COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Room 1100A of the People's Resource Center, 100 Community Place, Crownsville, Maryland, on September 9, 2005.

Members present:

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

Albert D. Brault, Esq.
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
Timothy F. Maloney, Esq.
Hon. John L. Norton, III
Anne C. Ogletree, Esq.
Debbie L. Potter, Esq.
Larry W. Shipley, Clerk
Hon. William B. Spellbring, Jr.
Del. Joseph F. Vallario, Jr.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Andrew Smullian, Rules Committee Intern
Sally Rankin, Court Information Office
Brian L. Zavin, Esq., Office of the Public Defender
Andrea N. Padley, YWCA
Dilip Paliath, Governor's Office of Crime Control and Prevention
Anne Litecky, Governor's Office of Crime Control and Prevention
Barbara Bond, Esq., Office of the Attorney General
Norma Haily, Office of the Sheriff, Prince George's County
Louis Oertly
Cynthia Lifson Golomb, Esq.
Joycelyn M. Evans, Office of Victim Service, Maryland Department of Public Safety and Correctional Services
Kathryn Beerley, MSW, Cecil County Domestic Violence Shelter
Jessica Landers, Maryland Network Against Domestic Violence
Nancy Terry, Anne Arundel County Police
Clifton Files, Administrative Office of the Courts
Lisae C. Jordan, Esq., Maryland Coalition Against Sexual Assaults
Mary R. Craig, Esq., Maryland-Delaware-D.C. Press Association
Carol Melamed, Esq., The Washington Post
Caryn Tamber, The Daily Record
Roberta M. Roper, Maryland Crime Victims' Resource Center, Inc.

Russell P. Butler, Esq., Maryland Crime Victims' Resource Center, Inc.
Sara Shannon, YWCA
Pam Harris
Antonio Gioia, Esq., Baltimore City State's Attorney Office
Debbie Tall, Victim Service Provider, Anne Arundel County Police Department
Sue A. Schenning, Esq., Baltimore County State's Attorney Office
William M. Katcef, Esq., Anne Arundel County State's Attorney Office
Ellie Jones, YWCA of Annapolis and Anne Arundel County
Grace Pazdam
Maureen Gillmer, Esq., Director, Victim Witness Services, Anne Arundel County State's Attorney Office
Ellen Mugmon
C. Sue Hecht, Chief Executive Officer, Heartly House, Inc.
Heather Hill
F. Patrick Kelly, Esq.
Melvin Hirshman, Esq., Bar Counsel, Attorney Grievance Commission

The Chair convened the meeting. He said that the issue of prohibiting disbarred or suspended attorneys from working as paralegals, which was a late addition to the agenda, would be discussed at 10:30 a.m. He welcomed the guests who were attending the meeting, and told them that they were welcome to comment. He asked them to identify themselves if they chose to comment, so that their names would appear correctly in the minutes.

Agenda Item 1. Consideration of proposed amendments to Rule 16-1008 (Electronic Records and Retrieval)

Judge Norton presented Rule 16-1008, Electronic Records and Retrieval, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1008 to add a new subsection (a)(3)(B) limiting public access to certain court records in electronic form in criminal causes, as follows:

Rule 16-1008. ELECTRONIC RECORDS AND RETRIEVAL

(a) In General

(1) Subject to the conditions stated in this Rule, a court record that is kept in electronic form is open to inspection to the same extent that the record would be open to inspection in paper form.

(2) Subject to the other provisions of this Rule and any other law or any administrative order of the Chief Judge of the Court of Appeals, a custodian, court, or other judicial agency, for the purpose of providing public access to court records in electronic form, is authorized but not required:

(A) to convert paper court records into electronic court records;

(B) to create new electronic records, databases, programs, or computer systems;

(C) to provide computer terminals or other equipment for use by the public;

(D) to create the ability to inspect or copy court records through remote access; or

(E) to convert, supplement, modify, or replace an existing electronic storage or retrieval system.

(3) (A) Subject to the other provisions

of this Rule, a custodian may limit access to court records in electronic form to the manner, form, and program that the electronic system used by the custodian, without modification, is capable of providing. If a custodian, court, or other judicial agency converts paper court records into electronic court records or otherwise creates new electronic records, databases, or computer systems, it shall, to the extent practicable, design those records, databases, or systems to facilitate access to court records that are open to inspection under the Rules in this Chapter.

Alternative 1

(B) A custodian shall limit access to court records in electronic form to prevent public access to the name, address, phone number, e-mail address, place of employment, or other personal identification number or data of a victim or witness in a criminal case.

Committee note: This personal information regarding victims and witnesses may not be released in a delinquency case under Rule 16-1006 (a)(2).

Alternative 2

(B) A custodian shall limit access to court records in electronic form to prevent public access to any name, address, phone number, e-mail address, place of employment, or other personal identification number or data in a criminal case, except for the name of the defendant and the date, time, and place of any scheduled proceeding.

Committee note: This personal information regarding victims and witnesses may not be released in a delinquency case under Rule 16-1006 (a)(2).

(4) Subject to procedures and conditions established by administrative order of the Chief Judge of the Court of Appeals, a person may view and copy electronic court records that are open to inspection under the Rules

in this Chapter:

(A) at computer terminals that a court or other judicial agency makes available for public use at the court or other judicial agency; or

(B) by remote access that the court or other judicial agency makes available through dial-up modem, web site access, or other technology.

(b) Current Programs Providing Electronic Access to Databases

Any electronic access to a database of court records that is provided by a court or other judicial agency and is in effect on October 1, 2004 may continue in effect, subject to review by the Technology Oversight Board for consistency with the Rules in this Chapter. After review, the Board may make or direct any changes that it concludes are necessary to make the electronic access consistent with the Rules in this Chapter.

(c) New Requests for Electronic Access to or Information from Databases

(1) A person who desires to obtain electronic access to or information from a database of court records to which electronic access is not then immediately and automatically available shall submit to the Court Information Office a written application that describes the court records to which access is desired and the proposed method of achieving that access.

(2) The Court Information Office shall review the application and may consult the Judicial Information Systems. Without undue delay and, unless impracticable, within 30 days after receipt of the application, the Court Information Office shall take one of the following actions:

(A) The Court Information Office shall approve the application if it determines that the proposal will not permit access to court records that are not subject to inspection

under the Rules in this Chapter and will not involve a significant fiscal, personnel, or operational burden on any court or judicial agency, it shall approve the application. The approval may be conditioned on the applicant's paying or reimbursing the court or agency for any additional expense that may be incurred in implementing the proposal.

(B) If the Court Information Office is unable to make the findings provided for in subsection (c)(2)(A), it shall inform the applicant and:

(i) deny the application;

(ii) offer to confer with the applicant about amendments to the application that would meet the concerns of the Court Information Office; or

(iii) if the applicant requests, refer the application to the Technology Oversight Board for its review.

(C) If the application is referred to the Technology Oversight Board, the Board shall determine whether the proposal is likely to permit access to court records or information that are not subject to inspection under the Rules in this Chapter, create any undue burden on a court, other judicial agency, or the judicial system as a whole, or create undue disparity in the ability of other courts or judicial agencies to provide equivalent access to court records. In making those determinations, the Board shall consider, to the extent relevant:

(i) whether the data processing system, operational system, electronic filing system, or manual or electronic storage and retrieval system used by or planned for the court or judicial agency that maintains the records can currently provide the access requested in the manner requested and in conformance with Rules 16-1001 through 16-1007, and, if not, what changes or effort would be required to make those systems capable of providing that access;

(ii) any changes to the data processing, operational electronic filing, or storage or retrieval systems used by or planned for other courts or judicial agencies in the State that would be required in order to avoid undue disparity in the ability of those courts or agencies to provide equivalent access to court records maintained by them;

(iii) any other fiscal, personnel, or operational impact of the proposed program on the court or judicial agency or on the State judicial system as a whole;

(iv) whether there is a substantial possibility that information retrieved through the program may be used for any fraudulent or other unlawful purpose or may result in the dissemination of inaccurate or misleading information concerning court records or individuals who are the subject of court records and, if so, whether there are any safeguards to prevent misuse of disseminated information and the dissemination of inaccurate or misleading information; and

(v) any other consideration that the Technology Oversight Board finds relevant.

(D) If, upon consideration of the factors set forth in subsection (c)(2)(C) of this Rule, the Technology Oversight Board concludes that the proposal would create (i) an undue fiscal, personnel, or operational burden on a court, other judicial agency, or the judicial system as a whole, or (ii) an undue disparity in the ability of other courts or judicial agencies to provide equivalent access to judicial records, the Board shall inform the Court Information Office and the applicant in writing of its conclusions. The Court Information Office and the applicant may then discuss amendments to the application to meet the concerns of the Board, including changes in the scope or method of the requested access and arrangements to bear directly or reimburse the appropriate agency for any expense that may be incurred in providing the requested

> access and meeting other conditions that may be attached to approval of the application. The applicant may amend the application to reflect any agreed changes. The application, as amended, shall be submitted to the Technology Oversight Board for further consideration.
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> Source: This Rule is new.

Rule 16-1008 was accompanied by the following Reporter's Note.

> As part of the implementation of new Title 16, Chapter 1000, Access to Court Records, the current block on public access to victim and witness personal information that is contained in court record in criminal causes and is stored in electronic form will be lifted on July 1, 2005.
>
> At the request of the Maryland Crime Victims' Resource Center, Inc. and the Maryland State's Attorney Association, the General Court Administration Subcommittee recommends an amendment to Rule 16-1008 that limits public access to this electronically stored information.

Judge Norton explained that the issue addressed by the proposed changes to subsection (a)(3)(B) is the blocking of electronic access to certain court records. Alternative 1 limits access to the personal data of victims and witnesses in a criminal case. Alternative 2 allows access to the name of the defendant and the date, time, and place of any scheduled proceeding. The General Court Administration Subcommittee discussed this issue and noted that both the federal and State judiciary show a hesitancy to approve a full block. This is a question of public policy. One way to handle the matter is

review of a particular case by a judge when a motion to seal has been filed; another way is a generic sealing of the records. The Subcommittee has presented alternative language for the Rule. Proposals made previously include preventing electronic access, leaving the Rules pertaining to access to court records as they are, and setting up procedures for a case-by-case determination.

The Vice Chair inquired as to the related U.S. Supreme Court cases. Judge Norton replied that the case of *Nixon v. Warner Communications*, 435 U.S. 589 (1978) authorized a block on information that is to be used as a vehicle for improper purposes, such as to attack a witness or a victim in a criminal matter. In the same case, the Court leaned toward a procedure by which a judicial officer analyzes whether information should be blocked in a particular case, not a generic blocking.

The Chair commented that in the recently adopted Rules in Title 16, Chapter 1000, Access to Court Records, the Court of Appeals makes no distinction between paper and electronic records. He questioned whether the Court would be willing to adopt a Rule change that allows someone to obtain certain information by coming to the courthouse, yet the same information is not accessible electronically. The Rules pertaining to access to court records permit someone to request that his or her name be blocked. The Rules could provide that for a certain period of time after it is placed in the court file, the information would not be available. The Rule would allow the victim or a witness ask that certain information not be revealed. There is no

protection if the information is already disseminated before the person has the opportunity to request relief.

The Vice Chair asked why the Rule applies to court records as opposed to case records. The proposed new language seems to imply that electronic records are different than paper records. Judge Norton remarked that the concern of the Maryland Crime Victims' Resource Center involves electronic records, but that organization undoubtedly would be satisfied with a complete block on disseminating victim and witness information from court files. The Vice Chair suggested that the Rule should address "case" records, not "court" records. She said that she is not familiar with case law on this topic, and she questioned whether a blanket prohibition on disseminating information is allowed by law. The proposed Rule change probably involves a compelling state interest in protecting groups of people that would pass constitutional muster, but the Committee should be careful not to recommend to the Court a rule that does not pass the test for legality.

The Reporter asked Ms. Rankin, Court Information Officer, to speak about access to court records. Ms. Rankin said that the Access Rules Implementation Committee had reported to the Court of Appeals concerning access to victim and witness information. The Committee asked the Court for clarification as to the electronic blocks that had been in effect regarding this information. At the June 14, 2005 public hearing, the Court concluded that no authority for the block existed, and that each

matter should be handled on a case-by-case basis.

The Chair commented that the draft materials for today's meeting are a step in the right direction. At the inception of a criminal case, victims and witnesses may not know that their names are in the court file. There is only so much that can be done at the outset. He stated that he favors a blanket prohibition for a limited time to give the court the opportunity to decide on a request to block information from public access. The Vice Chair noted that there is a blanket limitation in delinquency cases. Mr. Johnson commented that this is dictated by statute.

Mr. Karceski expressed the opinion that this is a problem with electronic records, not paper records. A blanket prohibition would apply to both types of records and all types of criminal cases, both in the District and the circuit courts. In many jurisdictions, there is a 30-day turnaround time from arrest to trial in the District Court. A blanket prohibition on access to the records for a period of time may cause problems for the defendant, who may not be able to obtain any meaningful discovery in District Court. The result may be trial by ambush during the period of time that access to the information is blocked. The Vice Chair agreed that the defense attorney must have access to information about the case. Mr. Maloney pointed out that this is a court administration problem. The District Court charging document may identify the victim. It would be burdensome for the clerk to be required to redact the victim's name in thousands of

cases. It would be easier not to allow access to portions of the file until the specified time period has elapsed. It is too much work for the clerks' offices to eliminate the name of the victim from the statement of probable cause.

The Chair commented that it may be a matter of education for the police officers to learn to leave out the victim's address, zipcode, and other identifying information from the papers the police officer files. There is no restriction on access to the records by the defendant or defense counsel. The Chair expressed the concern that individuals who should not see the record will have access to it. A rape victim may receive hundreds of letters of solicitation from support groups, attorneys, etc. The Vice Chair said that she had assumed that the Rules only apply to access by the public, not access by a party. Mr. Michael noted that this is not specified in the Rules. Mr. Brault expressed his concern about electronic access, because so many more people can access records by computer than by going to the courthouse. It is much more difficult to control computer access. Someone in a foreign country could access District Court files in Rockville, Maryland.

Mr. Michael questioned as to why the witness's name and identifying information has to be in the court record at all. The Chair answered that there is no requirement that it has to be there. Mr. Michael remarked that omitting this information from the file would be a way to handle the problem. The Chair agreed, but he pointed out that police and prosecutors are used to

dealing with charging documents in a certain way. Traditional criminal discovery practice provides for the prosecutor to list the names and addresses of witnesses. A copy of the list goes to defense counsel, and the original goes into the court record. When the police officer fills out the statement of probable cause, traditionally all of the information concerning the case goes into the statement, so that subpoenas can be issued.

The Chair introduced Sue Schenning, Esq., Deputy State's Attorney for Baltimore County. Ms. Schenning told the Committee that since the mid-1980's, in the District Court, witnesses can be summoned only by having their names electronically entered into the court's computer system. The circuit court system is somewhat different. The case management systems are designed so that they do not rely on the court's computer system.

The Chair asked Mr. Shipley about the systems in use in the circuit courts. Mr. Shipley replied that all circuit courts are on the Uniform Court System ("UCS"), except Montgomery and Prince George's Counties. Most circuit court State's Attorneys are issuing subpoenas on their own, not depending on the clerk's office to do this.

The Chair inquired about the District Court. Judge Norton responded that there is a subpoena form for witnesses. Whoever initiates the criminal process lists the names and addresses of witnesses. There is no involvement of the State's Attorney. The District court system electronically issues subpoenas to witnesses. The Vice Chair questioned as to why the public has

the right to know the information concerning the witness or victim. This is not automatically public information. The government's interest in protecting victims and witnesses is greater than the public's right to know about them. The Vice Chair stated that she was in favor of Alternative 1 in Rule 16-1008 subject to changing the term "court record" to "case record." Ms. Potter expressed her interest in a blanket block with relief available to obtain the information if necessary.

The Chair commented that there are serious First Amendment issues involved in this matter. If, in criminal cases, all information pertaining to State's witnesses and victims is blocked, and the only way it can be obtained is to file a petition with the court, this is too broad a prohibition. Unless there is a legitimate security reason to protect all of the identifying information for all State's witnesses, this prohibition would be unconstitutional, and the Court of Appeals would not approve it.

The Vice Chair commented that the Committee should consider the Chair's suggestion that subsection (a)(3)(B) have a time period added to it, so that the block on access is for a definite amount of time. The Chair said that the Rule as it appears in the meeting materials, with the addition of a block for a limited time period, will not work unless people have an opportunity to ask that their identifying information continue not to be accessible to the public after expiration of the time period for the block. The Vice Chair inquired as to how the Maryland

Judiciary will let witnesses and victims know that they must take steps to protect their identifying information. The Chair answered that the appropriate forms can instruct the witnesses and victims, and the police can tell them directly.

The Chair asked Russell Butler, Esq., Executive Director of the Maryland Crime Victims' Resource Center, Inc., if he agreed with the suggestion to include a time period for the records to be blocked. Mr. Butler responded that his organization has a concern about the logistics of letting victims and witnesses know that they have an opportunity to request that their identifying information be blocked. Electronic records are easily broadcast to the entire world, as Mr. Brault pointed out earlier. Mass marketers can ask for information from the judicial data warehouse. There is no constitutional problem allowing a temporary block, but the information should not be broadcast all over the world. No redaction would be necessary if the information is not disseminated electronically. The defense attorney can always look at the file. The police officer may put the witness's or the victim's information in the file, but the witness or victim may not even know about it. The current draft of Rule 16-1008 allows the media access to the records, but the records should not be broadcast to the world. Four other states allow access to records but not to personal information concerning victims and witnesses.

Mr. Brault commented that the Committee recently discussed the issue of witness intimidation. Many State's Attorneys are

concerned about witness intimidation, and Mr. Brault asked why they are not speaking up about generally limiting information about witnesses from the public's view. Once information that identifies victims and witnesses is accessible, there is the potential for intimidation and even death of the victims or witnesses. The Chair responded that the State's Attorneys had argued to the Court of Appeals that the block on information in court records should remain in place, even though the Court of Appeals ultimately declined to keep the block in place. Several prosecutors from many jurisdictions argued to the Court that the identifying information should not be in electronic form. Mr. Brault remarked that there has to be a way that witnesses are advised of their rights.

The Reporter asked Ms. Rankin about the history of this issue. Ms. Rankin stated that dial-up access to District Court records has been in existence for many years. The circuit court uses the UCS system, which has the block on victim and witness information, as requested by some State's Attorneys. The District Court computer system has no block. At its June 14, 2005 hearing on access to court records, the Court of Appeals concluded that there is no authority by statute or in the Rules for the creation of a block. Dial-up is an outdated technology. The Judicial Information Systems branch of the Judiciary is developing technology to eliminate the dial-up system and create a public data warehouse as to both District Court and circuit court records. The new system will be launched in January 2006.

Currently, before the new system is operational, electronic data may be obtained only from a terminal in the courthouse or from dial-up. Policy questions related to this are who should have access, should it be tiered access, and what should the cost be?

The Vice Chair inquired as to whether the information in the system is the entire public record. If, in its electronic form, not all of the information is available, is this considered a partial block? Ms. Rankin responded that programs could be written so that some information is not available. Mr. Shipley added that the UCS has the capability to block any information that is designated. Mr. Maloney expressed the opinion that the public should not be able to use the Internet for court records but rather should have to go to the courthouse to see the records. The Chair pointed out that the Court of Appeals reached the opposite conclusion. The Vice Chair asked if the Court of Appeals would like a recommendation from the Rules Committee. The Chair replied that there would be no harm in presenting the Court with a recommendation from the Rules Committee. To the extent that any research exists, it might be helpful to look at the jurisdictions that treat electronic records differently from paper records.

Judge Norton questioned whether there is a time frame as to completing the Rules. The Chair replied that consistent with the January 2006 effective date for the new computer system, the Rules will have to be completed by December. Mr. Butler asked Ms. Rankin if, after January, when the court access goes from

dial-up to Internet, the names and addresses of sexual assault victims will be in the record. Ms. Rankin answered that the details of the new system have not been finalized by the Technology Oversight Board. The Chair inquired as to why it is not the Court of Appeals that finalizes the details. Ms. Rankin responded that the Board is asked to implement the Rules that apply in the technological area. Phase 1 of the new system is on schedule for startup on January 1. The Chair asked Ms. Rankin what data will be available. Ms. Rankin replied that currently basic docket information is available. The Technology Oversight Board will meet on September 26, 2005, and after that meeting, more information about the new system will be available. The Chair inquired as to who is on the Board. Ms. Rankin answered that the Board is composed of judges, clerks, and court administrators. The Board's purpose is to establish programming priorities for the Judiciary.

Mr. Maloney expressed the opinion that this issue is a public policy question, not a programming issue. Putting the defendants' or the victims' names on an accessible website raises questions. Mr. Karceski commented that his office uses dial-up to the District Court. Only the parties have access. Defense attorneys should not have to go to the courthouse to have access to the records. Mr. Maloney suggested that the Rule provide that remote electronic access to the records be limited to counsel of record. Ms. Ogletree observed that as to Internet access to circuit court information in Virginia, one can look up pending

cases by the name of the defendant to find out about any lawsuits or judgments against him or her. Docket information and end result data are available, but there is no information about the victims or witnesses.

Additional Agenda Item (See Appendix 1).

The Chair announced that at this time, subsection (d)(2) of Rule 16-760, Order Imposing Discipline or Inactive Status, would be discussed. He presented the Rule for the Committee's consideration. (See Appendix 1).

The Chair introduced Melvin Hirshman, Esq., Bar Counsel. Mr. Hirshman explained that in 2001, the Court of Appeals adopted revised Rules pertaining to the discipline and inactive status of attorneys. Rule 16-760 (d)(2) prohibited a disbarred or suspended attorney from working as a paralegal. Within a few weeks of the effective date of the Rule, several disbarred attorneys asked that the Rule be suspended, and the Court complied. In 2005, the Court passed an order dated June 2, 2005 reinstating the operation of the Rule as of September 2, 2005, but the order was stayed pending the outcome of the case of *Attorney Grievance Commission v. Blum*, Misc. Docket AG No. 30, September Term, 2005. Mr. Hirshman said that 18 other states prohibit a disbarred or suspended attorney from acting as a paralegal, while 24 states do not. Some states that have the general prohibition allow for a case-by-case determination as to exceptions. Some states allow disbarred and suspended attorneys

to work as paralegals, but not in the same office they had worked in before they were disbarred, and some restrict interaction with the public. In some states, the law firm for which a disbarred or suspended attorney works as a paralegal must register with the attorney disciplinary office, and the law firm must designate an attorney to supervise the disbarred or suspended attorney. Three attorneys representing disbarred attorneys have asked the Court of Appeals to order that the prohibition not apply to those disbarred attorneys already working as paralegals. No state has ever applied the prohibition retrospectively. It is up to the Court to decide whether disbarred attorneys already working as paralegals will not be allowed to do so in the future. The Court has scheduled an open hearing on the Rule on October 11, 2005 at 2 p.m.

The Chair observed that a lawyer who is disbarred but continues to practice law by pretending to be a paralegal is being funneled work by a practicing attorney. If the paralegal work is a sham, the lawyer with whom the disbarred attorney is working is contributing to the unauthorized practice of law. There already is a rule that applies to this. Mr. Johnson asked what the purpose of Rule 16-760 (d)(2) is. If it is not to punish the sanctioned attorney, but to protect the public, Rule 5.3 deals with it. The Chair suggested that there could be a minor modification to the Rule, adding an express provision that would allow someone to ask the court for permission to work as a paralegal.

Mr. Karceski pointed out that the Rules do not contain a definition of the term "paralegal." Mr. Hirshman responded that the term is an evolving concept, and it is difficult to define. Mr. Michael remarked that there may be equal protection ramifications involved. Mr. Hirshman noted that there has not been a U.S. Supreme Court case where the Court held that a disbarred lawyer who cannot work as a paralegal is deprived of equal protection under the law.

Patrick Kelly, Esq., told the Committee that his view is that Rule 16-760 (d)(2) is not necessary. Code, Business Occupations and Professions Article, §10-606 prohibits the unauthorized practice of law. Rule 5.3 provides that a lawyer must supervise a nonlawyer, and Rule 5.5, Unauthorized Practice of Law, states that a lawyer shall not assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law. Generally, a paralegal takes information from a client and does research. The wording of Rule 16-760 (d)(2) is broad: "...the respondent shall not:... work as a paralegal for or as an employee of an attorney...". One suspended attorney started a company to do legal research. Where does the court draw the line? The Chair commented that these issues are similar to the issues pertaining to whether working for a title company is practicing law. Mr. Brault added that no case has ever defined the term "practice of law."

The Chair said that his suggestion is to recommend that

subsection (d)(2) be deleted, because other Rules and statutes are already in existence to afford appropriate protections. These include Title 10 of the Business Occupations and Professionals Article of the Annotated Code of Maryland, Rules 5.3 and 5.5 of the Maryland Lawyers' Rules of Professional Conduct, and Rule 16-760 (d) and (m). The court can determine whether an action is the unauthorized practice of law. Sanctions are available for others who support or abet the disbarred or suspended attorney who is practicing law. Mr. Brault remarked that in the District of Columbia, disbarred attorneys often prepare complaints and forms as well as interview clients. This has never been held to be the unauthorized practice of law. It may be an equal protection issue, if everyone else is allowed to do the work that paralegals do, but disbarred and suspended attorneys are prohibited from doing that work. Mr. Hirshman noted that courts have enjoined three disbarred attorneys from negotiating case settlements.

The Chair asked for a motion. Mr. Brault moved that subsection (d)(2) be deleted. The motion was seconded, and it passed unanimously.

Continuation of Agenda Item 1. Consideration of proposed amendments to Rule 16-1008 (Electronic Records and Retrieval)

The Chair told the Committee that Mary R. Craig, Esq., representing the Maryland-Delaware-D.C. Press Association, and Carol Melamed, Esq., counsel to The Washington Post, both of whom

had worked with the Court of Appeals in developing the Rules pertaining to access to court records, were present at the meeting.

Ms. Melamed told the Committee that she is the Vice President of Government Affairs for The Washington Post. She has been involved with the Rules pertaining to access to court records since the Committee chaired by the Honorable Paul Alpert, retired judge of the Court of Special Appeals, worked on them. The only issue the Court of Appeals is likely to revisit regarding the Rules is the issue of security and safety. It is unlikely that the Court would be willing to revisit issues such as privacy and marketing. The Court is reluctant to distinguish between electronic and paper records. Eventually courts will become paperless. Restricting electronic access may provide no access at all. Electronic and remote access are not necessarily coterminous. It is important to keep the two concepts separate. The Rule change under consideration today would apply in all criminal cases, even minor ones such as shoplifting. There are constitutional implications, and the Rule goes far beyond what is needed to protect victims and witnesses. District Court electronic information has been available for years.

Ms. Melamed said that protecting victims is important to everyone, but it can be accomplished without a blanket closure of court records. The Post is in favor of developing an efficient and fair case-by-case procedure to determine whether records should be closed. The meeting materials contain a summary of the

July 12 meeting with Judges Wilner and Battaglia. See Appendix 2. The recommendation from that meeting was that certain information, such as witness information in the District Court, should be kept out of court files. If information needs to be in the file, there should be some procedure, as was previously suggested by the Chair, to enable people to make a showing that the information should not be public, and while a decision on the issue is pending, the information would be restricted.

Ms. Craig told the Committee that *Richmond Newspapers, Inc. v. Commonwealth of Virginia*, 448 U.S. 555 (1980) and *Globe Newspaper v. Superior Court*, 457 U.S. 596 (1982) are cases pertaining to access to court proceedings. The *Globe* case involved a child victim of a sex crime. All of the proceedings were held without public access. The U.S. Supreme Court held that the categorical closure of a court proceeding violates the First Amendment. The Supreme Court has not addressed the issue of a statute that categorically closes court records, but three or four lower courts have held that the categorical closure of court records violates the First Amendment.

The Chair inquired as to whether most states make the distinction between access to paper records as opposed to electronic records. Ms. Craig answered that this issue has not yet been litigated. The statutes and rules dealing with access to electronic court records are very new. The Maryland Court of Appeals has been reluctant to draw distinctions between the two. The comments to the Rules pertaining to access to court records

indicated that there was no intent to create new law but rather to compile and codify existing law. Ms. Craig noted that Rule 16-1009, Court Order Denying or Permitting Inspection of Records, already provides for a temporary order precluding or limiting inspection of court records and a case-by-case determination as to a final order. This is not a new concept.

The Chair pointed out that if an indictment against someone is filed on Day #1, and then on Day #6, the judge enters an order limiting access to the court records, the information has already been accessible. Ms. Craig said that the main interest of the Court of Appeals is security, not privacy. This may require the training of those people working in law enforcement. The Chair responded that it may take a long time before law enforcement organizations have implemented training programs and new procedures to diminish the danger of access to information that should not be allowed. He asked if anyone had an objection to imposing a waiting period before records can be accessed. The access to records would be blocked, except for access by the defendant, for a period of time. Ms. Melamed replied that The Post had not considered this possibility. At the July 12 meeting, the intake form was discussed. The form has a space where the victim, the victim's representative, or the police officer can request that the records be closed. This could be accomplished at the stage where charges are filed. This would meet the approval of Ms. Melamed's office.

The Chair commented that in a murder case, the victim is

dead, but the witnesses may be potential victims of intimidation, so it is not just the victim who may want to limit access to court records. Ms. Schenning agreed that witness information should be kept out of the accessible electronic data base. The restrictions could be burdensome to those offices that do not enter their own witness data. In Baltimore City, the circuit court clerk's office enters the witness data. Mr. Katcef noted that a charge that is initiated in the District Court may go to the circuit court on an indictment or information. In Anne Arundel County, a pink-colored witness slip is attached to the statement of charges. The clerk enters the names and addresses of the witnesses into the District Court computer system. When an indictment or information is filed, and the case is transferred to the circuit court, the names and addresses are still in the District Court records. In the circuit court, the names and addresses can be kept out of the UCS. Mr. Katcef's office issues its own summonses. However, unless the District Court data is purged, it remains in the District Court file.

Ms. Schenning observed that in Baltimore County, the secretarial staff of the State's Attorney's Office enters the witness data in the State's Attorney's computer system, and the subpoenas are issued from that system. Mr. Shipley inquired as to whether most State's Attorney's offices are entering their own witness data. Judge Norton replied that the State's Attorney's office in Wicomico County enter its own data, but this is not the case in Dorchester County. Ms. Schenning commented that the

State's Attorneys in most jurisdictions, except Baltimore City, are entering witness data in their own computer systems and issuing their own subpoenas for circuit court cases. However, because of the volume of cases in the District Court, it may be difficult for the State's Attorneys to take on this additional responsibility for District Court cases.

Mr. Gioia said that there is a high volume of crimes committed in Baltimore City. Because of judicial resources and the length of the average felony trial, there also is a high postponement rate of cases. Given the volume of cases and postponements, the Office of the State's Attorney cannot summon its own witnesses, and it relies on the circuit court clerks to enter the names and addresses of victims in the records.

Mr. Katcef noted that every file contains a listing of the charges and a case summary with the names and personal information pertaining to victims and witnesses. Mr. Maloney agreed that the most crucial time in the case regarding the information in the file is at the time of intake. This is when a privacy block is helpful. An additional form that does not go into the court file could be filled out. Journalists or anyone else could challenge the block in a particular case. Law enforcement officers could be taught to refer to witnesses by number and not by name in the record. It may be useful to look at the suggestions that were made at the July 12 meeting and codify them. Mr. Brault commented that if they have a choice, very few people would agree to have their names published. Ms.

Melamed commented that at the July 12 meeting, a security block, not a privacy block, was discussed. If someone felt at risk by having his or her name in the court record, the person could check a box on the intake sheet. The commissioner could determine that there is at least a facial showing of a reason for blocking access to the information. The information would then be shielded until a judge could hear a motion to allow access to it.

Mr. Brault expressed the opinion that Rule 16-1009 is not effective, because a judge probably will not seal a file over the objection of the media. Ms. Melamed disagreed. Mr. Butler commented that there is no statute or the Rule that prevents a temporary block on access. Elderly victims of theft and victims of sexual assault must be protected. There are privacy and safety concerns. The Subcommittee recommendation should be considered by the Court.

Mr. Klein asked Ms. Rankin if there is a technologic reason to install an internet warehouse of records, rather than a system of access only by going to the courthouse. Ms. Rankin replied that the warehouse already is in existence, but is not currently available to the public. Mr. Klein inquired as to whether the computer could distinguish between courthouse and other access. Ms. Rankin answered that she did not know. Mr. Shipley noted that employees of the Maryland Judiciary can access court records by using a protected password. Mr. Klein observed that the system could be designed so that only courthouse access to

electronic records is available.

The Chair said that the asbestos docket in Maryland is paperless. Public access to the records is provided by a dial-up modem in the clerk's office. Attorneys who have entered their appearance can access the records from their offices. Mr. Klein suggested that Rule 16-1008 can provide for remote access by attorneys of record and public access in the courthouse. Mr. Maloney noted that there is a difference between Internet and intranet access. The courthouse system would be intranet, providing only inside access. There is no reason to keep witnesses names in the court file. A summons can be automatically generated by the attorneys in the case.

The Chair suggested that the Committee could present alternatives to the Court of Appeals. One alternative would be to revisit and reconsider the issue of the distinction between electronic and paper access. A second alternative would be to present the concept of a time delay before access is granted. The delay would not apply to the defendant or to defense counsel and would provide for a reasonable opportunity to file a motion to extend the block on public access. The alternatives could include a provision for the purging of victim and witness information from District Court files when the files are forwarded to the circuit court.

Ms. Golomb, representing the Maryland Network against Domestic Violence, commented that from the standpoint of victims' rights, there is a need to distinguish between electronic and

paper records. A women in New Hampshire was tracked down and murdered by a stalker who had access to her home and work addresses from the Internet. Technology needs to be considered to protect victims, not further victimize them.

The Vice Chair noted that there are policy questions to be discussed. Alternative 1 in the meeting materials could be chosen, including building in the limit on access for a period of time. The speakers at today's meeting are interested in limiting remote access. This assumes that the Court is concerned only with security. The Reporter remarked that she was not certain that this is the only concern. The Vice Chair commented that preventing letters from attorneys being sent to victims would be a privacy interest. Perhaps the Court would be willing to impose a denial of access for a limited period of time in a case involving a crime of violence. Another sentence could be added to Rule 16-1008 providing that a procedure for further protection of the records after the time for the block expires can be found in Rule 16-1009.

The Chair expressed the view that Alternative 2 is better. It provides for disclosure of the defendant's name as well as the date, time, and place of any scheduled proceeding. The Vice Chair noted that Alternative 2 applies to all personal identification data in a criminal case, while Alternative 1 only applies to personal identification data pertaining to victims and witnesses. Ms. Craig asked about witnesses such as police officers, coroners, and DNA analysts. The Chair replied that

data concerning those individuals would be available after the initial waiting period ends. The Rule could provide that for a certain number of days, only defense counsel and the defendant will have access to the records, then availability is governed by Rule 16-1009.

Mr. Brault pointed out that in civil cases, the same experts appear frequently. What will happen if counsel does not have access to the names of the experts who are routinely involved in criminal cases? Counsel will not be able to track what the experts have been saying in other trials. Attorneys need to be able to check on the expert witnesses who will be testifying on behalf of the adverse party and obtain trial transcripts to find out what the experts have previously testified about. The Vice Chair suggested a five-day period before records can be accessed. Mr. Karceski inquired as to what event would trigger the five-day period. The Chair responded that it would be five days after the document containing the information was filed. Mr. Maloney cautioned that a victim of a serious crime, such as a rape, could forget to file the necessary papers, and then her name would be available to anyone on the Internet. Ms. Potter added that the victim could have been hospitalized and unable to take the necessary action to block access to the information. Mr. Maloney pointed out that the distinction between electronic access in the courthouse and electronic remote access could be added to Alternative 2. The public does not have a right of remote access to this information.

Ms. Schenning commented that one option is to limit access to personal information pertaining to "private" witnesses. Remote access to a home address would be prohibited, but there would be no automatic block as to business addresses of witnesses who will be testifying because it is their job to do so. Mr. Brault added that the block on access to information should apply only to a citizen witness, not witnesses who are police officers, coroners, etc. The Chair said that defendants are entitled to know the names of the witnesses, but not necessarily their home address, work address, or information that links the witness to a particular location. The Vice Chair pointed out that most people's home addresses already are available all over the world on the Internet. Mr. Michael cautioned that the Rule be structured so that it does not cause a constitutional scrutiny problem. The Chair stated that he did not think that a constitutional problem exists if the information is available to someone who goes to the courthouse. The Vice Chair expressed the opinion that Alternative 1 is overly broad. Ms. Ogletree suggested that the proposed amendment to the Rule could be limited to crimes of violence.

Lisae Jordan, Esq., Director of the Sexual Assault Legal Institute of the Maryland Coalition Against Sexual Assault, pointed out that technically the term "crime of violence" does not include child sex abuse. Also, if there is a block on access to the court records for five days, then the victim may not be able to access the record during that time. Some State's

Attorneys do not see the file within five days. How will people know to file within five days for a continuation of the limited access? Mr. Klein commented that if remote access is limited, no time period restriction would be necessary. If someone wants to see the file, then that person could go to the courthouse to have access to it, unless the file has been sealed. One would not be able to get identifying information about witnesses or victims over the Internet. The Vice Chair remarked that the Rule could provide that the custodian of the record may not allow remote access to personal information and data of victims and witnesses in a criminal case. Ms. Ogletree added that similar issues are associated with domestic violence cases. Mr. Shipley said that by statute, certain procedures are already in place to protect victims in domestic violence cases. The Chair stated that the goal is to design a rule that will prevent remote access to personal information regarding victims and witnesses. Alternative 2 can be modified to achieve this goal. Mr. Karceski cautioned that any amendment to the Rule must not deny access by the defense attorney.

The Vice Chair commented that a different Rule in Title 16, Chapter 1000 may be a more appropriate place to include the restriction on remote access to court records. Mr. Karceski expressed his concern that someone could use the records in the courthouse to get enough information to find someone and murder that person. Do the suggested modifications to Rule 16-1008 solve this problem? Mr. Maloney pointed out that Rule 16-1009

provides that a party or someone who is the subject of or is specifically identified in a case record may file a motion to seal or limit inspection of a case record that is not otherwise shielded from inspection. Mr. Karceski remarked that this rarely occurs. He questioned whether the proposed changes to the Rule make the public more secure, without adding some limits on courthouse access. Ms. Jordan observed that a victim may not report a rape for fear of her name being exposed to the public on the Internet. There is a big difference between Internet access to court files and access in the courthouse.

Mr. Brault suggested that the Rule could be amended to allow remote access to the personal identification data of all witnesses who are law enforcement officials and experts, but not to the personal identification information of victims and other witnesses. Mr. Karceski noted that attorneys should have access to all of the data in the file. The Chair said that a statement that the restrictions do not apply to a party or to counsel in the case can be added to the Rule.

The Chair questioned as to whether at the conclusion of the case, the clerk's list of the names of witnesses who testified will be posted on the Internet. He suggested that the language of Rule 16-1008 could tie into the language of Rule 16-1009 (a) which reads: "A party to an action in which a case record is filed, including a person who has been permitted to intervene as a party, and a person who is the subject of or is specifically identified in a case record may file a motion...". Law

enforcement officials and expert witnesses can be excluded. If there is a concern regarding the suggestion to wait five days before the record can be accessed, then the Court of Appeals can be told that the Committee discussed the possibility of a waiting period during which someone could file a motion pursuant to Rule 16-1009 (a), and the Court can decide whether this is feasible. Mr. Maloney pointed out that if remote access is restricted, the five-day waiting period would not be necessary. The Chair noted that at a certain point, the information has to be revealed to the defense.

Judge Kaplan moved that the word "remote" be added after the word "limit" and before the word "access" in either Alternative 1 or 2, and that language be added to either alternative to allow access to information concerning professional witnesses and law enforcement or expert witnesses. The motion was seconded.

The Vice Chair commented that Rule 16-1002, General Policy, provides in section (f) that judicial employees have access to court records. Implicitly, access by parties and counsel is allowed, although the Rule does not so state. The Chair suggested that Rule 16-1002 (f) be amended to provide that the Rules in Title 16, Chapter 1000 do not limit access to a case record by a party or counsel of record in the action. The Committee agreed by consensus to this suggestion.

The Vice Chair expressed the opinion that all members of the Maryland Bar should be allowed remote access to the court files. The Chair commented that an efficient way to accomplish this

would be to allow all members of the Maryland Bar access to the files from his or her office. Any violations by the attorney would result in discipline. Mr. Klein noted that data mining companies have counsel representing them. The Chair said that it is difficult to list every exception. Generally, attorneys should be able to have remote access. Judge Kaplan inquired as to whether this is limited to counsel of record. Ms. Potter responded that all members of the bar should be able to have remote access to court files as long as the information is not used for commercial purposes. Ms. Melamed pointed out that use of the information by a newspaper is for commercial purposes. The Chair observed that it is easier for attorneys to access the files from their offices. Mr. Karceski remarked that it may not be so convenient to get to the courthouse.

The Vice Chair inquired as to who will monitor the system to provide the appropriate password for access. Judge Kaplan referred to the asbestos docket, explaining that not all members of the bar have remote access to the files. Remote access is limited to those who are members of the asbestos bar.

Judge Kaplan asked the Chair to call the question on his motion. The Chair summarized that there would be no waiting period, the word "case" would be substituted for the word "court," the word "remote" would be added in, and the restriction would not apply to access to the names and identifying data of law enforcement officers and expert witnesses, but would apply to the names and identifying data of the victims and witnesses. Ms.

Craig suggested that the exclusion for law enforcement officers should also include public officials. Judge Kaplan agreed to this amendment. The Chair suggested that the language of the Rule should be: "...law enforcement officers and other public officials...". Judge Norton suggested that the language could be: "...public officials acting in their official capacity...".

Ms. Melamed asked if the Committee would consider making the limited access only apply to certain crimes, and not all crimes. It would be better to have an open system, then close only what is needed. The Chair responded that it is too difficult to try to carve out exceptions to the restriction. Ms. Ogletree added that only remote access is proposed to be restricted. By going to the courthouse, the press has access to all records that currently are open.

The Chair called for a vote on Judge Kaplan's motion, and it passed unanimously.

Agenda Item 2. Consideration of a policy issue concerning section (c) of Rule 16-1006 (Required Denial of Inspection - Certain Categories of Case Records) (See Appendix 3)

The Vice Chair presented Rule 16-1006 (Required Denial of Inspection - Certain Categories of Case Records) for the Committee's consideration. (See Appendix 3).

The Vice Chair asked that consideration of the Rule be withdrawn so that related statutes can be researched. The Chair said that the Rule will be remanded to the General Court Administration Subcommittee.

Agenda Item 3. Reconsideration of proposed amendments to Rule 16-109 (Photographing, Recording, Broadcasting or Televising in Courthouses)

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

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

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

AMEND Rule 16-109 to restate subsection b 1, to add a certain Committee note following subsection b 1, to add language to subsection b 3 concerning camera-equipped cellular phones and other similar devices, to add jury rooms to the list of locations to which subsection b 3 is applicable, to add a new subsection b 7 (iii) pertaining to the testimony of child victims, to add a certain cross reference following subsection c 1, to add a new section d pertaining to certain actions by the presiding judge and the local administrative judge, to revise section f concerning restrictions on extended coverage, to reorganize and renumber the provisions in section g, and to add a Committee note at the end of section g, as follows:

Rule 16-109. PHOTOGRAPHING, RECORDING, BROADCASTING OR TELEVISING IN COURTHOUSES

a. Definitions.

1. "Extended coverage" means any recording or broadcasting of proceedings by the use of television, radio, photographic, or recording equipment by:

(i) the news media, or

(ii) ~~by~~ persons engaged in the preparation of educational films or recordings with the written approval of the presiding judge.

2. "Local administrative judge" means the county administrative judge in the Circuit Court and the district administrative judge in the District Court.

3. "Party" means a named litigant of record who has appeared in the proceeding.

4. "Proceeding" means any trial, hearing, motion, argument on appeal or other matter held in open court which the public is entitled to attend.

5. "Presiding judge" means a trial judge designated to preside over a proceeding which is, or is intended to be, the subject of extended coverage. Where action of a presiding judge is required by this rule, and no trial judge has been designated to preside over the proceeding, "presiding judge" means the local administrative judge. "Presiding judge" in an appellate court means the Chief Judge of that Court, or the senior judge of a panel of which the Chief Judge is not a member.

b. General Provisions.

1. Unless prohibited by law or this Rule, extended coverage of proceedings in the trial and appellate courts of this State is permitted ~~unless prohibited or limited~~ in accordance with this Rule.

Committee note: Code, Criminal Procedure Article, §1-201 prohibits extended coverage of criminal proceedings in a trial court or before a grand jury.

2. Outside a courtroom but within a courthouse or other facility extended coverage is prohibited of persons present for a judicial or grand jury proceeding, or where extended coverage is so close to a judicial or grand jury proceeding that it is likely to interfere with the proceeding or its dignity and decorum.

3. Possession of cameras and recording[s] or transmitting equipment, including camera-equipped cellular phones or similar handheld devices capable of capturing and transmitting images, is prohibited in all courtrooms, jury rooms, and adjacent hallways except when required for extended coverage permitted by this rule or for media coverage not prohibited by this rule.

4. Nothing in this rule is intended to restrict in any way the present rights of the media to report proceedings.

5. Extended coverage shall be conducted so as not to interfere with the right of any person to a fair and impartial trial, and so as not to interfere with the dignity and decorum which must attend the proceedings.

6. No proceeding shall be delayed or continued to allow for extended coverage, nor shall the requirements of extended coverage in any way affect legitimate motions for continuance or challenges to the judge.

7. This rule does not apply to:

(i) The use of electronic or photographic equipment approved by the court for the perpetuation of a court record;

(ii) Investiture or ceremonial proceedings, provided, however, that the local administrative judge of a trial court and the Chief Judge of an appellate court shall have complete discretion to regulate the presence and use of cameras, recorders, and broadcasting equipment at the proceedings; or

(iii) The use of electronic or photographic equipment approved by the court to take the testimony of a child victim under Code, Criminal Procedure Article, §11-303.

c. Request for Extended Coverage.

1. All requests for extended coverage shall be made in writing to the clerk of the court at which the proceeding is to be held at least five days before the proceeding is scheduled to begin and shall specifically identify the proceeding to be covered. For

good cause a court may honor a request which does not comply with the requirements of this subsection. The clerk shall promptly give notice of a request to all parties to the proceeding.

Cross reference: For the computation of time before a day, act, or event, see Rule 1-203 (b).

2. Where proceedings are continued other than for normal or routine recesses, weekends, or holidays, it is the responsibility of the media to make a separate request for later extended coverage.

Cross reference: For the definition of "holiday," see Rule 1-202.

d. Action on Request.

The presiding judge shall grant or deny a request for extended coverage before the commencement of the proceeding. If the request is granted, the presiding judge shall promptly notify the local administrative judge who shall make whatever arrangements are necessary to accommodate the entry into and presence in the courthouse of the persons conducting the extended coverage and their equipment.

~~d.~~ e. Consent to Extended Coverage.

1. Extended coverage shall not be permitted in any proceeding in a trial court unless all parties to the proceeding have filed their written consent in the record, except that consent need not be obtained from a party which is a federal, state, or local government, or an agency or subdivision thereof or an individual sued or suing in his official governmental capacity.

2. Consent once given may not be withdrawn, but any party may at any time move for termination or limitation of extended coverage in accordance with this rule.

3. Consent of the parties is not required for extended coverage in appellate courts, but any party may at any time move for termination or limitation of extended coverage in accordance with this rule.

~~e.~~ f. Restrictions on Extended Coverage.

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

~~2.~~ 1. Extended coverage of all or any portion of a proceeding may be prohibited, terminated or limited, on the presiding judge's own ~~motion~~ initiative or on the request of a party, witness, or juror in the proceedings, where the judge finds ~~a reasonable probability of unfairness, danger to a person, undue embarrassment, or hindrance of proper law enforcement would result if such action were not taken. In cases involving police informants, undercover agents, relocated witnesses, and minors, and in evidentiary suppression hearings, divorce and custody proceedings, and cases involving trade secrets, a presumption of validity attends the request. This list of requests which enjoy the presumption is not exclusive, and the judge may in the exercise of his discretion find cause in comparable situations. Within the guidelines set forth in this subsection, the judge is granted broad discretion in determining whether~~ that there is good cause for termination, prohibition, or limitation of extended coverage. There is a presumption that good cause exists in cases involving custody, divorce, minors, relocated witnesses, and trade secrets.

Committee note: Examples of good cause include unfairness, danger to a person, undue embarrassment, or hindrance of proper law enforcement.

~~3.~~ 2. Extended coverage is not permitted of any proceeding which is by law closed to the public, or which may be closed to the public and has been closed by the judge.

~~4.~~ 3. Extended coverage in the judicial area of a courthouse or other facility is limited to proceedings in the courtroom in the presence of the presiding judge.

~~5.~~ 4. There shall be no audio coverage of private conferences, bench conferences, and conferences at counsel tables.

~~f.~~ g. Standards of Conduct and Technology.

~~8.~~ 1. Television or movie camera equipment shall be positioned outside the rail of the courtroom, or if there is no rail, in the area reserved for spectators, at a location approved in advance by the presiding judge. Wherever possible, recording and broadcasting equipment which is not a component part of a television camera shall be located outside the courtroom in an area approved in advance by the presiding judge.

~~9.~~ 2. A still camera photographer shall be positioned outside the rail of the courtroom or if there is no rail, in the area reserved for spectators, at a location approved in advance by the presiding judge. The still camera photographer shall not photograph from any other place, and shall not engage in any movement or assume any body position that would be likely to attract attention or be distracting. Unless positioned in or beyond the last row of spectators' seats, or in an aisle to the outside of the spectators' seating area, the still photographer shall remain seated while photographing.

~~10.~~ 3. Broadcast media representatives shall not move about the courtroom while proceedings are in session, and microphones and recording equipment once positioned shall not be moved during the pendency of the proceeding.

~~1.~~ 4. Not more than one ~~portable~~ television camera, operated by not more than one person, shall be permitted in any trial court proceeding. Not more than two stationary television cameras, operated by not more than one person each, shall be permitted in any appellate court proceeding.

~~2.~~ 5. Not more than one still photographer, utilizing not more than two still cameras with not more than two lenses for each camera and related equipment approved by the presiding judge shall be permitted in any proceeding in a trial or appellate court.

~~3.~~ 6. Not more than one audio system for

broadcast purposes shall be permitted in any proceeding in a trial or appellate court. Audio pickup shall be accomplished from existing audio systems, except that if no technically suitable audio system exists, unobtrusive microphones and related wiring shall be located in places designated in advance by the presiding judge. Microphones located at the judge's bench and at counsel tables shall be equipped with temporary cutoff switches. A directional microphone may be mounted on the television or film camera, but no parabolic or similar microphones shall be used.

~~4.~~ 7. Any "pooling" arrangements among the media required by these limitations on equipment and personnel shall be the sole responsibility of the media without calling upon the presiding judge to mediate any dispute as to the appropriate media representative or equipment authorized to cover a particular proceeding. In the absence of advance media agreement on disputed equipment or personnel issues, the presiding judge shall exclude all contesting media personnel from extended coverage.

~~5.~~ 8. Only television, movie, and audio equipment that does not produce light or distracting sound shall be employed. No artificial lighting device of any kind shall be employed in connection with the television and movie cameras.

~~6.~~ 9. Only still camera equipment that does not produce distracting sound shall be employed to cover judicial proceedings. No artificial lighting device of any kind shall be employed in connection with a still camera.

~~7.~~ 10. It shall be the affirmative duty of media personnel to demonstrate to the presiding judge adequately in advance of any proceeding that the equipment sought to be utilized meets the sound and light criteria enunciated herein. A failure to obtain advance judicial approval for equipment shall preclude its use in any proceedings.

11. Photographic or audio equipment shall not be placed in or removed from the courtroom except prior to commencement or

after adjournment of proceedings each day, or during a recess. Neither film magazines nor still camera film or lenses shall be changed within a courtroom except during a recess in the proceeding.

12. With the concurrence of the presiding judge, and before the commencement of a proceeding or during a recess, modifications and additions may be made in light sources existing in the courtroom provided such modifications or additions are installed and maintained without public expense.

Committee note: Nothing in this Rule prohibits a judge from granting a reasonable request for court-owned or court-controlled electronic or photographic equipment or materials.

Source: This Rule is derived from former Rule 1209.

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

Rule 16-109 is proposed to be amended to reflect several policy recommendations of the Rules Committee.

Subsection b 1 is proposed to be restated so that it expressly includes the concept that extended coverage may be prohibited "by law." A cross reference is proposed to be added following subsection b 1 to highlight the statutory provision that prohibits extended coverage of criminal trials and grand jury proceedings. A reference to an exception in that statute for the videotaping of certain child witnesses is added to subsection b 7 for completeness.

New language is proposed to be added to subsection b 3 to take account of camera-equipped cellular phones and similar technology. As a practical matter, this may impose additional burdens on courthouse security and bailiffs; but it is important to make clear that these devices are prohibited. Jury rooms are added to the list of locations where devices that capture and transmit images are prohibited.

With respect to the use of the phrase, "at least five days before ..." in subsection c 1, a cross reference to Rule 1-203 (b) is proposed to be added following that subsection.

Under proposed new section d, the presiding judge decides whether extended coverage will be permitted and controls what happens in the courtroom during a covered proceeding, and the local administrative judge makes whatever decisions and arrangements are necessary to get the media personnel and their equipment from the door of the courthouse to the door of the courtroom involved.

Certain references in section f, Restrictions on Extended Coverage, are proposed for deletion because they appear to refer to criminal proceedings, extended coverage of which is prohibited by Code, Criminal Procedure Article, §1-201.

The proposed reorganization and renumbering of the provisions in section g is stylistic, only.

Professor Frederic I. Lederer of the Courtroom 21 Project at the William and Mary School of Law, who had been asked to review the Rule, pointed out that the Rule did not address court-owned or court-controlled electronic or photographic equipment or materials. The Subcommittee recommends adding a Committee note to fill in this gap.

Judge Norton told the Committee that several changes have been recommended for the Rule. In subsection b. 1., the language "unless prohibited by law or this Rule" has been added. A new Committee note cites Code, Criminal Procedure Article, §1-201 which prohibits extended coverage of criminal proceedings in a trial court or before a grand jury. Subsection b. 3. has new language referring to camera-equipped cellular phones, a new development in technology, and there is an added reference to

cameras being prohibited in jury rooms. Subsection b. 7. (iii) has been added to exclude from the applicability of the Rule the use of electronic or photographic equipment to take the testimony of a child victim, as allowed by Code, Criminal Procedure Article, §11-303. A cross reference to section (b) of Rule 1-203, Time, has been added after subsection c. 1. A new section d. providing workable procedures for the presiding judge to handle requests for extended coverage has been added. Section f., Restrictions on Extended Coverage, has been shortened to delete language that seems to refer to coverage of criminal proceedings that is not allowed under §1-201 of the Criminal Procedure Article. A Committee note giving examples of good cause for termination, prohibition, or limitation of extended coverage has been added. The Committee note at the end of the Rule was added to respond to comments by Professor Frederic I. Lederer of the Courtroom 21 Project at the College of William and Mary School of Law, who had pointed out that the Rule did not address court-owned or court-controlled electronic or photographic equipment or materials.

Mr. Brault moved to approve the changes to Rule 16-109, the motion was seconded, and it passed unanimously.

Agenda Item 4. Consideration of proposed Rules changes recommended by the Appellate Subcommittee: Amendments to: Rule 7-112 (Appeals Heard De Novo), Rule 1-104 (Unreported Opinions), and Rule 8-605.1 (Reporting of Opinions of the Court of Special Appeals)

The Vice Chair presented Rule 7-112, Appeals Heard De Novo, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 - APPEALS FROM THE DISTRICT COURT TO THE CIRCUIT COURT

AMEND Rule 7-112 by adding language to subsections (f)(1) and (f)(4) that provides when an appeal may be dismissed, as follows:

Rule 7-112. APPEALS HEARD DE NOVO

. . .

(f) ~~Withdrawal~~ Dismissal of Appeal; Entry of Judgment

(1) An appellant may dismiss an appeal by filing a notice of dismissal prior to the commencement of trial. The court shall dismiss ~~An~~ an appeal ~~shall be considered withdrawn if the appellant files a notice withdrawing the appeal or~~ if the appellant fails to appear as required for trial or any other proceeding on the appeal.

(2) Upon ~~a withdrawal of~~ the dismissal of an appeal, ~~the circuit court shall dismiss the appeal, and~~ the clerk shall promptly return the file to the District Court. Any statement of satisfaction shall be docketed in the District Court.

(3) On motion filed in the circuit court within 30 days after entry of a judgment dismissing an appeal, the circuit court, for good cause shown, may reinstate the appeal upon the terms it finds proper. On motion of any party filed more than 30 days after entry

of a judgment dismissing an appeal, the court may reinstate the appeal only upon a finding of fraud, mistake, or irregularity. If the appeal is reinstated, the circuit court shall notify the District Court of the reinstatement and request the District Court to return the file.

(4) If the appeal of a defendant in a criminal case who was sentenced to a term of confinement and released pending appeal pursuant to Rule 4-349 ~~withdraws the appeal~~ is dismissed, the circuit court shall (A) issue a warrant directing that the defendant be taken into custody and brought before a judge or commissioner of the District Court or (B) enter an order that requires the defendant to appear before a judge or commissioner. The warrant or order shall identify the District Court case by name and number and shall provide that the purpose of the appearance is the entry of a commitment that conforms to the judgment of the District Court.

. . .

Rule 7-112 was accompanied by the following Reporter's Note.

In the case of *Gonzales v. State*, ___ Md. ___ (No. 103, September Term, 2004, filed July 15, 2005), the Court of Appeals pointed out that Rule 7-112 (f) does not set a time deadline as to when an appeal may be withdrawn and asked the Rules Committee to review this gap in the Rule. The Appellate Subcommittee recommends adding language to Rule 7-112 (f) providing that an appellant may dismiss an appeal by filing a notice of dismissal prior to the commencement of trial. This is a more definitive time frame and is consistent with the time jeopardy attaches in cases concerning the possibility of double jeopardy.

The Vice Chair explained that in *Gonzales v. State*, ___ Md. ___ (No. 103, September Term, 2004, filed July 15, 2005), when

the circuit court did not allow certain testimony into evidence during the *de novo* trial of an appeal from a judgment of the District Court, the appellant/petitioner attempted to withdraw his appeal. The circuit court did not permit him to do so. The Court of Appeals granted *certiorari*. Although the Court decided the case on a different ground, it asked that the Rules Committee consider the issue of when an appeal may be dismissed. The Appellate Subcommittee proposes that the notice of dismissal may be filed by an appellant prior to the commencement of trial.

Mr. Karceski commented that the appellant's motion to dismiss may be made orally prior to the commencement of the trial. The Vice Chair observed that a motion for summary judgment can be made orally. Mr. Karceski suggested that the new language be amended to allow for an oral motion as well as a written motion. The Reporter suggested that the motion could be allowed prior to the calling of the first witness at trial. The Chair pointed out that the motion should be before jeopardy attaches.

Mr. Brault inquired as to why the motion to dismiss cannot be made during the trial. The Vice Chair responded that the Subcommittee did not feel strongly about this; however, Judge McAuliffe, a member of the Appellate Subcommittee, believed that once the trial begins, the case cannot be dismissed. Mr. Karceski observed that it becomes a game if the case can be dismissed in the middle of the trial. Everyone who is convicted in the District Court could note an appeal and after the *de novo*

trial starts, decide whether the case is going in the right direction. It gives everyone a free shot at a *de novo* appeal, with no consequences for beginning the second trial. Mr. Brault said that in civil cases, to voluntarily dismiss the case after the case is at issue, the party who wishes to dismiss must comply with Rule 2-506 or 3-506 and have the consent of the other side or leave of court. He asked if it would make any difference if, in a criminal case that is heard *de novo* in the circuit court pursuant to Rule 7-112, the State's Attorney agrees to the dismissal of the appeal after the *de novo* trial begins. Judge Kaplan suggested that dismissal after a criminal trial begins should be only with leave of court. The Chair said that appropriate language should be added to Rule 7-112 to deal with a statement on the record in open court before the trial commences. One example would be: "An appeal may be dismissed at any time before the commencement of trial."

Judge Kaplan moved to approve the proposed amendment to Rule 7-112, with language added to allow an oral dismissal on the record prior to the commencement of the *de novo* trial. The motion was seconded, and it passed unanimously.

The Vice Chair presented Rule 1-104, Unreported Opinions, and Rule 8-605.1, Reporting of Opinions of the Court of Special Appeals, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 100 - APPLICABILITY AND CITATION

AMEND Rule 1-104 to add a Committee note, as follows:

Rule 1-104. UNREPORTED OPINIONS

(a) Not Authority

An unreported opinion of the Court of Appeals or Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority.

(b) Citation

An unreported opinion of either Court may be cited in either Court for any purpose other than as precedent within the rule of stare decisis or as persuasive authority. In any other court, an unreported opinion of either Court may be cited only (1) when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, (2) in a criminal action or related proceeding involving the same defendant, or (3) in a disciplinary action involving the same respondent. A party who cites an unreported opinion shall attach a copy of it to the pleading, brief, or paper in which it is cited.

Alternative 1

Committee note: Requests that unreported opinions be designated for reporting are governed by Md. Rule 8-605.1 (b).

Alternative 2

Committee note: This Rule does not prohibit a person from timely requesting that the Court of Special Appeals designate for reporting an opinion previously designated to be unreported. See Rule 8-605.1 (b).

Alternative 3

Committee note: This Rule does not prohibit a person from requesting, before the mandate issues, that the Court of Special Appeals designate for reporting an opinion previously designated to be unreported. See Rule 8-605.1 (b).

Source: This Rule is derived from former Rule 8-114, ~~and is~~ which was derived from former Rules 1092 c and 891 a 2.

Rule 1-104 was accompanied by the following Reporter's Note.

The Appellate Subcommittee discussed the issue of citing unreported opinions and concluded that no change should be made to the current procedure. However, the Subcommittee recommends adding a Committee note to Rule 1-104 to draw attention to Rule 8-605.1, which allows someone to request that the Court of Special Appeals designate an unreported opinion to be reported before the mandate issues. In light of this change, the

Subcommittee also recommends adding a cross reference to Rule 1-104 at the end of Rule 8-605.1.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 600 - DISPOSITION

AMEND Rule 8-605.1 to add a cross reference to Rule 1-104 and to delete an incorrect cross reference, as follows:

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

(a) Reporting of Opinions

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

(b) Request for Reporting of Unreported Opinion

At any time before the mandate issues, the Court of Special Appeals, on its own initiative or at the request of a party or nonparty filed before the date on which the mandate is due to be issued, may designate for reporting an opinion previously designated as unreported. An unreported opinion may not be designated for reporting after the mandate has issued.
Cross reference: See Rule 1-104 ~~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.

> See the Reporter's Note to Rule 1-104 concerning the proposed addition of a cross reference to that Rule. The cross reference to Rule 8-606 (f) is proposed to be deleted because there is no section (f) in Rule 8-606.

The Vice Chair explained that in lieu of making a rule change on the topic of unreported opinions, the Subcommittee suggests that a Committee note be added to Rule 1-104 to draw attention to Rule 8-605.1, which allows someone to request that the Court of Special Appeals designate an unreported opinion to be reported before the mandate issues. The Subcommittee also recommends the addition of a cross reference at the end of Rule 8-605.1 referring to Rule 1-104. By consensus, the Committee approved both rules, deciding on the addition of the language of Alternative 1 in Rule 1-104.

Agenda Item 5. Consideration of proposed amendments to Rules 2-126 (Process - Return) and 3-126 (Process - Return)

The Chair presented Rules 2-126, Process - Return, and 3-126, Process - Return, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-126 to add a certain cross reference following section (e), as follows:

Rule 2-126. PROCESS - RETURN

. . .

(e) Return to Include Process

A return shall include a copy of the process if served and the original process if not served.

Cross reference: For the definition of "process," see Rule 1-202.

. . .

Rule 2-126 was accompanied by the following Reporter's Note.

Proposed amendments to Rules 2-126 (e) and 3-126 (e) add a cross reference to the definition of "process" set forth in Rule 1-202. The Rule change is proposed at the suggestion of the Hon. Dana M. Levitz, who has noticed that requests for orders of default are being made without there having been a return of service of process.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE--DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-126 to add a certain cross reference after section (e), as follows:

Rule 3-126. PROCESS - RETURN

. . .

(e) Return to Include Process

A return shall include a copy of the process if served and the original process if not served.

Cross reference: For the definition of "process," see Rule 1-202.

. . .

Rule 3-126 was accompanied by the following Reporter's Note.

See the Reporter's note to the proposed amendment to Rule 2-126.

The Chair explained that the Honorable Dana M. Levitz, of the Circuit Court for Baltimore County, had pointed out that requests for orders of default are being made without a return of service of process. To address this problem, Judge Levitz suggests that a cross reference to the definition of the word "process" be added to Rule 2-126. The Chair expressed his concern that directing people to the definition in Rule 1-202 may not be helpful. Ms. Ogletree commented that this is a step in the right direction, but litigants who are *pro se* will not look at the definition in Rule 1-202. The Chair suggested that it would be better to add a Committee note to Rule 2-126 that sets forth the entire definition of the word "process." By consensus, the Committee agreed to this suggestion and to a parallel change to Rule 3-126.

The Chair adjourned the meeting.