COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Training Rooms 5 and 6 of the Judicial Education and Conference Center, 2011-D Commerce Park Drive, Annapolis, Maryland on March 5, 2010.

Members present:

Hon. Alan M. Wilner, Chair
Linda M. Schuett, Esq., Vice Chair

F. Vernon Boozer, Esq.
Lowell R. Bowen, Esq.
Hon. Ellen L. Hollander
Hon. Michele D. Hotten
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
Robert D. Klein, Esq.
Zakia Mahasa, Esq.
Robert R. Michael, Esq.
Anne C. Ogletree, Esq.
Hon. W. Michel Pierson
Debbie L. Potter, Esq.
Kathy P. Smith, Clerk
Melvin J. Sykes, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Lisa I. Ritter, District Court Headquarters
Ms. Amy Womaski, Mediator
Hon. Diane O. Leasure, Chair, Conference of Circuit Judges
James B. Astrachan, Esq., Astrachan, Gunst, & Thomas, P.C.
Bradley S. Shear, Esq., Law Office of Bradley S. Shear
CPL Phil English, Queen Anne’s County Sheriff’s Office
Jennifer K. Cassel, Esq., Family Law Administrator, Circuit Court for Anne Arundel County
Patricia Simpson, LCPC
Rose Naughton, Family Services Coordinator, Circuit Court for Calvert County
Paul H. Ethridge, Esq., Chair, Rules of Practice Committee, Maryland State Bar Association, Inc.
Jason Hessler, Esq., MSBA, Board of Governors, MSBA, Young Lawyers Section
Connie Kratovil-Lavelle, Esq., Executive Director, Family Administration, Administrative Office of the Courts
James McLaughlin, The Washington Post
Kalea Seitz Clark, Esq., The Washington Post

Anne C. Turner, Family Support Services Coordinator, Circuit Court for Worcester County
Hon. Alexandra N. Williams, Administrative Judge, District Court of Maryland for Baltimore County
Michael Schaefer
Mary Brady
Robert G. Wallace, Esq., Court Administrator, Circuit Court for Anne Arundel County
Geena Asiedu, Law Clerk, District Court of Maryland
Jeffrey Dobson, Law Clerk, District Court of Maryland

The Chair convened the meeting. He announced that the Court of Appeals will hold its open hearing on the 163rd Report at 2:00 p.m. on Monday, March 8, 2010. This Report includes the Code of Judicial Conduct; the Code of Conduct for Judicial Appointees; Rule 16-206, Problem-solving Court Programs; Rules 2-513 and 3-513, Testimony Taken by Telephone; and several other Rules. The Reporter introduced Chris Norman, the Rules Committee intern, who is a third-year law student at the University of Baltimore School of Law.

Agenda Item 1. Continued consideration of proposed new Rule 9-205.2 (Parenting Coordination) and amendments to: Rule 16-204 (Family Division and Support Services) and Rule 17-101 (Applicability)

The Chair presented Rule 9-205.2, Parenting Coordination, and conforming amendments to Rules 16-204, Family Division and Support Services, and 17-101, Applicability, 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 9-205.2, as follows:

Rule 9-205.2. PARENTING COORDINATION

(a) Applicability

This Rule applies to parenting coordination in actions under this Chapter in which ~~the court has entered a pendente lite order or judgment governing~~ child custody or child access is an issue.

Committee note: Actions in which parenting coordination may be used include an initial action to determine custody or visitation~~,~~ and an action to modify an existing order or judgment as to custody or visitation~~, and a proceeding for constructive civil contempt by reason of noncompliance with an order or judgment governing custody or visitation~~.

(b) Definitions

In this Rule, the following definitions apply:

(1) Parenting Coordination

"Parenting coordination" means a process in which the parties work with a parenting coordinator to resolve disputed parenting or family issues and reduce the effects or potential effects of conflict on the parties' child. Although parenting coordination may draw upon alternative dispute resolution techniques, ~~a parenting coordinator does not engage in arbitration, mediation, neutral case evaluation, or neutral fact-finding, and parenting coordination~~ it is not governed by the Rules

in Title 17.

(2) Parenting Coordinator

"Parenting coordinator" means an impartial provider of parenting coordination services who has the qualifications listed in section (c) of this Rule.

~~Committee note: A parenting coordinator, although impartial, is not required to remain neutral under all circumstances.~~

(c) Qualifications of Parenting Coordinator

(1) Age, Education, and Experience

To be designated by the court as ~~A~~ a parenting coordinator, a person shall:

(A) be at least 21 years old and hold a bachelor's degree from an accredited college or university;

~~(A)~~ (B) hold a ~~master's or doctorate~~ post-graduate degree in psychology, ~~law,~~ social work, counseling, ~~medicine,~~ negotiation, conflict management, or a related subject area, or from an accredited medical or law school;

~~(B)~~ (C) have at least three years of related professional ~~post-degree~~ experience undertaken after receiving the post-graduate degree; and

~~(C)~~ (D) if applicable, hold a current license in the ~~parenting coordinator's~~ person's area of practice.

(2) Parenting Coordination Training

A parenting coordinator shall have completed:

~~(A) at least 40 hours of mediation training in a program meeting the requirements of Rule 17-106 (a);~~

~~(B)~~ (A) at least 20 hours of training

in a family mediation training program meeting the requirements of Rule 17-106 (b); and

~~(C)~~ (B) at least ~~12~~ 40 hours of accredited specialty training in topics related to parenting coordination, including conflict coaching, the developmental stages of children, the dynamics of high-conflict families, family violence dynamics, ~~mediation,~~ parenting skills, problem-solving techniques, and the stages and effects of divorce.

~~Committee note: Some or all of the 12-hour training requirement may have been satisfied by graduate studies in the areas listed.~~

Committee note: For example, the accredited specialty parenting coordination training could be as offered by national organizations such as the American Bar Association or the Association of Family and Conciliation Courts.

(3) Continuing Education

~~Unless waived by the court, every~~ Every two years a parenting coordinator shall accumulate a minimum of eight hours of continuing education approved by the Administrative Office of the Courts in the topics listed in subsection (c)(2) of this Rule and recent developments in family law.

(d) Parenting Coordinator Lists

An individual who has the qualifications listed in section (c) of this Rule and seeks appointment as a parenting coordinator shall file an application with ~~provide the individual's curriculum vitae to~~ the family support services coordinator of each county in which the individual seeks appointment. The ~~curriculum vitae must show~~ application must document that the individual meets the qualifications required in section (c) and must provide documentation that the individual has satisfied the training requirements in that section. ~~The~~ If the family support services coordinator ~~shall~~

~~maintain a list of the individuals and, upon request, make the list and the information submitted by each individual available to the court, attorneys, and parties.~~ is satisfied that the applicant meets the qualifications, the applicant's name shall be placed on a list of qualified individuals. The family support services coordinator shall maintain the list and, upon request, make the list and the information submitted by each individual on the list available to the court, attorneys, and parties.

(e) Appointment of Parenting Coordinator

(1) Pendente Lite and Post-Judgment Parenting Coordinators

(A) In a high-conflict action involving custody of or visitation ~~of~~ with a child, the court may appoint a parenting coordinator in accordance with this section.

(B) After notice and an opportunity for the parties to be heard, the court may appoint a ~~A pendente lite~~ parenting coordinator pendente lite ~~may be appointed by the court on its own initiative or~~ on motion of a party, ~~(A) when a pendente lite custody or visitation order is entered, or at any time thereafter; (B) when an action is reopened for modification of custody or visitation; or (C) in a proceeding for constructive civil contempt by reason or noncompliance with an order or judgment governing custody or visitation. Upon entry of a judgment granting or modifying custody or visitation, the court, with the consent of the parties, may appoint a post-judgment parenting coordinator.~~ or joint request of the parties, or on the court's own initiative. At the request of either party, the court shall hold a hearing.

Committee note: A hearing may be important even when the court acts on joint request, with respect to the duties and powers given the parenting coordinator.

(C) With the consent of the parties, the court may appoint a post-judgment

parenting coordinator upon entry of a judgment granting or modifying custody or visitation.

Committee note: Appointment of a parenting coordinator does not affect the applicability of Rules 9-204, 9-205, or 9-205.1, nor does the appointment preclude the use of an alternative dispute resolution process under Title 17 of these Rules.

(2) Selection

A parenting coordinator shall be an individual who:

(A) has the qualifications listed in section (c) of this Rule,

(B) is willing to serve as the parenting coordinator in the action, and

(C) has entered into a written fee agreement with the parties or agrees to accept a fee not in excess of that allowed in the applicable fee schedule adopted pursuant to subsection (i)(1) of this Rule. If the parties jointly request appointment of an individual who meets these requirements, the court shall appoint that individual.

Committee note: A written fee agreement may be an agreement to render services *pro bono*.

(3) Contents of Order or Judgment

An order or judgment appointing a parenting coordinator shall include:

(A) the name, business address, and telephone number of the parenting coordinator;

(B) if there are allegations of domestic violence committed by or against a party or child, any provisions the court deems necessary to address the safety and protection of the parties, all children of the parties, other children residing in the home of a party, and the parenting coordinator;

(C) subject to section (i) of this Rule, a provision concerning payment of the fees and expenses of the parenting coordinator;

(D) if the appointment is of a post-judgment parenting coordinator, any decision-making authority of the parenting coordinator authorized pursuant to subsection (f)(1)(H) of this Rule; and

(E) subject to subsection (e)(4) of this Rule, the term of the appointment.

(4) Term of Appointment

Subject to the removal and resignation provisions of section (h) of this Rule:

(A) the service of an individual appointed as a pendente lite parenting coordinator terminates with the entry of a judgment that resolves all issues of child custody, visitation, and access; and

(B) the term of service of an individual appointed as a post-judgment parenting coordinator shall not exceed two years, unless the parties and the parenting coordinator consent to an extension for a specified period of time.

(5) Notice of Termination of Appointment of Pendente Lite Parenting Coordinator

If the court does not appoint as a post-judgment parenting coordinator an individual who had served as a pendente lite parenting coordinator in the action, the court shall send a notice by first-class mail to each party, any attorney for the child, and the pendente lite parenting coordinator, informing them of the termination of the appointment.

(f) Provision of Services by the Parenting Coordinator

(1) Permitted

As appropriate, a parenting coordinator may:

(A) ~~work with the parties to develop an agreed-upon, structured plan for complying with the custody and visitation order in the action~~ if there is no operative custody and visitation order, work with the parties to develop an agreed-upon, structured plan for custody and visitation;

(B) ~~assist the parties in amicably resolving disputes regarding compliance with the order;~~ if there is an operative custody and visitation order, assist the parties in amicably resolving disputes regarding compliance with the order and in making any joint recommendations to the court for substantive changes to the order;

(C) educate the parties about making and implementing decisions that are in the best interest of the child;

(D) develop guidelines with the parties for appropriate communication between them;

(E) suggest resources to assist the parties;

(F) assist the parties in modifying patterns of behavior and in developing parenting strategies to manage and reduce opportunities for conflict between them ~~and~~ to reduce the impact of any conflict upon their child;

(G) in response to a subpoena issued at the request of a party or an attorney for a child of the parties, or upon action of the court pursuant to Rules 2-514 or 5-614, produce documents and testify in the action as a fact witness; ~~and~~

(H) decide post-judgment disputes by making minor, temporary modifications to child access provisions ordered by the court if (i) the judgment or post-judgment order of the court authorizes such decision-making, and (ii) the parties have agreed in writing or on the record that the post-judgment

parenting coordinator may do so.; and

Committee note: Examples of such modifications could be or could include one-time or minor changes in the time or place for child transfer and one-time or minor deviations from access schedules to accommodate special events.

(I) if concerned that a party or child under this provision is in imminent danger, physically or emotionally, communicate with the court or court personnel to request an immediate hearing.

(2) Not Permitted

A parenting coordinator may not:

(A) require from the parties or the attorney for the child release of any confidential information that is not included in the court record;

Committee note: A parenting coordinator may ask the parties and the attorney for the child for the release of confidential information that is not in the court record, but neither the parenting coordinator nor the court may require release of such information to the parenting coordinator.

(B) except as permitted by subsections (f)(1)(G) and (I) of this Rule, communicate orally or in writing with the court or any court personnel regarding the substance of the action;

Committee note: This subsection does not prohibit communications with respect to routine administrative matters; collection of fees, including submission of records of the number of contacts with each party and the duration of each contact; or resignation. Nothing in the subsection affects the duty to report child abuse or neglect under any provision of federal or State law or the right of the parenting coordinator to defend against allegations of misconduct or negligence.

(C) testify in the action as ~~a court witness or as~~ an expert witness; or

Cross reference: See ~~Rule 5-614 as to court witnesses and~~ Rule 5-702 as to expert witnesses.

(D) except for decision-making by a post-judgment parenting coordinator authorized pursuant to subsection (f)(1)(H) of this Rule, make parenting decisions on behalf of the parties.

(g) Access to Case Records; Disclosure

(1) Access to Case Records

Except as otherwise provided in this subsection, the parenting coordinator shall have access to all case records in the proceeding. If a document or any information contained in a case record is not open to public inspection under the Rules in Title 16, Chapter 1000, the court shall determine whether the parenting coordinator may have access to it. The parenting coordinator shall maintain the confidentiality of ~~the~~ any such document or information.

Cross reference: See Rule 16-1001 for the definition of "case record."

(2) Disclosure of Information by Parenting Coordinator

Subject to subsection (g)(1) of this Rule, communications with and information provided to the parenting coordinator are not confidential and may be disclosed in any judicial, administrative, or other proceeding.

(h) Removal or Resignation of Parenting Coordinator

(1) Removal

The court ~~may~~ shall remove a parenting coordinator:

(A) on motion of a party or an attorney for the child, if the court finds good cause

~~is shown~~, ~~or~~

(B) on a finding that the appointment is not in the best interest of the child, or

(C) for a violation of subsection (i)(1) of this Rule.

(2) Resignation

A parenting coordinator may resign at any time by sending by first-class mail to each party and any attorney for the child a notice that states the effective date of the resignation and contains a statement that the parties may request the appointment of another parenting coordinator. The notice shall be sent at least 15 days before the effective date of the resignation. Promptly after mailing the notice, and at least seven days before the effective date of resignation, the parenting coordinator shall file a copy of it with the court.

(i) Fees

(1) Fee Schedules

Subject to the approval of the Chief Judge of the Court of Appeals, the ~~circuit~~ county administrative judge of each circuit court may develop and adopt maximum fee schedules for parenting coordinators. In developing the fee schedules, the ~~circuit~~ county administrative judge shall take into account the availability of qualified individuals willing to provide parenting coordination services and the ability of litigants to pay for those services. Except as agreed by the parties, an individual designated by the court to serve as a parenting coordinator in an action may not charge or accept a fee for parenting coordination services in that action in excess of the fee allowed by the applicable schedule. Violation of this subsection shall be cause for removal from all lists maintained pursuant to section (d) of this Rule and the Rules in Title 17.

(2) Designation by Court

Subject to subsection (i)(1) of this Rule and any fee agreement between the parties and the parenting coordinator, the court shall designate how and by whom the parenting coordinator shall be paid. If the court finds that the parties have the financial means to pay the fees and expenses of the parenting coordinator, the court shall allocate the fees and expenses of the parenting coordinator between the parties and may enter an order against either or both parties for the reasonable fees and expenses. Committee note: If a qualified parenting coordinator is an attorney and provides parenting coordination services *pro bono*, the number of *pro bono* hours provided may be reported in the appropriate part of the *pro bono* reporting form that the attorney is required to file annually in accordance with Rule 16-903.

Source: This Rule is new.

Rule 9-205.2 was accompanied by the following Reporter's Note.

Proposed new Rule 9-205.2 is based upon a request from the Conference of Circuit Judges for a Statewide Rule that authorizes and guides the practice of parenting coordination. Parenting coordination, as described in subsection (b)(1), is "a process in which the parties work with a parenting coordinator to resolve disputed parenting or family issues and reduce the effects or potential effects of conflict on the parties' child."

Section (a) provides for the applicability of the Rule. Under the Rule, in an action under the Rules in Title 9, Chapter 200 in which child custody or child access is an issue, the court may appoint a parenting coordinator *pendente lite* or post-judgment. A Committee note cites examples of actions in which parenting coordination may be used.

Section (b) contains definitions of "parenting coordination" and "parenting coordinator," and distinguishes the process of parenting coordination from the processes governed by the Rules in Title 17.

Section (c) sets out the qualifications that a parenting coordinator must have. The requirements are in the areas of age, education, experience, licensing (if applicable), family mediation training, parenting coordination training, and continuing education.

Section (d), in conjunction with a proposed amendment to Rule 16-204 (a)(3), requires the family support services coordinator for each county to maintain a list of individuals who wish to be appointed to provide parenting coordination services in the county and have the qualifications listed in section (c).

Section (e) sets out the process for appointment of a parenting coordinator.

Under subsection (e)(1), if there is pending before the court a high conflict action involving custody of or visitation with a child, the court may appoint a parenting coordinator *pendente lite*, after notice and an opportunity to be heard. A *pendente lite* parenting coordinator may be appointed on motion of a party, on joint request of the parties, or on the court's own initiative. Consent of the parties to the appointment of a *pendente lite* parenting coordinator is not required, but a hearing must be held if either party requests one. When the court enters judgment in the action, a post-judgment parenting coordinator may be appointed, but only if the parties consent to the appointment.

Under subsection (e)(2), an individual appointed to serve as a parenting coordinator must have the qualifications listed in section (c), be willing to serve in the action, and either have entered into a written fee agreement with the parties or be

willing to accept a fee not in excess of the fee allowed under the applicable fee schedule adopted pursuant to subsection (i)(1). The parties, by consent, may select any individual who meets these requirements. If there is no consent and the appointment is to be of a *pendente lite* parenting coordinator, the court may select any individual who meets the requirements after notice and an opportunity to be heard.

Subsection (e)(3) lists the required contents of an order or judgment appointing a parenting coordinator. In addition to the identity of the parenting coordinator, the contents of the order must include a provision concerning fees and expenses, the term of the appointment, and, if domestic violence is alleged, appropriate provisions for the safety of the parenting coordinator, the parties, all children of the parties, and all other children residing in the home of a party. If a post-judgment parenting coordinator is to be allowed to make decisions in accordance with subsection (f)(1)(H), the order or judgment must include that decision-making authority. The court may not authorize decision making by a *pendente lite* parenting coordinator.

Pursuant to subsection (e)(4), the term of service of a *pendente lite* parenting coordinator ends upon entry of a judgment that resolves all child custody and access issues. The term of service of a post-judgment parenting coordinator is for a specified period, not to exceed two years, unless the parties and the parenting coordinator agree to an extension.

Subsection (e)(5) contains a provision requiring notice to the parties, the parenting coordinator, and any attorney for the child regarding the termination of the appointment of a *pendente lite* parenting coordinator who is not appointed to serve as a post-judgment parenting coordinator.

Subsections (f)(1)(A) through (F) contain a list of services that the parenting

coordinator may provide to assist the parties in reducing conflict between them and complying with any court order regarding custody and visitation.

Subsections (f)(1)(G) and (I) and (f)(2)(B) and (C) set out the role of the parenting coordinator vis-a-vis the appointing court. The parenting coordinator is not an investigator or custody evaluator for the court. The parenting coordinator may be subpoenaed by either party, or by the attorney for the child, to produce documents and testify as a fact witness, or may be called to testify by the court. The parenting coordinator may not testify as an expert witness in the action. If concerned about imminent physical or emotional danger to a party or child, the parenting coordinator may communicate with the court or court personnel to request an immediate hearing.

Subsections (f)(1)(H) and (f)(2)(D) pertain to the decision-making authority of a parenting coordinator. A *pendente lite* parenting coordinator has no decision-making authority. A post-judgment parenting coordinator may be given the authority to decide upon minor, temporary modifications to the child access provisions ordered by the court, if the parties have agreed in writing or on the record to allow the parenting coordinator to make those decisions and the court authorizes the decision-making in a judgment or post-judgment order.

Subsection (f)(2)(A) prohibits the parenting coordinator and the court from requiring the release of confidential information that is not included in the court record. The parenting coordinator may ask the parties and the attorney for the child for access to that information. Each party and the attorney for the child may provide, or refuse to provide, any of the requested access or information. Pursuant to subsection (g)(1), however, the parenting coordinator has full access to all of the case records in the action, which, if allowed by the court, includes access to case record

information that is sealed or shielded from inspection by the public. The parenting coordinator is required to maintain the confidentiality of all documents and information contained in case records that are not open to public inspection. Except for confidential case records, subsection (g)(2) provides that communications with and information provided to the parenting coordinator are not confidential.

Subsection (h)(1) requires the court to remove a parenting coordinator on a finding that the appointment is not in the best interest of the child or, for good cause shown, upon motion of a party or the attorney for the child. Subsection (h)(1) also requires the court to remove a parenting coordinator from the action if the parenting coordinator violates the fee provisions of subsection (i)(1) of the Rule.

Subsection (h)(2) provides a mechanism by which the parenting coordinator may resign the appointment.

Borrowing language from Rule 17-108, subsection (i)(1) provides for the development and adoption of fee schedules. Unlike Rule 17-108, subsection (i)(1) requires the fee schedules to be developed and adopted by the county administrative judge, rather than the circuit administrative judge. Unless the parties and the parenting coordinator agree otherwise, a court-appointed parenting coordinator may not charge or accept a fee in excess of the amount allowed by the applicable schedule. Violation of the subsection is cause for removal from all lists maintained pursuant to section (d) and the Rules in Title 17.

Subsection (i)(2) allows the court to allocate the fees and expenses of the parenting coordinator between the parties and enter an order for payment. To encourage the provision of parenting coordination services *pro bono*, a Committee note following subsection (i)(2) observes that if a qualified parenting coordinator is an attorney, the number of hours of parenting

coordination services provided *pro bono* may

be reported in the appropriate part of the attorney's annual *pro bono* reporting form.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 200 - THE CALENDAR – ASSIGNMENT AND DISPOSITION

OF MOTIONS AND CASES

AMEND Rule 16-204 by adding a new subsection (a)(3)(G) pertaining to parenting coordination services, as follows:

Rule 16-204. FAMILY DIVISION AND SUPPORT SERVICES

(a) Family Division

(1) Established

In each county having more than seven resident judges of the circuit court authorized by law, there shall be a family division in the circuit court.

(2) Actions Assigned

In a court that has a family division, the following categories of actions and matters shall be assigned to that division:

(A) dissolution of marriage, including divorce, annulment, and property distribution;

(B) child custody and visitation, including proceedings governed by the

Maryland Uniform Child Custody Jurisdiction Act, Code, Family Law Article, Title 9, Subtitle 2, and the Parental Kidnapping Prevention Act, 28 U.S.C. §1738A;

(C) alimony, spousal support, and child support, including proceedings under the Maryland Uniform Interstate Family Support Act;

(D) establishment and termination of the parent-child relationship, including paternity, adoption, guardianship that terminates parental rights, and emancipation;

(E) criminal nonsupport and desertion, including proceedings under Code, Family Law Article, Title 10, Subtitle 2 and Code, Family Law Article, Title 13;

(F) name changes;

(G) guardianship of minors and disabled persons under Code, Estates and Trusts Article, Title 13;

(H) involuntary admission to state facilities and emergency evaluations under Code, Health General Article, Title 10, Subtitle 6;

(I) family legal-medical issues, including decisions on the withholding or withdrawal of life-sustaining medical procedures;

(J) actions involving domestic violence under Code, Family Law Article, Title 4, Subtitle 5;

(K) juvenile causes under Code, Courts Article, Title 3, Subtitles 8 and 8A;

(L) matters assigned to the family division by the County Administrative Judge that are related to actions in the family division and appropriate for assignment to the family division; and

(M) civil and criminal contempt arising out of any of the categories of actions and

matters set forth in subsection (a)(2)(A) through (a)(2)(L) of this Rule.

Committee note: The jurisdiction of the circuit courts, the District Court, and the Orphan's Court is not affected by this section. For example, the District Court has concurrent jurisdiction with the circuit court over proceedings under Code, Family Law Article, Title 4, Subtitle 5.

(3) Family Support Services

Subject to the availability of funds, the following family support services shall be available through the family division for use when appropriate in a particular action:

(A) mediation in custody and visitation matters;

(B) custody investigations;

(C) trained personnel to respond to emergencies;

(D) mental health evaluations and evaluations for alcohol and drug abuse;

(E) information services, including procedural assistance to pro se litigants;

Committee note: This subsection is not intended to interfere with existing projects that provide assistance to pro se litigants.

(F) information regarding lawyer referral services;

(G) parenting coordination services as permitted by Rule 9-205.2 (d);

~~(G)~~ (H) parenting seminars; and

~~(H)~~ (I) any additional family support services for which funding is provided.

Committee note: Examples of additional family support services that may be provided include general mediation programs, case

managers, and family follow-up services.

(4) Responsibilities of the County Administrative Judge

The County Administrative Judge of the Circuit Court for each county having a family division shall:

(A) allocate sufficient available judicial resources to the family division so that actions are heard expeditiously in accordance with applicable law and the case management plan required by Rule 16-202 b;

Committee note: This Rule neither requires nor prohibits the assignment of one or more judges to hear family division cases on a full-time basis. Rather, it allows each County Administrative Judge the flexibility to determine how that county's judicial assignments are to be made so that actions in the family division are heard expeditiously. Additional matters for county-by-county determination include whether and to what extent masters, special masters, and examiners are used to assist in the resolution of family division cases. Nothing in this Rule affects the authority of a circuit court judge to act on any matter within the jurisdiction of the circuit court.

(B) provide in the case management plan required by Rule 16-202 b criteria for:

(i) requiring parties in an action assigned to the family division to attend a scheduling conference in accordance with Rule 2-504.1 (a)(1) and

(ii) identifying those actions in the family division that are appropriate for assignment to a specific judge who shall be responsible for the entire case unless the County Administrative Judge subsequently decides to reassign it;

Cross reference: For rules concerning the referral of matters to masters as of course, see Rules 2-541 and 9-208.

(C) appoint a family support services coordinator whose responsibilities include:

(i) compiling, maintaining, and providing lists of available public and private family support services,

(ii) coordinating and monitoring referrals in actions assigned to the family division, and

(iii) reporting to the County Administrative Judge concerning the need for additional family support services or the modification of existing services; and

(D) prepare and submit to the Chief Judge of the Court of Appeals, no later than October 15 of each year, a written report that includes a description of family support services needed by the court's family division, a fiscal note that estimates the cost of those services for the following fiscal year, and, whenever practicable, an estimate of the fiscal needs of the Clerk of the Circuit Court for the county pertaining to the family division.

(b) Circuit Courts Without a Family Division

(1) Applicability

This section applies to circuit courts for counties having less than eight resident judges of the circuit court authorized by law.

(2) Family Support Services

Subject to availability of funds, the family support services listed in subsection (a)(3) of this Rule shall be available through the court for use when appropriate in cases in the categories listed in subsection (a)(2) of this Rule.

(3) Family Support Services Coordinator

The County Administrative Judge shall appoint a full-time or part-time family

support services coordinator whose responsibilities shall be substantially as set forth in subsection (a)(4)(C) of this Rule.

(4) Report to the Chief Judge of the Court of Appeals

The County Administrative Judge shall prepare and submit to the Chief Judge of the Court of Appeals, no later than October 15 of each year, a written report that includes a description of the family support services needed by the court, a fiscal note that estimates the cost of those services for the following fiscal year, and, whenever practicable, an estimate of the fiscal needs of the Clerk of the Circuit Court for the county pertaining to family support services.

Source: This Rule is new.

Rule 16-204 was accompanied by the following Reporter's Note.

See the Reporter's note to Rule 9-205.2.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-101 (b) to add a reference to parenting coordinators, as follows:

Rule 17-101. APPLICABILITY

. . .

(b) Rules Governing Qualifications and Selection

The rules governing the qualifications and selection of a person designated to conduct court-ordered alternative dispute resolution proceedings apply only to a person designated by the court in the absence of an agreement by the parties. They do not apply to a master, examiner, ~~or~~ auditor, or parenting coordinator appointed under Rules 2-541, 2-542, ~~or~~ 2-543, 9-205.2.

. . .

Rule 17-101 was accompanied by the following Reporter's Note.

New Rule 9-205.2 is a self-contained Rule pertaining to parenting coordination. The second sentence of Rule 9-205.2 (b)(1) reads, "Although parenting coordination may draw upon alternative dispute resolution techniques, it is not governed by the Rules in Title 17." The proposed amendment to Rule 17-101 (b) excludes a parenting coordinator appointed under Rule 9-205.2 from the applicability of the Rules in Title 17 that govern the qualifications and selection fo a person designated by the court to conduct alternative dispute resolution proceedings.

The Chair said that the last time these Rules were before the Committee, a number of issues, some of which were language issues and some of which were issues of substance, were not resolved. The Rules were held over for some further discussions with the consultants, particularly the Honorable Deborah Eyler, Judge of the Court of Special Appeals, and the Honorable Ann Sundt, retired Circuit Court judge for Montgomery County. Those discussions have been held, and a number of recommended changes to the draft that was previously before the Committee have been

proposed.

Judge Eyler told the Committee that the consultants had numerous telephone calls and e-mails that went back and forth. They modified some of the language in some of the sections of the Rules. She said that she would note those changes that were substantive and not merely stylistic changes. Some modifications were made to section (c), Qualifications of Parenting Coordinator, to clarify what kind of post-graduate degree a parenting coordinator needs to have to be qualified to hold that position. The language of subsection (c)(2), Parenting Coordination Training, was changed to explain the requirement of 40 hours of accredited specialty training to qualify someone to be a parenting coordinator. This is the kind of training now offered by certain national organizations that pertains to topics such as parental conflict. The hope is that as time goes by in Maryland, there will be programs of this sort sufficient to meet the 40-hour requirement. Currently, no such programs exist, and the Rule is drafted so that the requirement will be satisfied by any accredited program.

Judge Eyler said that the Rule was changed to clarify that the parenting coordinator can only be appointed in high-conflict cases. It will be left to the judges to rule on what a high-conflict case is. It is a “you know it when you see it” type of situation where the parties cannot agree on anything. It was clarified in the Rule that before a pendente lite parenting coordinator can be appointed, notice and an opportunity to be

heard are required. The judge cannot make the appointment without the input of the parties. The parties have to consent to the appointment of a post-judgment parenting coordinator. They will have met previously and decided together whether they would like to go forward with this appointment.

Judge Eyler said that what the orders that appoint the parenting coordinator in subsection (e)(3) must contain was clarified. The information about the term in subsection (e)(4) remains the same -- the pendente lite parenting coordinator would serve until there is a final order in the case. The post-judgment parenting coordinator would serve for a maximum of two years, unless the parties agree to an extension.

Section (f) addresses the provision of services by the parenting coordinator and divides it into two categories: services that are permitted and services that are not permitted. This section was changed to make clear that if a custody order exists, the services of the parenting coordinator have to be geared towards assisting the parties in complying with that order. If no order exists, the parenting coordinator can help both parties to come up with their own agreement as to how they will communicate with each other. Nothing that the parenting coordinator can do can contradict an existing order.

Judge Eyler told the Committee that the only point about this Rule that is still unresolved and left for the Rules Committee to address appears in subsection (f)(1)(I), which concerns what communication, if any, the parenting coordinator

can have with the court. The way that the Rule was originally drafted, the parenting coordinator was not permitted to have any contact with the court. The language was changed due to one issue that caused a great deal of disagreement. A parenting coordinator can be called as a witness by the court. The consultants and interested persons all thought that this was a good idea, especially since many times the parenting coordinator is appointed pendente lite for the purpose of the court getting information that the court might need to make a custody decision. Because the parenting coordinator is not acting as an arm of the court and is in a role of a type of mediator between the parents, it is not envisioned that the parenting coordinator is someone who reports to the court and is in contact with the court.

The general feeling was that it is best for the parenting coordinator not to be involved in that way. There was concern about a situation that might arise where a parenting coordinator believes from what he or she is seeing that there is a possibility of the children being in danger or result in some sort of violence or very bad outcome, and the court should know about this. What came to mind was the *Castillo* case where the father murdered his three children in a Baltimore hotel room. It is important that the court not be out of the loop in this type of situation.

Judge Eyler pointed out that subsection (f)(1)(I) permits the parenting coordinator to contact the court if he or she is

concerned that a party or child under this provision is in imminent danger, physically or emotionally. One concern is that including this provision could expose a parenting coordinator to liability that the parenting coordinator may not want. If the case has progressed to this point, does the parenting coordinator not have the obligation to report to the authorities as a mandated reporter? Not all parenting coordinators would be mandated reporters, because attorneys can be parenting coordinators, and they are not mandated reporters. The concern was also that these are situations where something has not yet happened, but the parenting coordinator is concerned that one or both of the parties are on the brink. This is a substantive issue that was not resolved by the interested persons and consultants.

Judge Eyler noted that in section (g), the language was changed somewhat, so that if the records are sealed, the parenting coordinator is not automatically entitled to see them. The court has to make a decision about this. Section (h), Removal or Resignation of Parenting Coordinator, was changed so that the court must remove a parenting coordinator when it is not in the best interest of the child for the parenting coordinator to continue, good cause exists for removal, or the parenting coordinator has not abided by section (i), Fees, which requires that the parenting coordinator charge a fee as agreed upon through the court system, unless there is an agreement by the parties to a higher fee. A parenting coordinator who charges a

higher fee than what was agreed to must be removed. These are the main points that had not been resolved at the last meeting when the Rule was discussed.

The Chair asked if anyone had any comments or questions to ask Judge Eyler. Master Mahasa referred to subsection (e)(4)(A) which reads: "the service of an individual appointed as a pendente lite parenting coordinator terminates with the entry of a judgment that resolves all issues of child custody, visitation, and access...". She questioned whether the word "substantially" should be added after the word "that" and before the word "resolves," because the judgment may not resolve all the issues. Judge Eyler responded that this does not refer to the parenting coordinator; it addresses the order of the court resolving all of the issues. The parenting coordinator has been appointed before the final order has been issued. It is not that the parenting coordinator has resolved any issues, it is that the court is now entering the final order in the case that has resolved the custody and visitation dispute.

Master Mahasa referred to subsection (g)(2), Disclosure of Information by Parenting Coordinator. She asked if in addition to the reference to "subsection (g)(1)," a reference to "subsection (f)(2)" should be added, because it also refers to confidentiality of information. Judge Eyler read part of subsection (f)(2): "A parenting coordinator may not (A) require from the parties or the attorney for the child release of any confidential information that is not included in the court

record...". Master Mahasa observed that this refers to what can be disclosed and what has to be kept confidential. Judge Eyler noted that one provision deals with the fact that the parenting coordinator cannot require disclosure of certain information, while the other concerns whether the parenting coordinator can disclose information that the he or she has already received. The two are not exactly the same concept. Master Mahasa expressed the view that a reference to "subsection (f)(2)" should be added to subsection (g)(2) along with the reference to subsection "(g)(1)." By consensus, the Committee agreed to this addition.

Judge Hotten referred to subsection (e)(1), Pendente Lite and Post-Judgment Parenting Coordinators, and asked what was intended by the phrase "high-conflict action" in subsection (A). Judge Eyler reiterated that it is the kind of situation in which "you know it when you see it." It pertains to parents who cannot agree on anything. The comment letter received from David Goldberg, Esq., who is active as a parenting coordinator, gives a "laundry list" of all of the unusual issues that parents cannot agree on. (See Appendix 1). This is the kind of case to which the term "high conflict" refers. It will be up to the judges to decide on this. Most of the judges have enough experience to be able to know this type of case when they see it.

Judge Pierson inquired whether there is a concern that if those words were not in the Rule, then judges would appoint parent coordinators in cases that were not suitable for them.

Judge Eyler said that many people on their committee asked why this should be restricted to high-conflict cases. If a parenting coordinator can be helpful to parents in making decisions and resolving disputes, then why not permit them in all cases? The concern is that an outsider cannot simply be injected into a parent's role, which would result in parents not making decisions for their children. The law places a natural limitation on this. In a high-conflict situation, it is the children who need to be protected. In that case, appointing a parenting coordinator is justified. There have been cases where this issue was thrashed out in court -- whether the court has the authority to insert a third person in parenting decisions when special circumstances, such as high-conflict cases, do not exist.

Judge Pierson said that he had presided over some high-conflict cases, and he expressed the concern that these cases generate litigation over whether it is a high-conflict case. Inserting the words "in a high-conflict action" in subsection (e)(1) only provides fodder for this argument. Judges can be trusted to assess a high-conflict situation. It may be preferable to signal judges in a Committee note not to appoint a parenting coordinator unless it is necessary. Judge Eyler expressed the opinion that it is safer to keep the reference to "high conflict" in the Rule. It is inevitable that there will be challenges, that someone will say that the judge does not have the authority to appoint a parenting coordinator. When people fight about anything, they will most certainly fight about this

issue, also. There will also be a certain number of cases where no matter how much parent coordination goes on, it will not be successful. The hope is that in a decent percentage of these cases, the conflict settles down to a point where it is not damaging to the children. Conflict cannot always be eliminated just by appointing a parent coordinator.

Judge Pierson said that he had not been present at the November meeting when the issue of parenting coordination was discussed. He noted that in some jurisdictions, use of the appointment of a parenting coordinator is more frequent than in others. It is not as typical in Baltimore City. He expressed the concern that in some jurisdictions there may not be a ready supply of persons who will meet the qualifications of this Rule. He asked if any thought was given to having an escape hatch, so that in a particular case, the judge could appoint a parenting coordinator who did not comply with the training. Judge Eyler replied that this had been discussed at the November meeting. Much of it was along the lines of appointing someone's pastor or another person that a party felt would be appropriate as a parenting coordinator. Judge Pierson remarked that he had appointed a psychologist, but the person may not have had the required 40 hours of training. Judge Eyler responded that some people have already qualified to be parenting coordinators, which is why there is no grandfather clause. In some jurisdictions, no shortage of people who qualify exists.

Mr. Johnson noted that in subsection (c)(2)(B), the time of

accredited specialty training has been changed from 12 to 40 hours. Where did the 40-hour requirement come from? Judge Eyler answered that a 20-hour training requirement had been taken out, and this was added into the specialty training. The Committee had removed some kind of training that it seemed that people would already have. Family services training and some other kind of mediation training were required, but it turned out that they could only be given together. So they had decided that the specialty training, which they thought was more important, should be 40 hours. The number of hours was 20, then 12, and it is now 40. The result is that the specialty training requires the most amount of time. This was their objective.

Mr. Bowen referred to the language in section (a) that reads: "child custody or child access." Subsection (b)(1) has the following language: "resolve disputed parenting or family issues." This language seems to be broader than the language in section (a). Is there a difference between these two? Judge Eyler replied that there really is not much of a difference. There may be issues causing conflict that do not pertain to parenting. It may pertain to a child being able to see a visiting grandparent who may be in town for a short period of time. The parenting coordinator should be able to address some minor changes of schedule that accommodate that issue. The language in subsection (b)(1) may be there to make it more difficult for parents, who are apt to be conflicted about everything, to argue that no jurisdiction exists for a parenting

coordinator to make that kind of decision. Mr. Bowen commented that reading the two sections together looks like one gets involved initially because of child custody or child access issues. Once the case begins, then the scope widens. Judge Eyler explained that the use of the language "child custody or access issues" was intended to encompass all of the child custody and visitation cases.

Mr. Sykes noted that a difference exists between the applicability section and the definitions. The applicability section is not as broad as the language in subsection (b)(1) referring to "parenting or family issues." They should be made consistent. Judge Eyler noted that subsection (b)(1) pertains to what the process of parenting coordination is. Arguably in resolving disputed parenting or family issues, parenting is dealt with generally. It may not make much of a difference. The language "resolve disputed parenting or family issues" could be deleted. Mr. Johnson inquired whether this is a subset of parenting and family issues to which the Rule applies. He read the language in section (a) and in subsection (b)(1) as two different aspects of the Rule. Ms. Ogletree commented that the first section deals with actions in which the relief sought involves child custody or child visitation. This language would encompass all of the family issues. The Chair added that it is only in those cases that there would be a parenting coordinator. Ms. Ogletree suggested that section (a) read as follows: "This Rule applies to parenting coordination in actions under this

Chapter if the relief sought includes issues of child custody or child access," then the definition in section (b) applies.

To address the comments of Mr. Bowen and Mr. Sykes, the Chair asked whether the language "resolve disputed parenting or family issues and" in subsection (b)(1) could be removed. Judge Eyler responded that it would be the same result without the language. Mr. Sykes said that this change would solve the problem of inconsistency that he had pointed out. By consensus, the Committee agreed to this suggestion.

Judge Hollander referred to the qualifications for parenting coordinators. She remarked that there was previously a Committee note after subsection (c)(2) that indicated that the training could be satisfied by graduate studies, but it has been deleted. She asked what the term "accredited specialty training" means. Attorneys do not specialize, and an attorney can serve as a parenting coordinator. If someone went to graduate school and took course work in a subject such as the developmental stages of children, would that count? Judge Eyler answered that the way that the Rule is written this would not count. The specialty training pertains to how one acts as a parenting coordinator, not the more general topics one would study in college or graduate school.

Judge Hollander pointed out that some of these studies may be in more depth than any continuing education program might offer. She added that she found the language of subsection (c)(2)(B) unclear. One is accredited when one goes to graduate

school and studies these subjects. Judge Eyler explained that one part of section (c) of the Rule pertains to education, and the other pertains to training, which is separate. The reason that the word "accredited" was added was because of programs throughout the country offering accreditation. Judge Hollander inquired whether this is obvious.

Ms. Ogletree hypothesized a situation where an attorney decides to get a masters degree in social work. Would this count as accredited specialty training? Would the person be required to do 40 hours more of training? Judge Eyler responded that Judge Sundt is very knowledgeable about the training requirements.

Judge Sundt agreed that the language pertaining to accredited specialty training is confusing. The more one says, the more confusing it is. The attempt was to provide guidelines that would get past well-meaning, but inexperienced novices whether they are psychologists, social workers, or attorneys. The intent was to give court administrators something that they can look at in the application form to indicate that the applicant is well-qualified and something that may get in the way of would-be applicants who have no idea what they are getting into. It is a daunting position, and the committee wanted to make this clear. They tried to provide that it is not simply training in mediation, although there needs to be a component of mediation.

The educational component does not guarantee anything. A

number of groups offer the training, including the American Bar Association (ABA), and the Association of Family and Conciliation Courts (AFCC). The American Psychology Association will probably offer the training soon, because they are in the process of drawing up their own standards, not guidelines, for any psychologist who is a would-be parenting coordinator, and their standards will be far stricter. Many people are concerned about who will be acting as parenting coordinators and why the person is qualified. The best way the Committee could address this was to list areas where there will be hands-on training, not just sitting in a classroom taking notes. She was not sure whether to emphasize the word "training" as opposed to "education." She suspected that the Administrative Office of the Courts would be getting involved in this. At this point, they are looking for the broadest kinds of guidelines. All of the training in the world does not necessarily make someone competent.

The Vice Chair asked if an attorney can take the extra 20 and then 40 hours of training to be a parenting coordinator. Judge Sundt replied affirmatively. She cautioned that an attorney should check out his or her liability insurance. Ms. Womaski said that she had taken the training to be a parenting coordinator and also had a post-graduate degree in conflict management. She noted that the training does not demand that someone prove that he or she learned anything. It only demands that a person physically attend the 40 hours of training. However, a post-graduate course requires that one exhibit in his

or her performance an understanding of the material, and the internship requires that one be able to apply what he or she learned. A post-graduate accredited class requires that someone prove that he or she processed the information and can apply it. Why would a post-graduate degree be held secondary to training? She expressed her agreement with Judge Hollander that taking classes may be a better educational tool than training. The Chair noted that the Rule requires both. Ms. Womaski asked why a specific degree in an appropriate subject should not be equivalent to training.

Judge Hollander clarified that her point was that the Rule is not clear as to what would satisfy "accredited specialty training," because the topics that it relates to include matters such as developmental stages of children. Someone may have studied this to obtain a graduate degree. Previously, the Rule had a note that indicated that the training requirement could be satisfied by graduate studies. The note has been deleted, and the Rule is no longer clear as to what is required. The Vice Chair said that she read the Rule to mean that it is necessary to meet the requirement of 60 hours of training. Judge Hollander responded that her concern was whether this is needed if someone has a graduate degree in a field of study that included developmental stages of children. The Chair commented that this had been discussed. The training would be more than one would learn in a masters program in psychology or law or social work. Judge Hollander reiterated that she was not sure that someone

reading the requirements in the Rule would understand what they are.

Ms. Turner told the Committee that she was a family services coordinator in Worcester County, which has been appointing parenting coordinators for some time. She and her colleagues fully support the Rule, and they appreciate all of the work that Judge Sundt and Judge Eyler had put into writing the Rule. After a year and a half of working on this, the Rule is probably in the best form it can be. The language requiring the additional training should remain in the Rule, because it is specific specialized training. No matter what one's degree is, this requirement takes the educational foundation to a different level. It is possible that someone could take the training and sleep through it, but that person would only be appointed once to a case and would never be appointed again. It is imperative that Maryland strive to maintain that level of standard. Parenting coordination is a national wave sweeping the country. There will be many opportunities available for people who want to become parenting coordinators.

Master Mahasa questioned whether the training includes a mock demonstration or any quizzes. Judge Sundt answered that it depends on the group giving the training. The training programs that she had attended had been very hands-on. They did some role-playing. She wanted to convey the message that there is no guarantee that the parenting coordinators are going to be good at what they do. All that can be done is to put enough challenges

into the requirements, so that those interested can go through the hoops that the Rule provides, and hopefully, those people who are not interested will be winnowed out. Being a parenting coordinator is a very difficult task.

Ms. Kratovil-Lavelle told the Committee that she was the Executive Director of the Family Administration Division of the Administrative Office of the Courts (AOC). If the Rule is passed, her department is planning to offer a training for parenting coordinators. It would be held at the Judicial Education and Conference Center and would be similar to the session offered on the Guidelines for Child Counsel. She referred to Master Mahasa's question as to whether there is some performance-based mock trial or something similar. Ms. Kratovil-Lavelle said that this is exactly how their trainings are done. There is a pilot project throughout the State where mediators are assessed on their performance. This is the model that offers the better feedback as to performance.

Judge Pierson moved that in subsection (e)(1)(A), the words "high-conflict" should be eliminated, or the language should be changed to "in an action in which the court determines that the level of conflict so warrants." He expressed some concern about using the term "high-conflict." If there needs to be some language to prevent judges from appointing parenting coordinators willy-nilly, the language that he had suggested or something similar could be added into the Rule. Master Mahasa seconded the motion, but she suggested the addition of a Committee note that

explains what "high-conflict" means. The Chair pointed out that this is not a second to Judge Pierson's motion. The Vice Chair remarked that it is actually a double motion. She seconded it, and she noted that the Rule could provide that in a case in which "X" is true, and the court determines that "X" is true, the court can do "Y". Is there a reason why in this situation, it is more important to use the term "high conflict?" Whatever the language, the meaning is that it is up to the judge to determine whether a parenting coordinator is appropriate in this case. She explained that she seconded the motion to take out the words "high-conflict" and add in the phrase suggested by Judge Pierson.

The Chair called for a vote on the motion. The motion carried with two opposed.

The Vice Chair referred to the language in subsection (c)(3), which pertains to continuing education and reads "approved by the Administrative Office of the Courts." She asked if this contemplates someone calling up the AOC and asking if a course that the person is about to take is approved. Most people will not want to take the training and then learn that it was not approved. Judge Eyler answered that what this means is that there are parenting coordination programs around the country, and the course would have to be similar to them. It does not mean that three or four people can get together and discuss parenting coordination. The Vice Chair inquired as to how someone would know which course is approved without inundating the AOC with telephone calls. The Chair said that this issue came up when

mediation procedures were being planned, because there is a continuing education component of that as well. He had assumed that anyone who wants to have a training program, whether it is the ABA or local organizations, could submit the program to the AOC for its approval. There would be a list. The Vice Chair remarked that she did not read the language in subsection (c)(3) that way. Other Rules provide for the maintenance of lists, such as Rule 17-107, Procedure for Approval, which provides for the court to keep a list of qualified mediators. Subsection (c)(3) does not require a list. It could read: "...eight hours of continuing education from a list approved by the Administrative Office of the Courts." Judge Eyler asked if a Committee note should be added to clarify this. Ms. Ogletree and the Chair said that this should be in the Rule.

The Vice Chair reiterated that her proposal subject to styling would be a reference to "on a program list approved by the Administrative Office of the Courts." By consensus, the Committee approved the addition of this language.

The Reporter asked Ms. Kratovil-Lavelle if the program her department would be offering to train parenting coordinators will be accredited from the outside or if it is self-accredited. Ms. Kratovil-Lavelle replied that it is anticipated that her department would bring in outside people, who are accredited, to conduct the program. The Reporter inquired if the program is consistent with the accreditation requirement in the Rule. Ms. Kratovil-Lavelle answered affirmatively.

By consensus, the Committee approved Rule 9-205.2 as amended.

The Chair asked the Committee to look at the conforming amendments to Rule 16-204, which would add to the list of family support services in subsection (a)(3) "parenting coordination services as permitted by Rule 9-205.2 (d)." By consensus, the Committee approved Rule 16-204 as presented.

The Chair asked the Committee to look at the conforming amendments to Rule 17-101 (b), which added a parenting coordinator to the list of individuals excluded from the scope of the Title 17 Rules. By consensus, the Committee approved Rule 17-101 as presented. The Chair thanked the consultants for their help.

Agenda Item 2. Consideration of proposed amendments to Rule 1-322 (Filing of Pleadings and Other Papers)

The Chair presented Rule 1-322, Filing of Pleadings and Other Papers, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-322 to add a new section (b) addressing electronic transmission of U.S. Supreme Court mandates and to make stylistic changes, as follows:

Rule 1-322. FILING OF PLEADINGS AND OTHER PAPERS

(a) Generally

The filing of pleadings and other papers with the court ~~as required by these rules~~ shall be made by filing them with the clerk of the court, except that a judge of that court may accept the filing, in which event the judge shall note on the papers the filing date and forthwith transmit them to the office of the clerk. No filing of a pleading or paper may be made by transmitting it directly to the court by electronic transmission, except (1) pursuant to an electronic filing system approved under Rule 16-307 or 16-506 or (2) as provided in section (b) of this Rule.

(b) Electronic Transmission of Mandates of the U.S. Supreme Court

A mandate of the Supreme Court of the United States addressed to a court of this State that is transmitted by electronic means shall be accepted by the Maryland court unless the court does not have the technical ability to receive it in the form transmitted, in which event the clerk shall immediately inform the Clerk of the Supreme Court of that inability and request an alternative method of transmission. The clerk of the Maryland court may request reasonable verification of the authenticity of a mandate transmitted by electronic means.

~~(b)~~ (c) Photocopies; Facsimile Copies

A photocopy or facsimile copy of a pleading or paper, once filed with the court, shall be treated as an original for all court purposes. The attorney or party filing the copy shall retain the original from which the filed copy was made for production to the court upon the request of the court or any party.

Cross reference: See Rule 1-301 (d), requiring that court papers be legible and of permanent quality.

Source: This Rule is derived in part from

> the 1980 version of Fed. R. Civ. P. 5 (e) and Rule 102 1 d of the Rules of the United States District Court for the District of Maryland and is in part new.

Rule 1-322 was accompanied by the following Reporter's Note.

> The Chief Deputy Clerk of the Supreme Court of the United States asked the Clerk of the Court of Appeals whether the Court of Appeals of Maryland will accept electronically transmitted mandates of the U.S. Supreme Court. The Executive Director of Legal Affairs of the Administrative Office of the Courts and his assistant researched this issue and concluded that the Court of Appeals may accept the U.S. Supreme Court mandates transmitted electronically by construing Rule 1-322 as not applying to those mandates. To clarify that Maryland courts can accept the mandates transmitted electronically and to address the issues of verification of the authenticity of the e-mail as well as the technical ability of a court to receive it, changes to section (a) and the addition of a new section (b) are being proposed for Rule 1-322.

The Chair told the Committee that the reason for the change in Rule 1-322 is described in the Reporter's note. The U.S. Supreme Court has entered the digital age and would like to transmit its mandates in electronic form. It would seem that they can do this any way they want. However, it turns out that several federal circuit courts are refusing to accept the mandates in that form. That is an internal matter for the federal judiciary. The request in Maryland was given to Ms. Bessie Decker, Clerk of the Court of Appeals. The Court gets most of the mandates from the U.S. Supreme Court, although the Court of Special Appeals has gotten them when certiorari has been

granted from one of their decisions, and potentially a circuit court could receive them as well. A memorandum to Ms. Decker from David R. Durfee, Jr., Esq., Executive Director of Legal Affairs and Ann MacNeille, Esq., his assistant, which provides that the mandate can be accepted electronically now, is included in the meeting materials. (See Appendix 2). However, it is preferable to clarify in the Rule that this can be done. The only two caveats or concerns were (1) if the receiving court is technically unable to receive the mandate in the form in which it is transmitted by the U.S. Supreme Court and (2) if there is any question about the authenticity of the mandate, since the embossed seal and the original signature of the clerk is not available. A procedure to address those concerns is built into the proposed Rule.

The Vice Chair commented that the General Provisions Subcommittee had discussed this issue. They agreed that section (b) was not needed to allow the Supreme Court to e-mail a mandate to a court in Maryland, because a mandate is not a "pleading or paper" that is filed with the court as referred to in section (a) of the Rule. Nothing in the Rule refers to a mandate of the Supreme Court. However, the Subcommittee had decided that if there is going to be a section (b), it would work better if the language "as required by these rules" is taken out of section (a). Section (a) would address the filing of anything. She asked if there is a potential for a court not having the technical ability to accept this mandate, which will be an e-mail

with a PDF attached to it. Is any court not able to receive these? The Chair responded that some of the background material, although not from Maryland, indicated that some courts had problems receiving these mandates. As far as he knew, there is no problem with receiving the mandates in this State. Some of the state courts and federal courts had noted that they were not able to accept the mandates in the form preferred by the Supreme Court. Part of the problem was the many different ways to electronically transmit something. The Vice Chair remarked that she had trouble getting the Chair's e-mails, because he sends them in Word Perfect. She cannot easily retrieve a Word Perfect document that is attached to the e-mails. The Chair said that other than the Maryland Judiciary, no other organization still uses Word Perfect.

The Reporter noted that the only issue would be a PDF file so big that it goes into spam and is booted out. What she had learned from attending meetings on e-filings is that it is not effected this way. One would send an e-mail notice to the litigant and tell the person to go into the server, such as that of the U.S. Supreme Court. The person would pull up the file that way. The Chair pointed out that the proposed Rule contains a provision that if someone is unable to receive the e-mailed file, the person would call the Supreme Court, explaining that the file is unable to be retrieved and asking for it to be sent in some other manner. Mr. Klein remarked that although he had been on the Subcommittee, he just realized that nothing in the

proposed Rule requires the electronic transmission to be directed to a specific person or office. The wording is "a mandate ... addressed to a court ....". An extreme case would be that the transmission ends up in the custodian's e-mail. Should the Rule use the language "addressed to a clerk of a court?" The Vice Chair observed that section (a) refers to pleadings and other papers being filed "with the clerk of the court ...".

Mr. Klein inquired as to who is going to receive this e-mailed mandate. The Chair said that he did not know the answer. He commented that section (a) is different, because it addresses the situation where someone goes into the courthouse to file a pleading or other paper that has to be filed with the clerk, except in the one situation where it can be filed with a judge. Mandates in the State are not directed to the clerk of the lower court but to the court. Mr. Klein questioned whether there is a court e-mail address. Where in cyberspace does this mandate land? The Chair replied that it will land in the clerk's office. If it were mailed, it would probably be mailed to the clerk of the court, but the mandate itself is addressed to the court. It is an order to the court, not to the clerk of the court. Mr. Klein asked if the Rule should provide that the mandate is sent to the e-mail address of the clerk of the court. The Chair remarked that the Court of Appeals of Maryland cannot tell the U.S. Supreme Court to whom to address its mail.

The Vice Chair added that when sections (a) and (b) are read together, they require that the mandate be sent to the clerk.

Section (a) provides that everything is filed with the clerk or with the judge under certain circumstances. This cannot be effected electronically unless one is under this program, or the filing is effected under section (b), so the entire Rule applies to filings with the clerk.

Ms. Potter asked how many mandates come from the Supreme Court. The Chair responded that there have been a few. Mr. Klein said that his point was not how the Supreme Court addresses the mandates, it is to whom the mandates are sent. His suggestion was that they should be transmitted to the clerk. Ms. Potter asked if the change to the is Rule needed if there are only a few mandates as the Vice Chair had pointed out. The Vice Chair commented that she did not think that proposed section (b) is necessary. However, there seems to be a feeling that the Rule should be changed to clarify that the mandate can be sent electronically.

Mr. Sykes observed that an electronic transmission is not a pleading or a paper. The Rule is now adding an exception that is not really an exception. The Vice Chair said that the transmission of the mandate electronically is the mode of transmission, but when it arrives, it is printed, so that it is paper. Mr. Sykes noted that it becomes a paper, but the word "transmission" causes him some concern. The Chair stated that this issue was raised by the Deputy Clerk of the U.S. Supreme Court and presented to the Clerk of the Court of Appeals, who was not certain that the Court was able to accept these mandates,

because Rule 1-322 prohibited them from accepting anything in electronic form. The issue was given to attorneys in the Legal Affairs Office of the Judiciary who wrote a long letter trying to interpret the Rule. It had occurred to the Chair and to the Honorable Robert M. Bell, Chief Judge of the Court of Appeals, that the Rule should be amended to make it clear that when the U.S. Supreme Court sends a mandate, it must be accepted. A Rule change is probably not needed. If any impediment to acceptance of the U.S. Supreme Court mandate by the State court comes up, it would be unconstitutional.

Mr. Sykes commented that his problem would be solved if the language "of a pleading or paper" is deleted from the second sentence of section (a). The Rule would read as follows: "No filing may be made ... except as provided in section (b) of this Rule," and then section (b) could stay the same. The Reporter asked if the reference to "pleadings and other papers" is to be eliminated from the first sentence of section (a). The Committee answered negatively. By consensus, the Committee approved Mr. Sykes' suggested change. The Chair asked if Mr. Sykes' problem could be solved by listing what is in section (a) as subsection (a)(1) and then what is now (b) would be subsection (a)(2), so that this is not an exception to (1). Mr. Sykes noted that section (a) states that nothing can be filed electronically and section (b) states that something can be filed electronically. The Vice Chair pointed out that this is a matter of style.

The Chair asked if anyone had any further comments on this

Rule. The Vice Chair remarked that no one objects to acceptance of U.S. Supreme Court mandates electronically. The way this Rule is constructed does require that the filing be with the clerk. If this is not intended, there may be a problem with the structure of the Rule. The Chair repeated that the mandate will be sent to the clerk. That is who will get it. The mandate is to the Court. By consensus, the Committee approved Rule 1-322 as amended, subject to restyling.

Agenda Item 3. Reconsideration of a State-wide Rule on cell phones applicable to all Maryland courts

The Chair told the Committee that the issue of cell phones in the courthouse has been discussed a number of times. He had commented on the lack of uniformity that exists now. He had said that in Baltimore County District Court, there is a disparity among its three courts in that one allows cell phones in the courthouse, and one does not. That is incorrect. He had misread a document that had been issued by the District Court. He offered his apology to the judges of the District Court in Baltimore County and to the reporter for The Baltimore Sun to whom he had also made this comment.

The Chair presented Rule 18-XXX, Cell Phones and Other Electronic Devices, for the Committee's consideration.

CELL PHONE AND ELECTRONIC DEVICE POLICY
PROPOSAL FOR CONSIDERATION

ADD new Rule 18-XXX, as follows:

Rule 18-XXX CELL PHONES AND OTHER ELECTRONIC DEVICES

(a) Definition

In this Rule:

(1) Electronic Device

"Electronic device" includes a cell phone, computer, and any other device that is capable of transmitting or receiving messages or information by electronic means or that, in appearance, purports to be a cell phone, computer, or such other device.

(2) Local Administrative Judge

"Local administrative judge" means the county administrative judge in a circuit court and the district administrative judge in the District Court.

(3) Court facility

"Court facility" means the building in which a circuit court or the District Court is located.

(b) In general

Except as otherwise provided in sections (d) and (e) of this Rule, a person may not bring any electronic device into any court facility occupied by a circuit court or the District Court.

(c) Notice

Notice of this prohibition shall be:

(1) posted prominently outside each entrance to the court facility and each security checkpoint within the court

facility;

(2) included prominently on all summons and notices of court proceedings;

(3) included on the main judiciary website and the website of each court; and

(4) disseminated to the public by any other means approved in an administrative order of the Chief Judge of the Court of Appeals.

(d) Confiscation of devices

The local administrative judge may adopt a written policy under which, as an alternative to prohibiting an electronic device from being brought into the court facility, the electronic device may be confiscated and retained by security personnel or other court personnel until the owner leaves the court facility, provided that no liability shall accrue to the security personnel or any other court official or employee for any loss or misplacement of or damage to the device.

(e) Exemptions

Subject to the provisions of section (f) of this Rule, section (b) of this Rule does not apply to electronic devices that are the property of:

(1) the court;

(2) judges and other officials or employees of the court who present appropriate identification approved by the local administrative judge;

(3) officials and employees of any State or local government agency that occupies space within the court facility who present appropriate identification approved by the local administrative judge;

(4) attorneys who present appropriate identification approved by the Court of Appeals;

(5) jurors who present appropriate identification approved by the local administrative judge;

(6) law enforcement officers who present appropriate identification approved by the local administrative judge; and

(7) other persons who present appropriate identification and written permission from a judge of the court.

Cross reference: See Rule 18-501

(f) Presence of Devices in Jury Deliberation Room and Courtroom

(1) An electronic device may not be brought into any jury deliberation room.

(2) Unless precluded by the local administrative judge or the presiding judge in a case, for good cause, persons included within a category set forth in subsection (e)(2), (4), (5), (6), or (7) of this Rule may bring an electronic device into a courtroom.

Committee note: Because electronic devices may not be brought into any jury deliberation room, the administrative judge may require that jurors leave such devices in a place designated by the administrative judge and not bring them into the courtroom.

(3) If an electronic device is permitted in a courtroom, the device (A) must remain off and may not be used to receive or transmit information, unless otherwise permitted by the presiding judge; and (B) is subject to any other reasonable limitation imposed by the presiding judge. A willful violation of paragraph (2) of this section or this paragraph, including any reasonable limitation imposed by the presiding judge, may be punished by contempt.

(4) An electronic device that is used in violation of this section may be confiscated and retained by security personnel or other court personnel subject to further order of

the court or until the owner leaves the building. No liability shall accrue to the security personnel or any other court official or employee for any loss or misplacement of or damage to the device.

(g) Rule 18-501

To the extent of any conflict between this Rule and Rule 18-501, Rule 18-501 shall prevail.

Source: This Rule is new.

The Chair said that he would give some background on the issue of cell phones in the courthouse. This matter had been before the Committee in October. The General Court Administration Subcommittee had voted not to change the current policy and to leave the decision up to the administrative judges. However, the issue was important enough to be brought to the full Committee for its consideration. In October, the Committee voted 11 to 5 to leave the policy as it stood then and not to have any uniform policy. As a result, the Committee never discussed what kind of policy there should be if there were to be a policy. The Chair had reported that decision to the Court of Appeals. In December, he had met with the Court on a number of Rules Committee matters and mentioned that the Committee had voted not to recommend a change to the current cell phone policy.

The Chair commented that in January, the Maryland State Bar Association ("MSBA"), which had been working on this for some time, adopted a recommendation that attorneys or at least MSBA members be able to bring in these devices statewide. They wanted

a uniform policy. The Rules Committee had just considered and rejected a uniform policy. The issue had been sent back from the MSBA. The Chair alerted Chief Judge Bell that this matter was back on the table. There was no point in the Committee taking this up when they had voted two months earlier not to make any change. Many attorneys wanted a uniform Rule on this issue. The Chair asked for guidance from the Court whether the Court wanted the Committee to propose a uniform Rule. If they did not, there would be no point for the Committee to get re-involved.

The Chair told the Committee that the response that he got back from Chief Judge Bell, which is in the meeting materials (See Appendix 3), is that the Court requested that the Committee propose a uniform rule. The Committee has to do this even if the Committee continued to think that the policy should be one of local option. It would be the Court's decision as to what that policy should be. The Committee will have to give the Court the Committee's best judgment as to what a uniform policy should be if the Court chooses to have one.

The Chair said that the Conference of Circuit Judges continues to believe that there should not be a uniform policy. The Chief Judge of the District Court thinks that there should be, but none of his administrative judges feel that way. The Chair commented that the directive from the Court of Appeals in no way compromises the integrity of the Committee or of any of the members who believe that no change should be forthcoming. In light of Chief Judge Bell's communication, which is not only

from him but from the rest of the Court, the question of whether the Committee can determine the policy by doing nothing is not an option.

The Chair told the Committee that they should not be concerned about the Rule before them being numbered "Rule 18-xxx." It is numbered that way tentatively, because the General Court Administration Subcommittee is looking at putting rules pertaining to general court administration into Title 18. The rule number is essentially irrelevant at this point. To address the matter fairly and efficiently, the first issue to try to resolve is who can bring these devices into the courthouse in the first place, and the second issue is what they can do with them once the devices are in the courthouse. What kinds of restrictions and limitations should a rule provide? His sense was that the current lack of uniformity is really not as extensive as it appears to be. From what he had been able to determine with the help of his law clerk and from communications from the courts themselves, it appears that all of the courts allow judges to bring in cell phones, all of the courts allow court employees to do so, and all or most courts permit other employees who work in the courthouse and have sufficient identification to bring these devices in. Generally, Assistant State's Attorneys and probation officers who work in the courthouse can bring the cell phones in.

The Chair commented that questions have arisen concerning other groups, including attorneys, jurors, law enforcement

personnel who are in the courthouse on official business, members of the news media, court interpreters, people who have special permission from the judge to bring the devices in, and all others. There could also be subgroups that he had forgotten about. He proposed that the Committee consider each of the groups separately, debating and voting on each one. Then, the Committee should consider what restrictions are permissible as to using these devices in various parts of the courthouse, including in the hallways, the courtrooms, jury rooms, etc. He inquired if anyone had a different thought about how to proceed.

Mr. Klein said that he had a fundamental policy question. The idea of excluding people from using cell phones indicates that courts are somehow different from churches, airplanes, the State House, and executive office buildings. What is it about the courts in Maryland that means that John Q. Public cannot bring in a cell phone into the courthouse? Is this more dangerous in a courthouse than it is on an airplane? The Chair answered that the reason is security. No one is concerned if someone takes a photograph of a pilot, the flight attendant, or some other passenger. There is grave concern about people taking photographs of jurors and witnesses.

Mr. Michael noted that it may be a problem if a photograph of an informant is taken. The Chair agreed, adding that this problem may extend to undercover police officers. Mr. Klein expressed the opinion that security would be the only reason to ban cell phones as opposed to the issue of disrupting

proceedings. The Chair responded that disrupting proceedings is a concern. Another issue is someone sitting in court using a cell phone to text out to sequestered witnesses what witnesses are saying in court or otherwise recording and transmitting testimony. He added that Judge Alexandra Williams, District Administrative Judge for Baltimore County, was present at the meeting, and she had had some experience with some of these issues.

Judge Kaplan observed that the security issue arose with the advent of camera telephones. The Chair noted that as of 2007 or 2008, some courts allowed cell phones in the courthouse unless the phone had a camera. Now nearly all phones have cameras. The Vice Chair remarked that in Carroll County, the security guard asked everyone coming in with a cell phone, which included almost everyone, if their cell phones could take a photograph with camera capability. Anyone who answered negatively was allowed to bring in the cell phone. Mr. Klein said that he had no experience with the security issue. Cell phones often go off in church and in other places. The way to handle this is to confiscate the phone and make the person with the phone pay a fine in order to redeem it. He expressed the concern that cell phones are such a lifeline to most members of the public. If someone coming to the courthouse forgets that he or she was carrying a cell phone, what would the person do with the phone once arriving at the courthouse? The Chair noted that one of the alternatives of the Rule that the Committee could choose to

suggest to the court is to have no restrictions, so that anyone could bring in a cell phone to the courthouse. Another view is that no one can bring a cell phone into the courthouse. Or, the policy could be something in between.

Mr. Sykes asked how the Committee has the expertise to decide this question. He expressed the opinion that this is not a matter of practice and procedure in civil and criminal litigation. The Chair responded that the Court of Appeals can decide this, but it has instructed the Committee to send them a proposal. Mr. Klein said that he did not have the knowledge to weigh the security risks. His inclination was not to ban the cell phones. The Chair said that the Committee spent hours in October hearing from sheriffs and judges. Some of them were present at today's meeting.

Ms. Potter inquired how the federal court gets around the same security issues that were raised today. The Chair responded that federal courts around the country have different policies. An article, which is in the meeting materials (See Appendix 4), indicates that the U.S. District Court in the Southern District of New York, which did not allow cell phones in the courthouse, did permit the Assistant U.S. Attorneys to bring them in, because they worked in the courthouse and had FBI clearance. The defense bar raised an issue asking why the prosecutors could have cell phones, but defense attorneys could not. The new Chief Judge of that court told the defense bar that they could bring their cell phones into the courthouse. The Chair said that his point was

that there is no uniformity in the federal courts around the country.

The Vice Chair remarked that she had not been at the October meeting, and she asked if there had been overwhelming testimony from sheriffs, judges, or anyone else in opposition to allowing cell phones in the courthouse. The Chair replied that his recollection was that the law enforcement community did not want to allow everyone to bring in their cell phones. Judge Norton and several others made the point that often the procedure is that the people who are not required to go through the metal detector to gain entry into the courthouse can bring in anything that they want. For those who do have to go through the metal detector, some people are allowed to bring them in and some are not. The Vice Chair inquired if the decision as to who has to go through the metal detector is different from jurisdiction to jurisdiction. Mr. Klein commented that security is raised as an argument for banning cell phones. On the other hand, there are First Amendment issues, and a personal safety issue, because a cell phone can offer someone protection. A practical issue is court employees holding on to the public's cell phones and the sheriffs being required to keep track of the phones.

Mr. Johnson observed that the security issue is one of legitimate concern, but the real question is where someone can use the cell phone in the courthouse. If the problem is informants and others who testify in court, the courtroom environment can be controlled, to some degree, by banning the use

of the phones in the courtroom. In jurisdictions such as Baltimore City where many people come to the courthouse on a bus, someone may need the cell phone for a lifeline, such as a juror calling a babysitter because the case is running late. The question is where people can use the phones as opposed to whether they should be allowed to use the phones. The Chair acknowledged that this was a good point.

The Chair asked Judges Leasure and Williams if they would like to comment on the security issues. Judge Leasure told the Committee that she was the Fifth Circuit and County Administrative Judge in Howard County, and she served as the Chair of the Conference of Circuit Court Judges ("Conference"). This issue had been addressed extensively at the Conference. She had presented the Conference position at the October Rules Committee meeting. The Conference is comprised of all of the circuit administrative judges as well as an individual elected from each of the circuits. There are a total of 16 members. In October, she had indicated that the Conference position was that it should be left to the discretion of the administrative judges whether or not camera phones or any device that is capable of photographing are permitted in the courthouses and if so, what proscriptions there should be once the phones are in the courthouse. She suggested that this should be the proposed Rule. Every courthouse is different, and the security considerations in the courthouses are different.

Judge Leasure said that there are legitimate and very

serious security considerations. Guns that look like cell phones are available for purchase. Recording devices for about $150.00 are also available. It is impossible to get ahead of technology. The sheriffs and others who are responsible for courthouse security would probably prefer the administrative judges to ban cell phones entirely because of the security risk. In some of the gang trials, people are intimidating witnesses and taking photographs of undercover officers. Anyone who does not practice criminal or domestic law may not have an appreciation for the security risks. The courts do vary on the policies. In some courts, anyone can bring in a cell phone, and then the use is restricted once the phone is in the courthouse. Others believe that no camera phones should be allowed in.

Judge Leasure stated that she was going to revise the policy in Howard County to permit attorneys to bring in cell phones without the permission of the administrative judge. Her decision was based on listening to the MSBA presentation explaining that attorneys are officers of the court. This places attorneys on a different plane with different responsibilities than the general public. Judge Leasure said that she uses electronic devices in the courtroom and in her personal life. Speaking personally and not on behalf of the Conference, Judge Leasure pointed out that there are some issues of concern with the Rule as originally proposed. One is the confiscation issue. The sheriffs do not want to hold on to the cell phones in their courthouses. There is no place to put them. The federal court has different

procedures, and some of those courts have lockers in which people can place their belongings. Howard County does not have the space for this. The other concern is that exemptions may swallow up a rule. It may have to be an all or nothing proposition. If jurors or law enforcement officials are exempted from the ban, other groups of people may ask to be exempted, also. The courts have an increasing number of self-represented litigants. If the attorney pulls out a blackberry, the self-represented litigant may wish to do so as well. This may create the perception that this is not a fair proceeding procedurally.

Judge Williams told the Committee that she was the administrative judge for Baltimore County District Court. She had been present at the last meeting when this issue had been discussed. Baltimore County District Court was one of the pioneers of the cell phone ban. The policy was very controversial, but they did it for security reasons. Attorneys do not want a cell phone ringing when they are in the middle of cross examination or a closing argument. The problem came to a head when someone came into Catonsville District Court and started taking photographs of the police officer, the witness, and the judge. She referred to Mr. Johnson's point that cell phones could be controlled in the courtroom. The bailiffs' position was that even though people were instructed to turn off their phones and keep them in their pocket, once they crossed the threshold with their phone, they were very possessive about it, and they refused to put their cell phones away when confronted by

the bailiff. The bailiffs' experience was that once the phones are in the courthouse, it is very difficult to control their usage effectively. Someone who is there to photograph a judge or a witness probably would not listen to the judge's order to keep a phone in one's pocket.

Judge Williams read an excerpt from an article in a Maryland newspaper in reference to a gang-related murder. It involved the shooting of someone who had previously witnessed a murder and was shot several times in an unsuccessful attempt to prevent him from testifying in State court. The witness tried to tell his story in court while sheriffs and detectives tried to keep audience members from snapping his photo with cell phone cameras. It was a new level of witness intimidation. Judge Williams remarked that this is unfortunately the state of the world. Gang-related crimes as well as witness intimidation are on the rise. Before Baltimore County banned phones, people were caught recording testimony. It was not clear if the testimony was being transmitted to someone else. The ban has been very successful for them. The only problem is getting the word out to the public. To accomplish this, the Judiciary has put on all of their notices, which are posted all over, instructions to people to call the court to which they are coming to find out what that court's cell phone policy is. Someone who took the bus should not have to be told that he or she cannot bring a cell phone into the courthouse. It is a real security issue.

Judge Williams said that she was reiterating much of what

Judge Leasure had already said on the issue of phones that are actually guns. An all or nothing ban would be a simple rule. Either everyone brings them in, or no one brings them in. If the rule is that everyone brings them in, then the security issues have to be addressed. The District Court has many people coming in and going out. Hundreds or maybe thousands of people come through the doors unlike the federal court that may have many fewer people. The District Court is understaffed with bailiffs and clerks. It would be difficult to examine all the phones, and it would be impossible to hold them. They could not consider having the bailiffs confiscate the phones at the door. Judge Williams noted that their courthouses have public phones, although it appears that everyone relies on their cell phones. She implored the Rules Committee on behalf of Baltimore County District Court to continue to either allow each jurisdiction to make its own determination or do something other than to let the public in with no restrictions. In Baltimore County, anyone who comes into the courthouse without being required to go through security, such as police officers on duty, attorneys with bar cards, and employees, can bring in their cell phones. If someone has to go through the metal detector, he or she cannot bring in a cell phone.

The Chair commented that to his knowledge, no court in the State has a policy of allowing everyone to bring in cell phones or a policy that no one can bring in cell phones. Ms. Potter said that Anne Arundel County has no limitation on bringing in

cell phones. The Chair said that he did not know of a court that totally bans cell phones. Every court allows some groups to bring them in. Judge Leasure reiterated that the Conference feels very strongly that local jurisdictions should make the decisions about cell phone use. She added that she was in favor of the contempt provision in subsection (f)(3) of the proposed Rule, because problems exist. The Chair responded that the way that he interpreted Chief Judge Bell's letter is that the Court does not want a rule stating that there is no uniform rule. They would like a uniform policy. The argument the Conference is making is a fair argument that has to be made to the Court of Appeals. Judge Leasure agreed to do so. She reiterated that the security issues are real.

Mr. Klein remarked that he was satisfied from the discussion that the threats are real. He said that he disliked that airport procedures are so strict because of terrorists. The cell phone policy may be determined based on gangs. He expressed the view that a uniform rule is necessary, and the policy should not be left up to the administrative judges. There will be exceptions to whatever the policies are. There should be one policy, and everyone would know what the exceptions are. Any criticisms could be the responsibility of the Court of Appeals rather than the administrative judges.

The Chair said that it would be important to focus on the issues. He asked if anyone on the Committee believed that there should be no limits on bringing in cell phones to the courthouse.

Two members were in favor of this policy. The Chair then inquired if anyone on the Committee believed that no one (no exceptions) should be allowed to bring cell phones into the courthouse. One person was in favor of this. The Vice Chair commented that she did not think that there was a good solution to this issue. Someone is likely to have a problem with any decision made. She felt that a simple policy was best. Everyone can bring in a phone, or everyone cannot, or some groups such as judges and attorneys can.

The Chair stated that the next issue would be who can and who cannot bring in the cell phones. He questioned whether anyone felt that judges and employees with proper identification should not be able to bring in cell phones. Mr. Sykes inquired why court employees would even need a cell phone when there is a telephone on their desks. The Chair answered that the reason is because office telephones are not supposed to be used for personal calls. Judge Hollander pointed out that employees go out for lunch and may need a phone. Ms. Ogletree added that a cell phone may be necessary after the courthouse is closed. Judge Hollander noted that someone could get stuck in an elevator and need a cell phone to notify someone. The Chair again asked about excluding judges and court employees from using cell phones, and no one voted to exclude them.

The Chair asked the Committee if anyone was against allowing employees who are not court employees but work in the courthouse. One type would be employees who work in the Office of the State's

Attorney. Ms. Ogletree said that in her county courthouse, this category would include the register of wills, the treasurer's office employees, the county commissioners, and everyone else. The Chair noted that some District Courts share building space with county or State agencies. The employees have identification badges as well. He asked if anyone would vote to exclude these people from bringing in cell phones. The Vice Chair responded that she would vote to exclude them if the Committee voted to exclude attorneys generally, because it would not be fair for the State's Attorney to be allowed to bring in cell phones without the defense attorney being allowed to do so. The Chair inquired if anyone else would vote to exclude county, State, and possibly federal employees with proper identification who work in the courthouse but are not necessarily court employees. No one voted to exclude court employees.

The Chair then raised the issue of attorneys. The MSBA has proposed that attorneys with MSBA identification could bring in cell phones. The MSBA consists of about 16,000 attorneys, and there are about 24,000 in the State. Assuming the decision is to include attorneys, should only MSBA members be allowed to bring in cell phones, or should attorneys with some other identification also be allowed to do so? One broader license could be from the Court of Appeals which licenses all attorneys who are in good standing.

Mr. Hessler told the Committee that he was from the MSBA Board of Governors and was the Chair of the Young Lawyers

Section. The MSBA's proposal is to assist the courts in providing some type of identification. The MSBA bar card is that piece of identification that they are suggesting, and it is available to all attorneys in the State of Maryland regardless of whether or not they pay dues to the MSBA. There is a small fee of $10.00 to get the card.

The Chair asked Mr. Hessler if the MSBA proposal is for all attorneys to get the bar card. Mr. Johnson remarked that the application for the card asks for an attorney's State bar number. Why is this information requested if MSBA membership is not necessary? The sheriff's office suggests that attorneys go to the State Bar to get clearance. This procedure has been shifted from the sheriff's office to the MSBA. This is part of the reason that the State Bar is involved in this. However, the application asks for the State Bar identification number when an attorney applies for a bar card. Mr. Hessler reiterated that this information is not required. The Chair again inquired if the MSBA position is that any attorney in good standing can get identification. Mr. Hessler replied affirmatively. The Chair asked about suspended or disbarred attorneys. Mr. Hessler answered that a disbarred attorney would not get the bar card. The attorneys' names are checked against the bar list of attorneys in good standing.

Mr. Klein observed that at least one county in the State will not recognize the State bar card. Mr. Johnson added that this issue has caused dissension for years. The Vice Chair

suggested that instead of discussing what kind of identification might get an attorney into the courthouse, the Committee should vote on who they believe should be able to bring in cell phones. Mr. Boozer recalled that at the meeting in October at which this matter was discussed, Senator Stone and Delegate Vallario who were present were both opposed to a uniform rule on cell phones. Mr. Boozer remarked that from his years serving in the legislature, he had learned that Maryland is a parochial state. Procedures vary in Western Maryland and on the Eastern Shore. The cell phone policy should be left as it is now. The Chair acknowledged that the Committee had voted that way, and the Court of Appeals can decide the matter that way. The Committee can recommend that to the Court. However, the Committee still needs to send the Court a uniform proposal. He asked if anyone would exclude attorneys with appropriate identification from bringing cell phones into the courthouse. No one wished to exclude these attorneys.

Mr. Johnson questioned whether paralegals and staff are included under the umbrella of attorneys. The Chair replied that this could be discussed, but the word "attorneys" means only attorneys. Mr. Johnson said that in the laundry list of persons, he would include staff because they assist people in presenting their cases. Judge Pierson noted that the justification for including attorneys is that they are regulated and have identification. This is not true for staff. Mr. Johnson commented that the attorneys are responsible for their staff.

Their staffs are helpful to attorneys. The Chair responded that attorneys are not responsible for the criminal behavior of staff.

The Chair asked what the Committee's view was about people identified as employees or staff of attorneys being able to bring a cell phone into the courthouse. Ms. Ogletree expressed the opinion that she was not in favor of this. Mr. Michael remarked that the problem is how are they identified. Ms. Potter observed that employees and staff should be categorized as the general public. Mr. Klein said that he was in favor of allowing employees and staff to bring cell phones, but there should be a provision to be able to validate them. Mr. Michael commented that he remembered a time when in Baltimore City, an attorney had to write to the judge to get exhibits in. If staff were to be allowed to bring in cell phones, it should be up to the administrative judge, but as far as writing a rule, for the Rule to mean anything, it has to be understandable. The word "staff" of an attorney could be anyone.

Mr. Klein pointed out that if the catchall exception in subsection (e)(7), which is "other persons who present appropriate identification and written permission from a judge of the court" is retained, this should take care of the problem. Mr. Johnson expressed the concern that the possibility of local rules exists. If there is a general rule that applies everywhere, and then the attorney has to get permission for certain people in certain places, it may become a local rule. The Chair explained that this may happen anyway. Contractors may

be doing work in the courthouse, or there maybe visiting dignitaries who will be coming in.

Judge Pierson said that another issue of concern is not only cell phones but other electronic devices. Baltimore City has issues concerning electronic devices. Permission is required for a variety of electronic devices. The Chair commented that this would include laptops and anything capable of transmitting information.

The Chair said that the next category of people to consider would be jurors. This is the first category where there is significant disparity among the circuit courts. Some courts permit jurors to bring cell phones in but control what the jurors can do with them once the phones are in. Others are treated as members of the general public, and they are not allowed to bring cell phones in. In Baltimore County, jurors are permitted to bring their cell phones and laptops in. They can use them in the jury assembly room and in the hallways of the courthouse. When the jurors are called into the courtroom for voir dire or because they are in a trial, the jury commissioner takes the phones away and holds them until the jurors come back to the jury assembly room. The Chair did not know if any other county followed this policy. Some counties do not allow jurors to bring phones in at all.

Master Mahasa commented that she liked the policy in Baltimore County. Mr. Michael expressed the view that jurors should fall under subsection (e)(7) of the proposed Rule. If the

cell phones of jurors in Montgomery County were taken away so that they could not make telephone calls on their lunch break, they would be very upset. The policy should fall within the local province of each circuit which would be under subsection (e)(7). It would be decided on a county-by-county basis. The Chair pointed out that the jurors are in the courthouse under compulsion. They may be sitting around all day and never go into a courtroom. They have child care issues and business to attend to.

The Chair said that he sees the jurors working on their laptops while they wait. One issue is whether they can take the cell phones into the courtroom when they get called. In Baltimore County, the jurors cannot bring the phones into the courtroom. He had been told that in Montgomery County, they can take them into the courtroom, but after voir dire, once they are selected and are sitting on a jury, the phones are collected. Mr. Michael noted that the jurors get the phones back at lunch. The Chair clarified that jurors can have the cell phones when they are not in the jury box or the jury deliberation room. Mr. Michael reiterated that this is why subsection (e)(7) should be applicable to jurors. Each court can decide what it wants to do on this issue. It may not be a good idea to have a rule that requires all of the circuits to do the same thing.

The Chair responded that one way to address Mr. Michael's comment is to let the administrative judge decide whether the jurors can bring the cell phones into the courthouse at all. Or

the policy could be that jurors are allowed to bring the phones into the courthouse, but the administrative judge decides what the next step will be. The counties have a variety of different policies. Mr. Johnson recalled that Judge Leasure had said that in her county, they do not have any way to store the cell phones. The Chair remarked that the sheriffs do not want to be responsible for the phones. In Baltimore County, the jury commissioner takes the phones when they get called to a courtroom. This is a smaller number of people. His understanding was that in Montgomery County, the clerk or the bailiff takes the phones. Mr. Michael noted that it is the bailiff who takes the phones. The Chair asked if the jurors should be able to bring in the cell phones at all.

Judge Hollander remarked that she had difficulty with the idea of asking the public to come in under compulsion to serve as jurors but be prohibited from bringing in their cell phones. Unfortunately, the jurors often waste the entire day sitting around and never getting called. To ask them to be isolated from their other responsibilities, from work that they could be doing while they are waiting, and from people with whom they have a need to communicate would generate ill will. There must be a way not to sever the lifeline of people who are asked to come in and fulfill their responsibilities as citizens. Master Mahasa suggested that the phones could be brought in, but taken away when the juror is sitting on a jury. Judge Hollander remarked that there must be a viable way that an individual judge can

collect the phones from the people who are selected to be jurors. Master Mahasa pointed out that this would not involve many jurors. Judge Hollander added that it would be no more than 12 with two alternates.

Ms. Ogletree inquired about the grand jury bringing in cell phones. Judge Leasure stated that in her county, there is no place to store anything. Ms. Potter noted that in jury trials, when the jurors go back to deliberate, they take their cell phones out and put them either on a counsel table or on the judge's bench. The bailiff or the judge's law clerk remains in the courtroom. After they reach a verdict, they pick up their phones which are in plain view. In Baltimore County, there is a ban on cell phones in the courthouse. A hot dog vendor outside is willing to keep the cell phones for a fee when someone takes public transportation to the courthouse and is told that the phone the person has with him or her cannot come in. Otherwise, people who do not have cars with them have no place to put their cell phones. Judge Leasure explained that this is why her personal view is that the other categories beyond subsection (e)(3) should be in the discretion of the administrative judge. The current policy in Howard County is that no camera cell phones are permitted in the courthouse. This has been in effect for six to eight years. Their jury pool is highly educated and many have responsible jobs. She has not heard a single complaint about this policy.

Judge Hollander inquired how often the jurors are called for

jury duty. In Baltimore City, people are called every year. Judge Leasure responded that this is why the policy should be left up to the administrative judge. The courthouses are different, and the jury plans are different. In Howard County, they do not have any place to store anything. The only time they take anything from the jurors is when the jury is deliberating. Judge Leasure said that the jurors can have the phones in their pockets in the courtroom. No one wants the responsibility of holding the phones, because of the storage problem. When the jury deliberates, they have to give the phones to the bailiff, who has to stay in the courtroom to watch over them. Judge Hollander said that she thought that Judge Leasure had indicated that jurors could not bring in phones. Judge Leasure clarified that camera phones are forbidden. The Chair pointed out that most cell phones have cameras. Judge Leasure disagreed, explaining that she recently got a blackberry phone without a camera. The Chair observed that statistics indicated that 95% of cell phones have a camera. Judge Leasure said that she has not received any complaints about the policy in Howard County.

The Vice Chair moved that after the category in subsection (e)(4), which pertains to attorneys, the next category, subsection (e)(5), should be: "any other person or classes of persons with appropriate identification approved by the administrative judge on any terms and conditions imposed by the administrative judge." The motion was seconded. The Chair asked if this means that a juror who is summonsed in has to get

permission from the administrative judge in advance to bring in a cell phone. The Vice Chair answered affirmatively. Ms. Potter questioned whether the permission has to be written. The Vice Chair replied that it could be by administrative order or any way that the administrative judge would like to do this. The policy can be put on the notices and advertised in any way the administrative judge chooses. Each jurisdiction through its administrative judge would determine the individual people and the classes of people who can bring in their cell phones and under what conditions. The Chair inquired about law enforcement personnel. The Vice Chair responded that this would be the same policy. The media would also be included. The Chair said that an FBI agent could bring in a cell phone in one county, but not in another county. The Vice Chair answered that this is the way it is now.

Master Mahasa asked whether the Vice Chair's suggested catchall exception would be so broad that the Court of Appeals would say that it is too broad. The Chair commented that the Court of Appeals did not indicate what kind of policy they wanted for anyone. They asked for a uniform policy. The Vice Chair noted that at the Court of Appeals hearing on this, there can be a discussion on any other categories that the Court may want to add. Ms. Ogletree remarked that the needs will be different depending on what county one is in. In her county, a person who is summonsed for jury duty would need a cell phone to call home if the person needs a ride. This may not be the same elsewhere.

The Chair pointed out that it will be the same for some jurors no matter where they are. Some can leave a cell phone in the car, and others who will be taking public transportation cannot. This is not a county-by-county issue. Ms. Ogletree remarked that Caroline County has no public transportation. The Chair said that there is no feasible public transportation in other jurisdictions. His sense was that the Court wants a uniform policy for categories. What one can do with the phones can be handled by the administrative judges.

Mr. Klein observed that the security issue is the only issue that ought to determine where there should be exceptions. The Chair inquired if the security issue includes texting out to sequestered witnesses. Mr. Klein replied affirmatively. He did not see law enforcement officials as a security risk. Why are they are not included in the list of categories of people allowed to bring in cell phone? The Vice Chair questioned whether law enforcement officials across the State are allowed to bring cell phones into the courtrooms. Ms. Smith replied that they can do so if they are in uniform and not there for private business. The Vice Chair asked if a law enforcement official who is not in uniform is not allowed to bring in a cell phone. Ms. Smith answered that the official can bring in a phone if the official can prove that he or she is in the courthouse on court business.

Mr. Klein expressed the opinion that a law enforcement officer in the courthouse on official business as opposed to being there for his or her personal case is not a security risk

and should be automatically included with those permitted to bring in cell phones rather than being subject to an administrative order of court. The Chair inquired if there should be an exception to the general prohibition on cell phones for law enforcement personnel with proper identification who are in the courthouse on court business. Judge Kaplan noted that court business should not include personal matters.

The Vice Chair commented that security personnel will have to question someone who comes into the courthouse in a uniform whether the person is there for his or her divorce case. The Chair observed that most of the law enforcement personnel will not have to go through the security device and will bring in the phones. Judge Williams said that in Baltimore County District Court, they ask officers if they are in the courthouse on official business. The police officers can come in without going through security. If the officer is at the courthouse as a respondent or petitioner in a domestic violence case or for a divorce case, whether or not the person is in uniform, he or she has to go through security. They are not permitted to bring in guns or cell phones.

The Chair asked what the Committee's view was on law enforcement officers who are in the courthouse on official business with appropriate identification. No one indicated that they should be excluded. The Vice Chair said that she would amend her motion to allow law enforcement officers to be able to bring in cell phones. Ms. Ogletree, who had originally seconded

the motion, agreed to the amendment. The Chair stated that the following groups were being included in the categories of persons to be in subsection (e)(5), which was the motion on the floor: jurors, news media, court interpreters, and anyone else not named in the first part of section (e). The Vice Chair commented that this group is not all-inclusive. It could be any individual and any class of persons that the administrative judge decides by order should be allowed to bring in cell phones. The Chair observed that some would be categorical; others would have to be individual. The Vice Chair agreed.

The Chair inquired whether the news media would like to comment. Mr. Astrachan told the Committee that he was representing the broadcasters. Their position was that the proposed Rule did not contain a provision addressing the news media. They would fall within subsection (e)(7) of the proposed Rule. The Chair pointed out that the purpose of the discussion is policy-making at this level, not necessarily discussing what is in the proposed Rule. Mr. Astrachan expressed the view that the news media being included as a category of subsection (c)(7) would create disparate treatment from court to court around the State. It is difficult to reconcile the disparate treatment when attorneys are allowed to bring in their cell phones, and the media is not. This begs the question of how to credential the media. The media representatives spent part of yesterday with officials in the State House working on standards for credentialing the media. Code, Courts Article, §9-112 contains a

traditional definition of the news media. Mr. Astrachan said that he did not see a compelling reason to ban media from bringing communication devices into the courthouse. The fact is that the public interest is very much served by allowing the media to quickly and actively report, but in reality, the media is not allowed to bring communication devices into the courthouse. A reporter for The Daily Record had to run back to his office to leave his cell phone there, because he could not bring it into the courthouse. Mr. Astrachan said that he would like to see a credentialing process that would allow members of the recognized press to have access to their communication devices in the courthouse.

The Vice Chair expressed concern that the media could take unwanted photographs. Mr. Astrachan responded that this is part of the issue. Prohibiting the taking of unwanted photographs would be part of the rules that would have to be made, and the press does not object to it. The Vice Chair noted that if an attorney were to take photographs in violation of the rules prohibiting cameras in the courtroom, there is a process by which attorneys are sanctioned. Mr. Astrachan said that he did not think the process was that much different for the media. If someone is taking a photograph after promising that in exchange for the credentialing, he or she would not do so, the person can be held in contempt. The Chair explained that the proposed Rule would allow the person to be held in contempt. This is an enforcement issue. The definition in the Code for “news media”

is: “newspapers, magazines, journals, press associations, news agencies.”

The Chair asked about weblogs (blogs) started by random groups of gang members who state that they are a community news organization. Mr. Astrachan asked whether the activities of these groups are protected by the First Amendment because they are gang members. The Chair remarked that gang members have certain First Amendment rights. Mr. Astrachan acknowledged that they do, but said that the practical answer to that question is that this is being addressed by the State House officials. Three days ago a lawsuit was filed by a blogger who was not credentialed. The Washington Post, the Press Association, and other broadcasters are trying to come up with a working definition of who is a member of the media. Many states have adopted a definition that states that someone is a member if one-half of one’s revenue comes from reporting. The Chair noted that this cannot be assessed at the courthouse door. Mr. Astrachan agreed, commenting that there has to be a credentialing process similar to the way the Bar Association credentials reporters. One can be credentialed for the Associated Press, the Maryland-Delaware-District of Columbia Press Association, or possibly through a recognized newspaper. The groups that he represents are currently working on this. In the next few weeks, a credentialing process should be coming out of the legislature.

The Chair inquired if the credentialing process could be as broad as the First Amendment may be. Mr. Astrachan said that

they are trying to recognize legitimate, trained reporters whether they are electronic or not. He recognized that technology is changing who the reporters are. Many years ago, Thomas Paine wrote his pamphlet "Common Sense;" today people write blogs. The Chair asked if Thomas Paine was a reporter. Mr. Astrachan answered that he was his own reporter.

Judge Kaplan questioned whether the definition could be couched in terms of who has to go through the metal detector or other security to get into the courthouse. Ms. Ogletree responded that this varies from county to county. The Chair added that using that as a factor would lead to a total lack of uniformity, because that is an issue for each court. This would then drive the policy of who can bring in the cell phones. What the Court of Appeals wants to address is the real issue and not who goes through the metal detectors. Judge Kaplan remarked that if someone has to go through a security device, it would be a different standard than someone who does not have to, such as attorneys. The Chair observed that some attorneys have to go through a security device. Ms. Potter said that in Charles County, she has to go through the metal detector if she brings in her cell phone. The Chair stated that using security as a standard will not work.

The Vice Chair questioned where the rule is that prohibits people from bringing guns into the courthouse. Ms. Ogletree responded that it is in an administrative order. The Vice Chair noted that theoretically some jurisdictions could allow guns but

not cameras. The Chair commented that there is probably no legitimate use for guns in the courthouse, but there are legitimate uses for cell phones. He had seen what kinds of weapons the sheriff in Baltimore County has picked up when people come into circuit court. It is unbelievable what people try to bring into the courthouse.

Judge Leasure remarked that in Howard County everyone, including employees, goes through security. The Chair added that people bring in pens that are actually guns and can shoot a bullet. The Vice Chair said that her point was that it is odd that the discussion is about a rule to prohibit cell phones in the courthouse, when no rule exists that prohibits guns, knives, and explosive devices. Judge Williams pointed out that the District Court has a statewide policy on that. The Vice Chair reiterated that it may be a policy, but there is no rule. Judge Williams explained that it is in an administrative order. The Vice Chair said that if an administrative order that varies from jurisdiction to jurisdiction addresses guns and knives, it would seem that an administrative order could address cell phones.

Ms. Clark told the Committee that she was an attorney for The Washington Post. The newspaper sent in a letter yesterday. Mr. Astrachan had already addressed many of their concerns. In preparation for today's meeting, they canvassed reporters for The Post and other reporters throughout the State. The reporters were very concerned about banning the cell phones, because the reporters rely on them. They use them to talk to their editors

as well as use the phones for scheduling and for providing up-to-date coverage of court proceedings. She had heard all of the issues about security that had been raised today. To the extent that a wrongdoer appears taking illegal photographs, that person would run the risk of losing his or her credentials or being held in contempt of court. It would be a different process than punishing an attorney. The U.S. District Court in the District of Columbia allows the mass media to bring electronic devices into the courthouse as an exception to the general restriction. They would argue that they should be exempted from the general restriction in a rule in Maryland.

The Chair said that one of the issues that he and Mr. Astrachan had been discussing was coming up with a definable credentialing process that includes the "legitimate" (a term the press has never liked) or "traditional" members of the media as opposed to the individuals who cannot be identified. He asked Ms. Clark if she and her clients could do this. Ms. Clark replied that it is an evolving body of media. It is a challenge to categorize the types of reporters and media. They have been working at the legislature on a press credentialing procedure with Mr. Astrachan, the broadcasters, Associated Press, and a number of news organizations in Maryland to come up with a list of criteria as to what a reporter who has press credentials is entitled to see. They have been working hard to come up with a definition that has some constraints on it but will allow for the credentialing of bloggers who report news.

Ms. Clark said that the letter they sent has some proposed changes to the Rule that would exempt a reporter from the cell phone prohibition. The new language would require that a reporter present appropriate identification. To a certain extent, it would leave it to the courts to determine the adequacy of the identification. She heard from one of their reporters who covers Montgomery County Circuit Court that a security guard gave a credential in that jurisdiction. There is some room for flexibility. The Rule being discussed probably should not address the credentialing issue, but it is an issue that is likely to arise in a number of circumstances. Before the advent of Twitter, the internet, and blogs, it was easier to define what a journalist was. It would be important to consider inclusion but with constraints on it.

Mr. Astrachan told the Committee that at the last legislative session, Delegate Samuel "Sandy" Rosenberg had proposed a bill that would include bloggers under the reporter's shield law. Mr. Astrachan had worked with Delegate Rosenberg on behalf of the broadcasters. Their concern is that people are called "reporters" who are actually not trained as such. Mr. Astrachan and his colleagues came up with a definition, and the bill was passed. He offered to send the Committee a copy of it. The Chair said that if there is a way to do this so that it would be acceptable statewide, it would be ideal, but the Vice Chair had pointed out that the administrative judges often know who the press is in their county. A concern does exist about people

horning in on the profession of journalists. Anyone can say that he or she is part of the media now as long as the person has a computer. Ms. Clark commented that if it would be helpful, she could provide the Committee with a copy of the criteria used to define who the media is. It was drawn on the experience of a number of different states. The Vice Chair asked what the press card will entitle one to do when an agreement is reached as to who the media is. Ms. Clark answered that in the State House, the public is generally not allowed in certain areas, including on the House floor, and in certain chambers. The press pass gives special admission. Their criteria is based on what other jurisdictions have done.

Mr. Sykes questioned whether the evidences of accreditation include photographs. Mr. Astrachan answered that at the State House if one has a credentialed badge, he or she would bypass security. The person would have access to the government buildings of the State of Maryland. He or she would be able to go anywhere. Mr. Astrachan had a question about the security background check. A credentialing practice can be decided upon that would involve a photograph and an official card. It could come from several different organizations. The process and the organizations could be approved in advance by the court. The Vice Chair inquired if the credentialing process is in existence now and being revised or if it is being created. Mr. Astrachan responded that it is in existence now. What happens currently is that a news director at a station or a managing editor will send

in a letter on official stationery introducing one of the reporters.

The Chair asked the Committee for its view on the media having cell phones in the courthouse. Ms. Ogletree replied that until such a credentialing process actually exists, and the documentation is uniform, the media should come under an administrative order. The Chair pointed out the practical issue that whatever decision the Committee makes, it will be several months before the matter goes before the Court of Appeals. It has to be published for public comment for 30 days in The Maryland Register. It will be several months at least before the Court of Appeals has a hearing on this. Would it be a problem to include the media in the "other" category for now subject to getting their credentialing process done, and then ask the Court once the process is in place for a blanket exemption from the cell phone prohibition? Mr. Astrachan answered that his preference would be to add the media as an exemption subject to a credentialing process. His fear was that once the Rule goes into place, the media will be subsumed within the catchall category. There will be a genuine policy for the State House very shortly.

The Chair inquired what the Committee's view was about permitting the news media to bring in cell phones provided that there is an acceptable statewide credentialing, or tabling this for the moment and deferring it until the next meeting on this issue. Mr. Michael responded that tabling the issue makes sense to see what credentialing process is decided upon. He said that

he was not comfortable making a decision at this point. The Vice Chair agreed. The Chair added that the Committee would be meeting in April, and he questioned whether the media representatives would know what the credentialing process would be by then. Ms. Clark answered that, hopefully, they would know by then. Mr. Astrachan commented that there are other issues associated with this subject. The Honorable Marcella A. Holland, Administrative Judge for the Circuit Court of Baltimore City, had issued an order banning the use of Tweeter in the courthouse. There are constitutional issues relating to this. He added that they would be willing to come back in April. The Chair reiterated that it would be important to see what the credentialing policy is.

The Chair questioned whether there is any other group that anyone on the Committee wished to consider separately as opposed to leaving the policy for that group to administrative order as the Vice Chair had suggested. Mr. Johnson pointed out that the issue of *pro se* litigants had not been discussed. These litigants may need to have their cell phones in the courtroom. As a *pro se* litigant, the person is in the courthouse on official business. This is a category of person who may need a cell phone. The Chair commented that the problem is that there is no way to credential them, and they are not easily identifiable. Ms. Ogletree suggested that *pro se* litigants should have permission to bring in their cell phones ahead of time, and it

should be up to the administrative judge as to whether this category of persons should be allowed to bring in a cell phone. The Vice Chair noted that it could be done on an individual basis. Ms. Ogletree added that the person can ask the court for permission.

Mr. Michael remarked that some categories of persons have been considered today as to whether they can bring cell phones into the courthouse. The Vice Chair's motion was to apply to every other category. The Committee had agreed on certain categories, and the motion was to put all the rest in the catchall category. The Chair called for a vote on the motion, and it passed unanimously.

The Chair said that after the lunch break, the next issue for consideration would be what a uniform rule should provide with respect to restrictions or limitations on the use of cell phones within the courthouse. Based on the discussion in October, he recalled that the Committee's view was that if the cell phones are allowed in the courthouse, the owners should be allowed to take them to the courtroom. This is an issue. If the phones can be taken into the courtroom, what should a rule provide with respect to limitations on their use and sanctions for violations? Ms. Potter pointed out that the definition of the term "electronic device" in subsection (a)(1) does not refer to "cameras" or "video cameras." Can someone bring into the courthouse a camera or video camera to record a wedding or an adoption? The Chair responded that there will be a separate rule

addressing the broadcasting of court proceedings, Rule 16-109, Photographing, Recording, Broadcasting or Televising in Courthouses. The Vice Chair noted the general prohibition on cameras in the courtroom. The Chair added that this applies to criminal cases. Ms. Potter asked if someone can bring cameras into the courthouse. The Chair answered that his understanding was that someone who wished to do so would need permission. Ms. Potter inquired if cameras and video cameras should be within the definition of the term "electronic device" or whether they were excluded intentionally. The Chair responded that they were intentionally excluded. The Vice Chair remarked that Ms. Potter had made a good point, because the terms are no longer discrete.

Judge Leasure observed that in most counties, including in Howard County, the clerk of the court and the sheriff are separately elected. Any photography or related issues are left up to those department heads. Weddings are photographed and videoed in the clerk's office frequently. The judge only has to get involved when someone wants to bring a camera into the courtroom. The Chair said that in Baltimore County, the administrative judge decides this. Investiture ceremonies are held which someone may want to photograph.

Judge Leasure told the Committee that she had to leave, and she thanked them for allowing her to comment.

After the lunch break, the Chair stated that the Committee needed to resolve some details. This would involve restrictions on the use of cell phones and other devices for those people who

are allowed to bring them into the courthouse. He asked if anyone had a view on this issue: to the extent that the cell phones can be brought into the courthouse whether by category or by special permission, they could be physically brought into a courtroom. No one was opposed to this. The Chair noted that the draft of the Rule that was before the Committee had a blanket prohibition against any of the devices being taken into a jury deliberation room. Judge Pierson inquired as to what a "jury deliberation room" is. The Chair answered that it is where a jury goes to deliberate. Judge Pierson said that often the juries in his cases use the same room to hear the case and to deliberate the case, and this is common elsewhere. Is this a jury deliberation room? Is it only a deliberation room when the jury is in deliberations? The Chair commented that recording devices should not be in those rooms at all. Others may have a different view. He asked if there should be no blanket prohibition on recording devices other than during jury deliberations. Judge Hotten responded that they should be prohibited during the trial, except during the lunch break. The Chair explained that he was referring to the places where the recording devices should be prohibited.

The Chair asked if anyone was opposed to a rule that would provide that the devices have to remain off when they are in the courtroom, other than with permission of the judge. Mr. Michael inquired if they could be on before the court activities begin, so that an attorney can use a phone to locate a witness. The

Chair questioned what Mr. Michael's view was. He answered that someone could step outside of the courtroom to use the phone. It may be better to keep the courtroom sacrosanct. The Committee agreed with Mr. Michael.

The Chair inquired whether anyone was opposed to a blanket prohibition on taking photographs in the courtroom, unless the judge has given permission. Judge Pierson questioned whether they can be used in the courtroom at all. Taking photographs would be subsumed within the prohibition of not using them at all. Mr. Michael noted that this would include using the phone during breaks. The Chair agreed, pointing out that witnesses could be present who would hear the telephone discussion. Judge Kaplan stated that the cell phones should not be able to be used in any way in the courtroom except with the permission of the judge. The Committee agreed with Judge Kaplan.

Mr. Sykes inquired whether there should be any distinction between civil and criminal cases. He did not see any security issues with civil cases. Judge Hotten observed that there may be security issues in terms of the integrity of the trial process. The Chair added that habeas corpus is a civil case. Master Mahasa commented that domestic violence cases could be civil.

The Chair asked if anyone was opposed to a blanket prohibition against transmitting information on the electronic devices in the courtroom other than as approved by the judge. No one was opposed. The Chair questioned whether the Rule should provide for or require the court to designate areas in the

courthouse where the devices can be used, or if the Rule should prohibit them from being used in the courtroom. Mr. Michael inquired where else would be a problem if the devices are excluded from use in the courtroom. The Chair responded that in Rule 16-109 which addresses extended coverage, there is a prohibition against cameras being used in areas such as near the Grand Jury room or certain other areas of the courthouse.

Mr. Johnson referred to the issue of taking photographs of jurors and witnesses. Even if the cell phone cannot be used in the courtroom, it could be used to take photographs in the hallway near the courtroom. The Chair reiterated that the Rule could designate areas where cell phone use would be allowed. In Baltimore County, the phones can be used outside of the courtroom. Judge Williams clarified that this is not allowed in the District Court. Judge Pierson inquired whether the proposed rule pertaining to extended coverage contains a prohibition against taking photographs in the courthouse. The Chair replied that it limits where in the courthouse broadcasting can take place. Judge Pierson expressed the opinion that there should be a prohibition against taking photographs anywhere in the courthouse without permission. The Chair asked if the news media had any problem with this. Ms. Clark answered negatively. Mr. McLaughlin commented that if permission includes a credentialing process, it would be appropriate to prohibit the taking photographs without permission. In a high-profile case, the media would want to take photographs. The Chair pointed out that

taking photographs outside of the building is not regulated.

The Chair asked about sanctions for violation. In the proposed Rule, if a violation occurs, the cell phone can be confiscated and held until the owner leaves the courthouse. If the violation is serious, the phone may not even be returned, because it might be evidence. The Rule also would allow the person to be found in contempt for the violation if it is a willful one. The Chair inquired if anyone was opposed to either of these sanctions or if anyone had a proposal for any other sanction. Mr. Sykes inquired if the criminal panoply of rights would apply. The Chair answered that it would be a direct contempt. Mr. Sykes added that that would be so if the judge saw the violation. If the judge did not see it, and it was reported by a bailiff, the contempt would be constructive.

The Chair questioned whether anyone felt that the proposed Rule should be changed in any way. No response was forthcoming. The Chair said that the Rule would be redrafted to comport with the decisions made at today's meeting. The issue concerning the news media would be held until the next meeting. Mr. Astrachan said that he had one more concern. He looked at Judge Holland's supplement to her administrative order regarding Tweeter. She may have lumped tweeting into the concept of broadcasting, which it is not. It is actually a series of the reporter's impressions. It might be helpful if the Committee could parse out tweeting from broadcasting, including it in the same category as e-mailing or texting. Judge Hotten noted that all of these

are electronic devices. Mr. Astrachan explained that tweeting is the same as e-mailing. He was concerned because Judge Holland saw tweeting as broadcasting, which is outside of the purview of the rule addressing cameras in the courtroom.

Master Mahasa pointed out that definition of the term "broadcasting" would include any type of transmittal of information. Mr. Astrachan noted that e-mailing is similar. The Chair said that the issue raised is that unlike broadcasting which is actually transmitting what is going on directly in the courtroom and is covered by Rule 16-109, tweeting is a reporter typing out something that is not verbatim of anything that is going on in the courtroom. It is whatever he or she decides to send, and it is just like using a cell phone. Mr. Astrachan said that Judge Holland had been considering a more formal definition in the statute of "extended coverage," and she had held that tweeting is extended coverage. Judge Pierson asked if Mr. Astrachan was suggesting that tweeting from the courtroom should be allowed. Mr. Astrachan responded that he was in favor of this, but the Committee did not agree. The Chair said that once someone is outside the courtroom, tweeting is like using a cell phone.

Mr. Shear told the Committee that he was a social media attorney. He said that he was present because he felt that there was an issue regarding jurors depending on the Committee's decision as to whether jurors should be allowed to use cell phones. The Committee should consider a rule that makes it clear

to jurors and prospective jurors that using social media during trial, whether it is explaining that they are on a certain jury panel or tweeting, is not acceptable. There should be some kind of civil fines or punishment for using social media. The case of *State v. Dixon*, involving the mayor of Baltimore City, was detrimentally affected by this occurrence. This should not keep happening. He had handed out a memorandum to the Committee today indicating that several courts around the country have already written jury instructions to handle this problem. The Committee should consider this issue. The problems will increase unless action is taken. Master Mahasa inquired as to the meaning of "social media." Mr. Shear responded that it is Facebook, Twitter, and other similar means of communication.

The Chair said that the Criminal Pattern Jury Instruction Committee chaired by the Honorable Irma Raker, retired from the Court of Appeals, is looking into form instructions to jurors in criminal cases about their communications. The *Dixon* case arose after they started this process. They could be asked where they are in the process. Judge Raker had told the Chair that they were hoping by the spring to have proposed instructions to juries about this issue. Mr. Michael added that this will be considered as part of the opening instructions on the civil side as well. The Chair stated that this is the place for the social media issue to be addressed.

The Chair thanked the Committee for their patience and for

their good work on the issue of cell phones. What was decided is without prejudice for the Committee to make the point that the process should remain as it is.

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