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 May 16, 2003.

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
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
Hon. John F. McAuliffe
Hon. William D. Missouri
Hon. John L. Norton, III
Anne C. Ogletree, Esq.
Larry W. Shipley, Clerk
Melvin J. Sykes, Esq.
Roger W. Titus, Esq.
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Shannon Simmons, Rules Committee Intern
David Addison, Esq., Office of the Public Defender
Elizabeth B. Veronis, Esq., Court Information Office

The Chair convened the meeting. He introduced Shannon Simmons, a third-year law student at the University of Baltimore, who will be serving as an intern in the Rules Committee Office this summer. The Chair announced the birth this morning of Thomas Francis Xavier Maloney, son of Tim Maloney, a member of the Rules Committee.

The Chair said that he had received a letter from Douglas Gansler, Esq., State's Attorney for Montgomery County, who was

concerned because Mr. Brault had distributed the "Brady Report" from the American College of Trial Lawyers along with a letter alleging that in Montgomery County some prosecutors are not cooperating, because they are not always providing information favorable to an accused as required by the case of Brady v. Maryland, 373 U.S. 83 (1963). In the letter, Mr. Gansler denied the allegations and requested that in the future he be consulted before any similar material is disseminated.

Agenda Item 1. Reconsideration of certain proposed rules changes concerning a probable cause determination after a Warrantless arrest: Rule 4-216 (Pretrial Release) - amendments to section (a) - (Arrest Without Warrant - Probable Cause Determination) and Rule 4-213 (Initial Appearance of Defendant - new subsection (a)(1) - (Probable Cause Determination for Warrantless Arrest)

The Chair presented Rules 4-216, Pretrial Release, and 4-213, Initial Appearance of Defendant, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216 to delete current section (a), to change the tagline of new section (a), to add new language to section (a) pertaining to a judicial officer determining probable cause, to add certain new Code references to section (b), to add language in section (b) clarifying that a judicial officer may release a defendant on personal recognizance or on bail with or without conditions imposed, to eliminate a

certain cross reference, to add a Committee note, to conform section (c) to section (b), to add to section (d) a new reference to the Code and to add language (1) providing that the judicial officer shall take into account certain information to the extent available, (2) referring to the safety of the alleged victim and community, and (3) requiring the judicial officer to place in writing or to state on the record the amount and terms of bail, to change the tagline of subsection (d)(4), to expand on the types of bail bonds in subsection (d)(4), to conform subsection (e)(5)(C) to section (b), to conform statutory references to recent legislation, to add language to section (h) providing for the power of a judge to alter conditions set by another judge or commissioner, to add cross references to Rules 1-361 and 4-347 at the end of section (j), and to make certain stylistic changes, as follows:

Rule 4-216. PRETRIAL RELEASE

~~(a) Interim Bail~~

~~Pending an initial appearance by the defendant before a judicial officer pursuant to Rule 4-213 (a), the defendant may be released upon execution of a bond in an amount and subject to conditions specified in a schedule that may be adopted by the Chief Judge of the District Court for certain offenses. The Chief Judge may authorize designated court personnel or peace officers to release a defendant by reference to the schedule.~~

~~(b)~~ (a) Arrest Without Warrant – Probable Cause Determination

~~A defendant arrested without a warrant shall be released on personal recognizance under terms that do not significantly restrain the defendant's liberty unless the judicial officer determines that there is probable cause to believe that the defendant committed an offense.~~ If a defendant was arrested without a warrant, the judicial

officer shall determine whether there was probable cause to arrest the defendant. If there was probable cause for the arrest, the judicial officer shall implement the remaining sections of this Rule. If there was no probable cause, the judicial officer shall release the defendant on personal recognizance, with no other conditions of release, and the remaining sections of this Rule are inapplicable.

Cross reference: See Rule 4-213 (a)(1).

. . .

Rule 4-216 was accompanied by the following Reporter's Note.

During its consideration of Rule 4-216 at the June 2002 meeting, the Rules Committee discussed whether a defendant arrested without probable cause can be released on personal recognizance or whether the defendant should be released with no conditions at all. A review of the case of *Gerstein v. Pugh*, 420 U.S. 103, 95 St. Ct. 854, 43 L. Ed. 2d 54 (1975) indicates that it is constitutional to release a defendant, who has been previously arrested without probable cause, on personal recognizance, because it does not restrict the defendant's liberty. Although Professor Byron Warnken recommends release without any conditions, it is appropriate to release a defendant arrested without probable cause on personal recognizance, which keeps the defendant in the criminal justice system for any monitoring that may be necessary.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-213 to add a new subsection (a)(1), Probable Cause Determination for Warrantless Arrest, as follows:

Rule 4-213. INITIAL APPEARANCE OF DEFENDANT

(a) In District Court Following Arrest

When a defendant appears before a judicial officer of the District Court pursuant to an arrest, the judicial officer shall proceed as follows:

(1) Probable Cause Determination for Warrantless Arrest

If a defendant was arrested without a warrant, the judicial officer shall determine whether there was probable cause to arrest the defendant. If there was no probable cause for the arrest, the judicial officer shall release the defendant on personal recognizance with no other conditions of release, and the remaining sections of this Rule are inapplicable.

Cross reference: See Rule 4-216 (a).

~~(1)~~ (2) Advice of Charges

The judicial officer shall inform the defendant of each offense with which the defendant is charged and of the allowable penalties, including mandatory penalties, if any, and shall provide the defendant with a copy of the charging document if the defendant does not already have one and one is then available. If one is not then available, the defendant shall be furnished with a copy as soon as possible.

~~(2)~~ (3) Advice of Right to Counsel

The judicial officer shall require the defendant to read the notice to defendant required to be printed on charging documents in accordance with Rule 4-202 (a), or shall read the notice to a defendant who is unable for any reason to do so. A copy of the notice

shall be furnished to a defendant who has not received a copy of the charging document. The judicial officer shall advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.

~~(3)~~ (4) Pretrial Release Determination

The judicial officer shall determine the defendant's eligibility for pretrial release pursuant to Rule 4-216.

~~(4)~~ (5) Advice of Preliminary Hearing

When a defendant has been charged with a felony that is not within the jurisdiction of the District Court and has not been indicted, the judicial officer shall advise the defendant of the right to have a preliminary hearing by a request made then or within ten days thereafter and that failure to make a timely request will result in the waiver of a preliminary hearing. If the defendant then requests a preliminary hearing, the judicial officer may either set its date and time or notify the defendant that the clerk will do so.

~~(5)~~ (6) Certification by Judicial Officer

The judicial officer shall certify compliance with this section in writing.

~~(6)~~ (7) Transfer of Papers by Clerk

As soon as practicable after the initial appearance by the defendant, the judicial officer shall file all papers with the clerk of the District Court or shall direct that they be forwarded to the clerk of the circuit court if the charging document is filed there.

Cross reference: Code (1957, 1989 Repl. Vol.), Courts Art., §10-912. See Rule 4-231 (d) concerning the appearance of a defendant by video conferencing.

(b) In District Court Following Summons

When a defendant appears before the District Court pursuant to a summons, the court shall proceed in accordance with Rule 4-301.

(c) In Circuit Court Following Arrest or Summons

The initial appearance of the defendant in circuit court occurs when the defendant (1) is brought before the court by reason of execution of a warrant pursuant to Rule 4-212 (e) or (f) (2), or (2) appears in person or by written notice of counsel in response to a summons. In either case, if the defendant appears without counsel the court shall proceed in accordance with Rule 4-215. If the appearance is by reason of execution of a warrant, the court shall inform the defendant of each offense with which the defendant is charged, ensure that the defendant has a copy of the charging document, and determine eligibility for pretrial release pursuant to Rule 4-216.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 723.
Section (b) is new.
Section (c) is derived from former Rule 723 a.

Rule 4-213 was accompanied by the following Reporter's Note.

In his June 21, 2002 memorandum entitled "Two Recommended Changes to the Proposed Md. Rule 4-216" and at the Rules Committee meeting on June 21, 2002, Professor Byron Warnken noted that in the case of ***Gerstein v. Pugh***, 420 U.S. 103, 95 S.Ct. 854, 43 L. Ed. 2d 54 (1975), the U.S. Supreme Court established a constitutional requirement for a prompt probable cause determination for any defendant arrested without a warrant. This requirement is absent from Rule 4-213, and the Rule should be amended to include this as one of the tasks to be accomplished by the judicial officer at the time of the

defendant’s initial appearance.

The Chair explained that when the Style Subcommittee reviewed the Rules pertaining to pretrial release that had been approved by the Rules Committee, the Subcommittee determined that the full Committee may wish to reconsider them to make sure that the Committee is satisfied with how the pretrial release decision works after a judicial officer has determined that there was no probable cause for the warrantless arrest of a defendant. The Chair said that his recollection was that from the time the Rules were modified to involve commissioners in the process, the procedure has been that when a defendant comes before a commissioner, and the commissioner is satisfied that there was no probable cause for the arrest, the commissioner sets a trial date and releases the defendant on the promise that the defendant will appear for the next proceeding whether it is a trial or a preliminary hearing. The Rule was approved by the Committee without this language. It read that if the commissioner decides there was no probable cause to have arrested the defendant, he or she is released with no conditions. The Rule should read that if the judicial officer decides that there is no probable cause for the defendant to have been arrested, the judicial officer schedules further proceedings and releases the defendant on the promise that the defendant will appear at the next proceeding.

Judge McAuliffe commented that the language suggested by the Style Subcommittee partially supersedes the statute, Code,

Criminal Procedure Article, §5-202, which provides that a District Court Commissioner may not authorize the pretrial release of a defendant charged with committing certain crimes. However, Judge McAuliffe expressed the opinion that the proposed change is a good one, notwithstanding the statute. Judge Norton remarked that there are several useful things that a commissioner does before releasing a defendant, such as advising the defendant of his or her right to an attorney. This is a very good practice, and it should continue. Judge Missouri agreed. The Chair said that the Rule will require the commissioner to advise the defendant of his or her rights, to schedule further proceedings, and to release the defendant on personal recognizance. The Committee agreed by consensus.

Judge McAuliffe asked if a change should be made to section (b) of Rule 4-222, Procedure Upon Waiver of Jurisdiction by Juvenile Court, to be consistent with the changes to Rule 4-216. Section (b) of Rule 4-222 uses the same language that was in Rule 4-216 before the Style Subcommittee suggested the modifications. The Chair expressed the view that no change to Rule 4-222 is needed, and the Reporter added that a juvenile defendant already has been processed in juvenile court prior to the waiver of that court's jurisdiction. Judge Dryden suggested that the language in section (b) of Rule 4-222 that reads, "... under terms and conditions that do not significantly restrain the defendant's liberty..." should be deleted. The Committee agreed by consensus that the language of Rule 4-222 should track the language of Rule

4-216.

Judge Norton suggested that in section (a) of Rule 4-216, a period should be placed after the phrase, "with no other conditions of release," and that the remainder of the sentence should be deleted. The Chair commented that the judicial officer should proceed in accordance with Rule 4-213 (a)(1) and (a)(2). Judge McAuliffe pointed out that the remaining sections of Rule 4-216 only pertain to bail bonds. The phrase "and the remaining sections of this Rule are inapplicable" should remain in the Rule.

The Reporter observed that although this language should remain in Rule 4-216, it should be taken out of Rule 4-213. It is Rule 4-213 that requires the advice of rights and provides for the scheduling of further proceedings. The Committee agreed by consensus to this change. The Chair said that the Style Subcommittee will review the Rules and conform them to the meaning intended by the Rules Committee. The Committee approved Rules 4-216, 4-213, and 4-222 as amended, subject to style changes.

Agenda Item 2. Reconsideration of certain proposed amendments concerning the transfer of an action to the juvenile court at sentencing: Rule 4-342 (Sentencing - Procedure in Non-Capital Cases)

Judge Missouri presented Rule 4-342, Sentencing -- Procedure in Non-Capital cases, for the Committee's consideration.

Note to Rules Committee: Proposed new section (m) is new, for your consideration. Proposed new section (l) already has been approved by the full Committee and styled.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 by adding a new section (l) providing for recordation of restitution **and to add a new section (m) and Committee note concerning transfer to the juvenile court under certain circumstances**, as follows:

Rule 4-342. SENTENCING -- PROCEDURE IN NON-CAPITAL CASES

(a) Applicability

This Rule applies to all cases except those governed by Rule 4-343.

(b) Statutory Sentencing Procedure

When a defendant has been found guilty of murder in the first degree and the State has given timely notice of intention to seek a sentence of imprisonment for life without the possibility of parole, but has not given notice of intention to seek the death penalty, the court shall conduct a sentencing proceeding, separate from the proceeding at which the defendant's guilt was adjudicated, as soon as practicable after the trial to determine whether to impose a sentence of imprisonment for life or imprisonment for life without parole.

Cross reference: Code, Criminal Law Article, §§2-101, 2-201, 2-202 (b)(3), 2-303, and 2-304.

(c) Judge

If the defendant's guilt is established after a trial has commenced, the judge who presided shall sentence the defendant. If a defendant enters a plea of guilty or nolo contendere before trial, any judge may sentence the defendant except that, the judge who directed entry of the plea shall sentence the defendant if that judge has received any matter, other than a statement of the mere facts of the offense, which would be relevant to determining the proper sentence. This section is subject to the provisions of Rule 4-361.

(d) Presentence Disclosures by the State's Attorney

Sufficiently in advance of sentencing to afford the defendant a reasonable opportunity to investigate, the State's Attorney shall disclose to the defendant or counsel any information that the State expects to present to the court for consideration in sentencing. If the court finds that the information was not timely provided, the court shall postpone sentencing.

(e) Notice and Right of Victim to Address the Court

(1) Notice and Determination

Notice to a victim or a victim’s representative of proceedings under this Rule is governed by Code, Criminal Procedure Article, §11-104 (e). The court shall determine whether the requirements of that section have been satisfied.

(2) Right to Address the Court

The right of a victim or a victim’s representative to address the court during a sentencing hearing under this Rule is governed by Code, Criminal Procedure Article, §11-403.

Cross reference: See Code, Criminal Procedure

Article, §§11-103 (b) and 11-403 (e) concerning the right of a victim or victim's representative to file an application for leave to appeal under certain circumstances.

(f) Allocution and Information in Mitigation

Before imposing sentence, the court shall afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment.

(g) Reasons

The court ordinarily shall state on the record its reasons for the sentence imposed.

(h) Credit for Time Spent in Custody

Time spent in custody shall be credited against a sentence pursuant to Code, Criminal Procedure Article, §6-218.

(i) Advice to the Defendant

At the time of imposing sentence, the court shall cause the defendant to be advised of any right of appeal, any right of review of the sentence under the Review of Criminal Sentences Act, any right to move for modification or reduction of the sentence, and the time allowed for the exercise of these rights. At the time of imposing a sentence of incarceration for a violent crime as defined in Code, Correctional Services Article, §7-101 and for which a defendant will be eligible for parole as provided in §7-301 (c) or (d) of the Correctional Services Article, the court shall state in open court the minimum time the defendant must serve for the violent crime before becoming eligible for parole. The circuit court shall cause the defendant who was sentenced in circuit court to be advised that within ten days after filing an appeal, the defendant must order in writing a transcript from the court stenographer.

Cross reference: Code, Criminal Procedure Article, §§8-102 - 8-109.

Committee note: Code, Criminal Procedure Article, §6-217 provides that the court's statement of the minimum time the defendant must serve for the violent crime before becoming eligible for parole is for informational purposes only and may not be considered a part of the sentence, and the failure of a court to comply with this requirement does not affect the legality or efficacy of the sentence imposed.

(j) Terms for Release

On request of the defendant, the court shall determine the defendant's eligibility for release under Rule 4-349 and the terms for any release.

(k) Restitution from a Parent

If restitution from a parent of the defendant is sought pursuant to Code, Criminal Procedure Article, §11-604, the State shall serve the parent with notice of intention to seek restitution and file a copy of the notice with the court. The court may not enter a judgment of restitution against the parent unless the parent has been afforded a reasonable opportunity to be heard and to present evidence. The hearing on parental restitution may be part of the defendant's sentencing hearing.

(l) Recordation of Restitution

(1) Circuit Court

Recordation of a judgment of restitution in the circuit court is governed by Code, Criminal Procedure Article, §11-608 and Rule 2-601.

(2) District Court

Upon the entry of a judgment of restitution in the District Court, the Clerk of the Court shall send the written notice required under Code, Criminal Procedure

Article, §11-610 (e). Recordation of a judgment of restitution in the District Court is governed by Code, Criminal Procedure Article, §§11-610 and 11-612 and Rule 3-621.

(m) Transfer to Juvenile Court

In a case involving a child, the court may transfer jurisdiction of the case to the juvenile court for disposition pursuant to Code, Criminal Procedure Article, §4-202.2.

(1) If Presiding Judge Designated to Hear Juvenile Matters

If the presiding judge has been designated under Code, Courts Article, §3-806 to hear juvenile matters, the court may transfer jurisdiction to the juvenile court and, after the State's Attorney has filed a juvenile petition pursuant to Rule 11-103 containing only the charge or charges of which the defendant has been convicted, may conduct a disposition pursuant to Rule 11-115. The record shall be docketed and transmitted to the juvenile court clerk. If the disposition does not occur immediately, the court shall enter a written order pursuant to subsection (m)(2) of this Rule, and the procedures of that subsection shall apply.

(2) If Presiding Judge Not Designated to Hear Juvenile Matters

If the presiding judge has not been designated under Code, Courts Article, §3-806 to hear juvenile matters, the court shall enter a written order waiving its jurisdiction and ordering that the defendant be subject to the jurisdiction and procedures of the juvenile court. In its order, the court shall (A) release or continue the pretrial release of the defendant, subject to appropriate conditions necessary to ensure the appearance of the defendant in the juvenile court or (B) place the defendant in detention or shelter care pursuant to Code,

Courts Article, §3-8A-15. The State's Attorney shall file a juvenile petition pursuant to Rule 11-103 and attach to the petition a copy of the charging document that was filed in the court exercising criminal jurisdiction and the order of the court transferring jurisdiction. If the defendant has been detained, the petition shall be filed on the date of the court's order. If the defendant has not been detained, the petition shall be filed within 72 hours of the date of the order to transfer. The record shall be docketed and transmitted to the juvenile court clerk. The juvenile court shall conduct a disposition pursuant to Rule 11-115.

Committee note: The docketing of the juvenile case includes assigning the case a new juvenile court case number, so that the record of the case in which the defendant was tried as an adult is able to be expunged.

~~Cross reference: Parent's liability, hearing, recording and effect, Rule 11-118.~~

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 772 a.
Section (b) is new.
Section (c) is derived from former Rule 772 b and M.D.R. 772 a. Section (d) is derived from former Rule 772 c and M.D.R. 772 b.
Section (e) is new.
Section (f) is derived from former Rule 772 d and M.D.R. 772 c.
Section (g) is derived from former Rule 772 e and M.D.R. 772 d.
Section (h) is derived from former Rule 772 f and M.D.R. 772 e.
Section (i) is in part derived from former Rule 772 h and M.D.R. 772 g and in part new.
Section (j) is new.
Section (k) is new.
Section (l) is new.
Section (m) is new.

Rule 4-342 was accompanied by the following Reporter's Note.

> The Rules Committee recommends the additions of two new sections to Rule 4-342.
>
> New section (l) is proposed in response to a request from Russell Butler, Esq. Mr. Butler suggested that Rules 4-342 and 4-354 should be amended because of problems with recording and enforcing judgments of restitution. The amendments would clarify that judgments of restitution may be enforced in the same manner as money judgments in civil actions and would add cross references to those sections of the Criminal Procedure Article that govern recording and indexing judgments of restitution. These amendments would provide more specific guidance for the clerks.
>
> New section (m) is proposed in light of Chapter 159, Acts of 2002 (SB 428), which allows a court exercising criminal jurisdiction to transfer an action involving a child to the juvenile court at sentencing under certain circumstances. The Criminal Subcommittee is proposing that Rule 4-342 be amended to refer to the new transfer procedure. The Subcommittee recommends dividing new section (m) into two sections, one pertaining to the case where the presiding judge has been designated pursuant to Code, Courts Article, §3-806 to hear juvenile matters and one pertaining to the case where the presiding judge has not been so designated. In subsection (m)(2), the Subcommittee recommends that language from Rule 4-251 (c)(2) and Rule 4-252 (h)(3) be added to the second sentence to provide procedures for releasing or detaining the juvenile, since the transfer to juvenile court will take longer because the presiding judge will not be the one conducting the disposition.

Judge Missouri explained that the legislature enacted a statute that provided for a transfer of an adult case to juvenile court if the case involves a minor who has not been convicted of any adult offenses, but has been convicted in criminal court of

offenses that could have been brought in juvenile court or if a waiver had been denied and pursuant to a plea agreement, the defendant was found guilty of an offense cognizable in the juvenile court. The Criminal Subcommittee has attempted to craft a rule to put into effect what the legislature intended by the statute.

Judge Missouri said that Mr. Addison, an Assistant Public Defender who had been very persuasive at the Subcommittee meetings, was present to discuss the Rule. Mr. Addison presented to the Committee a draft in which additional changes to the version of the Rule in the meeting materials have been made, including the deletion of the last sentence of subsection (m)(1) and the addition of a reference to "Rules 4-251 (c)(2) or 4-252 (h)(3)" in subsection (m)(2). (See Appendix 1).

Mr. Addison stated that he also suggests that part (B) of subsection (m)(2) be deleted. Judge McAuliffe commented that if part (B) were removed, it would appear that the defendant could only be released or put on bond. Mr. Addison responded that in subsection (m)(2)(A) he had added the referenced to Rules 4-251 (c)(2) and 4-252 (h)(3), because the wording of subsection (m)(2) is the same as these provisions. Parts (A) and (B) of subsection (m)(2) are somewhat redundant and both could simply refer to Rules 4-251 (c)(2) and 4-252 (h)(3).

Judge McAuliffe said that he had no problem with the Rule being redundant. Mr. Sykes commented that the second alternative, part (B) in the current version of subsection

(m)(2), needs to be clearer. Mr. Addison suggested that the language "pursuant to Rules 4-251(c)(2) or 4-252 (h)(3)," which he had proposed for addition to Rule 4-342 (m), could be placed in the first sentence of subsection (m)(2) after the word "matters" and before the word "the." Part A would pertain to release, and Part B would pertain to detention of a defendant. Judge McAuliffe commented that the Rule should retain the alternatives of Parts A and B. The Reporter inquired as to whether the reference to the two Rules adds anything. Mr. Addison responded that the statute contemplates that the judge in the adult criminal case should be the judge who sentences the defendant/ juvenile respondent. The Subcommittee's view is that if the judge has not been designated to hear juvenile matters, that judge should not be the one who conducts the disposition. The post-verdict transfer of jurisdiction is analogous to the pretrial transfer procedures described in Rules 4-251 (c)(2) and 4-252 (h)(3). Referencing these Rules reconciles the problem of a non-designated judge hearing a juvenile case.

The Chair suggested that the reference to the two Rules be put at the beginning of section (m) as the second sentence before subsection (1). Mr. Addison observed that if the criminal judge is a designated juvenile judge, that judge will enter the disposition in juvenile court. If the judge has not been designated, the case is transferred to juvenile court, and the disposition hearing is held before a judge who has been so designated. The Chair questioned as to whether it is

contemplated that the disposition occurs the day the case is transferred. Mr. Addison suggested that the last sentence of subsection (m)(1) could be stricken. For purposes of this Rule, it does not matter when the disposition takes place. Judge Missouri commented that the Department of Juvenile Justice is not always ready immediately to handle the juvenile case. The Reporter commented that the timing of the disposition is governed by section (a) of Rule 11-115, Disposition Hearing, which provides that the disposition hearing must be held no later than thirty days after the conclusion of the adjudicatory hearing.

The Reporter asked if a juvenile petition must be filed even though there already has been a trial on the criminal charging document and there will be no adjudicatory hearing on the juvenile petition. Judge Missouri replied that the Department of Juvenile Justice does not recognize a criminal charging document. Also, a new juvenile case number has to be assigned in order for any expungement of the criminal record to take place.

Mr. Dean pointed out that if the hearing on the juvenile's initial charges is not finished until 5 o'clock or 6 o'clock in the evening, as a practical matter, it could be difficult to hold the disposition at that time. The Reporter said that Rule 4-252 provides that until a juvenile petition is filed, the original charging document stays in effect. This language could be put into Rule 4-342. The Chair commented that in either case, whether the criminal court judge does or does not hear the disposition, the prosecutor has to file a juvenile petition.

This language probably should be moved elsewhere in the Rule, but the Style Subcommittee can make the necessary changes. The Reporter noted that if there is no juvenile judge available to conduct the disposition hearing and no juvenile petition is filed until 72 hours after the order of transfer is entered, it appears that no charging document is in effect. Mr. Dean added that any lapse in control over the defendant should be avoided.

Judge Missouri said that the statute is not clear as to which court conducts the disposition hearing of a juvenile who is convicted in the District Court and whose case is transferred to the juvenile court for disposition. It could be either the District Court or a circuit court. District Court judges could have difficulty with the disposition, because they are not always knowledgeable about resources in the juvenile system. The disposition should be handled in circuit court by juvenile judges.

Judge Norton remarked that the statute contemplates that the same judge who handled the criminal case will handle the juvenile matter. The Rule contains language so that an appropriate judge conducts the disposition hearing. The Rule has been organized to provide for procedures when the criminal court judge is a designated juvenile judge and when the criminal court judge is not so designated. The State's Attorney files a petition, and the provisions of Rules 4-251 and 4-252 apply to proceedings in which the disposition does not occur immediately. Language should be added to the Rule providing that the contents of the

juvenile petition should be limited to the charges of which the defendant has been convicted.

Judge McAuliffe commented that the legislature seems to have intended that after the verdict in adult court, the sentencing procedure of juvenile court is to be utilized, so the case has to be transferred. He inquired as to whether, after the transfer procedure takes place, the respondent could answer negatively if the respondent were to be asked if he or she had ever been convicted of a criminal case. Would the criminal conviction be erased from the juvenile's record? Judge Heller answered that the criminal conviction would be erased. The Subcommittee had discussed the possibility of the juvenile filing a petition for expungement of the adult record and the juvenile records being sealed. The Reporter noted that if a juvenile is charged not only with minor offenses that can be proven but also with serious offenses that cannot be proven but which require that the juvenile be charged as an adult, the expungement would allow the juvenile to be on the same footing as if he or she had not been overcharged. The Chair pointed out that any time the original criminal case is in the District Court, it will be necessary to transfer to the circuit court. Judge Dryden remarked that in Anne Arundel County, none of these types of cases are set in District Court. Mr. Addison said that in Baltimore City, the only charge that would be filed in the District Court is a handgun violation.

Mr. Karceski questioned as to why the last sentence of

subsection (m)(1) is proposed to be stricken. Judge Missouri replied that Mr. Addison had suggested the deletion. The Chair commented that it could happen that the case is not transferred to the juvenile court until very late on a Friday afternoon, and it is possible that the disposition does not take place until Monday. The language proposed for deletion by Mr. Addison provides that if the disposition does not occur immediately, the procedures of subsection (m)(2) apply. The Chair inquired if those procedures should apply. Mr. Addison answered that there are two competing interests –- the continuity of the court proceeding and the rights of the juvenile. The Chair said that the Rule should provide that if the disposition of the case does not occur immediately, the court should proceed in accordance with Rule 4-251 or 4-252, whichever is applicable. The Committee agreed by consensus to this change. Mr. Addison remarked that judicial continuity is important when it can be accomplished. The Chair expressed the opinion that immediate disposition of the matter should be encouraged. Judge Missouri added that the judge who sat on the original adult case knows more about the case than anyone.

The Committee approved the Rule as amended. The Chair said that the Rule would be sent to the Style Subcommittee. He invited Mr. Addison to attend the Style Subcommittee meeting at which the Rule will be discussed.

Agenda Item 3. Consideration of a proposed amendment to Rule 4-102 (Definitions)

Judge Missouri presented Rule 4-102, Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 100 - GENERAL

AMEND Rule 4-102 to add a definition of "peace officer," as follows:

Rule 4-102. DEFINITIONS

The following definitions apply in this Title:

(a) Charging Document

"Charging document" means a written accusation alleging that a defendant has committed an offense. It includes a citation, an indictment, an information, and a statement of charges.

(b) Citation

"Citation" means a charging document, other than an indictment, information, or statement of charges, issued to a defendant by a peace officer or other person authorized by law to do so.

(c) Defendant

"Defendant" means a person who has been arrested for an offense or charged with an offense in a charging document.

(d) Indictment

"Indictment" means a charging document returned by a grand jury and filed in a circuit court.

(e) Information

"Information" means a charging document filed in a court by a State's Attorney.

(f) Judicial Officer

"Judicial Officer" means a judge or District Court commissioner.

(g) Offense

"Offense" means a violation of the criminal laws of this State or political subdivision thereof.

(h) Peace Officer

"Peace officer" means a "law enforcement officer" as defined in Code, Public Safety Article, §3-101 (e); a "police officer" as defined in Code, Criminal Procedure Article, §2-101 (c); and any other person who, by law, is authorized to issue citations and serve summonses.

~~(h)~~ (i) Petty Offense

"Petty offense" means an offense for which the penalty may not exceed imprisonment for a period of three months or a fine of five hundred dollars.

~~(i)~~ (j) Statement of Charges

"Statement of charges" means a charging document, other than a citation, filed in District Court by a peace officer or by a judicial officer.

~~(j)~~ (k) State's Attorney

"State's Attorney" means a person authorized to prosecute an offense.

~~(k)~~ (l) Verdict

"Verdict" means the finding of the jury or the decision of the court pertaining to the merits of the offense charged.

~~(l)~~ (m) Warrant

"Warrant" means a written order by a judicial officer commanding a peace officer to arrest the person named in it or to search for and seize property as described in it.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 702 a and M.D.R. 702 a.
Section (b) is derived from former M.D.R. 702 c.
Section (c) is derived from former Rule 702 b and M.D.R. 702 d. Section (d) is derived from former Rule 702 c.
Section (e) is derived from former Rule 702 d and M.D.R. 702 e.
Section (f) is derived from former M.D.R. 702 f.
Section (g) is derived from former Rule 702 e and M.D.R. 702 g.
Section (h) is new.
Section ~~(h)~~ (i) is derived from former M.D.R. 702 h.
Section ~~(i)~~ (j) is derived from former M.D.R. 702 i.
Section ~~(j)~~ (k) is derived from former Rule 702 f and M.D.R. 702 j.
Section ~~(k)~~ (l) is derived from former Rule 702 g and M.D.R. 702 l.
Section ~~(l)~~ (m) is derived from former Rule 702 h and M.D.R. 702 m.

Rule 4-102 was accompanied by the following Reporter's Note.

The Rules Committee had agreed to substitute the term "law enforcement officer" for the term "peace officer" throughout the Rules of Procedure, but Mr. Zarnoch pointed out that certain employees of administrative agencies, such as the liquor board in some counties, perform some quasi-law enforcement activities, including issuing citations and serving summonses, yet are not defined as law enforcement officers by Code, Public Safety Article, §3-101 (a) and (e). It is important

> that these individuals not be inadvertently excluded from the rules that apply to them. With this in mind, the Criminal Subcommittee has decided to retain the term "peace officer" since it has been in use for so long, while adding a definition to Rule 4-102 to clarify that persons, other than law enforcement officers and police officers, who issue citations and serve summonses are included as peace officers.

Judge Missouri explained that the issue of changing the term "peace officer" had been discussed at several meetings of the Criminal Subcommittee during the time that the Honorable G. R. Hovey Johnson was chair of the Subcommittee. The Subcommittee had suggested that the term "peace officer" be replaced with the term "law enforcement officer." However, because the latter term does not include persons who work for administrative agencies or for municipalities and are able to issue citations and serve summonses, the Subcommittee recommends that the term "peace officer" be retained with a definition of the term added to Rule 4-102.

Mr. Klein pointed out that section (b) contains the language "or other person authorized by law to do so," which is similar to the proposed language in section (h). The Chair suggested that in section (h), a period be placed after the word "citations." He noted that anyone can serve process, but not anyone can issue a citation. Judge McAuliffe remarked that anyone can serve a subpoena, and not necessarily a summons. The Chair suggested that there should be a period after the word "citations" in section (h) and after the word "officer" in section (b). The

Committee agreed by consensus to the Chair's suggestions.

Mr. Dean commented that there has been a debate concerning federal law enforcement officers who patrol the Baltimore-Washington Parkway as to whether they should be included as peace officers who may issue state charges. Code, Public Safety Article, §3-101 (e), which defines the term "law enforcement officer," and Code, Criminal Procedure Article, §2-101 (c), which defines the term "police officer," do not sweep in these federal officers. Mr. Dean inquired as to whether the new definition in section (h) of the term "peace officer" is so broad that it would give the federal officers the authority to issue state charges. The Chair suggested that the language "local or state" be added after the word "by" and before the word "law." This would make clear that the federal officers who patrol the Baltimore-Washington Parkway are not "peace officers" under the definition set forth in the Rule. The Committee approved this change by consensus and approved the Rule as amended.

Agenda Item 4. Consideration of proposed amendments to two Forms: Form 4-217.1 (Declaration of Trust of Real Estate to Secure Performance of a Bail Bond) and Form 4-504.1 (Petition for Expungement of Records)

Judge Missouri presented Form 4-217.1, Declaration of Trust of Real Estate to Secure Performance of a Bail Bond, for the Committee's consideration.

AMEND Form 4-217.1 to change the capitalization rate from 6% to 12%, as follows:

Form 4-217.1. DECLARATION OF TRUST OF REAL ESTATE TO SECURE PERFORMANCE OF A BAIL BOND

DECLARATION OF TRUST OF REAL ESTATE
TO SECURE PERFORMANCE OF A BAIL BOND

STATE OF MARYLAND,

The undersigned [ ] Defendant, [ ] Surety, ...

..... of .....,
(Name) (Address)

in order to secure the performance of the bail bond annexed hereto, being first sworn (or, if Surety is a corporation, its undersigned officer being first sworn), acknowledges and declares under oath as follows:

That the undersigned is the sole owner of [ ] a fee simple absolute, or [ ] a leasehold subject to an annual ground rent of $....., in certain land and premises situate in

..... Maryland and described as
(County)

.....
(lot, block, and subdivision or other legal description)

That the undersigned is competent to execute a conveyance of

said land and premises; and

That the undersigned hereby holds the same in trust to the use and subject to the demand of the State of Maryland as collateral security for the performance of that bond;

That said property is assessed for $..... x .8 = $.....

from which the following encumbrances should be deducted:

Ground rent capitalized at ~~6%~~ 12%*	$.....	
Mortgages/Deeds of Trust totaling	$.....	
Federal/State Tax Liens	$.....	
Mechanics Liens	$.....	
Judgment & Other Liens	$.....	
Other outstanding Bail Bonds	$.....	
Total Encumbrances	$.....	$.....

and that the present net equity in the property is $.....

That, if the undersigned is a body corporate, this Declaration of Trust is its act and deed and that its undersigned officer is fully authorized to execute this Declaration of Trust on its behalf.

And the undersigned further declares, covenants, and undertakes not to sell, transfer, convey, assign, or encumber the land and premises or any interest therein, so long as the bail bond hereby secured remains undischarged and in full force and effect, without the consent of the court in which the bail bond is filed, it being understood that upon discharge of the bail bond the clerk of the court will execute a release in writing

endorsed on the foot of this document (or by a separate Deed of Release), which may be recorded in the same manner and with like effect of a release of mortgage if this Declaration of Trust is recorded among the Land Records.

.....(Seal)
(Defendant)

or

.....(Seal)
(Surety)

by .....

SWORN to, signed, sealed, and acknowledged before me this ..... day of ....., ...
(month) (year)

.....
Commissioner/Clerk/Judge

of the ..... Court

for ..... County/City

* For ground leases created between April 6, 1888 and July 1, 1982, the capitalization rate is 6%.

Form 4-217.1 was accompanied by the following Reporter's Note.

> Julia M. Andrew, Assistant Attorney General, pointed out that Code, Real Property Article, §8-110 (b) provides that the capitalization rate for ground leases created after July 1, 1982 has been changed to 12%. However, Form 4-217.1 provides that ground rents are capitalized at 6%, which was the percentage rate before 1982. The Criminal Subcommittee is recommending that the form be amended to reflect the current rate and to

> indicate that the 6% rate applies to leases created between April 6, 1988 and July 1, 1982.

Judge Missouri told the Committee that Julia M. Andrew, Esq., an Assistant Attorney General, had pointed out that the capitalization rate for ground rents created after July 1, 1982 has changed from 6% to 12%. The Subcommittee proposal amends Form 4-217.1 to conform to the new rate. The note at the end of the Rule explains that the 6% rate applies to ground rents created between April 6, 1888 and July 1, 1982.

Mr. Bowen suggested that the language in the third paragraph that reads, “said land” should be modernized to read, “the land” to conform with similar changes in the Rules. Mr. Bowen suggested that the form be redesigned to have a box to check to indicate whether the rate is 6% or 12%. He also pointed out that there is an error in the Reporter’s note –- the date that reads “April 6, 1988" should read “April 6, 1888.” Mr. Sykes noted that the language in the fourth paragraph that reads “said property” should be updated, also. The Chair said that the Style Subcommittee will review the form and make the necessary changes. The Committee approved the Rule, subject to stylistic changes.

Judge Missouri presented Form 4-504.1, Petition for Expungement of Records, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

BAIL BOND FORMS

AMEND Form 4-504.1 to delete the five-year requirement for filing a petition for expungement based on a pardon, as follows:

Form 4-504.1. PETITION FOR EXPUNGEMENT OF RECORDS

(Caption)

PETITION FOR EXPUNGEMENT OF RECORDS

1. (Check one of the following boxes) On or about _____, (Date)

I was [ ] arrested, [ ] served with a summons, or [ ] served with a citation by an officer of the _____ (Law Enforcement Agency)

at _____, Maryland, as a result of the following incident _____

_____

_____.

2. I was charged with the offense of _____

_____.

3. On or about _____, (Date)

the charge was disposed of as follows (check one of the following boxes):

[ ] I was acquitted and either three years have passed since

disposition or a General Waiver and Release is attached.

[ ] The charge was dismissed or quashed and either three years have passed since disposition or a General Waiver and Release is attached.

[ ] A judgment of probation before judgment was entered on a charge that is not a violation of Code*, Transportation Article, §21-902 or Code*, Criminal Law Article, §§2-503, 2-504, 2-505, or 2-506, or former Code*, Article 27, §388A or §388B, and either (a) at least three years have passed since the disposition, or (b) I have been discharged from probation, whichever is later. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

[ ] A Nolle Prosequi was entered and either three years have passed since disposition or a General Waiver and Release is attached. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or

regulations not carrying a possible sentence of imprisonment.

[ ] The proceeding was placed on the Stet docket and three years have passed since disposition. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

[ ] The case was compromised pursuant to Code*, Criminal Law Article, §3-207, former Code*, Article 27, §12A-5, or former Code*, Article 10, §37 and three years have passed since disposition.

[ ] On or about _____ , I was granted
(Date)
a full and unconditional pardon by the Governor for the one criminal act, not a crime of violence as defined in Code*, Criminal Law Article, §14-101 (a), of which I was convicted. ~~More than five years, but not~~ Not more than ten years~~,~~ have passed since the Governor signed the pardon, and since the date the Governor signed the pardon I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending

criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

WHEREFORE, I request the Court to enter an Order for Expungement of all police and court records pertaining to the above arrest, detention, confinement, and charges.

I solemnly affirm under the penalties of perjury that the contents of this Petition are true to the best of my knowledge, information and belief, and that the charge to which this Petition relates was not made for any nonincarcerable violation of the Vehicle Laws of the State of Maryland, or any traffic law, ordinance, or regulation, nor is it part of a unit the expungement of which is precluded under Code, Criminal Procedure Article, §10-107.

_____ _____

(Date) Signature

_____

(Address)

_____

_____

(Telephone No.)

* References to "Code" in this Petition are to the Annotated Code of Maryland.

Form 4-504.1 was accompanied by the following Reporter's Note.

Chapter 121 (HB 116), Laws of 2003 repealed the five-year period for persons waiting to file a petition for expungement based on a pardon from the Governor.

Accordingly, the Criminal Subcommittee recommends deleting the language in Form 4-504.1 which refers to the five-year period.

Judge Missouri explained that the 2003 General Assembly repealed the five-year waiting period for persons who wish to file a petition for expungement based on a pardon from the Governor. The Subcommittee is proposing a change on page 3 of the Rule, deleting the language "[m]ore than five years, but" and starting the sentence with the word "[n]ot." This change will eliminate the reference to the five-year waiting period. By consensus, the Committee approved the Form as presented.

Agenda Item 5. Reconsideration of certain proposed new Rules concerning performance of marriage ceremonies by judges: Rule 16-821 (Performance of Marriage Ceremonies by Judges – Applicability of Rules) and Rule 16-823 (Judicial Action) - section (b) (License)

The Reporter presented Rule 16-821, Performance of Marriage Ceremonies by Judges -- Applicability of Rules and 16-823, Judicial Action, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-821, as follows:

Rule 16-821. PERFORMANCE OF MARRIAGE CEREMONIES BY JUDGES – APPLICABILITY OF RULES

Rules 16-821 through 16-824 apply to all Maryland judges of the District Court, a circuit court, the Court of Special Appeals, and the Court of Appeals, including retired judges ~~eligible for recall as defined by the Court of Appeals of Maryland~~, who wish to perform marriage ceremonies.

Cross reference: Code, Family Law Article, §2-406.

Source: This Rule is new.

Rule 16-821 was accompanied by the following Reporter's Note.

Proposed new Rules 16-821 through 16-824 are based on the recommendations of the Conference of Circuit Judges.

Chapter 207, Acts of 2002, added judges to the list of persons who may perform marriage ceremonies in Maryland. The proposed Rules contain certain proscriptions and provide procedural details that apply to the performance of marriage ceremonies by judges.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-823, as follows:

Rule 16-823. JUDICIAL ACTION

(a) Ceremony

A judge who performs a marriage

ceremony shall include substantially the form of ceremony used by the clerk of the circuit court for the county where the marriage is to be performed. If the parties request, the ceremony may include religious references. A judge may perform the ceremony in conjunction with an official of a religious order or body.

(b) License

A judge may not perform a marriage ceremony unless a license has been issued by the clerk of the circuit court in the county where the ceremony is to be performed ~~and the fee for performing the ceremony has been paid to the clerk of the circuit court~~. A judge who performs a marriage ceremony shall (1) complete the certificate of marriage, (2) provide a copy of the certificate to the parties, and (3) return the completed certificate to the issuing clerk of court for recordation and reporting of the marriage as required by law. A judge who grants a request for the issuance of a marriage license under Code, Family Law Article, §2-405 (d) also may perform the marriage.

(c) Refusal to Perform Ceremony

A judge may decline to perform a marriage ceremony.

Source: This Rule is new.

Rule 16-823 was accompanied by the following Reporter's Note.

See the Reporter's Note to proposed new Rule 16-821.

The Reporter explained that the Rules concerning performance of marriage ceremonies by judges had been approved previously by the Committee. House Bill 58/Senate Bill 143,

filed in the 2003 legislative session, concerned the same subject, but the bills did not pass. The demise of the bills affected Rules 16-821 and 16-823, because the bills would have provided that the Court of Appeals could define who is a "judge" for the purpose of performing marriage ceremonies and that the clerk of the circuit court would collect a non-refundable fee for a judge to perform a marriage ceremony. Chapter 70 (SB 171), Acts of 2003, pertaining to decriminalizing solicitation of the performance of marriage ceremonies did pass, but it does not affect the proposed marriage rules.

Judge McAuliffe pointed out that the Rules Committee had decided that only retired judges who are eligible for recall should be included in Rule 16-821. The Chair said that this was a conditional provision, which had been based on whether the legislature enacted House Bill 58/Senate Bill 143, which it did not. The Reporter remarked that she had spoken with Susan Russell, Esq., staff to the Senate Judicial Proceedings Committee, who had indicated that the legislature wanted to maintain control over the subject of who may conduct marriage ceremonies. The Chair suggested that the legislation that did not pass should be revised and resubmitted to the legislature. Judge Missouri said that the Conference of Circuit Judges will take a vote on sending the matter back to the legislature. The Reporter commented that the Honorable Charlotte Cooksey, Chair of the Judicial Ethics Committee, had received inquiries from District Court judges who want guidance on performing marriage

ceremonies. Judge Missouri added that he too had received many questions from circuit court judges on the same topic.

Judge Dryden observed that some judges feel that there should be an administrative order or regulations from the Administrative Office of the Courts pertaining to guidelines for performance of marriage ceremonies by judges. The Chair responded that there had been a draft administrative order, but Judge Heller noted that the draft order was so broad as to be unworkable. The Conference of Circuit Judges drafted the current set of proposed Rules. By consensus, the Rules Committee approved the Rules as presented.

The Chair adjourned the meeting.