COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100A, People's Resource Center, Crownsville, Maryland on June 19, 1998.

Members present:

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

Lowell R. Bowen, Esq.
Albert D. Brault, Esq.
H. Thomas Howell, Esq.
Hon. G. R. Hovey Johnson
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
Joyce H. Knox, Esq.
Timothy F. Maloney, Esq.
Anne C. Ogletree, Esq.
Hon. Mary Ellen T. Rinehardt
Larry W. Shipley, Clerk
Sen. Norman R. Stone, Jr.
Melvin J. Sykes, Esq.
Roger W. Titus, Esq.
Del. Joseph F. Vallario, Jr.
Hon. James N. Vaughan
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Steve Gerald, Rules Committee Intern
Michael I. Gordon, Esq.
Melvin Hirshman, Esq., Bar Counsel
Glenn Grossman, Esq., Assistant Bar Counsel
Stephen Buvel, Esq., Community Law Center
Claire Smearman, Select Committee on Gender Equality
Buzz Winchester, Esq., MSBA
Susan Erlichman, Esq., Maryland Legal Services Corp.
Herbert S. Garten, Esq., Maryland Legal Services Corp.
Steven P. Lemmey, Esq., Commission on Judicial Disabilities
Constance Beims, Commission on Judicial Disabilities
Hon. Glenn Harrell, Commission on Judicial Disabilities
Hon. Maurice W. Baldwin, Jr.
Hon. James M. Smith

The Chair convened the meeting. He asked if there were any additions or corrections to the minutes of the May 22, 1998 Rules

Committee meeting. There being none, Judge Kaplan moved to approve the minutes as presented, the motion was seconded, and it carried unanimously.

Agenda Item 3. Reconsideration of Rule 2-323 in light of the decision in Liberty Mutual Insurance Co. v. Ben Lewis Plumbing Heating & Air Conditioning, Inc., Court of Special Appeals, September Term, 1997, No. 231, filed May 27, 1998 (See Appendix 1)

The Chair said that Agenda Item 3 would be discussed first to accommodate the Vice Chair's schedule. The Vice Chair presented Rule 2-323 for the Committee's consideration. (See Appendix 1). The Vice Chair explained that she had spoken with several trial attorneys who were concerned about the opinion in the case of Liberty Mutual Insurance Co. v. Ben Lewis Plumbing, Heating & Air Conditioning, Inc., Court of Special Appeals, September Term 1997, No. 231, filed May 27, 1998, particularly as the opinion related to filing an answer. The opinion concerned an insurance company which was in the business of issuing a large number of types of policies to insureds. In the provisions of the company's premiums, there had been one which said that after a policy had been in effect for a certain time, the insured's claims history would be analyzed, and if it were favorable, the company would issue a refund to the insured. In this case, the insured (appellee) had several policies with the insurance company (appellant). In 1986, the appellee requested bids for worker's compensation insurance. The appellant made a proposal, and when the

appellee asked if the terms of the new policy were the same as the terms of the prior policy, the appellant's representative replied that the terms would be the same. However, this reply was not correct, since the policy as to the dividends had changed. After the first audit of the worker's compensation policy, the appellant had credited the appellee with $94,000 in dividends, but since the new procedure allowed for negative adjustments to the dividends, the appellant had withdrawn the entire amount. The appellant sued for premiums which the appellee refused to pay because all of the dividends had been withdrawn. The appellee filed an answer with a general denial (which most answers contain) and asserted every affirmative defense as set forth in Rule 2-323 that might be applicable to a contract action. The appellant filed a motion for summary judgment, and the appellee intimated in his response that it was not necessary to prove fraud, since he could argue that the appellant negligently misrepresented the insurance policy. However, the defense of negligent misrepresentation had not been in the appellee's answer. The appellee filed a counterclaim in the amount of $94,000 for breach of contract. The jury found in favor of the appellant for the unpaid premiums and in favor of the appellee for the breach of contract. The jury also found that there had been negligent misrepresentation on the part of the appellant. The trial judge struck the verdict in favor of the appellant because the jury had found negligent misrepresentation. On appeal to the Court of

Special Appeals, the Court held that the appellee had a duty to read the insurance policy, and even absent that duty, the counterclaim could not prevail because the appellee's answer did not contain the defense of negligent misrepresentation. In its analysis of Rule 2-323, the Court observed that the language in section (a) which reads, "[e]very defense of law or fact to a claim for relief....shall be asserted in an answer, except as provided by Rule 2-322..." is inconsistent with the rest of the Rule. The Court held that due process requires the notice of claims. The defendant must allege in the answer all of the information he or she has so as to provide notice to the plaintiff. If every defense has to be put into the answer, the Rule needs to make this clear. Either everything must be put in the answer, which is the federal approach, or only the listed defenses must be in the answer. The ambiguity must be clarified.

Mr. Sykes inquired if a petition for a writ of certiorari to the Court of Appeals has been filed in the Liberty Mutual case, and the Chair replied that he was not sure. Mr. Howell pointed out that if the time has not yet run in the case for a motion for reconsideration, the decision may not be the final word. Due process allows an amendment of a complaint while the case is still pending. This is not like allowing the jury to award punitive damages when they were not pleaded. In this case, the insured gave a boilerplate answer with a general denial and an affirmative defense of fraud. At the summary judgment phase, the insured alleged negligent

misrepresentation for the first time. Negligent misrepresentation is akin to a lesser-included fraud defense. Arguably, pleading fraud is notice as to negligent misrepresentation.

Mr. Brault questioned as to how attorneys could amble into trial without enough discovery to ascertain the nature of the case. He recalled that the first drafts of Rule 2-323, which had been written by Judge McAuliffe and him, involved a debate over the general issue plea. The idea was not to give up on the concept of the general issue plea, so the general denial was put into Rule 2-323 as its equivalent. Mr. Sykes noted that historically the real problem was determining what the general issue plea covered in terms of affirmative defenses. He thought the theory was that one relied on the general denial in the appropriate case except for the defenses specifically listed which had to be specially pleaded. The Liberty Mutual case is a counsel-unfriendly decision, because it creates a trap and is contrary to what the Rules of Procedure are trying to achieve.

Mr. Titus inquired if the general denial is sufficient as an answer. Mr. Klein pointed out that at the bottom of page 12 of the slip opinion, the court seems to indicate that the appellee's answer, which was a recitation of every defense listed in Rule 2-323 that might be applicable to a contract action, is too broad to provide actual notice. Mr. Titus said that he reads Rule 2-323 to mean that pleading a general denial under section (d) requires that

one plead only the specific defenses listed under section (g). The general denial takes care of any other defense. The Vice Chair observed that her view of the Rule is that everything one has to assert shall be in the answer, but not that one must assert every single defense. Mr. Sykes remarked that this is inconsistent with the general denial.

Mr. Titus suggested that this issue be deferred until the September meeting because there is still the potential for reconsideration of the decision, and certiorari may be granted. The Vice Chair agreed that the matter could be deferred, but she cautioned that this is very important and should not be lost. She pointed out that no matter what the court does with this decision, there would be a benefit to amending the second sentence of section (a) to read: "Every defense of law or fact .... required to be asserted by this Rule shall be asserted in an answer....". Mr. Bowen commented that the word "every" may cause the same problems as before. Mr. Sykes suggested that the amendment could provide that defenses cannot be raised except by answer.

The Chair asked if it is fair to the plaintiff, after the defendant has filed the functional equivalent of a general issue plea and there has not been much discovery, who is hit at trial with a negligent misrepresentation charge when only fraud is required to be asserted. Usually, there is enough discovery so that there is no unfair surprise. The defense of negligent misrepresentation could be

added to the list of defenses required to be asserted. The Vice Chair responded that she does not think that the Chair's scenario would happen, because discovery has already been conducted to avoid any surprise on the part of the plaintiff. The Chair said that negligent misrepresentation is very close to fraud. The answer to this problem may be that asserting fraud is sufficient notice as to negligent misrepresentation. Mr. Klein inquired how the litany of affirmative defenses was decided upon. Mr. Brault replied that they came from the common law and were included in the rules prior to the 1984 revision.

Mr. Bowen suggested that Rule 2-323 be referred back to the appropriate subcommittee for revision. Mr. Brault agreed, adding that it would be helpful to have the minutes of the meetings at which the Rule was drafted. Mr. Bowen moved that the Rule be referred to the subcommittee, the motion was seconded, and it carried unanimously.

Agenda Item 1. Continued consideration of proposed new Rule 3-721 (Receivers)

Judge Rinehardt presented Rule 3-721, Receivers, for the Committee's consideration.

ADD new Rule 3-721, as follows:

Rule 3-721. RECEIVERS

(a) Applicability

This Rule applies when a receiver is appointed by the District Court to take charge of property, pursuant to the statutory provisions granting equitable jurisdiction to the court, for the enforcement of a local or state code, or to abate a nuisance.
Cross reference: For the power of the District Court to appoint a receiver, see Code, Courts Article, §§4-401 (7)(i) and 4-402 (b); Code, Real Property Article, §14-120; and Baltimore City Building Code, 1997 Edition, §123.9.

(b) Applicability of Other Rules

Except as otherwise specifically provided in this ~~Chapter~~ Rule, the procedures for making a sale of property by the receiver shall be governed by Title 14, Chapter 300 of these Rules.

(c) Bond

The court may require bond to the State of Maryland, to be filed with the court, in an amount not to exceed the appraised value of the property.

(d) Orders

An order appointing a receiver shall specify (1) the powers of the receiver, including the ~~ability~~ power to incur expenses and create liens on the property to secure payment of those expenses, and (2) the terms of sale.

~~(e) Employment of Other Professionals~~

~~A receiver shall not employ an~~ Except by order of the court, no attorney, accountant, attorney, accountant, appraiser, auctioneer, or other professional ~~without prior approval by the court~~ may be employed by the receiver.

~~(f)~~ (e) Procedures Following Sale of the Property

(1) Notice by Certified Mail

In lieu of the clerk issuing notice and publication thereof when filing the Report of Sale, the receiver shall send a notice, which states that the sale has been completed, by certified mail to the last known address of: the mortgagor; the present record owner of the property; and the holder of a recorded subordinate mortgage, deed of trust, or other recorded or filed subordinate interest, ~~including a judgment~~ in the property, including a judgment. The notice shall ~~provide~~ state

that the sale of the property shall be final unless cause to the contrary is shown within 30 days after the date of the notice.

(2) Posting of Property

The receiver shall cause the sheriff to post ~~a~~ the notice in a conspicuous place on the property. The notice shall ~~provide~~ state that the sale of the property shall be final unless cause to the contrary is shown within 30 days after the date of the notice.

(3) Exceptions to Sale

An exception to a sale may be filed within 30 days after the date of the notice issued pursuant to subsections ~~(f)(1)~~ (e)(1) and ~~(f)(2)~~ (e)(2) of this Rule.

~~(g)~~ (f) ~~Final~~ Accounting

After a sale has been ratified by the court, the receiver shall file ~~a proposed~~ an accounting. The receiver shall send notice of the accounting to the persons listed in subsection ~~(f)(1)~~ (e)(1) of this Rule, who shall have ten days after the date of the notice to file exceptions. The court may decide exceptions without a hearing unless a hearing is requested with the exceptions.

~~(h)~~ (g) Conveyance to Purchaser

After a sale has been ratified by the court and the purchase money paid, the receiver shall promptly convey the property to the purchaser, and cause to be recorded among the land records of each county where any part of the property is located a certified copy of the docket entries~~, the report of sale,~~ and the final order of ratification ~~and any other orders affecting the property~~.

~~(i)~~ (h) Distribution and Termination

After the ~~final~~ accounting has been ratified by the court, the receiver shall distribute the proceeds of the sale~~. Once the~~

~~proceeds have been distributed, the receiver shall~~ and petition the court to terminate the receivership.

~~(j)~~ (i) Removal of Receiver

~~Removal of a receiver or of any person employed by the receiver, may be instituted on the court's own initiative or upon petition of any person having an interest in the property.~~ Upon petition of a person having an interest in the property or on the court's initiative, the court may remove a receiver for good cause shown. A petition shall state the reasons for the requested removal and may include a request for the appointment of a successor receiver. The petitioner shall send a copy of the petition to the receiver and to each person entitled to notice under subsection (e)(1) of this Rule. The court may grant or deny the relief requested ~~with or~~ without a hearing, unless a hearing is requested by the receiver or other interested person with 10 days after service of the petition.

~~(k)~~ (j) Resignation of Receiver

~~(1) Petition to Resign~~

~~A receiver may file a~~ A petition to resign~~. The petition~~ shall state the reasons for the proposed resignation and may include a request for the appointment of a successor receiver.

~~(2) Report of Resigning Receiver~~

The ~~resigning~~ receiver shall file with the petition a report and accounting from the date the receiver was appointed and shall certify that a copy of the petition to resign, together with a copy of the report and accounting, was sent to each person entitled to notice under subsection (e)(1) of this Rule. The filing of a petition to resign~~.~~ ~~Resignation of a receiver~~ does not terminate the appointment until the resignation has been approved by the court. The court may grant or

deny the requested relief with or without a hearing.

Source: This Rule is derived as follows:

Section (a) is in part derived from Rule 13-102 and is in part new.
Section (b) is derived from Rule 13-103.
Section (c) is derived from Rule 13-107.
Section (d) is in part derived from Rule 13-301 (a) and is in part new.
Subsection (e)(1) is derived from Rule 14-206 (b)(2).
Subsection (e)(2) is derived from Rule 14-503 (c).
Subsection (e)(3) is derived from Rule 14-305 (d).
Section (f) is in part derived from Rule 2-543 and is in part new.
Section (g) is in part derived from Rule 14-207 (f)(1) and Rule 14-306.
Section (h) is in part derived from Rule 13-503 and is in part new.
Section (i) is derived from Rule 13-701.
Section (j) is derived from Rule 13-702.

Rule 3-721 was accompanied by the following Reporter's Note.

This Rule was requested by the Community Law Center because of problems that have arisen when organizations are appointed by the District Court as receivers to sell properties, many of which are vacant, at public auction. Because there are no rules, some title companies are hesitant about insuring properties that have been sold by a receiver appointed by the District Court.

Section (a) is partly derived from Rule 13-102, Scope, which is one of the Rules pertaining to receivers and assignees in the circuit court. Rule 3-721 (a) covers those areas specifically excluded from subsection (b)(2) of Rule 13-102, such as enforcement of local or state codes and abatement of a nuisance.

Section (b) is derived from Rule 13-303 (c), Applicability of Other Rules, which pertains to receivers and assignees in the circuit court. Since proposed Rule 3-721 is a District Court rule, the Title 2 Rules do not apply as they do in the circuit court receiverships, but Title 14, Chapter 300 does apply.

Section (c) is derived from a few of the salient provisions of Rule 13-107, Bond.

Section (d) is new. Neither Titles 13 nor 14 has a provision exactly parallel to this one which clarifies that the court may give the receiver certain powers and may set out the terms of the sale of the property. The second sentence of section (d) is derived from section (a) of Rule 13-301, Employment

of Attorney, Account, Appraiser, Auctioneer, or Other Professional.

Subsection (e)(1) is derived from subsection (b)(2) of Rule 14-206, Procedure Prior to Sale. To simplify the procedure in the District Court, there is no publication requirement by the clerk as there is with circuit court receiverships. Instead, the receiver sends notice to the persons who have an interest in the property informing them of the sale of the property.

Subsection (e)(2) is derived from section (c) of Rule 14-503, Process. Because there is no publication requirement, the posting provision has been added as an extra due process protection.

Subsection (e)(3) is derived from section (d) of Rule 14-305, Procedure Following Sale. It provides a simple mechanism for someone with an interest in the property to contest the sale.

Section (f) is in part derived from Rule 2-543, Auditors, but since there is no auditor available in District Court, the rule could not directly follow the circuit court receivership procedure. The receiver files the accounting and send notice of it to interested persons who have the right to file exceptions.

Section (g) is derived from subsection (f)(1) of Rule 14-207, Sale, and Rule 14-306, Real Property--Recording. It provides for the property to be conveyed to the purchaser after the sale has been ratified and for recordation of the sale transaction in the appropriate land records.

Section (h) is in part derived from Rule 13-503, Distribution, which is the distribution provision in the circuit court receivership rules.

Section (i) is mostly derived from Rule 13-701, Removal of Assignee, Receiver, or

> Professional, which is the removal provision in the circuit court receivership rules.
>
> Section (j) is derived from Rule 13-702, Resignation of Receiver or Assignee, the parallel circuit court rule. It provides the mechanism for a receiver to resign.

Judge Rinehardt pointed out that although the minutes of the May Rules Committee meeting reflect that the discussion of Rule 3-721 was to be deferred until she was present, these receiverships are heard in Baltimore City by two other judges who specialize in housing matters. There have been no receiverships since January, although there were several last year. Almost none of these are contested. Judge Rinehardt told the Committee that two guests interested in Rule 3-721 were present -- Michael Gordon, Esq., from the organization, Save-A-Neighborhood, and Stephen Buvel, Esq., from the Community Law Center.

The Chair said that it would be helpful to consider the Rule section by section. The Reporter noted that in section (a), a cross reference to the sources listed in a memorandum sent by Anne Blumenberg, Esq. of the Community Law Center, was added at the direction of the Committee. The Vice Chair questioned as to how section (a) comports with Rule 14-303 (a). Rule 3-721 provides that it incorporates the provisions of Title 14, Chapter 300 unless the Rule provides otherwise. Section (c) is different because there is a cap to the bond, but does the rest of Title 14, Chapter 300 apply? Ms. Ogletree pointed out that there is a proposal before the Property

Subcommittee concerning bonds, judicial sales, and foreclosures. Mr. Gordon said that he had taken over one hundred of these receivership cases, and he had never seen a bond requirement. The average appraised value of the properties was $1,000 or less; one was $10,000. He suggested that the word "may" is appropriate in section (c).

The Vice Chair asked where the requirement for an appraisal comes from. Mr. Gordon replied that when his organization sells property, it cannot take less than 70% of the appraised value of the property, so an appraisal is necessary. The Vice Chair pointed out that appraisals are expensive. Mr. Gordon responded that the Alex Cooper company charges his organization $100 for each appraisal. The Vice Chair noted that nothing in Title 14 requires an appraisal. She expressed her concern over the term "appraised value." Mr. Gordon inquired if it would be more appropriate to use the term "assessed value." The Vice Chair cautioned that the assessments can be for ridiculously high amounts. Judge Rinehardt suggested that both the terms "assessed" and "appraised" could be used in the disjunctive in the Rule. The Vice Chair added that the Rule could provide for the lesser of the two values to be used.

The Chair asked the Committee if the term "assessed" should be added to section (c). Mr. Sykes expressed the view that assessments tend to be arbitrary. Judge Kaplan remarked that the appraised amount could be less than the assessed amount. The Vice Chair

suggested that section (c) be structured differently so it would read as follows: "No bond is required unless the court orders otherwise." Mr. Gordon reiterated that the practice in Baltimore City is that generally there is no bond required. Mr. Johnson questioned whether the Vice Chair's suggested change addresses the issue of the amount of the bond. Judge Rinehardt replied that it does not address the amount, and it would be up to the judge to determine the amount of any bond. The Reporter pointed out that Rule 14-303 provides for the court to determine the amount of the bond. It may be preferable to make Rule 3-721 flexible as to whether a bond should be required and the amount of any bond. The Committee agreed by consensus to having flexibility in section (c).

Judge Rinehardt drew the Committee's attention to section (d). Mr. Bowen noted that the words "attorney" and "accountant" have been unnecessarily duplicated. The Reporter said that this is a typographical error which will be corrected. The Vice Chair asked where the language "create liens on the property" comes from. The Chair responded that there could be a mechanic's lien created. Judge Kaplan pointed out that several Baltimore City neighborhoods, including Roland Park and Guilford, have fees which are part of the covenants that run with the land. If the fees are not paid, it creates a lien on the property. The Vice Chair commented that she read this provision to mean that the receiver can incur an expense and then create a lien to secure the payment of the expense. Ms.

Ogletree noted that this language may be in the Baltimore City Code. Mr. Bowen observed that a receiver may not be able to get someone to fix property without the receiver borrowing the money by securing the property. He expressed concern at the decision of the Rules Committee to fold section (e) into section (d). He said that it was better as two separate sections. He moved to return to the language stricken at the previous meeting. The motion was seconded, and it carried unanimously.

The Vice Chair asked about the derivation of the sentence from section (e) of the previous draft of the Rule which reads, "A receiver shall not employ an attorney, accountant, appraiser, auctioneer, or other professional without prior approval by the court." The Assistant Reporter responded that she worked off of a draft initially prepared by one of the organizations which had requested this Rule. The Chair expressed the view that this is necessary in Rule 3-721. Mr. Sykes inquired if this is the only receiver in the District Court. The Chair observed that section (a) limits the application of the Rule.

Mr. Sykes suggested that section (a) could use the language "A receiver appointed by the District Court," and there could be a cross reference to the power to appoint a receiver. The Vice Chair explained that her concern is that a private receiver may be appointed to abate a nuisance and questioned whether Title 13 should apply. Mr. Bowen said that bringing into this Rule all the

provisions pertaining to receivers would be a big mistake. The Rule should be kept simple and clean.

Mr. Gordon asked why notice by certified mail is necessary when the property is already being posted. This requirement will add additional costs to the procedure. Judge Rinehardt pointed out that there is no requirement for publication. To afford due process, it is important to post the property and send notice by certified mail. Ms. Ogletree suggested that the notice procedures could parallel substituted service procedures by providing for posting the property and for regular and certified mail. Mr. Gordon remarked that this would raise the cost of the proceedings; his organization normally sends out notice by ordinary mail. He noted that subsection (e)(2) provides that the sheriff posts the notice on the property. His organization has the facilities to post its own notices at a cost less than that of using a sheriff. The Chair inquired about the relationship of the District Court with the sheriff's office. Judge Rinehardt responded that in Baltimore City, there are no constables. The Chair said that the Rule could be changed so a sheriff is not required to post the notice. Ms. Ogletree observed that the receiver could file an affidavit showing service by posting. Judge Rinehardt suggested that the Rule remain silent as to who is to do the posting. The Chair suggested that the first sentence of subsection (e)(2) read: "The receiver shall cause the notice to be posted in a conspicuous place on the property and file proof of posting with the

court." The Committee agreed by consensus with this suggestion.

The Vice Chair commented that in Chapter 13, the notice follows the sale. Ms. Ogletree said that the notice in Rule 3-721 is pre-sale notification. The Vice Chair asked why Rule 3-721 requires more notice after sale than Rule 14-305. Ms. Ogletree answered that the notice in Rule 3-721 is in lieu of the clerk issuing notice and publication. Mr. Gordon told the Committee that his practice is to mail by regular, and not certified mail, a copy of the notice to the interested persons. The Vice Chair pointed out that Rule 14-305 only requires the clerk to issue notice, but the interested persons do not get personal notice again. The Chair remarked that this is the practice in the District Court receiverships.

Mr. Gordon noted that the Rule does not call for the filing of a motion for ratification. The Chair questioned whether the Baltimore City Code requires the posting of property. Mr. Gordon replied that it does not. He asked about publication, but Ms. Ogletree answered that it can be dispensed with. The Vice Chair added that it is not worth the expense of publication, when no one reads the published notice, anyway. Subsection (e)(1) provides for better notice. Ms. Ogletree observed that when people walk by the property at issue, they are more apt to see a posted notice. They may not receive the notice by mail. The Chair added that there is no harm adding a posting requirement, because it is not burdensome or

expensive.

Turning to section (f), Mr. Sykes commented that the ten-day period to file exceptions is very short. Mr. Gordon responded that his organization's practice is to file a motion for ratification. It would be better if the Rule contained a sentence which provided that upon the expiration of the time period for filing exceptions, if none have been filed, a motion for ratification is filed. The Chair suggested that there could be a section on ratification. Mr. Gordon said that this could go between sections (f) and (g). The Reporter suggested that the language of Rule 2-543 could be used. Mr. Maloney suggested that the language of Rule 14-305 (e) might be better. Judge Johnson cautioned that the new language should not mix up notification of the audit and notification of the sale. Mr. Sykes remarked that the Rule should indicate that if no exceptions are filed, the sale is automatically final. The Committee agreed by consensus to put language similar to that of Rule 14-305 (e) into Rule 3-721.

The Chair questioned whether the Committee wants to modify the ten-day period in section (f). Judge Johnson commented that Title 14 provides ten days for exceptions. Once the auditor sends out the audit, if no one excepts within ten days, the sale is ratified. Mr. Sykes noted that the procedure in Rule 3-721 is less sophisticated. He expressed the view that there should be a period of at least 15 or 20 days to file exceptions. The Chair asked if there would be any

harm in making the time period 30 days, and Mr. Sykes agreed that 30 days would be better. The Vice Chair expressed the opinion that this may be too long, and it could affect buyers. Mr. Gordon expressed the view that a 30-day period would not make much of a difference from a 20-day period. The Committee agreed by consensus to change the time period from ten to 30 days.

The Chair drew the Committee's attention to section (g). Mr. Gordon suggested that an exception be added to section (g) to exclude Baltimore City District Court, which is a court of record. Therefore, it is not necessary to clutter Baltimore City's land records. Judge Johnson noted that the Rule should provide that the deeds are recorded in the land records. Mr. Gordon noted that in receivership sales, property is conveyed by deed. The Vice Chair questioned why it would not be sufficient to record the receivers' deeds. Ms. Ogletree responded that except for Baltimore City, the District Court is not a court of record, and the copy of the docket entries has to be recorded. The Chair suggested that section (g) should use the language: "cause a deed to be recorded among the land records of each county...". Mr. Gordon suggested that it should be the docket entries which are recorded. Mr. Bowen remarked that when a conveyance is made by someone not in the chain of title, documentation of the grantor's authority to convey the property is needed, except for Baltimore City. Ms. Ogletree added that it should be recorded where the land records are. The Chair

suggested that the language "except for Baltimore City" be added in after the word "and" and before the word "cause." The Committee agreed by consensus to this suggestion. Ms. Ogletree expressed the view that the copy of the docket entries need not be certified, but Mr. Bowen said that the title companies prefer the copies to be certified, and Mr. Shipley added that the clerk's office in Carroll County does, also. Mr. Sykes observed that this should not be too expensive, and Ms. Ogletree agreed, stating that the docket entries are not very long.

The Chair and Judge Rinehardt thanked the consultants for attending the meeting. Judge Kaplan moved to adopt the Rule as amended, the motion was seconded, and it carried unanimously.

Special Agenda Item.

The Chair stated that the next item for discussion would be one that was specially added for today's meeting. It involves the decision of the United States Supreme Court in Phillips et al v. Washington Legal Foundation, No. 96-1578, (1998) concerning the state of Texas' Interest on Lawyers Trust Account (IOLTA) program. Mr. Brault explained that the Attorneys Subcommittee met via a conference call the day before the meeting, June 18, to discuss the ramifications of the case as it applies to Maryland's IOLTA program. The program in Texas is very similar to the one in Maryland. The petitioners in the case were a public-interest organization, Texas members of which were opposed to the IOLTA program; a Texas attorney,

who regularly deposits client funds in an IOLTA account; and a Texas businessman whose attorney retainer was deposited in an IOLTA account. The Court said that an unconstitutional taking of property would violate the Fifth Amendment. The opinion was written by Chief Justice Rehnquist who analyzed the taking as requiring (1) that there has to be private property, (2) that the property has to be taken, and (3) that there has to be a failure of fair compensation for the taking. The majority held that there was a property right in the interest on the clients' principal. They did not reach the second and third requirements. The case was remanded to the circuit court for further consideration as to the other two prongs of the formula. There will be further litigation, and the case will eventually come back to the Supreme Court.

Mr. Brault told the Committee that Justice Souter dissented. His view was there could only be an unconstitutional taking if all of the three prongs of the formula had been decided. He felt that the case should be remanded for a determination of all three prongs. Justice Breyer also dissented, disagreeing with the majority's analysis that the interest always follows the principal. He felt that all property is not the same. Under banking rules and IRS rules, the owner of the property could not obtain interest on the money in the IOLTA account, and therefore this is an exception to the rule that the interest always follows the principal. This is similar to the situation where property is taken to create highways. The

property is valued before the taking and does not include the added value that the highway creates. The property interest of the plaintiff's is valued before the deposit of the funds in an IOLTA account adds value.

Mr. Brault said that the Rules Committee has the benefit of the expertise of Herbert Garten, Esq., who is the Chair of the American Bar Association (ABA) Committee on IOLTA in the United States. The Attorneys Subcommittee concluded that the IOLTA program is not unconstitutional, and since the constitutionality of it will be decided in the future, no action is recommended currently.

Mr. Garten thanked the Rules Committee for the opportunity to speak. He also participated in the Subcommittee conference call. He introduced Susan Erlichman, Deputy Director of the Maryland Legal Services Corporation, who attended the meeting in lieu of Robert Rhudy, the Director, who was not able to be at the meeting. Mr. Garten said that he distributed the annual report of the Maryland Legal Services Corporation. In 1981, Florida became the first state to develop an IOLTA program. Over the years, the program has raised over a billion dollars for legal services. Maryland, the fourth state to adopt the program, has raised four million dollars in IOLTA earnings. The roots of the program are in Australia. The Supreme Court decision in Phillips outlines the program, which became mandatory in 1989.

Mr. Garten said that the Rules Committee recommended changes to

the IOLTA Rules in Maryland about 18 months ago which restricted bank charges, and the program was able to increase its revenues. The monies go to 30 different provider organizations, including the Legal Aid Bureau and the House of Ruth. Maryland has been a role model in IOLTA programs throughout the country. The annual report reflects the range of organizations which benefit from the program, and how the monies are to be distributed in the upcoming fiscal year. The legislature has just enacted a bill that allows a ten-dollar surcharge on each civil circuit court and a two-dollar surcharge on each civil District Court case filed. This legislation will dramatically increase the amount of funds available to the provider organziations. Mr. Garten expressed his appreciation to Delegate Vallario and the other legislators who were very helpful in getting this bill passed. IOLTA, however, remains the single most important source of revenue for the Legal Services Corporation. Provider organizations are encouraged to do their own fundraising. However, only 25% of the people who require legal services are being reached. The decision of the Supreme Court is a potential bombshell for the program. The people who operate the Texas program put in an enormous amount of time on it and feel very good about the program. Mr. Garten said that those who work with the IOLTA programs are optimistic about them, since the Supreme Court only considered one prong of the formula. The other two prongs were left for further discussion, and the case may not be back to the Supreme Court for two

to five years. The IOLTA monies involve short-term deposits or insignificant sums, which would generate little or no net interest if they were not in IOLTA accounts. There is no compensable taking of property. None of the banks or members of the bar has contacted the Legal Services Corporation about the decision.

The Chair pointed out that the decision is more fact-specific than was originally expected. Maryland's program is very similar to that of Texas. Mr. Garten commented that his organization has not been able to take the time to distinguish from a property standpoint whether Maryland is different from Texas. Mr. Brault remarked that the idea is that the interest belongs to IOLTA, and it is a statutory exception to the common law. Mr. Garten told the Committee that in an amicus curiae brief filed, the chief justices in all 50 states were in favor of IOLTA. Many interested parties were in front of the Supreme Court for the argument. Mr. Howell commented that all the states, except for Indiana, have IOLTA. Mr. Garten added that the Indiana program went into effect on March 1, 1998. Some of the states' programs are voluntary, but the majority are mandatory. He stated that if the Supreme Court declares IOLTA unconstitutional, the Legal Services Corporation would be out of business unless there were federal funding supplements. Mr. Maloney pointed out that the banks would be the big winners if IOLTA were disbanded. The average attorney would find the accounting impossible, and the system would have to go back to non-interest bearing accounts, or the attorney

would have to fully disclose the financial arrangement to the client. Mr. Garten commented that no one argued that the client will benefit if the IOLTA system is closed down. Another aspect of the problem is that prior to IOLTA legislation, any interest that was given to a 501 (c)(3) corporation, such as the Legal Services Corporation, had to be reported on a Form 1099. Mr. Brault said that the subject of charitable immunity was discussed by the Subcommittee. The Subcommittee is satisfied that the best approach is to do nothing, and whenever the case gets back to the Supreme Court, the IOLTA program will be found constitutional.

Mr. Titus pointed out that the 1998 legislature passed Senate Bill 332 which imposed the filing fee surcharge. The recipient named in the statute is the Maryland Legal Services Corporation Fund. Conforming amendments need to be made to Rules 16-607, 16-608, and 16-610. The Committee agreed by consensus to make the necessary amendments to these Rules.

Agenda Item 2. Consideration of policy issues raised by the General Court Administration Subcommittee concerning "paneling" of the Commission on Judicial Disabilities (See Appendix 2)

Mr. Howell explained that the General Court Administration Subcommittee has been conducting an ongoing review of the Judicial Disabilities Commission Rules. A question has arisen in the Subcommittee as to whether to change the structure of how the Commission handles the complaints it receives. The current structure

is a single-tiered system where the entire Commission handles both the investigation and adjudication of the complaints. Some consideration has been given to the ABA model which bifurcates the Commission functions, so that part of the group does the investigation, and another part of the group does the adjudication. This is also known as panelization. The American Judicature Society has considered this question and has taken a stand against the ABA model. The Subcommittee needs guidance from the Rules Committee. This issue was not discussed when the Committee revised the Judicial Disabilities Commission Rules in 1994. Since the revision, the Commission has been enlarged and diversified. The constitutional amendment changed the composition of the Commission to three judges, three attorneys, and five lay people. The current practice is that all Commission members participate in all aspects of handling the complaint. The Commission is against panelization, particularly because the overwhelming majority of the complaints are sifted out early in the review process.

Mr. Howell noted that 12 states have panel models in effect. The majority of the states do not use the panelization model, but they adopted their system before the ABA model was introduced five years ago. The 12 states which adopted the ABA model did so recently. Mr. Howell said that, to his knowledge, no state with a single-tiered system considered the two-tiered system and rejected it. The current system in Maryland, while probably not

unconstitutional, could raise an appearance of unfairness. The Commission, in its investigatory stage, could come across evidence which is not admissible, and later in the adjudicatory stage, the Commissioners could inadvertently consider the inadmissible evidence while they are deciding the facts. The standards are not as carefully worked out as those for attorney discipline, where the investigation and adjudication are not commingled.

Mr. Howell observed that the type of system which is going to be used impacts on the revision of every Judicial Disabilities Commission Rule, so it is important to bring this issue before the Rules Committee. Mr. Howell said that he had looked at the due process issue in several cases. In these cases, the court pointed out that due process was not a problem, because the highest court in the state reviews de novo the finding of the Commission. This is not the situation in Maryland, where the Court of Appeals sets aside the Commission decision only if it is clearly erroneous. The Court cannot do much if it finds that the evidence supports the finding, even if there had been an unintentional recall of evidence which was not admitted but which was considered at the investigatory stage.

Mr. Brault inquired if there is a recommendation by the Subcommittee. Mr. Howell answered that the Subcommittee needs guidance. He is a partial author of the draft of the revised Judicial Disabilities Commission Rules. One aspect of the proposed system is that many states have an equal number of members of the

Commission, divided evenly into panels. In Maryland, there are 11 members of the Commission which would not divide evenly. In all cases, there is proposed to be at least one judge, one attorney, and two lay persons on the panel. Mr. Maloney asked if a judge is entitled constitutionally to have all 11 members hear his or her case. Mr. Howell replied that there is no indication as to the constitutionality of having part of the Commission hearing the case. The cases he has read do not indicate that utilizing members on a panel basis is defective. Nothing in the text of the Maryland Constitution would prevent the Court of Appeals from allowing panels as long as there are equal rights of participation among the Commission members. Mr. Maloney questioned whether proportional representation would carry over into both tiers. Mr. Howell responded that it is impossible to be exact. Two members of the attorney or judge groups doing the investigations would leave one member for the hearing stage. Two lay persons doing the investigation would leave three others for the hearing.

The Honorable Glenn Harrell told the Committee that he is Chair of the Judicial Disabilities Commission. He introduced Constance Beims, a lay member of the Commission, and Steven Lemmey, Esq., Investigative Counsel. Judge Harrell said that he had distributed to the Committee a two-page handout summarizing the position of the Commission, which does not favor panelization. The question is what is better for Maryland. Judge Harrell had asked the Honorable Alan

Wilner, past Rules Committee Chair, who had said that when the Rules were being revised, the Subcommittee had rejected panelization. Judge Harrell stated that since July 1, 1995, when the revised Rules took effect, he has not been aware of any recurrent problem which supports revisiting panelization, let alone adopting it. One case which began before July 1, 1995 has been used to point out that something needs to be done. In that case, inadmissible information came to the attention of all of the Commission members. The problematic information came in through a letter from the State's Attorney of Montgomery County concerning the results of a polygraph test. A new group of Commission members were appointed in July of 1995, but they received the same files in the case as the previous group of members, and the files included the letter. The polygraph evidence could have been redacted, but was not. This is the only concrete example of tainted evidence being considered by the Commission. If the new Judicial Disabilities Commission Rules had been in place when the letter went into the file, Investigative Counsel would have redacted the inadmissible information from the State's Attorney's letter. The information was not offered into evidence when the hearing was conducted. The Commission's suggestion is not to have panelization, which would involve keeping track of who is on which panel and could provide more potential for error. Recusals occur regularly if a Commission member has a close personal relationship with the judge who is the subject of the investigation,

or for other reasons, and that leaves the Commission at less than full strength.

Mrs. Beims was the next speaker. She said that she was pleased to be before the Chair and the Rules Committee. She was appointed to the Commission by the Governor one year ago. She expressed the view that the judiciary of Maryland is an excellent one. It is painful for every Commission member to have to review the actions of any judge. The four other new lay people are diverse, geographically and in other characteristics. The Commission debated the issue of panelization carefully. The timing for a new system would not be good. The Commission is coming together as a team with each member contributing to the process of reviewing judges. There have been occasions when a Commission member felt that a judge's conduct was not serious, but other members of the Commission had a different viewpoint. Each decision is made by the full Commission. Panelization would be difficult; in one case, there were three recusals by Commission members. Maryland is not a big enough state to warrant a large Commission. It is better to err on the side of caution. A three- or four-person panel with someone on the panel incapacitated by illness may have difficulty functioning. A full Commission can ultimately make more consistent decisions than rotating panels of three or four people.

Judge Harrell added that if the Commission were reviewing him, he would want to have someone on the panel who has walked in his

shoes and understands his perspective. Panelization would create a panel with one judge on it who could be an appellate, circuit court, or District Court judge. A full Commission has the benefit of several different judges. In a small panel, certain viewpoints will not be shared, and decisions could be made out of ignorance.

Mr. Bowen moved to reject the panelization system unless otherwise directed by the Court of Appeals. The motion was seconded.

The Chair asked for the viewpoints of some of the consultants who were present. Claire Smearman, Esq., representing the Select Committee on Gender Equality, told the Committee that she had participated in the Subcommittee discussions on the proposed revision to the Judicial Disabilities Commission Rules. She noted three points which are important to the Select Committee: (1) each case benefits from a diverse hearing panel, (2) panelization could be perceived by the public as destroying the recent changes to the Commission, and (3) the full Commission promotes commitment and collegiality; "if it ain't broke, don't fix it."

Judge Baldwin, of the Circuit Court for Harford County, said that he was not speaking for the Circuit Court Judges Association. He expressed his personal view that the attorney discipline process using panels is fairer than the judicial discipline process. The current process appears unfair, since Commission members could hear evidence which is not admissible and inadvertently consider it in their decision-making. He stated that he is in favor of

panelization.

Judge Smith, of the Circuit Court for Baltimore County, expressed his agreement with Judge Baldwin. Judge Smith commented that after discussions in the Subcommittee about filtering out inadmissible evidence, he was not persuaded that Investigative Counsel can always determine what is admissible. This is a significant concern. The Committee seems to be backing away from the issue of the breakdown of respect for the process. It is important that there be a judicial perception of fairness. Judge Smith recommended that the Rules Committee look into this issue.

Mr. Howell clarified that the issue of panelization was discussed only at the Subcommittee level when the Judicial Disabilities Commission Rules were being revised. The February, 1995 minutes of the Rules Committee meeting do not reflect any discussion of panelization. Today's discussion is the first by the Rules Committee. Mr. Karceski asked if the entire Commission is unanimous as to opposing panelization. Judge Harrell answered in the affirmative. Mr. Karceski questioned whether it would be preferable to have the investigation decided by a judge of the same court as the respondent judge. The Chair said that his sense is that if someone alleges that the trial judge mishandled his or her traffic ticket, a District Court judge would better understand the situation, whereas an appellate judge might see the case differently. Judge Harrell agreed.

Mr. Bowen commented that he made the motion to reject panelization, because there has been no complaint about the system. Mr. Brault referred to the information in the meeting materials from the American Judicature Society in which they raised the issue of how due process is ensured in many states, because the highest court reviews the judicial discipline matter de novo. The Court of Appeals in Maryland does not review the matter de novo. In an attorney grievance matter, investigatory information is segregated until the disposition phase, when information concerning repetitive complaints may be presented. Judge Harrell remarked that there is a provision in the Judicial Canons pertaining to recurring conduct. If the records reflect that a certain judge has a prior history, it would be relevant to know that.

Mr. Titus observed that tainted knowledge is not uncommon. Many cases address this issue. Although a lay person may be well-versed in the law, he or she is not trained to filter out tainted evidence. Since the Commission now contains a larger number of lay persons, it may be unable to overcome the taint. This is why the Subcommittee liked the panelization concept. What is troublesome is that the provision in the Maryland Constitution dealing with the Judicial Disabilities Commission does not appear to allow panelization. To make a change like this is not simple. The ABA recommends panelization, but the judicial discipline system is not parallel to the attorney discipline system.

Mr. Klein inquired if proffers of evidence are handled so that the whole panel hears them. Judge Harrell replied that they are handled that way. Mr. Klein noted that panelization would not cure this. Judge Harrell expressed his agreement with Mr. Titus that to make a change to panelization would not be simple. Even before the new constitutional amendment passed modifying the Commission, preparations were being made to add on the new members, including an orientation program to apprise the new members about their duties.

Mrs. Beims commented that in answer to the argument that lay people may not be able to differentiate admissible from inadmissible evidence, everyone has to make distinctions similar to that in their daily lives. Her feeling was that any member of the Commission could disregard inadmissible, tainted evidence. Judge Vaughan remarked that he is a member of the Subcommittee, and initially he favored panelization. Having listened to the Commission members, he is convinced that panelization would be wrong at this point in time. If the Commission were larger, it would be easier to divide up in panels. The more people involved in a decision, the more equitable the decision is.

Sen. Stone brought up again the issue of due process and the standard of review by the Court of Appeals. The Chair noted that the Subcommittee can work on that, because they are still working on the Rules. Mr. Brault agreed with Sen. Stone that this is an issue which needs to be discussed. The American Judicature Society has made a

good case for appellate de novo review. The Committee should consider a rule change to de novo review by the Court of Appeals. Mr. Sykes pointed out that this would not be a burden on the Court of Appeals because there are not that many judicial disability cases. This would make up for the fact that the judicial discipline process has less protections than the attorney discipline process. The Chair expressed doubts as to how this would be received by the Court of Appeals.

Mr. Lemmey observed that the Governor appointed bright, sophisticated people to the Commission. The new members take their roles very seriously and, even though the job is voluntary, the members read all the necessary information. The Commission's current internal policy on information presented prior to a decision to charge is:

> The Investigative Counsel shall not present information to the Commission for its consideration, at any time prior to charging, that would be inadmissible at a hearing before the Commission.

Mr. Lemmey suggested that this policy be incorporated into the Rules. In addition, a Committee note could provide guidance as to specific examples of inadmissible evidence. Three suggestions which could be included would be evidence from an illegal witness, polygraph evidence, and evidence from coerced or improperly obtained statements. This is not the universe of inadmissible evidence, but it might be helpful to list this in a committee note. Mr. Titus

added that this discussion provides guidance to the Subcommittee as to writing a rule with a standard for inadmissible evidence. Mr. Bowen remarked that civil jurors hear inadmissible evidence every day, and he is not concerned about the Judicial Disabilities Commission differentiating the evidence.

The Chair called the question on Mr. Bowen's motion to reject panelization. The motion carried unanimously.

The Chair stated that the Judicial Disabilities Commission Rules would be drafted without providing for panelization. Mr. Titus moved that the Rules should embody the internal policy of the Commission suggested by Mr. Lemmey, and the standard of review by the Court of Appeals should be addressed. The Chair suggested that each part of the motion be considered separately. The first motion, to embody the internal policy, was seconded and carried unanimously. The second motion, to reconsider the standard of review was seconded, and it passed with one opposed. The Chair thanked the guests for attending the meeting.

After the lunch break, the Chair introduced Steve Gerald, who is a University of Baltimore law student and is an intern in the Rules Committee office.

Special Agenda Item

The Chair presented Rule 16-712, Investigative Subpoena, for the Committee's consideration. (See Appendix 3).

The Chair explained that the Style Subcommittee, in its

consideration of the Attorney Discipline Rules, had questions about Rule 16-712. Mr. Howell said that the Committee apparently had made the decision that an attorney under investigation may not object to investigative subpoenas to compel the attendance of witnesses, but may object to subpoenas duces tecum. Mr. Howell remarked that he could not remember the rationale for this decision. He recommended to the Style Subcommittee that this issue come back before the full Committee, because his view is that there is no need to distinguish the two types of subpoenas. Mr. Sykes said that the Style Subcommittee felt that the Rule as recommended by the Rules Committee was an anomaly. An attorney under investigation is entitled to notice of Bar Counsel subpoenas. The Subcommittee provided that the attorney could object in court to the subpoenas. Then the Rules Committee changed the Rule to provide that an attorney could not object to subpoenas to compel the attendance of witnesses but could object to subpoenas for documents. Why give notice of a subpoena to compel the attendance of witnesses when the attorney cannot do anything about it? Mr. Bowen added that the Style Subcommittee's view was that both kinds of subpoenas should be treated the same. The Chair commented that it makes sense to treat them both the same and give the attorney the right to seek judicial relief.

Mr. Bowen moved to adopt the recommendation of the Style Subcommittee to change Rule 16-712 to allow an attorney to object to a subpoena compelling the attendance of witnesses. The motion was

seconded, and it passed unanimously.

Mr. Howell said that the Style Subcommittee had a second question concerning section (g) of Rule 16-712 -- the meaning of the word "statement" in terms of whether there is a time limitation. The wording of the Rule contains a possible ambiguity. Is everything said by the witness recorded? Did the Rules Committee intend the recording requirement to be limited to formal statements?

Mr. Hirshman questioned whether a statement is made under oath. Mr. Sykes replied that it is not. The Chair asked how much goes on the record if a witness is ordered to show up, and the attorney has no right to be there. Mr. Hirshman remarked that State's Attorneys do not have to record what a witness says when a witness is called in. The Chair noted that an Attorney Grievance subpoena is different. A State's Attorney subpoena is not used very often. Judge Kaplan said that he signs several each day. Judge Rinehardt added that the District Court gets investigatory subpoenas. Mr. Sykes observed that Bar Counsel can sign a subpoena without the necessity of the court signing it. Mr. Howell said that Bar Counsel takes the initiative, and the Chair of the Attorney Grievance Commission approves the subpoenas. Judge Rinehardt pointed out that recording the witness' statements may be burdensome. Mr. Hirshman stated that a reporter is necessary. The Rule does not provide who will do the recording. The preference is to have an impartial person.

Judge Rinehardt noted that having a reporter is costly. Mr. Hirshman agreed. He said that this issue came up recently when a panel asked for a tape made by an investigator. The question was whether the interview of the witness by the person from the Office of Bar Counsel was recorded. When an interview is obtained through a subpoena, it is because the witness would not come in voluntarily. The Chair commented that there is a sufficient potential relationship of an adversary nature, so that recording everything said in the interview cures the problem. Mr. Hirshman noted that the attorney can go to court for a protective order to make sure the interview is recorded. The judge can give a copy of the order to the witness. The Chair expressed the view that it would be better if there were something written in the Rule pertaining to this.

Mr. Bowen moved to adopt the Style Subcommittee's recommendation. The motion was seconded and passed unanimously.

Agenda Item 4. Consideration of proposed amendments to certain rules, recommended by the General Court Administration Subcommittee: Rule 16-101 (Administrative Responsibility), Rule 16-102 (Chambers Judge), Rule 16-103 (Assignment of Judges), Rule 16-105 (Reports to Be Filed), Rule 16-109 (Photographing, Recording, Broadcasting or Televising in Courthouses), Rule 16-201 (Motion Day -- Calendar), Rule 16-203 (Special Docket for Asbestos Cases), Rule 16-404 (Administration of Circuit Court Reporters), Rule 16-802 (Maryland Judicial Conference), Rule 16-817 (Appointment of Bail Bond Commissioner--Licensing and Regulation of Bail Bondsmen), Rule 2-509 (Jury Trial -- Special Costs in First, Second, and Fourth Judicial Circuits), Rule 4-344 (Sentencing -- Review)

The Chair presented Rule 16-101, Administrative Responsibility, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TILE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE, JUDICIAL DUTIES, ETC.

AMEND Rule 16-101 to make it gender-neutral and to transfer powers from the Circuit Administrative Judge to the County Administrative Judge, as follows:

Rule 16-101. Administrative Responsibility.

. . .

c. Circuit Administrative Judge.

1. Designation.

In each judicial circuit there shall be a Circuit Administrative Judge~~. He~~, who shall be appointed by order~~,~~ and serve at the pleasure of the Chief Judge of the Court of Appeals, provided that in the absence of any such appointment, the Chief Judge of the judicial circuit shall be the Circuit Administrative Judge.

2. Duties.

~~(a) Generally.~~

Each Circuit Administrative Judge shall be generally responsible for the administration of the several courts within ~~his~~ that judge's judicial circuit, pursuant to these Rules and subject to the direction of the Chief Judge of the Court of Appeals. Each Circuit Administrative Judge shall also be responsible

for the supervision of the County Administrative Judges within ~~his~~ the judicial circuit of the Circuit Administrative Judge and may perform any of the duties of a County Administrative Judge. ~~He~~ The Circuit Administrative Judge shall also call a meeting of all judges of ~~his~~ that judge's judicial circuit at least once every six months.

~~(b) Removed Cases--Approval Authority.~~

~~In the interest of expediting the trial of a removed action, criminal cause, or issue, and of equalizing judicial work loads to the extent feasible, it shall be the duty of a judge, before exercising removal authority designating a Court within his judicial circuit to which such action, criminal cause, or issue shall be removed, to obtain the approval of the Circuit Administrative Judge for such designation. It shall also be the duty of a judge, before exercising removal authority to a jurisdiction without the judicial circuit, to make inquiry of the Circuit Administrative Judge of the Circuit to which it is proposed to make the removal concerning the trial calendar and judicial work loads of any Court to which it is contemplated the action, criminal cause, or issue may be removed and to give consideration to the recommendations of such Circuit Administrative Judge. The Circuit Administrative Judge, in the interest of expediting the removal process, may at any time or from time to time delegate his approval authority under this Rule to any judge or judges within his judicial circuit.~~

Cross references: For more detailed provisions pertaining to duties of Circuit Administrative Judges, see Rule 4-344 (d); Rule 16-103 (Assignment of Judges); Rule 16-104 (Judicial Leave)~~; Rule 16-105 (Reports to Be Filed); Rule 15-106 (Court Sessions--Holidays--Time for Convening); Rule 16-201 a (Motion Day).~~ For removal in civil actions and criminal causes, see Rules 2-505 and 4-254.

Committee note: Section c of this Rule is

based on portions of the Court of Appeals Administrative and Procedural Regulation of July 17, 1967. Under the Rule, and particularly the portions thereof, dealing with the Circuit Administrative Judge, the Chief Judge of the Court of Appeals is free to appoint any judge of a circuit, including but not necessarily limited to the Chief Judge of that circuit, to be Circuit Administrative Judge. The judge so appointed, even if ~~he is~~ not the Chief Judge of the Circuit, exercises the administrative powers granted in this and other rules, such as Rule 16-103, dealing with assignment of judges. The intent of this Rule is to vest administrative power, at the judicial circuit level, in the Circuit Administrative Judge. In this regard, it should be noted that a Chief Judge has no inherent administrative power or authority, with the exception of the right to preside at sessions of ~~his~~ the court in the Chief Judge's Circuit, when more than one judge is present. See Bean v. Boryea, 81 Cal. 151, 22 Pac. 513 (1889); In re Opinion of the Justices, 271 Mass. 575, 171 N.E. 237, 240 (1930), and 48 C.J.S. "Judges," §2. Under this and other rules, the duty of selecting a panel for review of criminal sentences, as set forth in Article 27, §645JA, of the Code, would be vested in the Circuit Administrative Judge and not the Chief Judge. So would the duty of arranging for a sitting of the court en banc under Article IV, §22, of the Constitution. However, this Rule is not intended to interfere with the present practice of issuing process in the name of the Chief Judge of a Circuit.

d. County Administrative Judge.

1. Designation.

~~In the first seven judicial circuits, the Circuit Administrative Judge of a judicial circuit may, from time to time, and with approval of~~ The Chief Judge of the Court of Appeals, may, by order appoint a judge of the Circuit Court for any county ~~within his judicial circuit~~ to be County Administrative

Judge of the Circuit Court for ~~such~~ that county. A County Administrative Judge may be replaced ~~by the Circuit Administrative Judge of his circuit with the approval of the Chief Judge of the Court of Appeals or~~ by the Chief Judge of the Court of Appeals ~~on his own motion. In the Eighth Judicial Circuit the Circuit Administrative Judge shall have all the powers and duties of a County Administrative Judge~~.

~~Committee note: This is essentially the language of Paragraph 3 of the July 17, 1967 Administrative and Procedural Regulation of the Court of Appeals, except that the Circuit Administrative Judge is made the basic appointing and replacing authority to emphasize and reinforce his position in the administrative hierarchy. No express provision is made for a "County Administrative Judge" in any of the Supreme Bench courts, since the peculiar organization of these courts and their present method of functioning seems to make such unnecessary. The Circuit Administrative Judge in the Eighth Judicial Circuit is given the powers of a County Administrative Judge and pursuant to subsection 3 of this section may delegate portions of his authority to other judges of the Supreme Bench.~~

2. Duties.

Subject to the ~~general~~ supervision of the Chief Judge of the Court of Appeals ~~and to the direct supervision of his Circuit Administrative Judge, particularly with reference to assignment of judges and of cases,~~ a County Administrative Judge shall be responsible for the administration of justice and for the administration of the court for ~~which he is County Administrative Judge~~ that county. ~~His~~ The duties shall include:

(i) Supervision of all judges of ~~his~~ the court, and of officers and employees of the court, including the authority to assign judges within ~~his~~ the court pursuant to Rule 16-103 (Assignment of Judges), and including approval

of the designation by a judge of another county removing an action to the county for which the County Administrative Judge is responsible.

(ii) Supervision and expeditious disposition of cases filed in ~~his~~ the court, and the control of the trial and other calendars therein, including the authority to assign cases for trial and hearing pursuant to Rule 16-102 (Chambers Judge) and Rule 16-202 (Assignment of Actions for Trial).

(iii) Preparation of the budget of ~~his~~ the court.

(iv) Ordering of the purchase of all equipment and supplies for ~~his~~ the court and its ancillary services, such as master, auditor, examiner, court administrator, court stenographer, jury commissioner, staff of the medical and probation offices, and all additional court personnel other than personnel comprising the Clerk of Court's office.

(v) Subject to the approval of a majority of the judges of ~~his~~ the court, supervision of, and responsibility for, the employment, discharge, and classification of court personnel and personnel of its ancillary services and the maintenance of personnel files. However, each judge (subject to budget limitations) shall have the exclusive right to employ and discharge ~~his~~ the judge's personal secretary and law clerk.

Committee note: Article IV, §9, of the Constitution gives the judges of any court the power to appoint officers, and thus requires joint exercise of the personnel power. A similar provision was included in the July 17, 1967 Administrative and Procedure regulation.

(vi) In general, the implementation and enforcement of all policies, rules, and directives of the Court of Appeals, its Chief Judge, and the Director of the Administrative Office of the Courts, ~~and his Circuit Administrative Judge,~~ and the performance of

~~such~~ the other duties as may be necessary for the effective administration of the judicial business of ~~his~~ the court and the prompt disposition of litigation therein.

Cross references: For specific duties of a County Administrative Judge, see Rule 16-102 (Chambers Judge); Rule 16-103 (Assignment of Judges); Rule 16-201 (Motion Day--Calendar); Rule 16-202 (Assignment of Actions for Trial).

3. Power to Delegate.

(i) A County Administrative judge~~, with the approval of his Circuit Administrative Judge,~~ may delegate to any judge or to any committee of judges of ~~his~~ the court for that county, or to any officer or employee of ~~such~~ that court, ~~such of the~~ those responsibilities, duties, and functions imposed upon ~~him~~ the County Administrative Judge as ~~he~~ the judge, in ~~his~~ the judge's discretion, shall deem necessary or desirable.

(ii) In the implementation of Code, Article 27, §591 and Rule 4-271 (a), a County Administrative Judge may (A) with the approval of the Chief Judge of the Court of Appeals, authorize one or more judges to postpone criminal cases on appeal from the District Court or transferred from the District Court because of a demand for jury trial, and (B) authorize not more than one judge at a time to postpone all other criminal cases.

4. Single Judge Counties.

In any county in which there is but one resident judge of the Circuit Court, ~~such~~ that judge shall exercise, as appropriate, the power and authority of a County Administrative Judge.

Comment.--In general, section d (County Administrative Judge) is based upon the Court of Appeals Administrative and Procedural Regulation of July 17, 1967. Authority for the Rule is derived from Article IV, §18, of the Constitution, designating the Chief Judge of the Court of Appeals as administrative head of

> the judicial system and granting general rule-making and assignment power; the grant of administrative rule-making authority contained in Chapter 444, Acts of 1966, the provisions of Chapter 468, Acts of 1968, dealing with the distribution of judicial work loads and vacations; the provisions of CJ §1-201, of the Code dealing with rule-making power of the judges of the several courts of the State; and the inherent power of courts to prescribe rules to effectuate the administration of justice, including the inherent power of superior courts to regulate inferior courts; see, e.g., Petite v. Estate of Papachrist, 219 Md. 173, 148 A.2d 377 (1959); Annots., "Power of Court to Prescribe Rules of Pleadings, Practice and Procedure," 110 A.L.R. 22 (1937); 158 A.L.R. 705 (1945); Dowling, The Inherent Power of the Judiciary, 21 A.B.A.J. 835 (1935); Pound, Procedure Under Rules of Court in New Jersey, 66 Harv. L. Rev. 28 (1952).
>
> Source: This Rule is former Rule 1200.

Rule 16-101 was accompanied by the following Reporter's Note.

> This Rule is proposed to be amended to make it gender-neutral and to transfer from the Circuit Administrative Judge to the County Administrative Judge the power to approve the removal of cases from one county to another.

The Chair explained that the Rule was amended to transfer powers from the Circuit Administrative Judge to the County Administrative Judge. There was no discussion of Rule 16-101, so the Rule was approved as presented.

The Chair presented Rule 16-102, Chambers Judge, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TILE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE, JUDICIAL DUTIES, ETC.

AMEND Rule 16-102 to make it gender-neutral and to remove obsolete references, as follows:

Rule 16-102. Chambers Judge.

a. ~~Designation~~ Generally.

~~1. Eighth Judicial Circuit.~~

~~In the Eighth Judicial Circuit, the Circuit Administrative Judge shall from time to time designate one or more of the judges sitting in the courts of the Supreme Bench of Baltimore City to sit therein as chambers judge.~~

~~2. Other Judicial Circuits~~ 1. Designation.

In a county with more than four resident judges, the County Administrative Judge shall, and in any other county, ~~he~~ the judge may, from time to time designate one or more of the judges sitting in ~~his~~ the court in that county to sit therein as chambers judge.

~~3.~~ 2. Responsibility of County Administrative Judge.

~~In the Eighth Judicial Circuit, and~~ In any county where designation of a chambers judge is mandatory pursuant to subsection ~~2~~ 1 of this section, it shall be the responsibility of the County Administrative Judge to insure that a chambers judge is on duty in the courthouse whenever the courthouse is open for the transaction of judicial business therein.

~~Cross reference: In the Eighth Judicial Circuit the Circuit Administrative Judge has all the powers and duties of a County Administrative Judge. See section d 1 of Rule 16-101 (Administrative Responsibility).~~

. . .

Rule 16-102 was accompanied by the following Reporter's Note.

This Rule is proposed to be amended to make it gender-neutral and to remove obsolete references to the Supreme Bench of Baltimore City.

There was no discussion of Rule 16-102, so the Rule was approved as presented.

The Chair presented Rule 16-103, Assignment of Judges, for the Committee's consideration.

AMEND Rule 16-103 to make it gender-neutral and to remove obsolete references and a provision pertaining to attendance at the National College of State Trial Judges, as follows:

Rule 16-103. Assignment of Judges.

a. Chief Judge of the Court of Appeals.

~~1. Assignment of Judges.~~

The Chief Judge of the Court of Appeals may by order assign any judge to sit temporarily in any court other than the one to which he was appointed or elected. The order of assignment shall specify the court in which the judge is to sit and the duration of the assignment. During the period of ~~his~~ the assignment, the assigned judge shall possess all the power and authority of a judge of the court to which ~~he~~ the judge is assigned.

Comment.--This section, like the constitutional provision (article IV, §18) on which it is based, gives the Chief Judge of the Court of Appeals full vertical and horizonal assignment power.

~~2. Assignment to National College of State Trial Judges.~~

~~The Chief Judge of the Court of Appeals may from time to time assign, by order, one or more judges to attend the National College of State Trial Judges. Such assignment shall be made with the consent of the judge or judges concerned. Nothing in this Rule shall prevent~~

~~a judge no so assigned from attending National College of State Trial Judges during his annual vacation.~~

b. Circuit Administrative Judge.

~~1. Assignment Within First Seven Judicial Circuits.~~

Except for assignments made pursuant to section a of this Rule, the Circuit Administrative Judge of each of the ~~first seven~~ judicial circuits may assign any judge of ~~his~~ that judicial circuit to sit as a judge of the Circuit Court of any county in the judicial circuit, in any specific case or cases or for any specified time. ~~Such~~ The assignments may be made orally or in writing.

~~2. Assignment Within Supreme Bench of Baltimore City.~~

~~Except for assignments made pursuant to section a of this Rule, assignment of judges within the Supreme Bench of Baltimore City shall be pursuant to Article IV, Section 32 of the Constitution.~~

~~Cross reference: For rotation of judges, see Supreme Bench Rule 31 (Rotation of Judges).~~

c. County Administrative Judge.

Except for assignments made pursuant to section a or ~~subsection 1 of~~ section b of this Rule, assignment of judges within the Circuit Court for a county in which there is more than one resident judge shall be made by the County Administrative Judge.
~~Such~~ The assignments may be made orally or in writing.

d. Use of Assignment Power.

The assignment power herein established shall be exercised to insure full use of judicial manpower throughout the judicial system, to equalize, to the extent feasible, judicial work loads and to expedite the disposition of pending cases.

Cross reference: See ch. 468, Acts 1968, for

declaration that the judicial work load shall be distributed as uniformly as possible by exercise of the authority of assignment by the Chief Judge of the Court of Appeals.

Source: This Rule is former Rule 1202.

Rule 16-103 was accompanied by the following Reporter's Note.

This Rule is proposed to be amended to make it gender-neutral, to remove obsolete references, and to remove as unnecessary the provision pertaining to attendance at the National College of State Trial Judges.

There was no discussion of Rule 16-103, so the Rule was approved as presented.

The Chair presented Rule 16-105, Reports to Be Filed, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TILE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE, JUDICIAL DUTIES, ETC.

AMEND Rule 16-105 to make it gender-neutral and to transfer duties from the Circuit Administrative Judge to the County Administrative Judge, as follows:

Rule 16-105. Reports to Be Filed.

a. Report by Judge.

Every judge of the Circuit Court shall submit to the ~~Circuit~~ County Administrative Judge of ~~his~~ that judicial circuit, reports as may from time to time be required by the Chief Judge of

the Court of Appeals on forms prescribed and supplied by the State Court Administrator, and approved by the Chief Judge of the Court of Appeals. Each judge shall forward a copy of ~~such~~ the reports to the State Court Administrator ~~and to the County Administrative Judge, if any~~.

b. Report by County Administrative Judge.

Each ~~Circuit or~~ County Administrative Judge shall furnish such other reports as may from time to time be required by the Chief Judge of the Court of Appeals.

Committee note: The reports contemplated by section a of this Rule are those dealing with day-to-day operations of the trial courts, and should provide information as to current case loads, backlogs, etc., so as to permit the ~~Circuit and~~ County Administrative Judges to make prompt and sensible decisions as to the assignment of judges, cases, and the like; see proposed New Jersey Rule 1:32.

Since other types of reports may be required to obtain a proper view of the overall operations of the judicial system, section b of the Rule makes provision for the same. However, it is hoped that the weekly reports will in general be framed in such a way as to permit the compilation of overall data by the State Court Administrator from them, keeping to a minimum any additional reporting requirements.

Source: This Rule is former Rule 1204.

Rule 16-105 was accompanied by the following Reporter's Note.

This Rule is proposed to be amended to make it gender-neutral and to transfer the duty to submit reports from the Circuit Administrative Judge to the County Administrative Judge.

Mr. Sykes pointed out that the word "that" in the phrase "of that judicial circuit" in the first sentence of section a. is incorrect. It would be better to use the language, "in the judge's judicial circuit." The Reporter suggested that the phrase "of that judicial circuit" could be deleted as unnecessary. The Committee agreed by consensus to this change.

The Chair presented Rule 16-109, Photographing, Recording, Broadcasting or Televising in Courthouses, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 100 – COURT ADMINISTRATIVE STRUCTURE, JUDICIAL DISTRICTS

AMEND Rule 16-109 to eliminate obsolete references to cameras and equipment and to make the Rule gender-neutral, as follows:

Rule 16-109. Photographing, Recording, Broadcasting or Televising in Courthouses.

. . .

e. Restrictions on Extended Coverage.

1. Extended coverage of the testimony of a witness who is a victim in a criminal case shall be terminated or limited in accordance with the request or objection of the witness.

2. Extended coverage of all or any portion of a proceeding may be prohibited, terminated or limited, on the presiding judge's own motion

or on the request of a party, witness, or juror in the proceedings, where the judge finds a reasonable probability of unfairness, danger to a person, undue embarrassment, or hinderance of proper law enforcement would result if such action were not taken. In cases involving police informants, undercover agents, relocated witnesses, and minors, and in evidentiary suppression hearings, divorce and custody proceedings, and cases involving trade secrets, a presumption of validity attends the request. This list of requests which enjoy the presumption is not exclusive, and the judge may, in the exercise of ~~his~~ the discretion of the judge, find cause in comparable situations. Within the guidelines set forth in this subsection, the judge is granted broad discretion in determining whether there is cause for termination, prohibition, or limitation.

3. Extended coverage is not permitted of any proceeding which is by law closed to the public, or which may be closed to the public and has been closed by the judge.

4. Extended coverage in the judicial area of a courthouse or other facility is limited to proceedings in the courtroom in the presence of the presiding judge.

5. There shall be no audio coverage of private conferences, bench conferences, and conferences at counsel tables.

f. Standards of Conduct and Technology.

1. Not more than one portable television camera ~~(film camera -- 16 mm sound on film (self-blimped) or video tape electronic camera)~~, operated by not more than one camera person, shall be permitted in any trial court proceeding. Not more than two ~~television~~ stationary cameras, operated by not more than one camera person each, shall be permitted in any appellate court proceeding.

2. Not more than one still photographer,

utilizing not more than two still cameras with not more than two lenses for each camera and related equipment approved by the presiding judge shall be permitted in any proceeding in a trial or appellate court.

3. Not more than one audio system for broadcast purposes shall be permitted in any proceeding in a trial or appellate court. Audio pickup shall be accomplished from existing audio systems, except that if no technically suitable audio system exists unobtrusive microphones and related wiring shall be located in places designated in advance by the presiding judge. Microphones located at the judge's bench and at counsel tables shall be equipped with temporary cutoff switches. A directional microphone may be mounted on the television or film camera, but no parabolic or similar microphones shall be used.

5. Only television, movie, and audio equipment which does not produce light or distracting sound shall be employed. ~~Specifically, such photographic and audio equipment shall produce no greater sound than the equipment designated in Schedule A annexed hereto, when the same is in good working order.~~ No artificial lighting device of any kind shall be employed in connection with the television and movie cameras.

6. Only still camera equipment which does not produce distracting sound shall be employed to cover judicial proceedings. ~~Specifically, such still camera equipment shall produce no greater sound that a 35 mm Leica "M" series Rangefinder camera with manual file advance.~~ No artificial lighting device of any kind shall be employed in connection with a still camera.

7. It shall be the affirmative duty of media personnel to demonstrate to the presiding judge adequately in advance of any proceeding that the equipment sought to be utilized meets the sound the light criteria enunciated herein. A failure to obtain advance judicial approval

for equipment shall preclude its use in any proceedings.

8. Television or movie camera equipment shall be positioned outside the rail of the courtroom, or if there is no rail, in the area reserved for spectators, at a location approved in advance by the presiding judge. Wherever possible, recording and broadcasting equipment which is not a component part of a television camera shall be located outside the courtroom in an area approved in advance by the presiding judge.

9. A still camera photographer shall be positioned outside the rail of the courtroom or if there is no rail, in the area reserved for spectators, at a location approved in advance by the presiding judge. The still camera photographer shall not photograph from any other place, and shall not engage in any movement or assume any body position which would be likely to ~~call~~ attract attention ~~to himself~~, or be distracting. Unless positioned in or beyond the last row of spectator's seats, or in an aisle to the outside of the spectator's seating area, the still photographer shall remain seated while photographing.

10. Broadcast media representatives shall not move about the courtroom while proceedings are in session, and microphones and recording equipment once positioned shall not be moved during the pendency of the proceeding.

11. Photographic or audio equipment shall not be placed in or removed from the courtroom except prior to commencement or after adjournment of proceedings each day, or during a recess. Neither film magazines nor still camera film or lenses shall be changed within a courtroom except during a recess in the proceeding.

12. With the concurrence of the ~~local administrative~~ presiding judge, and before the commencement of a proceeding or during a

recess, modifications and additions may be made in light sources existing in the courtroom provided such modifications or additions are installed and maintained without public expense.

~~SCHEDULE A~~

~~FILM CAMERAS ..... 16mm Sound on Film (self-blimped)~~

~~1.~~	~~CINEMA PRODUCTS~~	~~CP-16A-R~~	~~Sound Camera~~
~~2.~~	~~ARRIFLEX~~	~~16mm-16BL Model~~	~~Sound Camera~~
~~3.~~	~~FREZZOLINI~~	~~16mm (LW16)~~	~~Sound on Film Camera~~
~~4.~~	~~AURICON~~	~~"Cini-Voice"~~	~~Sound Camera~~
~~5.~~	~~AURICON~~	~~"Pro-600"~~	~~Sound Camera~~
~~6.~~	~~GENERAL CAMERA~~	~~SS III~~	~~Sound Camera~~
~~7.~~	~~ECLAIR~~	~~Model ACL~~	~~Sound Camera~~
~~8.~~	~~GENERAL CAMERA~~	~~DGX~~	~~Sound Camera~~
~~9.~~	~~WILCAM REFLEX~~	~~16mm~~	~~Sound Camera~~

~~VIDEO TAPE ELECTRONIC CAMERAS~~

~~1.~~	~~Ikegami~~	~~HL-77 HL-33 HL-35 HL-34 HL-51 HL-52 HL 53 HL 79~~
~~2.~~	~~RCA~~	~~TK 76~~
~~3.~~	~~Sony~~	~~DXC-1600 Trinicon~~
~~4.~~	~~ASACA~~	~~ACC-2006~~
~~5.~~	~~Hitachi~~	~~SK 80 SK 90~~
~~6.~~	~~Hitachi~~	~~FP-3030~~
~~7.~~	~~Philips~~	~~LDK-25~~

~~8. Sony BVP-200 ENG Camera~~

~~9. Fernseh KCN-92~~

~~10. JVC-8800 u ENG Camera~~

~~11. AKAI CVC-150 VTS-150~~

~~12. Panasonic WV-3085 NV-3085~~

~~13. JVC GC-4800u~~

~~14. Sony BVP 300~~

~~15. NEC MN-71~~

~~16. Ampex BCC-14~~

~~VIDEO TAPE RECORDERS/used with Video Cameras~~

~~1. Ikegami 3800~~

~~2. Sony 3800~~

~~3. Sony BVU-100~~

~~4. Ampex VPR-20~~

~~5. Panasonic NV-9400~~

~~6. JVC 4400~~

~~7. Sony 3800H~~

~~8. Sony BVU-50~~

~~9. Sony/RCA BVH-500/TH 50~~

~~10. Fernseh BCN-20~~

. . .

Rule 16-109 was accompanied by the following Reporter's

Note.

This Rule is proposed to be amended to eliminate obsolete references to cameras and equipment and to make the Rule gender-neutral.

Mr. Brault inquired if the recording of trials means that the records are on video. The Chair replied that they are not. Judge Kaplan noted that there are 26 video cameras in Baltimore City. Judge Johnson said that Prince George's County has two. Judge Kaplan observed that the appellate court gets a transcript, unless the court asks to see the videotape. There was no other discussion of Rule 16-109, so the Rule was approved as presented.

The Chair presented Rule 16-201, Motion Day -- Calendar, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 200 - THE CALENDAR -- ASSIGNMENT AND DISPOSITION OF MOTIONS AND CASES

AMEND Rule 16-201 to make it gender-neutral and to transfer a duty from the Circuit Administrative Judge to the County Administrative Judge, as follows:

Rule 16-201. Motion Day -- Calendar.

a. Motion Day.

Each ~~Circuit~~ County Administrative Judge shall prescribe for each court in ~~his judicial circuit~~ that county motion days on which all motions and other preliminary matters pending

in that court and scheduled for hearing shall be heard.

. . .

c. Assignment When Hearing Required.

The County Administrative Judge in each county ~~and the Circuit Administrative Judge of the Eighth Judicial Circuit~~ shall provide for review of the motions calendar at appropriate intervals and the determination of what matters thereon require hearings. ~~He~~ The judge shall provide for assignment of hearing dates for such matters and notices thereof shall be given to all parties.

Committee note: It is intended that the ~~Circuit~~ County Administrative Judge will prescribe a different motion day for each court in ~~his judicial circuit~~ that county. Thus, attorneys with motions pending in a number of courts within ~~the judicial circuit~~ that county will not be called upon to argue several of them in different courts on the same day.

. . .

Rule 16-201 was accompanied by the following Reporter's Note.

This Rule is proposed to be amended to make it gender-neutral and to transfer the duty of designating motion days from the Circuit Administrative Judge to the County Administrative Judge.

The Assistant Reporter pointed out that a similar change to Rule 16-105, will be made. The phrase "in that county" will be deleted.

The Chair presented Rule 16-203, Special Docket for Asbestos Cases, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 200 - THE CALENDAR -- ASSIGNMENT AND DISPOSITION OF MOTIONS AND CASES

AMEND Rule 16-203 to clarify that the County Administrative Judge in the Eighth Judicial Circuit establishes the inactive docket for asbestos cases, as follows:

Rule 16-203. Special Docket for Asbestos Cases.

. . .

b. Special Docket.

~~The Circuit Court for Baltimore City, by order entered by~~ The Administrative Judge ~~for~~ of the Eighth Judicial Circuit, may establish a special inactive docket for asbestos cases filed in or transferred to that court. The order:

(1) shall specify the criteria and procedures for placement of an asbestos case on the inactive docket and for removal of a case from the docket;

(2) may permit an asbestos case meeting the criteria for placement on the inactive docket to be placed on that docket at any time prior to trial; and

(3) with respect to any case placed on the inactive docket, may stay the time for filing responses to the complaint, discovery, and other proceedings until the case is removed from the docket.

c. Transfer of Cases from Other ~~Circuits~~ Counties.

(1) The circuit administrative judge for any other judicial circuit, by order, may

(A) adopt the criteria established in an order entered by the County Administrative Judge for the Eighth Judicial Circuit pursuant to section b of this Rule for placement of an asbestos case on the inactive docket for asbestos cases;

(B) provide for the transfer to the Circuit Court for Baltimore City, for placement on the inactive docket, of any asbestos case filed in a circuit court in that other circuit for which venue would lie in Baltimore City; and

(C) establish procedures for the prompt disposition in the circuit court where the action was filed of any dispute as to whether venue would lie in Baltimore City.

(2) If an action is transferred pursuant to this Rule, the clerk of the circuit court where the action was filed shall deliver the file or a copy of it to the clerk of the Circuit Court for Baltimore City, and, except as provided in subsection c (3) of this Rule, the action shall thereafter proceed as if initially filed in the Circuit Court for Baltimore City.

(3) Unless the parties agree otherwise, any action transferred pursuant to this section, upon removal from the inactive docket, shall be retransferred to the circuit court in which it was originally filed and all further proceedings shall take place in that court.

. . .

Rule 16-203 was accompanied by the following Reporter's Note.

This Rule is proposed to be amended to clarify that the County Administrative Judge in

the Eighth Judicial Circuit establishes the inactive docket for asbestos cases.

Mr. Bowen pointed out that Baltimore City does not have a county administrative judge. However, Rule 1-202 provides that the word "county" includes the City of Baltimore. The Reporter noted that on the second page of Rule 16-203, there is a reference to the "county administrative judge." The Chair stated that the Rule's scope is limited to the Eighth Judicial Circuit. The word "county" should be deleted from subsection c (1)(A). The Committee agreed by consensus to this change. Mr. Brault questioned the wording of the phrase "[t]he Administrative Judge of the Eighth Judicial Circuit." The Reporter suggested that this be changed to "[t]he Administrative Judge of the Circuit Court for Baltimore City." The Committee agreed by consensus to this suggestion.

The Chair presented Rule 16-404, Administration of Circuit Court Reporters, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT AND OTHER PERSONS

AMEND Rule 16-404 to make it gender-neutral, to clarify that the Chief Judge of the Court of Appeals has the authority to prescribe regulations and standards relative to the maintenance of court records, and to eliminate duties of the Circuit Administrative Judge, as follows:

Rule 16-404. Administration of Circuit Court Reporters.

a. Establishment of Regulations and Standards.

The Chief Judge of the Court of Appeals shall from time to time prescribe regulations and standards regarding circuit court reporters and the system of reporting in the courts of the State. The regulations and standards may include provisions relative to:

(1) The selection, qualifications, and responsibilities of court reporters;

(2) Procedures and regulations for court reporting;

(3) Preparation, typing, and format of transcripts;

(4) Charges for transcripts and copies;

(5) Preservation and maintenance of reporting notes and records, however recorded;

(6) Equipment and supplies utilized in reporting.

b. Number of Court Reporters--Supervisory Court Reporter.

Each court shall have the number of court reporters recommended by the County Administrative Judge and approved by the Chief Judge of the Court of Appeals. In a county with more than one court reporter the County Administrative Judge shall designate one as supervisory court reporter, to serve at ~~his~~ the pleasure of the County Administrative Judge. The Chief Judge of the Court of Appeals shall prescribe the duties of the supervisory court reporter.

c. Supervision of Court Reporters.

Subject to the general supervision of the Chief Judge of the Court of Appeals ~~and to the direct supervision of his Circuit Administrative Judge~~, the County Administrative Judge shall have the supervisory responsibility for the court reporters in ~~his~~ the county. The County Administrative Judge may delegate supervisory responsibility to the supervisory court reporter, including the assignment of court reporters to attend the record at each session of the court and every other proceeding as provided in this Rule or by order of the court.

d. Methods of Reporting--Proceedings to Be Recorded.

Each court reporter assigned to record a proceeding shall record verbatim by shorthand, stenotype, mechanical, or electronic sound recording methods, electronic word or text processing methods, or any combination of these methods, and shall maintain that record subject to regulations and standards prescribed by the Chief Judge of the Court of Appeals.

1. Criminal Cases.

(a) Trial on Merits Other than District Court Appeals.

In criminal cases, other than appeals from the District Court, the entire trial on the merits held in open court, including opening statements and closing arguments of counsel;

(b) Appeals from District Court.

In appeals from the District Court, upon specific request of the judge or a party, the entire trial on the merits held in open court, including opening statements and closing arguments of counsel;

(c) Motions and Other Proceedings.

Upon specific request of the judge or a party, the entire or any designated part of the

hearing on all motions or other proceedings before the court.

2. Civil Cases.

(a) Trial on Merits Other than District Court Appeals.

In civil cases, other than appeals *de novo* from the District Court, the entire trial on the merits held in open court, excluding opening statements and closing arguments of counsel unless requested by the judge or a party;

(b) *De Novo* Appeals from District Court.

In appeals *de novo* from the District Court, upon specific request of the judge or a party, the entire trial on the merits held in open court, including, if requested opening statements and closing arguments of counsel;

(c) Motions and Other Proceedings.

Upon specific request of the judge or a party, the entire or any designated part of the hearing on all motions or other proceedings before the court.

e. Maintenance and Filing of Administrative Records.

The Chief Judge of the Court of Appeals may prescribe procedures for the maintenance and filing of administrative records and reports with the Administrative Office of the Courts ~~and the Circuit Administrative Judge~~.

Source: This Rule is former Rule 1224.

Rule 16-404 was accompanied by the following Reporter's Note.

The proposed amendment to Rule 16-404 adds the phrase "electronic word or text processing

methods" to the methods of court reporting authorized under section d. Because these methods do not ordinarily generate "notes," the phrase "and records" is added to subsection a (5) to make clear that the Chief Judge of the Court of Appeals has authority to prescribe regulations and standards relative to the preservation and maintenance of all records that are generated.

Also, references to the Circuit Administrative Judge are deleted, so that the judicial administrative responsibilities set forth in this Rule rest solely with the Chief Judge of the Court of Appeals and the County Administrative Judges.

Finally, stylistic changes are made to add commas where appropriate and make the rule gender-neutral.

There was no discussion of Rule 16-404, so the Rule was approved as presented.

The Chair presented Rule 16-802, Maryland Judicial Conference, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-802 to make it gender-neutral and to clarify that the representative judges of the Maryland Judicial Conference come from the appellate judicial circuits, as follows:

Rule 16-802. Maryland Judicial Conference.

. . .

b. Membership.

The members of the Judicial Conference are the judges of the:

1. Court of Appeals of Maryland;
2. Court of Special Appeals;
3. Circuit courts of the counties ~~and the Supreme Bench of Baltimore City~~;
4. The District Court of Maryland.

c. ~~Chairman~~ Chairperson and ~~Vice-Chairman~~ Vice-Chairperson.

1. The Chief Judge of the Court of Appeals of Maryland is the ~~chairman~~ chairperson of the Judicial Conference.

2. At its annual session, the Judicial Conference shall elect a ~~vice-chairman~~ vice-chairperson, who shall have all the power and duties of the ~~chairman~~ chairperson, but who shall serve only at the direction of the ~~chairman~~ chairperson, or in ~~his~~ the absence of the chairperson.

Comment.--This combines former Rule 1226 a 4 and 5 as to the ~~chairman~~ chairperson and ~~vice-chairman~~ vice-chairperson, but deletes the

provisions of subsection a 4 with respect to committees of the Conference. New provisions as to committees appear in section f of the proposed rule. See also subsection d 1 (b)(2). The last sentence of former Rule 1226 a 4 is omitted as unnecessary, in light of Maryland Rule 16-801.

d. Executive Committee of Maryland Judicial Conference.

1. Establishment--Duties.

a. There is an Executive Committee of the Judicial Conference. The Executive Committee consists of ~~18~~ 16 members.

b. Between plenary sessions of the Maryland Judicial Conference, the Executive Committee shall perform the functions of the Conference and shall:

(1) Submit recommendations for the improvement of the administration of justice in Maryland to the Chief Judge, the Court of Appeals, and the full Conference, as appropriate. The Executive Committee may also submit recommendations to the Governor, the General Assembly, or both of them, but these recommendations shall be transmitted through the Chief Judge and the Court of Appeals, and shall be forwarded to the Governor or General Assembly, or both, with any comments or additional recommendations deemed appropriate by the Chief Judge or the Court.

(2) Establish committees of the Judicial Conference pursuant to section f. of this Rule, and approve and coordinate the work of those committees.

(3) Plan educational programs to improve the administration of justice in Maryland.

(4) Plan sessions of the Conference in conjunction with the Conference ~~Chairman~~ Chairperson.

2. Members.

(a) The ~~17~~ 15 elected members of the Executive Committee are a circuit court and a District Court judge from each of the ~~first~~ seven appellate judicial circuits; ~~a judge of the Supreme Bench of Baltimore City and a judge of the District Court from the Eighth Judicial Circuit;~~ and a judge of the Court of Special Appeals. For purposes of this Rule, the Chief Judge of the District Court is considered to be a judge of the District Court from the appellate judicial circuit in which ~~he~~ the Chief Judge resides.

(b) The Chief Judge of the Court of Appeals is a member of the Executive Committee *ex officio* without vote.

3. Terms.

Subject to the provisions of paragraph 5 of this section, an elected member of the Executive Committee serves a two-year term and until ~~his~~ a successor is elected. The term begins on July 1 and ends on June 30. An elected member may not serve more than two consecutive two-year terms in any six-year period.

4. Elections.

(a) Not later than May 1 of each year, the executive secretary of the Conference shall advise the Chief Judge of the Court of Special Appeals, each ~~circuit~~ county administrative judge, and the Chief Judge of the District Court of the number of members of the Executive Committee from each court and in each appellate judicial circuit to be elected in that year.

(b) Not later than June 1 of each year, the Court of Special Appeals shall elect the Executive Committee member to which it is entitled in that year. The method of election shall be as determined by that court.

(c) Not later than June 1 of each year,

the judges of the circuit courts in each appellate judicial circuit ~~(and of the Supreme Bench of Baltimore City in the Eighth Judicial Circuit)~~ and of the District Court in each appellate judicial circuit shall elect the members of the Executive Committee to which they, respectively, are entitled in that year. The methods of election for circuit court~~/Supreme Bench~~ judges shall be as determined by the judges of those courts within each appellate judicial circuit. The methods of election of District Court judges shall be as determined by the judges of that court within each appellate judicial circuit.

(d) Promptly after the elections, the Chief Judge of the Court of Special Appeals, the circuit ~~administrative~~ court judge ~~of~~ who has been elected from each appellate judicial circuit, and the Chief Judge of the District Court shall advise the executive secretary of the individuals selected from ~~his~~ that court ~~level~~.

5. Vacancies.

(a) If a vacancy occurs on the Executive Committee because an elected member resigns from the Committee, leaves judicial office, or is appointed or elected to a judicial office other than the office ~~he~~ the member held when elected to the Committee, the executive secretary shall promptly notify the Chief Judge of the Court of Special Appeals, if the vacated position was held by a judge of that court; the ~~circuit~~ county administrative judges of the appropriate appellate judicial circuit, if the vacated position was held by a judge of a circuit court ~~or of the Supreme Bench of Baltimore City~~; or the Chief Judge of the District Court if the vacated position was held by a judge of that court.

(b) Within 30 days after the notification, the individual notified shall cause an election to be held by the judges of the Court of Special Appeals, the judges of the circuit court ~~or of the Supreme Bench~~ within

the appropriate appellate judicial circuit, or the judges of the District Court within the appropriate appellate judicial circuit, so that the vacancy shall be filled by election of a judge from the same court or court level as that from which ~~his~~ the judge's predecessor had been elected. The executive secretary shall be notified promptly of the individual elected. The individual elected serves for the unexpired balance of ~~his~~ the predecessor's term, and until ~~his~~ a successor is elected.

6. ~~Chairman~~ Chairperson and ~~Vice-Chairman~~ Vice-Chairperson.

(a) The elected members of the Executive Committee shall elect annually, from among their members, a ~~chairman~~ chairperson and ~~vice-chairman~~ vice-chairperson, to serve until the June 30 following their election, and until their successors are elected.

(b) ~~A vacancy in the chairmanship or vice-chairmanship~~ If the position of chairperson or vice-chairperson become vacant, it shall be filled by election by the Executive Committee members from among its elected members. The individual elected to fill the vacancy serves for the unexpired balance of ~~his~~ the predecessor's term, and until ~~his~~ a successor is elected.

Comment.--These provisions replace former Rule 1226 a 6. They establish the basic duties and responsibilities of the proposed Executive Committee, and provide for the members, their terms, and election, the filling of vacancies, and for a ~~chairman~~ chairperson and ~~vice-chairman~~ vice-chairperson elected by Committee members.

. . .

f. Committees.

1. Establishment.

In consultation with the ~~chairman~~ chairperson

of the Judicial Conference, the Executive Committee shall establish the committees of the Conference it considers necessary or desirable from time to time.

2. Appointment.

In consultation with the ~~Chairman~~ Chairperson of the Judicial Conference, the ~~Chairman~~ Chairperson of the Executive Committee shall appoint the ~~chairman~~ chairperson and members of each committee.

3. Duties.

Each committee shall meet at the time or times its ~~chairman~~ chairperson designates to receive, discuss, and consider suggestions pertaining to its area of responsibility. Each committee shall make reports to the Executive Committee as required by the Committee, and shall submit an annual report to the Judicial Conference through the Executive Committee.

Comment.--This provides for establishment and appointment of committees by the Executive Committee and its ~~chairman~~ chairperson, in consultation with the ~~chairman~~ chairperson of the Conference, and for committee reports. It replaces and enlarges upon portions of former Rule 1226 a 4, and also embodies certain existing practices.

. . .

Rule 16-802 was accompanied by the following Reporter's Note.

This Rule is proposed to be amended to make it gender-neutral and to clarify that the representative judges come from the appellate judicial circuits.

The Chair explained that the Honorable Martha F. Rasin, Chief

Judge of the District Court, wrote a letter requesting that subsection d.2.(b) be changed to include the Chief Judge of the District Court as a member of the Executive Committee *ex officio* without vote. The Chair suggested that subsection d.2.(b) be changed to read "The Chief Judge of the Court of Appeals and the Chief Judge of the District Court are members of the Executive Committee *ex officio* without vote." The Chair pointed out that in subsection d.2.(a), the Chief Judge of the District Court is listed as a possible elected member. Ms. Ogletree commented that this would be inconsistent with the proposed change.

Judge Rinehardt moved to delete the last sentence of subsection d.2.(a) and change subsection d.2.(b) to the Chair's proposed language. The motion was seconded and passed unanimously.

The Chair presented Rule 16-817, Appointment of Bail Bond Commissioner--Licensing and Regulation of Bail Bondsmen, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-817 to make it gender-neutral and to clarify that bail bond commissioners are organized by appellate judicial circuits, as follows:

Rule 16-817. Appointment of Bail Bond

Commissioner--Licensing and Regulation of Bail Bondsmen.

A majority of the judges of the circuit courts in any appellate judicial circuit may appoint a bail bond commissioner and license and regulate bail bondsmen and acceptance of bail bonds.

Each bail bond commissioner appointed pursuant to this Rule shall prepare, maintain and periodically distribute to all District Court commissioners and clerks within ~~his~~ the bail bond commissioner's jurisdiction for posting in their respective offices, and to the State Court Administrator, an alphabetical list of bail bondsmen licensed to write bail bonds within the appellate judicial circuit, showing the bail bondsman's name, business address and telephone number, and any limit on the amount of any one bond, and the aggregate limit on all bonds, each bail bondsman is authorized to write.

. . .

Rule 16-817 was accompanied by the following Reporter's Note.

This Rule is proposed to be amended to make it gender-neutral and to clarify that

the bail bond commissioners are organized by appellate judicial circuits.

There was no discussion of Rule 16-817, so the Rule was approved as amended.

The Chair presented Rule 2-509, Jury Trial -- Special Costs in First, Second, and Fourth Judicial Circuits, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-509 to delete the requirement that the Circuit Administrative Judge has to approve waiver of the assessment of special costs, as follows:

Rule 2-509. JURY TRIAL -- SPECIAL COSTS IN FIRST, SECOND, AND FOURTH JUDICIAL CIRCUITS

. . .

(b) Special Costs Imposed

When a jury trial is removed from the assignment at the initiative of a party for any reason within the 48 hour period, not including Saturdays, Sundays, and holidays, prior to 10:00 a.m. on the date scheduled, an amount equal to the total compensation paid to jurors who reported and were not otherwise utilized may be assessed as costs in the action against a party or parties in the discretion of the court and remitted by the clerk to the county. The County Administrative Judge~~, with the approval of the Circuit Administrative Judge,~~ may waive assessment of these costs for good

cause shown.

Source: This Rule is derived from former Rule 548.

Rule 2-509 was accompanied by the following Reporter's Note.

This Rule is proposed to be amended to delete the requirement that approval is required by the Circuit Administrative Judge when the County Administrative Judge waives the assessment of special costs.

Mr. Titus asked why this Rule is necessary when it seems to be local rules. The Chair responded that in some jurisdictions this is not a problem, but in the First, Second, and Fourth, there is a cost factor to be considered. Ms. Ogletree noted that in these jurisdictions, there may be only one courtroom. The First and Second Judicial Circuits make up the entire Eastern Shore of Maryland. Mr. Titus inquired as to when the Rule applies, and Ms. Ogletree answered that it applies every day. There being no objections, the Rule was approved as presented.

The Chair presented Rule 4-344, Sentencing--Review, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-344 to make it gender-neutral, as follows:

Rule 4-344. SENTENCING--REVIEW

(a) Application--When Filed

Any application for review of a sentence under the Review of Criminal Sentences Act, Code, Article 27, §§645JA - 645JG, shall be filed in the sentencing court within 30 days after the imposition of sentence or at a later time permitted by the Act. The clerk shall promptly notify the defendant's counsel, if any, the State's Attorney, and the Circuit Administrative Judge of the filing of the application.

. . .

(d) Review Panel--Appointment of

Upon notification by the clerk of the filing of an application, the Circuit Administrative Judge shall promptly appoint a Review Panel of three judges, not including the sentencing judge, and shall designate one as ~~chairman~~ chairperson, to review the sentence. The sentencing judge may sit with the Review Panel in an advisory capacity if requested by a majority of the Review Panel. A Review Panel may be appointed to serve for a fixed term or may be appointed to review only cases specifically assigned to it by the Circuit Administrative Judge.

. . .

Rule 4-344 was accompanied by the following Reporter's Note.

This Rule is proposed to be amended to make it gender-neutral.

There was no discussion of Rule 4-344, so the Rule was approved as presented.

Judge Kaplan moved to adopt the entire package of Rules in

Agenda Item 4 as amended. The motion was seconded, and it carried unanimously.

The Chair adjourned the meeting.