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 Judicial Education and Conference Center, 2011-D Commerce Park Drive, Annapolis, Maryland on November 22, 2013.

Members present:

Hon. Alan M. Wilner, Chair
Hon. Robert A. Zarnoch, Vice Chair

A Gillis Allen, II, Esq.
H. Kenneth Armstrong, Esq.
Robert R. Bowie, Jr., Esq.
James E. Carbine, Esq.
Mary Anne Day, Esq.
Hon. Angela M. Eaves
Alvin I. Frederick, Esq.
Hon. Joseph H. H. Kaplan
Hon. Thomas J. Love
Derrick William Lowe, Esq., Clerk
Timothy F. Maloney, Esq.
Donna Ellen McBride, Esq.
Hon. Danielle M. Mosley
Hon. W. Michel Pierson
Hon. Paula A. Price
Sen. Norman R. Stone, Jr.
Steven M. Sullivan, Esq.
Hon. Julia B. Weatherly
Robert Zarbin, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Cheryl Lyons-Schmidt, Esq., Assistant Reporter
Scott MacGlashan, Clerk, Circuit Court for Queen Anne's County
Katherine B. Hager, Chief Deputy Clerk, Circuit Court for Queen Anne's County
Kimberle Early, Asst. Chief Deputy Clerk, Circuit Court for Anne Arundel County
Sharon E. Goldsmith, Esq., Pro Bono Resource Center
Michelle Y. Ewert, Esq., Homeless Persons Rep Project
Pamela Cardullo Ortiz, Esq., Executive Director, Maryland Access to Justice Commission
Hon. Mark D. Thomas, District Court, Washington County
C. Matthew Hill, Esq., Public Justice Center
Robert P. Duckworth, Clerk, Circuit Court for Anne Arundel County
Ron Long, Judicial Information Systems, JIS Application Services
Kim McPeters, Judicial Information Systems

Mary Hutchins, Judicial Information Systems, JIS Enterprise Project
Mary Denise Davis, Esq., Office of the Public Defender
Greg Hilton, Esq., Clerk, Court of Special Appeals
Susan Erlichman, Esq., Maryland Legal Services Center
Jamie Walter, Assistant Chief Clerk, District Court Operations
Kathy P. Smith, Clerk, Circuit Court for Calvert County
Kathleen Wherthey, Esq., Deputy Director, Legal Affairs, Administrative Office of the Courts

The Chair convened the meeting. He told the Committee that he had some announcements. With regret, he informed the Committee of the death of a former member of the Committee, Robert R. Bowie, Sr. Professor Bowie had been a member of the Committee from 1975 to 1977, and then from 1979-1990. He remained an *emeritus* member until his death on November 2, 2013. Both the Chair and Melvin Sykes, Esq., another member of the Committee, had served with Professor Bowie, who was a remarkable person.

The Chair said that Professor Bowie was a 1931 graduate of Princeton University, and a 1934 graduate of Harvard Law School. He had practiced law in Baltimore until the outbreak of World War II. He joined the army as a captain and came out as a lieutenant colonel. He then went back to Harvard where he taught corporate and antitrust law, and one of his students was Mr. Sykes. Professor Bowie took a leave of absence in 1951 to serve as a chief advisor to John McCloy, who was the high commissioner for the American Zone in Germany. After World War II, Germany was under military occupation until the early 1950's when a government was established. Someone had told the Chair that

Professor Bowie was the actual draftsman of the German Constitution.

The Chair said that Professor Bowie went back to Harvard where he founded and became the first Director of the Center for International Affairs. According to the Harvard Gazette, he presided over a distinguished group of scholars that included Henry Kissinger. Professor Bowie then served as Assistant Secretary of State under John Foster Dulles and as Director of National Intelligence for the CIA. While he was doing all of this, he was a member of the Rules Committee. He was probably the most distinguished member of the Committee ever. When he was a professor at Harvard Law School, he was the youngest professor at the time. The Chair remembered serving with Professor Bowie when the Chair was first on the Committee. Professor Bowie was the most laid-back person. He never spoke about his many accomplishments.

Mr. Bowie, Professor Bowie's son and a member of the Rules Committee, commented that his father had been a wonderful man. His father had been pleased that Mr. Bowie had graduated college and law school, but when Mr. Bowie was appointed to the Rules Committee, his father truly felt that Mr. Bowie had reached the top. His father died at age 104, and he was as sharp as ever until his death on November 2, 2013. Mr. Bowie told the Committee that he lived in Towson, and his father had been in a retirement home in Towson, so Mr. Bowie saw his father almost every day unless Mr. Bowie was in court or was traveling.

Whenever Mr. Bowie attended a Rules Committee meeting, he would go back to see his father, who would want to know in detail about the discussion at the Committee. The two of them would go over the discussion at the meeting. Professor Bowie loved the Rules Committee. Mr. Bowie thanked the Chair for his comments about his father.

The Chair announced that the previous day the Court of Appeals had held its open hearing on the Supplement to the 177th Report, which included a rule addressing preliminary inquiries in the District Court and amended rules to clarify some ambiguities in the Rule dealing with charging documents. The Court also heard the 180th Report, which addressed amicus briefs in the two appellate courts and contained rules requiring the reporting of Social Security numbers to the Client Protection Fund.

Agenda Item 1. Consideration of proposed amendments to Rule 1-322 (Filing of Pleadings and Other Items) and new Rule 1-327 (Entry of Judgments, Orders, and Notices) and reconsideration of amendments to: Rule 2-601 (Entry of Judgment), Rule 3-601 (Entry of Judgment), Rule 7-104 (Notice of Appeals - Times for Filing), Rule 8-202 (Notice of Appeals - Times for Filing), and Rule 8-302 (Petition for Writ of Certiorari - Times for Filing)

Mr. Sullivan presented Rule 1-322, Filing of Pleadings and Other Items; new Rule 1-327, Entry of Judgments, Orders, and Notices; Rules 2-601, Entry of Judgment; 3-601, Entry of Judgment; 7-104, Notice of Appeal - Times for Filing; 8-202, Notice of Appeal - Times for Filing; and 8-302, Petition for Writ of Certiorari - Times for Filing, for the Committee's

consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-322 to require the clerk to date stamp a pleading or other item **[on the same day it is received] [promptly upon receipt]** and to specify how the date of filing of pleadings and other items is determined, as follows:

Rule 1-322. FILING OF PLEADINGS AND OTHER ITEMS

(a) Generally

The filing of pleadings and other items with the court shall be made by filing them with the clerk of the court, except that a judge of that court may accept the filing, in which event the judge shall note on the item the filing date and then forthwith transmit the item to the office of the clerk.

Alternative 1

On the same day that a pleading or other item is received in a clerk's office, the clerk shall date stamp it. The pleading or other item shall be deemed filed on the earlier of the date a judge receives it or the date the clerk first receives and date stamps it.

Alternative 2

Promptly upon receipt of a pleading or other item in a clerk's office, the clerk shall date stamp it with the actual date received. The pleading or other item shall be deemed filed on the earlier of the date a judge receives it or the date of the clerk's date stamp.

No item may be filed directly by electronic transmission, except (1) pursuant to an electronic filing system approved under Rule 16-307 or 16-506, (2) as permitted by Rule 14-209.1, (3) as provided in section (b) of this Rule, or (4) pursuant to Title 20 of these Rules.

(b) Electronic Transmission of Mandates of the U.S. Supreme Court

A Maryland court shall accept a mandate of the Supreme Court of the United States transmitted by electronic means unless the court does not have the technology to receive it in the form transmitted, in which event the clerk shall promptly so inform the Clerk of the Supreme Court and request an alternative method of transmission. The clerk of the Maryland court may request reasonable verification of the authenticity of a mandate transmitted by electronic means.

(c) Photocopies; Facsimile Copies

A photocopy or facsimile copy of a pleading or paper, once filed with the court, shall be treated as an original for all court purposes. The attorney or party filing the copy shall retain the original from which the filed copy was made for production to the court upon the request of the court or any party.

Cross reference: See Rule 1-301 (d), requiring that court papers be legible and of permanent quality.

Source: This Rule is derived in part from the 1980 version of Fed. R. Civ. P. 5 (e) and Rule 102 1 d of the Rules of the United States District Court for the District of Maryland and is in part new.

Rule 1-322 was accompanied by the following Reporter's note.

There is a lack of uniformity throughout the State as to the determination of the exact date of filing of pleadings and other items. This lack of uniformity results in uncertainty as to procedural or statutory

deadlines. To clarify the date of filing of pleadings and other items, a proposed amendment to section (a) of Rule 1-322 requires that the clerk date stamp a pleading or other item **[on the same day that the clerk receives it] [promptly upon receipt]** and provides that the date of filing is the earlier of the date a judge receives the pleading or other item or the date of the clerk's date stamps.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

ADD new Rule 1-327, as follows:

Rule 1-327. ENTRY OF JUDGMENTS, ORDERS, AND NOTICES

(a) Applicability

This Rule applies to the entry of judgments, orders, and notices on and after [*effective date of the Rule*] in actions governed by the Rules in Titles 2, 3, and 4. The entry of a judgment, order, or notice in those actions prior to [*effective date of the Rule*] is governed by the Rules and other laws in effect when the judgment, order, or notice was entered.

Committee note: Rule 1-327 does not apply to matters in the Orphans' Courts or to juvenile causes under Title 11 of these Rules. See Rule 1-101 (a) and (b).

(b) Entry

The clerk shall enter a judgment, notice, or order by entering on the docket of the electronic case management system used by that court and in the case file (1) the

notation "Judgment Entered," "Order Entered," or "Notice Entered," as appropriate, (2) the actual date of that entry, and (3) such description of the judgment, order, or notice as the clerk deems appropriate.

(c) Availability to the Public

Unless shielding is required by law or court order, the docket entry, including the "Judgment Entered," "Order Entered," or "Notice Entered" notation and the date of the entry, shall be available to the public through the case search feature on the Judiciary website and in accordance with Rules 16-1002 and 16-1003.

(d) Date of Judgment, Order, or Notice

On and after [*effective date of the amendment*], regardless of the date a judgment, order, or notice was signed or otherwise issued, the date of the judgment, order, or notice is the date that the clerk enters it on the electronic docket in accordance with section (b) of this Rule. The date of a judgment, order, or notice entered prior to [*effective date of the amendment*] is computed in accordance with the Rules in effect when the judgment, order, or notice was entered.

Source: This Rule is new.

Rule 1-327 was accompanied by the following Reporter's note.

All courts have electronic case management systems. Under the various systems currently in use prior to full implementation of the statewide MDEC system, the date a judgment, order, or notice is entered into a court's electronic case management system may differ from the date a paper record of that judgment, order, or notice is made when the clerk enters it on a "file jacket, or a docket within the file, or in a docket book." Both dates may differ from the date shown on the case search feature of the Judiciary website.

Proposed new Rule 1-327 establishes a single, statewide method for entering judgments, orders, and notices in actions governed by the Rules in Titles 2, 3, and 4 filed after the effective date of the new Rule and for determining the date of entry.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-601 to add an applicability provision in subsection (b)(1); to delete language from and add language to subsection (b)(2) to modify how a judgment is entered; to add subsection (b)(3), which provides that subject to a certain exception, a docket entry is available to the public through a search feature on the Judiciary website and in accordance with certain Rules in Title 16; and to add section (d), which provides how the date of a judgment is determined before and after the date of the amendment to Rule 2-601, as follows:

Rule 2-601. ENTRY OF JUDGMENT

(a) Prompt Entry - Separate Document

Each judgment shall be set forth on a separate document. Upon a verdict of a jury or a decision by the court allowing recovery only of costs or a specified amount of money or denying all relief, the clerk shall forthwith prepare, sign, and enter the judgment, unless the court orders otherwise. Upon a verdict of a jury or a decision by the court granting other relief, the court shall promptly review the form of the judgment presented and, if approved, sign it, and the clerk shall forthwith enter the judgment as approved and signed. A judgment is effective only when so set forth and when entered as

provided in section (b) of this Rule. Unless the court orders otherwise, entry of the judgment shall not be delayed pending determination of the amount of costs.

(b) Applicability - Method of Entry ~~- Date of Judgment~~ - Availability to the Public

(1) Applicability

Section (b) applies to judgments entered on and after [*effective date of the amendment*].

(2) Entry

The clerk shall enter a judgment ~~by making a record of it in writing on the file jacket, or on a docket within the file, or in a docket book, according to the practice of each court, and shall record the actual date of the entry. That date shall be the date of the judgment.~~ by entering on the docket of the electronic case management system used by that court and in the case file (A) the notation "Judgment Entered," (B) the actual date of that entry, and (C) such description of the judgment as the clerk deems appropriate.

(3) Availability to the Public

Unless shielding is required by law or court order, the docket entry, including the "Judgment Entered" notation and the date of the entry, shall be available to the public through the case search feature on the Judiciary website and in accordance with Rules 16-1002 and 16-1003.

(c) Recording and Indexing

Promptly after entry, the clerk shall (1) record and index the judgment, except a judgment denying all relief without costs, in the judgment records of the court and (2) note on the docket the date the clerk sent copies of the judgment in accordance with Rule 1-324.

(d) Date of Judgment

On and after [*effective date of the amendment*], regardless of the date a judgment was signed, the date of the judgment is the date that the clerk enters the judgment on the electronic case management system docket in accordance with section (b) of this Rule. The date of a judgment entered prior to [*effective date of the amendment*] is computed in accordance with the Rules in effect when the judgment was entered.

Source: This Rule is derived as follows:
Section (a) is new and is derived from the 1993 version of Fed. R. Civ. P. 58.
Section (b) is new.
Section (c) is new.
Section (d) is new.

Rule 2-601 was accompanied by the following Reporter's note.

All courts have electronic case management systems. Under the various systems currently in use prior to full implementation of the statewide MDEC system, the date a judgment is entered into a court's electronic case management system may differ from the date a paper record of that judgment is made when the clerk enters it on a "file jacket, or a docket within the file, or in a docket book" and from the date shown on the Judiciary website.

Proposed amendments to Rules 2-601 and 3-601 establish a single, statewide method for entering a judgment, making the entry available to the litigants and the public, and determining the date of its entry. Older methods of entering a judgment, such as making a notation on the file jacket or on a docket
within the file, are proposed for deletion, since these methods have fallen out of use with the advent of electronic case management systems.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 3-601 to add an applicability provision in subsection (b)(1); to delete language from and add language to subsection (b)(2), to modify how a judgment is entered; to add subsection (b)(3), which provides that subject to a certain exception, a docket entry is available to the public through a search feature on the Judiciary website and in accordance with certain Rules in Title 16; and to add section (e), which provides how the date of judgment is determined before and after the date of the amendment to Rule 3-601, as follows:

Rule 3-601. ENTRY OF JUDGMENT

(a) When Entered

Upon a decision by the court denying or granting relief, the court shall enter the judgment promptly.

(b) Applicability - Method of Entry ~~- Date of Judgment~~ Availability to the Public

~~The court shall enter a judgment by making a record of it in writing on the file jacket, or on a docket within the file, or in a docket book, according to the practice of each court, and shall record the actual date of the entry. That date shall be the date of the judgment.~~

(1) Applicability

Section (b) applies to judgments entered on and after [*effective date of the amendment*].

(2) Entry

The clerk shall enter a judgment by entering on the docket of the electronic case

management system used by that court and in the case file (A) the notation "Judgment Entered," (B) the actual date of that entry, and (C) such description of the judgment as the clerk deems appropriate.

(3) Availability to the Public

Unless shielding is required by law or court order, the docket entry, including the "Judgment Entered" notation and the date of the entry, shall be available to the public through the case search feature on the Judiciary's website and in accordance with Rules 16-1002 and 16-1003.

(c) Advice to Judgment Holder

Upon entering a judgment for a sum certain, except in Baltimore City, the court shall advise the judgment holder of the right to obtain a lien on real property pursuant to Rule 3-621.

(d) Recording and Indexing

Promptly after entry, the clerk shall record and index the judgment, except a judgment denying all relief without costs, in the judgment records of the court.

(e) Date of Judgment

On and after [*effective date of the amendment*], regardless of the date a judgment was signed, the date of the judgment is the date that the clerk enters the judgment on the electronic case management system docket in accordance with section (b) of this Rule. The date of a judgment entered prior to [*effective date of the amendment*] is computed in accordance with the Rules in effect when the judgment was entered.

Source: This Rule is derived as follows:
Section (a) is new and is derived from the 1963 version of Fed. R. Civ. P. 58.
Section (b) is new.
Section (c) is derived from former M.D.R. 619 b.
Section (d) is new.

Section (e) is new.

Rule 3-601 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 2-601.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW

IN CIRCUIT COURT

CHAPTER 100 - APPEALS FROM THE DISTRICT COURT

TO THE CIRCUIT COURT

AMEND Rule 7-104 to delete section (e), as follows:

Rule 7-104. NOTICE OF APPEAL - TIMES FOR FILING

. . .

~~(e) Date of Entry~~

~~"Entry" as used in this Rule occurs on the day when the District Court first makes a record in writing of the judgment, notice or order on the file jacket, or on a docket within the file, according to the practice of that court, and records the actual date of the entry.~~

. . .

Rule 7-104 was accompanied by the following Reporter's note.

The addition of new Rule 1-327 and changes to Rules 2-601 and 3-601 have been proposed to establish a single, statewide method for entering judgments, orders, and notices. Because the definition of "date of

entry" would be modified if these changes are adopted, language that provides the former definition of "entry" is proposed to be deleted from Rules 7-104, 8-202, and 8-302.

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 8-202 to delete section (f), as follows:

Rule 8-202. NOTICE OF APPEAL - TIMES FOR FILING

. . .

~~(f) Date of Entry~~

~~"Entry" as used in this Rule occurs on the day when the clerk of the lower court first makes a record in writing of the judgment, notice, or order on the file jacket, on a docket within the file, or in a docket book, according to the practice of that court, and records the actual date of the entry.~~

. . .

Rule 8-202 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 7-104.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 300 - OBTAINING APPELLATE REVIEW IN COURT OF APPEALS

AMEND Rule 8-302 to delete section (d), as follows:

Rule 8-302. PETITION FOR WRIT OF CERTIORARI - TIMES FOR FILING

. . .

~~(d) Date of Entry~~

~~"Entry" as used in this Rule occurs on the day when the clerk of the lower court first makes a record in writing of the judgment, notice, or order on the file jacket, on a docket within the file, or in a docket book, according to the practice of that court, and records the actual date of the entry.~~

. . .

Rule 8-302 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 7-104.

Mr. Sullivan told the Committee that Rules 1-322, 1-327, 2-601, 3-601, 7-104, 8-202, and 8-302 contained amendments concerning the entry of judgment. The Rules had been considered previously. One of the solutions to the problems with the Rules had been suggested by Mr. Carbine. The Judgments Subcommittee tried to go back through the Rules to rationalize all the related provisions that would be involved, including the filing of liens,

judgments, and orders. This is why more Rules have been implicated.

Mr. Sullivan explained that an amendment had been suggested for Rule 1-322, which was in the form of two alternatives. The key phrase that was different in each one was: "On the same day that a pleading or other item is received in a clerk's office..." in Alternative 1 and "Promptly upon receipt of a pleading or other item in a clerk's office..." in Alternative 2. Whether it is on the same day or promptly when the item is received, the clerk shall date stamp it, and the pleading or other item shall be deemed filed on the earlier of the date a judge receives it or the date the clerk first receives and date stamps it.

Mr. Sullivan said that the Subcommittee had been trying to nail down that key moment that the actual receipt by the clerk happens, so that there is a date certain. A number of events can happen in the clerk's office, some of which have been given significance in the electronic case reporting over the years. The purpose of the current revisions was to try to fix one particular date that judges, litigants, and attorneys can all look to, and then the other Rules, such as those governing time to appeal, will be tied to that. Rule 1-322 provides for the key moment when the filing is transmitted from a litigant or from counsel to the clerk's office, and this is going to be the time when it gets filed.

The Chair explained that the reason for the alternatives was that when this matter was being considered, there was some

question as to whether in some clerks' offices, filings that are made by mail come in and are not immediately attended to by the clerk. These filings can accumulate for a day or more. What happens if the filing is not stamped on the same day? Mr. Lowe responded that in preparation for this discussion, he had surveyed every clerk's office in the State. He had asked two questions. One was: "When a pleading comes in by mail, is it stamped on the day that it is received in the office?" The second question was: "Is that date used as the 'file' date when it is put into the system, and it shows up electronically?" Mr. Lowe said that he received responses from every clerk's office in the State. The response was "yes" to both questions. The practice among every clerk's office is that (1) the filing is stamped when it arrives in that day's mail and (2) even if the clerk cannot input it into the electronic system that day, that date will be used as the day that it is received, and the day that it is filed.

The Chair asked whether Alternative 1, which provides for the clerk date stamping a filing on the same day that it is received in the clerk's office, would work. Mr. Lowe answered affirmatively. Judge Pierson commented that each alternative provides that the date the pleading or other item is deemed to be filed is the "earlier of the date a judge receives it or the date the clerk first receives and date stamps it." The current Rule, which is retained, provides that a judge of a court may accept a filing, in which case the judge has to note the filing date and

forward the filing to the clerk's office.

Judge Pierson expressed his concern about the language in both alternatives which is: "...the date a judge receives it...," because now the main use of this Rule is that if the clerk's office is closed or for some other reason the pleading or other item is unable to be filed, it is a safety valve for the judge to accept it. However, increasingly people are sending things to judges, including by e-mail. Judge Pierson explained that his concern was that anything that a judge receives is considered to be accepted by the judge as a filing. Judge Pierson suggested that the language of section (a) could be: "the date a judge accepts it" instead of "the date a judge receives it."

Mr. Lowe asked for one modification regarding the language in the Reporter's note that refers to a lack of uniformity throughout the State as to when the exact date for filing is. Given the research Mr. Lowe had done, he asked if that language could be stricken. The Reporter noted that the lack of uniformity that had existed was what started all of the push to change the Rule.

Mr. Lowe said that his office gets a large amount of mail addressed to judges, and their practice is that they do not send anything to a judge unless it has been docketed and put in a case folder to go to the judge. They do not send mail directly to the judge. Judge Price asked if the pivotal date is the date the judge receives the filing in open court. Mr. Carbine responded that this was not necessarily the case. The use of Rule 1-322

that he had seen was a filing sent on a Saturday. When he had been a young attorney, the older attorneys all knew the judges. If the clerk's office was closed, the seasoned attorneys knew that they could go to the judge's home. The Chair said that this was his understanding of what this part of Rule 1-322 was used for.

Judge Weatherly remarked that frequently, attorneys come into the courtroom in a domestic case with an amended complaint for divorce. About once a week, someone hands Judge Weatherly a pleading with the intention of going forward on it. The Chair suggested that Judge Weatherly could just take the pleading to the clerk's office. She responded that she does this. The litigant loses his or her place in line for the trial. It may be a two-day trial, and if it is the most efficient for the court, the court may take the pleading. Ms. Day noted that pleadings, such as an amended complaint for divorce, filed with the court are accepted in Frederick County. The Reporter said that Judge Pierson's suggestion to change the word "receive" to the word "accept" was a good one. Section (a) of Rule 1-322 should read : "...the date the judge accepts the filing...". The judge does not have to accept the filing. By consensus, the Committee approved the change.

Judge Pierson asked if the reference to "the lack of uniformity" was going to be eliminated from the Reporter's note. The Reporter pointed out that the Reporter's notes eventually disappear, and they go with a disclaimer. She said that the

Reporter's note would be revised. Mr. Sullivan inquired whether the Committee preferred Alternative 1 in section (a). By consensus, the Committee agreed that the language of Alternative 1 would go into section (a) of Rule 1-322.

By consensus, the Committee approved Rule 1-322 as amended.

Mr. Sullivan told the Committee that Rule 1-327 was a new Rule. The Rule addresses entry of judgments, because of the distinction between the filing of pleadings and the filing of judgments and orders. The Subcommittee decided that the best idea was for there to be a separate rule to address entry of judgments, orders, and notices, because it is different when the judge is entering the document. This Rule has a concept at work similar to Rule 1-322, but Rule 1-327 will be key, because its language is going to be picked up in other places in the Rules where entry is an important event.

Mr. Sullivan noted that section (a) had the disclaimer as to when the Rule becomes effective and provided that the Rules in place previously governed the entry of judgments, orders, and notices prior to the effective date of Rule 1-327. Section (b) of Rule 1-327 is similar to the language that is in other Rules in the meeting materials. Mr. Sullivan said that as he had considered the language of section (b), he thought that there might be a disparity as to what the clerk thinks is the appropriate description and what the judge thinks is the appropriate description. This had already been an issue before Rule 1-327 had been drafted. The judge may look at the entry and

say that he or she was not quite sure that the description was what the judge's order had been. The three items in section (b) which are the notation, the actual date of the entry, and a description of it are what would be expected to be entered into the electronic case management system upon the entry of the judgment, order, or notice from the court.

The Chair commented that the Subcommittee had thoroughly discussed the idea of a uniform, statewide Rule about what language the clerk should use, so that the entries do not vary. The Subcommittee picked the language: "Judgment Entered." The Chair told the Committee that JIS was going to make a presentation at the meeting. The Committee had already considered the question about clerks in different counties handling the entry of judgments, orders, and notices differently. When a judgment comes in, either the judge signs it and sends it to the clerk's office, or it comes down from the courtroom clerk. Some clerks enter it into their computer system, which no one but the clerks can see. It happens to be an entry vehicle for the judgment getting on Case Search. It is preliminarily entered on the clerk's computer. Then someone in the clerk's office reviews the judgment, not for substantive accuracy, but to make sure that it is in the right case, or it has the right name on it. In Baltimore County, it could take a day or two or even longer for that process, because the filings get stacked up until someone can look at them. When the reviewer finds that the filing is appropriate, the clerks use the term "the judgment is committed."

Then the judgment gets entered again into the clerk's computer system. That entry gets on Case Search. The clerk has to be careful that the first entry onto the clerks' system is not the date of the judgment. It is not the date, because no one sees it.

The Chair said that there was another pertinent issue, which was that JIS is using the term "index" on their Case Search. What does this mean? The Chair told the Committee that Mary Hutchins from JIS was present to explain how the Case Search process works. Ms. Hutchins told the Committee that she was the Information Technology manager for JIS and also the Project Manager for Case Search. This issue had been discussed at the last Rules Committee meeting. She and her colleagues then went back and did some analysis. They realized that they were showing an order date, an entry date, and an index date. These were the date the judgment was ordered, the date the clerk entered it, and then the date that it was "committed." They took out the entry date. They have the judge's order date, and now they have an "entry index" date, because some people use the term "index," and some use the term "entry." These had been put on the sample form being shown to the Committee just to demonstrate that the labels are very easy to change in Case Search. Whatever the position of the Committee was, the change to the system can be made very quickly.

Ms. Hutchins said that two of her best co-workers from JIS were present at the meeting, Kim McPeters, who manages the

Uniform Case System (UCS) team, and Ron Long, who was previously a trainer and is now part of the UCS team. Mr. Long was there to run the computer, and Ms. McPeters to help with explaining to the Committee how to enter a real judgment into an Anne Arundel County case and how it goes from UCS to Case Search. What was being shown to the Committee was on a projector screen.

Ms. Hutchins explained that the replication process is usually very quick. There may be a delay because the team from the clerk's office in Anne Arundel County is very busy. Ms. Hutchins showed the Committee the "judgment order" date, which is the actual date that the judge ordered the judgment. The "index date" is the date that the supervisor actually committed the judgment. She added that she realized that this term should not be used. There is a date for the "entry," which will be taken out.

Ms. Hutchins said that the case being shown to the Committee had no judgment yet. Ms. McPeters remarked that a case that had already been entered in the UCS was also being shown. In this instance, the case had been ordered on November 18, and it had been held until the day of the Rules Committee meeting. It was going to be entered with the date of the meeting, which was November 22, 2013. As the Chair had suggested, the person in the clerk's office who gets the judgment will enter it into his or her computer. She told Mr. Long to enter in the judgment onto the screen being shown. The parties who are "for" and "against" would be designated. The judgment screen indicated the principal

dollar amount of the judgment.

Ms. McPeters told Mr. Long to make note of the "entry date." The field that is called the "entry date" is a date that is not changeable, because this is the date that the judgment is being entered into the computer. The "order date," which is changeable, was changed to November 18. They then entered the dollar amount of the judgment. At this point, any additional fees or attorney's fees would be added to the judgment form. The form being shown indicated that the judgment totaled $74,000. The judgment would not have been entered into Case Search yet, because it had not been indexed or committed.

Ms. McPeters noted that normally the person who is entering the judgment can do a draft of the judgment, so that anyone reviewing it can see that everything has been entered correctly. Mr. Long entered the draft onto the screen being shown to the Committee. What would happen is that someone, possibly a supervisor, would review the judgment being entered, making sure that all the information is correct. Then the person doing the reviewing would print out the judgment. Ms. McPeters was not sure as to what the court process is for stamping or documenting that the judgment is correct, but she pointed out that then the judgment would be committed or indexed. She added that she was going to show the Committee the case before it was committed to Case Search. She pointed out to the Committee the money judgment section prior to the commitment. It showed that the judgment was ordered on November 18 but there was no entry or index date to

it. Then she showed the judgment as committed. The form on the screen showed that the judgment was ordered on November 18, and entered on November 22. It showed the dollar amount of the judgment.

Judge Pierson inquired whether the process that had just been explained would always produce a docket entry and the notice of a recorded judgment as part of the same process. Is there a gap between those two items? Ms. McPeters answered that the only gap would be the gap between when the first person gets the judgment, and when it is reviewed. She told the Committee that she would show the index on UCS. This would appear on public access terminals. She showed the Case Search form to the Committee and indicated how quickly it is replicated. This is what happens between the time that the judgment is entered and the time that it is indexed.

Mr. Carbine commented that the process should be changed to comply with Rule 1-327. The one date should be on Case Search. The Chair noted that what is critical under Rule 1-327 is the way the judgment is entered, and it is that date when the judgment is entered, not the date the judge signs it. Mr. Lowe remarked that as he had understood the original issue, it was to determine what that date of entry was. He expressed the opinion that the technological fix solves this problem. Mr. Hilton, Clerk of the Court of Special Appeals, pointed out that the document, which was the notice of the judgment, is where many people look to find out about the judgment, but it does not have the date of the

order on it.

Ms. Smith, Clerk for Calvert County, and a former member of the Rules Committee, added that the notice document does not use the word "entered." What is needed on the docket entries is the enter date. The Reporter commented that it is the word "enter." Mr. Carbine noted that the docket entry must state: "Judgment Entered _____," and the date would be filled in. Ms. Smith pointed out that when there is a non-money judgment, the date that the judgment is entered is the date of the entry of an order of the court, such as a judgment of divorce. The docket entry shows the file date, and it also should show the entry date.

Mr. Carbine remarked that if Rule 1-327 is adopted, the docket entries must read: "Judgment Entered." Mr. Hilton noted that a non-money judgment, such as a judgment of divorce, is just an order of court. The docket entry is not done through the judgment index. It is a simpler process for those orders, because the clerk only has to type in "Judgment Entered." Ms. Smith remarked that this is not showing in Case Search. Ms. McPeters said that a non-money judgment is entered as a regular docket entry. Ms. Smith commented that the only information showing in that docket entry is the trial date. She asked Mr. Long to show the Committee the form for UCS. She pointed out the place on the form that read: "User ID, entered." It showed an order for judgment of divorce and the file date. The date that the judgment was entered was not showing nor was the date of any of the motions filed in the case.

Ms. McPeters responded that Case Search will have to be changed to show the file date and the date of entry. Ms. Smith noted that the date that would be shown is not the date of the order, but the date that it was filed. Ms. McPeters said that Case Search will be changed, so that every page will be displayed that way. Any type of case will display those two fields. This may have to be reassessed to make sure that the correct information would be shown all the time on every different type of case. In every type of case, the user-entered date has to be shown. Ms. Smith agreed. Ms. McPeters remarked that currently, the close date is being shown, which is not necessary.

The Chair said that the view of the Subcommittee was the point made by Mr. Carbine, which was that there should be the magic words: "Judgment Entered" as well as the date, and this is the date of the judgment. It is not the date the judge signed it and not the date that it was indexed, if there was a delay. The Chair added that he thought that the people from JIS regarded this as when the judgment was "committed." Ms. Smith observed that for a money judgment, this is what will be shown. It will be necessary to remove the date of index. However, for non-money judgments, the enter date is not being shown on any motions docket.

The Chair commented that this raises another issue. This is when the judge enters something that is labeled a "judgment," but under Rule 2-602, Judgments Not Disposing of Entire Action, it is not a judgment, because it is not final due to unresolved issues

remaining in the case. This is a problem now, and the Chair was not sure how this could be addressed. The judgment is not appealable, even though the docket entry reads: "Judgment," because unresolved issues remain in the case.

Judge Weatherly noted that this happens in domestic cases all of the time. Judge Pierson added that it often happens in multiple-party cases with motions for summary judgment. He referred to the previous point in the discussion about what is recorded. The system already records the date when the judgment is entered. The problem that he was hearing was the technological problem that this is not showing.

Judge Pierson expressed the opinion that it is a technological problem and not a rule problem. He remarked that the first language to eliminate is the language referring to entry by the clerk in a "file jacket, or a docket within the file, or in a docket book." The Committee agreed with this; the entry should only be in an electronic case management system.

Judge Pierson referred to the addition of the language to section (b) of proposed Rule 1-327 regarding the notation in the case file that read: "Judgment Entered," "Order Entered, "or "Notice Entered," and he expressed the view that it was unnecessary. It introduces another layer to this that could ultimately prove to be confusing.

Mr. Carbine commented that the Rule did not have to be drafted this way, but without it, there would be an unfair ambiguity as to what litigants and attorneys see on Case Search.

Judge Pierson responded that this is a Case Search problem. The Chair noted that Case Search is the only thing the public is able to see. Putting something in UCS is not helpful. Ms. Smith agreed, adding this is why the system needs to be changed. It is a system error.

Judge Pierson pointed out that a procedure for entry of judgment that works already exists. The Chair disagreed, noting that three or four different dates can appear in the current system. Anyone can consider any of those dates as the judgment date. The idea of changing the Rules was to provide statewide certainty. This is why the Subcommittee used the term "Judgment Entered" as the magic words, and the date that this goes on Case Search, this would be the date that the judgment is entered. This was the goal of having one date that is clear and is available to the public to know when a judgment is actually entered.

Judge Pierson noted that the words "available to the public" have been added to section (c) of proposed Rule 1-327. One date for entry of a judgment or order already exists under the electronic case management system, which is produced by UCS automatically on the date that the clerk enters a judgment. He understood that the Chair had commented that this should be available to the public, but this could be fixed by changing Case Search. Judge Pierson expressed his concern about the language in section (b) that read: "Judgment Entered," "Order Entered," or "Notice Entered," because of the other issue that had been

discussed, which was interlocutory orders. These are in the nature of judgments, because they may dispose of a case as to one defendant, but not all. The notations of "Judgment Entered," "Order Entered," or "Notice Entered" may cause confusion. The Chair responded that this is what the clerks put in the system now. Judge Pierson said that sometimes the clerks do, and sometimes they do not.

Mr. Lowe remarked that from a technological perspective, in both money and non-money judgments, the judgment entry date can be picked up and displayed in Case Search. The Chair pointed out that it is important that the public can see this, because this is how someone would know how many days there are to file an appeal or file a motion under the post-trial motions, such as Rule 2-532, Motion for Judgment Notwithstanding the Verdict, or for priority of liens.

Judge Pierson commented that the current system automatically puts in the date that the clerk enters the judgment. This is invariable; the clerk cannot alter the date of the judgment. Now, the proposed Rule would create an entry that reads: "Judgment Entered." He hypothesized that the clerk would put in an entry that reads: "Judgment Entered, November 26" but commits the entry to the computer on November 27. This would create an ambiguity.

The Chair pointed out that what would happen on the 27th is that the entry would be: "Judgment Entered." This was the problem. In Baltimore County (where the clerk said that other

counties are doing this, also), the clerk is putting a judgment in their UCS system as soon as they get it, even though it is not committed, because someone has to review it first. After that review, as Ms. Hutchins had said, the judgment is committed. This is when the judgment is put into the UCS system as committed, and this is when Case Search picks it up. The goal was to get away from the current practice of paper and the practice in the electronic world of having two different entries with different dates. The idea was to have one date, and this is when the judgment is real. The judgment would be put into the system as "Judgment Entered, November 27," and this is when everyone knows that this is the date.

Judge Pierson expressed the view that currently there is one date, and proposed Rule 1-327 is creating two dates. Ms. Smith agreed. She said that by showing the judgment before it is entered on Case Search, another problem is being created. It should be shown the day that it is committed. The date that it is committed is the date that it is entered. This is not a UCS problem, it is a problem with Case Search. The clerks are trying to change the date, because the file date is what is getting picked up. They are trying to change that date to the entry date, which is not showing. This is why the problem exists throughout the State. The Chair agreed that there was a problem. Ms. Smith reiterated that the problem is with Case Search.

Ms. McPeters asked Ms. Smith if she approved of what had been displayed for the Committee as the Judgment section of the

displayed form. Ms. Smith asked if anyone was in favor of keeping the judgment order date, because that could be confusing, also. Judge Pierson replied that he liked it, because it shows how long the process took. Ms. Smith agreed that it is a management tool, but it is not really a tool for the public. Instead of the entry index date, all that is needed is the "Judgment Entered" date. This will take care of the money judgments. It is not in UCS, which has the "Enter" date. What is needed is the "Judgment Entered" date. Ms. McPeters said that this had been on the UCS form, but then it was changed. Ms. Smith noted that it is not an entry date until it is committed.

The Chair said that to pick up on what Judge Pierson had commented on previously, the current Rule, which is Rule 2-601, reads: "The clerk shall enter a judgment by making a record of it in writing on the file jacket, or on a docket within the file, or in a docket book, according to the practice of each court." He asked if anyone was in favor of retaining this language. Ms. Smith responded that this procedure is no longer done. The Chair noted that the Rule has to be changed. The question was how Rule 2-601 should be worded to show the entry date for the judgment. Some people had said that it is when the judgment is "committed," but that is not a term of art.

Mr. Lowe pointed out that the words "entered" and "committed" are interchangeable. The Chair commented that instead of using the term "judgment committed," which no one will understand, the Committee is suggesting the term: "judgment

entered." Everyone knows what this means. Ms. Smith remarked that if the term is changed to: "judgment entered," this will capture the date that the judgment was committed. This is only for money judgments. This does not apply to non-money judgments. The Chair asked why it would not apply. Ms. Smith answered that the form showing on the screen was only for money judgments.

Ms. McPeters said that she would put up a motion form on the screen for the Committee to see. A close date had been added on purpose, because currently what was showing on the forms was the file date and the close date. The file date showing was November 18. The date the motion was entered on UCS should be there. Every case that is displayed on Case Search would display the user-entered date. She was not sure what the meaning of "close date" was. Ms. Smith responded that it meant the date that the case was closed, but it is not necessarily the date of the judgment. Ms. McPeters inquired if Case Search should be changed to show "close date" and "enter date." If it is only the "enter date" shown, it will never be known when the case has been closed.

The Chair asked what would be shown if the judgment was a final injunction in a case with a petition for an injunction, which was granted by a judge, and the case is over. Or what would be shown if it was a declaratory judgment? Ms. McPeters replied that it would be shown as "Judgment Entered." She added that from an IT point of view, a declaratory judgment and a non-money judgment all meant the same to her. She would only need to

know the date it was entered.

Ms. Smith noted that what is shown in UCS is the date that the clerk enters the order for an injunction, which would be placed on the right side of the form with a default entry date, and this can be changed. Case Search shows the file date, and if the clerk has not changed this by manipulating the docket entries to make it the same date that the judgment is being entered, the entry date is not showing. The Chair commented that it could be shown. Ms. Smith remarked that when there is a court order that was received the previous day, the clerk would have to change the receipt date to the date that the order was entered, so that it shows the file date, which is normally the date that the filed document was received. The entry date is not showing. For an order, such as an order for divorce, the entry date is needed.

Ms. McPeters asked if an entry date, not the filing date, is needed for all subsequent filings. The Reporter answered negatively. Ms. Smith said that if someone was going to file an appeal, it would have to be filed within 30 days from that date; that is why it is important. If there is a deadline to file something, the file date will be the important date. For an order of court, the entry date is the one that counts. It does not show in Case Search, but it does in UCS. Ms. McPeters asked if this is so regardless of the type of case. Ms. Smith answered affirmatively.

Ms. Hutchins questioned whether another label could be added that would be "entry date." Ms. Smith replied that the place for

"close date" could be removed. The Chair asked Ms. Hutchins if there was a problem when the clerk "commits" the judgment to put it on Case Search as "Judgment Entered" with the date, whether the judgment is a money judgment or not. Ms. Smith replied that for the non-money judgments, this could be a problem, because what counts is the date that the clerk entered it, but every motion document is going to have an enter date. The clerk will not be able to pick out which one is the final judgment. Mr. Carbine pointed out that there is a big difference between a motion and a judgment. Ms. Smith responded that this is not so as far as the computer is concerned. If an order is typed in, the computer does not know whether it is an order that is a final judgment or another order.

The Chair noted that Rule 2-601 requires a separate document for a judgment. Mr. Carbine said that he had not been referring to the differentiation between judgments and orders, but a motion and a judgment and/or order cannot be treated the same. Ms. Smith commented that the problem is because that date is a default date for both orders and judgments.

Mr. Hilton remarked that for a money judgment, the initial process is a technical process that satisfies Rule 2-601, which requires that a separate document be filed. What is generated from this effort is a notice from the clerk to the parties that a judgment has been entered. The Chair responded that this is different; it is a notice.

Mr. Hilton commented that it also satisfies the single-

document rule for a judgment. For any other type of judgment, such as for an injunction, a declaratory judgment, or a judgment of divorce, the technical process of putting that judgment into the system is the same as docketing a motion. Even though they are separate types of documents, the process is exactly the same. The difficulty is that when the money judgment is entered, it automatically picks up the date that the clerk was actually typing that information into the system. For a non-money judgment, it depends, because the data is coming from a different source, and this is the technical part that has to be figured out. It is important to understand what the clerks had been discussing when Rule 1-327 is crafted, so that the clerks can replicate what the Rule is intended to do.

The Chair said that Rule 1-327 is intended for any kind of judgment, whether it is an injunction or a money judgment. There are 30 days from the date that it is entered to appeal, and it is necessary to know precisely, and in every one of the 24 counties, that this is uniform, that there is something on Case Search which indicates when the time starts. Mr. Hilton commented that the clerks' position was that to do that completely, so that everyone knows what date that is, there will be two separate processes. It is important to consider how Case Search pulls that information from UCS and what date that is. Otherwise, there will be ambiguities. The discussion between the JIS personnel and the Subcommittee as to the process that is intended to be followed by proposed Rule 1-327 is very important,

so that JIS can replicate this if possible. The way that UCS is set up now, it tracks Rule 2-601 for money judgments, but not necessarily for non-money judgments.

The Chair asked Mr. Hilton if he agreed that the process needs to be the same. Mr. Hilton replied that he agreed, but he noted that a technical problem exists for the system to follow proposed Rule 1-327 or vice versa. He recommended that Rule 1-327 be recommitted to the Subcommittee to try to bridge that gap. His view was that there was less confusion now the way it is set up than there would be if a Rule is approved as written without modifying Case Search and UCS.

The Chair pointed out that this problem existed all through the process of developing the Maryland Electronic Courts System (MDEC) with JIS disagreeing with the Rules Committee's view on the way that it ought to be. If the Court of Appeals adopts this policy, it will have to be done this way. Mr. Hilton responded that the problem is that some human operator will have to create a method of compliance with Rule 1-327 that will cause more confusion in Case Search. The Chair said that it is not a good idea to have confusion in Case Search, but what the Subcommittee was trying to do was to create a clear, statewide policy, so that whatever the date is, it is one date that can be depended upon. There should not be three dates to choose from.

Mr. Hilton remarked that the problem would be when the clear policy is added to Rule 1-327, which is a very good rule from a non-technical point of view, but it interfaces with UCS and Case

Search, so that the policy will create confusion. The issue is mapping the source of data that goes up on Case Search to make sure that UCS can comply with Rule 1-327. If individual clerks are being relied on to type the exact and precise words, the clerks would have to properly transmit the words to UCS and Case Search.

Mr. Bowie asked whether the policy could be set at the meeting, and then at the next meeting, there could be a demonstration as to how the programming had been changed to meet the language of Rule 1-327. The Chair inquired whether JIS would be able to comply with proposed Rule 1-327 if the Court of Appeals were to adopt this Rule the way it had been presented at the meeting. Ms. Hutchins replied that she thought that they could, but what she and Ms. Smith had disagreed upon might not be able to be resolved.

Mr. Hilton recommended that the Rule be discussed again before the Court of Appeals approves it. Mr. Carbine pointed out that Rule 1-327 had been previously discussed by the Committee, and it was sent back to the Judgments Subcommittee, which discussed it again. The Rule presented today was what came out of that meeting. Each day that Rule 2-601 is in effect, some attorney will inadvertently commit malpractice. A new rule is needed as soon as possible.

The Chair commented that if the problem was figuring out how Case Search could comply with proposed Rule 1-327, he had thought that from the discussions he had had with Ms. Hutchins, Case

Search could comply. The entry into the computer system could be: "Judgment Entered." It can be done that way. He asked Ms. Hutchins what the problem was. Ms. Hutchins answered that this matter should be decided at the meeting, but she would have to check with MDEC personnel that JIS can still capture the date that the user actually depends on. The Chair said that MDEC covers this. When a judgment comes down, it will be e-entered into MDEC. Mr. Carbine added that when MDEC goes statewide, the problem will be solved. He did not know what the future holds for the interrelationship between MDEC and Case Search, but there may not even be a need for Case Search.

The Chair asked Mr. Duckworth, who is the Clerk for Anne Arundel County, if he saw a problem with this. Mr. Duckworth replied that when MDEC goes into effect, the problem identifying the date of the judgment will be eliminated. Mr. MacGlashan, who is the Clerk for Queen Anne's County, remarked that after listening to Mr. Carbine's comment about malpractice, he was concerned that the current Rule would result in a reliance on Case Search.

Mr. Maloney noted that the overwhelming majority of practitioners rely on Case Search. If an attorney has a case in Worcester County, but the attorney is located in Baltimore City, he or she cannot drive three hours to check the files in Worcester County. What the process is developing into is similar to PACER (Public Access to Court Electronic Records) in the federal system. An attorney can go on PACER right now and be

sure that what he or she sees is the docket entry. Since MDEC is not in place yet, nor is there a PACER system, something has to be created in Case Search that replicates this. This is what the Rules drafted by the Subcommittee are attempting to do.

Mr. Carbine explained that the problem being addressed is not the problem Mr. MacGlashan had identified. The problem being addressed is the following scenario. An attorney goes to the clerk's office and sees one of the dates that is on the file jacket. It is in the docket book, and it is written down elsewhere on a list. The attorney picks the wrong date. If one of the other dates is earlier, the attorney has just committed malpractice. Judge Pierson noted that this problem can be fixed by taking away all of the file jackets and paper records.

Mr. MacGlashan observed that not all docket entries are on Case Search. Any practicing attorney who is relying on Case Search is taking a risk. Mr. Maloney argued that this is not the reality. Ms. Hutchins noted that Case Search is not the official court record. The Chair said that whether an entry is on Case Search or not, every clerk's office should have the same procedures. Any word can be chosen to indicate an entry into the system, but the Subcommittee's view was that the language "Judgment Entered" would be best. Whatever the words chosen, they would mean that this is the date that governs.

Mr. MacGlashan said that in Queen Anne's County, when an order is issued by the court, someone in the clerk's office stamps the order as entered. Any attorney can look at this to

see when it was stamped. When a paper comes through the mail, they date stamp it when they receive it. There is no ambiguity at all. He reiterated that relying on Case Search was dangerous at this point. UCS is much more accurate.

Judge Weatherly noted that one of the problems in Prince George's County is the judgment that goes out in a family case. One date is the day a judge signed an order. It was noted as entered in handwriting, and there is another date on the bottom, which may be different. When the order was put into the system, it was signed also. The concern is that people know what date their appeal runs from. Does Rule 1-327 resolve this problem from the point of view of the clerk's office? What happens in Prince George's County is that the little notation at the bottom is not the date that the document was entered into the system. It is not the date on which people can rely. Judge Weatherly noted that 87% of the parties in front of her who are looking at these orders are *pro se*. If Judge Weatherly issues an opinion, the parties in the case see the date that she signed the opinion, and they could assume that this is the date from which the appeal time is running.

Mr. Lowe expressed the view that there is a technological fix, which had been described by Ms. Hutchins. It is making sure that all of the clerks are using the same dates. From a technological standpoint, they can pick up the date whether it is a money judgment or a non-money judgment order, and it can be displayed. This would be the date that governs. The Chair

stated that the goal is one uniform standard. If the court says that a certain date is when a judgment is entered, that is when the 30 days start. If the judge signed the order on some other date, or the clerk received it on some other date, it does not matter. Judge Weatherly remarked that she knows that the date she signs an order is not the date that is entered. Her concern is that the date that is written "entered" is not always the date that goes into the system. Mr. Lowe responded that this is an issue that needs to be addressed. Those dates should never be different.

Judge Pierson said that he had another issue to discuss. He referred to the following language in section (b) of Rule 1-327: "The clerk shall enter a judgment, notice, or order by entering on the docket of the electronic case management system used by that court and in the case file (1) the notation ..." . Currently, the court enters a judgment, the judgment is printed, and it is put into the paper case file. However, other orders are just docketed. As Judge Pierson read Rule 1-327, it will require the court to create some kind of notation to put in the court file when an order is entered. The Chair asked if the order is usually put in the file. Judge Pierson replied affirmatively, but he said that Rule 1-327 requires a separate notation before it is put in the file. Ms. Smith remarked that this would mean that an order of court would have to be entered as "Judgment Entered." Judge Pierson added that this would require the creation of a separate piece of paper.

The Chair commented that it should be the same date that the button entitled "Committed" is pushed. If it is pushed on November 27, then Case Search picks it up, and it should be put into the file as well. If someone comes to the courthouse, the person will see the same date. Judge Pierson remarked that the person coming to the courthouse will see the order sitting in the file. The Chair responded that the order date is not the date of the judgment.

Judge Pierson observed that if the idea of Rule 1-327 is to make the procedure uniform for the electronic recording and dissemination of information to the public, that is appropriate, but Rule 1-327 is creating the requirement of a new piece of paper for the court file. Judge Weatherly said that she thought that this provision meant that the order would be noted as "Judgment Entered." Judge Pierson pointed out that section (b) of Rule 1-327 provides that the clerk is going to have to put in the case file the notation "Judgment Entered," the date of that entry, and a description. This requires that a new piece of paper go into the case file.

Mr. Carbine told the Committee that docket entries are supposed to be in the case file. The Chair said that if a judge signs an order and sends it to the clerk's office, the order may be dated November 26. Is it true that the clerk does not put this in the file? Judge Pierson answered that it is put in the file. The Chair remarked that if the entry was "committed" on the 27th, then the docket entry on the file would be "November

27." Judge Pierson explained that his point was that the clerks are not putting in the paper case file a notation that is equivalent to what Rule 1-327 will require, except in the case of judgments. Mr. Carbine noted that Rule 16-306, Filing and Removal of Papers, states that docket entries have to be put into the case file. He did not see how section (b) of Rule 1-327 is any different from that requirement. The Chair added that the notation is just put in the docket.

Mr. Carbine suggested that Alternative 1 of Rule 1-322 be chosen and Rule 1-327 be approved. The Chair pointed out that Rules 1-327, 2-601, and 3-601 all have the language that had been discussed concerning the entry of judgment. The Chair asked if anyone had a motion to reject the Subcommittee's recommendation or to alter it. Judge Weatherly commented that she was not sure where the Committee was after the discussion. It seemed that one suggestion was to approve Rule 1-327 as it had been proposed by the Subcommittee. It had also been mentioned that the Rule should be returned to the Subcommittee for further meetings with the people from JIS. Were any changes also suggested?

The Chair said that it would take a motion either to reject the Subcommittee's proposal, to amend it in some way, or to recommit it to the Subcommittee. Judge Pierson moved to delete proposed Rule 1-327 from the package of Rules. The motion was seconded. The Chair inquired what would be done with Rules 2-601 and 3-601. Judge Pierson answered that they were appropriate the way that they were presented. The Chair pointed out that Rules

2-601 and 3-601 have exactly the same language as proposed Rule 1-327. Judge Pierson responded that the language of Rules 2-601 and 3-601 provide that the notation "Judgment Entered" be entered. The motion failed on a vote of 6 to 11.

By consensus, the Committee approved Rule 1-322 as amended, and proposed Rule 1-327, as well as Rules 2-601, 3-601, 7-104, 8-202, and 8-302 as presented.

Agenda Item 2. Reconsideration of proposed amendments to Rule 2-501 (Motion for Summary Judgment)and consideration of amendments to Rule 2-504 (Scheduling Order)

Mr. Sullivan presented Rules 2-501, Motion for Summary Judgment, and 2-504, Scheduling Order, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-501 by requiring that a motion for summary judgment be in writing, by limiting the time when a motion can be filed, by requiring permission of the court to file the motion after the deadline for dispositive motions in Rule 2-504 (b)(1)(E), by revising the Committee note after section (a), and by deleting the word "written" in section (b), as follows:

Rule 2-501. MOTION FOR SUMMARY JUDGMENT

(a) Motion

Any party may ~~make a~~ file a written motion for summary judgment on all or part of

an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. The motion shall be supported by affidavit if it is (1) filed before the day on which the adverse party's initial pleading or motion is filed or (2) based on facts not contained in the record. A motion for summary judgment may not be filed: (A) after the first witness is sworn, (B) after any evidence is received on the merits, or (C) unless permission of the court is granted, after the deadline for dispositive motions specified in the scheduling order pursuant to Rule 2-504 (b)(1)(E).

Committee note: ~~For an example of a summary judgment granted at trial, see *Beyer v. Morgan State*, 369 Md. 335 (2002).~~ This Rule does not prevent the trial court from exercising its discretion during trial to entertain any motions *in limine* or other preclusive motions that may have the same effect as summary judgment and lead to a motion for judgment under Md. Rule 2-519. See. e.g., *Univ. of Md. Medical System Corporation, et al. v. Rebecca Marie Waldt, et al*, 411 Md. 207 (2009). Such a procedure avoids confusion and potential due process deprivations associated with summary judgment motions raised orally or at trial. *See Beyer v. Morgan State Univ.*, 369 Md. 335, 359, fn. 16 (2002); *see also Hanson v. Polk County Land, Inc.*, 608 F.2d 129, 131 (5th Cir. 1979) (allowing oral motions for summary judgment leads to confusion with each side having a different recollection of what was contended. Requiring a written motion also insures adequate notice to all sides).

(b) Response

A response to a ~~written~~ motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony

(by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

. . .

Rule 2-501 was accompanied by the following Reporter's note.

Rule 2-501 is proposed to be amended by requiring that a motion for summary judgment and any response to the motion be in writing. Any motion filed after the deadline for dispositive motions specified in the scheduling order pursuant to Rule 2-504 (b)(1)(E) may be filed only with permission of the court. The motion is required to be filed before the first witness is sworn and before evidence is received. To clarify this, the Judgment Subcommittee suggests adding a cross reference to Rule 2-501 (a) after subsection (b)(1)(E) of Rule 2-504.

The Subcommittee suggests that the proposed amendments enhance due process by providing to the party against whom a dispositive motion is filed better notice of the movant's assertions and a fuller opportunity to refute those assertions.

The Committee note after section (a) is amended to clarify that the trial court is not precluded from exercising its discretion to entertain motions *in limine* or other preclusive motions that may have the same effect as summary judgment and lead to a motion for judgment. The Committee note also clarifies, by citing *Beyer* and *Hanson*, that a motion for summary judgment filed in writing avoids confusion and ensures adequate notice to both sides.

In the first line of section (b), the word "written" is deleted as unnecessary, since the amendment to section (a) requires <u>all</u> motions for summary judgment to be

written. Thus, section (b) requires all responses to be in writing.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-504 to add a cross reference to Rule 2-501 after subsection (b)(1)(E), as follows:

Rule 2-504. SCHEDULING ORDER

(a) Order Required

(1) Unless otherwise ordered by the County Administrative Judge for one or more specified categories of actions, the court shall enter a scheduling order in every civil action, whether or not the court orders a scheduling conference pursuant to Rule 2-504.1.

(2) The County Administrative Judge shall prescribe the general format of scheduling orders to be entered pursuant to this Rule. A copy of the prescribed format shall be furnished to the Chief Judge of the Court of Appeals.

(3) Unless the court orders a scheduling conference pursuant to Rule 2-504.1, the scheduling order shall be entered as soon as practicable, but no later than 30 days after an answer is filed by any defendant. If the court orders a scheduling conference, the scheduling order shall be entered promptly after conclusion of the conference.

(b) Contents of Scheduling Order

(1) Required

A scheduling order shall contain:

(A) an assignment of the action to an appropriate scheduling category of a differentiated case management system established pursuant to Rule 16-202;

(B) one or more dates by which each party shall identify each person whom the party expects to call as an expert witness at trial, including all information specified in Rule 2-402 (g)(1);

(C) one or more dates by which each party shall file the notice required by Rule 2-504.3 (b) concerning computer-generated evidence;

(D) a date by which all discovery must be completed;

(E) a date by which all dispositive motions must be filed, which shall be no earlier than 15 days after the date by which all discovery must be completed;

Cross reference: See Rule 2-501 (a), which provides that after the date by which all dispositive motions are to be filed, a motion for summary judgment may be filed only with the permission of the court.

(F) a date by which any additional parties must be joined;

(G) a date by which amendments to the pleadings are allowed as of right; and

(H) any other matter resolved at a scheduling conference held pursuant to Rule 2-504.1.

(2) Permitted

A scheduling order may also contain:

(A) any limitations on discovery otherwise permitted under these rules, including reasonable limitations on the number of interrogatories, depositions, and

other forms of discovery;

(B) the resolution of any disputes existing between the parties relating to discovery;

(C) a specific referral to or direction to pursue an available and appropriate form of alternative dispute resolution, including a requirement that individuals with authority to settle be present or readily available for consultation during the alternative dispute resolution proceeding, provided that the referral or direction conforms to the limitations of Rule 2-504.1 (e);

(D) an order designating or providing for the designation of a neutral expert to be called as the court's witness;

(E) in an action involving child custody or child access, an order appointing child's counsel in accordance with Rule 9-205.1;

(F) a further scheduling conference or pretrial conference date;

(G) provisions for discovery of electronically stored information;

(H) a process by which the parties may assert claims of privilege or of protection after production; and

(I) any other matter pertinent to the management of the action.

(c) Modification of Order

The scheduling order controls the subsequent course of the action but shall be modified by the court to prevent injustice.

Cross reference: See Rule 5-706 for authority of the court to appoint expert witnesses.

Source: This Rule is in part new and in part derived as follows:

Subsection (b)(2)(G) is new and is derived from the 2006 version of Fed. R. Civ. P. 16 (b)(5).

Subsection (b)(2)(H) is new and is derived from the 2006 version of Fed. R. Civ. P. 16 (b)(6).

Rule 2-504 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 2-501.

Mr. Sullivan told the Committee that Rule 2-501 was another return appearance of a previous effort. The goal was to require that a motion for summary judgment be written and that the procedure should be what is understood for a motion in writing, including that the other side can respond to it. It eliminates the oral motion for summary judgment, which is rare anyhow. The amendments also attempt to give more firmness to the scheduling order by making clear that without leave of court a motion for summary judgment cannot be filed after the date set forth in the scheduling order. The motion could possibly be filed if something comes up later that was not anticipated at the time that the judge issued the scheduling order. A party can ask for permission to file a motion for summary judgment in writing. If it is granted, it can be taken up by the judge. The amendment to Rule 2-504 is the addition of a cross reference to pick up the change to Rule 2-501. The cross reference appears after subsection (b)(1)(E) of Rule 2-504.

Mr. Frederick commented that he wanted to reduce the proposed change to Rule 2-501 to the original form. The

amendment seemed designed to protect the world from an incompetent attorney who, in the middle of a trial, cannot defend a legitimate motion and end the case. The amendment also ignores the good common sense of all of the judges in this State. If an attorney is in the middle of a trial, and the other attorney makes a mistake and offers an expert who does not qualify and who makes a statement that ruins the case, eradicating an element, the Committee note after section (a) of Rule 2-501, which essentially dares the judge to get reversed, would be applicable.

Mr. Frederick referred to the language in the Committee note that reads: "or other preclusive motions," and he said that he does not know what that language means. He did not see what possible use there is to prevent litigants from taking a shot at a summary judgment at an appropriate time. It is not generally granted, but there are times when it is appropriate. If an attorney is defending a case, and a plaintiff has missed it with one expert in the case who has been disqualified, and the case has to continue until the close of the plaintiff's case in order for the defense attorney to make a motion, the result is essentially to strangle the defendant and force him or her to pay a large amount of money for an attorney. The proposed change also clogs up the courtroom and wastes the time of the jury. Mr. Frederick moved to reject the proposed amendments to Rules 2-501 and 2-504. The motion was seconded.

Mr. Maloney explained that under Fed. R. Civ P. 56, Summary Judgment, there is no mid-trial motion for summary judgment.

Summary judgment is really a pretrial procedure. An "oral" motion is allowed, and this is not just at trial. Someone could come to a motions hearing requesting a summary judgment but not having any supporting affidavits. Rule 2-501 anticipates that the motion be supported with written documentation. There should be an affidavit, transcripts from depositions, or answers to interrogatories. The nature of a motion for summary judgment is that it is in writing.

Mr. Maloney said that the debate seemed to be about labels, because what the Committee note suggested was the issue Mr. Frederick had raised. It was the problem of when an expert "blows up" and cannot testify about the standard of care. The expert is "dead," and so is the case. The attorney wants to end the case quickly, so the case does not drag on for several more weeks. The cases cited in the Committee note after section (a) of Rule 2-501 address how to do this. It is not a motion for summary judgment, but it is really a motion in limine to preclude further evidence, or it is the judge's discretion to manage the rest of his or her docket. However, it is not really a summary judgment, and none of the cases around the country that address the mid-trial collapse of the plaintiff's case refer to summary judgment during trial. This does not preclude the court from ending the trial, but it would not be called "summary judgment," because summary judgment in Maryland, just like summary judgment everywhere, is a written practice.

Mr. Bowie commented that ending the case could be

accomplished by the attorney approaching the bench and asking if he or she has leave of court to file a motion for summary judgment. The attorney can ask the court reporter to print out the applicable text of the trial testimony, and the attorney can put it into a one-page motion as the appropriate affidavit. This should solve the problem.

Mr. Frederick disputed that court reporters would print out the text of the testimony. There is no need for an affidavit, because the attorney basically has admitted that he or she cannot prove the case. What is the problem?

The Chair said that there had been a Court of Special Appeals case, which may not have been reported, where the attorney filed a pretrial motion for summary judgment, and it was denied. The case went to trial. In the middle of the trial, the attorney renewed the motion. By that time, testimony had been taken, and the case was not in the same posture it had been previously. This was a totally different picture. The motion could not be renewed, because the situation was different.

Mr. Maloney pointed out that the Court of Appeals said in footnote 16 in *Beyer v. Morgan State*, 369 Md. 335 (2002) that there are very serious potential due process problems if an oral motion is called a "motion for summary judgment." This view has been echoed around the country in federal cases. It is cited toward the end of the Committee note after section (a) of Rule 2-501. Mr. Maloney expressed the opinion that very serious due process problems exist with an attorney telling the judge in open

court that the attorney has an oral motion for summary judgment. Ms. Day remarked that she did not have as much of a problem with that. She agreed with Mr. Frederick that it was a good idea to have the flexibility of making a motion for summary judgment if the circumstances are appropriate, but what she had never liked about Rule 2-501 was that if the other side submits a written motion for summary judgment, and the case was in a county far from where she practices, she has no staff available, she is staying in a hotel room, and no printers are available. She has to file a written response to the motion. Rule 2-501 requires that any response to a written motion for summary judgment be in writing. This is the problem that Ms. Day has with the Rule. Her concern was that an attorney would produce a written motion while the case was going on, and she would have to scramble to file a written response.

Judge Pierson commented that Rule 2-501 as drafted permits the court to have a deadline for motions for summary judgment. This would eliminate the problem noted by Ms. Day. He agreed with Mr. Maloney that a motion for summary judgment is a specific procedural vehicle that would envision certain things. Plaintiffs should not be barraged with last-minute motions for summary judgment. Now attorneys come into court on the morning of trial asking to file a motion for summary judgment. A summary judgment motion is supposed to be used when there is no dispute as to any material fact, and it is supposed to be supported by certain items. It should be limited to this use and not turned

into some sort of omnibus method of terminating cases.

The Chair said that a motion to reject the proposed amendment to Rule 2-501 was on the floor. He called for a vote on the motion, and it failed with only three in favor.

By consensus, the Committee approved Rules 2-501 and 2-504 as presented.

Judge Love asked that Agenda Item 4 be considered next, because the Honorable Mark D. Thomas, a judge of the District Court, who was the Chair of the Judicial Ethics Committee was present.

Agenda Item 4. Consideration of proposed amendments to new Rule 18-307 (Opinion; Letter of Advice)

The Chair presented Rule 18-307, Opinion; Letter of Advice, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 300 – JUDICIAL ETHICS COMMITTEE

Rule 18-307. OPINION; LETTER OF ADVICE

(a) Opinion

Except as provided in section (b) of this Rule, the Committee shall render a written opinion in response to each request properly made under Rule 18-306 and decide whether the opinion is to be published or unpublished.

(b) Letter of Advice

If the Chair determines that the full

Committee cannot provide a timely opinion or that prior published opinions of the Committee render full Committee review unnecessary, the Chair shall appoint a panel of not less than three members of the Committee to issue a written letter of advice, which shall not be published and shall have no precedential effect.

Committee note: The Committee is not obliged to issue an opinion or a letter of advice to an individual who is not qualified under Rule 18-306 to request one, who does not seek an opinion limited to an interpretation of the Maryland Code of Judicial Conduct or the Maryland Code of Conduct for Judicial Appointees, or whose request does not state sufficient facts.

(c) Redaction of Opinions ~~**Designated for Publication**~~

~~**If**~~ **Regardless of whether** an opinion is designated for publication, the Chair, on behalf of the Committee, shall ~~**cause to be prepared a redacted version of the opinion in which the identities of**~~ **ensure that it shall included no references to:** (1) the individual who requested the opinion, (2) other individuals mentioned in the ~~**opinion**~~ **request**, and (3) the specific court and geographic location of the individual who requested the opinion~~**, are deleted. Unless the Court of Appeals orders otherwise, only the redacted version shall be published**~~.

(d) Filing With State Court Administrator

The Chair shall file with the State Court Administrator every opinion and letter of advice issued by the Committee, ~~**including both the redacted and un-redacted versions of opinions**~~ **whether** designated for publication **or not**.

(e) Confidentiality

The following material is confidential and, unless ordered otherwise by the Court of Appeals or required by law, does not

constitute public information:

(1) a request for an opinion;

(2) an opinion of the Committee not designated for publication;

(3) ~~**an un-redacted version of an opinion designated for publication pursuant to section (c) of this Rule**~~ **preliminary drafts of any opinions considered by the Committee and correspondence, whether written or electronic, to the individual who requested the opinion, or among the Committee's members**; and

(4) a letter of advice issued by the Committee.

Source: This Rule is derived in part from subsections (j)(3), (j)(4), and (j)(6) of former Rule 16-812.1 (2013) and in part new.

The Chair explained that Rule 18-307 was in Part 2 of the 178th Report, which contained rules pertaining to judges. The Rules concerning the Judicial Ethics Committee had been vetted with the former Chair of the Judicial Ethics Committee, and the version of the Rule that had been approved by the Committee had been sent to the Court of Appeals. Judge Thomas had sent a comment to the Court of Appeals after the Rules Committee had sent Rule 18-307 to the Court of Appeals asking for a few changes. The Court of Appeals did not indicate any problem with this particular comment but simply noted that it had not been before the Rules Committee, so the Court sent it back to the Committee for consideration.

Judge Thomas commented that Rule 18-307 provides that the

Judicial Ethics Committee can issue opinions and letters of advice, which are issued when the Committee does not have the time to issue an opinion. No change is proposed for letters of advice, but there are two kinds of opinions in the current Rule, which refers to "redacted" and "unredacted" opinions. The redacted opinions are published but do not reflect which individual requested the opinion. From a practical point of view, Judge Thomas had been on the Judicial Ethics Committee for six years, and he had never heard of an unredacted opinion. The Committee does not decide whether opinions are to be published or not until they see the opinion. It is much more efficient to write the opinion initially redacted from the start. It is circulated in a redacted version, and all of the Judicial Ethics Committee members have already seen the inquiry and know the specifics, but it is sterilized so that it does not reveal the inquirer. The opinions are always written as though redacted.

The Chair asked whether the judge who requested the opinion gets an unredacted version. Judge Thomas answered affirmatively, noting that everyone else gets a redacted opinion. The opinions circulated are redacted. If it is something that is of a great amount of interest that should be circulated to all of the judges in the State, it would be circulated by e-mail or put on the website for future research when the same kind of issue comes up. The Judicial Ethics Committee does not know whether the opinions should be redacted or unredacted. This was essentially the nature of the changes the Committee had proposed, because they

were supposed to be providing both redacted and unredacted opinions to the State Court Administrator. However, they are only providing redacted opinions. One of the proposed changes brings Rule 18-307 into conformance with practice.

Judge Thomas said that the other proposed change to Rule 18-307 was related to the confidentiality of the original inquiry, which is assured by the Rule, but now electronic e-mail correspondence is common, and the Rule contains changes and revisions. The Judicial Ethics Committee had thought that it might be wise to include in the list of what is confidential preliminary drafts of any opinions considered by the Committee and the correspondence to the individual who requested the opinion, or among the Committee's members. This should be treated the same as the inquiry. This is the reason for the addition of language to section (e) of Rule 18-307.

Judge Love moved to approve the proposed changes to Rule 18-307, the motion was seconded, and it passed unanimously.

Agenda Item 3. Reconsideration of proposed amendments to Rule 1-325 (Waiver of Costs Due to Indigents) and conforming amendments to: Rule 2-603 (Costs), Rule 7-103 (Method of Securing Appellate Review), Rule 8-201 (Method of Securing Review – Court of Special Appeals), Rule 8-303 (Petition for Writ of Certiorari – Procedure), Rule 8-505 (Briefs - Indigents), and Rule 10-107 (Assessment and Waiver of Fees and Costs - Guardianships)

The Chair said that Christopher Dunn, a member of the Rules Committee, was to present this item, but he could not attend the meeting. The Chair presented Rule 1-325, Waiver of Costs Due to

Indigence, and conforming amendments to Rules 2-603, Costs; 7-103, Method of Securing Appellate Review; 8-201, Method of Securing Review - Court of Special Appeals; 8-303, Petition for Writ of Certiorari - Procedure; 8-505, Briefs - Indigents; and 10-107, Assessment and Waiver of Fees and Costs - Guardianships, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-325 to revise provisions pertaining to the waiver of prepayment of costs, as follows:

Rule 1-325. ~~FILING FEES AND COSTS – INDIGENCY~~ WAIVER OF COSTS DUE TO INDIGENCE

~~(a) Generally~~

~~A person unable by reason of poverty to pay any filing fee or other court costs ordinarily required to be prepaid may file a request for an order waiving the prepayment of those costs. The person shall file with the request an affidavit verifying the facts set forth in that person's pleading, notice of appeal, application for leave to appeal or request for process, and stating the grounds for entitlement to the waiver. If the person is represented by an attorney, the request and affidavit shall be accompanied by the attorney's signed certification that the claim, appeal, application, or request for process is meritorious. The court shall review the papers presented and may require the person to supplement or explain any of the matters set forth in the papers. If the court is satisfied that the person is unable by reason of poverty to pay the filing fee or~~

~~other court costs ordinarily required to be prepaid and the claim, appeal, application, or request for process is not frivolous, it shall waive by order the prepayment of such costs.~~

~~Committee note: The term "other court costs" in section (a) of this Rule includes the compensation, fees, and costs of a master or examiner. See Rules 2-541 (i), 2-542 (i), 2-603 (e), and 9-208 (j).~~

(a) Scope

Sections (b) through (f) of this Rule apply only to civil actions in a circuit court or the District Court.

(b) Definition

In this Rule, except as provided in section (g), "prepaid costs" means costs that, unless prepayment is waived pursuant to this Rule, must be paid prior to the clerk's docketing or accepting for docketing a pleading or paper or taking other requested action.

(c) No Fee for Filing Request

No filing fee shall be charged for the filing of the request for waiver of prepaid costs pursuant to section (d) or (e) of this Rule.

(d) Waiver of Prepaid Costs by Clerk

On request, the clerk shall waive the prepayment of prepaid costs, without the need for a court order, if:

(1) the party is represented by an attorney retained through a pro bono or legal services program that is on a list of programs serving low income individuals that is submitted by the Maryland Legal Services Corporation to the State Court Administrator and posted on the Judiciary website and (A) an authorized agent of the program provides the clerk with a statement that (i) names the program, attorney, and party; (ii) states

that the party is being represented in the matter by an attorney associated with the program and meets the financial eligibility criteria of the Corporation; and (iii) attests that the payment of filing fees is not subject to Code, Courts Article, §5-1002 (the Prisoner Litigation Act) and (B) the attorney certifies that, to the best of the attorney's knowledge, information, and belief, there is a good ground to support the claim, application, or request for process and it is not interposed for any improper purpose or delay; or

(2) the party is represented by an attorney provided by the Maryland Legal Aid Bureau, Inc. or the Office of the Public Defender.

Committee note: The Public Defender represents indigent individuals in a number of civil actions. See Code, Criminal Procedure Article, §16-204 (b).

(e) Waiver of Prepaid Costs by Court

(1) Request for Waiver

A person unable by reason of poverty to pay a prepaid cost and not subject to a waiver under section (d) of this Rule may file a request for an order waiving the prepayment of the prepaid cost. The request shall be accompanied by (A) an affidavit substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the Clerks' offices, and (B) if the person is represented by an attorney, by the attorney's certification that, to the best of the attorney's knowledge, information, and belief, there is a ground to support the claim, appeal, application, or request for process and it is not interposed for any improper purpose or delay.

(2) Review by Court; Factors to be Considered

The court shall review the papers presented and may require the [individual]

[person] to supplement or explain any of the matters set forth in the papers. In determining whether to grant a prepayment waiver, the court shall consider:

(A) whether the [individual] [person] has a family household income that qualifies under the client income guidelines for the Maryland Legal Services Corporation for the current year [as posted on the Judiciary website]; and

(B) any other factor that may reflect on the [individual's] [person's] ability to pay the prepaid cost.

(3) Order

If the court finds that the party is unable by reason of poverty to pay the prepaid cost and that the claim, appeal, application, or request for process does not appear, on its face, to be frivolous, it shall enter an order waiving prepayment of the prepaid cost. In its order, the court shall state the basis for granting or denying the request for waiver.

(f) Award of Costs at Conclusion of Action

(1) Generally

At the conclusion of an action, the court and the clerk shall allocate and award costs as required or permitted by law.

Cross reference: See Rules 2-603, 3-603, 7-116, and *Mattison v. Gelber*, 202 Md. App. 44 (2011).

(2) If Prepayment of Prepaid Costs Was Waived

If prepayment of prepaid costs payable by a party was waived pursuant to section (d) or (e) of this Rule and those costs remain unpaid at the conclusion of the action, the court shall enter, or direct the clerk to enter, judgment in favor of the clerk for those costs, subject to any waiver of final costs in accordance with Rule 2-603

(e) or Rule 10-107 (b).

(g) Waiver of Prepaid Appellate Costs

(1) Scope of Section

This section applies to appeals, applications for leave to appeal, and petitions for certiorari or other extraordinary relief seeking review in the Court of Special Appeals or the Court of Appeals from an order or judgment of a circuit court in a civil action.

(2) Definition

In this section, "prepaid costs" means (A) the fee charged by the clerk of the circuit court for assembling the record, and (B) the filing fee charged by the clerk of the appellate court.

Cross reference: See the schedule of appellate court fees following Code, Courts Article, §7-102 and the schedule of circuit court fees following Code, Courts Article, §7-202.

(3) Waiver

(A) Generally

Waiver of prepaid costs under this section shall be governed generally by sections (d) or (e) of this Rule, as applicable, except that:

(i) the request for waiver of both the circuit and appellate court costs shall be filed in the circuit court within 10 days after entry of judgment;

(ii) waiver of the fee charged for assembling the record shall be determined in the circuit court;

(iii) waiver of the appellate court filing fee shall be determined by the appellate court, but the appellate court may rely on a waiver of the fee for assembling the record ordered by the circuit court;

(iv) both fees shall be waived if the appellant received a waiver of prepaid costs under section (d) of this Rule, will be represented in the appeal by an eligible attorney under that section, and the attorney certifies that the appeal is meritorious and that the appellant remains eligible for representation in accordance with section (d); and

(v) if the appellant received a waiver of prepaid costs under section (e) of this Rule, the circuit court and appellate courts may rely upon a supplemental affidavit of the appellant attesting that the information supplied in the affidavit provided under section (e) of this Rule remains accurate and that there has been no material change in the appellant's financial condition or circumstances.

(B) Procedure

(i) If an appellant requests the waiver of the prepaid costs in both the circuit and appellate courts, the circuit court, within five days after the filing of the request, shall act on the request for waiver of its prepaid cost and transmit to the appellate court the request for waiver of the appellate court prepaid cost and a copy of the request and order regarding the waiver of the circuit court prepaid cost.

(ii) The appellate court shall act on the request for the waiver its prepaid cost within five business days after receipt of the request from the circuit court.

(iii) If either court denies, in whole or in part, a request for the waiver of its prepaid cost, it shall permit the appellant, within 10 days, to pay the unwaived prepaid cost. If, within that time, the appellant pays the full amount of the unwaived prepaid cost, the appeal or application shall be deemed to have been filed on the day the request for waiver was filed in the circuit court.

~~(b)~~ (h) Appeals Where Public Defender

Representation Denied - Payment by State

The court shall order the State to pay the court costs related to an appeal or an application for leave to appeal and the costs of preparing any transcript of testimony, brief, appendices, and record extract necessary in connection with the appeal, in any case in which (1) the Public Defender's Office is authorized by these rules or other law to represent a party, (2) the Public Defender has declined representation of the party, and (3) the party is unable by reason of poverty to pay those costs.

Source: This Rule is derived as follows:
Section (a) ~~is derived from former M.D.R. 102 and Courts Article §7-201~~ is new.
Section (b) is new.
Section (c) is new.
Section (d) is new.
Section (e) is new.
Section (f) is new.
Section ~~(b)~~ (g) is derived from former Rules 883 and 1083 b.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-603 to conform with amendments to Rule 1-325 concerning waiver of prepayment of prepaid costs, as follows:

Rule 2-603. COSTS

. . .

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

In an action under Title 9, Chapter 200 of these Rules, the court shall waive final costs, including any compensation, fees, and costs of a master or examiner if the court finds that the party against whom the costs are assessed is unable to pay them by reason of poverty. The party may seek the waiver at the conclusion of the case by filing a request for waiver of final costs, together with (1) an affidavit substantially in the form prescribed by Rule 1-325 (e)(1)(A), or (2) if ~~in accordance with Rule 1-325 (a). If~~ the party was granted a waiver of prepayment of prepaid costs by court order pursuant to ~~that~~ Rule 1-325 (e) and remains unable to pay the costs, ~~the~~ an affidavit ~~required by Rule 1-325 (a) need only~~ that recites the existence of the prior waiver and the party's continued inability to pay.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

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

AMEND Rule 7-103 to conform with amendments to Rule 1-325 concerning waiver of prepayment of prepaid costs, as follows:

Rule 7-103. METHOD OF SECURING APPELLATE REVIEW

(a) By Notice of Appeal

The only method of securing appellate review in the circuit court is by the filing of a notice of appeal with the clerk of the District Court within the time prescribed in

Rule 7-104.

(b) District Court Costs

Unless the prepayment of prepaid costs has been waived in accordance with Rule 1-325, before ~~Before~~ the clerk transmits the record pursuant to section (d) of this Rule, the appellant shall pay to the clerk of the District Court the cost of preparation of a transcript, if a transcript is necessary to the appeal.

Cross reference: Rule 7-113 (b).

(c) Filing Fee

Within the time for transmitting the record under Rule 7-108, the appellant shall deposit the fee prescribed by Code, Courts Article, §7-202 with the clerk of the District Court unless:

(1) if the appeal is in a civil action, the prepayment of prepaid costs has been waived in accordance with Rule 1-315; or

(2) if the appeal is in a criminal action, the fee has been waived by an order of court or ~~unless~~ the appellant is represented by ~~(1)~~ (A) the Public Defender's Office, ~~(2)~~ (B) an attorney assigned by Legal Aid Bureau, Inc., or ~~(3)~~ (C) an attorney assigned by any other legal services organization that accepts as clients only those persons meeting the financial eligibility criteria established by the Federal Legal Services Corporation or other appropriate governmental agency. The filing fee shall be in the form of cash or a check or money order payable to the clerk of the circuit court.

~~Cross reference: Rule 1-325.~~

(d) Transmittal of Record

After all required fees have been paid, the clerk shall transmit the record as provided in Rules 7-108 and 7-109. The filing fee shall be forwarded with the record

to the clerk of the circuit court.

Committee note: When a notice of appeal is filed, the clerk should check the docket to see if it contains the entry of a judgment in compliance with Rules 3-601 and 3-602, and if not, advise the parties and the court. This note is not intended to authorize the clerk to reject a notice of appeal or to place a mandatory duty on the clerk, or to relieve counsel of their responsibility to assure that there is an appealable order or judgment properly entered on the docket before noting an appeal.

Source: This Rule is derived from former Rule 1311.

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 8-201 to conform with amendments to Rule 1-315 concerning waiver of prepayment of prepaid costs, as follows:

Rule 8-201. METHOD OF SECURING REVIEW - COURT OF SPECIAL APPEALS

(a) By Notice of Appeal

Except as provided in Rule 8-204, the only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within the time prescribed in Rule 8-202. The notice shall be filed with the clerk of the lower court or, in an appeal from an order or judgment of an Orphans' Court, with the register of wills. The clerk

or register shall enter the notice on the docket.

(b) Filing Fees

At the time of filing a notice of appeal in a civil case, or within the time for transmitting the record under Rule 8-412 in a criminal case, an appellant shall deposit the fee prescribed pursuant to Code, Courts Article, §7-102 with the clerk of the lower court unless:

(1) if the appeal is in a civil action, the prepayment of prepaid costs has been waived in accordance with Rule 1-325; or

(2) if the appeal is in a criminal action, the fee has been waived by an order of court or ~~unless~~ the appellant is represented by ~~(1)~~ (A) the Public Defender's Office, ~~(2)~~ (B) an attorney assigned by Legal Aid Bureau, Inc., or ~~(3)~~ (C) an attorney assigned by any other legal services organization that accepts as clients only those persons meeting the financial eligibility criteria established by the Federal Legal Services Corporation or other appropriate governmental agency.

~~Cross reference: Rule 1-325.~~

(c) Transmittal of Record

After all required fees have been deposited, the clerk shall transmit the record as provided in Rules 8-412 and 8-413. The fee shall be forwarded with the record to the Clerk of the Court of Special Appeals.

Committee note: When a notice of appeal is filed, the clerk should check the docket to see if it contains the entry of a judgment in compliance with Rules 2-601 and 2-602, and if not, advise the parties and the court. This note is not intended to authorize the clerk to reject a notice of appeal, to place a mandatory duty on the clerk, or to relieve counsel of their responsibility to assure that there is an appealable order or judgment properly entered on the docket before noting

an appeal.

Source: This Rule is derived from former Rule 1011 with the exception of the first sentence of section (a) which is derived from former Rule 1010.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 300 - OBTAINING APPELLATE REVIEW IN COURT OF APPEALS

AMEND Rule 8-303 to conform with amendments to Rule 1-325 concerning waiver of prepayment of prepaid costs, as follows:

Rule 8-303. PETITION FOR WRIT OF CERTIORARI - PROCEDURE

(a) Filing

A petition for a writ of certiorari, together with seven legible copies, shall be filed with the Clerk of the Court of Appeals. The petition shall be accompanied by the filing fee prescribed pursuant to Code, Courts Article, §7-102 unless:

(1) if the petition is in a civil action, the prepayment of prepaid costs has been waived in accordance with Rule 1-325; or

(2) if the petition is in a criminal action, the fee has been waived by an order of court or unless the petitioner is represented by ~~(1)~~ (A) the Public Defender's Office, ~~(2)~~ (B) an attorney assigned by Legal Aid Bureau, Inc., or ~~(3)~~ (C) an attorney assigned by any other legal services organization that accepts as clients only those persons meeting the financial

eligibility criteria established by the Federal Legal Services Corporation or other appropriate governmental agency.

~~Cross reference: Rule 1-325.~~

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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 8-505 to conform with amendments to Rule 1-325, as follows:

Rule 8-505. BRIEFS - INDIGENTS

When the lower court has ordered that costs be paid by the State of Maryland pursuant to Rule 1-325 ~~(b)~~ (h) or in any case in which a party to the appeal is represented by the Public Defender, that party's brief, reply brief, and other documents required to be filed by that party in the appellate court shall be reproduced under the supervision of the Public Defender.

Source: This Rule is derived from Rules 831 f and 1031 e.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-107 to conform with amendments to Rule 1-325 concerning waiver of prepayment of prepaid costs, as follows:

Rule 10-107. ASSESSMENT AND WAIVER OF FEES AND COSTS - GUARDIANSHIPS

(a) Assessment

Upon a determination on the merits of a petition to appoint a guardian, the court may assess the filing fee and other court costs against the assets of the fiduciary estate or against the petitioner.

(b) Waiver

The court shall waive final costs and fees if the court finds that the person against whom the costs are assessed is unable to pay them by reason of poverty. The person may seek the waiver at the conclusion of the case by filing a request for waiver of final costs, together with (1) an affidavit substantially in the form prescribed by Rule 1-325 (e)(1)(A), or (2) if ~~in accordance with Rule 1-325 (a). If~~ the person was granted a waiver of prepayment of prepaid costs by court order pursuant to ~~that~~ Rule 1-325 (e) and remains unable to pay the costs, ~~the~~ an affidavit ~~required by Rule 1-325 (a) need only~~ that recites the existence of the prior waiver and the person's continued inability to pay.

Source: This Rule is in part new and in part derived from Rule 2-603 (e).

The Chair explained that the impetus for the proposal to change Rule 1-325 was from the Access to Justice Commission. This matter had been before the Committee earlier, and it had been recommitted to the General Provisions Subcommittee, which had substantially amended it. The Chair said that he would go through the Rule section by section, but first he would explain

some of the major issues associated with the Rule. The first issue was that except as to section (f), the Rule applied only to the waiver of prepaid costs. These are costs that must be paid before the filer is allowed to proceed. This is the essence of the access to justice theme. No one should be precluded from having his or her day in court because the person cannot pay the costs that are required to be paid before he or she is allowed to proceed. This was consistent with the current version of Rule 1-325.

The Chair commented that the second issue was that Rule 1-325 provides for an automatic waiver if the party is represented by the Legal Aid Bureau or the Office of the Public Defender, which does have some civil jurisdiction. No court order is necessary as long as the attorney is from Legal Aid or the Public Defender in a civil case. The clerk can waive. It is the same approach for a party who is represented by an attorney retained through pro bono or legal services programs that are on the Maryland Legal Services Corporation (MLSC) list. The clerk can waive simply because the attorney in the case is from one of those on the list. The only difference was that under the proposal, some verification has to be supplied to the clerk to show that this attorney really is one of the appropriate attorneys and that this program is on the MLSC list.

The Chair pointed out that the third principle was that if the party is not entitled to an automatic waiver by the clerk based on the status of the attorney, there needs to be an order

of court. This is found in section (e) of Rule 1-325. The fourth element was that in that situation, where a court order is needed, it sets a uniform standard for the waiver. Currently, judges use whatever standard they choose. The proposal was that the standard for waiver should be based on the income guidelines established by the MLSC plus whatever other relevant information the judge would want.

The fifth principle was that section (e) required that the motion for waiver should be on a uniform form established by the State Court Administrator posted on the Judiciary website, and available in all of the clerks' offices. A number of groups are now working on developing the different forms. This is a major change. Currently, several different forms are in use, none of which actually seek the information required by the MLSC guidelines. Some of the forms require some of the information, but none of them require all of the necessary information. The General Provisions Subcommittee thought that it would be advisable to have one form, which would solicit the information that the judge is going to need to know to decide waiver based on the MLSC guidelines. It had not been anticipated that the Rules Committee approve this form. The Committee does want to see it before a rule is sent to the Court of Appeals, however, to make sure that the form is consistent with the proposed rule.

The Chair said that the sixth principle deals with appellate costs. The Committee could not resolve this issue the last time the Rule was considered. There are two kinds of appellate costs

in appeals from the circuit court to the Court of Special Appeals. A $60 fee is payable to the clerk of the circuit court for assembling the record. A $50 filing fee goes to the appellate court.

The Committee had discussed who is going to deal with a request to waive prepayment of these fees. Both requests will be filed in the circuit court. The circuit court will decide whether to waive the $60 for assembling the record and will send both requests up to the Court of Special Appeals. That Court will decide whether to waive the $50 fee but may rely on what the circuit court did with respect to its fee. The Chair noted that the seventh issue, which was a major one, was whether Rule 1-325 should apply to costs in appeals from the District Court to a circuit court. The final issue was in section (f) of Rule 1-325, the award of costs at the conclusion of the action.

The Chair suggested that Rule 1-325 be considered section by section. Section (a) addresses the scope of the Rule. It applies only to civil actions in a circuit court or the District Court. As noted, one of the issues is whether Rule 1-325 should apply to civil appeals from the District Court to the circuit court. Initially, there were two concerns. The first was whether there was any statutory impediment to including the District Court appeals to the circuit court in Rule 1-325. The Subcommittee concluded in the end, that this was not a problem.

The second issue is whether Rule 1-325 should provide for the waiver of transcript costs in an appeal to the circuit court

on the record. The same issue is raised with respect to transcript costs in an appeal from the circuit court to the appellate courts. Section (b) of Rule 7-102, Modes of Appeal, provides that in a civil appeal to a circuit court where the amount in controversy exceeds $5,000, the appeal is on the record. In those cases, this issue is going to arise, because a transcript will be necessary unless it is waived.

Ms. Ortiz, who was from the Access to Justice Commission, told the Committee that in their initial proposal, the Commission had been responding to some of the concerns that had been expressed by pro bono attorneys and legal services attorneys about the difficulty with automatic waivers and getting fee waivers for their individual clients. It was also recognized that there were situations where other indigents had filed for prepayment waivers but were confused about them. In the initial proposal of the Commission, they focused primarily on the waiver of trial court costs. Representatives of the Public Justice Center had appeared at the April, 2013 Rules Committee meeting and wisely raised the issue of obtaining waivers in appeals. Appeals from the District Court to the circuit court will affect a large number of people.

Ms. Ortiz said that she had spoken with Ms. Jamie Walter, Assistant Chief Clerk of the District Court, who was present, and with Ms. Rose Day, Operations Administrator at District Court Headquarters, about their practice in handling transcript costs. Ms. Day recommended that a provision be included in the form that

would permit the judge to include the transcript costs when the court is determining whether to waive costs for sending the record or to waive other costs. The transcript costs are waivable. It would not be onerous to waive costs or too difficult for the clerk to waive them.

The Chair said that he recollected from the Subcommittee discussion that the transcript costs had been driving this issue, because the other costs are relatively minimal in the District Court. Judge Love expressed the view that it made no sense not to waive the transcript costs if other costs are going to be waived. The cost of the transcript should be included.

Mr. Hill told the Committee that he is from the Public Justice Center. He drew the Committee's attention to the constitutional issues that had been detailed further in the comments of the Public Justice Center with respect to waiver of transcript costs both from the District Court to the circuit court and from the circuit court to the Court of Special Appeals. The U.S. Supreme Court has made clear that these are fundamental rights and that there needs to be an avenue for indigent litigants to seek and obtain that kind of waiver, or they would be denied due process. The Chair noted that the Supreme Court decision had been limited and did not apply to every case. Mr. Hill said that the case was *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996), and it addressed the situation where a mother's rights had been terminated, because she was unable to pay the costs of preparation of a transcript and transmittal of the record.

Judge Pierson asked whether Rule 1-325 would have language to the effect that this applies to appeals from the District Court to the circuit court on the record where a transcript is required. Would the Rule specifically refer to "preparation of transcript costs?" The Chair answered that the Rule should refer to this. The reason he was raising it in the scope discussion was that if the Committee's view was that Rule 1-325 should apply to on-the-record civil appeals from the District Court to the circuit court, then the Rule should state this. If the Committee so chooses, the Rule should also refer to transcript costs as part of those waivable costs.

The Reporter pointed out that the language is on page 2 of the comment letter from the Public Justice Center that had been e-mailed to the Committee. The Public Justice Center suggested the following language for section (b): "In this section, 'prepaid costs' means (A) the fee charged by the clerk of the trial court for assembling the record, including the cost of the transcript in the District Court, and (B) the filing fee charged by the clerk of the appellate court." The Chair inquired if there was a motion to adopt that proposed language. Judge Eaves moved to adopt the language, and the motion was seconded. The Chair added that the language could be redrafted later. The motion passed by a majority vote. The Chair said that Rule 1-325 would apply to on-the-record civil appeals from the District Court to the circuit court, presumably in the same manner as if the case had started in the circuit court.

The Chair noted that section (b) of Rule 1-325 defines "prepaid costs" in a trial court. Ms. Ortiz remarked that she had spoken with the Honorable Karen A. Murphy Jensen, of the Circuit Court for Caroline County, who chairs the Standing Committee on Pro Bono Legal Service. One issue that had been brought to Ms. Ortiz' attention was whether appearance fees are considered as part of those costs. Judge Jensen had said that her practice was to include appearance fees when waiving costs. Ms. Ortiz remarked that in looking at the definition of "prepaid costs," she felt that it could include appearance fees. The Chair responded that not every county charges appearance fees, and for those that do, the fees are all different. He asked if the Committee wanted to include appearance fees as waivable costs. Judge Eaves moved that appearance fees be included. The motion was seconded, and it passed. The Chair noted that appearance fees would be added to the definition of "prepaid costs."

The Chair inquired if anyone had a comment on section (c). None was forthcoming. The Chair drew the Committee's attention to section (d). This addressed the issue of whether a pro bono attorney, not an attorney from Legal Aid or the Public Defender, who is part of one of the MLSC organizations, should be required to certify that the case has merit. The current version of Rule 1-325 requires this. In deciding upon a motion to waive prepayment of costs, the issue is not just whether the litigant is indigent, but also whether the case has some semblance of

merit. Under section (d), the issue arises only under the Subcommittee's proposal with respect to an attorney, who is not from Legal Aid or from the Public Defender, but is from one of the other pro bono organizations. This is a policy question.

Judge Pierson asked whether Code, Courts Article, §7-201 requires this even if the attorney is from Legal Aid. The Chair responded that this provision also allows the Court of Appeals by rule to address waivers. Judge Pierson noted that the law requires the attorney to certify. The Chair pointed out that if the subject is practice and procedure in the courts, a rule can supersede a statute. Judge Pierson moved that section (d) be amended to include a reference to the certificate of merit for everyone. Unless the Committee considers the statute to be an improper attempt by the legislature to interfere with the ability of the Court of Appeals to adopt rules of practice and procedure, Rule 1-325 should follow the statute. The motion was seconded.

Mr. Hill asked whether the certification was going to be similar to the certification proposed in section (d) which was that "there is a good ground to support the claim, application, or request for process." The Chair responded that there was some question as to what the standard should be. Mr. Hill said that the Public Justice Center would support the motion.

Ms. Ortiz explained that the goal of modifying the Rules was to try to improve the process that is used by Maryland Legal Services attorneys. Under the current system, the fee waiver standard is a process defined primarily in the fee schedule. The

schedule currently permits an automatic waiver for those employed by attorneys from the Legal Aid Bureau. She would oppose the creation of more filings for Legal Aid and the Public Defender. The hope is to streamline the process for legal services providers and not add an additional filing requirement. It was her understanding that when an attorney signs a pleading, he or she is making that same certification. The Chair said that this is in section (b) of Rule 1-311, Signing of Pleadings and Other Papers.

The Chair called for a vote on the motion to require the certification for all attorneys. The motion passed with one opposed.

The Chair drew the Committee's attention to section (e) of Rule 1-325. He noted that section (e) requires a court order. Subsection (e)(1) pertains to the request for waiver. It requires the person requesting waiver to fill out a uniform form, and if the person is represented by an attorney, it requires the attorney's certification that there is a ground to support the claim, appeal, application, or request for process and that it is not interposed for any improper purpose or delay. Judge Mosley asked if this could be done by standard forms, and the Chair answered affirmatively. He noted that one of the forms that was being proposed relates to subsection (e)(1). The idea of the uniform affidavit was that it would elicit the information that the judge would need to know in order to decide waiver based on these guidelines.

The Chair pointed out that subsection (e)(2) of Rule 1-325 pertained to the review by the court and the factors to be considered, including the family household income that is the standard for the MLSC guidelines and any other factor that may reflect on the person's ability to pay the prepaid cost. Subsection (e)(3) addressed the order. Judge Price referred to the requirement that the court has to state the basis for granting or denying the waiver. She suggested that a box could be added to the form for the court to check, so that the court does not have to write a separate order which states whether the courts grants or denies the request for waiver. The Chair responded that this is what was intended. Judge Love agreed that it is difficult for the judges unless there are boxes to check on the forms. The Chair remarked that one of the forms being worked on is a simple pre-printed form with boxes to check.

Judge Weatherly remarked that she has been the Family Coordinating Judge in Prince George's County for a while. Other than the clerk, no one else seems to care if the costs are waived. Many times judges deny waiver, because the person requesting it has not provided the documentation. Judge Weatherly noted that not only are people indigent, but often literacy is an issue. If the person then brings the appropriate documentation, the judges will look at it again. Judge Weatherly was not sure if this is a problem in the District Court. However, in circuit court, the judges do not necessarily say why the waiver has been granted, but if it is denied, they usually

put in a reason as to why. They do give the person the opportunity to try to cure the problem.

The Chair suggested to Ms. Ortiz that when the forms are drafted, some boxes should be added so that the judges can check off their decisions. Ms. Ortiz responded that some forms had been distributed that were not the final version. The form to which the Chair had referred was on page 4 of Form B. It included boxes. If the party meets the financial criteria, the judge can check the appropriate box. If the costs are waived by reason of poverty, a box can be checked indicating that. There was also a box for other findings. The Chair said that what Judge Weatherly had suggested was adding to the form some boxes to check if the judge is going to deny the request for waiver. This may be applicable to the District Court as well.

Judge Love asked if the sentence in subsection (e)(3) that read: "In its order, the court shall state the basis for granting or denying the request for waiver" could be changed by taking out the words "granting or." If the request is going to be denied, the judge can include his or her reasoning. The Chair pointed out that it is easier to keep the word "granting," because it requires checking off one box. Judge Love noted that then the judge would have to state the basis for granting the waiver. The Chair suggested that the Rule could provide that the judge would indicate the basis by checking the applicable box. The idea is not to create additional work for the judge but to have a finding to support the decision.

Ms. Davis told the Committee that she is from the Office of the Public Defender. When the judge denies a request for waiver, he or she has to give the basis for the denial. Case law requires this. It is very helpful when the judge gives more information than simply denying the request. This allows Ms. Davis to go back to her client, so that they can possibly meet with the judge to discuss the denial. Judge Weatherly said that if a judge denies the request for waiver, on Form B, there is a box entitled "Other Findings," and then there is a line, which could be turned into more boxes. Above that it gives three different alternatives for granting the request. The Chair remarked that it would not be difficult to include a box that provides that the request is denied, because the person requesting the waiver does not fall within the standard. Judge Weatherly added that it could also be because of insufficient information for documentation. The Chair said that it could also be because the case is frivolous.

The Chair drew the Committee's attention to section (f) of Rule 1-325. This involves a clear policy issue. The question is what happens at the end of the case, assuming that the prepaid fees have been waived, and now the case is over. One view is that if the party is indigent, all the costs, not just the prepaid costs, should be waived. The other view is that waiver at the end of the case is not an access to justice issue. The party has had his or her day in court, and if the party loses, a judgment for costs should be entered against him or her. It may

be totally uncollectible, but the clerk is entitled to a judgment. These were the two approaches. This also affects Rule 2-603, Costs.

Ms. Ortiz said that her concern, which was shared by others, was the language that she had put in her comment in the memorandum dated November 20, 2013. Initially, a goal of the Commission was to provide for a final waiver of costs and to ask the courts to use discretion about whether to waive the final costs by using the MLSC standard, so that judges had some guidance. In its original proposal, the Access to Justice Commission had intended Rule 1-325 to apply to the final waiver of costs. This had been discussed at the General Provisions Subcommittee meeting, but the original version that had been put before the Rules Committee at this meeting did not include that. There should not be a negative effect of having taken this out. The Commission feels that the final waiver is up to the court.

Ms. Ortiz commented that she had included in her comment the provision that had been taken out, which would have allowed for a final waiver of costs. The concern had been raised that even if the prepayment of costs is waived, at the end of the case, the issue of waiver should be determined again. There are different practices, and the issue affects people differently. Her understanding was that for expungements normally the attorney does not file another request, and the party is not assessed at the end of the case. But the other problem that was raised was that at some point, the draft of Rule 1-325 included an

enforcement provision. At the conclusion of the case, the prepaid costs were waived, and they were not finally waived. Now a new rule would be required so that a judgment could be entered against that party. The Chair commented that this would be whoever the costs are assessed against.

Ms. Ortiz noted that in the version of Rule 1-325 that had been prepared for the Rules Committee meeting, language had been added that referred to waiver of final costs in domestic cases and guardianship matters. It seemed to preclude the final waiver of costs in other types of cases. This should not be precluded. She had two concerns. One was that if final waiver of costs is provided for, the ultimate court costs affect the indigent. This is a disincentive for people to litigate their issues if they know that the prepaid costs are going to be assessed against them at the end of the case even though they are still indigent. The Chair cautioned that the costs would be assessed against them if they lose the case. Ms. Ortiz expressed the view that Rule 1-325 would create a great amount of confusion. It is not a good idea to preclude attorneys or their clients from requesting a final waiver of costs.

Mr. Hill commented that the Public Justice Center's view was that the final waiver of costs is an access to justice issue as Ms. Ortiz had said. Mr. Hill can advise his client that if a case is filed, there will be hundreds of dollars potentially in court costs. If the client loses or settles the case, he or she may not have any money. The court will enter a judgment against

the client for the court costs, and the judgment will go on the client's credit report. The client could be denied employment or housing. This is a significant risk that the client would have to be willing to take. It is an access to justice issue.

Mr. Hill noted that he had looked at many different rules, and he had found out that there is no provision currently for the automatic entry of a judgment against the party in favor of the court clerk. The rules contain language about assessing and allocating costs, but an automatic judgment at the end of the case without any opportunity to seek a waiver or contest the costs is a huge issue for the clients of the Public Justice Center. The credit history is so important for people to get access to employment and housing that Mr. Hill and his colleagues discourage any automatic entry of a judgment at the end of a case without the opportunity to pay and without the opportunity to waive.

The Chair asked Mr. Hill whether it is an access to justice issue for a person who does not qualify for a waiver of the prepaid costs because he or she exceeds the MLSC guidelines but has only a little more money than that. That person can owe a great amount of money for court costs at the end of the case if he or she loses. Mr. Hill answered that it is difficult to draw the line. It certainly is pertinent to the person who is slightly above the MLSC guidelines. The Chair asked if it is any different for that person. Mr. Hill answered affirmatively, explaining that clients who really have no money, which is the

case for most of the clients that he represents, are not going to be able to pay those costs at the end of the case. Many clients are on the borderline of the MLSC guidelines, which is a necessary burden, but for a large number of low-income people, it is a huge burden, and it is almost a permanent barrier.

Mr. Lowe noted that the current procedure for the clerks in his office at the end of the case if the court costs are not waived, is to invoice the party who has incurred the costs. They invoice two different times as prompted automatically by their system. After that, they refer the matter to Central Collections. This system seems to work very well as opposed to the clerk entering a judgment in favor of the clerk. The Chair remarked that this is a separate issue. What Ms. Ortiz and the Public Justice Center would like is for there to be an automatic waiver at the end of the case. There would not be any judgment. Mr. Hill responded that the Public Justice Center was not asking for an automatic waiver, they were asking for an opportunity to seek a waiver either in open court or within 10 days after trial.

Judge Pierson pointed out that there are three kinds of costs. He expressed the opinion that Mr. Hill was correct that there is no current procedure in which prepaid costs that are waived are recovered in any fashion. The Chair responded that the costs could be recovered against the other party. Judge Pierson said that if the filing fee was waived, the clerk does not go back and try to collect it.

Mr. Lowe remarked that there is still a filing fee to be

paid at the end of the case. It is the prepayment of filing fees that is waived. The case will proceed, and at the end, there will still be costs to be collected, because the ultimate final payment was not waived, just the prepayment. Judge Pierson noted that there are costs that accumulate during the course of the case. Many times the judgment will read: "open costs to be paid by _____." Judge Pierson noted that the judgment states that the prevailing party is entitled to recover costs. This is separate from the court recovering costs.

The Chair added that there are at least two different kinds of costs. One is where the plaintiff has won, and so the defendant is going to be assessed the costs, one of which is the open filing fee that has never been paid. If the plaintiff loses, should the judgment go against the plaintiff for that? Judge Pierson commented that under Rule 2-603, if costs are granted to the prevailing party, not the plaintiff, then he or she can recover the costs from the other side. The Chair responded that he was not sure of this, because if the prepayment of the filing fee was waived, that was the plaintiff's costs. If the plaintiff loses, then the defendant is not recovering anything against the plaintiff, because the plaintiff had not paid that cost. It is the clerk who is out the amount of the costs.

Judge Pierson noted that there could be two different things. If the plaintiff's prepayment is waived, and costs are awarded to the defendant, the defendant is not going to recover

those costs from the plaintiff. The defendant has to recover whatever costs the defendant paid. The Chair agreed, commenting that the clerk is the one who is out the money at that point, not the defendant. Mr. Carbine observed that if the defendant wins, he or she is out the court's charge of $10. The Chair referred to the appearance fee, and Mr. Carbine said that this is another issue.

Judge Weatherly said that in family cases, it is difficult at times to figure out who won or lost. The plaintiff could be awarded the divorce, custody, alimony, and/or marital property, and in that case, the court costs can be assessed to the defendant. It is not infrequent that in a case filed through a pro bono attorney, one party may be indigent, but the other party is not indigent. The biggest problem Judge Weatherly and the other judges in Prince George's County have is that domestic cases, like other civil cases, settle in large numbers, and very often, when the judge gets the proposed order settling the case, the court may do a poor job raising on its own behalf the issue of what to do about the outstanding court costs.

The Chair noted that in some counties, there is a judgment form, a preprinted form that has a box on it to note against whom costs were assessed. There have been cases in which the judge signs the order but does not check that box. Then Rule 2-603 is triggered providing that the prevailing party is entitled to costs. Mr. Lowe added that this has to be addressed in some way to clear the record.

Ms. Erlichman, Executive Director of the Maryland Legal Services Corporation, told the Committee that her organization gets calls from legal services programs throughout the State complaining about issues regarding filing fee waivers being granted. Typically, these are prepaid fees. She expressed the view that Rule 1-325 addresses the concerns about waivers of prepayment fees. However, nothing in the Rule defines how final waivers of fees go forward, except with regard to domestic relations and guardianship cases, which are referenced in the draft of Rule 1-325. Her understanding was that in some cases, but not all, at the end of the case, the judge or clerk will assess and require that the prepaid costs that had been waived be paid. The Maryland Legal Services Corporation was hoping to formalize the process of an attorney requesting a waiver at the end of the case and provide a process for that final waiver that will help the court and the litigants. Someone had called Ms. Erlichman expressing the concern that the way the draft of Rule 1-325 (f)(2) read, it seemed to preclude the ability to request that final waiver unless the case is either a guardianship case under section (b) of Rule 10-107, Assessment and Waiver of fees and costs - Guardianships, or a domestic relations case under Rule 2-603 (e). This is changing what Ms. Erlichman understood to be current practice, which does allow a request for a final waiver of costs in any civil matter. She respectfully asked that the language of Rule 1-325 (f)(2) be revisited.

The Chair inquired if Ms. Erlichman's position was that at

the end of the case, anyone who believes himself or herself to be indigent could request a waiver of costs that are assessed against that person. Ms. Erlichman replied that she and her colleagues were speaking specifically to litigants who had had the prepaid costs waived at the beginning of the case. The Chair asked if Ms. Erlichman was limiting the ability to request a waiver of costs at the end of the case to situations in which prepaid costs have been waived up front. Ms. Erlichman said that they also were proposing a process that may not be the same for those who have not already had a determination that costs should be waived.

The Chair questioned whether Ms. Erlichman would apply the same standard for the waiver at the end of the case as would be applied for the initial waiver of prepayment. Ms. Erlichman answered that her view was that there should be guidelines. The Chair asked if she was referring to the MLSC guidelines, and Ms. Erlichman responded affirmatively. There is a strong desire for the judge to make a determination; it should not be an automatic process. Some guidance should be provided to the judges; the decision should not be limited to the judge's discretion.

The Chair asked if the form would be the same as the one used for someone to obtain the initial waiver. Ms. Ortiz replied that forms were being drafted that could be used at the conclusion of the case. As had been discussed previously if someone had been represented by a MLSC provider, the person could submit an affidavit that he or she was still eligible to be

represented by one of those providers. If the person was an indigent who had not been represented by a legal services provider, he or she could submit an affidavit as to the person's income.

Ms. Goldsmith told the Committee that she is with the Pro Bono Resource Center. She had spoken with Judge Jensen, the Chair of the Standing Committee on Pro Bono Legal Service, who had asked that Ms. Goldsmith reiterate to the Rules Committee that the goal should be to preserve discretion for judges in determining whether to waive final fees. Another point was that many of the pro bono attorneys from the Pro Bono Resource Center represent defendants who may not be aware of the fact that they need to request a waiver. Ms. Davis remarked that she had been puzzled by subsection (f)(2) of Rule 1-325. The Office of the Public Defender handles some civil matters, such as expungement cases. The way subsection (f)(2) is worded seems to mean that at the end of the case, even though the prepayment of costs may have been waived, the client will be assessed $30. This issue is not just about how someone gets into court, it is also about how someone exits the court. The $30 fee may not be a great amount of money for some people, but for Ms. Davis' clients, who get food stamps and temporary cash assistance, the $30 is a large amount of their monthly income. It would be difficult for those people to know going into a case that eventually they will have to pay that $30. If it is not paid, the debt will go to Central Collection. It is a vicious cycle, and it is not really helping

the clients who are not getting access to the courts.

Ms. Ewert, Housing Law Supervisor for the Homeless Persons Representation Project, Inc., remarked that her organization handles a large amount of expungement cases, also. They handle almost 800 cases a year for people who are homeless or at risk of homelessness. She and her colleagues were of the view that it is important to allow the waiver of fees for an indigent person. One additional wrinkle is that if there is no final waiver of costs, how can the court collect the judgment? This is an issue not only because her clients cannot pay, since 17% have zero income and the rest have income below the limits of the federal poverty guidelines, but also the court may not be able to collect costs on cases that no longer exist. Judge Weatherly said that in family cases, the costs can include payment for a best interest attorney or a psychological evaluation. In Prince George's County, sometimes that money is fronted with the intention of collecting it from non-indigent people, but in other cases, if the parties are indigent, the county picks up those costs. Judge Weatherly added that she really wanted to preserve the opportunity to collect the amount of the costs from the other side if the other side is not indigent and able to pay. This can be thousands of dollars each year.

The Chair asked if there should be the ability to waive costs at the end of the case for all cases or only for those in which prepaid costs had been waived up front. Judge Pierson inquired if the Chair was referring only to prepaid costs. The

Chair responded that there had been some discussion about all costs. One of the scenarios discussed for the ability to waive costs at the end of the case involved cases where prepayment of costs had been waived. At the end of the case, should there be the ability to seek a waiver of costs at all? Judge Pierson asked whether this refers to the costs for which prepayment had been waived. The Chair answered affirmatively. Judge Pierson observed that this would not affect costs recoverable by the other party or open costs. The Chair replied that this was his understanding.

Ms. Ortiz inquired if judges now have the authority to waive costs generally. Judge Pierson answered affirmatively. Ms. Ortiz pointed out that this authority should not be taken away. Judge Pierson agreed. Ms. Ortiz noted that the interest of the Access to Justice Commission was to have closure at the end of the case. When the judge exercises discretion, he or she would use a standard that is familiar and that would benefit the indigent person.

The Chair referred to the scenario where there has been no waiver of prepayment, so the plaintiff has paid the costs, and at the end of the case, costs are assessed against the defendant. The clerk has already been paid unless there are open costs for some reason. The question is the ability to waive those costs. Ms. Ortiz responded that sometimes legal service providers represent the defendants, because they are indigent. However, the court has the authority now to waive final costs. Mr. Hill

said that it is not a specific authority, but it is implied in practice, and it does happen.

Ms. Ortiz remarked that a separate process may not be necessary, but closure is necessary, because the waiver that the court grants at the beginning is the waiver of the prepayment requirement. The Chair acknowledged this, but he said that he was trying to figure out at the end of the case whether the waiver should go beyond that. If the plaintiff has paid the $135 and at the end of the case wins, so costs are assessed against the defendant, can the court waive those costs, so the plaintiff does not recover the costs? Judge Pierson responded that Rule 2-603 provides that unless the court orders otherwise, the prevailing party is entitled to costs. This is the default. If the judge says nothing to the clerk, the clerk will indicate judgment for $_____ and costs. However, Rule 2-603 also provides that the court may, by order, allocate costs among the parties. The court has the power to change that default rule.

The Chair questioned whether this includes a waiver. Judge Pierson said that he was trying to be clear as to how far the current proposal goes. The Chair noted that Rule 1-325 only addresses prepaid costs. At the appellate level, when the record comes up, the plaintiff may have won on some issues, and the defendant may have won on some other issues. The court may have assessed costs 2/3 to the plaintiff and 1/3 to the defendant. This is the allocation. But if the costs are assessed against the defendant, should the court be able to decide that the

defendant does not have to pay? Judge Pierson replied that he was not suggesting that, he just wanted to make sure that it was not being suggested.

The Chair said that what was being discussed was the prepaid costs. He asked the Committee how they wanted to address this. Mr. Carbine suggested that in subsection (f)(2), the word "may" should be substituted for the word "shall." Mr. Lowe remarked that from a clerk's perspective, the current system functions properly. Any open prepaid costs, such as the filing fee, will get invoiced, and then if those invoices are not paid, the case goes on to Central Collections. Mr. Lowe and his colleagues prefer that method rather than entering a judgment. The Reporter inquired whether subsection (f)(2) should be deleted. The Chair pointed out that subsection (f)(2) could be deleted, but it leaves open the question as to whether the court can waive. In place of subsection (f)(2), it seemed that what was being requested was permitting the court to waive open costs where prepayment had been waived up front. Judgments would not have to be mentioned at all.

The Chair asked Mr. Carbine if he still wanted to change the word "shall" to the word "may" in subsection (f)(2). Mr. Carbine responded that he thought that what should be done was to give the trial judge the discretion to award or waive costs. The Chair noted that Mr. Lowe's point had been that section (f) should not refer to "judgments." Mr. Carbine inquired whether this issue could be worked out by the clerks and judges. The

Chair commented that if at the end of the case, waiver of the prepayment costs that had been waived up front is to be permitted, the Rule should state this.

Mr. Carbine asked whether the Committee should vote on whether when prepayment costs have been waived and remain unpaid, it should be discretionary or mandatory for the court to enter judgment in favor of the clerk for those costs. Then the language could be drafted accordingly. The Chair said that the language had already been drafted earlier. The question was whether to expressly permit the court at the end of the case to waive final payment of prepaid costs for which prepayment had been waived.

Judge Weatherly remarked that where there had been a finding of indigency and a waiver, the presumption should be that the court costs should be finally waived unless the court finds otherwise. This gets rid of the problem of the expungement. This would apply if there was no change in circumstances. The default would be that if there had been a prepayment waiver, once the judge reviewed the financial documents, the waiver would be final unless the court determines that the party is now able to pay. Judge Weatherly preferred that the judgment not be entered automatically.

The Chair said that the Committee should vote on the question of whether Rule 1-325 should expressly provide for a waiver at the end of the case for open costs for which the prepayment had been waived up front. Mr. Lowe commented that he

saw this as a two-part issue. First was the issue presented by the Chair. Then there was the procedural piece for the clerks. The Chair explained that the reference to entering judgments would be eliminated. Mr. Carbine noted that a vote of "yes" means that the judge has discretion to waive. A majority of the Committee was in favor of the Rule expressly providing for a waiver at the end of the case for open costs for which prepayment had been waived up front.

The Chair asked whether the Committee was in favor of eliminating subsection (f)(2), which requires that a judgment be entered. Mr. Zarbin moved to eliminate subsection (f)(2), noting that the clerks can handle this on their own. The motion was seconded. By a majority vote, the Committee agreed to delete subsection (f)(2).

Mr. Hill drew the Committee's attention to section (g), Waiver of Prepaid Appellate Costs. As detailed in their comments, the Public Justice Center's view was that there are constitutional issues for not providing an avenue for waiver. The inability to pay transcript costs from the circuit court to the Court of Special Appeals or to the Court of Appeals affects fundamental rights. There is clear case law in the U. S. Supreme Court as cited in the comment letter submitted by the Public Justice Center. No avenue is currently available in the Appellate Rules for waiving the transcript costs from the circuit court to the Court of Special Appeals or the Court of Appeals. This does not comply with the constitutional requirements of due

process. There needs to be some sort of avenue.

The Chair said that the Subcommittee had discussed this at some length. A distinction exists between the District Court transcripts that are prepared by court employees and transcripts in the circuit court that someone has to pay for. The Subcommittee's view was that they preferred not to address this. They did not want a waiver of costs when someone had to pay for the service. A provision does exist for waiver of costs in criminal Public Defender cases. The Subcommittee felt that the impact of making this change would be substantial.

The Chair commented that a recent Court of Appeals case had 13 volumes of the record extract, and some cases have had more than that. If anyone wants to make a motion to permit the court somehow to waive the costs, it would not be obvious who would pay for the transcript. It is a fair issue. The Chair asked if anyone wanted to make a motion, and no one did.

Mr. Hill told the Committee that some suggestions as to how this could be done were in the comment letter from the Public Justice Center. The preparation fee could be shifted to the District Court transcribers. There could be a requirement that they conduct a certain amount of pro bono service each year. The Chair had referred to the provision for waiver in criminal cases, so funds are available for that.

Mr. Hill expressed the opinion that in termination of parental rights cases, there should be some provision for an indigent person to not pay these costs. The Chair commented that

the Subcommittee could not get a handle on how these costs would be paid. When MDEC goes into effect, this may not be as much of an issue, because so much of this would be electronic. Debra Gardner, Esq., the Legal Director of the Public Justice Center, had been present at the Subcommittee meeting and had heard all of the discussion. She had preserved the right to file an objection.

Judge Weatherly asked if the court had the right to waive those costs now. Mr. Hill answered that no provision exists allowing the costs to be waived. Judge Weatherly said that costs may be able to be waived in termination of parental rights cases.

By consensus, the Committee approved Rule 1-325 as amended and Rules 2-603, 7-103, 8-201, 8-303, 8-505, and 10-107 as presented.

Agenda Item 5. Reconsideration of proposed amendments to Rule 8-501 (Record Extract) and Rule 8-503 (Style and Form of Briefs)

The Vice Chair presented Rule 8-501, Record Extract, 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 8-501 (a) by changing the

word "appendix" to "attachment," as follows:

Rule 8-501. RECORD EXTRACT

(a) Duty of Appellant

Unless otherwise ordered by the appellate court or provided by this Rule, the appellant shall prepare and file a record extract in every case in the Court of Appeals, subject to section (k) of this Rule, and in every civil case in the Court of Special Appeals. The record extract shall be included as an ~~appendix~~ attachment to appellant's brief, or filed as a separate volume with the brief in the number of copies required by Rule 8-502 (c).

. . .

Rule 8-501 was accompanied by the following Reporter's note.

In an appeal, an attorney had attached a very small record extract as an appendix, basing this on the language of Rule 8-501 (a), which states that the record extract "shall be included as an appendix to appellant's brief, or filed as a separate volume with the brief in the number of copies required by Rule 8-502 (c)." The attorney had labeled the pages "App" and had made appropriate references to those pages in his brief. An appellate judge ordered that the pages be labeled "E," not "App." The attorney's interpretation of the pertinent Rules is that a record extract, when attached as an appendix, is an appendix and should be labeled and referenced accordingly. He suggested that the Rules be clarified to eliminate any ambiguity.

The proposed amendment to Rule 8-501 clarifies section (a) by changing the word "appendix" to "attachment."

The proposed amendments to Rule 8-503 make clear that any reference to the record extract -- regardless of whether the record extract is included as an attachment to the appellant's brief or filed as a separate

volume -- is indicated as (E.....). Stylistic changes to section (b) also are made.

The Vice Chair explained that Rule 8-501 had been considered at the May, 2013 Rules Committee meeting. The issue is that when someone files the record extract as an appendix to his or her brief, the extract is labeled either "E" or "A" or some other notation. The Committee had decided that the label for a record extract should be "E". The Style Subcommittee reviewed Rule 8-501 and decided that the proposed language change was not clear enough, particularly as to the language which read: "The record extract shall be included as an appendix to appellant's brief...". This would count toward the numbers of pages allowed for the brief. The Reporter suggesting substituting the word "attachment" for the word "appendix," so that the record extract is included as an attachment. This makes it clear that it is not part of the page limitations.

By consensus, the Committee approved Rule 8-501 as presented.

The Vice Chair 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 (b) to clarify the form of references to pages in a record extract and to make stylistic changes, as follows:

Rule 8-503. STYLE AND FORM OF BRIEFS

. . .

(b) References

References (1) to the record extract, regardless of whether the record extract is included as an attachment to the appellant's brief or filed as a separate volume, shall be indicated as (E.....), (2) to any appendix to appellant's brief shall be indicated as (App.....), (3) to an appendix to appellee's brief shall be indicated as (Apx.....), and (4) to an appendix to a reply brief shall be indicated as (Rep. App.....). If the case falls within an exception listed in Rule 8-501 (b), references to the transcript of testimony contained in the record shall be indicated as (T.....) and other references to the record shall be indicated as (R.....).

. . .

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

See the Reporter's note to Rule 8-501.

The Vice Chair said that Rule 8-503 picks up the word "attachment" as in Rule 8-501. The new language makes it clear that the record extract is not counted in the page limits.

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

Agenda Item 6. Consideration of proposed amendments to new Rule 19-105 (Confidentiality)

The Reporter 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~~ including 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,

or prepared 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) 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) if the applicant has consented in writing, any material pertaining to ~~an~~ the 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) for use in a pending disciplinary proceeding against the applicant as an attorney or judge, a pending proceeding for reinstatement of the applicant as an attorney after disbarment, or a pending proceeding for original admission of the applicant to the Bar, 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 or any other 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~~ individuals who graduated from that law school who took a bar examination, **~~and~~** whether they passed or failed the examination, **and the number of bar examination attempts by each individual**;

(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~~ an individual 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~~ an individual recommended for bar admission pursuant to Rule ~~10~~ 19-209;

(9) to the National Conference of Bar Examiners, the following information regarding ~~persons~~ individuals 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 any 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~~ an individual 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 (c)(4) and (5) of this ~~section~~ Rule 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~~ individual 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 (d)(1), (2), and (3) of this ~~section~~ Rule 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 Rule 19 of the Rules Governing Admission to the Bar of Maryland (2013).

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. References to the judicial nominating commission of other States, governors of other States, and the President of the United States are added. At the request of law schools, added to subsection (c)(6) is the permitted disclosure to a law school of the number of times an individual graduate of that law school took the bar examination.

The Reporter told the Committee that the State Board of Law Examiners ("State Board") had apologized for not giving all of their comments at once. They had requested express authority to tell the law schools whether the applicants had passed or failed

the bar examination. If the law schools had been keeping track of the information that the State Board already gives to the law schools as to who passed, the law schools would know how many times the applicant took the bar exam before the person passed. Apparently, the law schools do not always keep track of this information. This is important for American Bar Association accreditation and for their marketing tools. The State Board would like Rule 19-105 to expressly state what is already happening.

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

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