COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Training Rooms 5 and 6 of the Judiciary Education and Conference Center, 2011 Commerce Park Drive, Annapolis, Maryland on April 5, 2013.

Members present:

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

Robert R. Bowie, Jr., Esq.
Albert D. Brault, Esq.
James E. Carbine, Esq.
Christopher R. Dunn, Esq.
Hon. Angela M. Eaves
Ms. Pamela Q. Harris
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
J. Brooks Leahy, Esq.
Hon. Thomas J. Love
Robert R. Michael, Esq.
Hon. Danielle M. Mosley
Anne C. Ogletree, Esq.
Scott G. Patterson, Esq.
Hon. W. Michel Pierson
Hon. Paula A. Price
Kathy P. Smith, Clerk
Melvin J. Sykes, 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
A. J. Bellido de Luna, Esq., University of Maryland, Section Chair, Council on Legal Education and Admission to the Bar
D. Jill Green, Esq., University of Baltimore, Committee Member, Council on Legal Education and Admission to the Bar
David W. Weissert, Coordinator of Commissioner Activity, District Court of Maryland
Hon. Gary G. Everngam, District Court of Maryland, Montgomery County
Renee E. Hood, Esq., Pro Bono Resource Center of Maryland
Robert B. Levin, Esq., Shapiro, Sher, Guinot & Sandler, P.A.
Matt Hill, Esq., Public Justice Center
Dean Merritt, File and Serve Express
James Watson, Maryland State Archives
Derrick Lowe, Clerk, Circuit Court for Cecil County
Lisa Preston, Assistant Chief Deputy Clerk, Anne Arundel County

Suzanne Strong, Courtroom Clerk Supervisor, Anne Arundel County Circuit Court
Erin McCarthy, Courtroom Clerk Supervisor, Anne Arundel County Circuit Court
Kathleen Wherthey, Legal Affairs, Administrative Office of the Courts
Pamela Cardullo Ortiz, Esq., Executive Director, Maryland Access to Justice Commission
Julia Doyle Bernhardt, Esq., Office of the Attorney General
Joan Nairn, Judicial Information Systems, Senior Project Manager
Mr. Mark Twedt, Tyler Technologies

The Chair convened the meeting. The Chair announced that the 176th Report of the Rules Committee, which pertains to the Maryland Electronic Courts (MDEC), was sent to the Court of Appeals. Together with any supplement required by changes the Committee makes today, it will be heard by the Court of Appeals on April 18, 2013. Nine sets of comments that had been received were sent to the Court, some of which seemed to have merit. Handouts pertaining to these comments had been distributed, so that the Committee would discuss them. The Court had decided not to hear any oral presentations, except from the Rules Committee but to consider only the written comments received. A Supplement to the 176th Report will have to be filed to address some of the comments, which the Committee will discuss today. The Committee will also have to address two new items that have surfaced since the MDEC Rules were sent to the Court.

The 177th Report of the Rules Committee was sent to the Court of Appeals on March 28, 2013. This included the Rules pertaining to attorneys' fees and related expenses as well as the Alternative Dispute Resolution Rules for the Court of Special

Appeals. A hearing date for the 177th Report has not yet been set.

The Chair noted and apologized for the fact that many sets of minutes of the Rules Committee had been sent out to each of the members for approval. Because of the press of other business, a backlog had developed in reviewing drafts of the minutes, but that backlog is nearly over.

The Chair explained that Committee meetings are recorded on audiotape. Ms. Libber, an assistant reporter prepares an initial draft of the minutes from the tape and the Reporter and the Chair each then review them. Ms. Libber's draft is not a verbatim transcript, but does record, in some detail, the essence of the discussion. The minutes of an average Rules Committee meeting are somewhere between 150 and 200 pages. One recent set was 337 pages. Some of this is comprised of the draft of the Rules, but it takes time to compose the minutes as well as to review them. Lately, due to all of the work on MDEC, and even earlier work on the Rules pertaining to foreclosures, the minutes just had dropped in priority even though the law on open meetings, Code, State Government, §10-509, requires the minutes to be done. One more batch of minutes may be ready to be sent out. This should take care of all of the backlog. The goal is to send out the minutes in a more timely fashion.

The Chair asked if anyone had any comments or corrections to the minutes that had been sent out: September, October, and November, 2011 as well as January, March, April, May, June,

September, and October of 2012. No comments were forthcoming, and the minutes of those meetings were approved as presented.

Agenda Item 1. Consideration of certain revisions to proposed new Title 20 (Electronic Filing and Case Management) contained in the One Hundred Seventy-Sixth Report of the Rules Committee Rule 20-106 (When Electronic Filing Required; Exceptions), Rule 20-201 (Requirements for Electronic Filing), Rule 20-203 (Review by Clerk; Striking of Submission; Delinquency Notice; Correction; Enforcement), Rule 20-402 (Transmittal of Record), and Rule 20-504 (Agreements with Vendors)

The Chair said that the Committee needed to consider several Rules on MDEC in light of comments that had been made, which the Reporter and the Chair believe have some merit, and to consider two Rules that would require changes in light of new issues that surfaced after Title 20 had been sent to the Court of Appeals. One other issue that needs to be considered today was triggered by a comment from the Access to Justice Commission that had never been presented to the Rules Committee but was important.

The Chair presented Rule 20-101, Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

Rule 20-101. DEFINITIONS

In this Title the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(a) Affected Action

"Affected action" means an action to which this Title is made applicable by Rule 20-102.

Cross reference: For the definition of an "action" see Rule 1-202.

(b) Appellate Court

"Appellate court" means the Court of Appeals or the Court of Special Appeals, whichever the context requires.

(c) Applicable County

"Applicable county" means a county listed in Rule 20-102 (a).

(d) Applicable Date

"Applicable date" for an applicable county means the date stated in Rule 20-102 (a) pertaining to that county.

(e) Business Day

"Business day" means a day that the clerk's office is open for the transaction of business. For the purpose of the Rules in this Title, a "business day" begins at 12:00.00 a.m. and ends at 11:59.59 p.m.

(f) Clerk

"Clerk" means the Clerk of the Court of Appeals, the Court of Special Appeals, or a circuit court, an administrative clerk of the District Court, and the deputy clerks in those offices.

(g) Concluded

An action is "concluded" when

(1) there are no pending issues, requests for relief, charges, or outstanding motions in the action or the jurisdiction of the court has ended;

(2) no future events are scheduled; and

(3) the time for appeal has expired or, if an appeal or an application for leave to appeal was filed, all appellate proceedings have ended.

Committee note: This definition applies only to the Rules in Title 20 and is not to be confused with the term "closed" that is used for other administrative purposes.

(h) Digital Signature

"Digital signature" means a secure electronic signature inserted using a process approved by the State Court Administrator that uniquely identifies the signer and ensures authenticity of the signature and that the signed document has not been altered or repudiated.

(i) Facsimile Signature

"Facsimile signature" means a scanned image or other visual representation of the signer's handwritten signature, other than a digital signature.

(j) Filer

"Filer" means a person who is accessing the MDEC system for the purpose of filing a submission.

Committee note: The internal processing of documents filed by registered users, on the one hand, and those transmitted by judges, judicial appointees, clerks, and judicial personnel, on the other, is different. The latter are entered directly into the MDEC System, whereas the former are subject to clerk review under Rule 20-203. For purposes of these Rules, however, the term "filer" encompasses both groups.

(k) Hand-Signed or Handwritten Signature

"Hand-signed or handwritten signature" means the signer's original genuine signature on a paper document.

(l) Hyperlink

"Hyperlink" means an electronic link embedded in an electronic document that enables a reader to view the linked document.

(m) Judge

"Judge" means a judge of the Court of Appeals, Court of Special Appeals, a circuit court, or the District Court of Maryland and includes a former judge of any of those courts recalled pursuant to Code, Courts Article, §1-302 and designated to sit in one of those courts.

(n) Judicial Appointee

"Judicial appointee" means a judicial appointee, as defined in Rule 16-814.

(o) Judicial Personnel

"Judicial personnel" means an employee of the Maryland Judiciary, even if paid by a county, who is employed in a category approved for access to the MDEC system by the State Court Administrator;

(p) MDEC or MDEC System

"MDEC" or "MDEC system" means the system of electronic filing and case management established by the Maryland Court of Appeals.

Committee note: "MDEC" is an acronym for Maryland Electronic Courts.

(q) Redact

"Redact" means to exclude information from a document accessible to the public.

(r) Registered User

"Registered user" means an individual authorized to use the MDEC system by the State Court Administrator pursuant to Rule 20-104.

(s) Restricted Information

"Restricted information" means information (1) prohibited by Rule or other law from being included in a court record, (2) required by Rule or other law to be redacted from a court record, (3) placed under seal by a court order, or (4) otherwise required to be excluded from the court record by court order.

Cross reference: See Rule 1-322.1 (Exclusion of Personal Identifier Information in Court Filings) and the Rules in Title 16, Chapter 1000 (Access to Court Records).

(t) Scan

"Scan" means to convert printed text or images to an electronic format compatible with MDEC.

(u) Submission

"Submission" means a pleading or other document filed in an action. "Submission" does not include an item offered or admitted into evidence in open court.

Cross reference: See Rule 20-402.

(v) Tangible Item

"Tangible item" means an item that is not required to be filed electronically. A tangible item by itself is not a submission; it may either accompany a submission or be offered in open court.

Cross reference: See Rule 20-106 (c)(2) for items not required to be filed electronically.

Committee note: Examples of tangible items include an item of physical evidence, an oversize document, and a document that cannot be legibly scanned or would otherwise be incomprehensible if converted to electronic form.

(w) Trial Court

"Trial court" means the District Court

of Maryland and a circuit court, even when the circuit court is acting in an appellate capacity.

Committee note: "Trial court" does not include an orphans' court, even when, as in Harford and Montgomery Counties, a judge of the circuit court is sitting as a judge of the orphans' court.

(x) Typographical Signature

"Typographical signature" means the symbol "/s/" affixed to the signature line of a submission above the typed name, address, e-mail address, and telephone number of the signer.

Source: This Rule is new.

The Chair said that Rule 20-101 had been handed out at the meeting today. Two changes, which seemed to be minor, had been proposed. The District Court Focus Group recommended that when a "business day" begins and ends be defined for purposes of Title 20. The reason for the suggested change is that for electronic purposes, anything can be filed in the clerk's office at any time beginning with midnight and ending at 11:59 p.m. on a given day. A "business day" is not 8:30 a.m. until 4:30 p.m when the clerk's office is otherwise open for business.

By consensus, the Committee approved the change to Rule 20-101 (e) as presented.

The Chair noted that the second change in Rule 20-101 was to section (t), the definition of the word "scan." That term appears in two other Rules, which would be discussed later. This change had been recommended by the Legal Aid Bureau to ensure

that when something is scanned, it is in a format that is compatible with MDEC. This was the intent, but it does not hurt to make it more clear. The Chair asked if anyone had a comment on the proposed change to section (t), which was to add the language "compatible with MDEC."

By consensus, the Committee approved the proposed change to Rule 20-101 (t) as presented.

Ms. Smith said that she had a comment concerning section (f) of Rule 20-101. This section refers to "deputy clerks." She asked if this term could be changed to the language "employees of the clerk's office." The term "deputy clerk" is somewhat archaic. The Chair inquired if the language "authorized clerks" would be appropriate. Is anyone who works in the clerk's office considered to be a clerk? Ms. Smith responded that they are all clerks, but they are not all deputy clerks.

The Chair asked if anyone objected to Ms. Smith's proposed change. Mr. Carbine replied that this change could have a domino effect on the MDEC Rules and needed to be considered further. He expressed the view that the Committee should not be tinkering with the MDEC Rules. The Chair questioned whether some employees in the clerk's office are secretaries. Ms. Smith answered affirmatively. Mr. Michael asked if each clerk's office has a clerk and deputy clerks. Ms. Smith answered that there is a chief deputy clerk, and the other members of the staff are not called "deputy clerks." They have different titles depending on their jobs. Some have the adjective "assistant" in front of

their title, whatever it is.

The Chair said that what was troubling him was that clerks will have free remote access to everything. Should secretaries have access as well? Ms. Smith asked if they would have to register. The Chair responded that the people in the clerk's office do not register. Ms. Smith pointed out that they have to get an identification number. Mr. Carbine noted that clerks are not registered users. Ms. Smith remarked that they have to get access somehow. Mr. Carbine explained that the clerks get access automatically. They can see anything filed. Ms. Smith disagreed, commenting that even now under the case management system, all of the employees in the clerk's office do not have access to that system, only those who are users who have been registered through the State Court Administrator.

The Chair said that his understanding was that the Administrative Office of the Courts (AOC), based on the recommendations of the clerk, would determine who is going to have the necessary access. It will not be everyone in the clerk's office who has the access. Ms. Smith suggested the language "authorized employees in the clerk's office," but she noted that the employees are not deputy clerks.

The Chair suggested the term "authorized assistant clerks." This would not be capitalized, so that it is not a title. It is simply descriptive. Mr. Patterson inquired if the clerks are sworn. Ms. Smith replied that the circuit court clerk is sworn, but not everyone who works in the office of the clerk is sworn.

Some people are sworn who are deputy clerks, which is an archaic term that was related to retirement years ago. Mr. Patterson noted that the circuit court clerk is an elected office.

Mr. Patterson asked what differentiates whether they are sworn or not. Mr. Carbine commented that what is being discussed is the meaning of the term "deputy clerk." It has an effect all the way through the Title 20 Rules. Rule 20-101 does not state who is a "registered user;" it states who is a "clerk." Mr. Carbine expressed the opinion that it is very dangerous to make such a change when the full set of Rules had not been reviewed to see what the implications are.

The Chair noted that current Rule 16-301, Personnel in Clerks' Offices, addresses chief deputy clerks as part of the personnel system established by the State Court Administrator. In the budget, there are appropriations for certain clerks or categories of clerks. If Ms. Smith's problem could be solved by the language "authorized assistant clerks," it would avoid titles. Mr. Carbine disagreed with this suggestion. He was opposed to changing this until all of the Title 20 Rules could be reviewed to find out how any change to the definition of "clerk" would affect the MDEC Rules.

Ms. Harris noted that the change would be to the term "deputy clerk," not to the term "clerk." Mr. Carbine remarked that there are delegation rules. The term "deputy clerks" had been included, because of the District Court system. The original definition of the term "clerk" was in the circuit court.

The Chair pointed out that the term "deputy clerk" is not in the District Court. There is one in the Court of Appeals, and Court of Special Appeals as well as some in the circuit courts, but it is an "administrative clerk" of the District Court. Mr. Carbine said that his view would be the same as he had previously stated about the need to look through the Title 20 Rules to see what the implications of changing the definition of the term "clerk" are before any change is made.

The Chair noted that the problem is the adjective "deputy" in Rule 20-101 now, and Ms. Smith had commented that this suggests a title which some people in the clerks' offices will not have, but they are the ones who will be doing the work. Mr. Carbine said that the word "deputy" was added deliberately, but it has nothing to do with who is a filer. It relates to the exception for clerks and judges. The Chair commented that with respect to the material going to the clerk's queue, it has to be checked to make sure that it is signed and has the appropriate certificates. It was never intended that the elected clerk of the court would be the only one having access; employees who are authorized would have access. Mr. Carbine told the Committee that after the Title 20 Rules were discussed, he would look over all of the Rules in Title 20, so that no harm is done by making the proposed change.

By consensus, the Committee approved Rule 20-101 as presented, subject to a possible amendment to section (f).

The Chair presented Rule 20-102, Application of Title to

Courts and Actions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

Rule 20-102. APPLICATION OF TITLE TO COURTS AND ACTIONS

(a) Trial Courts

(1) Applicable Counties and Dates

(A) Anne Arundel County is an applicable county from and after _____.

(B) There are no other applicable counties.

Committee note: The MDEC Program will be installed sequentially in other counties over a period of time. As additional counties become applicable counties, they will be listed in new subsections (a)(1)(B) through (a)(1)(X).

(2) Actions, Submissions, and Filings

(A) New Actions and Submissions

On and after the applicable date, this Title applies to (i) new actions filed in a trial court for an applicable county, (ii) new submissions in actions then pending in that court, (iii) new submissions in actions in that court that were concluded as of the applicable date but were reopened on or after that date, (iv) new submissions in actions remanded to that court by a higher court or the United States District Court, and (v) new submissions in actions transferred to that court.

(B) Existing Documents; Pending and Reopened Cases

With the approval of the State Court Administrator, (i) the County Administrative Judge of the circuit court for an applicable county, by order, may direct that all or some of the documents that were filed prior to the applicable date in a pending or reopened action in that court be converted to electronic form by the clerk, and (ii) the Chief Judge of the District Court, by order, may direct that all or some of the documents that were filed prior to the applicable date in a pending or reopened action in the District Court be converted to electronic form by the clerk. Any such order shall include provisions to ensure that converted documents comply with the redaction provisions applicable to new submissions.

(b) Appellate Courts

This Title applies to appeals and other proceedings in the Court of Special Appeals or Court of Appeals seeking the review of a judgment or order entered in any action to which section (a) of this Rule applies. If so ordered by the Court of Appeals in a particular matter or action, the Title also applies to (1) a question certified to the Court of Appeals pursuant to the Maryland Uniform Certification of Questions of Law Act, Code, Courts Article, §§12-601 - 12-613; and (2) an original action in the Court of Appeals allowed by law.

(c) Applicability of Other Rules

Except to the extent of any inconsistency with the Rules in this Title, all of the other applicable Maryland Rules continue to apply. To the extent there is any inconsistency, the Rules in this Title prevail.

Source: This Rule is new.

The Chair explained that the proposed change to subsection

(a)(2)(B) of Rule 20-102 resulted from a comment by the Legal Aid Bureau, Inc. to make sure that any of the conversions to electronic format are done by the clerk and that the party does not have to do this. The Legal Aid Bureau, Inc. was concerned that they would have to make the conversion. It was always intended that the clerk would do the conversion.

Ms. Smith asked on behalf of a colleague if in subsection (a)(2)(A)(v) of Rule 20-102, the language should be "transferred or removed to that court," or whether it means an originating file. The Chair inquired where the action would be removed to. Ms. Smith answered that it would be removed to Anne Arundel County, which will be the first county to have the MDEC system. Her office gets cases that are started somewhere else but then removed to a different jurisdiction. The Chair pointed out that this is what the word "transferred" means. He asked if Ms. Smith wanted the words "or removed" added after the word "transferred." She answered affirmatively. By consensus, the Committee agreed with this change.

Ms. Smith said that her colleague had also commented on the language "existing documents" in the tagline of subsection (a)(2)(B) of Rule 20-102, and he had asked if those documents would be docketed again as well as scanned. Ms. Smith inquired whether the State Court Administrator would have to scan all of the existing documents. The Chair responded that both the documents and the dockets would be scanned. Ms. Smith remarked that she was making sure that the old data was being converted.

By consensus, the Committee approved Rule 20-102 as amended.

The Chair presented Rule 20-104, User Registration, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

Rule 20-104. USER REGISTRATION

(a) Eligibility

Any individual may apply to become a registered user in accordance with this Rule.

(b) On-line Application

An individual seeking to become a registered user shall complete an on-line application in the form prescribed by the State Court Administrator. The form shall include an agreement by the applicant to comply with MDEC policies and procedures and the Rules in this Title and a statement as to whether the applicant is an attorney and, if so, is a member of the Maryland Bar in good standing.

(c) Identification Number, Username, and Password

Upon successful completion of the registration process in accordance with section (b) of this Rule and any verification that the State Court Administrator may require, the individual becomes a registered user. The State Court Administrator shall issue to the registered user a unique user identification number, a username, and a password, which together shall entitle the registered user to file submissions electronically in an affected action to which the registered user is a party or is

otherwise entitled to file the submission and have the access provided by Rule 20-109. The registered user may not change the unique identification number issued by the State Court Administrator but may change the assigned username and password in conformance with the policies and procedures published by the State Court Administrator.

(d) Effect of Registration

By registering with the State Court Administrator as a registered user, an individual agrees to comply with the Rules in this Title and the MDEC policies and procedures established and published by the State Court Administrator.

(e) Multiple User Identification Numbers Prohibited

(1) Cancellation of User Registration

A registered user may not have more than one user identification number at a time. If the State Court Administrator believes that an individual has more than one user identification number, the State Court Administrator shall notify the individual, at the individual's most recent e-mail address provided to the State Court Administrator, that all of the individual's identification numbers will be cancelled unless the individual shows good cause to the contrary within 30 days after the date of the notice. If the individual fails to make that showing, the State Court Administrator shall cancel all of the individual's identification numbers and revoke the user's registration. The individual may seek review of the State Court Administrator's action pursuant to the Rules in Title 7, Chapter 200 of the Maryland Rules.

(2) Re-application for User Registration

An individual whose user registration has been cancelled may reapply for user registration, but the State Court Administrator may reject the application unless reasonably satisfied that the

individual will comply with the Rules in this Title and with all policies and procedures adopted by the State Court Administrator.

(f) Revocation, Suspension, Reinstatement of Attorney User Registration

(1) Duty of Clerk of Court of Appeals

The Clerk of the Court of Appeals shall promptly notify the State Court Administrator of each attorney (A) who, by order of the Court, becomes disbarred, suspended, placed on inactive status, or decertified or who has resigned from the Maryland Bar or (B) who, following a disbarment, suspension, placement on inactive status, decertification, or resignation, has been reinstated to the practice of law in Maryland.

(2) Duty of State Court Administrator

Promptly upon receipt of such notice, the State Court Administrator shall (A) revoke the user registration of each attorney who has been disbarred or placed in inactive status or who has resigned, (B) suspend the user registration of each attorney who has been suspended or decertified, (C) reinstate the user registration of an attorney who has been reinstated, and (D) take any necessary steps to be reasonably satisfied that the MDEC system does not accept any electronic filings from an attorney whose user registration has been revoked or suspended and not reinstated.

(3) ~~Withdrawal of Appearance~~ Further Submissions

An attorney whose registration has been suspended or revoked under this section shall file any submissions required by the Rules of Professional Conduct in paper form.

(4) Application for User Registration as a Non-attorney

An attorney whose user registration has been suspended or revoked under this

section may apply for user registration as a non-attorney. The State Court Administrator may reject the application unless reasonably satisfied that the individual will comply with the Rules in this Title and with all policies and procedures adopted by the State Court Administrator.

Source: This Rule is new.

The Chair explained that the only change to Rule 20-104 was a change in the tagline of subsection (f)(3). It was a recommendation of Derrick W. Lowe, Esq., the Clerk of the Court for Cecil County. He had suggested that the tagline be changed from "Withdrawal of Appearance" to "Further Submissions." By consensus, the Committee approved this change.

By consensus, the Committee approved Rule 20-104 as presented.

The Chair presented Rule 20-106, When Electronic Filing Required; Exceptions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

Rule 20-106. WHEN ELECTRONIC FILING REQUIRED; EXCEPTIONS

(a) Filers – Generally

(1) Attorneys

Except as otherwise provided in section (b) of this Rule, an attorney who enters an appearance in an affected action

shall file electronically the attorney's entry of appearance and all subsequent submissions in the affected action.

(2) Judges, Judicial Appointees, Clerks, and Judicial Personnel

Except as otherwise provided in section (b) of this Rule, judges, judicial appointees, clerks, and judicial personnel, shall file electronically all submissions in an affected action.

(3) Self-represented Litigants

(A) Except as otherwise provided in section (b) of this Rule, a self-represented litigant in an affected action who is a registered user shall file electronically all submissions in the affected action.

(B) A self-represented litigant in an affected action who is not a registered user may not file submissions electronically.

(4) Other Persons

Except as otherwise provided in the Rules in this Title, a registered user who is required or permitted to file a submission in an affected action shall file the submission electronically. A person who is not a registered user shall file a submission in paper form.

Committee note: Examples of persons included under subsection (a)(4) of this Rule are government agencies or other persons who are not parties to the affected action but are required or permitted by law or court order to file a record, report, or other submission with the court in the action and a person filing a motion to intervene in an affected action.

(b) Exceptions

(1) MDEC System Outage

Registered users, judges, judicial appointees, clerks, and judicial personnel

are excused from the requirement of filing submissions electronically during an MDEC system outage in accordance with Rule 20-501.

(2) Other Unexpected Event

If an unexpected event other than an MDEC system outage prevents a registered user, judge, judicial appointee, clerk, or judicial personnel from filing submissions electronically, the registered user, judge, judicial appointee, clerk, or judicial personnel may file submissions in paper form until the ability to file electronically is restored. With each submission filed in paper form, a registered user shall submit to the clerk an affidavit describing the event that prevents the registered user from filing the submission electronically and when, to the registered user's best knowledge, information, and belief, the ability to file electronically will be restored.

Committee note: This subsection is intended to apply to events such as an unexpected loss of power, a computer failure, or other unexpected event that prevents the filer from using the equipment necessary to effect an electronic filing.

(3) Other Good Cause

For other good cause shown, the administrative judge having direct administrative supervision over the court in which an affected action is pending may permit a registered user, on a temporary basis, to file submissions in paper form. Satisfactory proof that, due to circumstances beyond the registered user's control, the registered user is temporarily unable to file submissions electronically shall constitute good cause.

(c) Submissions

(1) Generally

Except as otherwise provided in subsection (c)(2) of this Rule, the requirement of electronic filing in section

(a) applies to all submissions that are capable of being converted into electronic format and that, in electronic form, may be converted into a legible paper document.

(2) Exceptions

Except with court approval, the following submissions shall not be filed electronically:

(A) A single document comprising more than 300 pages;

Committee note: A single document comprising more than 300 pages may be submitted electronically by dividing the document into shorter segments.

(B) Oversized documents, such as blueprints, maps, and plats;

(C) Documents offered as evidence in open court at a trial or other judicial proceeding pursuant to Rule 20-402;

(D) An item that is impracticable to be filed electronically because of the item's physical characteristics; and

(E) Any other category of submissions that the State Court Administrator exempts from the requirement of electronic filing.

(3) Required Retention of Certain Original Documents

Original wills and codicils, property instruments that have been or are subject to being recorded, and original public records, such as birth certificates, that contain an official seal may be scanned and filed electronically so long as the original document is maintained by the filer pursuant to Rule 20-302.

Cross reference: See Rule 20-204, which requires a registered user to file a "Notice of Filing Tangible Item" under certain circumstances.

(d) Paper Submissions

(1) Compliance with MDEC Rules

A paper submission shall comply with Rule 20-201 (d), (e), (f), and (i). If applicable, a paper submission also shall comply with Rule 20-201 (g).

~~(1)~~ (2) Review by Clerk; Scanning

(A) Except as provided in subsection ~~(d)(1)(B)~~ (d)(2)(B) of this Rule, upon receipt of a submission in paper form, the clerk shall review the submission for compliance with Rule 20-201 ~~(c), (d), (e)(1)(B), and (h)~~ (d), (e), (f)(1)(B), and (i). If the submission is in compliance, the clerk shall scan it into the MDEC system, verify that the electronic version of the submission is legible, and docket the submission. If the submission is not in compliance, the clerk shall decline to scan it and promptly notify the filer in person or by first class mail that the submission was rejected and the reason for the rejection.

Committee note: The clerk's pre-scanning review is a ministerial function, limited to ascertaining whether any required fee has been paid (Rule 20-201 ~~(h)~~ (i)) and the presence of the filer's signature (Rule 20-201 ~~(c)~~ (d)); a certificate of service if one is required (Rule 20-201 ~~(d)~~ (e)); and a certificate as to the absence or redaction of restricted information (Rule 20-201 ~~(e)(1)(B)~~ (f)(1)(B)).

(B) Upon receipt of a submission in paper form that is required by the Rules in this Title to be filed electronically, the clerk shall (i) decline to scan the submission, (ii) notify the filer electronically that the submission was rejected because it was required to be filed electronically, and (iii) enter on the docket that the submission was received and that it was not entered into the MDEC system because of non-compliance with Rule 20-106. The filer may seek review of the clerk's action by filing a motion with the administrative

judge having direct administrative supervision over the court.

Committee note: Subsection ~~(d)(1)(B)~~ (d)(2)(B) of this Rule is necessary to enforce the electronic filing requirement of Rule 20-106. It is intended to be used only when it is clear that the filer is a registered user who is required to file submissions electron-ically and that none of the exceptions in sections (b) or (c) of this Rule appear to be applicable.

~~(2)~~ (3) Destruction of Paper Submission

Subject to subsections ~~(d)(3)~~ (d)(4) and (e)(2) of this Rule, the clerk may destroy a paper submission after scanning it and verifying the legibility of the electronic version of it.

~~(3)~~ (4) Optional Return of Paper Document

The State Court Administrator may approve procedures for identifying and, where feasible, returning paper documents that must be preserved in their original form.

~~(4)~~ (5) Public Notice

Prior to the date specified in Rule 20-102 (a)(1)(A), the State Court Administrator shall provide public notice alerting the public to the procedure set forth in subsections ~~(d)(1), (2), and (3)~~ (d)(2), (3), and (4) of this Rule.

Committee note: If submissions properly filed in paper form are to be destroyed by the clerk following their being scanned into MDEC, the public must be given reasonable notice of that policy. Notice may be given in a variety of ways, including on the Judiciary website, on on-line and pre-printed forms prepared by the Judiciary, on summonses or other notices issued by the clerks, and by postings in the clerks' offices.

(e) Exhibits and Other Documents Offered in Open Court

(1) Generally

Unless otherwise approved by the court, a document offered into evidence or otherwise for inclusion in the record in open court shall be offered in paper form. If the document is offered as an exhibit, it shall be appropriately marked.

Committee note: Examples of documents other than exhibits offered for inclusion in the record are written motions made in open court, proposed voir dire questions, proposed jury instructions, communications from a jury, and special verdict sheets.

(2) Scanning and Return of Document

As soon as practicable, the clerk shall scan the document into the MDEC system and, unless the court orders otherwise, return the document to the party who offered it at the conclusion of the proceeding. If immediate scanning is not feasible, the clerk shall scan the document as soon as practicable and notify the person who offered it when and where the document may be retrieved.

Source: This Rule is new.

The Chair said that the proposed changes are to section (d) of Rule 20-106. The changes are to make clear that paper submissions also must comply with Rule 20-201 (d), (e), (f), and (i), which require that a submission must be signed and contain the two certificates, and that any fee that is due must be paid. Rule 20-106 is an electronic filing rule. It is necessary to make sure that the requirements also apply to paper filings which will be scanned. Mr. Carbine said that this is appropriate for restricted information. The certificate of service is already spelled out in other rules. It is important to not create an

ambiguity. He asked what section (d) of Rule 20-201 was. The Chair answered that section (d) is the signature requirement. Mr. Carbine commented that paper filers should not be using digital signatures or a signature with "s/s." They should sign as they always sign.

The Chair noted that Mr. Carbine had the full set of the MDEC Rules in front of him, and the Chair asked about the provisions of Rule 20-201. Mr. Carbine replied that there were changes to that Rule. Section (f) used to be section (e). Section (d) pertains to the signature. It is not necessary to bring the paper filers into the e-filing signature rule or into the e-filing certificate of service rule. They do need to comply with sections (f) and (i). Section (f) pertains to restricted information. Rule 20-201 had been altered by adding a new section (a). This latest version was in the set of Rules handed out today. When Rule 20-106 (d) states that a paper submission shall comply with sections (d) and (e) of Rule 20-201, it means that the paper submission would have to comply with the e-filing procedures.

The Chair asked if Mr. Carbine preferred to restrict the compliance of a paper submission to sections (f) and (i) of Rule 20-201, and Mr. Carbine answered affirmatively. By consensus, the Committee agreed to strike the references to sections (d) and (e) of Rule 20-201 in subsection (d)(1) of Rule 20-106, leaving only the references to sections (f) and (i) of Rule 20-201.

The Chair noted that the rest of the changes to Rule 20-106

conform with the changes made to Rule 20-201. Ms. Ogletree inquired if the reference to "Rule 20-201 (g)" in subsection (d)(1) of Rule 20-106 was still correct. Mr. Carbine replied that section (g) had not changed.

Ms. Smith referred to section (e) of Rule 20-106. She observed that there had been a procedure for redaction, but the Rule does not specify the procedure for redaction in open court. The Chair said that a comment had been made about this, and his response was that exhibits offered in open court do not have to be redacted. The judge can seal or shield anything that he or she feels is necessary. Ms. Smith noted that often exhibits include financial statements. The Chair responded that this is true now notwithstanding electronic filing. Rule 20-106 cannot provide that an attorney is not allowed to offer an exhibit with this kind of information in it.

Ms. Smith said that the question that she had been asked was whether the clerks are responsible for taking care of the redaction. The Chair pointed out that the clerk would be responsible only if the court orders the redaction of evidence. Ms. Smith said that giving the evidence back in open court may be a problem. The Chair responded that this is covered in the Rules. The clerk does not have to redact anything unless the judge so instructs.

Judge Price asked whether the references to sections (d) and (e) of Rule 20-201 are being left in subsection (d)(2)(a), since they are being deleted from subsection (d)(1) of Rule 20-106.

The Chair answered affirmatively, explaining that subsection (d)(2)(A) applies to an electronically filed document. Ms. Smith commented that the clerk is supposed to decline a paper submission that should be filed electronically. Is the clerk going to use the attorney's identification number to find out if he or she should be filing electronically by entering in the number, and then the computer will indicate that the attorney should be filing electronically? How will the clerk be responsible for knowing what cannot be filed as a paper submission?

The Chair responded that this issue had been raised previously, and the view of the General Court Administration Subcommittee and the Rules Committee was that the State Court Administrator is going to have a list of all registered users. It should be very easy for the clerk to click on a computer button and find out if the person is on that list. If the person is a registered user, he or she has to file electronically. Mr. Carbine added that at the January Rules Committee meeting, this issue was discussed at length. The clerk would not have a problem distinguishing who is an attorney. The burden on the clerks is when the filers are *pro se*. It will be necessary to manually check their names against the lists. The Chair noted that otherwise, there would be a gaping hole in the policy decision of the Court of Appeals that electronic filing should be mandatory for all registered users.

Mr. Carbine remarked that the clerks had questioned this

when the MDEC Rules had been discussed in January. Ms. Nairn noted that the computer system cannot figure out who is a registered user. Mr. Carbine said that a paper list of registered users is necessary, but it will not be part of the MDEC system. The clerks will be required to do a manual report. The Chair responded that his understanding was that the AOC would have a list of all registered users. It is the AOC who has to assign the numbers. The list can be computerized. It does not have to be a paper list. Ms. Smith commented that the clerks will have to check the list. The computer system will not indicate who has to file electronically. The list will have to be checked every time something is filed. The Chair responded that he thought that it was clear that one click on the AOC website will indicate who the registered users are.

Mr. Michael inquired if the system will automatically reject a filing by someone who is not a registered user. Mr. Carbine answered negatively, noting that when someone hands the clerk a piece of paper to be filed, the clerk is not supposed to accept it if the person who hands it to the clerk is a registered user. The registered users are supposed to file electronically. The burden is being placed on the clerks. Whether the list is computerized or on paper, it will require the clerk to examine the paper to see if the person is a mandatory e-filer. It will be easy when the person filing is an attorney, because it is self-evident.

Ms. Smith asked about an attorney who has been disbarred.

The Chair responded that Rule 20-104 addresses that situation. Mr. Carbine commented that the problem is not whether an attorney is disbarred; it is the *pro se* filers. Judge Weatherly questioned why it would be so obvious that someone is an attorney. The Reporter replied that the pleading will indicate that it is filed by an attorney. Mr. Carbine added that the attorneys are required to put their names in the signature line on a pleading. The Chair reiterated that this issue had been thoroughly discussed at three different levels, including at the Rules Committee.

The Chair said that he had thought that the system would reject any attempted electronic filing by someone who is not a registered user. The Reporter pointed out that Mr. Twedt, who is with Tyler Technologies, the contractor for the MDEC system, had indicated that the system would reject this person. The Chair noted that the only question is when someone asks the clerk to scan a paper, and the person bringing in the paper is a registered user. It had been thoroughly discussed as to what the options are. The paper could be scanned anyway and then rejected later, which makes no sense. The option chosen was the one in the Title 20 Rules. The AOC would have a list of who is a registered user. The AOC knows this, because they register the registered users. This should be able to be on the AOC website, so the clerk can just click to see who is on the list. It is not necessary for the clerk to read the document being filed.

Mr. Zarbin asked how the clerk can differentiate people with

the same name, such as "John Smith." The Chair responded that the registration would include the person's address and e-mail address, which must be given to the AOC. Mr. Zarbin inquired if this information would come up when the clerk clicks on the name. The Chair replied that he saw no reason why this information could not be included when the clerk clicks on a name.

Mr. Zarbin remarked that he could see problems in the District Court, such as people filing landlord-tenant cases, who will come in with a lot of papers. It might be useful to have a number that would differentiate one "John Smith" from another. The Chair pointed out that it would not be a number, but it could be an e-mail address, address, or telephone number. It is unlikely that *pro se* people other than landlord's agents are going to be registered users in the District Court. Mr. Zarbin inquired if it would be convenient to assign users a number such as the ones used in federal court. The Chair stated that a number will be assigned to registered users. Mr. Carbine added that there will not be a number for *pro se* filers. Having a number is not a differentiating factor. The clerk will not know if the person has a number.

The Chair asked Mr. Carbine to look at Rule 20-104, User Registration. The Chair noted that in order to get registered, one would need to give his or her e-mail address, because that is the way the registered person is contacted. Mr. Bowie referred to subsection (a)(2) of Rule 20-106, noting that what is meant by this provision is that the scanning occurs at the conclusion of

the proceeding, but not the offering of documents. The Committee agreed that this was the meaning of subsection (a)(2) of Rule 20-106.

In answer to the Chair's question about Rule 20-104, Mr. Carbine read from section (b) of that Rule: "An individual seeking to become a registered user shall complete an online application in the form prescribed by the State Court Administrator." The Chair pointed out that the person registering will have to give out information, including an e-mail address, so that there will be a way to differentiate people who have the same name.

By consensus, the Committee approved Rule 20-106 as amended.

The Chair presented Rule 20-201, Requirements for Electronic Filing, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 - FILING AND SERVICE

Rule 20-201. REQUIREMENTS FOR ELECTRONIC FILING

(a) Scope

Sections (b) and (c) of this Rule apply to all filers. Sections (d), (e), (f), (g), (h), and (i) of this Rule do not apply to judges, judicial appointees, clerks, and judicial personnel.

~~(a)~~ (b) Authorization to File

A person may not file a submission in an affected action unless authorized by law to do so.

~~(b)~~ (c) Policies of State Court Administrator

A filer shall comply with all published policies and procedures adopted by the State Court Administrator pursuant to Rule 20-103.

~~(c)~~ (d) Signature

If, under Rule 1-311, the signature of the filer is required, the submission shall be signed in accordance with Rule 20-107.

~~(d)~~ (e) Certificate of Service

(1) Generally

Other than an original pleading that is served by original process, each submission that is required to be served pursuant to Rule 20-205 (d) shall contain a certificate of service signed by the filer.

(2) Non-electronic Service

If service is not to be made electronically on one or more persons entitled to service, service on such persons shall be made in accordance with the applicable procedures established by other Titles of the Maryland Rules, and the submission shall include a certificate of service that complies with Rule 1-323 as to those persons and states that all other persons, if any, entitled to service were served by the MDEC system.

(3) Electronic Service

If service is made electronically by the MDEC system on all persons entitled to service, the certificate shall so state.

~~(e)~~ (f) Restricted Information

(1) Generally

Except as provided in subsection ~~(e)(2)~~ (f)(2) of this Rule, a submission filed by a ~~registered user~~ filer (A) shall not contain any restricted information, and (B) shall contain a certificate by the filer that the submission does not contain any restricted information or, if it does contain restricted information, a redacted submission has been filed contemporaneously pursuant to subsection ~~(e)(2)~~ (f)(2) of this Rule.

(2) Where Restricted Information is Necessary

If the filer believes that restricted information is necessary to be included, the filer shall (A) state the reason and a legal basis for including the restricted information, and (B) file both an unredacted version of the document, noting prominently in the caption that the document is unredacted, and a redacted version of the document that excludes the restricted information, noting prominently in the caption that the document is redacted.

~~(f)~~ (g) Sealed Submissions

If the filer desires the submission to be under court seal, the submission shall (1) state prominently in the caption that the document is to be under seal, and (2) state whether there is already in effect a court order to seal the document and, if so, identify that order. If there is no such order, the submission shall include a motion and proposed order to seal the document.

~~(g)~~ (h) Proposed Orders

A proposed order to be signed by a judge or judicial appointee shall be in an editable text form specified by the State Court Administrator.

~~(h)~~ (i) Fee

(1) Generally

A submission shall be accompanied, in a manner allowed by the published policies and procedures adopted by the State Court Administrator, by any fee required to be paid in connection with the filing.

(2) Waiver

(A) A filer who (i) desires to file electronically a submission that requires a prepaid fee, (ii) has not previously obtained and had docketed a waiver of prepayment of the fee, and (iii) seeks a waiver of such prepayment, shall file a request for a waiver pursuant to Rule 1-325.

(B) The request shall be accompanied by (i) the documents required by Rule 1-325, (ii) the submission for which a waiver of the prepaid fee is requested, and (iii) a proposed order granting the request.

(C) No fee shall be charged for the filing of the waiver request.

(D) The clerk shall docket the request for waiver but not the submission requiring a prepaid fee and shall transmit the request, with the accompanying documents, to a judge.

(E) If the judge waives prepayment in full, the clerk shall docket the submission.

(F) If the judge denies the waiver in whole or in part, the clerk shall notify the filer but shall not docket the submission until the fee or non-waived part of the fee, is paid.

Source: This Rule is new.

The Chair said that Rule 20-201 had two changes. The addition of section (a) was based on a comment from the District Court Focus Group, which felt that the Rules were not entirely clear as to which provisions apply to judges and judicial personnel. To address this, section (a) was added. It points

out what does apply to judges and judicial personnel and what does not.

Mr. Carbine commented that this may need to be reconsidered. Sections (b) and (c) apply to all filers. Section (d) pertains to the electronic signature. The electronic signatures available to the judges are restricted to a digital signature and a facsimile signature where the judge actually signs a paper. Judges cannot be exempted from section (d). Section (f) addresses restricted information, and this is a policy issue. Mr. Carbine said that the judges should be exempted from subsection (f)(1)(B) of Rule 20-201, which provides for the redaction certificate. Judges do not have to do a redaction certificate, but should subsection (f)(1)(A), which precludes filing a submission containing restricted information, apply to judges? The Chair responded that he had thought that the Rules would not restrict what judges can put in their orders. Mr. Carbine stated that this is a policy issue. Everyone should know that section (f) does not apply to judges. The Chair noted that judges can put whatever they want in their orders.

The Reporter pointed out that the signature referred to in section (d) of Rule 20-201 is only a signature under Rule 1-311, Signing of Pleadings and Other Papers. It is not referring to a judge's signature, only to signatures on pleadings. Mr. Carbine observed that section (d) provides that a submission "shall be signed in accordance with Rule 20-107." Rule 20-107 is entitled "Electronic Signatures." The Reporter said that section (d)

begins with the clause "[i]f under Rule 1-311...". Mr. Carbine remarked that a judge would not be signing under Rule 1-311. The Reporter agreed, adding that a judge would be signing under Rule 20-107. This is not what section (d) of Rule 20-201 refers to. The Chair asked if section (a) of Rule 20-201 is acceptable as it now reads, and Mr. Carbine answered affirmatively.

The Chair commented that Russell Butler, Esq, had made a comment about subsection (i)(2) of Rule 20-201 as to the lack of clarity in the current proposed Rule. When someone wants to file a complaint or a post-judgment enforcement petition that requires a fee, and the filer would like to get a waiver of the fee, the Rule should provide a procedure for this. The Rule also needs to make sure that the clerk is not going to assess a fee for filing the request for a waiver of the fee. To make Rule 20-201 more clear as to what the process is, the language in subsection (i)(2) was added to explain how to file a request for waiver of prepayment of the fee electronically.

The Chair said that he had spoken with several clerks to ascertain what the procedure is now. When a document in paper form seeking a waiver of a fee comes into the clerk's office, does the person filing have to go to the judge first to get the judge's permission, or does the clerk bring it to the judge? The Chair had heard from the clerks that they bring the document to the judge to get it signed. If the judge totally waives the fee, then the clerk dockets everything. If the judge either denies the waiver or denies it in part, so that some fee has to be paid,

then the clerk notifies the person that the fee were not waived, and the person has to come in then and pay the fee.

The Chair asked Ms. Smith if the proposed language of subsection (i)(2) of Rule 20-201 was appropriate. Ms. Smith answered affirmatively. She asked if it is a policy decision as to how long documents will stay in the queue. The Chair responded that the documents cannot stay indefinitely. Subsection (i)(2) of Rule 20-201 does not affect Rule 1-325, proposed amendments to which will be discussed later today.

By consensus, the Committee approved Rule 20-201 as presented.

The Chair presented Rule 20-203, Review by Clerk; Striking of Submission; Delinquency Notice; Correction: Enforcement, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 200 - FILING AND SERVICE

Rule 20-203. REVIEW BY CLERK; STRIKING OF SUBMISSION; DELINQUENCY NOTICE; CORRECTION; ENFORCEMENT

(a) Time and Scope of Review

As soon as practicable, the clerk shall review a submission, other than a submission filed by a judge or judicial appointee, for compliance with Rule 20-201 ~~(c), (d), (e)(1)(B), and (h)~~ (d), (e), (f)(1)(B), and

(i) and the published policies and procedures for acceptance established by the State Court Administrator. Until the submission is accepted by the clerk, it remains in the clerk's queue and shall not be docketed.

(b) Docketing

(1) Generally

The clerk shall promptly correct errors of non-compliance that apply to the form and language of the proposed docket entry for the submission. The docket entry as described by the filer and corrected by the clerk shall become the official docket entry for the submission.

(2) Submission Signed by Judge or Judicial Appointee

The clerk shall enter on the docket each judgment, order, or other submission signed by a judge or judicial appointee.

(3) Submission Generated by Clerk

The clerk shall enter each writ, notice, or other submission generated by the clerk into the MDEC system for docketing in the manner required by Rule 16-305.

(c) Striking of Certain Non-compliant Submissions

If, upon review pursuant to section (a) of this Rule, the clerk determines that a submission, other than a submission filed by a judge or judicial appointee, fails to comply with the requirements of Rule 20-201 ~~(c), (d), or (e)(1)(B)~~ (d), (e), or (f)(1)(B), the clerk shall (1) strike the submission, (2) notify the filer and all other parties of the striking and the reason for it, and (3) enter on the docket that the submission was received, that it was stricken for non-compliance with the applicable section of Rule 20-201 ~~(c), (d), or (e)(1)(B)~~ (d), (e), or (f)(1)(B), and that notice pursuant to this section was sent. The filer

may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court.

(d) Deficiency Notice

(1) Issuance of Notice

If, upon review, the clerk concludes that a submission is not subject to striking under section (c) of this Rule but materially violates a provision of the Rules in Title 20 or an applicable published policy or procedure established by the State Court Administrator, the clerk shall send to the filer with a copy to the other parties a deficiency notice describing the nature of the violation.

(2) Correction; Enforcement

If the deficiency is not corrected within two business days after the date of the notice, any party may move to strike the submission.

(e) Restricted Information

(1) Shielding Upon Issuance of Deficiency Notice

If, after filing, a submission is found to contain restricted information, the clerk shall issue a deficiency notice pursuant to section (d) of this Rule and shall shield the submission from public access until the deficiency is corrected.

(2) Shielding of Unredacted Version of Submission

If, pursuant to Rule 20-201 ~~(e)(2)~~ (f)(2), a filer has filed electronically a redacted and an unreadacted submission, the clerk shall docket both submissions and shield the unredacted submission from public access. Any party and any person who is the subject of the restricted information contained in the unredacted submission may file a motion to strike the unredacted

submission. Upon the filing of a motion and any timely answer, the court shall enter an appropriate order.

Source: This Rule is new.

The Chair told the Committee that Rule 20-203 has conforming amendments and cross references that are required by the change to Rule 20-201.

By consensus, the Committee approved the proposed changes to Rule 20-203 as presented.

The Chair presented Rule 20-402, Transmittal of Record, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 400 - APPELLATE REVIEW

Rule 20-402. TRANSMITTAL OF RECORD

(a) Preference

If possible under MDEC, the clerk of the trial court shall transmit in an electronic format that portion of the record ~~filed electronically~~ that is in electronic format.

(b) Alternative

(1) This section applies only if it is not possible under MDEC for the clerk of the trial court to transmit the electronic part of the record to the clerk of the appellate court in an electronic format.

(2) Upon the filing of a notice of appeal, notice that the Court of Special Appeals has granted an application for leave

to appeal, or notice that the Court of Appeals has issued a writ of certiorari directed to the trial court, the clerk of the trial court shall comply with the requirements of Title 8 of the Maryland Rules and assemble, index, and prepare a certification of the record. The clerk shall transmit that part of the record not in electronic format to the clerk of the appellate court as required under Title 8 and shall enter on the docket a notice that (A) the non-electronic part of the record was so transmitted, and (B) from and after the date of the notice, the entire record so certified is in the custody and jurisdiction of the appellate court.

(3) Upon the docketing of the notice provided for in subsection (b)(2) of this Rule, the record of all submissions filed prior to the date of the notice shall be deemed to be in the custody and jurisdiction of the appellate court. Subject to order of the appellate court, any submissions filed in the trial court after the date of the notice shall not be part of the appellate record but shall be within the custody and jurisdiction of the trial court.

(4) Subject to subsection (b)(6) of this Rule, submissions filed with or by the appellate court shall during the pendency of the appeal not be made part of the record certified by the clerk of the trial court but shall be part of the appellate court record.

(5) During the pendency of the appeal, the judges, law clerks, clerks, and staff attorneys of the appellate court shall have free remote access to the certified record.

(6) Upon completion of the appeal, the clerk of the appellate court shall add to the record certified by the clerk of the trial court any opinion, order, or mandate of the appellate court disposing of the appeal, and a notice that, subject to any further order of the appellate court, from and after the date of the notice, the record is returned to the custody and jurisdiction of the trial court.

Source: This Rule is new.

The Chair said that Rule 20-402 has new material in it. Going back to at least 2011, Judge Clyburn's group produced its Court Rules Assessment. The drafters of the MDEC Rules had been under the impression that the appellate courts were going to be part of MDEC. This had been clear to Judge Clyburn's group and was in its Court Rules Assessment, and it had been approved by the Technology Oversight Board. In September, this issue was presented to the Court of Appeals, which determined that the appellate courts were to be part of MDEC. All of the Rules were drafted based on this premise.

The Chair commented that after the Rules had been sent to the Court of Appeals, Tyler Technologies indicated that MDEC cannot handle the appellate courts in time for the startup of MDEC in Anne Arundel County and the entire Eastern Shore of Maryland. MDEC may be able to apply to appellate courts by the time the system has begun in Baltimore County. Tyler raised the question concerning the fact that the Court of Appeals had said as a policy matter that the electronic record is the official record of anything in electronic form. A series of hurried meetings took place on the subject of how to deal with this. There were two proposals. One was that either the clerk of the circuit court or the clerk of the appellate court will have to print out anything that is on the computer. That approach was rejected as being wholly inconsistent with the basic purpose of

MDEC, not to mention the Court of Appeals determination.

The Chair noted that the other proposal was a sort of a "fiction" that if an appeal is noted, or the Court of Special Appeals sends out notice that an application for a leave to appeal has been granted, the clerk will assemble the record, index, and certify the record but do so electronically. The last thing would be a notice that is docketed in that record that, effective as of the date of the notice the record is in the custody of the appellate court (usually the Court of Special Appeals). That part of the record that is certified is no longer in the custody of the circuit court. It would be the same as if the circuit court had physically sent it up to the appellate court.

The Chair commented that this means two things can happen afterwards. One is that someone continues to file papers in the circuit court, which is permissible. The trial court can act on such filings so long as it does not interfere with the appeal. That will continue to be in the circuit court record, because it is post-certification. It is not part of the appellate record unless the appellate court makes it so. The other is what happens in the appellate court. Part of the problem is that the MDEC planners have said that nothing can be filed in the appellate courts through MDEC. People will be able to file briefs, record extracts, motions, and applications in electronic form, but they will have to be filed in some other format, such as an e-mail attachment. For the purpose of lessening the amount

of paper in the appellate courts, that is the preferred approach, at least until Tyler figures out a way to have those documents filed through MDEC. The appellate court judges, law clerks, and clerks would have free remote access to this certified record. They will not be adding to it, except for disposition of the appeal. The opinion, the mandate, and the order that come down will become part of the circuit court record as it is now.

Judge Weatherly asked if this will be in paper form, and the Chair answered that it will be electronic. The alternative in Rule 20-402, which hopefully is a temporary one, attempts to minimize the effect of the problem by keeping the electronic record in electronic form. As of now, this proposal as drafted had been approved by the AOC, which is able to do this. This proposal is new. The hope was that this will not create any burden on the circuit court clerks to do anything more than they do now, except for one docket simple, uniform entry, which states that the file is in the hands of the appellate court until the circuit court gets it back.

By consensus, the Committee approved the proposed changes to Rule 20-402 as presented.

The Chair presented Rule 20-504, Agreements with Vendors, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

Rule 20-504. AGREEMENTS WITH VENDORS

(a) Definition

In this Rule, "vendor" means a person who provides or offers to provide to registered users or others services that include the filing or service of submissions pursuant to the Rules in this Title or remote access to electronic case records maintained by Maryland courts.

(b) Agreement with Administrative Office of the Courts

As a condition of having the access to MDEC necessary for a person to become a vendor, the person must enter into a written agreement with the Administrative Office of the Courts that, in addition to any other provisions, (1) requires the vendor to abide by all Maryland Rules and other applicable law that limit or preclude access to information contained in case records, whether or not that information is also stored in the vendor's database, (2) permits the vendor to share information contained in a case record only with a party or attorney of record in that case who is a customer of the vendor, (3) provides that any material violation of that agreement may result in the immediate cessation of remote electronic access to case records by the vendor, and (4) requires the vendor to include notice of the agreement with the Administrative Office of the Courts in all agreements between the vendor and its customers.

Cross reference: See Maryland Rules 20-109 and 16-1001 through 16-1011.

Source: This Rule is new.

The Chair told the Committee that Rule 20-504 is also a new Rule. Tyler Technologies is the contractor that is designing and in effect, is going to run MDEC. They are going to "host" the MDEC system, which means that they are going to be the conduit through which registered users are going to e-file. Judges and judicial personnel are not going to have to go through Tyler. They will have direct access to MDEC. This is going to affect only registered users. If an attorney would like to file something though MDEC, he or she will use the computer, but that correspondence is actually going to go to Tyler, who will then send it to the clerk's computer. Because the Request for Proposal (RFP) that was sent out by the AOC provided for multiple vendors, it is possible that some other vendor (the only one mentioned so far had been LexisNexis) also may be offering file and serve services as well as access services. If someone would file with another vendor, the attorney will go through vendor B, who then sends the filing to Tyler, who sends it to the clerk. This will happen almost instantaneously.

The Chair said that any of these vendors, at least for some period of time, will have its own database of what is filed through them. For a vendor such as LexisNexis, the database will only be what the attorneys file through them, but they will have a database of some kind that is apart from what is in the clerk's computer. It is important to make sure that these vendors are

not selling that database. The Court of Appeals has made clear that as a matter of policy, remote electronic access is limited to CaseSearch, which consists of only dockets and names of litigants. If someone would like to see anything else, he or she would have to go to the terminals in the clerk's office. This raises the specter of a vendor selling its own database and thereby providing remote access not available from the clerk's computer. The procedure in Rule 20-504 has been crafted after discussions with the AOC to try to prevent this. The AOC intends to have some type of certification process, but this may not have been fully developed yet.

The Chair commented that the thought was that Rule 20-504 should require an agreement by a vendor with the AOC that the vendor will be on the same playing field as everyone else. The vendors have to comply with all of the rules pertaining to access to court records, as well as the rules in Title 20, and Title 16. What is understood is that the AOC, as part of the certification process, is going to have some way of informing all of the vendors, including Tyler, that they can only keep this data in their database for whatever time period the AOC comes up with.

Mr. Merritt told the Committee that he worked for File and Serve Express and formerly worked for LexisNexis. He and his colleagues supported the idea of Rule 20-504. Their only concern was related to facilitating electronic service and to whether the vendors would be able to share the documents with other vendors, so that they could send them electronically to other firms and

parties who might be registered. The Chair responded that this would be giving the other vendors remote access to documents that no one else has.

Mr. Merritt inquired if the idea was that Tyler was going to serve as a hub to provide documents to the other firms and vendors who are registered. What the Court of Appeals addressed in September was that remote electronic access to anything other than dockets and names of litigants is restricted. To get any other information, one would have to go to the clerk's office and use the terminals there. Mr. Merritt asked if the attorneys were going to receive any documents. The Chair replied that the attorneys of record were going to be served and receive documents. Mr. Merritt asked how this would take place if an attorney is using one of the vendors, and the vendors cannot share the documents with others. Mr. Twedt remarked that the question was whether all of the vendors had been approved, and there was communication among them.

Mr. Carbine asked whether MDEC did not automatically serve those who would be entitled to service if LexisNexis files pleading X in case Y. Mr. Twedt answered that this would be their typical model. Mr. Carbine inquired why it is necessary to consider this. Service will happen almost instantaneously, but the service on the people who are supposed to get service in a specific case for a specific pleading will be through MDEC. Mr. Twedt responded that there might be other usages that come into play, including sharing.

The Chair remarked that he was not clear what the scope of the sharing could be. Judge Weatherly commented that the concern would be not sharing documents with a party to the action. What Mr. Merritt had said was that his group would like to be able to share documents. Judge Weatherly asked what documents he was referring to. Did he mean sharing the pleadings in a case? She asked why Mr. Merritt's firm would get more access than anyone else. Mr. Merritt answered that their customers would get the access. He cited asbestos cases as an example. The Chair pointed out that this was different. Mr. Merritt observed that in any case with numerous parties and numerous firms involved, they would like to be able to exchange documents among themselves.

The Chair said that regarding the asbestos docket in Baltimore City, any attorney who is an attorney of record in any of those asbestos cases on that docket can see everything that is on that docket, but they cannot see any of the other dockets that are in Baltimore City. This is limited to the asbestos docket. This had been set up by rule. The asbestos docket has a limited number of attorneys who can only see what is on that docket. If Mr. Merritt was asking for sharing from Tyler Technologies, this could go well beyond a limited case or cases. Mr. Merritt observed that his firm could share the data with other firms of an attorney who is in involved in that matter. The Chair said that it could be in any matter.

Mr. Merritt asked how an attorney who would like to file a

document gets that document to another attorney. The Chair responded that if an attorney wants to file a document, and Mr. Merritt's company has been served, the attorney can file that document with LexisNexis electronically, and the document will get filed. As an attorney in the case, he or she will have access to it. The attorneys have free remote access to all documents in a case in which they are the attorney of record. A *pro se* party would have the same access if the party is a registered user. If anyone else, such as another attorney, who is not an attorney of record in that case, would like to see documents in a file, the attorney is just another member of the public and will have to go to the clerk's office and use the terminals there to get access. This was the policy decision of the Court of Appeals.

Mr. Merritt said that his only concern was getting the documents to the other parties. In other service systems in other states, the vendors have to share documents among themselves. The Chair commented that this policy was before the Court of Appeals, and they held a hearing on it in September. They stated that remote access is to be equivalent to what now exists. There is remote access to docket entries, but for anything else, people would have to go to the clerk's office.

Mr. Merritt inquired if access is available for a certain time period. The Chair replied that this was an AOC issue and was not an issue for the Rules Committee. His understanding was that as part of the AOC's policies, they were giving

consideration to limiting the amount of time that Tyler or anyone else can keep this data on their database. Mr. Merritt remarked that they would like to provide the data to other firms for as long as they choose, because the firms want backups and the ability to store their data elsewhere and get access at any time. The Chair noted that if they are attorneys of record in a case, they would have free access to this. But if they are not attorneys of record, they do not have access. Mr. Merritt said that they may want access through his firm or another vendor.

Judge Weatherly remarked that she had envisioned that an attorney who has a personal injury or other case and who would be working at his or her computer and participating in the case, would get reports sent to him or her, but Judge Weatherly did not see where another server or vendor is available. Where does any company come in between the attorney filing and the court system? Mr. Merritt answered that the original RFP was a multi-vendor model, where any vendor could plug into the system to handle electronic filing. The Chair observed that this still exists. Mr. Merritt said that this was the interest of his firm. Judge Weatherly asked whether attorneys would pay Mr. Merritt's firm and send them the pleadings, and Mr. Merritt's firm would then send them to the court. The Chair noted that this is provided for in Rule 20-504, Agreements with Vendors.

The Reporter pointed out that the original RFP contemplated the multi-vendor model. The idea would be that other vendors might come up with better time ticklers or something similar that

could help the attorney who might not want the plain or ordinary model through Tyler. Tyler has to provide basic services. They may try to add on to that to try to lure more users. From a technical point of view, Ms. Nairn, from the AOC, has to find a way to make the vendors able to do their job. Is Rule 20-504 going to prevent Mr. Merritt's firm from allowing others to do what they need to do to service their clients properly?

Mr. Twedt commented that he did not see the Rule interfering with this. It was not meant to interfere. The Reporter added that if there is a problem, the Rules need to be changed. The Chair said that the Court of Appeals had been told that the Rules would not affect any other vendor from being able to file and have their clients electronically served. The Reporter noted that they have to get access to any documents that they need to send to their clients in conjunction with that particular case in compliance with the Rules. The Chair stated that all that was intended by Rule 20-504 is to protect against vendors selling remote access to documents that the access Rules do not allow.

Mr. Zarbin told the Committee that he was sitting adjacent to the MDEC consultants who had told him that the courts can send the data directly to MDEC or to a service, because the service could give an enhancement that an attorney may wish to use. Ms. Harris asked about the data that outside vendors can get in their database, such as criminal sentences. The Chair said that what is in the system is what has been filed by someone. Ms. Harris observed that whatever is filed is coded, and then it can go into

the database. Currently, people have to come to the Technology Oversight Board and request data. There is a process now to get data out of the court system.

The Chair inquired if Ms. Harris was referring to "data dumps." She replied that it could be those, or it could be criminal sentencing. In her county, their judge numbers are applied to data in their system. The outside vendors will have the ability to gather information and data. The Chair pointed out that Rule 16-1008, Electronic Records and Retrieval, addresses access to this data. It is the province of the Technology Oversight Board as to what kind of data is going to be accumulated. This issue had been discussed in 2004 when the Access to Court Records Rules were drafted. It pertained to the ability to go through data, such as finding out which judges are lenient sentencers, or other information about judges. The Chair had thought that this was going to be in the hands of the Technology Oversight Board. Will this now be available through MDEC? Ms. Harris responded that the Technology Oversight Board would manage the MDEC data. There will be outside vendors having that data. The Chair asked how they would get the data. Ms. Harris answered that it would be through the documents that are filed through MDEC.

Judge Weatherly asked if the issue was that outside vendors could check her criminal sentences, for example, and sell the information at the time when she runs for re-election. The Chair questioned whether outside vendors would be able to do that.

Mr. Twedt responded that the assumed spirit of this is that information, documents, case data, judge data, and people data would be prevented from being shared except as in compliance with the Rules. Is there wording that would make this more clear? The Chair responded that he thought that currently, if someone would like to get a composite of what judges or clerks are doing, the person would have to go through every single file in which that judge or clerk has participated unless the Technology Oversight Board decides to compile this information, for whatever reason, on their own. If they were to do this, then it might be available to the public. The MDEC system is not supposed to give people any greater ability to do that than they have now.

Ms. Harris expressed the concern that before the outside vendors get to MDEC, they get the coded information, and they can keep that information in a database. The Chair pointed out that the AOC is supposed to put time limits on what the outside vendors can keep in their databases. Mr. Twedt responded that it is not a question of the time limits, but it is a policy determination as to whether the vendor should be precluded from sharing that information. As long as the courts can e-file, and the attorneys can do what they need to do, then the Rule should not preclude any other use.

Ms. Harris suggested that in subsection (b)(1) of Rule 20-504, the words "or data" should be added after the word "information." Judge Pierson pointed out that "data" is not necessarily "information." The Chair inquired what the

difference was between the two terms. Ms. Harris answered that "data" is something that is different than filings, information, or pleadings. It is gathered from that information. It is not that information itself.

The Chair asked whether the data would be contained in the records. Ms. Harris replied that the data would possibly be contained in the database. The Chair asked whether in terms of Rule 20-204 if the language "or data" is added after the word "information," the word "database" would need to be added somewhere. Mr. Carbine remarked that the word "information" is appropriate. It includes "data."

Ms. Ogletree inquired whether a Committee note should be added indicating that the word "information" includes data. Mr. Carbine expressed the view that it was not necessary to define every word. Ms. Ogletree agreed, but she pointed out that since this question had come up, it might be helpful to have a clarifying Committee note. Mr. Carbine responded that if a note is added here, there may be questions as to why notes were not added in other places in the Title 20 Rules.

Mr. Leahy asked whether Rule 20-504 could be expanded to make it clear that the vendors cannot sell databases, since the AOC is going to have to agree to the vendors. The Reporter added that vendors cannot sell the coding of the courts. Mr. Leahy suggested that these prohibitions could be in the agreement between the AOC and the vendors. Mr. Zarbin said that he had again spoken with the MDEC consultants who had informed him that

the Office of the State's Attorney will always go directly to MDEC, not to any other outside office. The most sensitive information goes to MDEC, and for criminal matters, MDEC sends the information to the Office of the State's Attorney. The Chair noted that this is not clear in the Title 20 Rules. This is set up so that only judges, judicial appointees, clerks, and judicial personnel would be able to file directly into MDEC. The Reporter asked if the Office of the State's Attorney would use Tyler Technologies to file documents. They would not go directly into the system the way a judge signing an order would. The State's Attorney would be a filer just like defense counsel.

Mr. Merritt noted the language in subsection (b)(2) of Rule 20-504, which provides that the person who wishes to become a vendor must enter into a written agreement with the AOC that permits the vendor to share information contained in a case record only with a party or attorney of record in that case who is a customer of the vendor. Mr. Merritt asked if this would apply to an attorney entering his or her appearance. Is the service list to be shared with those attorneys even if they are not of record yet? Mr. Carbine replied that once an attorney enters an appearance in a case, that attorney is in the case.

Mr. Merritt commented that those attorneys contemplating entry would need to see the basic information about the case. Mr. Carbine remarked that they would be free to use the current CaseSearch system to find the docket entries, and they would be free to use the terminals in the courthouse. Mr. Merritt

inquired how these attorneys would serve the other parties. Mr. Carbine said that the attorney would enter an appearance, and this would be served on the other parties.

By consensus, the Committee approved Rule 20-504 as presented.

The Chair stated that subject to Mr. Carbine's review, the discussion of the MDEC Rules was completed for the time being.

Agenda Item 2. Consideration of proposed new Title 18, Chapter 600 - Judicial Education - Rule 18-601 (Judicial Institute of Maryland), Rule 18-602 (Attendance at Education Programs), Rule 18-603 (General Annual Education Program), Rule 18-604 (Specialized Education Programs) and Amendments to: Rule 16-1001 (Definitions) and Rule 16-1004 (Access to Notice, Administration, and Business License Records

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The Chair explained that the Judicial Institute of Maryland was created and exists through a series of administrative orders of the Chief Judge of the Court of Appeals, and there are quite a few of these orders. Some of these orders are somewhat in conflict, and some have ambiguities in them. The Judicial Institute is now a permanent structure of the Judiciary and has been for at least 30 years. Every judge in the State is required to take at least 12 hours of continuing legal education a year, and subject to being able to get the permission of the administrative judge, a judge may be able to take even more than that. This is one of the judicial units that not only has permanence but also has some requirements that must be followed, and should be in the Rules. The Honorable Mary Ellen Barbera,

Judge of the Court of Appeals and Chair of the Judicial Institute Board of Directors, and Claire Smearman, Esq., Executive Director of the Judicial Institute, were consulted to help figure out how to structure this. Chapter 600 of Title 18 updates the administrative orders and attempts to eliminate the conflicting provisions and the ambiguities.

The Chair said that Judge Barbera as well as the Honorable Robert M. Bell, Chief Judge of the Court of Appeals, felt that judicial education for judges should be centered in the Judicial Institute. Even if other units of the Judiciary would be doing some judicial education programs, all of this should be through the offices of the Judicial Institute.

The Chair presented Rule 18-601, Judicial Institute of Maryland, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 600 – JUDICIAL EDUCATION

Rule 18-601. JUDICIAL INSTITUTE OF MARYLAND

(a) Existence

There is a Judicial Institute of Maryland, which is a unit of the Maryland Judiciary.

(b) Duties

(1) Generally

The Judicial Institute is responsible for the development, coordination,

implementation, and evaluation of educational programs for Maryland judges, both active and approved for recall pursuant to Code, Courts Article, §1-302. The Institute also may provide continuing education programs for masters in accordance with the Rules in this Chapter and the directives of the Institute's Board of Directors.

(2) Judicial Education Programs Offered By Other Judicial Units

From and after _____, 2014, each other unit of the Maryland Judiciary that proposes to offer an educational program for Maryland judges or masters shall promptly inform the Executive Director of the Judicial Institute of the date, time, and location of the program and provide the Executive Director with a proposed syllabus. The Executive Director shall review the proposed program and consult with the Chair of the Board of Directors, and may make appropriate recommendations with respect to the proposed program. The program may not require the participation of judges without the approval of (A) the Chief Judge of the Court of Appeals, or (B) the Executive Director and the Chair of the Board.

Committee note: The purpose of subsection (b)(2) of this Rule is to centralize in the Judicial Institute oversight of judicial education programs, in order to avoid duplication, unnecessary expense, and undue burdens on judges and to assure the quality and consistency of judicial education programs.

(3) Calendar of Upcoming Programs

From and after _____, 2014, the Judicial Institute shall maintain on the Judiciary intranet website a current master calendar of all upcoming educational programs offered by the Institute and upcoming educational programs and courses for judges or masters offered by other units of the Maryland Judiciary.

(4) Digital Library Website

The Judicial Institute may maintain a digital library website on the Judiciary intranet that will allow Maryland judges, including retired judges approved for recall pursuant to Code, Courts Article, §1-302, and masters to access and download Judicial Institute course materials and such other information as determined by the Board of Directors.

(5) Bench Books

The Judicial Institute is responsible for the development and updating of all bench books for the trial judges of the State. Bench books shall be prepared and periodically updated in areas of law selected by the Board of Directors. They shall be maintained on the Judiciary intranet and may be made available to judges in paper form.

(c) Course Materials, Bench Books, and Recordings

All course materials and bench books, whether in written or electronic form, that are prepared by or for the Judicial Institute and all recordings of Judicial Institute education programs are solely for the information and education of judges and masters.

Cross reference: See Rules 16-1001 (a) and 16-1004 (e). See also Code, State Government Article, §10-615 (2)(iii), which requires that a custodian deny inspection of a public record if inspection is contrary to the Rules adopted by the Court of Appeals.

(d) Board of Directors

(1) Appointment; Membership

The Chief Judge of the Court of Appeals shall appoint a Board of Directors. The Board shall consist of 16 members, as follows: (A) one judge of the Court of Appeals, who shall serve as Chair; (B) one judge of the Court of Special Appeals; (C) five judges from the circuit courts, one of whom shall be a judge who is or has served as

a program judge assigned to the Business and Technology Program pursuant to Rule 16-308; (D) four judges of the District Court; (E) a judge who has been certified as an ASTAR Fellow or who is otherwise knowledgeable about science and technology matters; (F) one judge of an orphans' court; (G) one retired judge approved for recall pursuant to Code, Courts Article, §1-302; (H) one representative from the University of Maryland School of Law; and (I) one representative from the University of Baltimore School of Law. The appointment of the law school representatives shall be made after consultation with the Deans of the respective law schools.

(2) Terms

(A) The Chair and the retired judge shall serve at the pleasure of the Chief Judge. Subject to subsection (c)(2)(B) of this Rule, the terms of the other members shall be three years or during the member's incumbency as a judge of the court upon which the member was serving at the time of appointment or during the member's continuing affiliation with the school of law that the member represents, whichever is shorter. Those members may be reappointed but may not serve more than two consecutive full terms, except that, if a member was appointed to fill the unexpired term of a former member, the period of consecutive service also may include the remainder of that unexpired term.

(B) Incumbent members of the Board as of _____, 2013 are subject to appointment under subsection (c)(2)(A) of this Rule, but their initial terms shall be staggered as follows: (i) the judge from the Court of Special Appeals, two judges from the circuit courts, and one judge from the District Court shall receive an initial term of three years or during the judge's continued incumbency as a member of those respective courts, whichever is shorter; (ii) two judges from the circuit courts and one judge from the District Court shall receive an initial term of two years or during the

judge's continued incumbency as a member of those respective courts, whichever is shorter; (iii) one judge of the circuit court and two judges of the District Court shall receive an initial term of one year or during the judge's continued incumbency as a member of those respective courts; (iv) the judge whose appointment is based on being knowledgeable about science and technology matters shall receive an initial term of one year or during the judge's continued incumbency as a member of the court on which the judge was serving at the time of appointment, whichever is shorter; (v) the judge of the orphans' court shall receive an initial term of three years; and (vi) one law school representative shall receive an initial term of three years and one shall receive an initial term of two years, during their continued affiliation with the respective law school, whichever is shorter.

(3) Compensation; Expenses

The members shall serve without compensation but shall be reimbursed for reasonable expenses related to the work of the Judicial Institute in accordance with the approved budget of the Institute.

(4) Meetings

The Board shall meet at least twice a year at the call of the Chair.

(5) Quorum

Nine members of the Board shall constitute a quorum for the transaction of business.

(6) Duties of Board

(A) The Board shall generally supervise the development, implementation, and evaluation of the educational programs provided by the Judicial Institute and perform the other duties set forth in this Chapter.

(B) Subject to the approval of the

Chief Judge of the Court of Appeals and in accordance with applicable judicial personnel policies and procedures, the Board shall appoint an Executive Director and a Deputy Director.

(e) Executive Director; Deputy Director; Other Staff

The Executive Director, with the assistance of the Deputy Director and other staff of the Institute, shall implement the policies of the Board of Directors and oversee the operations of the Judicial Institute. The Executive Director, Deputy Director, and other staff of the Judicial Institute shall be employees of the Court of Appeals.

(f) Funding

Basic funding for the operation of the Judicial Institute shall be provided in the annual budget for the Court of Appeals. Other funding sources may be developed to support special programs.

Source: This Rule is new. It is derived in part from an Administrative Order of the Chief Judge of the Court of Appeals dated June 30, 2011.

The Chair told the Committee that Rule 18-601 addresses the structure and basic duties of the Judicial Institute. The blanks are in subsections (b)(2) and (b)(3) because some other units of the Judicial branch conduct educational programs for judges. The idea is not to eliminate this for now but to let the Institute have some time to coordinate with the other units. The Family Law Administration gives many educational programs. The goal is to centralize all of these programs but not eliminate other educational programs at this point.

Judge Weatherly said that she was currently on the Judicial Institute Board, and she liked the way that the Rules were written. She noted that initially masters had been excluded from the Judicial Institute and did not participate at all. She had become a master in 1987, and soon thereafter, the masters were invited to attend some programs, provided that they were limited to family law courses. Once the judges had selected their courses, the masters could fill the open slots for attendance.

Judge Weatherly commented that one of her concerns was that to some extent the proposed Rules make the distinction between masters and judges. Rule 18-602, Attendance at Education Programs, provides that judges shall take the required two days of education, and masters may take the courses. No one disputes that the work of both domestic relations and juvenile masters is as important as what the judges do. If there were no masters, judges would have to do their work.

Judge Weatherly said that she felt strongly that no distinction should be made between the masters and the judges as to required CLE. In her county, CLE for the masters has always had the support of the administrative judges. However, the masters in Baltimore County had many problems getting approved for educational programs. Currently, because the Institute tends to offer basic family law education, there has been a need for giving domestic relations training at the PhD level for the masters. Some counties have said that this is the masters' education. Some administrative judges have allowed the masters

to take any kind of classes. Many of the masters have become District Court and circuit court judges, so a master who practiced criminal law as an attorney may wish to keep up with current practice in case the master becomes a judge. There is no reason to delay those classes for them.

Judge Weatherly recommended that the masters should be included as judicial officers and that all of the Rules apply to them as well. The Chair responded that this issue had been discussed with Judge Barbera and Ms. Smearman. They felt strongly that this should not be the policy yet. They have too much to do and prefer not to have responsibility for all of the masters yet, particularly since there are both juvenile and family programs for the masters. This is why the blanks appear in Rule 18-601. The Chair added that this was not to suggest that Judge Weatherly's recommendation would not be adopted at a later point in time.

Judge Weatherly referred to the composition of the Board of Directors of the Judicial Institute, which is covered in section (d) of Rule 18-601, noting that no masters are on the Board. The Chair said that this provision was in the existing administrative order now. The only change suggested for the composition of the Board was the change from 15 to 16 members to include the Advanced Science and Technology Adjudication Resource ("ASTAR") person. The Chair reiterated that this is a policy question, and it may well be that if the Board of Directors agrees with Judge Weatherly, then it could be presented to the

Court of Appeals as a policy determination. The group drafting the Rules had not decided this as a matter of policy. They simply took the existing administrative orders and asked Judge Barbera, Ms. Smearman, and to some extent, Chief Judge Bell whether they wanted to make any changes to the orders. The Rules in Chapter 600 are the product of those discussions.

Mr. Johnson inquired whether the intention of the existing orders and the intention of the Institute was that no educational programs offered outside of those offered by the Institute qualify. The Chair answered that the requirement of 12 hours of CLE applies to Institute programs. Mr. Johnson asked whether programs not offered by the Institute would qualify for the 12 hours. The Chair replied that he was not sure. Judges can attend other programs with the consent of their administrative judges. Some programs are in Nevada and New York. The Chair had heard that many are very good.

Judge Eaves commented that her understanding was that if a program is also offered by another unit of the Judiciary, such as the Family Administration Office, which applies for grants for programs, including those on the subject of the Violence against Women Act, a number of judges would be able to attend those programs offered throughout the country. But the Family Administration Office is a unit of the Maryland Judiciary, and therefore the Judicial Institute would have some say as to that process, so judges would be able to attend those programs. Mr. Johnson noted that he read Rule 18-602 to mean that judges can go

to programs offered under two provisions of the Chapter 600 Rules. This is why he asked the question. He knows of other programs that judges in the State go to that are valuable.

The Chair explained that the idea was that the 12-hour requirement was to attend courses in the Judicial Institute. This is the mandatory CLE, but it does not preclude judges from taking other courses and programs wherever they are offered. However, the judges would need the consent of the administrative judge. Rule 18-602 was not intended to prohibit judges from taking other courses, but the 12 hours is required. Mr. Johnson expressed the concern that judges may not be able to get the time off to go to out-of-state conferences, because the administrative judge tells them that the State cannot afford it, and the conference is not a Judicial Institute program in Maryland. The training at the out-of-state program may be more valuable than the program offered by the Judicial Institute.

The Chair noted that there is a balance with the 12 hours, because when the trial judges are in CLE programs, they are not in court. Judge Mosley pointed out that when that happens, the other judges usually pull the load. The District Court dockets are done ahead of time, so they make it work when a judge is not available. The Chair observed that the plan is that eventually the Institute will use webinars so the judges can participate while they are in their offices.

Judge Weatherly commented that the 12-hour requirement is anticipated to be fulfilled in two days, such as two one-day

programs or several half-day programs. Every year about 42 courses are given, and included are four to six computer courses, usually pertaining to computer research. These classes usually consist of about six people, who may be new to the bench. With the advent of electronic filing, the Judiciary is going to need training in basic knowledge of word documents. These types of courses have a lower priority than the ones dealing substantively with the law. The Chair responded that it is up to the Board as to what courses to offer. Judge Weatherly suggested that language be added to Rule 18-602 indicating that the computer courses do not count as part of the 12 hours. The Reporter reiterated that this should be up to the Board. The Chair remarked that he had taken a very interesting computer course which judges, law clerks, and administrative assistants had been invited to take.

Mr. Brault asked whether the materials given to the judges are available to the public and to attorneys. The Chair answered that this issue would be discussed later, but the basic response was that the materials are not available. Judge Pierson said that in response to Mr. Johnson's comment, the required 12 hours must consist of Judicial Institute courses.

By consensus, the Committee approved Rule 18-601 as presented.

The Chair presented Rule 18-602, Attendance at Education Program, for the Committee's consideration.

Rule 18-602. ATTENDANCE AT EDUCATION PROGRAMS

(a) Judges

(1) Personal Attendance Requirement

Unless excused by the Chief Judge of the Court of Appeals for good cause or otherwise permitted by the Rules in this Chapter, each incumbent judge of the Court of Appeals, the Court of Special Appeals, a circuit court, the District Court, or an orphans' court and each retired Maryland judge who has been approved for recall to sit on one or more of those courts pursuant to Code, Courts Article, §1-302 shall register for and personally attend, each year, one or more courses with an aggregate scheduled length of twelve hours. A judge may satisfy this requirement by personal attendance at courses offered under Rule 18-603, by personal attendance at courses offered under Rule 18-604 or by acting as an instructor for a course under Rule 18-603, Rule 18-604, or a webinar program.

Committee note: Subject to subsection (a)(2) of this Rule, judges must select their required personal attendance courses so as not to be absent from their judicial duties for more than two days – one or more courses aggregating six hours on one day and one or more courses aggregating six hours on another day.

(2) Additional Courses

(A) Judges may be required to attend or may be requested to serve as an instructor for one or more specialized education courses offered under Rule 18-604. If a judge satisfies the twelve-hour requirement of

subsection (a)(1) of this Rule by attending or serving as an instructor at a specialized course offered under Rule 18-604 but desires to attend one or more courses offered under Rule 18-603, the judge may request administrative leave to do so. If the administrative judge having administrative supervision over the court on which the judge serves finds that attendance at such courses would benefit the judge in carrying out the judge's judicial duties and would not delay the timely execution of the judge's adjudicative or administrative duties, the administrative judge may grant the administrative leave.

(B) If a judge has registered for twelve hours of courses offered under Rule 18-603 or 18-604, as a student or as an instructor, and desires to participate in additional courses provided by the Institute and the administrative judge having administrative supervision over the court on which the judge serves finds that such participation would benefit the judge in carrying out the judge's judicial duties and would not delay the timely execution of the judge's adjudicative or administrative duties, the administrative judge may grant a reasonable amount of additional administrative leave.

(b) Masters

(1) Generally

Masters may be required to attend education programs offered under Rule 18-604 specifically designed for them. They are not required but may be permitted to attend education programs offered under Rule 18-603, to the extent that space is available.

(2) Attendance at Programs under Rule 18-603

Education programs offered under Rule 18-603 are primarily for judges. A master may register for and attend a program offered under Rule 18-603 if the administrative judge having administrative supervision over the

court on which the master serves approves the attendance and notifies the Executive Director in writing of the approval.

Source: This Rule is new.

The Chair explained that Rule 18-602 addresses the attendance requirement for CLE. The judges have to take 12 hours of education over two days. They have the ability to apply the required time to acting as part of the faculty of any of those courses. They also have the ability to take more classes than the 12 hours if they can get the approval of the administrative judge. Rule 18-602 has the provision concerning masters, which has not changed from what currently exists.

Ms. Ogletree asked if Rule 18-602 applies to judicial appointees. The Chair replied that this issue had been discussed with Judge Barbera and Ms. Smearman. Their view was that the Chapter 600 Rules only apply to masters and not to other judicial appointees. The Judicial Institute has never taken on the education of District Court commissioners.

Ms. Ogletree remarked that she was thinking more in terms of auditors, especially in the smaller counties. The Chair said that this issue had been discussed, and the decision was to limit the Chapter 600 Rules now to masters. Judge Weatherly observed that the AOC has been training mediators. Ms. Ogletree commented that on the Eastern Shore at this time, all nine of the auditors are looking to her to explain what the changes in the Foreclosure Rules in Title 14 are, so that they can be up to date when they

do the audits. There is no uniformity statewide with respect to what auditors do. It would be helpful when there is a huge foreclosure docket if what the auditor is sent is somewhat consistent.

The Chair explained that the drafters of the Chapter 600 Rules were not thinking about the issue of auditors. They had just taken the existing administrative orders and converted them into the proposed Rules. Nothing prohibits the Judicial Institute from offering courses to auditors and examiners and to District Court commissioners, if they choose to do so. They do not have the responsibility for it at this time. Ms. Ogletree expressed the opinion that it would be very helpful. She acknowledged that in larger counties, some auditors are court employees. This is not true on the Eastern Shore. All of the auditors are practicing attorneys. It is probably the same situation in western Maryland. It would be helpful if the audits were done uniformly, or at least the auditors were requiring the same information. The second circuit has a yearly meeting to set up the procedures for that year. The Chair remarked that all of the circuits have meetings. Ms. Ogletree said that she had talked to the first circuit about what the second circuit is doing in the interest of conformity, but the procedures are not uniform.

The Chair suggested to Ms. Ogletree that she make a request of the Judicial Institute Board to include auditors in the educational process. The Board does not want mandates. Ms.

Ogletree responded that she was not asking for a mandate, but she felt that it would be preferable if all of the auditors were operating with the same information.

Judge Love said that he was pleased to see that working as an instructor of judicial education counts as part of the 12-hour requirement. From an administrative point of view, this is very helpful. Judge Pierson commented that he did not think that the Rules currently define the term "administrative leave." He had raised this issue for two reasons. The first was that the term "administrative leave" was appearing in the Rules of Procedure for the first time. In addition, Judge Pierson said that from talking with the Honorable Marcella Holland, Administrative Judge for the Circuit Court for Baltimore City, he had the sense that there is a policy that the administrative judge can only approve so many days of administrative leave per year without the approval of the Chief Judge of the Court of Appeals. There are provisions that state that the administrative judge shall grant administrative leave under certain circumstances. If the Rule requires the administrative judge to grant administrative leave, that may conflict with another policy. Judge Love agreed with Judge Pierson. Chief Judge Bell's policy is that only he can grant administrative leave.

The Chair commented that he had asked about this. The administrative orders upon which these Rules were based referred to "education leave." Judge Barbera's view had been that this was formerly "administrative leave." Rule 18-602 could use the

language "education leave," but this term is not in the Rules either. Judge Weatherly said that for the "CanDo" conference, the letter that comes out indicates that, for example, judges handling Child in Need of Assistance and delinquency cases shall go to a certain course. They are required to attend. The Chair said that he was not sure what to call this. He asked Judge Pierson if he was making a recommendation. Judge Pierson responded that he was pointing out that the term "administrative leave" has appeared in the Rules, and there is a policy that administrative judges cannot grant administrative leave without some approval.

Judge Love noted that the operative administrative order is the Amended Administrative Order on Judicial Absences from Court (the earlier order was October 22, 2001). Paragraph 26 reads as follows: "Subject to the provisions of paragraphs 3 and 5 of this Order, the Chief Judge of the Court of Appeals may grant a judge administrative leave from any other absence not specifically provided by the Maryland Rules or this Order." There are different categories: outreach, education, and Judicial Institute. Judge Love had always read the term "administrative leave" to mean that Chief Judge Bell had to approve a judge's request for administrative leave. Ms. Ogletree remarked that this could be excepted by rule. Judge Love said that if Chief Judge Bell approves the Rule, Judge Love would be in favor of it. The Chair pointed out that if the Court of Appeals approves the Rule, Chief Judge Bell would be part of that approval process.

By consensus, the Committee approved Rule 18-602 as presented.

The Chair presented Rule 18-603, General Annual Education Program, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 600 – JUDICIAL EDUCATION

Rule 18-603. GENERAL ANNUAL EDUCATION PROGRAM

(a) Development of Curriculum

By July 1 of each year, the Board of Directors, with the advice and assistance of the Executive Director:

(1) shall develop a comprehensive curriculum of three-hour and six-hour courses to be given during the following calendar year and may develop courses of longer duration;

(2) shall recruit, approve, and assign qualified instructors, in accordance with the Rules in this Chapter, to present the courses;

(3) shall prepare and distribute to all Maryland judges and masters, in print form or on-line, a catalog that (A) describes the courses, (B) states, to the extent determined, the names of the instructors, (C) states the dates, times, and places where the courses will be offered, and (D) provides instructions for how to register for the courses; and

(4) may include in the catalog or supplement it at a later time with an offering of webinar courses that are offered by the Institute.

(b) Content of Curriculum

The curriculum may vary from year to year but shall include courses in aspects of general civil law and procedure; criminal law and procedure; family law; estate, property, or trust law; evidence; issues affecting the conduct of judicial proceedings; and recent relevant legislation, Rules changes, and court decisions.

(c) Faculty

(1) Selection

The Board or the Executive Director under the direction of the Board shall recruit, approve, and assign one or more instructors for each course. To the extent possible, instructors shall be selected from among active and retired Maryland judges, but members of the Federal judiciary, law school faculty, attorneys, or other individuals having specialized knowledge and experience in the subject matter of a course may be recruited as instructors or co-instructors. The Judicial Institute may not offer or pay compensation or other than normal in-State travel expenses to instructors unless approved in advance by the Chief Judge of the Court of Appeals.

(2) Notice to Administrative Judge; Administrative Leave

When an incumbent judge has accepted an instructional assignment, the judge shall promptly notify the administrative judge having administrative supervision over the court on which the judge serves. The administrative judge shall approve any necessary administrative leave for the instructor, including administrative leave not exceeding one day for course development.

(3) Assistance by Judicial Institute Staff

The Executive Director and other designated Judicial Institute staff shall offer support and assistance to the

designated instructors in setting course objectives, the selection and use of instructional techniques and materials, research, developing a course outline, preparatory services, and the evaluation of the presentation.

(d) Offering of Courses

(1) No Charge

All courses offered by the Judicial Institute shall be without charge to the judge or master.

(2) Place of Offering

Unless otherwise directed by the Board of Directors, all personal attendance courses shall be offered at the Judicial Education and Conference Center in Annapolis. In an emergency, the Executive Director may direct that a course be offered at another convenient location.

(3) Webinar Courses

To the extent practicable, webinar courses offered by the Institute shall be in one-hour segments and shall be offered before or after normal court hours or during lunch breaks.
Source: This Rule is new.

The Chair said that Rule 18-603 was a general catalogue of the continuing legal education requirement. Administrative leave is also provided for in Rule 18-603 in subsection (c)(2). Judge Weatherly referred to section (b) of Rule 18-603, Content of Curriculum, and she suggested that judicial ethics be included as one of the courses. By consensus, the Committee approved this change.

By consensus, the Committee approved Rule 18-603 as amended.

The Chair presented Rule 18-604, Specialized Education Programs, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 18 – JUDGES AND JUDICIAL APPOINTEES

CHAPTER 600 – JUDICIAL EDUCATION

Rule 18-604. SPECIALIZED EDUCATION PROGRAMS

(a) Generally

In addition to the general annual education program provided for in Rule 18-603, the Judicial Institute shall develop, provide, and monitor the specialized education programs provided for in this Rule.

(b) New Trial Judge Orientation Program

(1) Duty of Institute

At least once every two years, and more often as needed, the Judicial Institute shall present a six-day residential judicial orientation program for judges newly appointed to the District Court, newly appointed or elected to a circuit court, or newly appointed to the Court of Special Appeals or the Court of Appeals. The program, including the curriculum and format, shall be determined by the Board of Directors with the advice of the Executive Director, but, in addition to discussion of significant aspects of civil and criminal law and procedure applicable in the District and circuit courts, shall include discussion of domestic violence, judicial ethics and professionalism, and best practices in presiding over judicial proceedings.

(2) Duty of Judges

Unless excused by the Chief Judge of the Court of Appeals, each judge newly appointed to the District Court or newly

appointed or elected to a circuit court shall attend the orientation program next occurring after the judge's appointment or election. Attendance is optional for judges newly appointed to the Court of Special Appeals or Court of Appeals.

(c) Family Law Education Program

(1) Duty of Institute

Once every other year, the Judicial Institute shall present a three-day, 18-hour comprehensive program on family law, including practice and procedure in the trial of family law cases. The curriculum and format shall be determined by the Board of Directors, with the advice of the Executive Director.

(2) Duty of Judges and Masters

Each judge, and each master who will be assigned to hear family law cases, shall attend the family law education program next occurring after the judge's appointment or election or the master's appointment or assignment to hear family law cases. Each judge and master who has attended the family law education program and who continues to hear family law cases for more than three years or who ceases to hear such cases but is reassigned to hear them more than three years after having attended the program shall register for and attend the next offered refresher or update course on family law offered under Rule 18-603.

(d) Business and Technology Education Program

(1) Duty of Institute

The Judicial Institute shall develop and periodically update a curriculum for the Maryland Business and Technology Case Management Program provided for in Rule 16-308. The curriculum and the format shall be determined by the Board of Directors with the advice of the Executive Director and in consultation with the Business and Technology

judges.

(2) Duty of Business and Technology Program Judges

Judges assigned to the Business and Technology Program shall make every reasonable effort to register for and attend courses offered under this section in order to achieve and maintain their designation as Program Judges. The Administrative judge having administrative supervision over the court on which a Program Judge serves may and is encouraged to grant educational leave to allow the Program Judge to attend the courses.

(e) ASTAR Program

(1) Role of Institute

The Judicial Institute may participate in national science and technology programs, which may include participation in the national Advanced Science and Technology Adjudication Resource ("ASTAR") program by hosting or co-hosting conferences and workshops and developing and offering courses in the bioscience training regimen prescribed by the ASTAR Program for ASTAR Fellows and prospective ASTAR Fellows.

(2) Administrative Judges

The administrative judge having administrative supervision over the court on which a judge who is an ASTAR Fellow or prospective ASTAR Fellow serves may and is encouraged to grant educational leave to the judge for completion of ASTAR requirements.

Source: This Rule is new.

The Chair explained that Rule 18-604 pertains to specialized programs, such as the new trial orientation program, which is a six-day residential program. It is given approximately every two years for newly appointed or elected judges. The specialized

programs also include the Family Law Education program, which is a three-day program that is required for judges going into family divisions, the Business and Technology Program, and the ASTAR program, which is basically science. These are the courses currently done by the Judicial Institute, but they could do more if they chose to. They do not want to be required to do so at this point.

The Chair told the Committee that Mr. Brault had raised a question earlier about the accessibility of this educational process. A huge issue has dated back for years as to who can have access to the educational materials. Judge Barbera and Ms. Smearman had concluded that these should not be public documents. There are written materials prepared for Judicial Institute programs, some of which may be copyrighted, although most are not. The Institute can and sometimes does videotape the programs, and the question is whether the videotape is accessible. There are bench books, and there may be other materials, also. Mr. Michael asked if the term "bench books" means notebooks that are prepared for the course. The Chair replied negatively, explaining he had been referring to trial judges' bench books. Mr. Michael remarked that there are also books prepared for the courses, and the Chair agreed, noting that some of these are done by the Institute and some by the faculty who is chosen to do the programs.

The Chair said that to the best of his knowledge, this issue had been before the Court of Appeals once. It was many years ago

when a program for judges on how to try a death penalty case had been held. The program had been videotaped, and the Office of the Public Defender (OPD) wanted the tape. They alleged that they were entitled to it under the Public Information Act (Code, State Government Article, §§10-611 - 10-626). The Court gave the OPD the tape without determining whether they were entitled to it under the Public Information Act, but it raised the question of whether any of these educational materials are available under the Public Information Act, which requires a custodian to deny inspection of anything that is not accessible by a rule of the Court of Appeals. The Court of Appeals has leeway by rule to say what court records are or are not accessible. The sense of this issue is that the educational material is prepared solely for the education of judges. With respect to video tapes of the program, the thought is that we want the judges to ask questions, make comments, and share in candor, without worrying that what they ask or say will be publicly accessible experiences.

The Chair noted that this is a policy issue that is being addressed for the first time comprehensively in the Chapter 600 Rules. The Court of Appeals will have to decide whether they would allow these materials to be accessible to the public. At one time the bench books were not done by the Judicial Institute, but by anyone who had the time and knowledge to do them. There was an arrangement with the Maryland Institute for the Continuing Professional Education of Lawyers (MICPEL) to sell the books. MICPEL is no longer in existence, and the bench books will be

centered in the Judicial Institute, so that they will be the property of the Institute. It is purely a policy issue as to whether these educational materials should be sold or otherwise made available to the bar or to the public.

Mr. Zarbin commented that the Maryland Association for Justice would gladly put together a bench book if the Judiciary gave them permission. The Association could sell the bench book just as MICPEL did. The bench book has been a great resource for practitioners. The Chair responded that this is an issue for the Court of Appeals. If they are going to authorize the preparation of bench books, which are going to be guides to what judges should do, they will want to have some assurance that they are accurate, and if the bench book is going to be centered in the Judicial Institute, the question is whether they want to make them saleable. Mr. Zarbin reiterated that it is a great resource.

The Chair inquired if anyone had a suggestion for what was being proposed, which was that the educational materials for the judicial programs are not a public record. None was forthcoming.

By consensus, the Committee approved Rule 18-604 as presented.

The Chair presented Rule 16-1001, Definitions, and Rule 16-1004, Access to Notice, Administrative, and Business License Records, for the Committee's consideration.

AMEND Rule 16-1001 to add to the definition of "administrative record" a reference to judicial education materials, as follows:

Rule 16-1001. DEFINITIONS

In this Chapter, the following definitions apply except as expressly otherwise provided or as necessary implication requires.

(a) Administrative Record

(1) Except as provided in subsection (a)(3) of this Rule, "administrative record" means a record that:

(A) pertains to the administration of a court, another judicial agency, or the judicial system of the State; and

(B) is not otherwise a case record.

(2) "Administrative record" includes:

(A) a rule adopted by a court pursuant to Rule 1-102;

(B) an administrative order, policy, or directive that governs the operation of a court, including an order, policy, or directive that determines the assignment of one or more judges to particular divisions of the court or particular kinds of cases;

(C) an analysis or report, even if derived from court records, that is:

(i) prepared by or for a court or other judicial agency;

(ii) used by the court or other judicial agency for purposes of judicial

administration; and

(iii) not filed, and not required to be filed, with the clerk of a court.

(D) judicial education materials prepared by, for, or on behalf of a unit of the Maryland Judiciary for use by Maryland judges;

~~(D)~~ (E) a jury plan adopted by a court;

~~(E)~~ (F) a case management plan adopted by a court;

~~(F)~~ (G) an electronic filing plan adopted by a court; and

~~(G)~~ (H) an administrative order issued by the Chief Judge of the Court of Appeals pursuant to Rule 16-1002.

(3) "Administrative record" does not include a document or information gathered, maintained, or stored by a person or entity other than a court or other judicial agency, to which a court or other judicial agency has access but which is not a case record.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1004 to add a new subsection (e)(2) pertaining to certain judicial education materials, as follows:

Rule 16-1004. ACCESS TO NOTICE, ADMINISTRATIVE, AND BUSINESS LICENSE RECORDS

. . .

(e) Certain Administrative Records

A custodian shall deny inspection of the following administrative records:

(1) Judicial work product, including drafts of documents, notes, and memoranda prepared by a judge or other court personnel at the direction of a judge and intended for use in the preparation of a decision, order, or opinion;

(2) Unless otherwise determined by the Board of Directors of the Judicial Institute, judicial education materials prepared by, for, or on behalf of a unit of the Maryland Judiciary for use by Maryland judges.

~~(2)~~ (3) An administrative record that is:

(A) prepared by or for a judge or other judicial personnel;

(B) either (i) purely administrative in nature but not a local rule, policy, or directive that governs the operation of the court or (ii) a draft of a document intended for consideration by the author or others and not intended to be final in its existing form; and

(C) not filed with the clerk and not required to be filed with the clerk.

Source: This Rule is new.

The Chair explained that the proposed changes to Rules 16-1001 and 16-1004 were in conformance with the policy of judicial educational materials not being open to the public. In Rule 16-1001, the judicial education materials are considered to be administrative records. In Rule 16-1004, a custodian shall deny inspection of judicial education materials unless otherwise

determined by the Board of Directors of the Judicial Institute.

By consensus, the Committee approved the proposed changes to Rules 16-1001 and 16-1004 as presented.

Additional Agenda Item

Mr. Brault told the Committee that two professors, one from the University of Baltimore School of Law and one from the University of Maryland School of Law were present at the meeting. They had addressed the Judges and Attorneys Subcommittee on the issue of Bar Admission Rule 16, Legal Assistance By Law Students, which allows law students to appear in courts in Maryland. Each law school has clinics in which a group of law students participate. Once the students are certified, they can appear in court as counsel. The Chair noted that the students have to appear with a practicing attorney. Mr. Brault said that each school also has an extern practice. This is close to a clinic practice, but instead of a group, it is individualized. At some point, a student has been through the clinic and is getting far along into law school. Then he or she goes through the process of being an extern under the appropriate guidance of the Rules. The way that Rule 16 had been written, the Maryland State Bar Association (MSBA) has to approve whether this can be done and how it can be done. There has been a differential treatment of externships by the MSBA Section Council of the Section of Legal Education and Admission to the Bar ("the Council") depending on who the Chair was. At times, the externship program had not been

approved. The law professors asked the Subcommittee to specifically address externships. The Subcommittee looked over this practice, and they supported it. Mr. Brault added that he could not think of a better way to educate an attorney than for him or her to represent clients in court, and it does not have to be part of a group setting in a clinic.

Mr. Brault said that the Subcommittee had asked for the full Rules Committee to approve the use of externship programs. The Chair commented that the actual language of the Rule had not yet been drafted. It will be ready for the Rules Committee to see it at the meeting on May 3, 2013. The issue today is whether the Committee would approve the concept of externships. Professor Bellido de Luna told the Committee that he is on the faculty of the University of Maryland School of Law and is the managing director of the clinical program. He currently is the Chair of the Council. Dean Green said that she runs the Externship Office for the University of Baltimore School of Law and is a member of the Council.

Professor Bellido de Luna thanked the Committee for allowing Dean Green and him to address the Committee. He remarked that Mr. Brault's explanation had been correct, and he clarified that every law student does not necessarily take a clinic. This issue affects not only students at the two law schools in Maryland, but also Maryland residents who go to a law school outside the State but return to Maryland to become a Maryland attorney. One student was accepted as a Rule 16 student seeking an externship.

Currently, the members of the Council would not allow this. Each time the Council changed personnel, it depended on the experience of the student as to where he or she went to school, the clinic or externship would be defined through the student's experience.

Professor Bellido de Luna said that he and his colleagues would like Rule 16 to be similar to the American Bar Association (ABA) version of Rule 16, Standard 305, which applies to "a clinic and a field placement." A field placement is like an externship. The only other requirements under Rule 16 that the student must have taken 28 credits, must have been certified by the Dean, and must be in good standing, and the externship must have a classroom component, must have supervision, etc. Everything in Rule 16 remains. Professor Bellido de Luna and his colleagues would like to avoid the fluctuation depending on who is on the Council. The fluctuation can be eliminated by a minor change to Rule 16 to include externships as part of the Rule.

Mr. Johnson remarked that the Section Council that decides whether a program qualifies under Rule 16 would still make that decision, whether or not Rule 16 refers to externships. Professor Bellido de Luna responded that the Council has a dedicated small core of volunteer attorneys, and they shift every year; new members come in, and others go off. The updated Council, which is about 12 people, has the authority to allow practice under Rule 16 or not. The decision requires a majority. If the members of the Council define the term "clinic" very narrowly, as they do right now, the Council does not allow

externships to qualify. Last year they had about 30 Rule 16 students participate in externships. This year those 30 students would not have had that opportunity if the current Council were to vote on it. It is left to the Council to interpret the Rule. We are trying to do away with the Council interpreting the meaning of the Rule. We would like Rule 16 to be clear that these externship opportunities qualify, because they fall under the ABA rule.

The Reporter inquired if the law schools charge the students money to participate in the externships. Is it a course for which they pay tuition? Dean Green replied affirmatively. The Reporter asked if the students are placed in private attorneys' offices. Professor Bellido de Luna answered negatively, explaining that Rule 16 will not qualify for private attorneys, because the students cannot be compensated. If any attorney is being compensated from a client, the attorney could not participate in the Rule 16 opportunity.

The Reporter questioned where the students are placed. Professor Bellido de Luna answered that they are placed in the Office of the Public Defender, the State's Attorney's Office, the Office of the Attorney General, and the Legal Aid Bureau. The Reporter noted that the students are placed in organizations which are "for the public good" as opposed to being placed with one litigator vs. another litigator, where one litigator would get a student and one would not. Professor Bellido de Luna remarked that for the past 39 years where there have been

records, they know that these externships have been going on, and it has been a training ground for students to go into public interest law. The Reporter asked if this limitation of public interest law should be included in the language of the new addition to the Rule. Professor Bellido de Luna replied that it would not be necessary to include this. He expressed the view that the Rule is clear, because of the compensation issue that is already in Rule 16. Rule 16 students can never practice in a private attorney's office. They can have an internship or a clerkship but not fall under Rule 16. All that they are asking for is for the Rule to include a reference to "externship or field placement programs."

Judge Pierson inquired if they were proposing to change subsection (a)(2) of Rule 16, which requires a clinical program to be approved by the Section Council. Dean Green answered that they are not concerned with the definition of the term "clinical program." Professor Bellido de Luna added that their requested change would more closely align Rule 16 with the ABA Rule, currently Standard 305, which is supposed to be changed to Standard 309 next year.

Judge Kaplan asked if a motion was necessary to approve a change to Bar Admission Rule 16. The Chair replied that this is a Subcommittee recommendation, so no motion is necessary. He asked for the sense of the Committee as to whether they had any problem with the suggestion made by Professor Bellido de Luna and Dean Green to add externships to Rule 16. The Subcommittee would

have to draft a small change to Rule 16 to be considered at the Rules Committee meeting on May 3, 2013. Mr. Johnson commented that the requested change is more than a resolution, it is a change to the Rule. Mr. Brault noted that originally the proponents of the change did not ask for a change to Rule 16; they asked for the Rules Committee to approve the concept. The Reporter said that it will be necessary to clarify the idea of including externships, and this will have to be drafted by the Subcommittee. Professor Bellido de Luna responded that the Section Council will assist in the drafting of Rule 16. Mr. Brault expressed the view that this is one more valuable step in educating trial attorneys. Trial attorneys are being lost in the United States all the time. The law schools are being relied upon more and more to train trial attorneys.

The Chair commented that Rule 16 students also appear in the Court of Special Appeals. Professor Bellido de Luna agreed, adding that they also appear in District Court and in administrative hearings throughout the State. They are only precluded from appearing in front of the Court of Appeals. Mr. Zarbin remarked that this is a win-win situation. It would serve the District Court well to have Legal Aid attorneys helping litigants in landlord-tenant and creditor cases. A Rule 16 student could be assigned, the student benefitting from a useful experience and the litigants getting good representation. The Chair said that when the Court of Appeals decided in *DeWolfe v. Richmond* ___ Md. ___ (2012), that indigent litigants needed

representation at the commissioner level, and Paul DeWolfe, Esq., the Public Defender, asked where all of these attorneys would come from, the possibility of Rule 16 attorneys being able to do some of this representation was considered, as long as there was an electronic hookup even in the middle of the night with a law professor. It did not happen, because legislation superceded the need for this procedure. Mr. Johnson inquired if there was a corresponding federal rule. Professor Bellido de Luna answered that Rule 702, Student Practice, a rule of the U.S. District Court of Maryland, is the parallel federal rule.

The Chair told the Committee that what is needed is a consensus, so that the Subcommittee can prepare a draft to bring before the Committee at the May, 2013 meeting. By consensus, the Committee approved the concept of externships to be added to Rule 16. Professor Bellido de Luna and Dean Green thanked the Committee.

Agenda Item 3. Consideration of proposed amendments to: Rule 1-325 (Filing Fees and Costs - Indigency), Rule 2-603 (Costs), and Rule 3-603 (Costs)

Judge Pierson presented Rules 1-325 (Filing Fees and Costs - Indigency), 2-603 (Costs), and 3-603 (Costs) for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-325 by adding a new section (a) to clarify that this Rule applies to prepayment and complete waivers of filing fees and costs for indigent litigants, by amending and moving the Committee Note to clarify that it applies to the entire Rule; by adding a new section (b) listing certain types of cases in which the prepayment of costs are waived without a court order; by amending section (c) to clarify that it pertains to the waiver of prepayment of costs by court order, adding a cross-reference to the Code regarding certifications of meritoriousness, adding a new subsection (c)(2) listing the factors to be considered by the court when reviewing a request to waive prepayment of costs, by adding a cross-reference for information on the Maryland Legal Services Corporation Guidelines; by adding a new section (d) pertaining to the award of charges, costs, and fees at the conclusion of the action, and listing factors the court shall consider when deciding whether to grant a complete waiver of those fees; and making stylistic changes as follows:

Rule 1-325. FILING FEES AND COSTS - INDIGENCY

(a) Applicability

This Rule applies to prepayment and complete waivers of filing fees and other court costs for indigent litigants. It does not apply to special costs assessed under Rule 4-353 (b).

Committee note: The term "other court costs" in 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).

(b) Waiver of Prepayment of Costs without Court Order

A clerk shall not collect a filing fee,

surcharge for the Maryland Legal Services Corporation, or other court costs in advance in an action in which:

(1) the plaintiff or petitioner is represented by counsel retained through a pro bono or legal services program that is recognized by the Maryland Legal Services Corporation, if the program provides the clerk with a memorandum that (A) names the program, attorney, and client, (B) specifies that representation is being provided for any client meeting the financial eligibility criteria of the Corporation, and (C) states that payment of filing fees is not required under the Prisoner Litigation Act, Code, Courts Article, §§5-1001 et seq.;

(2) representation is being provided by the Maryland Legal Aid Bureau, Inc.; or

(3) the plaintiff or petitioner is represented by counsel provided by the Office of the Public Defender.

~~(a)~~ (c) Waiver of Prepayment of Costs By Order of Court

(1) Request for Waiver

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 shall include or be accompanied by an affidavit(A) verifying the facts set forth in ~~that person's~~ the pleading, notice of appeal, application for leave to appeal, or request for process; and (B) 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.

Cross-reference: See Code, Courts and Judicial Proceedings Article §7-201 (b) concerning certifications of meritoriousness.

(2) Review by Court; Factors to Be Considered

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. In determining whether to grant a prepayment waiver, the court shall consider:

(A) whether the petitioner has a family household income that qualifies under the client income guidelines for the Maryland Legal Services Corporation for the current year;

Cross reference: For information as to the Maryland Legal Services Corporation Guidelines, see the Maryland Legal Services Corporation website and Code, Human Services Article, §11-603.

(B) whether an attorney is representing the petitioner pro bono;

(C) whether the petitioner is the recipient of means-tested government benefits including food stamps, housing under Section 8 of the Housing Act of 1937 (42 U.S.C. §1437f), Temporary Assistance for Needy Families, or other programs; and

(D) other factors that may reflect on the petitioner's ability to pay the filing fee.

(3) Court Order

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 that the claim, appeal, application, or request for process is not frivolous, it shall waive by order the prepayment of such costs.

(d) Award of Charges, Costs, and Fees at Conclusion of Action

If the court waives prepayment of a charge, costs, or fee in an action, the court

shall award charges, costs, and fees in accordance with this Rule, at the conclusion of the action. In determining whether to grant a complete waiver of fees in the civil action, the court shall consider:

(1) whether the petitioner has a family household income that qualifies under the client income guidelines for the Maryland Legal Services Corporation for the current year;

(2) whether an attorney is representing the petitioner pro bono;

(3) whether the petitioner is the recipient of means-tested government benefits including food stamps, housing under Section 8 of the Housing Act of 1937 (42 U.S.C. §1437f), or Temporary Assistance for Needy Families; and

(4) other factors that may reflect on the petitioner's ability to pay the filing fee.

~~(b)~~ (e) 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~~ action 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 new.
Section (b) is new.
Section ~~(a)~~ (c) is derived from former M.D.R. 102 and Courts Article, §7-201.
Section (d) is new.
Section ~~(b)~~ (e) 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 broaden the applicability of section (e) to all civil actions, as follows:

Rule 2-603. COSTS

(a) Allowance and Allocation

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

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

(b) Assessment by the Clerk

The clerk shall assess as costs all fees of the clerk and sheriff~~, statutory fees actually paid to witnesses who testify~~, and, in proceedings under Title 7, Chapter 200 of these Rules, the costs specified by Rule 7-206 (a). On written request of a party, the clerk shall assess other costs prescribed by rule or law. The clerk shall notify each party of the assessment in writing. On motion of any party filed within five days after the party receives notice of the clerk's assessment, the court shall review the action of the clerk.

(c) Assessment by the Court

When the court orders or requests a transcript or, on its own initiative, appoints an expert or interpreter, the court may assess as costs some or all of the expenses or may order payment of some or all of the expenses from public funds. On motion of a party and after hearing, if requested, the court may assess as costs any reasonable and necessary expenses, to the extent

permitted by rule or law.

(d) Joint Liability

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

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

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

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 604 a.
Section (b) is in part new and in part derived from former Rule 604 a.
Section (c) is new.
Section (d) is derived from former Rule 604 c.
Section (e) is new.

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

See the Reporter's note to Rule 1-325.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 3-603 to add a new section (d) pertaining to waiver of costs for indigent persons, as follows:

Rule 3-603. COSTS

(a) Allowance and Allocation

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

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

(b) Assessment by the Court

When the court orders or requests a transcript or, on its own initiative, appoints an expert or interpreter, the court may assess as costs some or all of the expenses or may order payment of some or all of the expenses from public funds. On motion of a party and after hearing, if requested, the court may assess as costs any reasonable and necessary expenses, to the extent permitted by rule or law.

(c) Joint Liability

When an action is brought for the use or benefit of another as provided in Rule 3-201, the person for whom the action is brought and the person bringing the action, except the State of Maryland, shall be liable for the payment of any costs assessed against either of them.

(d) Waiver of Costs - Indigency

In a civil action, the court shall

waive final costs, including any compensation and fees, 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 action in accordance with Rule 1-325 (a). If the party was granted a waiver pursuant to that Rule and remains unable to pay the costs, the affidavit required by Rule 1-325 (a) need only recite the existence of the prior waiver and the party's continued inability to pay.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 604.
Section (b) is new.
Section (c) is derived from former Rule 604 c.

Rule 3-603 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 1-325.

Judge Pierson explained that the proposed amendment to Rule 1-325 had been requested by the Access to Justice Commission. The essence of the proposed change was that if a plaintiff was represented by certain organizations or other entities supplying legal services, that plaintiff would be automatically granted leave to file without prepayment of fees. A second aspect of this was to identify certain factors for the courts to consider in determining whether to grant waiver in other cases based on poverty level identifiers. Currently, Rule 1-325 simply provides that the court may grant leave to file without prepayment of costs, and the court can grant this on a verification of facts made in a request for waiver of prepayment of costs. The schedule of costs that was promulgated by the AOC already has a

provision for a waiver for individuals who are represented by some of these organizations. The idea was to put this into the Rule as opposed to it simply appearing in the costs schedule.

Judge Pierson said that he had suggested redrafting the proposed amendment to reorganize it, because he had felt that as drafted by the Commission, the structure of the Rule was somewhat confusing. The version of Rule 1-325 that was handed out at the meeting had the same content as the version of the Rule in the meeting materials.

Mr. Brault asked how it would work if the award of fees was in favor of the plaintiff who had requested and gotten a waiver of the prepayment of fees, and the defendant had been ordered to pay the costs. Judge Pierson answered that no costs need to be paid, because there are no costs to recover. Mr. Brault inquired about the costs to the court. The court could recover costs from a capable, paying defendant. Judge Kaplan said that there are prepaid costs and closing costs. Mr. Brault remarked that the closing costs could be awarded in favor of the plaintiff.

Judge Pierson commented that the court deals with two varieties of costs, one is costs that a party has already incurred during the pendency of the litigation. A party who got a waiver of prepayment of costs obviously could not recover those costs, because he or she had never paid them. Judge Pierson added that he assumed that a losing party who had to pay costs would still have to pay any open costs. The two varieties of costs are incurred costs and open costs.

Judge Weatherly noted that in the family division of the circuit court, there are many costs. Some of them are absorbed by the court which waives them. These costs include fees for parenting classes, mediation, home studies, psychological evaluations, a best interest attorney, etc., and they range from $150 to $3,000 for a best interest attorney that have been divided. If one of the parties is indigent, and his or her costs have been waived, the court uses grant money to pay the psychologist or the outside helper. The best interest attorney gets a check from the court if one or both parents is or are indigent. Once the case goes to court, it is not unusual to find that one party, who may be the petitioner, is indigent, but the other side has the ability to pay. The judges do order that party to pay all of the fees, including the entire fee for the best interest attorney, and the person gets reimbursed at the court. That plaintiff did not have to come up with the money, and the attorney's firm did not advance any of those monies.

Judge Pierson said that he did not think that the changes to Rule 1-325 would affect what Judge Weatherly had been discussing. The Rule specifies who cannot be required to pay costs, and this is the party who meets the requirements of Rule 1-325. Judge Weatherly commented that the court has depended on the fact that it is the waiver of the prepaid costs, not the final determination of costs at the end of the case. The Chair added that this would not apply if the party is represented by one of the legal aid organizations. Judge Pierson pointed out that

section (d) has a provision for the award of costs at the conclusion of the action. This would apply to the point made by Judge Weatherly, because under Rule 1-325, if a party is granted a waiver of prepayment costs, then that party will not be paying any costs as the case goes along, but section (d) provides that if the court waives prepayment, the court awards costs at the conclusion of the action. The Rule then repeats the same standard in determining whether to waive that at the conclusion of the action. Again, the inability to pay is usually due to poverty. Judge Weatherly said that she thought that the person could be without employment at the beginning of the case and have a pro bono attorney, but by the end of the case might be gainfully employed or, in a family case, through the award of alimony or marital property, may have funds so that the court determines that the person no longer qualifies as indigent and can assess costs to the person.

Ms. Ortiz told the Committee that she is the Executive Director of the Maryland Access to Justice Commission. She had not had the opportunity to read Judge Pierson's revised version of Rule 1-325. She had gone over the version that was originally distributed, and she had assumed that the content of the two versions was similar. The Commission's intention was threefold.

The first goal was to try to not change the decision-making process on fee waivers. One of the concerns that had been brought to the attention of the Commission was that, despite the automatic waiver and cost schedule, the cost schedule anticipates

that grantees of the Maryland Legal Services Corporation (MLSC) would be able to submit a letter with their pleading and get an automatic waiver without having to file a motion. However, this was not being routinely honored at the trial court level. One of the major concerns was that this provision is buried in an online cost schedule. It is not in the Rules. Placing the procedure that is currently articulated in the cost schedule in the Rule itself would heighten its visibility for judges and for practitioners. One goal was to be sure that the courts automatically waive filing fees for litigants who are represented by the MLSC grantees or civil legal services providers.

The Chair inquired if Ms. Ortiz was referring to total waiver or only waiver of prepayment costs. Ms. Ortiz replied that she was referring to waiver of the prepayment costs and consideration of waiver if the party is indigent at the end of the case. She noted that some people feel that the two-part fee waiver process is confusing, especially for those who are self-represented. Many people do not understand that when they request the prepayment waiver up front, they must again ask for a full waiver of costs at the conclusion of the case. The Commission would support any change to clarify this. They were trying to solve the problem of the judges not always honoring the automatic waiver when a Legal Services provider was representing a client.

The Chair drew the Committee's attention to section (b) of the revised version of Rule 1-325. Judge Pierson clarified that

the content of the revised version is identical to the content of the version that was in the meeting materials. The order is different. The Chair said that there was one exception. Judge Pierson added that he had not redrafted the revised version. The Reporter said that she and her staff had redrafted it in response to Judge Pierson's concerns. The Chair commented that the redraft added something to section (a). It does not apply to special costs assessed under section (b) of Rule 4-353, Costs. That is not a prepaid cost; it is a cost required by statute. The Committee had discussed this last year. It applies to the criminal cases where a statute requires the fee and provides that it cannot be waived unless the party is indigent. Rule 1-325 is not going to require the waiver of those costs simply because a criminal defendant is being represented by a Public Defender. Ms. Ortiz added that this is to capture the fees for the victims' funds.

Ms. Ortiz said that there were two other purposes behind the Commission's proposal. Another purpose was to extend the automatic prepayment waiver to those individuals represented in civil matters by the Office of the Public Defender. The third purpose was to improve the process for fee waivers requested by self-represented litigants, individuals who are not represented by an MLSC provider. It would require judges to consider whether those petitioners would meet the indigency guidelines set forth by the MLSC. This would be applied to those individuals using the same guidelines the MLSC providers use.

Ms. Ortiz commented that Judge Weatherly had discussed the service waivers that are provided in the family division. Years ago, when funding began to be granted to the court for services, they used that opportunity to require courts to provide fee waivers if the guidelines were met for service fees. They did not have the authority to tell judges when to waive fees otherwise for self-represented litigants. They were asking judges to use the guidelines. The judges would still be exercising their discretion in determining whether to grant the fee waivers. The process is not being changed, other than to require that the court must consider whether the person meets MLSC guidelines. The standards would create some regularity and consistency across the State. The Public Justice Center had commented on this, and Ms. Ortiz had forwarded those comments to the Chair. They suggested making conforming changes to the fee waiver provisions for appeals.

Ms. Smith said that the circuit court is not allowed to waive the fees for the appellate courts. Mr. Hill told the Committee that he was from the Public Justice Center. In noting an appeal, a memorandum is submitted that identifies the MLSC provider. Judge Pierson remarked that the answer is that the waiver would have to be by the circuit court. The change to section (c) of Rule 7-103, Method of Securing Appellate Review and to section (b) of Rule 8-201, Method of Securing Review – Court of Special Appeals, proposed by the Public Justice Center provides that the filing fee shall be deposited unless the fee

has been waived pursuant to Rule 1-325. This will require the determination to be made in that court. Ms. Smith said that her office had been told that the Court of Special Appeals makes that decision on cases in their court. The circuit court judges in her county make the decision on cases in their court.

Mr. Hill asked how else a *pro se* party would waive prepayment costs. Ms. Smith answered that the party would have to file with the appellate court in which the case would be heard. The person would actually be filing in both the lower and the appellate court. The Reporter pointed out that the notice of appeal has to be filed in the circuit court. Ms. Smith agreed, but she had been told that the judges in her county are not allowed to waive the fees of the appellate court. The Reporter inquired how the waiver for a *pro se* party would work in the Court of Special Appeals. The person would have to file a notice of appeal in the circuit court, but the Court of Special Appeals has to actually waive the fee. How does this work from a logistical point of view? The Chair replied that when he was Chief Judge of the Court of Special Appeals, the clerk would get the request for waiver and bring it to him, and he would either allow it or not. The Reporter reiterated that the request is filed at the lower court.

Mr. Zarbin commented that it appears that two motions would be filed, one in the circuit court, and one in the Court of Special Appeals. The Chair responded that if the circuit court cannot waive the fees, there is no point in filing a motion

there. Judge Weatherly noted that the circuit court judge holds on to the case file and does not send it to the appellate court until the fee is paid. Ms. Bernhardt remarked that her understanding was that the fee is collected for the Court of Special Appeals, and the notice of appeal is still filed in the circuit court, but if the litigant wants the fees waived, he or she has to go to the Court of Special Appeals for the waiver request. Ms. Smith said that the circuit court does not know that the litigant is requesting a waiver in the appellate court. The Chair noted that there are two fees, one is for the circuit court clerk which is $50, and the filing fee for the Court of Special Appeals is $60. The $50 fee would have to be waived in the circuit court. Ms. Smith observed that the higher court has the right to waive the fees in the circuit court, but the circuit court does not have the ability to waive the fees in the appellate court.

Ms. Ortiz explained that the current Rule does not address this problem. Mr. Hill said that the Public Justice Center was recommending that certain rules reference Rule 1-325. It will not change the procedure, but it will provide some uniformity. Ms. Ortiz remarked that the discussion today had highlighted that fee waivers are designed for the indigent and for people who are vulnerable. Anything that would streamline and improve the process as well as educate the public about the availability of fee waivers would be helpful.

Ms. Ogletree inquired whether the Rule could provide that

two copies are filed and that if a fee waiver is requested, one gets sent to each court. Judge Pierson observed that currently the Rule provides that the fee is not waived unless the court waives the fee. The Rule should define what "the court" is in relation to what fee is being waived.

The Chair noted that this would only go halfway into the procedure. If the circuit court were to waive the $50 fee, and the Court of Special Appeals does not waive the $60 fee, the person may not get to appeal the case. Judge Pierson reiterated that the Rule should state who is doing the waiver. The Chair pointed out that the problem is that the fee is for a different court.

Judge Weatherly remarked that the circuit court judges can be trusted to handle this. An indigent, not well-educated person is told that he or she has the right to take an appeal. The person goes to the clerk's office to try to note the appeal. The person's court costs have already been waived at the District Court or circuit court level. The clerk asks the person for $110. The person answers that the costs have been waived. The clerk explains that the person has to pay the money again.

Judge Pierson commented that there has not been a problem with this. He said that he was in charge of the civil docket in Baltimore City, so he had seen any problem that is in that court. He had not seen many problems with the fees in the appellate court. He felt that the clerk in Baltimore City must be getting these cases to the Court of Special Appeals.

The Chair stated that it would be easy to find out about this by asking Leslie Gradet, Esq., Clerk of the Court of Special Appeals, how this is handled at that court. When the Chair was Chief Judge of the Court of Special Appeals, Ms. Gradet would bring to him the requests for waiver by *pro se* litigants, but at that time, there were not too many of them. However, now *pro se* filings of one or both parties are 27% of the docket of the Court of Special Appeals. Ms. Gradet would bring to the Chair the application for waiver along with the affidavit. Either the fee was waived, or it was not. One of the conditions under Rule 1-325 is a certification that the appeal has merit.

Judge Pierson said that he had two issues regarding the proposed changes to Rule 1-325. The Chair noted that the easiest procedure is to provide that one court can waive both. On the other hand, who is going to give up that jurisdiction? Judge Weatherly remarked that the circuit court would be willing to give up jurisdiction. The Chair commented that it is a jurisdictional issue about one court being able to waive another court's fee. This goes both ways. Ideally, the fee should be waived in one place. Mr. Zarbin observed that the procedure used to be that there would be one check for $110, which would be split, one check going to the Court of Special Appeals. If one check still went to the Court of Special Appeals, it would be easy for that court to waive the fees.

The Chair noted that Rule 1-325 pertains to a waiver of prepayment of costs. If one court could waive only prepayment of

the entire costs, and the determination of who is to pay what could be with the appellate court, that court could dispose of the appeal. Currently, if the Court of Appeals gets a case that came from the Court of Special Appeals, and the Court of Appeals reverses the case, they direct that the winner in their court get the costs from both courts. The mandate in a Court of Appeals reversal provides that the case is remanded to the Court of Special Appeals with instructions that the costs in both courts are to be paid to whoever won in the Court of Appeals. There is some precedent for one court handling the issue, but it is on the theory that the winner is entitled to costs. It may be that if one court can waive the prepayment and let the mandate of the appellate court decide who ultimately pays, this could be the procedure.

Judge Weatherly commented that it is important to be careful with indigent people. Some people come up with the prepayment of costs, but if someone is truly indigent, the person could be prevented from noting an appeal. Judge Love inquired if appeal bonds in criminal cases are considered to be costs under Rule 1-325. If a judge convicts someone who is represented by the OPD, sentences the person, and sets an appeal bond, is that a cost that is waived? Judge Eaves answered negatively, explaining that the person either has to submit himself or herself to the detention center or wherever he or she needs to go, or the person has to request that the court authorize an appeal bond or grant the person release on his or her own recognizance. Ms. Ortiz

pointed out that Rule 1-325 pertains to representation by the OPD in civil matters. Judge Love said that the language of the Rule in subsection (b)(3) is: "...the plaintiff or petitioner is represented by counsel provided by the Office of the Public Defender." Ms. Ortiz reiterated that she had not seen the current version of Rule 1-325. She added that she would look at that language.

The Chair said that section (a) of Rule 8-607, Assessment of Costs, reads as follows: "Unless the Court orders otherwise, the prevailing party is entitled to costs." This is the same as in the circuit court. The Chair referred to Rule 8-608, Computation of Costs. He read from section (a): "The Clerk shall include in the costs the allowance determined pursuant to section (c) of this Rule for reproducing the briefs, the record extract and any necessary appendices to briefs and any other costs prescribed by these rules or other law. Unless the case is in the Court of Appeals and was previously heard and decided by the Court of Special Appeals, the Clerk shall also include the amount paid by or on behalf of the appellant for the original and the copies of the stenographic transcript of testimony furnished pursuant to section (a) of Rule 8-411. If the transcript was paid for by the Office of the Public Defender, the Clerk shall so state." These are existing appellate rules addressing what costs are assessed and who has to pay the costs. Rule 1-325 is only referring to prepayment of the $110 sum. The Court of Special Appeals could be asked to allocate the costs to the loser, which they do

sometimes.

The Chair asked the Committee for their opinion as to who can waive what. Ms. Ogletree commented that it would be helpful to find out how the issue of waiver gets to the Court of Special Appeals now before the Committee decided how the Rule should be written. Does it happen automatically as soon as the request for waiver is filed? Ms. Smith remarked that the circuit court clerk can waive the $50, but the other request would have to be sent to the higher court. The circuit court is supposed to have the money before the case is sent to the other court. The Chair asked if Ms. Smith notifies the Court of Special Appeals whether the fees were waived in the circuit court. Ms. Smith answered that she did not think that the Court of Special Appeals is notified. Judge Pierson commented that the Chair's point seemed to be that the suggestions of the Public Justice Center cannot be accepted, because they propose that by placing this in Rule 1-325 as amended, it would be an automatic waiver for cases in which the individual is represented by one of the organizations listed. This would then remove from the Court of Special Appeals and the Court of Appeals the power to deny a waiver.

The Chair clarified that it is a waiver of the prepayment of costs. Mr. Hill remarked that the way the appeal has been drafted now, certain organizations such as the OPD and the Legal Aid Bureau are already entitled to an automatic waiver. The change proposed by the Public Justice Center is to make it consistent as to which organizations qualify as well as, when,

and how the waiver request is judged. There is still a problem whether or not the suggestions of the Public Justice Center are adopted.

The Chair inquired if the Committee has a problem with the automatic waiver of prepayment of both the $50 and the $60 fees if the appellant is represented by one of the legal aid groups. The Committee agreed to the automatic waiver. The Chair said that it would have to be understood that this does not affect the authority of the appellate court in assessing its costs at the end of the case. If the indigent person in a domestic relations case manages to come into possession of a huge monetary award, the other party may need a waiver.

Mr. Carbine remarked that he was in favor of the proposed Rule change, except that when the mandate is issued by the appellate court, there is a schedule of costs. It says that costs have to be worked out between counsel, and the court should not be involved. If costs are awarded to the appellant with a waiver, what is done with the briefs or record extract? The Chair responded that this would not be affected by Rule 1-325, which is only referring to the filing fees. Mr. Carbine observed that the loser would pay costs to the winner even though the winner did not incur costs.

The Chair explained that the appellant takes the appeal, and the prepayment of costs is waived. If the appellant loses, the court would have to figure out a way to make the appellant pay. If the appellant wins, the appellee would have to pay the costs.

It is not a windfall, because the only difference is if the appellant wins, the appellee would be charged with the costs. If the appellant had paid the costs, the appellant would get a judgment against the appellee for those costs. If prepayment is waived, then the costs would have to be paid to the court. This is what happens now. In the circuit court, if the prepayment of the filing fee is waived, and the plaintiff wins, the plaintiff is entitled to costs. The defendant has to pay the costs. If the prepayment of the costs had been waived, then the defendant pays the costs to the clerk. If the costs were not waived, then the defendant would pay them to the plaintiff.

Ms. Smith observed that a problem still exists, because the person who filed the case is the one who owes the costs. At the end of the case, that is the person who is billed. However, the person's costs were waived, and the waiver was granted at the end of the case, so there would be no costs unless the court assesses the costs to the other party. This would not be automatic but would be by order. The clerks may not be getting this direction, so at the end, the clerk does not know who to bill. Sometimes it is not easy to tell which party prevailed. There may be four or five issues, and one party wins on some, but not all. The Chair responded that a motion can be filed, and this is provided for by rule. Ms. Smith pointed out that this does not happen in practice.

Judge Eaves commented that the judges can be asked. Ms. Smith said that the judges get tired of the clerks questioning

them. The Chair noted that the Rule requires a judgment to be in a separate writing. Howard County has a form with boxes to check off. One of the boxes is "costs to be paid by." The judge can leave the question blank, and the Rule applies that states that the prevailing party gets the costs, or the judge states who pays. This is the procedure in civil cases.

Ms. Ortiz told the Committee that there are many problems with the fee waiver process. She and her colleagues had heard that the second waiver of costs is not clearly articulated. The proposed change to Rule 1-325 is not about changing the procedure for fee waivers. It is simply a suggestion to move the procedure into a rule with some minor modifications. This would benefit low-income Marylanders. The procedure could be changed. People do not know to ask for the final waiver of costs. The Chair pointed out that if any changes are to be made to Rule 1-325, it should be amended so that the procedure is totally clear. Judge Pierson inquired if the Rule was going back to the Subcommittee, and the Chair replied affirmatively.

Judge Pierson remarked that costs assessed at the conclusion of an action had been discussed at today's meeting. The proposal that came from the Access to Justice Commission added their subsection (b)(3)(section (d) in the revised version), which began as follows: "If the court waives prepayment of a charge, costs, or fee in an action, the court shall award charges, costs, and fees in accordance with this Rule, at the conclusion of the action." Rule 2-603 already addresses the award of charges,

costs, and fees at the conclusion of the action. As Rule 2-603 had been proposed to be amended, it already had a provision for waiver of final costs at the end. Subsection (b)(3) may be completely unnecessary. What is added is that it incorporates the same factors, including MLSC client income guidelines, etc. Subsection (b)(3) should not provide that the court shall award charges in accordance with "this Rule," but in accordance with Rule 2-603. If any of it is necessary, it should go into Rule 2-603. Ms. Ortiz explained that she and her colleagues had wanted to add language to Rule 2-603 providing that judges should consider the MLSC guidelines. The Chair pointed out the same problem with Rule 8-608 at the appellate level and in the District Court. It would be helpful to look at how to structure costs in the Rules, including the prepayment of costs and the final costs.

Judge Pierson noted that while it was not intentional, the reference to "the certificate of meritoriousness" had been removed from Rule 1-325. This was not proper, because the statute, Code, Courts Article §7-201, requires it. The proposed changes to Rule 1-325 had been taken from the schedule of costs, but the certificate of meritoriousness is not in the schedule. Despite the lack of reference to the statute in the schedule of costs, the Baltimore City Circuit Court has been requiring the certificate.

The Chair commented that this issue had come up in the area of vexatious litigants. This is the basis on which courts have

been denying the waiver of costs on the theory that the litigation is frivolous. It is not because the person is not indigent, but because there is no merit to the litigation. The Reporter asked Judge Pierson whether, which presumably has its own procedures for screening out non-meritorious litigation, if someone is represented by the Legal Aid Bureau, Judge Pierson would require that certificate anyway. Judge Pierson answered affirmatively. Ms. Ogletree remarked that the certificate would be needed with a *pro se* party, but it makes sense to have it for both cases.

The Chair stated that Rules 1-325, 2-603, and 3-603 would go back to the Subcommittee for further work.

Agenda Item 6. Consideration of the Report of the Property Subcommittee concerning a proposal to amend Rule 14-207 by adding a "personal knowledge" requirement to certain affidavits

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

MEMORANDUM

TO	:	Members of the Rules Committee
FROM	:	Members of the Property Subcommittee
DATE	:	March 12, 2013
SUBJECT	:	Rule 14-207 proposal: add "personal knowledge" to affidavits

On March 4, 2013 the Property Subcommittee held a telephone conference call to address a proposal by DLLR to amend Rule 14-207 (b). Rule 14-207 addresses pleadings, papers, and affidavits filed during a foreclosure. DLLR's proposed version of Rule 14-207 is attached.

Proposed Amendment to Rule 14-207: require affidavits to be based on "personal knowledge."

Subcommittee Recommends: no change to Rule 14-207 (at this time).

Basis for Recommendation

The Subcommittee does not recommend amending Rule 14-207 for the following three reasons.

First, the legislature has been active in regulating the foreclosure process. The Property Subcommittee noted that the legislature has not added a "personal knowledge" requirement to affidavits. The consensus of the Subcommittee is that, for the time being, this is a topic that should be addressed by the legislature.

Second, many changes have been made to the foreclosure process recently, some of which have not been fully implemented. The Property Subcommittee recommends waiting to see how these recent changes affect the foreclosure process. These changes may correct the root of the problem and make the proposed amendment to Rule 14-207 unnecessary. In addition, so many changes in such a short period of time are difficult to implement.

Third, "personal knowledge" is too broad and is not applicable to the affidavits in Rule 14-207. "Personal knowledge" does not, and cannot, apply to an affidavit in the foreclosure process because that affidavit is, and must be, based on a review of business documents. In sum, since the affidavit in Rule 14-207 is based on a review

of business records it is *not possible* for the affiant to state, under penalty of perjury, that the information in the affidavit is based on the affiant's "personal knowledge."

Conclusion

Therefore, the Subcommittee does not recommend amending Rule 14-207 by adding a "personal knowledge" requirement to affidavits filed during the foreclosure process.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

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

(a) Pleadings Allowed

(1) Power of Sale

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

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

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

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

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

(b) Exhibits

Except as provided in section (c) of this Rule, a complaint or order to docket shall include or be accompanied by:

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

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

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

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

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

(5) with respect to any defendant who is an individual, an affidavit in compliance with §521 of the Servicemembers Civil Relief

Act, 50 U.S.C. app. §501 et seq.;

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

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

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

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

copy of the deed of appointment.

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

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

(10) if the property is residential property and the secured party and borrower did not elect to participate in prefile mediation, a statement that the parties did not elect to participate in prefile mediation; and

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

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

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

(c) When a Certificate of Vacancy or a Certificate of Property Unfit for Human Habitation Has Been Filed

If the property is residential property and the order to docket or complaint to foreclose is based on a certificate of vacancy or a certificate of property unfit for human habitation, the order to docket or complaint to foreclose shall be accompanied by a copy of the certificate and by the exhibits required by subsections (b)(1) through (b)(5) of this Rule.

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

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

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

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

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

Ms. Ogletree said that the Property Subcommittee had considered the request of the Maryland Department of Labor, Licensing, and Regulation to amend Rule 14-207 to require affidavits to be based on "personal knowledge." The Subcommittee had decided not to recommend the requested change at this time. "Personal knowledge" is too broad a standard and cannot apply to an affidavit in the foreclosure process because the affidavits are based on a review of business records. Affiants cannot state, under penalty of perjury, that the information is based on the affiant's personal knowledge. If the legislature decides that this is necessary, then the Rule would have to be considered again. The Chair asked if Rule 14-207 now provides that the

affidavit is made on information and belief of the affiant. Ms. Ogletree replied negatively. What had been happening was that the affidavits stated the amount owed, but there was no indication that the affiant had reviewed the records of the institution or anything similar.

The Chair inquired if the Subcommittee would have an objection to adding the language "an affidavit based upon a review of the relevant record...". Ms. Ogletree responded that this issue had been discussed at a conference call. Jeffrey Fisher, Esq., a member of the foreclosure bar, had participated in the call, and he had expressed the view that the addition of the language suggested by the Chair would create a trap. He had submitted information concerning what people were doing inhouse to make sure that they were not notarizing any affidavits that they had not reviewed and were only notarizing the signatures of those people who were present. They were not signing their names to anything else. They have adapted to the practice and did not want it to be made a requirement.

The Chair commented that the problem had been the "robo" signatures. Ms. Ogletree stated that the term "personal knowledge" is wrong and it would not be appropriate to add it to the Rules. The affiants do not have personal knowledge. The best they can do is to look at the records. Judge Kaplan pointed out that the affiants were not even looking at the records. Ms. Ogletree responded that in the past they had not been looking at the records, but they are now, because the affidavits are

indicating this. It is not necessary to require something that is already being done.

The Chair said that the recommendation of the Subcommittee was to make no change to Rule 14-207, and he asked if anyone had a motion to do otherwise. None was forthcoming.

Agenda Item 4. Consideration of proposed amendments to Rule 2.2 (Impartiality and Fairness) of Rules 16-813 (Maryland Code of Judicial Conduct) and 16-814 (Maryland Code of Conduct for Judicial Appointees)

Mr. Brault presented Rule 2.2 of the Maryland Code of Judicial Conduct, Impartiality and Fairness, and Rule 2.2 of the Maryland Code of Conduct for Judicial Appointees, Impartiality and Fairness, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 2.2 of Rule 16-813 (Maryland Code of Judicial Conduct) by deleting Comment [4] and by adding language to the text of the Rule permitting reasonable lawful efforts to facilitate the ability of self-represented and other litigants to be heard, as follows:

Rule 16-813. MARYLAND CODE OF JUDICIAL CONDUCT

. . .

SECTION 2

RULES GOVERNING THE PERFORMANCE OF JUDICIAL DUTIES

. . .

Rule 2.2. IMPARTIALITY AND FAIRNESS

(a) A judge shall uphold and apply the law and shall perform all duties of judicial office impartially and fairly.

(b) A judge may make reasonable efforts, consistent with the Maryland Rules and other law, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.

COMMENT

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

~~[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.~~

Cross reference: *See* Rule 2.6 Comment [2].

Source: This Rule is derived from Rule 2.2 of the 2007 ABA Code. The Comments are derived from the ABA Comments to that Rule.

Rule 2.2 of Rule 16-813 was accompanied by the following Reporter's note.

The Maryland Access to Justice Commission has requested the addition of a new paragraph to the text of Rule 2.2 to expressly reference the reasonable efforts that judges and judicial appointees may make to enhance access to justice for self-represented litigants. The Commission's proposal is based upon a Resolution passed by the Conference of Chief Justices and the Conference of State Court Administrators.

Rule 2.2 of the Maryland Codes of Judicial Conduct [Rule 16-813] and Conduct for Judicial Appointees [Rule 16-814] is proposed to be amended by deleting Committee [4] and by adding to the text of the Rule language expressly permitting a judge or judicial appointee to make reasonable lawful efforts to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 2.2 of Rule 16-814 (Maryland Code of Conduct for Judicial Appointees) by deleting Comment [4] and by adding language to the text of the Rule permitting reasonable lawful efforts to facilitate the ability of self-represented and other litigants to be heard, as follows:

Rule 16-814. MARYLAND CODE OF CONDUCT FOR JUDICIAL APPOINTEES

. . .

SECTION 2

RULES GOVERNING THE PERFORMANCE OF A

JUDICIAL APPOINTEE'S DUTIES

. . .

Rule 2.2. IMPARTIALITY AND FAIRNESS

(a) A judicial appointee shall uphold and apply the law and shall perform all duties of the position impartially and fairly.

(b) A judicial appointee may make reasonable efforts, consistent with the Maryland Rules and other law, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.

COMMENT

[1] To ensure impartiality and fairness to all parties, a judicial appointee must be objective and open-minded.

[2] Although each judicial appointee comes to the position with a unique background and personal philosophy, a judicial appointee must interpret and apply the law without regard to whether the judicial appointee approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judicial appointee sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

~~[4] It is not a violation of this Rule for a judicial appointee to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.~~

Cross reference: See Rule 2.6 Comment [2].

Source: This Rule is derived from Rule 2.2 of MCJC.

Rule 2.2 of Rule 16-814 was accompanied by the following Reporter's note.

> See the Reporter's note to the proposed amendment to Rule 2.2 of the Maryland Code of Judicial Conduct [Rule 16-813].

Mr. Brault commented that he was amused that the Rules require judges to be fair. However, the language that is proposed for addition was that the fairness apply to self-represented litigants. The idea was to overcome the notion that the trial judge has to act as the attorney for self-represented litigants. It may afford more opportunities for a trial judge to help the self-represented litigant. Judge Pierson remarked that it seemed to him that the proposed added language meant that section (a) in Rule 2.2 of Rule 16-813 requires the judge to be fair, and section (b) requires the judge to take a certain action, which carves out an area where the judge does not have to be fair. Judge Pierson had no problem with the underlying thought that it is appropriate for a judge to take certain actions to ensure litigants, including self-represented litigants, the ability to be heard. However, the language in section (b) as opposed to the language in section (a) seems to carve out an area where the judge is not fair.

The Chair commented that this was not what was being proposed. Mr. Brault noted that section (b) facilitates the ability of a self-represented litigant. This is the proposal of the Access to Justice Commission. Judge Pierson remarked that it

was a matter of linguistics. The Chair said that the recommendation the Commission initially had proposed in its letter was based on the assumption that section (b) already was in the Code of Judicial Conduct and the Code of Conduct for Judicial Appointees, because all that the Commission wanted to do was to add the language "including self-represented litigants." However, section (b) had never been adopted as part of the Codes, so to do what the Commission had requested, all of section (b) had to be added. Section (b), except for the requested change, is in the ABA Model Code. It was not adopted when the Court of Appeals adopted the Codes.

The Reporter noted that the Court converted the thought behind section (b) into Comment 4 of Rule 2.2. Judge Pierson expressed the view that linguistically the language of the Comment makes sense. It indicates that ensuring that self-represented litigants have the opportunity to have their matters fairly heard does not violate section (a).

Mr. Patterson remarked that Rule 2.2 of Rule 16-813 now does not have a section (a) and a section (b). It just has the one statement. Could the language "to all litigants" be added to the end of this statement in Rule 2.2? This would cover every litigant. This would avoid the dichotomy pointed out by Judge Pierson between two sections of the Rule. It is not necessary to get into the issue of whether litigants are represented or unrepresented.

Ms. Ortiz explained that the Commission was following the

lead of the Conference of Circuit Court Judges and the Conference of State Court Administrators, which adopted a resolution to modify the ABA Model Rule to address the needs of self-represented litigants. There is a stigma attached to being a self-represented litigant. For many judges, articulating the words "self-represented litigant" shows the judges that they can make reasonable efforts to create the opportunity for those voices to be heard. It is not really a substantive change and is not major. Mr. Patterson suggested that the language that could be added was "whether represented or self-represented." Ms. Ortiz pointed out that the phrase "make reasonable efforts" is similar to the language in *Turner v. Rogers*, 131 S. Ct. 2507 (2011) in which the U.S. Supreme Court indicated that the court may have some obligation to create procedural safeguards for self-represented litigants.

Judge Weatherly observed that one of the problems was that it would make no sense to take out the reference to "self-represented litigants" and simply refer to all litigants. Many judges still take the position that they should do nothing to help self-represented litigants. Other judges do help. Judge Weatherly said that 87% of the litigants she sees daily are self-represented. She asks questions of the self-represented litigants. Often there are cases with one attorney and one self-represented litigant. There is a pushback from the bar for the court to provide any assistance whatsoever including telling a litigant that he or she has a right to cross-examine a witness or

a right to make an opening or closing statement.

Judge Price remarked that using the word "may" in proposed section (b) would not change anything. Judge Pierson noted that the Rule provides that a judge has the duty to uphold and apply the law and perform all duties of the judicial office impartially and fairly. Then the Rule provides in the Comment that it is not a violation of that duty to make reasonable efforts to ensure the right of self-represented litigants to be heard. This is all consistent. The problem is when a separate proposition is set up in opposition to the initial statement, which carves out an exception to the duty to be impartial. It is the meaning Judge Pierson objected to, not the message.

The Chair said that he and Ms. Ortiz had discussed this a number of times. This issue came up when the 2007 Model Code of the ABA was first sent to the states for consideration. It had been adopted by the House of Delegates of the ABA, and the Council of Chief Justices was implored by the ABA to take it to their states. Chief Judge Bell had created a committee to look at the Code and make recommendations. That committee had discussed this issue of the proposed added section of Rule 2.2 at considerable length. At the time, there were proposals nationwide that the ethical rules for judges should contain a "laundry list" of what judges are supposed to do for self-represented litigants. Six or seven items were on the list. After much debate, the committee rejected the proposal, because the way the proposed language was worded could throw the judge

into the role of advocate for the self-represented individual if it was construed that way. Instead, the committee came up with adding a new Comment 4 to Rule 2.2. This was what the committee thought was the appropriate approach. It made a cross reference in Rule 2.2 to Comment 2 in Rule 2.6, Ensuring the Right to be Heard. The committee rejected section (b) of the ABA Rule as an unnecessary change.

The Chair pointed out that this issue had then been taken before the Court of Appeals, where there was some discussion about it. The Court agreed with the committee. What triggered this was a resolution of the National Conference of Court Administrators, who probably did not know what Maryland had done. They were suggesting adding the language "including self-represented litigants" to the text of Rule 2.2 (b), not realizing that Maryland had no section (b) at all. This was what was before the Rules Committee.

Judge Pierson remarked that he had language to suggest to solve the problem. Section (b) could read: "A judge should make reasonable efforts...". This way it is not an exception to section (a), it is a different obligation. The Chair asked how the word "should" is different than the word "may." If section (b) is in opposition to section (a), using the word "should" will make it worse. Judge Pierson commented that it would be a freestanding additional obligation. Judge Mosley inquired what would happen then if the judge did not make a reasonable effort to facilitate the ability of the litigant. The litigant would

complain that the judge did not help him or her introduce evidence or did not grant a requested postponement. Ms. Ogletree added that the complaint could be that the litigant was not told that he or she had to subpoena a witness. The Chair commented that these are the kinds of issues that the committee had been concerned about.

Mr. Carbine asked what was wrong with the way Rule 2.2 reads now including Comment 4. The Chair replied that the view of the Access to Justice Commission was that the content of Comment 4 should be in the text of the Rule, not just in a comment. It is purely cosmetic and adds nothing. Mr. Carbine noted that if Rule 2.2 applies to all litigants, whether self-represented or not, it could be argued that if the court limits the argument of a litigant, the Rule would be violated. Mr. Brault expressed the opinion that the proposed addition should be left as "[a] judge may...". Mr. Carbine said that he could see attorneys using this language to appeal the denial of a motion. The Chair observed that he was not sure attorneys were going to get the benefit of the change to the Rule; the question is making sure that they do not get hurt by it.

The Chair said that the proposal of the Subcommittee was before the Committee. It would take a motion to alter it or delete it. Mr. Carbine moved to reinstate Comment 4 and not include section (b). The motion was seconded, and it failed on a vote of five in favor.

By consensus, the Committee approved Rule 2.2 in both Rule

16-813 and 16-814 as presented.

Agenda Item 5. Consideration of proposed amendments to Rules 2-202 (Capacity) and 3-202 (Capacity)

Mr. Brault presented Rules 2-202 and 3-202, Capacity, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 200 - PARTIES

AMEND Rule 2-202 to revise and clarify section (c), as follows:

Rule 2-202. CAPACITY

(a) Generally

Applicable substantive law governs the capacity to sue or be sued of an individual, a corporation, a person acting in a representative capacity, an association, or any other entity.

(b) Suits by Individuals under Disability

An individual under disability to sue may sue by a guardian or other like fiduciary or, if none, by next friend, subject to any order of court for the protection of the individual under disability. When a minor is in the sole custody of one of its parents, that parent has the exclusive right to sue on behalf of the minor for a period of one year following the accrual of the cause of action, and if the custodial parent fails to institute suit within the one year period, any person interested in the minor shall have the right to institute suit on behalf of the minor as next friend upon first mailing

notice to the last known address of the custodial parent.

(c) Settlement of Suits on Behalf of Minors

~~A next friend who files an action for the benefit of a minor may settle the claim in accordance with this subsection. If the next friend is not a parent or person in loco parentis of the child, the settlement is not effective unless approved by each living parent or person in loco parentis. If (1) both parents are dead and there is no person in loco parentis of the child or (2) one of the parents does not approve the settlement, the settlement is not effective unless approved by the court in which the suit is pending. Approval may be granted only on verified application by the next friend, stating the facts of the case and why the settlement is in the best interest of the child.~~

(1) Generally

Subject to subsection (c)(2) of this Rule, a next friend who files an action for the benefit of a minor may settle the claim on behalf of the minor.

(2) Limitations

(A) If the next friend is the only living parent of the minor, the settlement need not be approved by a court.

(B) If the next friend is not the only living parent of the minor, the settlement must be approved (i) by each living parent of the minor, or (ii) after a reasonable attempt at notice to each living parent and an opportunity for a hearing, by a court.

(C) If there are no living parents of the minor, the settlement must be approved by a court.

(D) A motion for court approval shall be filed in the court where the action is pending.

Cross reference: For settlement of suits on behalf of minors, see Code, Courts Article, §6-405. For settlement of a claim not in suit asserted by a parent or person in loco parentis under a liability insurance policy, see Code, Insurance Article, §19-113.

(d) Suits Against Individuals Under Disability

In a suit against an individual under disability, the guardian or other like fiduciary, if any, shall defend the action. The court shall order any guardian or other fiduciary in its jurisdiction who fails to comply with this section to defend the individual as required. If there is no such guardian or other fiduciary, the court shall appoint an attorney to represent and defend the individual.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rule 205 c and d.
Section (c) is new.
Section (d) is derived from former Rule 205 e 1 and 2.

Rule 2-202 was accompanied by the following Reporter's note.

A practicing attorney suggested a proposed amendment to Rule 2-202 (c) that was considered by the Process, Parties & Pleading Subcommittee. Initially, the Subcommittee believed that no amendment was necessary; however, further discussion of the Rule revealed substantial disparities in the interpretation of it.

Rules 2-202 (c) and 3-202 (c) are proposed to be revised and clarified to require court approval of the settlement of a suit on behalf of a minor whenever (1) the minor has no living parent, or (2) the minor has at least one living parent who has not affirmatively approved the settlement.

AMEND Rule 3-202 to revised and clarify section (c), as follows:

Rule 3-202. CAPACITY

(a) Generally

Applicable substantive law governs the capacity to sue or be sued of an individual, a corporation, a person acting in a representative capacity, an association, or any other entity.

(b) Suits by Individuals under Disability

An individual under disability to sue may sue by a guardian or other like fiduciary or, if none, by next friend, subject to any order of court for the protection of the individual under disability. When a minor is in the sole custody of one of its parents, that parent has the exclusive right to sue on behalf of the minor for a period of one year following the accrual of the cause of action, and if the custodial parent fails to institute suit within the one year period, any person interested in the minor shall have the right to institute suit on behalf of the minor as next friend upon first mailing notice to the last known address of the custodial parent.

(c) Settlement of Suits on Behalf of Minors

~~A next friend who files an action for the benefit of a minor may settle the claim in accordance with this subsection. If the next friend is not a parent or person in loco parentis of the child, the settlement is not effective unless approved by each living parent or person in loco parentis. If (1)~~

~~both parents are dead and there is no person in loco parentis of the child or (2) one of the parents does not approve the settlement, the settlement is not effective unless approved by the court in which the suit is pending. Approval may be granted only on verified application by the next friend, stating the facts of the case and why the settlement is in the best interest of the child.~~

(1) Generally

Subject to subsection (c)(2) of this Rule, a next friend who files an action for the benefit of a minor may settle the claim on behalf of the minor.

(2) Limitations

(A) If the next friend is the only living parent of the minor, the settlement need not be approved by a court.

(B) If the next friend is not the only living parent of the minor, the settlement must be approved (i) by each living parent of the minor, or (ii) after a reasonable attempt at notice to each living parent and an opportunity for a hearing, by a court.

(C) If there are no living parents of the minor, the settlement must be approved by a court.

(D) A motion for court approval shall be filed in the court where the action is pending.

Cross reference: For settlement of suits on behalf of minors, see Code, Courts Article, §6-405. For settlement of a claim not in suit asserted by a parent or person in loco parentis under a liability insurance policy, see Code, Insurance Article, §19-113.

(d) Suits Against Individuals under Disability

In a suit against an individual under disability, the guardian or other like

fiduciary, if any, shall defend the action. The court shall order any guardian or other fiduciary in its jurisdiction who fails to comply with this section to defend the individual as required. If there is no such guardian or other fiduciary, the court shall appoint an attorney to represent and defend the individual.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former M.D.R. 205 c and d.
Section (c) is new.
Section (d) is derived from former M.D.R. 205 e.

Rule 3-202 was accompanied by the following Reporter's note.

See the Reporter's note to the proposed amendment to Rule 2-202.

Mr. Brault explained that the issue of next friends approving settlements on behalf of minors came up in lead paint cases. An attorney who represents children poisoned by lead-based paint wrote a letter stating that Code, Courts Article, §6-504 provides that a next friend who is a parent or is a person *in loco parentis* can settle a case. Rules 2-202 and 3-202 provide that if there is only one parent who is the next friend, the settlement has to be approved by both parents or approved by the court. The attorney requested that Rules 2-202 and 3-202 be amended so that the settlement does not have to be approved by both parents.

The Process, Parties, and Pleading Subcommittee recommended against this change, because it could involve getting in the middle of a battle between parents arguing post-settlement about

whether the settlement was proper. Requiring court approval when only one parent agrees avoids any other litigation between the parents. It resolves the matter completely. To change the Rules as requested would leave open the potential of a post-litigation dispute by an uninvolved parent.

Judge Pierson suggested adding to the end of subsection (c)(1) of Rules 2-202 and 3-202 after the word "minor" the following language: "without the necessity of court approval." The reason was that the judges get many motions for court approval in cases where there does not seem to be any need for it. The Reporter asked if there were any statutes, regulations, standard provisions in trusts or insurance policies, or anything else that might require court approval regardless of this Rule. Judge Pierson responded that he could not certify that there are not any such statutes, but he expressed the opinion that probably there are not. Court approval is needed sometimes for a special needs trust. The Reporter noted that subsection (c)(2)(A) of Rules 2-202 and 3-202 provides that if the next friend is the only living parent of the minor, court approval is not needed. Mr. Brault said that the Reporter was referring to court approval of the disposition of money under a court-supervised guardianship. After these cases are settled, in the course of the settlement, the money is going to be paid into a trust fund, which is a special needs trust. They are very complicated and have to be approved by the court.

The Chair pointed out that this is part of the settlement,

and unless both parents agree, court approval is needed. Rules 2-202 and 3-202 provide this. Either all of the living parents approve the settlement, or court approval is necessary. Mr. Brault noted that a trust fund cannot be taken out of court administration. A trust fund or guardianship account that is administered in the future will have to be done under the court's supervision. The Chair observed that a guardianship will have already been settled. Judge Pierson remarked that he often sees cases where there is a motion to approve a settlement. He tells the parties that the Rule provides that the parent can approve a settlement, and asks why the person is filing the motion. The answer is that the insurance company requested court approval. The Rule already provides that the parent has the authority to settle.

The Chair commented that the original letter from the attorney on this had indicated that the attorney may be representing one parent, usually the custodial parent who is often the mother, and the case is settled. The attorney does not want to have to get the other parent's approval of the settlement. The custodial parent is the next friend, and they would like this to finally resolve the matter. The Subcommittee's view was that either all parents approve the settlement, or the court has to approve it.

Mr. Brault noted that this topic was discussed in the wake of the problems with wrongful death where a relative had disappeared, and litigation had gone on concerning one

beneficiary under the Wrongful Death Act (Code, Courts Article, §3-904) bringing the wrongful death action and leaving out three or four others. It created a difficult situation. Rule 15-1001, Wrongful Death, was rewritten to eliminate this problem. Language was added to Rule 15-1001 providing that once a defendant has been named, if the person cannot be found or served and has truly disappeared, the plaintiff can go to the court which would certify that the missing person's rights have been waived. It is a similar problem with a disappearing parent, which is a frequent problem in lead-paint poisoning litigation.

The Chair said that the proposed change was intended to clarify what happens when a parent cannot be located. It is a policy choice. Either the approval of both living parents for the settlement is obtained, or the court has to approve the settlement. If both parents approve, there is no problem. The insurance companies would like for the court to approve all settlements, because the judgment is golden and cannot be overturned.

By consensus, the Committee approved the changes to Rules 2-202 and 3-202.

Continuation of Agenda Item 1

Mr. Carbine told the Committee that he had researched the problem raised by Ms. Smith as to using the term "deputy clerk" in Title 20. He said that the definition of the term "deputy clerk" is well-defined. He pointed out two policy decisions that

accompany expanding the definition of this term. Clerks have access to all information in the system to be able to perform their duties. The Reporter cautioned that the criminal clerks only have access to the criminal cases. Mr. Carbine agreed, noting that the access is to the extent necessary for the clerk to do his or her job. The second policy question is the decision made this morning that the Rules restricting the inclusion of confidential information do not apply to clerks. This is in Rule 20-201 (f), which has been exempted from judges, judicial appointees, and clerks.

Ms. Smith referred to section c. of Rule 16-301, Personnel in Clerks' Offices, which reads as follows: "Persons serving as deputy clerks on July 1, 1991 who qualify for pension rights under Code, State Personnel and Pensions Article, §23-404...". Ms. Smith noted that these persons are the deputy clerks being discussed today. Using the term "deputy clerk" may be limiting the group of people with access to court information.

Mr. Carbine expressed the view that there is some value in expanding the definition of the term "clerk" as long as its meaning is understood it is clear that the clerk is not subject to the limitations on restricted information in Rule 20-201 (f).

The Chair pointed out that Rule 16-301 grandfathered in people who were working at the time the Rule went into effect. This Rule is not meant to define the meaning of the term "deputy clerk." Ms. Smith reiterated that the term "deputy clerk" is not used any more. There are no advertisements for the job of deputy

clerk. Ms. Ogletree remarked that in Caroline County, there is a "chief deputy clerk" Ms. Smith noted that the term "chief deputy clerk" still exists. The Reporter suggested that the language of the Rules could be "deputy clerks and other authorized assistant clerks in those offices." The Chair said that the adjective "deputy" is not needed. The wording could be "authorized assistant clerks." Mr. Brault pointed out that the definition of the word "clerk" in section (f) of Rule 1-202, Definitions, includes the language "deputy clerk of a court of this State...".

The Chair responded that this was because this definition had been adopted in 1984 before the 1991 date in Rule 16-301. He added that the Rules in Title 20 were being discussed at this point. He reiterated that the language should be "authorized assistant clerks." By consensus, the Committee approved this change to Rule 20-101 (f).

The Chair said that it was a matter of drafting to implement what the Committee had decided as a policy matter based on the comment made by the Access to Justice Commission that the screens on the computers have to be readable. Mr. Carbine expressed the opinion that this was a terrible idea. The Chair observed that setting aside the drafting issue for the moment, the Access to Justice Commission, in an official comment to the Title 20 Rules sent to the Court of Appeals, made the point that the screens should be readable. Anyone who knows about the Americans with Disabilities Act, 42 U.S.C. §12101 et seq. (ADA) would understand what this means, which is that for people who are sight-impaired

what is on the electronic screens when they access court records has to be in either large print or in Braille, or the machine has to be able to speak to those people.

The Chair said that the Access to Justice Commission had raised this issue for the first time. The AOC was asked about this and their initial response was that they could not do it. However, if the ADA requires readable screens, they will have to be installed. Ms. Nairn and the Legal Affairs Division of the AOC had scheduled a meeting to figure out how to address this issue. Initally, the thought was that this is a rules issue, but it may not be. The contractor is going have to make this modification to the system. The MDEC personnel can do their part to address this, but the message has to be sent so that the visually-impaired people can read it.

Ms. Nairn noted that the MDEC system is readable. The documents attached will be readable unless they are saved in a certain way. The Chair added that the problem is how will the person filing the document know whether he or she has to take some special steps when filing to make sure that the person receiving it can read it. Ms. Nairn added that the transmittal would have to be saved as a PDF file, and it would have to be scanned OCR (Optical Character Recognition).

The Chair commented that this appeared to be a rules issue, because the Rule, which pertains to how the documents are filed, has to provide these specifications for visually-impaired persons. The Reporter pointed out that if someone is preparing a

pleading, he or she has some control over it, but if a previously-generated document is being attached to that pleading, it would have to be scanned into a readable format.

Judge Price observed that there is no requirement to file paper pleadings in Braille. Ms. Nairn responded that if a visually-impaired person comes into the courthouse, the clerk can read the document to that person. Ms. Ogletree remarked that this could be done under the electronic system. Mr. Carbine said that his understanding was that not one person who has considered this knows whether this issue raised by the Access to Justice Commission is necessary. It is not required in the federal court system. The current Title 20 Rules provide how an affidavit is to be done. The document has to be signed with an original signature, then the document has to be scanned. It becomes a facsimile signature, and the scanned document is filed. The rule in Texas provides that documents are prohibited from being scanned. If the only way to file it is by scanning, the document would have to be scanned so that it can be OCR, which produces searchable, editable texts.

The Chair said that the issue is not whether the Texas rule should be adopted. He asked Ms. Wherthey if the ADA requires searchable screens. She replied that she had received a memorandum late yesterday afternoon from David Durfee, Esq., Executive Director of Legal Affairs for the AOC, stating that there would be a meeting soon regarding this issue.

The Chair commented that the issue was whether the ADA

actually requires this. If it does not, this does not have to be done, but the question becomes whether it is good policy to do it. If the ADA requires it, it will have to be done. Mr. Carbine noted that it would not have to be done the way that has been suggested. The Chair added that the problem is the timing. He said that he was sending to the Court of Appeals that day the written responses to the comments received about MDEC. The Court did not want the hearing to be held on April 18 to be lengthy. The issue about readable screens must go before the Court soon.

Mr. Carbine observed that this issue causes a long list of problems. What is driving this issue is whether the commercial market has software capabilities, so that visually impaired people can read what has been electronically filed. At this point, it is not known what the commercial market has. The latest Adobe product would have to be purchased. In order to be filed, the document must be filed by a converted word processing document, not a scanned document. Mr. Carbine noted that his latest Adobe printer once a week crashes and refuses to convert over word processing documents, so he has to print out the document and then scan it. It is now a PDF file. There is no problem with him filing a scanned PDF document with the U.S. District Court of Maryland. It may be that the federal system is exempt from the ADA.

The Chair said that there is a solution to this, and that is to defer making a decision. The Court of Appeals is going to hold a hearing on the MDEC Rules on April 18, 2013. MDEC is not

going to start in Anne Arundel County until some time between January and April of 2014. If there is time to defer this ADA issue now, the Court can be alerted to the problem, and the discussion on it can wait until everyone has had a chance to weigh in on this. Then prior to the time Anne Arundel County starts up MDEC, an ADA requirement can be worked out. The only problem is that the solution has to be in time for the MDEC system to do this. The MDEC staff knows about the problem. This is one way to address it. The Reporter commented that except for one or two rules referring to the Maryland State Bar Association, she was not aware of any other rules that expressly recommend a private entity, and Adobe is a private corporation. It is not a good idea to refer to it in the Rules. Ms. Ogletree pointed out that very soon, a new, more modern product could come on the market.

Mr. Carbine said that he has a long list of problems with this. The Chair asked Mr. Carbine for the list in writing. The Committee will not be able to deal with the text today. He suggested that this issue be held, and then it could be discussed to try to come up with a solution. Tyler Technologies cannot choose to ignore it, unless it is clear that compliance with the ADA is not required. Judge Love remarked that Tyler has had systems in place nationwide, and he could not believe that this is the first time the ADA issue had arisen. Ms. Nairn pointed out that Minnesota had never gone completely paperless.

Mr. Carbine commented that the hope is that the meeting on

Monday with the Legal Affairs Office of the Court of Appeals concludes that the Rules do not have to be modified to comply with the ADA. The Chair said that that would only raise the question of whether the Rules should deal with the problem as a matter of policy. Ms. Ogletree observed that if currently what happens is that the visually impaired person goes to the clerk's office, and someone there reads the document that person, this procedure can be carried forward into the MDEC system. The Chair noted that if it is possible to make the screens readable, then the clerk does not have to be burdened. Ms. Ogletree observed that it would be very difficult for a solo practitioner who would need the software to take care of this issue, and the software, which is very expensive, may only be used once or not at all.

The Chair said that he had talked with Ms. Nairn earlier, and since it may not be known if someone is visually impaired, the system may need to be changed for everyone. Mr. Carbine inquired how the clerks will know whether a compliant document has been filed. The Chair added that this would not be in the clerk's queue. Mr. Carbine remarked that the entire Title 20 has been built around the premise of filing a PDF submission with PDF attachments that cannot be altered. Mr. Carbine said that making the suggested change would require a complete revision of that premise on which Title 20 is based. The Chair responded that nobody was suggesting that the Texas rule be adopted. It is an example of what one state did. Mr. Carbine noted that it would be a good idea to identify the problem before any changes are

suggested. Ms. Ogletree added that there may not be a problem.

By consensus, the Committee agreed to defer further discussion of the ADA issue until more information was available.

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