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 March 11, 2005.

Members present:

Hon. Joseph F. Murphy, Jr., Chair

Lowell R. Bowen, Esq.
Albert D. Brault, Esq.
Robert L. Dean, Esq.
Hon. James W. Dryden
Hon. Ellen M. Heller
Hon. Joseph H. H. Kaplan
Robert D. Klein, Esq.
J. Brooks Leahy, Esq.
Timothy F. Maloney, Esq.
Robert R. Michael, Esq.
Hon. John L. Norton, III
Debbie L. Potter, Esq.
Twilah S. Shipley, Esq.
Hon. William B. Spellbring, Jr.
Melvin J. Sykes, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Professor John Lynch, University of Baltimore School of Law
Alan C. Drew, Esq., Office of the Public Defender
Richard Montgomery, Maryland State Bar Association
Mary Ann Ince, Esq., Office of the Attorney General

The Chair convened the meeting. He congratulated Mr. Michael whose work on behalf of Habitat for Humanity was recognized in the March/April 2005 edition of the Maryland Bar Journal. The Chair also congratulated Mr. Maloney, who was the featured speaker at the 30th Annual Conference of the National Association of Administrative Law Judges. Mr. Maloney spoke on the topic of "Administrative Adjudication and the Rule of Law." This was

recognized in the February 2005 edition of the Bar Bulletin. The Chair said that this is Litigation Week at the University of Baltimore School of Law, with many events taking place during the week. The Court of Special Appeals sat on Wednesday at the University. Tomorrow evening there will be a "Legacy of Excellence in Litigation" awards banquet. The flagship award, the Charles Hamilton Houston Lifetime Achievement Award, is being given to Mr. Brault. The Chair and the Committee congratulated Mr. Brault.

The Chair said that the minutes of the meetings of September 10, 2004; October 15, 2004; and November 19, 2004 had been distributed to the Committee. The Reporter commented that Mr. Klein had made a correction to the September minutes. In the second paragraph on page 16, Mr. Klein suggested that in place of the language that reads: "... an attorney has to provide a reasonable statement ...," the following language should be substituted: "... an attorney must specify documents with reasonable particularity." Mr. Dean moved that the September minutes be adopted as amended and the October and November minutes be approved as presented. The motion was seconded, and it carried unanimously.

Agenda Item 1. Reconsideration of proposed Rules changes pertaining to coram nobis: New Rule 4-409 (Applicability), New Rule 4-410 (Petition), New Rule 4-411 (Notice of Petition), New Rule 4-412 (Response), New Rule 4-413 (Voluntary Dismissal), New Rule 4-414 (Hearing), and New Rule 4-415 (Statement and Order of Court), and Amendments to Rule 5-101 (Scope)

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Mr. Dean told the Committee that the Coram Nobis Rules were discussed at the last Rules Committee meeting and had been remanded to the Criminal Subcommittee. Any necessary changes were discussed by e-mail and by telephone.

Mr. Dean presented Rule 4-409, Applicability, for the Committee's consideration.

**Note to Rules Committee: Title 4, Chapter 400 pertains to proceedings under the Uniform Post Conviction Procedure Act. Therefore, the Style Subcommittee will renumber the proposed new *coram nobis* Rules, either placing them elsewhere in Title 4 or moving them to Title 15.**

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 400 - POST CONVICTION PROCEDURE

ADD new Rule 4-409, as follows:

Rule 4-409. APPLICABILITY

Rules 4-409 through 4-415 govern proceedings for a writ of coram nobis as to a prior judgment in a criminal action.

Committee note: Rules 4-409 through 4-415 are not intended to apply to proceedings for a writ of coram nobis as to judgments in civil actions.

Source: This Rule is new.

Rule 4-409 was accompanied by the following Reporter's Note.

Proposed new Rule 4-409 provides that Rules 4-409 through 4-415 apply to

proceedings for a writ of *coram nobis* where the underlying judgment is in a criminal action and are not intended to apply if the underlying judgment is in a civil action.

Mr. Dean said that at the last meeting, Mr. Brault had expressed the concern that the Rules do not apply to all judgments, but only to criminal judgments. To emphasize this point, an "Applicability" Rule and Committee note were added. By consensus, the Committee approved Rule 4-409 as presented.

Mr. Dean presented Rule 4-410, Petition, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 400 - POST CONVICTION PROCEDURE

ADD new Rule 4-410, as follows:

Rule 4-410. PETITION

(a) Filing

An action for a writ of error coram nobis is commended by the filing of a petition in the court where the conviction took place. Where practicable, the petition shall be filed in the criminal action to which it relates.

Cross reference: For the authority of the District Court to issue a writ of error coram nobis, see Code, Courts Article, §1-609.

(b) Caption

The caption of the petition shall indicate the assigned docket reference of the criminal action to which the petition relates.

Cross reference: See Rule 1-301 (a).

(c) Content

The petition shall allege:

(1) the identity of the petitioner as the person subject to the judgment and sentence;

(2) the case number of the criminal action, the place and date of trial, the offense for which the petitioner was convicted, and the sentence imposed.

(3) a statement of all previous proceedings, including appeals, motions for a new trial, post conviction petitions, and previous petitions for a writ of error coram nobis, and the determinations made thereon;

(4) the facts that would have resulted in the entry of a different judgment, or the allegations of error upon which the petition is based;

(5) a statement that the allegations of error have not been waived;

(6) the significant collateral consequences that resulted from the challenged conviction;

(7) the unavailability of appeal, post conviction relief, or other remedies; and

(8) the prayer for relief.

If the petitioner is in possession of a transcript of the criminal action in which the conviction took place, the petitioner shall attach to the petition the relevant portions of the transcript.

(d) Argument and Citation

The petition shall include a concise argument, including citation of authority.

(e) Service

The petitioner shall serve on the State's Attorney a copy of the petition and any attachments, pursuant to Rule 1-321.

(f) Amendment

Amendment of the petition shall be freely allowed in order to do substantial justice.

Source: This Rule is new.

Rule 4-410 was accompanied by the following Reporter's Note.

Rule 4-410 is new. It is based in part on Rules 4-401 and 4-402, 39 Am. Jur. 2d, *Habeas Corpus and Post Conviction Remedies* §256 (2003), and *Skok v. State*, 361 Md. 52 (2000).

The Criminal Subcommittee recommends that, where practicable, the petition be filed in the criminal action to which it relates. The Subcommittee considered whether the civil nature of coram nobis proceedings would be affected by filing the petition for a writ of error coram nobis in the underlying criminal action. The Subcommittee examined other Rules in which a civil matter may be filed in a criminal action, such as Rule 15-206 (a) and the second sentence of Rule 4-403, and concluded that those Rules appear to be working satisfactorily.

Mr. Dean said that section (a) states that the petition is filed in the court where the conviction took place. As originally drafted, the Rule required that the petition be filed in a circuit court. This was changed because of the fact that the petitions can be filed in District Court as well. The Rule

also provides that where practicable, the petition shall be filed in the criminal action to which it relates. The District Court purges its records fairly quickly, so it may not be practicable to file the petition in the original criminal action if the records have been purged. The Chair remarked that Mr. Shipley, Clerk of the Circuit Court for Carroll County and a member of the Committee who was not present at today's meeting, had stated previously that these cases are handled differently by various circuit court clerks. Some open a new case and some file the petition in the original criminal case.

Mr. Dean said that section (c) was fine-tuned based on suggestions made at the February meeting. Judge Dryden asked about the language in subsection (c)(8) referring to attachment by the petitioner of the relevant portions of the transcript. He commented that it is unlikely that the petitioner will have the transcript, and it may not be possible to access the transcript in the District Court. The Chair suggested that the language of that provision could read: "... the petitioner shall attach to the petition the relevant portions of the transcript or explain why the petitioner is unable to do so." The judge can then see why the transcript is not there. By consensus, the Committee agreed to this change.

Ms. Potter questioned as to why section (d) is not part of the contents of the petition listed in section (c). Mr. Dean remarked that its location is a relic of the post conviction rules. The provision is very useful. Judge Dryden observed that

the District Court judges do not ordinarily ask for a citation of authority. The Chair suggested that the language of Rule 4-402 (b) be used. That Rule states: "The petition, may, but need not, include a concise argument or citation of authority." By consensus, the Committee agreed to this suggestion.

Turning to section (e), Mr. Dean noted that service on the State's Attorney is effected by following the procedures in Rule 1-321. The Reporter added that as a safeguard to using Rule 1-321, rather than the procedures in Rule 2-121 or 3-121, to provide for service on the State's Attorney, Rule 4-411 provides that the clerk notifies the State's Attorney that the petition has been filed.

Mr. Dean stated that the language in section (f) is taken from Rule 4-402, Petition, pertaining to post conviction proceedings. Even though there is no statute restricting the number of *coram nobis* petitions that one may file, as there is restricting the number of post conviction petitions that one may file, it is preferable to allow amendments, rather than encourage dismissal and refiling. By consensus, the Committee approved the Rule as amended.

Mr. Dean presented Rule 4-411, Notice of Petition, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 400 - POST CONVICTION PROCEDURE

ADD new Rule 4-411, as follows:

Rule 4-411. NOTICE OF PETITION

Upon receipt of a petition for a writ of error coram nobis, the clerk shall promptly notify the State's Attorney that the petition has been filed and the assigned docket reference of the criminal action to which the petition relates.

Source: This Rule is new.

Rule 4-411 was accompanied by the following Reporter's Note.

Rule 4-411 is new and is based on Rule 4-403, Notice of Petition.

Mr. Dean told the Committee that the Rule is derived from Rule 4-403, Notice of Petition, a Post Conviction Rule. The Rule is very helpful, ensuring that the State's Attorney knows about the filing of the petition. There being no comments, the Committee, by consensus, approved the Rule as presented.

Mr. Dean presented Rule 4-412, Response, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 400 - POST CONVICTION PROCEDURE

ADD new Rule 4-412, as follows:

Rule 4-412. RESPONSE

The State's Attorney shall file a response to the petition within 30 days after notice of its filing, or within such further time as the court may order.

Source: This Rule is new.

Rule 4-412 was accompanied by the following Reporter's Note.

Rule 4-412 is new and is derived from Rule 4-404, Response. The Subcommittee recommends, however, that the State's Attorney have 30 days to file a response after being notified that a petition was filed, instead of the 15 days provided for in Rule 4-404.

Mr. Dean explained that Rule 4-404, Response, the parallel Post Conviction Rule, provides for 15 days for the State's Attorney to file a response. However, the *coram nobis* cases may be older than the post conviction cases, and it may be difficult for the prosecutor, especially in the District Court, to retrieve his or her own files. The Chair commented that the court should be able to shorten the time. Mr. Michael suggested that the word "further" be deleted from the Rule. The Chair suggested that the word "other" replace the word "further," so that the last clause of the Rule would read: "... or within such other time as the court may order." By consensus, the Committee approved this change.

Judge Dryden asked whether Rule 4-404 provides for the time period to be calculated as 15 days after notice of the filing of the petition. The Chair inquired as to whether the time period

should be 30 days after service of the petition, and Mr. Dean replied that it should remain as 30 days after notice, the way Rule 4-404 is worded. By consensus, the Committee approved the Rule as amended.

Mr. Dean presented Rule 4-413, Voluntary Dismissal, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 400 - POST CONVICTION PROCEDURE

ADD new Rule 4-413, as follows:

Rule 4-413. VOLUNTARY DISMISSAL

Voluntary dismissal of a petition is governed by Rule 2-506.

Source: This Rule is new.

Rule 4-413 was accompanied by the following Reporter's Note.

The Rules Committee recommends that Rule 2-506, rather than a Rule based on Rule 4-405, the comparable post conviction Rule, govern voluntary dismissal of a petition.

Mr. Dean pointed out that voluntary dismissal is governed by the civil rules. The Reporter suggested that Rule 3-506 be referenced, also. By consensus, the Committee agreed to this suggestion. By consensus, the Committee approved the Rule as amended.

Mr. Dean presented Rule 4-414, Hearing, for the Committee's

consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 400 - POST CONVICTION PROCEDURE

ADD new Rule 4-414, as follows:

Rule 4-414. HEARING

(a) Generally

The court may, in its discretion, hold a hearing on the petition. The court may deny the petition without a hearing, but may grant the petition only if a hearing has been held. If the court permits, evidence may be presented by affidavit, deposition, oral testimony, or in any other form as the court finds convenient and just. In the interest of justice, the court may decline to require strict application of the rules in Title 5, except those relating to competency of witnesses.

(b) Notice to Victims

The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, §11-503 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, §11-104 that states (1) that a petition for a writ of error coram nobis has been filed; (2) that the petition has been denied without a hearing or the date, time, and location of the hearing; and (3) if a hearing is to be held, that each victim or victim's representative may attend and testify when appropriate.

Source: This Rule is new.

Rule 4-414 was accompanied by the following Reporter's Note.

Rule 4-414 is new.

Section (a) is based on Rule 4-406, Hearing.

Section (b) conforms the Rule to victims' rights laws, and is based on Rule 4-345 (e)(2).

Mr. Dean explained that the Rule was revised to conform to legislation pertaining to notice to victims. The Reporter pointed out that the second sentence of section (a) was added in conjunction with the addition of section (b). Mr. Dean noted that the legislature gave victims the right to address the court in a sentence review. A reference to this was added to Rule 4-414. The right to address the court is not absolute. It may not be allowed if the proceeding is not related to sentencing, so the phrase "testify when appropriate" was used in the Rule. Judge Heller expressed the view that it might be better to state that the victim may address the court when it is relevant. Mr. Dean commented that victims do not know what is relevant, and the judge should not have to make a decision as to relevance in every case. Ms. Potter remarked that the court, not the victim, makes the determination as to what is relevant. Judge Heller said that the word "relevant" has a legal meaning.

Mr. Dean emphasized that there is no absolute right for the victim to testify. The Chair said that the victim may testify if the court authorizes it. Mr. Sykes commented that the Rule should be drafted so that its restrictive language does not apply to attendance at the hearing. The Chair suggested that the last

sentence of section (b) end with the word “attend,” and then a new sentence be added that would indicate that the court may allow testimony. Judge Dryden suggested that the sentence state that the court may allow testimony as the court deems relevant. The Chair proposed that the new sentence provide that the victim may attend and request the court’s permission to testify. Mr. Dean suggested that the new language be: “... and request the court’s permission to be heard.” Judge Norton expressed the opinion that relevance is the key component; otherwise the victim may take the opportunity to testify about his or her grievances with the system. Mr. Sykes commented that the right to ask to testify should be carefully spelled out. This Rule is being written for laymen. Judge Spellbring remarked that the public is represented by the State’s Attorney.

Judge Norton suggested that the second sentence of section (b) should be: “The court may allow the testimony if relevant to an issue before the court.” The Chair suggested that the fourth sentence of section (a), which reads, “In the interest of justice, the court may decline to require strict application of the rules in Title 5, except those relating to relevancy and the competency of witnesses” be moved to section (b). Judge Heller expressed her preference for Judge Norton’s suggested language. This makes it clear that the victim may have the opportunity to testify, but the judge knows that it is not required. This language is clearer for all involved -- the victim, prosecutor, and judge. The Chair commented that depending on the way the

notice is worded, it may create an expectation on the part of the victim that he or she will be permitted to testify. Mr. Dean agreed with Judge Heller that Judge Norton's language makes it clear that there is not an absolute right to be heard. The Committee agreed by consensus to use Judge Norton's language with restyling by the Style Subcommittee.

The Chair suggested that the following language be added at the end of the first sentence: "... each victim or victim's representative may attend and request the opportunity to be heard." By consensus, the Committee agreed to this suggestion. By consensus, the Committee approved the Rule as amended, subject to restyling.

Mr. Dean presented Rule 4-415, Statement and Order of Court, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 400 - POST CONVICTION PROCEDURE

ADD new Rule 4-415, as follows:

Rule 4-415. STATEMENT AND ORDER OF COURT

(a) Statement

The judge shall prepare and file or dictate into the record a statement setting forth separately each ground upon which the petition is based, the federal and state rights involved, the court's ruling with respect to each ground, and the reasons for the action taken thereon. If dictated into the record, the statement shall be promptly

transcribed.

(b) Order of Court

The statement shall include or be accompanied by an order either granting or denying relief. If the order is in favor of the petitioner, the court may provide for rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper.

(c) Copy to the Parties

A copy of the statement and the order shall be filed promptly with the clerk and sent to the petitioner, petitioner's counsel, and the State's Attorney.

(d) Finality

The statement and order constitute a final judgment when entered by the clerk.

Cross reference: See *Skok v. State*, 361 Md. 52 (2000).

Source: This Rule is new.

Rule 4-415 was accompanied by the following Reporter's Note.

Rule 4-415 is new and is based on Rule 4-407, Statement and Order of Court.

Mr. Dean told the Committee that Judge Dryden had raised an issue regarding the language of Rule 4-415. Judge Dryden pointed out that section (a) requires that the judge "prepare and file or dictate into the record a statement setting forth separately each ground upon which the petition is based, the federal and state rights involved, the court's ruling with respect to each ground, and the reasons for the action taken thereon." A statement dictated into the record "shall be promptly transcribed." Section (b) refers to "an order either granting or denying

relief." These references do not accurately describe the way that the District Court functions. The reason that this language is in the Rule is so that the appellate court can understand why the judge made his or her decision. However, decisions appealed from the District Court are heard *de novo*, so there is no need for a detailed record to be made and transcribed. It would be better to separate out procedures in the circuit courts and the District Court. Mr. Michael suggested that the second sentence of section (a) be eliminated.

Judge Heller commented that the Circuit Court for Baltimore City hears more post conviction proceedings than any other jurisdiction in the State. Although it is a burden to write out the reasons for the decision, it is helpful in appeals. Judge Dryden responded that *coram nobis* cases will not work the same way, especially if the petitioner refiles a petition that previously had been denied. Judge Heller inquired as to whether the petitioner can obtain a transcript of the District Court proceeding. Judge Norton replied that a compact disc of the proceedings is available. Judge Heller noted that obtaining and transcribing the compact disc may create a burden.

Mr. Dean agreed with Mr. Michael that the last sentence of section (a) be deleted. The burden should be placed on the party who would like to have further review. This language is taken from Rule 4-407, the Post Conviction Rule. Often, in a post conviction case, there will be as many as six grounds set forth

in the judge's statement, but in a *coram nobis* case, there is usually one ground -- that the petitioner was not advised of the collateral consequences of his or her guilty plea.

Judge Norton expressed the opinion that the second sentence of section (b) should be retained, because it uses the word "may," indicating that the court is not required to take the actions listed. The Reporter asked if the Committee agreed with Mr. Michael's suggestion to delete the second sentence of section (a), and by consensus, the Committee indicated its agreement with this suggestion. Mr. Dean questioned as to whether the removal of the sentence has any effect on section (c). The Chair suggested that the reference to the "statement" be deleted from section (c). The Reporter suggested that the reference to the "statement" also be removed from section (d). The Committee agreed by consensus to these deletions. The Committee approved the Rule as amended.

Mr. Dean presented Rule 5-101, Scope, for the Committee's consideration.

**Note to Rules Committee:**
**Subsection (c)(4) is the conforming amendment re: coram nobis.**
**Subsection (c)(9) has been transmitted to the Evidence Subcommittee for consideration by that Subcommittee.**

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 5-101 to add two subsections to section (c), as follows:

Rule 5-101. SCOPE

(a) Generally

Except as otherwise provided by statute or rule, the rules in this Title apply to all actions and proceedings in the courts of this State.

(b) Rules Inapplicable

The rules in this Title other than those relating to the competency of witnesses do not apply to the following proceedings:

(1) Proceedings before grand juries;

(2) Proceedings for extradition or rendition;

(3) Direct contempt proceedings in which the court may act summarily;

(4) Small claim actions under Rule 3-701 and appeals under Rule 7-112 (d)(2);

(5) Issuance of a summons or warrant under Rule 4-212;

(6) Pretrial release under Rule 4-216 or release after conviction under Rule 4-349;

(7) Preliminary hearings under Rule 4-221;

(8) Post-sentencing procedures under Rule 4-340;

(9) Sentencing in non-capital cases under Rule 4-342;

(10) Issuance of a search warrant under Rule 4-601;

(11) Detention and shelter care hearings under Rule 11-112; and

(12) Any other proceeding in which, prior to the adoption of the rules in this Title, the court was traditionally not bound by the common-law rules of evidence.

Committee note: The Rules in this Chapter are not intended to limit the Court of Appeals in defining the application of the rules of evidence in sentencing proceedings in capital cases or to override specific statutory provisions regarding the admissibility of evidence in those proceedings. See, for example, *Tichnell v. State*, 290 Md. 43 (1981); Code, Article 41, §4-609 (d).

(c) Discretionary Application

In the following proceedings, the court may, in the interest of justice, decline to require strict application of the rules in this Title other than those relating to the competency of witnesses:

(1) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 5-104 (a);

(2) Proceedings for revocation of probation under Rule 4-347;

(3) Hearings on petitions for post-conviction relief under Rule 4-406;

(4) Hearings on petitions for coram nobis under Rule 4-414;

~~(4)~~ (5) Plenary proceedings in the Orphans' Court under Rule 6-462;

~~(5)~~ (6) Waiver hearings under Rule 11-113;

~~(6)~~ (7) Disposition hearings under Rule 11-115;

~~(7)~~ (8) Modification hearings under Rule 11-116; ~~and~~

(9) Permanency planning hearings under Code, Courts Article, §3-823; and

~~(8)~~ (10) Any other proceeding in which, prior to the adoption of the rules in this Title, the court was authorized to decline to apply the common-law rules of evidence.

Source: This Rule is derived from Uniform

Rule of Evidence 1101.

Rule 5-101 was accompanied by the following Reporter's Note.

> The proposed amendments to Rule 5-101 add two new subsections to section (c).
>
> Proposed new subsection (c)(4) conforms the Rule to proposed new Rule 4-414, concerning hearings on a petition for a writ of *coram nobis* as to a prior judgment in a criminal action.
>
> Proposed new subsection (c)(9) adopts by Rule the holding of *In Re Ashley E.*, 158 Md. App. 144 (2004), *cert. granted*, 383 Md. 569 (2004).

Mr. Dean told the Committee that hearings on petitions for *coram nobis* have been added to the list of proceedings in which the judge may decline to require strict application of the evidence rules. The underlined change in subsection (c)(9) is another unrelated matter for consideration by the Evidence Subcommittee. By consensus, the Committee approved the change to subsection (c)(4) of the Rule.

Alan Drew, Esq., an attorney with the Office of the Public Defender, said that the Court of Appeals has granted certiorari and will hear the case of *In Re Ashley E.*, 158 Md. App. 144 (2004) on April 4, 2005. The proposed change to subsection (c)(9) reflects the holding in that case. Mr. Drew asked that the Committee defer discussion of this provision until the Court of Appeals decides the case. The Chair responded that if the Court of Appeals reverses the decision of the Court of Special Appeals, the proposed language in subsection (c)(9) will be taken

out before the Rule is sent to the Court of Appeals. Any action taken by the Court of Appeals will be monitored.

Judge Dryden raised the issue of appeal rights, asking if an appeal from a decision of the District Court is heard *de novo* in the circuit court. He asked if the petitioner is the only party who has the right to appeal. Mr. Dean replied that Code, Courts Article, Title 12, Subtitle 4 contains the body of law that governs appeals from judgments entered in the District Court. Judge Norton pointed out that subsection (b)(3) of Rule 7-102, Modes of Appeal, provides that an appeal shall be heard on the record made in the District Court in the following cases: "... any civil or criminal action in which the parties so agree ...". Otherwise, the appeal is *de novo*.

Judge Spellbring questioned as to how many convictions in the District Court are not appealed to the circuit court when the defendant is dissatisfied with the District Court judgment. Judge Norton replied that usually, the *coram nobis* petitioner had been satisfied with the District Court decision in the criminal case until deportation proceedings are instituted. Judge Dryden commented that usually the issue is that the petitioner was not warned about the collateral consequences of the conviction, and the Reporter noted that another possibility is that the deportation law changed between the time the defendant was granted probation before judgment and the time of the notice of the deportation. Judge Norton inquired as to what type of advice

attorneys are giving to their clients on the issue of possible deportation. The Chair suggested that the Rule provide in a Committee note that appeals from the District Court to a circuit court are governed by Title 7, Chapter 100 of the Rules of Procedure. The procedure would be keyed to civil practice. Ordinarily, the appeal is heard *de novo* in the circuit court. Judge Norton had pointed out that the parties can agree to have the appeal heard on the record, and there are other possibilities as to how the appeal can proceed. The appeal could be from a judgment entered in a circuit court, in which case the appeal would be governed by the Rules in Title 8. It would be difficult to write a comprehensive road map applicable to all *coram nobis* appeals. Mr. Dean expressed the opinion that the Chair's suggestion is a good resolution. The Committee agreed by consensus to this suggestion.

The Committee approved Rule 5-101, as amended.

Agenda Item 2. Consideration of a proposed amendment to Rule 4-406 (Hearing)

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Mr. Dean presented Rule 4-406, Hearing, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 400 - POST CONVICTION PROCEDURE

AMEND Rule 4-406 by adding a cross

reference after section (c), as follows:

Rule 4-406. HEARING

(a) When Required

A hearing shall be held promptly on a petition under the Uniform Post Conviction Procedure Act unless the parties stipulate that the facts stated in the petition are true and that the facts and applicable law justify the granting of relief. If a defendant requests that the court reopen a post conviction proceeding that was previously concluded, the court shall determine whether a hearing will be held, but it may not reopen the proceeding or grant the relief requested without a hearing unless the parties stipulate that the facts stated in the petition are true and that the facts and applicable law justify the granting of relief.

Cross reference: For time requirements applicable to hearings in death penalty cases, see Code, Criminal Procedure Article, §7-204.

(b) Judge

The hearing shall not be held by the judge who presided at trial except with the consent of the petitioner.

(c) Evidence

Evidence may be presented by affidavit, deposition, oral testimony, or in any other form as the court finds convenient and just. In the interest of justice, the court may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses.

Cross reference: For procedures concerning DNA testing and preservation of DNA evidence in post conviction cases, see Code, Criminal Procedure Article, §8-201.

(d) Presence of Petitioner

The petitioner has the right to be present at any hearing on the petition.

Cross reference: For post conviction procedure, right to counsel and hearing, see Code, Criminal Procedure Article, §§7-101 - 7-108 and §§7-201 - 7-204; victim notification, Criminal Procedure Article, §11-104.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rule BK44 c.
Section (c) is derived from former Rule BK44 d.
Section (d) is derived from former Rule BK44 e.

Rule 4-406 was accompanied by the following Reporter's Note.

Code, Criminal Procedure Article, §8-201 provides for DNA testing and for preservation of scientific identification evidence that the State has reason to know contains DNA material in post conviction cases. The Criminal Subcommittee recommends adding a cross reference after section (c) of Rule 4-406 to draw attention to the statute.

Mr. Dean explained that adding a cross reference to Code, Criminal Procedure Article, §8-201, which provides for DNA testing and for preservation of scientific identification evidence that the State has reason to know contains DNA material, dovetails the Rule with the legislative prescription. The Assistant Reporter commented that previously it had been proposed that Rule 4-322, Exhibits, be amended to refer to the statute, but the Committee did not agree with this proposal. By

consensus, the Committee approved the Rule as presented.

Agenda Item 3. Consideration of certain proposed rules changes pertaining to the Maryland Patients' Access to Quality Health Care Act of 2004: Amendments to Rule 2-332 (Third-Party Practice), New Rule 2-605 (Offers of Judgment - Health Care Malpractice Claims), Amendments to Rule 5-706 (Court Appointed Experts), Amendments to Rule 5-804 (Hearsay Exceptions; Declarant Unavailable), and Amendment to Rule 15-402 (Definitions)

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Mr. Brault presented Rule 2-332, Third-Party Practice, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-332 by adding a cross reference to a certain Code provision at the end of the Rule, as follows:

Rule 2-332. THIRD-PARTY PRACTICE

(a) Defendant's Claim Against Third Party

A defendant, as a third-party plaintiff, may cause a summons and complaint, together with a copy of all pleadings, scheduling notices, court orders, and other papers previously filed in the action, to be served upon a person not previously a party to the action who is or may be liable to the defendant for all or part of a plaintiff 's claim against the defendant. A person so served becomes a third-party defendant.

(b) Response by Third Party

A third-party defendant shall assert defenses to the third-party plaintiff's claim as provided by Rules 2-322 and 2-323 and may assert counterclaims against the third-party plaintiff and cross-claims against other

third-party defendants as provided by Rule 2-331. The third-party defendant may assert against the plaintiff any defenses that the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(c) Plaintiff's Claim Against Third Party

The plaintiff shall assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert defenses as provided by Rules 2-322 and 2-323 and may assert counterclaims and cross-claims as provided by Rule 2-331. If the plaintiff fails to assert any such claim against the third-party defendant, the plaintiff may not thereafter assert that claim in a separate action instituted after the third-party defendant has been impleaded. This section does not apply when a third-party claim has been stricken pursuant to section (e) of this Rule.

(d) Additional Parties

A third-party defendant may proceed under this Rule against any person who is or may be liable to the third-party defendant for all or part of the claim made in the pending action. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances that would entitle a defendant to do so under this Rule.

(e) Time for Filing

If a party files a third-party claim more than 30 days after the time for filing that party's answer, any other party may file, within 15 days of service of the third-party claim, a motion to strike it or to sever it for separate trial. When such a motion is filed, the time for responding to the third-party claim is extended without special order to 15 days after entry of the court's order on the motion. The court shall

grant the motion unless there is a showing that the late filing of the third-party claim does not prejudice other parties to the action.

Cross reference: For third-party practice in health care malpractice cases, see Code, Courts Article, §3-2A-04.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 315 a.
Section (b) is derived from former Rule 315 c 1, c 2 and d 1.
Section (c) is derived from former Rule 315 d.
Section (d) is derived from former Rule 315 f 1 and 2.
Section (e) is derived from former Rule 315 b.

Rule 2-332 was accompanied by the following Reporter's Note.

The Maryland Patients' Access to Quality Health Care Act of 2004, Chapter 5 (HB2), Acts of 2004 Special Legislative Session contains new language providing that the court may allow a third-party claim against a health care provider to be filed later than the 30-day response provided for in the statute. The Process, Parties & Pleading Subcommittee recommends adding a cross reference in Rule 2-332 to Code, Courts Article, §3-2A-04 to draw attention to the new language.

Mr. Brault told the Committee that the Maryland Patients' Access to Quality Health Care Act of 2004, Chapter 5 (HB 2), Acts of 2004, was the product of negotiations between the Senate and the House of Delegates. Many aspects of the law interact with the Rules of Procedure. It is a difficult piece of legislation to read. The cross reference added to Rule 2-332 is appropriate. By consensus, the Committee approved the Rule as presented.

Mr. Klein presented Rule 2-605, Offers of Judgment - Health

Care Malpractice Claims, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 - JUDGMENT

ADD new Rule 2-605, as follows:

Rule 2-605. OFFERS OF JUDGMENT - HEALTH CARE MALPRACTICE CLAIMS

A party to a health care malpractice claim may serve on the adverse party an offer of judgment pursuant to Code, Courts Article, §3-2A-08A.

Source: This Rule is new.

Rule 2-605 was accompanied by the following Reporter's Note.

The Maryland Patients' Access to Quality Health Care Act of 2004, Chapter 5 (HB2), Acts of 2004 Special Legislative Session contains a section providing for a procedure for a party to a health care malpractice claim to make an offer of judgment. There are at least three possible ways to conform the Rules of Procedure to the new procedure. One way is to create a new Rule that references the statute which is presented here. The second is to create a new Rule that more fully describes the new procedure. The third is to add a cross reference to the statute in one or more of the Rules. It is also arguable that no change needs to be made to the Rules.

Mr. Klein explained that a longer version of the proposed new Rule had been distributed at the meeting today. The longer version reads as follows:

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE — CIRCUIT COURT

CHAPTER 600 - JUDGMENT

ADD new Rule 2-605, as follows:

Rule 2-605. OFFERS OF JUDGMENT - HEALTH CARE MALPRACTICE CLAIMS

(a) When Served

(1) Before Trial

At any time not less than 45 days before **[**trial commences**]** **[**a scheduled trial date**]**, a party to an action for medical injury as defined in the Health Care Malpractice Claims Act (Code, Courts Article, §§3-2A-01 et seq.) may serve on an adverse party an offer of judgment to be entered for the amount of money specified in the offer, plus costs accrued as of the date of the offer.

(2) After Liability Adjudged

When the liability of one party to another has been determined by verdict or entry of judgment, but the amount or extent of the liability remains to be determined by further proceedings, a party adjudged liable or a party in whose favor liability was determined may make an offer of judgment not less than 45 days before the commencement of any hearing to determine the amount or extent of liability.

(b) Offer Accepted

If within 15 days after service of the offer of judgment the adverse party serves written notice that the offer is accepted, then either party may file and serve on all other parties a copy of the offer and notice of acceptance. The court shall then enter judgment in accordance with that filing.

(c) Offer Not Accepted

(1) Offer Deemed Withdrawn

If the adverse party does not accept an offer of judgment within the time specified in section (b) of this Rule, the offer shall be deemed withdrawn. Evidence of the offer is not admissible except in a proceeding to determine costs.

(2) Subsequent Offer

An offer of judgment that is not accepted does not preclude a party from making a subsequent offer of judgment within the time specified in section (a) of this Rule.

(d) Payment of Costs

If the judgment finally obtained is not more favorable to the adverse party than the offer of judgment, the adverse party who received the offer shall pay the costs incurred by the party making the offer after it was made.

Committee note: The term "costs" as used in Rule 2-605 is defined in Rule 2-603.

Source: This Rule is new.

Mr. Klein stated that he had requested that a longer version be drafted as an alternative to the one in the meeting materials. The question of whether to have offers of judgment in the Rules of Procedure is a sensitive subject for the Rules Committee, which had, on several occasions, previously considered and rejected the suggestion to provide for offers of judgment in the Rules. The legislature included an offer of judgment provision in the new statute, and has restricted it to health care malpractice claims. The Reporter had suggested that the shorter version is more consistent with the philosophy of the Committee. Neither version was well received by any member of the Management

of Litigation Subcommittee. The issue for the Rules Committee is whether to have the short version or the long version of the Rule.

Mr. Klein said that the long version of the Rule is based on the language of the statute with some modifications. Although the statute uses the phrase " trial begins," the Rules generally use the word "trial commences." Another choice for language in subsection (a)(1) of the longer version of Rule 2-605, would be "... not less than 45 days before a scheduled trial date ...". As an example, Rule 2-341, Amendment of Pleadings, contains the language: "at any time prior to 15 days of a scheduled trial date." Mr. Klein noted that he had added the language in subsection (a)(1) that reads "as defined in the Health Care Malpractice Claims Act (Code, Courts Article, §§3-2A-01 et seq.)." He also added the language "as of the date of the offer" at the end of subsection (a)(1).

The Chair inquired as to whether the word "may" should be changed to the word "shall" in section (b) of the long version of the Rule. Mr. Klein responded that the filing and service depend on whether the offer has been accepted. The Chair said that the burden should be on the party who accepts the offer to file and serve a copy of the offer and notice on all of the other parties. Mr. Michael asked if it is a requirement that the judgment must be entered. Mr. Brault replied that this is from the federal rule. Mr. Michael remarked that this may be unwise; the confidentiality of the settlement may need to be protected.

Mr. Brault told the Committee that he had served on a Task Force on Fed. R. Civ. P. 68, Offer of Judgment. The Honorable Paul W. Grimm, Magistrate Judge for the United States District Court for the District of Maryland, gave the Task Force an excellent dissertation on Rule 68 and the cases decided under that Rule. However, the federal court experience is not helpful, because the Rule only affords costs and expenses. The imposition of a penalty is inadequate, and thus, no "teeth" exist to effect a settlement.

The new statute in Maryland differs from the federal rule in that the Maryland law provides that any party to a case may file an offer of judgment on the adverse party. The federal rule only allows a party against whom another party has made a claim for money damages to file. The Task Force directed its efforts at defendants only. The President of the Maryland Senate and the Chair of the Senate Judicial Proceedings Committee favored also allowing plaintiffs to file. The language in the statute assists plaintiffs in getting a settlement. However, the legislators may not have realized that Rule 2-603 costs are only court costs.

Mr. Brault said that as part of the first phase of the 1984 revision of the Maryland Rules, he and Judge McAuliffe drafted Rule 2-603, Costs. "Costs" mean court costs and sheriff's fees, and they usually amount to about $200. In the past, the Rules Committee had declined the request of the Honorable Paul Weinstein, formerly the administrative judge for the Circuit Court for Montgomery County and Chair of the Conference of

Circuit Judges, to approve an "offer of judgment" rule that includes attorney's fees as costs. Judge Grimm had referred to a rule with "teeth" as including attorney's fees –- the English Rule. The new statute does not have "teeth," and is not likely to be effective.

Mr. Klein agreed that the statute does not address costs in a meaningful way. He said that he does not believe in the bilateral English Rule. Even though the statute may not be effective, it may not be appropriate simply to cross reference the statute as the short version of the Rule does. It is more helpful to track the statute. Mr. Sykes pointed out that there are other Rules that consist of only a cross reference to a statute, such as Rule 5-412, Sex Offense Cases; Relevance of Victim's Past Behavior. Mr. Brault remarked that federal judges have broader authority in interpreting Fed. R. Civ. P. 54, Judgments, Costs. Costs may be included in any order. An attorney simply files a bill for costs with the clerk. Attorneys in federal cases include as costs every dollar they spent on depositions and transcripts, costs that can run into thousands of dollars. This is not allowed in Maryland. Costs are defined narrowly, and the judge does not have discretion to expand the definition.

Judge Heller remarked that if the costs referenced in proposed Rule 2-605 are defined in Rule 2-603 as court costs, then Rule 2-605 is not meaningful. Mr. Klein responded that the statute refers to costs under Rule 2-603. Judge Heller noted

that Rule 2-603 is clear that it refers to court costs, and not to litigation costs. Mr. Brault said that "costs" should be defined as one of three categories -- court costs, expenses, or attorney's fees. He asked whether minutes of Rules Committee meetings discussing costs would clarify the meaning of the term. He suggested that Rule 2-603 may need to be modified.

Mr. Klein stated that he had no strong preference as to which version of the Rule should be chosen. The Chair expressed the opinion that the short version is more appropriate. Mr. Maloney moved that the short version of the Rule be adopted, the motion was seconded, and it passed unanimously. The Chair said that a cross reference to Rule 2-603 should be added at the end of Rule 2-605. The Committee agreed by consensus to this. The Reporter asked whether any clarification or modification of Rule 2-603 should be made. By consensus, the Committee agreed to have the Style Subcommittee make any necessary changes to Rule 2-603 when it styles Rule 2-605.

The Committee approved the short version of proposed new Rule 2-605, as amended.

The Chair presented Rule 5-706, Court Appointed Experts, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 700 - OPINIONS AND EXPERT TESTIMONY

AMEND Rule 5-706 by adding a cross

reference to a certain Code provision at the end of the Rule, as follows:

Rule 5-706. COURT APPOINTED EXPERTS

(a) Appointment

The court, on its own initiative or on the motion of any party, may enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness's duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness's findings, if any; the witness's deposition may be taken by any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

(b) Compensation

Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in civil actions, proceedings involving just compensation for the taking of property, and criminal actions. In other civil actions the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) Disclosure of Appointment

In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert

witness.

(d) Parties' Experts of Own Selection

Nothing in this Rule limits the parties in calling expert witnesses of their own selection.

Cross reference: Rule 2-603. See Code, Courts Article, §3-2A-09 concerning court-appointed experts in health care malpractice cases.

Source: This Rule is derived without substantive change from F.R.Ev. 706. Any language differences are solely for purposes of style and clarification.

Rule 5-706 was accompanied by the following Reporter's Note.

The Maryland Patients' Access to Quality Health Care Act of 2004, Chapter 5 (HB2), Acts of 2004 Special Legislative Session contains a section providing that a court may on its own motion or on motion of a party, employ a neutral expert witness to testify on the issue of a plaintiff's future medical expenses or future loss of earnings. The Evidence Subcommittee recommends adding a cross reference in Rule 5-706 to Code, Courts Article, §3-2A-09 to draw attention to the new language.

The Chair pointed out that although the Rule covers the language of the Code provision, there is no harm in including a cross reference to the statute. By consensus, the Committee approved the Rule as presented.

The Chair presented Rule 5-804, Hearsay Exceptions; Declarant Unavailable, for the Committee's consideration.

AMEND Rule 5-804 (b)(3) by adding a cross reference to a certain Code provision, as follows:

Rule 5-804. HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE

. . .

(b) Hearsay Exceptions

The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former Testimony

Testimony given as a witness in any action or proceeding or in a deposition taken in compliance with law in the course of any action or proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement Under Belief of Impending Death

In a prosecution for an offense based upon an unlawful homicide, attempted homicide, or assault with intent to commit a homicide or in any civil action, a statement made by a declarant, while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be his or her impending death.

(3) Statement Against Interest

A statement which was at the time of its making so contrary to the declarant's pecuniary or proprietary interest, so tended to subject the declarant to civil or criminal liability, or so tended to render invalid a

> claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.
>
> Cross reference: See Code, Courts Article, §10-920, distinguishing expressions of regret or apology from admissions of liability or fault when made by health care providers.
>
> . . .

Rule 5-804 was accompanied by the following Reporter's Note.

> The Maryland Patients' Access to Quality Health Care Act of 2004, Chapter 5 (HB2), Acts of 2004 Special Legislative Session contains language providing that an apology or expression of regret made by a health care provider is not an admission of fault in a health care malpractice claim. The Evidence Subcommittee recommends adding a cross reference in Rule 5-804 to Code, Courts Article, §10-920 to draw attention to the new language.

The Chair told the Committee that the Colorado Rules of Evidence have a provision similar to the one in the new statute. This language has been found to be useful. It encourages better physician-patient relationships. Mr. Brault added that many attorneys have experienced the situation where the physician's apology has been admitted into evidence to be used against the physician. By consensus, the Committee approved the Rule as presented.

Mr. Sykes presented Rule 15-402, Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 400 - HEALTH CLAIMS ARBITRATION

AMEND Rule 15-402 (d) by modifying the definition of the term “Director” to comply with a statutory change, as follows:

Rule 15-402. DEFINITIONS

In these Rules the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(a) Arbitration Panel

"Arbitration panel" means the arbitrators selected to determine a health care malpractice claim in accordance with Code, Courts Article, Title 3, Subtitle 2A.

(b) Award

"Award" means a final determination of a health care malpractice claim by an arbitration panel or by the panel chair.

Cross reference: For the authority of the panel chair to rule on issues of law, see Code, Courts Article, §3-2A-05 (a).

(c) Defendant

"Defendant" means the health care provider.

(d) Director

"Director" means the Director of the Health ~~Claims Arbitration~~ Care Alternative Dispute Resolution Office.

(e) Plaintiff

"Plaintiff" means the party making a

claim against a health care provider.
Source: This Rule is new.

Rule 15-402 was accompanied by the following Reporter's Note.

The proposed amendment to Rule 15-402 conforms the Rule to the change of name of the Health Claims Arbitration Office to the Health Care Alternative Dispute Resolution Office. This change was made by the Maryland Patients' Access to Quality Health Care Act of 2004, Chapter 5 (HB2), Acts of 2004 Special Legislative Session.

Mr. Sykes explained that the Patients' Access to Quality Health Care statute changed the name of the "Health Claims Arbitration Office" to the "Health Care Alternative Dispute Resolution Office," and the amendment to Rule 15-402 contains the conforming change. By consensus, the Committee approved the Rule as presented.

Additional Agenda Item.

Mr. Bowen presented Rule 14–503, Process, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 500 - TAX SALES

AMEND Rule 14-503 to add a new subsection (c)(2) providing for posting of property by a private person, as follows:

Rule 14-503. PROCESS

(a) Notice to Defendants Whose Whereabouts are Known

Upon the filing of the complaint, the clerk shall issue a summons as in any other civil action. The summons, complaint, and exhibits, including the notice prescribed by Rule 14-502 (b) (3), shall be served in accordance with Rule 2-121 on each defendant named in the complaint whose whereabouts are known.

(b) Notice to Defendants Whose Whereabouts are Unknown, Unknown Owners, and Unnamed Interested Persons

When the complaint includes named defendants whose whereabouts are unknown, unknown owners, or unnamed persons having or claiming to have an interest in the property, the notice filed in accordance with Rule 14-502 (b)(3), after being issued and signed by the clerk, shall be served in accordance with Rule 2-122.

(c) Posting of Property

Upon the filing of the complaint, the plaintiff shall cause ~~the sheriff to post a notice in a conspicuous place on the property. The content of the notice shall be as prescribed in Rule 14-502 (b)(3).~~ a notice containing the information required by Rule 14-503 (b)(3) to be posted in a conspicuous place on the property. The posting may be made either by the sheriff or by a competent private person appointed by the plaintiff who is 18 years of age or older, including an attorney of record, but not a party to the action. A private person who posts the notice shall file with the court an affidavit setting forth the name and address of the affiant, the caption of the case, the date and time of the posting, and a description of the location of the posting and shall attach a photograph of the location showing the posted notice.

(d) Notice to Collector

Upon the filing of the complaint, the plaintiff shall mail a copy of the complaint and exhibits to the collector of taxes in the county in which the property is located.

Cross reference: For due process requirements, see *St. George Church v. Aggarwal*, 326 Md. 90 (1992).

Source: This Rule is new. Section (a) is derived in part from Code, Tax-Property Article, §14-839 (a). Section (b) is derived in part from Code, Tax-Property Article, §14-840. Section (c) is new. Section (d) is derived from Code, Tax-Property Article, §14-839 (c).

Rule 14-503 was accompanied by the following Reporter's Note.

At the request of John E. Reid, Esq., the Property Subcommittee recommends adding a provision to Rule 14-503 (c) allowing a private person to post notice of a tax sale on the property. Mr. Reid pointed out that often sheriffs cannot locate the property or cannot post the notice in a timely fashion. Allowing private persons to post the notice may speed up the process and limit the sheriffs' expenditure of resources. The Subcommittee suggested that requiring private persons to file an affidavit containing a description and a photograph of the posting will safeguard the process.

Mr. Bowen explained that John E. Reid, Esq. had written to the Chair of the Rules Committee pointing out that only allowing the sheriff to post properties that are the subject of foreclosure suits is often inefficient. The sheriff is not always able to locate the property or cannot complete the posting. The plaintiff may not find out until several months

have passed that the sheriff did not post the property. The sheriff's limited resources are being expended on a task that the plaintiff could complete. Mr. Reid suggested that in place of the language in section (c) that reads "... the plaintiff shall cause the sheriff to post a notice," the following language could be substituted: "... the plaintiff shall cause the property to be posted with a notice in a conspicuous place on the property ...". The Property Subcommittee proposes amending section (c) to include language giving the plaintiff the choice of having the sheriff or a competent private person post the property and if the choice is the latter, requiring a private person to file with the court an affidavit setting forth the name and address of the affiant, the caption of the case, the date and time of the posting, and a description of the location of the posting, including a photograph of the location of the posting on the property. The concern is that the sheriff as an officer of the court will post the property conscientiously, but a private person may not.

Ms. Potter asked why the word "competent" is added before the words "private person." Mr. Bowen answered that this language is taken from Rule 2-123, Process–By Whom Served. The Chair stated that the Style Subcommittee can finalize the language of the Rule. He expressed the opinion that the change is a good idea. Ms. Potter questioned as to how the court knows that the sheriff has posted the property. Mr. Bowen answered that the sheriff files a return noting that the task has been

accomplished. The Chair inquired as to whether there is an express requirement for the sheriff to file a return. Mr. Bowen replied that the requirement is statutory.

By consensus, the Committee approved the Rule as presented.

Information Item: Letter dated February 22, 2005 to the Hon. Alan M. Wilner, Chair, Judicial Institute of Maryland (See Appendix 1.)

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The Chair said that the meeting materials contain a copy of a letter to the Honorable Alan M. Wilner, judge of the Court of Appeals and Chair of the Judicial Institute of Maryland, apprising him of the Committee's suggestion to add courses on writing opinions to the Judicial Institute, an idea formulated in response to the letter of the Honorable Dana M. Levitz, judge of the Circuit Court for Baltimore County, to the Committee suggesting that the length of appellate opinions should be regulated. (See Appendix 1).

The Chair adjourned the meeting.