COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in the Conference Room 1100A of the People's Resource Center, 100 Community Place, Crownsville, Maryland, on June 25, 2004.

Members present:

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

Lowell R. Bowen, Esq.
Albert D. Brault, Esq.
Hon. James W. Dryden
Hon. G. R. Hovey Johnson
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
Timothy F. Maloney, Esq.
Hon. John F. McAuliffe
Robert R. Michael, Esq.
Hon. William D. Missouri
Anne C. Ogletree, Esq.
Larry W. Shipley, Clerk
Twilah S. Shipley, Esq.
Sen. Norman R. Stone
Melvin J. Sykes, Esq.
Del. Joseph F. Vallario, Jr.
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Alice Neff Lucan, Esq., Maryland/Delaware/District of Columbia Press Association
David Morgan, Esq., Assistant Attorney General
Daniel O'Brien, Esq., Principal Counsel to the Department of Health and Mental Hygiene
Richard Montgomery, Maryland State Bar Association
Judith K. Sykes, Esq.
Christopher G. Townsend, Rules Committee Intern

The Chair convened the meeting. He told the Committee that the Court of Appeals had reappointed all of the members whose current terms expire on June 30: the Vice Chair, Judge Norton, Mr. Brault, Ms. Ogletree, Mr. Johnson, and Mr. Michael. Special guests attending today's meeting are Una Perez, Esq., a former Reporter to the Rules Committee who currently is serving as a

Special Report to the Committee; Judith Sykes, Esq., wife of Mr. Sykes; Richard Montgomery of the Maryland State Bar Association; Christopher Townsend, Rules Committee intern from the University of Baltimore School of Law; Alice N. Lucan, Esq., representing the Maryland-Delaware-District of Columbia Press Association; Daniel O'Brien, Esq., Principal Counsel, to the Department of Health and Mental Hygiene; and David Morgan, Esq., Assistant Attorney General, Department of Health and Mental Hygiene. The Chair asked if there were any additions or corrections to the Minutes of the February 6, 2004 Rules Committee meeting. There being none, the Vice Chair moved that the minutes be accepted as read, and the motion passed unanimously.

Agenda Item 1. Reconsideration of proposed new Title 15, Chapter 1100 (Catastrophic Health Emergency) and a proposed conforming amendment to Rule 1-101 (Applicability)

Mr. Sykes told the Committee that he was not present at the February 6, 2004 Rules Committee meeting at which the Catastrophic Health Emergency Rules were discussed. The minutes of the meeting reflect that the Committee made extensive amendments to the proposed new Rules and decided to review the Rules after they were amended. The Rules were drafted based on Code, Health General Article, §18-901 et seq. Recently, Mr. Sykes discovered that another statute with the same substantive provisions had been enacted: Code, Public Safety Article, §14-3A-01 et seq. It is not clear what the status of the provisions

in the Health General Article is. The staff of the Rules Committee determined that the two statutes are parallel. The only difference for purposes of Rules drafting is that the Public Safety Article version refers to the Court of Appeals appointing counsel for the petitioner, while the Health General Article version states that the circuit court appoints counsel. The Rules have been changed to include references to the Public Safety Article that go into effect on October 1, 2004. The Assistant Reporter pointed out that the provisions of the Public Safety Article had already been in existence in Article 41 before they were moved to the Public Safety Article. Mr. Morgan added that the Article 41 provisions went into effect at the same time as the comparable provisions in the Health General Article.

Mr. Sykes presented Rule 15-1101, Construction, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1101, as follows:

Rule 15-1101. CONSTRUCTION

The Rules in this Chapter are promulgated pursuant to Code, Health-General Article, §18-906 (d) and Code, Public Safety Article, §14-3A-05 (f)(3) and should be construed to facilitate the efficient adjudication of any proceedings brought pursuant to Code, Health-General Article,

§18-906 and Code Public Safety Article, §14-3A-05. The Rules in this Chapter do not prohibit an individual from seeking habeas corpus relief.

Source: This Rule is new.

Mr. Sykes explained that the February 6, 2004 Minutes indicate that the last sentence was added to clarify that someone who filed an action or is eligible to file an action pursuant to the Health General or Public Safety provisions is not prohibited from seeking habeas corpus relief. The Committee approved the Rule as presented.

Mr. Sykes presented Rule 15-1102, Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1102, as follows:

Rule 15-1102. DEFINITIONS

The definitions set forth in Code, Health-General Article, §§1-101 and 18-901 and Code, Public Safety Article, §§1-101 and 14-3A-01, are incorporated in this Chapter by reference.

Source: This Rule is new.

Mr. Sykes noted that the pertinent definitions from the two statutes are incorporated in the new Rules by reference. The

Committee approved the Rule as presented.

Mr. Sykes presented Rule 15-1103, Initiation of Proceeding to Contest Isolation or Quarantine, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1103, as follows:

Rule 15-1103. INITIATION OF PROCEEDING TO CONTEST ISOLATION OR QUARANTINE

(a) Petition for Relief

An individual or group of individuals required to go to or remain in a place of isolation or quarantine by a directive of the Secretary, issued pursuant to Code, Health-General Article, §18-905 (a)(1) or Code, Public Safety Article, §14-3A-04, may request a hearing in a circuit court to contest the isolation or quarantine pursuant to Code, Health-General Article, §18-906 (b)(1) or Code, Public Safety Article, §14-3A-05 (c)(1) by filing with the Clerk of the Court of Appeals a petition for relief stating the basis for the request for a hearing and for opposing the isolation or quarantine.

Committee note: If possible, the petitioner should notify the Secretary that a petition will be filed.

Query: Should the Rule provide an alternate filing location or method in the event that, for example, the entire city of Annapolis is quarantined?

(b) Provisional Sealing

Upon the filing of a petition, the Clerk shall seal the petition on a provisional basis, subject to further order of court.

Query: Should there be a Committee note to the effect that even though the provisional sealing occurred at the Court of Appeals level, the circuit court judge to whom the matter is assigned may unseal those portions of the papers and pleadings as to which confidentiality is not required?

Cross reference: See Rules 16-1001 - 16-1011, concerning access to court records.

(c) Order Assigning Judge and Setting Hearing

The Chief Judge of the Court of Appeals or that judge's designee shall enter an order assigning the matter to a judge of any circuit court to hear the action. The order also shall set a date, time, and location of the hearing or direct that the clerk of the circuit court to which the action has been assigned forthwith set the hearing and notify the parties.

Cross reference: See Code, Health-General Article, §18-906 (b), Code, Public Safety Article, §14-3A-05 (c), and Rule 15-1104 (c) concerning the time within which a hearing is to be conducted.

(d) Notice

No later than the close of business on the day after the petition was filed, the Clerk of the Court of Appeals shall provide the Secretary or other official designated by the Secretary, and counsel to the Department of Health and Mental Hygiene, with a notice of the filing of the petition and a copy of the petition. The Clerk also shall provide to all parties a copy of the order entered pursuant to section (c) of this Rule.

(e) Answer to Petition

> The Secretary or other official designated by the Secretary may file an answer to the petition. To the extent an answer is not filed, the petition shall be deemed denied.
>
> Source: This Rule is new.

Mr. Sykes explained that the Rule provides a centralized place for persons to file a petition for relief if the Secretary has issued an order of isolation or quarantine. The model for this Rule is Rule 16-752, Order Designating Judge, which is the Attorney Discipline Rule that provides for the Court of Appeals to designate a judge of a circuit court to hear an attorney discipline case filed by Bar Counsel in the Court of Appeals.

The Vice Chair asked about the reference to the two statutes twice in section (a). The Chair inquired as to why the reference is necessary, since statutory references often change. The Vice Chair and Mr. Sykes agreed that the second set of statutory references is unnecessary. The Reporter suggested that the statutory references after the word “quarantine” the second time that it appears in section (a) be deleted. The Vice Chair agreed, noting that the first two references adequately state the statutory authority. Mr. Sykes remarked that the Rule could provide that the directive is “issued pursuant to statutory authority.”

The Vice Chair suggested that a general reference to both sections of the Code could be placed at the beginning of the Rules in this Chapter. Mr. Morgan pointed out that the Secretary

has other quarantine authority outside of the two Code sections cited in the Rule. The Chair said that the two Code references should be left in the Rule, even though one does not need that authority to go to the court. If someone is required by the Secretary to go to a place of isolation or is quarantined, the person has the right to file a petition for relief.

The Vice Chair asked about the Committee note at the end of section (a). The Reporter answered that it was added at the February 2004 meeting. The Vice Chair expressed the view that the note does not make sense. The Reporter explained that the reason for the note is that the speed of the proceedings makes them comparable to *ex parte* proceedings. The Chair commented that if the Secretary quarantines someone, it would not be a surprise if the quarantined person sought judicial relief. The Vice Chair suggested that the Committee note be deleted, and the Committee agreed, by consensus, to the suggestion.

Mr. Bowen inquired about the query at the end of section (a) asking if the Rule should provide an alternate filing location or method in the event that, for example, the entire city of Annapolis is quarantined. The Reporter replied that she had added the query. After the Assistant Reporter had made the changes to the Rules suggested by the Committee in February, the Reporter had reorganized the Rules. Additional issues then became apparent. Mr. Bowen suggested that if the Office of the Clerk of the Court of Appeals is under quarantine, the petition

for relief should be filed in the circuit court closest to the place of isolation or quarantine that is not under quarantine. The Vice Chair remarked that the filing could be faxed. Mr. Bowen expressed his preference for the language he had proposed. Mr. Maloney suggested that the word "county" should be included to avoid designating a specific geographical area. Mr. Bowen disagreed with this suggestion. Mr. Maloney noted that the language of the Rule should not lead to a question of measurement, such as whether Rockville or Upper Marlboro is closer to Silver Spring.

The Chair suggested that the language could be "in the county where the person is quarantined or in the circuit court in the place closest to where the person is quarantined." Mr. Morgan suggested that the language could be "in the circuit court with an otherwise appropriate venue." Mr. Bowen explained that the reason for his suggested language is that the Court of Appeals could send the matter anywhere, and it would not necessarily be in the county where the quarantine occurred. If an emergency existed, and the Court of Appeals could not make this designation, the locale for filing would be the shortest distance to travel. The Chair cautioned that a judge should not be able to dismiss the petition on the ground that the place of filing was not the closest location.

Mr. Karceski expressed the concern that some people may have to file these petitions while unrepresented, with no funds. How would a person in this circumstance begin the process? The Chair

responded that it may be necessary to write into the Rule language providing for appointment of counsel and advice of rights. Mr. Bowen pointed out that someone in quarantine cannot leave to retain an attorney. The Reporter commented that the statute contemplates that the petitioner will be represented by appointed counsel.

Mr. Bowen suggested that the word "clerk" not be capitalized in section (b), so that the reference is both to the Clerk of the Court of Appeals and to a circuit court clerk in the jurisdiction where the petition may be filed. The clerk would seal the petition provisionally, subject to the court to which the matter is assigned unsealing it. The Chair noted that the word "clerk" is a defined term. The Committee agreed by consensus to Mr. Bowen's suggestions as to the word "clerk" and including an alternate venue provision in the Rule.

The Reporter asked what the language of section (a) should be, since Mr. Bowen and the Chair had made different suggestions. The Vice Chair remarked that the filing should be in the county where the quarantine is. The Chair asked if there should be an alternate provision to refer to filing the petition in whichever county is open if others are closed. The Vice Chair said that this language would provide a third choice. Mr. Klein noted that the petition should be filed in the nearest court that is not quarantined. Mr. Sykes said that the Rule should be clear that a circuit court would be the place to file the petition only if the Court of Appeals is closed.

The Vice Chair asked what the decision is as to where to file the petition if the Court of Appeals is closed. The Chair inquired as to which is the proper courthouse in which to file the petition upon the closure of the Court of Appeals, if the quarantine takes place in northern Baltimore County, eight miles from the Harford County courthouse and 28 miles from the Baltimore County courthouse. Mr. Michael suggested that the Rule could provide that the petition may be filed in any other circuit court. The Reporter observed that this could lead to the involvement of many different courts. This would defeat the purpose of the preferred mechanism set forth in the Rule –- that the petition is filed in the Court of Appeals, and the Chief Judge of the Court decides which county should hear the case. Involving too many counties creates a difficult situation; it is preferable that the Rule be drafted so that the second choice of where the petition is filed can be easily ascertained. Judge Missouri added that having too many counties from which to choose could lead to "judge-shopping."

Mr. Bowen reiterated that his suggested language would take care of the problems pointed out today. Mr. Sykes noted that there could be other groups who are quarantined. Judge Missouri responded that the cases could be consolidated pursuant to section (d) of Rule 2-327, Transfer of Action. The Vice Chair commented that the Rule does not have to provide for the situation where the Court of Appeals is in quarantine. If that is the case, the Court will deal with the situation. The Chair

said that this is a meritorious viewpoint. The right of filing a petition for habeas corpus relief has been built into Rule 15-1101. It is not worth rewriting the Rule to anticipate a quarantine of the Court of Appeals. The Committee agreed by consensus to omit an alternate venue provision from the Rule.

Mr. Klein said that he is concerned about proposing new Rules that do not answer the question, "Where does one file a petition for relief if the Court of Appeals is not operational because of the outbreak of a disease?". The underlying statute was drafted in response to the terrorism attacks that occurred on September 11, 2001. It would be reasonable to assume that the seat of state government could be a terrorism target. An alternate venue to Anne Arundel County where the Office of the Clerk of the Court of Appeals is located might be preferable. The Subcommittee could reconsider this issue. Mr. Bowen expressed the view that this should not be left to the remedy of habeas corpus, and he agreed with Mr. Klein. Mr. Maloney pointed out that Rule 1-322, Filing of Pleadings and Other Papers, provides that pleadings and papers can be filed with a judge.

The Chair commented that Mr. Bowen had suggested that the petition be filed in the courthouse that is closest to the place of confinement. The Vice Chair remarked that the Court of Appeals can designate another court to receive the petition. Mr. Klein noted that it is possible that the entire Court of Appeals is quarantined in a catastrophic health emergency. The Chair said that for the Clerk of the Court of Appeals to accept

the filing, it is implicit that the Clerk's office is open. The alternative venue would be the courthouse closest to the confinement. Mr. Bowen suggested that Rule 15-1103 (a) could provide: "If the office of the Clerk of the Court of Appeals is under quarantine, the request may be filed in the circuit court nearest to the place of isolation or quarantine that is not under quarantine." By consensus, the Committee agreed to this change.

Mr. Sykes told the Committee that Alice Lucan, Esq. was present to speak about the issue of sealing the petition. Ms. Lucan remarked that an air of unreality surrounds the drafting of these Rules. The Maryland-Delaware-District of Columbia Press Association, the organization she represents, would like to underscore that its goal is to give fast and accurate information to the public and avoid dangerous rumors if a catastrophic event were to happen. Under the new Rules in Title 16, Chapter 1000, court records are presumed to be open. Her organization objects to the language of section (b) that provides for provisionally sealing the petition and asks that it be deleted. The Health General Article does not require the sealing of the petition and neither does the Federal Privacy Act, 5 U.S.C.A. §552a. This is also not required by the Health Insurance Portability and Accountability Act (HIPAA), Public Law 104-191 (1996), a statute providing for privacy in health care matters. Code, Health General Article, §4-303, Disclosure upon Authorization of a Person in Interest, generally puts the decision to disclose in the hands of the patient. Section (h) of Rule 16-1006, Required

Denial of Inspection–Certain Categories of Case Records, provides that the custodian shall deny inspection of certain medical records that are mandatorily sealed unless opened by court order or as otherwise provided by law. Rule 16-1009, Court Order Denying or Permitting Inspection of Case Record, provides a mechanism to close records. The petitioner in a quarantine case who would like the records closed can ask that they be sealed. Otherwise, the records can remain open. The Chair commented that it seems inappropriate that the petitioner would have to request that the matter be sealed. Ms. Lucan responded that Rule 16-1009 provides a procedure for requesting that the case record be sealed. The Rule alerts the petitioner that sealing the petition is an option. The Chair pointed out that the language in section (b) of Rule 15-1103 makes it expressly clear that the petition is provisionally sealed. He said that this seems appropriate. He disagreed with the idea that someone should have to go to another Rule to find out about sealing. Mr. Sykes added that this involves sensitive medical information, and this is different from many other petitions.

Ms. Lucan stated that the position of the Press Association is that there is no legislative authority for the files to be sealed, and any sealing is effected pursuant to Rule 16-1009. The Chair remarked that there is no harm in repeating the procedures about sealing in Rule 15-1103, instead of sending people to another separate rule. The Vice Chair expressed the view that the Rule as written is appropriate. There is nothing

wrong with a brief closure of the petition. The Chair stated that this issue can be reconsidered later after the other Catastrophic Health Emergency Rules are discussed.

Turning to section (c), Mr. Sykes remarked that it is not clear when the statutory three-day time limit for the hearing to take place starts running. Is it when the case gets to the circuit court or when the original petition is filed? The Reporter replied that the time period is three days from the filing of the petition. The Vice Chair questioned as to how likely it would be that the Court of Appeals in its order would tell the trial judge that the hearing has to be at a certain time and date. Judge Dryden pointed out that this would be appropriate in an emergency situation. The Vice Chair remarked that the phrase using the word "forthwith" will be revised by the Style Subcommittee.

Mr. Bowen suggested that the words "of Appeals" be deleted, and that language be added that refers to the court in which the petition was filed. The Vice Chair observed that alternate venue provisions can create confusion and suggested not to add alternate locations for filing petitions, leaving the alternative of filing a petition for habeas corpus if the Court of Appeals is closed. The Chair suggested that the Rule require that the petitions be filed only in the Court of Appeals, and the Committee agreed by consensus with this suggestion.

The Vice Chair inquired as to whether it is necessary in section (d) for the Clerk of the Court of Appeals to create a

notice. The Clerk can serve the Secretary with a copy of the petition and the order, and the language that states that the Clerk is to provide a notice of the filing of the petition can be deleted. Mr. Sykes observed that a notice can be provided more quickly than a copy of the petition and order. The Chair pointed out that this is covered in Title 1 of the Rules. Mr. Sykes said that in a quarantine situation, the notice is an efficient way to let the Department know about the petition as soon as possible.

The Chair suggested that a requirement be built into the Rule that the petitioner serve the Secretary with a copy of the petition. The Vice Chair noted that it may be difficult for the petitioner to do this, and she asked what the harm is in requiring the Clerk to give a copy of the petition to the Secretary. The Reporter added that this is a shortcut method for service of process. The Vice Chair suggested that the language stating that the Clerk is to provide a notice of the filing of the petition be deleted. The Chair suggested that the language "the close of business on" be deleted. The Committee agreed by consensus to the deletions. Ms. Lucan asked if the filing of the petition would result in a listing on the court docket that would provide public notice. The Chair responded that this would be sealed and marked only with a number. It would be listed as "miscellaneous." Judge McAuliffe added that the Secretary should be told that a petition was filed and the date that it was filed. The Vice Chair said that the Secretary should receive a copy of the petition, with the date of its filing noted on it.

Mr. Sykes suggested that the Rule should state that the Clerk will provide the Secretary with the date of the filing of the petition, a copy of the petition, and a copy of the order. The Committee agreed by consensus to this suggestion. The Vice Chair asked if the statute states that the petition is to be filed in the Court of Appeals. Mr. O'Brien answered that the statute provides only that the Court of Appeals is to adopt rules to effectuate the statute.

The Vice Chair pointed out that the Court of Appeals does not decide many cases of original jurisdiction. The Chair commented that this issue was discussed when the Client Security Trust Fund Rules were changed to the Client Protection Fund Rules. The Court of Appeals had asked for a rule requiring that judicial review of a determination by the Fund be made under the Rules in Title 7, Chapter 200, rather than by the Court of Appeals exercising original jurisdiction. The Vice Chair questioned whether original jurisdiction in the Court of Appeals can be created by rule. Mr. Sykes replied that the filing of the petition in the Court of Appeals does not create original jurisdiction in the Court. Rather, the proposed Rules implement the power of the Chief Judge of the Court of Appeals as administrator of the court system, parceling out emergency health cases to the circuit courts. Under proposed Title 15, Chapter 1100, a decision of a circuit court, unlike a recommendation issued by a circuit court judge in attorney discipline cases, is a final judgment of a court exercising original jurisdiction.

Turning to section (e), Mr. Sykes noted that this allows the Secretary to file an answer. Judge McAuliffe suggested that the language "allegations of the" should be placed between the word "the" and the word "petition." The Committee agreed by consensus to this suggestion.

Mr. Michael asked whether the answer in the file is sealed. The Chair replied that it would be sealed until the court says that it is open. The Vice Chair commented that the Secretary is not required to file an answer and does not need the same protections that a quarantined person needs. The Secretary has the power to say what information is public. The Chair agreed, commenting that the Secretary could hold a press conference, but he cautioned that the Secretary should not be given *carte blanche* to file an answer that indirectly attempts to unseal the file. He suggested that the second sentence of section (e) begin as follows: "[i]f an answer is not filed ...". The Committee agreed by consensus to this suggestion. Ms. Lucan pointed out that Code, Health General Article, §18-906, provides for an efficient adjudication but not a secret one. Since medical records are sealed on a mandatory basis, under Rule 16-1006, and Rule 16-1009 provides for a temporary seal for five days at the request of a party or other person identified in a court record, language in Title 15, Chapter 1100 is redundant.

The Chair countered that it is important to keep section (b) in the Rule, rather than to assume that someone reading the Rule

would go to other rules and statutes.

The Committee approved Rule 15-1103 as amended.

Mr. Sykes presented Rule 15-1104, Proceedings in the Circuit Court, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1104, as follows:

Rule 15-1104. PROCEEDINGS IN THE CIRCUIT COURT

(a) Appointment of Counsel

If a petition has been filed pursuant to Rule 15-1103 by an individual or group not represented by counsel, the circuit court shall appoint counsel in accordance with Code, Health-General Article, §18-906 (c), or the Court of Appeals shall appoint counsel in accordance with Code, Public Safety Article, §14-3A-05 (f)(2).

(b) Consolidation of Actions, Claims, and Issues

Consolidation of actions, claims, and issues is governed by Rule 2-327 and Code, Health General Article, §18-906 (b)(7).

(c) Time for Hearing

The circuit court shall conduct a hearing on a petition for relief within three days from the date that the petition is filed, except that the court may extend the time for the hearing:

(1) upon a request of the Secretary or other designated official in accordance with

Code, Health-General Article, §18-906 (b)(4) or Code, Public Safety Article, §14-3A-05 (c)(4);

(2) upon a request by a petitioner who is unrepresented by counsel, to afford the petitioner an opportunity to retain counsel or for other good cause; or

(3) to effectuate the consolidation of proceedings in connection with claims pending in two or more petitions.

(d) Appearance at and Conduct of the Hearing

In the event that one or more of the parties, their counsel, or witnesses are unable to appear personally at the hearing, and where the fair and effective adjudication of the proceedings permits, the court, in the interests of justice, may:

(1) accept pleadings and admit documentary evidence submitted or proffered by courier, facsimile, or electronic mail;

(2) relax or suspend some or all of the rules of evidence set out in Title 5 of these Rules; and

(3) if feasible, hear testimony and argument and rule on issues of fact and law, by means of a telephonic conference call, live closed circuit television, live internet or satellite video conference transmission, or other available means of communication that reasonably permit the parties or their authorized representatives to fully participate in the proceedings.

(e) Factors to be Considered

At the hearing, the court shall take into account the following information, to the extent available:

(1) the means of transmission of the disease or outbreak that is believed to be caused by exposure to the deadly agent;

(2) the degree of contagion that is associated with exposure to the deadly agent;

(3) the degree of public exposure to the disease or outbreak;

(4) the risk and severity of the possible result from infection, injury, or death of an individual or group of individuals by the deadly agent;

(5) whether the petitioner or the group of individuals similarly situated to the petitioner may have been exposed to the deadly agent;

(6) the potential risk to the public health of an order enjoining the Secretary's directive or otherwise requiring the immediate release of the petitioner, or of an individual or group of individuals similarly situated to the petitioner, from isolation or quarantine; and

(7) any other material facts.

Source: This Rule is new.

Mr. Sykes pointed out the two alternative provisions for the appointment of counsel in Code, Health General Article, §18-906 (c) and Code, Public Safety Article, §14-3A-05 (f)(2). The Chair said that the statutes provide for an automatic appointment of counsel whether or not the confined individual chooses to have an attorney. Mr. Bowen noted that if the person does not have an attorney, he or she would not be able to appear in proper person because of the confinement or quarantine. Mr. Karceski commented that someone could appear and argue *pro se* via satellite, television, or telephone. The Chair asked whether it would be superseding the statute to build into the Rule that the confined

person may request that the Court of Appeals appoint counsel. Mr. O'Brien suggested that the language of the Rule could be: "The Court of Appeals, upon request, shall appoint counsel." This would make counsel available, but may an individual decline counsel? Mr. Maloney suggested that the Rule could provide that unless the petitioner declines, the court shall appoint counsel. The Committee agreed by consensus to this suggestion.

Judge Missouri inquired as to who pays for counsel. Mr. Maloney answered that the Secretary of Health and Mental Hygiene is responsible for the payment. Mr. Maloney asked if the Rule should provide that the order state that the Secretary pays for counsel. The Chair suggested that language should be added to Rule 15-1104 expressly stating who is to pay for counsel. The Committee agreed by consensus to this change. The Reporter added that the language of other Rules similar in nature can be used. The Chair said that the Style Subcommittee can draft the language expressing the concept that counsel will be appointed unless the person declines and that the Secretary will pay the reasonable fees and costs of counsel. He asked whether the provision concerning the appointment of counsel should be moved into Rule 15-1103. Mr. Sykes answered that the provision concerning the appointment of counsel should be placed in Rule 15-1104. The Committee agreed by consensus to add this language to Rule 15-1104. The Vice Chair noted that adding this provision would be the judiciary stating that a department of the executive branch of government is responsible for payment. The Reporter observed

that the statute provides that the court shall appoint counsel.

Turning to section (b), Mr. Sykes commented that the reference to both Rule 2-327 and to the Code is necessary, because the Rule does not contain the language in subsection (b)(7) of Code, Health General Article, §18-906 referring to consolidation where the number of individuals involved or affected is so large as to render individual participation impractical. The Chair noted that the two provisions are not in conflict. The Vice Chair inquired as to whether Title 2 applies to these Rules. Mr. Sykes answered that Title 2 does apply. The Vice Chair questioned as to why one rule is being singled out when all of the Title 2 Rules are applicable to the extent that they are not modified by these provisions. She said that it would be preferable to state in the Rule that "in addition to" Rule 2-327, the provisions of Code, Health General Article, §18-906 (b)(7) apply. The Committee agreed by consensus to add this language.

The Vice Chair inquired as to how subsection (c)(2) would work. Mr. Sykes replied that a petitioner who would like to retain counsel selected by the petitioner rather than appointed by the court can ask for an extension. The Vice Chair remarked that if a petitioner is negotiating with an attorney, he or she should wait to file the petition. Mr. Sykes responded that the petition should be filed as promptly as possible. The Chair observed that there may be additional reasons why the petitioner may require an extension and suggested that subsection (c)(2)

should read as follows: “upon a request by a petitioner for good cause.” The Committee agreed with this suggestion by consensus.

Mr. Klein noted that section (b) refers to “actions, claims, and issues” while subsection (c)(3) refers to “claims.” He asked if this distinction was intended. The Vice Chair suggested that subsection (c)(3) read as follows: “to effectuate the consolidation of proceedings.” The Committee agreed by consensus to this change.

Mr. Karceski expressed concern about the possibility that the court could relax or suspend some or all of the rules of evidence pursuant to subsection (d)(2). The Chair noted that section (c) of Rule 5-101, Scope, provides that as to the proceedings listed in that section, “...the court may, in the interest of justice, decline to require strict application of the rules in [Title 5]...”. The Vice Chair suggested that this language could be used in subsection (d)(2) of Rule 15-1104. The Reporter inquired as to whether the appropriate section of Rule 5-101 would be section (b), which provides that the Rules in Title 5 are inapplicable in certain types of proceedings. The Vice Chair answered that the Rules in Title 5 are not inapplicable. The Chair reiterated that the language of Rule 5-101 (c) should be put into subsection (d)(2) of Rule 15-1104, and the Committee agreed by consensus with this suggestion.

Mr. Brault questioned as to why it is necessary to list the various means of communication in subsection (d)(3). Mr. Sykes replied that there is no harm in suggesting examples.

Mr. Sykes told the Committee that section (e) was taken from the Code provisions, but subsection (e)(4) needs to be restyled.

The Committee approved the Rule as amended.

Mr. Sykes presented Rule 15-1105, Decision and Order, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1105, as follows:

Rule 15-1105. DECISION AND ORDER

(a) Decision

If the court finds by a preponderance of the evidence that the isolation or quarantine directive of the Secretary, as applied to the petitioner or, in the case of consolidated proceedings, to the individuals or group of individuals similarly situated to the petitioner, is necessary and reasonable under the circumstances to prevent or reduce the spread of the disease or outbreak believed to have been caused by exposure to a deadly agent, the court shall deny the petition and issue an order authorizing the continued isolation or quarantine of the individual or group of individuals. Otherwise, the court shall enter an order releasing from isolation or quarantine the petitioner and other individuals or group of individuals as to whom the burden of proof has not been met.

(b) Statement of Reasons

The court shall prepare and file or dictate into the record a brief statement of the reasons for its decision and enter an order in accordance with section (c) of this

Rule.

(c) Order

(1) Generally

The order shall:

(A) be in writing;

(B) reasonably identify the isolated or quarantined individual or group of individuals by name or by shared characteristics;

(C) specify all material findings of fact and conclusions of law;

(D) be given to the parties or their counsel of record, except as otherwise provided in subsection (c)(2)(B) of this Rule.

(2) Orders Authorizing Continued Isolation or Quarantine

An order authorizing continued isolation or quarantine or the individual or group of individuals shall:

(A) be effective for a specific period of time not to exceed 30 days; and

(B) be served by the Secretary or the Secretary’s designee on the individual or group of individuals specified in the order, unless such service is impractical due to the number or geographical dispersion of the affected individuals, in which case the court shall provide actual notice to the affected individuals by personal service or by any means available.

Committee note: The Rules is this Chapter do not authorize the granting of other equitable relief.

(d) Stay

Upon motion of the Secretary, the court may stay the operation of an order

releasing the petitioner and other individuals or group of individuals and continue the isolation or quarantine pending appellate review. The motion shall be accompanied by a statement of the Secretary or the Secretary's designee in writing or on the record of intention to seek expedited appellate review of the order.
Source: This Rule is new.

Mr. Sykes commented that section (a) needs to be restyled. The Chair suggested that section (a) should begin as follows: "The court shall order the release of the petitioner unless the court finds by a preponderance of the evidence that the isolation or quarantine directive...". Mr. Morgan said that the Rule should provide that the court can determine the evidence for each individual. The Chair suggested that a Committee note could be added that would state that each individual's case would be measured on his or her own. The Vice Chair pointed out that there is no similar Committee note in Rule 2-503, Consolidation; Separate Trials. The presumption is that each party remains an individual plaintiff or petitioner.

The Chair reiterated his suggestion that the Rule should begin with the language providing that the court shall order the release of the petitioner. By consensus, the Committee agreed with this suggestion.

Turning to sections (b) and (c), the Vice Chair questioned as to why the statement of reasons for the court's decision is outside of the court's order. Mr. Michael added that there is no time frame included in the Rule. The Chair commented that

subsection (c)(1) should only apply to orders authorizing the quarantine. Mr. Sykes suggested that if the petitioner is released, the court should dictate a statement of reasons into the record, but if the quarantine is continued, there is no reason to dictate the reasons into the record because a detailed order is entered. The statute requires that a written order be issued when relief is denied. The Vice Chair expressed the view that a written order should be issued, no matter what the decision, pursuant to Rule 2-601, Entry of Judgment. The Chair suggested that subsection (c)(1) read as follows: "The order shall be in writing, and orders authorizing continued quarantine shall reasonably identify the isolated or quarantined individual or group of individuals by name or by shared characteristics and shall specify all material findings of fact and conclusions of law." The Reporter suggested that subsections (c)(1)(B) and (c)(1)(C) could be moved into subsection (c)(2).

Mr. Michael suggested that there should be a time frame for orders authorizing a quarantine. His concern is that the judge could hold the matter *sub curia* for an extended amount of time. The Chair said that the Rule could direct that the court decide the petitions promptly. Mr. Michael remarked that if the court grants a quarantine, the order should be issued promptly so that the petitioner can appeal. The Chair suggested that subsection (c)(1)(A) should read "be in writing," and subsection (c)(1)(B) should read "be filed no later than the day after the court

reaches a decision." Judge Dryden suggested that the time frame could be "the day after the hearing concludes."

Mr. Brault asked if section (a) of Rule 2-522, Court Decision–Jury Verdict, applies. The Vice Chair answered affirmatively. Mr. Sykes commented that no judgment has been entered when the order is written. The Chair said that language could be added to the Rule providing that the matter cannot be held *sub curia*. Mr. Sykes reiterated that Rule 2-522 (a) only applies when a judgment has been entered. Mr. Brault suggested that subsection (c)(1) provide that the court shall promptly enter the order and comply with Rule 2-522 (a). Judge Dryden reiterated that the time period should be the day after the hearing concludes. Judge Missouri cautioned that the hearing could finish on a Friday. Mr. Michael suggested that the time period could be the next business day after the hearing concludes. Subsection(c)(1)(A) would read: "be in writing," and subsection (c)(1)(B) would read: "be filed no later than the next business day after the hearing concludes." Current subsections (c)(1)(B) and (c)(1)(C) would be moved to subsection (c)(2). By consensus, the Committee agreed to these changes.

The Reporter asked about keeping the language requiring the judge to dictate the reasons into the record. The Vice Chair responded that this language is not necessary if Rule 2-522 (a) applies. Mr. Brault suggested that the judge put the reasons on the record, then write the order. The Chair said that this would

be appropriate if the judge is releasing the petitioner from quarantine, but if the quarantine is being continued, the Rule could provide that whether or not the judge has stated the reasons on the record, the judge shall put the reasons in the order. The next provision would be that the order is to be given to the parties or their counsel. Subsection (c)(2), Orders Authorizing Continued Isolation or Quarantine, should be moved.

Mr. Sykes asked about subsection (c)(2)(B). The Reporter replied that the order cannot be handed to the party, so it is disseminated by the method set out in subsection (c)(2)(B). Mr. Sykes pointed out that the wording of the subsection is very cumbersome and can be redrafted by the Style Subcommittee. The Vice Chair agreed that the wording of subsection (c)(2)(B) is awkward. The actual notice is first served by the Secretary, then by the court. Mr. Shipley commented that the clerk's office is required to send out copies. The Vice Chair noted that the "actual" notice is really no more than what the clerk normally sends out, and she suggested that the word "actual" be deleted. By consensus, the Committee agreed to this suggestion. The Vice Chair pointed out that Rule 2-121 provides for notice by any means "reasonably calculated to give actual notice." She suggested that this language be substituted in subsection (c)(2)(B) for the phrase "by any means available." Mr. Sykes responded that the court will do its best to ensure that the party knows about the contents of the order.

Turning to section (d), Mr. Sykes commented that a motion

for a stay is accompanied by a statement of the Secretary's intention to seek appellate review. Mr. Karceski inquired as to why the Rule does not also contain a provision that allows the quarantined person to note an immediate appeal from the statement of reasons by the court. The Chair responded that an appeal should be from a written judgment. It may be that the written order is not filed until the next day. Nothing prohibits a person from noting his or her appeal, which is treated as filed on the day the order is filed.

The Vice Chair suggested that section (d) could begin as follows: "[u]pon motion of the Secretary made at the hearing...". Judge McAuliffe pointed out that the judge may not necessarily decide the petition at the hearing. Mr. Karceski remarked that if the hearing is held on a Friday, the order will be issued on Monday morning. The Chair stated that the order should be filed the same day the court makes its decision, but no later than the following business day. The appeal should be from the written judgment.

Judge Missouri remarked that the practicalities of this are that the judge could prepare the order, but if it is late in the day, court personnel would not be available to type, copy, and distribute it. In a situation fraught with hysteria, such as what took place following the terrorist attack on September 11, 2001, not much work may be accomplished. If there is a catastrophic incident, employees may go home during the work day. An immediate order may have to be more truncated than that for

which the Rule provides. The Chair suggested that language similar to that in Rule 4-407, Statement and Order of Court, could be added to subsection (b) as follows: "A decision and statement of reasons dictated into the record shall constitute a final judgment for purposes of appellate review." This makes it clear that an appeal is from a final judgment. Judge Kaplan suggested that the judge could put the reasons for the decision on the record and then file an order incorporating the reasons immediately. Mr. Sykes pointed out that the statute requires that the order state certain things that may not be covered when the reasons are dictated. The Vice Chair asked why the order should require more than the decision on the record. Judge Kaplan pointed out that Rule 4-407 provides that after a post conviction hearing, the judge shall prepare and file or dictate into the record a statement setting forth separately each ground upon which the petition is based. Rule 15-1105 could use the same concept and then state that the order incorporates by reference the statement made by the judge. The Chair noted that the statute requires more than this. Mr. Brault commented that providing that the statement of reasons is a final judgment and then writing a new final judgment later with more reasons could cause problems.

The Chair said that if the reasons for the court's decision are dictated into the record and promptly transcribed, the order may incorporate by reference a transcript of the proceedings. This is not in the Post Conviction Rules, but it is in the case

law. He asked the Committee if they agreed with this proposition. Mr. Sykes inquired as to whether the parties or their counsel would be given the entire transcript. The Chair answered that the transcript would consist of the judge's statement of reasons. This is parallel to the habeas corpus statute and does not violate the catastrophic health emergency statutes. He suggested that the following language should be added to subsection (c)(1)(C): "The order may incorporate by reference a transcript of the proceedings." The Committee agreed by consensus to this suggestion.

Mr. Sykes pointed out that section (d) does not provide the petitioner the opportunity to respond to the Secretary's stay motion. The Vice Chair remarked that it is not a motion if there is no opportunity to respond. Mr. Michael questioned as to why a stay is permitted, if the court has decided to release the petitioner. The Reporter observed that the risk to the general public may be enormous. The Chair suggested that the Rule provide as follows: "The court may, for good cause shown, stay the order releasing the petitioner, allowing the quarantine to continue pending appellate review." The Vice Chair suggested that the language in section (d) that reads "[u]pon motion of the Secretary" be deleted. The Chair suggested that the following language should be added to the beginning of section (d): "[o]n the record and in open court after the parties have been afforded an opportunity to be heard...". Mr. Sykes cautioned that the Rule should not use the language "in open court," because the

proceedings may be conducted via television. The Vice Chair suggested that the first sentence of section (d) remain in the Rule, and the rest of the section be deleted. Mr. Sykes commented that a good cause standard should be added. The Chair suggested that the first sentence of section (d) begin as follows: "[u]pon a finding of good cause, the court may stay... pending appellate review provided that the petitioner is afforded the opportunity to be heard." By consensus, the Committee agreed to this change. Mr. Bowen observed that the Secretary has to undertake appellate review. The Chair remarked that the Secretary should not be allowed to move for a stay, unless the Secretary has filed for appellate review. This can be filed as soon as the decision has been made and would be deemed filed after the written judgment. The stay is available only if the Secretary does something to persuade the court that he or she is going to seek appellate review.

Judge Kaplan observed that in death penalty cases, there is an automatic appeal. Mr. Maloney commented that the petitioner who is quarantined may not want to appeal. Mr. Sykes pointed out that the phrase "expedited appellate review" in section (d) is a technical term that probably is not appropriate in this situation. Judge Dryden inquired as to whether there should be a specific time period within which the Secretary must note the appeal. The Chair said that the stay provision could include a requirement that the Secretary must file a notice of appeal by a particular date. Judge McAuliffe noted that this would not work

-- the judge does not necessarily decide the matter on the date of the hearing, and once the hearing is over, the parties may not be immediately available. The stay must be entered promptly. Mr. Maloney suggested that the following language could be added to section (d): "the court may order a stay on such terms as the court deems practicable." Judge McAuliffe remarked that the petitioner can ask for a stay to be lifted. Mr. Sykes noted that the Secretary should ask for the stay as soon as the decision at the hearing is announced, and the petitioner is available to argue. Mr. Brault commented that the petitioner can move to lift the stay while the appeal is pending. The trial court's continuing jurisdiction over the stay should be made clear. Mr. Sykes suggested that the Rule require the Secretary to state his or her position after the adverse decision. The court would then decide on the stay after the petitioner has had an opportunity to be heard.

The Chair said that there are two different situations. The first is that the petitioner is released in open court with all the parties present. The Secretary should ask for a stay and promise to file the appeal soon thereafter. The other situation is that the judge holds the matter *sub curia*, then files an order releasing the petitioner who may soon be unavailable.

The Vice Chair suggested that the word "motion" be changed to the word "request" in section (d) in both places it appears and to leave the rest of the section as it is. The Committee

agreed by consensus to this suggestion. Mr. Klein expressed the view that language should be added to section (e) of Rule 15-1103, which is entitled "Answer to Petition," that would permit the Secretary to request a stay of any order to release. Mr. Morgan pointed out that the answer is discretionary. Mr. Brault suggested that the second sentence of section (d) of Rule 15-1105 read as follows: "The request shall be accompanied by a statement of the Secretary or the Secretary's designee in writing, on the record, or by prior pleading of the intention to seek appellate review of the order." Mr. Sykes cautioned that there must be some opportunity for the petitioner to be heard; an automatic stay offends due process.

The Chair commented that the court should be able to stay the proceedings for a reasonable amount of time on its own initiative as well as at the request of the Secretary. The Chair expressed the concern that if it takes 29 days until an appeal is filed, someone may unnecessarily be sitting in quarantine. Mr. Karceski suggested that section (d) be deleted, and language providing that the court decides as to the stay should be incorporated into section (b), Statement of Reasons. The Chair suggested that at the same time the judge decides the case, the judge should decide the issue of whether an order releasing the petitioner should be stayed. He proposed that section (a) should begin as follows: "The court shall release the petitioner unless the court finds by a preponderance...". After the first sentence, the following sentence could be added: "If the court

orders the release of the petitioner, the court shall decide whether that order shall be stayed pending appellate review upon such terms and conditions as the court may require." Ms. Ogletree remarked that the word "immediate" should be added before the word "appellate" to avoid the problem of filing the appeal on the 29th day. The Chair said that the Rule should have language added to the effect that if the court orders a stay, the court would set the conditions, one of which would be that unless a notice of appeal is filed within a certain time, the stay is lifted. The Committee agreed by consensus to add this language to section (a).

The Reporter inquired as to whether there should be language providing for the undertaking of the Secretary to enter a prompt notice of appeal. The Chair answered that this can go into a Committee note at the end of section (a). By consensus, the Committee agreed with the Chair. The Committee approved the Rule as amended.

Mr. Sykes presented Rule 15-1106, Motion to Continue Order.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1106, as follows:

Rule 15-1106. MOTION TO CONTINUE ORDER

Prior to the expiration of a court order authorizing or continuing the authorization

> of the isolation or quarantine of an individual or group of individuals, the Secretary may move for a continuation of the order for another period not to exceed 30 days. The motion shall be filed in the court that entered the isolation or quarantine order and may include a request for a stay pending the hearing. Unless the petitioner consents to the entry of the order for continuation, no order shall be granted without a hearing.
>
> Source: This Rule is new.

Mr. Bowen suggested that the word "motion" should be changed to the word "request." The Vice Chair responded that in this case, the word "motion" is appropriate. This is not intended to be an *ex parte* proceeding. The filing of the motion triggers service on the petitioner. Mr. Sykes questioned the wording in the last sentence of the Rule. The Chair suggested that the word "granted" be changed to the word "entered." The Committee agreed by consensus to this change.

Ms. Ogletree noted that the Rule refers to a request for a stay. The Vice Chair commented that this reference is confusing. The order will expire unless the petitioner consents or there is a hearing at which the court determines that the isolation or quarantine should continue. Ms. Ogletree noted that the order cannot be extended without a hearing, so there is no need for a stay provision. The Chair suggested that the second sentence of Rule 15-1106 end with the word "order," and the remainder of the sentence be deleted. The Committee agreed by consensus to this suggestion.

The Chair suggested that the Rule could require that the

isolation or quarantine be continued without a hearing. Mr. Maloney expressed the opinion that the last sentence should remain in the Rule. Senator Stone pointed out that there is no time limit set out in the Rule. The Chair said that the motion must be filed prior to the expiration of the order. Mr. O'Brien remarked that if there were a widespread outbreak of a disease, the hearing requirement in this Rule would constrict the ability of the Secretary to respond. Mr. Michael observed that a new order could moot the original order that is on appeal. The Chair observed that if the petitioner has successfully obtained release, there is no continuation order. A petitioner who has not obtained release and has not appealed may contest the extension of the order. Language could be added to the Rule providing that the entry of an order continuing the isolation or quarantine is a final judgment for appeal purposes. Mr. Morgan pointed out that Rule 15-1107 covers this. The Vice Chair commented that if an order is entered detaining the petitioner for 30 days and the order is extended for an additional 30 days, any appeal is moot in 60 days. To further detain the petitioner, the Secretary would have to start all over again.

The Committee approved the Rule as amended.

Mr. Sykes presented Rule 15-1107 for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 – CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1107, as follows:

Rule 15-1107. EXPEDITED REVIEW

Any party adversely affected by the court's ruling on a petition for relief or on a subsequent motion to continue an order authorizing isolation or quarantine shall have the right of appellate review. The request for appellate review may include a request for a stay.

Source: This Rule is new.

Mr. Sykes pointed out that the word "expedited," although appearing in the title, is not in the body of the Rule. He suggested that the word "expedited" be changed to the word "appellate" in the title of the Rule. By consensus, the Committee agreed to this change. The matter of the stay has already been covered in the Rules, so the second sentence is not necessary. The Reporter noted that this sentence refers to a stay by the appellate court. The Vice Chair said that this is covered by other appellate rules. Mr. Sykes inquired as to how quickly the appellate court reviews the matter. Mr. Brault suggested that the word "immediate" should be added after the word "of" and before the word "appellate." The Vice Chair observed that the process should be expedited. Ms. Ogletree remarked that there are statutes, such as in workers' compensation cases, that provide for a priority in scheduling in court.

The Chair suggested that the following language be added to Rule 15-1107: "The appellate court shall decide the appeal as soon as is reasonably practicable." By consensus, the Committee approved this addition. He suggested that the last sentence of the Rule be deleted as unnecessary, and the Committee agreed to this suggestion by consensus.

The Committee approved the Rule as amended.

Mr. Sykes presented Rule 1-101, Applicability, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 100 - APPLICABILITY AND CITATION

AMEND Rule 1-101, as follows:

Rule 1-101. APPLICABILITY

. . .

(o) Title 15

Title 15 applies to special proceedings relating to arbitration, <u>catastrophic health emergencies,</u> contempt, habeas corpus, health claims arbitration, injunctions, judicial releases of individuals confined for mental disorders, mandamus, the Maryland Automobile Insurance Fund, name changes, and wrongful death.

. . .

Rule 1-101 was accompanied by the following Reporter's Note.

Rule 1-101 is proposed to be amended to include proceedings relating to catastrophic health emergencies pursuant to Code, Health-

General Article, §18-906 (d) and Code, Public Safety Article, §14-3A-05 (f)(3).

Mr. Sykes explained that this is a "housekeeping" amendment to include a reference to the new Catastrophic Health Emergency Rules. The Committee approved the Rule by consensus.

Judge McAuliffe asked that the Committee return to the topic of sealing the petition, as provided in section (b) of Rule 15-1103. He recommended the following language for section (b): "Upon the filing of a petition, if requested by the petitioner, the clerk shall seal the proceedings on a provisional basis, subject to further order of court." This would require the petitioner to ask for the sealing. Ms. Lucan commented that assuming nothing restricts the Secretary during a quarantine, there would be a public announcement except as to medical records. She quoted page 11 of the February 6, 2004 minutes: "The Maryland legislature did not enact a blanket closing of catastrophic health emergency proceedings." She pointed out that everything is open unless there is a motion for closure.

Mr. O'Brien noted that other statutes provide for the Secretary to make public announcements. Ms. Lucan remarked that nothing would be secret if the disease outbreak were widespread. The Chair said that the public may not know about a particular individual quarantine. If the petitioner wants the proceedings to be secret, the petitioner can so request. He suggested that section (b) begin as follows: "[u]pon the filing of a petition, at the request of the petitioner, the clerk shall seal the

proceedings on a provisional basis...". The media can file an motion to unseal the record. Mr. Michael commented that if the petition is open at the time it is filed, by the time the petitioner requests the matter to be sealed, the cat is already out of the bag. He expressed concern for the privacy of the person; this would be maintained if the proceedings were sealed from the beginning.

Ms. Lucan suggested that a compromise could be that the Rule would specifically refer to the possibility of closure and state that the petitioner may seek a court order pursuant to Rule 16-1009. The Chair said that if all of the Rules of Procedure are being considered, then section (b) of Rule 15-1103 would not be necessary, because of Rule 16-1009. However, in many instances, it is important to put the relevant information in the Rule where people are looking. It cannot hurt to do this. Ms. Lucan argued that it is not necessary to leave this language in section (b), because the cross reference already refers to the Rules pertaining to court access. The Vice Chair noted that Rule 16-1009 applies to preliminary shielding. If someone asks for shielding, the court may deny inspection of the case record for five days to allow the court to determine if shielding is appropriate.

The Chair pointed out that the provisions of Rule 16-1009 are not the same as section (b) of Rule 15-1103. He reiterated his previous suggested new language for section (b): "[u]pon the filing of a petition, at the request of the petitioner, the clerk

shall seal the proceedings on a provisional basis...". Ms. Lucan asked that the language "pursuant to Rule 16-1009" be added after the word "basis." The Chair replied that this is not appropriate, Rule 16-1009 provides for a five-day period of preliminary shielding, and the Catastrophic Health Emergency statute provides for a hearing within three days. The Vice Chair inquired as to whether the hearing will be closed, and Ms. Ogletree answered that it will be if the petitioner requests that it be closed and the court grants the request. By consensus, the Committee approved the Chair's suggested language.

Judge McAuliffe pointed out that all parts of an action are a "proceeding." Ms. Lucan commented that there is no authority to set up a closed "proceeding." The Vice Chair suggested that the word "proceedings" be changed to the word "record." The Committee approved this suggestion by consensus.

Ms. Lucan argued that this provision should be the same as Rule 16-1009 and include a reference to that Rule. The Chair responded that what is being accommodated in Rule 15-1103 is a special kind of problem. People should not have to search through the Rule book to find out how to proceed. He told Ms. Lucan that when it considers this Rule, the Court of Appeals may agree with her. Mr. Shipley commented that the clerk will routinely seal such a pleading anyway, because it contains medical records. By consensus, the Committee approved Rule 15-1103 as amended.

The Chair adjourned the meeting.