STANDING COMMITTEE ON RULES
OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100A of the People's Resource Center, 100 Community Place, Crownsville, Maryland, on September 8, 2000.

Members present:

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

Robert L. Dean, Esq.
Hon. Ellen M. Heller
Bayard Z. Hochberg, Esq.
Hon. G. R. Hovey Johnson
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
Joyce H. Knox, Esq.
Timothy F. Maloney, Esq.
Anne C. Ogletree, Esq.
Debbie L. Potter, Esq.
Larry W. Shipley, Clerk
Sen. Norman R. Stone, Jr.
Melvin J. Sykes, Esq.
Roger W. Titus, Esq.
Robert A. Zarnoch, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Melvin Hirshman, Esq., Bar Counsel
David D. Downes, Esq., Chair, Attorney Grievance Commission
J. Donald Braden, Esq., Attorney Grievance Commission
Michael Chomel, Esq.
Robert Kershaw, Esq.
Linda H. Lamone, Esq.
Harry K. Wolpoff, Esq.
James L. Thompson, Esq.
Buz Winchester, Director of Legislative Relations, MSBA
Glenn Grossman, Esq., Deputy Bar Counsel
Hon. Louis A. Becker, III, District Court of Maryland for Howard County
Ms. Shakun

The Chair convened the meeting. He welcomed the newest members of the Committee, The Honorable Ellen M. Heller,

Administrative Judge of the Circuit Court of Baltimore City, and Deborah L. Potter, Esq., a practitioner in Anne Arundel County.

The Chair thanked the consultants present for attending the meeting.

The Chair asked if there were any additions or corrections to the minutes of the April, May, and June Rules Committee meetings. There being none, Mr. Klein moved that all three sets of minutes be approved as presented, the motion was seconded, and it passed unanimously.

Agenda Item 1. Consideration of proposed amendments to Rule 16-802 (Maryland Judicial Conference)

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

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-802 to modify the objectives of the Judicial Conference, to eliminate the Executive Committee of the Maryland Judicial Conference, and to add a Judicial Council of the Maryland Judicial Conference, as follows:

Rule 16-802. MARYLAND JUDICIAL CONFERENCE

~~a.~~ (a) Conference Established - Objectives

There is a Judicial Conference, known as "The Maryland Judicial Conference," ~~to consider the status of judicial business in~~

the various courts, to devise means for relieving congestion of dockets where it may be necessary, to consider improvements of practice and procedure in the courts, to consider and recommend legislation, and to exchange ideas with respect to the improvement of the administration of justice in Maryland and the judicial system in Maryland and a Judicial Council which is part of the Maryland Judicial Conference. The Judicial Council guides the Maryland Judicial Conference in maintaining the cohesiveness, leadership, and efficacy of the judiciary.

COMMENT

This is former Rule 1226 a 1, without substantive change.

b. (b) Membership

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

1. (1) Court of Appeals of Maryland;

2. (2) Court of Special Appeals;

3. (3) Circuit courts of the counties;

4. (4) The District Court of Maryland.

COMMENT

This is former Rule 1226 a 2 without substantive change.

c. (c) Chair and Vice Chair

1. The Chief Judge of the Court of Appeals of Maryland is the Chair of the Judicial Conference and the Judicial Council.

2. At its annual session, the Judicial Conference shall elect a Vice Chair, who shall have all the powers and duties of the Chair, but who shall serve only at the direction of the Chair, or in the absence of

~~the Chair.~~

~~d.~~ (d) ~~Executive Committee~~ Judicial Council of Maryland Judicial Conference

~~1.~~ (1) Establishment - Duties

~~a.~~ (A) There is ~~an Executive Committee~~ a Judicial Council of the Judicial Conference. The ~~Executive Committee~~ Judicial Council consists of ~~19~~ 16 members.

~~b.~~ (B) Between plenary sessions of the Maryland Judicial Conference, the ~~Executive Committee~~ Judicial Council shall perform the functions of the Conference and shall:

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

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

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

~~(4)~~ (iv) Plan sessions of the Conference in conjunction with the Conference Chair.

~~2.~~ (2) Members

~~a.~~ (A) ~~The 15 elected members of the~~

~~Executive Committee are a circuit court and a District Court judge from each of the seven appellate judicial circuits; and a judge of the Court of Special Appeals.~~ The Chief Judge, Chief Judge of the Court of Special Appeals, Chair of the Conference of Circuit Judges, Chief Judge of the District Court, State Court Administrator, Chief Clerk of the District Court, and Chair of the Conference of Circuit Court Clerks and the judges appointed by the Chief Judge pursuant to subsection (d)(2)(B) are members of the Judicial Council.

~~(b)~~ (B) ~~The Chief Judge of the Court of Appeals, the Chief Judge of the Court of Special Appeals, the Chair of the Conference of Circuit Judges, and the Chief Judge of the District Court are members of the Executive Committee ex officio without vote.~~ The members of the Judicial Council appointed by the Chief Judge are four circuit court judges -- two circuit administrative judges and two elected members from the Conference of Circuit Court judges, four District Court judges -- two District Administrative judges and two elected members of the Administrative Judges Committee, and one trial court administrator of a circuit court.

~~3.~~ (3) Terms

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

~~4. Elections~~

~~(a) Not later than May 1 of each year, the executive secretary of the Conference shall advise the Chief Judge of the Court of~~

~~Special Appeals, each county administrative judge, and the Chief Judge of the District Court of the number of members of the Executive Committee from each court and in each appellate judicial circuit to be elected in that year.~~

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

~~(c) Not later than June 1 of each year, the judges of the circuit courts in each appellate judicial circuit and of the District Court in each appellate judicial circuit shall elect the members of the Executive Committee to which they, respectively, are entitled in that year. The methods of election for circuit court judges shall be as determined by the judges of those courts within each appellate judicial circuit. The methods of election of District Court judges shall be as determined by the judges of that court within each appellate judicial circuit.~~

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

~~5.~~ (4) Vacancies

~~(a)~~ If a vacancy occurs on the ~~Executive Committee~~ Judicial Council because an ~~elected~~ appointed member resigns from the ~~Committee~~ Council, leaves judicial office, or is appointed or elected to a judicial office other than the office the member held when ~~elected~~ appointed to the ~~Committee~~ Council, ~~the executive secretary shall promptly notify the Chief Judge of the Court of Special~~

Appeals, if the vacated position was held by a judge of that court; the county administrative judges of the appropriate appellate judicial circuit, if the vacated position was held by a judge of a circuit court; or the Chief Judge of the District Court if the vacated position was held by a judge of that court the Chair shall appoint a replacement member of the Council to serve for the unexpired balance of the predecessor's term.

(b) Within 30 days after the notification, the individual notified shall cause an election to be held by the judges of the Court of Special Appeals, the judges of the circuit court within the appropriate appellate judicial circuit, or the judges of the District Court within the appropriate appellate judicial circuit, so that the vacancy shall be filled by election of a judge from the same court or court level as that from which the judge's predecessor had been elected. The executive secretary shall be notified promptly of the individual elected. The individual elected serves for the unexpired balance of the predecessor's term, and until a successor is elected.

6. Chair and Vice Chair

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

(b) If the position of Chair or Vice Chair becomes vacant, it shall be filled by election by the Executive Committee members from among its elected members. The individual elected to fill the vacancy serves for the unexpired balance of the predecessor's term, and until a successor is elected.

e. (e) Secretariat

The Administrative Office of the Courts is the secretariat for the Conference. ~~and for all of its committees, including the Executive Committee. The State Court Administrator is the Executive Secretary of the Conference.~~

~~COMMENT~~

~~This is former Rule 1226 a 3, without substantive change.~~

~~f.~~ (f) Committees

~~1.~~ (1) Establishment

In consultation with the Chair of the Judicial Conference, the ~~Executive Committee~~ Judicial Council shall establish the committees of the Conference it considers necessary or desirable from time to time.

~~2.~~ (2) Appointment

In consultation with the Chair of the Judicial Conference, the ~~Chair of the Executive Committee~~ Judicial Council shall appoint the Chair and members of each committee.

~~3.~~ (3) Duties

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

~~g.~~ (g) Sessions of the Conference

The Conference shall meet in general session at least once a year at the time and place designated by the ~~Executive Committee~~

Judicial Council, unless otherwise ordered by the Court of Appeals. Each session of the Conference shall be for the number of days the work of the Conference may require.

~~COMMENT~~

~~This is in substance former Rule 1226 a 7.~~

Source: This Rule is derived from former Rule 1226.

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

The General Court Administration Subcommittee has approved Rule 16-802 as to form. Former Rule 1226 was not drafted by the Rules Committee, but was presented to the Court of Appeals by the Maryland Judicial Conference. The substantive changes to the Rule have been recommended by a Leadership Conference convened by Chief Judge Bell in 1999.

Section (a) is derived from the "Draft Report - Judicial Council Recommendations," December 13, 1999. On pages 2 and 3, the Report suggests that there needs to be some adjustment of the objectives of the Judicial Conference.

Section (b) is unchanged.

Section (c) is derived from section (c) of current Rule 16-802, but the provision pertaining to the Vice Chair has been deleted.

Subsection (d)(1) is derived from the Report entitled "Recommendations to the Maryland Judiciary, the Way Forward," July 23, 1999 and the Draft Report of December 13, 1999. The crux of both reports is the recommendation to eliminate the Executive

Committee of the Judicial Conference and replace it with the Judicial Council.

Subsection (d)(2) is new and is derived from the December 13, 1999 Draft Report and from the Memorandum from Chief Judge Bell to the Leadership Conference, dated January 21, 2000. On pages 3 and 4, the Report recommends the membership of the Judicial Council. In the memorandum, Chief Judge Bell further explains the composition of the Judicial Council.

Subsection (d)(3) is in part derived from current Rule 16-802 d.3 and is in part new.

Subsection (d)(4) is derived from current Rule 16-802 d. 5 (a), the December 13,1999 Draft Report, and the January 21,2000 Memorandum from Chief Judge Bell. Because the Chief Judge of the Court of Appeals appoints those members whose position does not automatically qualify them for Council membership, the current Rule has been modified to provide for the Chair to appoint a replacement member of the Judicial Council.

Section (e) has been shortened, eliminating the references to committees and to the Executive Secretary.

Section (f) is changed only to reflect the change in name to the Judicial Council.

Section (g) is changed only to reflect the change in name to the Judicial Council.

The Chair explained that Rule 16-802 had been amended at the request of the Chief Judge of the Court of Appeals, Robert M. Bell. The reasons for the changes are explained in the memorandum from Chief Judge Bell dated August 21, 2000, which is included in the meeting materials. (See Appendix 1.) The

proposal is to have a Judicial Council which will do the work that had been done by the Executive Committee. Chief Judge Bell is persuaded that the new system provides a more efficient way to run the judiciary. It is more consistent with Chief Judge Bell's ideas as to how the Maryland Judicial Conference should operate. Former Rule 1226, the predecessor to Rule 16-802 was not drafted by the Rules Committee but came about as a result of the deliberations of the Maryland Judicial Conference. Chief Judge Bell would like the Rules Committee to look at the proposed revised draft of the Rule.

Mr. Hochberg commented that subsection (d)(4) does not list death as a reason for a vacancy on the Judicial Council. The Chair pointed out that the language in that provision which reads a "leaves judicial office" would cover that situation. The Vice Chair noted that the Rules of Procedure usually have a provision for the position of a vice chair when the chair of an organization is not available. The Assistant Reporter indicated that Chief Judge Bell preferred to have no vice chair.

Judge Johnson moved to approve the Rule as presented. The motion was seconded, and it passed unanimously.

Agenda Item 2. Consideration of proposed revised Title 16, Chapter 700 (Discipline and Inactive Status of Attorneys) drafted by the committee of two Judges of the Court of Appeals appointed in accordance with an Order of the Court dated June 6, 2000. (See Appendix 2)

The Chair told the Committee that the Court of Appeals had decided to appoint a committee of the Court to draft a revision of the Attorney Discipline Rules. The committee was composed of the Honorable Alan M. Wilner and the Honorable Glenn T. Harrell, Jr., Judges of the Court of Appeals. The Rules Committee Chair and Vice Chair, the Reporter to the Rules Committee, Albert D. Brault, Chair of the Attorneys Subcommittee, representatives of the Maryland State Bar Association (MSBA) and the bar of Maryland, Bar Counsel, and other interested persons met with the Court's committee during the drafting process. The committee requested that the Rules Committee take one more look at the revised Rules. Then the Rules will be published for comment. For the discussion today, one approach is to let the consultants comment on specific Rules or another is to go through the Rules page by page. The Vice Chair expressed the view that the Committee should answer all the questions in bold in the Rules. The drafting committee's proposed revision of Title 16, Chapter 200 is set out in Appendix 2, and their Concept Proposal (Rev. 8/8/00) is set out in Appendix 3.

The Reporter said that the Rules are on a fast track. Next Tuesday, Judges Harrell and Wilner will consider the recommendations of the Rules Committee and meet with members of the Style Subcommittee to make final changes to the proposal that will be transmitted to all of the Judges on the Court of Appeals.

After that, the Attorney Disciplinary Rules will be published in The Maryland Register with a 20-day comment period. The Court will consider the Rules on one of its November 2000 conference days.

The first query is after section (a) of Rule 16-701, Definitions, on page 9 asking whether the word "lawyer" should be changed to the word "person" in the definition of the term "attorney." The Vice Chair answered that the word should be "person," and the Committee agreed by consensus. The second question is whether lawyers from other countries are to be included. Mr. Thompson, immediate past President of the MSBA, answered that lawyers from other countries are included, and the Committee agreed with this by consensus.

On page 11 after section (k) of Rule 16-701, the query to the Rules Committee pertaining to the definition of the term "serious crime" reads as follows: "Should this definition be limited to crimes in the U.S.? Should it specify the U.S., any state, or territory? Should it include crimes committed anywhere (including foreign countries) if the underlying conduct would be a 'serious crime' in Maryland (under subsections (k)(1), (k)(2), or (k)(3)), if the conduct had occurred in Maryland?" The Reporter pointed out that this issue had been debated by the Rules Committee previously. The Vice Chair asked why the definition of "serious crime" should be limited to crimes in the

U.S. It should be serious crimes under Maryland law and should be left alone. The Reporter commented that the definition should not provide that any felony is included, because a foreign country may provide that the act of chewing gum is a felony. Mr. Sykes noted that the language "any felony under Maryland law" might mean that the felony has to be committed in Maryland. Mr. Maloney suggested that the language could be "any felony constituting a crime under Maryland law." Mr. Sykes said that this may cause a jurisdictional problem if the crime is committed in England but is not a felony under English law. Mr. Maloney then suggested that it could be "conduct which, if it had occurred in Maryland, would have constituted a felony."

The Vice Chair remarked that she did not read this provision to mean that the crime would have to be committed in Maryland. Her view is that it means any felony committed, including one committed in Maryland. Mr. Sykes suggested that the language should be changed to clarify the meaning. Mr. Maloney reiterated his suggested language which was "conduct which, if it had occurred in Maryland, would have constituted a felony." The Vice Chair inquired if this language would exclude a felony committed in Maryland. The Chair suggested that subsection (k)(1) read as follows: "any crime, the elements of which constitute a felony under Maryland law." The Committee agreed by consensus to this change.

After section (a) of Rule 16-711 on page 13, the query to the Committee reads as follows: "How many lawyers and non-lawyers should be on the Commission? 9 and 3 per this draft? 8 and 4 per the 144th Report? 8 and 2 per the current rule? Some other combination?" Mr. Downes expressed the opinion that the change to nine attorneys and three members was preferable. He noted that the Attorney Grievance Commission (AGC) was satisfied with this. The Committee agreed by consensus with a membership of nine lawyers and three non-lawyers on the Commission.

The Vice Chair drew the Committee's attention to subsection (b)(4) of Rule 16-712, Bar Counsel, on page 17. She expressed the concern that since many of the Rules contain the addition of the language "or remedial" in the phrase "disciplinary or remedial action" and in similar provisions, this should be consistent throughout the Attorney Discipline Rules. The language "or remedial" should be added to subsection (b)(4) as well as subsection (b)(6) of Rule 16-712. The Committee agreed by consensus with this suggestion.

The Vice Chair pointed out that in subsection (c)(5) of Rule 16-713, Peer Review Committee, on page 19, the word "other" should be deleted, so that the end of the Rule would read "or any State." The Committee agreed by consensus to this change.

After section (d) of Rule 16-713 on page 20, the following query appears: "Should anything be added to or deleted from the

‘ineligibility’ lists in sections (c) and (d)?” The Vice Chair commented that the ineligibility list is a good idea. Mr. Johnson inquired as to why there is a requirement of practicing law for five years to be a member of the Peer Review Committee. Diversionary cases often involve younger attorneys, and it might be more appropriate to have a three-year requirement to allow for younger attorneys to be appointed to the Peer Review Committee. Mr. Hirshman explained that the policy behind the five-year provision was to appoint more experienced people to move the system along. Mr. Thompson remarked that the MSBA had adopted guidelines with the five-year provision and a Martindale-Hubbell “BV” rating requirement. The Vice Chair said that she agreed with Mr. Johnson as to shortening the amount of time necessary to practice law to be eligible for the Peer Review Committee. Mr. Johnson said that although he understands Mr. Hirshman’s position, he still believes that three years is more appropriate. The Committee agreed by consensus to recommend a three-year requirement.

Mr. Wolpoff asked what the term “judge” means in subsection (c)(3) of Rule 16-713. Does this include an administrative law judge, a master, etc.? Mr. Hochberg questioned what the result is if the judge were retired. Ms. Ogletree answered that a retired judge would have to be sitting as a judge to be ineligible for appointment. The Chair stated

that retired judges would be able to sit on the panels.

The Vice Chair commented that in subsection (c)(2), the requirement that the practice must be in Maryland is somewhat parochial and should be deleted. The Chair noted that the theory of peer review is that the reviewer knows Maryland practice. The Vice Chair noted that negligence and discipline are not measured by a local standard. The Chair said that he was reluctant to recommend the elimination of a residency requirement. Mr. Thompson suggested that this requirement should remain as it was presented, and the Committee agreed by consensus.

The next query to the Committee is after section (a) of Rule 16-723, Confidentiality, on page 28 and reads as follows: "The drafting committee favors the following approach to confidentiality/ privilege issues with respect to peer review proceedings (based on portions of proposed new Rule 17-109, Mediation Confidentiality):

> All persons present at a peer review meeting shall maintain the confidentiality of all speech, writing, and conduct made as part of the meeting and may not disclose or be compelled to disclose the speech, writing, or conduct in any judicial, administrative, or other proceeding. Speech, writing, or conduct that is confidential under this Rule is privileged and not subject to discovery, but information otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use at the peer review meeting.

Is the Rules Committee in agreement with this proposal and, if

so, how should this provision be incorporated in the Rule?"

The Chair questioned as to how much that the attorney says at the peer review is fair game at a hearing downstream. Can the attorney be impeached on the basis of a prior inconsistent statement or does everything said at the peer review remain confidential and not a subject for questioning at the evidentiary hearing that follows? The Vice Chair pointed out that one view is that the attorney should not be encouraged to lie, and this could be accomplished by allowing the attorney to be impeached at trial. The other side of the coin is that if peer review is informal, it may encourage the attorney to recognize that his or her conduct contributed to the problem. If the Rules do not protect the attorney's statements from admissibility at the evidentiary hearing, the peer review will not be as meaningful because the attorney will have to be guarded. Judge Harrell supports the theory that there should be the same confidentiality as in mediation. Mr. Thompson added that the MSBA also supports this theory.

Mr. Hirshman stated that his office will subpoena respondents to provide statements under oath. The Chair inquired whether the Office of Bar Counsel will do this because peer review is confidential, and this will be anticipatory retaliation. Mr. Hirshman remarked that the attorney should not be allowed to change his or her story. The Chair commented that

even if the Rule provides that an attorney cannot be impeached by statements at the peer review meeting, Bar Counsel can still take the attorney's testimony under oath. One idea is that there could be a prior inconsistent statement exception to the general rule of confidentiality. Generally, attorneys will not lie very often at peer review, nor will complainants. If nothing can be done about a prior inconsistent statement, what will complainants think of the process? It is not a good idea to give every attorney the third degree under oath. Mr. Hirshman responded that that would only be necessary if an attorney fails to cooperate when someone from the Office of Bar Counsel talks to the attorney. The Chair noted that in his nine years as a circuit court judge, less than two percent of people confronted with a prior inconsistent statement say that they never made the earlier statement. It is not a good idea to subpoena everyone who had been present at peer review to the evidentiary hearing every time a inconsistent statement is uttered. The Vice Chair commented that it would discourage volunteer attorneys and lay people from participating in peer review if they faced the possibility of spending days in court testifying about the peer review proceeding.

Judge Heller observed that confidentiality promotes the role of peer review. She said that she hoped that Bar Counsel would use good judgment and discretion and not bring in every attorney

because the peer review hearing is confidential. The Vice Chair pointed out that Bar Counsel can use the subpoena to investigate, but does not always need to take the attorney's statement under oath. Once peer review is over, full discovery is available. The Chair stated that Mr. Hirshman's concern is the attorney changing his or her testimony. The attorney should be pinned down before the peer review hearing. A deposition after the peer review hearing will not do Bar Counsel any good. Mr. Hirshman said that most attorneys will cooperate. If there is a change in the story, the investigator will testify. Mr. Hirshman remarked that he does not envision taking testimony under oath very often. The Chair suggested that the language presented in the query be included somewhere in the Rules. The Vice Chair said that this can be styled later. The Committee agreed by consensus.

After section (d) of Rule 16-723 on page 30, the Committee considered the following query: "If what happens at peer review is absolutely confidential, is subsection (d)(2) needed? Is there some reason this subsection is needed to help Bar Counsel?" Mr. Sykes responded that without this provision, the Rules would be at odds with themselves, since elsewhere the Rules provide that peer review is confidential. The provision should remain. The Committee agreed by consensus with Mr. Sykes. The Vice Chair pointed out that the language "or remedial" should be placed after the word "disciplinary" in subsection (d)(2). The Rules

should be reviewed to add this language where it is necessary.

The Chair said that another query for the Committee is after section (b) of Rule 16-724, Service of Papers on Attorney, on page 33. It reads as follows: "These Rules provide for personal service of a statement of charges (to go to peer review) and a petition for disciplinary or remedial action (with the availability of the Clients' Security Trust Fund option if the attorney cannot be located). All other papers that are part of the peer review process and all post-petition papers are served in the manner provided by Rule 1-321. Should any changes be made to these service provisions?" The Vice Chair replied that no changes are necessary.

The Chair pointed out another query after section (g) of Rule 16-732, Investigative Subpoena, on page 39 which reads as follows: "If the statement is given in compliance with a subpoena, shouldn't it be under oath? In the 144th Report, this Rule specified that the statement should not be under oath -- is there a reason why it should not be?" The Reporter noted that the Rules Committee had decided that a statement given by a witness who is subpoenaed under this Rule is not under oath. The drafting committee changed the Rule to provide that if a person is subpoenaed, the statement will be under oath. The drafting committee has inquired as to whether there is a good reason for the statement not to be under oath. The Chair commented that the

two members of the Committee who had spoken on this issue previously were not present at the meeting today. Judge Kaplan verified that the earlier decision had been that the statements should not be under oath, and that there has been concern about the ex parte aspect of the procedure.

The Vice Chair inquired as to why the statements should be recorded, if they are not under oath. The Chair asked what the position of the Committee is. Mr. Hirshman said that he thought that the statements should be under oath. The Vice Chair questioned as to whether the person subject to the subpoena has the right to counsel. The Chair answered that the person does not have a right to appointed counsel. Mr. Hochberg pointed out that subsection (c)(1) of Rule 16-732 provides that the attorney shall be notified prior to the conclusion of the investigation that Bar Counsel has undertaken an investigation of the attorney. This means that the attorney may not have been notified of the investigation until after he or she is subpoenaed. He noted that the attorney probably is not represented by counsel at this point, leaving the attorney more exposed to the possibility of perjury allegations being added to the charges against the attorney. Also, the attorney may not be aware of applicable privileges.

Mr. Thompson expressed the view that if the Rules Committee feels the attorney's statement should not be under oath, then the

MSBA recommends it not be under oath. The Chair suggested that both alternatives could be included, including a report of the Committee's position, and the Court of Appeals can make the choice. The Vice Chair commented that the issue is whether the statement of the attorney can later be used for impeachment purposes and as the basis of perjury charges. This would be difficult if the statement is not under oath. The Chair said that even if it is not under oath, the prior statement has impeachment value; there is a hearsay exception for recorded statements pursuant to Rule 5-802.1. The Vice Chair expressed the opinion that the statement should be under oath. The attorney may want it to be under oath. For a statement to be worthwhile, it should be made under the penalties of perjury. She noted her dissent on this issue. The Chair stated that the Rules Committee's nearly unanimous position, with one dissent, is that the statements should not be under oath.

Turning to page 41, the Reporter pointed out that the choice of language in section (d) of Rule 16-734, Procedure Upon Completion of Investigation, is dependent upon the decision to be made about Rule 16-741, Statement of Charges.

The Chair noted that there is a query after section (f) of Rule 16-736, Conditional Diversion Agreement, on page 50 which reads as follows: "Should there be any statement regarding judicial review or lack of any judicial review of the

revocation?" referring to revocation of the conditional diversion agreements. The Chair questioned as to what happens when the attorney says that he or she has not defaulted, does not deserve to be the subject of the action, and there is no reason to go forward. Should there be a judicial review of the decision? Once the case gets downstream before a court, the attorney could argue that the matter was worked out, and the attorney did not violate the conditions of the agreement. The Vice Chair said that she thought that there was no judicial review of the issue. The AGC and the attorney entered into an agreement. If the agreement is breached, this should be final. The Chair pointed out that the attorney in mitigation may be arguing that the agreement was not violated.

The Vice Chair suggested that the Rule could allow evidence of remediation to be admitted. The Chair observed that to the extent that there is a disputed issue of fact, the judge will resolve it at some point. There would be no judicial review in advance. Mr. Sykes was not sure that he agreed, noting that the question before the judge would be whether or not a violation has been committed. It is relevant if the attorney asserts that he or she should not been before the trial judge on a petition for disciplinary action because there has been no breach of the Conditional Diversion Agreement. If the question is whether the attorney violated certain ethical rules, this assertion may be

able to brought up on the issue of the determination of an appropriate sanction, or it may not, since the Court of Appeals determines the sanction. Can the attorney introduce evidence of the agreement? The Chair answered that the attorney has the right to introduce mitigating circumstances. The question is whether there should be a rule on this. This is a mitigation issue, and the circuit court can look into this. The Vice Chair disagreed, saying that the attorney entered into the agreement and then cannot put on a mini-trial as to whether the AGC was correct in revoking the agreement.

The Chair expressed his hesitation about prohibiting the attorney from being able to allege that the AGC breached the agreement. The Reporter inquired if this could be handled by a preliminary motion filed in the circuit court. The Vice Chair expressed the opinion that the Rule should not address this. The Chair agreed. Judge Kaplan suggested that the Rule not be amended. The Committee agreed by consensus with this suggestion.

Mr. Sykes stated that the minutes should reflect that the reason the Committee decided not to add in a statement regarding judicial review was based on the understanding that a provision was unnecessary because the matter could be raised at the appropriate time in defense or in mitigation at other proceedings.

Turning to Rule 16-741, the Chair noted that there are two

alternatives. Ms. Lamone explained that Alternative 1 requires the Commission to review every decision of Bar Counsel to file a Statement of Charges. This system could lengthen the time of the disciplinary process by as much as 30 days. Alternative 2 is the system being used now, and the Commission prefers Alternative 2. Mr. Johnson pointed out that under the current system, there is a Review Board. Mr. Downes remarked that if the Commission had to review each decision, it would be too time consuming. Mr. Johnson noted that the Review Board reviews the case to determine whether it agrees with Bar Counsel. Under the new system, the Peer Review Panel is melding two functions, the function of the Inquiry Panel and that of the Review Board, into one. Mr. Downes said that he had tracked proceedings from the Inquiry Panel to the Review Board, and in 90% of the cases, the recommendation of the Review Board was the same as that of the Inquiry Panel. Ms. Lamone remarked that the idea is to get rid of the delay inherent between the Inquiry Panel, Review Board, and the filing of charges.

Mr. Johnson observed that under the new system, the case goes from the Peer Review Panel to the Commission, which serves as the Review Board and decides whether the case goes to trial. A concern is if the Commission had seen the case before. There may be an inherent conflict in Alternative 1. Mr. Thompson commented that the purpose of changing the process is to speed it

up and make it more efficient, yet preserve fairness and due process. The elimination of the Review Board eliminates three to six months, but are fairness and due process preserved? Mr. Wolpoff pointed out that some of the review mechanism is accomplished under Alternative 2 by the Commission considering the charges before they are filed in the Court of Appeals. When the charges are filed, the matter becomes public. This final review protects the charges from going public prematurely. Mr. Thompson noted that he preferred Alternative 1. Ms. Lamone told the Committee that another alternative that could be considered is a review by one member of the Commission, instead of by the full Commission, before the Statement of Charges is filed.

The Reporter pointed out that the Statement of Charges is still confidential when it goes to the peer review process. It is public only after peer review is concluded and the Commission approves the filing of a Petition for Disciplinary or Remedial Action. The Chair said that the Statement of Charges is contrasted with the Petition for Discipline or Remedial Action. He asked if the Committee preferred Alternative 1 or Alternative 2. The Committee unanimously decided that Alternative 2 was preferable.

Turning to Rule 16-742, Peer Review Panel, the Reporter said that in section (b) on page 55, there is a choice of whether the Chair appoints members to the Panel from the county or the

circuit in which the attorney has an office, or if there is no office, the county or the circuit in which the last known address of the attorney is located. Mr. Downes stated that the Commission prefers that the choice be the word "circuit." There have been problems getting panel members in the same county. The language "if practicable" allows Mr. Wolpoff to go outside of the county or the circuit, but the Commission recommends that the word "circuit" be the one chosen. Mr. Titus pointed out that if practicable, the Chair should appoint by county. Ms. Ogletree remarked that that would be impossible in her county. The Vice Chair questioned as to why this has to be from the county. Mr. Titus replied that this is so that peers know who the attorney is and are familiar with the practice of law in that county. Ms. Lamone said that it has been difficult to fill panels. Drawing from appellate circuits would be of great assistance, especially in western Maryland and the Eastern Shore.

The Chair referred to Mr. Titus' comment that he prefers the same county if practicable because of peer review involving people familiar with the practice of law in that county. Mr. Downes remarked that there have been problems with the concept of "if practicable" in the past. Mr. Wolpoff first goes to the county list to set up a panel, then he goes to the circuit, then statewide. Mr. Titus commented that he did not like the Rule. He suggested that the term "county" be used, together with a

Committee note which provides that if it is not practicable to draw the panel members from the county, then they should be drawn from the circuit. The Vice Chair noted that the word "county" infers that the panel knows the attorney, which is not necessary. Deciding whether or not the attorney committed an ethical breach does not depend on where the panel is located.

The Chair asked for a vote on whether to use the word "county" or the word "circuit." Eleven members were in favor of the word "circuit" and three in favor of the word "county." The Chair stated that the Committee would recommend that the word "circuit" be used in section (b) of Rule 16-742.

Mr. Hirshman inquired as to how the Rule covers Maryland attorneys who have an office outside of the State. The Reporter responded that the Rule uses the language "if practicable." Mr. Wolpoff observed that an attorney from Washington, D.C. or Pennsylvania may not have an office in Maryland but may live in Maryland. The Chair reiterated that it is not always practicable to draw all of the panel members from the same county or circuit.

The Vice Chair pointed out that in subsection (a)(1) of Rule 16-743, Peer Review Process, the reference to Petition for Disciplinary or Remedial Action is capitalized. In other places in the Rules, it is not capitalized. This needs to be consistent, and she suggested that the term should be capitalized. She asked about the Committee note which is after

subsection (a)(1). The Reporter responded that Judge Harrell had written the note. The Vice Chair inquired whether some portion of the note should be in the body of the Rule. This can be restyled.

Mr. Wolpoff drew the Committee's attention to subsection (b)(5) on page 58. He asked whether only the full Commission may grant a request for a continuance. Ms. Lamone replied that an earlier rule covers this. The Reporter inquired if the request should be in writing. The Chair remarked that an 11th hour request may not be in writing. The Vice Chair asked if there should be a limit on the number of extensions. The Chair answered that there should not be a limit. Ms. Lamone noted that for all practical purposes, the Commission does not grant multiple extensions of time.

The Vice Chair noted that in subsection (c)(1) of Rule 16-743 on page 59, there is a reference to "lawful" privileges. She questioned as to why the word "lawful" is necessary. The Chair answered that Judge Wilner prefers this wording. Judge Heller suggested that the wording could be "privileges in Maryland." The Chair pointed out that there may be privileges provided by federal law. If the word "lawful" were excluded, privileges could be made up. Mr. Thompson expressed his agreement with the word "lawful." The Vice Chair suggested that the wording could be "applicable privileges."

Turning to section (a) of Rule 16-752, Order Designating Judge, on page 62, the Vice Chair asked why the language which reads "defining the extent of discovery and setting dates for the completion of discovery, filing of motions, and hearing" is necessary. She suggested that in its place the language "pursuant to Rule 2-504" could be substituted, since there are other items in that Rule besides the ones listed in section (a). The Committee agreed by consensus to this suggestion. The Reporter noted that in Rule 16-756, Discovery, on page 67, there is a reference to the scheduling order. The Chair asked if this Rule should refer to Rule 2-504, but the Vice Chair replied that the language of Rule 16-756 is appropriate.

The Vice Chair questioned the last sentence of section (a) of Rule 16-757, Judicial Hearing, on page 68 and the Committee note following that section. It is odd to say that remedial action is ever relevant to the issue of whether the attorney committed an ethical violation. The Reporter said that Judge Harrell requested this provision so that the circuit court judge could inquire as to whether there is evidence of remedial action taken by the attorney. Judge Johnson asked why evidence of remedial action is relevant. The Chair explained that if this is not allowed, the case will go through judicial review even though the attorney wishes to allege that he or she participated fully in an agreement that had been worked out with Bar Counsel, and

the attorney has not taken an action or omitted an action that Bar Counsel is alleging. The attorney ought to be able to get this evidence admitted. Without this provision, the judge may not be able to inquire about it. The Vice Chair suggested that there be a sentence providing that the judge must allow evidence of what the attorney has done. Mr. Hirshman agreed because the attorney's license to practice law is on the line. The Chair suggested that the new language could state that a respondent may offer evidence relevant to the complainant's testimony. The Reporter observed that although evidence of remedial action is not relevant to the issue of whether the attorney committed an ethical violation, it is relevant to the issue of an appropriate sanction. An example would be an attorney charged with mismanaging his or her law office offering evidence of adopting better procedures to manage the office.

Judge Heller commented that trial judges do admit this type of evidence. The Reporter noted that the trial judge does not determine the sanction. Judge Heller remarked that some judges may not admit the evidence, and there is no remedy. The matter will be reviewed on the record. Mr. Titus expressed the view that the Committee note should be placed into the body of the Rule. The Chair observed that the wording of the Committee note is a problem. It should provide that Bar Counsel may not introduce evidence of an attorney's remedial action, but may

respond to it. The Vice Chair asked why Bar Counsel would introduce such evidence, and the Chair responded that Bar Counsel may want the evidence admitted. The Chair questioned whether Judge Harrell's intention was that Bar Counsel cannot introduce evidence of an attorney's remedial action but may respond to it. The Reporter answered that this was Judge Harrell's intention.

The Vice Chair pointed out that providing that evidence of remedial action is admissible makes a complete record for the Court of Appeals. Mr. Titus suggested that the Committee note be stricken, and the following language be added after the last sentence of section (a): "and Bar Counsel shall be permitted to respond." The Committee agreed by consensus to this change.

The Chair drew the Committee's attention to Rule 16-759, Disposition, on page 71. He explained the history of the two alternatives, noting that H. Thomas Howell, Esq., formerly a member of the Rules Committee who had drafted the first version of the revised Attorney Discipline Rules, had drafted Alternatives 1 and 2 so that the Rule would expressly provide whether the Court makes a de novo or a sufficiency the evidence review of the findings of fact. The Vice Chair expressed the view that Alternative 3 is preferable because the Court of Appeals only looks at the facts if exceptions are filed. This reflects reality because if no exceptions are filed, it is unrealistic for the entire record to be reviewed. She suggested

that in subsections (b)(2)(A) and (B) the language "in its discretion" should be deleted. Mr. Sykes commented that the standard of review should be a combination of Alternatives 1 and 3. It is important that the Court actually determine where there is proof by clear and convincing evidence. If no exceptions are filed, the Court would not have to review the findings of fact. If exceptions are filed, the Court determines whether the matter in issue has been proved by clear and convincing evidence. He said that he would not like to see the standard as sufficiency of the evidence. He suggested that subsection (b)(1) be retained. If exceptions are taken on the issue of misconduct or incapacity, the Court ought to decide if the case has been made by clear and convincing evidence. The Chair suggested that one way to put this into the Rule is to include language in subsection (b)(2)(B) that provides that if exceptions are filed, the Court of Appeals shall review de novo the issue of whether the findings of fact are supported by the requisite standard of proof.

Mr. Titus questioned whether the standard should be the same as the one in the Judicial Disabilities Commission Rules. The Reporter commented that the attorney discipline process is not the same as the judicial discipline process. Mr. Sykes noted that the review by the Court of Appeals ought to be a review to decide whether misconduct or incapacity has been proven by clear and convincing evidence. The Vice Chair commented that the first

sentence of subsection (b)(2)(B) of Alternative 3 already provides this. Mr. Sykes suggested that the language of subsection (b)(2)(B) should be that the findings of fact "have been proven." The Vice Chair suggested that the language read as follows: "...the findings of fact have been proven by...". The Committee agreed by consensus to this change. The Chair asked whether Alternative 3 as amended was agreeable to the Committee, and the Committee indicated its agreement.

Turning to Rule 16-760, Order Imposing Discipline or Inactive Status, the Chair pointed out that there is a query after subsection (c)(7) on page 76 which reads as follows: "Should the period of six months be changed to one year?", referring to the time for the period of suspension necessary to require the respondent to remove a listing in a telephone directory or law listing suggesting that the respondent is eligible to practice law. The Vice Chair remarked that the listings usually last for one year. Mr. Thompson suggested that one year would be appropriate. The Committee agreed by consensus to the one-year period.

The Chair drew the Committee's attention to subsection (c)(3) of Rule 16-772, Consent to Discipline or Inactive Status, on page 92 of the Rules package. He explained that the added language provides that a licensed psychologist is able to certify an attorney's competence to sign the affidavit. This is not a

certificate of incompetency. There being no comment, the change was approved as presented.

The Reporter drew the Committee's attention to the query on page 101 after subsection (a)(1) of Rule 16-776, Injunction, Expedited Disciplinary Action, which query reads as follows: "Should Bar Counsel be able to file without prior approval or should there be prior approval by the Chair of the Commission, the Commission, or the Court? Particularly as to the suspension or restriction of the attorney's practice, should the process be initiated by a filing in the Court of Appeals, rather than in a circuit court?" This refers to applying for injunctive relief against an attorney. The Vice Chair asked what the context of this suggested change is. The Chair replied that at the last work session of the drafting committee, it was noted that the power to suspend an attorney or restrict an attorney's practice of law rests with the Court of Appeals. Does the portion of this Rule allowing a trial court to grant injunctive relief restricting the attorney's practice go too far?

The Vice Chair commented that the Rules Committee had previously approved this Rule in essentially the same form. The only change is the addition of the words "Chair of the" in subsection (a)(1). Mr. Downes explained that this was added so that the full Commission does not have to approve the application for an injunction. The Vice Chair remarked that on the one hand,

it is quicker for the Chair of the Commission to approve the application, instead of the full Commission; on the other hand, initiating the process by filing in the Court of Appeals may be very slow. The Reporter pointed out that there are four options -- no prior approval of the application for an injunction by Bar Counsel, approval by the Chair of the Commission, approval by the entire Commission, or approval by the Court of Appeals.

Judge Kaplan expressed the opinion that this Rule is necessary. Courts are issuing injunctions without the benefit of a rule. Sometimes the attorney has stolen money in bank accounts in the attorney's name, and more money can be easily removed from those accounts. An injunction is immediately delivered to the financial institution to stop the attorney from removing the money.

Mr. Titus suggested that the Chair of the Peer Review Committee could approve the application for an injunction to keep the Commission from being tainted. Mr. Hochberg remarked that in a real emergency situation, the Rule as drafted could be restrictive if the Chair of the Commission were unavailable. It might be preferable to add an alternative of any other member of the Commission being able to approve the application. The Reporter pointed out that the Vice Chair of the Commission can act in the Chair's place. The Chair said that approval by the Chair of the Commission provides sufficient protection. He

suggested that the Rule be approved as drafted, and the Committee agreed with this suggestion by consensus.

The Chair drew the Committee's attention to the query after section (f) of Rule 16-777, Conservator of Client Matters, on page 105. The query reads as follows: "Should the conservator's authority, other than transitional, end when and if the personal representative is appointed, especially with respect to the sale of the practice?" The Chair responded that this is covered, subject to further order of court. The Rule need not address this. The Vice Chair asked where in the Rule does it imply that the conservator's authority does not end at this point. The Chair said that the drafting committee was satisfied that the language of the Rule takes care of this situation.

The Assistant Reporter pointed out a typographical error in section (n) of Rule 16-781, Reinstatement, on page 115. The reference to "Rule 17-759" should be "Rule 16-759."

Mr. Titus drew the Committee's attention to subsection f 1 of Rule 16-811 at the end of the package of Rules on page 119. He asked if the language in part (B) which reads "who are residents of the county" should be deleted. The Reporter noted that this language appears in the former and current predecessor Rules. Mr. Titus expressed the view that it is not necessary to be a resident; maintaining an office for the practice of law is sufficient contact with the local bar association to be a member

of it. The Reporter commented that some Maryland attorneys work for the U.S. Government in Washington, D.C., but live somewhere else and should be eligible for membership in the county in which they live. To take care of this situation, the word "or" could replace the word "and." The Vice Chair questioned as to why this definition is necessary. The Reporter replied that this definition is present in the current Attorney Discipline Rules. It is not included in the proposed revised rules. It is used in Rule 16-811. Therefore, it is appropriate for the definition of the term to be transferred to that Rule. The Chair suggested that no change be made, and the Committee agreed.

Agenda Item 3. Consideration of proposed amendments to certain rules in Title 6, Settlement of Decedents' Estates: Rule 6-122 (Petitions), Rule 6-207 (Letters of Administration), Rule 6-404 (Information Report), Rule 6-433 (Subsequent Procedure on Petition to Caveat), and Rule 6-455 (Modified Administration)

After the lunch break, Mr. Sykes explained that the Probate Subcommittee suggested modifying several of the Probate Rules to conform to legislative changes. He presented Rule 6-122, Petitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-122 to change the dollar amount of what

constitutes a small estate, and to delete the percentages listed as the amounts of direct and collateral inheritance tax, as follows:

Rule 6-122. PETITIONS

(a) Petition for Probate

The Petition for Probate shall be in the following form:

IN THE ORPHANS' COURT FOR

(OR) ____________________________, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____________________________________ ESTATE NO: ________________________

FOR:

[ ]REGULAR ESTATE PETITION FOR PROBATE Estate value in excess of ~~$20,000~~ $30,000. (If spouse is sole heir or legatee, $50,000.) Complete and attach Schedule A.

[ ]SMALL ESTATE PETITION FOR ADMINISTRATION Estate value of ~~$20,000~~ $30,000 or less. (If spouse is sole heir or legatee, $50,000.) Complete and attach Schedule B.

[ ] WILL OF NO ESTATE Complete items 2 and 5

The petition of:

_________________________________   _________________________________
Name   Address

____

_________________________________   _________________________________
Name   Address

____

______________________________ ______________________________
Name Address

____

Each of us states:

1. I am (a) at least 18 years of age and either a citizen of the United States or a permanent resident alien spouse of the decedent or (b) a trust company or any other corporation authorized by law to act as a personal representative.

2. The Decedent, ____,
was domiciled in ____,
(County)
State of ______________________________ and died on the
________ day of ________________________, ____________, at
____.
(place of death)

3. If the decedent was not domiciled in this county at the time of death, this is the proper office in which to file this petition because: ____
____.

4. I am entitled to priority of appointment as personal representative of the decedent's estate pursuant to §5-104 of the Estates and Trusts Article, Annotated Code of Maryland because:
____
____

and I am not excluded by §5-105 (b) of the Estate and Trusts

Article, Annotated Code of Maryland from serving as personal representative.

5. I have made a diligent search for the decedent's will and to the best of my knowledge:

[ ] none exists; or

[ ] the will dated __________________ (including codicils, if any, dated ____________________________________) accompanying this petition is the last will and it came into my hands in the following manner: ______________________________________

____

and the names and last known addresses of the witnesses are:

________________________________ _______________________________

________________________________ _______________________________

________________________________ _______________________________

6. Other proceedings, if any, regarding the decedent or the estate are as follows: ____

____

____.

7. If any information required by paragraphs 2 through 6 has not been furnished, the reason is:______________________________

____.

8. If appointed, I accept the duties of the office of personal representative and consent to personal jurisdiction in any action brought in this State against me as personal

representative or arising out of the duties of the office of personal representative.

WHEREFORE, I request appointment as personal representative of the decedent's estate and the following relief as indicated:

[ ] that the will and codicils, if any, be admitted to administrative probate;

[ ] that the will and codicils, if any, be admitted to judicial probate;

[ ] that the will and codicils, if any, be filed only;

[ ] that the following additional relief be granted: ____________

____

I solemnly affirm under the penalties of perjury that the contents of the foregoing petition are true to the best of my knowledge, information, and belief.

______________________ Attorney	______________________ Petitioner Date
______________________ Address	______________________ Petitioner Date
______________________	______________________ Petitioner Date
______________________ Telephone Number	______________________ Telephone Number (optional)

IN THE ORPHANS' COURT FOR

(OR) ____________________________, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

____ ESTATE NO. __________

SCHEDULE - A

Regular Estate

Estimated Value of Estate and Unsecured Debts

Personal property (approximate value) .... $ __________

Real property (approximate value) .... $ __________

Value of property subject to:

(a) Direct Inheritance Tax of ~~1%~~ ___% .... $__________

(b) Collateral Inheritance Tax of ~~10%~~ ___% ... $ __________

Unsecured Debts (approximate amount) .... $__________

I solemnly affirm under the penalties of perjury that the contents of the foregoing schedule are true to the best of my knowledge, information, and belief.

Attorney	Petitioner Date
Address	Petitioner Date
	Petitioner Date
Telephone Number	Telephone Number (optional)

....

(FOR REGISTER'S USE)

Safekeeping Wills ________________ Custody Wills ________________

Bond Set $ _______________________ Deputy ______________________

IN THE ORPHANS' COURT FOR

(OR) ________________________, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

____ ESTATE NO. ________

SCHEDULE - B

Small Estate - Assets and Debts of the Decedent

1. I have made a diligent search to discover all property and debts of the decedent and set forth below are:

(a) A listing of all real and personal property owned by the decedent, individually or as tenant in common, and of any other property to which the decedent or estate would be entitled, including descriptions, values, and how the values were determined:

____

____

____

(b) A listing of all creditors and claimants and the amounts claimed, including secured*, contingent and disputed claims:

____

____

2. Allowable funeral expenses are $ __________; statutory family allowances are $ _____________; and expenses of administration claimed are $ ______________.

3. Attached is a List of Interested Persons.

*NOTE: §5-601 ~~(c)~~ (d) of the Estates and Trusts Article, Annotated Code of Maryland "For the purpose of this subtitle - value is determined by the fair market value of property less debts of record secured by the property as of the date of death, to the extent that insurance benefits are not payable to the lien holder or secured party for the secured debt."

I solemnly affirm under the penalties of perjury that the contents of the foregoing schedule are true to the best of my knowledge, information, and belief.

Attorney	Petitioner Date
Address	Petitioner Date
	Petitioner Date
Telephone Number	Telephone Number (optional)

(b) Other Petitions

(1) Generally

Except as otherwise provided by the rules in this Title or permitted by the court, an application to the court for an

order shall be by petition filed with the register. The petition shall be in writing, shall set forth the relief or order sought, and shall state the legal or factual basis for the relief requested. The petitioner may serve on any interested person and shall serve on the personal representative and such persons as the court may direct a copy of the petition, together with a notice informing the person served of the right to file a response and the time for filing it.

(2) Response

Any response to the petition shall be filed within 20 days after service or within such shorter time as may be fixed by the court for good cause shown. A copy of the response shall be served on the petitioner and the personal representative.

(3) Order of Court

The court shall rule on the petition and enter an appropriate order.

Cross reference: Code, Estates and Trusts Article, §§2-102 (c), 2-105, 5-201 through 5-206, and 7-402.

Rule 6-122 was accompanied by the following Reporter's Note.

The 2000 Legislature enacted House Bill 322 (Chapter 118) which changed the amount of the property constituting a small estate from $20,000 to $30,000. The Legislature added a new provision which establishes a limitation of $50,000 for a small estate if the surviving spouse is the sole legatee or heir of the decedent. The Probate/Fiduciary Subcommittee is proposing changes to Rule 6-122 (a) to conform to the new legislation. The Legislature passed Senate Bill 1 (Chapter 497) which also changed the percentage of the value of property subject to direct and collateral inheritance tax. Because these percentages change frequently, the Subcommittee is recommending that the percentage amount be deleted from Schedule A. The Subcommittee is suggesting that the Registers of Wills distribute a sheet with the appropriate percentages along with the probate forms. There is also an incorrect statutory citation in the note in Schedule B which the Subcommittee has corrected.

Mr. Sykes told the Subcommittee that the 2000 legislative session passed House Bill 322 (Chapter 118), which raised the amount of the property constituting a small estate from $20,000 to $30,000 and which added a new provision establishing a limitation of $50,000 for a small estate if the surviving spouse is the sole legatee or heir of the decedent. These changes are reflected in the beginning of section (a) of Rule 6-122. The legislature also passed Senate Bill 1 (Chapter 497), which changed the percentage of the value of property subject to direct and collateral inheritance tax. Rather than changing the percentage amounts in Schedule A, the Subcommittee is proposing

to leave a blank line for the percentage to be filled in depending on the statutory amount in effect. In the note after section 3. of Schedule B, an incorrect statutory reference has been amended. There being no discussion, the Committee approved these changes by consensus.

Mr. Sykes presented Rule 6-207, Letters of Administration, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 200 - SMALL ESTATE

AMEND Rule 6-207 to add another category to the letters of administration of a small estate, as follows:

Rule 6-207. LETTERS OF ADMINISTRATION

Letters of administration to the personal representative shall be in the following form:

STATE OF MARYLAND

LETTERS OF ADMINISTRATION

OF SMALL ESTATE

Estate No. ____________

I certify that administration of the Estate of ___________________________________

____

was granted on the ____ day of
____________________________________, _____,
(month) (year)

to ____
as personal representative and the appointment is in effect this ______ day of
_______________________, ______.
(month) (year)

[ ] Will probated _______________________.
(date)

[ ] Intestate estate.

[ ] Unprobated Will – Probate Not Required.

____
Register of Wills for

____

VALID ONLY IF SEALED WITH THE SEAL OF THE COURT OR THE REGISTER

Cross reference: Code, Estates and Trusts Article, §§6-103 and 6-104.

Rule 6-207 was accompanied by the following Reporter's Note.

On behalf of all of the Registers of Wills in Maryland, the Register of Wills for Caroline County has requested the addition of a new category to the letters of administration of a small estate. The additional category would read "Unprobated Will – Probate Not Required." This would cover the situation where a will does not

have to be probated because the allowances exceed the assets. Apparently, some people are upset that this situation is currently classified as "intestate estate," since the decedent dies with a will.

Mr. Sykes explained that the Registers of Wills of Maryland have requested the addition of a new category in the letters of administration of a small estate. This reads "Unprobated Will -- Probate Not Required." When the allowances exceed the amount of the estate, the current category of "Intestate Estate" is not appropriate, since the decedent died with a will. There being no discussion, the Committee approved by consensus the change to the Rule.

Mr. Sykes presented Rule 6-404, Information Report, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-404 to modify the information report to reflect the statutory changes broadening the class of people who are exempt from inheritance tax, as follows:

Rule 6-404. INFORMATION REPORT

Within three months after appointment, the personal representative shall file with the register an information report

in the following form:

[CAPTION]

Date of Death _______________

[ ] With [ ] Without Will

INFORMATION REPORT

1. a. At the time of death did the decedent have any interest as a joint owner (other than with a ~~surviving spouse~~ person exempted from inheritance tax by Code, Tax General Article, §7-203) in any real or leasehold property located in Maryland or any personal property, including accounts in a credit union, bank, or other financial institution?

[ ] No [ ] Yes If yes, give the following information as to all such jointly owned property:

Name, Address, and Relationship of Joint Owner	Nature of Property	Total Value of Property
__________________________________	_______________	____________
___________________________________	_______________	____________

1. b. At the time of death did the decedent have any interest in any real or leasehold property located outside of Maryland either in the decedent's own name or as a tenant in common?

[ ] No [ ] Yes If yes, give the following information as to such property:

Address, and Nature of Property	Case Number, Names, and Location of Court Where Any Court Proceeding Has Been Initiated With Reference to the Property
______________________________	__________________________________
______________________________	__________________________________
______________________________	__________________________________
______________________________	__________________________________

2. Except for a bona fide sale or a transfer to a person exempted from inheritance tax pursuant to Code, Tax General Article, §7-203, within two years before death did the decedent make any transfer~~, other than a bona fide sale,~~ of any material part of the decedent's property in the nature of a final disposition or distribution, including any transfer that resulted in joint ownership of property?

[ ] No [ ] Yes

If yes, give the following information as to each transfer.

Date of Transfer	Name, Address, and Relationship of Transferee	Nature of Property Transferred	Total Value of Property

3. Except for interests passing to a person exempted by Code, Tax General Article, §7-203, at the time of death did the

decedent have (a) any interest less than absolute in real or personal property over which the decedent retained dominion while alive, including a P.O.D. account, (b) any interest in any annuity or other public or private employee pension or benefit plan ~~that is taxable for federal estate tax purposes,~~ (c) any interest in real or personal property for life or for a term of years, or (d) any other interest in real or personal property less than absolute, in trust or otherwise?

[ ] No [ ] Yes If yes, give the following information as to each such interest:

Description of Interest and Amount or Value	Date and Type of Instrument Establishing Interest	Name, Address, and Relationship of Successor, Owner, or Beneficiary

I solemnly affirm under the penalties of perjury that the contents of this report are true to the best of my knowledge, information, and belief.

Date: ______________________ ______________________________

____
Personal Representative(s)

____
Attorney

____
Address

____

____
Telephone Number

Cross reference: Code, Tax General Article, §§7-201 and 7-224. See Code, Estates and Trusts Article, §1-401 and Code, Financial Institutions Article, §1-204 concerning transfers on death of funds in multiple party accounts, including P.O.D. accounts. See in particular §1-204 (b)(8) and (b)(10), defining multiple party and P.O.D. accounts.

Rule 6-404 was accompanied by the following Reporter's Note.

> The Probate/Fiduciary Subcommittee is recommending that the information report be changed to refer to Code, Tax Article, §7-203 which was changed by the 2000 legislature to broaden the class of persons exempted from inheritance tax. In reference to pension or benefit plans, the Subcommittee is proposing to delete the language in question 3 which reads "that is taxable for federal estate tax purposes" because the plans are specifically exempted from tax by §7-203 of the Tax General Article.

The proposed changes to Rule 6-404 in sections 1., 2., and 3. of the information report take account of the fact that the class of persons exempted from inheritance tax has been broadened by the passage of Senate Bill 1. In section 3., the Subcommittee is recommending the deletion of the language "that is taxable for federal estate tax purposes," because the plans are specifically

exempted from tax by §7-203 of Code, Tax General Article. There being no comment, the Committee approved these changes by consensus.

Mr. Sykes presented Rule 6-433, Subsequent Procedure on Petition to Caveat, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-433 to correct a reference to a renumbered section of Rule 6-122, as follows:

Rule 6-433. SUBSEQUENT PROCEDURE ON PETITION TO CAVEAT

The procedure for responding to and deciding the petition to caveat shall be governed by ~~sections~~ section (b) ~~and (c)~~ of Rule 6-122.

Rule 6-433 was accompanied by the following Reporter's Note.

Mel Sykes pointed out that section (c) of Rule 6-122 no longer exists, since the Rule was renumbered in 1998. The reference in Rule 6-433 to section (c) of Rule 6-122 has to be corrected.

Mr. Sykes explained that this is a "housekeeping" change to correct a reference to "Rule 6-122 (c)" in Rule 6-433. Rule 6-

122 (c) no longer exists, and the correct reference is to "Rule 6-122 (b)." The Committee agreed by consensus to this change.

Mr. Sykes presented Rule 6-455, Modified Administration, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-455 to remove the percentage amount for direct and collateral inheritance tax and to remove the categories listed for exempt distribution, as follows:

Rule 6-455. MODIFIED ADMINISTRATION

(a) Generally

When authorized by law, an election for modified administration may be filed by a personal representative within three (3) months after the appointment of the personal representative.

(b) Form of Election

An election for modified administration shall be in the following form:

BEFORE THE REGISTER OF WILLS FOR ______________________, MARYLAND

ESTATE OF __________________________________ Estate No. ______

ELECTION OF PERSONAL REPRESENTATIVE FOR

MODIFIED ADMINISTRATION

1. I elect Modified Administration. This estate qualifies for Modified Administration for the following reasons:

(a) The decedent died on ______________ [ ] with a will or [ ] without a will.

(b) This Election is filed within 3 months from the date of my appointment which was on ____________________________________.

(c) [ ] All residuary legatees named in the will or [ ] all heirs of the intestate decedent are limited to:

[ ] The personal representative, [ ] a surviving spouse, [ ] children of the decedent.

(d) Consents of the persons referenced in 1 (c) are [ ] filed herewith or [ ] were previously filed.

(e) The estate is solvent and the assets are sufficient to satisfy all specific legacies.

(f) Final distribution of the estate can be made within 12 months after the date of my appointment.

2. Property of the estate is briefly described as follows:

Description	Estimated Value
_____________________________	__________________________________
_____________________________	__________________________________
_____________________________	__________________________________
_____________________________	__________________________________

3. I acknowledge that I must file a Final Report Under Modified Administration no later than 10 months after the date of appointment and that, upon request of any interested person, I must provide a full and accurate Inventory and Account to all interested persons.

4. I acknowledge the requirement under Modified Administration to make full distribution within 12 months after the date of appointment and I understand that the Register of Wills and Orphans' Court are prohibited from granting extensions under Modified Administration.

5. I acknowledge and understand that Modified Administration shall continue as long as all the requirements are met.

I solemnly affirm under the penalties of perjury that the contents of the foregoing are true to the best of my knowledge, information and belief.

______________________	______________________
Attorney	Personal Representative
Address	Personal Representative
Address	
Telephone	

(c) Consent

An election for modified administration may be filed if all the residuary legatees of a testate decedent and the heirs at law of an intestate decedent consent in the following form:

BEFORE THE REGISTER OF WILLS FOR _____________________, MARYLAND

ESTATE OF ________________________________Estate No. ___________

CONSENT TO ELECTION FOR
MODIFIED ADMINISTRATION

I am a [ ] residuary legatee or [ ] heir of the decedent who died intestate. I consent to Modified Administration and acknowledge that under Modified Administration:

1. Instead of filing a formal Inventory and Account, the personal representative will file a verified Final Report Under Modified Administration no later than 10 months after the date of appointment.

2. Upon written request to the personal representative by any legatee not paid in full or any heir-at-law of a decedent who died without a will, a formal Inventory and Account shall be provided by the personal representative to the legatees or heirs of the estate.

3. At any time during administration of the estate, I may revoke Modified Administration by filing a written objection with the Register of Wills. Once filed, the objection is binding on the estate and cannot be withdrawn.

4. If Modified Administration is revoked, the estate will

proceed under Administrative Probate and the personal representative shall file a formal Inventory and Account, as required, until the estate is closed.

5. Unless I waive notice of the verified Final Report Under Modified Administration, the personal representative will provide a copy of the Final Report to me, upon its filing which shall be no later than 10 months after the date of appointment.

6. Final Distribution of the estate will occur not later than 12 months after the date of appointment of the personal representative.

________________________________ ________________________________

Signature of Residuary Legatee or Heir

[ ] Surviving Spouse [ ] Child
[ ] Residuary Legatee or Heir serving as Personal Representative

____

Type or Print Name

________________________________ ________________________________

Signature of Residuary Legatee or Heir

[ ] Surviving Spouse [ ] Child
[ ] Residuary Legatee or Heir serving as Personal Representative

____

Type or Print Name

(d) Final Report

(1) Filing

A verified final report shall be filed no later than 10 months after the date of the personal representative's appointment.

(2) Copies to Interested Persons

Unless an interested person waives notice of the verified final report under modified administration, the personal representative shall serve a copy of the final report on each interested person.

(3) Contents

A final report under modified administration shall be in the following form:

BEFORE THE REGISTER OF WILLS FOR ______________________, MARYLAND

ESTATE OF ______________________________ Estate No. _______________

Date of Death ____________________________ Date of Appointment of Personal Repre-

sentative _______________

FINAL REPORT UNDER MODIFIED ADMINISTRATION

(Must be filed within 10 months after the date of appointment)

I, Personal Representative of the estate, report the following:

1. The estate continues to qualify for Modified Administration as set forth in the Election for Modified Administration on file with the Register of Wills.

2. Attached are the following Schedules and supporting attachments:

Total Schedule A: Reportable Property .... $ _______

Total Schedule B: Payments and Disbursements .... $(_______)
Total Schedule C: Distribution of Net Reportable Property .... $ _______

3. I acknowledge that:

(a) Final distributions shall be made within 12 months after the date of my appointment as personal representative.

(b) The Register of Wills and Orphans' Court are prohibited from granting extensions of time.

(c) If Modified Administration is revoked, the estate shall proceed under Administrative Probate, and I will file a formal Inventory and Account, as required, until the estate is closed.

I solemnly affirm under the penalties of perjury that the contents of the foregoing are true to the best of my knowledge, information, and belief and that any property valued by me which I have authority as personal representative to appraise has been

valued completely and correctly in accordance with law.

______________________________	______________________________
Attorney Signature	Personal Representative Date
______________________________	______________________________
Address	Personal Representative Date
______________________________	______________________________
Address	Personal Representative Date
______________________________	
Telephone	

CERTIFICATE OF SERVICE OF

FINAL REPORT UNDER MODIFIED ADMINISTRATION

I hereby certify that on this ____ day of ____________, I delivered or mailed, postage prepaid, a copy of the foregoing Final Report Under Modified Administration and attached Schedules to the following persons:

Names	Addresses
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________
______________________________	______________________________

______________________________	______________________________
Attorney	Personal Representative
______________________________	______________________________
Address	Personal Representative
______________________________	______________________________
City, State, Zip Code	

______________________________ _______________________________
Telephone Number

FOR REGISTER OF WILLS USE

Distributions subject to collateral _____ Tax thereon _____
tax at ~~11.111%~~ _____%

Distribution subject to collateral ______ Tax thereon ________
tax at ~~10%~~ _____%

Distribution subject to direct tax ______ Tax thereon ________
at ~~1.0101%~~ _____%

Distribution subject to direct tax ______ Tax thereon ________
~~at 1%~~

Exempt distributions ~~to spouse~~ __________

Exempt distributions ~~to charities~~ __________

Exempt distributions ~~to persons not exceeding $150 (decedents dying prior to 1/1/98)~~ __________

~~not exceeding $1,000 (decedents dying on or after 1/1/98)~~

Total Inheritance Tax due __________

Total Inheritance Tax paid __________

Gross estate __________ Probate Fee & Costs __________
Collected __________

FINAL REPORT UNDER MODIFIED ADMINISTRATION

SUPPORTING SCHEDULE A

REPORTABLE PROPERTY

ESTATE OF ________________________________Estate No. ___________

Item No.	Description	Basis of Valuation	Value

TOTAL REPORTABLE PROPERTY OF THE DECEDENT $ __________
(Carry forward to Schedule C)

INSTRUCTIONS

ALL REAL AND PERSONAL PROPERTY MUST BE INCLUDED AT DATE OF DEATH VALUE. THIS DOES NOT INCLUDE INCOME EARNED DURING ADMINISTRATION OR CAPITAL GAINS OR LOSSES REALIZED FROM THE SALE OF PROPERTY DURING ADMINISTRATION. ATTACHED APPRAISALS OR COPY OF REAL PROPERTY ASSESSMENTS AS REQUIRED:

1. Real and leasehold property: Fair market value must be established by a qualified appraiser. For decedents dying on or after January 1, 1998, in lieu of a formal appraisal, real and leasehold property may be valued at the full cash value for property tax assessment purposes as of the most recent date of finality. This does not apply to property tax assessment purposes on the basis of its use value.

2. The personal representative may value: Debts owed to the decedent, including bonds and notes; bank accounts, building, savings and loan association shares, money and corporate stocks listed on a national or regional exchange or over the counter securities.

3. All other interests in tangible or intangible property: Fair market value must be established by a qualified appraiser.

ATTACH ADDITIONAL SCHEDULES AS NEEDED

FINAL REPORT UNDER MODIFIED ADMINISTRATION

SUPPORTING SCHEDULE B

Payments and Disbursements

ESTATE OF ___________________________________ Estate No.__________

Item No.	Description	Amount Paid

Total Disbursements: $ ___________
(Carry forward to Schedule C)

INSTRUCTIONS

1. Itemize all liens against property of the estate including mortgage balances.

2. Itemize sums paid (or to be paid) within twelve months from the date of appointment for: debts of the decedent, taxes due by the decedent, funeral expenses of the decedent, family allowance, personal representative and attorney compensation, probate fee and other administration expenses of the estate.

ATTACH ADDITIONAL SCHEDULES AS NEEDED

FINAL REPORT UNDER MODIFIED ADMINISTRATION

SUPPORTING SCHEDULE C

Distributions of Net Reportable Property

1. SUMMARY OF REPORTABLE PROPERTY

Total from Schedule A .... ____________

Total from Schedule B.......................... ____________

Total Net Reportable Property.................. ____________
(Schedule A minus Schedule B)

2. SPECIFIC BEQUESTS (If Applicable)

Name of Legatee or Heir	Distributable Share of Reportable Estate	Inheritance Tax Thereon

3. DISTRIBUTION OF BALANCE OF ESTATE

Name of Legatee or Heir	Distributable Share of Reportable Estate	Inheritance Tax Thereon

Total Reportable Distributions $ __________

Inheritance Tax $ __________

ATTACH ADDITIONAL SCHEDULES AS NEEDED

(4) Inventory and Account

The provisions of Rule 6-402 (Inventory) and Rule 6-417 (Account) do not apply.

(e) Revocation

(1) Causes for Revocation

A modified administration shall be revoked by:

(A) the filing of a timely request for judicial probate;

(B) the filing of a written objection by an interested person;

(C) the personal representative's filing of a withdrawal of the election for modified administration;

(D) the court, on its own initiative, or for good cause

shown by an interested person or by the register;

(E) the personal representative's failure to timely file the final report and make distribution within 12 months after the date of appointment, or to comply with any other provision of this Rule or Code, Estate and Trusts Article, §§5-701 through 5-710.

(2) Notice of Revocation

The register shall serve notice of revocation on each interested person.

(3) Consequences of Revocation

Upon revocation, the personal representative shall file a formal inventory and account with the register pursuant to Rules 6-402 and 6-417. The inventory and account shall be filed within the time provided by Rules 6-402 and 6-417, or, if the deadline for filing has passed, within 30 days after service of the register's notice of revocation.

Source: This Rule is new.

Rule 6-455 was accompanied by the following Reporter's Note.

> Because Senate Bill (Chapter 497) changed the percentages of the value of property subject to direct and collateral inheritance tax, the Probate/Fiduciary Subcommittee is recommending that the percentage amounts be deleted from the section of Rule 6-455 labeled "For Register of Wills Use." The same legislation changed the categories of persons exempted from inheritance tax. The Subcommittee is recommending that the specific categories of

persons and institutions exempted from tax be deleted, and several references to “exempt distributions” be retained.

Mr. Sykes said that because the legislature changed the percentages of the value subject to direct and collateral inheritance tax, the Subcommittee is recommending that the percentage amounts be deleted from the section of the Rule labeled “For Register of Wills Use.” Also, the specific categories of persons and institutions exempted from tax should be deleted, and general references to “exempt distributions” be added. Extra lines could be added for more than one exempt distribution. Mr. Hochberg asked if the name of the party is to be listed. Mr. Sykes answered in the affirmative. The Chair suggested that the language “Identity of the Recipient” should be placed under each line. The Committee agreed by consensus with these suggestions.

Added Agenda Item.

Mr. Titus explained that an extra item is being added to the agenda. He presented Rules 8-501 and 8-504 for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-501 to delete the reference to the opinion or jury instructions of the trial court in section (c) and to delete the second sentence of section (k), as follows:

Rule 8-501. RECORD EXTRACT

. . .

(c) Contents

The record extract shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal and any cross-appeal. It shall include the judgment appealed from; the opinion or jury instructions of the trial court, if any; ~~the opinion of the Court of Special Appeals if the case has been decided by that Court;~~ and such other parts of the record as are designated by the parties pursuant to section (d) of this Rule. The record extract shall not include those parts of the record that support facts set forth in an agreed statement of facts or stipulation made pursuant to section (g) of this Rule nor any part of a memorandum of law in the trial court, unless it has independent relevance. The fact that a part of the record is not included in the record extract shall not preclude a party from relying on it or the appellate court from considering it.

. . .

(k) Record Extract in Court of Appeals on Review of Case From Court of Special Appeals

When a writ of certiorari is issued to review a case pending in or decided by the Court of Special Appeals, unless the Court of Appeals orders otherwise, the appellant shall file in that Court 20 copies of any record extract that was filed in the Court of

Special Appeals within the time the appellant's brief is due. ~~In those cases, any opinion of the Court of Special Appeals shall be included as an appendix to the appellant's brief in the Court of Appeals.~~ If a record extract was not filed in the Court of Special Appeals or if the Court of Appeals orders that a new record extract be filed, the appellant shall prepare and file a record extract pursuant to this Rule.

. . .

Rule 8-501 was accompanied by the following Reporter's Note.

The Rules Committee is recommending the deletion of the second sentence of section (k) and its transfer to Rule 8-504. See the Reporter's Note to Rule 8-504.

Because of the proposed modification to Rule 8-504 (b), the Appellate Subcommittee is recommending the deletion in section (c) of the reference to placing the opinion or jury instructions of the trial court into the record extract. See Reporter's Note to Rule 8-504 (b).

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-504 (b) to delete the

reference to criminal cases and to add rulings to be included in the appellant’s appendix to the brief, as follows:

Rule 8-504. CONTENTS OF BRIEF

(a) Contents

A brief shall contain the items listed in the following order:

(1) A table of contents and a table of citations of cases, constitutional provisions, statutes, ordinances, rules, and regulations, with cases alphabetically arranged. When a reported Maryland case is cited, the citation shall include a reference to the official Report.

(2) A brief statement of the case, indicating the nature of the case, the course of the proceedings, and the disposition in the lower court, except that the appellee's brief shall not contain a statement of the case unless the appellee disagrees with the statement in the appellant's brief.

(3) A statement of the questions presented, separately numbered, indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail.

(4) A clear concise statement of the facts material to a determination of the questions presented, except that the appellee's brief shall contain a statement of only those additional facts necessary to correct or amplify the statement in the appellant's brief. Reference shall be made to the pages of the record extract supporting the assertions. If pursuant to these rules or by leave of court a record extract is not filed, reference shall be made to the pages of the record or to the transcript of

testimony as contained in the record.

Cross reference: Rule 8-111 (b).

(5) Argument in support of the party's position.

(6) A short conclusion stating the precise relief sought.

(7) The citation and verbatim text of all pertinent constitutional provisions, statutes, ordinances, rules, and regulations except that the appellee's brief shall contain only those not included in the appellant's brief.

(8) If the brief is prepared with proportionally spaced type, the font used and the type size in points shall be stated on the last page.

Cross reference: For requirements concerning the form of a brief, see Rule 8-112.

(9) Any opinion of the Court of Special Appeals, which shall be included as an appendix to the appellant's brief in the Court of Appeals.

Cross reference: Rule 8-501.

(b) In the Court of Special Appeals -- Extract of Instructions or Opinion ~~in Criminal Cases~~

~~In criminal cases in~~ In the Court of Special Appeals, the appellant shall reproduce, as an appendix to the brief, the pertinent part of ~~any~~ every ruling, opinion, or jury instruction~~s or opinion~~ of the lower court that deals with points raised by the appellant on appeal. If the appellee believes that the part reproduced by the appellant is inadequate, the appellee shall reproduce, as an appendix to the appellee's brief, any additional part of the instructions or opinion believed necessary by

the appellee.

(c) Effect of Noncompliance

For noncompliance with this Rule, the appellate court may dismiss the appeal or make any other appropriate order with respect to the case, including an order that an improperly prepared brief be reproduced at the expense of the attorney for the party for whom the brief was filed.

Source: This Rule is derived as follows:

Section (a) is derived from former Rules 831 c and d and 1031 c 1 through 5 and d 1 through 5, with the exception of subsection (a)(6) which is derived from FRAP 28 (a)(5).

Section (b) is derived from former Rule 1031 c 6 and d 6.

Section (c) is derived from former Rules 831 g and 1031 f.

Rule 8-504 was accompanied by the following Reporter's Note.

The Rules Committee is recommending the transfer of language in section (k) of Rule 8-501 to a new subsection (a)(9) of Rule 8-504 to emphasize that a Court of Special Appeals opinion is to be included as an appendix to the appellant's brief in the Court of Appeals.

The Appellate Subcommittee is recommending a change to section (b) so that in every appeal to the Court of Special Appeals, including civil cases, the appellant shall include as an appendix to his or her brief the pertinent part of every ruling as well as of every opinion and jury instruction that deal with points raised by the appellant. The Subcommittee feels that it is preferable to put this in an appendix to the brief, instead of in the record extract, because it would make it easier for the Court

of Appeals to review the case to see if a bypass of the Court of Special Appeals is appropriate.

The Appellate Subcommittee is suggesting that the language in Rule 8-501 (c) which reads "the opinion or jury instructions of the trial court, if any" should be deleted as well as the language in section (k) which reads "In those cases, any opinion of the Court of Special Appeals shall be included as an appendix to the appellant's brief in the Court of Appeal." In their place, language is to be added to Rule 8-504 in subsection (a)(9) providing that the opinion of the Court of Special Appeals is to be part of the contents of the brief and to section (b) to help the Bypass Committee of the Court of Appeals have available the opinions, rulings, and jury instructions in both civil and criminal cases.

Mr. Titus cautioned that this may be a trap for the unwary practitioner. The Chair responded that the Court of Special Appeals will be liberal. Mr. Sykes asked when the changes will go into effect. The Chair replied that the Rules will be in the next Report to the Court and that he did not know when the Court would consider them. Mr. Titus recommended that the effective date be deferred. The Reporter suggested a date of July 1, 2001. Mr. Titus expressed his concern about the reference to rulings and asked why this was added. The Chair answered that Alex Cummings, Clerk of the Court of Appeals, had said that the bypass

committee of the Court wants the full flavor of the issue, and not simply the arguments pro and con. He suggested that the Rule not be changed further. There being no changes suggested, the Rules were approved as presented.

Agenda Item 4. Consideration of proposed amendments to Rule 14 of the Rules Governing Admission to the Bar (Special Admission of Out-of-State Attorneys)

Mr. Titus presented Rule 14, Special Admission of Out-of-State Attorneys, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND

AMEND Rule 14 so that it applies to out-of-state attorneys representing clients in a binding arbitration in Maryland, as follows:

Rule 14. SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEYS

(a) Motion for Special Admission

A member of the Bar of this State who is an attorney of record in an action pending in any court of this State, ~~or~~ before an administrative agency of this State or any of its political subdivisions, or representing a client in a binding arbitration, may move, in writing, that an attorney who is a member in good standing of the Bar of another state be admitted to practice in this State for the limited purpose of appearing and participating in the action as co-counsel with the movant. If the action is pending in

a court, the motion shall be filed in that court. If the action is pending before an administrative agency or arbitration panel, the motion shall be filed in the circuit court for the county in which the principal office of the agency is located or in which the arbitration hearing is located or in any other circuit to which the action may be appealed and shall include the movant's signed certification that copies of the motion have been furnished to the agency or the arbitration panel, and to all parties of record.

(b) Certification by Out-of-State Attorney

The attorney whose special admission is moved shall certify in writing the number of times the attorney has been specially admitted during the twelve months immediately preceding the filing of the motion. The certification may be filed as a separate paper or may be included in the motion under an appropriate heading.

(c) Order

The court by order may admit specially or deny the special admission of an attorney. In either case, the clerk shall forward a copy of the order to the State Court Administrator, who shall maintain a docket of all attorneys granted or denied special admission. When the order grants or denies the special admission of an attorney in an action pending before an administrative agency, the clerk also shall forward a copy of the order to the agency.

(d) Limitations on Out-of-State Attorney's Practice

An attorney specially admitted may act only as co-counsel for a party represented by an attorney of record in the action who is admitted to practice in this State. The specially admitted attorney may participate in the court or administrative proceedings

only when accompanied by the Maryland attorney, unless the latter's presence is waived by the judge or administrative hearing officer presiding over the action. Any out-of-state attorney so admitted is subjected to the Maryland Rules of Professional Conduct.

Cross reference: See Code, Business Occupations and Professions Article, §10-215.

Committee note: The Committee has not recommended a numerical limitation on the number of appearances pro hac vice to be allowed any attorney. Specialized expertise of out-of-state attorneys or other special circumstances may be important factors to be considered by judges in assessing whether Maryland litigants have access to effective representation. This Rule is not intended, however, to permit extensive or systematic practice by attorneys not licensed in Maryland. The Committee is primarily concerned with assuring professional responsibility of attorneys in Maryland by avoiding circumvention of Rule 13 (Out-of-State Attorneys) or Kemp Pontiac Cadillac, Inc. et al vs. S & M Construction Co., Inc., 33 Md. App. 516 (1976). The Committee also noted that payment to the Clients' Security Trust Fund of the Bar of Maryland by an attorney admitted specially for the purposes of an action is not required by existing statute or rule of court.

Source: This Rule is derived from former Rule 20.

Bar Admission Rule 14 was accompanied by the following Reporter’s Note.

Because of many inquiries to the Rules Committee Office as to this issue, the Attorneys Subcommittee is proposing to modify Rule 14 to clarify that an out-of-state attorney representing a client in a binding

> arbitration in Maryland should apply for pro hac vice admission to the Maryland Bar. This would avoid the possibility of an attorney engaging in the unauthorized practice of law.

Mr. Titus explained that there has been some uncertainty regarding whether out-of-state attorneys representing clients in a binding arbitration have to be admitted pro hac vice. Senator Stone noted that this does not apply to mediation. He asked about non-binding arbitration. Mr. Titus replied that if the outcome does not obligate someone, it is harmless. The Chair said that an out-of-state attorney cannot represent a client, unless admitted through this Rule. Judge Heller asked if representing a client in any alternative dispute resolution process is the practice of law. The Reporter responded that the MSBA had a committee studying the question of what constitutes the practice of law. The Chair inquired if a petition for pro hac vice has to be filed if the parties agreed that the dispute will be arbitrated at a certain place such as a hotel, the attorneys are from Virginia and Washington, D.C., and there is no case pending. Mr. Sykes observed that he is subject to the Maryland Rules of Professional Conduct, and an out-of-state attorney is subject to his or her state's ethics rules.

Mr. Titus commented that the issue is whether the attorney is or is not practicing law when he or she represents someone in a binding arbitration. The Chair suggested that the following

language could be added after the words "binding arbitration": "in an action pending in a Maryland court or before an administrative agency of this State." Mr. Titus disagreed, because that would be blessing the unauthorized practice of law. Senator Stone noted that this change could be applicable before a suit is filed. Mr. Sykes pointed out that this could be a trap for unwary attorneys. He said that if the arbitration hearing were in D.C., he would not check the D.C. rules. If it were a California case, and a New York attorney went out to California to give the New York client advice in a connection with a California proceeding, it is not clear whether a rule like this would apply. Mr. Titus explained that the purpose of the amendment is to legitimize what is actually going on.

Judge Heller questioned why binding and non-binding arbitration is being distinguished. An out-of-state attorney who represents a client in a non-binding arbitration should be held to the same standard. Mr. Titus answered that the issue is what is the practice of law. This is not necessarily the issue in a non-binding arbitration. Judge Heller asked why mediation and arbitration are distinguished. The Chair noted that a Maryland attorney who goes to Nebraska to take the deposition of a party in a pending Maryland case is not admitted pro hac vice.

The Chair suggested that after the word "client" the following language could be added: "in a binding arbitration

proceeding of an action pending in a court or administrative agency of this State." This gives the attorney a place to file the petition. Mr. Titus argued that the proposed Rule change gives the attorney a place to file. The Chair asked if the Rule should provide that an out-of-state attorney is practicing Maryland law if he or she decides to arbitrate the case at a Maryland hotel. Judge Heller commented that more information is needed as to what the case law is interpreting this. Mr. Titus suggested that the Rule could apply in a binding arbitration involving the application of Maryland law. He said that he sees cases from administrative agencies which are disastrous. He is aware of one large corporation that is hiring arbitrators who are not well educated, and arbitration is spreading like wildfire. Judge Heller pointed out that the proposed Rule does not prevent that corporation from hiring bad arbitrators.

Mr. Hochberg commented that if the language "in this State involving the application of Maryland law" is added, it would bring in the question of conflict of laws. The Chair said that the proceeding involves an action pending before a court or administrative agency of this State. Mr. Titus argued that there are hundreds of arbitrations independent of pending cases.

Mr. Titus noted that the current Rule asks the out-of-state attorney to state how many times he or she has been specially admitted and whether the Maryland attorney must accompany the

out-of-state attorney in the proceedings. Judge Johnson said that when D.C. attorneys come into court, he evaluates both the Maryland attorney and the D.C. attorney before he makes a determination. Mr. Karceski remarked that the Maryland attorney has a right to practice, and this may be punishing the out-of-state attorney. Judge Johnson responded that he determines this.

Mr. Titus reiterated that this is an unauthorized practice of law issue. The Chair noted that hidden in the Rule is the principle that only Maryland attorneys can participate in binding arbitration proceedings conducted in this State. Mr. Titus remarked that existing law would say that a deposition is the practice of law. Judge Heller pointed out that under Title 17, there is a definition of the term "arbitration." Arbitration is very judicial, and the reason for distinguishing between non-binding and binding is unclear. The Chair stated that the issue of the unauthorized practice of law is not addressed in this Rule. The Rule should not tell an out-of-state attorney that he or she cannot arbitrate in Maryland. Mr. Titus commented that the proposed change to add the language "in this State involving the application of Maryland law" would preclude the need to refer only to binding arbitration. The definition of arbitration is in Title 17.

The Chair suggested that a Committee note could be added which states that the term "arbitration" is defined in Rule 17-

102 (b), and the word "binding" could be taken out. Mr. Karceski asked if the language "the application of Maryland law" would create problems.

Mr. Klein stated that with respect to any arbitration that is physically held in Maryland, unless there is a preexisting agreement of the parties to apply the substantive law of a state other than Maryland, then, at a minimum, because Maryland is the forum of the arbitration, the parties necessarily would have to apply Maryland "choice-of-law" principles in order to determine whether the substantive law of Maryland or some other state should otherwise govern the proceedings. Is the act of applying Maryland choice-of-law rules to determine what state's substantive law governs the proceedings the type of "application of Maryland law" that the Rule is intended to reach? If it is not, then the application of Maryland choice-of-law principles should be excluded from the intended scope of the language "involving application of Maryland law."

The Chair said that if anything arises during the proceeding that requires Maryland law on the point, it would involve the application of Maryland law. Mr Hochberg expressed the view that simply adding the language "in this State" is sufficient. Mr. Klein noted that under the choice of law rules, unless otherwise specified by contract, the law of the forum in which the case is being heard applies. Mr. Titus moved that the language "in this

State involving the application of Maryland law" should be added after the word "arbitration" in the fourth line of the Rule, the word "binding" is to be removed, and a Committee note is to be added referring to the definition of "arbitration" in Rule 17-102 (b). The motion was seconded, and it passed with two abstentions.

Agenda Item 5. Continued consideration of: Proposed new Rule 8-605.1 (Reporting of Opinions of the Court of Special Appeals) and Proposed amendments to: Rule 8-606 (Mandate) and Rule 8-113 (Court papers - Duty of Clerk)

Mr. Titus presented Rules 8-605.1, 8-113, and 8-606 for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 600 - DISPOSITION

ADD new Rule 8-605.1, as follows:

Rule 8-605.1. REPORTING OF OPINIONS OF THE COURT OF SPECIAL APPEALS

(a) Publication of Opinions

The Court of Special Appeals shall designate for publication only those opinions that are of substantial interest as precedents.

(b) Request for Publication of Unreported

Opinion

At any time prior to the issuance of the mandate, the Court of Special Appeals, on its own initiative or at the request of a party or nonparty filed prior to the date on which the mandate is due to be issued, may designate for publication an opinion that was previously designated as unreported at the time that it was filed. An unreported opinion may not be designated for publication after the issuance of the mandate.

Cross reference: Rule 8-606 (f).

Source: This Rule is derived as follows:
Section (a) is derived from Rule 8-113 (a).
Section (b) is new.

Rule 8-605.1 was accompanied by the following Reporter's Note.

At the suggestion of the Rules Committee, the Appellate Subcommittee proposes adding a new rule which provides that an unreported opinion may be converted to a reported one before the mandate has issued. This avoids the unfair situation of an opinion being converted from unreported to reported when it is too late for the other party to file a petition for a writ of certiorari.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 600 - DISPOSITION

AMEND Rule 8-606 to add a new section (f) providing for revisory power of an appellate court over a mandate, as follows:

Rule 8-606. MANDATE

(a) To Evidence Order of the Court

Any disposition of an appeal, including a voluntary dismissal, shall be evidenced by the mandate of the Court, which shall be certified by the Clerk under the seal of the Court and shall constitute the judgment of the Court.

(b) Issuance of Mandate

Upon a voluntary dismissal, the Clerk shall issue the mandate immediately. In all other cases, unless a motion for reconsideration has been filed or the Court orders otherwise, the Clerk shall issue the mandate upon the expiration of 30 days after the filing of the Court's opinion or entry of the Court's order.

(c) To Contain Statement of Costs

The mandate shall contain a statement of the order of the Court assessing costs and the amount of the costs taxable to each party.

(d) Transmission - Mandate and Record

Upon issuance of the mandate, the Clerk shall transmit it to the appropriate

lower court. Unless the appellate court orders otherwise, the original papers comprising the record shall be transmitted with the mandate.

(e) Effect of Mandate

Upon receipt of the mandate, the clerk of the lower court shall enter it promptly on the docket and the lower court shall proceed in accordance with its terms. Except as otherwise provided in Rule 8-611 (b), the assessment of costs in the mandate shall not be recorded and indexed as provided by Rule 2-601 (c).

Query: Should section (f) encompass all of the revisory powers of Rule 2-535, with the word "mandate" substituted for the word "judgment" wherever it appears?

(f) Revisory Power

The court on its own initiative or on motion of any party filed at any time may exercise revisory power and control over a mandate in case of fraud, mistake, or irregularity.

Cross reference: Code, Courts Article, §6-408.

Source: This Rule is derived from former Rules 1076, 1077, 876, and 877.

Rule 8-606 was accompanied by the following Reporter's Note.

In conjunction with the addition of proposed Rule 8-605.1, the Appellate Subcommittee is suggesting that a new section (f) be added to Rule 8-606 to clarify that the court has revisory power over the mandate in cases of fraud, mistake, or irregularity.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 8-113 by removing a sentence from section (a), as follows:

Rule 8-113. COURT PAPERS -- DUTY OF CLERK

(a) Opinions

All opinions of the Court shall be filed with the Clerk. ~~The Court of Special Appeals shall designate for publication only those opinions that have substantial general interest as precedent.~~ The Clerk shall deliver a certified copy of each opinion to be published to the State Reporter for inclusion in the State Reports.

(b) Record on Appeal

(1) Request by Governor - Criminal Cases

When requested by the Governor, the Clerk may send to the Governor the record on appeal in a criminal case. The Clerk shall obtain a receipt.

(2) For Preparation of Record Extract

When necessary for preparation of a record extract and on request of a party, the Clerk may send all or part of the record on appeal to a commercial printer or photocopier for reproduction.

(3) Removal to State Archives

The Clerk shall deliver the original records to the State Archives for permanent retention in accordance with the procedures

established by the State Archivist and Records Management Division.

(c) Other Court Papers

Except as otherwise provided in this Rule, the Clerk shall not release any original court paper without permission of the Court and the receipt of the party to whom it is delivered.

Source: This Rule is derived as follows:
Section (a) is derived from former Rules 1092 a and b and 891 a.
Section (b) is derived from former Rules 1091 a and 891 b.
Section (c) is derived from former Rules 1091 b and 891 c.

Rule 8-113 was accompanied by the following Reporter's Note.

The Appellate Subcommittee is recommending the deletion of the second sentence in section (a) and its transfer to proposed Rule 8-605.1. See the Reporter's Note to proposed Rule 8-605.1.

Mr. Titus explained that a prominent attorney had called him because after the attorney lost an appellate case, the attorney did not appeal because the case was unreported. After it was too late for the attorney to appeal, the Court of Special Appeals decided to publish the case. If the attorney had known that the case was going to be published, the attorney would have noted an appeal. The suggestion is to add a new Rule which provides that before the mandate is issued, anyone can ask for an opinion to be published. At the last discussion, the point was made that the request for publication could come on the 29th day. If so, the

mandate would not be issued. Rule 8-113 would be amended to take out the second sentence of section (a) providing that the Court of Special Appeals designates for publication only opinions of substantial general interest as precedent.

The Chair said that if an attorney is involved in litigation and would like his or her case as precedent, the court can delay the issuance of the mandate if the request to publish is made at the last minute. This gives the parties time to deal with the matter. Judge Heller asked if the Rule should provide that the mandate will not be issued when there is a late request. Mr. Titus responded that it was too difficult to draft this concept, because it could create a situation where people deliberately make the request to slow the proceedings down. The Chair added that if the request to publish comes on the 29th day, the court can instruct the clerk to delay the mandate.

Mr. Titus directed the Committee's attention to the proposed amendment to Rule 8-606, which provides that the court can exercise control over the mandate in case of fraud, mistake, or irregularity. There is no time limit for these issues. The Chair observed that Rule 2-535 provides that the court, on the motion of any party, can exercise revisory power. The proposed amendment to Rule 8-606 allows the court to exercise the power on its own motion, as well as on motion of a party. There being no changes suggested, proposed new Rule 8-605.1 and the proposed

amendments to Rules 8-113 and 8-606 were approved as presented.

The Chair adjourned the meeting.