COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100A of the People's Resource Center, 100 Community Place, Crownsville, Maryland on November 14, 2003.

Members present:

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

F. Vernon Boozer, Esq.
Lowell R. Bowen, Esq.
Albert D. Brault, Esq.
Robert L. Dean, Esq.
Hon. James W. Dryden
Hon. Ellen M. Heller
Hon. G. R. Hovey Johnson
Hon. Joseph H. H. Kaplan
Robert D. Klein, Esq.
Timothy F. Maloney, Esq.
Hon. John F. McAuliffe
Hon. John L. Norton, III
Anne C. Ogletree, Esq.
Debbie L. Potter, Esq.
Larry W. Shipley, Clerk
Twilah S. Shipley, Esq.
Melvin J. Sykes, Esq.
Robert W. Titus, Esq.
Del. Joseph F. Vallario, Jr.
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Una M. Perez, Esq., Special Reporter
Colette Gresham, Esq., Court Information Office
Glenn Grossman, Esq., Deputy Bar Counsel, Attorney Grievance Commission
David D. Downes, Esq., Chairman, Attorney Grievance Commission
Melvin Hirshman, Esq., Bar Counsel, Attorney Grievance Commission
Leslie Gradet, Esq., Clerk, Court of Special Appeals
Professor John Lynch, University of Baltimore School of Law

The Chair convened the meeting. He asked if there were any additions or corrections to the minutes of the meetings of April 11, 2003 and May 16, 2003 meetings. There being none, Mr. Dean moved that the minutes be accepted as presented, the motion was

seconded, and it passed unanimously. Judge Heller congratulated the Chair and Mr. Johnson for receiving Leadership in Law 2003 awards from The Daily Record. The Chair said that Judge Heller's husband, Shale Stiller, had also received the same award.

Agenda Item 1. Consideration of proposed amendments to Rule 16-723 (Confidentiality)

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

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-723 to reorganize section (b), to add language to subsection (b)(1)(A) clarifying that a complaint is confidential, and to add a new subsection (b)(2) pertaining to prohibited disclosure by certain individuals, as follows:

Rule 16-723. CONFIDENTIALITY

. . .

(b) Other Confidential ~~Proceedings and Records~~ Matters

(1) Records and Proceedings

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

~~(1)~~ (A) the records of an investigation by Bar Counsel, including the existence and content of any complaint;

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

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

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

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

Committee note: The peer review panel is not required to find that information disclosed under subsection ~~(b)(5)~~ (b)(1)(E) is relevant under Rule 16-743 (c)(1).

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

~~(7)~~ (G) the records and proceedings of the Commission on matters that are confidential under this Rule;

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

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

(2) Prohibited Disclosure

The matters deemed confidential by subsection (b)(1) may not be disclosed by the Commission, the staff of the Commission, Bar Counsel, the staff and investigators of the Office of Bar Counsel, and members of the Peer Review Committee.

(c) Public Proceedings and Records

The following records and proceedings are public and open to inspection:

(1) except as otherwise provided in subsection ~~(b)(8)~~ (b)(1)(H) of this Rule, a Petition for Disciplinary or Remedial Action, all proceedings on that petition, and all documents or other items admitted into evidence at any hearing on the petition;

(2) an affidavit filed pursuant to Rule 16-772 that consents to discipline and an order that disbars, suspends, or reprimands the attorney by consent;

(3) a reprimand issued by the Commission pursuant to Rule 16-737; and

(4) except as otherwise provided by order of the Court of Appeals, all proceedings under this Chapter in the Court of Appeals.

. . .

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

Proposed amendments to Rule 16-723 were transmitted to the Court of Appeals by the 152nd Report of the Rules Committee. The Court remanded section (b) of the Rule for reconsideration of the confidentiality issue, including whether the proposals would have (1) imposed an unconstitutional restriction on the speech of persons, particularly non-lawyer complainants and lawyer-complainants, who are not appointees to or employees of the attorney discipline system and (2) precluded

the Court of Appeals from making reference in an order to the existence of a complaint when no public charges have been filed without first providing to the attorney against whom the complaint was filed notice and an opportunity to object or move for a protective order.

The Attorneys Subcommittee reviewed section (b) and suggested further changes to clarify what is confidential and which persons in the attorney disciplinary system specifically may not disclose confidential matters.

Mr. Brault explained that this Rule pertains to confidentiality in the attorney discipline system. Proposed amendments to the Rule were included in the 152nd Report of the Rules Committee. The Court of Appeals remanded the Rule to the Committee because the Court was concerned that the proposed amendments contained too much prior restraint on free speech and may have been unconstitutional. Mr. Titus, a member of the Attorneys Subcommittee, had drafted the version of the Rule before the Committee today. Subsection (b)(2) is new and limits confidentiality to the persons named in the new provision--those individuals involved in the attorney discipline system.

Mr. Brault said that he had spoken with Glenn Grossman, Esq., Deputy Bar Counsel, who had expressed the concern that the Rule would preclude Bar Counsel from talking to witnesses about other witnesses. The Chair noted that this had arisen in the Court of Appeals in a different context. A motion had been filed in the Court of Appeals requesting that the Court hold the President of the Maryland Senate in contempt for certain

telephone calls made to members of the Court of Appeals. The Court denied the motion on the basis that the matter was pending before the Attorney Grievance Commission. The Honorable John Eldridge raised the question of confidentiality -- entering an order on public record in a matter that arguably was confidential. The Court of Appeals would like to be able to decide a case like this without potentially running afoul of its own Rules. The Vice Chair pointed out that the language of subsection (b)(1) seems to indicate that everything is confidential and that confidentiality is not restricted to the persons listed in subsection (b)(2). Mr. Brault noted that subsection (b)(1) is introduced with the language "[e]xcept as otherwise provided in these Rules...". Judge McAuliffe observed that subsection (b)(1) pertains only to records and proceedings, while subsection (b)(2) applies to communications. The Vice Chair commented that subsection (b)(2) incorporates subsection (b)(1). The Chair asked Mr. Grossman for his opinion. Mr. Grossman replied that he agreed with the Vice Chair. He said that Mr. Brault was correct in his statement that the Office of Bar Counsel never considered that the issue of confidentiality would inhibit their investigations. The focus has been on who is covered by the proscription on disclosure. The Rule does not inhibit third parties from exercising their First Amendment rights. The Chair asked how the Rule could ever prohibit a citizen from announcing that he or she has filed a complaint against a lawyer. Mr. Hirshman answered that the Rule cannot

prohibit that. The Vice Chair questioned as to whether the complainant is allowed to talk about anything else. There is no gag order available against a complainant.

Mr. Brault remarked that this was a difficult provision to write. The Vice Chair suggested that the words "confidential and" be deleted from subsection (b)(1), and the reference to subsection (b)(1) should be deleted from subsection (b)(2). Mr. Brault said that the Subcommittee had discussed placing language in subsection (b)(1)to the effect that "the following records are not open to the public and their contents deemed confidential and not able to be revealed by _____."

The Reporter inquired as to whether a complainant who is an attorney is allowed to reveal that he or she had filed a complaint against another attorney. The Rule needs to be clear on this issue. Mr. Hirshman noted that an attorney is bound by the rules and cannot reveal anything about the filing of a complaint. The Vice Chair suggested that the Rule could apply to complainants other than attorneys. Mr. Brault responded that this involves an issue of equal protection. A similar issue exists in the rules pertaining to judicial campaigns -- can an attorney's speech be restricted beyond the restrictions applicable to a non-attorney? Do the judicial campaign rules bind a judge more than an attorney? Mr. Zarnoch commented that this is a First Amendment problem even more than an equal protection problem.

Mr. Sykes pointed out that one way to redraft the Rule would

be to state in subsection (b)(1): "The following records and proceedings are not open to public inspection and may not be disclosed by the Commission, the staff of the Commission, Bar Counsel, the staff and investigators of the Office of Bar Counsel, and members of the Peer Review Committee." Mr. Brault suggested that the following language should be added at the end of the list of those who may not disclose: "or any attorney involved in the proceeding." Without this language, an attorney representing the respondent could be free to comment to anyone as to what is in the record. The Vice Chair stated subsection (b)(2) could be eliminated because subsection (b)(1) will list those people who are not permitted to disclose. The Style Subcommittee can redraft the language.

The Chair suggested that a Committee note could be added which would provide that a person who files a complaint is not prohibited from disclosing the fact that a complaint has been filed. Judge McAuliffe expressed his disagreement with this suggestion, commenting that this should not be flagged. The Chair remarked that this issue could be handled without an express reference to it, and Mr. Maloney agreed that this is the better way to handle it. The Committee approved the Rule as amended, subject to being restyled.

Agenda Item 2. Reconsideration of proposed amendments to Rule 8-602 (Dismissal by Court)

The Chair said that Mr. Titus would be presenting his last

two items ever as a member of the Committee, because, unfortunately for the Committee and fortunately for the citizens of the United States, Mr. Titus will soon be Judge Titus, a member of the bench of the United States District Court. The Chair offered his congratulations to Mr. Titus.

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

MARYLAND RULES OF PROCEDURE

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

CHAPTER 600 - DISPOSITION

AMEND Rule 8-602 to delete language from section (b) and revise the remaining language, to add a cross reference at the end of section (b), to transfer language pertaining to rescission of orders dismissing an appeal from subsection (c)(1) to subsection (c)(3), to delete from section (c) the distinction between orders entered by an individual judge and orders entered by the court, to transfer language pertaining to rescission of orders dismissing an appeal from subsection (c)(2) to subsection

(c)(3), to add new language to subsection (c)(2) pertaining to individual judges rescinding orders dismissing appeals, to add a Committee note after subsection (c)(2), to revise the language in subsection (c)(3) pertaining to rescission of orders of dismissal, to add new language in subsection (c)(4) pertaining to reinstatement of a case, and to delete the reference in subsection (c)(5) to Rule 8-605, as follows:

Rule 8-602. DISMISSAL BY COURT

(a) Grounds

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

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

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

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

(4) the appellant has failed to comply with the requirements of Rule 8-205;

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

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

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

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

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

(10) the case has become moot.

Cross reference: Rule 8-501 (m).

(b) Determination by Court

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

Cross reference: For the number of judges required by law to decide an appeal, see Maryland Constitution, Article IV, §14 and Code, Courts Article, §1-403.

(c) Reconsideration of Dismissal

(1) ~~When Order was Entered by Individual Judge~~ Motion for Reconsideration

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

~~record extract complying with the Rules will be filed within a time prescribed by the Court.~~ No later than 10 days after the entry of an order dismissing an appeal, a party may file a motion for reconsideration of the dismissal.

(2) ~~When Order was Entered by Court~~ Number of Judges; Exception

~~If an appeal has been dismissed by the ruling of the Court or a panel pursuant to subsection (4), (6), (8), or (9) of section (a) of this Rule, the order dismissing the appeal, on motion filed within ten days after entry of the order, may be rescinded if the Court is satisfied that a report, record, brief, appendix, or record extract complying with the Rules will be filed or the proper party will be substituted within a time to be prescribed by the Court.~~ A motion for reconsideration shall be determined by the number of judges required by law to decide an appeal, except that an individual judge who entered an order of dismissal may rescind the order and reinstate the appeal. The judges who determine the motion for reconsideration may include one or more of the judges who entered the order of dismissal.

Committee note: Although an individual judge who entered an order of dismissal may rescind the order and reinstate the appeal upon a timely filed motion for reconsideration, a motion for reconsideration of the dismissal may be denied only by the number of judges required by law to decide an appeal.

(3) ~~Reinstatement on Docket~~ Determination of Motion for Reconsideration

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

The Court shall rescind an order of dismissal if:

(A) the Court determines that the

appeal should not have been dismissed;

(B) the appeal was dismissed pursuant to subsection (a)(4), (a)(5), or (a)(7) of this Rule and the Court is satisfied that the failure to file a report, transmit the record, or file a brief or record extract within the time prescribed by these Rules was unavoidable because of sickness or other sufficient cause; or

(C) the appeal was dismissed pursuant to subsections (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(9) of this Rule and the interests of justice require reinstatement of the appeal.

(4) ~~No Further Reconsideration by the Court~~ Reinstatement

~~When an order dismissing an appeal is reviewed by the Court on motion filed pursuant to this section, the moving party may not obtain further reconsideration of the dismissal pursuant to Rule 8-605.~~ If an order of dismissal is rescinded, the case shall be reinstated on the docket on the terms and conditions prescribed by the Court.

(5) No Further Reconsideration by the Court

If an order dismissing an appeal is reconsidered under this section, the party who filed the motion for reconsideration may not obtain further reconsideration of the motion.

(d) Judgment Entered After Notice Filed

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

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

(1) If the appellate court determines

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

(2) If, upon remand, the lower court decides not to direct entry of a final judgment pursuant to Rule 2-602 (b), the lower court shall promptly notify the appellate court of its decision and the appellate court shall dismiss the appeal. If, upon remand, the lower court determines that there is no just reason for delay and directs the entry of a final judgment pursuant to Rule 2-602 (b), the case shall be returned to the appellate court after entry of the judgment. The appellate court shall treat the notice of appeal as if filed on the date of entry of the judgment.

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

Cross reference: Rule 8-206.

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

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

The amendments to Rule 8-602 are proposed at the request of the Chief Judge of the Court of Special Appeals. The language of the Rule has been revised so that it is more succinct and comprehensible.

Section (b) no longer limits the Chief Judge or a judge designated by the Court to rule on motions to dismiss based only on certain subsections of section (a) of the Rule. A cross reference has been added to the Maryland Constitution and to the Courts Article for clarification as to the number of judges required by law to decide an appeal.

The language in subsection (c)(1) pertaining to rescission of an order dismissing an appeal has been moved to subsection (c)(3). Subsection (c)(1) has been streamlined to provide that a party may file a motion for reconsideration of the dismissal no later than 10 days after the entry of the order dismissing the appeal. The distinction in section (c) between cases where an order was entered by an individual judge and cases where the order has been entered by the court has been eliminated.

Subsection (c)(2) states that an individual judge who entered an order of dismissal may rescind the order and reinstate the appeal and that the panel of judges who entered the order of dismissal may include the judge who entered the order of dismissal. The Committee note clarifies that a motion for reconsideration of the dismissal may be denied only by the number of judges required by law to decide an appeal. Language pertaining to rescission of an order dismissing an appeal has been moved to subsection (c)(3).

Subsection (c)(3) carries forward the concept of rescission of an order of dismissal from subsection (c)(1) of the former Rule. The concept of rescission of orders of dismissal in the interests of justice based on certain grounds listed in section (a) has been added.

Subsection (c)(4) is a new provision which states that if an order of dismissal is rescinded, the case shall be reinstated on the docket on the terms and conditions prescribed by the court.

Subsection (c)(5) is former subsection

(c)(4). The Appellate Subcommittee is proposing to eliminate the reference to reconsideration of the dismissal pursuant to Rule 8-605 because there are other rules which allow parties to obtain reconsideration for technical reasons such as Rule 8-414, Correction of the Record.

Mr. Titus explained that this Rule had been before the Committee previously. The concept of the changes to the Rule is to allow a single judge more responsibility in dismissing cases, without running afoul of the concept of a three-judge panel. One of the amendments to the Rule cures the problem of requiring three judges to dismiss an appeal for a ministerial reason. Section (b) offers three choices for who may enter an order dismissing an appeal or denying a motion to dismiss an appeal -- the Chief Judge, an individual judge of the Court designated by the Chief Judge, or the number of judges required by law to decide an appeal.

The Vice Chair asked if allowing one judge or the Chief Judge to dismiss an appeal for any reason satisfies the constitutional requirements for the number of judges required to decide an appeal. If a motion for reconsideration is not filed, the appeal will have been decided by less than the number of judges specified in the Maryland Constitution. Mr. Titus answered that he is satisfied that the Rule is constitutional. A party whose appeal has been dismissed is entitled to a reconsideration of the dismissal. One judge may reinstate the appeal, but if the appeal is not reinstated, subsection (c)(2)

requires that the decision not to reinstate must be made by "the number of judges required by law to decide an appeal."

The Chair said that the Court of Special Appeals gets cases in which an appeal is dismissed because the appellant did not file a pre-hearing information report. To arrange a three-judge panel to reconsider the dismissal and reinstate the appeal after the information report is filed is a waste of time and resources. The Rule as proposed is more efficient that the current Rule.

The Reporter inquired as to why the reference to Rule 8-605, which had been in subsection (c)(4) of Rule 8-602, has been deleted. The Chair replied that one of the reasons is that the idea of reconsideration has already been built into the Rule. If the motion for reconsideration has been denied, one is not allowed to file then under Rule 8-605 or under any other Rule. The Reporter asked if this is a broadening of Rule 8-602, and Mr. Titus responded affirmatively.

Ms. Gradet, Clerk of the Court of Special Appeals, told the Committee that for the administrative purposes of the Court of Special Appeals, the proposed changes to the Rule will simplify the appellate process. The Rule still provides for a three-judge panel review but is more efficient.

Ms. Potter asked about the language in subsection (c)(3)(B) which reads "...the Court is satisfied that the failure to file a report, transmit the record, or file a brief or record extract... was unavoidable because of sickness...". The Chair answered that this language is from the current Rule and is not necessary.

Mr. Titus suggested that the language should be "...was unavoidable because of good cause." The Committee agreed by consensus to the deletion suggested by Ms. Potter and the additional language suggested by Mr. Titus.

The Chair said that one concern is the language of the last sentence of subsection (c)(2) which, as proposed, allows the judge who entered the order of dismissal to be a member of the three-judge panel that determines the motion for reconsideration. If this is a problem, the word "not" could be added after the word "may" and before the word "include." Judge McAuliffe responded that this is not necessary. The judge who entered the order of dismissal would be able to explain what happened if that judge is a member of the three-judge panel that reviews the dismissal.

Mr. Brault remarked that often an appeal is dismissed with no opinion attached. He suggested that the judge who orders the dismissal should explain why the case is being dismissed. The Vice Chair proposed that language of subsection (c)(3)(B) should be as follows: "the appeal was dismissed pursuant to subsection (a)(4), (a)(5), or (a)(7) of this Rule and the Court is satisfied that there was good cause for the failure to file a report, transmit the record, or file a brief or record extract within the time prescribed by these Rules." The Committee agreed by consensus to this change. The Committee approved the Rule as amended.

Agenda Item 3. Consideration of proposed amendments to: Rule 8-501 (Record Extract) and Rule 8-502 (Filing of Briefs)

Mr. Titus presented Rules 8-501, Record Extract, and 8-502, Filing of Briefs, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-501 (b) to add CINA proceedings, TPR proceedings, and permanency planning proceedings to the list of exceptions, as follows:

[Note to Rules Committee: Certain proposed amendments to Rule 8-501 are included in the 152nd Report of the Rules Committee, currently pending before the Court of Appeals. The proposed amendments below show changes from the 152nd Report version of the Rule.]

Rule 8-501. RECORD EXTRACT

(a) Duty of Appellant

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

(b) Exceptions

Unless otherwise ordered by the court, a record extract shall not be filed (1) when an agreed statement of the case is filed pursuant to Rule 8-207 or 8-413 (b) or (2) in an appeal in the Court of Special Appeals from juvenile delinquency proceedings, inmate grievance proceedings, extradition proceedings, child in need of assistance proceedings, termination of parental rights proceedings, permanency planning proceedings, or a criminal case.

Cross reference: See Rule 8-504 (b) for contents of required appendix to appellant's brief in criminal cases in the Court of Special Appeals.

(c) Contents

The record extract shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal and any cross-appeal. It shall include the circuit court docket entries, the judgment appealed from, and such other parts of the record as are designated by the parties pursuant to section (d) of this Rule. In agreeing on or designating parts of the record for inclusion in the record extract, the parties shall refrain from unnecessary designation. The record extract shall not include those parts of the record that support facts set forth in an agreed statement of facts or stipulation made pursuant to section (g) of this Rule nor any part of a memorandum of law in the trial court, unless it has independent relevance. The fact that a part of the record is not included in the record extract or an appendix to a brief shall not preclude an appellate court from considering it.

(d) Designation by Parties

Whenever possible, the parties shall agree on the parts of the record to be included in the record extract. If the parties are unable to agree:

(1) Within 15 days after the filing of

the record in the appellate court, the appellant shall serve on the appellee a statement of those parts of the record that the appellant proposes to include in the record extract.

(2) Within ten days thereafter, the appellee shall serve on the appellant a statement of any additional parts of the record that the appellee desires to be included in the record extract.

(3) Within five days thereafter, the appellant shall serve on the appellee a statement of any additional parts of the record that the appellant proposes to include in view of the parts of the record designated by the appellee.

(4) If the appellant determines that a part of the record designated by the appellee is not material to the questions presented, the appellant may demand from appellee advance payment of the estimated cost of reproducing that part. Unless the appellee pays for or secures that cost within five days after receiving the appellant's demand, the appellant may omit that part from the record extract but shall state in the record extract the reason for the omission.

(e) Appendix in Appellee's Brief

If the record extract does not contain a part of the record that the appellee believes is material, the appellee may reproduce that part of the record as an appendix to the appellee's brief together with a statement of the reasons for the additional part. The cost of producing the appendix may be withheld or divided under section (b) of Rule 8-607.

(f) Appendix in Appellant's Reply Brief

The appellant may include as an appendix to a reply brief any additional part of the record that the appellant believes is material in view of the appellee's brief or appendix. The appendix to the appellant's reply brief shall be prefaced by a statement

of the reasons for the additional part. The cost of producing the appendix may be withheld or divided under section (b) of Rule 8-607.

(g) Agreed Statement of Facts or Stipulation

The parties may agree on a statement of undisputed facts that may be included in a record extract or, if the parties agree, as all or part of the statement of facts in the appellant's brief. As to disputed facts, the parties may include in the record extract, in place of any testimony or exhibit, a stipulation that summarizes the testimony or exhibit. The stipulation may state all or part of the testimony in narrative form. Any statement of facts or stipulation shall contain references to the page of the record and transcript. The parties are strongly encouraged to agree to such a statement of facts or stipulation.

(h) Table of Contents

If the record extract is produced as an appendix to a brief, the table of contents required under section (a) of Rule 8-504 shall include the contents of the appendix. If the record extract is produced as a separate volume, it shall be prefaced by its own table of contents. The table of contents shall (1) reference the first page of the initial examination, cross-examination, and redirect examination of each witness and of each pleading, exhibit, or other paper reproduced and (2) identify each document by a descriptive phrase including any exhibit number.

(i) Style and Format

The numbering of pages, binding, method of referencing, and covers of the record extract, whether an appendix to a brief or a separate volume, shall conform to sections (a) through (c) of Rule 8-503. Except as otherwise provided in this section and in section (g) of this Rule, the record extract shall reproduce verbatim the parts of

the record that are included. Asterisks or other appropriate means shall be used to indicate omissions in the testimony or in exhibits. Reference shall be made to the pages of the record and transcript. The date of filing of each paper reproduced in the extract shall be stated at the head of the copy. If the transcript of testimony is reproduced, the pages shall be consecutively renumbered. Documents and excerpts of a transcript of testimony presented to the trial court more than once shall be reproduced in full only once in the record extract and may be referred to in whole or in part elsewhere in the record extract. Any photograph, document, or other paper filed as an exhibit and included in the record extract shall be included in all copies of the record extract and may be either folded to the appropriate size or photographically or mechanically reduced, so long as its legibility is not impaired.

(j) Correction of Inadvertent Errors

Material inadvertently omitted from the record extract may be included in an appendix to a brief, including a reply brief. Other inadvertent omissions or misstatements in the record extract or in any appendix may be corrected by direction of the appellate court on motion or on the Court's own initiative.

(k) Record Extract in Court of Appeals on Review of Case from Court of Special Appeals

When a writ of certiorari is issued to review a case pending in or decided by the Court of Special Appeals, unless the Court of Appeals orders otherwise, the appellant shall file in that Court 20 copies of any record extract that was filed in the Court of Special Appeals within the time the appellant's brief is due. If a record extract was not filed in the Court of Special Appeals or if the Court of Appeals orders that a new record extract be filed, the appellant shall prepare and file a record extract pursuant to this Rule.

(l) Deferred Record Extract; Special Provisions Regarding Filing of Briefs

(1) If the parties so agree in a written stipulation filed with the Clerk or if the appellate court so orders on motion or on its own initiative, the preparation and filing of the record extract may be deferred in accordance with this section. The provisions of section (d) of this Rule apply to a deferred record extract, except that the designations referred to therein shall be made by each party at the time that party serves the page-proof copies of its brief.

(2) If a deferred record extract authorized by this section is employed, the appellant, within 30 days after the filing of the record, shall file four page-proof copies of the brief if the case is in the Court of Special Appeals, or one copy if the case is in the Court of Appeals, and shall serve two copies on the appellee. Within 30 days after the filing of the page-proof copies of the appellant's brief, the appellee shall file one page-proof copy of the brief and shall serve two copies on the appellant. The page-proof copies shall contain appropriate references to the pages of the parts of the record involved.

(3) Within 25 days after the filing of the page-proof copy of the appellee's brief, the appellant shall file the deferred record extract, and the appellant's final briefs. Within five days after the filing of the deferred record extract, the appellee shall file its final briefs.

(4) The appellant may file a reply brief in final form within 20 days after the filing of the appellee's final brief, but not later than ten days before the date of scheduled argument.

(5) In a cross-appeal:

(A) within 30 days after the filing of the page-proof copies of the appellee/cross-appellant's brief, the appellant/cross-appellee shall file one

page-proof copy of a brief in response to the issues and argument raised on the cross-appeal and shall include any reply to the appellee's response that the appellant wishes to file;

(B) within 25 days after the filing of the cross-appellee/appellant's reply brief, the appellant shall file the deferred record extract, the appellant's final briefs, and the final cross-appellee's/appellant's reply briefs;

(C) within five days after the filing of the deferred record extract, the appellee shall file its final appellee/cross-appellant's briefs; and

(D) the appellee/cross-appellant may file in final form a reply to the cross-appellee's response within 20 days after the filing of the cross-appellee's final brief, but not later than ten days before the date of scheduled argument.

(6) The deferred record extract and final briefs shall be filed in the number of copies required by Rules 8-502 (c) and 8-501 (a). The briefs shall contain appropriate references to the pages of the record extract. The deferred record extract shall contain only the items required by Rule 8-501 (c), those parts of the record actually referred to in the briefs, and any material needed to put those references in context. No changes may be made in the briefs as initially served and filed except (A) to insert the references to the pages of the record extract, (B) to correct typographical errors, and (C) to take account of a change in the law occurring since the filing of the page-proof briefs.

(7) The time for filing page-proof copies of a brief or final briefs may be extended by stipulation of counsel filed with the clerk so long as the final briefs set out in subsections (3) and (5) of this section are filed at least 30 days, and any reply brief set out in subsections (4) and (5) of this section is filed at least ten days, before

the scheduled argument.

(m) Sanctions for Noncompliance

Ordinarily, an appeal will not be dismissed for failure to file a record extract in compliance with this Rule. If a record extract is not filed within the time prescribed by Rule 8-502, or on its face fails to comply with this Rule, the appellate court may direct the filing of a proper record extract within a specified time and, subject to Rule 8-607, may require a non-complying attorney or unrepresented party to advance all or part of the cost of printing the extract. The appellate court may dismiss the appeal for non-compliance with an order entered under this section.

Source: This Rule is derived from former Rules 1028 and 828 with the exception of section (l) which is derived from former Rule 833.

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

Based on a request from Nancy Forster, Esq., Deputy Public Defender, the Appellate Subcommittee recommends adding to subsection (b)(2) of Rule 8-501 more exceptions to the requirement that a record extract must be filed. Ms. Forster pointed out that since the Office of the Public Defender handles the bulk of CINA, TPR, and permanency planning appeals, not being required to file record extracts in these cases would save a great deal of money and storage space, while causing no real hardship.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 - RECORD EXTRACTS, BRIEFS, AND ARGUMENT

AMEND Rule 8-502 (c) to decrease the number of copies of the record extract to be filed from 15 to seven and to add language pertaining to the court ordering more copies, as follows:

Rule 8-502. FILING OF BRIEFS

(a) Duty to File; Time

Unless otherwise ordered by the appellate court:

(1) Appellant's Brief

Within 40 days after the filing of the record, an appellant other than a cross-appellant shall file a brief conforming to the requirements of Rule 8-503.

(2) Appellee's Brief

Within 30 days after the filing of the appellant's brief, the appellee shall file a brief conforming to the requirements of Rule 8-503.

(3) Appellant's Reply Brief

The appellant may file a reply brief within 20 days after the filing of the appellee's brief, but in any event not later than ten days before the date of scheduled argument.

(4) Cross-appellant's Brief

An appellee who is also a cross-appellant shall include in the brief filed pursuant to subsection (2) of this section the issues and arguments on the cross-appeal as well as the response to the brief of the appellant, and shall not file a

separate cross-appellant's brief.

(5) Cross-appellee's Brief

Within 30 days after the filing of that brief, the appellant/cross-appellee shall file a brief in response to the issues and argument raised on the cross-appeal and shall include any reply to the appellee's response that the appellant wishes to file.

(6) Cross-appellant's Reply Brief

The appellee/cross-appellant may file a reply to the cross-appellee's response within 20 days after the filing of the cross-appellee's brief, but in any event not later than ten days before the date of scheduled argument.

(7) Multiple Appellants or Appellees

In an appeal involving more than one appellant or appellee, including actions consolidated for purposes of the appeal, any number of appellants or appellees may join in a single brief.

(8) Court of Special Appeals Review of Discharge for Unconstitutionality of Law

No briefs need be filed in a review by the Court of Special Appeals under Code, Courts Article, §3-706.

(b) Extension of Time

The time for filing a brief may be extended by (1) stipulation of counsel filed with the clerk so long as the appellant's brief and the appellee's brief are filed at least 30 days, and any reply brief is filed at least ten days, before the scheduled argument, or (2) order of the appellate court entered on its own initiative or on motion filed pursuant to Rule 1-204.

(c) Filing and Service

In an appeal to the Court of Special Appeals, 15 copies of each brief and seven copies of each record extract shall be filed, unless otherwise ordered by the court. In the Court of Appeals, 20 copies of each brief

and record extract shall be filed, unless otherwise ordered by the court. Two copies of each brief and record extract shall be served on each party pursuant to Rule 1-321.

(d) Default

If an appellant fails to file a brief within the time prescribed by this Rule, the appeal may be dismissed pursuant to Rule 8-602 (a)(7). An appellee who fails to file a brief within the time prescribed by this Rule may not present argument except with permission of the Court.

Source: This Rule is derived from former Rules 1030 and 830 with the exceptions of subsection (a)(8) which is derived from the last sentence of former Rule Z56 and of subsection (b)(2) which is in part derived from Rule 833 and in part new.

Rule 8-502 was accompanied by the following Reporter's Note.

Leslie Gradet, Esq., Clerk of the Court of Special Appeals, has requested that the number of copies of the record extract that must be filed be lowered from 15 to seven and that the court be allowed to order additional copies if it is necessary. She explained that the record extracts take up a great deal of space, and the change would help the situation and would cause no hardship. The Appellate Subcommittee recommends this change.

Mr. Titus explained that Nancy S. Forster, Esq., Deputy Public Defender, had sent a letter dated August 12, 2003, a copy of which is in the meeting materials (See Appendix 1), requesting a change to Rule 8-501, so that it will no longer be necessary for record extracts to be filed in appeals of Child in Need of Assistance proceedings, Termination of Parental Rights proceedings, and Permanency Planning proceedings. The Vice Chair commented that this is a good idea, and Ms. Gradet expressed her

approval of the request. The Chair added that this would be helpful to the Office of the Public Defender. Mr. Titus pointed out that this goes hand-in-hand with the changes to Rule 8-502. The Subcommittee is proposing to reduce the number of copies of record extracts filed in appellate cases, unless the court orders otherwise. There is a serious problem finding room to store the record extracts. The Vice Chair added that producing a large number of record extracts is expensive for litigants. Mr. Titus remarked that very few cases require more than seven copies of the record extract, and it is not justified for the Rule to require more than seven.

The Reporter commented that 15 copies of the brief are still required. Ms. Gradet explained that briefs do not take up much space, but the record extracts may take up several shelves for one case. There may well be situations in which more copies of the record extract are needed, and the parties can be asked to provide more. The language "unless otherwise ordered by the court" will take care of the situations where more record extracts are needed. Parties can be notified that the court may ask for more copies of the record extract. The Vice Chair inquired as to why 15 copies of the brief are necessary. Ms. Gradet replied that more than one panel may be involved in the consideration of a case. If there are six different judges, it is possible to run out of copies of the briefs. The first panel may be asked to return the record extracts for use by the second panel, but briefs may have been marked by the first panel. Also,

the Court of Appeals gets two copies of the briefs to review for bypass of cases. Additionally, the Court of Special Appeals keeps old briefs as samples, and one set of briefs is needed for copying onto microfiche.

The Committee approved the Rule as presented.

Agenda Item 4. Consideration of Chapters 400, 500, 600, and 800 of proposed revised Title 16, Attorneys (See Appendix 2)

Mr. Brault explained that when the Rules were revised starting in 1984, the Rules that currently are in Title 16 had been left untouched. Ms. Perez, former Reporter to the Rules Committee, has worked on revising Title 16, not changing the substance of most Rules, but reorganizing and renumbering them. All of the Rules affecting attorneys are placed in Title 16. The Rules that pertain to courts and judges will be located in new Title 18. The structure of the new organization is included in the meeting materials. The Attorneys Subcommittee approved the changes proposed by Ms. Perez, who did an excellent job. Ms. Perez explained that concept of Title 16 is that all of the Rules pertaining to attorneys are in the same place in the Rule Book and placed in an organized fashion.

Mr. Brault said that he thought that the Rodowsky Committee had completed its revision of the Lawyers' Rules of Professional Conduct and asked the Chair whether the revision would be sent to the Rules Committee or to the Court of Appeals. The Chair replied that it would go directly to the Court of Appeals, which

reserves the right to send it to the Rules Committee.

Ms. Perez presented Rule 16-401, Reporting Pro Bono Legal Service, and Rule 18-XX3, Pro Bono Reporting Process for the Committee's consideration. (See Appendix 2).

Ms. Perez explained that currently there are three Rules pertaining to Pro Bono Legal Service: Rule 16-901, State Pro Bono Committee and Plan; Rule 16-902, Local Pro Bono Committees and Plans; and Rule 16-903, Reporting Pro Bono Legal Service. The first two Rules pertain to the administration of the State and local plans but do not pertain to an attorney's Pro Bono activity. The proposal is to move the first two Rules into Title 18, the Court Administration Title, and create new Rule 18-XX3 (to be renumbered later) which is derived from section (b) of current Rule 16-903 and provides a cross reference to new Rule 16-401. The Committee approved Rules 16-401 and 18-XX3 as presented.

Ms. Perez noted that in the revised Chapters 500, 600, 700, and 800, there are a few style changes that will be reviewed by the Style Subcommittee.

Ms. Perez said that Chapter 500 is composed of current Rule 16-811, Client Protection Fund of the Bar of Maryland, divided into smaller rules.

Ms. Perez presented Rule 16-501, Name, Purpose, and Operation for the Committee's consideration. (See Appendix 2).

Ms. Perez noted that there are no substantive changes to the Rule. Most of section (a) has been deleted as unnecessary. The

reference to the date is no longer needed, because it is already 2003. The Committee approved the Rule as presented.

Ms. Perez presented Rule 16-502, Trustees and Officers -- Generally, for the Committee's consideration. (See Appendix 2).

Ms. Perez told the Committee that she designated those trustees who are members of the Bar as "attorney-trustees" to distinguish them from non-attorney trustees. The Vice Chair expressed her approval of the Rule being changed into the active voice. The Committee approved the Rule as presented.

Ms. Perez presented Rule 16-503, Maintenance of Fund; Duties of Treasurer, for the Committee's consideration. (See Appendix 2).

Ms. Perez pointed out that there are no substantive changes to the Rule. The Committee approved the Rule as presented.

Ms. Perez presented 16-504, Powers and Duties of Trustees, for the Committee's consideration. (See Appendix 2).

Ms. Perez said that the Rule tracks the substance of the current Rule. The Chair questioned the addition of subsection (a)(12), pertaining to the power to apply to the Court of Appeals for interpretation of the Rule and for advice as to the trustees' powers and the proper administration of the Fund. The last time that the Court of Appeals looked at this issue, a concern was raised about whether the trustees should be able to ask the Court for advisory opinions. Ms. Perez responded that subsection (a)(12) is the first sentence of current Rule 16-811 i 4. She observed that this provision pertains only to non-adjudicatory,

administrative matters. The Reporter remarked that if the Court does not wish to have subsection (a)(12) in the Rule, the Court can strike that subsection. Ms. Perez commented that Ms. Janet Moss, Administrator of the Client Security Trust Fund, had attended the Attorneys Subcommittee meeting and had said that the predecessor provision to subsection (a)(12) has been used only for internal, non-adjudicatory purposes.

Ms. Perez noted that the deleted part of subsection (a)(7) is not necessary, because it is covered later in another Rule. Sections (b) and (c) pertain to audits. She said that she had been informed that the trustees arrange the annual audit of the Fund. The Court of Appeals may institute an audit on its own motion--this provision is both in this Rule and in Rule 16-511, Powers of Court of Appeals. Section (b) requires the trustees to arrange an annual audit of the Fund accounts. The language pertaining to audits arranged by the Court of Appeals has been moved to Rule 16-511. Section (c) requires the trustees to file a written report, which shall include the audit made pursuant to section (b) or an audit arranged by the Court of Appeals. Mr. Brault commented that it is not clear if the audits are always certified, and he asked if the Rule should clarify this. Ms. Perez answered that Rule 16-504 will be more understandable after Rule 16-511 is considered. The Committee approved the Rule as presented.

Ms. Perez presented Rule 16-505, Payments to Fund, for the Committee's consideration. (See Appendix 2).

Ms. Perez explained that the definition of the term "local bar association" was deleted from the Rule, because it is not necessary to define a term that has its ordinary meaning. The Reporter pointed out that the term "local bar association" only appears in one place in the Client Protection Fund Rules.

The Vice Chair questioned as to whether there are late charges for failure to pay the yearly assessment. Judge McAuliffe responded that the late charges are referenced in new section (a). The Vice Chair noted that section (a) requires the payment of "all applicable late charges, the Court may fix," and she asked how the charges are calculated. Judge McAuliffe replied that the Court fixes the late charges from time to time. The Vice Chair inquired as to whether this is accomplished by order, and Judge McAuliffe answered affirmatively.

The Committee approved the Rule as presented.

Ms. Perez presented Rule 16-506, Enforcement, for the Committee's consideration. (See Appendix 2).

Ms. Perez explained that the Rule consists of what is now subsections f 1 through f 3 of Rule 16-811. Other than style changes, the only change is the addition of the word "electronic" before the word "transmission" in section (c). The Committee approved the Rule as presented.

Ms. Perez presented Rule 16-507, Decertification Upon Default, for the Committee's consideration. (See Appendix 2).

Ms. Perez told the Committee that this Rule is the same as current Rule 16-811 f 4 and f 5, with style changes. The only

changes are more definitive taglines for sections (b) and (e). The Committee approved the Rule as presented.

Ms. Perez presented Rule 16-508, Dishonored Checks, for the Committee's consideration. (See Appendix 2).

Ms. Perez explained that this Rule is what is now subsection f 6 of Rule 16-811. The Committee approved the Rule as presented.

Ms. Perez presented Rule 16-509, Copies of Orders to be Furnished to Clerks, for the Committee's consideration. (See Appendix 2).

Ms. Perez said that this Rule contains style changes only. The Committee approved the Rule as presented.

Ms. Perez presented Rule 16-510, Claims, for the Committee's consideration. (See Appendix 2).

Ms. Perez explained that this Rule is the same as the existing Rule, with style changes. The Committee approved the Rule as presented.

Ms. Perez presented Rule 16-511, Powers of Court of Appeals, for the Committee's consideration. (See Appendix 2).

Ms. Perez pointed out that language from section (a) has been deleted as superfluous. The Vice Chair commented that if the Court of Appeals repealed the Rules in this Chapter, it would have to provide for the dissolution and winding up of the affairs of the Fund, and therefore, the word "shall" should be used instead of the word "may," or the entire sentence may be superfluous. The Committee agreed by consensus to change the

word "may" to the word "shall" in section (a). Mr. Sykes noted that if the Rules are repealed, and the agency is reconstituted, the Court may not be dissolving or winding up the Fund's affairs. The word "shall" may not be appropriate. The Chair said that the Court would have to take some action, and it has the power to decide what it wants to do. Ms. Perez observed that section (a) may not be necessary. The Committee agreed by consensus to delete section (a) in its entirety.

Ms. Perez noted that the language in section (b) has been changed to clarify that the Court of Appeals may arrange for an audit at any time, and this is not the annual audit provided for in Rule 16-504. The Vice Chair asked the meaning of the language which reads, "... if no other source of funds is available." Mr. Brault answered that an example would be if someone files suit against the Client Protection Fund, and the court ordered an audit with the costs to be paid by a litigant. The Chair suggested that language should be added to section (b) which provides: "The Court shall state who shall pay for the audit." Ms. Perez commented that similar language could be put into section (b) of Rule 16-504.

The Chair suggested that subject to restyling, the following sentence could be added: "If the Court arranges for an audit, it will enter an order stating who shall pay for the audit." Mr. Maloney remarked that the Fund would pay for the audit unless some other source of funds is available. Mr. Sykes said that adding this language would cause no problems. The Vice Chair

pointed out that if 99% of the audits are paid for by the Fund, the language of the Rule makes it sound as if the Fund pays only if someone else does not. Mr. Sykes remarked that the Fund pays to the extent that no other funds are available. The Chair suggested that this issue be left up to the Court of Appeals.

Ms. Perez told the Committee that section (c) provides that the Court may provide the trustees with administrative advice. This is the second half of the provision in Rule 16-504 (a)(12) that allows the trustees to ask for that advice. The language in the beginning of section (c) could be: "[u]pon application by the trustees or upon its own motion...," if the Committee wishes to change it. No motion to change the beginning language was made.

The Committee approved the Rule as amended.

Ms. Perez presented Rule 16-512, Judicial Review, for the Committee's consideration. (See Appendix 2).

Ms. Perez said that no changes had been made to this Rule.

The Committee approved the Rule as presented.

Ms. Perez presented Rules 16-601, Applicability; 16-602, Definitions; and 16-603, Duty to Maintain Account, for the Committee's consideration. (See Appendix 2).

Ms. Perez stated that Rule 16-601 carries forward the provisions of current Rule 16-601, without change.

Ms. Perez explained that a change suggested by Robert Rhudy, Esq., Executive Director, Maryland Legal Services Corporation, has been made to section (g) of Rule 16-602. At the Attorneys Subcommittee meeting, Mr. Rhudy had explained that it is not

necessary to limit the definition of "financial institution" to those banks in states contiguous to Maryland, because of the growth of interstate banking and the fact that information pertaining to financial institutions is accessible through computers. The Vice Chair suggested that the language of section (g) could read as follows: " 'Financial Institution' means a bank, trust company, savings bank, or savings and loan association maintained in the United States, the accounts of which ...". Mr. Titus proposed that the new language could be "... to do business in any state or the District of Columbia." Judge Norton remarked that it is preferable to list the state of Maryland first to encourage business here. The Reporter said that the Style Subcommittee will redraft the language of section (g). Ms. Perez noted that the same change will be made to Rule 16-603.

Mr. Brault commented that Rule 16-602 is monitored by the Maryland Legal Services Corporation and the banking industry. Ms. Perez responded that at the Subcommittee meeting, the point was raised that there is the possibility of consolidation of the Interest on Lawyer Trust Accounts (IOLTA) and the Pro Bono program, but this will not affect the language of the Rules. Another issue still unresolved is whether title companies are practicing law, but this also does not affect the Rules.

The Committee approved Rules 16-601, 16-602, and 16-603 as presented, subject to style changes.

Ms. Perez told the Committee that none of the other Rules in

Chapter 600 had been changed. She presented Rules 16-604, Trust Account; 16-605, Duty of Attorney to Notify Institution; 16-606, Name and Designation of Account; 16-607, Commingling of Funds; 16-608, Interest on Funds in Attorney Trust Accounts; 16-609, Prohibited Transactions; 16-610, Approval of Financial Institutions; 16-611, Notice of Approved Institutions; and 16-612, Enforcement (See Appendix 2), and the Committee approved them as presented.

Ms. Perez presented Rule 16-801, Prohibition Against Giving Gratuities to Court Officers or Employees, for the Committee's consideration. (See Appendix 2).

Ms. Perez explained that section a of current Rule 16-401, Proscribed Activities – Gratuities, etc., is transferred to Title 16, Chapter 800, Miscellaneous Provisions, while section (b) will be placed in Title 18 pertaining to courts, judges, and court employees. The Vice Chair inquired as to whether the Rule prohibits an attorney from handing out plates of cookies at the holidays to judges or to the sheriff. Ms. Perez responded that she did not think that this would be prohibited. Ms. Potter asked about an attorney giving a court employee a birthday present. The Vice Chair commented that this would be same principle as giving a holiday present.

Ms. Perez questioned whether language should be added to the Committee note to clarify this issue, but the Committee was not in favor of adding to the Committee note. Mr. Brault remarked that the Rule is working well, and it should not be changed.

Ms. Ogletree observed that the customs often depend on the location of the courthouse. In Caroline County, attorneys often send cookies to every office in the courthouse at the holidays. The Reporter said that perhaps the Rule could be clarified to more clearly state that it prohibits monetary bribes and gifts of greater than *de minimus* value to court employees.

Judge Dryden asked if the definition of the term "peace officer" should be added to the Rule. He also questioned the use of the term "constables," and whether the listed individuals should be considered officers or employees of the court. The Vice Chair suggested that the language of the Rule could be reviewed, and the Rule reconsidered by the Committee at a later meeting. The Committee agreed by consensus to this suggestion.

The Vice Chair adjourned the meeting, because the Chair had to leave early to accept his award for Leadership in Law 2003.