

COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms UL4 and 5 of the Judicial Education and Conference Center, 2011 Commerce Park Drive, Annapolis, Maryland on November 17, 2017.

Members present:

Hon. Alan M. Wilner, Chair

Hon. Yvette M. Bryant	Bruce L. Marcus, Esq.
James E. Carbine, Esq.	Donna Ellen McBride, Esq.
Hon. John P. Davey	Hon. Danielle M. Mosley
Mary Anne Day, Esq.	Hon. Douglas R. M. Nazarian
Hon. Angela M. Eaves	Hon. Paula A. Price
Alvin I. Frederick, Esq.	Hon. Margaret M. Schweitzer
Pamela Q. Harris, State Court Administrator	Gregory K. Wells, Esq.
	Thurman W. Zollicoffer, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Susan Macek, Esq., Assistant Reporter
Sherie B. Libber, Esq., Assistant Reporter
Albert D. Brault, Esq., Brault Graham, LLC
P. Tyson Bennett, Esq., Chair, Rules of Practice Committee,
Maryland State Bar Association
Thomas J. Dolina, Esq., Bodie, Dolina, Hobbs, Friddell &
Grenzer, P.C.
Thomas B. Stahl, Esq., Spencer & Stahl, P.C.
Kimberly Klein, Esq., Anne Arundel County Circuit Court
Benjamin Woolery, Esq.
Sara Walsh, Esq.
Colby Schmidt, Esq., Office of the Attorney General
Kathy Brissette-Minus, Esq.
Scott G. MacGlashan, Clerk, Circuit Court for Queen Anne's
County
Nisa C. Subasinghe, Esq., Department of Juvenile and Family
Services, Administrative Office of the Courts

The Chair convened the meeting. He announced that Agenda Item 1, consideration of review proposed amendments to Rules 2-541, Magistrates; 2-542, Examiners; 2-543, Auditors; and 9-208, Referral of Matters to Magistrates, would be deferred until the January 5, 2018 meeting.

Agenda Item 2. Consideration of proposed amendments to: Rule 10-707 (Inventory, Monthly Benefits Statement, and Information Report) and Rule 10-708 (Fiduciary's Account and Report of Trust Clerk)

Since Mr. Laws, the Chair of the Probate/Fiduciary Subcommittee, was not present, the Chair said that he would present the Rules in Agenda Item 2.

The Chair presented Rule 10-707, Inventory, Monthly Benefits Statement, and Information Report, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 700 - FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS OF THE PROPERTY

AMEND Rule 10-707 by adding to the title the language "Monthly Benefits Statement;" by adding to the inventory form a new Part II, Monthly Benefits Statement; and by making stylistic changes, as follows:

Rule 10-707. INVENTORY, MONTHLY BENEFITS STATEMENT, AND INFORMATION REPORT

(a) Duty to File

Within 60 days after jurisdiction has been assumed or a fiduciary has been appointed, the fiduciary shall file an inventory and information report in substantially the following form:

Part I.

[CAPTION]

INVENTORY

The FIDUCIARY ESTATE now consists of the following assets:

(attach additional sheets, if necessary; each item listed shall be valued by the fiduciary at its fair market value, as of the date of the appointment of the fiduciary or the assumption of jurisdiction by the court; unless the court otherwise directs, it shall not be necessary to employ an appraiser to make any valuation; state amount of any mortgages, liens, or other indebtedness, but do not deduct when determining estimated fair market value)

A. REAL ESTATE

(State location, liber/folio, balance of mortgage, and name of lender, if any)

	ESTIMATED FAIR MARKET VALUE
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL	\$ _____

B. CASH AND CASH EQUIVALENTS

(State name of financial institution, account number, and type of account)

	PRESENT FAIR MARKET VALUE
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL	\$ _____

C. PERSONAL PROPERTY

(Itemize motor vehicles, regardless of value; describe all other property generally if total value is under \$1500; state amount of any lien; itemize, if total value is over \$1500)

	ESTIMATED FAIR MARKET VALUE
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL	\$ _____

D. STOCKS

(State number and class of shares, name of corporation)

	PRESENT FAIR MARKET VALUE
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL	\$ _____

E. BONDS

(State face value, name of issuer, interest rate, maturity date)

	PRESENT FAIR MARKET VALUE
_____	\$ _____
_____	\$ _____
_____	\$ _____
TOTAL	\$ _____

F. OTHER

(Describe generally, e.g., debts owed to estate, partnerships, cash value of life insurance policies, etc.)

	ESTIMATED FAIR MARKET VALUE
_____	\$ _____

	\$	
	\$	
TOTAL	\$	

Part II.

MONTHLY BENEFITS STATEMENT

Anticipated monthly benefits and other receipts (e.g., Social Security, rental income, annuities, pensions, etc.) are:

	<u>Amount Received</u> <u>Monthly</u>
	\$
	\$
	\$
<u>TOTAL</u>	\$

Part ~~II.~~ III.

INFORMATION REPORT

(1) Are there any assets in which the minor or disabled person holds a present interest of any kind together with another person in any real or 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 property:

Name, Address, and Relationship of Co-Owner	Nature of Property	Description of Interest	Total Value of Property

(2) Does the minor or disabled person hold an interest less than absolute in any other property which has not been disclosed in question (1) and has not been included in the inventory (e.g., interest in a trust, a term for years, a life estate)?

[] 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

_____	_____
_____	_____
_____	_____

VERIFICATION:

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

_____	_____
Date	Date
_____	_____
Signature of Fiduciary	Signature of Fiduciary
_____	_____
Address	Address
_____	_____
Telephone Number	Telephone Number

Name of Fiduciary's Attorney

Address

Telephone Number

Facsimile Number

E-mail Address

(b) Examination not Required

Unless the court otherwise directs, it shall not be necessary that the assets listed in the report be exhibited to or examined by the court, the trust clerk, or auditor.

(c) Notice

Unless the court orders otherwise, the trust clerk or fiduciary shall furnish a copy of the report to any interested person who has made a request for it.

Source: This Rule is derived as follows:

Section (a) is in part derived from former Rule V74 b 1 and 2 and is in part new.

Section (b) is derived from former Rule V74 b 3.

Section (c) is new.

Rule 10-707 was accompanied by the following Reporter's note.

Guardianship estates include monthly income from government benefits, pensions, annuities, rental properties, etc., but the inventory form in Rule 10-707 does not have a place for guardians of the property to list this income. Some courts have asked guardians to list this income in a separate attachment, but this is burdensome for some guardians and clerks.

The Probate/Fiduciary Subcommittee agrees with the suggestion of the Guardianship Work Group to add a new section to the inventory form asking for guardians to provide specific information about the benefits that are received monthly.

The Chair explained that Rule 10-707 contains the inventory form to be filed in guardianships of the property. The proposal is to add a section requesting information on any monthly benefits statement to the form.

The Chair said that he had two minor changes to suggest. The proposed new Part II of the form refers not only to monthly benefits, such as Social Security, but also to rental income. The Reporter asked Ms. Subasinghe, who is a research specialist in the Department of Juvenile and Family Services of the Judiciary and on the staff of the Guardianship Work Group of the Judicial Council, to answer questions. The Chair noted that rental income may not be the only kind of monthly income. He referred to other kinds of income, such as dividends, interest, and deferred compensation. There could be a variety of items similar to this. He asked whether the intent of the Work Group was to require those kinds of income to be reported on the monthly benefits statement. Ms. Subasinghe replied that that was the intent of the Work Group, because income is part of the guardianship estate. Clerks had been asking guardians to submit a separate document to provide that information. Ms. Subasinghe added that the Chair was correct that rental income does include those other sources.

The Chair commented that two changes to Rule 10-707 could be made. In the title of the Rule and in the caption of proposed Part II, the wording could be "monthly income statement" in place of "monthly benefits statement." In proposed new Part II, instead of limiting it to "rental income," it could be broadened to read "income," so that it would be

income of any kind, if that is what the Work Group intended. Ms. Subasinghe responded that this is what was intended. Mr. Woolery said that he had never seen this proposal before, and he agreed with the Chair's suggested changes. An attorney who handles guardianship estates wants to know about everything that the client has. If a client only gives the attorney limited information, the attorney may file a Medicaid application, which may not be appropriate given the resources that the attorney did not know about.

The Chair asked if anyone on the Committee had any comments, and there were none. The Chair said that the title of the Rule would be "Inventory, Monthly Income Statement, and Information Report," and the caption of Part II would be "Monthly Income Statement." Also in Part II, the word "rental" would be deleted. The concern is that some of the people filling out the form may be *pro se* and would not understand what is being asked for. The Reporter suggested that the language could be "rental and other income." The Chair pointed out that it might be better to be more specific as to what should be included in Part II.

Mr. Stahl told the Committee that he was at the meeting to represent the Maryland State Bar Association. He had just finished a two-day guardianship trial, and in his practice, he had filed many of these accounting forms. The initial inventory

form is required to be filed 60 days after the guardian takes over the estate. The "estate" means the disabled person's affairs. This inventory originally did not include these kinds of benefits, because what the guardians were taking control of were the actual assets in the name of the disabled person.

Mr. Stahl remarked that the next document that has to be filed is an accounting that is usually filed a year after the initial inventory. This informs the court as to what the guardian has done with the assets contained in the inventory. The probate process has the same concept. An initial inventory is filed, and then subsequent accountings are filed.

Mr. Stahl noted that with a little more precision, regular recurring benefits could be identified. It is recurring income, because income could be periodic, or it could be only one time. A *pro se* guardian who has to file this return needs to understand that the form requests that the recurring income of the ward be provided. The Chair expressed the view that the language "anticipated monthly benefits" in the Monthly Benefits Statement in Part II of Rule 10-707 is clear. This means something that is recurring and that is not simply a one-time payment. Mr. Stahl referred to the phrase just after the language "anticipated monthly benefits" which was "and other receipts." This could be income that is not regular. Part II also refers to "rental income," which had been discussed

already. What is trying to be identified is the actual recurring benefit that the person is receiving, whether it is provided by the State or by the federal government.

Judge Price suggested that it might be clearer to use the language "monthly benefits and other income." Then the examples could be listed. The Chair commented that the guardianship forms tend to be very long and not easy to negotiate. On the other hand, if the guardian is a *pro se* person, the more specificity in the form, the better it is going to be. He asked whether in Part II, the benefits should be broken out. Some categories, even if they are fairly general, might be listed, so that the person filing the form has some idea of what should be included when the form is filled out. Judge Eaves suggested adding the word "type." The Chair responded that the categories could be listed. It would make the form longer, but it would focus the guardian on what information is necessary to provide in the form. The Style Subcommittee could redraft Part II. The Chair asked for further comments. There being none, the Chair said that the Style Subcommittee would redraft Part II.

By consensus, the Committee approved Rule 10-707, subject to Part II being redrafted.

The Chair presented Rule 10-708, *Fiduciary's Account and Report of Trust Clerk*, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 700 - FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS OF THE
PROPERTY

AMEND Rule 10-708 by separating the Fiduciary's Account form into Part 1 and Part 2; by adding the word "now" to Part 1; by deleting language from Part 1 referring to assets reported on the fiduciary's inventory carried forward from the last account; by adding to Part 1 instructions as to how to fill the form out; by deleting from Part 1 Sections A. through F., referring to certain assets and by deleting the line for the total of the assets; by adding new Sections A. through F., referring to certain assets, and including lines to itemize the assets, to add the fair market value of the assets, and to add the total of the assets; by adding Part 2 to the form; by deleting from the summary in Part 2 the language "to be carried forward to next account" and adding the language "is as follows;" by adding to Part 2 a section requiring an itemization of the summary of what is in the Fiduciary Estate, including value reported on last fiduciary account, value reported on the current account, and a total for both; by adding to both the Report of Trust Clerk and the Order in section (b) language specifying the time period that the account covers, and by making stylistic changes, as follows:

Rule 10-708. FIDUCIARY'S ACCOUNT AND REPORT OF TRUST CLERK

(a) Form of Account

The Fiduciary's Account shall be filed in substantially the following form:

[CAPTION]

FIDUCIARY'S ACCOUNT

I, _____, make this [] periodic
[] final Fiduciary's Account for the period from
_____ to _____ .

PART 1. The Fiduciary Estate **now** consists of the following assets ~~as [] reported on the Fiduciary's Inventory [] carried forward from last Fiduciary Account~~ **(attach additional sheets, if necessary; state amount of any mortgages, liens, or**

other indebtedness, but do not deduct when determining estimated fair market value):

A. Real Estate	\$ _____
B. Cash and Cash Equivalents	\$ _____
C. Personal Property	\$ _____
D. Stocks	\$ _____
E. Bonds	\$ _____
F. Other Total	\$ _____
Total	\$ _____

A. REAL ESTATE

(State location, liber/folio, balance of mortgage, and name of lender, if any)

	<u>ESTIMATED FAIR MARKET VALUE</u>
_____	\$ _____
_____	_____
_____	_____
_____	_____
<u>TOTAL</u>	<u>\$ _____</u>

B. CASH AND CASH EQUIVALENTS

(State name of financial institution, account number, and type of account)

	<u>PRESENT FAIR MARKET VALUE</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
<u>TOTAL</u>	<u>\$ _____</u>

C. PERSONAL PROPERTY

(Itemize motor vehicles, regardless of value; describe all other property generally if total value is under \$1500; state amount of any lien; itemize, if total value is over \$1500)

	<u>ESTIMATED FAIR MARKET VALUE</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
	<u>TOTAL</u> \$ _____

D. STOCKS

(State number and class of shares, name of corporation)

	<u>PRESENT FAIR MARKET VALUE</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
	<u>TOTAL</u> \$ _____

E. BONDS

(State face value, name of issuer, interest rate, maturity date)

	<u>PRESENT FAIR MARKET VALUE</u>
_____	\$ _____
_____	\$ _____
_____	\$ _____
	<u>TOTAL</u> \$ _____

F. OTHER

(Describe generally, e.g., debts owed to estate, partnerships, cash value of life insurance policies, etc.)

	<u>ESTIMATED FAIR MARKET VALUE</u>
	\$ _____
	\$ _____
	\$ _____
<u>TOTAL</u>	\$ _____

PART 2.

The following changes in the assets of the Fiduciary Estate have occurred since the last account: (Please include real or personal property that was bought, sold, transferred, exchanged, or disposed of and any loans that were taken out on any asset in the estate. Attach additional sheets, if necessary.)

A. INCOME

Date Received	Type of Income (e.g., pension, social security, rent, annuity, dividend, interest, refund)	Source	Amount
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
Total			\$ _____

B. DISBURSEMENTS

Date of Payment	To Whom Paid	Purpose of Payment	Amount
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
			Total \$ _____

C. ASSETS ADDED

Date	Description of Transaction	Gross Sale Proceeds	Selling Costs	Carrying Value	Gain or (Loss)
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

D. ASSETS DELETED

Date	Description of Transaction	Gross Purchase Price	Value at date of acquisition if other than by purchase
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

SUMMARY

Total Income	\$ _____
Total Disbursements	\$ (_____)
Total Assets Added	\$ _____
Total Assets Deleted	\$ (_____)
Total Changes	\$ _____

A Summary of the Fiduciary Estate ~~to be carried forward to next account~~ is as follows:

<u>Type of Property</u>	<u>Value reported on last Fiduciary Account</u>	<u>Value reported on this Fiduciary Account</u>
<u>A. Real Estate</u>	\$ _____	\$ _____
<u>B. Cash and Cash Equivalents</u>	\$ _____	\$ _____
<u>C. Personal Property</u>	\$ _____	\$ _____
<u>D. Stocks</u>	\$ _____	\$ _____
<u>E. Bonds</u>	\$ _____	\$ _____
<u>F. Other</u>	\$ _____	\$ _____
<u>Total</u>	\$ _____	\$ _____

The Fiduciary bond, if any, has been filed in this action in the amount of \$ _____.

VERIFICATION:

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

_____	_____
Date	Date
_____	_____
Signature of Fiduciary	Signature of Fiduciary
_____	_____
Address	Address
_____	_____
Telephone Number	Telephone Number

 Name of Fiduciary's Attorney

 Address

 Telephone Number

Facsimile Number

E-mail Address

(b) Report of the Trust Clerk and Order of Court

The Report of the Trust Clerk and Order of Court shall be filed in substantially the following form:

REPORT OF TRUST CLERK AND ORDER OF COURT

I, the undersigned Trust Clerk, certify that I have examined the attached Fiduciary's Account covering the period of through in accordance with the Maryland Rules.

Matters to be called to the attention of the Court are as follows:

Date

Signature of Trust Clerk

Address of Trust Clerk

Telephone No. of
Trust Clerk

ORDER

The foregoing Fiduciary's Account having been filed and reviewed, it is by the Court, this ____ day of _____, _____, (month) (year) ORDERED, that the attached Fiduciary's Account covering the period of through is

accepted.

(or)

ORDERED, that a hearing shall be held in this matter on

(date)

JUDGE

Source: This Rule is new.

Rule 10-708 was accompanied by the following Reporter's
note.

Clerks from around the State had complained about the changes to the Fiduciary's Account form in Rule 10-708 that went into effect on January 1, 2016. The changes only allow for the total values of real estate, case and cash equivalents, personal property, stocks, bonds and other items. However, the proposed changes bring back the form that had been in use. These have spaces for guardians to itemize the contents of each category of assets. Without this information, the clerks are having difficulty keeping track of what is in the estate, particularly as assets change or shift over the course of the guardianship. The revised form that is currently in use creates more work for court staff responsible for tracking assets, especially in guardianships that have been open for many years. The court staff also prefers the last section of the old form, the summary, which had fields for guardians to report the value of assets in the last fiduciary accounts along with the current values.

The Probate/Fiduciary Subcommittee also suggests adding to the Report of the Trust Clerk and Order of Court and to the Order the dates that the account covers to help courts keep track of filing.

The Chair said that Rule 10-708 pertains to the fiduciary's account. The account form has been broken out into categories. The Chair pointed out that the Access Rules shield the information requested in the forms in Rule 10-707, which are the Inventory, Monthly Benefits Statement, and Information Report, but they do not shield the information requested in the accounting forms in Rule 10-708. This is critical, because the forms in Rule 10-708 contain a large amount of personal information. The Chair suggested that a reference to Rule 10-708 should be added to section (f) of Rule 16-906, Required Denial of Inspection - Certain Categories of Case Records. By consensus, the Committee approved adding the cross reference.

The Chair noted that in Part 1, section A of the Account form, requests for information about real estate, including location, liber/folio, balance of mortgage, and name of lender, are set out in one line. This is a large amount of information. The Chair asked about other liens and lienholders other than mortgagees. Although there is not much room for this information, should it be included? Ms. Subasinghe responded that a forms subcommittee is looking at some of these forms, and some amendments to the forms are pending that create boxes for the various categories. The categories are broken down, and there will be instructions that will make it easier for *pro se* people to fill out the forms.

The Chair pointed out that if the forms being considered today are going to be presented to a forms subcommittee, they will not be able to do anything if the form is in the Rules. Ms. Subasinghe said that what the subcommittee is doing is more in the nature of formatting and addressing administrative issues. The Chair commented that any form that is in the Rules cannot be changed by the forms subcommittee. The Reporter asked Ms. Subasinghe if she wanted to delay consideration of the changes to Rule 10-708 until the forms subcommittee comes up with the changes they feel are necessary. If the subcommittee would like to add boxes to delineate the various categories, consideration of Rule 10-708 could be delayed. The Chair added that this is also applicable to Rule 10-707. Ms. Subasinghe responded that the subcommittee did not make any changes to the forms in Rule 10-707.

Judge Nazarian noted that section (a) of Rule 10-708 provides that the Fiduciary's Account "shall be filed in substantially the following form." How closely does the form in the Rule have to track whatever form the subcommittee comes up with? The Chair responded that the word "substantially" means very minor changes. Judge Nazarian remarked that he was thinking of a change such as lines instead of boxes in the form, but the information sought would be the same. The Chair said that if the Committee recommends changing the form, it might be

better to wait and let the forms subcommittee make their changes. They can present their recommendations, and the Committee can then look at everything.

Ms. Harris asked why the form has to be in the Rule. The Chair responded that the question of which forms do not have to be in the Rules had been presented to the Judicial Council. The form in Rule 10-708 may be one of those forms as long as it is uniform. Ms. Harris commented that there are hundreds of forms. The goal is to automate all of these forms. The Chair said that someone could move that this be deleted from the Rules and sent to the forms subcommittee. The Reporter observed that the language of the Rule could be "substantially in the form approved by the State Court Administrator." The forms subcommittee then develops the language used in the form. The Chair commented that he would not recommend deleting the form until there is a form that has been created and approved.

Judge Eaves asked about how the Guardianship Work Group felt about the forms. Ms. Subasinghe answered that the Work Group was supportive of having a form that is substantially approved by the State Court Administrator. It will allow the Work Group to change the forms through their internal process. The Chair said that this process should not be changed until the Work Group has a form ready.

The Chair responded that he and the Reporter had discussed

this. Forms that are important to keep in the Rules are forms that have a significant impact on important rights, such as forms pertaining to adoption and termination of parental rights. If those forms are not filled out properly and sent in timely, someone could lose his or her child. The Chair suggested that there should be a reluctance to have a forms committee of the Judicial Council toy with this. For the time being, the proposed changes to Rules 10-707 and 10-708 would be deferred.

Judge Nazarian asked about the amendment to address shielding of the information in the Fiduciary's Account form in Rule 10-708. The Chair replied that this amendment should be approved, because there is an existing form in Rule 10-708 that requires information that should be shielded.

The Chair said that the proposed changes to Rules 10-707 and 10-708 would be deferred. By consensus, the Committee approved the change to Rule 16-906 (f) that adds a cross reference to Rule 10-708.

Agenda Item 3. Consideration of proposed amendments to Rule 1-321 (Service of Pleadings and Papers Other Than Original Pleadings)

Judge Bryant presented Rule 1-321 for the Committee's consideration.

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-321 by adding a new section (e), a cross reference, and a Committee note, as follows:

Rule 1-321. SERVICE OF PLEADINGS AND PAPERS
OTHER THAN ORIGINAL PLEADINGS

(a) Generally

Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties. If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at the office of the person to be served with an individual in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, leaving it at the dwelling house or usual place of abode of that person with some individual of suitable age and discretion who is residing there. Service by mail is complete upon mailing.

(b) Service After Entry of Limited Appearance

Every document required to be served upon a party's attorney that is to be served

after entry of a limited appearance also shall be served upon the party and, unless the attorney's appearance has been stricken pursuant to Rules 2-132 or 3-132, upon the limited appearance attorney.

Cross reference: See Rule 1-324 with respect to the sending of notices by a clerk when a limited appearance has been entered.

(c) Party in Default - Exceptions

No pleading or other paper after the original pleading need be served on a party in default for failure to appear except:

(1) a pleading asserting a new or additional claim for relief against the party shall be served in accordance with the rules for service of original process; and

(2) a request for entry of judgment arising out of an order of default under Rule 2-613 shall be served in accordance with section (a) of this Rule.

(d) Requests to Clerk - Exception

A request directed to the clerk for the issuance of process or any writ need not be served on any party.

(e) Proceedings to Modify Judgment in a Civil Action

If a motion, petition, or other paper that initiates proceedings to modify a judgment in a civil action is filed more than 30 days after entry of the judgment, it shall be treated as an original pleading and served, together with a summons issued pursuant to Rule 2-114 or 3-114, as applicable, in accordance with the rules for service of original process.

Cross reference: For the time for filing a response to an original pleading, see Rules 2-321 and 3-307.

Committee note: A certificate of service under Rule 1-323 is not required when a motion, petition, or paper is treated as an

original pleading pursuant to section (e) of this Rule.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 306 a 1 and c and the 1980 version of Fed. R. Civ. P. 5 (a). Section (b) is new. Section (c) is derived from former Rule 306 b and the 1980 version of Fed. R. Civ. P. 5 (a).

Section (d) is new.

Section (e) is new.

Rule 1-321 was accompanied by the following Reporter's note.

A May 8, 2002 Letter of Advice from the Office of the Attorney General advised that: the clerk should not issue a summons in connection with a motion or petition seeking post-judgment relief, unless expressly directed by the court to do so, and that a motion for post-judgment relief, such as modification of child support, custody, or visitation, but not a petition for contempt, needs to contain or be accompanied by a certification of service, or an admission or waiver of service.

A number of jurisdictions have raised concerns about the advice, and various local approaches have been implemented, including at least one circuit court requiring that "every civil Motion, Petition or Complaint filed with the Clerk of this Court to modify any provision of any final court order or judgment, which is filed after thirty (30) days have passed from the entry of such final order, shall be served on the opposing party using the same process required for an original action."

To provide a more uniform procedure throughout the State and to assure that parties receive notice of post-judgment proceedings that may affect their rights,

the Process, Parties, and Pleading Subcommittee recommends an amendment to Rule 1-321. The proposed amendment adds a new section (e), pertaining to post-judgment motions, petitions, and papers that seek to modify the judgment in a civil action. Such motions, petitions, and papers are treated as original pleadings and served in accordance with the rules for service of original process, together with a summons that is issued under Rule 2-114 or 3-114, as applicable.

The Process, Parties, and Pleading Subcommittee also recommends that a cross reference and a Committee note be added following new section (e). For the cross reference, the Subcommittee considered the time for filing a response and felt that the same rules for responding to an original pleading applied to responding to motions, petitions, or papers to which section (e) applies. The Committee note clarifies that a certificate of service is not required when a motion, petition, or paper is being treated as an original pleading.

Judge Bryant told the Committee that an issue had arisen concerning modifications of judgments in civil cases. The proposed change to Rule 1-321 is to add a section (e), which provides that if a motion, petition, or other paper that initiates proceedings to modify a judgment is filed more than 30 days after entry of the judgment, it shall be treated as an original pleading and served together with a summons in accordance with the rules for service of original process. Apparently, jurisdictions have been handling this in different ways. The proposed change to the Rule is designed to get every

jurisdiction operating in the same manner. It would ensure that people get notice of a proceeding to modify a judgment.

Typically, this may be for a family matter, with someone seeking modification of child custody or support. There is a question about whether people are actually getting notice. Some jurisdictions require mailing of the pleading; others require service.

Ms. Klein, who works in the Clerk's office of the Circuit Court for Anne Arundel County, asked whether the proposed change includes petitions for contempt. Is the change strictly just for modifications? Judge Bryant answered that petitions for contempt have their own separate rules. Service of those petitions is as provided in those rules. Ms. Klein said that in Anne Arundel County, because of section (b) of Rule 2-132, Striking of Attorney's Appearance, the attorney's appearance is automatically stricken if no one files an appeal within 30 days. The court in Anne Arundel County does require a new summons to be served for anything that is filed after the 30 days. Amending this Rule would make modifications consistent. She added that she wanted a clarification as to how it would work.

The Reporter responded that the change to Rule 1-321 (e) is intended to address the situation where someone is trying to modify a judgment. Ms. Klein's concern appears focused on enforcement of a judgment, such as through the power to hold

someone in contempt, because he or she did not do what the judgment had said to do. Similarly, enforcement of a money judgment is an attempt to collect on the judgment, not to change the amount of the underlying judgment. What the judge signed remains in place. Section (e) pertains to modification of a judgment, rather than enforcement of it.

The Chair said that the proposed addition of section (e) to Rule 1-321 was a Subcommittee recommendation, which is approved if no one objects. No one objected, so the Rule was approved as presented.

Agenda Item 4. Consideration of proposed new Rule 9-211
(Restoration of Former Name After Judgment of Absolute Divorce)

The Reporter presented Rule 9-211 for the Committee's consideration.

MARYLAND RULES OF PROCEDURE
TITLE 9 - FAMILY LAW ACTIONS
CHAPTER 200 - DIVORCE, ANNULMENT, ALIMONY,
CHILD SUPPORT, AND CHILD CUSTODY

ADD new Rule 9-211, as follows:

Rule 9-211. RESTORATION OF FORMER NAME
AFTER JUDGMENT OF ABSOLUTE DIVORCE

(a) Applicability

This Rule applies to a post-judgment motion for a change of name pursuant to

Code, Family Law Article, §7-105.

(b) Motion

The motion shall be filed under oath in the action in which the judgment of absolute divorce was entered and shall state:

(1) the change of name desired and the fact that the party formerly used the name;

(2) that the party took a new name upon marriage and no longer wishes to use it; and

(3) that the party is not requesting the name change for any [illegal or fraudulent] [illegal, fraudulent, or immoral] purpose.

(c) Service

A motion filed within 30 days after the entry of the judgment of absolute divorce shall be served in the manner provided in Rule 1-321. If more than 30 days have passed since the entry of the judgment, the motion shall be served in the manner described in Rule 2-121, and proof of service shall be filed in accordance with the method described in Rule 2-126.

Committee note: A motion under Code, Family Law Article, §7-105 may be filed no later than 18 months after the judgment of absolute divorce was entered.

(d) Action by Court

Notwithstanding Rule 2-311 (f), the court may hold a hearing or may rule on the motion without a hearing even if one was requested. The court shall not deny the motion without a hearing, regardless of whether a hearing was requested.

Source: This Rule is new.

Rule 9-211 was accompanied by the following Reporter's note.

Proposed new Rule 9-211 implements Chapter 625, Laws of 2017 (SB 83), which authorizes a court, upon motion of a party filed within 18 months after the entry of a judgment of absolute divorce, to change the name of the party if the statutory requirements are met.

The Reporter commented that she and the Chair go through every piece of legislation that is enacted by the General Assembly each year, but occasionally, a bill that affects the Rules is missed. Chapter 625, Laws of 2017 (SB 83) had been missed and requires a Rule change. The bill is in the meeting materials. For a long time, there has been the ability to get a name change in connection with the granting of an absolute divorce; however the person had to ask for it before the judgment was entered. In the legislation that went into effect October 1, 2017, the person who wants the name change in connection with an absolute divorce can ask for it by filing a motion at any time up until 18 months after the judgment was entered. This raises issues similar to those that were just discussed in connection with Rule 1-321 (e).

The Reporter noted that what is new in the statute, besides the ability to ask for a name change up until 18 months after the judgment was entered, is that the statute expressly states that the provisions of Rule 15-901, Action for Change of Name, do not apply in this situation. The legislature was trying to

make this a simple procedure, avoiding the expense of newspaper publication and the objection process that may be part of the regular name change process. Ms. Macek, an Assistant Reporter, and the Reporter had reviewed the statute and drafted proposed new Rule 9-211. The Rule has not been considered by a subcommittee. The new law has already been in effect since October. The Committee is being asked directly to weigh in on the draft new Rule to move it forward quickly.

The Reporter observed that section (a) of proposed Rule 9-211 is the applicability provision. The statute refers to a "motion," so the applicability section of the Rule refers to a motion for a change of name filed pursuant to Code, Family Law Article, §7-105. In section (b), the concept of the motion being filed "under oath" was added, because ordinarily, in a divorce situation, the person would be testifying to obtain his or her divorce.

The Reporter pointed out that the person who would like a name change must state what the change is and state that the party formerly used that particular name. The name does not have to be the party's birth name, but it must be a name previously used. This is provided for in subsection (b)(1) and is in the statute. Subsection (b)(2) requires that the party state that he or she had taken a new name upon marriage and no longer wishes to use it. The statute requires that the party

state that he or she is not requesting the name change for any illegal, fraudulent, or immoral purpose. The Reporter and Ms. Macek were not certain about using the word "immoral" in the Rule.

Ms. Day remarked that every time she handles a case involving a name change, the judge asks whether it is for an immoral purpose. The Reporter commented that she and Ms. Macek could not come up with an example of something that is clearly immoral without being either illegal or fraudulent or both. Should the court be legislating morality? Judge Eaves reiterated that Code, Family Law Article, §7-105 requires a statement about not changing a name for illegal, fraudulent, or immoral purposes. People who request a name change swear that the name change is for none of the three purposes. The Reporter noted that for the regular name change under Rule 15-901, the party is required to say only that the change is not for an illegal or fraudulent purpose.

The Reporter asked the Committee whether it wants the language of subsection (b) (2) of proposed new Rule 9-211 to be "illegal, fraudulent, or immoral purpose." The Chair pointed out that this tracks the statute. Judge Bryant remarked that, as a practical matter, it is never an issue, because no one ever answers the question affirmatively. The Chair commented that somebody objecting to the name change could allege that it is

for an immoral purpose.

The Reporter drew the Committee's attention to section (c) of proposed new Rule 9-211. She said that the statute is silent on service, but the motion is filed in a divorce case that has two parties, so ordinarily there would be service on the other party. When drafting the Rule, they divided the way that service is effected. If the motion is filed within 30 days after the entry of the judgment of absolute divorce, service is made pursuant to Rule 1-321, Service of Pleadings and Papers Other than Original Pleadings. If more than 30 days have passed since the entry of the judgment, the motion is served in the manner described in Rule 2-121, Process--Service--In Personam. No process is issued. The motion is delivered to the other side, or the other side must be informed somehow to know that this name change has been requested.

The Reporter inquired as to whether service on the other side matters. It could matter, for example, because there is no publication as required in Rule 15-901, and there could be children involved. The person could be changing his or her name to attempt to avoid paying alimony or child support or to hide from the other side. Making sure that the other side is notified seemed to be the right course. How much notice and what kind of notice is a policy question.

The Reporter noted that a Committee note was added after

section (c) providing that the motion must be filed no later than 18 months after the judgment of divorce was entered. People need to be informed that they cannot file this motion after the deadline that is clearly stated in the statute. This could be affirmatively stated in the Rule. Currently, the wording is that the motion may be filed no later than 18 months after the judgment was entered.

The Reporter commented that section (d) was drafted to follow the intent of the legislature, which is for the court to decide this matter quickly and prevent the other side from trying to throw a wrench into the works. The legislature set this up using a motions procedure. Section (f) of Rule 2-311, Motions, provides that the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested. A name change may involve some uncooperative behavior. Rule 9-211 was drafted to provide that the court may hold a hearing or may rule on the motion without a hearing even if one was requested. One former spouse may expect the other former spouse living in California to be required to come to Maryland for a hearing just to be spiteful. The court may take this into account, and if the motion is properly made, the court may award the name change without requiring the party who lives far away to be present at a hearing. However, the court may not deny the motion without holding a hearing whether or not one was

requested. If a person asks for a name change to a name that that he or she had never used before, the name change is not covered by the statute, and the motion should be denied.

The Reporter stated that the presumption is that, ordinarily, the court will grant the name change as a matter of course. If the court is thinking about denying the motion, a hearing will be held, and the person who requested the change of name can explain why he or she is entitled to it. This is the structure of the proposed Rule. It is not a subcommittee recommendation. The Reporter said that if anyone had any changes to suggest, the changes could be made today. To approve this version of proposed new Rule 9-211 or any other version, a motion is necessary.

The Chair asked whether it would be helpful to add a cross reference to the Title 15 Rules, because the procedure in proposed Rule 9-211 is not the only way to effect a name change. The Reporter responded that this could be added to the Committee note to indicate that another name change procedure is available after 18 months. The Chair added that the other procedure is also available during the 18 months after the motion was filed.

Mr. MacGlashan, Clerk of the Circuit Court for Queen Anne's County, remarked that he had spoken with Dennis Weaver, Clerk of the Circuit Court for Washington County, who is on the Rules Committee, about the need to address in Rule 9-211 the fact that

there is no fee to make this change of name. Ms. Harris observed that there was no legislative intent to have a fee. The Reporter noted that no fee for this motion is included in the costs schedule. Mr. MacGlashan asked whether, to avoid confusion, there should be language added to the Committee note indicating that no fee is required.

The Chair inquired whether there is a fee for the change of name under Title 15. The Reporter answered that it would require a filing fee, because it is a new case. Judge Eaves pointed out that a *pro se* litigant may not realize that he or she was eligible for a change of name, and if the litigant asked for the change later, it would be unfair to ask for an additional fee. The Reporter reiterated that no fee appears in the fee schedule, and she and Ms. Macek had thought about referring to this in the Rule. Ms. Harris added that some clerks had been charging for the name change procedure provided for in Code, Family Law Article, §7-105. The appropriate procedure should be clarified, and it may be useful to point out in Rule 9-211 that there is no fee.

Judge Price noted that the judgment has to be in a Maryland case. The Reporter observed that the motion is filed in that action. The Chair inquired whether the Committee was in agreement about adding language providing that no filing fee shall be charged for the change of name. By consensus, the

Committee approved of this change. The Reporter said that she would put this in the body of the Rule rather than in a Committee note. The Chair pointed out that this Rule had not been approved by a Subcommittee, so it would take a motion to approve it.

Judge Eaves moved that Rule 9-211 be approved as it was amended at the meeting with the additional cross reference and the language added providing that there is no filing fee. The motion was seconded. Mr. Carbine asked whether the word "immoral" is going to be added to subsection (b) (3). The Reporter answered that it would be added.

The Chair called for a vote on the motion, and it passed with a majority vote.

Agenda Item 5. Consideration of proposed amendments to Rule 2-422.1 (Inspection of Property - of Nonparty or by Foreign Party - Without Deposition)

Judge Bryant presented Rule 2-422.1, Inspection of Property - of Nonparty or by Foreign Party - Without Deposition, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 400 - DISCOVERY

AMEND Rule 2-422.1 to require that the written undertaking and notice accompanying a subpoena issued to a nonparty under subsection (d) (2) be in a form approved by the State Court Administrator, as follows:

Rule 2-422.1. INSPECTION OF PROPERTY--OF NONPARTY OR BY FOREIGN PARTY--WITHOUT DEPOSITION

(a) Applicability; Use of Subpoena

This Rule applies to the issuance of a subpoena to obtain entry upon and inspection of designated land or property owned by or in the possession or control of (1) a nonparty to an action pending in this State or (2) a person to whom a foreign subpoena is directed pursuant to Code, Courts Article, Title 9, Subtitle 4. A subpoena issued under this Rule may be used only for that purpose. This Rule does not apply to the issuance of a subpoena in conjunction with a deposition.

Committee note: Under subsection (a) (2), a person to whom a foreign subpoena is directed could be a party or a nonparty to the foreign action. A party to an action pending in this State who seeks entry upon land of another party must proceed in accordance with Rule 2-422.

Cross reference: For a subpoena issued in conjunction with a deposition, see Rules 2-510 and 2-510.1.

(b) Definitions

(1) Statutory Definitions

The definitions stated in Code, Courts Article, §9-401 apply in this Rule to the extent relevant.

(2) Additional Definitions

In this Rule, the following additional definitions apply:

(A) Domestic Subpoena

"Domestic subpoena" means a subpoena issued by a circuit court of this State in an action pending in this State.

(B) Inspection

"Inspection" includes inspecting, measuring, surveying, photographing, testing, and sampling within the scope of Rule 2-402 (a).

(C) Nonparty

"Nonparty" means any person, other than a party, who is in possession or control of land or other property and, if different, the record owner of the land or other property.

(D) Foreign Party

"Foreign party" means the party on whose behalf a foreign subpoena is issued.

(E) Foreign Attorney

"Foreign attorney" means an attorney licensed to practice law in a foreign jurisdiction, but not in the State of Maryland.

(c) Issuance

(1) Domestic Subpoena

Upon the request of a person entitled to the issuance of a subpoena under this Rule for discovery in an action pending in this State, the clerk shall issue a completed subpoena, or provide a blank form of subpoena which shall be filled in and returned to the clerk to be signed and sealed before service. On the request of an attorney or other officer of the court entitled to the issuance of a subpoena under this Rule, the clerk shall issue a subpoena signed and sealed but otherwise in blank, which shall be filled in before service.

(2) Foreign Subpoena

(A) Request for Issuance

A party to an action pending in a foreign jurisdiction may request issuance of a subpoena by a court of this State based on a foreign subpoena issued in that action by submitting a request to the clerk of the circuit court for the county in which discovery is sought to be conducted. The request shall be accompanied by the foreign subpoena and a written undertaking in a form approved by the State Court Administrator, signed by the foreign party and the party's foreign attorney, if any, by which the party and the party's foreign attorney submit to the jurisdiction of the circuit court for the purpose of adjudicating discovery disputes, motions to quash, enforcement of the subpoena, and discovery sanctions. A foreign party and the party's foreign attorney, if any, who files a request or undertaking pursuant to this section does not, by so doing, submit to the jurisdiction of a court of this State for any other purpose.

Committee note: This section does not affect the jurisdiction of a court over a party or attorney who is otherwise subject to the court's jurisdiction.

(B) Issuance

The clerk promptly shall issue a subpoena for service upon the person to whom the foreign subpoena is directed. The subpoena shall:

(i) incorporate the terms used in the foreign subpoena;

(ii) comply with the requirements of section (d) of this Rule; and

(iii) contain or be accompanied by the names, addresses, and telephone numbers of all attorneys of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(d) Form

(1) Except as otherwise provided by the court for good cause, every subpoena shall be on a uniform form approved by the State Court Administrator and shall:

(A) contain the caption of the action, including the civil action number for the Maryland court issuing the subpoena;

(B) contain the name and address of the person to whom it is directed;

(C) contain the name of the person at whose request it is issued;

(D) describe with reasonable particularity the land or property to be entered and any actions to be performed;

(E) state the nature of the controversy and the relevancy of the entrance and proposed acts;

(F) specify a reasonable time and manner of entering and performing the proposed acts;

(G) contain or be accompanied by a description of the good faith attempts made by the party to reach agreement and with the person to whom the subpoena is directed concerning the entry and proposed acts;

(H) contain the date of issuance; and

(I) contain a statement that the subpoena may be served within 60 days after its issuance and may not be served thereafter.

(2) A subpoena issued pursuant to this Rule shall be accompanied by the following, in a form approved by the State Court Administrator:

(A) a written undertaking that the requesting party will pay for all damages arising out of the entry and performance of the proposed acts; and

(B) a notice informing the person to whom the subpoena is directed that:

(i) the person has the right to object to the entry and proposed acts by filing an objection with the court and serving a copy of it on the requesting party;

(ii) any objection must be filed and served within 30 days after the person is served with the subpoena; and

(iii) the objection must include or be accompanied by a certificate of service, stating the date on which the person mailed a copy of the objection to the requesting party.

Cross reference: See Rules 1-321 and 1-323.

(e) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a) (3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. If a subpoena is to permit entry upon leased land or property, the subpoena shall be served on any record owner of the land or property and any occupant or person in possession or control of the land or property. Before the subpoena is served, the party on whose behalf the subpoena is issued shall serve a copy of it on each other party in the manner provided by Rule 1-321 and file with the court a certificate of service attesting to the fact of service on the other parties. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance. A subpoena shall be served at least 45 days before the date of a requested entry.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain

persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health-General Article, §4-306 (b) (6) and Code, Financial Institutions Article, §1-304.

(f) Objection to Subpoena to Permit Entry Upon Designated Land or Property; Procedure to Compel Entry

(1) Objection

A person served with a subpoena to permit entry upon designated land or property, or any other person who claims an interest in the land or property, may object to the entry by filing an objection within 30 days after service of the subpoena and serving the objection on the requesting party. After an objection is filed, entry upon the designated land or property is not permitted unless the court grants a motion to compel entry filed in accordance with subsection (f) (2) of this Rule.

(2) Procedure to Compel Entry

(A) Motion to Compel

If the requested discovery is refused or within 15 days after an objection is served, the requesting party may file a motion to compel entry. The requesting party shall (i) attach to the motion a copy of the subpoena and any objection, (ii) serve a copy of the motion in the manner provided by Rule 1-321 on all other parties and the person who filed the objection, and (iii) if the requesting party is seeking entry upon leased land or property, serve a copy of the motion on any record owner of the land or property and any occupant or person in possession or control of the land or property. A hearing may be requested by including the heading "Request for Hearing" in the motion.

(B) Response

A response may be filed within 15 days after service. A hearing may be requested by including the heading "Request for Hearing" in the response.

(C) Hearing

If a hearing is not timely requested, the court may rule on the motion without a hearing. If a nonparty requests a hearing, the court shall hold a hearing. If a party requests a hearing, the court may determine whether a hearing will be held.

(D) Order

An order granting the motion shall specify the time, place, and manner of entry upon the land or property and the acts that may be performed. The order also may include any other provision that the court deems appropriate, including provisions relating to the privacy of the person who filed the objection, protection of the interests of the parties and any nonparty, and the filing of a bond to secure the obligation of the moving party to pay for damages arising out of the entry and acts performed.

Cross reference: See Maryland Uniform Interstate Depositions and Discovery Act, Code, Courts Article, §§9-401 et seq.

Source: This Rule is new.

Rule 2-422.1 was accompanied by the following Reporter's note.

A practicing attorney observed that subsection (d)(2) of Rule 2-422.1 does not require that the written undertaking and notice accompanying a subpoena issued to a nonparty for inspection and testing of the nonparty's property in an action pending in this State be in a form approved by the

State Court Administrator. This requirement is proposed to be added to the Rule to ensure that the documents are uniformly consistent with the Rule and adequately protect the interests of the nonparty.

Judge Bryant said that the proposed changes to Rule 2-422.1 pertained to the inspection of property by a nonparty or by a foreign party in a case. Language is proposed to be added to subsection (d)(2) providing that the State Court Administrator must approve the form that contains the information that is listed in subsection (d)(2) of the Rule and that accompanies the subpoena issued pursuant to the Rule.

The Chair noted that Rule 2-422.1 had been considered by the Process, Parties, and Pleading Subcommittee, so no motion was needed to approve it unless someone wanted to suggest a change. No one commented, so the Rule was approved as presented.

Agenda Item 6. Consideration of proposed amendments to: Rule 2-706 (Fees for Appellate Litigation), Rule 8-411 (Transcript), Rule 7-114 (Dismissal of Appeal), Rule 8-602 (Dismissal by Court), and Conforming amendments to: Rule 8-502 (Filing of Briefs), Rule 8-603 (Motion to Dismiss Appeal), Rule 8-605 (Reconsideration) - section (a), Rule 17-404 (Mediation), and Rule 8-605 (Reconsideration).

Judge Nazarian told the Committee that the next few Rules had clarifying amendments that came out of the Appellate

Subcommittee.

Judge Nazarian presented Rule 2-706, Fees for Appellate Litigation, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 700 - CLAIMS FOR ATTORNEYS' FEES AND
RELATED EXPENSES

AMEND Rule 2-706 to allow a party to file a motion seeking an award of attorneys' fees up to 30 days after the entry of a final order in proceedings conducted on remand from an appellate court, as follows:

Rule 2-706. FEES FOR APPELLATE LITIGATION

A party who seeks an award of attorneys' fees incurred in connection with an appeal, application for leave to appeal, or petition for certiorari shall file a motion for such fees in the circuit court that entered the judgment or order that is the subject of the appellate litigation. The motion shall be filed: (a) within 30 days after entry of the last mandate or order disposing of the appeal, application, or petition; or (b) if an appellate court remands for further proceedings, within 30 days after the entry of a final order disposing of all claims. Proceedings on the motion shall be in the circuit court and shall be consistent with the standards and procedures set forth in Rule 2-703 or Rule 2-705, as applicable.

Source: This Rule is new.

Rule 2-706 was accompanied by the following Reporter's note.

The Appellate Subcommittee has been advised that litigants, particularly indigent litigants, have been adversely affected by the application of Rule 2-706 in cases that are remanded for further proceedings by an appellate court. Litigants in such cases must file two fee petitions—one for proceedings through the appellate stage of disposition and one after the conclusion of proceedings on remand. A proposed amendment to Rule 2-706 redresses the issue of multiple petitions by permitting a single petition to be filed within 30 days after entry of a final order disposing of all claims in a case remanded by an appellate court.

Judge Nazarian explained that the proposed change to Rule 2-706 had been requested by the Public Justice Center. It pertains to clarifying the time frame for when a motion to seek fees for appellate litigation is due. Cases may go back and forth, including a remand, and there is confusion about when a prevailing party who is entitled to fees under whatever authority should file the motion for the fees. There are two scenarios that are a source of the confusion. One is when fees are sought after the appellate decision, and one is when proceedings on remand raise a question as to whether there actually is a prevailing party. The proposed amendment to Rule 2-706 adds a new section (b), which provides that if an appellate court remands for further proceedings, the motion seeking fees shall be filed within 30 days after the entry of a final order disposing of all claims. This clarifies that the

filing of the motion depends on whether the mandate has been filed or whether the case has been remanded for further proceedings.

The Chair noted that what is being considered is a Title 2 Rule, and he asked about a District Court case where attorneys' fees are granted or denied, and there is an appeal to the circuit court. If the case is a small claim and is \$5,000 or less, it is heard *de novo*, and it is not a problem. If the claim is for more than \$5,000, and the appeal is on the record, the circuit court takes whatever action it chooses, and a party may seek attorney's fees for the circuit court proceeding. Rule 3-741, Attorneys' Fees, pertains to attorneys' fees in the District Court. Is a parallel rule needed in the circuit court?

Judge Mosley commented that this issue is going to be addressed in the 2018 legislature because of a landlord-tenant matter that gave rise to attorneys' fees in the circuit court. The case came back to the District Court, and more attorneys' fees accrued. Three or four judges have been involved in this case. Problems have arisen because of the huge amount of attorneys' fees that continue to accrue, and the topic will be addressed by the 2018 General Assembly.

The Chair noted one difference. If attorneys' fees are being sought in the Court of Special Appeals or the Court of Appeals, those courts are not equipped to take evidence. This

is why the case is shifted back to the circuit court for that court to take evidence. This issue does not apply to a District Court appeal unless it goes up to the Court of Appeals on a writ of certiorari. The Court of Appeals can take a case on certiorari that originated in the District Court, and they have done this. Conceivably, that case could then go back to the circuit court to handle the issues. Judge Nazarian commented that a case that is appealed from the District Court to the circuit court, with the circuit court functioning in an appellate capacity, would be covered by Rule 2-706. The Chair pointed out that if the case is heard *de novo*, it can easily be resolved. If it is on the record because the claim is over \$5000, the matter is more complicated.

Mr. Frederick asked whether fees under Rule 1-341, Bad Faith - Unjustified Proceeding, are included in this. The Chair answered in the negative. Mr. Frederick inquired whether a Committee note could be added to Rule 2-706 making it clear that fees under Rule 1-341 are not included. The Chair asked whether this already is in the Chapter 2, Title 700 Rules. Mr. Marcus noted that it is in Rule 3-741, Attorneys' Fees. Mr. Frederick observed that fees under Rule 1-341 may be awarded in an appellate proceeding where there is inappropriate conduct that was in bad faith or without substantial justification. The Chair referred to section (b) of Rule 2-702, Scope of Chapter.

This is the Rule on attorneys' fees for the circuit court. It states that the procedural requirements of the Rules do not apply to claims for attorneys' fees in a proceeding under Rule 1-341 or under Rule 2-433, which pertains to discovery sanctions.

The Chair said that this matter did not have to be addressed today. He had raised the question as to whether any changes need to be made to the District Court Rules if the change to Rule 2-706 is adopted. Mr. Carbine suggested that this issue be sent to the appropriate Subcommittee.

By consensus, the Committee approved Rule 2-706 as presented.

Judge Nazarian presented Rule 8-411, Transcript, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE
TITLE 8 - APPELLATE REVIEW IN THE COURT OF
APPEALS AND COURT OF SPECIAL APPEALS
CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-411 to require an appellant to order a transcript within ten days after the granting of a petition for writ of certiorari under Code, Courts Article, §12-305, as follows:

Rule 8-411. TRANSCRIPT

(a) Ordering of Transcript

Unless a copy of the transcript is already on file, the appellant shall order in writing from the court reporter a transcript containing:

(1) a transcription of (A) all the testimony or (B) that part of the testimony that the parties agree, by written stipulation filed with the clerk of the lower court, is necessary for the appeal or (C) that part of the testimony ordered by the Court pursuant to Rule 8-206 (c) or directed by the lower court in an order;

(2) a transcription of any proceeding relevant to the appeal that was recorded pursuant to Rule 16-502 (b); and

(3) if relevant to the appeal and in the absence of a written stipulation by all parties to the contents of the recording, a transcription of any audio or audiovisual recording or portion thereof offered or used at a hearing or trial.

(b) Time for Ordering

Unless otherwise ordered by the court, the appellant shall order the transcript within the applicable time specified in this section:

(1) in a civil action subject to Rule 8-207 (a), the time prescribed by Rule 8-207 (a) (3);

(2) in all other civil actions subject to Rule 8-205 (a), ten days after the date of an order entered pursuant to Rule 8-206 (c); ~~or~~

(3) within ten days after the granting of a petition for writ of certiorari under Code, Courts Article, §12-305; or

~~(3)~~ (4) in all other actions, ten days after the date the first notice of appeal is filed.

Cross reference: Rule 8-207 (a).

(c) Filing and Service

The appellant shall (1) file a copy of the written order to the court reporter with the clerk of the lower court for inclusion in the record, (2) cause the original transcript to be filed promptly by the court reporter with the clerk of the lower court for inclusion in the record, and (3) promptly serve a copy on the appellee.

Source: This Rule is derived from former Rule 1026 a 2 and Rule 826 a 2 (b).

Rule 8-411 was accompanied by the following Reporter's note.

The Appellate Subcommittee was advised of a timing issue for litigants requesting a transcript after petitioning for a writ of certiorari following an appeal to a circuit court. Rule 8-411 (b) is silent on the matter. As a result, petitioners are following current subsection (b)(3) of the Rule. If a petitioner follows current subsection (b)(3) and the petition is denied, the petitioner has paid for the transcript unnecessarily and the court reporter has prepared it needlessly. The proposed amendment directly addresses this issue by requiring an appellant to order a transcript within ten days after the granting of a petition for writ of certiorari under Code, Courts Article, §12-305.

Judge Nazarian explained that Rule 8-411 pertains to the ordering of transcripts. The change was requested by the Public Justice Center, and it is in subsection (b)(3). Section (b) provides that unless otherwise ordered by the court, the appellant shall order the transcript within the applicable time specified in this section. The proposed language is "within ten

days after the granting of a petition for writ of certiorari under Code, Courts Article, §12-305.” The proposed change answers the question of when a party files a petition for certiorari, whether the party must order and pay for a written transcript while the petition for certiorari pending but has not yet been granted. Not many petitions for certiorari are granted. This is particularly a problem for indigent petitioners, who may have to incur the cost of preparation of the transcript for no reason if the petition for certiorari is denied. The new language allows parties to wait until a petition for certiorari has been granted before they have to order and pay for a transcript. If the petition has been granted, the party then orders the transcript. The Subcommittee unanimously had supported this change.

Judge Nazarian said that since the proposal to change Rule 8-411 was approved by the Appellate Subcommittee, it is considered approved by the Committee unless anyone objects. No one had an objection, so Rule 8-411 was approved as presented.

Judge Nazarian presented Rules 7-114, Dismissal of Appeal; Rule 8-602, Dismissal by Court; Rule 8-502, Filing of Briefs; Rule 8-603, Motion to Dismiss Appeal; Rule 8-605, Reconsideration; and Rule 17-404, Mediation, 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 7-114 to reorganize it, to specify grounds for mandatory dismissals and grounds for discretionary dismissals, to delete a cross reference to Rule 2-311, to add a cross reference to Rule 7-105, and to make stylistic changes, as follows:

Rule 7-114. DISMISSAL OF APPEAL

(a) On Motion or Court's Initiative

A circuit court may dismiss an appeal pursuant to this Rule on motion or on the court's own initiative.

(b) When Mandatory

~~On motion or on its own initiative,~~
The ~~The~~ circuit court ~~may~~ shall dismiss an appeal ~~for any of the following reasons if:~~

~~(a) (1) the appeal is not allowed by law;~~

~~(b) the appeal was not properly taken pursuant to Rule 7-103;~~

~~(c) (2) the notice of appeal was not filed with the District Court within the time prescribed by Rule 7-104; or~~

(3) an appeal to be heard de novo was withdrawn pursuant to Rule 7-112.

(c) When Discretionary

The circuit court may dismiss an appeal if:

(1) the appeal was not properly taken pursuant to Rule 7-103;

~~(d) (2) the record was not transmitted within the time prescribed by Rule 7-108, unless the court finds that the failure to~~

transmit the record was caused by the act or omission of a judge, a clerk of court, a court reporter, or the appellee; or

~~(e) an appeal to be heard de novo has been withdrawn pursuant to Rule 7-112; or~~

~~(f) (3) the case has become moot.~~

Cross reference: ~~Rule 2-311.~~ See Rule 7-105 allowing the District Court to strike a notice of appeal for certain reasons, including failure to file the notice of appeal within the time prescribed by Rule 7-104.

Source: This Rule is derived from former Rule 1335.

Rule 7-114 was accompanied by the following Reporter's note.

In *Brownstones at Park Potomac v. JP Morgan*, 445 Md. 12 (2015), the Court held that the circuit court did not have jurisdiction to hear an appeal from the District Court that was not timely filed, and the appeal had to be dismissed.

Proposed amendments to Rule 7-114 reorganize the Rule and conform the Rule to the holding in *Brownstones at Park Potomac* by making dismissal of an appeal not timely filed mandatory, rather than discretionary. In addition, an appeal to be heard de novo that has been withdrawn pursuant to Rule 7-112 and an appeal that is not allowed by law have been included in the category of mandatory dismissals. Dismissals for the other reasons listed in the Rule continue to be discretionary.

A cross reference to Rule 2-311 is deleted as unnecessary, and a new cross reference to Rule 7-105 is added.

Stylistic changes also are made.

MARYLAND RULES OF PROCEDURE
TITLE 8 - APPELLATE REVIEW IN THE COURT OF
APPEALS AND COURT OF SPECIAL APPEALS
CHAPTER 600 - DISPOSITION

AMEND Rule 8-602 to reorganize it, to specify grounds for mandatory dismissals and grounds for discretionary dismissals, and to make stylistic changes, as follows:

Rule 8-602. DISMISSAL BY COURT

(a) ~~Grounds~~ On Motion or Court's Initiative

The court may dismiss an appeal pursuant to this Rule on motion or on the court's own initiative.

(b) When Mandatory

~~On motion or on its own initiative, the~~ The Court may shall dismiss an appeal ~~for any of the following reasons if:~~

(1) the appeal is not allowed by these Rules or other law; or

~~(2) the appeal was not properly taken pursuant to Rule 8-201;~~

~~(3)~~ (2) the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202~~;~~.

(c) When Discretionary

The court may dismiss an appeal if:

(1) the appeal was not property taken pursuant to Rule 8-201;

~~(4)~~ (2) the appellant has failed to comply with the requirements of Rule 8-205;

~~(5)~~ (3) the record was not transmitted within the time prescribed by Rule 8-412, unless the court finds that the failure to transmit the record was caused by the act or

omission of a judge, a clerk of court, the court reporter, or the appellee;

~~(6)~~ (4) the contents of the record do not comply with Rule 8-413;

~~(7)~~ (5) a brief or record extract was not filed by the appellant within the time prescribed by Rule 8-502;

~~(8)~~ (6) the style, contents, size, format, legibility, or method of reproduction of a brief, appendix, or record extract does not comply with Rules 8-112, 8-501, 8-503, or 8-504;

~~(9)~~ (7) the proper person was not substituted for the appellant pursuant to Rule 8-401; or

~~(10)~~ (8) the case has become moot.

Cross reference: Rule 8-501 (m).

~~(b)~~ (d) Determination by Court

An order of the Court dismissing an appeal or denying a motion to dismiss an appeal may be entered by the Chief Judge, an individual judge of the Court designated by the Chief Judge, or the number of judges required by law to decide an appeal.

Cross reference: For the number of judges required by law to decide an appeal, see Maryland Constitution, Article IV, §14 and Code, Courts Article, §1-403.

~~(e)~~ (e) Reconsideration of Dismissal

(1) Motion for Reconsideration

No later than 10 days after the entry of an order dismissing an appeal, a party may file a motion for reconsideration of the dismissal.

(2) Number of Judges; Exception

A motion for reconsideration shall be determined by the number of judges required by law to decide an appeal, except that an individual judge who entered an

order of dismissal may rescind the order and reinstate the appeal. The judges who determine the motion for reconsideration may include one or more of the judges who entered the order of dismissal.

Committee note: Although an individual judge who entered an order of dismissal may rescind the order and reinstate the appeal upon a timely filed motion for reconsideration, a motion for reconsideration of the dismissal may be denied only by the number of judges required by law to decide an appeal.

(3) Determination of Motion for Reconsideration

The Court shall rescind an order of dismissal if:

(A) the Court determines that the appeal should not have been dismissed;

(B) the appeal was dismissed pursuant to subsection ~~(a) (4), (a) (5), or (a) (7)~~ (c) (2), (c) (3), or (c) (5) of this Rule and the Court finds that there was good cause for the failure to comply with the applicable subsection of the Rule; or

(C) the appeal was dismissed pursuant to subsection ~~(a) (4), (a) (5), (a) (6), (a) (7), (a) (8), or (a) (9)~~ (c) (2), (c) (3), (c) (4), (c) (5), (c) (6), or (c) (7) of this Rule and the Court finds that the interests of justice require reinstatement of the appeal.

(4) Reinstatement

If an order of dismissal is rescinded, the case shall be reinstated on the docket on the terms and conditions prescribed by the Court.

(5) No Further Reconsideration by the Court

If an order dismissing an appeal is reconsidered under this section, the party

who filed the motion for reconsideration may not obtain further reconsideration of the motion.

~~(d)~~ (f) Judgment Entered after Notice Filed

A notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

~~(e)~~ (g) Entry of Judgment not Directed Under Rule 2-602

(1) If the appellate court determines that the order from which the appeal is taken was not a final judgment when the notice of appeal was filed but that the lower court had discretion to direct the entry of a final judgment pursuant to Rule 2-602 (b), the appellate court, as it finds appropriate, may (A) dismiss the appeal, (B) remand the case for the lower court to decide whether to direct the entry of a final judgment, (C) enter a final judgment on its own initiative or (D) if a final judgment was entered by the lower court after the notice of appeal was filed, treat the notice of appeal as if filed on the same day as, but after, the entry of the judgment.

(2) If, upon remand, the lower court decides not to direct entry of a final judgment pursuant to Rule 2-602 (b), the lower court shall promptly notify the appellate court of its decision and the appellate court shall dismiss the appeal. If, upon remand, the lower court determines that there is no just reason for delay and directs the entry of a final judgment pursuant to Rule 2-602 (b), the case shall be returned to the appellate court after entry of the judgment. The appellate court shall treat the notice of appeal as if filed

on the date of entry of the judgment.

(3) If the appellate court enters a final judgment on its own initiative, it shall treat the notice of appeal as if filed on the date of the entry of the judgment and proceed with the appeal.

Source: This Rule is in part derived from former Rules 1035 and 835 and in part new.

Rule 8-602 was accompanied by the following Reporter's note.

Proposed amendments to Rule 8-602 reorganize the Rule and categorize the listed grounds for dismissal as "mandatory" or "discretionary." Stylistic changes also are made.

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 8-502 to conform an internal reference to the reorganization of Rule 8-602, as follows:

Rule 8-502. FILING OF BRIEFS

. . .

(d) Default

If an appellant fails to file a brief within the time prescribed by this Rule, the appeal may be dismissed pursuant to Rule 8-602 ~~(a)(7)~~ (c)(5). An appellee who fails to file a brief within the time prescribed by

this Rule may not present argument except with permission of the Court.

. . .

Rule 8-502 was accompanied by the following Reporter's note.

A proposed amendment to Rule 8-502 conforms an internal reference to the reorganization of Rule 8-602.

MARYLAND RULES OF PROCEDURE
TITLE 8 - APPELLATE REVIEW IN THE COURT OF
APPEALS AND COURT OF SPECIAL APPEALS
CHAPTER 600 - DISPOSITION

AMEND Rule 8-603 to conform internal references to the reorganization of Rule 8-602, as follows:

Rule 8-603. MOTION TO DISMISS APPEAL

(a) Time for Filing

Unless included in the appellee's brief as permitted by section (c) of this Rule or by order of the appellate court, a motion to dismiss shall be filed within the following time periods:

(1) ten days after the record was or should have been filed pursuant to Rule 8-412 if the motion is based on subsection (a) (2), (3), (5), or (6) (b) (2), (c) (1), (c) (3), or (c) (4) of Rule 8-602;

(2) ten days after the information report was or should have been filed pursuant to Rule 8-205 if the motion is

based on subsection ~~(a)(4)~~ (c)(2) of Rule 8-602;

(3) ten days after the appellant's brief was or should have been filed pursuant to Rule 8-502 if the motion is based on subsection ~~(a)(7) or (8)~~ (c)(5) or (6) of Rule 8-602;

(4) ten days after the case becomes moot, if the motion is based on subsection ~~(a)(10)~~ (c)(8) of Rule 8-602.

(b) Where Filed; Number of Copies

A motion to dismiss and any response shall be filed with the Clerk of the appellate court. If the motion or response is not included in a brief as permitted by section (c) of this Rule, an original shall be filed together with three copies in the Court of Special Appeals or seven copies in the Court of Appeals.

(c) Included in Appellee's Brief

A motion to dismiss based on subsection ~~(a)(1), (2), (3), (9), or (10)~~ (b)(1), (b)(2), (c)(1), (c)(7), or (c)(8) of Rule 8-602 may be included in the appellee's brief. The appellant may include in a reply brief any response to the motion.

(d) Affidavit

A motion to dismiss or response that is based on facts not contained in the record or papers on file in the appellate court shall be supported by affidavit and accompanied by any part of the record or papers on which it is based.

(e) Request for Hearing

A party desiring oral argument on a motion to dismiss in advance of argument on the merits shall so request in the motion or response under the heading "Request for Hearing."

(f) Separate Oral Argument

(1) Not Unless Directed by the Court

Oral argument on a motion to dismiss will not be held in advance of argument on the merits unless directed by order of the Court.

(2) Briefs

If the Court directs oral argument on a motion to dismiss in advance of argument on the merits, the parties, with permission of the Court, may file briefs in support of or in opposition to the motion. Not later than one day before the date assigned for argument (A) an original shall be filed with the Clerk together with three copies in the Court of Special Appeals or seven copies in the Court of Appeals, and (B) a copy shall be delivered to other parties. Unless otherwise ordered by the Court, the briefs shall not exceed 2,600 words in the Court of Special Appeals or 6,500 words in the Court of Appeals.

(3) Time; Number of Counsel

Unless otherwise ordered by the Court, separate oral argument on a motion to dismiss is restricted to 15 minutes for each side, and only one attorney may argue for each side.

Source: This Rule is derived from former Rules 1036, 1037, 836, and 837.

Rule 8-603 was accompanied by the following Reporter's note.

Proposed amendments to Rule 8-603 conform internal references to the reorganization of Rule 8-602.

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 (a) to conform an internal reference to the reorganization of Rule 8-602, as follows:

Rule 8-605. RECONSIDERATION

(a) Motion; Response; No Oral Argument

Except as otherwise provided in Rule 8-602 ~~(e)~~ (e), a party may file pursuant to this Rule a motion for reconsideration of a decision by the Court that disposes of the appeal. The motion shall be filed (1) before issuance of the mandate or (2) within 30 days after the filing of the opinion of the Court, whichever is earlier. A response to a motion for reconsideration may not be filed unless requested on behalf of the Court by at least one judge who concurred in the opinion or order. Except to make changes in the opinion that do not change the decision in the case, the Court ordinarily will not grant a motion for reconsideration unless it has requested a response. There shall be no oral argument on the motion.

. . .

Rule 8-605 was accompanied by the following Reporter's note.

A proposed amendment to Rule 8-605 conforms an internal reference to the reorganization of Rule 8-602.

MARYLAND RULES OF PROCEDURE
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION
CHAPTER 400 - PROCEEDINGS IN THE COURT OF
SPECIAL APPEALS

AMEND Rule 17-404 to conform an internal reference to the reorganization of Rule 8-602, as follows:

Rule 17-404. MEDIATION

. . .

(f) Order Implementing Settlement

(1) Proposed Order

Within 30 days after the conclusion of a Court-ordered mediation at which a full or partial settlement is achieved, if an order is necessary to implement the settlement, the parties shall submit a proposed order for review by the Chief Judge. The proposed order may include dismissal of the appeal, proceeding with the appellate process, limiting issues, a remand pursuant to Rule 8-602 ~~(e)~~ (g), or any other appropriate directives necessary to implement the settlement.

(2) Review by Chief Judge

After review, the Chief Judge shall (A) sign the order as presented, (B) reject the proposed order, or (C) return the order to the parties with recommended changes, but the Chief Judge may not preclude an appellant from dismissing the appellant's appeal as permitted by Rule 8-601 or preclude the parties from otherwise proceeding in a manner authorized by the Rules in Title 8.

(3) Recommended Changes

If the Chief Judge returns an order with recommended changes and, within 15 days after return of the order, the parties do

not accept the recommended changes, the appeal shall proceed as if no agreement had been reached, unless the Chief Judge agrees to withdraw an unaccepted recommended change. If the parties accept the recommended changes, the Chief Judge shall sign the order with those changes included.

(4) Duty of Clerk

The clerk shall send a copy of a signed order to each party and to the ADR Division.

. . .

Rule 17-404 was accompanied by the following Reporter's note.

A proposed amendment to Rule 17-404 conforms an internal reference to the reorganization of Rule 8-602.

Judge Nazarian said that the proposed amendments to Rules 7-114 and 8-602 pertain to dismissal of appeals. The amendments do not change how or when appeals can be dismissed. However, they reorganize the dismissal grounds into the categories of mandatory and discretionary. Structurally, the two amendments are the same. A new section (a) has been added to Rule 7-114, which provides that a circuit court may dismiss an appeal. In Rule 8-602, the "court" refers to the Court of Special Appeals or the Court of Appeals. New section (a) provides that the "court may dismiss an appeal pursuant to this Rule on motion or on the court's own initiative." Section (b) of both Rules 7-114

and 8-602 lists the grounds under which a dismissal is mandatory. Section (c) of both Rules lists the grounds for when dismissal is discretionary. No new grounds have been added to either section (b) or section (c). They have been rearranged to fall into the two categories of mandatory or discretionary.

Judge Nazarian noted that in both Rules, a dismissal is mandatory if the appeal is not allowed by law. In Rule 7-114, a dismissal is mandatory if the notice of appeal was not filed with the District Court within the time prescribed by Rule 7-104, Notice of Appeal - Times for Filing, and in Rule 8-602, a dismissal is mandatory if the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202, Notice of Appeal - Times for Filing. Last week the U.S. Supreme Court addressed dismissal of appeals in *Hamer v. Neighborhood Housing Services of Chicago*, 138 S. Ct. 13 (2017). The Court held that a filing deadline for an appeal prescribed by statute would be regarded as jurisdictional, but a time limit prescribed by a court-made rule would not be. In the federal system, notices of appeal are jurisdictional. The Chair said that this would not affect Rule 8-602.

Judge Nazarian said that there is one additional mandatory basis for dismissing an appeal in Rule 7-114, which is that an appeal to be heard *de novo* was withdrawn pursuant to Rule 7-112, Appeals Heard De Novo. The list of discretionary reasons is

shorter in Rule 7-114 than in Rule 8-602. The circuit court may dismiss an appeal if it was not properly taken pursuant to Rule 7-103, Method of Securing Appellate Review. Another reason for dismissing an appeal is if the record was not transmitted within the time prescribed by Rule 8-412.

Judge Nazarian noted that subsection (c) (1) of Rule 7-114 is not new. It has been moved to section (c) from section (b). Subsection (c) (2) has not been changed, but it has been reorganized. In Rule 8-602 (c) (1), the court may dismiss an appeal when the appeal was not properly taken pursuant to Rule 8-202. Judge Nazarian noted a typographical error in subsection (c) (1) -- the word "property" should be the word "properly." The other reasons for dismissal listed in section (c) have not been changed.

Judge Mosley commented that there is a filing fee when an appeal is taken, but sometimes it is never paid. Is it discretionary to allow the appeal to go forward? The Chair responded that if a filing fee was not paid, the clerk would not send the record up. The Chair remarked that this is one area in which the lower court can strike the notice of appeal. What triggered this was *The Brownstones at Park Potomac Homeowners Association v. JP Morgan*, 445 Md. 12 (2015), a decision of the Court of Appeals that involved a District Court appeal to the circuit court that was filed beyond 30 days. The current Rule

provides that the court may dismiss the appeal, but in *Brownstones*, the circuit court did not do so. After an argument about the merits of the case, the Court of Appeals held that the circuit court is required to dismiss the appeal because the 30 days had run. The statute that addresses District Court appeals, Code, Courts Article, §12-401, requires that an appeal be taken within 30 days of the date of the final judgment from which appealed.

The Chair commented that for appeals from the circuit court to the Court of Special Appeals, the 30-day requirement is not in any statute. Back in the 1800's, the requirement was in a statute, but now it is governed strictly by Rule. The Chair said that he had found a very early Court of Appeals case where there was a statute. The Court had held that 30 days is jurisdictional, and an appeal filed after the 30-day period had expired had to be dismissed. That statute no longer exists. Judge Nazarian commented that *Hamer* was the first decision of this term of the Supreme Court. It is grounded entirely in the way that the federal rules are promulgated. It is not binding on the appellate courts in Maryland.

The Chair noted that this has been an interesting question, because the Court of Appeals has often said that its jurisdiction is determined strictly by the Constitution or by statute. The provision for filing an appeal within 30 days is

now only by Rule. The Court could change this. The Court could shorten the time to 10 days or lengthen it to six months, and the Court would be creating its own jurisdiction or limiting it, which is an interesting point that the Court never has considered.

Judge Nazarian said that a cross reference to Rule 7-105, Striking of Notice of Appeal by District Court, has been added at the end of Rule 7-114. It explains that Rule 7-105 allows the District Court to strike a notice of appeal for certain reasons. Rule 8-602 has a number of changes that track the rearrangement of the existing grounds for dismissal, which are now in a new category. Subsection (d)(3)(B) refers to the grounds for dismissal that had been in subsections (a)(4), (a)(5), or (a)(7) but are now in subsections (c)(2), (c)(3), or (c)(5).

Rules 7-114 and 8-602 were approved as presented.

Judge Nazarian told the Committee that the only other changes pertaining to Rules 7-114 and 8-602 were conforming changes to Rules 8-502, 8-603, 8-605, and 17-404. Internal references to Rule 8-602 in those Rules have been corrected.

By consensus, the Committee approved Rules 8-502, 8-603, 8-605, and 17-404 as presented.

Judge Nazarian presented Rule 8-605, Reconsideration, 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

AMEND Rule 8-605 to permit a motion for reconsideration when the court's opinion determined the outcome of an appeal on an issue not raised in the briefs or proceedings below, as follows:

Rule 8-605. RECONSIDERATION

(a) Motion; Response; No Oral Argument

Except as otherwise provided in Rule 8-602 (c), a party may file pursuant to this Rule a motion for reconsideration of a decision by the Court that disposes of the appeal. The motion shall be filed (1) before issuance of the mandate or (2) within 30 days after the filing of the opinion of the Court, whichever is earlier. A response to a motion for reconsideration may not be filed unless requested on behalf of the Court by at least one judge who concurred in the opinion or order. Except to make changes in the opinion that do not change the decision in the case, the Court ordinarily will not grant a motion for reconsideration unless it has requested a response. There shall be no oral argument on the motion.

(b) Content

A motion or response ordinarily shall be limited to addressing one or more of the following:

(1) whether the Court's opinion or order did not address a material factual or legal matter raised in the lower court and argued by a party in its submission to the Court, and if not raised or argued, a brief statement as to why it was not raised or argued;

(2) whether a material change in the law relevant to the appeal occurred after the case was submitted and was not addressed in the Court's opinion or order;

(3) whether the court's opinion determined the outcome of the appeal on an issue not raised in the briefs or proceedings below;

~~(3)~~ (4) whether there is a significant consequence of the decision that was not addressed in the opinion;

~~(4)~~ (5) if the motion or response is filed in the Court of Appeals, whether and how the Court's opinion or order is in material conflict with a decision of the United States Supreme Court or a decision of the Court of Appeals; or

~~(5)~~ (6) if the motion or response is filed in the Court of Special Appeals, whether and how the Court's opinion or order is in material conflict with a decision of the United States Supreme Court or the Court of Appeals or a reported opinion of the Court of Special Appeals.

(c) Length

A motion or response filed pursuant to this Rule shall not exceed 3,900 words.

(d) Copies—Filing

(1) In Court of Special Appeals

In the Court of Special Appeals, the original of the motion and any response shall be filed together with four copies if the opinion of the Court was unreported or 13 copies if reported.

(2) In Court of Appeals

In the Court of Appeals, the original and seven copies of the motion and any response shall be filed.

(e) Mandate to be Delayed

A motion for reconsideration shall delay issuance of a mandate, unless otherwise ordered by the Court.

(f) Disposition of Motion

A motion for reconsideration shall be granted only with the consent of at least half the judges who concurred in the opinion. If a motion for reconsideration is granted, the Court may make a final disposition of the appeal without reargument, restore the appeal to the calendar for argument, or make other orders, including modification or clarification of its opinion, as the Court finds appropriate.

Source: This Rule is in part derived from former Rules 1050 and 850 and in part new.

Rule 8-605 was accompanied by the following Reporter's note.

The Appellate Subcommittee was advised of procedural difficulties an attorney experienced when requesting review after an appellate court decided a case on an issue not raised in the briefs or proceedings below. The proposed amendment to Rule 8-605 permits a motion for reconsideration when an appellate court decides a case on an issue not raised in the briefs or proceedings below.

Judge Nazarian said that an amendment to Rule 8-605 that is separate from the one pertaining to the amendment to Rule 8-602 has been proposed. It is to add the underlined language in subsection (b) (3) to the contents of a motion for reconsideration. The proposed language is "whether the court's opinion determined the outcome of the appeal on an issue not

raised in the briefs or proceedings below." This had been proposed by Albert D. Brault, Esq., a former member of the Rules Committee.

Mr. Brault told the Committee that the basis for the requested change stems from an unfortunate experience he had in the Court of Special Appeals. He had represented someone in administrative proceedings that had been through a circuit court review of an administrative agency decision. He was in the Court of Special Appeals because of an appeal by Montgomery County from the win Mr. Brault had obtained for his client at the circuit court level. In the case, issue "A" had been briefed and argued by Montgomery County and by Mr. Brault and his team. A transcript was prepared, and the case was argued before the Court of Special Appeals. In the Court of Special Appeals, issue "A" was argued by the County, and Mr. Brault answered the same issue by a counter argument. In the Court's opinion, after the facts were given, the Court found that both parties had argued the wrong issue, and the Court made its determination based on issue "B." The Court affirmed the administrative agency determination in favor of the County, not on the position the County had taken, but on issue "B."

Mr. Brault expressed the view that something needed to be done to alert people that when an appellate court exercises its power or discretion to decide a case on an issue that none of

the parties had ever considered or argued, the parties should be able to file a motion for reconsideration. When Mr. Brault had moved to reconsider, he had argued only for a constitutional right to notice and an opportunity to answer. The Court of Special Appeals did not agree with that argument. The Court did not expressly state this, but it implied that he should have filed a brief in opposition to the opinion, which he had never considered doing. He was arguing for procedural rights. The proposed change to Rule 8-605 would give an opportunity to a litigant in that position to file a motion for reconsideration. If anyone were to ask for Mr. Brault's advice, he would say to file a brief and ask for a new opinion, but there has to be the right to do so. The amendment would ensure this right.

Judge Nazarian said that the Appellate Subcommittee had approved the proposed change to Rule 8-605. The Chair added that it would take a motion to reject the amendment. There being no motion to modify or reject the amendment, Rule 8-605 was approved as presented.

There being no further business before the Committee, the Chair adjourned the meeting.