COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Training Rooms 5 and 6 of the Judicial Education and Conference Center, 2011-D Commerce Park Drive, Annapolis, Maryland on April 20, 2012.

Members present:

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

Albert D. Brault, Esq.
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
Robert D. Klein, Esq.
Hon. Thomas J. Love
Zakia Mahasa, Esq.
Robert R. Michael, Esq.
Hon. John L. Norton, III
Anne C. Ogletree, Esq.
Hon. W. Michel Pierson
Debbie L. Potter, Esq.
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
Professor Doug Colbert, University of Maryland School of Law
Chris Flohr, Esq.
Bradley A. Kukuk, Esq., Maryland Family Law News
Kathleen Wherthey, Esq., Deputy Director, Department of Legal Affairs, Administrative Office of the Courts
Suzanne James, Circuit Court Administrator, Howard County
Wendy Riley, Circuit Court Administrator, Wicomico County
Dr. Edward C. Papenfuse
Mitchell Y. Mirviss, Esq., Venable, LLP
Brian L. Zavin, Esq., Office of the Public Defender, Appellate Division
Julia Doyle Bernhardt, Esq., Office of the Attorney General
Richard Montgomery, Director Legislative Relations, Maryland State Bar Association
Mark Bittner, Executive Director, Judicial Information Systems, Administrative Office of the Courts
David R. Durfee, Jr., Esq., Executive Director, Legal Affairs, Administrative Office of the Courts

The Chair convened the meeting. He announced the death of Senator Walter M. Baker, who had served on the Rules Committee from 1984 to 1999 during his tenure as Chair of the Senate Judicial Proceedings Committee. He had been a marvelous member, very straightforward, and he had also been an excellent legislator. The Chair also announced that Ms. Smith had been chosen as one of Maryland's top 100 women. The ceremony honoring the women will be held on May 7, 2012. The Chair commented that Mr. Klein had been written up in the Maryland State Bar Association Bulletin, because he is also a musical entertainer as well as an attorney.

Agenda Item 1. Consideration of queries from the Style Subcommittee regarding: Rule 2-311 (Motions), Rule 4-266 (Subpoenas - Generally), and "Attorneys' Fees"

The Chair told the Committee that the first agenda item consisted of questions from the Style Subcommittee to the Rules Committee.

MEMORANDUM

TO	:	Members of the Rules Committee
FROM	:	Sandra F. Haines, Esq., Reporter
DATE	:	April 3, 2012
SUBJECT	:	Queries from the Style Subcommittee

The Style Subcommittee requests guidance and clarification from the full Rules Committee regarding three matters:

(1) Rule 2-311: At the January 2012 meeting, the Rules Committee voted to allow a reply memorandum to be filed by a party within 10 days after being served with a response. Should a party who files a reply memorandum be allowed to request a hearing for the first time in the reply memorandum? In the attached draft of Rule 2-311, "Option 1" answers that question in the negative, while "Option 2" answers that question in the affirmative.

(2) Rule 4-266: At the March 2012 meeting, the Rules Committee approved the attached amendment to Rule 4-266. What, if any, additional changes should be made to the Rule regarding protection of trade secret information and protection against harassment? Also, as to a subpoena that, in accordance with section (a) of the Rule, seeks the production any "documents, recordings, photographs, or other tangible things," should section (c) refer to a "person who is the subject of a **[record] [document, recording, photograph, or other tangible thing]** sought by the subpoena?

(3) Attorneys' Fees: The Style Subcommittee observed that the terms "attorney's fees" and "personal representative's commissions" are used in the forms and Rules in Title 6. This terminology is consistent with the terminology in Code, Estates and Trusts Article.

In the Rules pertaining to fee shifting (proposed new Title 2, Chapter 700 and proposed new Rule 3-741), the term "attorneys' fees" is used. This terminology is consistent with the terminology of L.R. 109 2 (Motions requesting attorneys' fees) and Appendix B (Rules and Guidelines for Determining Attorneys' Fees in Certain Cases) of the Rules of the U.S. District Court for the District of Maryland. Other federal

rules and statutes use different terminology, including "reasonable attorney's fees" [Fed.R.Civ.P. 23 (h)]; "a reasonable attorney's fee" [28 U.S.C. §1875 (d)(2)]; and "reasonable attorney fees" [28 U.S.C. §2412 (a)(2)(A)].

Does the Rules Committee have a preference as to the terminology that should be used in the Maryland Rules?

SFH:cdc

Mr. Sykes presented Rule 2-311, Motions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-311 to add a new section (c) to allow the filing of a reply memorandum within 10 days after being served with a response, **[to add Committee notes following sections (c) and (g)] [to add a Committee note following section (c), to allow a party to include in a reply memorandum a request for a hearing]**, and to make stylistic changes, as follows:

Rule 2-311. MOTIONS

(a) Generally

An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, and shall set forth the relief or order sought.

(b) Response

Except as otherwise provided in this section, a party against whom a motion is directed shall file any response within 15 days after being served with the motion, or within the time allowed for a party's original pleading pursuant to Rule 2-321 (a), whichever is later. Unless the court orders otherwise, no response need be filed to a motion filed pursuant to Rule 1-204, 2-532, 2-533, or 2-534. If a party fails to file a response required by this section, the court may proceed to rule on the motion.
Cross reference: See Rule 1-203 concerning the computation of time.

(c) Reply Memorandum

Unless otherwise ordered by the court, a party may file a reply memorandum within 10 days after being served with a response. A reply memorandum shall not present matters that do not relate to the response.

Committee note: Reply memoranda should not be filed as a matter of course, but may be filed to correct a misstatement of fact or law in a response or to address a matter raised for the first time in a response.

~~(c)~~ (d) Statement of Grounds and Authorities; Exhibits

A written motion and a response to a motion shall state with particularity the grounds and the authorities in support of each ground. A party shall attach as an exhibit to a written motion, ~~or~~ response, or reply memorandum any document that the party wishes the court to consider in ruling on the motion or response unless the document is adopted by reference as permitted by Rule 2-303 (d) or set forth as permitted by Rule 2-432 (b).

~~(d)~~ (e) Affidavit

A motion, ~~or~~ a response to a motion, or a reply memorandum that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based.

~~(e)~~ (f) Hearing - Motions for Judgment Notwithstanding the Verdict, for New Trial, or to Amend the Judgment

When a motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the court shall determine in each case whether a hearing will be held, but it may not grant the motion without a hearing.

Option #1

~~(f)~~ (g) Hearing - Other Motions

A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the heading "Request for Hearing." The title of the motion or response shall state that a hearing is requested. Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

Committee note: A party may not request a hearing for the first time in a reply memorandum.

Option #2

~~(f)~~ (g) Hearing - Other Motions

A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion, ~~or~~ response, or reply memorandum under the heading "Request for Hearing." The title of the motion or response shall state that a hearing is requested. Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or

defense without a hearing if one was requested as provided in this section.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 321 a.
Section (b) is new.
Section (c) is new.
Section ~~(c)~~ (d) is derived from former Rule 319.
Section ~~(d)~~ (e) is derived from former Rule 321 b.
Section ~~(e)~~ (f) is derived from former Rule 321 d.
Section ~~(f)~~ (g) is new but is derived in part from former Rule 321 d.

Rule 2-311 was accompanied by the following Reporter's note.

New section (c), Reply Memorandum, is proposed in order to provide guidance to practitioners and courts regarding reply memoranda. Section (c) expressly authorizes the filing of a reply memorandum and requires a party who wishes to file one to do so within 10 days after being served with the response to the motion. The second sentence is borrowed from Federal Rule of Appellate Procedure 27, with a stylistic change. A Committee note following section (c) cautions that reply memoranda are appropriate in limited circumstances. **[A Committee note following section (g) clarifies that a party may not request a hearing for the first time in the reply memorandum.] [An amendment to section (g) allows a party to include a request for a hearing in the party's reply memorandum.]**

Currently, the Rules are silent regarding reply memoranda. This silence has caused differences of opinion among courts and practitioners as to whether reply memoranda are permitted at all. Also, some practitioners have taken the position that a reply memorandum may be filed on the day of the hearing on the motion because no filing deadline for replies is mentioned in Rule 2-311 or Rule 2-504 (b).

> Although reply memoranda are not necessary in most cases, they provide a party (ordinarily the moving party) an opportunity to address matters raised for the first time in a response and to correct any misstatements of fact or law in the response.
>
> Conforming amendments are made to Rules 2-303, 2-401, and 2-643.

Mr. Sykes explained that at the last Committee meeting, the Committee had considered the issue of whether a reply memorandum to a motion should be permitted. The Committee had decided that it should be permitted. The question then came up about a hearing that had not been requested until the time of the reply. The issue noted by the Style Subcommittee, which had not been addressed by the full Committee, was whether a person who files a reply memorandum may request the hearing. This results in two options. One is that the party may request a hearing, and the other is that a party should not be able to do so. The Chair noted that there may be a third option, which is whether someone can request a hearing on the response to the motion and to the reply. The Style Subcommittee had not thought about this third option.

Mr. Klein remarked that he could see no reason why a party could not request a hearing at any stage of the motion process. Whether or not it may be granted is a different matter. Something that was said in the response or in the reply could cause the other side to believe that a hearing is necessary. Judge Pierson disagreed. He expressed the opinion that it is not

up to the court whether to grant a hearing on a dispositive motion. The court cannot grant a dispositive motion without a hearing if one has been requested. Currently, a hearing can be requested either in the motion or at the time a response is filed. If the Rule allows hearings to be requested at the time the reply is filed, this raises the issue of how allowing replies will stretch out the motion-processing time, which impacts the time standards. Judge Pierson said that he would not be in favor of allowing another 10 days to request a hearing that would extend the motion-processing time.

The Chair commented that the real issue may be what the reply says to the response, which may be the one issue on which a hearing may be required. It is a choice to be made by the Committee. The Committee had discussed a motion, a response, and a reply memorandum. Should Rule 2-311 refer to a "reply" rather than a "memorandum?" In appellate court proceedings, the Rules refer to "reply briefs," because briefs are being replied to. Mr. Klein moved that Rule 2-311 should allow a hearing to be requested at the reply stage, or in response to a reply. The motion was seconded, and it carried on a vote of nine in favor, five opposed.

The Chair asked if it would be a problem to refer to this as a "reply" rather than a "reply memorandum." By consensus, the Committee agreed that Rule 2-311 should refer to a "reply" and not a "reply memorandum."

Mr. Sykes 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 add language to section (c) referring to a person named in or who is the subject of a subpoena, as follows:

Rule 4-266. SUBPOENAS - GENERALLY

(a) Form

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.

(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;

(3) That certain matters 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.

The Rules Committee proposes 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.

Mr. Sykes told the Committee that Rule 4-266 addresses subpoenas and the right to challenge a subpoena. The Rule, as approved by the Committee, had what the Style Subcommittee had perceived to be a gap, and they had referred the Rule back to the full Committee. The issue is whether the same kind of protection that is available to the party who is served the subpoena can also be available to someone who is the subject of the subpoenaed records or whose conduct was involved. The Style Subcommittee had suggested an amendment to Rule 4-266 that would expand the protection to include persons who are the subject of the request.

Master Mahasa noted that there is already precedent for this

in Code, Courts Article, §9-109 concerning medical records. If someone is the subject of a subpoena, he or she has a privilege to refuse to disclose information in medical records. The Chair pointed out that the version of Rule 4-266 that had been adopted by the Committee previously added the language, "named in or the subject of the subpoena." If the expansion is to allow protection for anyone whose name in the record is being sought, this could mean that 100 people could be named in the record, depending on the nature of the record. A medical record could refer to many medical personnel. Would they have the right to seek a protective order, or is it only the patient who has this right? Master Mahasa responded that she had interpreted this Rule to refer to the person who is the subject of the subpoena. The Chair noted that this is already in the Rule.

The Reporter questioned whether protecting an emergency medical technician (EMT) named in the medical record would not be frivolous. How would the EMT be protected from "annoyance, embarrassment, oppression or undue burden or expense," which is the language in section (c) of Rule 4-266? The Chair commented that the likelihood of a protective order being granted to such a person is remote. Master Mahasa said that the EMT would not be the person named in the subpoena, but the Chair noted that this problem concerns the EMT named in the record.

Judge Pierson remarked that to the extent that the Rules contain a standard as to who can file a motion for a protective order, his view was that this should be as broad as possible, so

that the Rule does not encourage a court to cut off someone from having standing to file a motion. There is case law on the civil side that allows parties with an interest in the privacy of records to file a motion for a protective order. The court may entertain a motion for a protective order even from someone who is not specifically within the standards set forth in the Rule, but nevertheless Judge Pierson expressed the view that the Rule should not be drawn narrowly. The court can weed out someone who does not have a genuine interest in the matter.

The Chair inquired if the language "or is named in the record being sought" should be added. Mr. Sykes added that this was what the Style Subcommittee had suggested. The Rule should refer to anyone who could be annoyed, embarrassed, oppressed, or unduly burdened as a result of giving out the information requested. The object is to give that protection to anyone who may need it. The Chair asked what language should be added to Rule 4-266. The current language is "...to protect the party or person named in or who is the subject of the subpoena...".

Judge Pierson commented that the language "who is the subject of" is flexible enough that it allows for anyone who has a potential interest in the case to be protected. Mr. Sykes noted that the language "the subject" may mean only one person. It should be changed to "a subject." This would be a good compromise on this issue. He suggested that this change be made. Mr. Klein asked if the wording of section (c) would also be "a person named in" as opposed to "the person named in." The

Reporter responded that she had thought that the problem was with the record. It is not that the person is named in the subpoena, but that he or she is named in the record that is part of the subpoena. Judge Pierson remarked that the language that reads "the subject of the subpoena" is not clear. Who is the subject of a subpoena? It could be anyone named in the record. The Reporter suggested that Rule 4-266 should not be written with an intentional ambiguity.

Judge Pierson commented that Mr. Durfee had pointed out that Rule 16-1009, Court Order Denying or Permitting Inspection of Case Record, addressing motions to seal and shield, states: "A party to an action in which a case record is filed, including a person who has been permitted to intervene as a party, and a person who is the subject of or is specifically identified in a case record may file a motion...". The Chair noted that a case record has already been filed. Mr. Sykes suggested that the language "specifically identified" could be used in Rule 4-266. The Rule would have to state "...identified in records sought to be subpoenaed." The Chair observed that if this is what the Rule is intended to mean, this is the language that should be used. Otherwise, the Rule will result in litigation.

Ms. Potter pointed out that the language in section (c) of Rule 2-510, Subpoenas, which is the civil Rule, is different from the language in Rule 4-266 (a). For example, in Rule 2-510, the language "electronically stored information" was added, but it is not in Rule 4-266 (a). Ms. Potter was not sure if this lack of

consistency was intended. Mr. Klein responded that the Criminal Rules never caught up with the changes made as a result of electronically stored information (ESI). The lack of consistency between Rules 2-510 and 4-266 was not by design. The Chair noted that the proposal to amend Rule 4-266 came from the Maryland Crime Victims' Resource Center. They were concerned about defense counsel and the State's Attorney subpoenaing records that identify the victim in a crime. Whether whatever changes that are made to Rule 4-266 should be parallel in the civil context is a separate issue.

Mr. Klein noted that the word "records" is not broad enough, because section (a) of Rule 4-266 permits a subpoena for documents, recordings, photographs, or other tangible things. The Rule needs to sweep in all of this. Ms. Potter observed that objection to civil subpoenas is on motion of a person served. The Chair asked whether the language "subject of the subpoena" would be necessary if the new language in section (c) would be expanded to "any individual who is named in or depicted in a document, recording, photograph, or other tangible things." The word "depicted" would apply if it refers to a photograph.

Mr. Brault commented that this Rule is designed for the person who was served, and now it would be broadened to apply to the person served and anyone who may be named in the record. The Rule should be clearer as to which is which. The Chair responded that the person named in the subpoena would be the recipient. Mr. Michael pointed out that this is not necessarily the case, if

the subpoena was received by a corporate designee or a custodian of medical records, or in any situation where someone is served in a representative capacity. The Chair asked whether the custodian would be named in the subpoena. Ms. Potter answered negatively, noting that if someone issues a subpoena to a rape crisis center about a victim, the victim would not know that the rape crisis center had been served with a subpoena. The Rule can be broadened, but it is not clear how the victim would necessarily be on notice that the subpoena had been served. The Chair said that if the subpoena is for medical records, the subject of the medical records would have to be notified. Ms. Potter remarked that there are other examples of this issue.

Mr. Klein suggested the following language for section (c) of Rule 4-266: "Upon motion of a party or of a person named in the subpoena or named or depicted in a document, recording, photograph, or other tangible thing requested by the subpoena...". The Chair added that the language "who is the subject of" would be dropped. Mr. Klein moved that his suggested language be added to section (c), the motion was seconded, and it carried on a majority vote.

Mr. Sykes told the Committee that the third item in Agenda Item 1 was purely a style matter. The Rules vary greatly on this issue. Should the term "attorney's fee" be singular possessive, plural possessive, or not possessive ("attorney fee")? The Style Subcommittee thought that the Committee might have a preference. The Chair pointed out that every Rule that refers to "attorney's

fees" would not be changed at this time. Mr. Sykes noted that this would ultimately be done. The Style Subcommittee was interested in making the Title 6 Rules that they had discussed a model for the rest of the Rules. Mr. Brault responded that in his experience, the language "the evidence of and motion for attorneys' fees" would apply to a situation where there is more than one attorney. The Chair inquired if there are any cases in which a person comes into court when only one attorney is present. Judge Weatherly replied that this happens in family cases. Ms. Ogletree added that this occurs on the Eastern Shore. Judge Pierson noted that in the appellate case law, the term is always in the plural possessive.

The Reporter pointed out that in the Code, Estates and Trusts Article, the term is always "attorney's fee." The Title 6 Rules track the Estates and Trusts Article, because that is what the Rules relate to. Mr. Sykes suggested that the term could be "attorney fees." The Reporter said that she had found a federal rule that referred to "attorney fees." On page 2 of her memorandum, which was included in the meeting materials, she had given the examples of what she had found in the federal system, which varied greatly, plus how the term is noted in the Maryland Rules and statutes. Judge Weatherly expressed the view that the term is possessive, either plural or singular. The Chair asked if anyone had a motion for a uniform term. Mr. Brault moved that the term should be plural ("attorneys' fees"). The motion was seconded, and it carried on a majority vote.

Additional Emergency Agenda Item

The Chair presented Rules 4-216, Pretrial Release - Authority of Judicial Officer; Procedure; 4-216.1, Further Proceedings Regarding Pretrial Release; 4-213, Initial Appearance of Defendant, 4-217, Bail Bonds; 4-231, Presence of Defendant; 4-263, Discovery in Circuit Court; 4-349, Release after Conviction; and 5-101, Scope for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216 to clarify section (a) regarding a finding of probable cause; to require a written record of certain determinations by a judicial officer; to add section (b) regarding communications with a judicial officer; to add section (e) pertaining to a defendant's right to counsel at an initial appearance before a judge and a defendant's waiver of that right; to delete sections (f), (g), (h), (i), and (j); and to make stylistic changes, as follows:

Rule 4-216. PRETRIAL RELEASE – AUTHORITY OF JUDICIAL OFFICER; PROCEDURE

(a) Arrest Without Warrant

If a defendant was arrested without a warrant, the judicial officer shall determine whether there was probable cause for each charge and for the arrest and, as to each determination, make a written record. If there was probable cause for at least one charge and the arrest, the judicial officer shall implement the remaining sections of this Rule. If there was no probable cause for any of the charges or for the arrest, the

judicial officer shall release the defendant on personal recognizance, with no other conditions of release, and the remaining sections of this Rule are inapplicable.

Cross reference: See Rule 4-213 (a)(4).

(b) Communications with Judicial Officer

Except as permitted by Rule 2.9 (a)(1) and (2) of the Maryland Code of Conduct for Judicial Appointees or Rule 2.9 (a)(1) and (2) of the Maryland Code of Judicial Conduct, all communications with a judicial officer regarding any matter required to be considered by the judicial officer under this Rule shall (1) be in writing, shown to each other party who participates in the proceeding before the judicial officer, and made part of the record, or (2) made openly at the proceeding before the judicial officer. Each party who participates in the proceeding shall be given an opportunity to respond to the communication.

Cross reference: See also Rule 3.5 (a) of the Maryland Lawyers' Rules of Professional Conduct.

~~(b)~~ (c) Defendants Eligible for Release by Commissioner or Judge

In accordance with this Rule and Code, Criminal Procedure Article, §§5-101 and 5-201 and except as otherwise provided in section ~~(c)~~ (d) of this Rule or by Code, Criminal Procedure Article, §§5-201 and 5-202, a defendant is entitled to be released before verdict on personal recognizance or on bail, in either case with or without conditions imposed, unless the judicial officer determines that no condition of release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community.

~~(c)~~ (d) Defendants Eligible for Release Only by a Judge

A defendant charged with an offense

for which the maximum penalty is death or life imprisonment or with an offense listed under Code, Criminal Procedure Article, §5-202 (a), (b), (c), (d), (e), (f) or (g) may not be released by a District Court Commissioner, but may be released before verdict or pending a new trial, if a new trial has been ordered, if a judge determines that all requirements imposed by law have been satisfied and that one or more conditions of release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community.

(e) Initial Appearance Before a Judge

(1) Applicability

This section applies to an initial appearance before a judge. It does not apply to an initial appearance before a District Court commissioner.

(2) Duty of Public Defender

Unless another attorney has entered an appearance or the defendant has waived the right to counsel for purposes of an initial appearance before a judge in accordance with this section, the Public Defender shall provide representation to an eligible defendant at the initial appearance.

(3) Waiver of Counsel for Initial Appearance

(A) Unless an attorney has entered an appearance, the court shall advise the defendant that:

(i) the defendant has a right to counsel at this proceeding;

(ii) an attorney can be helpful in advocating that the defendant should be released on recognizance or on bail with minimal conditions and restrictions; and

(iii) if the defendant is eligible, the Public Defender will represent the

defendant at this proceeding.

(B) If the defendant indicates a desire to waive counsel and the court finds that the defendant knowingly and voluntarily waives the right to counsel for purposes of the initial appearance, the court shall announce on the record that finding and proceed pursuant to this Rule.

(C) Any waiver found under this section applies only to the initial appearance.

(4) Waiver of Counsel for Future Proceedings

For proceedings after the initial appearance, waiver of counsel is governed by Rule 4-215.

Cross reference: For the requirement that the court also advise the defendant of the right to counsel generally, see Rule 4-215 (a).

~~(d)~~ (f) Duties of Judicial Officer

(1) Consideration of Factors

In determining whether a defendant should be released and the conditions of release, the judicial officer shall take into account the following information, to the extent available:

(A) the nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the potential sentence upon conviction;

(B) the defendant's prior record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings;

(C) the defendant's family ties, employment status and history, financial resources, reputation, character and mental condition, length of residence in the community, and length of residence in this State;

(D) any recommendation of an agency that conducts pretrial release investigations;

(E) any recommendation of the State's Attorney;

(F) any information presented by the defendant or defendant's counsel;

(G) the danger of the defendant to the alleged victim, another person, or the community;

(H) the danger of the defendant to himself or herself; and

(I) any other factor bearing on the risk of a wilful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

(2) Statement of Reasons - When Required

Upon determining to release a defendant to whom section (c) of this Rule applies or to refuse to release a defendant to whom section (b) of this Rule applies, the judicial officer shall state the reasons in writing or on the record.

(3) Imposition of Conditions of Release

If the judicial officer determines that the defendant should be released other than on personal recognizance without any additional conditions imposed, the judicial officer shall impose on the defendant the least onerous condition or combination of conditions of release set out in section (e) of this Rule that will reasonably:

(A) ensure the appearance of the defendant as required,

(B) protect the safety of the alleged victim by ordering the defendant to have no

contact with the alleged victim or the alleged victim's premises or place of employment or by other appropriate order, and

(C) ensure that the defendant will not pose a danger to another person or to the community.

(4) Advice of Conditions; Consequences of Violation; Amount and Terms of Bail

The judicial officer shall advise the defendant in writing or on the record of the conditions of release imposed and of the consequences of a violation of any condition. When bail is required, the judicial officer shall state in writing or on the record the amount and any terms of the bail.

~~(e)~~ (g) Conditions of Release

The conditions of release imposed by a judicial officer under this Rule may include:

(1) committing the defendant to the custody of a designated person or organization that agrees to supervise the defendant and assist in ensuring the defendant's appearance in court;

(2) placing the defendant under the supervision of a probation officer or other appropriate public official;

(3) subjecting the defendant to reasonable restrictions with respect to travel, association, or residence during the period of release;

(4) requiring the defendant to post a bail bond complying with Rule 4-217 in an amount and on conditions specified by the judicial officer, including any of the following:

(A) without collateral security;

(B) with collateral security of the kind specified in Rule 4-217 (e)(1)(A) equal in value to the greater of $100.00 or 10% of the full penalty amount, and if the judicial

officer sets bail at $2500 or less, the judicial officer shall advise the defendant that the defendant may post a bail bond secured by either a corporate surety or a cash deposit of 10% of the full penalty amount;

(C) with collateral security of the kind specified in Rule 4-217 (e)(1)(A) equal in value to a percentage greater than 10% but less than the full penalty amount;

(D) with collateral security of the kind specified in Rule 4-217 (e)(1) equal in value to the full penalty amount; or

(E) with the obligation of a corporation that is an insurer or other surety in the full penalty amount;

(5) subjecting the defendant to any other condition reasonably necessary to:

(A) ensure the appearance of the defendant as required,

(B) protect the safety of the alleged victim, and

(C) ensure that the defendant will not pose a danger to another person or to the community; and

(6) imposing upon the defendant, for good cause shown, one or more of the conditions authorized under Code, Criminal Law Article, §9-304 reasonably necessary to stop or prevent the intimidation of a victim or witness or a violation of Code, Criminal Law Article, §9-302, 9-303, or 9-305.

Cross reference: See Code, Criminal Procedure Article, §5-201 (a)(2) concerning protections for victims as a condition of release. See Code, Criminal Procedure Article, §5-201 (b), and Code, Business Occupations and Professions Article, Title 20, concerning private home detention monitoring as a condition of release.

~~(f) Review of Commissioner's Pretrial~~

~~Release Order~~

. . .

~~(g) Continuance of Previous Conditions~~

. . .

~~(h) Amendment of Pretrial Release Order~~

. . .

~~(i) Supervision of Detention Pending Trial~~

. . .

~~(j) Violation of Condition of Release~~

. . .

~~(k)~~ (h) Title 5 Not Applicable

Title 5 of these rules does not apply to proceedings conducted under this Rule.

[Sections (f), (g), (h), (i), and (j) of this Rule have been amended and transferred to proposed new Rule 4-216.1]

Source: This Rule is derived in part from former Rule 721, M.D.R. 723 b 4, and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

ADD new Rule 4-216.1, as follows:

Rule 4-216.1. FURTHER PROCEEDINGS REGARDING PRETRIAL RELEASE

[showing changes from current Rule 4-216 (f), (g), (h), (i), and (j)]

~~(f)~~ (a) Review of ~~Commissioner's~~ Pretrial Release Order Entered by Commissioner

(1) Generally

A defendant who is denied pretrial release by a commissioner or who for any reason remains in custody ~~**for 24 hours**~~ after a commissioner has determined conditions of release pursuant to ~~this~~ Rule 4-216 shall be presented immediately to the District Court if the court is then in session, or if not, at the next session of the court.

Cross reference: See Rule 4-231 (d) concerning the presence of a defendant by video conferencing.

(2) Counsel for Defendant

(A) Duty of Public Defender

Unless another attorney has entered an appearance or the defendant has waived the right to counsel for purposes of the review hearing in accordance with this section, the Public Defender shall provide representation to an eligible defendant at the review hearing.

(B) Waiver

(i) Unless an attorney has entered an appearance, the court shall advise the defendant that:

(a) the defendant has a right to counsel at the review hearing;

(b) an attorney can be helpful in advocating that the defendant should be released on recognizance or on bail with minimal conditions and restrictions; and

(c) if the defendant is eligible, the Public Defender will represent the defendant at this proceeding.

(ii) If the defendant indicates a desire to waive counsel and the court finds that the defendant knowingly and voluntarily waives the right to counsel for purposes of the review hearing, the court shall announce on the record that finding and proceed pursuant to this Rule.

(iii) Any waiver found under this Rule applies only to the review hearing.

(C) Waiver of Counsel for Future Proceedings

For proceedings after the review hearing, waiver of counsel is governed by Rule 4-215.

Cross reference: For the requirement that the court also advise the defendant of the right to counsel generally, see Rule 4-215 (a).

(3) Determination by Court

The District Court shall review the commissioner's pretrial release determination and take appropriate action in accordance with Rule 4-216 (f) and (g). If ~~the defendant will remain~~ the court determines that the defendant will continue to be held in custody after the review, the ~~District Court~~ court shall set forth in writing or on the record the reasons for the continued detention.

~~(2)~~ (4) Juvenile Defendant

If the defendant is a child whose case is eligible for transfer to the juvenile court pursuant to Code, Criminal Procedure Article, §4-202 (b), the District Court, regardless of whether it has jurisdiction over the offense charged, may order that a study be made of the child, the child's family, or other appropriate matters. The court also may order that the child be held in a secure juvenile facility.

~~(g)~~ (b) Continuance of Previous Conditions

When conditions of pretrial release

have been previously imposed in the District Court, the conditions continue in the circuit court unless amended or revoked pursuant to section ~~(h)~~ (c) of this Rule.

~~(h)~~ (c) Amendment of Pretrial Release Order

After a charging document has been filed, the court, on motion of any party or on its own initiative and after notice and opportunity for hearing, may revoke an order of pretrial release or amend it to impose additional or different conditions of release. If its decision results in the detention of the defendant, the court shall state the reasons for its action in writing or on the record. A judge may alter conditions set by a commissioner or another judge.

~~(i)~~ (d) Supervision of Detention Pending Trial

In order to eliminate unnecessary detention, the court shall exercise supervision over the detention of defendants pending trial. It shall require from the sheriff, warden, or other custodial officer a weekly report listing each defendant within its jurisdiction who has been held in custody in excess of seven days pending preliminary hearing, trial, sentencing, or appeal. The report shall give the reason for the detention of each defendant.

~~(j)~~ (e) Violation of Condition of Release

A court may issue a bench warrant for the arrest of a defendant charged with a criminal offense who is alleged to have violated a condition of pretrial release. After the defendant is presented before a court, the court may (1) revoke the defendant's pretrial release or (2) continue the defendant's pretrial release with or without conditions.

Cross reference: See Rule 1-361, Execution of Warrants and Body Attachments. See also, Rule 4-347, Proceedings for Revocation of Probation, which preserves the authority of a

judge issuing a warrant to set the conditions of release on an alleged violation of probation.

~~(k)~~ (f) Title 5 Not Applicable

Title 5 of these rules does not apply to proceedings conducted under this Rule.

Source: This Rule is new but is derived, in part, from former sections (f), (g), (h), (i), (j), and (k) of Rule 4-216.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-212 to add references to Rule 4-216.1, as follows:

Rule 4-212. ISSUANCE, SERVICE, AND EXECUTION OF SUMMONS OR WARRANT

. . .

(d) Warrant - Issuance; Inspection

(1) In the District Court

. . .

(2) In the Circuit Court

Upon the request of the State's Attorney, the court may order issuance of a warrant for the arrest of a defendant, other than a corporation, if an information has been filed against the defendant and the circuit court or the District Court has made a finding that there is probable cause to believe that the defendant committed the

offense charged in the charging document or if an indictment has been filed against the defendant; and (A) the defendant has not been processed and released pursuant to Rule 4-216 or 4-216.1, or (B) the court finds there is a substantial likelihood that the defendant will not respond to a summons. A copy of the charging document shall be attached to the warrant. Unless the court finds that there is a substantial likelihood that the defendant will not respond to a criminal summons, the court shall not order issuance of a warrant for a defendant who has been processed and released pursuant to Rule 4-216 or 4-216.1 if the circuit court charging document is based on the same alleged acts or transactions. When the defendant has been processed and released pursuant to Rule 4-216 or 4-216.1, the issuance of a warrant for violation of conditions of release is governed by Rule 4-217.

(3) Inspection of the Warrant and Charging Document

. . .

(e) Execution of Warrant - Defendant Not in Custody

Unless the defendant is in custody, a warrant shall be executed by the arrest of the defendant. Unless the warrant and charging document are served at the time of the arrest, the officer shall inform the defendant of the nature of the offense charged and of the fact that a warrant has been issued. A copy of the warrant and charging document shall be served on the defendant promptly after the arrest. The defendant shall be taken before a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after arrest or, if the warrant so specifies, before a judicial officer of the circuit court without unnecessary delay and in no event later than the next session of court after the date of arrest. The court shall process the defendant pursuant to Rule 4-216 or 4-216.1 and may make provision for the appearance or waiver of counsel pursuant

to Rule 4-215.

Committee note: The amendments made in this section are not intended to supersede Code, Courts Article, §10-912.

(f) Procedure - When Defendant in Custody

(1) Same Offense

When a defendant is arrested without a warrant, the defendant shall be taken before a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after arrest. When a charging document is filed in the District Court for the offense for which the defendant is already in custody a warrant or summons need not issue. A copy of the charging document shall be served on the defendant promptly after it is filed, and a return shall be made as for a warrant. When a charging document is filed in the circuit court for an offense for which the defendant is already in custody, a warrant issued pursuant to subsection (d)(2) of this Rule may be lodged as a detainer for the continued detention of the defendant under the jurisdiction of the court in which the charging document is filed. Unless otherwise ordered pursuant to Rule 4-216 or 4-216.1, the defendant remains subject to conditions of pretrial release imposed by the District Court.

(2) Other Offense

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-213 to add a cross reference following subsection (a)(2) and to

add a reference to the applicable provisions of Rules 4-216 and 4-216.1, as follows:

Rule 4-213. INITIAL APPEARANCE OF DEFENDANT

(a) In District Court Following Arrest

When a defendant appears before a judicial officer of the District Court pursuant to an arrest, the judicial officer shall proceed as follows:

(1) Advice of Charges

The judicial officer shall inform the defendant of each offense with which the defendant is charged and of the allowable penalties, including mandatory penalties, if any, and shall provide the defendant with a copy of the charging document if the defendant does not already have one and one is then available. If one is not then available, the defendant shall be furnished with a copy as soon as possible.

(2) Advice of Right to Counsel

The judicial officer shall require the defendant to read the notice to defendant required to be printed on charging documents in accordance with Rule 4-202 (a), or shall read the notice to a defendant who is unable for any reason to do so. A copy of the notice shall be furnished to a defendant who has not received a copy of the charging document. The judicial officer shall advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.

Cross reference: See Rule 4-216 (e) with respect to counsel at an initial appearance before a judge and Rule 4-216.1 (a) with respect to counsel at a hearing to review a pretrial release decision of a commissioner.

(3) Advice of Preliminary Hearing

When a defendant has been charged

with a felony that is not within the jurisdiction of the District Court and has not been indicted, the judicial officer shall advise the defendant of the right to have a preliminary hearing by a request made then or within ten days thereafter and that failure to make a timely request will result in the waiver of a preliminary hearing. If the defendant then requests a preliminary hearing, the judicial officer may either set its date and time or notify the defendant that the clerk will do so.

(4) Pretrial Release

The judicial officer shall comply with the applicable provisions of Rules 4-216 and 4-216.1 governing pretrial release.

(5) Certification by Judicial Officer

The judicial officer shall certify compliance with this section in writing.

(6) Transfer of Papers by Clerk

As soon as practicable after the initial appearance by the defendant, the judicial officer shall file all papers with the clerk of the District Court or shall direct that they be forwarded to the clerk of the circuit court if the charging document is filed there.

Cross reference: Code, Courts Article, §10-912. See Rule 4-231 (d) concerning the appearance of a defendant by video conferencing.

(b) In District Court Following Summons

When a defendant appears before the District Court pursuant to a summons, the court shall proceed in accordance with Rule 4-301.

(c) In Circuit Court Following Arrest or Summons

The initial appearance of the defendant in circuit court occurs when the

defendant (1) is brought before the court by reason of execution of a warrant pursuant to Rule 4-212 (e) or (f) (2), or (2) appears in person or by written notice of counsel in response to a summons. In either case, if the defendant appears without counsel the court shall proceed in accordance with Rule 4-215. If the appearance is by reason of execution of a warrant, the court shall inform the defendant of each offense with which the defendant is charged, ensure that the defendant has a copy of the charging document, and determine eligibility for pretrial release pursuant to Rule 4-216.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 723.
Section (b) is new.

Section (c) is derived from former Rule 723 a.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-215 to add a cross reference, as follows:

Rule 4-215. WAIVER OF COUNSEL

(a) First Appearance in Court Without Counsel

. . .

(b) Express Waiver of Counsel

. . .

(c) Waiver by Inaction - District Court

. . .

(d) Waiver by Inaction - Circuit Court

. . .

(e) Discharge of Counsel - Waiver

. . .

Cross reference: See Rule 4-216 (e) with respect to waiver of counsel at an initial appearance before a judge and Rule 4-216.1 (a) with respect to waiver of counsel at a hearing to review a pretrial release decision of a commissioner.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 723 b 1, 2, 3 and 7 and c 1.
Section (b) is derived from former Rule 723.
Section (c) is in part derived from former M.D.R. 726 and in part new.
Section (d) is derived from the first sentence of former M.D.R. 726 d.
Section (e) is new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-217 to delete a reference to Rule 4-216 and to add references to Rule 4-216.1, as follows:

Rule 4-217. BAIL BONDS

(a) Applicability of Rule

This Rule applies to all bail bonds taken pursuant to Rule 4-216 or 4-216.1, and to bonds taken pursuant to Rules 4-267, 4-348, and 4-349 to the extent consistent with those rules.

. . .

(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~~ 4-216.1 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 or 4-216.1.

(2) Refund of Collateral Security - Release of Lien

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-231 to add subsection (d)(1) referencing a defendant's right to counsel under Rule 4-216 (e) and Rule 4-216.1 (a) and to make stylistic changes, as follows:

Rule 4-231. PRESENCE OF DEFENDANT

(a) When Presence Required

A defendant shall be present at all times when required by the court. A corporation may be present by counsel.

(b) Right to be Present - Exceptions

A defendant is entitled to be physically present in person at a preliminary hearing and every stage of the trial, except (1) at a conference or argument on a question of law; (2) when a nolle prosequi or stet is entered pursuant to Rules 4-247 and 4-248.

Cross reference: Code, Criminal Procedure Article, §11-303.

(c) Waiver of Right to be Present

The right to be present under section (b) of this Rule is waived by a defendant:

(1) who is voluntarily absent after the proceeding has commenced, whether or not informed by the court of the right to remain; or

(2) who engages in conduct that justifies exclusion from the courtroom; or

(3) who, personally or through counsel, agrees to or acquiesces in being absent.

(d) Video Conferencing in District Court

In the District Court, if the Chief Judge of the District Court has approved the use of video conferencing in the county, a judicial officer may conduct an initial appearance under Rule 4-213 (a) or a review of the commissioner's pretrial release determination under Rule ~~4-216 (f)~~ 4-216.1 (a) with the defendant and the judicial officer at different locations, provided that:

(1) the defendant's right to counsel under Rule 4-216 (e) and Rule 4-216.1 (a) is not infringed;

~~(1)~~ (2) the video conferencing procedure and technology are approved by the Chief Judge of the District Court for use in the county;

~~(2)~~ (3) immediately after the proceeding, all documents that are not a part of the District Court file and that would be a part of the file if the proceeding had been conducted face-to-face shall be electronically transmitted or hand-delivered to the District Court; and

~~(3)~~ (4) if the initial appearance under Rule 4-213 is conducted by video conferencing, the review under Rule ~~4-216 (f)~~ 4-216.1 (a) shall not be conducted by video conferencing.

Committee note: Except when specifically

covered by this Rule, the matter of presence of the defendant during any stage of the proceedings is left to case law and the Rule is not intended to exhaust all situations. By the addition of section (d) to the Rule, the Committee intends no inference concerning the use of video conferencing in other contexts.

Source: Sections (a), (b), and (c) of this Rule are derived from former Rule 724 and M.D.R. 724. Section (d) is new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-263 (h) to add a section reference to a reference to Rule 4-213, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

. . .

(h) Time for Discovery

Unless the court orders otherwise:

(1) the State's Attorney shall make disclosure pursuant to section (d) of this Rule within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213 (c), and

(2) the defense shall make disclosure pursuant to section (e) of this Rule no later than 30 days before the first scheduled trial date.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-349 to conform an internal reference to the relettering of Rule 4-216, to add a reference to Rule 4-216.1, and to make a stylistic change, as follows:

Rule 4-349. RELEASE AFTER CONVICTION

(a) General Authority

After conviction the trial judge may release the defendant pending sentencing or exhaustion of any appellate review subject to such conditions for further appearance as may be appropriate. Title 5 of these rules does not apply to proceedings conducted under this Rule.

(b) Factors Relevant to Conditions of Release

In determining whether a defendant should be released under this Rule, the court may consider the factors set forth in Rule 4-216 ~~(d)~~ (f) and, in addition, whether any appellate review sought appears to be frivolous or taken for delay. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

(c) Conditions of Release

The court may impose different or greater conditions for release under this Rule than had been imposed upon the defendant before trial pursuant to Rule 4-216 ~~before~~

~~trial~~ or Rule 4-216.1. When the defendant is released pending sentencing, the condition of any bond required by the court shall be that the defendant appear for further proceedings as directed and surrender to serve any sentence imposed. When the defendant is released pending any appellate review, the condition of any bond required by the court shall be that the defendant prosecute the appellate review according to law and, upon termination of the appeal, surrender to serve any sentence required to be served or appear for further proceedings as directed. The bond shall continue until discharged by order of the court or until surrender of the defendant, whichever is earlier.

(d) Amendment of Order of Release

The court, on motion of any party or on its own initiative and after notice and opportunity for hearing, may revoke an order of release or amend it to impose additional or different conditions of release. If its decision results in the detention of the defendant, the court shall state the reasons for its action in writing or on the record.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 776 a and M.D.R. 776 a.
Section (b) is derived from former Rule 776 c and M.D.R. 776 c.
Section (c) is derived from former Rules 776 b and 778 b and M.D.R. 776 b and M.D.R. 778 b.
Section (d) is new.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 5-101 to add a reference to Rule 4-216.1, as follows:

Rule 5-101. SCOPE

(a) Generally

Except as otherwise provided by statute or rule, the rules in this Title apply to all actions and proceedings in the courts of this State.

(b) Rules Inapplicable

The rules in this Title other than those relating to the competency of witnesses do not apply to the following proceedings:

(1) Proceedings before grand juries;

(2) Proceedings for extradition or rendition;

(3) Direct contempt proceedings in which the court may act summarily;

(4) Small claim actions under Rule 3-701 and appeals under Rule 7-112 (d)(2);

(5) Issuance of a summons or warrant under Rule 4-212;

(6) Pretrial release under Rule 4-216 or 4-216.1 or release after conviction under Rule 4-349;

(7) Preliminary hearings under Rule 4-221;

(8) Post-sentencing procedures under Rule 4-340;

(9) Sentencing in non-capital cases under Rule 4-342;

(10) Issuance of a search warrant under Rule 4-601;

(11) Detention and shelter care hearings under Rule 11-112; and

(12) Any other proceeding in which, prior to the adoption of the rules in this Title,

the court was traditionally not bound by the common-law rules of evidence.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 300 - HABEAS CORPUS

AMEND Rule 15-303 to add a reference to Rule 4-216.1, as follows:

Rule 15-303. PROCEDURE ON PETITION

(a) Generally

. . .

(b) Bail

(1) Pretrial

If a petition by or on behalf of an individual who is confined prior to or during trial seeks a writ of habeas corpus for the purpose of determining admission to bail or the appropriateness of any bail set, the judge to whom the petition is directed may deny the petition without a hearing if a judge has previously determined the individual's eligibility for pretrial release or the conditions for such release pursuant to Rule 4-216 or 4-216.1 and the petition raises no grounds sufficient to warrant issuance of the writ other than grounds that were raised when the earlier pretrial release determination was made.

Cross reference: Rule 4-213 (c).

(2) After Conviction

. . .

The Chair explained that when Rules 4-216 and 4-216.1 were

discussed, bills had been pending in the legislature that were not entirely consistent, and it had not been clear how the statute affecting the Rules was going to end up. As far as the legislature is concerned, this is now known. The Chair said that his understanding was that Chapter 505, Laws of 2012 (House Bill 261), the emergency bill, might be signed on May 2, 2012. If it is signed, the bill would take effect that day. The Rules were drafted to take account of the bill.

The Chair pointed out that Rule 4-216 (a) had not changed. The language of that section was tentatively approved by the Court of Appeals at its February 16, 2012 hearing. In the Rule sent to the Court in the 173rd Report, the provision pertaining to ex parte communications with a judicial officer had language calling attention to the Rules of Ethics (Rule 2.9 (a)(1) and (2) of the Maryland Code of Conduct for Judicial Appointees and Rule 2.9 (a)(1) and (2) of the Maryland Code of Judicial Conduct) that apply to the commissioners and the judges. Apparently, these Rules had not been complied with religiously, as the Court of Appeals had commented on this in its opinion in *DeWolfe v. Richmond*, ___ Md. ___ (2012). Both the House and Senate bills had language very much like the language that had been placed in the Rule. It seemed that the Rule change would not be necessary if the language was going to be in the statute. Then, the legislature removed the language from the statute before it was passed.

The Chair commented that in the meantime, some concerns had been expressed about how this procedure would work. Rule 4-216 (f) expressly requires the commissioners to consider recommendations made by the State's Attorney and defense counsel. Some people took the position that if the State's Attorney did not appear at the hearing before the commissioner, the defendant would not be allowed to say anything, because this would be ex parte. This was never the intent. The thought was that if the defendant is at a hearing before the commissioner, this is no longer ex parte. It would be no different than the situation in a civil case where if the defendant did not appear for trial, it would not mean that the plaintiff cannot testify, or an attorney cannot say anything.

The Chair said that the attempt was to take account of the concerns that had been expressed and frame the Rule as to how recommendations can be presented to the commissioner, namely, that it must be in writing (not by telephone), it must be communicated to all of the other parties, a record of the communication must be made by the commissioner, and anyone else who is present at the hearing has the right to respond. All of this is consistent with the prohibition against ex parte communications and the requirement that the commissioner consider recommendations made by anyone.

Mr. Mirviss told the Committee that he had been co-counsel for the plaintiffs in *DeWolfe*. He and his colleagues had

requested that Rule 4-216 be amended to state that a writing must be provided to the defendant rather than a copy of the writing only shown to the defendant. The Chair asked if this meant that the copy would be shown to the defendant by the commissioner, and Mr. Mirviss replied affirmatively. The Chair inquired if anyone had an objection. The Reporter questioned whether this could be done in all of the commissioners' offices. Judge Norton noted that this would always be part of the record. The circumstances would not be that a writing would be shown to the defendant for only a second. Everyone would be entitled to a copy of everything.

Mr. Michael asked whether the hearings are conducted by remote access with a videotape. It sounds like the word "shown" was used to permit the video conferencing that may occur. Judge Norton said that he had thought that the intent was to make sure that the information is not given out secretly, so that it is clandestine and prejudicial. The intent of the Rule is that everything is on the record, and everyone involved will know what everyone else has said.

The Chair commented that it would not be a problem to make Mr. Mirviss' suggested change as long as it is not a video remote proceeding. The Reporter pointed out that the Rule allows these proceedings to be conducted remotely. Judge Norton remarked that the issue is when the defendant gets the copy and not whether he or she gets the copy. The Chair added that the defendant needs to know what the communication says to be able to respond to it

at the hearing. Mr. Johnson inquired how the language "shown to each other party" works in the context of a videotaped proceeding. Is it put up to the camera, so the defendant can read the writing? Judge Norton said that commissioners are not involved in video bail reviews. The Reporter noted that the change to Rule 4-231 is so that the commissioner can do the bail review by video and that some commissioners must be doing the bail reviews by video conferencing. Judge Norton observed that bail reviews by video are not done in the rural counties.

The Chair asked if anyone present knew about bail review hearings conducted by video. Professor Colbert, a professor at the University of Maryland School of Law, answered that he was not aware of bail hearings by video, and he was also not aware of any initial appearances conducted by video. There is no record of what has taken place at the initial appearance. The Chair noted that the recommendation by the State's Attorney can be recorded.

Judge Weatherly remarked that this would be problematic for Prince George's County where the judges of the Circuit Court do the initial appearances remotely by video. Assuming that the Public Defender or private counsel will be in the judge's courtroom, the State could hand the attorney whatever was written. Since Judge Weatherly has been on the bench, neither a State's Attorney nor a Public Defender has been in the courtroom for the initial appearance. The Chair pointed out that subsection (2) of section (b) providing that the communication

shall be made openly at the proceeding. The State's Attorney, whether remotely or otherwise, may state what he or she recommends as to bail. If it is stated openly at the proceeding, even if it is remote, the defendant is there to respond to it.

Judge Norton said that he thought that the intent of the Rule was to prevent secret communications. The Chair commented that the concern of the Court of Appeals was the telephone calls made by the State's Attorney to the commissioners with a recommendation that is never recorded and that no one knows about. The defendant would not even know that this took place.

Mr. Michael noted a style change that should be made to section (b) of Rule 4-216. In the first sentence, the word "be" should be placed after the word "shall" and before the number "(1)." By consensus, the Committee agreed to this change.

Professor Colbert said that he wanted to add some comments to what Mr. Mirviss had suggested. Professor Colbert noted that his comments apply largely to the initial appearance before the commissioner. This is the place where it is likely that no one else is present besides the defendant and the commissioner. If the commissioner could hand information to the defendant that indicates what type of bail the prosecutor is recommending, this would at least ensure a fairer process and would provide the notice that currently is not being given. Anything short of this risks the defendant either not being able to remember what occurred at the initial appearance or not being able to respond directly to the recommendation. The suggestion to make sure that

the defendant is being given something in writing that states that this was the recommendation of _____ provides an opportunity to be heard. The Chair asked if the language should be "a copy of which shall be provided by the commissioner to each other party."

Ms. Ogletree inquired if the commissioner's written record is not sufficient. It would have the recommendation in it. The Chair pointed out that the defendant does not get a copy of this. Ms. Ogletree explained that her point was that a copy of whatever the commissioner writes is what the defendant should get. The Chair responded that the commissioner does note that the defendant was given the advice of rights and advice about counsel. Ms. Ogletree added that the commissioner can include information about what the State's Attorney would be recommending as to the amount of the bond, and this should be in the record as well. If the defendant gets a copy of this record, is this not enough? Judge Norton commented that the commissioner will do a National Crime Information Center (NCIC) check of the defendant's criminal history, which may be 30 pages long, and the commissioner does not give the defendant a copy of this either, although it is part of the record. It is not feasible to give the defendant a copy of the entire record.

Mr. Flohr told the Committee that he had participated as private counsel in a large number of these commissioner hearings (including some that took place in the middle of the night). Many defendants will have no idea as to what bail a prosecutor is

recommending. Mr. Flohr expressed the view that if Professor Colbert's suggestion was going to be adopted, it is important, the commissioners need to be told that they must give the defendant a copy of the bail recommendation at the outset. There will be commissioners who will give the notice to the defendant after the bail has been set. This is distinguishable from giving the defendant the entire record. It would not be a fair proceeding for a defendant to go to a bail review hearing without a prosecutor there. The defense would say something, but the prosecutor would not have access to the information, or the defense may not have access to the information. It is common in many counties for the bail recommendation not to be put on the record, so the defense is not put on notice. Professor Colbert's request is eminently reasonable and will not take up much time. The way that it works now is that some paperwork has to be signed before the bail decision is made, and this would be the appropriate time for the commissioner to give the defendant whatever information the commissioner has.

The Chair said that he assumed that since these hearings come up very quickly, often in the middle of the night, if the State's Attorney or anyone is going to make a recommendation for bail, it would have to be communicated by e-mail. It would not be feasible to mail the recommendation. If the commissioner gets the recommendation, should he or she make a copy for the defendant? If a defense attorney is present at the hearing and would like to make a recommendation, does he or she have to send

this to the State's Attorney? How would this be done?

Mr. Sykes asked if the point of this is that the defendant ought to know the substance of what the State's Attorney is recommending before final action is taken, so that the defendant can make whatever statement he or she would like. Mr. Sykes was not sure whether it would be necessary to give the defendant a copy of the recommendation, or if it would be enough for the commissioner to be required to put on the record at the beginning of the proceeding what the recommendation is. Mr. Sykes expressed the opinion that the defendant ought to know whatever the reasoning for the bail was that had been presented to the commissioner. Mr. Sykes added that he was not sure that it was necessary that a copy of the information be given to the defendant or whether the substance of the State's Attorney's communication could be transmitted some other way. What is fundamental is that the defendant should know what he or she is facing and have a chance to respond to it.

Judge Weatherly commented that although she had never been at a hearing before the commissioner, she guessed that at the majority of the hearings held by commissioners there would be no communication with the State's Attorney. In Prince George's County, the State's Attorney does not seem to communicate with the commissioner. If the case is a major one, such as a murder, the State's Attorney may be in contact with the commissioner, but there is likely no contact for every arrest. What the commissioner has is what the defendant can access, which is the

prior criminal history of the case.

The Chair acknowledged Judge Weatherly's point, but he noted that Rule 4-216 (f) expressly requires the commissioner to consider any recommendation from the State's Attorney. Judge Weatherly remarked that she had viewed the papers that the commissioner has put into the file, and she had not seen any statement as to the recommendation of the State's Attorney. The defendant's criminal history goes into a sealed envelope in the court files, and this can be viewed, so it could be shared with the defendant. Could the form be changed to note any communication from the State's Attorney that he or she has made a recommendation as to bail?

Judge Norton commented that what will have to be provided is a recommendation in writing, and this will be provided by the person making the recommendation. The purpose of this is so that there is no secrecy, and everyone knows what is taking place. The Chair suggested that the wording of section (b) could be "...shown or otherwise communicated by the commissioner to each other party...". He added that Mr. Mirviss had asked that the communication be in writing. Mr. Mirviss remarked that the issue is more than just communication. It is ensuring that the defendant is able to understand and advocate. This stems from *DeWolfe* where counsel were present. It makes a big difference whether something is read in rote form, and the defendant does not understand and does not even know what the factors are that

the commissioner had considered as opposed to the defendant actually seeing what the defendant's opponent had said, with the defendant having a chance to read it and respond to it.

The Chair pointed out that the last sentence of the proposed change to Rule 4-216 (b) requires that each party who participates in the proceeding has to be given an opportunity to respond to the communication. Mr. Mirviss argued that a non-legally-trained individual will not necessarily understand what is read to him or her. Having the information in front of the individual is a matter of fundamental fairness. Master Mahasa said that what Mr. Mirviss seemed to asking for was that the commissioner make sure that the defendant understands what has been given to him or her. It is not enough to simply give the defendant information. Many of them are illiterate and would not understand any writing they would be given. They do not have to be tutored, but at least the commissioner can ascertain that the defendant understands what information has been communicated to him or her.

The Chair commented that Master Mahasa had raised an interesting question. If the defendant is not a speaker of English, and the commissioner simply hands the defendant a piece of paper written in English, it will not do the defendant much good. Mr. Johnson remarked that he did not know very much about the commissioner procedure. He did not know what resources the commissioners have. He expressed his dislike for mandating procedures when the implication of those procedures is unknown.

He added that he was not adverse to the idea of notice. Where the Rule is designed to give people notice, some problems have come up, such as the issue regarding what language the documents are in, which is not addressed by the proposed changes. The Committee needs to think about what they are mandating without knowing what resources are available. It may be that a Spanish interpreter could come in and talk to the defendant in Prince George's County, but there may not be a Spanish interpreter in Calvert County.

Mr. Michael remarked that he had the same concerns as Mr. Johnson. If the Rule requires a writing, it makes sense from a constitutional perspective. The process is being elevated to where an attorney is involved. The attorney and his or her client ought to be receiving a copy of this just as they would receive a copy of criminal charges. If the Rule mandates this in writing, it may cut off the possibility of some of these proceedings being conducted by remote video access. This may mean that the defendants remain in jail longer, because it is necessary that the writing be handed to them, which cannot happen until an in-person appearance is arranged. Mr. Michael agreed with Mr. Johnson that he would like some more information about how this procedure is going to work. If it is not going to be done by remote video access, then requiring a writing makes total sense.

The Chair said that bail reviews are currently being conducted by remote video access. He asked whether commissioner

hearings are being conducted this way. Ms. Bernhardt commented that the commissioner has to advise the defendant on other issues besides the right to counsel. She did not think that any problem was being created by the language in section (b) of Rule 4-216. The law requires that if a defendant is not English-speaking, he or she has to be communicated with in the defendant's native language. The language aspect does not have to be addressed at this point. It is an important consideration, because it affects the right to counsel, the reading of the statement of charges, and other issues. She suggested that with respect to communicating the information, the language proposed by the Chair was appropriate. The suggestion was that the communications with a judicial officer be shown to or communicated with the other party. This would permit reading it to a defendant who is at a remote location. The intent is to convey the information to the defendant, so that there are no secrets. Ms. Bernhardt did not object to the information being provided in writing if the defendant is present; however, accommodations would have to be made for a remote video appearance.

Judge Norton remarked that all commissioners have access to interpreters. The Chair asked if anyone had a motion to change the language proposed for section (b) of Rule 4-216. Ms. Ogletree suggested that the language proposed by the Chair, which was "... shown or communicated by the judicial officer..." be added to section (b) after the word "writing" and before the words "to each." By consensus, the Committee approved this

change. Master Mahasa asked what language Mr. Mirviss had suggested. He answered that he had suggested the language "provided to." The Chair responded that this raises the question of whether the paper has to be handed to the defendant. Mr. Mirviss asked that Rule 4-216 require that the paper be handed to the defendant.

Master Mahasa expressed the view that the Rule should require that the paper be handed over, or if remote video access is a problem, the defendant should be told that he or she may be incarcerated longer than necessary, because the paper could not be physically handed over. The defendant should have the right to be able to waive the requirement that the paper has to be handed to him or her. The Chair questioned the idea of a waiver. Master Mahasa explained that she preferred that the paper be handed to the defendant, but she was concerned that the defendant could be incarcerated for a longer period of time if the defendant was participating by remote video access.

The Chair asked if Master Mahasa was making a motion stating that the paper must be handed over to the defendant. Master Mahasa responded that she was moving that the paper be handed to the defendant, unless the defendant waives receiving the actual piece of paper. The Chair noted that none of the proceeding is recorded, so he asked how a waiver hearing could be conducted to determine whether the defendant is going to waive the right to the paper. Master Mahasa responded that it is not a waiver hearing. The defendant has the right to have the paper handed to

him or her, but the commissioner would tell the defendant that he or she may have to be incarcerated for another two days if the paper cannot be handed to the defendant, because it is the weekend. The defendant could respond that he or she does not need to physically have the paper and could sign a form to this effect. The Chair asked if this was a motion, and Master Mahasa replied affirmatively. The motion was seconded.

Judge Weatherly commented that when she does arraignments which are handled through remote video access, some people being arraigned are located at the jail. When Judge Weatherly wants them to get a piece of paper, the papers that are generated in the courtroom go to the jail. She makes sure that the person got the copy. She is not handing the copy of the paper to the person, but she is able to provide it. It could be sent by fax or some other method.

Judge Kaplan suggested that the Rule use the word "provided." Judge Weatherly noted that the word "handed" means a person-to-person contact. The word "provided" would allow more flexibility to give the person a copy of the writing but not limit it to handing it over directly. Master Mahasa questioned how the paper would be provided. Judge Weatherly replied that in most cases, if a commissioner in one location is handling this, and the defendant is in jail, the commissioner will fax it to the defendant. The Chair inquired whether the commissioners have fax machines. Judge Weatherly answered affirmatively.

The Chair asked Master Mahasa if she would accept changing

the word “handed” to the word “provided” for the language in her motion. She answered affirmatively. Professor Colbert asked about the language in section (b) that reads “made part of the record.” Sometimes, documents are made part of the record, and they go into a folder with a clasp on it, which does not invite the attorney to take a look at whatever the commissioner has put in it. He inquired whether the language of the Rule could be “made part of the public record,” so that whatever notation that was made by the commissioner will be included with the court papers. The Chair said that this is a separate issue. The Committee is addressing now whether the defendant is to be provided a separate copy of the commissioner’s papers.

Judge Norton agreed with Professor Colbert that if the State makes a recommendation, it should be part of the public record. Judge Norton added that the main purpose of the change to the Rule is to prevent secrecy. The Chair stated that the motion is to require that a copy of the written recommendation be provided to each other party. Mr. Michael inquired whether the word “provided” would be inserted before the word “writing,” so that the language of section (b) would read “...provided in writing...”. The Chair responded that the recommendation would have to be in writing and provided to each other party. Master Mahasa noted that the word “provided” could mean in writing or sent by fax.

Mr. Johnson asked if the language would be “shown or provided to each other party.” Master Mahasa questioned how else

it could be provided if it is not in writing. The Chair responded that no one is objecting to the recommendation being in writing. The question is whether a copy would have to be provided. Mr. Michael said that to be clear on what is being voted on, the language would be "...shall be in writing, provided to each other party who participates in the proceeding...". The Chair said that the language being voted on is: "...in writing, provided to each other party who participates and made part of the record...". Professor Colbert had requested that it be "public record," which will be discussed soon.

The Chair called for a vote on the motion. There was a tie vote of six in favor, six against. Mr. Johnson expressed the opinion that the word "communicated" is broad enough to encompass what people had been discussing. It would allow the necessary flexibility. He was still concerned about remote video proceedings. The word "communicated" would allow a document to be shown on a video feed to someone who is somewhere else, so that the person would have been shown the document and communicated with. This was the earlier motion that had been raised. Mr. Klein told the Committee that he was going to withdraw his "yes" vote to the word "provided," because he had thought that the word was sufficiently ambiguous to allow for the video communication. His withdrawal would make the motion to use the words "provided to" fail on a vote of five in favor, seven opposed.

The Chair inquired if anyone had an objection to adding the

word “public” before the word “record.” The Reporter asked if this would have any impact on victims. Ms. Ogletree observed that victims have a right to see the record. Mr. Michael noted that by definition, the record would be public. The Chair commented that it is possible to shield documents under the Rules pertaining to access to court records (Title 16, Chapter 1000). Judge Weatherly questioned whether the defendant’s criminal history goes into the envelope. Defendants would not want their entire criminal history accessible to anyone.

Professor Colbert said that the criminal history is not a part of the record in the envelope. The envelope contains forms that the commissioner fills out as to whatever statements were made, and they are not always accessible to the defense attorney. He wanted to make sure that the record is a public record, so that there is no confusion. Defendants may say that certain events took place at the initial hearing, and there is no way to verify this information. What had been discussed was that if the State’s Attorney makes a recommendation, the defense attorney will be able to verify whatever bail the State’s Attorney had recommended. The defense attorney should have access to information and should not have to rely on the defendant’s representations.

Mr. Durfee observed that Professor Colbert’s solution solves one problem, but by using the language “public record” in this Rule, each time the word “record” is used without the adjective “public” in other Rules, it creates the question as to whether

the record is public or not. The Rules pertaining to access to court records refer to "case records" meaning they are public records. The information from the commissioner would be public record as long as the criminal history was not provided. The remainder of the record would be provided. The Chair responded that the Rule had language pertaining to what the commissioner was required to make a record of. Judge Norton pointed out that this is in subsection (f)(2) of Rule 4-216, which requires the judicial officer to state the reasons in writing or on the record upon determining to release a defendant or to refuse to release a defendant.

The Chair asked what the Committee's opinion was about adding the word "public" before the word "record." Mr. Michael moved to do so. The motion was seconded. Judge Pierson expressed his agreement with Mr. Durfee that adding the word "public" to describe this particular record would be confusing, because in all of the other places in the Rules, the word "record" appears without the word "public" in front of it. If an issue exists about getting access to the record, there ought to be another way to go about it without adding the word "public."

Mr. Brault expressed the view that the word "record" means a public record. The Chair pointed out that the access rules make clear that any court record is public unless a rule provides that it should be shielded. Mr. Klein remarked that he had the impression that somehow these recommendations may not be available, because of some commissioners' practices. If this is

the case, then maybe in this one place in the Rules, it might be helpful to have a Committee note indicating that the recommendation of the commissioner is public. This make clear what is intended.

The Chair noted that the way the Rule is structured now what is made part of the record only applies to the situation in subsection (b)(1) of Rule 4-216. Subsection (b)(2) does not state that the matter considered by the judicial officer that is made openly at the proceeding is part of the record. Mr. Sykes pointed out that what is made openly at the proceeding should be automatically part of the record. The Chair agreed. Mr. Sykes asked if it is recorded. The Chair answered that the commissioners may record what happened at the proceeding. They have to record such items as that they advised the defendant of the charging document, read him or her the charging document, advised him or her of the right to counsel, etc.

Judge Weatherly reiterated her suggestion that a box could be added to the form indicating that the commissioner advised the defendant of any recommendation made by the States' Attorney as to bail. The Chair commented that the commissioners have to state their reasons for their bail decision in the record, and one of those reasons would likely be a recommendation made by someone.

Mr. Sullivan referred to section (c) of Rule 16-1001, Definitions. This defines the term "case record" broadly enough as "a document, information, or other thing that is collected,

received, or maintained by a court in connection with one or more specific judicial actions or proceedings." Rule 16-1002, General Policy, states that court records are presumed to be open to the public for inspection. Unless language is added to Rule 4-216 (b) that states that the record is not open, the presumption will be that it is open to the public. The Chair remarked that language could be added to Rule 4-216 (b) that would provide that even if the record is not public, the other party has a right to access the record.

The Chair asked what the motion on the floor was, and Mr. Michael answered that the motion was to add the word "public" before the word "record." Master Mahasa inquired if there has been a problem with access. Professor Colbert told the Committee to ask themselves how they would react to seeing an envelope with a clasp inside the court file, but the envelope is closed. In that envelope is a form that the commissioner had filled out that includes a great amount of information as to what took place at the hearing. Some defense attorneys feel that anything in the public record, the court file, is accessible to the attorney, so that he or she can see what happened at the initial appearance. Some attorneys might feel that if there is a clasp on the envelope, and it was placed in the file by a judicial officer, the attorney does not have liberty to open the envelope to see what is in it. The Chair asked if there is a seal on the envelope. Professor Colbert replied that it is not sealed. The Chair responded that if it is not sealed, the attorney can look

at it. Judge Kaplan added that the State's Attorney should communicate his or her recommendation as to bail or the denial of bail to the defendant. The defendant should be provided with a copy of that recommendation.

Ms. Potter inquired if information about the defendant being HIV-positive or other information not open to the public could be inside the envelope. Mr. Flohr replied that when he had tried to have access to the envelope, seven out of ten times he had been told that he was not allowed to look at what was inside the envelope. He had told the clerk that he had entered his appearance and was the attorney of record, but he had not been allowed to look at what was inside the envelope. He expressed the view that it is preposterous that the defense attorney cannot access the contents of the envelope. The commissioner may think that all of the documents go into the folder. Ms. Potter remarked that she was trying to find out exactly what is put into the folder.

Mr. Flohr said that he had been told that he could not attend the commissioner hearing, because he was a security risk. The reason that Professor Colbert brought up the issue of access to the envelope, was because it is a common occurrence that defense attorneys are denied access to their clients' files. Judge Weatherly noted that the envelopes have printed material on them. In Prince George's County, some of the envelopes have the word "shielded" or "sealed" printed on them. Some envelopes contain domestic violence case information, and no one can look

at those without a court order.

The Chair inquired if the envelopes are actually sealed by the court. Judge Weatherly answered negatively. The Chair observed that they can be opened. It may well be that under the Rules pertaining to access to court records, some of that information may not be publicly accessible, but defense counsel should always be able to see what is in the envelope. The defense attorney may have to file a motion with a judge to order the clerk to turn over the envelope. Mr. Johnson commented that this does not answer the basic question. A record is public. The question is whether the word “public” needs to be inserted before the word “record” in this Rule. His position was that it is not necessary to do so, because to add it suggests that there is some distinction between a public record and a record in the court. How the commissioners handle this is not before the Committee at this time. He moved the question on adding the word “public.” The Chair called for a vote, and the motion failed.

Master Mahasa suggested that the problem of how the commissioners handle this could be addressed educationally. The Chair responded that the Rules Committee could look at this, but part of House Bill 261 creates a task force to study the issue of the commissioners and representation by the Office of the Public Defender (OPD). The Task Force has to make an interim report by November of 2012 and a final report by November of 2013. He assumed that the Task Force would address some of the issues raised today.

Mr. Brault asked what the relief would be if the commissioner violates procedures. The defendant would stay in jail until an attorney moves to put the matter before a judge to set bail. This Rule may not be very useful, since it is difficult to enforce. Judge Norton responded that there are checks and balances available. One is that there is a bail review before the court, and even more importantly, another is that the commissioners can lose their jobs. They are at-will employees and are not entitled to grievance procedures.

The Chair told the Committee that they had already approved the changes to sections (c) and (d). He said that section (e) is new. It was not needed in Rule 4-216 before, because the Rule had provided counsel at the commissioner hearing. However, there can be initial appearances before a judge. Even under House Bill 261, there is a right to counsel at an initial appearance before a judge. This language about the duty of the Public Defender and waiver is needed in Rule 4-216. This language had been considered previously, but because the OPD has to represent indigents even at an initial appearance, if it is before a judge, the language has been put back in the Rule. No one had a comment on section (e).

The Chair pointed out that sections (f) and (g) are essentially the current Rule. Nothing had changed.

By consensus, the Committee approved Rule 4-216 as amended.

The Chair drew the Committee's attention to Rule 4-216.1. The Chair explained that Rule 4-216.1 is largely the same as the

Committee had approved the last time it considered it, except that the provision that was in the prior proposed Rule pertaining to provisional representation had been dropped. The reason was that Mr. DeWolfe had told the Committee that the OPD will be able to qualify people at the review stage generally. The OPD can still provisionally represent people, but the special language about provisional representation was not needed. The other change was that the remote appearance provisions that had been in the Rule had been dropped, because this proceeding takes place before a judge. The Chair had been advised that a provision addressing remote appearances is not necessary other than what is already allowed for bail review. With those two exceptions, it was basically the same Rule that the Committee had previously considered.

Mr. Michael inquired why the language "for 24 hours" had been removed from subsection (a)(1) of Rule 4-216.1. The Chair answered that the first sentence of the current version of the Rule reads as follows: "A defendant who is denied pretrial release by a commissioner or who for any reason remains in custody for 24 hours after a commissioner has determined conditions of release...". House Bill 261 provided for this by statute and the 24-hour time period was left out. As the Chair read the statute, if the Commissioner denies release, or the defendant is still being held after the commissioner's decision, the defendant has the right to be presented immediately. It is not necessary to wait for 24 hours. Since the statute does not

have the 24-hour waiting period, it is only provided for by rule. The statute has trumped this.

The Reporter said that her understanding from talking with some commissioners was that they do not wait for 24 hours to see if the defendant can make bail. As soon as practicable, the defendant is brought in. If the commissioner makes a determination at 5 a.m. on a weekday, the person is brought to the morning docket in many jurisdictions. The Chair commented that in most cases, this would be favorable to the defendant. However, there are situations in which it could be disastrous. It may be that the defendant will be able to make the bail set by the commissioner, although not immediately, but is happy with the commissioner's decision and does not want a review of it by a judge. If the defendant were to make the bail, then there would not be a bail review. Some District Court judges on occasion will increase the bail. Judge Norton noted that this happens frequently. The Chair remarked that the judge may raise the amount of the bail, make it payable only in cash, etc. In these situations, the defendant may not be able to make the bail ordered by the judge and may be in jail pending trial when he or she otherwise would not be. The Chair was not sure how to address this.

Judge Norton pointed out that one philosophy was that the commissioner had set the bond, and 24 hours was a window to determine whether the bond was unreasonable or not. If the defendant could post the bond within 24 hours, then it must have

been reasonable. If he or she could not, then the bond may have been unreasonable. This was the underlying philosophy of the 24-hour time period. But as the Chair had noted, circumstances can change, and the victim who had been stabbed with a knife is near death by the time the matter gets to the judge. The bail may need to reflect this change in circumstances. The Chair clarified that he was not suggesting that it is inappropriate for judges to raise the amount of the bail.

Judge Norton said that he had another problem. The Rules require that after the matter goes before the commissioner, it then goes to a District Court judge. This is a meaningless exercise when it is a circuit court case. The District Court judge has no file, no information, and no history of the defendant. The District Court judges review circuit court cases just because the Rule requires it. It is one thing for the commissioner to review the case, but then instead of the cases going to the court where the case belongs, they are being sent to the District Court.

Mr. Michael asked if the District Court judges have the commissioner's court file. Judge Norton answered that the defendants get picked up on a circuit court warrant; then, after the commissioner reviews the case, it is not sent to the circuit court but to the District Court. The Chair said that he had been alerted to this problem, but it cannot be solved on an emergency basis. The Reporter observed that the problem is exacerbated by the statute, because initially it provided that the case was to

be sent to the circuit court, but this was crossed out. The Chair said that the question that can be addressed now is whether in light of the statute, the 24-hour provision should be deleted from the Rule. Judge Norton said that the procedure has been changed, so that the defendants are brought before the District Court right away.

The Reporter read from the statute: "A defendant, who is denied pretrial release by a District Court commissioner or who for any reason remains in custody after a District Court commissioner has determined conditions of release under Maryland Rule 4-216, shall be presented to a District Court judge..." (the statute had had the words "or circuit court" but they had been crossed out, and at one point, the statute had a 48-hour time period, but it had been crossed out.

Mr. Flohr commented that one issue that he had argued successfully and unsuccessfully at times was that the purpose of this procedure is to benefit the defendant and is not an opportunity to increase the bail. It would be a great service to the bench to add a Committee note that the hearing before the judge is intended as a benefit to the defendant, and the judge should never be able to increase the amount of the bail. The Chair responded that the Committee was not prepared to take this step. Mr. Flohr remarked that the Rule could state that the defendant has a right to waive his or her bail review. Mr. Flohr had seen the situation where the defendant is in the process of making bail, and the bail bondsman is working on it. The

defendant asks for a waiver of the bail review, and the judge refuses to allow the defendant to waive. It is a constitutional issue. The people who make bail quickly are the people who have the most means. It is unfair for the people who have less means. It would be a good idea to add a Committee note allowing the defendant to waive the bail review hearing.

The Chair told Mr. Flohr that he may be correct. The Chair said that he had spoken with some judges on this issue, and they see it in different ways. Some judges feel that the Rule is mandatory. The defendant must be presented, and the bail review hearing cannot be waived. Others feel that if the defendant wants to waive the hearing, the judge will treat it as a motion to do whatever the commissioner had done. The problem was that this cannot be addressed on an emergency basis.

The Chair inquired if anyone had a further comment on Rule 4-216.1. No further comment was forthcoming.

By consensus, the Committee approved Rule 4-216.1 as presented.

The Chair said that the other Rules in this agenda item contain conforming amendments, and the Committee had already seen all of them. The only difference was that the proposed change to Rule 4-202, Charging Document – Content, had been eliminated, because it was not necessary. There were no further comments on the other Rules.

By consensus, the Committee approved Rules 4-216.1, 4-213, 4-217, 4-231, 4-263, 4-439, and 5-101 as presented. The Chair

explained that the Rules would be held until May 2, 2012 to see if the Governor signs House Bill 261, and then immediately these Rules would be sent to the Court of Appeals. There will be an open hearing on the Rules, and anyone who is not in agreement with the changes proposed by the Rules Committee would have an opportunity to convince the Court to do something else.

Agenda Item 2. Consideration of a proposed revised Title 16 (Court Administration) - Chapter 100 - (Court Administrative Structure), Chapter 200 - (General Provisions - Circuit and District Court), Chapter 300 - (Circuit Courts - Administration and Case Management), and Chapter 400 - (Circuit Court - Clerks' Offices)

The Chair explained that the next item on the agenda was the beginning of the Rules on court administration. While the bar may not be totally familiar with these Rules, they are very important. The Rules being considered were the first part of a reorganization updating the Rules that are now in Title 16 addressing court administration, judges, and attorneys. Most of the reorganization is a matter of restyling, but there are substantive changes. Some material that is now in administrative orders of the Chief Judge has been added to the Rules. In the view of the General Court Administration Subcommittee, those administrative orders need greater transparency. The material for discussion had already been considered by the Subcommittee, assisted by all of the various stakeholders that the Subcommittee could locate. The Rules have already been sent out to various stakeholders for comment, and a number of comments had been

received. More of the administration rules would be considered in May and June.

The Chair said that Title 16, which would continue to be the title dealing with court administration, would consist of nine chapters, the first four of which were on the agenda for the meeting today. The last chapter, Chapter 900, will pertain to access to court records. This was being held to look at it in the context of the development of the Maryland Electronic Courts (MDEC) system. Chapter 100 pertains to the general administrative structure of the Maryland Judicial system, the authority and role of each component. Chapter 200 deals with administrative provisions affecting both the circuit court and the District Court. Chapter 300 pertains to administration and case management in the circuit courts. Chapter 400 deals with the circuit court clerks' offices. Chapter 500 pertains to the recording of proceedings, which has many issues associated with it, because the Subcommittee had updated much of the Rules. Chapter 600 deals with extended coverage, the broadcasting of court proceedings. Chapter 700 covers miscellaneous judicial units. Chapter 800 pertains to miscellaneous court administration matters, and Chapter 900 pertains to access to court records.

The Chair noted that Chapters 100 through 400 were being discussed at the meeting. He asked if anyone had a comment on the structure of the Rules as it was proposed by the Subcommittee. No comment was forthcoming.

The Chair presented Rule 16-101, General Administrative Structure, for the Committee’s consideration.

Rule 16-101. GENERAL ADMINISTRATIVE STRUCTURE

The official administrative structure of the Maryland Judiciary consists of:

(1) The Chief Judge of the Court of Appeals, exercising the administrative powers and duties vested in the Chief Judge by the Maryland Constitution, the Maryland Code, and the Maryland Rules;

(2) The Chief Judge of the Court of Special Appeals, exercising the administrative powers and duties vested in the Chief Judge by the Maryland Code and the Maryland Rules;

(3) Circuit and County Administrative Judges of the circuit courts, exercising the administrative powers and duties vested in them by the Maryland Code and the Maryland Rules;

(4) The Chief Judge and Administrative Judges of the District Court, exercising the administrative powers and duties vested in them by the Maryland Constitution, the Maryland Code, and the Maryland Rules;

(5) The Maryland Judicial Conference, the Maryland Judicial Council, and the Maryland Judicial Cabinet exercising the administrative powers and duties vested in them by the Maryland Rules and Administrative Orders of the Chief Judge of the Court of Appeals;

(6) The Administrative Office of the Courts and the State Court Administrator, exercising the administrative powers and duties vested in them by the Maryland Code,

> the Maryland Rules, and Administrative Orders of the Chief Judge of the Court of Appeals;
>
> (7) The clerks of the Court of Appeals, the Court of Special Appeals, the circuit courts, and the District Court, exercising the administrative powers and duties vested in them by the Maryland Constitution, the Maryland Code, and the Maryland Rules;
>
> (8) The court administrators of the circuit courts, exercising the administrative powers and duties conferred on them by the county or circuit administrative judges; and
>
> (9) The Registers of Wills and, except in Harford and Montgomery Counties, the chief judges of the Orphans' Courts exercising the administrative powers and duties vested in them by the Maryland Constitution, the Maryland Code, and the Maryland Rules.
>
> Source: This Rule is in part derived from former Rule 16-101 and in part new.

Rule 16-101 was accompanied by the following Reporter's note.

> Rule 16-101 is new and lays out the administrative structure of the Maryland Judiciary in one Rule, listing the administrative judges of the various levels of courts, the organizations of judges, the Administrative Office of the Courts, the State Court Administrator, the various court clerks, the circuit court administrators and the registers of wills as well as the chief judges of the Orphans' Courts.

The Chair said that Rule 16-101 is new, but it lists up front the major components of the official administrative structure. Most of the items listed are further explained in other Rules which appear later on. With respect to some of these elements, such as the Chief Judge of the Court of Appeals and the

Chief Judge and Administrative Judges of the District Court, the Maryland Constitution is referenced. With respect to some of the other items, there is no reference to the Constitution, because some rules are based on provisions in the Constitution and some are not. One possible change since Rule 16-101 was drafted was in paragraph (5) referencing the Judicial Cabinet. When the Subcommittee worked on this Rule, they thought that the Cabinet had some actual status, but, in fact, it does not. It does not appear in any rule, statute, or administrative order of the Chief Judge of the Court of Appeals. It stems from a memorandum of the Administrative Office of the Courts (AOC).

The Chair remarked that he had spoken about this with the Honorable Robert M. Bell, Chief Judge of the Court of Appeals, because it has some implications later on. He had suggested that the references to the Judicial Cabinet be deleted. If anything, it could be treated as an executive committee of the Judicial Council and addressed there.

The Chair asked if anyone had a comment on Rule 16-101. Since none was forthcoming, by consensus, the Committee approved Rule 16-101 as presented.

The Chair presented Rule 16-102, Chief Judge of the Court of Appeals, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 100 – ADMINISTRATIVE STRUCTURE

Rule 16-102. CHIEF JUDGE OF THE COURT OF APPEALS

(a) Generally

The Chief Judge of the Court of Appeals is the administrative head of the Maryland judicial system and has overall responsibility for the administration of the courts of this State. In the execution of that responsibility, the Chief Judge:

(1) may exercise the authority granted by the Rules in this Chapter or otherwise by law;

(2) shall appoint a State Court Administrator to serve at the pleasure of the Chief Judge;

(3) may delegate administrative duties to other persons within the judicial system, including retired judges recalled pursuant to Md. Constitution, Article IV, §3A; and

(4) may assign ~~a~~ judges ~~of any court other than an Orphans' Court to sit temporarily in any other court~~ pursuant to Rule 16-108 (b).

(b) Pretrial Proceeding in Certain Criminal Cases

The Chief Judge of the Court of Appeals ~~may~~, by Administrative Order, may require in any county a pretrial proceeding in the District Court for an offense within the jurisdiction of the District Court punishable by imprisonment for a period in excess of 90 days.

Source: This Rule is derived from former Rule 16-101 a.

Rule 16-102 was accompanied by the following Reporter's note.

This Rule is derived from former Rule 16-101 a with style changes.

The Chair told the Committee that Rule 16-102 was basically the same as current Rule 16-101 a. with style changes.

By consensus, the Committee approved Rule 16-102 as presented.

The Chair presented Rule 16-103, Chief Judge of the Court of Special Appeals, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 100 – ADMINISTRATIVE STRUCTURE

Rule 16-103. CHIEF JUDGE OF THE COURT OF SPECIAL APPEALS

Subject to the provisions of this Chapter and to the direction of the Chief Judge of the Court of Appeals, the Chief Judge of the Court of Special Appeals~~, subject to the direction of the Chief Judge of the Court of Appeals and pursuant to the provisions of this Title, shall be~~ is responsible for the administration of the Court of Special Appeals~~. In fulfilling that responsibility, the Chief Judge of the Court of Special Appeals shall possess,~~ and with respect to that court and to the extent applicable, has the authority ~~granted to~~ of a County Administrative Judge ~~in section d of this Rule~~. In the absence of the Chief Judge of the Court of Special Appeals, the provisions of this Rule shall be applicable to the senior judge present in the Court of Special Appeals.

Source: This Rule is derived from former Rule 16-101 b.

Rule 16-103 was accompanied by the following Reporter's note.

Rule 16-103 is derived from former Rule 16-101 b with style changes.

The Chair said that Rule 16-103 is the same as current Rule 16-101 b. with some minor restyling.

By consensus, the Committee approved Rule 16-103 as presented.

The Chair presented Rule 16-104, Circuit Court - Circuit Administrative Judge, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 100 – ADMINISTRATIVE STRUCTURE

Rule 16-104. CIRCUIT COURT –CIRCUIT ADMINISTRATIVE JUDGE

(a) ~~Designation~~ Appointment

~~In each judicial circuit there shall be~~ The Chief Judge of the Court of Appeals shall appoint a Circuit Administrative Judge~~, who shall be appointed by order and~~ for each judicial circuit, to serve at the pleasure of the Chief Judge ~~of the Court of Appeals~~. ~~In the absence of any such appointment, the Chief Judge of the judicial circuit shall be the Circuit Administrative Judge.~~ The Circuit Administrative Judge shall serve also as the County Administrative Judge of the circuit court within the judicial circuit upon which that judge serves.

(b) Duties

~~Each~~ Subject to the provisions of this Chapter and to the direction of the Chief Judge of the Court of Appeals, the Circuit Administrative Judge ~~shall be generally~~ is generally responsible for the overall administration of the ~~several~~ circuit courts

within the judicial circuit, ~~pursuant to these Rules and subject to the direction of the Chief Judge of the Court of Appeals~~ and for matters that may affect more than one of those courts. ~~Each~~ In carrying out those responsibilities, the Circuit Administrative Judge:

(1) shall ~~also be responsible for the supervision of~~ supervise the other County Administrative Judges within the judicial circuit; ~~and~~

(2) on a temporary basis, may perform any of the duties of a County Administrative Judge for a circuit court within the judicial circuit in the absence of a County Administrative Judge for that court~~.~~; and

(3) ~~The Circuit Administrative Judge~~ shall ~~also~~ call a meeting of all of the circuit court judges ~~of~~ within the judicial circuit at least once every six months.

~~Cross reference: For more detailed provisions pertaining to the duties of Circuit Administrative Judges, see section (d) of Rule 4-344 (Sentencing - Review); Rule **18-107** 16-103 (Assignment of Judges); and Rule 16-104 (Judicial Leave).~~

Source: This Rule is derived from former Rule 16-101 c.

Rule 16-104 was accompanied by the following Reporter's note.

This Rule is derived from former Rule 16-101 c, with new language clarifying the role of the Circuit Administrative Judge in dealing with matters affecting more than one circuit court.

The Subcommittee had questioned the need for subsection (b)(2) in light of the requirement in section (a) that the Circuit Administrative Judge be a County Administrative Judge. It may be necessary,

however, if the judge in a one-judge county (Caroline, Cecil, Garrett, Queen Anne's, Somerset, or Talbot) becomes unavailable.

The Chair explained that Rule 16-104 is basically the same as current Rule 16-101 c., but some clarification has been requested. The Judicial Administration Section of the Maryland State Bar Association (MSBA) had made a comment in a letter suggesting that the last sentence of section (a) is ambiguous. They proposed the following language: "The Circuit Administrative Judge shall serve also as the County Administrative Judge of the circuit court within the county in which the judge resides." The Chair said that he was not sure how this clarified the meaning of this provision. What it does is drop the requirement that the Circuit Administrative Judge be the Administrative Judge of the county within the circuit. A letter, which was distributed as a handout at the meeting was from Richard L. Flax, Esq., Chair of the Judicial Administration Section. (See Appendix 1). He did not say why he thought that the language in section (a) was ambiguous.

Judge Kaplan pointed out that some circuits are comprised of more than one county. It is not a problem in Baltimore City, but it is in other places. The Judicial Administration Section wanted the judge to reside in one of the counties in that circuit. The Chair responded that he had thought that this is what the language in section (a) of Rule 16-104 provided. Ms. Ogletree commented that at one point on the Eastern Shore of Maryland, Dorchester and Wicomico Counties were sharing a circuit

court judge. The language suggested by the MSBA would allow for that as long as it is within the circuit.

The Chair observed that the idea was that the Circuit Administrative Judge would also serve as the County Administrative Judge in the circuit court in which he or she was a judge, so that there would not be two different judges. Ms. Ogletree noted that the language proposed by the MSBA covers the case where two counties are sharing a judge. Judge Pierson expressed the view that the last sentence of section (a) was not ambiguous, but it was cumbersome. It could be improved by dropping the language "within the judicial circuit," so that it would read, "The Circuit Administrative Judge shall serve as the County Administrative Judge of the circuit court upon which that judge serves."

Judge Pierson asked why the language "within the judicial circuit" was necessary? The Chair answered that it is important to make sure that the circuit court is within the judicial circuit. Judge Pierson remarked that if the judge is serving on the court, it has to be within the circuit. The Chair responded that it should not be that a County Administrative Judge in Cecil County serves as the Circuit Administrative Judge in the lower Eastern Shore. Judge Pierson pointed out that this is not what section (a) of Rule 16-104 provides. The sentence is intended to say that there is also a County Administrative Judge for any judge's court. But because they can only be elected to a court within which they reside, the language "within the judicial

circuit" does not add anything. One can only be the County Administrative Judge in the court in which that judge serves.

The Chair stated that the suggestion from the MSBA was to drop the language "within the judicial circuit upon which that judge serves" and replace it with the language "for the county within which the judge resides." Judge Pierson moved to make that change, the motion was seconded, and it carried on a majority vote.

The Chair drew the Committee's attention to section (b) of Rule 16-104. No one had a comment about section (b).

By consensus, the Committee approved Rule 16-104 as amended.

The Chair presented Rule 16-105, Circuit Court - County Administrative Judge, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 100 – ADMINISTRATIVE STRUCTURE

Rule 16-105. CIRCUIT COURT - COUNTY ADMINISTRATIVE JUDGE

(a) ~~Designation~~ Appointment

After considering the recommendation of the Circuit Administrative Judge, the Chief Judge of the Court of Appeals ~~may~~ shall appoint a County Administrative Judge ~~of the~~ for each circuit court ~~for any county to be County Administrative Judge of the Circuit Court for that county. A County Administrative Judge shall~~, to serve in that capacity at the pleasure of the Chief Judge ~~of the Court of Appeals~~. Except as permitted by Rule 16-104 (b)(2), the County

Administrative Judge shall be a judge of that circuit court.

(b) Duties

Subject to the provisions of this Chapter, the general supervision of the Chief Judge of the Court of Appeals, and the general supervision of the Circuit Administrative Judge, ~~a~~ the County Administrative Judge ~~shall be~~ is responsible for the administration of ~~justice and for the administration of the court for that county~~ the circuit court. The duties ~~shall~~ of the County Administrative Judge include:

(1) supervision of ~~all~~ the judges, ~~officers~~ officials, and employees of the court~~,~~;

(2) ~~including the authority to assign~~ assignment of judges within the court pursuant to Rule ~~16-103~~ 16-302 (Assignment of ~~Judges~~ Actions for Trial; Case Management Plan);

(3) supervision and expeditious disposition of cases filed in the court, ~~and the~~ control ~~of~~ over the trial ~~calendar~~ and other calendars~~, including the authority to assign~~ of the court, assignment of cases for trial and hearing pursuant to Rule ~~16-102~~ 16-304 (Chambers Judge) and Rule ~~16-202~~ 16-302 (Assignment of Actions for Trial; Case Management Plan), and scheduling of court sessions;

(4) preparation of the court's budget;

(5) preparation of a case management plan for the court pursuant to Rule 16-302;

(6) preparation of a continuance of operations plan for the court pursuant to Rule 16-802;

(7) preparation of a jury plan for the court pursuant to Code, Courts Article, Title 8, Subtitle 2;

(8) preparation of any plan to create a

problem-solving court program for the court pursuant to Rule 16-207;

(9) ordering the purchase of all equipment and supplies for (A) the court, and ~~its~~ (B) the ancillary services~~, such as~~ and officials of the court, including masters, auditors, examiners, court administrators, court reporters, jury commissioner, staff of the medical ~~and probation~~ offices, and all ~~additional~~ other court personnel ~~other than~~ except personnel comprising the Clerk of Court's office;

(10) supervision of and responsibility for the employment, discharge, and classification of court personnel and personnel of its ancillary services and the maintenance of personnel files, unless a majority of the judges of the court disapproves of a specific action. ~~However,~~ Each judge, however, has the exclusive right, ~~(~~subject to budget limitations~~)~~ and any applicable personnel plan, ~~shall have the exclusive right~~ to employ and discharge ~~the~~ a ~~judge's~~ personal secretary and law clerk; Committee note: Article IV, §9, of the Constitution gives the judges of any court the power to appoint officers and, thus, requires joint exercise of the personnel power. ~~A similar provision was included in the July 17, 1967 Administrative and Procedure Regulation.~~

(11) implementation and enforcement of all administrative policies, rules, orders, and directives of the Court of Appeals, ~~its~~ the Chief Judge of the Court of Appeals, ~~and~~ the State Court Administrator, and the Circuit Administrative Judge of the judicial circuit; and

(12) performance of any other duties necessary ~~for~~ to the effective administration of the judicial business of the court and the prompt disposition of litigation in it. ~~Cross reference: See also Rule 16-102 (Chambers Judge); Rule 16-103 (Assignment of Judges); Rule 16-201 (Motion Day - Calendar); Rule 16-202 (Assignment of Actions for Trial).~~

(c) ~~Power to Delegate~~ Delegation of Authority

(1) With the approval of the Circuit Administrative Judge or in accordance with a continuance of operations plan adopted by the court pursuant to Rule 16-802, a County Administrative Judge may delegate ~~to any judge,~~ one or more of the administrative duties and functions imposed by this Rule to (A) another judge or a ~~to any~~ committee of judges~~, or to any officer or employee any of the administrative responsibilities, duties and functions of the County Administrative Judge~~ of the court, or (B) one or more other officials or employees of the court.

(2) Except as provided in subsection (c)(3) of this Rule, ~~In~~ in the implementation of Code, Criminal Procedure Article, §6-103 and Rule 4-271 (a), a County Administrative Judge may ~~authorize~~ (A) with the approval of the Chief Judge of the Court of Appeals, authorize one or more judges to postpone criminal cases on appeal from the District Court or transferred from the District Court because of a demand for jury trial, and (B) authorize not more than one judge at a time to postpone all other criminal cases.

(3) The administrative judge of the Circuit Court for Baltimore City may authorize one judge sitting in the Clarence M. Mitchell courthouse to postpone criminal cases set for trial in that courthouse and one judge sitting in Courthouse East to postpone criminal cases set for trial in that courthouse.

~~4. Single Judge Counties~~

~~In a county that has only one resident judge of the Circuit Court, that judge shall exercise the power and authority of a County Administrative Judge.~~

Source: This Rule is derived from former Rule 16-101 d.

Rule 16-105 was accompanied by the following Reporter's

note.

> This Rule is derived from former Rule 16-101 d with style changes. A more comprehensive list of the duties of the County Administrative Judge has been added. Subsection (c)(3) was added to take into account the situation in Baltimore City where there is more than one courthouse, so that a judge is available in each of the courthouses to postpone criminal cases set for trial.

The Chair said that a number of comments had been made on Rule 16-105, but none pertained to section (a). The Chair noted that Ms. James had some comments. Ms. James told the Committee that she was the court administrator in Howard County. She said that the language of section (b) is very specific, and it uses active verbs. It reflects back to some old language. The discussion had been centered on the fact that the County Administrative Judge will produce the budget, not that the judge will see that it is produced. She expressed her concern about this, because the Rule goes on to discuss delegation of authority and other ramifications of that language, so that the judge producing something is not correct. She asked the Committee to consider more general language concerning the County Administrative Judge supervising rather than actively producing items such as the budget, which does not happen. The judges see that it is done; they do not prepare it.

The Chair noted that what Rule 16-105 was trying to address was who is responsible for these duties. It is the County Administrative Judge. Even if that judge tells the court

administrator to perform the task, it is the County Administrative Judge who has to sign off on it and send it wherever it is supposed to go. Someone has to be responsible for this whether he or she actually does the work or not. Ms. James suggested that the language could be something to the effect of: “it is the responsibility of the County Administrative Judge to ensure that...”. This is different from subsection (b)(4), which reads: “preparation of the court’s budget” or subsection (b)(5), which reads “preparation of a case management plan for the court ...”. Then, subsection (c)(1) provides that the Circuit Administrative Judge has to approve any delegation of these responsibilities, which is confusing.

The Chair asked Ms. James if she had any suggested language. She replied that it would be something like: “the County Administrative Judge is responsible for ensuring that...” leaving that judge with the approval authority. Mr. Durfee suggested that the language could be “the County Administrative Judge is responsible for: ...”. The Chair inquired if the language “[t]he duties of the County Administrative Judge” would be deleted. Judge Pierson moved that the wording should be: “The County Administrative Judge is responsible for the administration of the circuit court, including:” The motion was seconded, and it passed on a majority vote.

The Chair pointed out that in subsection (c)(6), the word “continuance” should be the word “continuity,” which is the official term. He noted that Ms. James had a comment on

subsection (b)(9). Ms. James said that she had asked for a definition of the term "ancillary services." Also, some examiners are not legitimate court personnel, and the Rule should not imply that the court would be providing private practitioners for tasks that were inappropriate. It would be helpful to have an idea of what is meant by "ancillary services." The Chair commented that this language is in the current Rule.

The Chair asked Ms. James for alternative language. She replied that the problem is that the Rule is trying to be so specific. Subsection (b)(9) provides that the Administrative Judge is responsible for the budget, including seeing that equipment and supplies are ordered for the court and the ancillary services. This provision tries to differentiate between the court and ancillary services, but it varies from Baltimore City to the other counties. Can the Rule not stop there?

The Chair responded that subsection (b)(9) is for ordering the purchase of equipment and supplies. It is not only the budget. Ms. James inquired if the Rule could use the language "ordering the purchase of." The Chair asked who would be responsible for procurement. Ms. James replied that the Rule could state that the County Administrative Judge is responsible for procurement but not list all the ancillary services. How can the Rule distinguish between the court and ancillary services, such as officials of the court? The Chair questioned how it is done now. Ms. James answered that it is all on one budget, and

it is the court. The Chair noted that the budget is the appropriation of money for this. Who is responsible for the ordering and purchasing of all of this?

Ms. James commented that the ordering and purchasing come under the County Administrative Judge, but the problem is when the Rule differentiates between the court and ancillary services and then tries to elaborate. What composes those ancillary services? The Chair questioned how this has been handled for the past 30 years. Ms. James replied that she has been doing the procuring, not the County Administrative Judge. It is under the direction of the County Administrative Judge. The Chair noted that it had been just pointed out that the County Administrative Judge is supposed to ensure that these things happen. What is supposed to happen? What is the purchasing for?

Judge Weatherly remarked that she thought that Ms. James' suggestion was that the language "ordering the purchase of all equipment and supplies for the court" would mean that the word "court" includes all of these various entities thereafter without enumerating them. The idea is that once they are enumerated in the Rule, it limits the scope to what has been listed. Subsection (b)(9) could end with the words "the court." Should the clerks' offices be excluded? Is it possible that the masters, court administrators, and court reporters would not be included? The Chair replied that he did not know. Some of the examiners are attorneys, who are in private practice and are not court personnel. Ms. Ogletree added that she is an auditor for

the court in her county, and the auditors are not provided for by the court budget. The Chair noted that the current Rule includes the same list of personnel. Ms. Ogletree reiterated that some of them are not court personnel. Ms. James said that at one time, some people who were called examiners were funded by the court budget, but now generally, the term is not used that way.

The Chair commented that he did not have a conceptual problem with Ms. James' suggestion, but he expressed the view that the Conference of Circuit Court Judges and the AOC ought to be consulted before this change is made from the current Rule, which has been in effect for a long time. Mr. Klein remarked that it could be assumed that dropping out the list of personnel from subsection (b)(9), narrows the scope, not broadens it. Judge Zarnoch pointed out that the word "including," which is in subsection (b)(9), is not a word of limitation.

The Reporter inquired if the Rule should read: "...order the purchase of all equipment and supplies in accordance with the court's budget." Ms. James replied that since the Rule applies to the County Administrative Judge, the wording should be: "...in accordance with the county's budget." This would solve the problem of whether to include the clerk's office in the list. The Chair asked if State money would be included in the county budget. Ms. James answered affirmatively. The Chair inquired if this is the case in every county, and Ms. James replied affirmatively.

Ms. Riley told the Committee that she was the Chair of the

Conference of Circuit Court Administrators. Whatever the financial requirements are that the county puts upon the circuit court with reference to handling the State money that is given to the counties, the process that the counties follow is that many of the counties must get permission to have the funding included, and it has to be shown as a line item in their local budget. The Chair inquired if this is true for federal funds, also, and Ms. Riley answered affirmatively. Mr. Durfee remarked that in those instances where the counties do not give enough money to the court, the court would have the inherent power to spend money, for example money that was given to it by the AOC. To put in subsection (b)(9) the language "in accordance with the county budget" would be too limiting. The court may want to spend money even if the county budget does not permit it.

The Chair pointed out that either State funds or federal funds could come in after the county budget has been adopted by the county government, and the court should be able to spend that money. Ms. Riley responded that the court administrator would have to go before the respective county council commissioner and request that those be supplemental funds. The Chair asked what would happen if the county government refused. Ms. Riley answered that she had never had that experience in her county, and she did not know if others had had that experience.

Ms. James remarked that an older Attorney General Opinion (73 Op Atty Gen. 92 (1988)) held that circuit court administrators are bound as county representatives to county

procurement laws, to which Ms. Riley had referred, with the exception of laws that impact on the direct administration of the court. To the best of Ms. James' knowledge, no confrontation over this decision had ever taken place. The idea is that for auditing, the court administrators must have spending authority before the budget is increased.

The Chair said that he would prefer to get the views of the Conference of Circuit Judges on this before any change to subsection (b)(9) is made. He pointed out that the "ancillary services" are referred to in subsection (b)(10), also. Ms. James noted that Ms. Ogletree had made the point that although she is an examiner, she is not technically supervised as court personnel. She is supervised as a court officer for a particular case or cases. The Chair noted that the language in subsection (c)(1) has to be changed from "continuance of operations" to "continuity of operations." This has to be changed wherever the words "continuance of operations" appear.

There was no further comment on Rule 16-105. The Chair stated that Rule 16-105 would be sent to the Conference of Circuit Judges.

The Chair presented Rule 16-106, Chief Judge of the District Court, for the Committee's consideration.

Rule 16-106. CHIEF JUDGE OF THE DISTRICT COURT

(a) Generally

Subject to the provisions of this Chapter and to the direction of the Chief Judge of the Court of Appeals, the Chief Judge of the District Court is the chief administrative officer of ~~the~~ that court and is responsible for the maintenance, administration, and operation of the court in all its locations throughout the State.

(b) Administrative Regulations

The Chief Judge of the District Court may ~~make~~ adopt administrative regulations for the ~~governing~~ governance of the District Court, subject to and not inconsistent with the Maryland Rules or with ~~an~~ administrative orders ~~promulgated~~ issued by the Chief Judge of the Court of Appeals.

(c) Assignment of Judges

The Chief Judge of the District Court may assign a judge of the District Court to sit temporarily in a county other than the judge's county of residence.

(d) Other Powers and Duties

In addition to the powers and duties granted and imposed in sections (a), (b), and (c) of this Rule, or elsewhere by law or rule, the Chief Judge of the District Court shall exercise the powers and duties of that office as set out in Code, Courts Article, §1-605.

Source: This Rule is derived from Code, Courts Article, §1-605.

Rule 16-106 was accompanied by the following Reporter's note.

This Rule is derived from Code, Courts Article, §1-605.

The Chair noted that Rule 16-106 is derived from Code, Courts Article, §1-605.

There being no comment on Rule 16-106, the Committee approved the Rule by consensus.

The Chair presented Rule 16-107, Administrative Judges of the District Court, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 100 – ADMINISTRATIVE STRUCTURE

Rule 16-107. ADMINISTRATIVE JUDGES OF THE DISTRICT COURT

(a) Designation

The Chief Judge of the District Court, subject to the approval of the Chief Judge of the Court of Appeals, shall designate a District Court judge in each district as the administrative judge for that district.

(b) Duties

Subject to the direction of the Chief Judge of the District Court, ~~The~~ the administrative judges, in their respective districts, are ~~is~~ responsible for (1) the administration, operation, and maintenance of the court; ~~in that district and for~~ (2) the conduct and scheduling of the court's business; and (3) subject to the approval of the Chief Judge of the District Court, the appointment and discharge of commissioners of the District Court within their respective administrative districts pursuant to Article IV, §41G of the Constitution.

(c) Functional Division of District

Subject to the approval of the Chief Judge of the District Court, the District

Court of any district may be divided into civil, criminal, traffic, or other functional divisions if the work of the District Court requires.

Source: This Rule is derived from Code, Courts Article, §1-607 and Article IV, §41G of the Constitution of Maryland.

Rule 16-107 was accompanied by the following Reporter's note.

This Rule incorporates the substance of Code, Courts Article, §1-607 and Article IV, §41G of the Constitution of Maryland.

The Chair explained that Rule 16-107 was derived from Code, Courts Article, §1-607, and Article IV, §41G of the Constitution of Maryland.

There being no comment on Rule 16-107, the Committee approved the Rule by consensus.

The Chair presented Rule 16-108, Assignment of Judges, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 100 – ADMINISTRATIVE STRUCTURE

Rule 16-108. ASSIGNMENT OF JUDGES

~~(d)~~ (a) ~~Use of Assignment Power~~ Generally

The ~~assignment power herein established~~ authority provided in this Rule shall be exercised to ensure the full and efficient use of ~~judicial personnel~~ judges throughout the judicial system, to help

equalize~~, to the extent feasible,~~ judicial workloads, and to expedite the disposition of pending cases.

~~(a)~~ (b) Chief Judge of the Court of Appeals

The Chief Judge of the Court of Appeals ~~may,~~ by order, may assign ~~any~~ a judge of any court other than a judge elected or appointed to an Orphans' Court to sit temporarily in ~~any~~ another court other than ~~the one to which he was appointed or elected~~ an Orphans' Court. The order ~~of assignment~~ shall specify the court in which the judge is to sit and the duration of the assignment. During the period of the assignment, the ~~assigned~~ judge shall possess all the power and authority of a judge of the court to which ~~the~~ that judge is assigned.

~~COMMENT~~

~~This section, like the constitutional provision (Article IV, §18) on which it is based, gives the Chief Judge of the Court of Appeals full vertical and horizontal assignment power.~~

~~(b)~~ (c) Circuit Administrative Judge

~~Except for assignments made pursuant to section a~~ Subject to section (b) of this Rule, ~~the~~ a Circuit Administrative Judge ~~of each of the judicial circuits~~ may assign ~~any~~ a judge of ~~that~~ a circuit court within the judicial circuit to sit as a judge of ~~the~~ another Circuit Court within ~~of any county in~~ the judicial circuit~~, in any~~. The assignment may be for a specific case or cases or for ~~any~~ a specified time~~. The assignments~~ and ~~may~~ shall be ~~made orally or~~ in writing.

~~(c)~~ (d) County Administrative Judge

~~Except for assignments made pursuant to~~ Subject to sections (b) and (c) of this Rule, the assignment of judges within the Circuit Court for a county ~~in which there is~~ having more than one resident judge shall be made by the County Administrative Judge. ~~The~~

> Those assignments may be made orally or in writing.
>
> (e) District Administrative Judge
>
> Subject to section (b) of this Rule, a District Administrative Judge may assign a judge of the District Court within the judge's district to sit as a District Court judge in any county within the judicial district. The assignment shall be made in writing.
>
> Source: Sections (a) through (d) of ~~This~~ this Rule ~~is~~ are derived from former Rule 16-103. Section (e) is new.

Rule 16-108 was accompanied by the following Reporter's note.

> This Rule is former Rule 16-103, except that former section (d) has been relocated as section (a) and section (e) is new.

The Chair said that the Committee had received from Roberta Warnken, Chief Clerk of the District Court, a collection of comments from the District Court. (See Appendix 2). Judge Norton pointed out that she had requested that the assignment of judges be allowed both orally and in writing. The last sentence of section (e) of Rule 16-108 requires that the assignment be in writing. The Chair suggested that the last sentence be deleted from the Rule.

Judge Norton remarked that he is one of the judges whose district has multiple counties. If someone files a complaint several years later, it is better to have a written record of which judge was sitting for a certain case. Keeping a written

record is not that onerous. The Chair commented that the Subcommittee had discussed this and deliberately voted that the assignment should be in writing. Judge Norton observed that some judges are changed around from county to county. If a judge is switching counties, it would be helpful for there to be a written record. He expressed the opinion that Rule 16-108 should remain as it is.

Ms. Smith pointed out that Ms. Suzanne H. James had submitted a comment suggesting that section (d) of Rule 16-108 should also apply to the assignment of masters. (See Appendix 3). Mr. Michael expressed the view that this would not fall under the category of "County Administrative Judge" and would require placement in a new section. Ms. James said that if Rule 16-108 is intended to apply only to judges, then she would defer to the opinion of the Committee. However, since the Rule applies to the administrative structure of the courts, nothing that she knew of would specifically address assignment of masters. Master Mahasa responded that a section of the Rules is devoted to that. The Reporter remarked that Rule 2-541 pertains to masters, but she asked if there was a Title 16 Rule on the same subject. Master Mahasa said that the Subcommittee had worked on a Title 16 Rule several years ago.

Judge Weatherly expressed the view that assignment of masters would come under the aegis of the County Administrative Judge. Mr. Johnson pointed out that section (a) had previously referred to "judicial personnel," but that was changed to a

reference to “judges.” Ms. Ogletree noted that a gap exists that does not address masters. The Reporter remarked that Rule 16-108 could be changed back to applying to judicial personnel. Judge Weatherly suggested that masters could be covered by the rule applying to masters. The Reporter inquired whether Judge Weatherly meant Rule 2-541, Masters, or she meant that a separate rule pertaining to masters should be added to Title 16. Ms. Ogletree pointed out that Rule 2-541 separates masters into two categories, standing and special masters. It provides that a circuit court judge can appoint the masters. Judge Pierson added that the Rule states that the court may refer to a master any matter or issue not triable of right before a jury (other than domestic relations masters, who are addressed in Rule 9-208, Referral of Matters to Masters).

The Reporter asked who tells the masters where they are sitting. Who assigns this? Judge Pierson responded that the masters in Baltimore City are hired to fill certain slots. They are not reassigned. They are hired for civil matters or family matters. Master Mahasa noted that a master could be reassigned, but they are not reassigned in Baltimore City. Judge Weatherly said that in Prince George’s County, the masters hear child support, family, and juvenile cases. Ms. Ogletree reiterated that Rule 2-541 only applies to standing and special masters. The ones to which Judge Weatherly had referred are all standing masters. Judge Weatherly observed that ultimately, the Administrative Judge assigns the masters.

Mr. Johnson reiterated that it would be appropriate to address the masters somewhere, but Rule 16-108 applies to the assignment of judges. Ms. Ogletree said that assignment of masters is already covered in Rule 2-541. Section (a) states: "(1) Standing master, a majority of the judges of the circuit court of a county may appoint a full time or part time standing master...". The Reporter inquired whether this subject should be left to Rule 2-541, and the Committee, by consensus, indicated that this would be appropriate. Mr. Sykes suggested that a cross reference to Rule 2-541 could be added to Rule 16-108.

Judge Pierson said that he did not disagree that a gap as to the masters exists, but it may be that a rule should be included that provides specifically that the County Administrative Judge has the power to assign masters. Baltimore City has 10 to 15 masters, but nowhere in the Rules does it expressly state who is assigning the masters, yet Rule 16-108 states this for judges. The Chair questioned whether a new section (e) should be added. Ms. Ogletree expressed the opinion that since Rule 2-541 already provides who can appoint masters, any further elaboration on this should go into that Rule. Mr. Brault reiterated that Rule 2-541 provides that a majority of judges may appoint a master. The Chair added that this goes further than the County Administrative Judge. Mr. Brault noted that Rule 2-541 goes on to provide that the court may appoint special masters. Judge Pierson agreed with Ms. James that assignment of masters should be covered in Rule 16-108.

Mr. Sykes asked where assignment of examiners and auditors should go. Ms. Ogletree commented that there are differences throughout the State as to whether some of those individuals are paid by the court, or whether private attorneys are brought in, which is the procedure in the Eastern Shore counties. The Chair asked the Committee if they were in favor of adding a new section to Rule 16-108 pertaining to masters. Mr. Johnson expressed his preference for the suggestion by Mr. Sykes to add to Rule 16-108 a cross reference to Rule 2-541. Rule 16-108 applies to the assignment of judges. Masters are not judges, so it is not appropriate to include masters in Rule 16-108.

Judge Pierson remarked that the issue is who assigns the cases to the masters. Judge Norton observed that if Rule 16-108 includes the assignment of masters, it would have to be retitled, such as "Assignment of Judges and Masters." The Chair pointed out that the Rule would have to apply to more than masters. The question is if it applies to auditors and examiners. Ms. Ogletree noted that on the Eastern Shore, the parties pick the examiners. The Chair observed that there are three separate rules in Title 2, one for masters (Rule 2-541, Masters), one for examiners (Rule 2-542, Examiners), and one for auditors (Rule 2-543, Auditors).

Judge Weatherly expressed the opinion that assignment of masters should be in Rule 2-541. People go to that Rule looking for the information about masters, and putting it into Rule 16-108 would make it difficult to find. Ms. Ogletree remarked that

a cross reference to Rule 2-541 is appropriate to add to Rule 16-108. Judge Weatherly commented that it does not answer the question about assignment of masters. Ms. Ogletree responded that it would send someone to the right Rule to find out about it. The Chair noted that Rule 2-541 does not address who assigns the masters to the various cases. Ms. Ogletree said that it does address this for a special master, because they are appointed by the court, but it does not address assignment of standing masters.

The Chair asked if the standing masters get their assignment from central assignment. Judge Weatherly noted that sometimes the question about assignment of masters arises. In Prince George's County recently, a master had been appointed to the District Court and had heard juvenile and domestic cases. Who will actually hear those cases? The reality is that the director of family law cases would work with the assignment office to make that decision. If one of the masters refuses to hear a certain kind of case, ultimately the Administrative Judge would have to assign the cases.

The Chair asked if the Administrative Judge would decide the assignment, if a master is already hearing domestic cases, and the judge would like for the master to hear another kind of case. Judge Weatherly replied that it would be decided ultimately by the Administrative Judge. Mr. Durfee pointed out that Code, Courts Article, §2-102 refers to the appointment of special officers. This may have some bearing on who has what control

over whom and who can appoint the officers. The Chair responded that the issue is not who can appoint them. Mr. Durfee added that the statute addresses who can assign the officers.

Mr. Johnson noted that in Baltimore City, the Administrative Judge is in charge of different dockets. Do the masters report to the judges in charge of the docket, or do they report to the Administrative Judge? Judge Weatherly responded that the masters report to the family division judge. Judge Pierson added that this is because the Administrative Judge has delegated the power as to who is in charge of the docket. All of that power resides in the Administrative Judge. The Chair expressed the opinion that assignment of masters should be in Rule 16-108. The Rule relates to the power of the County Administrative Judge, and assignment of masters is part of that power, even if the judge delegates that power.

Judge Weatherly suggested that the title of Rule 16-108 could be changed to "Assignment of Judges and Masters." The Chair inquired if the Rule should include examiners and auditors. Mr. Sullivan asked if there is a general term used to include all of the other officers of the court. The Chair replied that for purposes of the Code of Ethics "judicial appointees" includes masters, examiners, and auditors, but also District Court commissioners. Mr. Michael added that it could refer to a child advocate. The Chair inquired whether the Administrative Judge should be ultimately responsible for the assignment of auditors and examiners. Judge Kaplan answered that the Administrative

Judge would be responsible. Ms. Ogletree remarked that this is not the way the assignment happens.

Mr. Johnson asked whether an Administrative Judge could appoint a special master in a case. The Chair replied affirmatively but noted that this would be for a specific case. Mr. Johnson questioned whether this would be subject to the Circuit Administrative Judge's approval. The Chair said that the pertinent Rules were Rules 2-541, 2-542, and 2-543. Ms. Ogletree pointed out that this is covered in the first section of Rule 2-541 (b). Judge Pierson noted that this does not address assignment. It applies to a special master for one particular case.

The Chair observed that Rule 2-541 addresses masters. Subsection (a)(1) pertains to a standing master. He read from the Rule: "A majority of the judges of the circuit court of a county may appoint a full time or part time standing master and shall prescribe the compensation, fees, and costs of the master." The Rule does not refer to the assignment of masters. Subsection (a)(2) applies to special masters. The Chair read from subsection (a)(2): "The court may appoint a special master for a particular action and shall prescribe the compensation, fees, and costs of the special master... . The order of appointment may specify or limit the powers of a special master and may contain special directions." This is for a particular case.

The Chair pointed out that Rule 2-542 has the same language as Rule 2-541. Mr. Brault noted that section (b) of Rule 2-541

covers referral of cases to the master, but it only addresses domestic relations matters and further states that the referral is to be done in accordance with Rule 9-208, which describes all of the cases that are permanently assigned. The Rule then provides that the court may refer to a master any other matter not triable of right before a jury. The Chair said that Rule 2-542 is the same situation for examiners. The Rule provides for standing examiners and special examiners. Rule 2-543 is the same as the other two Rules. It provides for a standing auditor and a special auditor.

The Chair reiterated that the language is the same for all three Rules, but it does not address the assignment of cases to the various officers. Ms. Ogletree commented that Caroline County now has a master, but for years it did not. All of the divorce cases used to go to examiners. Now uncontested as well as contested cases go mostly to the master, but it is the parties who choose the examiner, and the parties opt for either a master or an examiner. The language of the Rules does not really fit.

Judge Weatherly said that the assignment of cases is not about a particular case. It is not that on a given day, a certain case has to go to a certain master or a certain judge. With judges, the issue is whether the judge is in the civil division or criminal division. Some cases are specially assigned. The masters will be assigned to a certain kind of case, such as child support or divorce. Ms. Ogletree noted that the examiners used to be called “examiners in chancery.” Those

were the kind of cases the examiners heard, such as partition cases. Judge Weatherly commented that even for those counties in which uncontested divorces may be heard by examiners, and the examiner is contacted by the party, it is not a question of the one case that goes to the examiner, but it is the idea that the examiner can hear these kinds of cases. This is the assignment that is being discussed.

The Chair pointed out that Rule 9-208 is referred to in Rule 2-541 (b). Section (a) of Rule 9-208 reads "(a) Referral (1) As of Course." This would provide for a case being sent to some master. Subsection (a)(2) is entitled "By Order on Agreement of the Parties." It states that by agreement of the parties, the court can send some other case to the master. Judge Pierson remarked that the purpose of Rule 16-108 is the assignment of judges in several courts, including the Court of Appeals, the Court of Special Appeals, and the circuit courts. Some language could be added to Rule 16-105 (b)(2). That Rule currently provides that the County Administrative Judge's responsibilities include assignment of judges within the court. The language "and other personnel" could be added after the word "judges" in subsection (b)(2) of Rule 16-105 without changing the structure of Rule 16-108, which applies strictly to the assignment of judges.

The Chair pointed out that this provision refers to Rule 16-302, Assignment of Actions for Trial; Case Management Plan. Judge Pierson expressed the view that Rule 16-105 (b)(2) is not

contrary to Rule 16-302. The Chair asked if the change proposed by Judge Pierson would be sufficient to cover masters, examiners, and auditors. The Chair said that the more basic question to be answered is who makes the decision if the County Administrative Judge wants to move a master in domestic relations to the juvenile docket. This is not the assignment of cases; it is the assignment of function.

Judge Pierson noted that Rule 16-302 is not exactly consistent with Rule 16-105 (b)(2), which reads "...assignment of judges within the court...". The Chair inquired if this would apply to also to examiners and auditors. Judge Pierson asked what the language "assignment of actions for trial" in Rule 16-302 (a) is supposed to mean. Does this mean case A is being sent out, or does it include who is going to assign the cases?

The Chair commented that a divorce case would not be assigned to a juvenile master, unless it was necessary. Judge Weatherly agreed with Master Mahasa that the issue had been discussed as to whether juvenile masters and domestic relations masters should be cross-trained to assist if there is a gap. Ms. Ogletree remarked that the one master in Caroline County hears all of the cases. Judge Weatherly said that the same issue exists for judges. Some judges only want to be assigned to civil or criminal cases. They may not want to hear family cases. It is also the same issue for appointed masters. There are requirements for training juvenile masters who specialize in juvenile cases.

Judge Kaplan observed that the court has a case management file. The County Administrative Judge files a case management plan with the Court of Appeals every year or two, and the plan provides how the functions of the court are divided up. There had not been a problem as to who has authority as between the Circuit Administrative Judge and the County Administrative Judge. Judge Pierson suggested that the reference to "Rule 16-302" could be taken out of Rule 16-105 (b)(2). The language in the current Rule, Rule 16-101 d.(2)(i) is "assign judges within the court." It does not relate to the case management plan. Mr. Klein noted that subsection (b)(2) of Rule 16-105 refers to "assignment of judges." Rule 16-302 (a) has the language "judicial personnel," which has a broader implication. The language is "...assignment of actions for trial in a manner that maximizes the use of available judicial personnel...".

The Chair said that the Conference of Circuit Judges should be consulted about this Rule. He asked whether anyone objected to Rule 16-108 being held. It would be better to get the opinion of the Conference before the Rule is presented to the Court of Appeals. Judge Weatherly agreed with Judge Kaplan that the Administrative Judge ultimately has the authority to assign cases to the masters. The issue is where to include this in the Rules. No one is disputing that this is a power that the Administrative Judge has. The Chair noted that this is the second Rule that will be held, so that the Conference of Circuit Judges can be consulted. He said that he would send a letter to the Honorable

Marcella A. Holland, who is the Chair of the Conference, asking that the Conference consider Rules 16-105 and 16-108.

After lunch, the Chair presented Rule 16-109, Maryland Judicial Conference, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 100 – ADMINISTRATIVE STRUCTURE

Rule 16-109. MARYLAND JUDICIAL CONFERENCE ~~AND COUNCIL~~

(a) ~~Conference and Council Established~~ Existence; Membership; Chair; Secretariat

There is a Maryland Judicial Conference which consists of the judges of the Court of Appeals, the Court of Special Appeals, the circuit courts, and the District Court. The Chief Judge of the Court of Appeals is the Chair of the Conference. The Administrative Office of the Courts is the secretariat for the Conference. ~~, known as "The Maryland Judicial Conference," to consider the status of judicial business in the various courts, appropriate legislation, and changes in rules and to exchange ideas with respect to the improvement of the administration of justice in Maryland and the judicial system in Maryland. There is a Judicial Council, which is part of the Maryland Judicial Conference. The Judicial Council guides the Maryland Judicial Conference in maintaining the cohesiveness, leadership, and efficacy of the judiciary.~~

~~(b) Membership of Conference~~

~~The members of the Judicial Conference are the judges of the Court of Appeals of Maryland, Court of Special Appeals, circuit courts of the counties, and District Court of Maryland.~~

~~(c) Chair~~

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

(b) Duties

The Judicial Conference shall

(1) monitor the status of judicial business in the Maryland courts,

(2) consider proposed and enacted legislation, proposed and adopted changes in the Maryland Rules, and emerging case law and trends that may affect the Maryland courts, judges, or the broader legal and judicial community, and

(3) exchange ideas with respect to the improvement of the administration of justice in Maryland.

(c) Sessions ~~of the Conference~~

Unless otherwise ordered by the Court of Appeals, the Conference shall meet in general session at least once a year at the time and place designated by the Judicial Council. Each session of the Conference shall be for the number of days ~~the work of the Conference may require~~ determined by the Court of Appeals.

(d) Committees

~~(1) Establishment~~

~~In consultation with the Chair~~ Committees of the Judicial Conference~~, the Judicial Council shall establish the committees of the Conference it considers necessary or desirable from time to time and appoint the chair and members of each committee.~~

~~(2) Duties~~

~~At the time or times each committee's chair designates,~~ shall be created and

appointed by the Judicial Council pursuant to Rule 16-109. The committees shall meet upon the call of their chairs to receive~~, discuss,~~ and consider suggestions pertaining to ~~its~~ their respective areas of responsibility. Each committee shall ~~make~~ report~~s~~ to the Judicial Council as required by the Council and shall submit an annual report of its activities and recommendations, through the Judicial Council, to the Judicial Conference ~~through the Judicial Council~~.

Source: This Rule is derived in part from former Rule ~~1226~~ 16-802 and is in part new.

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

This Rule is derived from former Rule 16-802 with style changes. The section of the former Rule pertaining to the Judicial Council has been placed in Rule 16-110.

The Chair noted that this is current Rule 16-802 with style changes.

There being no comment, by consensus, the Committee approved Rule 16-109 as presented.

The Chair presented Rule 16-110, Judicial Council, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 100 – ADMINISTRATIVE STRUCTURE

Rule 16-110. JUDICIAL COUNCIL

(a) Existence

There is a Judicial Council, which is part of the Maryland Judicial Conference.

(b) Membership; Chair

(1) Generally

The Judicial Council consists of:

(A) the Chief Judge of the Court of Appeals, who is the Chair of the Judicial Council;

(B) the Chief Judge of the Court of Special Appeals;

(C) the Chair of the Conference of Circuit Judges;

(D) the Chief Judge of the District Court;

(E) the State Court Administrator;

(F) the Chair of the Conference of Circuit Court Clerks;

(G) the Chief Clerk of the District Court; and

(H) nine persons appointed by the Chief Judge of the Court of Appeals in accordance with section (b)(2) of this Rule.

(2) Appointed Members

(A) The Chief Judge shall appoint:

(i) four circuit court judges, two of whom shall be Circuit Administrative Judges and two nominated by the Conference of Circuit Judges;

(ii) four District Court judges, two of whom shall be District Administrative Judges and two of whom shall be members of the Administrative Judges Committee nominated by that Committee; and

(iii) one court administrator of a circuit court.

(B) The term of each appointed member is two years. The terms of those members shall be staggered.

(C) If a vacancy occurs because an appointed member resigns from the Judicial Council, leaves judicial office, or is appointed or elected to another judicial office, the Chief Judge shall appoint a replacement member to serve for the balance of the unexpired term.

(c) Duties

The Judicial Council has the following duties:

(1) The Judicial Council shall guide the Judicial Conference in maintaining the cohesiveness, leadership, and efficiency of the Maryland Judiciary.

(2) Between plenary sessions of the Judicial Conference, the Judicial Council shall perform the functions of the Conference.

(3) The Judicial Council shall submit to the Chief Judge of the Court of Appeals, the Court of Appeals, and the full Conference, as appropriate, recommendations for the improvement of the administration of justice in Maryland. The Judicial Council may request that one or more of its recommendations be forwarded to the Governor or the General Assembly. The Chief Judge or the Court shall forward those recommendations to the Governor or General Assembly with any comments or additional recommendations the Chief Judge or the Court find appropriate.

(4) In consultation with the Chief Judge of the Court of Appeals, the Judicial Council shall establish the committees of the Judicial Conference, appoint the chair and members of those committees, receive and consider reports from the committees, and approve and coordinate the work of the committees.

(5) In conjunction with the Maryland Judicial Institute, the Judicial Council shall plan educational programs for the plenary sessions of the Conference.

(6) In conjunction with the Chief Judge of the Court of Appeals, plan plenary sessions of the Conference.

Source: This Rule is derived from former Rule 16-802.

Rule 16-110 was accompanied by the following Reporter's note.

Rule 16-110 is derived form former Rule 16-802, but it has been reorganized and revised.

The Chair explained that Rule 16-110 had been split off from current Rule 16-802, Maryland Judicial Conference and Council, which addressed both the Conference and the Council. No substantive changes had been made to Rule 16-110.

There being no comments, by consensus, the Committee approved Rule 16-110 as presented.

The Chair presented Rule 16-111, Administrative Office of the Courts; State Court Administrator, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 100 – ADMINISTRATIVE STRUCTURE

Rule 16-111. ADMINISTRATIVE OFFICE OF THE COURTS; STATE COURT ADMINISTRATOR

(a) Administrative Office of the Courts

The Administrative Office of the Courts shall perform the duties required by the Maryland Code, the Maryland Rules, and administrative orders issued by the Chief Judge of the Court of Appeals.
Cross reference: Code, Courts Article, §13-101; Family Law Article, §4-512.

(b) State Court Administrator

The State Court Administrator:

(1) is the head of the Administrative Office of the Courts; and

(2) shall perform the duties required by the Maryland Code, the Maryland Rules, and administrative orders of the Chief Judge of the Court of Appeals.

Cross reference: Code, Courts Article, §§7-102, 7-202, 13-101.

Source: This Rule is new.

Rule 16-111 was accompanied by the following Reporter's note.

Rule 16-111 is new and sets out the duties of the Administrative Office of the Courts and the State Court Administrator.

The Chair noted that this is a new Rule, but it is only descriptive of what the AOC and the State Court Administrator do.

There being no comment, by consensus, the Committee approved Rule 16-111 as presented.

The Chair presented Rule 16-201, Court Sessions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURT

Rule 16-201. COURT SESSIONS~~=HOLIDAYS=TIME FOR CONVENING~~

(a) ~~Court Sessions - Holidays~~ In General

~~A Court~~ The courts of this State shall be ~~in session~~ open each day throughout the year from Monday through Friday except

(1) on days designated pursuant to State law for the observance of legal holidays by State employees; or

(2) when closed because of emergency, inclement weather, or other good cause:

(A) by order of the Chief Judge of the Court of Appeals;

(B) with respect to a circuit court, by order of the County Administrative Judge or the Circuit Administrative Judge for the judicial circuit;

(C) with respect to a district court, by order of the Chief Judge of the District Court or the District Administrative Judge for the district; or

(D) with respect to an Orphans' Court, by the Chief Judge of that court or in Harford and Montgomery Counties, by the County Administrative Judge.

Cross reference: For the definition of "holiday," see Rule 1-202 and Code, State Personnel and Pensions Article, §9-201.

(b) Public or Catastrophic Health Emergency

When required to deal with the effects of a public emergency or a

catastrophic health emergency declared by the Governor, the Chief Judge of the Court of Appeals may order that one or more courts remain open on a holiday or weekend.

Cross reference: Code, Public Safety Article, §§14-107, 14-303, 14-3A-02.

(c) Proceedings When Courts Closed

~~On holidays,~~ No trials or other court proceedings shall be conducted when the court is closed pursuant to section (a) of this Rule except ~~in emergency matters or~~ when ordered by (1) the Chief Judge of the Court of Appeals or (2) a judge of the particular court ~~as the judicial business and~~ in an emergency or as the public welfare may require. ~~In an emergency and in the interest of the public welfare, the Chief Judge of the Court of Appeals may order a court to be closed on any day.~~

(d) ~~Time for Convening~~ Commencement of Sessions

ALTERNATIVE 1

Unless otherwise ordered by the court, ~~All~~ scheduled proceedings will ~~stand for hearing at~~ ordinarily commence at a time designated by the County Administrative Judge or at a time determined by regulation of the Chief Judge of the District Court, but no later than 10:00 A.M. ~~unless otherwise ordered by the court.~~

ALTERNATIVE 2

Unless otherwise ordered for good cause by the County Administrative Judge, by the presiding judge, or by regulation of the Chief Judge of the District Court, daily court proceedings will ordinarily commence no later than 10:00 a.m. Except for unexpected or necessary delays or other good cause, particular proceedings shall ordinarily commence at the time scheduled by the County Administrative Judge, the presiding judge, or the Chief Judge of the District Court.

~~Committee note: This Rule is not intended to prevent the convening of court earlier than 10:00 o'clock A.M. when circumstances so require or when such a procedure is established under rules like Seventh Circuit Rules 507 and 707. However, if court is to convene at an earlier hour, reasonable notice should be furnished counsel. It is intended that conferences or other work in chambers shall not conflict with or postpone the regular time for convening court. It is contemplated that a court will remain in session for as long as is necessary for the effective disposition of the business before it.~~

Source: This Rule is derived from former Rule 16-106 with style changes.

Rule 16-201 was accompanied by the following Reporter's note.

This Rule is derived from former Rule 16-106 with clarifying style changes. Section (b), permitting the Chief Judge of the Court of Appeals to order that one or more courts remain open on a holiday or weekend to deal with the effects of a public emergency or catastrophic health emergency declared by the Governor, is new. It complements the provision in section (c) permitting proceedings to occur when the court is otherwise closed. The Rules Committee has a choice of alternatives in section (d). Both are different from the current Rule. Alternative 1 provides that the County Administrative Judge or the Chief Judge of the District Court can ordinarily designate or determine the time of court proceedings but no later than 10:00 a.m. Alternative 2 makes a clearer distinction between the start of daily court business and the commencement of particular proceedings. If there are several cases on the docket all of them cannot commence at 10:00 a.m. The existing Committee note is deleted as superfluous.

Ms. James commented that the courts operate at the direction of the Chief Judge of the Court of Appeals, who is currently the Honorable Robert M. Bell. The court holidays do not always coincide with the State holidays. This has presented some problems in the past few years, particularly with furloughs and similar issues. Is this a point where this inconsistency can be clarified? For example, subsection (a)(1) of Rule 16-201 refers to "observance of legal holidays by State employees...". The Chair pointed out that this is the language in the current Rule. Ms. James inquired if the Rule could clarify what a "legal holiday" means, since at least half of the court employees are not State employees. Either a definition of "legal holiday" or language clarifying that the courts operate at the direction of the Chief Judge could be added. The Chair said that when Rule 16-201 was drafted, it was deliberately written to tie the operation of the courts to State holidays, not necessarily county holidays.

Ms. James remarked that the holidays should coincide with the holidays of the Executive branch of Maryland government. For example, the Executive Branch is closed sometimes around the winter holidays, and the courts are not closed. The Chair inquired what was unclear about the language of the Rule. Ms. James replied that Rule 16-201 states that the courts are not open on days designated pursuant to State law for the observance of legal holidays by State employees. The Chair noted that this language is taken from Code, State Personnel and Pensions

Article, §9-201. Ms. James acknowledged this, but she pointed out that the Executive Branch holidays do not always coincide with the holidays of the Judicial Branch. When there have been furlough days that have happened in the past year or two, people are required to take reduction of salaries. However, the Executive Branch had been closed around the winter holidays, and it got very confusing.

The Chair asked Ms. James if she had a suggestion as to how to address this. Judge Weatherly inquired what Ms. James was trying to accomplish. It may not be possible to arrange by rule for the county employees to have the same days off as the State employees. Ms. James remarked that when the Executive Branch had closed, some people thought that it was a legal holiday, but Chief Judge Bell had not closed the courts. Is there a way to make it clearer by defining what is meant? The Chair responded that at times the State's Attorney, who is not a State employee, may have a holiday, and yet the courts are open.

Judge Weatherly pointed out that the problem is a day that the courts are open, which is a State holiday. The County Attorney or the Public Defender would have a holiday, but the courts are open. The Reporter commented that the problem comes with the distinction between the term "holiday," which is a defined list of holidays in Code, State Personnel and Pensions Article, §9-201 and is referred to in Rule 1-202, Definitions, and days where certain facilities are closed for reasons other than being a holiday, such as when the Governor declares a

particular furlough day, but Chief Judge Bell cannot close the courts, which already have many cases set in. Ms. James questioned whether the definition of the term "legal holiday" would refer back to the statute. The Chair replied that this is what was intended by subsection (a)(1). The Reporter noted that there is a cross reference to the statute at the end of section (a) of Rule 16-201. The Chair said that there was not much that could be done to address Ms. James' issue. Ms. James thanked the Committee for its consideration.

The Chair drew the Committee's attention to section (b) of Rule 16-201. He noted that section (b) is new. It allows the courts to be open on weekends and holidays in the event of a catastrophic health or public emergency. He did not know that this had ever happened, but the Rule takes account of the prospect that it might happen. There may have been the need for this procedure in Baltimore City after the assassination of Reverend Martin Luther King, Jr. Rioting had occurred, and thousands of people had been picked up on curfew violations. They were all sent to the District Court, and many attorneys in Baltimore City had been drafted to represent these people. The courts had not been open on Sundays and holidays, but they could have been open to keep all of the people arrested from staying in jail for several days on curfew violations. The Subcommittee thought that as a prophylactic measure, there should be a rule that would allow the Chief Judge to open a court on a day when it otherwise would not be open.

The Chair drew the Committee's attention to section (c). Ms. James asked that the Committee consider changing section (c), so that only the County or Circuit Administrative Judge can open a court when it is closed. This would keep procedures clear. Ms. Smith added that this would be pursuant to their continuation of operations, because if something is wrong, the County Administrative Judge would be the one to handle it.

Judge Pierson pointed out that Ms. James' suggestion would not work in section (c). A judge may hold proceedings for a particular case in an emergency without the permission of the Administrative Judge. For example, if there was a blood transfusion case, it would not be advisable to have a requirement that the County Administrative Judge must sign off to hold an emergency proceeding. The Chair said that section (c) is the current Rule, but it has been restyled. Judge Pierson responded that he was opposing the suggestion that only the Circuit or County Administrative Judge could permit emergency trials or other court proceedings. The Chair inquired if anyone had a motion to change section (c), and none was forthcoming.

The Chair pointed out that section (d) has two alternatives. Alternative 1 is basically the current Rule with restyling. The Subcommittee felt that Alternative 2 makes more sense, because not every case will begin at 10:00 a.m. Several comments had been received on this issue. Ms. James had expressed her preference for Alternative 2, and so did some people from the District Court who had commented. This was a policy question for

the Committee. Ms. Ogletree suggested that Alternative 2 be approved. Judge Norton noted that Alternative 2 required good cause by the County Administrative Judge, by the presiding judge, or by regulation of the Chief Judge of the District Court as an exception to court proceedings ordinarily commencing no later than 10:00 a.m.

Judge Norton inquired as to the utility of the second sentence. The first sentence has the word “ordinarily” in it. Providing for good cause would take it out of the ordinary. The Chair responded that the first sentence essentially stated that court is supposed to start no later than 10:00 a.m. This is basically what Alternative 1 provides, also. However, not every case that is scheduled is going to start at 10:00 a.m. Judge Norton remarked that the term “court proceedings” does not mean that every case is scheduled for that time. It means that proceedings of the court should start then. An administrative order or regulation of the District Court indicates that the District Court is supposed to start at 9:00 a.m., which is often not the case. However, this indicates that a standard exists, and Judge Norton added that he would be hesitant to make any rule change that would encourage a start time of 10:00 a.m.

The Chair pointed out that the current Rule, Rule 16-106 b., reads: “All scheduled proceedings will stand for hearing at 10:00 A. M. unless otherwise ordered by the court.” This seems to not be feasible. Judge Norton suggested the language “All scheduled proceedings will ordinarily commence...”. The word

"proceedings" implies that this does not refer to each case. The Chair noted that it would be the first case. Judge Norton inquired as to the purpose of Alternative 2. The Chair answered that Alternative 2 pertains to particular proceedings that ordinarily commence when scheduled. A case that is set for 2:00 p.m. is supposed to start at 2:00 p.m. Judge Weatherly remarked that she has discovery motions set in for 2:00 p.m. on Fridays. The Chair added that this is obviously later than 10:00 a.m. Judge Norton asked if the second sentence of Alternative 2 is to accommodate specially set hearings. The Chair replied affirmatively. He said that the problem is that the current Rule states that all proceedings have to start no later than 10:00 a.m.

The Reporter inquired if the Committee preferred Alternative 2. By consensus, the Committee approved Alternative 2.

By consensus, the Committee approved Rule 16-201 as presented with Alternative 2 included.

The Chair presented Rule 16-202, Payment of Money into Court, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURT

Rule 16-202. PAYMENT OF MONEY INTO COURT

> All money paid into the District Court or a circuit court under an order or on account of a pending action shall be deposited by the clerk in a ~~bank~~ financial institution approved by the State Comptroller and noted in an appropriate record. The clerk shall disburse the money only upon order of the court ~~and, unless the court otherwise directs, only by check payable to the order of the party entitled and the party's counsel of record~~.
>
> Source: This Rule is derived from former Rules 16-303 and 16-502.

Rule 16-202 was accompanied by the following Reporter's note.

> This Rule consolidates former Rules 16-303 and 16-502, which applied to the circuit courts and the District Court, respectively. The two rules were substantively identical.

The Chair explained that comments had been received from an administrative clerk of the District Court asking to retain the language in Rule 16-202 that had been stricken, which read: "and unless the court otherwise directs, only by check payable to the order of the party entitled and the party's counsel of record." The Subcommittee had suggested taking out this language to allow for electronic payments. However, if this was going to be a problem, then the language could be added back in. Judge Norton asked if Roberta Warnken, the Chief Clerk of the District Court, had commented on this. The Chair answered that she had not commented. She had sent out Rule 16-202 to all of the District Court administrative clerks. Judge Norton remarked that one clerk's question should not dictate changing the Rule. The Chair

said that the only comments that were received had been from Districts 11 and 12 of the District Court. He inquired if the stricken language should go back into Rule 16-202. Mr. Johnson suggested that the Rule should be flexible and allow for electronic payments. The stricken language should stay out of the Rule. The Chair asked if anyone had a motion to change Rule 16-202. None was forthcoming, so by consensus, the Committee approved Rule 16-202 as presented.

The Chair presented Rule 16-203, Electronic Filing of Pleadings, Papers, and Real Property Instruments, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURT

Rule 16-203. ELECTRONIC FILING OF PLEADINGS, PAPERS, AND REAL PROPERTY INSTRUMENTS

DRAFTER'S NOTE: This Rule may need to be completely rewritten to accommodate the plan for comprehensive electronic filing and record-keeping in all of the courts.

(a) Applicability; Conflicts with Other Rules

This Rule applies to the electronic filing of pleadings and papers in a circuit court and to the electronic filing of instruments authorized or required by law to be recorded and indexed in the land records, or the District Court. A pleading, paper, or instrument may not be filed by direct

electronic transmission to a court except in accordance with this Rule. To the extent of any inconsistency with any other Rule, this Rule and any administrative order entered pursuant to it shall prevail.

Cross reference: Code, Real Property Article, §3-502.

(b) Submission of Plan

(1) Circuit Court

A County Administrative Judge may submit to the State Court Administrator a detailed plan for a pilot project for the electronic filing of pleadings and papers or of real property instruments. In developing the plan, the County Administrative Judge shall consult with the Clerk of the Circuit Court, appropriate vendors, the State Court Administrator, and any other judges, court clerks, members of the bar, vendors of electronic filing systems, and interested persons that the County Administrative Judge chooses to ensure that the criteria set forth in section (c) of this Rule are met.

(2) District Court

The Chief Judge of the District Court may submit to the Court of Appeals for approval a detailed plan for a pilot project for the electronic filing of pleadings and papers. In developing the plan, the Chief Judge shall consult with the District Administrative Judge and the District Administrative Clerk of each district included in the plan, the District Court Chief Clerk, appropriate vendors, the State Court Administrator, and any other judges, court clerks, members of the bar, vendors of electronic filing systems, and interested persons that the Chief Judge chooses to ensure that the criteria set forth in section (c) of this Rule are met.

(c) Criteria for Adoption of Plan

In developing a plan for the electronic filing of pleadings, the County

Administrative Judge or the Chief Judge of the District Court, as applicable, shall be satisfied that the following criteria are met:

(1) the proposed electronic filing system is compatible with the data processing systems, operational systems, and electronic filing systems used or expected to be used by the judiciary;

(2) the installation and use of the proposed system does not create an undue financial or operational burden on the court;

(3) the proposed system is reasonably available for use at a reasonable cost, or an efficient and compatible system of manual filing will be maintained;

(4) the proposed system is effective, secure and not likely to break down;

(5) the proposed system makes appropriate provision for the protection of privacy and for public access to public records; and

(6) the court can discard or replace the system during or at the conclusion of a trial period without undue financial or operational burden.

The State Court Administrator shall review the plan and make a recommendation to the Court of Appeals with respect to it.

Cross reference: For the definition of "public record," see Code, State Government Article, §10-611. See also Rules 16-701 -16-711 (Access to Court Records).

(d) Approval and Duration of Plan

A plan may not be implemented unless approved by administrative order of the Court of Appeals. The plan shall terminate two years after the date of the administrative order unless the Court terminates it earlier or modifies or extends it by a subsequent administrative order.

(e) Evaluation

The Chief Judge of the Court of Appeals may appoint a committee consisting of one or more judges, court clerks, lawyers, legal educators, bar association representatives, and other interested and knowledgeable persons to monitor and evaluate the plan. Before the expiration of the two-year period set forth in section (d) of this Rule, the Court of Appeals, after considering the recommendations of the committee, shall evaluate the operation of the plan.

(f) Public Availability of Plan

The State Court Administrator and the Clerk of the Circuit Court or the Chief Clerk of the District Court, as applicable, shall make available for public inspection a copy of any current plan.

Source: This Rule is derived from former Rules 16-307 and 16-506.

Rule 16-203 was accompanied by the following Reporter's note.

This Rule is a consolidation of former Rules 16-307 and 16-506, which applied in the circuit courts and the District Court, respectively. Since the consultation process is slightly different, it is broken down in section (b). The general criteria for approval of a plan are moved to new section (c), and the remaining sections are re-lettered accordingly.

The Chair told the Committee that the Subcommittee had not changed Rule 16-203, because it may need to be changed or deleted when MDEC goes into effect. He added that consideration of Rule 16-203 would be deferred.

The Chair presented Rule 16-204, Court Information System, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURT

Rule 16-204. COURT INFORMATION SYSTEM

DRAFTER'S NOTE: (1) Will this procedure still be necessary when Statewide electronic filing and record-keeping is in place?
(2) Does section (a) apply to the District Court? See current Rule 16-308 a.

(a) ~~Report of~~ Docketing and Disposition of Circuit Court Cases ~~in the Circuit Courts~~

The clerk of each circuit court shall promptly ~~transmit~~ send to the Administrative Office of the Courts, in a manner prescribed by the State Court Administrator, the data elements designated by the State Court Administrator concerning the docketing and disposition of criminal, juvenile, and civil cases ~~as may be designated by the State Court Administrator~~.

(b) Reporting and Transmittal of Criminal History Record Information in Circuit Courts and the District Court

(1) Criminal History ~~Transmittal of~~ Information

The Administrative Office of the Courts and the District Court of Maryland shall ~~transmit~~ send to the Central Repository of Criminal History Record Information of the Department of Public Safety and Correctional Services the data elements of criminal history record information with respect to ~~on~~

the list of offenses agreed to by the Secretary of the Department of Public Safety and Correctional Services and the Chief Judge of the Court of Appeals or ~~his designee~~ their respective designees for purposes of completing a criminal history record maintained by the Central Repository of Criminal History Record Information.

DRAFTER'S NOTE: Does the District Court send this material directly, or does everything go through AOC? See current Rule 16-308 b.

~~(2) Transmittal of Reports of Dispositions~~

~~(A) Within 15 days after the conviction, forfeiture of bail, dismissal of an appeal, or an acquittal in any case involving a violation of the Maryland Vehicle Law or other traffic law or ordinance, or any conviction for manslaughter or assault committed by means of an automobile, or of any felony involving the use of an automobile, the clerk of the circuit court or the District Court shall forward to the State Motor Vehicle Administration a certified abstract of the record on a form furnished by the State Motor Vehicle Administration.~~

~~(B) When a defendant has been charged by citation and a conviction is entered by reason of the payment of a fine or forfeiture of collateral or bond before trial, the conviction is not a reportable event under Code, Criminal Procedure Article, §10-215 (a)(10).~~

(2) Offenses Involving Motor Vehicles

(A) Within 15 days after the event, the clerk of each circuit court and the Chief Clerk of the District Court shall send to the Motor Vehicle Administration, on a form furnished by the Administration, a certified abstract of the record of:

(i) each conviction, acquittal, forfeiture of bail, or dismissal of an appeal in a case involving a violation of the

Maryland Vehicle Law or other traffic law or ordinance;

(ii) each conviction of manslaughter or assault committed by means of an [automobile] [motor vehicle]; and

(iii) each conviction of a felony involving the use of [an automobile] [a motor vehicle].

(B) The clerk shall not report a conviction entered by reason of the payment of a fine or forfeiture of collateral or bond before trial if the defendant was charged by citation.

(c) Inspection of Criminal History Record Information Contained in Court Records of Public Judicial Proceedings

DRAFTER'S NOTE: Should this be moved to Chapter 700?

~~Unless expunged, sealed, marked confidential or otherwise prohibited by statute, court rule or order, c~~ Criminal history record information contained in court records of public judicial proceedings is subject to inspection in accordance with Rules 16-601 through 16-608 ~~by any person at the times and under conditions as the clerk of a court reasonably determines necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of his the clerk's office~~.

Cross reference: See Code, Courts Article, §§2-203 and 13-101 (d) and (f), Criminal Procedure Article, §§10-201, 10-214, 10-217, and State Government Article, §§10-612 through 10-619. For the definition of "court records" for expungement purposes, see Rule 4-502 (d). For provisions governing access to court records generally, see Title 18 [currently Title 16, Chapter 1000].

~~Committee note: This Rule does not contemplate the reporting of parking violations.~~

Source: This Rule is derived from former Rules 16-308 and 16-503.

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

> This Rule is a consolidation of former Rules 16-308 and 16-503; reporting requirements are slightly different for the circuit courts and the District Court because of difference in the matters handled by the respective courts. The lengthy cross reference and the current Committee note are suggested for deletion. A sentence is added to the other cross reference to call attention to the new rules on access to "court records." "Court record" is defined differently there than "court records" are defined in Title 4 for expungement purposes.

The Chair commented that the version of Rule 16-204 that was included in the meeting materials had two problems. The first was a mistake in that the Subcommittee had considered an outdated version of the current Rule. The second was that the current Rule is outdated in practice to a large extent. The clerks no longer report criminal histories to the Criminal Justice Information System (CJIS). The Judicial Information Systems (JIS) pick up that information electronically from the case management system of the circuit courts, and they transmit it to CJIS. As of the prior day, the Chair had been told that the same procedure applies to reporting to the Motor Vehicle Administration (MVA). He had received an e-mail today stating

that this is not so. The clerks still report some information.

The Chair said that Mr. Mark R. Bittner, the Executive Director of JIS, was present at the meeting. Mr. Bittner remarked that regardless of whether currently the clerks report to the MVA, his office is always open to new procedures being approved that would provide for the clerks to report manually to the MVA even though JIS has automated the process. He suggested that Rule 16-204 could provide that the clerk or JIS report, which would give the necessary flexibility. Depending on when new regulations on reporting to the MVA might be passed, it is difficult to predict when the system would be totally automated. A manual process may be necessary for some period of time. The Chair inquired if it was intended that eventually JIS would be doing the reporting to the MVA. Mr. Bittner replied that this would be the intent. JIS would be reporting all events to any external agencies that needed the information.

Ms. Smith observed that to be accurate, Rule 16-204 should provide that the clerk or JIS should both be able to report to the MVA. Currently, they cannot possibly do all the reporting. The Chair asked if the wording of subsection (a)(1) was correct as far as the clerks are concerned with respect to CJIS. Ms. Smith replied that subsection (a)(1) was worded correctly. The Chair questioned whether adding language to subsection (a)(2) providing that the clerks report to the MVA would mean that it is correct.

The Reporter pointed out that a more recent version of Rule 16-204 had been handed out at the meeting.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURT

Rule 16-204. REPORTING OF CRIMINAL AND MOTOR VEHICLE INFORMATION

(a) Reporting Requirements

The Judicial Information Systems unit of the Administrative Office of the Courts, from data retrieved from the trial courts case management systems, shall:

(1) send to the Central Repository of Criminal History Record Information of the Department of Public Safety and Correctional Services reportable events, as defined in Code, Criminal Procedure Article, §10-215, with respect to the list of offenses agreed to by the Secretary of the Department of Public Safety and Correctional Services and the Chief Judge of the Court of Appeals, or their respective designees, for purposes of completing criminal history record maintained by Central Repository of Criminal History Record Information; and

(2) report to the State Motor Vehicle Administration (A) each conviction, acquittal, forfeiture of bail, or dismissal of an appeal in a case involving a violation of the Maryland Vehicle Law or other traffic law or ordinance; (B) each conviction of manslaughter or assault committed by means of [an automobile] [motor vehicle]; and (C) each conviction of a felony involving the use of [an automobile] [a motor vehicle].

(b) Inspection of Criminal History Record Information Contained in Court Records of Public Judicial Proceedings

DRAFTER'S NOTE: Should this be moved to Chapter 700?

Criminal history record information contained in court records of public judicial proceedings is subject to inspection in accordance with Rules 16-601 through 16-608.

Cross reference: See Code, Courts Article, §§2-203 and 13-101 (d) and (f), Criminal Procedure Article, §§10-201, 10-214, 10-217, and State Government Article, §§10-612 through 10-619. For the definition of "court records" for expungement purposes, see Rule 4-502 (d). For provisions governing access to court records generally, see Title 18 [currently Title 16, Chapter 1000].

Source: This Rule is derived from former Rules 16-308 and 16-503.

Ms. Smith noted that the clerks have never sent information about a forfeiture of bail to the MVA. They do report the dispositions manually either by sending the information to the traffic section of the District Court, updating their citations, or sending something manually if someone has been charged with a motor vehicle crime. They would send a certified copy of the disposition sheet to the MVA.

The Chair commented that subsection (b)(2)(B) of the version of proposed Rule 16-204 that was in the meeting materials read as follows: "The clerk shall not report a conviction entered by reason of the payment of a fine or forfeiture of collateral or bond before trial if the defendant was charged by citation."

One of the comments that had been received was that the clerks do report this. Ms. Smith pointed out that this comment came from the District Court. She was not certain that the circuit court clerks report this. They report forfeitures of bail. Judge Norton said that the District Court clerks report convictions entered by reason of the payment of a fine or forfeiture of collateral or bond if the defendant was charged by citation. The Chair noted that in the redrafted version of the Rule, the words "shall not" had been dropped. He asked Ms. Smith if she wanted to hold Rule 16-204 so that she could check on the circuit court clerks' procedure, and she replied affirmatively.

The Chair said that section (b) of the version of Rule 16-204 that had been handed out contained a question. Should inspection of criminal history record information be in Rule 16-204, or should it be in the Rules pertaining to access to court records? He was not certain as to why it had been put in Rule 16-204. He stated that Rule 16-204 will be held.

Mr. Bittner reiterated that Rule 16-204 should provide that either the clerk or JIS can send the data retrieved from the trial courts' case management systems. The Chair responded that it would be easier if and when JIS has the capacity to do for the MVA what they had been doing for CJIS. Mr. Bittner remarked that the overwhelming majority of motor vehicle violations are sent electronically to the MVA on a daily basis. However, in certain circumstances, this may need to be sent manually, because it is not within the traffic system. They do not pick up all

violations from all of the systems. MDEC will be able to do this. Ms. Smith noted that it would be reporting from the traffic system, but it is not reporting from all of the systems. Mr. Bittner added that MDEC will provide one unified system, and there will no longer be disparate systems to search for data. In the interim, one solution would be to provide that the clerk or JIS can report.

The Chair reiterated that Rule 16-204 would be deferred.

The Chair presented Rule 16-205, Disposition of Records, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURT

Rule 16-205. DISPOSITION OF RECORDS

DRAFTER'S NOTE: This Rule needs to be discussed with Dr. Papenfuse and the Clerks' Association. Will it still be needed, in this form, once the electronic filing and record-keeping system is in place?

(a) Definitions

In this Rule, ~~unless the context or subject matter otherwise~~ the following definitions apply except as otherwise provided or as necessary implication requires.

(1) Authorized Judge

"Authorized judge" means

(A) with respect to records of a circuit court, the County Administrative Judge; and

(B) with respect to records of the District Court, the Chief Judge of that Court.

(2) Court

"Court" means a circuit court or the District Court.

Cross reference: See Rule 8-113 (b)(3) for disposition of records of the Court of Appeals and Court of Special Appeals.

(3) Dispose

"Dispose" means to ~~either~~ destroy or remove ~~records~~.

(4) Records

"Records" means any original papers, official books, documents, files, including ~~but not limited to~~ dockets, electronic recordings of testimony, and exhibits within the custody of the clerk of the court.

Cross reference: See Code, State Government Article, §§9-1009 and 10-639 through 10-642.

(5) Schedule

"Schedule" means the form known as the "Records Retention and Disposal Schedule" used by the Records Management Division of the ~~Hall of Records Commission~~ Department of General Services.

(b) Authority of Clerk

~~Subject to the provisions of this Rule,~~ The clerk of the court~~, with the written approval of the Chief Judge of the District Court and in cooperation with the Hall of Records Commission~~ may dispose of records within ~~his~~ the clerk's custody:

(1) in accordance with the provisions of this Rule or Rule 16-405 (e)(2);

(2) with the written approval of the authorized judge; and

(3) in cooperation with the State Archivist.

Cross reference: See Code, Courts Article, ~~§2-206~~ §2-205.

(c) Procedure

(1) ~~Schedule Preparation - Hall of Records Recommendation~~

The clerk ~~of the court~~ shall prepare ~~a~~ an initial schedule for the disposition of court records and submit ~~it~~ the schedule to the ~~Hall of Records Commission~~ State Archivist for ~~its~~ the Archivist's recommendation.

(2) ~~Chief Judge - Approval~~

Upon receipt of the recommendation of the State Archivist, the clerk shall submit the schedule ~~together with~~ and the recommendation ~~of the Hall of Records Commission, shall be submitted for the written approval of the Chief Judge~~ to the authorized judge, who may approve ~~it in whole or in part~~, amend ~~it~~, or disapprove ~~it~~ the schedule. ~~(3) Court Order~~ Approval of the schedule ~~by the Chief Judge~~ in whole or in part shall be ~~deemed~~ by an order ~~of court~~ providing for disposal of the records.

DRAFTER'S NOTE: This would allow County Administrative Judges to adopt different policies. Should any significant disagreement between the clerk and the State Archivist be resolved by the Chief Judge of the Court of Appeals?

~~(4)~~ (3) ~~Contents of Schedule~~

The schedule, as approved, shall **identify the records and** set forth:

~~(A) the identification of the records.~~

~~(B)~~ (A) the length of time the records are to be retained by the clerk of the court before disposition.

~~(C)~~ (B) whether the ~~Hall of Records Commission~~ State Archivist declines to accept the records for preservation.

~~(D)~~ (C) whether the records are to be destroyed or removed.

~~(E)~~ (D) the place to which the records would be removed.

~~(F)~~ (E) whether the schedule shall be "standing" viz., operative until changed by further order of court.

~~(5)~~ (4) ~~Removal Procedures - Hall of Records~~

The records shall be disposed of:

(A) ~~In those cases where the hall of Records Commission~~ in accordance with procedures of the State Archivist if the State Archivist accepts the records~~, they shall be removed according to the Hall of Records Commission procedures~~;

~~(6) Disposal if Hall of Records Declines Custody~~

(B) ~~In those cases where the Hall of Records Commission declines records, disposition shall be according to the terms set forth in the schedule as approved.~~ otherwise, in accordance with the terms specified in the approved schedule. If the records are to be destroyed, the clerk shall obtain the approval of the Board of Public Works and, upon destruction, shall file a certificate of destruction with the ~~Hall of Records Commission~~ State Archivist.

Cross reference: See Code, State Government Article, §10-642.

~~Committee note: This Rule is meant to allow periodic destruction of records without the necessity of obtaining Board of Public Works approval each time if such destruction of records or classes of records had been clearly approved by the Board of Public Works in a standing schedule.~~

(d) Limitations Upon Disposal of Circuit Court Records

(1) ~~Permanent Retention - Clerks or Hall of Records~~ This section applies only to circuit court records.

(2) Subject to subsection (d)(5) of this Rule, the following records ~~which~~ shall be retained permanently either by the clerk~~s~~ or the ~~Hall of Records Commission~~ State Archivist:

~~(i)~~ (A) permanent books of account;

~~(ii)~~ (B) indices and dockets maintained by the clerk; and

~~(iii)~~ (C) other records ~~as~~ designated on ~~a~~ an approved schedule ~~as approved~~.

~~(2)~~ (3) ~~Permanent Retention - Clerks~~

~~Records which shall be retained permanently by the clerk:~~ Subject to subsection (d)(5) of this Rule, the clerk shall retain permanently ~~(i)~~ records affecting title to real ~~estate~~ property.

~~(3)~~ (4) ~~Records Destruction After Certain Periods~~

~~Records which may be destroyed by the clerk after the following minimum periods of time~~ The clerk may destroy:

~~(i)~~ (A) Records in a motor vehicle ~~and~~ or natural resources case at any time three years or more after the case ~~is~~ was closed and any required audit ~~performed, if required;~~ was completed, except ~~for~~ that the clerk shall retain as permanent records

convictions of offenses which carry subsequent offender penalties ~~which cases shall be retained as permanent records~~;

~~(ii)~~ (B) Records in a landlord/tenant case ~~three years in cases~~ involving restitution of the premises ~~where there is~~ but no money judgment at any time three years or more after the case was closed; and

~~(iii)~~ (C) Other records ~~according to times~~ designated on an approved schedule allowed to be destroyed at any time 12 years or more after the case was closed ~~designated on a schedule as approved - twelve years~~.

~~(4)~~ (5) ~~Disposal if Photographed, Photocopied, or Microphotographed~~

~~Any of the records set forth in subsections 1, 2, and 3 of this section may be disposed of at any time provided that~~ The clerk may dispose of records specified in subsections (d)(2), (d)(3), or (d)(4) of this Rule at any time if an unredacted version of the records has ~~have~~ been ~~photographed, photocopied or microphotographed~~ duplicated in accordance with ~~the hall of Records Commission~~ State Archivist's procedures and copies have been substituted ~~therefor~~ for the originals.

(e) Limitations upon Disposal of District Court Records

(1) This section applies to District Court records.

(2) Subject to subsection (e)(10) of this Rule, the clerk shall retain the records set forth in subsections (e)(3), (e)(4), (e)(5), (e)(6), and (e)(7) of this Rule for the periods specified in those paragraphs.

~~(1)~~ (3) ~~Indices, Dockets, and Books of Account~~

The clerk shall retain permanently all indices, dockets, and books of account.

~~(2)~~ (4) ~~Emergency Evaluation and Domestic Violence Cases~~

The clerk shall retain for a period of 12 years after the case is closed all original papers and exhibits in any case containing a petition for emergency evaluation or a petition for protection from domestic violence.

~~(3)~~ (5) ~~Cases Involving Judgment for a Sum Certain~~

In any case in which a money judgment ~~for a sum certain~~ is entered, the clerk shall retain all original papers, exhibits, and electronic recordings of testimony for a period of three years after entry of the judgment and shall continue to retain all original papers and exhibits in the file after that three year period until the judgment expires or is satisfied.

~~(4)~~ (6) ~~Criminal Cases~~

~~(i)~~ In any criminal case which is dismissed or in which a nolle prosequi or stet is entered, the clerk shall retain all original papers, exhibits, and electronic recordings of testimony for a period of three years after the case is so concluded.

~~(ii)~~ (7) In any criminal case in which judgment is entered or probation before judgment is granted, the clerk shall retain all original papers, exhibits, and electronic recordings of testimony for a period of three years after the case is so concluded, and if within that three year period the defendant fails to comply with the order of court, the clerk shall continue to retain the original papers and exhibits in the file until the failure is cured or an arrest warrant issued as a result of the failure is invalidated as permitted by law.

~~(iii)~~ (8) In any criminal case ~~for~~ involving a misdemeanor in which an arrest warrant issued on the charging document or as a result of the defendant's failure to appear for trial remains unserved three years after

its issuance, the clerk shall retain all the original papers and exhibits in the file until the warrant is invalidated as permitted by law.

~~(5)~~ (9) ~~Other Cases~~

~~Except as provided in subsection 1, 2, 3, or 4 of this section~~ The clerk shall retain ~~all~~ the original papers, exhibits, and electronic recordings of testimony in ~~a case~~ all other cases for a period of three years after the case is concluded by dismissal, settlement, or entry of judgment.

~~(6)~~ (10) ~~Disposal if Photographed, Photocopied, or Microphotographed -- Traffic and Criminal Dockets~~

~~(i)~~ (A) Any of the records, except dockets, set forth in subsections (e)(1) through ~~(5)~~ (e)(9) of this ~~section~~ Rule may be disposed of at any time provided that an unredacted version of the records has ~~have~~ been ~~photographed, photocopied or microphotographed~~ duplicated in accordance with ~~the Hall of Records Commission~~ State Archivist's procedures and copies have been substituted ~~therefor~~ for the originals, including a master security negative which shall be retained permanently.

~~(ii)~~ (B) Traffic and criminal dockets may be disposed of after a period of five years if copies are retained in accordance with subsection ~~(6)(i)~~ (10)(A) above.

~~(7)~~ (f) Retention by ~~Hall of Records~~ State Archives

Whenever this ~~section~~ Rule requires the clerk to retain records, the requirement may be satisfied by retention of the records by the ~~Hall of Records Commission~~ State Archives. When records retained by the clerk are twenty-five years of age, if not previously transferred to the ~~Hall of Records Commission~~ State Archives, they shall be transferred to ~~that Commission~~ the Archives, or disposed of according to an approved schedule.

> Source: This Rule is derived from former Rules 16-505 and 16-818.

Rule 16-205 was accompanied by the following Reporter's note.

> This Rule is a consolidation of former Rules 16-505 and 16-818, governing records disposition in the District Court and the circuit courts, respectively, with style changes.

The Chair told the Committee that a number of comments on Rule 16-205 had been received. Dr. Edward Papenfuse said that he was the State Archivist and had been so since 1975. He asked that revised Rule 16-205 be reconsidered by the Subcommittee. He had drafted a proposed Rule, which was based on all of the comments that his office had received so far and on their efforts to take a look at the interrelationship between proposed Rule 16-205 and the existing Rule. (See Appendix 4). He inquired when the current Rule was last revised. The Reporter answered that it had not been revised for a long time. Dr. Papenfuse observed that statutory language that no longer exists is part of the current Rule. This is carried forward in revised Rule 16-205.

Dr. Papenfuse noted that the Archives is the legislative and constitutionally-endowed entity concerned with permanent preservation of the public record and access to the public record over time. It does not conflict with the recordation responsibilities or the responsibilities of access that are part of the court's responsibilities. It is concerned with the timing

and release of the information into the custody of the archives. How to handle paper records is clear. The Archives acts as a warehouse retrieval for a number of courts. Many courts do not have the space to store their permanent record. They have transferred their permanent records to the custody of the Archives sooner than they may have wished. The Archives serves a number of different functions with regard to the permanent record.

Dr. Papenfuse observed that the issues concerning electronic records are custody, access, and preservation. The electronic world presents some enormous problems with regard to permanence and ability to access records. They are accessible in paper form, but they are more difficult to access in electronic form. The Maryland Archives is the only state archives in the nation that has permanent electronic archives. This is due to the cooperation of the clerks and the efforts to preserve the land records in this State. Maryland is the only state in the nation that has all of its land records available electronically in the custody of the person who creates them in the first place, which makes them accessible online. This has completely transformed the business of searching titles, and it addresses the question of recordation and access to the land records. This has been a joint project between the Archives and the court system. The same model needs to be continued with regard to court management and to electronic records. One issue is that Dr. Papenfuse and his colleagues had not paid enough attention to Casesearch as a

permanent electronic resource. How can it be moved into an environment where it is permanently accessible? Dr. Papenfuse suggested that Rule 16-205 should be further discussed by the Subcommittee.

The Chair agreed that the Subcommittee could reconsider Rule 16-205. Any changes requested by Dr. Papenfuse could not have been decided at the Rules Committee meeting. He said that he would like some guidance from Dr. Papenfuse on two issues. One is the system used in the courts concerning a schedule that is negotiated. The clerk proposes a schedule for the transfer of paper records, and then the clerk sends it to Dr. Papenfuse for his comment. The schedule then goes to the Administrative Judge, who decides whether it is appropriate. One of the questions is what happens if Dr. Papenfuse's comments are different from what the clerk had proposed. Mr. Durfee noted that the final authority rests with the Administrative Judge.

Dr. Papenfuse remarked that when he gets the schedule, if something in that schedule does not adequately preserve the permanent record, he has the right to send the schedule back to the clerk. The Chair pointed out that the problem is that the Rule provides otherwise. Rule 16-205 suggests that the administrative judge has the final say. Dr. Papenfuse responded that the draft of the Rule he had presented addresses this. The Chair inquired if this is provided for by the statute. Dr. Papenfuse answered that he and his colleagues believe that it is, but Mr. Durfee has a different opinion with regard to the

constitutional authority of the Archivist. It is important to explore this.

The Chair said that the second issue concerns documents that are shielded from public access pursuant to the Rules pertaining to public access to court records. What happens if those documents are transferred to Dr. Papenfuse? Dr. Papenfuse responded that this relates to the schedule. If a rule or statute states that a certain record is closed, and it is a permanent record transferred to the Archives, they cannot provide access to it.

Dr. Papenfuse pointed out that an example is the trial of H. Rap Brown, a well known African-American activist, in Harford County. At the trial, Mr. Brown's attorney presented in evidence a book that he had borrowed from the Enoch Pratt Library in Baltimore City. The book was put into an envelope and sealed by the court. The only way the Archives could have access to that book was by going back to the judge. This constituted a restriction as to what the Archives could provide in the way of access. The same restriction could happen electronically. The Rules are set up as to what is accessible when. It is important when looking at the permanence of records, that there is a point in time when the record is discarded, or it is archived. Then it is available and publicly accessible. This is governed by a schedule.

Dr. Papenfuse commented that what happens with regard to what is extracted and what is sent when the records are

electronic is determined by a code that is written by a number of people. From that code, it can be determined that something gets delivered somewhere, and it can be determined when it disappears altogether. It is easier for documents to disappear electronically than when they are paper documents. One important aspect of scheduling is managing what happens ultimately. It is not an impediment; it is a management tool. It is meant to be so with regard to the question of ultimately what the public does have access to and when the public has access to it.

Dr. Papenfuse remarked that one of the problems that the State has is that the scheduling process is bifurcated and divided between two State agencies. The Department of General Services has a role in the schedule. Dr. Papenfuse and his colleagues recently have been able to make that role into a much more accelerated process, so that it gets to the Archives faster. When a judge is ready to dispose of records, it is a fairly instant process. The request to dispose of records is submitted, it is transmitted electronically, the Archives personnel review it very quickly, and the judge gets his or her authority back.

The Chair inquired if anyone had any policy concerns or questions. Rule 16-205 will go back to the Subcommittee. The Rule is imperfect and may be inconsistent with the statute.

The Chair presented Rule 16-206, Prohibition Against Accepting Gratuities, for the Committee’s consideration.

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURT

Rule 16-206. ~~PROSCRIBED ACTIVITIES - PROHIBITION AGAINST ACCEPTING~~ GRATUITIES~~, ETC.~~

(a) Definition

In this Rule, "officer or employee of a court" includes the sheriff, deputy sheriffs, constables, officials and employees of a clerk's office, and other employees of an office serving a court.

~~(a)~~ (b) ~~Giving Prohibited~~ Prohibition

~~No attorney shall give, either directly or indirectly, to an officer or employee of a court, or of an office serving a court, a gratuity, gift, or any compensation related to his official duties and not expressly authorized by rule or law.~~

~~(b) Receiving Prohibited~~

Except as expressly authorized by rule or law, no officer or employee of ~~any~~ a court~~, or of any office serving a court,~~ shall accept a gratuity, ~~or~~ gift, or any compensation related to the officer's or employee's official duties, either directly or indirectly, from a litigant, an attorney, or any person regularly doing business with the court~~, or any compensation related to such officer's or employee's official duties and not expressly authorized by rule or law~~.

Cross reference: For definition of "person," see Rule 1-202 ~~(s)~~.

Committee note: ~~This Rule is based in part on New Jersey Rule 1:34. It is intended as a broad prohibition against the exchange of gratuities, gifts or any compensation not expressly authorized by rule or law as~~

~~between attorneys and court officials and employees, in connection with the official functions of such persons. This Rule covers sheriffs and deputy sheriffs, as well as regular court officers, employees and other persons.~~ This Rule is not intended to preclude contributions to or for elected public officials as authorized by and in conformance with the provisions of Code, Election Law Article, Title 13.

Source: This Rule is derived from former Rule 16-401 b.

Rule 16-206 was accompanied by the following Reporter's note.

This Rule is derived from former Rule 16-401 b with style changes. A new sentence has been added to the text of the Rule, clarifying the meaning of the term "officer or employee of a court." This definition currently is in a long Committee Note, the bulk of which is recommended for deletion because it is either unnecessary or outdated.

The Chair said that Rule 16-206 was similar to the current Rule, Rule 16-401 b. Some of the language in the Committee note at the end of the Rule had been deleted.

There being no discussion, the Committee approved Rule 16-206 by consensus.

The Chair presented Rule 16-207, Problem-solving Court Programs, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURT

Rule 16-207. PROBLEM-SOLVING COURT PROGRAMS

(a) ~~Applicability~~ Definition

(1) Generally

~~This Rule applies to~~ Except as provided in subsection (a)(2) of this Rule, "problem-solving court program" ~~which are~~ means a specialized court docket or program that addresses matters under a court's jurisdiction through a multi-disciplinary and integrated approach incorporating collaboration by the court with other governmental entities, community organizations, and parties.

(2) Exceptions

(A) The mere fact that a court may receive evidence or reports from an educational, health, or social service agency or may refer a person before the court to such an agency as a condition of probation or other dispositional option does not make the proceeding a problem-solving court program.

(B) Juvenile court truancy programs specifically authorized by statute do not constitute problem-solving court programs for the purpose of this Rule.

Committee note: Problem-solving court programs include adult and juvenile drug courts, and DUI, mental health, truancy, and family recovery programs under which the judge acts as part of a therapeutic team that collectively monitors the progress of a person enrolled in the program.

~~(2)~~ (b) ~~Existing Programs; Programs Submitted for Approval on or After July 1, 2010~~ Applicability

This Rule applies in its entirety to problem-solving court programs submitted for approval on or after July 1, 2010. Sections (a), ~~(d),~~ (e), (f), and (g) of this Rule

apply also to problem-solving court programs in existence on July 1, 2010.

~~(b)~~ (c) Submission of Plan

After consultation with the Office of Problem-Solving Courts and any officials whose participation in the programs will be required, the County Administrative Judge of a circuit court or a District Administrative Judge of the District Court may prepare and submit to the State Court Administrator a detailed plan for a problem-solving court program consistent with the protocols and requirements in an Administrative Order of the Chief Judge of the Court of Appeals.

Committee note: Examples of officials to be consulted, depending on the nature of the proposed program, include individuals in the Office of the State's Attorney, Office of the Public Defender; Department of Juvenile Services; health, addiction, and education agencies; the Division of Parole and Probation; and the Department of Human Resources.

~~(c)~~ (d) Approval of Plan

After review of the plan, the State Court Administrator shall submit the plan, together with any comments and a recommendation, to the Court of Appeals. The program shall not be implemented until it is approved by the Court of Appeals.

~~(d)~~ (e) Acceptance of Participant into Program

(1) Written Agreement Required

As a condition of acceptance into a program and after the advice of counsel, if any, a prospective participant shall execute a written agreement that sets forth:

(A) the requirements of the program;

(B) the protocols of the program, including protocols concerning the authority of the judge to initiate, permit, and consider ex parte communications pursuant to

Rule 2.9 of the Maryland Code of Judicial Conduct;

(C) the range of sanctions that may be imposed while the participant is in the program; and

(D) any rights waived by the participant, including rights under Rule 4-215 or Code, Courts Article, §3-8A-20.
Committee note: The written agreement shall be in addition to any advisements that are required under Rule 4-215 or Code, Courts Article, §3-8A-20, if applicable.

(2) Examination on the Record

The court may not accept the prospective participant into the program until, after an examination of the prospective participant on the record, the court determines and announces on the record that the prospective participant knowingly and voluntarily enters into the agreement and understands it.

(3) Agreement to be Made Part of the Record

A copy of the agreement shall be made part of the record.

~~(e)~~ (f) Immediate Sanctions; Loss of Liberty or Termination from Program

In accordance with the protocols of the program, the court, for good cause, may impose an immediate sanction on a participant, except that if the participant is considered for the imposition of a sanction involving the loss of liberty or termination from the program, the participant shall be afforded notice, an opportunity to be heard, and the right to be represented by counsel before the court makes its decision. If a hearing is required by this section and the participant is unrepresented by counsel, the court shall comply with Rule 4-215 in a criminal action or Code, Courts Article, §3-8A-20 in a delinquency action before holding the hearing.

Committee note: In considering whether a judge should be disqualified pursuant to Rule 2.11 of the Maryland Code of Judicial Conduct from post-termination proceedings involving a participant who has been terminated from a problem-solving court program, the judge should be sensitive to any exposure to ex parte communications or inadmissible information that the judge may have received while the participant was in the program.

~~(f)~~ (g) Credit for Incarceration Time Served

If a participant is terminated from a program, any period of time for which the participant was incarcerated as a sanction during participation in the program shall be credited against any sentence imposed or directed to be executed in the action.

Source: This Rule is derived from former Rule 16-206.

Rule 16-207 was accompanied by the following Reporter's note.

Rule 16-207 is substantially derived from former Rule 16-206. A definition section has been separated out from the applicability section in the current Rule. The Subcommittee added a sentence clarifying that because a court received evidence from an educational, healthy, or social service agency or refers a person to one of these agencies, the proceeding is not necessarily a problem-solving court program. Language has been added to the Committee note after section (a), which provides that the judge acts as part of the therapeutic team that monitors the progress of a person enrolled in the program.

The Chair noted that Rule 16-207 was new and was drafted very recently. The only change to the Rule was in subsection (a)(2), the addition of exceptions, which was to clarify that the

mere fact that a judge gets reports from the agencies referred to in subsection (a)(2) does not make the proceeding a problem-solving court. Some of the juvenile courts on the Eastern Shore and others including those in Prince George's County have a statutory truancy program (Code, Courts Article, §3-8C-02). These are not the same as a problem-solving court. The remainder of the Rule was the current Rule, Rule 16-206.

There being no comment on Rule 16-207, by consensus, the Committee approved Rule 16-207 as presented.

The Chair presented Rule 16-208, Cell Phones; Other Electronic Devices; Cameras, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 200 - GENERAL PROVISIONS – CIRCUIT AND DISTRICT COURT

Rule 16-208. CELL PHONES; OTHER ELECTRONIC DEVICES; CAMERAS

(a) Definitions

In this Rule the following definitions apply:

(1) Court Facility

"Court facility" means the building in which a circuit court or the District Court is located.~~, but if~~ If the court is in a building that is also occupied by county or State executive agencies having no substantial connection with the court, ~~then~~ "court facility" means only that part of the building occupied by the court.

(2) Electronic Device

"Electronic device" means (A) a cell phone, a computer, and any other device that is capable of transmitting, receiving, or recording messages, images, sounds, data, or other information by electronic means or that, in appearance, purports to be a cell phone, computer, or such other device; and (B) a camera, regardless of whether it operates electronically, mechanically, or otherwise and regardless of whether images are recorded by using digital technology, film, light-sensitive plates, or other means.

(3) Local Administrative Judge

"Local Administrative Judge" means the County Administrative Judge in a circuit court and the District Administrative Judge in the District Court.

(b) Possession and Use of Electronic Devices

(1) Generally

Subject to inspection by court security personnel and the restrictions and prohibitions set forth in this section, a person may (A) bring an electronic device into a court facility and (B) use the electronic device for the purpose of sending and receiving phone calls and electronic messages and for any other lawful purpose not otherwise prohibited.

(2) Restrictions and Prohibitions

(A) Rule 5-615 Order

An electronic device may not be used to facilitate or achieve a violation of an order entered pursuant to Rule 5-615 (d).

(B) Photographs and Video

Except as permitted in accordance with this Rule, Rule ~~16-109~~ 16-603, Rule ~~16-405~~ 16-502, or Rule 16-504 or as expressly permitted by the Local Administrative Judge,

a person may not (i) take or record a photograph, video, or other visual image in a court facility, or (ii) transmit a photograph, video, or other visual image from or within a court facility.

Committee note: The prohibition set forth in subsection (b)(2)(B) of this Rule includes still photography and moving visual images. It is anticipated that permission will be granted for the taking of photographs at ceremonial functions.

(C) Interference with Court Proceedings or Work

An electronic device shall not be used in a manner that interferes with court proceedings or the work of court personnel.

Committee note: An example of a use prohibited by subsection (b)(2)(C) is a loud conversation on a cell phone near a court employee's work station or in a hallway near the door to a courtroom.

(D) Jury Deliberation Room

An electronic device may not be brought into a jury deliberation room.

(E) Courtroom

(i) Except with the express permission of the presiding judge or as otherwise permitted by this Rule, Rule ~~16-109~~ 16-603, Rule ~~16-405~~ 16-502, or Rule 16-504, all electronic devices inside a courtroom shall remain off and no electronic device may be used to receive, transmit, or record sound, visual images, data, or other information.

(ii) Subject to subsection (b)(2)(F), the court shall liberally allow the attorneys in a proceeding currently being heard, their employees, and agents to make reasonable and lawful use of an electronic device in connection with the proceeding.

(F) Security or Privacy Issues in a Particular Case

Upon a finding that the circumstances of a particular case raise special security or privacy issues that justify a restriction on the possession of electronic devices, the Local Administrative Judge or the presiding judge may enter an order limiting or prohibiting the possession of electronic devices in a courtroom or other designated areas of the court facility. The order shall provide for notice of the designated areas and for the collection of the devices and their return when the individual who possessed the device leaves the courtroom or other area. No liability shall accrue to the security personnel or any other court official or employee for any loss or misplacement of or damage to the device.

(c) Violation of Rule

(1) Security personnel or other court personnel may confiscate and retain an electronic device that is used in violation of this Rule, subject to further order of the court or until the owner leaves the building. No liability shall accrue to the security personnel or any other court official or employee for any loss or misplacement of or damage to the device.

(2) An individual who willfully violates this Rule or any reasonable limitation imposed by the local administrative judge or the presiding judge may be found in contempt of court and sanctioned in accordance with the Rules in Title 15, Chapter 200.

(d) Notice

Notice of the provisions of sections (b) and (c) of this Rule shall be:

(A) posted prominently at the court facility;

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

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

Source: This Rule is derived from former Rule 16-110.

Rule 16-208 was accompanied by the following Reporter's note.

Rule 16-208 is substantially the same as Rule 16-110.

The Chair pointed out that Rule 16-208 had been drafted very recently after a great deal of discussion. Some portions of the Rule may need to be changed when MDEC is instituted. This pertains more to the use of computers than to the use of cell phones.

By consensus, the Committee approved Rule 16-208 as presented.

The Chair presented Rule 16-301, Term of Court and Grand Jury, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 300 - CIRCUIT COURTS - ADMINISTRATION AND CASE MANAGEMENT

Rule 16-301. TERM OF COURT AND GRAND JURY

(a) Term of Court

For accounting and statistical reporting purposes, each circuit court shall

hold a single term each year beginning on July 1 and ending the following June 30.

(b) Term of Grand Jury; Extension to Complete Investigation

(1) Definition

In this section, "State's Attorney" includes the Attorney General when using a grand jury pursuant to Article V, §3 of the Maryland Constitution and the State Prosecutor when using a grand jury pursuant to Code, Criminal Procedure Article, §14-110.

(2) Term of Grand Jury and Additional Grand Jury

~~The jury plan of a county shall specify the term of a grand jury for the county.~~ The term of a grand jury for a county shall be as determined in the jury plan for that county. The term of ~~service of~~ any additional grand jury for a county appointed pursuant to Code, Courts Article, §8-413 shall be ~~as~~ determined by the County Administrative Judge.

(3) Extension of Term

On motion of the State's Attorney, the County Administrative Judge or the jury judge may ~~extend~~ enter an order extending the term of a grand jury or additional grand jury so that it may complete an investigation specified by the judge in the order. The grand jury shall continue until it concludes its investigation or is sooner discharged by the judge~~,~~ but is limited to the investigation specified in the order. ~~The grand jury shall continue until it concludes its investigation or is sooner discharged by the judge, but is limited to the investigation specified in the order. In this Rule, "State's Attorney" includes the Attorney General, when using a grand jury pursuant to Article V, §3 of the Maryland Constitution and the State Prosecutor, when using a grand jury pursuant to Code, Criminal Procedure Article, §14-110.~~

Source: This Rule is derived from former Rule 16-107.

Rule 16-301 was accompanied by the following Reporter's note.

This Rule incorporates the substance of Rule 16-107, as amended effective January 1, 2008. The Rule has been reorganized.

The Chair explained that Rule 16-301 was similar to the current Rule, Rule 16-107, but it had been restyled.

There being no comment, by consensus, the Committee approved Rule 16-301 as presented.

The Chair presented Rule 16-302, Assignment of Actions for Trial; Case Management Plan, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 300 - CIRCUIT COURTS - ADMINISTRATION AND CASE MANAGEMENT

Rule 16-302. ASSIGNMENT OF ACTIONS FOR TRIAL; CASE MANAGEMENT PLAN

(a) Generally

The County Administrative Judge in each county shall supervise the assignment of actions for trial ~~to achieve the efficient~~ in a manner that maximizes the use of available judicial personnel, ~~and to~~ brings pending actions to trial, and disposes of them as expeditiously as feasible. ~~Procedures instituted in this regard shall be designed to:~~

(b) Case Management Plan; Information Report

(1) Development; Monitoring, Implementation

The County Administrative Judge shall develop, implement, monitor, and, as needed, update~~, upon approval by the Chief Judge of the Court of Appeals,~~ ~~implement and monitor~~ a case management plan for the prompt and efficient scheduling and disposition of actions in the circuit court. The plan shall include a system of differentiated case management in which actions are classified according to complexity and priority and are assigned to a scheduling category based on that classification.

(2) Family Division

In courts that have a family division, the plan shall provide for the implementation of Rule 16-307. ~~criteria for (A) requiring parties in an action assigned to the family division to attend a scheduling conference in accordance with Rule 2-504.1 (a)(1) and (B) identifying actions in the family division that are appropriate for assignment to a specific judge who shall be responsible for the entire case unless the County Administrative Judge subsequently decides to reassign it.~~

Cross reference: See Rule 9-204 for provisions that may be included in the case management plan concerning an educational seminar for parties in actions in which child support, custody, or visitation are involved.

~~(2)~~ (3) Consultation

In developing, monitoring, and implementing the case management plan, the County Administrative Judge shall ~~(i)~~ (A) consult with the Administrative Office of the Courts and with other County Administrative Judges who have developed ~~or are in the process of developing~~ such plans in an effort to achieve as much consistency and uniformity among the plans as is reasonably practicable, and ~~(ii)~~ (B) seek the assistance of the county bar association and such other

interested groups and persons as the judge deems advisable.

~~(3)~~ (4) Information Report

As part of the plan, the clerk shall make available to the parties, without charge, a form approved by the County Administrative Judge that will provide the information necessary to implement the case management plan. The information contained in the information report shall not be used for any purpose other than case management.

~~(4)~~ The clerk of each circuit court shall make available for public inspection a copy of the current administrative order of the Chief Judge of the Court of Appeals exempting categories of actions from the information report requirement of Rule 2-111 (a).

(c) Additional Features of Case Management Plan

As part of the case management plan, the County Administrative Judge shall adopt procedures consistent with the Maryland Rules designed to:

(1) eliminate docket calls in open court;

(2) insure the prompt disposition of motions and other preliminary matters;

(3) provide for the use of scheduling and pretrial conferences, and the establishment of a calendar for that purpose, when appropriate;

(4) provide for the prompt disposition of uncontested and ex parte matters, including references to an examiner-master, when appropriate;

(5) provide for the disposition of actions under Rule 2-507;

(6) to the extent permitted by law and when feasible and approved by the presiding judge, provide for non-evidentiary hearings

to be conducted by telephonic, video, or other electronic means.

~~(6)~~ (7) establish trial and motion calendars and other appropriate systems under which actions ready for trial will be assigned for trial and tried, after proper notice to parties, without necessity of a request for assignment from any party; and

Cross reference: See Rule ~~16-201~~ 16-303 (Motion Day ~~- Calendar)~~.

~~(7)~~ (8) establish systems of regular reports ~~which~~ that will indicate the status of all pending actions with respect to their readiness for trial, the disposition of actions, and the availability of judges for trial work.

Source: This Rule is derived from former Rule 16-202.

Rule 16-302 was accompanied by the following Reporter's note.

This Rule incorporates the substance of Rule 16-202 with style changes. The Subcommittee proposes to add another feature to section (c), which is that the case management plan can provide for non-evidentiary hearings to be conducted by telephone, video, or other electronic means if permitted by law and if approved by the presiding judge.

The Chair said that Rule 16-302 had been discussed earlier at the meeting. Subsection (c)(6) was new. This expanded the Rule to include procedures in other Rules allowing for non-evidentiary hearings to be conducted by telephonic, video, or other electronic means. Judge Pierson remarked that he had a philosophical question. The Committee had approved and the Court

of Appeals had adopted Rule 7-208, Hearing, allowing judicial review hearings to be conducted by video conferencing or other electronic means. His understanding was that the courts are not supposed to be expanding this yet to the point that many hearings are held by video conferencing. The proposed Rule seems to be a wedge to let the County Administrative Judge approve all sorts of other proceedings to be recorded by video, which Judge Pierson said that he was not opposed to. However, it is somewhat inconsistent with the message that the judges have been getting so far.

The Chair commented that he had not heard this backlash that proceedings should not be conducted by video. The Court of Appeals had been told that the Committee intended to move towards this incrementally. This began with testimony by telephone. Some proceedings, such as bail reviews, had already been permitted in the Rules. Then, non-evidentiary hearings and judicial review actions conducted by video conferencing were included. Rule 16-302 would allow for motions hearings to be conducted by video conferencing. He asked if anyone had any problems with this.

Judge Pierson responded that he had no problem with it. Baltimore City is now doing the inmate grievance appeals by video conferencing. They had been told that they could not conduct other proceedings by video conferencing, not because it is not permitted by rule, but because the AOC does not want this to be done yet. The Chair said that this may be because of the

logistical issue of having to provide the equipment. He had not heard from Frank Broccolina, the State Court Administrator, that he has a conceptual problem with this. The Chair added that he thought that the Access to Justice Commission would be in favor of video conferencing. It would keep the costs of attorneys' fees down.

Mr. Sullivan inquired whether the word "maximizes" is the best term in section (a). It implies that more people will be used than may otherwise be needed. The Chair inquired if Mr. Sullivan preferred the current language. Mr. Sullivan replied negatively. The Reporter suggested that the language of section (a) could be: "...in a manner that efficiently uses available judicial personnel...". Mr. Sullivan proposed going back to the word "maximizing." The Reporter suggested the language: "...maximizes the efficient use of available judicial personnel...". Mr. Sullivan expressed the view that this would work. By consensus, the Committee approved this language.

By consensus, the Committee approved Rule 16-302 as amended.

The Chair presented Rule 16-303, Motion Day, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 300 - CIRCUIT COURTS - ADMINISTRATION AND CASE MANAGEMENT

Rule 16-303. MOTION DAY ~~- CALENDAR~~

(a) Motion Day

The ~~Each~~ County Administrative Judge may prescribe for each circuit court in the judicial circuit, motion days on which ~~all~~ pending motions and other preliminary matters ~~pending in that court and~~ scheduled for hearing shall be heard.

(b) Motions Calendar

The circuit court clerk in each county shall maintain a motions calendar in ~~such~~ the form ~~as may be~~ prescribed by the County Administrative Judge. Upon the filing of a response pursuant to Rule 2-311 (b), or upon the date on which ~~such~~ the response should have been filed, the clerk ~~will~~ shall list the case on the motions calendar.

(c) Assignment When Hearing Required

The County Administrative Judge ~~in each county~~ shall ~~provide for~~ review ~~of~~ the motions calendar at appropriate intervals and ~~the determination~~ determine ~~of what~~ which matters on the calendar ~~thereon~~ require hearings. Hearing dates for those matters shall be assigned, and all parties shall be notified of the dates. ~~The judge shall provide for assignment of hearing dates for such matters and notices thereof shall be given to all parties.~~

DRAFTER'S NOTE: Does the County Administrative Judge do this personally or delegate the task to someone else, and, if someone else, must it be a judge?

(d) Notice of Lengthy Hearing

If it is anticipated that the hearing on a motion will exceed a total of 30 minutes, the parties shall inform the assignment clerk, ~~in which event~~ who may calendar the motion ~~may be calendared~~ specially.

Source: This Rule is derived from former Rule 16-201.

Rule 16-302 was accompanied by the following Reporter's note.

> This Rule incorporates the substance of Rule 16-201 with style changes. There is a substantive change in section (a), which is that the Circuit Administrative Judge sets motion days for the courts in the circuit.

The Chair said that he had spoken with two Circuit Administrative Judges, who indicated that the metropolitan courts do not have motion days. The Chair asked if Montgomery County had motions days. Mr. Michael replied that Friday is generally scheduled as motion day. Mr. Brault noted that this is not exclusively. Montgomery County has a motions judge. Motions hearings are scheduled for a motions court, not a motions day. Mr. Michael agreed, but he pointed out that many motions hearings are held on Fridays. The Chair noted that Rule 16-303 has the language "...may prescribe...". Ms. James commented that there is so much variation in practice in the circuit courts that the Rule has to be flexible. She had questioned whether this Rule is helpful in trying to describe this kind of detail. Sometimes her county has motion days, and sometimes motions are scheduled in and among other actions.

Judge Pierson suggested that Rule 16-303 be referred to the Conference of Circuit Judges to determine whether this practice is still useful. The Chair agreed. He noted that his understanding was that the County Administrative Judge does not review the motions calendar to determine which matters on the

calendar require hearings as section (c) requires. If a hearing is requested, a judge will make a decision as to whether a hearing is to be granted. Ms. Smith remarked that in section (b) it is not necessarily the circuit court clerk who maintains the motions calendar. It could be the assignment office.

The Chair stated that Rule 16-303 would be sent to the Conference of Circuit Judges.

The Chair presented Rule 16-304, Chambers Judge, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 300 - CIRCUIT COURTS - ADMINISTRATION AND CASE MANAGEMENT

Rule 16-304. CHAMBERS JUDGE

(a) ~~Generally~~ Designation

(1) ~~Designation~~ County With More than Four Judges

In a county with more than four resident circuit court judges, the County Administrative Judge shall~~, and in any other county may,~~ (A) from time to time designate one or more of the resident judges ~~sitting in that county~~ to sit as chambers judge, and (B) ensure that a chambers judge is on duty in the courthouse whenever the courthouse is open to handle motions and emergency or any other matters.

(2) ~~Responsibility of County Administrative Judge~~ Other Counties

~~In any county where the designation of a chambers judge is mandatory pursuant to~~

~~subsection 1 of this section, it shall be the responsibility of the County Administrative Judge to ensure that a chambers judge is on duty in the courthouse whenever the courthouse is open for the transaction of judicial business.~~ In any other county, the County Administrative Judge may from time to time designate one or more judges sitting in the court to sit as chambers judge.

(b) Duties

Except for motions or other matters that are to be resolved by another judge pursuant to a scheduling order or other order entered in an action or motions made or filed during the course of a trial or on the day an action is scheduled for trial, a ~~A~~ chambers judge shall have primary responsibility for:

~~(i)~~ (1) the prompt disposition of motions and other preliminary matters which may be disposed of without a hearing~~, except for motions made or filed during the course of a trial or on the day a case is set for trial, which motions shall be disposed of by the trial judge~~;

~~(ii)~~ (2) consideration of and, when appropriate, signing show cause orders;

~~(iii)~~ (3) the conduct of pre-trial conferences and control of the pre-trial calendar, if one has been established; and

~~(iv)~~ (4) unless a different procedure is prescribed by the County Administrative Judge, consideration of and, when appropriate, signing orders and ~~decrees~~ judgments in uncontested or ex parte cases, and the disposition of motions for continuances or postponements [in civil actions]~~, except such motions made on the day of or during trial, which shall be disposed of by the trial judge~~.

Cross reference: For postponement of criminal actions, see Rule 16-105 (c).

Committee note: While a chambers judge, where one has been designated, will have

> primary responsibility for performing the duties set forth in this Rule, the Rule is not intended to affect the power of other judges to perform these duties should a chambers judge not be available. The Rule does contemplate that in those jurisdictions in which a chambers judge must be designated, some judge will be available to perform the duties of a chambers judge at all times during the normal 9:00 a.m. - 5:00 p.m. working day, Monday through Friday.
>
> Source: This Rule is derived from former Rule 16-102.

Rule 16-304 was accompanied by the following Reporter's note.

> This Rule incorporates the substance of Rule 16-102 with style changes. The existing Committee note at the end of the Rule is recommended for deletion.

The Chair told the Committee that Rule 16-304 is basically the same as the current Rule, Rule 16-102, with style changes. Ms. James said that she had a comment on subsection (b)(4). Postponement policies that are consistent are trying to be effectuated. In most circuit courts, this means that one or two judges are designated as postponement judges. Rule 16-304 seems to indicate that the chambers judge would be able to rule on postponements. She expressed the opinion that this should not be in the Rule. The Chair noted that this is the current Rule. Ms. James added that the Rule does not have to be so specific. Judge Pierson remarked that the procedure set out in subsection (b)(4) is not the procedure in Baltimore City. The procedure in the Rule varies in several respects from the way it is done in

Baltimore City. Many of the duties listed in the Rule are performed by other judges.

The Chair pointed out that the beginning language of subsection (b)(4) is: "unless a different procedure is prescribed by the County Administrative Judge...". Judge Pierson commented that section (b) does not have an opt-out for the County Administrative Judge to change this. The Chair said that there is an opt-out in subsection (b)(4). Judge Pierson acknowledged this, but he noted that there is no opt-out in subsections (b)(1) and (b)(3). He said that he thought that the Rules had done away with show cause orders. The Chair noted that some Rules provide for show cause orders.

Mr. Sullivan inquired whether Judge Pierson's problem would be helped if the clause in subsection (b)(4) that reads: "unless a different procedure is prescribed by the County Administrative Judge" would be the precursor to the entire Rule. Judge Pierson replied affirmatively. Mr. Sullivan remarked that this would allow individual courts to handle designating the chambers judge, but if the court does not do so, this would be the default procedure.

The Chair reiterated that the following language could be added to the beginning of subsection (a)(1): "[u]nless a different procedure is prescribed by the County Administrative Judge, in a county...". Mr. Sullivan suggested that the language could be: "[u]nless a different procedure is prescribed by the County Administrative Judge, the following provisions apply to

the designation and conduct of the chambers judge." It would be understood that the Rule applies to those counties or circuits that have adopted a different procedure.

The Chair questioned whether there is any circuit court that does not have a chambers judge. Ms. Ogletree answered affirmatively, pointing out that Caroline County only has one judge who handles everything. The Chair said that the Rule applies to counties with more than four judges. Are there any counties with more than four judges that do not have a chambers judge? Judge Pierson commented that section (a) serves a function, because it ensures that someone is on duty in the courthouse to handle emergencies. Section (a) is worded appropriately. He expressed the view that the preparatory clause suggested by Mr. Sullivan should go at the beginning of section (b). By consensus, the Committee approved this change.

By consensus, the Committee approved Rule 16-304 as amended.

The Chair presented Rule 16-305, Trust Clerk, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 300 - CIRCUIT COURTS - ADMINISTRATION AND CASE MANAGEMENT

Rule 16-305. TRUST CLERK

The circuit court for each county ~~and the Supreme Bench of Baltimore City~~ shall

designate a trust clerk and shall determine the trust clerk's compensation.

Source: This Rule is derived from former Rule 16-403.

Rule 16-305 was accompanied by the following Reporter's note.

This Rule incorporates the substance of former Rule 16-403, omitting the obsolete reference to the Supreme Bench of Baltimore City.

Ms. Ogletree asked why Rule 16-305 had not been placed in Title 2. The Reporter responded that it is part of the administrative structure of the clerk's office. Ms. Ogletree noted that the trust clerk is just like an auditor or an examiner. Some courts, such as Baltimore County, have a trust clerk who is employed by the court, but this is not true in the majority of the smaller counties. All of them are attorneys or accountants. This is the only place in the Rules that refers to the trust clerk.

Mr. Michael inquired whether a Committee note should be added. Ms. Ogletree answered that this would be appropriate. People have looked for this Rule and cannot find it. The Reporter inquired where the cross reference would go. Ms. Ogletree replied that there should be a cross reference to the guardianship rules. In certain cases, a judge may appoint someone to act as the trust clerk if a case involves a large sum of money, and there is an accounting to be done, rather than the auditor doing the accounting. The smaller counties have a

standing trust clerk and special trust clerks when the standing clerk has a conflict. She did not understand why trust clerks are not treated the same way as the auditors or examiners.

The Chair pointed out that the language of the Rule is: "[t]he circuit court for each county shall...". Should this refer to "the County Administrative Judge" instead of "the circuit court?" Ms. Ogletree noted that Rule 2-543 provides that a majority of the judges of the circuit court of a county that has more than one judge may appoint a standing auditor. Should Rule 16-305 be made parallel to Rule 2-543? The trust clerk is probably the employee with the most divergences. Some of the trust clerks are employed, and some are part-time judicial officers.

Ms. Smith said that she has trust clerks among her staff, and the judges do not decide their compensation. Ms. Ogletree observed that her trust clerk is addressed by a Second Circuit rule. Judge Zarnoch inquired if the term "circuit court" should be changed to the term "County Administrative Judge." Ms. Ogletree commented that this could not be done in the counties where the trust clerk is an employee of the clerk's office. In those counties, the judges do not choose the trust clerks or determine their salary. Mr. Sullivan noted that this is how the current Rule reads. Ms. Ogletree responded that the current Rule is no longer applicable.

Judge Weatherly said that the cross reference to Rule 16-305 should be added to the rules pertaining to trusts and

guardianships. Ms. Ogletree reiterated that it is odd that a reference to the trust clerk does not appear anywhere in the Title 2 Rules. Except in the guardianship rules and Rule 13-501, Reports, which is a receivership rule, there is no other reference to the "trust clerk." Someone who does not know to look at Rule 16-305 would not find it. Judge Pierson commented that Rule 16-305 does not state what the trust clerk does. Mr. Johnson noted that the suggestion had been made to refer to the County or Circuit Administrative Judge. Who is "the circuit court" referred to in the Rule? Ms. Ogletree pointed out that Rule 2-543 provides that a majority of the circuit court judges designate the trust clerk and prescribe his or her compensation. This is not consistent with the language of Rule 16-305.

The Chair inquired if the clerk appoints the trust clerk if he or she works in the clerk's office. Ms. Ogletree answered affirmatively. There is a huge discrepancy around the State as to how the trust clerks are chosen. The Chair said that this is an opportunity to make this procedure uniform. Judge Zarnoch remarked that in terms of legal authority, both the statute and the Rule would suggest that the court chooses the trust clerk. The mere fact that some counties do it differently may be practice trumping the law.

Ms. Ogletree remarked that in theory where the clerk hires the trust clerk, this is a delegation from the County Administrative Judge or the majority of judges on the court, depending on which formulation is used. Mr. Michael suggested

that the language could be “the County Administrative Judge or his or her designee...”. Ms. Ogletree responded that this was more appropriate language. The clerk can be included as the designee. Judge Pierson noted that in Baltimore City, the County Administrative Judge does not designate the trust clerk; it is the bench who designates. Mr. Johnson remarked that the term “circuit court” probably means the entire bench. Ms. Ogletree reiterated that the language of Rule 2-543, which is “a majority of the judges,” should be used in Rule 16-305.

Judge Pierson commented that there may be a variation in local practice, and it may be useful to know what the practices are around the State. The Chair responded that this could be researched. The current Rule provides that the circuit court for each county shall designate a trust clerk. Mr. Michael suggested that it could be the circuit court or an appointed designee. Ms. Ogletree added that this would solve the immediate problem. The Chair asked if it should be the circuit court or the County Administrative Judge. Mr. Michael reiterated that the language “the circuit court or an appointed designee” would address the problem. Judge Pierson noted that this could include the Administrative Judge.

The Reporter questioned who appoints the designee. The Chair remarked that it could be left as “the circuit court.” Ms. Ogletree again suggested that the language should be “a majority of the judges.” It takes care of the problem, and it is language similar to that in Rule 2-543. It is the same kind of function,

and, in some cases, it is the same person. Judge Pierson noted that this refers to the hiring power, and people may be particularly interested in how the Rule affects that power. He expressed the opinion that Rule 16-305 should be sent to the Conference of Circuit Judges. The Chair said that Rule 16-305 would be sent to the Conference.

The Chair presented Rule 16-306, Special Docket for Asbestos Cases, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 300 - CIRCUIT COURTS - ADMINISTRATION AND CASE MANAGEMENT

Rule 16-306. SPECIAL DOCKET FOR ASBESTOS CASES

(a) Definition

In this Rule, "asbestos case" means an action seeking money damages for personal injury or death allegedly caused by exposure to asbestos or products containing asbestos. It does not include an action seeking principally (1) equitable relief or (2) ~~seeking principally~~ damages for injury to property or for removal of asbestos or products containing asbestos from property.

(b) Special Docket

The Administrative Judge of the Circuit Court for Baltimore City may establish and maintain a special inactive docket for asbestos cases filed in or transferred to that court. The order:

(1) shall specify the criteria and procedures for placement of an asbestos case

on the inactive docket and for removal of a case from the docket;

(2) may permit an asbestos case meeting the criteria for placement on the inactive docket to be placed on that docket at any time prior to trial; and

(3) with respect to any case placed on the inactive docket, may stay the time for filing responses to the complaint, discovery, and other proceedings until the case is removed from the docket.

(c) Transfer of Cases from Other Counties

(1) The Circuit Administrative Judge for any other judicial circuit, by order, may

(A) adopt the criteria established in an order entered by the Administrative Judge of the Circuit Court for Baltimore City pursuant to section (b) of this Rule for placement of an asbestos case on the inactive docket for asbestos cases;

(B) provide for the transfer to the Circuit Court for Baltimore City, for placement on the inactive docket, of any asbestos case filed in a circuit court in that other circuit for which venue would lie in Baltimore City; and

(C) establish procedures for the prompt disposition in the circuit court where the action was filed of any dispute as to whether venue would lie in Baltimore City.

(2) If an action is transferred pursuant to this Rule, the clerk of the circuit court where the action was filed shall deliver the file or a copy of it to the clerk of the Circuit Court for Baltimore City, and, except as provided in subsection (c)(3) of this Rule, the action shall thereafter proceed as if initially filed in the Circuit Court for Baltimore City.

(3) Unless the parties agree otherwise, any action transferred pursuant to this section, upon removal from the inactive

docket, shall be re-transferred to the circuit court in which it was originally filed and all further proceedings shall take place in that court.

(d) Exemption from Rule 2-507

Any action placed on an inactive docket pursuant to this Rule shall not be subject to Rule 2-507 until the action is removed from that docket.

(e) Effect on Rule 2-327 (d)

To the extent of any inconsistency with Rule 2-327 (d), this Rule shall prevail.

Committee note: This section (e) does not preclude a transfer under Rule 2-327 upon retransfer of an action under subsection (c)(3) of this Rule.

(f) Applicability of Rule

This Rule shall apply only to actions filed on or after December 8, 1992.

Source: This Rule is derived from former Rule 16-203.

Rule 16-306 was accompanied by the following Reporter's note.

This Rule incorporates the substance of Rule 16-203 with style changes.

The Chair told the Committee that no substantive changes had been made to Rule 16-306.

There being no comment, by consensus, the Committee approved Rule 16-306 as presented.

The Chair presented Rule 16-307, Family Division and Support Services, for the Committee's consideration.

Rule 16-307. FAMILY DIVISION AND SUPPORT SERVICES

(a) Family Division

(1) Established

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

(2) Actions Assigned

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

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

(B) child custody and visitation, including proceedings governed by the Maryland Uniform Child Custody Jurisdiction and Enforcement Act, Code, Family Law Article, Title ~~9~~ 9.5, ~~Subtitle 2~~ and the Parental Kidnapping Prevention Act, 28 U.S.C. §1738A;

(C) alimony, spousal support, and child support, including proceedings under the Maryland Uniform Interstate Family Support Act, Code, Family Law Article, Title 10, Subtitle 3;

(D) establishment and termination of the parent-child relationship, including

paternity, adoption, guardianship that terminates parental rights, and emancipation;

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

(F) name changes;

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

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

DRAFTER'S NOTE: It appears that under HG §§10-613 - 10-619, involuntary admissions can be made to a VA hospital as well as a State facility.

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

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

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

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

(M) civil ~~and~~ or criminal contempt arising out of any of the categories of actions and matters set forth in subsection (a)(2)(A) through (a)(2)(L) of this Rule.

Committee note: The jurisdiction of the circuit courts, the District Court, and the Orphan's Court is not affected by this

section. For example, the District Court has concurrent jurisdiction with the circuit court over proceedings under Code, Family Law Article, Title 4, Subtitle 5.

(3) Family Support Services

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

(A) mediation in custody and visitation matters;

(B) custody investigations;

(C) trained personnel to respond to emergencies;

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

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

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

(F) information regarding lawyer referral services;

(G) parenting seminars; and

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

Committee note: Examples of additional family support services that may be provided include general mediation programs, case managers, and family follow-up services.

(4) Responsibilities of the County Administrative Judge

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

(A) allocate sufficient available judicial resources to the family division so that actions are heard expeditiously in accordance with applicable law and the case management plan required by Rule ~~16-202 b~~ 16-302 (b);

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

(B) provide in the case management plan required by Rule ~~16-202 b~~ 16-302 (b) criteria for:

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

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

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

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

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

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

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

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

(b) Circuit Courts Without a Family Division

(1) Applicability

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

(2) Family Support Services

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

(3) Family Support Services Coordinator

The County Administrative Judge shall appoint a full-time or part-time family support services coordinator whose responsibilities shall be substantially as set forth in subsection (a)(4)(C) of this Rule.

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

> The County Administrative Judge shall prepare and submit to the Chief Judge of the Court of Appeals, no later than October 15 of each year, a written report that includes a description of the family support services needed by the court, a fiscal note that estimates the cost of those services for the following fiscal year, and, whenever practicable, an estimate of the fiscal needs of the Clerk of the Circuit Court for the county pertaining to family support services.
>
> Source: This Rule is derived from former Rule 16-204.

Rule 16-307 was accompanied by the following Reporter's note.

> This Rule incorporates the substance of Rule 16-204 with style changes. Statutory references have been updated. The Subcommittee deleted the language "to state facilities" in subsection (a)(2)(H), because persons may be involuntarily admitted to private psychiatric facilities under HG Title 10, Subtitle 6.

The Chair said that the only change in Rule 16-307 is to subsection (a)(2)(H), which makes that provision more general.

There being no comment, by consensus, the Committee approved Rule 16-307 as presented.

The Chair presented Rule 16-308, Business and Technology Case Management Program, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 300 - CIRCUIT COURTS - ADMINISTRATION AND CASE MANAGEMENT

Rule 16-308. BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

(a) Definitions

The following definitions apply in this Rule:

(1) ADR

"ADR" means "alternative dispute resolution" as defined in Rule 16-102.

(2) Program

"Program" means the business and technology case management program established pursuant to this Rule.

(3) Program Judge

"Program judge" means a judge of a circuit court who is assigned to the program.

(b) Program Established

Subject to the availability of fiscal and human resources, a program approved by the Chief Judge of the Court of Appeals shall be established to enable each circuit court to handle business and technology matters in a coordinated, efficient, and responsive manner and to afford convenient access to lawyers and litigants in business and technology matters. The program shall include:

(1) a program track within the differentiated case management system established under Rule ~~16-202~~ 16-302;

(2) ~~the~~ a procedure by which an action is assigned to the program;

(3) program judges who are specially trained in business and technology; and

(4) ADR proceedings conducted by persons qualified under Title 17 of these Rules and specially trained in business and technology.

Cross reference: See Rules ~~16-101 a~~ 16-101 (a) and ~~16-103 a~~ 16-107 (a) concerning the assignment of a judge of the circuit court for a county to sit as a program judge in the circuit court for another county.

(c) Assignment of Actions to the Program

On written request of a party or on the court's own initiative, the Circuit Administrative Judge of the circuit in which an action is filed or the Circuit Administrative Judge's designee may assign the action to the program if the judge determines that the action presents commercial or technological issues of such a complex or novel nature that specialized treatment is likely to improve the administration of justice. Factors that the judge may consider in making the determination include: (1) the nature of the relief sought, (2) the number and diverse interests of the parties, (3) the anticipated nature and extent of pretrial discovery and motions, (4) whether the parties agree to waive venue ~~for the hearing of motions and other pretrial matters~~, (5) the degree of novelty and complexity of the factual, ~~and~~ legal, or evidentiary issues presented, (6) whether business or technology issues predominate over other issues presented in the action, and (7) the willingness of the parties to participate in ADR procedures.

(d) Assignment to Program Judge

Each action assigned to the program shall be assigned to a specific program judge. To the extent feasible, the program judge to whom the action is assigned shall hear all proceedings until the matter is concluded, except that, if necessary to prevent undue delay, prejudice, or injustice, the Circuit Administrative Judge or the Circuit Administrative Judge's designee may designate another judge to hear a particular

pretrial matter. That judge shall be a program judge, if practicable.

(e) Scheduling Conference; Order

Promptly after an action is assigned, the program judge shall (1) hold a scheduling conference under Rule 2-504.1 at which the program judge and the parties discuss the scheduling of discovery, ADR, and a trial date and (2) enter a scheduling order under Rule 2-504 that includes case management decisions made by the court at or as a result of the scheduling conference.

Source: This Rule is derived from former Rule 16-205.

Rule 16-308 was accompanied by the following Reporter's note.

This Rule incorporates the substance of Rule 16-205 with style changes.

The Chair pointed out that the Subcommittee had made no substantive changes to Rule 16-308.

There being no comment, by consensus, the Committee approved Rule 16-308 as presented.

The Chair presented Rule 16-309, Reports, for the Committee's consideration

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 300 - CIRCUIT COURTS - ADMINISTRATION AND CASE MANAGEMENT

Rule 16-309. REPORTS ~~TO BE FILED~~

~~a. Report by Judge.~~

~~Every judge of the Circuit Court shall submit to the County Administrative Judge reports as the Chief Judge of the Court of Appeals may require, on forms prescribed and supplied by the State Court Administrator and approved by the Chief Judge of the Court of Appeals.~~

~~b. Report by County Administrative Judge.~~

~~Each Circuit or County Administrative Judge shall furnish such other reports as may from time to time be required by the Chief Judge of the Court of Appeals.~~

Each judge of a circuit court shall submit the reports required from time to time by the Chief Judge of the Court of Appeals. The report shall be submitted in the form and to the persons required by the Chief Judge of the Court of Appeals.

Source: This Rule is derived from former Rule 16-105.

Rule 16-309 was accompanied by the following Reporter's note.

This Rule incorporates the substance of former Rule 16-105 with style changes, collapsing former sections a. and b.

The Chair inquired whether the Chief Judge of the Court of Appeals ever asks the individual circuit court judges to file reports. Judge Pierson answered affirmatively, noting that the judges have to file two different forms of reports. One is a report of all of their regular cases, and one is a monthly report on all of their specially assigned habeas corpus, post conviction, and coram nobis cases. Each judge has to file them.

Mr. Klein questioned whether the word "report" in the second sentence should be plural to be consistent with the word "reports" in the first sentence. By consensus, the Committee agreed to change the word "report" in the second sentence to make it plural.

By consensus, the Committee approved Rule 16-309 as amended.

The Chair presented Rule 16-401, Personnel, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 400 - CIRCUIT COURT - CLERKS' OFFICES

Rule 16-401. PERSONNEL ~~IN CLERKS' OFFICES~~

(a) Chief Deputy Clerk

(1) Appointment

The clerk of each circuit court may appoint a chief deputy clerk for that court. The appointment is not subject to section (b) ~~subsection (d)(3)~~ of this Rule.

(2) Tenure

Subject to ~~paragraph (3) of this section~~ subsection (a)(3) of this Rule, a chief deputy clerk serves at the pleasure of the clerk.

(3) Approval of Chief Judge

The appointment, retention and removal of a chief deputy clerk shall be subject to the ~~authority and~~ approval of the Chief Judge of the Court of Appeals, after consultation with the County Administrative Judge.

(b) Other Employees

(1) Personnel System

The selection and appointment of other employees and the promotion, classification and reclassification, transfer, demotion, suspension, discharge, and other discipline of such employees shall be subject to and conform with the standards and procedures set forth in a personnel system developed by the State Court Administrator and approved by the Court of Appeals. The personnel system shall (A) provide for equal opportunity, (B) be based on merit principles, and (C) include appropriate job classifications and compensation scales.

(2) Review for Compliance

The State Court Administrator may review the selection or promotion of an employee to ensure compliance with the standards and procedures in the personnel system. ~~All other employees in the clerk's office shall be subject to a the personnel system to be established by the State Court Administrator and approved by the Court of Appeals. The personnel system shall provide for equal opportunity, shall be based on merit principles, and shall include appropriate job classifications and compensation scales.~~

(c) Certain Deputy Clerks

Persons serving as deputy clerks on July 1, 1991 who qualify for pension rights under Code, State Personnel and Pensions Article, §23-404 shall hold over as deputy clerks but shall have no fixed term and shall in all respects be subject to the personnel system established pursuant to section (b) of this Rule.

(d) ~~Personnel Procedures~~ Grievances

~~(1) The State Court Administrator shall develop standards and procedures for the selection and appointment of new employees~~

~~and the promotion, reclassification, transfer, demotion, suspension, discharge or other discipline of employees in the clerks' offices. These standards and procedures shall be subject to the approval of the Court of Appeals.~~

~~(2) If a vacancy occurs in a clerk's office, the clerk shall seek authorization from the State Court Administrator to fill the vacancy.~~

~~(3) The selection and appointment of new employees and the promotion, reclassification, transfer, demotion, suspension, discharge or other discipline of employees shall be in accordance with the standards and procedures established by the State Court Administrator.~~

~~(4) The State Court Administrator may review the selection or promotion of an employee to ensure compliance with the standards and procedures established pursuant to this Rule.~~

~~(5)~~ An employee grievance shall be resolved in accordance with the personnel system. ~~procedures established by the State Court Administrator. The clerk shall resolve a grievance within the clerk's office, but appeals of the grievance to the State Court Administrator or a designee of the State Court Administrator shall be allowed and shall constitute the final step in the grievance procedure.~~

(e) Payroll and Time Sheets

~~(6)~~ The Administrative Office of the Courts shall prepare the payroll and time and attendance reports for the clerks' offices. The clerks shall submit the information and other documentation that the Administrative Office requires for this purpose.

Source: This Rule is derived from former Rule ~~1212~~ 16-301.

Rule 16-401 was accompanied by the following Reporter's

note.

This Rule incorporates the substance of Rule 16-301.

The Chair noted that the language “in Clerk’s Office” was dropped from the title of Rule 16-401, because the entire chapter applies to the clerk’s offices. It may be worth putting into subsection (b)(1) the language “in the clerk’s office” after the word “employees” and before the word “and.” This would make it clear that this is what subsection (b)(1) is referring to. By consensus, the Committee agreed to add that language in. The Chair asked Ms. Smith if she had any problems with Rule 16-401. She replied that she had no problems, and she had not heard of any.

By consensus, the Committee approved Rule 16-401 as amended.

The Chair presented Rule 16-402, Operations, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 400 - CIRCUIT COURT - CLERKS’ OFFICES

Rule 16-402. OPERATIONS ~~IN CLERKS’ OFFICES~~

(a) Procurement

A clerk may not ~~purchase, lease, or otherwise~~ procure any service or property~~, including equipment,~~ except in accordance with procedures established by the State Court Administrator. Unless otherwise provided by those procedures, the clerk shall

submit all procurement requests to the State Court Administrator in the form and with the documentation that the State Court Administrator requires.

(b) General Operations

The State Court Administrator shall develop policies, procedures, and standards for all judicial and non-judicial operations of the clerks' offices, including case processing, records management, forms control, accounting, budgeting, inventory, and data processing. The current data processing systems in Baltimore City, Prince George's County, and Montgomery County shall not be replaced except by order of the Chief Judge of the Court of Appeals.

(c) Audits

The Administrative Office of the Courts may audit the operations and accounts of the clerks' offices.

(d) Submission of Budget

Each clerk shall submit an annual budget to the State Court Administrator for ~~the~~ review and approval ~~of~~ by the Chief Judge of the Court of Appeals. The budget shall be submitted at the time specified by the State Court Administrator and shall be in the form prescribed by the Secretary of Budget and ~~Fiscal Planning~~ Management.

(e) County Administrative Judge to Supervise Certain Functions

The case assignment function and the jury selection process, whether or not located in the clerk's office, shall be subject to the overall supervision of the County Administrative Judge or a judge designated by the County Administrative Judge.

Source: This Rule is derived from former Rule ~~1213~~ 16-302.

Rule 16-402 was accompanied by the following Reporter's note.

> This Rule incorporates the substance of Rule 16-302.

The Chair told the Committee that Rule 16-402 is essentially the current Rule.

There being no comment, by consensus, the Committee approved Rule 16-401 as presented.

The Chair presented Rule 16-403, Hours, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 400 - CIRCUIT COURT - CLERKS' OFFICES

Rule 16-403. ~~CLERKS' OFFICES -~~ HOURS

(a) Generally

Except as provided in section (b) of this Rule, ~~T~~the office of each clerk of court shall be open to the public throughout the year for the transaction of all business of the court from at least 8:30 a.m. to 4:30 p.m. Monday through Friday of each week~~.~~ except

(1) on days designated pursuant to State law for the observance of legal holidays by State employees; or

(2) on days when the court is closed because of an emergency, inclement weather, or other good cause by order of the Chief Judge of the Court of Appeals, the County Administrative Judge, or the Circuit Administrative Judge for the judicial circuit. ~~Each clerk's office shall be open~~

~~during the additional hours and on the additional days the judge or judges of the court shall prescribe. The office shall not be open on the holidays set forth in Rule 16-106 (Court Sessions - Holidays - Time for Convening) unless otherwise ordered by the County Administrative Judge. In the event of an emergency and in the interest of the public welfare, the Chief Judge of the Court of Appeals may order a clerk's office to be closed for the transaction of all business of the court on any day.~~

(b) Public or Catastrophic Health Emergency

The clerk's office shall remain open on each day that the Chief Judge of the Court of Appeals orders the court to remain open pursuant to Rule 16-201 (b) (Public or Catastrophic Health Emergency).

Source: This Rule is derived from former Rule ~~1215~~ 16-304.

Rule 16-403 was accompanied by the following Reporter's note.

This Rule incorporates the substance of Rule 16-304.

The Chair said that Rule 16-403 incorporates the substance of current Rule 16-304.

There being no comment, by consensus, the Committee approved Rule 16-403 as presented.

The Chair presented Rule 16-404, Dockets, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 400 - CIRCUIT COURT - CLERKS' OFFICES

Rule 16-404. DOCKETS

The clerks of the courts shall maintain ~~such~~ dockets in ~~such~~ the form and containing ~~such~~ the information ~~as shall be~~ prescribed by the Chief Judge of the Court of Appeals.

~~COMMENT~~

~~This will permit a uniform system of dockets in accordance with forms which are to be prescribed by the Chief Judge acting as administrative head of the judicial system. To permit maximum flexibility, the Rule does not specify what dockets shall be maintained. The general source of the Rule is proposed New Jersey Rule 1:32-2.~~

Source: This Rule is derived from former Rule ~~1216~~ 16-305.

DRAFTER'S NOTE: This Rule may need to be augmented based on the Committee's review of how docket entries are to be made.

Rule 16-404 was accompanied by the following Reporter's note.

This Rule incorporates the substance of Rule 16-305 with style changes.

The Chair remarked that Ms. James had requested that the term "docket" be defined. Ms. James told the Committee that she and Ms. Smith had discussed this issue. It is similar to the word "assignment," which has different meanings to people. The concern is differentiating the meanings. The Drafter's Note at the end of the Rule refers to "docket entries." Ms. Smith commented that the word "docket" is similar to the word "judgment." Docket entries, docket books, and the court docket

are ways that the word “docket” is used. There used to be docket books with the entries made in them, but now all of it is referred to as “case histories.”

The Chair observed that several months ago, the Committee got into a major debate over this but deferred it for further study as to docket entries, dockets, when something is docketed, etc. The Committee never got back into discussing this, because other more urgent matters had surfaced. The Chair added that he had seen dockets with four entries for the same event. Ms. Smith noted that automatic docket entries are done. In the current system, a response can be attached to the original pleading. This may be out of sequential order, so some people are attaching it. It would make sense to also docket it further along in the case when it actually came in. Some guidance as to what a docket entry should be would be helpful.

The Chair inquired to what extent MDEC would affect this. Ms. Smith answered that she did not know what the docket entries under MDEC are going to look like. She assumed that when a docket entry is filed, it would have to be stated what that document is. Information as to the date that it was filed would have to be collected. At a minimum, a rule should provide what information MDEC should capture.

The Reporter asked Ms. James what she understood as to the docket situation. Ms. James responded that it is still fairly fluid. The current thought as to the filing of electronic forms is that much information, if not all of the information, will be

entered from the courtroom. Currently, clerks of court are not provided to the masters' courtrooms. The Rule had to be redrafted to contain language that is broad enough to cover any court personnel who are actually entering anything that could be construed as a docket entry.

Ms. Smith remarked that years ago masters did not get an extra employee in the clerk's office. Since masters have become employees of the State, when a master is appointed, a corresponding employee is hired in the clerk's office. Who is handling the docket entries varies. If the clerk is responsible for the docket entries, it is not a good idea for others to change or delete the entries. It would be appropriate for others to handle the calendar.

Judge Weatherly pointed out that frequently one issue that arises is a change of address. Litigants, attorneys, and anyone who is in the courtroom may need this. It would be a good idea for the courtroom clerk to be able to enter this. In Prince George's County, when a hearing notice is sent out, no one looks at the file. A *pro se* litigant may have put his or her change of address form in the file, but no one looks at it. In the masters' cases, the information is not necessarily entered into the docket. Ms. Smith noted that the procedures may be different, depending on which system the court uses.

The Chair commented that he had been told that when something is filed electronically by a party, the clerk will

review it quickly, and unless there is a reason to reject it, that would be the docket entry. If the attorney titles the entry "motion to do _____," this will be the docket entry, and it will be printed as soon as it is filed. Ms. Smith remarked that the date that it was entered, the date that it was accepted, and what the entry describes is not written anywhere. The Chair responded that currently what happens is that papers come into the clerk's office by mail. The papers may get stamped in that day and may not be. It could be three days before a paper is entered on the docket. It is even more difficult to enter judgments, because the judge has to sign and date them. At some point in the future, the judgment will get docketed. The Chair said that he had thought that when MDEC goes into effect, this procedure will be automatic. As soon as anything is filed, it will be entered.

Ms. Smith pointed out that if there is a review of the document, the date that it was entered will be available. The documents and events that are coming out of the court may be entered in the courtroom. The Chair responded that it appears that when someone sends in a document electronically, it is regarded as filed as soon as it is received. Ms. Smith asked what would happen if the costs have not been determined. The Chair replied that subject to costs and a certificate of service (if one is required), it is entered. If the clerk later finds some fault with it, the entry would be subject to being stricken, or if the entry is corrected, it would relate back to when it was filed. A quick date will be assigned instantly. Whatever the

attorney or anyone else puts on the heading of that document is going to be the docket entry. Mr. Klein added that there will be required fields which the Committee should not attempt to define. Ms. Smith said that some information must be available. Mr. Klein noted that it will be more than what is able to be captured now.

The Chair questioned whether any changes need to be made to Rule 16-404 subject to when MDEC goes into effect. Ms. Smith asked about using the word "docket." Judge Zarnoch pointed out that Code, Courts Article, §2-201 (a)(2) provides that the clerk of a court shall: "make proper legible entries of all proceedings of the court and keep them in well-bound books or other permanent form." This is the docket.

Ms. Smith remarked that there used to be a docket book. This is no longer the procedure, and what was the docket is now called a "case history." It is electronic. The Chair commented that Rule 2-601, Entry of Judgment, has similar language, but it only applies to the entry of judgments. He quoted from section (b) of Rule 2-601 as follows: "The clerk shall enter a judgment by making a record of it in writing on the file jacket, or on a docket within the file, or in a docket book, according to the practice of each court...".

The Chair asked if anyone had any changes to propose to Rule 16-404. When MDEC becomes effective, the Rule will be changed. There will no longer be docket books. Ms. Ogletree noted that Caroline County still has docket books. The Committee's view was

that the Rule should not be changed until MDEC becomes effective. Mr. Sullivan remarked that the Title 8 Rules refer to docket entries, which provides a frame of reference.

By consensus, the Committee approved Rule 16-404 as presented.

The Chair presented Rule 16-405, Filing and Removal of Papers, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 400 - CIRCUIT COURT - CLERKS' OFFICES

Rule 16-405. FILING AND REMOVAL OF PAPERS

(a) Applicability

This Rule applies to items filed in paper form and to tangible exhibits. Items filed in electronic form shall be handled by the clerk in accordance with the Rules governing electronic filing and the maintenance of electronic records. This Rule is also subject to any Rules governing the sealing or shielding of court records or information contained in court records.

~~(a)~~ (b) Flat Filing

Any paper received by the clerk shall be filed flat in an appropriate folder.

~~(b)~~ (c) Docket Entries

Each case file shall include a copy of the docket entries pertaining to that case.

~~(c)~~ (d) Exhibits Filed with Pleadings

The clerk ~~shall~~, when practicable, shall file exhibits with the papers which they accompany. When not practicable ~~In other cases~~, the clerk shall file exhibits by ~~such~~ the method ~~as may be~~ that is most convenient and practicable.

~~(d)~~ (e) Removal of Papers and Exhibits

(1) Court Papers and Exhibits Filed with Pleadings

~~No~~ A paper or exhibit filed with a pleading in any case pending in or decided by the court ~~shall~~ may not be removed from the clerk's office, except:

(A) by direction of a judge of the court;

(B) ~~and except as authorized by rule or law; provided, however, that~~ upon signing a receipt, by an attorney of record in the case~~, upon signing a receipt, may withdraw~~ a ~~any such paper or exhibit for presentation~~ for the purpose of presenting the paper or exhibit to the court;

(C) upon signing a receipt, by an auditor, master, or examiner or examiner-master~~, upon signing a receipt, may withdraw such paper or exhibit~~ in connection with the performance of his or her official duties.

(2) Exhibits Filed During Trial

(A) ~~All exhibits~~ Exhibits introduced in evidence or marked for identification during the trial of a case, and not filed as a part of or with the pleadings, shall be retained by the clerk of court or ~~such~~ other person ~~as may be~~ designated by the court.

(B) Except as otherwise required by law, upon the entry of judgment in the case and after ~~either (A)~~ the time for appeal has expired, or ~~(B)~~ in the event of an appeal, ~~the mandate has been received by the clerk~~ **the clerk has received a mandate issued by the final appellate court to consider a**

direct appeal from the judgment, the clerk shall send written notice to all counsel of record and to each self-represented party advising them that if no request to withdraw the exhibits is received within 30 days from the date of the notice, the exhibits will be disposed of. Unless a request is received by the clerk within 30 days ~~from~~ after the date of notice, or unless the court within that period ~~shall~~ orders otherwise, the clerk shall dispose of the exhibits in any appropriate manner, including destruction~~, as may be appropriate~~.

Drafter's note: The language in boldfaced type conforms this Rule to language used in part of an amendment to Rule 4-331 ["...received a mandate issued by the final appellate court to consider a direct appeal from a judgment or a belated appeal permitted as post conviction relief..."] that was approved by the Committee at its March 2012 meeting.

Committee note: This subsection is intended to provide for the safeguarding of trial exhibits. In the absence of a request to withdraw such exhibits, the clerk is given discretion as to their disposition. It is assumed that exhibits such as hospital records, bank records, police records, etc., would normally be returned by the clerk to the proper custodian. Other exhibits might be destroyed, although parties interested in preserving any exhibits could ask for appropriate action by the court. It should be noted that exhibits filed with the pleadings, even though admitted in evidence or marked for identification do not fall under the "disposition" provision of this subsection, but instead under subsection 1.

There are statutes that require the retention of certain evidence. See, for example, Code, Criminal Procedure Article, §8-201, requiring the State to preserve scientific identification evidence.

~~(e)~~ (f) Record of Removed Papers

Whenever a court file or any paper contained ~~therein~~ in it is removed from the clerk's office pursuant to this Rule, the clerk shall maintain an appropriate record of its location ~~while out of his hands~~, including a notation on the docket, if ~~such~~ the file or papers are removed from the courthouse.

~~COMMENT~~

~~The word "court" means the court of a circuit as defined in Rule 1-202 (e). The sources of this Rule are Supreme Bench Rule 331 and Montgomery County Rule 300. With respect to removal of exhibits introduced during trial, Baltimore County Rule 1.7 has been followed; see also Baltimore County Rule 1.12 and Seventh Circuit Rule 7.~~

~~In general, the Rule prohibits the withdrawal of exhibits filed with the pleadings without court order (compare Second Circuit Rule 9). However, exhibits introduced into evidence or marked for identification during a trial could be disposed of by the clerk of court or other person designated by the court after expiration of the time for appeal or after return of the mandate in the event of an appeal. The practice, now used in some areas, especially Baltimore City, of counsel removing exhibits after a trial would be prohibited.~~

Source: This Rule is derived from former Rule ~~1217~~ 16-306.

Rule 16-405 was accompanied by the following Reporter's note.

This Rule incorporates the substance of Rule 16-306 with style changes. The existing Committee note is recommended for deletion.

The Chair noted that the language of subsection (e)(2) of Rule 16-405 had been conformed to the new language in section (c)

of Rule 4-331, Motions for New Trial; Revisory Power. Ms. Smith observed that section (f) provides that the clerk's office is to maintain an appropriate record of the location of any court file or paper that has been removed from the clerk's office. This may cause a problem with court files leaving the courthouse, because a judge or master had taken them to look them over and had not informed the clerk where the files are. Ms. Ogletree remarked that in Caroline County, no one is allowed to take the files until they are listed in the clerk's office.

The Chair inquired if it is necessary for the clerk to keep track of a file that had been given to a judge. Ms. Smith replied it would be helpful to know if someone other than a judge had taken the file out of the courthouse. The Chair clarified that his question pertained to whether the clerk had given the file to the judge, who then intends to take the file home. Does the judge have to tell the clerk that he or she is doing so? Although they may not do this, what is important is that a notation is made that a certain judge has the file. Ms. Smith responded that there have been instances where they could not find a file, because the judge who had it had retired. It is difficult for the clerk to know when a judge or master has taken the file out of the courthouse. The problem is usually not the judges but masters and others who take the files. The Chair commented that it would be difficult to improve the Rule to accommodate this.

Judge Pierson observed that the Subcommittee had extensively discussed section (c) of Rule 16-405. At the Subcommittee meeting, Judge Pierson had stated that Baltimore City maintains its docket entries in electronic form only; they are not put into the case file. Section (c) seems to require a paper copy. Ms. Ogletree added that every time a paper comes in, it has to be printed, which is a waste of time, money, and resources. The Chair inquired as to how the Rule could be improved. Judge Pierson suggested that section (c) be deleted. Judge Weatherly agreed that this is no longer done.

The Reporter suggested that whenever something is put into the case file, a docket entry should be made and kept where appropriate. Judge Pierson said if a docket entry is to be required, this should be put into Rule 16-404. Ms. Smith commented that there is a difference between a physical court file and an electronic court file. The electronic file will always have a copy of the case history in it; the physical file will not necessarily. Judge Weatherly observed that when she is trying a case that has a thick file, she will ask her clerk to print out the important sections of the file, because it is easier to review the file that way. She asked whether attorneys have access to the file. Ms. Ogletree answered that access can be obtained by Casesearch. Judge Zarnoch added that access depends on whether the file has been updated.

The Chair noted that when the record is prepared for an appeal, the docket entries are in the file, or they are attached

to it. Ms. Smith said that they have to be retyped and reversed, so that they are in chronological order, and the most recent papers are at the bottom of the file. Judge Pierson remarked that the procedure in Baltimore City is to print out the case history, which is then turned into an index of record file. The Chair clarified that he had not been referring to the index to the record, because the first notation on the index is the docket entries. Ms. Smith responded that the clerk prints those out on demand. The Chair inquired whether section (c) of Rule 16-405 should be eliminated, or whether it should be moved. Master Mahasa asked whether each case has a docket entry. Ms. Smith answered that it is not a docket entry, but a case history, which includes docket entries. The Chair questioned whether Rule 16-404 covers this. Judge Pierson replied affirmatively.

Ms. Ogletree asked why the Rule does not use the term "case history." Judge Zarnoch reiterated that the Appellate Rules use the term "docket entry." The Chair said that MDEC may be using the same term. Ms. Ogletree remarked that it depends on whether the term is being used generically. Most people understand that the docket entry is a list of every piece of paper that is filed in that case, plus any decisions that the court makes in open court. It is the docket, and it is also the case history. It is easier to call it the "case history," because when someone prints it, that is the name of the button that the person pushes to get it. Ms. Smith added that the word "docket" may only mean what the court had heard that day.

The Chair questioned whether the language should be "case history entry" instead of "docket entry." Mr. Klein replied that it is not known at this point whether the term "case history" is going to carry over into MDEC. The Chair said that if the Committee felt that Rule 16-405 (c) was covered by 16-404, then it would not be necessary to repeat it. Ms. Ogletree pointed out that this is not being done uniformly. Judge Pierson remarked that he was hoping that the papers filed would not have to be printed each time. Ms. Ogletree added that they are printed each time an entry is added. The Chair asked if section (c) should be deleted. By consensus, the Committee agreed that section (c) should be eliminated from Rule 16-405.

Mr. Klein noted that the language of section (d) is awkward. He suggested that the language should be: "Unless not practicable, the clerk shall file exhibits with the papers that they accompany; otherwise, the clerk shall file exhibits by another method that is convenient and practicable." By consensus, the Committee approved the change suggested by Mr. Klein.

By consensus, the Committee approved Rule 16-405 as amended.

The Chair presented Rule 16-406, Notice to Court of Special Appeals, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 400 - CIRCUIT COURT - CLERKS' OFFICES

Rule 16-406. NOTICE TO COURT OF SPECIAL APPEALS

By the third working day of each month, the clerk shall ~~send~~ mail or electronically transmit to the Clerk of the Court of Special Appeals a list of all ~~cases~~ actions in which, during the preceding calendar month, (1) a notice of appeal [or application for leave to appeal] to the Court of Special Appeals ~~has been~~ was filed, (2) a timely motion pursuant to Rule 2-532, 2-533, or 2-534 ~~has been~~ was filed after the filing of a notice of appeal, or (3) an appeal to the Court of Special Appeals ~~has been~~ was stricken pursuant to Rule 8-203. The list shall include the title and docket number of the case, the name and address of counsel for each appellant~~(s)~~, and the date on which the notice of appeal, the motion, or the dismissal was filed.

Source: This Rule is derived from former Rule ~~1219~~ 16-309.

Rule 16-406 was accompanied by the following Reporter's note.

This Rule incorporates the substance of Rule 16-309, with style changes.

The Chair commented that instead of the language "the third working day," it would be consistent with other Rules to use "the third business day" in Rule 16-406. By consensus, the Committee agreed to this change.

Mr. Johnson inquired if mailing will be phased out, since electronic filing is available. The Chair answered affirmatively. MDEC will be starting in Anne Arundel County in August of 2013. It will be introduced county by county or in clusters of counties every seven months thereafter. The idea was

not to change any of the existing rules when the new system will be starting in only one county. A separate set of rules can be drafted for Anne Arundel County, and then those Rules can be used as a template as other counties come online. Then, all of the Rules can be changed.

The Reporter asked why the reference to "or application for leave to appeal" is underlined and stricken at the same time. The Chair answered that the current Rule only applies to notices of appeal, and the question is whether to add an "application for leave to appeal." The Reporter asked Ms. Smith what she had been sending to the Clerk of the Court of Special Appeals. Ms. Smith replied that she is sending notices of appeal and applications for leave to appeal. The Chair said that the applications for leave to appeal should be added to the Rule. By consensus, the Committee agreed to make that change.

By consensus, the Committee approved Rule 16-406 as amended.

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