

COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Training Rooms 5 and 6 of the Judiciary Education and Conference Center, 2011 C-D Commerce Park Drive, Annapolis, Maryland, on September 7, 2007.

Members present:

Hon. Joseph F. Murphy, Chairperson
Linda M. Schuett, Esq., Vice Chairperson

F. Vernon Boozer, Esq.	J. Brooks Leahy, Esq.
Lowell R. Bowen, Esq.	Zakia Mahasa, Esq.
Albert D. Brault, Esq.	Hon. Albert J. Matricciani
Hon. Michele D. Hotten	Robert R. Michael, Esq.
Harry S. Johnson, Esq.	Hon. John L. Norton, III
Hon. Joseph H. H. Kaplan	Debbie L. Potter, Esq.
Richard M. Karceski, Esq.	Kathy P. Smith, Clerk
Robert D. Klein, Esq.	Melvin J. Sykes, Esq.
Frank M. Kratovil, Jr., Esq.	Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Cheryl Lyons-Schmidt, Rules Committee Intern
Paul H. Ethridge, Esq., Chair, Rules of Practice Committee, M.S.B.A.
Veronica P. Jones, Esq., Legal Officer, Court of Appeals
Wilhelm Joseph, Esq., Legal Aid Bureau, Inc.
Steven H. Brownlee, Esq., Chevy Chase Bank
Harriet Robinson
Herbert S. Garten, Esq.
Melvin Hirshman, Esq., Bar Counsel, Attorney Grievance Commission
Glenn Grossman, Esq., Assistant Bar Counsel, Attorney Grievance Commission
David D. Downes, Esq., Chair, Attorney Grievance Commission
D. Robert Enten, Esq., Gordon, Feinblatt, et al.
Kathleen M. Murphy, Executive, Maryland Bankers Association
Susan M. Erlichman, Esq., Director, Maryland Legal Services Corporation
Steven P. Lemmey, Esq., Investigative Counsel, Commission on Judicial Disabilities

The Chair convened the meeting. He told the Committee that several guests were in attendance. The Reporter introduced Cheryl Lyons-Schmidt, a third-year law student from the University of Baltimore, who also has a degree in paralegal studies from Anne Arundel Community College and who will be the intern for the Rules Committee for the fall semester. Ms. Lyons-Schmidt will be available to help Committee members with any research that they may need. The Chair welcomed Ms. Lyons-Schmidt.

Agenda Item 1. Reconsideration of proposed amendments to Rule 16-610 (Approval of Financial Institutions), concerning Interest on Lawyers' Trust Accounts (IOLTA)

Mr. Brault presented Rule 16-610, Approval of Financial Institutions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 600 - ATTORNEY TRUST ACCOUNTS

AMEND Rule 16-610 by adding a reference to the Maryland Legal Services Corporation (MLSC) in section a, by deleting language from and adding language to subsection b 1 (D) explaining how to determine the rate of interest on IOLTA accounts, by adding language to subsection c 3 referring to the MLSC and requiring notification to a financial institution of termination of an IOLTA agreement, and by adding a section d referring to filing exceptions, as follows:

Rule 16-610. APPROVAL OF FINANCIAL INSTITUTIONS

a. Written Agreement to be Filed with Commission.

The Commission shall approve a financial institution upon the filing with the Commission of a written agreement with the Maryland Legal Services Corporation (MLSC), complying with this Rule and in a form provided by the Commission, applicable to all branches of the institution located in this State.

b. Contents of Agreement.

1. Duties to be Performed.

The agreement shall provide that the financial institution, as a condition of accepting the deposit of any funds into an attorney trust account, shall:

(A) Notify the attorney or law firm promptly of any overdraft in the account or the dishonor for insufficient funds of any instrument drawn on the account.

(B) Report the overdraft or dishonor to Bar Counsel as set forth in subsection b 1 (C) of this Rule.

(C) Use the following procedure for reports to Bar Counsel required under subsection b 1 (B) of this Rule:

(i) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the institution's other regular account holders. The report shall be mailed to Bar Counsel within the time provided by law for notice of dishonor to the depositor and simultaneously with the sending of that notice.

(ii) If an instrument is honored but at the time of presentation the total funds in the account, both collected and

uncollected, do not equal or exceed the amount of the instrument, the report shall identify the financial institution, the attorney or law firm maintaining the account, the account name, the account number, the date of presentation for payment, and the payment date of the instrument, as well as the amount of the overdraft created. The report shall be mailed to Bar Counsel within five banking days after the date of presentation, notwithstanding any overdraft privileges that may attach to the account.

~~(D) Not deduct from interest on the account that otherwise would be payable to the Maryland Legal Services Corporation Fund any fees for wire transfers, presentations against insufficient funds, certified checks, overdrafts, deposits of dishonored items, and account reconciliation services. Pay no less on its IOLTA accounts than the highest non-promotional interest rate generally available from the institution to its non-IOLTA customers at the same branch when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications for its non-IOLTA accounts at that branch. In determining the highest interest rate generally available from the institution to its IOLTA customers at a particular branch, an approved institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution at that branch when setting interest rates for its non-IOLTA customers; provided, however, that these factors shall not discriminate between IOLTA accounts and non-IOLTA accounts, nor shall the factors include or consider the fact that the account is an IOLTA account.~~

(i) An approved institution may satisfy the requirement described in subsection b 1 (D) by establishing the IOLTA account in an account paying the highest rate for which the IOLTA account qualifies. The approved institution may deduct from interest earned on the IOLTA account allowable reasonable fees as provided herein ("Allowable Reasonable Fees"). This account may be any one of the following product

option types, assuming the particular financial institution offers these account types to its non-IOLTA customers, and the particular IOLTA account qualifies to be established as this type of account at the particular branch:

(a) a business checking account with an automated investment feature, which is an overnight sweep and investment in repurchase agreements fully collateralized by U.S. Government securities, including Government-Sponsored Entities;

(b) checking accounts paying interest rates in excess of the lowest-paying interest-bearing checking account;

(c) any other suitable interest-bearing checking account offered by the approved institution to its non-IOLTA customers.

(ii) In lieu of the options provided in subsection b 1 (D)(i), an approved financial institution may: (a) retain the existing IOLTA account and pay the equivalent applicable rate that would be paid at that branch on the highest-yield product for which the IOLTA account qualifies and deduct from interest earned on the IOLTA account Allowable Reasonable Fees; (b) offer a "safe harbor" rate that is equal to 55% of the Federal Funds Target Rate as reported in the Wall Street Journal on the first calendar day of the month on high-balance IOLTA accounts to satisfy the requirements described in subsection b 1 (D), however, no fees are allowed to be deducted from the interest on this "safe harbor" rate account, because the rate is deemed already to be net of Allowable Reasonable Fees; or (c) pay a rate specified by the MLSC, if it chooses to specify a rate, which is agreed to by the financial institution and would be in effect for and remain unchanged during a period of twelve months from the agreement between the financial institution and MLSC to pay the specified rate. Allowable Reasonable Fees may be deducted from the interest on this "specified rate" account as agreed between

MLSC and the financial institution.

(iii) "Allowable Reasonable Fees" means fees and service charges in amounts customarily charged to non-IOLTA customers with the same type of account and balance at the same branch, including per-check charges, per-deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, and sweep fees, plus a reasonable IOLTA account administrative fee. Allowable Reasonable Fees may be deducted from interest earned on an IOLTA account only in amounts and in accordance with the customary practices of the approved institution for non-IOLTA customers at the particular branch. Fees or service charges are not Allowable Reasonable Fees if they are charged for the convenience of or arise due to errors or omissions by the attorney or law firm maintaining the IOLTA account or that attorney's or law firm's clients, including fees for wire transfers, certified checks, account reconciliation services, presentations against insufficient funds, overdrafts, or deposits of dishonored items.

(iv) Nothing in this Rule shall preclude an approved institution from paying a higher interest rate than described herein or electing to waive any fees and service charges on an IOLTA account.

(v) Fees that are not Allowable Reasonable Fees are the responsibility of, and may be charged to, the attorney or law firm maintaining the IOLTA account.

Cross reference: Rule 16-607 b 1.

(E) Allow reasonable access to all records of an attorney trust account if an audit of the account is ordered pursuant to Rule 16-722 (Audit of Attorney Accounts and Records).

2. Service Charges for Performing Duties Under Agreement.

Nothing in the agreement shall preclude an approved financial institution

from charging the attorney or law firm maintaining an attorney trust account (1) a reasonable fee for providing any notice or record pursuant to the agreement or (2) ~~the fees and service charges other than the~~ "Allowable Reasonable Fees" listed in subsection b 1 (D)(iii) of this Rule.

c. Termination of Agreement.

The agreement shall terminate only if:

1. the financial institution files a petition under any applicable insolvency law or makes an assignment for the benefit of creditors; or

2. the financial institution gives thirty days' notice in writing to Bar Counsel that the institution intends to terminate the agreement on a stated date and that copies of the termination notice have been mailed to all attorneys and law firms that maintain trust accounts with any branch of that institution; or

3. after a complaint is filed by the MLSC, The the Commission finds, after prior written notice to the institution and adequate opportunity to be heard, that the institution has failed or refused without justification to perform a duty required by the agreement. The Commission shall notify the institution that the agreement is terminated.

d. Exceptions

Within 15 days after service of the notice of termination pursuant to subsection c 3 of this Rule, the institution may file with the Court of Appeals exceptions to the decision of the Attorney Grievance Commission. The institution shall file eight copies of the exceptions which shall conform to the requirements of Rule 8-112. The Court shall set a date for oral argument, unless oral argument is waived by the parties. Oral argument shall be conducted in accordance with Rule 8-522. The decision of the Court of Appeals is final and shall be evidenced by

an order which the clerk shall certify under the seal of the Court.

Source: This Rule is former Rule BU10.

Rule 16-610 was accompanied by the following Reporter's Note.

The Maryland Legal Services Corporation (MLSC) has been concerned that some financial institutions in Maryland have not been offering IOLTA (Interest on Lawyers Trust Accounts) account- holders the same rate of interest as comparable non-IOLTA account-holders. After meeting with representatives of the Maryland Bankers' Association, the interested parties drafted amendments to Rule 16-610 to work towards an even playing field for both IOLTA and non-IOLTA accounts. The Attorneys Subcommittee is in agreement with the changes to section a and subsection b 1 D. The Subcommittee proposed the addition of a sentence to subsection c 3 providing for notification to a financial institution of termination of an IOLTA agreement if the Attorney Grievance Commission finds that the institution has failed or refused to perform a duty required by the agreement. It also proposes the addition of a new section d providing a mechanism for the financial institution to file exceptions to a decision by the Attorney Grievance Commission to terminate a written agreement between a financial institution and the MLSC setting up an IOLTA account.

Mr. Brault said that since the meeting of the Committee on June 22, 2007 at which the issue of possible changes to Rule 16-610 pertaining to Interest on Lawyers' Trust Accounts (IOLTA) was considered, the issue of comparability of interest rates was discussed at a series of informal meetings by telephone with representatives of the Maryland Legal Services Corporation (MLSC)

and the banking industry in an effort to create a rule that is acceptable and fair to all interested parties. This morning Melvin Hirshman, Esq., Bar Counsel, told Mr. Brault that he had a few more changes to suggest to the Rule. The changes are mostly technical and not substantive.

Mr. Brault commented under the current Rule, the written agreement for approval of a financial institution to offer attorney trust accounts must be approved by the Attorney Grievance Commission. However, the Rule does not provide who the other party to the agreement is. The statute that created the MLSC, Code, Article 10, §45C et seq., which has been replaced by Code, Human Services Article, §11-101 et seq., gives MLSC the authority and obligates it to provide monitoring and dispensing of IOLTA funds to grantees who provide legal assistance to clients in civil matters. Logically, the agreement is going to be with the MLSC. In section a. of the Rule, language has been inserted after the word "agreement" as follows: "with the Maryland Legal Services Corporation (MLSC)...".

Mr. Brault commented that although he is not knowledgeable about banking practices, the computation of a comparable rate of interest does not seem to him to be a simple matter, due to the various charges and different types of accounts. There are many areas of possible disagreement as to what is or should be a comparable account and many ways for a dispute to arise as to whether there has been a violation of an agreement that would result in a bank's termination from the IOLTA program. The

Subcommittee has added a provision that the MLSC may file a complaint with the Attorney Grievance Commission alleging a termination because of a breach. After the bank has been given an opportunity to be heard, if the Commission determines that the bank failed or refused without justification to perform a duty required by the agreement, the Commission notifies the bank that the agreement is terminated. The Subcommittee also added a new section d., providing a mechanism for the bank to file with the Court of Appeals exceptions to the decision of the Attorney Grievance Commission to terminate the agreement. This was based on some of the language in Rules 16-758, Post-Hearing Proceedings, and 16-759, Disposition, of the Rules pertaining to the discipline of attorneys. This is not a complicated appeals process; it is a direct exception filed with the Court of Appeals.

Mr. Brault told the Committee that he would go through the Rule, explaining the changes. While he does not fully understand all of the banking terminology, he noted that the drafters considered rules from other states. The predominant rule being followed is that of Texas. Section a. has the language added providing for agreement with the MLSC, which was already discussed. Mr. Hirshman asked whether the language "and with the Commission" should be added. Mr. Brault responded that it should not be added, explaining that the agreement is not with the Commission but with the MLSC. It is approved by the Commission, which can terminate it. Previously, it must have been assumed

that the agreement was with the Commission. Mr. Hirshman commented that the agreement is with the Commission, because the agreement includes the requirement of overdraft notification, which is not a concern of the MSLC. Mr. Brault noted that if the agreement is with the Commission and the Commission determines that there has been a breach requiring termination of the agreement, then a party to the agreement is the judge of whether the agreement has been violated. The fact that one of the parties to the agreement is also the judge would be an unusual feature. This would neutralize the Commission as a hearing body when there is an allegation that there has been a breach. Under the Rules proposed by the Attorneys Subcommittee, the allegation is going to come from the MLSC, because MLSC is the entity that is monitoring compliance with the comparability provision of the agreement. The comparability provision is the provision in the agreement most likely to generate a dispute as to whether the bank is in compliance. Whether any of the provisions that currently are in the agreement have been violated is less subject to dispute. For example, Bar Counsel may learn from a routine audit that a lawyer with a trust account bounced a check. If the bank had not previously informed Bar Counsel about the overdraft, it is clear that the bank is not in compliance. Under the proposed scheme, the Commission would have to work with the MLSC, and that does not seem to be a problem.

Mr. Brault inquired as to whether the Commission is willing to monitor the interest rates. Mr. Hirshman remarked that

currently the agreement is with the Commission, and the change to the Rule adds the MLSC as a party. Mr. Brault questioned as to where in the Rule it is stated that the agreement is with the Commission. The Chair pointed out that as a practical matter, MLSC would not approve the agreement unless it contained language satisfactory to the Commission. Mr. Downes said that it is the Commission's own agreement, and the Commission sends out a form with the language in it when a bank asks for one. Mr. Brault commented that this is the proposal of the Attorneys Subcommittee, and if it is not acceptable, it would mean that the Commission would have to complain to itself about a breach. Mr. Hirshman observed that current procedure works this way. Mr. Brault noted that there is no right of appeal now. The Commission is the party to the agreement, it hears the complaint, it makes a ruling, and the bank is terminated. The Chair said that the required contents of the agreement that are stated in the Rules protect the interests of the Commission. The agreement requires the bank to report any overdraft to Bar Counsel. This takes care of the problem.

Mr. Brault pointed out that one of the problems that was brought to his attention by Mr. Downes, Mr. Hirshman, and Mr. Grossman is the language at the end of section a. that reads: "...complying with this Rule and in a form provided by the Commission, applicable to all branches of the institution located in this State." Section g. of Rule 16-602, Definitions, defines "financial institution" as "... a bank, trust company, savings

bank, or savings and loan association authorized by law to do business in this State, in the District of Columbia, or in a state contiguous to this State...". Branches could be in D.C., Virginia, West Virginia, Pennsylvania, or Delaware but would not be "located in this State" as section a. of Rule 16-610 provides. Therefore, this language should be deleted to conform to Rule 16-602. Mr. Brault suggested replacing the language, "located in this State," with the language, "that are subject to this Rule." By consensus, the Committee approved this change.

Mr. Brault said that another request by Mr. Downes, Mr. Hirshman, and Mr. Grossman was to add to subsection b. 1 (C) (ii), the name and address of the attorney or law firm maintaining the account. The Commission receives bank notices that have an attorney's name, but no address, or have only part of a name, and the attorney cannot be identified. By consensus, the Committee agreed to this addition.

Mr. Brault pointed out that in subsection b. 1 (D), some of the language was added by the banks, including "at the same branch when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications for its non-IOLTA accounts at that branch." This language is in the Texas rule and is appropriate because before a higher interest rate is paid, the banks require eligibility requirements, such as a minimum balance. In the next sentence, the banks added the phrase "at a particular branch." The language of this sentence was created by the representatives of the MLSC and the bankers. The

Subcommittee believes that this language is appropriate. It has been used successfully in other states, and the banks understand it.

Mr. Brault noted that provisions in subsection b. 1. (D) pertain to allowable reasonable fees, which had caused a significant discussion several years ago. The fees must be adequately defined so that they are fair to the banks, and so that the benefits of the comparability rule are not destroyed by fees being tacked on by the banks. Language on this topic is now included in a new definition of "Allowable Reasonable Fees," which is subsection b. 1. (D)(iii).

Mr. Brault pointed out that the language in subsection b. 1 (D)(i) describing the types of bank accounts is very specific banking language. Subsection b. 1 (D)(i)(a) describes sweep accounts, where the money in the account is swept out and invested overnight. The bank can make money on the money in the account on an hourly basis. The Chair asked if those funds that are swept out are at risk of loss. Mr. Brault responded that the funds are protected by U.S. government securities.

Mr. Brault commented that subsection b. 1. (D)(i)(b) pertains to checking accounts paying interest rates in excess of the lowest-paying interest-bearing accounts, and he remarked that the rate hopefully will be more than 1%. Mr. Sykes inquired as to the meaning of a "Government-Sponsored Entity" referred to in subsection (D)(i)(a). If the money is invested in "Fannie Mae" or mortgages, it could affect the risk. This is not the same as

a government security. Mr. Enten commented that there are sweep funds invested in U.S. government obligations, such as Treasury bills, which are the safest investments. Others are invested in "Fannie Mae," "Freddie Mac," and "Ginnie Mae," which are government-sponsored entities. State or local governments can invest in mutual funds that are made up of U.S. government obligations and those of government-sponsored entities. The latter are not direct obligations of the U.S. government, but are sponsored by the government. Mr. Enten said that although he was not aware of defaults in those obligations, they are probably not as secure as funds that are direct obligations of the U.S. government, but more secure than those of private corporations.

Mr. Garten pointed out that unlike in Texas, the Rule does not provide for investments in mutual funds. It is his understanding that government-sponsored entities are entities whose debt is guaranteed, subject to the full faith and credit of the United States. He asked Mr. Enten to confirm this, and Mr. Enten answered that he would have to check as to whether the government-sponsored entities are backed by the Federal Deposit Insurance Corporation (FDIC) or are otherwise guaranteed by the federal government. Mr. Brault observed that the Subcommittee was under the impression that all were guaranteed by the U.S. government. If this is not the case, then subsection (D)(i)(a) may need to be changed. Escrow accounts should not be in risky investments.

Mr. Brault drew the Committee's attention to subsection b.

1. (D)(i)(c). The question is how the money in the IOLTA account is protected. The answer often is that the account is protected by FDIC insurance, but this has a limit of \$100,000. Many of the IOLTA accounts are enormous. Most of the money is not insured by the FDIC. Many people believe that bank accounts are federally insured, but they are only insured up to \$100,000 per customer.

Mr. Leahy noted that if a bank fails, an account-holder with more than \$100,000 in the failed bank risks losing the funds that exceed that amount. Regardless of whether the bank has placed the sweep account money in a U.S. government obligation, the account-holder has no protection above the \$100,000 FDIC limit. Unless the funds are earmarked as to a particular owner, the account-holder is an unsecured creditor of the bank with respect to the account-holder's funds that exceed \$100,000. Mr. Garten said that he wanted to clarify that the \$100,000 limit in an escrow account applies to each individual client. Mr. Brault responded that even with the current real estate market downturn, there will still be many clients with escrowed funds in excess of \$100,000.

Mr. Brault pointed out that subsection b. 1. (D)(ii) provides for other options for the bank instead of the ones listed in subsection b. 1. (D)(i). These include retaining the existing IOLTA account and paying the equivalent applicable rate that would be paid at that branch on the highest-yield product for which the account qualifies, offering a "safe harbor" rate that is equal to 55% of the Federal Funds Target Rate, or paying

a rate specified by the MLSC that is agreed to by the financial institution for 12 months from the date of the agreement between the financial institution and the MLSC. The Chair asked why the phrase "because the rate is deemed already to be net of Allowable Reasonable Fees" was added. Mr. Brault responded that this language was taken from the rule of another state. Ms. Erlichman noted that many states have higher safe harbor rates, but the banks can charge fees against them. The rate set out in this Rule negotiated with the bankers is the lowest "safe harbor" rate in the country.

The Chair stated that explanatory phrases generally are not put into rules. As an example, in Rule 5-404, Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes, the Rule does not allow evidence of other crimes to prove the character of a person, but the Rule does not explain that this is not allowed because it is prejudicial to the criminal defendant. Ms. Erlichman said that in other instances, the bank is allowed to deduct fees from the interest. This is the only exception. The Chair suggested that the phrase be taken out of the Rule. Mr. Bowen commented that this language may make the Rule politically acceptable.

The Reporter asked if this concept should be put into a Committee note. Ms. Erlichman replied affirmatively. Mr. Enten commented that the Rule states that fees cannot be deducted from interest if the "safe harbor" is elected. No Committee note is needed. Mr. Brault suggested that a Committee note could be

added to explain why this is being done. Mr. Bowen proposed that the explanation be put into a Reporter's note, and the Committee agreed by consensus to this. Mr. Bowen pointed out a typographical error in the sixth line of the Reporter's note -- the word "Backer" should be "Banker."

Mr. Brault noted that subsection b.1.(D)(iii) explains the term "Allowable Reasonable Fees." Mr. Sykes referred to the language in subsection (iii) that reads "plus a reasonable IOLTA account administrative fee," pointing out that the language at the end of the subsection seems to indicate that IOLTA accounts have charges that other accounts do not have. Is this justified? Ms. Erlichman replied that with regard to the administrative fees, 40% of financial institutions charge an administrative fee for IOLTA accounts, because those accounts require reports to Bar Counsel that are not required for other accounts. Most banks do not charge an administrative fee.

Mr. Sykes asked whether there are any disagreements as to what is a reasonable administrative fee. Ms. Erlichman answered that some banks charge more than others, and the MLSC has encouraged them to charge less, but most banks do not charge administrative fees. Mr. Brownlee said that the bank for which he works, Chevy Chase Bank, does not charge an IOLTA administrative fee, but it may have to start charging one. The bank uses a manual process where the accounts are looked at on a monthly basis, and the interest is sent to the MLSC. This requires some work. The Chair commented that the Rule authorizes

the bank to do this.

Mr. Brault said that in subsection b. 2, language has been added to exclude Allowable Reasonable Fees. Section c. pertains to enforcement. Mr. Brault expressed the view that monitoring the interest rates is going to be a significant amount of work for the MLSC. Disagreements may arise. He noted that in subsection c. 3, language has been added providing that the Commission finding takes place after a complaint is filed by the MLSC and providing for notice by the Commission to the institution that an agreement is terminated. Section d. pertains to exceptions and is taken primarily from Rules 16-758 and 16-759, the parallel provisions for attorney discipline proceedings. Mr. Leahy pointed out that since subsection c. 3 has been changed, a new subsection c. 4. may be needed, so that the Commission can act on its own initiative, as the Rule now provides. The Chair suggested that the new language at the beginning of subsection c. 3 could read: "after a complaint is filed by the MLSC or on its own initiative...". By consensus, the Committee approved this change.

Master Mahasa asked if the language in subsection c. 3 should be "right to be heard" instead of "opportunity to be heard." The Chair responded that the language should not be changed, because it has been in use for some time and has caused no problems. Mr. Brault said that one aspect not mentioned is whether a hearing can be held that is not oral and is on the record. An opportunity to be heard suggests that the hearing is

oral. Master Mahasa explained that she brought this issue up because of recently enacted federal law in the area of family law that uses the language "right to be heard," instead of "opportunity to be heard." This is more than just a chance of a hearing and is stronger. The Reporter pointed out that this change would involve changes to the same language in many other Rules. The Vice Chair suggested that it might be necessary to change this language if the federal language has been changed. The Maryland Rules are falling behind as far as consistency with the federal rules. Mr. Brault responded that the federal rules are different. They are legislatively approved by Congress, so they have a much broader authority to create substantive law. This authority is not applicable in Maryland. Master Mahasa remarked that this change in federal law is being reflected in recent family law legislation in Maryland. Mr. Brault said that if a right is created by statute, then the corresponding Rule would have to conform, but if there is no applicable statute, there is no requirement that the Rule conform.

Mr. Enten expressed his concern as to the language added to section a., which provides that the agreement is with the MLSC. Mr. Hirshman stated that the current agreements in place are with the Attorney Grievance Commission. Practically, when this Rule goes into effect, there will be a period of time during which discussions between the MLSC and the banks take place. The *status quo* should be maintained until any dispute as to interest

rates is resolved. The change in the wording of the Rule contemplates an agreement that does not exist today. Initially, the old agreement would be subject to termination, because there is no new agreement. The language should be carefully reviewed to make sure that it complies with the intended meaning.

The Chair stated that the Rule will be effective on a certain date to make sure that there is no gap between an agreement under the current Rule and one under the revised Rule. This has been done with other rules. The current Rule and agreements under it remain in place until the revised Rule and agreements under it become effective. Mr. Brault inquired as to whether this is effected by language in the Rules Order. The Reporter answered that this is the usual practice. The Chair observed that it can also be put into the Rule itself by adding a provision that allows the Commission to extend its approval of an existing agreement for a reasonable period to allow the bank and the MLSC the opportunity to enter into a revised agreement that complies with the revised Rule.

Mr. Enten suggested that section a. end after the word "Commission." The account of an attorney in a branch of a bank located in Centreville is subject to different competitive forces than a branch in Baltimore City. Subsection b. 1. (D) of the Rule provides that the bank must pay a rate comparable to the rate being paid at the branch where the account is located. In today's banking world, there are differences from one branch of a bank to another branch of the same bank. The goal is

comparability at the same branch. The rate may or may not be applicable to all branches. It is important that section a. does not conflict with subsection b. 1. (D). The Reporter commented that, subject to stylistic changes, section a. of the Rule reads properly, because it refers to the overall agreement. The rate can be different at each branch, and that can be incorporated into the agreement. The Chair suggested that the language, "applicable to all branches of the institution that are subject to this Rule," which was approved by the Committee earlier during today's discussion, does not prohibit different rates at different branches because it is the agreement, rather than a specific interest rate, that must be applicable to all branches.

Judge Matricciani moved to approve the Rule subject to the amendments made at today's meeting. The motion was seconded, and it passed unanimously. The Chair thanked all of the people who worked on the Rule, including the Subcommittee and the consultants. He asked that the consultants come to the Court of Appeals when the Rule is presented. One of the issues for the Court to consider is the June 11, 2007 letter from the Honorable Thomas V. Mike Miller, Jr., Senate President and the Honorable Michael E. Busch, Speaker of the House, asking that this matter be handled by the legislature. Ms. Erlichman thanked Mr. Brault, noting that he had participated in a conference call discussion of the Rule while he was on vacation, and she also thanked all of the other members of the Committee.

Agenda Item 2. Consideration of two Reports pertaining to the May 30, 2007 Revised Final Report and Recommendations of the Maryland Judicial Commission on Professionalism

- Report of the Combined Attorneys/General Provisions Subcommittees
 - Report of the General Court Administration Subcommittee
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The Chair told the Committee that Mr. Lemmey would speak about this agenda item. Mr. Lemmey said that he is a member of the Professionalism Commission. He thought that the Honorable Lynne Battaglia, the Chair of the Commission, and Norman Smith, Esq., Reporter to the Commission, would attend today's meeting. He was surprised to see that Judge Battaglia was not present. The Chair explained that members of the Court of Appeals generally are not invited to meetings of the Committee, although they are, of course, welcome to attend if they wish. The following persons were notified about the meeting: Mr. Lemmey, Mr. Smith, Tom Lynch, the Honorable Dennis Sweeney, Claire McSpaden, the Honorable Patrick Woodward, the Honorable John Tisdale, and the Honorable Jeannie Hong.

Mr. Lemmey commented that he has been on the Commission for three years. Judge Battaglia has attended every Commission meeting, including evening meetings, around the State. Mr. Lemmey called her this morning, and she requested that the issue be tabled, because she would like to be present when it is discussed. She did not receive notice of the meeting, and because the Court of Appeals is in session, she is unable to attend today. The Court has not referred this matter to the Rules Committee, so she was surprised that it was on the agenda.

The Chair asked if tabling this was acceptable to the Committee, and by consensus the Committee agreed to table it.

The Chair announced that he had to leave, so the meeting would be run by the Vice Chair.

Agenda Item 3. Consideration of proposed amendments to: Rule 9-206 (Child Support Guidelines) and Rule 9-210 (Attachment, Seizure, and Sequestration)

The Vice Chair said that this item was to be presented by Ms. Ogletree, Chair of the Family and Domestic Subcommittee, but she was unable to attend. The Reporter added that no one else is prepared to present this. The item was tabled.

Agenda Item 4. Consideration of a proposed amendment to Rule 13-102 (Scope)

The Reporter presented Rule 13-102, Scope, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 13 - RECEIVERS AND ASSIGNEES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 13-102 by expanding the cross reference at the end of the Rule to refer to two statutes, as follows:

Rule 13-102. SCOPE

(a) Generally

Except as provided in section (b), the rules in this Title apply in the circuit court to the estate of:

(1) an assignee;

(2) a receiver appointed under the general equitable power of a court to take charge of an estate;

(3) a receiver appointed under any statutory provision that specifically provides that these rules apply to the proceeding; and

(4) any other statutory receiver to the extent that (A) the rules in this Chapter are not inconsistent with the statutory provisions authorizing the appointment of the receiver, and (B) the court orders that the rules apply.

(b) No Application

The rules in this Title do not apply to the estate of:

(1) a receiver appointed pursuant to the terms of a mortgage or deed of trust pending foreclosure who takes charge of only the property subject to that mortgage or deed of trust;

(2) a receiver appointed pursuant to the terms of a security agreement who takes charge of only the property subject to that agreement; or

(3) a person appointed for purposes of enforcement of health, housing, fire, building, electric, licenses and permits, plumbing, animal control, or zoning codes or for the purpose of abating a public nuisance.

Cross reference: For an example of a statute specifically providing that these rules apply, see Code, Financial Institutions Article, §9-708. For examples of statutes authorizing the appointment of a receiver, see Code, Corporations and Associations Article, §§3-411, 3-414, 3-415, and 3-514; Financial Institutions Article, §§5-605 and 6-307; Commercial Law Article, §§6-106 and 15-210; and Health-General Article, §19-334; and Real Property Article, §§11-109.3 and 11B-111.5. This list is illustrative only.

Source: This Rule is derived in part from

former Rule BP1 b.

Rule 13-102 was accompanied by the following Reporter's Note.

The General Assembly enacted Chapter 321, Acts of 2007 (SB 287) which added a procedure for appointment by a court of a receiver when a council of unit owners of a condominium or a homeowners association fails to fill vacancies on the board of directors. The Property Subcommittee recommends adding to the list of cross references after Rule 13-102 a reference to the new statutes.

The Vice Chair asked if this should be tabled, for the same reason the previous item was tabled -- the absence of the Chair of the Property Subcommittee. The Reporter noted that this change is only the addition of a cross reference to Rule 13-102, Scope. Mr. Boozer, a member of the Property Subcommittee, stated that he agrees with this added cross reference. The Assistant Reporter asked whether the cross reference is necessary, and Mr. Brault answered that it is helpful to practitioners to have cross references to applicable statutes in the Rules. By consensus, the Committee approved the amendment to Rule 13-102.

Agenda Item 5. Consideration of proposed "housekeeping" amendments to: Rule 10-213 (Order) and Rule 16-1006 (Required Denial of Inspection - Certain Categories of Case Records)

The Reporter presented Rules 10-213, Order and 16-1006, Required Denial of Inspection - Certain Categories of Case Records, for the Committee's consideration.

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-213 to revise a cross reference, as follows:

Rule 10-213. ORDER

(a) Generally

The court may issue an order authorizing the provision of protective services on an emergency basis after a finding on the record that the allegations required by Rule 10-210 (c)(6) are established by clear and convincing evidence. An order shall either be in writing or, if dictated into the record, transcribed by the court reporter immediately and placed into the record.

(b) Appointment of Temporary Guardian

In its order the court shall appoint a temporary guardian who can give consent on behalf of the disabled person for the approved protective services until the expiration of the order.

(c) Duration of Order

The order shall expire 144 hours after it is issued, unless extended pursuant to section (d) of this Rule.

(d) Extension of Order

The court may further extend the emergency order and the appointment of the temporary guardian until appointment of a guardian of the person upon (1) a petition of the temporary guardian filed before the expiration of the emergency order, accompanied by a petition for the appointment of a guardian of the person, and (2) a showing that the situation described in Rule

10-210 (c)(6) will probably continue or recur if the emergency order is not further extended. The petition for appointment of a guardian shall be heard on an expedited basis not later than 60 days after it is filed.

(e) Report of Temporary Guardian

When protective services are rendered on the basis of an emergency order, the temporary guardian shall submit a report to the court describing the services and outcome and any forcible entry used to obtain custody of the person. The report shall become a part of the court record. The temporary guardian shall also send a copy of the report to

(1) the disabled person and the attorney for the disabled person, and

(2) the director of the local department of social services if the disabled person is under 65, or

(3) the director of the local office on aging if the disabled person is 65 or older, and

(4) any other person or entity as required by the court or by law.

Cross reference: Code, ~~Article 70B~~ Human Services Article, Title 10.

Source: This Rule is derived from Code, Estates and Trusts Article, §13-709.

Rule 10-213 was accompanied by the following Reporter's

Note.

A proposed amendment to the cross reference that follows Rule 10-213 conforms it to Chapter 3, Acts of 2007 (SB 6) by which the General Assembly added the new Human Services Article to the Code.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 300 - CIRCUIT COURT CLERKS' OFFICES

AMEND Rule 16-1006 to revise a Committee note, as follows:

Rule 16-1006. REQUIRED DENIAL OF INSPECTION
- CERTAIN CATEGORIES OF CASE RECORDS

Except as otherwise provided by law, court order, or the Rules in this Chapter, the custodian shall deny inspection of:

(a) All case records filed in the following actions involving children:

(1) Actions filed under Title 9, Chapter 100 of the Maryland Rules for:

(A) Adoption;

(B) Guardianship; or

(C) To revoke a consent to adoption or guardianship for which there is no pending adoption or guardianship proceeding in that county.

(2) Delinquency, child in need of assistance, and child in need of supervision actions in Juvenile Court, except that, if a hearing is open to the public pursuant to Code, Courts Article, §3-8A-13 (f), the name of the respondent and the date, time, and location of the hearing are open to inspection.

(b) The following case records pertaining to a marriage license:

(1) A physician's certificate filed pursuant to Code, Family Law Article, §2-301,

attesting to the pregnancy of a child under 18 years of age who has applied for a marriage license.

(2) Until a license is issued, the fact that an application for a license has been made, except to the parent or guardian of a party to be married.

(c) In any action or proceeding, a record created or maintained by an agency concerning child abuse or neglect that is required by statute to be kept confidential.

Committee note: Statutes that require child abuse or neglect records to be kept confidential include Code, ~~Article 88A, §§6 (b) and 6A~~ Human Services Article, §§1-202 and 1-203 and Code, Family Law Article, §5-707.

. . .

Rule 16-1006 was accompanied by the following Reporter's Note.

The proposed amendment to the Committee note that follows section (c) of Rule 16-1006 conforms it to Chapter 3, Acts of 2007 (SB 6), by which the General Assembly added the new Human Services Article to the Code.

The Reporter said that these were two minor "housekeeping" amendments to these Rules. The changes conform to Chapter 3, Acts of 2007 (SB 6), the new Human Services Article. The Reporter expressed her gratitude to Cathy Cox, Administrative Assistant to the Rules Committee, who carefully went through the

new law to determine the corresponding changes to the Rules. By consensus, the Committee approved the changes.

The Vice Chair adjourned the meeting.