COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Training Rooms 1 and 2 at the Judicial Education and Conference Center, 2009 Commerce Park Drive, Annapolis, Maryland on March 9, 2012.

Members present:

Hon. Alan M. Wilner, Chair
Hon. Robert A. Zarnoch, Vice Chair

Robert R. Bowie, Esq.
Albert D. Brault, Esq.
James E. Carbine, Esq.
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
J. Brooks Leahy, Esq.
Hon. Thomas J. Love
Zakia Mahasa, Esq.
Robert R. Michael, Esq.
Scott G. Patterson, Esq.
Hon. W. Michel Pierson
Kathy P. Smith, Clerk
Steven M. Sullivan, Esq.
Melvin J. Sykes, Esq.
Hon. Julia B. Weatherly
Robert Zarbin, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Kara K. Lynch, Esq., Assistant Reporter
Allan J. Gibber, Esq.
Hon. Charlotte K. Cathell, Register of Wills for Worcester County
Margaret H. Phipps, Register of Wills for Calvert County
Michele Nethercott, Esq., Office of the Public Defender
Russell R. Butler, Esq., Executive Director, Maryland Crime Victims Resource Center
Hon. Vicky L. Orem, Associate Judge, Orphans' Court
Paul H. Ethridge, Esq., Rules of Practice Committee, Maryland State Bar Association

The Chair convened the meeting. He announced that he would update the Committee on the situation with *DeWolfe v. Richmond*, ___ Md. ___ (2012), which had been continually changing. Motions for reconsideration had been filed, which automatically put the

case on hold in the Court of Appeals. At a hearing on February 16, 2012, the Court considered the Rules that had been drafted to address the holdings in the case. They decided to ask for answers to the motions for reconsideration. On Thursday, March 15, 2012, the Court's regular conference day, the Court will be meeting in part to consider what they will do about the motions that had been filed, and that will affect the mandate. Meanwhile, the legislation had been moving through both the House and the Senate. Each house had passed its own version of a bill. The bills are different in a number of respects. Each house thought that they had worked out a compromise, and it either fell apart or was not there to begin with. The information as of noon yesterday was that each bill was in the other house. The House of Delegates bill had been voted out of committee in the Senate, and the Senate bill had been voted out of the House Judiciary Committee, so both bills were on the floor. It appeared that unless some other compromise is reached, this matter would have to eventually go to the Conference Committee to resolve any differences.

The Chair said that the likely result as far as the Rules Committee was concerned, seemed to have been that the Public Defender statute, Code, Criminal Procedure Article, §§16-101 - 16-403, would be amended to provide that the Public Defender does not have to represent indigents at an initial appearance before the commissioner. It had appeared that the bill would require the Public Defender to represent indigents at an appearance

before a judge, which is bail review in the District Court or an initial appearance in the circuit court. At the moment, the effective date for that is May 1, 2012. One of the bills has a provision, which would probably remain, that any statements made by the defendant at an initial appearance before a commissioner will be inadmissible in further proceedings. This is a type of codified *Miranda* principle (*Miranda v. Arizona*, 384 U.S. 436 (1966).

The Chair noted that a provision in one of the bills now pending that codifies the ethical provisions addressing ex parte communication will probably remain in the bill. This seems to have tracked what is in Rule 4-216, Pretrial Release - Authority of Judicial Officer; Procedure, which is that there should be no ex parte communications between the commissioner and the State's Attorney or law enforcement officer, except in the circumstances where the Rule allows it, which is now basically for administrative purposes. What is in play and likely to remain in the bill in some form is that, with limited exceptions, the police will be required to charge by citation, rather than by arrest, offenses not carrying any prison sentence, and with a long list of exceptions, offenses carrying a sentence of less than 90 days added to which is possession of a small amount of marijuana. This is the status of the legislation.

The Chair told the Committee that he had spoken with Mr. DeWolfe yesterday, who said that he believed that he could fully

qualify defendants for indigency purposes at the bail review proceeding, so that provisions added to the Rule addressing provisional representation probably do not need to remain there. The Chair remarked that the bills would be monitored on a daily basis to find out what changes would be made that would affect the Rule. More time may be available than was first thought, if the Court of Appeals is willing to abide by the effective date of May 1 that is in the bill. The Court does not have to do this, but they could do so. This may allow the Rules Committee more time to work on the Rule; otherwise, the Committee would do the best that they could under the circumstances if the time period is limited.

The Chair noted that starting in April 2012, the full Committee would be sent a complete reorganization and revision of the court administration rules that the General Court Administration Subcommittee had been working on for several years. This will be sent out in several installments. This will be the total reorganization of those Rules other than the rules pertaining to access to court records, which need to be held in part to see how they will be sorted out with regard to the MDEC, the electronic filing project. There is also a draft of a complete reorganization of and some revisions to the rules pertaining to attorneys, from the Bar Admission Rules to the Attorney Grievance Rules. This will be submitted to the Attorneys Subcommittee next week.

The Chair said that work is in progress on a complete

reorganization of the Juvenile Rules. The Reporter; Ms. Lynch, an Assistant Reporter; and the Chair have been working with juvenile masters, judges, people from the Department of Juvenile Services, prosecutors, and Public Defenders, to get a sense of how the system actually works. They had gotten preliminarily through the first draft of rules on Child in Need of Assistance and Termination of Parental Rights cases, and they were currently working on delinquency cases. These rules will eventually be presented to the Juvenile Subcommittee for its consideration and then to the full Committee.

The Chair stated that a meeting was scheduled with the contractor who had been designated to develop the MDEC program. Also attending would be people from the Judicial Information System, and the Administrative Office of the Courts, as well as the Honorable Ben Clyburn, Chief Judge of the District Court. The Committee had been given a document that had been prepared by this group. The Chair had asked the Reporter, Mr. Klein, and Mr. Carbine to look over that document and come up with a submission for the General Court Administration Subcommittee, although other Subcommittees may be involved. It is an enormous undertaking.

The Chair said that Mr. Klein had done a great amount of work looking at the current Rules to see what changes need to be made as a result of MDEC. The intent was not to try to amend every Rule that may need amending at this time. The project is due to be introduced in Anne Arundel County first in August of

2013. At that point, it will involve the District Court, the circuit court, and the two appellate courts in appeals from that County's trial courts. It will be all four levels of court but confined to cases in Anne Arundel County. Either a three- or six-month pilot project is being planned for Anne Arundel County, and then the next county to be involved would be Montgomery County. The plan is to extend the project to another county every three months.

The Chair explained that the goal of the Committee was to prepare the Rules for the new electronic system. A new Title 20 would be created without trying to amend all the rest of the Rules. This would be similar to the way the electronic system for the asbestos docket in Baltimore City was handled. All of the other Rules would not be replaced and would apply except to the extent of any consistency. What would be considered is what attorneys would need to know if they are going to file anything in Anne Arundel County, making clear that this supersedes any inconsistencies in the other Rules, but to the extent there is no inconsistency, all of the other Rules still apply. As the project moves from county to county, these will be added to the effort.

The Chair commented that once the template from Anne Arundel County was received, there would be plenty of time to start looking to see what changes need to be made to all of the Rules. It covers everything from Title 1 through all of the Rules, including civil, criminal, and all of the special proceedings.

At the first meeting of the small group of the Rules Committee, Mr. Carbine had done some very good preliminary work on this. Three full-day meetings had been set up. Some of the issues considered have been truly policy-laden, and the decision was to present those to the Court of Appeals without any draft of a Rule to get some guidance. Some of the issues are whether this is going to be mandatory for everyone, and whether there are going to be opt-outs.

The Chair said that the Style Subcommittee needs to finish styling the Alternative Dispute Resolution (ADR) Rules. They left off at the District Court ADR Rules. A meeting to do this had already been set up. The Court of Special Appeals now wants Rules on their ADR program. A chapter in Title 17 has been reserved for this. The Court came up with a rough draft of what they want, which would eventually be given to the ADR Subcommittee for its consideration. This is separate and would not hold up the ADR Rules pertaining to the circuit court and the District Court.

Agenda Item 1. Consideration of proposed amendments to: Rule 4-217 (Bail Bonds), Rule 4-266 (Subpoenas – Generally), Rule 4-342 (Sentencing - Procedure in Non-Capital Cases), and Rule 4-345 (Sentencing - Revisory Power of Court)

Mr. Karceski presented Rule 4-217, Bail Bonds, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-217 by deleting language from and adding language to subsection (i)(5) to include a condition to striking out the forfeiture of bail, by adding language to subsection (i)(6)(B) to include conditions to striking out the forfeiture of bail where the defendant is incarcerated outside the State, and by adding a new subsection (i)(6)(C) to provide for an exception to subsection (i)(6)(B), as follows:

Rule 4-217. BAIL BONDS

(a) Applicability of Rule

This Rule applies to all bail bonds taken pursuant to Rule 4-216, and to bonds taken pursuant to Rules 4-267, 4-348, and 4-349 to the extent consistent with those rules.

(b) Definitions

As used in this Rule, the following words have the following meanings:

(1) Bail Bond

"Bail bond" means a written obligation of a defendant, with or without a surety or collateral security, conditioned on the appearance of the defendant as required and providing for the payment of a penalty sum according to its terms.

(2) Bail Bondsman

"Bail bondsman" means an authorized agent of a surety insurer.

(3) Bail Bond Commissioner

"Bail bond commissioner" means any person appointed to administer rules adopted pursuant to Maryland Rule 16-817.

Cross reference: Code, Criminal Procedure Article, §5-203.

(4) Clerk

"Clerk" means the clerk of the court and any deputy or administrative clerk.

(5) Collateral Security

"Collateral security" means any property deposited, pledged, or encumbered to secure the performance of a bail bond.

(6) Surety

"Surety" means a person other than the defendant who, by executing a bail bond, guarantees the appearance of the defendant, and includes an uncompensated or accommodation surety.

(7) Surety Insurer

"Surety insurer" means any person in the business of becoming, either directly or through an authorized agent, a surety on a bail bond for compensation.

(c) Authorization to Take Bail Bond

Any clerk, District Court commissioner, or other person authorized by law may take a bail bond. The person who takes a bail bond shall deliver it to the court in which the charges are pending, together with all money or other collateral security deposited or pledged and all documents pertaining to the bail bond.

Cross reference: Code, Criminal Procedure Article, §§5-204 and 5-205.

(d) Qualification of Surety

(1) In General

The Chief Clerk of the District Court shall maintain a list containing: (A) the names of all surety insurers who are in default, and have been for a period of 60 days or more, in the payment of any bail bond forfeited in any court in the State, (B) the names of all bail bondsmen authorized to write bail bonds in this State, and (C) the limit for any one bond specified in the bail bondsman's general power of attorney on file with the Chief Clerk of the District Court. The clerk of each circuit court and the Chief Clerk of the District Court shall notify the Insurance Commissioner of the name of each surety insurer who has failed to resolve or satisfy bond forfeitures for a period of 60 days or more. The clerk of each circuit court also shall send a copy of the list to the Chief Clerk of the District Court.

Cross reference: For penalties imposed on surety insurers in default, see Code, Insurance Article, §21-103 (a).

(2) Surety Insurer

No bail bond shall be accepted if the surety on the bond is on the current list maintained by the Chief Clerk of the District Court of those in default. No bail bond executed by a surety insurer directly may be accepted unless accompanied by an affidavit reciting that the surety insurer is authorized by the Insurance Commissioner of Maryland to write bail bonds in this State.

Cross reference: For the obligation of the District Court Clerk or a circuit court clerk to notify the Insurance Commissioner concerning a surety insurer who fails to resolve or satisfy bond forfeitures, see Code, Insurance Article, §21-103 (b).

(3) Bail Bondsman

No bail bond executed by a bail bondsman may be accepted unless the bondsman's name appears on the most recent list maintained by the Chief Clerk of the District Court, the bail bond is within the limit specified in the bondsman's general

power of attorney as shown on the list or in a special power of attorney filed with the bond, and the bail bond is accompanied by an affidavit reciting that the bail bondsman:

(A) is duly licensed in the jurisdiction in which the charges are pending, if that jurisdiction licenses bail bondsmen;

(B) is authorized to engage the surety insurer as surety on the bail bond pursuant to a valid general or special power of attorney; and

(C) holds a valid license as an insurance broker or agent in this State, and that the surety insurer is authorized by the Insurance Commissioner of Maryland to write bail bonds in this State.

Cross reference: Code, Criminal Procedure Article, §5-203 and Rule 16-817 (Appointment of Bail Bond Commissioner - Licensing and Regulation of Bail Bondsmen).

(e) Collateral Security

(1) Authorized Collateral

A defendant or surety required to give collateral security may satisfy the requirement by:

(A) depositing with the person who takes the bond the required amount in cash or certified check, or pledging intangible property approved by the court; or

(B) encumbering one or more parcels of real estate situated in the State of Maryland, owned by the defendant or surety in fee simple absolute, or as chattel real subject to ground rent. No bail bond to be secured by real estate may be taken unless (1) a Declaration of Trust of a specified parcel of real estate, in the form set forth at the end of this Title as Form 4-217.1, is executed before the person who takes the bond and is filed with the bond, or (2) the bond is secured by a Deed of Trust to the State or

its agent and the defendant or surety furnishes a verified list of all encumbrances on each parcel of real estate subject to the Deed of Trust in the form required for listing encumbrances in a Declaration of Trust.

(2) Value

Collateral security shall be accepted only if the person who takes the bail bond is satisfied that it is worth the required amount.

(3) Additional or Different Collateral Security

Upon a finding that the collateral security originally deposited, pledged, or encumbered is insufficient to ensure collection of the penalty sum of the bond, the court, on motion by the State or on its own initiative and after notice and opportunity for hearing, may require additional or different collateral security.

(f) Condition of Bail Bond

The condition of any bail bond taken pursuant to this Rule shall be that the defendant personally appear as required in any court in which the charges are pending, or in which a charging document may be filed based on the same acts or transactions, or to which the action may be transferred, removed, or if from the District Court, appealed, and that the bail bond shall continue in effect until discharged pursuant to section (j) of this Rule.

(g) Form and Contents of Bond - Execution

Every pretrial bail bond taken shall be in the form of the bail bond set forth at the end of this Title as Form 4-217.2, and, except as provided in Code, Criminal Procedure Article, §5-214, shall be executed and acknowledged by the defendant and any surety before the person who takes the bond.

(h) Voluntary Surrender of the Defendant by Surety

A surety on a bail bond who has custody of a defendant may procure the discharge of the bail bond at any time before forfeiture by:

(1) delivery of a copy of the bond and the amount of any premium or fee received for the bond to the court in which the charges are pending or to a commissioner in the county in which the charges are pending who shall thereupon issue an order committing the defendant to the custodian of the jail or detention center; and

(2) delivery of the defendant and the commitment order to the custodian of the jail or detention center, who shall thereupon issue a receipt for the defendant to the surety.

Unless released on a new bond, the defendant shall be taken forthwith before a judge of the court in which the charges are pending.

On motion of the surety or any person who paid the premium or fee, and after notice and opportunity to be heard, the court may by order award to the surety an allowance for expenses in locating and surrendering the defendant, and refund the balance to the person who paid it.

(i) Forfeiture of Bond

(1) On Defendant's Failure to Appear - Issuance of Warrant

If a defendant fails to appear as required, the court shall order forfeiture of the bail bond and issuance of a warrant for the defendant's arrest. The clerk shall promptly notify any surety on the defendant's bond, and the State's Attorney, of the forfeiture of the bond and the issuance of the warrant.

Cross reference: Code, Criminal Procedure Article, §5-211.

(2) Striking Out Forfeiture for Cause

If the defendant or surety can show reasonable grounds for the defendant's failure to appear, notwithstanding Rule 2-535, the court shall (A) strike out the forfeiture in whole or in part; and (B) set aside any judgment entered thereon pursuant to subsection (4)(A) of this section, and (C) order the remission in whole or in part of the penalty sum paid pursuant to subsection (3) of this section.

Cross reference: Code, Criminal Procedure Article, §5-208(b)(1) and (2) and *Allegany Mut. Cas. Co. v. State*, 234 Md. 278, 199 A.2d 201 (1964).

(3) Satisfaction of Forfeiture

Within 90 days from the date the defendant fails to appear, which time the court may extend to 180 days upon good cause shown, a surety shall satisfy any order of forfeiture, either by producing the defendant in court or by paying the penalty sum of the bond. If the defendant is produced within such time by the State, the court shall require the surety to pay the expenses of the State in producing the defendant and shall treat the order of forfeiture satisfied with respect to the remainder of the penalty sum.

(4) Enforcement of Forfeiture

If an order of forfeiture has not been stricken or satisfied within 90 days after the defendant's failure to appear, or within 180 days if the time has been extended, the clerk shall forthwith:

(A) enter the order of forfeiture as a judgment in favor of the governmental entity that is entitled by statute to receive the forfeiture and against the defendant and surety, if any, for the amount of the penalty sum of the bail bond, with interest from the date of forfeiture and costs including any costs of recording, less any amount that may have been deposited as collateral security;

and

(B) cause the judgment to be recorded and indexed among the civil judgment records of the circuit court of the county; and

(C) prepare, attest, and deliver or forward to any bail bond commissioner appointed pursuant to Rule 16-817, to the State's Attorney, to the Chief Clerk of the District Court, and to the surety, if any, a true copy of the docket entries in the cause, showing the entry and recording of the judgment against the defendant and surety, if any.

Enforcement of the judgment shall be by the State's Attorney in accordance with those provisions of the rules relating to the enforcement of judgments.

(5) Subsequent Appearance of Defendant

When the defendant is produced in court after the period allowed under subsection (3) of this section, the surety may apply for the refund of any penalty sum paid in satisfaction of the forfeiture less any expenses permitted by law. ~~If the penalty sum has not been paid, the court, on application of the surety and payment of any expenses permitted by law, shall strike the judgment against the surety entered as a result of the forfeiture.~~ The court shall strike out a forfeiture of bail or collateral and deduct only the actual expense incurred for the defendant's arrest, apprehension, or surrender provided that the surety paid the forfeiture of bail or collateral during the period allowed for the return of the defendant under subsection (3) of this section.

(6) Where Defendant Incarcerated Outside this State

(A) If, within the period allowed under subsection (3) of this section, the surety produces evidence and the court finds that the defendant is incarcerated in a penal institution outside this State and that the

State's Attorney is unwilling to issue a detainer and subsequently extradite the defendant, the court shall strike out the forfeiture and shall return the bond or collateral security to the surety.

(B) If, after the expiration of the period allowed under subsection (3) of this section, but within 10 years from the date the bond or collateral was posted, the surety produces evidence and the court finds that the defendant is incarcerated in a penal institution outside this State, ~~and~~ that the State's Attorney is unwilling to issue a detainer and subsequently extradite the defendant, and that the surety agrees in writing to defray the expense of returning the defendant to the jurisdiction in accordance with Code, Criminal Procedure Article, §5-208 (c), subject to subsection (C) of this section, the court shall ~~(i)~~ strike out the forfeiture~~; (ii) set aside any judgment thereon; and (iii) order the return of the forfeited bond or collateral or the remission of any penalty sum paid pursuant to subsection (3) of this section~~ and refund the forfeited bail bond or collateral to the surety provided that the surety paid the forfeiture of bail or collateral within the time limits established under subsection (3) of this section.

(C) On motion of the surety, the court may refund a forfeited bail bond or collateral that was not paid within the time limits established under subsection (3) of this section if the surety produces evidence that the defendant was incarcerated when the judgment of forfeiture was entered, and the court strikes out the judgment for fraud, mistake, or irregularity.

(j) Discharge of Bond - Refund of Collateral Security

(1) Discharge

The bail bond shall be discharged when:

(A) all charges to which the bail bond

applies have been stetted, unless the bond has been forfeited and 10 years have elapsed since the bond or other security was posted; or

(B) all charges to which the bail bond applies have been disposed of by a nolle prosequi, dismissal, acquittal, or probation before judgment; or

(C) the defendant has been sentenced in the District Court and no timely appeal has been taken, or in the circuit court exercising original jurisdiction, or on appeal or transfer from the District Court; or

(D) the court has revoked the bail bond pursuant to Rule 4-216 or the defendant has been convicted and denied bail pending sentencing; or

(E) the defendant has been surrendered by the surety pursuant to section (h) of this Rule.

Cross reference: See Code, Criminal Procedure Article, §5-208 (d) relating to discharge of a bail bond when the charges are stetted. See also Rule 4-349 pursuant to which the District Court judge may deny release on bond pending appeal or may impose different or greater conditions for release after conviction than were imposed for the pretrial release of the defendant pursuant to Rule 4-216.

(2) Refund of Collateral Security - Release of Lien

Upon the discharge of a bail bond and surrender of the receipt, the clerk shall return any collateral security to the person who deposited or pledged it and shall release any Declaration of Trust that was taken.

Source: This Rule is derived from former Rule 722 and M.D.R. 722.

Rule 4-217 was accompanied by the following Reporter's Note.

> Chapter 598, Laws of 2011 (HB 682) added a condition to a court striking a forfeiture of bail or collateral. This condition is that the surety must have paid the forfeiture during the period allowed by the statute for the return of the defendant. The law also added the same condition to a court giving back the forfeited bail bond or collateral when the defendant is confined in a correctional facility outside the State, the State's Attorney is unwilling to issue a detainer and later extradite the defendant, and the surety agrees in writing to defray the expense of returning the defendant to the jurisdiction, but it included an exception if the surety produces evidence that the defendant was incarcerated when the judgment of forfeiture was entered, and the court strikes out the judgment of forfeiture for fraud, mistake, or irregularity.
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> The Criminal Subcommittee recommends modifying subsection (i)(5) to conform to the recent statutory change. They also recommend adding language to subsection (i)(6)(B) that conforms to the recent statutory change and that conforms to an earlier change, which added the condition of the surety agreeing in writing to defray the expense of returning the defendant to the jurisdiction as one of the conditions the court must determine to strike out a forfeiture. A third change is the addition of a new subsection, (i)(6)(C) to conform to the recent legislation. It allows the court to refund a forfeited bail bond on collateral if the defendant was incarcerated when the judgment of forfeiture was entered, and the court strikes out the judgment for fraud, mistake, or irregularity.

Mr. Karceski explained that the proposed changes to Rule 4-217 were as a result of Chapter 598, Laws of 2011 (HB 682) recently enacted by the legislature. This legislation amended Code, Criminal Procedure Article, §5-208. The change sets up three situations applicable to Rule 4-217 respecting the

forfeiture and the recovery of the monies that had been forfeited by the surety. Subsection (i)(3) of current Rule 4-217 covers satisfaction of forfeiture and provides that within 90 days from the date the defendant fails to appear (which time period the court may extend to 180 days upon good cause shown), a surety shall satisfy any order of forfeiture, either by producing the defendant in court or by paying the penalty sum of the bond. The new law tightens up the process where the surety may be able to recover monies when the defendant fails to appear. Subsection (e)(3) of the new bill states that there will not be a refund to a surety of any bail bond or any collateral unless the monies were posted within that time period in subsection (i)(3), which is the 90 to 180-day time period. There is one exception, which would be explained as the proposed changes to the Rule were discussed.

Mr. Karceski said that subsection (i)(5) of the version of Rule 4-217 that was handed out today, Subsequent Appearance of the Defendant, contained the first set of changes. Language that would have allowed the court, on application for the refund of any penalty sum paid less expenses, to strike the judgment against the surety entered as a result of the forfeiture if the penalty sum had not been paid within a certain period of time was deleted, because the new language of the bill prohibits this. This provision means that if the defendant is produced in court after the longest period allowed, which is 180 days pursuant to subsection (i)(3), the surety may apply for a refund of the

penalty sum paid less any expenses that are permitted in the recovery of the defendant provided that the surety paid the forfeiture of bail or collateral during the period allowed for the return of the defendant pursuant to subsection (i)(3).

Mr. Karceski pointed out a last-minute correction indicated in the handout version of the Rule. In the original version of Rule 4-217 that was in the meeting materials, subsection (i)(5) had a second sentence. It was later stricken, because it was only applicable to the situation described in the Rule prior to House Bill 682. What is left is that under subsection (i)(3) if the defendant is returned beyond the allowable period, the court shall, upon application, strike the forfeiture of the bail minus the expenses provided that the surety paid the forfeiture of bail or collateral during the period allowed for the return of the defendant.

Mr. Karceski drew the Committee's attention to subsection (i)(6)(B) of Rule 4-217. An overview is that the same situation would apply. As long as the money was posted for the failure of the defendant to appear within the time allowed, the longest time period being 180 days, there can be an application for return of the monies that were posted. This provision states that within a 10-year period from the date that the bond or collateral was posted, if a surety produces evidence indicating (1) that the defendant was incarcerated in a penal institution outside of the State of Maryland, (2) that the State's Attorney is unwilling to issue a detainer and extradite, and (3) that the surety agrees in

writing to defray the expenses of the return of the defendant to the jurisdiction in accordance with Code, Criminal Procedure Article, §5-208 (c), which is the new legislation, the court shall strike out the forfeiture and refund the forfeited bond or collateral to the surety provided that the surety paid the forfeiture of bail or collateral within that time period established under subsection (b)(3), the 180-day period. These items would have to be proved by the surety, and the State would have to aver that it was not willing to go forward with the extradition, because that requires some cost. As long as the bail bondsman, the surety, agrees to pay that cost, the surety can get the return of monies posted minus the expenses for the return of the person arrested.

The Chair noted that if the State's Attorney is unwilling to issue a detainer or subsequently extradite, then it would be necessary to wait until the defendant is released from prison in another state. He asked what would happen next. Mr. Karceski responded that the Chair appeared to be saying that the bail bondsman may be entitled to his or her money immediately, and the defendant may never be returned, because if there is no detainer, nothing will hold the defendant. The Chair remarked that the defendant may decide to stay in the state he was held in.

Mr. Karceski said that there seemed to be an imaginary line of extradition depending on the seriousness of the offense. The less serious the offense is, the more likely that if the defendant is far away, the State's Attorney will not extradite

the defendant. It is costly to extradite someone. The warrant remains, and if the defendant travels from state to state, he or she could be arrested any number of times and detained at a police station because the warrant is there, but if the State's Attorney in Maryland decides not to extradite the defendant, unless he or she returns to Maryland and is caught, the defendant would not be subject to prosecution. The Chair commented that this is in the statute. Mr. Karceski acknowledged that the bondsman could get his or her money back, and the defendant would never be returned for trial.

Mr. Patterson said that he was not speaking for all State's Attorneys, but from his own point of view, he noted that Mr. Karceski was correct about the cost factor. When Mr. Patterson's office gets extradition requests, which are frequent, he has instructed his criminal investigator who does the legwork for extraditions that he is to ask the exact same question in every extradition request. As soon as the request comes in, the investigator goes to the charging agency, the police department, and asks if the case is triable. Do they have the evidence, the witnesses? If the answer is "no," they release the detainer, because the case is over. If the answer is "yes," then the balancing factors are used. It depends what it is, who it is, and where the person is.

For example, Mr. Patterson remarked that he would not authorize the expenditure of monies for a deputy to drive to Delaware to pick up someone on a bench warrant for driving on a

suspended license, but he would authorize going to Seattle, Washington for someone who is charged with a serious crime. If someone from his office does not go to Delaware, the detainer is not released, because the defendant may come back into Maryland and get picked up in Mr. Patterson's county. It is only when the case is not triable that the detainer is released.

Mr. Karceski agreed with Mr. Patterson, pointing out that the issue is the cost. Rule 4-217 is simply conforming to the statute. The Chair said that Rule 4-217 provides that the State's Attorney may be unwilling to issue the detainer. A detainer may have already been issued, and the State's Attorney is either willing or unwilling to release it. If the detainer is released, it would be like not issuing it. Subsection (i)(6)(C) is the one exception. The situation where the defendant is incarcerated had just been discussed. Subsection (i)(6)(C) addresses the situation where the surety may seek a refund of the forfeited bail or collateral if the surety can show that the defendant was incarcerated when the judgment of forfeiture was entered. In this situation, the legislation allows for a refund of the money even if it was not paid within the 180-day time period if it can be shown that a judgment of forfeiture was entered, and the court strikes out the judgment for fraud, mistake, or irregularity.

Mr. Patterson inquired if the statute uses the language "placed in incarceration." Mr. Karceski answered that the legislation provides that the surety gets the money back if "(1)

on motion, the surety produces evidence that the defendant was incarcerated when the judgment of forfeiture was entered...", so the defendant could be anywhere, including in Maryland. Mr. Patterson was concerned that the defendant was locked up in Pennsylvania but then gets out. The purpose of having a surety is to ensure that the defendant shows up back in Maryland.

The Chair remarked that the way he read the statute, the defendant could be incarcerated in Queen Anne's County. Mr. Patterson commented that the defendant often would be incarcerated in the home jurisdiction where the bond was laid, but the defendant could be somewhere entirely different. Mr. Karceski agreed that there are no geographic limitations to this legislation as to the incarceration. The statute simply states that the defendant was incarcerated when the judgment of forfeiture was entered and that the court strikes out the judgment of forfeiture for fraud, mistake, or irregularity. Mr. Patterson noted that it is a permissible refund, but it is not mandatory. Mr. Karceski agreed and added that it is the only exception to the 180-day rule.

Mr. Michael questioned whether the Subcommittee had considered ending the last sentence of subsection (i)(6)(C) after the word "judgment" the second time it appears. Notwithstanding the legislative use of the language "fraud, mistake, or irregularity," there is an entire body of case law dealing with the meaning of that language, which he felt would never be met under these circumstances. Mr. Karceski expressed the opinion

that the language “fraud, mistake, or irregularity” has to be in the Rule, because that is what the legislation states is the criteria for the return of the forfeited collateral.

Mr. Sykes noted that Rule 4-217 does not necessarily have to follow exactly the language of the statute. The question of the relative powers of the legislature and the Rules Committee goes back to 1964 when Mr. Sykes had written on this issue, and George Liebman, Esq., had incorporated it into his form book. The legislature can legislate, and if it is a matter of procedure, and the Committee thinks that the legislature is wrong or that the Committee can do something better, the Committee has the right to fashion the Rules as they wish.

The Chair noted that it is the Court of Appeals that makes the rules. Mr. Sykes commented that the later action by either the Court or the legislature will trump anything that has been done earlier as long as it relates to procedure. The Committee should not feel that just because the legislature has done something which the Committee does not agree with, the Committee is constrained to do something else. Mr. Karceski inquired if the Committee was constrained in drafting Rule 4-332, Writ of Actual Innocence and Rules 4-701 et. seq., the Post Conviction DNA Rules that were originally the law. They were discussed over and over, and the Committee had determined that they could only vary so far from the statutes. The Committee had hoped that the next legislative session would change the statute, and the Chair pointed out that they did, although they did not solve the

problem.

Mr. Sykes inquired what would be an example of the kind of fraud the legislature was referring to. He could not visualize any circumstances where the language “fraud, mistake, or irregularity” would apply to a judgment of forfeiture. Mr. Michael added that case law in that area is extremely restrictive. The Chair said that he was not sure how to proceed. He remarked that Mr. Sykes was correct that the Court of Appeals has always taken the position that if it is a matter of practice and procedure in the courts, the Court of Appeals has the constitutional authority to adopt the Rules of Procedure, which have the force of law and can, in effect, trump a statute. Mr. Karceski suggested that an alternate could be proposed with the language referred to by Mr. Michael shown as deleted. The Chair asked what authority the court would have to strike the judgment of forfeiture after 30 days other than for fraud, mistake, or irregularity. He assumed that this would be a civil judgment, not a criminal one, although it is in the Criminal Rules. Mr. Karceski remarked that in today’s world, it is fairly easy to get the information that someone has been incarcerated.

The Chair commented one of the problems particularly pertaining to bail bonds, which has faced the Committee before, is that the legislature has a special interest in this. The Committee had disagreed with the legislature previously on bail bond issues. While the Court of Appeals can address this, because it is practice and procedure in the courts, the question

is whether they should. The last time that the Committee had addressed this was with the statutes and rules pertaining to a "newspaper of general circulation." Clearly, the Rules could have trumped the statute, but the Committee had decided not to do so. If no other ground exists on which the judgment of forfeiture could be vacated after 30 days, what is the harm in deleting the language at the end of subsection (i)(6)(C)?

Mr. Karceski remarked that this involves a number of different issues. This language was here because if the defendant is incarcerated on the day that the judgment was entered, he or she could have been incarcerated on that one day and been released the next day. There are no limitations on this. The Chair noted that this cannot be changed.

Mr. Patterson expressed the view that Rule 4-217 has to follow the legislation. The reality is that there are many strong lobbies in the legislature, and the bail bondsman lobby has historically been very strong. They have frequently pushed through legislation that favors them. It is not a function of the Rules Committee to try to change this. Mr. Brault inquired whether the "mistake" that the statute refers to is that the judge did not know at the time of the forfeiture that the defendant was incarcerated. Mr. Karceski said that if the judge knew that the defendant was incarcerated, it probably would not result in a forfeiture of the bond. The answer to Mr. Brault's question would be "yes." The judge did not know that the defendant had been incarcerated. Mr. Brault noted that this kind

of mistake does not coincide with the Rules or the cases interpreting fraud, mistake, and irregularity as Mr. Michael had pointed out. Mr. Brault asked if the last sentence of subsection (i)(6)(C) could read: "... and the court strikes out the judgment on the basis that the defendant's whereabouts were unknown." The Chair responded that this is not a jurisdictional mistake for purposes of fraud, mistake, or irregularity.

Judge Pierson commented that the irregularities would relate to the court's knowledge. He expressed the opinion that it is not a good idea to extend the court's authority beyond what the legislation authorized on a subject that is open to speculation as to what this language really means. He agreed with Mr. Patterson that Rule 4-217 should track the language of the statute. Mr. Brault said that he wondered whether the legislature realized that this was an impossible condition. Judge Pierson remarked that the clerk may have missed putting something into the file, and this could be an irregularity. There could be circumstances that would satisfy the Rule.

Mr. Sykes suggested that Rule 4-217 track the language of the statute and that this issue be brought to the attention of Delegate Vallario to try to get better language in the statute. The Chair pointed out that it would take a motion to alter the language, and he asked if anyone had such a motion. No motion was forthcoming.

By consensus, the Committee approved Rule 4-217 as presented.

Mr. Karceski presented Rule 4-266, Subpoenas - Generally, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-266 to (1) add language to section (a) clarifying that subsection (a)(5) refers to items that are not privileged and (2) to add language to section (c) referring to persons who are the subject of subpoenas, and to add either a Committee note or language in the body of the Rule that includes materials protected by lawful privilege as matters not to be inquired into, and to make stylistic changes, as follows:

Rule 4-266. SUBPOENAS - GENERALLY

(a) Form

ALTERNATIVE 1

Every subpoena shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, and (5) a description of any documents, recordings, photographs, or other tangible things, not privileged, to be produced.

ALTERNATIVE 2

Every subpoena shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, ~~and~~ (5) a description of any documents, recordings,

photographs, or other tangible things to be produced, and (6) a statement that the material requested is not protected by lawful privilege.

(b) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). A subpoena may be served by a sheriff of any county or by a person who is not a party and who is not less than 18 years of age. A subpoena issued by the District Court may be served by first class mail, postage prepaid, if the administrative judge of the district so directs.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort.

(c) Protective Order

Upon motion of a party or of the ~~witness~~ person named in or who is the subject of the subpoena filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance the court ~~may~~, for good cause shown, may enter an order which justice requires to protect the party or ~~witness~~ person named in or who is the subject of the subpoena from annoyance, embarrassment, oppression, or undue burden or expense, including one of the following:

(1) That the subpoena be quashed;

(2) That the subpoena be complied with only at some designated time or place other than that stated in the subpoena, or before a judge, or before some other designated officer;

Alternative 1

(3) That certain matters not be inquired into or that the scope of examination or inspection be limited to certain matters;

Committee note: This includes material protected by lawful privilege.

Alternative 2

(3) That certain matters, including material protected by lawful privilege, not be inquired into or that the scope of examination or inspection be limited to certain matters;

(4) That the examination or inspection be held with no one present except parties to the action and their counsel;

(5) That the transcript of any examination or matters produced or copies, after being sealed, not be opened or the contents be made public only by order of court; or

(6) That a trade secret or other confidential research development or commercial information not be disclosed or be disclosed only in a designated way.

(d) Attachment

A witness personally served with a subpoena under this Rule is liable to a body attachment and fine for failure to obey the subpoena without sufficient excuse. The writ of attachment may be executed by the sheriff or peace officer of any county and shall be returned to the court issuing it. The witness attached shall be taken immediately before the court if then in session. If the court is not in session, the witness shall be taken before a judicial officer of the District Court for a determination of appropriate conditions of release to ensure the witness' appearance at the next session of the court that issued the attachment.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 742

c and M.D.R. 742 b.
Section (b) is derived from former Rule 737
b and M.D.R. 737 b.
Section (c) is derived from former Rule 742
d and M.D.R. 742 c.
Section (d) is derived from former Rule 742
e and M.D.R. 742 d.

Rule 4-266 was accompanied by the following Reporter's note.

> There have been situations in which the medical records of victims have been subpoenaed unbeknownst to the victim. A victim's rights advocate requested changes to Rule 4-266 to clarify that privileged items may not be subpoenaed. Language has been added to section (a) to reflect this. The Subcommittee also recommends modifying section (c) by changing the word "witness" to the term "person named in or the subject of the subpoena," which is broader and would include a victim and by adding a Committee note at the end of or modifying subsection (c)(3) to make clear that matters that cannot be inquired into include material protected by lawful privilege.

Mr. Karceski told the Committee that a revised version of Rule 4-266 had been handed out at the meeting today. It was somewhat different than the version of Rule 4-266 that was in the meeting materials. Russell Butler, Esq., Executive Director of the Maryland Crime Victims' Resource Center, Inc. had sent in a comment letter, which had been distributed at today's meeting. (See Appendix 1). This was why the Rule change had been proposed. Situations have arisen where medical records of crime victims have been subpoenaed, and the victim is not aware of it.

Mr. Karceski said that Mr. Butler had requested a change to Rule 4-266. The reason for the change is to bring to the

attention of those who request subpoenas that the information that is the subject of the subpoena cannot be privileged. There are three possibilities regarding the Rule. One is to do nothing and leave the Rule as it is. Another is to add the words "not privileged," which is Alternative 1 of section (a). The change from the original version of Rule 4-266 in the meeting materials to the version handed out is Alternative 2, which adds to section (a) a number (6) that reads: "a statement that the material requested is not protected by lawful privilege." Mr. Karceski expressed the opinion that if any change was to be made, it should be the addition of the language in new number (6) of section (a). He was not sure that the proposed change to number (5) of section (a) was sufficient.

Mr. Klein inquired if the concept of privilege was to also include work product protection. The reason for this question was that in the civil Rules, attorney-client privilege and work product protection are addressed. With respect to work product, the word "protection" is used. It is not called a "privilege." Mr. Karceski responded that the change to Rule 4-266 did not take into account work product, because the proposed change came from a victims' rights situation, not a work product situation. This is not to say that work product should not be considered. Mr. Klein explained that if the intention is that the Rule includes work product, the language in the criminal rules should be consistent with the language in the civil rules.

The Chair asked how subpoenas get issued in a criminal case.

Mr. Karceski answered that in a circuit court case, a request for a subpoena is filed with the clerk. The Chair questioned whether the attorney prepares the subpoena, and Mr. Karceski answered affirmatively. The Chair inquired if the clerk then gives it to the sheriff. Mr. Karceski answered affirmatively, adding that a private process server can also serve it.

The Chair referred to Alternative 2 of Rule 4-266, noting that just putting a statement in the Rule that the material is not protected by privilege does not make it so. Mr. Sullivan remarked that Mr. Butler's concern seemed to be that people are being misled in providing privileged material. This kind of statement, if erroneous, would mislead someone who is not an attorney. What the Rule would indicate is that if the material is not privileged, it would have to be turned over. It could have the opposite effect that Mr. Butler wishes to achieve. Mr. Karceski remarked that someone files the subpoena and states in the filing that what is requested is not privileged. The person receiving it handles these subpoenas on a daily basis and should understand it. In today's world, people know that if medical records are subpoenaed, they are not automatically given out. This is why the proposed changes may not be necessary at all.

Mr. Zarbin expressed the concern that at least on the civil side, a subpoena for any kind of medical records cannot be issued without the person who is the subject of the records knowing, because it is a violation of the Health Insurance Portability and Accountability Act (HIPAA), Pub. L 104-191 (1996). It appears

that on the criminal side, HIPAA is being violated. This is an obligation on the attorney, because an attorney cannot release any medical records without giving notice to the person who owns the medical records. Mr. Karceski noted that the person's consent could be obtained. He added that not all subpoenas are issued by attorneys.

Mr. Brault asked if this is transferring the burden of knowing the privileged protection from the person with the record to the person issuing the subpoena. How does one know the existence of privilege or protection if a subpoena is issued? Attorneys get into arguments frequently as to whether something is privileged. Even under HIPAA, if the person gets notice, and the court subpoenas someone for information, it is producible. Mr. Karceski said that he was not trying to dodge the question, but he had asked previously if this change is needed at all, and if it is, what the language should be. From the discussion, there may be no good language to place in the Rule, so leaving it as is may be the solution.

Mr. Patterson agreed with Mr. Karceski that this change is not necessary. It is also not necessarily proper to tell the issuer of the record that he or she is the one who determines whether the record is privileged or not. The burden is really on the person whose record it is to know and to express that a record is privileged absent consent. The Chair remarked that someone would have to file a motion to quash the subpoena. Ms. Nethercott, an assistant Public Defender, noted that her

experience had been that, in light of HIPAA, any medical records are not just turned over. The usual procedure would be that a subpoena would not simply be issued, but the person requesting it would make a motion for a judicial order fully anticipating all of the consequences under HIPAA. It is not necessarily only defendants or defense attorneys who might be issuing these subpoenas, prosecutors routinely issue subpoenas for medical records.

Mr. Michael asked whether, in a criminal setting, the attorney has to notify the other side when a subpoena is issued. Mr. Karceski replied that in a criminal setting, most of the time the records are obtained through the discovery process. If someone is a victim of a crime and has been hospitalized, the defense can generally get the records through the State, which is getting the records on its own. The delicate issue is one where records may be psychiatric, such as one asked for from Sheppard Pratt Hospital, and the State is not concerned about that record. Mr. Karceski commented that what he does to try to obtain these records, which is not through the discovery process where the State is providing the information, is to make sure that the person whose records he is trying to obtain has consented, or he sends notification to that person from whom he is trying to obtain the records. He finds that a way to do this to protect one's client at the moment of trial, is, if he cannot get an agreement on this, to send the subpoena and place in the subpoena itself a letter that states that he recognizes that this is

privileged information. He then sends it under seal to the clerk, letting the court determine, at an appropriate time, whether this information will ever be able to be released. At least it is there at the time that the argument is made in court for the material requested. Mr. Michael remarked that this is so even if that procedure violates HIPAA, as Mr. Zarbin had pointed out. Mr. Karceski asked whether it is a violation if the material is put into a sealed envelope. Mr. Zarbin answered that it is still a HIPAA violation.

Judge Pierson pointed out that Code, Health General Article, §4-304 has a specific procedure for obtaining psychiatric records that includes notice, but Rule 4-266 pertains to the form of a subpoena. The two Rules that give authority for the issuance of subpoenas are Rule 4-264, Subpoena for Tangible Evidence before Trial in Circuit Court, and Rule 4-265, Subpoena for Hearing or Trial. Both Rules already provide that a subpoena shall include a designation of the documents, etc., not privileged, that are the subject of the subpoena. It is not necessary to put the language "not privileged" in Rule 4-266, because it is already in Rules 4-264 and 4-265. The problem with Alternative 2 would be that it would vary from what is in Rules 4-264 and 4-265.

Mr. Butler agreed, noting that the problem is that the language he had requested is already in Rules 4-264 and 4-265. The person who receives it is not the person requesting it, because the person requesting it may not know what is in there at all. There is no notice to the person receiving it, and this is

why the suggestion was made to put it on the form of the subpoena, so that the person receiving it sees that he or she should not be turning over privileged material. Although the discussion today had involved medical records, which may be confidential or privileged, depending on what they are, the privilege also goes to accountants, records of the Department of Veterans Affairs, and other matters besides medical records. Someone who has the privilege or the confidentiality may never know that this happens and is relying on the person who holds the record.

Mr. Butler remarked that the federal rules have been modified to specifically require notice, such as HIPAA, so that there is an opportunity to file a motion to quash, because the records in many cases can be turned over to the attorney or to the clerk before the person holding the privilege would even know about it. He had suggested Alternative 1, because it would track the other Rules, but what should result is that the person receiving the subpoena understands that he or she is not supposed to turn over privileged material. The person may or may not know that, but at least the Rule notifies people, so that they do not unintentionally violate someone's rights.

The Chair responded that the problem with Alternative 2 is that the person receiving it will be told that none of the material requested is privileged, which may be wrong. Judge Pierson remarked that the solution to effectuate what Mr. Butler had asked for is to put a provision in the Rule requiring service

of the subpoena upon the person who is the subject of the subpoena, so that he or she could then file a motion for a protective order. It would solve the problem by providing notice to the person who has an interest in asserting the privilege. Mr. Zarbin noted that this is what HIPAA requires. In the civil arena, a certified letter would be sent to that person or to his or her counsel stating that the person's medical records have been subpoenaed and will be turned over unless a response is received. Judge Pierson agreed that this involves all kinds of records beyond medical records, such as bank records (which have their own statutory notice requirements), accounting records, attorneys' records, etc.

The Chair inquired how the Committee wanted to handle this. Mr. Carbine moved that Rule 4-266 remain as is with no changes. The motion was seconded. Mr. Brault agreed, noting that there is an industry that collects medical records. Attorneys get a copy of their notice of deposition which has on it the question "Do you object?" The notice goes on to state that the records will be given unless the other side responds.

The Chair said that a motion had been made and seconded not to accept the Subcommittee's recommendation on this. Judge Pierson commented that he wanted to clarify that this did not apply to the proposed change to section (c). The Chair responded that the motion on the floor applied only to section (a). He called for a vote on the motion, and it carried.

Mr. Karceski drew the Committee's attention to section (c)

of Rule 4-266. The proposed changes were an attempt to broaden the language in substituting for the word "witness" the language "the person named in or who is the subject of." The effect of this change would be to broaden the application of this section to include a victim, who may then be the person or the subject who can file a motion to quash the subpoenaed information. The Chair noted that section (c) also has two alternatives for proposed changes. Mr. Karceski explained that one alternative is the addition of a Committee note, and the other is the addition of language into subsection (c)(3) that reads "including material protected by lawful privilege."

Mr. Johnson inquired about the use of the language "lawful privilege." Is this as opposed to any other kind of privilege? What does the word "lawful" add? Mr. Karceski replied that the change had been suggested some time ago, and he could not remember the genesis of it. The word "lawful" may be surplusage. Mr. Klein asked what the purpose of the Committee note was. The Chair asked if the proposed language should not be in the Rule rather than in a Committee note if material protected by privilege is going to be excluded under subsection (c)(3). This is giving the court a basis for a protective order. Judge Pierson remarked that the language related to protective orders had been in the Rule for a long time. Everyone has understood that it authorizes issuance of a protective order to protect privilege. Why is the additional language needed?

The Chair said that since the proposed changes are a

recommendation of the Subcommittee, it would take a motion to delete them. Mr. Klein moved to strike both alternatives. He had no problem with the changes to the first part of section (c). The motion was seconded, and it carried. The Reporter noted that the new language in the first part of section (c) would be added, so that victims as well as others are covered.

By consensus, the Committee approved Rule 4-266 as amended.

Mr. Karceski presented Rule 4-342, Sentencing - Procedure in Non-capital Cases, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 to add a cross reference at the end of section (e) to a certain statute, as follows:

Rule 4-342. SENTENCING - PROCEDURE IN NON-CAPITAL CASES

. . .

(e) Notice and Right of Victim to Address the Court

(1) Notice and Determination

Notice to a victim or a victim's representative of proceedings under this Rule is governed by Code, Criminal Procedure Article, §11-104 (e). The court shall determine whether the requirements of that section have been satisfied.

(2) Right to Address the Court

The right of a victim or a victim's

representative to address the court during a sentencing hearing under this Rule is governed by Code, Criminal Procedure Article, §11-403.

Cross reference: See Code, Criminal Procedure Article, §§11-103 (b) and 11-403 (e) concerning the right of a victim or victim's representative to file an application for leave to appeal under certain circumstances. See Code, Criminal Procedure Article, §11-103 (e) for the right of a victim to file a motion requesting restitution.

. . .

Rule 4-342 was accompanied by the following Reporter's note.

Chapter 362, Laws of 2011, (HB 801) authorizes a victim who alleges that his or her right to restitution was not considered or was improperly denied to file a motion requesting relief within 30 days of the denial or alleged failure to consider. To draw attention to the new law, the Criminal Subcommittee recommends adding a cross reference to it after section (e).

Mr. Karceski explained that the proposed changes to Rule 4-342 resulted from a law enacted by the legislature, Chapter 362, Laws of 2011 (HB 801), which pertains to the right of a victim to seek restitution. The legislation provides that if a victim alleges a right to restitution pursuant to Code, Criminal Procedure Article, §11-603, and the matter was not considered or improperly denied, he or she may file a motion requesting relief within 30 days of the denial or alleged failure to consider. The judge may enter a judgment of restitution upon a finding that the victim's right to restitution was not considered or was

improperly denied. The Subcommittee has suggested adding a cross reference alerting the reader to the Criminal Procedure Article just referred to.

By consensus, the Committee approved Rule 4-342 as presented.

Mr. Karceski presented Rule 4-345, Sentencing - Revisory Power of Court, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-345 to add a cross reference at the end of the Rule to a certain statute, as follows:

Rule 4-345. SENTENCING - REVISORY POWER OF COURT

(a) Illegal Sentence

The court may correct an illegal sentence at any time.

(b) Fraud, Mistake, or Irregularity

The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

(c) Correction of Mistake in Announcement

The court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

(d) Desertion and Non-support Cases

At any time before expiration of the sentence in a case involving desertion and non-support of spouse, children, or destitute parents, the court may modify, reduce, or vacate the sentence or place the defendant on probation under the terms and conditions the court imposes.

(e) Modification Upon Motion

(1) Generally

Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

Cross reference: Rule 7-112 (b).

Committee note: The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Department of Health and Mental Hygiene if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied. See Code, Health General Article, §8-507.

(2) Notice to Victims

The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, §11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, §11-503 that states (A) that a motion to modify or reduce a sentence has been filed; (B) that the motion has been denied without a hearing or the date, time,

and location of the hearing; and (C) if a hearing is to be held, that each victim or victim's representative may attend and testify.

(3) Inquiry by Court

Before considering a motion under this Rule, the court shall inquire if a victim or victim's representative is present. If one is present, the court shall allow the victim or victim's representative to be heard as allowed by law. If a victim or victim's representative is not present and the case is one in which there was a victim, the court shall inquire of the State's Attorney on the record regarding any justification for the victim or victim's representative not being present, as set forth in Code, Criminal Procedure Article, §11-403 (e). If no justification is asserted or the court is not satisfied by an asserted justification, the court may postpone the hearing.

(f) Open Court Hearing

The court may modify, reduce, correct, or vacate a sentence only on the record in open court, after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. The defendant may waive the right to be present at the hearing. No hearing shall be held on a motion to modify or reduce the sentence until the court determines that the notice requirements in subsection (e)(2) of this Rule have been satisfied. If the court grants the motion, the court ordinarily shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.

Cross reference: See Code, Criminal Procedure Article, §8-302, which allows the court to vacate a judgment, modify a sentence, or grant a new trial for a person convicted of prostitution if, when the crime was committed, the person was acting under duress caused by the act of another committed in violation of Code, Criminal Law Article, §11-303, the prohibition against human

trafficking.

Source: This Rule is derived in part from former Rule 774 and M.D.R. 774, and is in part new.

Rule 4-345 was accompanied by the following Reporter's note.

Chapter 218, Laws of 2011 (SB 327) allows a person convicted of prostitution under Code, Criminal Law Article, §11-306 to file a motion to vacate the judgment if, when the person committed the crime, the person was acting under duress cause by the act of another person committed in violation of Code, Criminal Law Article, §11-303, the prohibition against human trafficking. The new law allows the court to vacate the conviction, modify the sentence, or grant a new trial. To draw attention to the new law, the Criminal Subcommittee recommends adding a cross reference to it at the end of Rule 4-345.

Mr. Karceski told the Committee that the legislature had enacted Chapter 218, Laws of 2011, (SB 327), which allows a person convicted of prostitution under Code, Criminal Procedure Article, §11-306 to file a motion to vacate the judgment if at the time the act was committed, the person was acting under duress caused by an act of another committed in violation of Code, Criminal Law Article, §11-303, which is this legislation, the Human Trafficking Victim Protection Act. That law provides that if a person was forced to commit the crime of prostitution, the case falls within the confines of Code, Criminal Procedure Article, §11-303, and if the person is convicted under §11-306, the person may file a motion to vacate or modify a sentence or grant a new trial for the conviction of prostitution. The

Subcommittee recommends the addition of a cross reference to Rule 4-345.

Judge Pierson pointed out that the statute refers to vacating a conviction or granting a new trial, and he asked why the cross reference was suggested for Rule 4-345 and not Rule 4-331, Motions for New Trial; Revisory Power. Rule 4-345 pertains to modifying a sentence. Vacating a judgment or granting a new trial is a more plenary remedy, and Judge Pierson expressed the view that the cross reference to the statute should go into Rule 4-331. Mr. Karceski remarked that the cross reference would fit under either or both.

The Chair noted that Rule 4-331 would cover vacating the judgment. Mr. Karceski observed that it would not cover modifying a sentence, which would have to fall under Rule 4-345. Mr. Karceski read from subsection (d)(1) of the statute, Code, Criminal Procedure Article, §8-302: "...the court may vacate the conviction, modify the sentence, or grant a new trial." The Chair commented that Rule 4-331 provides for all of those. Mr. Karceski asked how Rule 4-331 would allow for the modification of the sentence. Mr. Sykes noted that the title of both Rules includes the term "Revisory Power." The Chair said that Rule 4-331 (b) states: "The court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial...". Mr. Karceski remarked that the word "modify" did not appear in Rule 4-331. This is what Rule 4-345 pertains to. Judge Pierson noted that Rule 4-345 also pertains to

modifying a sentence. Mr. Karceski reiterated that the legislation refers to modifying the sentence. Judge Pierson stated that the court can also vacate the conviction or grant a new trial.

Mr. Karceski commented that his point was not that a cross reference to the statute should not be in Rule 4-331. He added that maybe it should be in both Rules. If the sentence can be vacated, he could not envision the court only modifying the sentence. If the consensus is to move the cross reference from Rule 4-345 to Rule 4-331, he would go along with it, but he again expressed the opinion that the cross reference should be in both Rules.

The Chair remarked that he had checked the language of the statute again, and it appeared to be another instance where the legislature was not as precise as it should have been. Section (a) of the statute reads: "A person convicted of prostitution... may file a motion to vacate the judgment....". Section (b) pertains to the motion. Section (c) provides that the court shall hold a hearing and may dismiss the motion. In ruling on the motion, the court may vacate the conviction, modify the sentence, or grant a new trial. This gives the court the authority to take any of those actions. All of those are provided for in Rule 4-331 (b). Only modifying the sentence is provided for in Rule 4-345.

Judge Weatherly recommended that the cross reference be put into Rules 4-331 and 4-345. The Chair remarked that it is in the

statute, so that it can happen anyway. If the cross reference is not added to Rule 4-331, that Rule would be incomplete. Although it appears to be like newly discovered evidence, it probably is not, because the defendant would have known about the duress at the time that she was convicted. Mr. Michael said that he could not figure out how the defendant could have been convicted, since duress is a common law defense.

Mr. Karceski commented that this seems to be somewhat unnecessary to add to the Rules, because duress is a defense. If a person is charged with prostitution under this theory, and this legislation is in effect, duress becomes a complete defense to the charge. Why should it not be proved at the time of the trial? However, the legislation provides a second chance for the defendant to void the conviction. The thought may have been that the duress continues through the trial. Mr. Zarbin agreed with this, noting that the defendant may have been forced to plead guilty.

Judge Weatherly moved to add the cross reference to both Rules 4-331 and 4-345. The motion was seconded, and it passed unanimously. The Chair said that it would be necessary to see how the language fits into the context of Rule 4-331. Adding a cross reference is not the same as incorporating language into the Rule. He asked the Committee if they preferred to add the language into the body of Rule 4-331 as a basis for granting this relief. This is where the revisory power of the court is stated. Rule 4-331 is complicated, and the entire Rule needs to be looked

at again. Section (a) provides for a motion for a new trial within ten days of the verdict, which often is pre-sentence. In the interest of justice, the court may order a new trial. Section (b) pertains to revisory power. The court can set aside an unjust and improper verdict, but there are time limits on this, which are 90 days in the District Court and the circuit courts. Section (c) addresses newly discovered evidence, which has longer time limits, but the scope is narrower.

Mr. Michael asked whether the goal could be accomplished by including the reference to the statute in the cross reference section of Rule 4-331. The Chair noted that Rule 4-331 has a cross reference under section (a), which is the ten-day motion. The Reporter pointed out that the section that is closest to the cross reference to the statute would be in section (d), a separate, self-contained DNA evidence section, so the provision pertaining to the statute should be a separate section (e).

The Chair said that the Criminal Subcommittee might want to look at this not for the policy, which the Committee had already resolved, but in terms of where the reference to the statute ought to go. The Reporter may be correct that it should go into a separate section. The statute does not include a time limit for filing the motion to vacate the judgment, so it should not be tied to sections (b) or (c). Mr. Karceski noted that it does not fit anywhere in Rule 4-331 now. It probably will be used very rarely. The Chair responded that he was not so sure about this. The Office of the Attorney General has been active in efforts to

stop human trafficking for a number of years. Apparently, this is a problem.

Judge Pierson remarked that if the purpose of the change to the Rule was simply to alert people, section (c) seemed to be the closest place for it, if it is a cross reference. The Chair pointed out that section (c) pertains to newly discovered evidence, which this is not. The victim would have known if she had been under duress. There is no time limit on filing the motion, and section (c) has time limits. Judge Pierson observed that it is not going to be part of the Rule; it is just a cross reference. The Chair said that the issue is whether it should be part of the Rule, because it is an authorization to vacate a judgment that is beyond 30 days. The Reporter added that this does not fit into any of the pigeonholes currently described by the Rule. This is why she felt that if it would be put into the Rule, it should go into its own section.

Judge Pierson commented that he had thought that the proposal was to put a cross reference to the statute into Rule 4-345. The Chair acknowledged that it was, but he asked what effect that would really have, noting that it left the Rule incomplete. Judge Pierson remarked that the General Assembly often creates minor procedures that belong in specific niches not covered by the general language of the Rules. The Chair pointed out that Senate Bill 327 addresses the ability of the court to vacate a judgment. Mr. Karceski pointed out that although section (d) of Rule 4-345 does not address the same situation,

the template is the same. The Chair noted that this only pertains to modification of the sentence. Mr. Karceski suggested that it may be appropriate to have another section applicable to the legislation in Rule 4-345. The Chair responded that it would not hurt to do that, but what the petitioner is interested in is wiping out the conviction, not just the sentence. The sentence may have expired.

The Chair said that Rule 4-345 would go back to the Subcommittee so that they could decide how to handle this.

Mr. Karceski presented Rule 4-331, Motions for New Trial; Revisory Power, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-331 to add language to clarify the time for filing a motion under section (c) and to make stylistic changes, as follows:

Rule 4-331. MOTIONS FOR NEW TRIAL; REVISORY POWER

(a) Within Ten Days of Verdict

On motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial.

Cross reference: For the effect of a motion under this section on the time for appeal see Rules 7-104 (b) and 8-202 (b).

(b) Revisory Power

The court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial:

(1) in the District Court, on motion filed within 90 days after its imposition of sentence if an appeal has not been perfected;

(2) in the circuit courts, on motion filed within 90 days after its imposition of sentence.

Thereafter, the court has revisory power and control over the judgment in case of fraud, mistake, or irregularity.

(c) Newly Discovered Evidence

The court may grant a new trial or other appropriate relief on the ground of newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial pursuant to section (a) of this Rule:

(1) on motion filed within one year after the later of (A) the date the court imposed sentence or (B) the date ~~it~~ the court received a mandate issued by the ~~Court of Appeals or the Court of Special Appeals~~ final appellate court to consider a direct appeal or a belated appeal from a petition for post conviction relief; ~~whichever is later;~~

(2) on motion filed at any time if a sentence of death was imposed and the newly discovered evidence, if proved, would show that the defendant is innocent of the capital crime of which the defendant was convicted or of an aggravating circumstance or other condition of eligibility for the death penalty actually found by the court or jury in imposing the death sentence; and

(3) on motion filed at any time if the motion is based on DNA identification testing not subject to the procedures of Code, Criminal Procedure Article, §8-201 or other

generally accepted scientific techniques the results of which, if proved, would show that the defendant is innocent of the crime of which the defendant was convicted.

Committee note: Newly discovered evidence of mitigating circumstances does not entitle a defendant to claim actual innocence. See *Sawyer v. Whitley*, 112 S. Ct. 2514 (1992).

(d) DNA Evidence

If the defendant seeks a new trial or other appropriate relief under Code, Criminal Procedure Article, § 8-201, the defendant shall proceed in accordance with Rules 4-701 through 4-711. On motion by the State, the court may suspend proceedings on a motion for new trial or other relief under this Rule until the defendant has exhausted the remedies provided by Rules 4-701 through 4-711.

Cross reference: For retroactive applicability of Code, Criminal Procedure Article, §8-201, see *Thompson v. State*, 411 Md. 664 (2009).

(e) Form of Motion

A motion filed under this Rule shall (1) be in writing, (2) state in detail the grounds upon which it is based, (3) if filed under section (c) of this Rule, describe the newly discovered evidence, and (4) contain or be accompanied by a request for hearing if a hearing is sought.

(f) Disposition

The court may hold a hearing on any motion filed under this Rule. Subject to section (d) of this Rule, the court shall hold a hearing on a motion filed under section (c) if a hearing was requested and the court finds that: (1) if the motion was filed pursuant to subsection (c)(1) of this Rule, it was timely filed, (2) the motion satisfies the requirements of section (e) of this Rule, and (3) the movant has established

a prima facie basis for granting a new trial. The court may revise a judgment or set aside a verdict prior to entry of a judgment only on the record in open court. The court shall state its reasons for setting aside a judgment or verdict and granting a new trial.

Cross reference: Code, Criminal Procedure Article, §§6-105, 6-106, 11-104, and §11-503.

Source: This Rule is derived in part from former Rule 770 and M.D.R. 770 and is in part new.

Rule 4-331 was accompanied by the following Reporter's note.

The amendment to Rule 4-331 (c)(1) is proposed in light of *State v. Matthews*, 415 Md. 286 (2010), wherein the Court of Appeals referred the clarification of the Rule to the Rules Committee. *Id*. at 298.

The Court of Appeals explained that, in *Matthews v. State*, 187 Md. App. 496 (2009), the Court of Special Appeals determined

> ...that Rule 4-331 (c)(1) is ambiguous because it permits a motion filed within one year after imposition of sentence or "the date it received a mandate issued by the Court of Appeals or the Court of Special Appeals, whichever is later," and thus, it is unclear whether Subsection (c)(1) "applies to *any* mandate," or only to a mandate issued at the conclusion of a direct appeal. *Matthews*, 187 Md. App. at 504, 979 A.2d at 203.

Matthews, 415 Md. at 298-99 (emphasis in original).

The Court of Appeals analyzed former versions of the Rule and the accompanying legislative history. In so doing, the Court found support for the position that the term "mandate" should be construed as referring only to the mandate issued at the conclusion of a direct appeal. *Id*. at 299-306.

> The proposed amendment to the Rule resolves the ambiguity highlighted by the Court of Special Appeals, and is consistent with the Court of Appeals' interpretation of the Rule.

Mr. Karceski explained that Rule 4-331 had been inadvertently left off the agenda. The proposed changes arose from *State v. Matthews*, 415 Md. 286 (2010). The issue in the case, which the Court of Appeals had asked the Rules Committee to address, pertained to the language in subsection (c)(1) which read: "on motion filed within one year after the date the court imposed sentence or the date it received a mandate issued by the Court of Appeals or the Court of Special Appeals, whichever is later." The critical language is "a mandate." Mr. Matthews pled guilty in 2000, and he was sentenced a month later. He never appealed the judgment. He chose other ways to move the case forward, such as filing three post conviction petitions and numerous motions for a new trial because of a recantation of a witness. Mandates were issued, and the question that the Court of Appeals had resolved and had asked the Committee to address in Rule 4-331 was whether the mandate is the one issued by the last court in the direct appeal or if it is any mandate. In its opinion, the Court analyzed former versions of Rule 4-331 and the accompanying legislative history. The Court found support for the position that the term "mandate" should be construed as referring only to the mandate issued at the conclusion of a direct appeal. The goal is to conform Rule 4-331 to the

directive of the Court of Appeals.

Mr. Karceski said that to tighten up the language of Rule 4-331, the Subcommittee had recommended a change to subsection (c)(1), which pertains to newly discovered evidence. The changes read as follows: "...on motion filed within one year after the later of (A) the date the court imposed sentence or (B) the date the court received a mandate issued by the final appellate court to consider a direct appeal or a belated appeal from a petition for post conviction relief." The Subcommittee added the language at the end of the sentence that reads: "...or a belated appeal from a petition for post conviction relief," because in some situations, the defendant is sentenced, but there is confusion about filing the appeal. The defendant may have thought that the attorney was going to file the appeal. It is possible that the attorney forgot to file the appeal, or some confusion occurred as to which attorney was going to file the appeal.

Mr. Karceski remarked that a number of post conviction petitions are based on the allegation that the defendant was denied his or her right to appeal, because an appeal was never filed when it had been indicated to the defendant that the attorney was going to do so. The Subcommittee's view was that the additional language would be appropriate, because although it is not on a direct appeal track, it puts the matter on a direct appeal that should have been but never was. The Subcommittee felt that the proposed language would cure the ambiguous language that is now in the Rule.

The Chair noted a problem with the language at the end of subsection (c)(1). There is no belated appeal from a petition. It should read: "...consider a direct appeal ... from the judgment" or "... a belated appeal permitted as post conviction relief." It is a direct appeal, but it can be filed later. By consensus, the Committee approved the Chair's second suggestion. The Reporter said that she assumed that Rule 4-331 would not be held up until the previous amendment suggested for addition to the Rule involving the human trafficking victim protection statute is determined. Mr. Karceski remarked that this issue could be discussed in a telephone conference call. The Chair said that there would be a list of Rules to send to the Court of Appeals that are already in the Rules Committee's inventory for the 174th Report. Rule 4-331 can be added to that list, which would then be sent to the Court in April.

By consensus, the Committee approved Rule 4-331 as amended.

Agenda Item 2. Reconsideration of proposed amendments to: Rule 6-122 (Petitions), Rule 6-153 (Admission of Copy of Executed Will), Rule 6-202 (List of Interested Persons), Rule 6-316 (List of Interested Persons), Rule 6-404 (Information Report), Rule 6-405 (Application to Fix Inheritance Tax on Non-Probate Assets), Rule 6-413 (Claim Against Estate – Procedure), Rule 6-415 (Petition and Order for Funeral Expenses), Rule 6-455 (Modified Administration), Rule 6-501 (Application by Foreign Personal Representative to Set Inheritance Tax), Rule 10-707 (Inventory and Information Report), Rule 6-125 (Service), Rule 10-203 (Service; Notice), Rule 6-443 (Meeting of Distributees and Distribution by Court), Rule 10-601 (Petition for Assumption of Jurisdiction – Person Whose Identity or Whereabouts is Unknown), Rule 10-602 (Notice), Rule 10-103 (Definitions), New Rule 10-111 (Petition for Guardianship of Minor), New Rule 10-112 (Petition for Guardianship of Alleged Disabled Person), Rule 10-201 (Petition for Appointment of a Guardian of the Person), Rule 10-202 (Certificates and

Consents), Rule 10-206 (Annual Report – Guardianship of a Minor or Disabled Person), Rule 10-207 (Resignation of Guardian of the Person and Appointment of Substituted or Successor Guardian), Rule 10-208 (Removal for Cause or Other Sanctions), Rule 10-301 (Petition for Appointment of a Guardian of Property), and Rule 10-708 (Fiduciary's Account and Report of Trust Clerk)

Mr. Sykes explained that the Rules proposed for change generally address issues in probate and guardianship proceedings. The changes are designed to add provisions to some of the forms. One issue is to address cases where the names or location of distributees are unknown, or the names of people who should get notice of these proceedings are unknown. The Subcommittee report had been based on input from the Office of the Attorney General, the Offices of the Registers of Wills, members of the Probate/ Fiduciary Subcommittee, and members of the bar, such as Allan Gibber, Esq., who was also a consultant to the Subcommittee. Since the proposed changes were made, Judge Pierson had a number of comments about the Rules, and Master Susan Marzetta, a master in Baltimore City, had a number of other suggestions. These were handed out at today's meeting. Some of the Subcommittee members as well as the consultants were present at the meeting to help address some of the issues that had been raised recently.

Mr. Sykes presented Rules 6-122, Petitions; 6-153, Admission of Copy of Executed Will; 6-202, List of Interested Persons; 6-316, List of Interested Persons; 6-404, Information Report; 6-405, Application to Fix Inheritance Tax on Non-Probate Assets; 6-413, Claim Against Estate - Procedure; 6-415, Petition and

Order for Funeral Expenses; 6-455, Modified Administration; 6-501, Application by Foreign Personal Representative to Set Inheritance Tax; and 10-707 - Inventory and Information Report, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-122 to add the word "substantially" to section (a), to revise and reorganize sections 2. and 3. of the form of petition, to add language to section 4. of the form used by the registers, to delete the notes after and add a cross reference to section 4. of the form used by the registers, and to make stylistic changes, as follows:

Rule 6-122. PETITIONS

(a) Initial Petition

The Initial Petition shall be <u>substantially</u> in the following form:

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO: _____

FOR:

[ ]REGULAR ESTATE [ ]SMALL ESTATE [ ] WILL OF NO ESTATE

PETITION FOR ADMINIS-TRATION Estate value in excess of $30,000. (If spouse is sole heir or legatee, $50,000.) Complete and attach Schedule A.	PETITION FOR ADMINISTRATION Estate value of $30,000 or less. (If spouse is sole heir or legatee, $50,000.) Complete and attach Schedule B.	Complete items 2 and 5 [ ] LIMITED ORDERS Complete item 2 and attach Schedule C

The petition of:

_____ _____
Name Address

_____

_____ _____
Name Address

_____

_____ _____
Name Address

_____

Each of us states:

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

2. The Decedent, _____,
was domiciled in _____,
(County)
State of _____ and died on the

_____ day of _____, _____, at

_____.
(place of death)

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

_____.

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

_____

_____.

5. I am mentally competent.

ALTERNATIVE A

6. (Check the applicable box):

[ ] I have not been convicted of a crime,

[ ] I have not been convicted of a crime other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment,

[ ] I have been convicted of the following crime(s):

_____

_____

_____,

ALTERNATIVE B

6. (Check the applicable box):

[ ] I have not been convicted of a serious crime,

[ ] I have been convicted of the following serious crime(s): (a serious crime includes a misdemeanor involving dishonesty or a felony)

_____

_____

_____,

~~and~~ 7. I am not excluded by other provisions of §5-105 (b) of the Estate and Trusts Article, Annotated Code of Maryland from serving as personal representative.

~~5.~~ 8. I have made a diligent search for the decedent's will and to the best of my knowledge:

[ ] none exists; or

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

_____

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

_____ _____

_____ _____

_____ _____

~~6.~~ 9. Other proceedings, ~~if any~~ known to petitioner, regarding the decedent or the estate are as follows: _____

_____

_____

_____.

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

_____
_____

_____
_____.

~~8.~~ 10. If appointed, I accept the duties of the office of personal representative and consent to personal jurisdiction in any action brought in this State against me as personal representative or arising out of the duties of the office of personal representative.

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

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

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

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

[ ] that only a limited order be issued;

[ ] that the following additional relief be granted: _____

_____

I solemnly affirm under the penalties of perjury that the

contents of the foregoing ~~petition~~ document are true to the best of my knowledge, information, and belief.

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

_____
Facsimile Number

_____
E-mail Address

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO. _____

SCHEDULE - A

Regular Estate

Estimated Value of Estate and Unsecured Debts

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

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

Value of property subject to:

(a) Direct Inheritance Tax of ___% ..... $ _____

(b) Collateral Inheritance Tax of ___% ..... $ _____

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

_____

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

_____ _____

Attorney Petitioner Date

_____ _____

Address Petitioner Date

_____ _____

Petitioner Date

_____ _____

Telephone Number Telephone Number (optional)

_____

Facsimile Number

_____

E-mail Address

.....

(FOR REGISTER'S USE)

Safekeeping Wills _____ Custody Wills _____

Bond Set $ _____ Deputy _____

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO. _____

SCHEDULE - B

Small Estate - Assets and Debts of the Decedent

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

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

_____

_____

_____

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

_____

_____

2. Allowable funeral expenses are $ _____; statutory family allowances are $ _____; and expenses of administration claimed are $ _____.

3. Attached is a List of Interested Persons.

4. After the time for filing claims has expired, subject to the statutory order of priorities, and subject to the resolution of disputed claims by the parties or the court, I shall (1) pay all proper claims~~**~~ made pursuant to Code, Estates and Trusts Article, §8-104 in the order of priority set forth in Code, Estates and Trusts Article, §8-105, expenses, and allowances not previously paid; (2) if necessary, sell property of the estate in order to do so; and (3) distribute the remaining assets of the estate in accordance with the will or, if none, with the intestacy laws of this State.

_____ _____

Date Personal Representative

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

~~**NOTE: Proper claims shall be paid pursuant to the provisions of Code, Estates and Trusts Article, §§8-104 and 8-105.~~

Cross reference: For the jurisdictional amount to qualify for a small estate, which is the fair market value of property less debts of record secured by the property as of the date of death, to the extent that insurance benefits are not payable to the lien holder or secured party for the secured debt, see Code, Estates and Trusts Article, §5-601 (d).

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

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

_____
Facsimile Number

_____
E-mail Address

SCHEDULE - C

Request for Limited Order

[ ] To Locate Assets

[ ] To Locate Will

1. I am entitled to the issuance of a limited order because I am:

[ ] a nominated personal representative or

[ ] a person interested in the proceedings by reason of

_____

_____

_____

_____

_____

2. The reasons(s) a limited order should be granted are:

_____

_____

_____

I solemnly affirm under the penalties of perjury that the contents of the foregoing ~~schedule~~ document are true to the best of my knowledge, information, and belief. I further acknowledge that this order may not be used to transfer assets.

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

_____
Facsimile Number

_____
E-mail Address

(b) Other Petitions

. . .

(c) Limited Order to Locate Assets

. . .

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

> The Subcommittee recommends adding the word "substantially" to the first line of section (a).
>
> At the November 19, 2010 Rules Committee meeting, the issue of the meaning of the term

"serious crime" came up, because the Probate/Fiduciary Subcommittee had suggested changing the form in Rule 6-122 to expressly highlight two important factors affecting someone's entitlement to appointment as a personal representative cited in Code, Estates and Trusts Article, §5-105 (b) – mental competence and not having been convicted of a serious crime. The Committee wrestled with the meaning of the term "serious crime." Rather than include the term in the petition for probate, the Committee suggested that if anyone applying to be a personal representative has been convicted of a crime (other than one not carrying a possible sentence of imprisonment), the petition should list the specific crimes for which he or she was convicted. However, when this issue was discussed again at a recent Subcommittee meeting, one of the members suggested that a better way to address this would be for the person applying to be a personal representative to simply check off on the application form whether he or she has been convicted of a serious crime, and if so, to list which crimes he or she had been convicted of. A definition of what crimes should be listed would be added. These would include misdemeanors involving honesty and felonies, crimes which would impact on someone's ability to serve as a personal representative.

The two differing formats of section 5 of the form of petition are included as alternatives for the Committee to choose from.

The Probate/Fiduciary Subcommittee also recommends deleting the notes that are after section 4. of the form (Schedule B) the registers use and instead adding clarifying language to section 4. and a cross reference after section 4. The Subcommittee's view was that the notes are mainly for the benefit of pro se persons who will likely not understand them, so in place of the notes, simpler language would be added to the form, and a cross reference to the relevant statutes would also be added. The Subcommittee

recommends deleting section 10 from the form. They noted that if any of the information required by paragraphs 2 through 9 has not been furnished, the petitioner cannot be appointed. They also suggested that the language "if any" be replaced by the language "known to petitioner" in section 9, so that a more realistic question is being asked of the petitioner.

A member of the Rules Committee had suggested that the affirmation clauses in the Title 6 and Title 10 Rules should conform to the affirmation clause in Rule 1-304. The Probate/Fiduciary Subcommittee's view is that the most appropriate affirmation clause when the affiant does not have personal knowledge is the one in Rule 6-123. They recommend conforming the clause in Rule 1-304 as well as the clauses in the Titles 6 and 10 Rules to the one in Rule 6-123. However, the General Provisions Subcommittee is not in favor of the change to Rule 1-304, because the word "paper" is used in other Rules and is potentially less inclusive than the word "document." Without the addition of a definition of the word "document," the General Provisions Subcommittee's view is that the word "document" should not be substituted for the word "papers."

If the affiant has personal knowledge, the Subcommittee has proposed another affirmation clause.

The Probate/Fiduciary Subcommittee has suggested that the affirmation clause in Schedule A of the form of petition be deleted, because it is so difficult to affirm under the penalties of perjury the estimated value of the estate and of unsecured debts.

AMEND Rule 6-153 to conform the affirmation clause to other affirmation clauses in Title 6, as follows:

Rule 6-153. ADMISSION OF COPY OF EXECUTED WILL

An interested person, without notice to other interested persons, may file a petition for the admission of a copy of an executed will at any time before administrative or judicial probate if:

(1) the original executed will is alleged to be lost or destroyed;

(2) a duplicate reproduction of the original executed will, evidencing a copy of the original signatures of the decedent and the witnesses, is offered for admission; and

(3) all the heirs at law and all legatees named in the will have executed a consent in the following form:

[CAPTION]

CONSENT TO PROBATE OF COPY OF EXECUTED LAST WILL AND TESTAMENT

The undersigned _____ and _____, being all the heirs at law of the decedent and all the legatees named in the will executed by the decedent on _____, hereby consent to the probate of a copy of that executed will, it having been determined, after an extensive search of the decedent's personal records, that an original of the will cannot be located. By

signing this consent each of the undersigned affirms that it is his or her belief that the will executed by the decedent on _____, is the last valid will executed by the decedent and was not revoked and that the copy of the will, as submitted with the petition for its admission, represents a true and correct copy of the will.

We solemnly affirm under the penalties of perjury that the ~~facts set forth in this consent~~ contents of the foregoing document are true ~~and correct~~ to the best of our knowledge, information, and belief.

Date	Signature	Print Name and Relationship
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____
Attorney

_____
Address

_____

_____
Telephone Number

Rule 6-153 was accompanied by the following Reporter’s note.

See the Reporter’s note to Rule 6-122.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 200 - SMALL ESTATE

AMEND Rule 6-202 to conform the affirmation clause to other affirmation clauses in Title 6, as follows:

Rule 6-202. LIST OF INTERESTED PERSONS

A list of interested persons shall be filed in the following form:

[CAPTION]

LIST OF INTERESTED PERSONS

Name (and age if under 18 years)	Last Known Address including Zip code	Specify: Heir/Legatee/Personal Representative	Relationship to Decedent

I solemnly affirm under the penalties of perjury that the contents of the foregoing ~~list of interested persons~~ document are

true to the best of my knowledge, information, and belief.

_____
Petitioner/Personal Representative

_____
Attorney

_____
Address

_____

_____
Telephone Number

Instructions:

1. Interested persons include decedent's heirs (surviving spouse, children, and other persons who would inherit if there were no will) and, if decedent died with a will, the personal representative named in the will and all legatees (persons who inherit under the will). All heirs must be listed even if decedent dies with a will.

2. This list must be filed (a) within 20 days after appointment of a personal representative under administrative probate or (b) at the time of filing a Petition for Judicial Probate or a Petition for Administration of a Small Estate.

Cross reference: Code, Estates and Trusts Article, §§5-403 (a), 5-607, and 7-104.

Rule 6-202 was accompanied by the following Reporter’s note.

See the Reporter’s note to Rule 6-122.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 300 - OPENING ESTATES

AMEND Rule 6-316 to conform the affirmation clause to other affirmation clauses in Title 6, as follows:

Rule 6-316. LIST OF INTERESTED PERSONS

A list of interested persons shall be filed in the following form:

[CAPTION]

LIST OF INTERESTED PERSONS

Name (and age if under 18 years)	Last Known Address including Zip Code	Specify: Heir/Legatee/ Personal Representative	Relationship to Decedent
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

I solemnly affirm under the penalties of perjury that the contents of the foregoing ~~list of interested persons~~ document are

true to the best of my knowledge, information, and belief.

_____
Petitioner/Personal Representative

_____
Attorney

_____
Address

_____

_____
Telephone Number

Instructions:

1. Interested persons include decedent's heirs (surviving spouse, children, and other persons who would inherit if there were no will) and, if decedent dies with a will, the personal representative named in the will and all legatees (persons who inherit under the will). All heirs must be listed even if decedent died with a will.

2. This list must be filed (a) within 20 days after appointment of a personal representative under administrative probate or (b) at the time of filing a Petition for Judicial Probate or a Petition for Administration of a Small Estate.

Cross reference: Code, Estates and Trusts Article, §§5-403 (a), 5-607, and 7-104.

Rule 6-316 was accompanied by the following Reporter’s note.

See the Reporter’s note to Rule 6-122.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-404 to conform the affirmation clause to the other affirmation clauses in Title 6, as follows:

Rule 6-404. INFORMATION REPORT

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

[CAPTION]

Date of Death _____

[ ] With [ ] Without Will

INFORMATION REPORT

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

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

Name, Address, and Relationship of Joint Owner	Nature of Property	Total Value of Property

_____ _____ _____

_____ _____ _____

_____ _____ _____

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

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

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

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

[ ] No [ ] Yes If yes, give the following information

as to each transfer.

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

3. Except for interests passing to a person exempted by Code, Tax General Article, §7-203, at the time of death did the decedent have (a) any interest less than absolute in real or personal property over which the decedent retained dominion while alive, including a P.O.D. account, (b) any interest in any annuity or other public or private employee pension or benefit plan, (c) any interest in real or personal property for life or for a term of years, or (d) any other interest in real or personal property less than absolute, in trust or otherwise?

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

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

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

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

Date: _____ _____

_____
Personal Representative(s)

_____
Attorney

_____
Address

_____

_____
Telephone Number

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

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

See the Reporter's note to Rule 6-122.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-405 to conform the affirmation clause to other affirmation clauses in Title 6, as follows:

Rule 6-405. APPLICATION TO FIX INHERITANCE TAX ON NON-PROBATE ASSETS

An application to fix inheritance taxes on non-probate assets shall be filed with the register within 90 days after decedent's death, together with any required appraisal in conformity with Rule 6-403. The application shall be in the following form:

BEFORE THE REGISTER OF WILLS FOR _____,

MARYLAND

In the matter of: File No.

_____, Deceased

APPLICATION TO FIX INHERITANCE TAX
ON NON-PROBATE ASSETS

The applicant represents that:

1. The decedent, a resident of _____,
(county)

died on _____, _____.
(month) (day) (year)

2. The non-probate property subject to the inheritance tax in

which the decedent and the recipient had interests, the nature of each interest (such as joint tenant, life tenant, remainderman of life estate, trustee, beneficiary, transferee), and the market value of the property at the date of death are:

PROPERTY	NATURE OF INTERESTS	DATE AND TYPE OF INSTRUMENT	MARKET VALUE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. The name and address of the recipient of the property and the relationship to the decedent are: _____ _____.

4. Any liens, encumbrances, or expenses payable from the above property and their amounts are:

_____ $_____

_____ $_____

_____ $_____

5. Attached is a statement of the basis for valuation or, if required by law, an appraisal.

6. All other information necessary to fix inheritance tax is as follows: [ ] tax is payable from residuary estate pursuant to decedent's will; [ ] OTHER (describe): _____ _____

_____

_____

The applicant requests the Register of Wills to fix the amount of inheritance tax due.

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

Date: _____ _____
Applicant

_____
Attorney

_____
Address

_____

_____
Telephone Number

(FOR APPLICANT'S USE - OPTIONAL)

Value of property as above ..... $_____

Less: Liens, encumbrances, and expenses as above .. $_____

Amount taxable ..... $_____

Direct Inheritance Tax due at ____% $_____

Collateral Inheritance Tax due at ____% $_____

Total tax due ..... $_____

Cross reference: Code, Tax-General Article, §§7-208 and 7-225 and Code, Estates and Trusts Article, §7-202.

Rule 6-405 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 6-122.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-413 to conform the affirmation clause to other affirmation clauses in Title 6, as follows:

Rule 6-413. CLAIM AGAINST ESTATE - PROCEDURE

(a) Presentation of Claim

A claimant may make a claim against the estate, within the time allowed for presenting claims, (1) by serving it on the personal representative, (2) by filing it with the register and serving a copy on the personal representative, or (3) by filing suit. If the claim is filed prior to the appointment of the personal representative, the claimant may file the claim with the register in the county in which the decedent was domiciled or in any county in which the decedent resided on the date of the decedent's death or in which real property or a leasehold interest in real property of the decedent is located.

(b) Content of Claim

A claim against the decedent's estate

shall indicate (1) the basis of the claim, (2) the name and address of the claimant, (3) the amount claimed, (4) if the claim is not yet due, the date when it will become due, (5) if the claim is contingent, the nature of the contingency, and (6) if the claim is secured, a description of the security. Unless the claim is made by filing suit, it shall be verified.

(c) Form of Claim

A claim against a decedent's estate may be filed or made substantially in the following form:

In the Estate of: Estate No. _____

_____ Date _____

CLAIM AGAINST DECEDENT'S ESTATE

The claimant certifies that there is due and owing by the decedent in accordance with the attached statement of account or other basis for the claim the sum of $_____.

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

_____ _____

Name of Claimant

Signature of claimant or person authorized to make verifications on behalf of claimant

_____ _____

Name and Title of Person Signing Claim

Address

_____

_____
Telephone Number

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____(month), _____(year), I [ ] delivered or [ ] mailed, first class, postage prepaid, a copy of the foregoing Claim to the personal representative, _____

_____.
(name and address)

_____
Signature of Claimant

Instructions:

1. This form may be filed with the Register of Wills upon payment of the filing fee provided by law. A copy must also be sent to the personal representative by the claimant.

2. If a claim is not yet due, indicate the date when it will become due. If a claim is contingent, indicate the nature of the contingency. If a claim is secured, describe the security.

(d) Disallowance of Claim or Petition for Determination of Validity

. . .

(e) Form of Disallowance of Claim

. . .

(f) Claimant's Petition

. . .

(g) Hearing

. . .

(h) Notice to Register of Suit

. . .

Rule 6-413 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 6-122.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-415 to conform the affirmation clause to other affirmation clauses in Title 6, as follows:

Rule 6-415. PETITION AND ORDER FOR FUNERAL EXPENSES

When a petition for funeral expenses is required by law, it shall be filed in the following form:

[CAPTION]

PETITION AND ORDER FOR FUNERAL EXPENSES

I hereby request allowance of funeral expenses and I state that:

(1) The expenses are as follows (or as set forth in the attached statement or invoice): _____

_____.

(2) The estate is (solvent) (insolvent).

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

Date: _____ _____

_____
Personal Representative(s)

_____
Attorney

_____
Address

_____

_____
Telephone Number

Certificate of Service

I hereby certify that on this ___ day of _____, _____, I
(month) (year)
delivered or mailed, postage prepaid, a copy of the foregoing Petition to the following persons: _____

_____.
(name and address)

_____
Signature

ORDER

Upon a finding that $_____ is a reasonable amount for funeral expenses, according to the condition and circumstances of the decedent, it is this _____ day of _____, _____,
(month) (year)

ORDERED, by the Orphans' Court for _____ County, that this sum is allowed.

_____

_____

_____
JUDGES

Cross reference: Code, Estates and Trusts Article, §§7-401 (i) and 8-106. For limitations on the amount of allowable funeral expenses, see Code, Estates and Trusts Article, §8-106 (b).

Rule 6-415 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 6-122.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-455 to conform the affirmation clauses to other affirmation clauses in Title 6, as follows:

Rule 6-455. MODIFIED ADMINISTRATION

(a) Generally

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

(b) Form of Election

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

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

ESTATE OF _____Estate No. _____

ELECTION OF PERSONAL REPRESENTATIVE FOR

MODIFIED ADMINISTRATION

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

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

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

(c) [ ] Each of the residuary legatees named in the will or [ ] each of the heirs of the intestate decedent is either:

[ ] The decedent's personal representative or [ ] an individual or an entity exempt from inheritance tax in the decedent's estate under §7-203 (b), (e), and (f) of the Tax -

General Article.

(d) Each trustee of every trust that is a residuary legatee is one or more of the following: the decedent's [ ] personal representative, [ ] surviving spouse, [ ] child.

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

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

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

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

Description	Estimated Value
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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

4. I acknowledge the requirement under Modified Administration to make full distribution within 12 months after the date of

appointment.

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

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

_____ _____
Attorney Personal Representative

_____ _____
Address Personal Representative

_____
Address

_____
Telephone

(c) Consent

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

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

ESTATE OF _____ Estate No. _____

CONSENT TO ELECTION FOR MODIFIED ADMINISTRATION

I am a [ ] residuary legatee, who is the decedent's personal representative or an individual or an entity exempt from

inheritance tax under §7-203 (b), (e), and (f) of Code, Tax General Article, [ ] an heir of the decedent who died intestate, and I am the decedent's personal representative or an individual or an entity exempt from inheritance tax under §7-203 (b), (e), and (f), [ ] or a trustee of a trust that is a residuary legatee who is the decedent's personal representative, surviving spouse, or child.

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

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

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

4. If Modified Administration is revoked, the estate will proceed under Administrative Probate and the personal representative shall file a formal Inventory and Account, as required, until the estate is closed.

5. Unless I waive notice of the verified Final Report Under

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

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

_____	_____
Signature of Residuary Legatee or Heir	State Relationship to Decedent
_____	
Type or Print Name	
_____	_____
Signature of Residuary Legatee or Heir	State Relationship to Decedent
_____	
Type or Print Name	
_____	_____
Signature of Trustee	Signature of Trustee
_____	_____
Type or Print Name	Type or Print Name

(d) Final Report

(1) Filing

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

(2) Copies to Interested Persons

Unless an interested person waives notice of the verified final report under modified administration, the personal

representative shall serve a copy of the final report on each interested person.

(3) Contents

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

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

ESTATE OF _____ Estate No._____

Date of Death _____ Date of Appointment of Personal Representative _____

FINAL REPORT UNDER MODIFIED ADMINISTRATION

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

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

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

2. Attached are the following Schedules and supporting attachments:

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

Total Schedule B: Payments and Disbursements .... $(_____)

Total Schedule C: Distribution of Net Reportable Property ..... $ _____

3. I acknowledge that:

(a) Final distributions shall be made within 12 months after

the date of my appointment as personal representative.

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

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

_____ _____
Attorney Signature Personal Representative Date

_____ _____
Address Personal Representative Date

_____ _____
Address Personal Representative Date

_____
Telephone

CERTIFICATE OF SERVICE OF

FINAL REPORT UNDER MODIFIED ADMINISTRATION

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

to the following persons:

Names	Addresses
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
Attorney	Personal Representative
_____	_____
Address	Personal Representative
_____	
City, State, Zip Code	
_____	
Telephone Number	

_____

FOR REGISTER OF WILLS USE

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

Distribution subject to collateral _____ Tax thereon _____
tax at _____ %

Distribution subject to direct tax _____ Tax thereon _____
at _____ %

Distribution subject to direct tax _____ Tax thereon _____

Exempt distributions to _____ _____
(Identity of the recipient)

Exempt distributions to _____ _____
(Identity of the recipient)

Exempt distributions to _____ _____
(Identity of the recipient)

Total Inheritance Tax due _____

Total Inheritance Tax paid _____

Gross estate _____ Probate Fee & Costs Collected _____

FINAL REPORT UNDER MODIFIED ADMINISTRATION

SUPPORTING SCHEDULE A

REPORTABLE PROPERTY

ESTATE OF _____ Estate No. _____

Item No.	Description	Basis of Valuation	Value

TOTAL REPORTABLE PROPERTY OF THE DECEDENT $ _____

(Carry forward to Schedule C)

INSTRUCTIONS

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

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

its use value.

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

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

ATTACH ADDITIONAL SCHEDULES AS NEEDED

FINAL REPORT UNDER MODIFIED ADMINISTRATION

SUPPORTING SCHEDULE B

Payments and Disbursements

ESTATE OF _____ Estate No. _____

Item No.	Description	Amount Paid

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

INSTRUCTIONS

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

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

ATTACH ADDITIONAL SCHEDULES AS NEEDED

FINAL REPORT UNDER MODIFIED ADMINISTRATION

SUPPORTING SCHEDULE C

Distributions of Net Reportable Property

1. SUMMARY OF REPORTABLE PROPERTY

Total from Schedule A ..... _____

Total from Schedule B ..... _____

Total Net Reportable Property ..... _____

(Schedule A minus Schedule B)

2. SPECIFIC BEQUESTS (If Applicable)

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

3. DISTRIBUTION OF BALANCE OF ESTATE

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

Total Reportable Distributions $ _____

Inheritance Tax $ _____

ATTACH ADDITIONAL SCHEDULES AS NEEDED

(4) Inventory and Account

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

(e) Revocation

. . .

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

See the Reporter's note to Rule 6-122.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 500 - MISCELLANEOUS PROVISIONS

AMEND Rule 6-501 to conform the affirmation clause to the other affirmation clauses in Title 6, as follows:

Rule 6-501. APPLICATION BY FOREIGN PERSONAL REPRESENTATIVE TO SET INHERITANCE TAX

(a) Form of Application

An application by a foreign personal representative to set inheritance tax shall be filed with the register for the county where the largest part in value of the decedent's Maryland property is located according to the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

In the Estate of: File No. _____

_____

APPLICATION BY FOREIGN PERSONAL REPRESENTATIVE TO SET INHERITANCE TAX

The Application of

_____, _____
Name Address

_____
_____, _____
Name Address

_____

Each of us states:

1. I am the qualified foreign personal representative of the Estate of _____
(name of decedent)
who died domiciled in _____ on
(state or country)
_____ (with) (without) a will.
(date)

2. Real and leasehold property owned by the decedent in Maryland and the market value at the decedent's date of death are:

_____ $_____

_____ $_____

_____ $_____

3. Tangible personal property in Maryland owned by the decedent and taxable in Maryland and the market value at the decedent's date of death are:

_____ $_____

_____ $_____

_____ $_____

4. Any liens, encumbrances, and expenses payable out of

Maryland property and their amounts are:

_____ $_____

_____ $_____

_____ $_____

5. Attached are:

(a) copy of appointment and will, if any, authenticated under Title 28, U.S.C.A. §1738;

(b) appointment of Maryland resident agent;

(c) list of recipients of Maryland property, their interests in the property, and their relationship to the decedent;

(d) notice to creditors of appointment with respect to the decedent's real or leasehold property in Maryland; and

(e) appraisal or other basis for valuation of real or leasehold property, or of tangible personal property that is taxable in Maryland. (For real and leasehold property give a description sufficient to identify the property and the title reference by liber and folio.)

I request the Register of Wills to set the amount of inheritance tax due.

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

Date: _____ _____

Applicant

_____
Applicant

_____
Attorney

_____
Address

_____

_____
Telephone Number

(FOR APPLICANT'S USE - OPTIONAL)

Value of Property as above .....$_____

Less: Liens, encumbrances and
expenses as above .....$_____

Amount Taxable .....$_____

Direct Inheritance Tax due at ____% .....$_____

Collateral Inheritance Tax due at ____% .....$_____

Total Tax due .....$_____

(b) Form of Notice of Appointment of Foreign Personal Representative

. . .

(c) Publication – Certification

. . .

Rule 6-501 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 6-122.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 700 - FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS OF THE PROPERTY

AMEND Rule 10-707 to modify the verification clause in the form, as follows:

Rule 10-707. INVENTORY AND INFORMATION REPORT

(a) Duty to File

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

Part I.

[CAPTION]

INVENTORY

The FIDUCIARY ESTATE now consists of the following assets:

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

market value)

A. REAL ESTATE

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

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

B. CASH AND CASH EQUIVALENTS

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

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

C. PERSONAL PROPERTY

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

	ESTIMATED FAIR MARKET VALUE
_____	$ _____

_____ $ _____

_____ $ _____

TOTAL $ _____

D. STOCKS

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

PRESENT FAIR MARKET VALUE

_____ $ _____

_____ _____

_____ _____

TOTAL $ _____

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

PRESENT FAIR MARKET VALUE

_____ $ _____

_____ _____

_____ _____

TOTAL $ _____

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

ESTIMATED FAIR MARKET VALUE

_____ $ _____

_____ $ _____

_____ $ _____

TOTAL $ _____

Part II.

INFORMATION REPORT

(1) Are there any assets in which the minor or disabled person holds a present interest of any kind together with another person in any real or personal property, including accounts in a credit union, bank, or other financial institution?

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

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

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

[ ] No [ ] Yes

If yes, give the following information as to each such interest:

Description of Interest and Amount or Value	Date and Type of Instrument Establishing Interest
_____	_____
_____	_____
_____	_____

VERIFICATION:

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

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

_____

Name of Fiduciary's Attorney

_____

Address

_____
Telephone Number

(b) Examination Not Required

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

(c) Notice

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

Source: This Rule is derived as follows:
Section (a) is in part derived from former Rule V74 b 1 and 2 and is in part new.
Section (b) is derived from former Rule V74 b 3.
Section (c) is new.

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

See the Reporter's note to Rule 6-122.

Mr. Sykes commented that the Reporter's note to Rule 6-122 indicated that the word "substantially" was added to section (a). The question is whether the Rule should provide what must be stated exactly in the petition form. Should the Rule permit any variation at all from the essential requirements of the form? The Subcommittee felt that circumstances differ, and it is difficult to envision all of the circumstances. The word "substantially" should be used, and it is also the language of

many of the other forms in the Rules. This allows a certain leeway. This is a question for the Committee to decide.

The Vice Chair pointed out that the addition of the word "substantially" conforms to the language of Code, Estates and Trusts Article, §5-206, Form of Petition. The language of the statute is: "In a proceeding for administrative or judicial probate the petition for probate shall be in substantially the following form...". Nothing new is being added to the Rule; it is tracking the statute. The addition of the word "substantially" is more accurate. The Chair recollected drafting the probate forms the first time. If it is mandated that the form has to be in the exact form in which it is presented, and then if something totally insignificant is missing or some punctuation is incorrect, it is grounds for a denial. This is why in almost all of the forms, the word "substantially" is included, so that no injustice results from a minor error.

The Chair remarked that he had another question that had been discussed by the full Committee at least once. It involved Alternatives A and B of section 6. of the form in Rule 6-122. There is a case that addresses the issue of the meaning of the term "serious crime." It is *LaGrange v. Hinton*, 91 Md. App. 294 (1992). The statute, Code, Estates and Trusts Article, §5-105 (b), provides that a person is not eligible to be a personal representative if the person has been convicted of a "serious crime." The statute does not define what a "serious crime" is.

In the case, the meaning of the term was discussed. It had been pointed out that the word "serious" was added by the legislature in response to the Governor's Commission to Review and Revise the Testamentary Law of Maryland (the Henderson Commission). Previously, the language of the statute had been "infamous crime." An old Court of Appeals case, *Garitee v. Bond*, 102 Md. 379 (1905) had discussed this.

The Chair said that the Court of Special Appeals inferred that when the legislature changed the wording of the statute, the term meant something more than just an infamous crime, and they looked at other statutes relating to the term "serious crime," one of which is in the Public Defender Law, Code, Criminal Procedure Article, §§16-101 - 16-403. This in effect defines the term as any crime where the potential sentence is confinement of more than 90 days. The U.S. Supreme Court decision, *Codispoti v. Pennsylvania*, 418 U.S. 506 (1974), in addressing the right to a jury trial, defined the term "serious crime" as any crime with a potential sentence of six months or more. Maryland has taken both definitions. At least one case is on point.

The Chair commented that it may well be that if the statutory term "serious crime" is retained, because this is the language of the statute, it should be defined. Mr. Sykes noted that the case could be cross-referenced. The Chair responded that mostly lay people will be filling out the forms, and the case would not be that meaningful. One suggestion would be to

take what the Court of Special Appeals had cobbled together and provide in the form that a "serious crime" is a crime carrying a possible sentence of imprisonment for six months or more. Everyone would know what it is. The bills that are currently pending in response to *DeWolfe v. Richmond* both have a provision pertaining to charging by citation rather than by arrest. With many exceptions, the current proposal is to require the police to charge by citation if the crime does not carry a sentence of 90 days or more. If this passes, it would be important to consider how it would affect the Rules. If, subject to the many exceptions, it is not permissible to arrest for a crime, then it cannot be a "serious crime."

The Chair said that the form in Rule 6-122 can state that a serious crime is one that has a potential sentence of six months or more, and the Court of Appeals can decide if this is appropriate. If this is the way that the form reads, it will provide a uniform standard. The registers would have a list of these crimes. This is one way to handle it, rather than refer to violations of vehicle or traffic law. If this is how the Rule reads, the boxes to check off in the Rule will not be necessary.

Mr. Sykes remarked that it is not clear whether the Court of Appeals is going to adopt the definition of the Court of Special Appeals. The Chair agreed, noting the problem that if the statute, which has the language "serious crime" is not tracked, it is being defined anyway by the language next to the boxes.

It conceivably would include state statutes that do not carry a sentence of imprisonment. Mr. Sykes noted that a sentence of imprisonment is not defined as to length. Using the Court of Special Appeals definition would provide some judicial backing. The Chair commented that the Court of Special Appeals did not define the term. In *LaGrange*, the crime was perverted practices, which was Code, Article 27, §554 (now Code, Criminal Law Article, §3-322), and the Court held that this was a serious crime.

Mr. Gibber said that the issue is one of practice. If someone is convicted of a vehicular crime, is this a reason not to allow him or her to serve as a personal representative? The person may be the decedent's only relative. An exception has been created, and someone else would have to be brought in to be the personal representative. At the Orphans' Court level, the courts have typically found that the crime has to be something that pertains to dishonesty or is a felony. An Orphans' Court case in Maryland (*In re Estate of Chapman*, Docket 37, folio 147, issued March 9, 1984) held that although not a felony, pick-pocketing should be recognized as a crime that would bar someone from serving as a personal representative. This is why Alternative B was included, because it stays with the general definition of a "serious crime." He reiterated that anyone convicted of a crime of dishonesty or of a felony ought to be precluded from serving as a personal representative of an estate.

The Chair pointed out that the language of Alternative B is:

“a serious crime includes....”; it does not state: “a serious crime means...”. Mr. Gibber responded that some redrafting may be necessary. The genesis for any change here originated from the registers of wills, who said that people applying to be a personal representative often state that they have not been convicted of a serious crime. The applicant may have just gotten out of prison after serving three years but did not consider that to be serious and did not report it to the register. After the Subcommittee looked into this, another balance was discussed. This was to what extent do the registers have the ability to decide that a crime is not serious as it relates to an estate. If a potential personal representative was convicted of a crime 30 years ago and is the only relative of the decedent, is that an absolute bar, or should someone have the right to make the determination of whether it is serious now as it relates to this estate? If the language in the Rule is “I have not been convicted of a serious crime,” then this person would not be able to qualify to serve as a personal representative.

Mr. Gibber pointed out that there is a form that asks what the person did. The person can answer that he or she had been convicted but can give the facts about the conviction. This at least allows the person to go to the next step and tell the register that he or she ought to be allowed to serve. The person may recognize that the statute provides an absolute bar, but the way that the courts and registers have looked at this is that although they have the facts about the conviction, given the

nature of all of the facts, in this particular case, the crime is not serious enough to affect the right to serve as the personal representative.

The Chair commented that the statute provides that letters of administration may not be granted to a person, who at the time that the determination of priority is made, has been convicted of a serious crime. Mr. Gibber responded that the discretion is in the definition of the word “serious.” The Chair asked if one register can define this one way, and another define it a different way. Mr. Gibber replied that this is what is currently happening. He reiterated the scenario of the person convicted 30 years ago. The Chair inquired whether this is a battle that needs to be taken to the register. Mr. Gibber answered affirmatively, but he asked how it is being addressed now with the discretion to decide what is “serious.”

The Chair questioned whether it should be emblazoned in a rule of the Court of Appeals that the register has this discretion when the statute prohibits it. Mr. Gibber replied that the argument could be made that someone who is convicted of a crime that carries with it 6 months in prison or 90 days in prison should not necessarily be precluded from being a personal representative. The Chair remarked that one might have the view that someone should not be disqualified for being convicted of the crime of possession of marijuana which is a misdemeanor with a possible sentence of one year in prison. However, what if the person has 22 convictions for this crime?

Ms. Cathell, the Register of Wills in Worcester County, told the Committee that her county had never experienced the problems discussed today. This is another case where many laws had been enacted to address one problem. It puts the registers in an awkward position. She would not like for her staff to have to decide what a "serious crime" is and whether a person should serve as a personal representative. The Subcommittee had discussed this issue thoroughly, and they came up with Alternative B. The Registers were uneasy about Alternative A. It is possible to draft a combination of the two. She said that she liked the language pertaining to a sentence of six months or more, which is based on *Codispoti*. The problem is that this was stated by the U.S. Supreme Court. The Chair clarified that this was for purposes of a jury trial. Ms. Cathell commented that using the standard of a conviction involving dishonesty may not work, because no one will admit to being dishonest.

The Chair commented that one of the problems was that there were at least three contexts for this situation. One is to have the right to a jury trial; one is the right to Public Defender representation; and one is the older context of when someone can be impeached for a prior conviction, which is essentially if it is a felony or if the conviction affects the defendant's credibility (dishonesty). The Court of Appeals has not been consistent in deciding these cases. They have held that mere possession of a controlled dangerous substance does not

necessarily affect credibility, because it does not mean that the defendant was dishonest. However, if the defendant possessed enough of the controlled dangerous substance with the intent to distribute, it does affect credibility. The Court has drawn fine lines in making these decisions. Would the Court be willing to hold what a "serious crime" means in the context of applying to be a personal representative?

Ms. Cathell noted that probably 90% of the time, there is an administrative appointment of the personal representative by the register as opposed to a judicial appointment by the Orphans' Court. She and Ms. Phipps preferred the definition using the six-months standard, because so many lay people who come into their office may or may not understand what they are asked, but even if they do, they may not be honest about answering. The Chair responded that one solution could be that if the court were willing for the Rule to provide that "serious crime" means _____, then the legislature could be asked to see if they would be willing to remove the absolute bar and permit some discretion to find that whatever the crime was is not a reason to prohibit someone from serving as a personal representative.

Judge Weatherly remarked that this subject addresses forms, something she sees frequently in family law cases. The goal for the form being discussed is for an unrepresented person to be able to read the form and know what question is being asked. Whether or not the person answers truthfully is another issue. The question should be easily understood by a person who is not

an attorney, not a judge, and not represented by an attorney. The person should be able to read the question and know how to answer without making any major decisions as to what constitutes a "serious crime." Many people are not even sure if they have been convicted of a felony. On voir dire, often people answer incorrectly.

Mr. Sykes commented that if the criterion for a "serious crime" is the length of time of a possible sentence, an unrepresented layman would not know if a crime carries a sentence of six months, etc. The Chair acknowledged this, but he added that the registers of wills would know this information, because they have a list of these crimes. The person can be asked if he or she has been convicted of any crime and to list what the crimes are. The register would know which crimes are relevant. Mr. Gibber inquired if all of the crimes should be listed on the public record. The person may have to list serious crimes, none of which are pertinent to the case. This is why Alternative B was suggested to give some guidelines and carve out those crimes that are not relevant.

The Chair said that one alternative is to leave it ambiguous. Whether the person has been convicted of the "following serious crimes," and a "serious crime" includes a misdemeanor that involves dishonesty may not be meaningful. Mr. Zarbin agreed with the Chair that this has to be addressed by the legislature. It cannot be fixed in the form. If someone were to acknowledge that he or she has been convicted of a crime,

the statute could direct that the person would have to consult an attorney. If the family member had been convicted 30 years ago of some indiscretion committed during the person's youth, and if an attorney is with the person when the estate is opened, it would guarantee that the answers would be made in an honest, truthful manner. He could imagine many situations where 30 years ago, someone had been convicted of a youthful indiscretion, and the person does not want the other family members to know about it. Ms. Cathell pointed out that some estates have a value of $10, and it would not be fair to require the person to hire an attorney. Mr. Zarbin responded that the alternative would be that the person could not open the estate.

Ms. Cathell referred to number 5. on the form, which reads "I am mentally competent," and she remarked that it would be hard to imagine someone stating that he or she was not mentally competent. Mr. Zarbin suggested that the wording could be "I have never been found to be mentally incompetent." Mr. Johnson said that he assumed someone could have a judgment of being competent, if the person was excused from a mental health facility, but Mr. Johnson could not figure out how someone could state that he or she is incompetent. The Chair noted that the registers and the public need some guidance. Language could be added to Rule 6-122 trying to define what is and what is not allowable, which is essentially defining the term "serious," and if so, what definition to use. The point Mr. Gibber had made was that even if a crime were to fall within the prohibition, it may

be that there should be some ability to excuse this, but it needs to be statutory. Mr. Michael pointed out that the language of the statute is: “Letters may not be granted to a person...”. The word “may” is used. The Chair explained that in legislative language, “may not” means “shall not.”

Mr. Carbine asked whether someone is automatically disqualified if the person checks off the box indicating that he or she has been convicted of a crime, or if the answer triggers a hearing in the Orphans’ Court. The Chair replied that section (b) of Code, Estates and Trusts Article, §5-105 reads as follows: “Letters may not be granted to a person who....is convicted of a serious crime...”. Mr. Carbine noted that the statute does not state what a “serious crime” is. It is clear that someone cannot be the personal representative if the person has committed a serious crime. Is there some procedure that can be built in so that if the person checks the box affirmatively, instead of not qualifying, he or she can go before a judge who decides whether the crime could affect the person’s ability to serve?

The Chair pointed out that this is what the registers are doing. The decision could be left up to the registers or to a court. Would it be the Orphans’ Court, which is often made up of people who are not attorneys? Should this go to a circuit court judge? Whatever the procedure, one judge will decide that the crime at issue is serious, and another judge is going to decide that it is not. Mr. Carbine remarked that this may not be so bad. If some flexibility could be built in, it could solve Mr.

Gibber's problem by having someone independently judge the situation, so there is no trial by form. Someone can apply discretion and judgment to a particular situation.

The Chair responded that he had no problem with discretion and judgment. The question is if it can be done when the statute does not allow letters of administration to be granted to someone convicted of a serious crime. Mr. Carbine inquired whose job it is to decide what a "serious crime" is. The Chair answered that if this is intended to be uniform throughout the State, it is not advisable for one judge or one county to allow the appointment and another judge or county not allow it for the same crime.

Judge Weatherly pointed out that what is being done today is to modify the form, not make a decision as to the meaning of the term "serious crime." The hope is to define the term here, so that it resolves administrative people's decisions. Unrepresented, non-legally trained people should not be required to be the final person who determines whether he or she has been convicted of a serious crime. The information should be elicited, and then somebody in the register of wills' office should determine whether the crime precludes the person from acting as a personal representative in the case.

The Chair asked whether this would mean that the person filling out the form would have to list every crime that he or she has been convicted of. This would be a matter of public record. Judge Pierson observed that Alternative A would require this. Mr. Sykes suggested that a statement be added to the form

that would read: “I have not been convicted of a serious crime.” It would be in the Rule until the legislature is made aware of the problem and defines what a serious crime is. This should not be done by rule, and it is not a good idea for someone to list on the form all of the crimes the person has ever been convicted of. The Chair said that this would be consistent with the statute. Mr. Sykes said that the Committee cannot be faulted for tracking the statutory language. It would be a temporary measure, and it would be the least negative of all of the alternatives. The Chair inquired if this would become the Subcommittee recommendation, and Mr. Sykes answered affirmatively.

The Vice Chair inquired if Rule 6-122 should have a Committee note referring to *LaGrange*, which defines the term “serious crime.” The Chair responded that the case does not really define the term, but it addresses the issue. Nothing else is on point. Mr. Sykes agreed with the idea of cross-referencing the case. He expressed the opinion that this issue should be taken up with the legislators who are on the Committee. The Chair commented that this is an issue that the registers or the estates and trusts bar should take the lead on. It is really not a Rules Committee issue. Mr. Sykes remarked that the registers tried to address the problem in Alternatives A and B.

Mr. Karceski noted that if the question, “Have you been convicted of a serious crime?” is included on the form, some people will answer negatively regardless of what the crimes have

been that he or she has been convicted of. The problem develops when someone asks what a serious crime is, because the person may not want to divulge the crimes he or she has been convicted of. Does the person not have the right to have an explanation of what constitutes a serious crime? Mr. Sykes responded that the hope is that the legislature will address this, but in the meantime, the Rule has to conform with the statute.

Mr. Karceski inquired if it would be better to at least try to include some definition as Alternative B provides. That language could be changed to provide that the misdemeanor referred to has a certain time period for its minimum sentence, and that crimes involving dishonesty, or a felony are included in the scope of what a serious crime is. This provides some idea of what a serious crime is. If everyone at the meeting was asked to define the term "serious crime," all of the definitions would probably differ.

The Chair commented that, as a fallback, if Mr. Sykes' suggested language, which was: "I have not been convicted of a serious crime" was added to the form, it has to go to the Court of Appeals for their approval. The problem can be pointed out in the report to the Court with an explanation that the proposed language tracks the statute, and the Court will indicate if they prefer to handle this some other way. Mr. Sykes said that the cross reference to *LaGrange* can be added with a quote from the case in the cross reference. The Chair reiterated that the case

does not define the term “serious crime.” The Court of Special Appeals addressed the issue and tried to figure it out in the context of the crime before them, which was unnatural or perverted sexual practices. They looked at other places where the term “serious crime” is used and what it meant in those contexts.

Mr. Sykes remarked that what it means in the context of applying to be a personal representative is an act that is dishonest. If someone has been convicted of possession of marijuana but has a spotless record of being honest as the treasurer of a non-profit organization, he or she should be able to serve as a personal representative. The Chair pointed out that this would be creating a definition. The Court of Appeals can define this any way it chooses.

Mr. Leahy expressed the view that *LaGrange* should not be cross referenced. A conviction for driving while impaired by alcohol (DWI) would be for six or 12 months. If someone were convicted of this 20 years ago, would this prevent the person from being a personal representative now? Mr. Karceski expressed the opinion that it would not make a difference if the person were convicted of that crime last week nor would a conviction for an assault be a disqualifier. A list of disqualifying crimes is necessary. He reiterated that someone who has been convicted of possession of marijuana many times may not be able to be appointed. The Chair added that multiple violations for DWI may

disqualify someone.

Mr. Gibber pointed out that Rule 6-122 currently provides that a person is "not excluded by §5-105 (b) of the Estates and Trusts Article...". The starting point is what this means. For the lay person who looks at the petition and has no idea what §5-105 (b) provides, what is in Alternative B is more informative. The purpose of giving the Rule some definition is for the person who has been convicted of a serious crime and does not want his or her criminal history listed, so that the person can choose not to serve. In Mr. Gibber's experience, it had been the register of wills who looked at the application form and determined whether the crime was serious or not. In this situation, how far is it necessary to go? Is it possession of marijuana, is it DWI? What should be required for the person to list so that the register can decide that it is not serious?

The Chair said that this is the problem, and since the disqualification is a legislative one, the legislature may need to look at this. However, there is also the problem of some drug offenses, which may not be serious, but there are recidivism provisions in the law. If someone has committed the crime a certain amount of times, he or she may serve some time in prison. Does the crime become serious the third time that the person has been convicted, because he or she was sentenced to 20 years in prison when the first time the punishment was only six months? Mr. Gibber said that his point was that Mr. Sykes' suggestion to add the language, "I have not been convicted of a serious crime"

is not even a change to the current Rule. It fleshes out what the current Rule already provides. Mr. Sykes' suggested language is the same as stating that someone has not been excluded under the provisions of the statute.

Mr. Karceski inquired if it would be appropriate to require a record check, which can be done very quickly. He asked Mr. Patterson how long it takes to get someone's records through the Criminal Justice Information System (CJIS). Mr. Patterson replied that it takes about three minutes, but that is because he has three staff members who do the record checks. Someone outside of his agency cannot do a record check, unless the court, or other authorized entities order it. If the record check is ordered through the State Police, it takes a long time. The Chair observed that a register of wills does not have access to CJIS. Mr. Patterson added that the registers of wills would have to go through the court or the police. Judge Weatherly noted that the only way people can get this type of information is on the Maryland Judiciary Case Search. Mr. Patterson said that this is limited to Maryland records.

Mr. Zarbin suggested that a cover sheet be required that would inform the applicant that to be eligible for being a personal representative, one must be over the age of 18, as well as a citizen of the United States and of the State of Maryland, and it would also have the question "Have you ever been convicted of a crime?" If the person checks off "yes" in answer to that question, then the register of wills could be the gatekeeper and

find out what the crime was. If the register is allowed to make the determination that the crime is not one that would prohibit the person from serving, the person can sign the form that states "I have not been convicted of a serious crime."

The Chair commented that this procedure could be done, but the question is whether there should be a uniform definition of this, so that 24 different registers of wills are not making 24 different decisions. It may be that in one county, someone could serve, but in another county, the person could not serve. Mr. Zarbin suggested that there could be a list of crimes that would prevent appointment of someone as a personal representative and maybe even a certain time frame could be included, similar to what is used for impeachment. The Chair responded that the problem is that the statute has no time frame.

The Chair said that two different proposals were on the floor. One was to provide in the form that the person states that he or she has not been convicted of a serious crime. Mr. Sykes told the Committee that this was the Subcommittee's recommendation. The Chair noted that it would take a motion to change the recommendation. No motion was forthcoming. Mr. Sykes suggested that an explanation as to why this language was chosen should be given to the Court of Appeals.

Mr. Sykes pointed out that in number 9. on the form, the words "if any" have been deleted. The Chair commented that the next group of Rules in the meeting materials up through Rule 10-707 simply conform the affirmation clause. Mr. Sykes noted that

in subsection (b) 4. of Schedule B in Rule 6-122, the language, "made pursuant to Code, Estates and Trusts Article, §8-104 in the order of priority set forth in Code, Estates and Trusts Article, §8-105" has been added. Judge Weatherly inquired what an unrepresented litigant would be told as to what that order of priority is. Mr. Leahy remarked that this is something the petitioner has to do later on; this is simply a reference to it in the petition. It tells the petitioner that he or she has to pay the claims made under the Estates and Trusts law. Ms. Phipps said that the registers of wills give the petitioners a copy of that section of the Code.

Mr. Sykes pointed out that the affirmation clauses in Schedules B and C in Rule 6-122 have been changed to conform to all of the affirmation clauses in the Probate Rules. The Vice Chair had previously commented that the affirmation clauses in the Probate statutes are not uniform. The Vice Chair explained that in Rule 6-122 and in the other Rules where the affirmation clauses were changed, the language differs from the statutory language. Code, Estates and Trusts Article, §1-102 has a uniform definition of "verification." This differs from what is being suggested for the affirmation clauses in the Probate Rules. He did not suggest that the Rules should not be changed as the Subcommittee had proposed, but he expressed the view that a note should be added to the Rules indicating that the language is deliberately varied from the language in the statute. Mr. Sykes said that the language would be varied in the interest of

uniformity.

The Vice Chair remarked that the problem is that the statute provides something different. The Chair noted that Code, Estates and Trusts Article, §1-102 simply states: "Verification is sufficient..." if it is in the form provided, but it does not state that it is not sufficient if it is in other forms. The other statutes listed on the sheet handed out at the meeting have the language: "substantially in the following form" or "substantially in the form contained in this subsection." The Vice Chair pointed out that there is similar language in Code, Tax-General Article, §1-203 used for taking an oath. He expressed the opinion that in the interest of full disclosure, a Committee note should be added drawing attention to the statutes and explaining the reasons that the language of the Rule does not conform to the statutory language.

Mr. Sykes noted that the affirmation clause at the end of Schedule A had been deleted. The Subcommittee had decided to have only one affirmation or oath at the end of the entire document, and it would refer to "document" rather than to "schedule." Mr. Carbine remarked that for years, documents were notarized by notaries. Then the Rules were changed to state that if certain language is used, no notary is needed. For his entire professional life, he thought that if the exact language of the Rule is not used, the affirmation does not work. Now, the legislature has weighed in on this. There is a definition of the word "oath" in the Rules of Procedure, which covers all of the

Rules of Procedure, and it is different than the verification that is required by the legislature. He expressed the concern that if the exact text of the statutes is not followed, it would run the risk of not complying with the statute; if the definition of "oath" in the Rule is not followed, it would run the risk that the statements were not under oath.

The Vice Chair responded that some of the changes are not particularly dramatic. The change from the word "schedule" to the word "document" means very little. In other places, the Rule uses the language "affirm to be true," while the language of the statute is "affirm to be true and correct." Or the language "swear and affirm" is used, rather than just the word "affirm." The Rule can trump the statute. The Constitution of Maryland (Article IV, §18) gives the Court of Appeals that right. The General Assembly is unlikely to change the statutory language again.

Mr. Carbine expressed the view that the Subcommittee made the right choice in conforming the affirmation clauses to the definition in the Maryland Rules. The Vice Chair said that as long as the Court of Appeals knows that a statute exists that reads somewhat differently than the language in the Rules, there is nothing wrong with conforming the language in the Rules to something different than the statute. It would be helpful if the legislature followed suit and conformed the statutes to the language of the Rules. The Chair commented that the legislature has done this before when certain Rules have been changed.

They are not likely to be concerned with such a minimal modification as changing the language "true and correct" to the word "true." The changes to the affirmation clauses appear in the next ten Rules.

Mr. Carbine suggested that as far as the inconsistency of the language in the affirmation clauses with the definition of "oath" in the statute, a footnote could be added indicating that the variation in the language of the Rules is not substantive. The Chair inquired if a footnote would have to be added to each Rule. The Vice Chair recommended either adding a general note, or indicating in each Rule that where there is a statute, the language in the Rule takes precedence. He had a list of all of the statutes on point. Ms. Libber, an Assistant Reporter, pointed out that the language of the affirmation clauses in the Rules had never fully matched the language of the statutes. The Reporter said that if the note is in the Report to the Court of Appeals, it is part of the legislative history. By consensus, the Committee agreed to put the note in the Report to the Court.

The Chair inquired if anyone had a comment on the uniform form of affirmation that is being proposed for the next ten Rules up to Rule 10-707. No comment was forthcoming. The Reporter pointed out that in Rule 6-122, the Subcommittee had proposed adding a line for the attorney to add his or her facsimile number and e-mail address after filling out his or her name, address, and telephone number. The Reporter inquired if the facsimile number and e-mail address are to be added to every Title 6 Rule

that contains a form asking for the attorney's information. The decision could be to add this to each of the Rules or to consider each Rule separately to decide if it should be added.

Ms. Phipps responded that at the last Committee meeting where these Rules had been discussed, it had been suggested that the facsimile number as well as the e-mail address should be part of the information given by all attorneys. A number of Rules in the package for discussion today do not have that added in. This would only be for the attorneys. The Chair asked Mr. Sykes if the Subcommittee approved of adding this to all of the appropriate Title 6 Rules, and he answered affirmatively, noting that this makes it easier for the registers of wills. By consensus, the Committee approved of adding a line for the attorney's facsimile number and e-mail address to any Title 6 Rule that asks for the attorney's address and telephone number.

By consensus, the Committee approved Rule 6-122 as amended, and Rules 6-153, 6-202, 6-316, 6-404, 6-405, 6-413, 6-415, 6-455, 6-501, and 10-707 as presented.

Mr. Sykes presented Rule 6-125, Service, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-125 to add a form of affidavit of attempts to contact, locate, and identify interested persons and to make stylistic changes, as follows:

Rule 6-125. SERVICE

(a) Method of Service - Generally

Except where these rules specifically require that service shall be made by certified mail, service may be made by personal delivery or by first class mail. Service by certified mail is complete upon delivery. Service by first class mail is complete upon mailing. If a person is represented by an attorney of record, service shall be made on the attorney pursuant to Rule 1-321. Service need not be made on any person who has filed a waiver of notice pursuant to Rule 6-126.

Cross reference: For service on a person under disability, see Code, Estates and Trusts Article, §1-103 (d).

(b) Certificate of Service

(1) When Required

A certificate of service shall be filed for every paper that is required to be served.

(2) Service by Certified Mail

If the paper is served by certified mail, the certificate shall be in the following form:

I hereby certify that on this ____ day of _____, _____, I
(month) (year)

mailed by certified mail a copy of the foregoing paper to the

following persons:

_____.
(name and address)

_____
Signature

(3) Service by Personal Delivery or First Class Mail

If the paper is served by personal delivery or first class mail, the certificate shall be in the following form:

I hereby certify that on the _____ day of _____, _____, I
(month) (year)
delivered or mailed, postage prepaid, a copy of the foregoing paper to the following persons:

_____.
(name and address)

_____
Signature

(c) Affidavit of Attempts to Contact, Locate, and Identify Interested Persons

An affidavit of attempts to contact, locate, and identify interested persons shall be substantially in the following form:

[CAPTION]

AFFIDAVIT OF ATTEMPTS TO CONTACT, LOCATE, AND IDENTIFY INTERESTED PERSONS

I, _____, am: (check one)

[ ] a party

[ ] an attorney

[ ] a person interested in the above-captioned matter.

I have reason to believe that the persons listed below are

persons interested in the estate of _____ (Provide any information you have).

Name	Relationship	Address
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I have made a good faith effort to contact, locate, or identify the persons listed above by the following means: _____

_____

_____.

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

_____ _____

Signature Date

~~(c)~~ (d) Proof

If no return receipt is received apparently signed by the addressee and there is no proof of actual notice, no action taken in a proceeding may prejudice the rights of the person entitled to notice unless proof is made by verified writing to the satisfaction of the court or register that reasonable

efforts have been made to locate and warn the addressee of the pendency of the proceeding.

Cross reference: Code, Estates and Trusts Article, §1-103 (c).

Rule 6-125 was accompanied by the following Reporter's note.

The Rules Committee was not in favor of a specific form to be added to Title 1 describing the attempts to locate or identify a person, because it was too broad and would affect so many Rules. The recommendation was to add the form to Titles 6 and 10, since the proposal had come from the Probate/Fiduciary Subcommittee. The Subcommittee modified the form and recommends adding it to Rules 6-125 and 10-203. The Rules in Title 6 and 10 that address attempts to contact, locate, and identify persons will refer to the form in Rules 6-125 and 10-203. The identification of persons is particularly relevant in wrongful death actions in which the party bringing the action knows there may be siblings or relatives of the decedent who should be notified but does not know their names.

Mr. Sykes explained that Rule 6-125 addresses the problem of trying to contact, locate, or identify persons interested in an estate. The Chair said that he had a comment about the sequence of those actions. This appears in several of the Rules. The language in the Rules is "contact, locate, or identify." Should this not be in the opposite order? One would have to identify, then locate, and then contact. Someone could not contact another person if his or her identity is unknown, or the person trying to contact does not know where the other person is. Mr. Sykes remarked that someone can be contacted without the other person knowing the location of the person he or she is trying to

contact, for example, by telephone. He agreed that the sequence should be “identify, locate, or contact.”

Mr. Gibber explained that the reason for the way these words were ordered is that the first scenario considered is the one the most is known about, the next one a little less is known, and the last one the least is known. To contact someone, the person doing the contacting would know who he or she is looking for. To locate someone, the person doing the locating would not necessarily know the location, but the identity would be known. To identify someone is the worst case scenario. The Chair responded that it could remain as it is; he had brought it up as a style issue.

The Chair pointed out that the Affidavit of Attempts to Contact, Locate, and Identify Interested Persons in Rule 6-125, has the following language: “I,_____, am: (check one)... [ ] an attorney...”. Does this refer to any attorney or an attorney for interested persons? Mr. Sykes responded that any attorney would not necessarily be filing an affidavit. It would only be the attorney for the personal representative. The Chair inquired if it could refer to an attorney for anyone else who is interested. Mr. Sykes responded that if that attorney has information and is willing to make an affidavit that adds to the information in the proceeding, there is no reason that he or she could not file the affidavit. The attorney would have an obligation to do so as an officer of the court. The Chair asked if this means an attorney for a party or an interested person.

Mr. Sykes answered affirmatively. He said that the order of the three individuals listed in the affidavit could be changed to (1) a party, (2) a person interested in the above-captioned matter, and (3) an attorney. By consensus, the Committee agreed to this change.

By consensus, the Committee approved Rule 6-125 as amended.

Mr. Sykes presented Rule 10-203, Service; Notice, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-203 by adding a form of affidavit of attempts to contact, locate, and identify interested persons; by deleting the word "circuit" from the caption of the Notice to Interested Persons; and by making stylistic changes; as follows:

Rule 10-203. SERVICE; NOTICE

(a) Service on Minor or Alleged Disabled Person

The petitioner shall serve a show cause order issued pursuant to Rule 10-104 on the minor or alleged disabled person and on the parent, guardian, or other person having care or custody of the minor or alleged disabled person. Service shall be in accordance with Rule 2-121 (a). If the minor or alleged disabled person resides with the petitioner, service shall be made upon the minor or disabled person and on such other person as the court may direct. Service upon a minor under the age of ten years may be waived provided that the other service

requirements of this section are met. The show cause order served on a disabled person shall be accompanied by an "Advice of Rights" in the form set forth in Rule 10-204.

(b) Notice to Other Persons

(1) To Attorney

Unless the court orders otherwise, the petitioner shall mail a copy of the petition and show cause order by ordinary mail to the attorney for the minor or alleged disabled person.

(2) To Interested Persons

Unless the court orders otherwise, the petitioner shall mail by ordinary mail and by certified mail to all other interested persons a copy of the petition and show cause order and a "Notice to Interested Persons."

(c) Affidavit of Attempts to Contact, Locate, and Identify Interested Persons

An affidavit of attempts to contact, locate, and identify interested persons shall be substantially in the following form:

[CAPTION]

AFFIDAVIT OF ATTEMPTS TO CONTACT, LOCATE, AND IDENTIFY INTERESTED PERSONS

I, _____, am: (check one)

[ ] a party

[ ] an attorney

[ ] a person interested in the above-captioned matter.

I have reason to believe that the persons listed below are persons interested in _____. (Provide any information you have).

Name	Relationship	Addresses
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I have made a good faith effort to contact the persons listed above by the following means: _____

_____.

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

_____ _____

Signature Date

~~(c)~~ (d) Notice to Interested Persons

The Notice to Interested Persons shall be in the following form:

In the Matter of

In the ~~Circuit~~ _____ Court for

_____

(Name of minor or alleged disabled person)

_____

(County)

_____

(docket reference)

NOTICE TO INTERESTED PERSONS

A petition has been filed seeking appointment of a guardian of the person of _____, who is alleged to be a minor or disabled person.

You are an "interested person," that is, someone who should receive notice of this proceeding because you are related to or otherwise concerned with the welfare of this person.

If the court appoints a guardian for the person, that person will lose certain valuable rights to make individual decisions.

Please examine the attached papers carefully. If you object to the appointment of a guardian, please file a response in accordance with the attached show cause order. (Be sure to include the case number). If you wish otherwise to participate in this proceeding, notify the court and be prepared to attend any hearing.

Each certificate filed pursuant to Rule 10-202 that is attached to the petition will be admissible as substantive evidence without the presence or testimony of the certifying health care professional unless you file a request that the health care professional appear to testify. The request must be filed at least 10 days before the trial date, unless the trial date is less than 10 days from the date your response is due. If the trial date is less than 10 days from the date your response is due, the request may be filed at any time before trial.

If you believe you need further legal advice about this

matter, you should consult your attorney.

Source: This Rule is in part derived from former Rule R74 and Code, Estates and Trusts Article, §1-103 (b) and is in part new.

Rule 10-203 was accompanied by the following Reporter's note.

> In 2010, the General Assembly amended Code, Estates and Trusts Article, §13-105 to give concurrent jurisdiction over guardianships of the person of a minor to the circuit and orphans' courts. The Probate/Fiduciary Subcommittee recommends amending Rule 10-203 by deleting the word "Circuit" and adding in its place a blank for filling in the name of the appropriate court in the notice to interested persons that is sent out when a petition for a guardianship of the person has been filed.
>
> See the Reporter's note to Rule 6-125 for an explanation about the form added to section (c).

Mr. Sykes told the Committee that Rule 10-203 applies to guardianships and is very similar to Rule 6-125.

By consensus, the Committee approved Rule 10-203 with the same changes decided on for Rule 6-125.

Mr. Sykes presented Rule 6-443, Meeting of Distributees and Distribution by Court, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

> AMEND Rule 6-443 to add language to section (a) pertaining to a certain

affidavit, as follows:

Rule 6-443. MEETING OF DISTRIBUTEES AND DISTRIBUTION BY COURT

(a) Request

When the personal representative cannot obtain agreement from all interested persons entitled to distribution, or if the personal representative has reason to believe that there may be a person entitled to distribution whose name, address, or survival is unknown, the personal representative may file with the court a request for a meeting, under the supervision of the court, of all interested persons entitled to distribution. The request shall set forth the purpose of the meeting, may include the proposed distribution, and shall ask the court to set a date for the meeting. If the personal representative has reason to believe that there may be an interested person entitled to distribution whose name, address, or survival is unknown, the request shall be accompanied by an affidavit <u>of attempts to contact, locate, and identify substantially in the form set forth in Rule 6-125 (c)</u> so stating and setting forth the good faith efforts made to <u>contact, locate, and</u> identify ~~and locate~~ the person.

(b) Notice

The court shall set a date for the meeting allowing sufficient time for the personal representative to comply with the notice requirements set forth in this section. At least 20 days before the meeting the personal representative shall serve on each distributee whose identity and whereabouts are known a notice of the date, time, and place of the meeting, and if the request was accompanied by an affidavit under section (a) of this Rule, the personal representative shall publish notice of the date, time, and place, and purpose of the meeting. The notice shall be published in a newspaper of general circulation once a week

for three successive weeks in the county of appointment. The first publication shall be made at least 20 days before the meeting. The personal representative shall make such other efforts to learn the names and addresses of additional interested persons as the court may direct.

(c) Appointment of Disinterested Persons

At any time, the court may appoint two disinterested persons, not related to the distributees, to recommend a proposed distribution or sale.

(d) Order

Following the meeting, the court shall issue an appropriate order of distribution or sale.

Cross reference: Code, Estates and Trusts Article, §§9-107 and 9-112.

Rule 6-443 was accompanied by the following Reporter's note.

See the Reporter's note to the proposed amendments to Rule 6-125.

Mr. Sykes explained that Rule 6-443 refers to the affidavit now proposed for addition to Rule 6-125 in the context of notifying interested persons whose identity or location is unknown.

By consensus, the Committee approved Rule 6-443 as presented.

Mr. Sykes presented Rules 10-601, Petition for Assumption of Jurisdiction - Person Whose Identity or Whereabouts is Unknown, and 10-602, Notice, for the Committee's consideration.

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 600 - ABSENT OR UNKNOWN PERSONS

AMEND Rule 10-601 to add language pertaining to a certain affidavit to and to delete a word from subsection (c)(6), as follows:

Rule 10-601. PETITION FOR ASSUMPTION OF JURISDICTION - PERSON WHOSE IDENTITY OR WHEREABOUTS IS UNKNOWN

(a) Who May File

A fiduciary or interested person may file a petition requesting a court to assume jurisdiction over the fiduciary estate for the purpose of determining its distribution if the petitioner believes that there may be a person whose identity or present whereabouts is unknown who is entitled to share in the estate.

(b) Venue

The petition shall be filed in the court which has assumed jurisdiction over the fiduciary estate, or if jurisdiction has not been assumed, then in the county where any part of the property to be distributed is located or where the fiduciary, if any, resides, is regularly employed, or maintains a place of business.

(c) Contents of Petition

In addition to any other material allegations, the petition shall contain at least the following information:

(1) The petitioner's name, address, and telephone number.

(2) The nature, value, and location of any property comprising the fiduciary estate.

(3) The reasons for seeking the

assumption of jurisdiction by the court and the proposed distribution.

(4) An identification of any instrument creating the fiduciary estate, with a copy attached to the petition, if possible, and, if not, an explanation of its absence.

(5) The reason it is believed that there may be a person whose identity or whereabouts is unknown.

(6) ~~Facts~~ An affidavit of attempts to contact, locate, and identify filed substantially in the form set forth in Rule 10-203 showing that the petitioner has searched diligently for the person whose identity or whereabouts is unknown.

Committee note: For substantive law on absent persons, see Uniform Absent Persons Act, Code, Courts Article, §§3-101 to 3-110. For substantive law on abandoned property, see Uniform Disposition of Abandoned Property Act, Code, Commercial Law Article, §§17-301 to 17-324.

Source: This Rule is in part derived from former Rules V71, V79, and R77 and is in part new.

Rule 10-601 was accompanied by the following Reporter's note.

See the Reporter's note to the proposed amendments to Rule 6-125.

AMEND Rule 10-602 to add language pertaining to a certain affidavit to section (b), as follows:

Rule 10-602. NOTICE

(a) Known Persons

Unless the court orders otherwise, the petitioner shall give notice to those persons whose identity and interest in the property are known and to any others designated by the court by mailing to them by ordinary mail and by certified mail a copy of the petition and a show cause order issued pursuant to Rule 10-104.

(b) Unknown Persons

If the court is satisfied <u>from an affidavit of attempts to contact, locate, and identify filed by the petitioner in the form set forth in Rule 10-203</u> that reasonable efforts have been made to ascertain the identity or whereabouts of a person, the court shall order that notice to those persons whose identity or whereabouts are unknown shall be made in the manner provided by Rule 2-122.

Source: This Rule is derived from former Rule V79 b and c and from Code, Estates and Trusts Article, §1-103 (b).

Rule 10-602 was accompanied by the following Reporter's note.

See the Reporter's note to the proposed amendments to Rule 6-125.

Mr. Sykes noted that a reference to the affidavit proposed for Rule 10-203 in the context of notifying interested persons whose identity or location is unknown has been added to both

Rules 10-601 and 10-602. This would provide a means of giving the best notice possible. The original version of the Rules did not have a provision for a means of identifying or locating unknown or absent persons.

By consensus, the Committee approved Rules 10-601 and 10-602 as presented.

Mr. Sykes presented Rule 10-103, Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-103 by deleting the reference to Rule 10-703 from section (c), as follows:

Rule 10-103. DEFINITIONS

. . .

(c) Fiduciary

"Fiduciary" means (1) a guardian of the property of a minor or disabled person, (2) a guardian of the person of a minor or disabled person to the extent that the guardian exercises control over any property of the minor or disabled person, (3) a trustee acting under any inter vivos or testamentary trust over which the court has been asked to assume or has assumed jurisdiction, (4) a person administering an estate under appointment by a court as a "committee," "conservator," or the like, and (5) a personal representative of a decedent to the extent provided in ~~Rules 10-703 and~~ Rule 10-711.

. . .

Rule 10-103 was accompanied by the following Reporter's note.

> An attorney from the Office of the Attorney General pointed out that the reference to "Rule 10-703" in Rule 10-103 (c) is inconsistent with Code, Estates & Trusts Article, §7-401, which allows a personal representative to settle claims without a court order. Rule 10-703 requires the fiduciary (personal representative) to issue a show cause order when authorizing or notifying a compromise or settlement of a claim or matter relating to a fiduciary estate. The reference to "Rule 10-703" in Rule 10-103 (c) seems to require that a show cause order be filed. The Probate/Fiduciary Subcommittee recommends deleting the reference to "Rule 10-703" in Rule 10-103.

Mr. Sykes explained that in Rule 10-103 the reference to "Rule 10-703" was taken out, because a show cause order is not needed when a personal representative settles claims without a court order pursuant to Code, Estates and Trusts Article, §7-401. Rule 10-703, Compromise of Claim or Dispute, requires that a show cause order be filed when the fiduciary petitions the court to authorize or ratify a compromise or settlement of any claim or matter relating to a fiduciary estate.

By consensus, the Committee approved Rule 10-103 as presented.

Mr. Sykes presented Rule 10-111, Petition for Guardianship of a Minor, for the Committee's consideration.

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 10-111, as follows:

Rule 10-111. PETITION FOR GUARDIANSHIP OF MINOR

A petition for guardianship of a minor shall be in substantially the following form:

[CAPTION]

PETITION FOR GUARDIANSHIP OF MINOR

[ ] Guardianship of Person [ ] Guardianship of Property [ ] Guardianship of Person and Property

The petitioner, _____, whose address is _____, represents to the Court that:

1. The minor _____, age ____, born on the _____ day of _____, _____ at
(month) (year)

_____,
(place of birth)

_____, is the male/female child of _____ and _____.
(city and state)

A birth certificate of the minor is attached.

2. The petitioner born on the ____ day of _____, _____
(month) (year)

is the _____ of the minor.

(a) The petitioner's interest in the minor's property is _____.

ALTERNATIVE A

(b) (Check the applicable box)

The petitioner

[ ] has not been convicted of a crime.

[ ] has not been convicted of a crime other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

[ ] has been convicted of the following crime(s):

_____

_____

_____.

ALTERNATIVE B

(b) (Check the applicable box)

The petitioner

[ ] has not been convicted of a serious crime.

[ ] has been convicted of the following serious crime(s) (a serious crime includes a felony or a misdemeanor involving dishonesty):

_____

_____

_____.

3. The following is a list of the names and addresses of

all interested persons (mother, father, guardian, the minor's heirs at law, any other person having assumed responsibility for the minor, each government agency paying benefits to or for the minor, any person having any interest in the minor's property; and all others exercising any control over the minor or the minor's property) and the nature of their interest(s) (see Code, Estates and Trusts Article, §13-101 (j)).

List of Interested Persons

	Name	Address
Mother:	_____	_____
	_____	_____
Father:	_____	_____
	_____	_____
Guardian:	_____	_____
	_____	_____
Heirs at Law:	_____	_____
	_____	_____
Government Agency:	_____	_____
	_____	_____
Minor's Attorney:	_____	_____
	_____	_____
Petitioner's Attorney:	_____	_____
	_____	_____

Other: _____ _____

_____ _____

Other: _____ _____

4. The names and addresses of the persons with whom the minor resided over the past five years, and the length of time of the minor's residence with each person are, as follows:

Names	Addresses	State Time Frame
_____	_____	_____
_____	_____	_____
_____	_____	_____

5. The name(s) of one or more persons other than Petitioner(s) to whom correspondence can be sent on behalf of the minor, including a minor who is at least ten years of age are, as follows:

Names	Addresses
_____	_____
_____	_____
_____	_____
_____	_____

6. Guardianship is sought for the following reason(s):

_____

_____

_____

7. If this Petition is for Guardianship of the Property, the following is the list of all the property in which the minor

has any interest including an absolute interest, a joint interest, or an interest less than absolute (e.g. trust, life estate).

Property	Location	Value	Trustee, Custodian, Agent, Co-Tenant, etc.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

8. (a) All other proceedings regarding the minor (including any proceedings in juvenile court) are, as follows:

_____

_____

_____

8. (b) All proceedings regarding the petition filed in this court or any other court are, as follows:

_____

_____

_____

9. All exhibits required by Maryland Rule 10-301 (d)* are attached.

WHEREFORE, the Petitioner(s) request that this court issue an order to direct all interested persons to show cause why the Petitioner should not be appointed as guardian of (person, property, or person and property) of the minor.

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

_____	_____
Attorney	Petitioner
_____	_____
Address	Petitioner
_____	_____
Telephone Number	Address
_____	_____
Facsimile Number	Telephone Number
_____	
E-mail Address	

INSTRUCTIONS

*1. Exhibits required by Maryland Rule 10-301 (d) are:

(a) A copy of any instrument nominating a guardian;

(b) If the petition is for the appointment of a guardian for a minor who is a beneficiary of the Department of Veterans Affairs, a certificate of the Administrator or the Administrator's authorized representative, setting forth the age of the minor as shown by the records of the Veterans Administration, and the fact that appointment of a guardian is a condition precedent to the payment of any moneys due the minor from the Veterans Administration shall be prima facie evidence of the necessity for the appointment [Section 13-802, Estates & Trusts Article and Maryland Rule 10-301 (d)]

2. Attached additional sheets, if necessary, to answer all the information requested on this petition.

Rule 10-111 was accompanied by the following Reporter's

note.

> The Probate/Fiduciary Subcommittee initially proposed the addition of a new form of petition of a guardianship of a minor, new Rule 10-111. This form was drafted by a committee of registers of wills, Orphans' Court judges, members of the bar and of the Estates and Trusts Section of the Maryland State Bar Association. Currently, someone petitioning to be the guardian of the person of a minor is required to file a petition whose contents are described in section (c) of Rule 10-201, and someone petitioning to be the guardian of the property of a minor is required to file a petition whose contents are described in section (c) of Rule 10-301. The Subcommittee felt it would be easier and more uniform if the petitions were filed using a specific form. Because Rules 10-201 and 10-301 also address guardianships of the person or property or both of alleged disabled persons, the Subcommittee decided that it would be more consistent to also include a similar form for guardianships of alleged disabled persons. This would be in Rule 10-112. The adoption of these forms would mean that the contents provision of Rules 10-201 and 10-301 would no longer be necessary.
>
> See the Reporter's note to Rule 6-122 for an explanation of the alternatives in section 2 of the form.
>
> The Committee of registers of wills, Orphans' Court judges, and members of the bar requested that the list of interested persons be a separate document. An estates and trusts attorney asked that the list include a verification section at the end. To address these comments, the Committee recommends that the list of interested persons be attached to the petition for guardianship of a minor, so that the verification at the end of the petition applies to the information provided in the list.

Mr. Sykes noted that the same problem concerning the term

"serious crime" that was in Rule 6-122 is also in Rule 10-111. The same solution that was proposed for Rule 6-122 could be applied to Rule 10-111. The Chair expressed some doubt about this. The statute that applies to Rule 6-122, which is Code, Estates and Trusts Article, §5-105 (b) provides that someone cannot get letters of administration if the person has been convicted of a serious crime. Code, Estates and Trusts Article, §13-206, which applies to Rule 10-111, provides that any individual can be appointed as a guardian. It has no disqualification for being convicted of a serious crime. Judge Pierson pointed out that the language in Rule 10-111 was imported from Rule 6-122.

The Chair commented that the statute for guardians is different. Mr. Sykes inquired if there was any reason to distinguish between the qualifications for a guardian and a personal representative in regards to honesty, etc. Mr. Michael responded that the need for honesty is greater with the guardianship, but the problem is that the statute does not require it. It sounds like more of a legislative issue. The Chair questioned whether Code, Estates and Trusts Article, §13-206 is the applicable statute. Mr. Gibber answered that both §13-206 and §13-207 are the applicable statutes. The Chair pointed out that neither of those statutes requires disqualification of criminals from serving as a guardian.

Mr. Sykes suggested that Rule 10-111 be left alone, and the problem with the statutes should be pointed out to the Court.

The statutes should be modified so that they match the proposed changes to the Rules. The Chair said that this problem could be explained to the legislature, who probably cannot address it this session. The Reporter asked if the Uniform Laws Commission was working on this. Mr. Brault replied that he had been a member but was no longer active. Mr. Michael added that the Commission may be interested in changing a law that allows a child molester to be a guardian. Mr. Sykes commented that one qualification should be that a potential guardian is not on the list of sex offenders.

Mr. Gibber observed that the same issue exists for a person serving as a guardian of the property. Someone who was convicted of certain crimes should not be appointed as a guardian of the property. Mr. Sykes asked whether the Rule can be changed to impose qualifications on persons who want to be guardians if the legislature is totally silent about this. The Reporter responded that the court could require the applicant to list different crimes, and then the judge who is appointing the guardian can decide whether this is in the best interest of the child or the disabled person. The Chair said that the problem is discretion. The statute provides that any individual can be appointed.

Mr. Michael asked whether Rule 10-111 could be drafted to include disqualifications. Mr. Gibber said that when a personal representative is appointed, there is an order of priority that gives rights. With guardianships, it is not a question of rights, it is presenting facts to the court who will then make an

independent decision as appropriate. The court has very little discretion in making the appointment of a personal representative, but as to the guardian, the court can appoint whomever it so chooses. The point is to get information before the court, so the court can exercise its discretion.

Mr. Sykes commented that if there is to be a list of qualifications, assuming that the legislature is silent, the applicant can be compelled to list information. Mr. Michael noted that Alternative A would cast a broader net, as it addresses the difference between a "crime" and a "serious crime." He expressed the view that Alternative A would be more useful in determining who should be a guardian of a child. Mr. Sykes added that Alternative A would require the applicant to list all of the crimes of which he or she had been convicted.

Mr. Michael pointed out that Rule 10-111 would require that if the applicant had not been convicted of the crimes in the second block, he or she would have to list all of the crimes that the person had been convicted of. The Chair reiterated that the crimes in the second block are ordinances or regulations not carrying a possible sentence of imprisonment, but this provision does not refer to a state statute. Mr. Sykes commented that section (c) takes care of this, because it requires the applicant to list the crimes of which he or she has been convicted. The Chair noted that the person would have to list all of the crimes in the third section, including traffic offenses. Mr. Sykes disagreed, noting that those offenses would be handled by the

person checking the second box. If the person had not been convicted of a crime other than the ones listed in the second box, then the person has not committed any crimes at all. The Chair responded that he was not sure that the Rule reads that way. To indicate this, the third box would have to read: "has been convicted of the following crimes not included in the second box." If all of the crimes of which the person has been convicted have to be listed, then the second box is not necessary.

Mr. Michael expressed the opinion that it would be a good idea to eliminate the second box. What if the applicant had been convicted ten times of the crime of driving while impaired? The judge might want to know that before appointing that person as a guardian of a minor child. The Chair noted that this may be included in the second box if the language "not carrying a possible sentence of imprisonment" is intended to modify the language "vehicle or traffic laws." Mr. Michael reiterated that if the second box was eliminated, this would not be a problem. Without the second box, the applicant would have to list those crimes under the third box. The Chair remarked that in that situation, the third box would require the applicant to list violations for speeding. Mr. Michael said that if the applicant had many convictions for speeding at a very high rate, this could impact on his or her ability to serve as a guardian.

Mr. Sykes commented that if the person checked the second box, this would mean that the only crimes that he or she had been

convicted of were those listed after the second box. The person would not have to address the crimes requested after the third box. Mr. Carbine suggested that the second box be eliminated. The Chair pointed out that there is precedence for this type of question. A person applying to be a member of the Maryland Bar has to list convictions of any crime other than traffic violations.

The Chair asked about driving on a suspended license. Judge Pierson remarked that unlike the language in Code, Estates and Trusts Article, §5-105, which provides for disqualifying conditions, Sections 13-206 and 13-207 of that Article do not require any disqualifications from being a guardian. Theoretically, all sorts of information could be requested in the form. The reason that section (b) is in Rule 10-111 is because it was taken from the form in Rule 6-122.

Mr. Gibber disagreed, noting that this is in the form in Rule 10-111, because it is even more important, since the court has the discretion as to who to appoint as guardian. Judge Pierson argued that the applicant might have to list any judgments against him or her, such as tax liens. Mr. Gibber responded that this information would not impact the ability to represent a child. The Chair asked if someone with many judgments against him or her should be the guardian of the property. Mr. Gibber answered that this is not necessarily a bar to serving as a guardian of a child. The Chair noted that the applicant may not have paid his or her debts and has liens and

judgments against him or her. Should the person be in charge of a child's property?

Ms. Cathell said that the Subcommittee tried to be practical in drafting this form. The idea is to get necessary information before the court. There will always be loopholes. Mr. Carbine noted that it cannot be perfect, but at least the form can attempt to keep child molesters from being appointed as the guardian of a child. Mr. Karceski commented that under the convoluted sex offender registry statute (Code, Criminal Procedure Article, §11-701 et seq.), a person can be found guilty of a sex offense, and the conviction is then stricken. The person is given probation before judgment, and the court can still require the person to register as a sex offender. So, it is not a conviction of a crime, if the person gets probation before judgment, but yet the person can be on a sex offender's registry. Even if someone on a sex offender registry received a probation before judgment, it would be important that he or she not be appointed as a guardian of a child.

Judge Weatherly commented that when hearings for appointment of a guardian of the person or property of minors and disabled persons are held in Prince George's County, the judges use a checklist of questions, which includes whether or not the person has ever been convicted of a crime and some inquiry as to the person's financial responsibility. If someone is asked this in court, it might be a good idea to put the questions in the petition, so the person knows what he or she is going to be asked

at the hearing.

Judge Pierson noted that the same issue arises with the next Rule, addressing a petition for guardianship of a disabled person. The difference between these two guardianship Rules and Rule 6-122 is that people are not appointed guardian of a minor or disabled person without a hearing. In a petition for administrative probate, the personal representative can be appointed by the Register of Wills without a hearing. It is a completely different process in the Orphans' Court for appointment of a personal representative than in the circuit courts for a guardianship. The Chair agreed, noting another difference. The statute addresses who cannot serve as a personal representative. In a guardianship, there is a distinction between an absolute disqualification as opposed to someone who may be able to serve depending on the circumstances.

Judge Pierson explained that his point was that there is a show cause order for guardianships. Other hearings take place. What is in the petition is not entirely what is considered. The Chair observed that the court would have more leeway on the guardianships. What is in the Rule is not inconsistent with what is in the statutes. The court has a significant interest in who gets appointed as a guardian, because it is a court action as opposed to the appointment of a personal representative. In either case, the legislature can be alerted about the partial vacuum as to the meaning of the term "serious crime," and the total vacuum as to the inquiry about an applicant for appointment

of a guardian having been convicted of a serious crime. Sometimes, the legislature prefers that the Rules Committee address certain issues; other times, the legislature prefers to address the issues itself.

Mr. Klein moved that Alternative A, with the middle paragraph stricken, be added to Rule 10-111. The motion was seconded. Mr. Sullivan referred to Mr. Karceski's observation that some sex offenders may have received a probation before judgment and therefore had not been convicted of a crime. He suggested that the language of section (b) could be: "has not been found guilty of a crime." Mr. Patterson said that it might be clearer to state "has been found guilty, but the conviction was stricken." Mr. Karceski noted that the person would not be found guilty, because the guilty finding was stricken. It is not considered a conviction, but some probations before judgment are awarded at the end of very serious cases. Mr. Michael suggested adding to the first sentence "has not been convicted of a crime or received a probation before judgment." The idea is to flag it for the judge. Mr. Klein accepted that amendment to his motion. The motion passed on a majority vote.

Master Mahasa said that she had an issue to raise concerning Rule 10-111 even though the Committee had already voted on it. In Alternative A, the Committee had decided to add that the petitioner had to indicate that he or she had not received a probation before judgment. Can language be added to this that would read: "unless the probation before judgment has been

expunged?" The majority of probations before judgment are given for minor infractions. For someone to have to go before the court because they were given a probation before judgment that was later expunged seems somewhat oppressive. She added that she understood the reason for this in a serious case, but for the minor cases it seems excessive to have a court procedure. Almost certainly, any probation before judgment that was expunged is for a minor crime. The Chair asked the Committee if anyone disagreed with adding this exception. By consensus, the Committee agreed to add the exception of expunged probations before judgment to reporting a probation before judgment in a guardianship petition.

After lunch, Mr. Sykes presented Rule 10-112, Petition for Guardianship of Alleged Disabled Person, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 10-112, as follows:

Rule 10-112. PETITION FOR GUARDIANSHIP OF ALLEGED DISABLED PERSON

A petition for guardianship of an alleged disabled person shall be substantially in the following form:

[CAPTION]

PETITION FOR GUARDIANSHIP OF ALLEGED DISABLED PERSON

[ ] Guardianship of Person [ ] Guardianship of Property [ ] Guardianship of Person and Property

The petitioner, _____, whose address is _____, and whose telephone number is _____, represents to the court that:

1. The alleged disabled person _____, age ____, born on the _____ day of _____ (month), _____ (year) at _____ (place of birth), _____ (city and state), is the male/female child of _____ and _____.

2. The petitioner born on the ___ day of _____ (month), _____ (year) is the _____ of the alleged disabled person.

(a) The petitioner's interest in the property of the alleged disabled person is _____ _____.

ALTERNATIVE A

(b) (Check the applicable box)

The petitioner

[ ] has not been convicted of a crime.

[ ] has not been convicted of a crime other than

violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

[ ] has been convicted of the following crime(s):

_____

_____

_____.

ALTERNATIVE B

(b) (Check the applicable box)

The petitioner

[ ] has not been convicted of a serious crime.

[ ] has been convicted of the following serious crime(s) (a serious crime includes a felony or a misdemeanor involving dishonesty):

_____

_____

_____.

3. The following is a list of the names and addresses of all interested persons (mother, father, guardian, the alleged disabled person's heirs at law, any other person having assumed responsibility for the alleged disabled person, each government agency paying benefits to or for the alleged disabled person, any person having any interest in the property of the alleged disabled person; and all others exercising any control over the alleged disabled persons or the person's property) and the nature

of their interest(s) (see Code, Estates and Trusts Article, §13-101 (j)).

List of Interested Persons

	Name	Address
Mother:	_____	_____
	_____	_____
Father:	_____	_____
	_____	_____
Guardian:	_____	_____
	_____	_____
Heirs at Law:	_____	_____
	_____	_____
Government Agency:	_____	_____
	_____	_____
Alleged Disabled Person's Attorney:	_____	_____
	_____	_____
Petitioner's Attorney:	_____	_____
	_____	_____
Other:	_____	_____
	_____	_____
Other:	_____	_____
	_____	_____

4. The names and addresses of the persons with whom the alleged disabled person resided over the past five years, and the length of time of the alleged disabled person's residence with each person are, as follows:

Names	Addresses	State Time Frame
_____	_____	_____
_____	_____	_____
_____	_____	_____

5. The name(s) of one or more persons other than Petitioner(s) to whom correspondence can be sent on behalf of the alleged disabled person are, as follows:

Names	Addresses
_____	_____
_____	_____
_____	_____
_____	_____

6. A brief description of the alleged disability and how it affects the alleged disabled person's ability to function is, as follows:

_____

_____

_____

7. Guardianship is sought for the following reason(s) (include (a) allegations demonstrating an inability of the person to make or communicate responsible decisions concerning the person's health care, food, clothing, or shelter, because of

mental disability, disease, habitual drunkenness, or addition to drugs, and (b) a description of less restrictive alternatives that have been attempted and have failed):

_____

_____

_____

8. If this Petition is for guardianship of the property, the following is the list of all the property in which the alleged disabled person has any interest including an absolute interest, a joint interest, or an interest less than absolute (e.g. trust, life estate):

Property	Location	Value	Trustee, Custodian, Agent, Co-Tenant, etc.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

9. (a) All other proceedings regarding the alleged disabled person (including guardianship of the person or property and criminal) are, as follows:

_____

_____

_____

9. (b) All proceedings regarding the petition filed in this court or any other court are, as follows:

_____

_____

_____

10. If a guardian or conservator has been appointed for the alleged disabled person in another proceeding, the name and address of the guardian or conservator and the court that appointed the guardian or conservator are, as follows:

_____ _____
Name Address

_____
Court

11. All exhibits required by Maryland Rules 10-202 (a) and 10-301 (d)* are attached.

WHEREFORE, the Petitioner(s) request that this court issue an order to direct all interested persons to show cause why the Petitioner should not be appointed as guardian of (person, property, or person and property) of the alleged disabled person.

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

_____ _____
Attorney Petitioner

_____ _____
Address Petitioner

_____ _____
Telephone Number Address

_____ _____
Facsimile Number Telephone Number (Optional)

_____
E-mail Address

INSTRUCTIONS

*1. Exhibits required by Maryland Rules 10-202 (a) and 10-301 (d) are:

(a) A copy of any instrument nominating a guardian;

(b) If the petition is for the appointment of a guardian of an alleged disabled person who is a beneficiary of the Department of Veterans Affairs, in lieu of the certificates required by Rule 10-202 (a)(1), a certificate of the Secretary of that Department or an authorized representative of the Secretary setting forth the fact that the person has been rated as disabled by the Department. [Maryland Rules 10-202 (a)(4) and 10-301 (d)]

2. Attached additional sheets, if necessary, to answer all the information requested on this petition.

Rule 10-112 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 10-111.

The Chair pointed out that the same issue with Alternatives A and B that was in some of the previous Rules was also in section (b) of Rule 10-112. Judge Pierson commented that he had received an e-mail from Master Susan Marzetta, a master in Baltimore City, who had expressed some concern about the suggestion to do away with sections of current Rules 10-201, Petition for Appointment of a Guardian of Person, and 10-301, Petition for Appointment of a Guardian of Property, which prescribe the contents of the petition, and replace them with

forms. The forms would be the only requirement in the Rules relating to the contents of the petition. A memorandum on this had been distributed to the Committee earlier today. One concern is that unlike the Orphans' Court example of a petition for probate where it is already in the Rules and in the statute, the adoption of a form instead of a rule is a completely new idea.

Judge Pierson said that the petitions for guardianship are unlike petitions for probate. In a guardianship situation, if the petition is deemed sufficient, meaning that it complies with the Rules, the court issues a show cause order. In the case of a disabled person, counsel is appointed for the alleged disabled person, who is then charged with making an investigation and representing the alleged disabled person at the hearing. Notice is given to all of the relatives, interested persons, and guardians of last resort, which would be the Department of Social Services or the local agency on aging, as well as to any government agencies paying benefits. A hearing is held in all cases. The appointed guardian is an agent of the court, which is made clear by case law, so that it is not a normal adversary proceeding with a plaintiff and a defendant. The neutral arbitrator has a different role in a guardianship.

Judge Pierson commented that as the e-mail from Master Marzetta had indicated, Baltimore City gets a large number of these cases, and they are adjudicated on an expedited basis. The hearings on these are held within seven days. The current system is working well, and the masters have been concerned that

if the forms are adopted, which seems to be for the purpose of facilitating pursuit of guardianships by self-represented litigants, it would water down the current Rules, and it also possibly leaves the ambiguity as to whether everything has to be in the form and what can be eliminated. This is a summary of the reasons behind the suggestion that the current Rules pertaining to the guardianship petitions be maintained, and if the Committee feels that it is necessary to adopt forms, rather than making the forms the prescription, they should be adjunct to the Rules prescribing the procedures.

Mr. Klein inquired if the problem would be solved if Rule 10-112 were to state: "the petition shall be substantially in the following form and contain all of the information requested in the form." Judge Pierson questioned whether this would be ambiguous. Mr. Klein noted that the form has blanks to fill in, so that is why he used the language "requested in the form." Judge Pierson explained that his concern was not the physical appearance of the form itself, but he interpreted the language "substantially in the form" as meaning this is substantially the information that is necessary.

The Chair remarked that he had not seen the e-mail on this issue until that morning and had not had a chance to read it through. He inquired if there was anything in the Rule that Judge Pierson would like to see maintained that was either not in the proposed form, or if there was anything in the form that was not required by law. Judge Pierson responded that Master

Marzetta had made quite a few comments. He was not sure if the Committee should go through the comments one by one. Master Marzetta had a real concern that the form does not contain a number of the items in the Rule. The Chair asked if her problem would be resolved if the form did contain all of the items in the Rule. Judge Pierson replied that Master Marzetta did not want the form at all. However, if the amendment suggested by Mr. Klein was made, and if the form was changed to address all of the issues she had raised, this might solve her problem.

The Chair asked whether the forms were designed to be consumer-friendly as opposed to the information being in a rule. Mr. Gibber answered that the idea for the forms started when the jurisdiction of the Orphans' Court for guardianships was extended. Many of the people who come before the Orphans' Court petitioning for guardianships of the person of a minor are *pro se*. The Orphans' Court does not have the historic support that the circuit courts have. The idea was to put together a form to assist in this process. The Chair inquired if the form would be applicable whether the proceeding is in the circuit court or the Orphans' Court. Mr. Gibber replied affirmatively. Judge Pierson noted that the Orphans' Court does not have jurisdiction over the guardianship of a disabled person, only of a minor.

The Chair commented that it seems that the Subcommittee prefers to have a form. Mr. Sykes explained that it is very handy if someone petitioning for a guardianship only has to go to

one place to effect the process. If the substance of the statute is incorporated into the form, whether the proceeding is in the circuit court or the Orphans' Court, it simplifies the job of the practitioner and the *pro se* person to have everything in one place and to fill in blanks instead of going through an entire list of items that a petition has to contain.

The Chair said that to the extent that the form does not have specified information that the Rule does, it might be useful to put it into the form. One issue pointed out by Master Marzetta was to specify the county in which the proceeding takes place. Would it be the county of residence or the county of domicile or both? Judge Pierson answered that it would be either one. Judge Weatherly remarked that either would be lost on an unrepresented litigant. The Chair asked if there would be any harm in adding to the form a request to specify the county.

Mr. Sykes pointed out that a number of Master Marzetta's suggestions are stylistic. Some can be easily addressed. He added that he took issue with some of the suggestions. The only way to address her suggestions would be to go through them one by one. Since this information was only given to the Committee that day, Mr. Sykes said that the venue to go through everything was probably not at the level of the full Committee. The Subcommittee could analyze it and make a report. On the general issue of the word "substantial," it would not be a good idea for a petition to be dismissed because a comma was left out. If the

form calls for information, then adding the word “substantially” is a good innovation. He proposed that the Subcommittee study Master Marzetta’s comments and suggestions and then produce an updated form. To the extent that the Subcommittee does not follow Master Marzetta’s suggestions, the Subcommittee can state the reasons, and then the Committee can decide.

The Chair stated that Rule 10-112 would be recommitted to the Subcommittee. Mr. Michael pointed out that Alternative A in subsection 2. (b) of the form would be conformed to the changes made to the parallel section in Rule 10-111. The Reporter inquired if Rule 10-111 would be recommitted to the Subcommittee, so that it would conform to Rule 10-112. The Chair replied affirmatively.

Mr. Sykes presented Rule 10-201, Petition for Appointment of a Guardian of the Person, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-201 by adding a new section (b) pertaining to the form of petition, by deleting current section (c), by adding a new section (d) containing a form for designation of a guardian by a minor, by adding a cross reference at the end of the Rule, and by making stylistic changes, as follows:

Rule 10-201. PETITION FOR APPOINTMENT OF A GUARDIAN OF <u>THE</u> PERSON

(a) Who may File

An interested person may file a petition requesting a court to appoint a guardian of a minor or alleged disabled person.

(b) Form of Petition

The petition for a guardianship of the person of a minor shall be filed in substantially the form set forth in Rule 10-111. The petition for a guardianship of the person of an alleged disabled person shall be filed in substantially the form set forth in Rule 10-112.

~~(b)~~ (c) Venue

(1) Resident

If the minor or alleged disabled person is a resident of Maryland, the petition shall be filed in the county where (A) the minor or alleged disabled person resides or (B) the person has been admitted for the purpose of medical care or treatment to either a general or a special hospital which is not a State facility as defined in Code, Health-General Article, §10-406 or a licensed private facility as defined in Code, Health-General Article, §§10-501 to 10-511.

(2) Nonresident

If the minor or alleged disabled person does not reside in this State, a petition for guardianship of the person may be filed in any county in which the person is physically present.

~~(c) Contents~~

~~The petition shall be captioned, "In the Matter of . . ." [stating the name of the minor or alleged disabled person]. It shall be signed and verified by the petitioner, may contain a request for the guardianship of property, and shall contain at least the following information:~~

~~(1) The petitioner's name, address, age, and telephone number.~~

~~(2) The petitioner's familial or other relationship to the minor or alleged disabled person.~~

~~(3) Whether the person who is the subject of the petition is a minor or alleged disabled person, and, if an alleged disabled person, a brief description of the alleged disability and how it affects the alleged disabled person's ability to function.~~

~~(4) The reasons why the court should appoint a guardian of the person and, if the subject of the petition is a disabled person, allegations demonstrating an inability of that person to make or communicate responsible decisions concerning the person, including provisions for health care, food, clothing, or shelter, because of mental disability, disease, habitual drunkenness or addiction to drugs, and a description of less restrictive alternatives that have been attempted and have failed.~~

~~Cross reference: Code, Estates and Trusts Article, §13-705 (b).~~

~~(5) An identification of any instrument nominating a guardian or constituting a durable power of attorney, with a copy attached to the petition, if possible, and, if not, an explanation of its absence.~~
~~Cross reference: Code, Estates and Trusts Article, §13-701.~~

~~(6) If a guardian or conservator has been appointed for the alleged disabled person in another proceeding, the name and address of the guardian or conservator and the court that appointed the guardian or conservator. If a guardianship or conservatorship proceeding was previously filed in any other court, the name and address of the court, the case number, if known, and whether the proceeding is still pending in that court.~~

~~(7) A list of (A) the name, age, sex, and address of the minor or alleged disabled~~

~~person, (B) the name and address of the persons with whom the minor or disabled person resides, and (C) if the minor or alleged disabled person resides with the petitioner, the name and address of another person on whom service can be made.~~

~~(8) The name, address, telephone number, and nature of interest of all other interested persons and all other persons exercising control of the minor or alleged disabled person, to the extent known or reasonably ascertainable.~~

~~(9) If the minor or alleged disabled person is represented by an attorney, the name and address of the attorney.~~

~~(10) A statement that the certificates required by Rule 10-202 are attached, or, if not, an explanation of their absence.~~
~~(11) If the petition also seeks a guardianship of the property, the additional information required by Rule 10-301.~~

~~(12) A statement of the relief sought.~~

(d) Designation of a Guardian of the Person by a Minor

After a minor's 14th birthday, a minor may designate a guardian of the minor's person substantially in the following form:

[CAPTION]

DESIGNATION OF A GUARDIAN OF THE PERSON BY A MINOR

I, _____, a minor child, having attained my 14th birthday, declare:

1. I am aware of the Petition of _____ (petitioner's name) to become the Guardian of my person.

2. I hereby designate _____

as the Guardian of my person.

3. I understand that I have the right to revoke this designation at any time up to the granting of the Guardianship.

I solemnly affirm under the penalties of perjury that the contents of the foregoing document are true based upon my personal knowledge.

_____

Signature of Minor Date

Cross reference: Code, Estates and Trusts Article, §13-702.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule R71 a.
Section (b) is new.
Section ~~(b)~~ (c) is derived from former Rule R72 a and b.
~~Section (c) is derived in part from former Rule R73 a and in part from former Rule V71 c.~~
Section (d) is new.

Rule 10-201 was accompanied by the following Reporter's note.

> See the Reporter's note to Rule 10-111 as to the form of the petition and to explain the deletion of section (c) of this Rule.
>
> The Probate/Fiduciary Subcommittee recommended the addition of a form, "Designation of a Guardian of the Person by a Minor" to be consistent with Code, Estates and Trusts Article, §13-702. This form was drafted by a committee of registers of wills, Orphans' Court judges as well as members of the bar and of the Estates and Trusts Section of the Maryland State Bar Association. The Rules Committee approved the form. The Subcommittee changed the wording of section (d) slightly for clarity.

Mr. Sykes explained that section (b) of Rule 10-201 incorporates by reference the forms in Rules 10-111 and 10-112. The contents portion of the Rule which had been section (c) has been deleted, because it is incorporated by reference in Rules 10-111 and 10-112. Section (d) now includes a form for designation of a guardian of the person by a minor. If the minor is old enough, he or she can designate a guardian of the person. The Chair pointed out that the statute, Code, Estates and Trusts Article, §13-702, is somewhat peculiar. It is attached to the Rule. It reads: "...This section may not be construed to require court appointment of a guardian of the person of a minor if there is no good reason, such as a dispute, for a court appointment." If someone does not agree with this, it is not allowed.

Mr. Johnson pointed out that Rule 10-201 had referenced Code sections, but the forms in Rules 10-111 and 10-112 do not reference the Code sections. Is there a reason why the Code sections would not be in the forms? The deleted portion of the Rule gave the statutory authority as to where the language of the Rule came from. Were the Code references left out because Code sections are not put into forms? Mr. Gibber noted that the Code references in the current Rule are only cross references. Mr. Johnson acknowledged this, but he observed that cross references give information as to the source of the language in the Rule. If the cross references are not in the forms, that information would not be available. The form may make it easier for the practitioner to know how to proceed, but the cross references

should be listed somewhere on the form to provide the source of the law.

Mr. Sykes responded that the source for the law is the constitutional authority of the Court of Appeals to prescribe the form. It would be unnecessary to use language similar to that in the statute. The forms are self-contained and complete. Putting the cross references in the form would mean that any diligent practitioner would have to go to the statute which will not give out any more information. The form would be adopted later than the statute and would control over the statute.

The Chair asked if there is anything in the statute that is not in the form. Mr. Sykes answered that it was the intention of the Subcommittee in drafting the forms to put in the substantial contents of the statutes. Mr. Brault pointed out that the cross reference at the end of the Rule which was to "Code, Estates and Trusts Article, §13-702" had formerly been to "§13-701." The Reporter explained that the confusion seems to stem from the fact that Rule 10-201 had information that is now going to be moved to the forms in Rules 10-111 and 10-112. Section (b) of Rule 10-201 provides that the petition for guardianship of the person shall be filed in substantially the forms set in Rules 10-111 and 10-112. The language that had been stricken in Rule 10-201 contains references to Code, Estates and Trusts Article, §§13-705 (b) and 13-701, which pertain to the information that would now go into the two forms. The form in Rule 10-201 addresses only the situation of a minor who would like to designate a guardian of

his or her person. A reference to Code, Estates and Trusts Article, §13-702 is at the end of this Rule. A copy of that statute is included in the meeting materials. Mr. Brault remarked that the cross reference may be slightly different. The Reporter said that the way this had been presented may have been confusing.

Mr. Klein commented that he understood Mr. Johnson's question to have been whether the statutory cross reference should be provided in support of the form, since the form would now incorporate information that used to be cross-referenced at least to show where the text of the Rule had been stricken, and a form has now been substituted for that text. Mr. Johnson reiterated the comment by Mr. Sykes that there would be no need for the cross references in the Rule, because the content of those statutes are substantially in the Rule. Mr. Johnson expressed the concern about taking out of rules items that people are used to looking at, because they would not know if the Code provisions formerly referenced no longer apply or whether the new language is overruling them. The bar needs to be told why the new form is being added and why something that was in the Rules is no longer there. The Chair inquired if the issue is whether the cross references ought to be in Rule 10-201 or in Rules 10-111 and 10-112. Mr. Klein answered that it would be the latter. Mr. Sykes added that if there is to be a cross reference, it should be in Rules 10-111 and 10-112.

The Chair noted that the statute, Code, Estates and Trusts

Article, §13-702, makes clear that the court shall appoint the minor's designee unless the judge finds that it is not in the minor's best interest to do so. The form provides that the minor avers that he or she has a right to revoke this designation. Should there be a reference to the fact that the judge does not have to appoint the guardian designated by the minor? It appears from the form that the minor is saying that anyone he or she wants to be the guardian will be the guardian. Mr. Sykes commented that this is more of a legislative matter.

Mr. Sykes asked if the decision had been made that the cross references that were taken out of Rule 10-201 should be put back in to Rules 10-111 and 10-112. Mr. Johnson moved that those cross references be put back in the designated Rules, the motion was seconded, and it passed by a majority vote.

By consensus, the Committee approved Rule 10-201 as presented.

Mr. Sykes presented Rule 10-202, Certificates and Consents, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-202 by adding a new section pertaining to parental consents and by making stylistic changes, as follows:

Rule 10-202. CERTIFICATES AND CONSENTS

(a) Certificates

~~(a)~~ (1) Generally Required

Except as provided in ~~section (d)~~ subsection (a)(4) of this Rule, ~~if~~ guardianship of the person of a disabled person is sought, the petitioner shall file with the petition signed and verified certificates of ~~(1)~~ (A) two physicians licensed to practice medicine in the United States who have examined the disabled person, or ~~(2)~~ (B) one licensed physician ~~or~~ who has examined the disabled person and one licensed psychologist or certified clinical social worker who has seen and evaluated the disabled person. An examination or evaluation by at least one of the health care professionals ~~under this subsection~~ shall ~~occur~~ have been within 21 days before the filing of the petition.

~~(b)~~ (2) Contents

Each certificate shall state: ~~(1)~~ (A) the name, address, and qualifications of the person who performed the examination or evaluation, ~~(2)~~ (B) a brief history of the person's involvement with the disabled person, ~~(3)~~ (C) the date of the last examination or evaluation of the disabled person, and ~~(4)~~ (D) the person's opinion as to: ~~(A)~~ (i) the cause, nature, extent, and probable duration of the disability, ~~(B)~~ (ii) whether institutional care is required, and ~~(C)~~ (iii) whether the disabled person has sufficient mental capacity to understand the nature of and consent to the appointment of a guardian.

~~(c)~~ (3) ~~Delayed Filing~~ Absence of Certificates

~~(1)~~ (A) ~~After~~ Refusal to Permit Examination

If the petition is not accompanied by the required certificate and the petition

alleges that the disabled person is residing with or under the control of a person who has refused to permit examination by a physician or evaluation by a psychologist or certified clinical social worker, and that the disabled person may be at risk unless a guardian is appointed, the court shall defer issuance of a show cause order. The court shall instead issue an order requiring that the person who has refused to permit the disabled person to be examined or evaluated appear personally on a date specified in the order and show cause why the disabled person should not be examined or evaluated. The order shall be personally served on that person and on the disabled person.

~~(2)~~ (B) Appointment of Health Care Professionals by Court

If the court finds after a hearing that examinations are necessary, it shall appoint two physicians or one physician and one psychologist or certified clinical social worker to conduct the examinations or the examination and evaluation and file their reports with the court. If both health care professionals find the person to be disabled, the court shall issue a show cause order requiring the alleged disabled person to answer the petition for guardianship and shall require the petitioner to give notice pursuant to Rule 10-203. Otherwise, the petition shall be dismissed.

~~(d)~~ (4) Beneficiary of the Department of Veterans Affairs

If guardianship of the person of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought, the petitioner shall file with the petition, in lieu of the two certificates required by ~~section (a)~~ subsection (a)(1) of this Rule, a certificate of the Secretary of that Department or an authorized representative of the Secretary stating that the person has been rated as disabled by the Department in accordance with the laws and regulations governing the Department of Veterans Affairs. The

certificate shall be prima facie evidence of the necessity for the appointment.

(b) Consent to Guardianship of a Minor

(1) Generally

If guardianship of the person of a minor child is sought, consent of each parent shall be obtained if possible. If a parent's consent cannot be obtained, the petitioner shall file an affidavit of attempts to contact, locate, or identify substantially in the form set forth in Rule 10-203. If the failure to obtain consent is for some other reason, the affidavit shall state why the parent's consent could not be obtained.

Cross reference: For a hearing when a parent objects to a guardianship, see Rule 10-205. For procedures for a child in need of assistance, see Code, Courts Article, §3-801 et seq.

(2) Form of Parent's Consent to Guardianship

The parent's consent to guardianship of a minor shall be filed with the court substantially in the following form:

[CAPTION]

PARENT'S CONSENT TO GUARDIANSHIP OF A MINOR

I, _____, _____
(name of parent) (relationship)

of _____, a minor, declare that:
(minor's name)

1. I am aware of the Petition of _____
(petitioner's name)

to become guardian of _____.
(minor's name)

2. I understand that the reason the guardianship is needed

is _____

_____

and if the need for the guardianship is expected to end before the child reaches the age of majority _____

_____.
(state time frame or date it is expected to end)

3. I believe that it is in the best interest of _____

_____ that the Petition for
(minor's name)

Guardianship be granted.

4. I understand that I have the right to revoke my consent at any time.

I solemnly affirm under the penalties of perjury that the contents of the foregoing document are true based on my personal knowledge.

_____
Signature of Parent Date

_____

_____
Address

_____
Telephone Number

Cross reference: Code, Estates and Trusts Article, §13-705.
Rule 1-341.

Source: This Rule is in part derived from former Rule R73 b 1 and b 2 and is in part new.

Rule 10-202 was accompanied by the following Reporter's

note.

> To ensure that parental consents are obtained when a guardianship of the person of a minor has been filed, the Probate/Fiduciary Subcommittee recommended the addition of a form "Consent to Guardianship of a Minor." This form would require the petitioner to file an affidavit of attempts to contact, locate, and identify interested persons pursuant to Rule 10-203, when a parent cannot be located. The form in Rule 10-202 was drafted by a committee of registers of wills.
>
> At the October 2011 meeting, the Rules Committee asked how to address the situation of when a parent refuses to consent to a guardianship, including whether a petition alleging that a child is a "Child in Need of Assistance" could be appropriate. Research has indicated that this issue is not directly addressed in the laws. Rule 10-203 provides that after a petition for guardianship of the person has been filed, a copy of a show cause order shall be served on a parent having care or custody of a minor person and on any other interested persons. Rule 10-205 provides that if a response to the show cause order objects to the relief requested, the court shall set the matter for trial and give notice to all persons who have responded. The Subcommittee suggests that a cross reference to Rule 10-205 and to Code, Courts Article, §3-801, which covers child in need of assistance cases, be added.
>
> See the Reporter's note to Rule 6-122 explaining the language of the affirmation clause.

The Chair inquired about the language of subsection (b)(1) in Rule 10-202. It provides that the consent of each parent should be obtained if a guardianship of the person of a minor child is sought and that if the consent cannot be obtained, the petitioner shall file an affidavit of attempts to contact,

locate, or identify the parents. This suggests that this is true if the consent cannot be obtained because it is not known where or who the person is. What if the parent refuses to consent? What is the point of locating or identifying the parent? The Rule could provide that if the parent's consent could not be obtained because the parent is unknown, the parent's whereabouts are unknown, or the petitioner has been unable to contact the parent, the petitioner shall file the affidavit. Then the rest of the language of subsection (b)(1) follows. The stem of this is broader than what the context should be. Mr. Sykes agreed. The provision could be split in two. One sentence would provide that if the parent cannot be located, identified, or contacted, an affidavit would be filed. The other sentence would require the parent who refuses to consent to state what the reason is. By consensus, the Committee agreed to make this change to subsection (b)(1).

Master Mahasa inquired whether the case would be under the exclusive jurisdiction of the juvenile court if the parent is unable or unwilling to care for the child. The Chair responded that he had raised this issue previously. Although he had not spoken with any Orphans' Court judges, he had spoken with several judges in Baltimore County who handle these cases, and those judges had indicated that this is not a problem. These guardianships are almost always consented to. It is frequently a situation where the parents want the child to go to school in the grandmother's school district. The judges have said that where

the parents consent, no hearing is held. If a parent objects, a hearing is held, and often the guardianship is not authorized. The circuit court judges do not regard this as being in conflict with the juvenile court, because it is not a Child in Need of Assistance (CINA) matter. Master Mahasa asked if the case would be referred to the juvenile court if it was a CINA matter. The Chair answered that this is what he had been told. Mr. Gibber added that in the Orphans' Court, if the guardianships are not consented to, they are sent to the circuit court.

By consensus, the Committee approved Rule 10-202 as amended.

Mr. Sykes presented Rule 10-206, Annual Report - Guardianship of a Minor or Disabled Person, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-206 to change the title of the Rule, to provide that the current "Annual Report of Guardian" form applies to guardianships of disabled persons, to add the word "caption" before the "Order" section of the form, to add a new form for the Annual Report of a Guardian of a Minor, and to make stylistic changes, as follows:

Rule 10-206. ANNUAL REPORT - GUARDIANSHIP OF A MINOR OR DISABLED PERSON

(a) Report Required

~~A guardian, other~~ Other than a temporary guardian, a guardian of the person of a minor or disabled person shall file an annual report in the action. The reporting year shall end on (1) the anniversary of the date the court assumed jurisdiction over the person or (2) any other date approved by the trust clerk or the court.

Cross reference: Code, Estates and Trusts Article, §13-708 (b) (7).

(b) Time for Filing

The report shall be filed not later than 60 days after the end of the reporting year, unless the court for good cause shown shall extend the time.

(c) Copies to Interested Persons

The guardian shall furnish a copy of the report to any interested person

requesting it, unless the court orders otherwise.

(d) Court Approval

The court shall review the report and either enter an order accepting the report and continuing the guardianship or take other appropriate action.

(e) Form of Annual Report of Guardian of Disabled Person

The guardian's report shall be in substantially the following form:

[CAPTION]

ANNUAL REPORT OF _____, GUARDIAN OF THE PERSON OF _____ , WHO IS DISABLED

1. The name and permanent residence of the disabled person are:_____.

2. The disabled person currently resides or is physically present in:

____ own home	____ guardian's home
____ nursing home	____ hospital or medical facility
____ foster or boarding home	____ relative's home: _____ relationship
	____ other

(If other than disabled person's permanent home, state the name and address of the place where the disabled person lives _____ _____.)

3. The disabled person has been in the current location since _____. If the person has moved within the past year, the
(date)

reasons for the change are: _____

_____.

4. The physical and mental condition of the disabled person is as follows: _____

_____.

5. During the past year, the disabled person's physical or mental condition has changed in the following respects: _____

_____

_____.

6. The disabled person is presently receiving the following care: _____

_____.

7. I have applied funds as follows from the estate of the disabled person for the purpose of support, care, or education:

_____

_____.

8. The plan for the disabled person's future care and well-being, including any plan to change the person's location, is:

_____

_____.

9. [ ] I have no serious health problems that affect my ability to serve as guardian.

[ ] I have the following serious health problems that may affect my ability to serve as guardian: _____

_____.

10. This guardianship

[ ] should be continued.

[ ] should not be continued, for the following reasons:

_____

_____.

11. My powers as guardian should be changed in the following respects and for the following reasons: _____

_____

_____.

12. The court should be aware of the following other matters relating to this guardianship: _____

_____

_____.

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

_____ _____

Date Guardian's Signature

_____

Guardian's Name (typed or printed)

_____

Street Address or Box Number

_____

City and State

_____

Telephone Number

[CAPTION]

ORDER

The foregoing Annual Report of a Guardian having been filed and reviewed, it is by the Court, this ___ day of _____, _____,
(month) (year)

ORDERED, that the report is accepted, and the guardianship is continued.

(or)

ORDERED, that a hearing shall be held in this matter on _____.
(date)

_____
JUDGE

(f) Form of Annual Report of Guardian of Minor

[CAPTION]

ANNUAL REPORT OF _____, GUARDIAN OF THE PERSON OF _____, WHO IS A MINOR

1. The name and permanent residence of the minor are:

_____.

2. The minor currently resides or is physically present in:

____ own home

____ foster or boarding home

____ guardian's home

____ hospital or medical facility

____ relative's home: _____ relationship

____ other

(If other than minor's permanent home, state the name and address

of the place where the minor lives _____

_____.)

3. The minor has been in the current location since _____ (date). If the person has moved within the past year, the reasons for the change are: _____

_____.

4. The physical and mental condition of the minor is as follows: _____

_____.

5. During the past year, the minor's physical or mental condition has changed in the following respects: _____

_____

_____.

6. The minor is presently receiving the following care:

_____

_____.

7. I have applied funds as follows from the estate of the minor for the purpose of support, care, or education:

_____

_____.

8. The plan for the minor's future care and well-being, including any plan to change the person's location, is:

_____

_____.

9. [ ] I have no serious health problems that affect my

ability to serve as guardian.

[ ] I have the following serious health problems that may affect my ability to serve as guardian: _____

_____.

10. This guardianship

[ ] should be continued.

[ ] should not be continued, for the following reasons: _____

_____

_____.

11. My powers as guardian should be changed in the following respects and for the following reasons: _____

_____

_____.

12. The court should be aware of the following other matters relating to this guardianship: _____

_____

_____.

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

_____ _____

Date Guardian's Signature

_____

Guardian's Name (typed or printed)

_____

Street Address or Box Number

_____
City and State

_____
Telephone Number

[CAPTION]

ORDER

The foregoing Annual Report of a Guardian having been filed and reviewed, it is by the Court, this day of (month), (year),

ORDERED, that the report is accepted, and the guardianship is continued.

(or)

ORDERED, that a hearing shall be held in this matter on _____.
(date)

_____
JUDGE

Source: This Rule is new and is derived as follows:
Section (a) is derived from Code, Estates and Trusts Article, §13-708 (b)(7) and former Rule V74 c 2 (b).
Section (b) is derived from former Rule V74 c 2 (b).
Section (c) is patterned after Rule 6-417 (d).
Sections (d) and (e) are new.
Section (f) is new.

Rule 10-206 was accompanied by the following Reporter's note.

> Guardians of disabled persons are required by statute to file an annual report informing the court of the status of the guardianship. An attorney has suggested that there be a similar report on the status of minor persons who are the subject of a guardianship, noting that the court should also be monitoring guardianships of minors. The Probate/Fiduciary Subcommittee recommends amending Rule 10-206 to make it applicable to guardianships of minors.
>
> A clerk has suggested that the word "Caption" be added before the word "order" in the order forms. The addition of the word indicates that the order should be on a separate piece of paper, making it more convenient for the clerks to use and docket the form separately.

Mr. Sykes explained that guardians of disabled persons are required by law to file an annual status report, but guardians of minor persons are not required to do so. An attorney had suggested that guardians of minor persons be required to fill out a status report, as well. A form to do this has been added to Rule 10-206. Mr. Gibber asked if the affirmation at the end of the report form should be by personal knowledge. A more intensive verification may be necessary. Mr. Sykes commented that stating whether the guardianship should be continued, which is in question 10, is a matter of opinion and belief. It does not involve personal knowledge of any of the facts. What the guardian has done is a matter of his or her personal knowledge.

Mr. Carbine noted that the personal knowledge requirement typically is an evidentiary issue. It would not necessarily apply to this form, because it is not a matter of whether the

information in the form is admissible. He expressed the view that the language of the affirmation should remain as is. A personal knowledge affidavit would have a restrictive effect. Mr. Sykes agreed. The Reporter asked if the word "report" in the affirmation clause should be changed to the word "document." All of the other affirmation clauses have the word "document." Mr. Sykes replied that the word should be "document" to be consistent with the other Rules. By consensus, the Committee approved this change.

By consensus, the Committee approved Rule 10-206 as amended.

Mr. Sykes presented Rule 10-207, Resignation of Guardian of the Person and Appointment of Substituted or Successor Guardian, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-207 to conform an internal reference to a proposed amendment to Rule 10-201, as follows:

Rule 10-207. RESIGNATION OF GUARDIAN OF THE PERSON AND APPOINTMENT OF SUBSTITUTED OR SUCCESSOR GUARDIAN

(a) Commencement of Action

A petition to resign may be filed in accordance with this Rule by a guardian of the person who has exercised no control over any property of the minor or disabled person or by a public guardian. The petition shall

state the reasons for the resignation and may request the appointment of a substitute or successor guardian. When a guardian of the person resigns, dies, is removed, or becomes otherwise incapable of filling the position, and there is no substituted or successor guardian of the person already named, the court may, on its own initiative or on the petition filed by any interested person, appoint a substituted or successor guardian of the person.

Committee note: If the original guardian, other than a public guardian, has exercised control over any property of the minor or disabled person, resignation and appointment of a successor shall be in accordance with Rule 10-711.

(b) Venue

The petition to resign or to appoint a substituted or successor guardian shall be filed in the court that has assumed jurisdiction over the guardianship. If jurisdiction has not been assumed, the petition shall be filed pursuant to Rule 10-201 ~~(b)~~ (c).

(c) Notice

The petitioner shall give notice to those interested persons designated by the court by mailing to them by ordinary mail a copy of the petition and a show cause order issued pursuant to Rule 10-104.

(d) Termination of Guardian's Appointment

Resignation of a guardian does not terminate the appointment of the guardian until the court enters an order accepting the resignation.

(e) Proceedings

The court may, and upon request shall, hold a hearing and shall grant or deny the relief sought in the petition. Pending the appointment of the successor guardian, the court may appoint a temporary guardian.

(f) Other Procedures

This Rule is in addition to, and not in lieu of, any other procedure for the resignation or discharge of a guardian provided by law or by the instrument appointing the guardian.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule V81 a and former Rule V82 a.
Section (b) is derived from former Rule R72 a and b.
Section (c) is derived from former Rule V81 c 1.
Section (d) is new.
Section (e) is in part derived from former Rule V78 b 5 and is in part new.
Section (f) is derived from former Rule V81 e.

Rule 10-207 was accompanied by the following Reporter's note.

If the proposed change to Rule 10-201 is adopted, it would require the change to section (b) of this Rule.

Mr. Sykes said that the only change to Rule 10-207 was to conform an internal reference to the proposed changes to Rule 10-201.

There being no discussion, the Committee approved Rule 10-207 as presented.

Mr. Sykes presented Rule 10-208, Removal for Cause or Other Sanctions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-208 to conform an internal reference to an amendment to Rule 10-201, as follows:

Rule 10-208. REMOVAL FOR CAUSE OR OTHER SANCTIONS

(a) On Court's Initiative

The court that has already assumed jurisdiction over the guardianship of the person may order a guardian to show cause why the guardian should not be removed or be subject to other sanctions for failure to perform the duties of that office.

(b) On Petition of Interested Persons

An interested person may file a petition to remove a guardian of the person. The petition shall be filed in the court that has assumed jurisdiction or, if jurisdiction has not been assumed, pursuant to Rule 10-201 ~~(b)~~ (c). The petition shall state the reasons why the guardian should be removed.

(c) Notice and Hearing

The court shall issue a show cause order pursuant to Rule 10-104 which shall set a hearing date. If no petition for removal has been filed, the show cause order shall state the grounds asserted by the court for the removal. The order and a copy of any petition shall be served on the guardian, all interested persons, and any other persons as directed by the court. The court shall conduct a hearing for the purpose of determining whether the guardian should be removed.

(d) Action by Court

If the court finds grounds for removal, it may remove the guardian and appoint a substituted or successor guardian as provided in Rule 10-207. Pending the appointment of the guardian, the court may appoint a temporary guardian.

Cross reference: As to the grounds for the removal of a fiduciary, see Code, Estates and Trusts Article, §15-112.

(e) Other Sanctions

In addition to or in lieu of removal, the Court may require the guardian to perform any neglected duties and may impose any other appropriate sanctions.

Source: This Rule is derived as follows:
Section (a) is in part derived from former Rules V84 d and V74 e 1 (a) and is in part new.
Section (b) is in part derived from former Rule V84 d 1 and d 2 and in part from former Rule R72 a and b.
Section (c) is in part derived from former Rules V74 e 1 (a) and V84 e, and is in part new.
Section (d) is new.
Section (e) is in part derived from former Rule V74 e 2 and is in part new.

Rule 10-208 was accompanied by the following Reporter's note.

If the proposed change to Rule 10-201 is adopted, it would require the change to section (b) of this Rule.

Mr. Sykes told the Committee that the only change to Rule 10-208 was to modify the reference in section (b) to Rule 10-201 to conform to the changes proposed for Rule 10-201.

There being no discussion, the Committee approved Rule 10-208 as presented.

Mr. Sykes presented Rule 10-301, Petition for Appointment of a Guardian of Property, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 300 - GUARDIAN OF PROPERTY

AMEND Rule 10-301 by adding a new section (b) pertaining to the form of petition, by deleting current section (c), and by making stylistic changes, as follows:

Rule 10-301. PETITION FOR APPOINTMENT OF A GUARDIAN OF PROPERTY

(a) Who May File

Any interested person may file a petition requesting a court to appoint a guardian of the property of a minor or an alleged disabled person.

(b) Form of Petition

The petition for a guardianship of the property of a minor shall be filed in substantially the form set forth in Rule 10-111. The petition for a guardianship of the property of an alleged disabled person shall be filed in substantially the form set forth in Rule 10-112.

~~(b)~~ (c) Venue

(1) Resident

If the minor or alleged disabled person is a resident of Maryland, the petition shall be filed in the county where the minor or alleged disabled person resides, even if the person is temporarily absent.

(2) Nonresident

If the minor or disabled person does not reside in this State, the petition shall be filed in the county in which a petition for guardianship of the person may be filed, or in the county where any part of the property is located. For purposes of determining the situs of property, the situs of tangible personal property is its location; the situs of intangible personal property is the location of the instrument, if any, evidencing a debt, obligation, stock or chose in action, or the residence of the debtor if there is no instrument evidencing a debt, obligation, stock, or chose in action; and the situs of an interest in property held in trust is located where the trustee may be sued.

~~(c) Contents~~

~~The petition shall be captioned "In the Matter of . . ." [stating the name of the minor or alleged disabled person]. It shall be signed and verified by the petitioner and shall contain at least the following information:~~

~~(1) The petitioner's name, address, age, and telephone number;~~

~~(2) The petitioner's familial or other relationship to the alleged disabled person;~~

~~(3) Whether the person who is the subject of the petition is a minor or an alleged disabled person and, if an alleged disabled person, a brief description of the alleged disability;~~

~~(4) The reasons why the court should appoint a guardian of the property and, if the subject of the petition is an alleged disabled person, allegations demonstrating an inability of the alleged disabled person to manage the person's property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance;~~

~~Cross reference: Code, Estates and Trusts Article, §13-201 (b) and (c).~~

~~(5) An identification of any instrument nominating a guardian for the minor or alleged disabled person or constituting a durable power of attorney;~~

~~Cross reference: Code, Estates and Trusts Article, §13-207 (a) (2) and (5).~~

~~(6) If a guardian or conservator has been appointed for the alleged disabled person in another proceeding, the name and address of the guardian or conservator and the court that appointed the guardian or conservator. If a guardianship or conservatorship proceeding was previously filed in any other court, the name and address of the court, the case number, if known, and whether the proceeding is still pending in that court.~~

~~(7) The name, age, sex, and address of the minor or alleged disabled person, the name and address of the persons with whom the minor or alleged disabled person resides, and if the minor or alleged disabled person resides with the petitioner, the name and address of another person on whom service can be made;~~

~~(8) To the extent known or reasonably ascertainable, the name, address, telephone number, and nature of interest of all interested persons and all others exercising any control over the property of the estate;~~

~~(9) If the minor or alleged disabled person is represented by an attorney, the name, address, and telephone number of the attorney;~~

~~(10) The nature, value, and location of the property of the minor or alleged disabled person;~~

~~(11) A brief description of all other property in which the minor or alleged disabled person has a concurrent interest with one or more individuals;~~

~~(12) A statement that the exhibits required by section (d) of this Rule are attached or, if not attached, the reason that they are absent; and~~

~~(13) A statement of the relief sought.~~

(d) Required Exhibits

The petitioner shall attach to the petition as exhibits (1) a copy of any instrument nominating a guardian; (2) (A) the certificates required by Rule 10-202, or (B) if guardianship of the property of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought, in lieu of the requirements of Rule 10-202, a certificate of the Secretary of that Department or an authorized representative of the Secretary stating that the person has been rated as disabled by the Department in accordance with the laws and regulations governing the Department of Veterans Affairs; and (3) if the petition is for the appointment of a guardian for a minor who is a beneficiary of the Department of Veterans Affairs, a certificate of the Secretary of that Department or any authorized representative of the Secretary, in accordance with Code, Estates and Trusts Article, §13-802.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule R71 a.
Section (b) is new.
Section ~~(b)~~ (c) is derived from former Rule R72 a and b.
~~Section (c) is in part derived from former Rule R73 a and is in part new.~~
Section (d) is new.

Rule 10-301 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 10-111 as to the form of the petition and to explain the deletion of section (c) of this Rule.

Mr. Sykes explained that similar to the changes to Rule 10-201, the information needed in the petition for appointment of a guardian of the property would now be requested in the forms set forth in Rules 10-111 and 10-112.

There being no discussion, the Committee approved Rule 10-301 as presented.

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

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 700 - FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS OF THE PROPERTY

AMEND Rule 10-708 to revise the form of the fiduciary's account, as follows:

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

(a) Form of Account

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

[CAPTION]

FIDUCIARY'S ACCOUNT

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

_____ to _____ .

Part I. The FIDUCIARY ESTATE now consists of the following assets: (attach additional sheets, if necessary; state amount of any mortgages, liens, or other indebtedness, but do not deduct when determining estimated fair market value)

A. REAL ESTATE

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

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

B. CASH AND CASH EQUIVALENTS

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

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

C. PERSONAL PROPERTY

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

	ESTIMATED FAIR MARKET VALUE
_____	$_____
_____	$_____

_____ $_____

TOTAL $_____

D. STOCKS

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

PRESENT FAIR MARKET VALUE

_____ $_____

_____ $_____

_____ $_____

TOTAL $_____

E. BONDS

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

PRESENT FAIR MARKET VALUE

_____ $_____

_____ $_____

_____ $_____

TOTAL $_____

F. OTHER

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

ESTIMATED FAIR MARKET VALUE

_____ $_____

_____ $_____

_____ $_____

TOTAL $_____

Part II. The following income was collected and disbursements were made: (attach additional sheets, if necessary)

A. INCOME
(State type, e.g. pensions, social security, rent, annuities, dividends, interest, refunds)

	AMOUNT
	$
	$
	$
	$
	$
	$
	$
TOTAL	$

B. DISBURSEMENTS
(State to whom paid and purpose of payment)

	AMOUNT
	$
	$
	$
	$
	$
	$
	$
TOTAL	$

C. SUMMARY

Total Income	$ _____
Total Disbursements	$(_____)
Net Income/(Loss)	$ _____

Part III. The following changes in the assets of the Fiduciary Estate have occurred since the last account: (attach additional sheets, if necessary)

A. ASSETS ADDED

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

B. ASSETS DELETED

Date	Description of Transaction	Gross Sale Proceeds	Selling Costs	Carrying Value	Gain (loss)

A Summary of the Fiduciary Estate is as follows:

Type of Property	Value reported on last Fiduciary Account	Value reported on this Fiduciary Account
A. Real Estate	$ _____	$_____
B. Cash and Cash Equivalents	$ _____	$_____
C. Personal Property	$_____	$_____

~~D. Stocks $_____ $_____~~

~~E. Bonds $_____ $_____~~

~~F. Other $_____ $_____~~

~~Total $_____ $_____~~

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

POLICY QUESTION: The Probate/Fiduciary Subcommittee discussed adding an item to the form of fiduciary account which would request that the fiduciary indicate a substantial change in asset value. Although this may be useful information, the Subcommittee expressed some concern that providing this information could be burdensome for the fiduciary. The Subcommittee would like the full Committee to make this determination.

The Fiduciary Estate consists of the following assets as [ ] reported on the Fiduciary's Inventory [ ] carried forward from last Fiduciary Account:

A. REAL ESTATE	$_____
B. CASH & CASH EQUIVALENTS	$_____
C. PERSONAL PROPERTY	$_____
D. STOCKS	$_____
E. BONDS	$_____
F. OTHER	$_____
TOTAL	$_____

The following changes in the assets of the Fiduciary Estate have occurred since the last account: (Please include real or personal property that was bought, sold, transferred, exchanged,

or disposed of and any loans that were taken out on any asset in the estate. Attach additional sheets, if necessary.)

A. INCOME

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

B. DISBURSEMENTS

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

C. ASSETS ADDED

	Gross	Value at date of

Date	Description of Transaction	Purchase Price	acquisition if other than by purchase

D. ASSETS DELETED

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

SUMMARY

Total Income ..... $ _____

Total Disbursements ..... $ (_____)

Total Assets Added ..... $ _____

Total Assets Deleted ..... $ (_____)

Total Changes ..... $ _____

A Summary of the Fiduciary Estate to be carried forward to next account:

A. REAL ESTATE ..... $ _____

B. CASH & CASH EQUIVALENTS ..... $ _____

C. PERSONAL PROPERTY ..... $ _____

D. STOCKS ..... $ _____

E. BONDS ..... $ _____

F. OTHER ..... $ _____

TOTAL ..... $ _____

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

VERIFICATION:

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

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

_____

Name of Fiduciary's Attorney

_____

Address

_____

Telephone Number

_____

Facsimile Number

_____

E-mail Address

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

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

REPORT OF TRUST CLERK AND ORDER OF COURT

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

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

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____ _____
Date Signature of Trust Clerk

_____ _____
Address of Trust Clerk Telephone No. of Trust Clerk

ORDER

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

ORDERED, that the attached Fiduciary's Account is accepted.

(or)

ORDERED, that a hearing shall be held in this matter on _____.
(date)

_____
JUDGE

Source: This Rule is new.

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

> The Probate/Fiduciary Subcommittee had recommended modifying the form in Rule 10-708 to (1) include a question about which assets in the fiduciary estate were reported on the inventory form and which were carried forward from the last account, (2) eliminate the question about estimated fair market value of real estate, cash, personal property, stocks, and bonds, (3) include a question about changes in the assets of the fiduciary estate, and (4) reorganize the form and make it easier to read. The modifications to the form were suggested by the committee composed of registers of wills, Orphans' Court judges as well as members of the bar and of the

> Estates and Trusts Section of the Maryland State Bar Association.
>
> The Rules Committee also recommended adding the word "date" to Section A., Income and Section B., Disbursements and a Column for "source" in Section A. When the Subcommittee later considered the Rule to make these changes, they discussed adding an item to the form of the fiduciary account which would request the fiduciary to indicate a substantial change in asset value. Their concern was that this may be too burdensome a requirement for the fiduciary. This is added as a policy question for the full Rules Committee.
>
> See the Reporter's note to Rule 6-122 for an explanation of the change to the verification clause near the end of the account form.

Mr. Sykes noted that some changes had been made to the form of the fiduciary's account in Rule 10-708. The Chair inquired about the reason for the changes in the fiduciary's account. Mr. Sykes answered that the changes make the form more readable. The changes make it unnecessary to repeat the information that had already been stated before in the form. The form now reflects what was carried forward from the last account. Currently, the person filling out the form has been required to go back to what happened in the beginning.

The Chair pointed out that before discussion of the new language of the form begins, there is a policy question for the Committee. Mr. Sykes responded that the Committee was being asked whether the form should request substantial changes in asset value. The form opts to ask the carrying value as long as

everyone recognizes it and knows that it is not asking for an appraisal each year. The Chair inquired if it would make a difference if there was a significant change in the value of the assets. Mr. Leahy questioned whether the burden should be on the fiduciary to be required to get appraisals. Mr. Carbine noted that if the value of stocks goes down, no appraisal is needed. The Chair agreed, pointing out that this information would be in the newspaper. He asked about a significant change in the value of real estate.

Judge Pierson commented that the reports are largely for the purpose of enabling the trust clerk to make sure that there are no obvious defalcations or inattention to the reporting duties. The cash and the liquid assets are the primary concern. The fact that this form was filed does not prevent interested persons from questioning the guardian's administration in terms of breach of fiduciary duty related to a drop in the value of assets. This form does not occupy the entire space for review of performance of fiduciary duty. It allows for an independent eye to be kept on the account from year to year. There are a number of self-represented guardians who are the main obstacle to re-evaluating the asset values each year. Mr. Sykes remarked that it is important to ensure that the assets have not been removed.

The Chair asked whether the form is ensuring that it was the same personal property this year as it was last year. He hypothesized that the guardian may have sold or otherwise disposed of some jewelry and noted on the form that the value was

carried over. Mr. Sykes pointed out that Section D. of the form is “Assets Deleted.” Mr. Johnson added that the fiduciary must itemize whatever was sold. The Reporter noted that the fiduciary would itemize what is sold, but it is still going to look like the fiduciary is stealing money when the stock market goes down a great amount. There should be some way to show that last time the fiduciary reported “X” amount, and in this account, the stocks are only worth “Y” amount. It should be clear that the person did not steal the money.

Mr. Gibber pointed out that the fiduciary would use the carrying value. The Reporter said that this is not a fair statement of the actual value that is available to the estate. Mr. Johnson inquired if this would be covered by the carrying value and the gain or loss. This should be able to be tracked. The form is where this is captured. The Reporter reiterated that it could look as if the fiduciary was stealing money, or that the minor or disabled person has more assets available than the person actually has or perhaps less assets available. She expressed doubt as to whether the changes to the form are an improvement.

Ms. Phipps commented that what is being done now and what is being discussed today are not different. It is a carrying value from the time the fiduciary takes over the administration of the assets until he or she sells it, distributes it, or does something else with it. The proposed form is to make it flow better, so that the fiduciary does not have to repeat everything

over again. It is like an accounting in an estate. What is left over is carried forward. Even in the current form, there is no place for what has been reduced in value. The Reporter noted that the old form in Section B., “Assets Deleted” reads: “Value reported on last Fiduciary Account” and “Value reported on this Fiduciary Account,” and she inquired whether when the fiduciary fills out the current form, he or she uses the carrying value and does not take the time to determine what the stocks currently are worth. Ms. Phipps answered that this has never been done.

By consensus, the Committee approved Rule 10-708 as presented.

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