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 Commerce Park Drive, Annapolis, Maryland on September 6, 2012.

Members present:

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

Robert R. Bowie, Jr., Esq.
James E. Carbine, Esq.
Christopher R. Dunn, Esq.
Hon. Angela M. Eaves
Ms. Pamela Q. Harris
Harry S. Johnson, Esq.
J. Brooks Leahy, Esq.
Hon. Thomas J. Love
Timothy F. Maloney, Esq.
Robert R. Michael, Esq.
Hon. Danielle M. Mosley
Hon. John L. Norton, III
Anne C. Ogletree, Esq.
Scott G. Patterson, Esq.
Hon. W. Michel Pierson
Sen. Norman R. Stone, Jr.
Steven M. Sullivan, Esq.
Hon. Julia B. Weatherly
Robert Zarbin, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Cheryl Lyons-Schmidt, Esq., Assistant Reporter
Ms. Nancy Faulkner, Circuit Court for Anne Arundel County
D. Robert Enten, Esq.
Jeffrey Nadel, Esq.
Vicky Orem, Esq., Orphans' Court
Hon. Denise O. Shaffer, Maryland Office of Administrative Hearings
Jedd Bellman, Esq., Office of the Attorney General
James Cosgrove, Maryland Land Title Association
Scott Nadel, Esq.
Sharon R. Harvey, Esq., Administrative Office of the Courts

The Chair convened the meeting, welcoming everyone. He introduced the new members of the Committee, the Honorable Angela M. Eaves, of the Circuit Court for Harford County; the Honorable

Danielle M. Mosley of the District Court for Anne Arundel County; Christopher R. Dunn, Esq.; and Pamela Q. Harris, Court Administrator for Montgomery County.

The Chair told the Committee that he would explain the work plan for the upcoming 2012-2013 year. At the request of the Rules Committee, the Court of Appeals solicited public comments on certain basic issues relating to the new Maryland Electronic Courts (MDEC) system. The notice requesting comments about the new system, which is posted on the Judiciary's website, was also sent to any groups that the Committee could think of who may have some interest in MDEC, including (1) the Maryland State Bar Association (MSBA), with a request to the Executive Director that every section and committee that is part of the MSBA be apprised of the new system, (2) every judge, and (3) the Maryland Judicial Conference. Written comments are due by September 21, 2012. On October 18, 2012, the Court of Appeals will hold an open meeting on MDEC to consider the written comments. They are not going to entertain oral presentations. It is a meeting, not a hearing, unless the Court invites comments.

The Chair said that a preliminary drafting group is working on drafting the MDEC Rules. They have been meeting for many months. The group, which is chaired by James E. Carbine, Esq., is not a subcommittee of the Rules Committee. It is comprised of Mr. Carbine, the Chair, and the Reporter. They are meeting with the program manager of MDEC, who is from the Judicial Information Systems, and a representative of the contractor selected to

design the system. There will be one more meeting, which will hopefully result in a preliminary product. The official Subcommittee comprised of Mr. Carbine, Ms. Harris, Mr. Johnson, Judge Love, Judge Norton, Senator Stone, Mr. Sullivan, Ms. Smith, Delegate Vallario, and the Chair will then review that draft. Hopefully, the Subcommittee's proposal would be before the full Committee by January, 2013. It is the Chair's hope to have a report to the Court of Appeals with the Committee's proposed Rules in April of 2013. They are working against a deadline.

The Chair said that the project is scheduled to commence in Anne Arundel County on August 31, 2013. The hope is that the Court of Appeals will hold its hearing on the Rules in May, 2013, and adopt the Rules with whatever amendments they choose to make. In June, July, and August, everyone will be apprised as to what the Rules are. The process of education and training can begin. What has been drafted so far is not a huge set of rules. They are manageable in terms of volume.

The Chair stated that the next item for the work plan is the reorganization and updating of the Court Administration Rules, the final part of which are on the agenda for the meeting today. Other parts had been considered at the last three meetings. A draft of the reorganization of all of the rules pertaining to attorneys has been approved by the Attorneys and Judges Subcommittee, and this will hopefully go on the agenda of the full Committee in October. The Alternative Dispute Resolution (ADR) and Appellate Subcommittees had approved and are finalizing

the ADR Rules for the Court of Special Appeals. Hopefully, they will be ready for the Committee to consider in October. The Court of Special Appeals is anxious to have those Rules. There is a draft of the reorganization of all of the Rules pertaining to judges, which is ready for review by the Attorneys and Judges Subcommittee. The first meeting of that Subcommittee is scheduled for October 24, 2012. When those Rules are finalized, the total reorganization of Title 16 will be completed. The Court of Appeals has scheduled a hearing on the 174th Report for September 20, 2012.

The Chair told the Committee that he and the Reporter had been working for a long time on a revision of the Juvenile Rules. It has been a very slow process, but they are getting near the end. Hopefully, the Rules should be ready for consideration by the Juvenile Subcommittee in the late fall or early winter. This is what the Committee will be doing for the next eight or nine months, plus anything else that arises.

The Chair said that the Committee had been sent four sets of minutes. He asked if anyone had any comments on the minutes. By consensus, the Committee approved the minutes as presented.

Additional Agenda Item

The Chair presented Rules 2-521 and 4-326, Jury - Review of Evidence - Communications, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-521 to delete current section (d) and add a new section (d) specifying certain duties of judges, clerks, and other court officials and employees concerning written and oral communications from the jury, as follows:

Rule 2-521. JURY - REVIEW OF EVIDENCE - COMMUNICATIONS

(a) Jurors' Notes

The court may, and on request of any party shall, provide paper notepads for use by sworn jurors, including any alternates, during trial and deliberations. The court shall maintain control over the jurors' notes during the trial and promptly destroy the notes after the trial. Notes may not be reviewed or relied upon for any purpose by any person other than the author. If a sworn juror is unable to use a notepad because of a disability, the court shall provide a reasonable accommodation.

(b) Items Taken to Jury Room

Sworn jurors may take their notes with them when they retire for deliberation. Unless the court for good cause orders otherwise, the jury may also take exhibits that have been admitted in evidence, except that a deposition may not be taken into the jury room without the agreement of all parties and consent of the court. Written or electronically recorded instructions may be taken into the jury room only with the permission of the court.

Cross reference: See Rule 5-802.1 (e).

(c) Jury Request to Review Evidence

The court, after notice to the parties, may make available to the jury testimony or other evidence requested by it. In order that undue prominence not be given to the evidence requested, the court may also make available additional evidence relating to the same factual issue.

(d) Communications with Jury

~~The court shall notify the parties of the receipt of any communication from the jury pertaining to the action as promptly as practicable and in any event before responding to the communication. All such communications between the court and the jury shall be on the record in open court or shall be in writing and filed in the action. The clerk or the court shall note on a written communication the date and time it was received from the jury.~~

(1) Notification of Judge; Duty of Judge

A court official or employee who receives any written or oral communication from the jury shall immediately notify the presiding judge of the communication. The judge shall promptly, and before responding, direct that the parties be notified of the communication and invite and consider, on the record, any response proposed by the parties. The judge may respond to the communication (A) in writing, or (B) orally in open court on the record.

(2) Duty of Clerk

The clerk shall (A) record on any written communication the date and time it was received by the judge, and (B) enter on the docket (i) any written communication and the nature of any oral communication, (ii) the date and time the communication was received by the judge, (iii) that the parties were notified and had an opportunity on the record to recommend a response, (iv) how the communication was addressed by the judge, and (v) any written response by the judge to the communication.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rules 558 a, b and d and 758 b.
Section (c) is derived from former Rule 758 c.
Section (d) is derived in part from former Rule 758 d and is in part new.

Rule 2-521 was accompanied by the following Reporter's Note.

Amendments to Rules 2-521 and 4-326 are proposed in light of *Black v. State*, 426 Md. 328 (2012).

In the 174th Report of the Rules Committee, the Committee proposed the addition of the following sentence to Rules 2-521 (d) and 4-326 (d):

> The court shall state on the record the nature of the communication, that the parties were notified of the communication, and how the communication was addressed.

In lieu of an amendment to section (d), the section is proposed to be rewritten in its entirety to specify in detail the procedures that must be followed whenever there is a communication from the jury.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-326 to delete current section (d) and add a new section (d) specifying certain duties of judges, clerks, and other court officials and employees concerning written and oral communications from the jury, as follows:

Rule 4-326. JURY - REVIEW OF EVIDENCE - COMMUNICATIONS

(a) Jurors' Notes

The court may, and on request of any party shall, provide paper notepads for use by sworn jurors, including any alternates, during trial and deliberations. The court shall maintain control over the jurors' notes during the trial and promptly destroy the notes after the trial. Notes may not be reviewed or relied upon for any purpose by any person other than the author. If a sworn juror is unable to use a notepad because of a disability, the court shall provide a reasonable accommodation.

(b) Items Taken to Jury Room

Sworn jurors may take their notes with them when they retire for deliberation. Unless the court for good cause orders otherwise, the jury may also take the charging document and exhibits that have been admitted in evidence, except that a deposition may not be taken into the jury room without the agreement of all parties and the consent of the court. Electronically recorded instructions or oral instructions reduced to writing may be taken into the jury room only with the permission of the court. On request of a party or on the court's own initiative, the charging documents shall reflect only those charges on which the jury is to deliberate. The court may impose safeguards for the preservation of the exhibits and the safety of the jury.

Cross reference: See Rule 5-802.1 (e).

(c) Jury Request to Review Evidence

The court, after notice to the parties, may make available to the jury testimony or other evidence requested by it. In order that undue prominence not be given to the evidence requested, the court may also make available additional evidence relating to the same factual issue.

(d) Communications with Jury

~~The court shall notify the defendant and the State's Attorney of the receipt of any communication from the jury pertaining to the action as promptly as practicable and in any event before responding to the communication. All such communications between the court and the jury shall be on the record in open court or shall be in writing and filed in the action. The clerk or the court shall note on a written communication the date and time it was received from the jury.~~

(1) Notification of Judge; Duty of Judge

A court official or employee who receives any written or oral communication from the jury shall immediately notify the presiding judge of the communication. The judge shall promptly, and before responding, direct that the parties be notified of the communication and invite and consider, on the record, any response proposed by the parties. The judge may respond to the communication (A) in writing, or (B) orally in open court on the record.

(2) Duty of Clerk

The clerk shall (A) record on any written communication the date and time it was received by the judge, and (B) enter on the docket (i) any written communication and the nature of any oral communication, (ii) the date and time the communication was received by the judge, (iii) that the parties were notified and had an opportunity on the record to recommend a response, (iv) how the communication was addressed by the judge, and (v) any written response by the judge to the communication.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rule 758 a and b and 757 e. Section (c) is derived from former Rule 758 c.
Section (d) is derived in part from former Rule 758 d and is in part new.

Rule 4-326 was accompanied by the following Reporter's note. See the Reporter's note to Rule 2-521.

The Chair explained that the previous October after having just heard two or three cases pertaining to notes from the jury that were not properly handled, the Court of Appeals had asked the Committee to consider a rule that would require judges to put on the record when any communication from the jury has been received and what the judge has done about it.

After the Committee drafted some proposed changes to the Rules, in response to that request, the Court had another criminal case, *Black v. State*, 426 Md. 328 (2012), in which, after an appeal had been noted, the public defender, in reviewing the record, found several notes from the jury in the file that no one seemed to know about, or how they got into the file. The judge said that he had never seen the notes, and he actually signed an affidavit to that effect. It occurred to us that the Rule needs to be expanded to address this situation. No one knew whether the clerk or bailiff or maintenance person cleaned up the jury room hours later and found the notes on the table, or whether someone gave them to the bailiff who gave them to the clerk. Obviously, the clerk had the notes at some point, because they were in the file.

The Chair noted that Rules 2-521 and 4-326, which had been redrafted by the Committee in October, was in the 174th Report, which was already before the Court of Appeals. *Black* was filed

in May, 2012, and the Committee did not discuss it at its June meeting. The thought was that since the Court is considering other new provisions in Rules 2-521 and 4-326, the Committee might want to add some language to take care of this new problem. In Rule 2-521, which is the civil jury Rule, and Rule 4-326, which is the criminal jury Rule, section (d) had been revised to require that a court official or employee who receives any written or oral communication from the jury shall immediately notify the presiding judge. Section (d) then provides what the judge is supposed to do, which is based on what is in the existing Rule. A new subsection (d)(2) has been added pertaining to what the clerk is supposed to do. The clerk shall record on any written communication the date and time that it was received by the judge and enter the information on the docket, so that there is a record.

The Chair said that the Reporter had pointed out that the current language of section (d) is: "The court shall notify ... of the receipt of any communication from the jury pertaining to the action...". The language "pertaining to the action" could be added back in to subsection (d)(1). It is not in the new language. Judge Pierson remarked that sometimes the jury has only logistical questions that do not have any impact on the action at all. Issues come up that have nothing to do with the case, such as if the jury can take a break. Particularly, in a criminal case, if the court has to follow the procedures of the Rule for such a question, it places a burden on the court, since

the defendant may have to be brought back to the courtroom. Judge Pierson agreed that the language "pertaining to the action" should be put back into the Rule. The Chair observed that this language is in the Rule now, so there is no harm in including it in the proposed Rule. Judge Weatherly commented that in Prince George's County, the notes from the jury are on the same pad that the jurors take notes on. It is a yellow pad with a signature at the bottom for the attorneys. It is disseminated to the courtrooms. This is the way Prince George's County tries to make the notes look like they were not on a piece of scratch paper.

Judge Pierson suggested that in place of the language in the Rule that reads: "...consider, on the record, any response proposed by the parties," it would be better to provide "...consider on the record, the parties' position on any response." The court may have a response, so the suggested change broadens the Rule. By consensus, the Committee approved this change.

The Chair asked if there was a motion to approve the changes to Rules 2-521 and 4-326, because the changes had not been suggested by a subcommittee. Mr. Maloney moved that the changes should be approved, the motion was seconded, and it passed unanimously. The Chair stated that revised Rules 2-521 and 4-326 would be a handout for the Court of Appeals when they consider the 174th Report.

Agenda Item 1. Consideration of proposed amendments to: Rule 12-704 (Termination of Dormant Mineral Interest), Rule 14-202 (Definitions), Rule 14-207 (Pleadings; Service of Certain Affidavits, Pleadings, and Papers), Rule 14-209 (Service in Actions to Foreclose on Residential Property; Notice), Rule 14-209.1 (Owner-Occupied Residential Property), Rule 14-211 (Stay of the Sale; Dismissal of Action), Rule 14-214 (Sale), Rule 14-215 (Post-Sale Procedures), and Rule 14-502 (Foreclosure of Right of Redemption - Complaint)

Ms. Ogletree presented Rule 12-704, Termination of Dormant Mineral Interest, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 700 - SEVERED MINERAL INTERESTS

AMEND Rule 12-704 (e) to add language describing the contents of the court order, as follows:

Rule 12-704. TERMINATION OF DORMANT MINERAL INTEREST

(a) Petition

(1) Generally

At any time after October 1, 2011, a surface owner of real property that is subject to a severed mineral interest may initiate an action to terminate a dormant mineral interest by filing a petition in the circuit court of any county in which the surface estate is located, but if a trust created under Rule 12-703 is in existence, then in the county where the trust was created.

(2) Contents

The petition shall be captioned "In

the Matter of ...," stating the location of each surface estate subject to the mineral interest. It shall be signed and verified by the petitioner and shall contain at least the following information:

(A) the petitioner's name, address, and telephone number;

(B) the name and address of all other surface owners;

(C) the reason for seeking the assumption of jurisdiction by the court and a statement of the relief sought;

(D) a legal description of the severed mineral interest;

(E) the name, address, telephone number, and nature of the interest of all interested persons, including each person who has previously recorded a notice of intent to preserve the mineral interest or a part of a mineral interest pursuant to Code, Environment Article, §15-1204;

(F) the nature of the interest of the petitioner;

(G) the nature and location of the surface estate or estates subject to a severed mineral interest; and

(H) an affidavit signed by each surface owner affirming fee simple ownership of the surface estate, including a reference to each recorded document establishing such ownership. If any person whose name is required information under this subsection is unknown, that fact shall be stated. If any person is the unknown heir of a decedent, that person shall be described as the unknown heir of _____, deceased.

Cross reference: See Code, Environment Article, §§15-1203 through 15-1205.

(b) Service

The proceeding shall be deemed in rem

or quasi in rem. A copy of the petition and attached documents shall be served on all persons with a legal interest in the severed mineral interest named in the petition and all surface owners who have not joined in the petition. Service on a person alleged to be unknown or missing shall be pursuant to Rule 2-122. Otherwise, service shall be pursuant to Rule 2-121.

(c) Late Notice of Intent to Preserve Interest

Unless the mineral interest has been unused for a period of 40 years or more preceding the commencement of the action, the court shall permit the owner of the mineral interest to record a late notice of intent to preserve the mineral interest and dismiss the action, provided that the owner of the mineral interest pays the litigation expenses incurred by the surface owner of the real property that is subject to the mineral interest.

Cross reference: See Code, Environment Article, §15-1203 (c) for actions constituting use of an entire mineral interest.

(d) Hearing

The court, in its discretion, may hold a hearing on the petition.

(e) Order

The court shall enter an order granting or denying the petition. An order terminating a mineral interest shall ~~describe each tract of the surface estate overlying the terminated mineral interest into which the mineral interest is merged, and shall~~ identify: (1) the mineral interest, (2) each surface estate into which the mineral interest is merged, including the tax map and parcel number, (3) the name of each surface owner, (4) if known, the name of each person that owned the mineral interest prior to the termination date, and any information determined by the court as appropriate to

describe the effect of the termination and merger of the mineral interest. The order also shall describe the proportional shares, if any, of each surface owner in each tract. The clerk shall record a copy of the order of termination in the land records of each county in which the mineral interest is located.

Cross reference: See Code, Environment Article, §15-1203 (d)(2) for the effects of an order terminating a mineral interest. See also Code, Environment Article, §15-1203 (d)(3).

Source: This Rule is new.

Rule 12-704 was accompanied by the following Reporter's note.

Chapter 370, Laws of 2012 (HB 402), added to the requirements in the court order terminating a mineral interest in real property. The Property Subcommittee recommends amending Rule 12-704 (e) to incorporate the new language in the statute, Code, Environment Article, §15-1203 (d)(3).

Ms. Ogletree told the Committee that the legislature in Chapter 370, Laws of 2012 (HB 402), specified certain requirements that are to be contained in the court order terminating a dormant mineral interest. The Property Subcommittee tracked the statute and included those items in section (e), Order, of Rule 12-704. Probably, most orders have had them anyway, but this is what is now required by the statute.

By consensus, the Committee approved Rule 12-704 as presented.

Ms. Ogletree presented Rule 14-202, Definitions, for the

Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-202 to add certain definitions, to correct internal references, and to make stylistic changes, as follows:

Rule 14-202. DEFINITIONS

In the Rules in this Chapter, the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(a) Assent to a Decree

"Assent to a decree" means a provision in a lien instrument assenting, in the event of a specified default, to the entry of an order for the sale of the property subject to the lien.

(b) Borrower

"Borrower" means:

(1) a mortgagor;

(2) a grantor of a deed of trust;

(3) any person liable for the debt secured by the lien;

(4) a maker of a note secured by an indemnity deed of trust;

(5) a purchaser under a land installment contract;

(6) a person whose property is subject to a lien under Code, Real Property Article, Title 14, Subtitle 2 (Maryland Contract Lien

Act); and

(7) a leasehold tenant under a ground lease, as defined in Code, Real Property Article, §8-402.3 (a)(6).

(c) Certificate of Property Unfit for Human Habitation

"Certificate of property unfit for human habitation" means (1) in Baltimore City, a certificate of substantial repair, or (2) a certificate for residential property issued by a unit of a county or municipal corporation indicating that the county or municipal corporation has determined that the residential property is unfit for human habitation.

(d) Certificate of Vacancy

"Certificate of vacancy" means a certificate for residential property issued by a unit of a county or municipal corporation indicating that the residential property is vacant.

~~(c)~~ (e) Debt

"Debt" means a monetary obligation secured by a lien.

~~(d)~~ (f) Final Loss Mitigation Affidavit

"Final loss mitigation affidavit" means an affidavit substantially in the form prescribed by regulation adopted by the Commissioner of Financial Regulation that:

(1) is made by a person authorized to act on behalf of a secured party to a mortgage or deed of trust on residential property that is the subject of a foreclosure action;

(2) certifies the completion of the final determination of loss mitigation analysis in connection with the mortgage or deed of trust or states why no loss mitigation analysis is required; and

(3) if a loan modification or other loss mitigation was denied, provides an explanation for the denial.

Committee note: The Committee believes that a final loss mitigation affidavit should be filed in every action seeking foreclosure of a lien on residential property, whether or not the property is owner-occupied. If the affiant has determined that the property is not owner-occupied residential property and, therefore, no loss mitigation analysis is required, the affiant should so state. See Rule 14-207 (b)(7). The definition set forth in Code, Real Property Article, §7-105.1 is supplemented to include this requirement, and it is clarified to include the requirement that the form of affidavit be substantially in the form prescribed by regulation adopted by the Commissioner of Financial Regulation. Other modifications to the definition are stylistic only.

If the property is owner-occupied residential property but the secured party, such as an individual purchase-money mortgagee, is not required to provide or participate in a loss mitigation program, the affiant should so state as an explanation for the denial of a loan modification or other loss mitigation.

Cross reference: See Chapter 485, Laws of 2010 (HB 472), Section 4 (3)(i) for the form of Final Loss Mitigation Affidavit required prior to the adoption of regulations by the Commissioner of Financial Regulation.

~~(e)~~ (g) Foreclosure Mediation

(1) Generally

"Foreclosure mediation" means a conference at which the parties in a foreclosure action, their attorneys, additional representatives of the parties, or a combination of those persons appear before an impartial individual to discuss the positions of the parties in an attempt to reach agreement on a loss mitigation program for the mortgagor or grantor.

Committee note: This is the definition stated in Code, Real Property Article, §7-105.1 (a)(3). Code, Real Property Article, §§7-105.1 ~~(i), (j), (k), and (l)~~ (d), (k), (l), (m), and (n) require that the foreclosure mediation be conducted by the Office of Administrative Hearings.

(2) Prefile Mediation

"Prefile mediation" means foreclosure mediation that occurs in accordance with Code, Real Property Article, §7-105.1 (d) before the date on which the order to docket or complaint to foreclose is filed.

(3) Postfile Mediation

"Postfile mediation" means foreclosure mediation that occurs in accordance with Code, Real Property Article, §7-105.1 (j) after the date on which the order to docket or complaint to foreclose is filed.

~~(f)~~ (h) Lien

"Lien" means a statutory lien or a lien upon property created or authorized to be created by a lien instrument.

~~(g)~~ (i) Lien Instrument

"Lien instrument" means any instrument creating or authorizing the creation of a lien on property, including:

(1) a mortgage;

(2) a deed of trust;

(3) a land installment contract, as defined in Code, Real Property Article, §10-101(b);

(4) a contract creating a lien pursuant to Code, Real Property Article, Title 14, Subtitle 2;

(5) a deed or other instrument reserving a vendor's lien; or

(6) an instrument creating or authorizing the creation of a lien in favor of a homeowners' association, a condominium council of unit owners, a property owners' association, or a community association.

~~(h)~~ (j) Loss Mitigation Analysis

"Loss mitigation analysis" means an evaluation of the facts and circumstances of a loan secured by owner-occupied residential property to determine:

(1) whether a mortgagor or grantor qualifies for a loan modification; and

(2) if there will be no loan modification, whether any other loss mitigation program may be made available to the mortgagor or grantor.

~~(i)~~ (k) Loss Mitigation Program

"Loss mitigation program" means an option in connection with a loan secured by owner-occupied residential property that:

(1) avoids foreclosure through a loan modification or other changes to existing loan terms that are intended to allow the mortgagor or grantor to stay in the property;

(2) avoids foreclosure through a short sale, deed in lieu of foreclosure, or other alternative that is intended to simplify the relinquishment of ownership of the property by the mortgagor or grantor; or

(3) lessens the harmful impact of foreclosure on the mortgagor or grantor.

~~(j)~~ (l) Owner-Occupied Residential Property

"Owner-occupied residential property" means residential property in which at least one unit is occupied by an individual who has an ownership interest in the property and uses the property as the individual's primary residence.

~~(k)~~ (m) Power of Sale

"Power of sale" means a provision in a lien instrument authorizing, in the event of a specified default, a sale of the property subject to the lien.

~~(l)~~ (n) Preliminary Loss Mitigation Affidavit

"Preliminary loss mitigation affidavit" means an affidavit substantially in the form prescribed by regulation adopted by the Commissioner of Financial Regulation that:

(1) is made by a person authorized to act on behalf of a secured party to a mortgage or deed of trust on owner-occupied residential property that is the subject of a foreclosure action;

(2) certifies the status of an incomplete loss mitigation analysis in connection with the mortgage or deed of trust; and

(3) includes reasons why the loss mitigation analysis is incomplete.

Cross reference: See Chapter 485, Laws of 2010 (HB 472), Section 4 (3)(ii) for the form of Preliminary Loss Mitigation Affidavit required prior to the adoption of regulations by the Commissioner of Financial Regulation.

~~(m)~~ (o) Property

"Property" means real and personal property of any kind located in this State, including a condominium unit and a time share unit.

~~(n)~~ (p) Record Owner

"Record owner" of property means a person who as of 30 days before the date of providing a required notice holds record title to the property or is the record holder of the rights of a purchaser under a land installment contract.

~~(o)~~ (q) Residential Property

"Residential property" means real property with four or fewer single family dwelling units that are designed principally and are intended for human habitation. It includes an individual residential condominium unit within a larger structure or complex, regardless of the total number of individual units in that structure or complex. "Residential property" does not include a time share unit.

Cross reference: See Code, Real Property Article, §7-105.1 (a).

~~(p)~~ (r) Sale

"Sale" means a foreclosure sale.

~~(q)~~ (s) Secured Party

"Secured party" means any person who has an interest in property secured by a lien or any assignee or successor in interest to that person. The term includes:

(1) a mortgagee;

(2) the holder of a note secured by a deed of trust or indemnity deed of trust;

(3) a vendor under a land installment contract or holding a vendor's lien;

(4) a person holding a lien under Code, Real Property Article, Title 14, Subtitle 2;

(5) a condominium council of unit owners;

(6) a homeowners' association;

(7) a property owners' or community association; and

(8) a ground lease holder, as defined in Code, Real Property Article, §8-402.3 (a)(3).

The term does not include a secured party under Code, Commercial Law Article, §9-102 (a)(3).

~~(r)~~ (t) Statutory Lien

"Statutory lien" means a lien on property created by a statute providing for foreclosure in the manner specified for the foreclosure of mortgages, including a lien created pursuant to Code, Real Property Article, §8-402.3 (d).

Committee note: Liens created pursuant to Code, Real Property Article, Title 14, Subtitle 2 (Maryland Contract Lien Act) are to be foreclosed "in the same manner, and subject to the same requirements, as the foreclosure of mortgages or deeds of trust." See Code, Real Property Article, §14-204 (a). A lien for ground rent in arrears created pursuant to Code, Real Property Article, §8-402.3 (d) is to be foreclosed "in the same manner and subject to the same requirements, as the foreclosure of a mortgage or deed of trust containing neither a power of sale not an assent to decree." See Code, Real Property Article, §8-402.3 (n).

Source: This Rule is derived in part from the 2008 version of former Rule 14-201 (b) and is in part new.

Rule 14-202 was accompanied by the following Reporter's note.

Chapter 156, Laws of 2012 (HB 1374) amended Code, Real Property Article, §7-105.1 by adding a new procedure entitled "prefile mediation" that can occur before the date on which the order to docket or complaint to foreclose is filed. Current foreclosure mediation will now be entitled "postfile mediation." The Property Subcommittee recommends amending Rules 14-202, 14-207, 14-209, 14-209.1, 14-211, and 14-214 to conform to this change to the foreclosure mediation procedure.

The new legislation also provides a procedure for persons with a secured interest in residential property when the mortgage or deed of trust on the property is in default

> to request that a county or municipal corporation issue a certificate of vacancy or a certificate of property unfit for human habitation. The record owner or occupant of the property may challenge the certificate by notifying the circuit court of the challenge. A secured party filing an order to docket or complaint to foreclose based on a certificate of vacancy or a certificate of property unfit for human habitation is required to serve with foreclosure documents a description of the procedure to challenge the certificate and the form to be used to make the challenge. If the certificate is valid at the time of filing the order to docket or complaint to foreclose, the requirements of Code, Real Property Article, §7-105.1 do not apply. If a challenge is upheld, the statutory requirements do apply. The Property Subcommittee recommends adding a definition of the terms "certificate of vacancy" and "certificate of property unfit for human habitation" to Rule 14-202 and adding to section (b) of Rule 14-207 a reference to the documents required to be filed by the secured party when an order to docket or complaint to foreclose is based on one of the certificates as well as a Committee note after this addition explaining the procedure and providing the appropriate Code reference.

Ms. Ogletree explained that there are additions to the definitions in Rule 14-202. The first is because the legislature in Chapter 156, Laws of 2012 (HB 1374) allowed an exemption from the mediation requirements in foreclosure cases for properties in which the mortgage or deed of trust is in default when a county or municipal corporation has issued a certificate that the property is unfit for human habitation or that the property is vacant. The Subcommittee incorporated the statutory definitions of those certificates into sections (c) and (d) of Rule 14-202.

The Chair said that he had some questions about Rule 14-202. The questions stemmed from the statute, a copy of which was in the meeting materials. His concern was based on subsection (f)(1) of the statute. The statute permits a challenge by the record owner or occupant of a property to one of these certificates from the county or municipal corporation. The language of subsection (f)(1) is that the challenge is effected "by notifying the circuit court of the challenge." Who adjudicates the challenge? The statute provides that the Commissioner of Financial Regulation is supposed to come up with a procedure.

The Chair asked Mr. Bellman, Assistant Attorney General, who works with the Commissioner, if any procedures had been written. Mr. Bellman answered that the Commissioner had taken the position which was the balance between what he saw as his obligation while still respecting the court's jurisdiction. The new regulations, which are currently going through the rulemaking process, do not necessarily address this issue. The Commissioner's position was that the rules of the court would dictate how that challenge to the certificates of being unfit for human habitation or of vacancy would be effected. The Commissioner believes that the courts would want to adjudicate this whether it be by motion or some other procedure. However, if it would be a challenge to the local jurisdiction, that would take longer than the actual process that is afforded to a secured party if he or she determines that the property is problematic.

The Chair remarked that his problem was that some county or county agency issues the certificate. If someone would like to challenge that, normally, there is some administrative proceeding for making that challenge. If someone is unhappy with the final administrative decision, then there is an action for judicial review. The Chair said that he was not sure about what happens if the homeowner tells the court that he or she is challenging the issuance of the certificate. Is this in the nature of a judicial review action of what the county has done? Ms. Ogletree replied that she had thought it was more like a petition for a stay while the issue is being decided, but this still does not address who determines it. The Chair inquired if this is to be a trial in the court in the foreclosure action. Normally, in a judicial review action, the record made by the agency is what prevails. No new evidence is taken in court as to whether the house is vacant or not, or whether the house is falling apart or not.

Mr. Bellman reiterated that the new administrative processes take a great amount of time. He was not sure if, in an order to docket, the court would want to wait for that administrative process to run to give someone an opportunity to challenge, whether it is by filing exceptions or by some other process, so that the decision can be appealed to the administrative body before the person gets to judicial review. It would seem to be more logical, if the court believes it is acceptable, to wrap that challenge process into the foreclosure action, or at least

to give the consumer the opportunity to challenge it in front of a judge who will determine whether the foreclosure sale should go forward or not. The Chair noted that the Rule at this point has no provision to address this. The statute provides that the Commissioner of Financial Regulation is supposed to come up with a procedure. There is a gap. Mr. Bellman responded that in a notice of intent to foreclose for non-owner occupied property, the loan servicer is required to give a phone number, so that the consumer can contact the State to express his or her belief that the property is indeed owner-occupied. However, this is prior to the order to docket, and it does not address the issue raised by the Chair. There are some procedures within the regulations to give a consumer the opportunity to challenge a determination of non-owner occupancy.

The Chair questioned whether Rule 14-202 should refer to a procedure to make a challenge. It will have to be a expedited procedure. The secured party, who has obtained one of these certificates will file an order to docket. The homeowner sends a piece of paper to the court challenging the certificate. Presumably, the Court cannot proceed with the foreclosure until the challenge is resolved, which may require an evidentiary hearing. But the statute states that the certificate is only good for 60 days. What happens if it takes longer than 60 days to resolve the challenge? The secured party would have to start all over again.

Judge Pierson commented that the effect of the certificate

is to enable the secured party to avoid the requirements of Code, Real Property Article, §7-105.1. This is the only effect of the certificate. It does not address the concepts of judicial review, condemnation, etc. Baltimore City has cases where the secured party avers that the property is not owner-occupied, and therefore some of the requirements of the statute and rules do not apply. The defendant answers that the property is owner-occupied, and this is adjudicated like any other motion. There is a hearing at which evidence is taken. The procedure for the certificates would be similar.

The Chair responded that it is not quite the same, because the determination is based on a certificate that a government agency has issued, not on an allegation of a party that another party contests. The statute states that the Commissioner of Financial Regulation is supposed to come up with a procedure for addressing this. Judge Pierson remarked that he thought that this provision had been stricken. It had been subsection (f)(2) of Code, Real Property Article, §7-105.11. The Chair pointed out subsection (r)(3) of Code, Tax - General Article, §10-208, which states that the Commissioner of Financial Regulation shall develop the description of the procedure to challenge a certificate of vacancy or certificate of property unfit for human habitation and the form to be used to make the challenge that are required to be served under Code, Real Property Article, §7-105.11 (f)(2).

Mr. Enten noted that Code, Real Property Article, §7-105.11

was enacted because of requests from Baltimore City and the other political subdivisions and neighborhood groups, who wanted an expedited process when there was a problem house in the neighborhood. It did not come from the lenders. It had been the subject of much discussion and many negotiations. Mr. Enten read from Code, Real Property Article, §7-105.11 (f)(1) as follows: "The record owner or occupant of a property may challenge the certificate of vacancy or certificate of property unfit for human habitation under this section by notifying the circuit court of the challenge." He assumed that the "circuit court" means the circuit court in the foreclosure proceeding.

Mr. Enten said that what he interpreted from the statute was not that the homeowner made a challenge, it was that the person made the challenge by notifying the circuit court that has the foreclosure case that he or she is challenging the validity of the certificate. Based on this, Mr. Enten's view was that it is not an administrative challenge; it is like any other defense that a borrower may advocate for in a foreclosure proceeding. The borrower would state that he or she is entitled to notice and mediation and anything else that an owner-occupied residential property gets under Code, Real Property Article, §7-105.1, because the property should not have been subject to a certificate of vacancy or of property unfit for human habitation. If the statute did not have the language "by notifying the circuit court," he would agree that the statute was unclear. However, it seemed to Mr. Enten that the legislature intended for

the challenge to be made in the foreclosure proceeding.

The Chair inquired whether Rule 14-202 should provide for what happens when the clerk gets a paper stating that someone challenged the certificate. Mr. Enten responded that the Rule would provide that this challenge would be in the same fashion as other challenges to any other violation of the statute or the Rules regarding foreclosure. The Chair asked whether the certificate of vacancy or of unfitness for habitation issued by the local government would be entitled to any presumption of validity. Mr. Enten answered negatively. He saw it as a question of fact before the court as to whether or not the certificate was properly issued. The Chair asked whether the court hearing is de novo. Mr. Enten responded that the Chair was asking good questions, and Mr. Enten was not sure of all the answers. Typically, there would be a presumption of validity.

Mr. Bowie inquired whether it is also a problem if the administrative agency makes its decision later than when the court would. It is a kind of jurisdictional question. It could be that the circuit court assumes the jurisdiction and overrides the administrative decision, so that the decision can be prompt. Judge Pierson disagreed, pointing out that the only effect of this is whether the secured party has to comply with Code, Real Property Article, §7-105.1. He did not think that there was any basis for administrative proceedings where the municipality or other locality tries to condemn a house as unfit for human habitation, which can take a long time. This is not the purpose

of the statute. The Chair remarked that he was trying to figure out how the challenge would be resolved.

Ms. Ogletree asked whether it is a separate stay. She envisioned the procedure as a stay of that action, while something else proceeds in circuit court or for the administrative process to determine the validity of the certificate. This could take years. Judge Pierson pointed out that this is like any other fact question raised as a defense. As the existing statute provides, there are innumerable defenses that can be raised.

The Chair countered that they are not usually based on some certificate or order of an administrative agency. This just may be a dispute between the parties as to a fact. If the secured party gets one of these certificates and notifies the homeowner that he or she is going to proceed, the homeowner sends this notice to the court, which has no knowledge about the matter, because nothing has been filed. The clerk gets a notice, which states that the homeowner is challenging the certificate of vacancy. The clerk will not know which property is being referred to, because there is no file to put the notice into. Or it may be that the secured party has filed an order to docket on the theory that he or she does not have to go through all of the steps, and then there is a file.

Mr. Bellman commented that the point was not that the court needs to determine the validity of the actual certificate; it is whether the consumer is entitled to more process, such as prefile

mediation. The Chair noted that it would be postfile mediation. Mr. Bellman agreed. He expressed the view that it would be inappropriate for the Commissioner to draft regulations stating how the court should handle this issue. The Chair asked whether the Rule should provide for how the court handles this, if it is inappropriate for the Commissioner to do this (even though the statute states that the Commissioner should do so). Mr. Bellman noted that the requirement that the Commissioner provide the necessary procedure was taken out of the statute. The Chair reiterated that the requirement is in an uncodified section on page 22 of the statute, in Code, Tax - General Article, §10-208.

The Vice Chair observed that the language of the statute is somewhat strange. It requires the Commissioner not to develop a procedure to challenge the certificate, but to develop a description of the procedure. This same language appears in the codified section of Code, Real Property Article, §7-105.11 in subsection (f)(2). It reads as follows: "A secured party ... shall serve the foreclosure documents ... along with a description of the procedure to challenge the certificate and the form to be used to make the challenge." All the Commissioner has to develop is a description of what a procedure is.

The Vice Chair expressed the opinion that the Committee has to come up with a procedure. The Chair commented that if the intent of the legislature was that the court would resolve this, that is appropriate, but there needs to be some provision in the Rules indicating how to do that. Does the secured party have a

right to respond to this challenge, and how many days does he or she have to respond? The certificate is only good for 60 days. Is there an expedited hearing on it? Ms. Ogletree inquired whether all of the procedural protections for the consumer come into effect, once the challenge is filed. The Chair said that his problem is that there is a gap.

Ms. Ogletree asked what happens once the challenge is filed. Does the court resolve it? Does it just trigger the notice requirement? Mr. Bowie responded that he thought that the original idea was that it was the statute that everyone looked at. He began to think that the certificate procedure could easily be a vehicle for someone to shut down the foreclosure process. He thought that it would make sense if it is a stay, and a foreclosure process would be the only kind of stay triggered. When the foreclosure process is triggered, the stay can be challenged. It would be a judicial determination of whether it is a legitimate defense or not that would trump the administrative order.

Ms. Ogletree expressed the view that if all the challenge does is entitle someone or possibly entitle someone to more process, it ought to be automatic. The Chair said that if it is built into the court procedure, presumably it would be necessary to require that the homeowner serve a copy of the challenge on the secured party, provide for an answer to it and provide for some kind of expedited hearing to determine the validity of the certificate.

The Reporter suggested that the lender would probably give up on the certificate and go through the other options. Mr. Enten agreed. Ms. Ogletree asked whether that should be the rule. Once a challenge is filed, the property would be treated as if it were occupied. The Chair pointed out that the secured party may want to contest this. Ms. Ogletree inquired why the secured party would bother; it costs them more to do that. It is really not a service to the homeowner, because he or she ends up paying for it. The Chair commented that he had no personal interest in this matter, but the statute does not provide a procedure for what happens when one of these challenges is filed. The answer is that nobody knows. It is easy to fix this.

Ms. Ogletree said that the Subcommittee would need some direction as to which way the Committee wishes to fix it. Should there be a full-blown hearing, or should there just be a trigger of the homeowner's notice? The latter may be the most efficient way of handling it. The Chair questioned if the challenge would simply be filing the statement: "I challenge this," or whether the challenge has to explain why the property is not vacant or not unfit for human habitation. Ms. Ogletree asked if this is not in the description that the Commissioner is supposed to write. The Chair reiterated that the Commissioner has not done this.

Mr. Leahy inquired whether, as a practical matter, 99% of the time when a secured party gets the challenge, the property is often not occupied, because it is abandoned housing in the city,

so it would be a rare instance for someone to challenge the certificate. If someone did challenge it, even as it is written now, and if the secured party really wanted to litigate this, could the secured party file a motion in the foreclosure action asking for a hearing on the challenge? The Chair noted that the secured party may not know about the challenge. Ms. Ogletree said that the procedure cannot be that someone just files the challenge with the court. The notice of the filing has to go to someone else. Judge Pierson agreed, noting that the challenge must get into the foreclosure file. The person filing the challenge must be told that it is to be filed in the court in the foreclosure case.

The Chair added that there has be a notice requirement and a requirement to serve a copy on the other parties. The Reporter commented that this could be effected by regulation, which would provide that the challenge is to be filed in the court file with the correct number on it, and a copy would be mailed to the secured party, who can then figure out what the next step should be. The Chair said that the Rule would have to provide what the procedure is. Mr. Bellman reiterated that the Commissioner is not comfortable writing a regulation that addresses what happens within the context of a judicial proceeding. The Commissioner would pass regulations to adopt and to put on notice the procedures if that is warranted. However, Mr. Bellman expressed the view that it should be left up to the Rules Committee to draft rules providing how the challenge procedure should work.

Ms. Ogletree asked what the procedure should look like. Is it going to be simply a statement "I challenge this?" Does it have to be supported by an affidavit? The Subcommittee needs to know what they have to write. Mr. Bellman answered that it would not be sophisticated. Usually, the consumers are *pro se*. They have a difficult time knowing how to send anything to a lender. The legislature's intention is to give an opportunity for someone who has an interest in property that has not been abandoned or is not unfit for human habitation to be able to have a process to argue the prior determination of abandonment or of unfitness for human habitation. Mr. Enten expressed the opinion that this is an issue that should be brought to the attention of the legislature next session. It will not come up very often, and if it does come up, it should be treated as if a motion had been filed in the foreclosure proceeding. All parties get a copy. Mr. Enten added that he did not think that it would be different than any other defense. He asked if Jeffrey Nadel, Esq. and Scott Nadel, Esq., who are foreclosure attorneys, would like to weigh in on this issue.

Scott Nadel remarked that he did not know how every lender would handle this, but presumably if a lender is met with a challenge as to the occupancy or the habitability of a property, the lender would go ahead through the regular mediation process, because usually it is the faster course. If a certificate is challenged, a motion would be filed, and then a hearing would be

held. By this time, a mediation could have taken place. The Office of Administrative Hearings (OAH) could have already determined whether there is or is not going to be an agreement with the lender. From a procedural perspective, if the lender is met with a challenge to the certificate, the matter probably would end up in mediation. The Chair told Mr. Nadel that he could be correct, but the statute does not require that the homeowner send a copy of the challenge to the secured party. The statute requires only that the homeowner notify the circuit court of the challenge. This is probably what the homeowners will do. Scott Nadel said that he had seen many cases where the court takes the official mediation form, which can also be a letter. The borrowers would state that they would like mediation. The court would docket the case and then send it to OAH, who would then set up a hearing and address the matter. Mr. Nadel added that he did not know how the clerk would interpret the statute from a procedural perspective.

The Chair pointed out that postfile mediation is triggered by the order to docket. Mr. Nadel responded that the postfile mediation is triggered when the order to docket is filed with the final loss mitigation affidavit, and the mediation packet is sent back in. However, sometimes the borrowers will just send in a letter. They have heard that there is a possibility of getting a mediation hearing, so they send in a letter. Some borrowers will send in a letter when they have not even been served with the final loss mitigation affidavit, and they want mediation at that

stage. The courts will allow the mediation at that stage. The borrowers will take those avenues, and usually, the lender will tell them to go to mediation. The Chair noted that it is not just mediation. If the borrower does not ask for mediation, the case is not going to proceed. A challenge is in existence that may or may not get into the file. Mr. Nadel remarked that the clerks should have some procedure to address whether they docket the challenge and set in a hearing, or whether they just put the challenge in the file and do not have to serve the secured party. However, the secured party would never be on notice that there is such a challenge. He expressed the view that there should be some procedural basis to serve the secured party so that he or she is on notice.

The Chair proposed that Rule 14-202 specify that a challenge at least has to identify the property and identify the order or certificate, so the court knows what it is dealing with. The challenge should identify the case if there is one. Ms. Ogletree added that the homeowner in that case should also be identified. The Chair said that a copy of the challenge should be served on the secured party. The Rule should provide for the time for an answer.

Mr. Zarbin commented that a similar system exists in the District Court. A District Court complaint is filed, and the defendant has to file a notice of intention to defend, but it does not have to be served on the plaintiff. The clerk will send the plaintiff's counsel notice that the defendant filed a notice

of intention to defend, and it will state what the defense has put into the notice. The situation is similar to this one. It is the District Court clerk who tells the plaintiff about the defense. Since most of the parties in the challenge situation are likely to be *pro se*, if they file the challenge, it may be that the circuit court clerk could then send notice to the lender. Ms. Ogletree noted that the clerk may not know who the lender is. Mr. Zarbin responded that he was assuming that the lender is a party to the pending matter. Ms. Ogletree pointed out that there may not be a pending matter.

Mr. Enten suggested that the Rule could provide that the challenge must be filed in the foreclosure proceeding. It should not just be handed to the clerk. The statutory language "notifying the circuit court" means doing so in the foreclosure proceeding. It would be treated as if it is a motion to stay. The Chair cautioned that this would only apply if a foreclosure proceeding has already been filed. Mr. Carbine remarked that a secured party will not file these certificates unless there is going to be a foreclosure filed. The Chair agreed, but he pointed out that the challenge may come in before the order to docket is filed. Mr. Bowie expressed the opinion that this is a good solution. The challenge must be filed in the foreclosure proceeding, so documents are not scattered everywhere. Then it can trigger the opportunity for a stay and perhaps a hearing on the stay.

Ms. Ogletree added that if the lender does not choose to contest the certificate, the case can proceed with a regular homeowner's notice without court intervention. Mr. Bellman referred to the suggestions for required affidavits and the opportunity for mediation, and he asked if some procedure would be added to the Rules to allow this. Ms. Ogletree answered that the procedure would not necessarily be to start over but to start at the point right after the order to docket.

Judge Pierson noted that a literal reading of section (e) of the new statute, Code, Real Property Article, §7-105.11, indicates that if a certificate of vacancy or of property unfit for human habitation is valid at the time of the filing of an order to docket or complaint to foreclose, all of the requirements of Code, Real Property Article, §7-105.1 do not apply, which means there is no notice of intent to foreclose. If a notice of intent has not been filed, it is not a matter of sending out a mediation packet, the action would have to be started up again. Ms. Ogletree explained that the notice can be filed, which would bring the action back. The action would have to be started over.

The Chair stated that the Committee would not be able to draft anything today. The question was whether the Committee would like the Rule to have some provision in it as to what happens when one of these challenges is sent in. The Subcommittee may have to figure out what that ought to be. Ms. Ogletree remarked that the Subcommittee needs some direction from

the Committee. Mr. Leahy observed that it makes sense to require the person filing the challenge to file it in court in the order to docket and to serve it on the secured party.

Ms. Ogletree pointed out two more additions to the definitions. The next one is in section (g). Chapter 156, Laws of 2012 (HB 1374) has modified Code, Real Property Article, §7-105.1 to permit prefile mediation. The Subcommittee incorporated the statutory definitions in section (g) by adding subsection (1) and (2). The remainder of the changes was the relettering of the Rule.

By consensus, the Committee approved Rule 14-202 as presented, with the caveat that the issue of providing for a challenge procedure for certificates of vacancy and inhabitability of property would have to be considered by the Subcommittee. This possibly could affect Rule 14-202.

Ms. Ogletree presented Rule 14-207, Pleadings; Service of Certain Affidavits, Pleadings, and Papers, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-207 to add certain exhibits to section (b), to add language to subsection (b)(7) referring to certain lien instruments, to correct internal references, and to make stylistic changes, as follows:

Rule 14-207. PLEADINGS; SERVICE OF CERTAIN

(a) Pleadings Allowed

(1) Power of Sale

An action to foreclose a lien pursuant to a power of sale shall be commenced by filing an order to docket. No process shall issue.

(2) Assent to a Decree or Lien Instrument With No Power of Sale or Assent to a Decree

An action to foreclose a lien pursuant to an assent to a decree or pursuant to a lien instrument that contains neither a power of sale nor an assent to a decree shall be commenced by filing a complaint to foreclose. If the lien instrument contains an assent to a decree, no process shall issue.

(3) Lien Instrument with Both a Power of Sale and Assent to a Decree

If a lien instrument contains both a power of sale and an assent to a decree, the lien may be foreclosed pursuant to either.

(b) Exhibits

A complaint or order to docket shall include or be accompanied by:

(1) a copy of the lien instrument supported by an affidavit that it is a true and accurate copy, or, in an action to foreclose a statutory lien, a copy of a notice of the existence of the lien supported by an affidavit that it is a true and accurate copy;

Cross reference: See Code, Real Property Article, §7-105.1 ~~(d-1)~~ (f) concerning the contents of a lost note affidavit in an action to foreclose a lien on residential property.

(2) an affidavit by the secured party,

the plaintiff, or the agent or attorney of either that the plaintiff has the right to foreclose and a statement of the debt remaining due and payable;

(3) a copy of any separate note or other debt instrument supported by an affidavit that it is a true and accurate copy and certifying ownership of the debt instrument;

(4) a copy of any assignment of the lien instrument for purposes of foreclosure or deed of appointment of a substitute trustee supported by an affidavit that it is a true and accurate copy of the assignment or deed of appointment;

(5) with respect to any defendant who is an individual, an affidavit in compliance with §521 of the Servicemembers Civil Relief Act, 50 U.S.C. app. §501 et seq.;

(6) a statement as to whether the property is residential property and, if so, statements in boldface type as to whether (A) the property is owner-occupied residential property, if known, and (B) a final loss mitigation affidavit is attached;

(7) if the property is residential property that is not owner-occupied residential property, and the lien instrument being foreclosed is a mortgage, deed of trust, land installment contract, or vendor's lien, a final loss mitigation affidavit to that effect;

(8) in an action to foreclose a lien instrument on residential property, to the extent not produced in response to subsections (b)(1) through (b)(7) of this Rule, the information and items required by Code, Real Property Article, §7-105.1 ~~(d)~~ (e), except that (A) if the name and license number of the mortgage originator and mortgage lender is not required in the notice of intent to foreclose, the information is not required in the order to docket or complaint to foreclose; and (B) if the mortgage loan is owned, securitized, insured, or guaranteed by the Federal National

Mortgage Association, Federal Home Loan Mortgage Corporation, or Federal Housing Administration, or if the servicing agent is participating in the federal Making Home Affordable Modification Program (also known as "HAMP"), providing documentation as required by those programs satisfies the requirement to provide a description of the eligibility requirement for the applicable loss mitigation program; ~~and~~

Committee note: Subsection (b)(8) of this Rule does not require the filing of any information or items that are substantially similar to information or items provided in accordance with subsections (b)(1) through (b)(7). For example, if a copy of a deed of appointment of substitute trustee, supported by an affidavit that it is a true and accurate copy, is filed, it is not necessary to file the original or a clerk-certified copy of the deed of appointment.

Cross reference: For the required form and sequence of documents, see Code, Real Property Article, §7-105.1 ~~(f)(1)~~ (h)(1) and COMAR 09.03.12.01 et seq.

(9) if the secured party and borrower have elected to participate in prefile mediation, the report of the prefile mediation issued by the Office of Administrative Hearings.

(10) if the secured party and borrower have not elected to participate in prefile mediation, a statement that the parties have not elected to participate in prefile mediation.

(11) if the order to docket or complaint to foreclose was based on a certificate of vacancy or a certificate of property unfit for human habitation, a description of the procedure to challenge the certificate and the form used to make the challenge; and

Committee note: The record owner or occupant of the property may challenge the certificate of vacancy or certificate of property unfit for human habitation by notifying the circuit

court of the challenge. If the certificate is valid at the time of filing an order to docket or complaint to foreclose, the requirements of Code, Real Property Article, §7-105.1 do not apply. If the challenge to the certificate is upheld, the provisions of that statute do apply.

Cross reference: See Code, Real Property Article, §7-105.11.

~~(9)~~ (12) in an action to foreclose a land installment contract on property other than residential property, an affidavit that the notice required by Rule 14-205 (c) has been given.

Cross reference: For statutory "notices" relating to liens, see, e.g., Code, Real Property Article, §14-203 (b).

Committee note: Pursuant to subsections (b)(7) and (8) of this Rule, a preliminary or final loss mitigation affidavit must be filed in all actions to foreclose a lien on residential property, even if a loss mitigation analysis is not required.

(c) Service of Certain Affidavits, Pleadings, and Papers

Any affidavit, pleading, or other paper that amends, supplements, or confirms a previously filed affidavit, pleading, or other paper shall be served on each party, attorney of record, borrower, and record owner in accordance with the methods provided by Rule 1-321, regardless of whether service of the original affidavit, pleading, or paper was required.

Committee note: This Rule prevails over the provision in Rule 1-321 (a) or any other Rule that purports, where a party is represented by an attorney, to permit service on only the attorney. This Rule requires service on both.

Source: This Rule is derived in part from the 2008 version of former Rule 14-204 (a) and (c) and is in part new.

Rule 14-207 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 14-202.

A foreclosure attorney suggested that subsection (b)(7) of Rule 14-207 clarify that a final lost mitigation affidavit is to be submitted with a complaint or order to docket if the lien instrument being foreclosed is a mortgage or deed of trust. He noted that "final loss mitigation affidavit" is a defined term in the statute limited to mortgages and deeds of trust. The Property Subcommittee had agreed to this change, but had expanded it to add land installment contracts and vendor's liens to the list of lien instruments being foreclosed.

Ms. Ogletree explained that a number of comments had been received pertaining to Rule 14-207. The first change made by the Subcommittee was in subsection (b)(7). This was in response to a comment by Jeffrey Fisher, Esq., who had asked that condominium liens and other liens of that nature be excluded from the subsection. The Subcommittee wanted to be sure that they were including items to be foreclosed such as a mortgage and not just the statutory liens. The items that are foreclosed, such as a mortgage or other similar items, have been added to subsection (b)(7), including a land installment contract and a vendor's lien, which are both fee simple liens on property. By consensus, the Committee approved the change to subsection (b)(7) of Rule 14-207.

The Chair noted that the Commissioner of Financial Regulation had proposed some changes to Rule 14-207. He asked Mr. Bellman if the Commissioner had agreed to defer those suggested changes. Mr. Bellman answered that this could be deferred unless the Committee wanted to hear the Commissioner's position as to why he believes that the proposed changes are important, so that the Committee could start thinking about it. The Chair said that the Committee would not be able to take up this issue today. Ms. Ogletree pointed out that the changes requested by the Commissioner are not within the statutory changes that the legislature had required. Ms. Ogletree expressed the view that it was a substantial change that is unworkable. The Chair stated that Mr. Fisher had raised some objections to the changes and asked that the issue be deferred because he was unable to attend the meeting today. Mr. Bellman had agreed to defer this. Mr. Bellman said that he wanted to apologize for the late timing of these requested changes. His client, the Commissioner, wanted to raise this issue. Similar language is in the final loss mitigation affidavit.

The Chair observed that Mr. Enten had suggested some style changes. Mr. Enten explained that his changes were more technical. They would make it clear that subsections (b)(9), (10), and (11) of Rule 14-207 refer only to residential property. Ms. Ogletree said that the Subcommittee had no objection to Mr. Enten's suggested changes. By consensus, the Committee approved Mr. Enten's suggested change.

Mr. Johnson pointed out that the Committee note after subsection (b)(11) of Rule 14-207 also referred to the procedure of notifying the circuit court of the challenge. This had been previously discussed at the meeting and should reflect any change made to the Rules. Ms. Ogletree responded that the Subcommittee would take a look at that and dovetail it with whatever proposals the Committee makes in adding in a procedure to challenge the certificates of vacancy and uninhabitability of property. Rule 14-207 was recommitted to the Property Subcommittee.

Ms. Ogletree presented Rule 14-209, Service in Actions to Foreclose on Residential Property; Notice, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-209 to correct internal references in sections (a) and (b), to delete section (d), to delete language from subsection (d)(1), and to make stylistic changes, as follows:

Rule 14-209. SERVICE IN ACTIONS TO FORECLOSE ON RESIDENTIAL PROPERTY; NOTICE

(a) Service on Borrower and Record Owner by Personal Delivery

When an action to foreclose a lien on residential property is filed, the plaintiff shall serve on the borrower and the record owner a copy of all papers filed to commence the action, accompanied by the documents required by Code, Real Property Article,

§7-105.1 ~~(f)~~ (h). Service shall be accomplished by personal delivery of the papers or by leaving the papers with a resident of suitable age and discretion at the borrower's or record owner's dwelling house or usual place of abode.

Cross reference: For the required form and sequence of documents, see Code, Real Property Article, §7-105.1 ~~(f)(1)~~ (h)(1) and COMAR 09.03.12.01 et seq.

(b) Service on Borrower and Record Owner by Mailing and Posting

If on at least two different days a good faith effort was made to serve a borrower or record owner under section (a) of this Rule and service was not successful, the plaintiff shall effect service by (1) mailing, by certified and first-class mail, a copy of all papers filed to commence the action, accompanied by the documents required by Code, Real Property Article, §7-105.1 ~~(f)~~ (h), to the last known address of each borrower and record owner and, if the person's last known address is not the address of the residential property, also to that person at the address of the property; and (2) posting a copy of the papers in a conspicuous place on the residential property. Service is complete when the property has been posted and the mailings have been made in accordance with this section.

Cross reference: For the required form and sequence of documents, see Code, Real Property Article, §7-105.1 ~~(f)(1)~~ (h)(1) and COMAR 09.03.12.01 et seq.

(c) Notice to all Occupants by First-class Mail

When an action to foreclose on residential property is filed, the plaintiff shall send by first-class mail addressed to "All Occupants" at the address of the property the notice required by Code, Real Property Article, §7-105.9 (b).

~~(d) If Notice Required by Local Law~~

~~When an action to foreclose on residential property is filed with respect to a property located within a county or a municipal corporation that, under the authority of Code, Real Property Article, §14-126 (c), has enacted a local law requiring notice of the commencement of a foreclosure action, the plaintiff shall give the notice in the form and manner required by the local law. If the local law does not provide for the manner of giving notice, the notice shall be sent by first-class mail.~~

~~(e)~~ (d) Affidavit of Service, Mailing, and Notice

(1) Time for Filing

An affidavit of service under section (a) or (b) of this Rule~~,~~ and mailing under section (c) of this Rule~~, and notice under section (d) of this Rule~~ shall be filed promptly and in any event before the date of the sale.

(2) Service by an Individual Other than a Sheriff

In addition to other requirements contained in this section, if service is made by an individual other than a sheriff, the affidavit shall include the name, address, and telephone number of the affiant and a statement that the affiant is 18 years of age or older.

(3) Contents of Affidavit of Service by Personal Delivery

An affidavit of service by personal delivery shall set forth the name of the person served and the date and particular place of service. If service was effected on a person other than the borrower or record owner, the affidavit also shall include a description of the individual served (including the individual's name and address, if known) and the facts upon which the individual making service concluded that the

individual served is of suitable age and discretion.

(4) Contents of Affidavit of Service by Mailing and Posting

An affidavit of service by mailing and posting shall (A) describe with particularity the good faith efforts to serve the borrower or record owner by personal delivery; (B) state the date on which the required papers were mailed by certified and first-class mail and the name and address of the addressee; and (C) include the date of the posting and a description of the location of the posting on the property.

(5) Contents of Affidavit of Notice Required by Local Law

An affidavit of the sending of a notice required by local law shall (A) state (i) the date the notice was given, (ii) the name and business address of the person to whom the notice was given, (iii) the manner of delivery of the notice, and (iv) a reference to the specific local law of the county or municipal corporation, or both, requiring the notice and (B) be accompanied by a copy of the notice that was given.

Cross reference: See the Servicemembers Civil Relief Act, 50 U.S.C. app. §§501 et seq.

Source: This Rule is derived in part from the 2008 version of former Rule 14-204 (b) and is in part new.

Rule 14-209 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 14-202.

Chapter 155, Laws of 2012 (HB 1373) repealed Code, Real Property Article, §14-126 (c), which had allowed counties or municipal corporations to enact a local law requiring

> that notice be given to the county or municipal agency or official when an order to docket or a complaint to foreclose a mortgage or deed of trust is filed on residential property located within the county or municipal corporation. The Property Subcommittee recommends deleting section (d) of Rule 14-209 and deleting the reference to section (d) in what is new section (e), because of the repeal of this law.

Ms. Ogletree explained that Chapter 155, Laws of 2012 (HB 1373), removed the authority of a county or municipal corporation to enact local laws requiring that notice be given to a county or municipal agency when an order to docket or complaint to foreclose a mortgage or deed of trust is filed on residential property located within the county or municipal corporation.

Mr. Enten said that he and his colleagues had pointed out in their comments that Prince George's County does have a notification ordinance that it enacted prior to the effective date of the legislation. The uncodified language in the legislation is prospective. The deletion of section (d) in Rule 14-209 is probably in conflict with the uncodified language in the legislation, since Prince George's County's ordinance has survived the legislation. The Chair said that the uncodified part of the statute seems to grandfather in the local ordinances that would be in effect on October 1, 2012. Mr. Enten remarked that the only one that he was aware of was the one in Prince George's County. The Chair pointed out that section (d) of Rule 14-209 should be retained, but the following language should be added after the word "law" and before the word "requiring": "that

was in effect as of October 1, 2012." Ms. Ogletree said that the Committee agreed to that change.

By consensus, the Committee approved Rule 14-209 as amended.

Ms. Ogletree presented Rule 14-209.1, Owner-Occupied Residential Property, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-209.1 to change the word "foreclosure" to the word "postfile," to correct internal references, to add a new subsection (c)(1) pertaining to prefile mediation, to modify new subsection (c)(2), and to make stylistic changes, as follows:

Rule 14-209.1. OWNER-OCCUPIED RESIDENTIAL PROPERTY

(a) Applicability

This Rule applies to an action to foreclose a lien on residential property that is owner-occupied residential property, or where it is unknown whether the property is owner-occupied residential property at the time the action is filed.

(b) Advertising of Sale

A sale may not be advertised until 30 days after a final loss mitigation affidavit is filed, but if a request for foreclosure mediation is filed within that time and not stricken, a sale may not be advertised until the report from the Office of Administrative Hearings is filed with the court.

(c) Foreclosure Mediation

(1) Prefile Mediation

A secured party may offer to participate in prefile mediation with a borrower to whom the secured party has delivered a notice of intent to foreclose on owner-occupied residential property. The borrower may elect to participate in the prefile mediation offered.

Cross reference: See Code, Real Property Article, §7-105.1 (d) for prefile mediation procedures.

(2) Postfile Mediation

~~(1)~~ (A) Request; Transmittal

~~(A)~~ (i) Filing of Request

If the borrower has not participated in prefile mediation or the prefile mediation agreement gives the borrower the right to participate in postfile mediation, the borrower may file a request for ~~foreclosure~~ postfile mediation ~~filing fee required~~ within the time allowed by Code, Real Property Article, §7-105.1 ~~(h)(1)~~ (j)(1)(ii). The request shall contain the caption of the case and the names and addresses of the parties and be accompanied by the ~~foreclosure~~ postfile mediation filing fee required by Code, Real Property Article, §7-105.1 ~~(h)(1)(ii)~~ (j)(1)(iii) or a written request in accordance with Rule 1-325 for an order waiving or reducing the fee. The borrower shall serve a copy of the request on the other parties. The clerk shall not accept for filing a request for ~~foreclosure~~ postfile mediation that does not contain a certificate of service or is not accompanied by the required fee or request for an order waiving or reducing the fee.

Cross reference: See Rules 1-321 and 1-323. For the Request for Postfile Foreclosure Mediation form prescribed by regulation adopted by the Commissioner of Financial Regulation, see COMAR 09.03.12.05.

~~(B)~~ (ii) Transmittal of Request

Subject to section (e) of this Rule, the clerk shall transmit notice of the request to the Office of Administrative Hearings no later than five days after the request is filed.

Committee note: The transmittal to the Office of Administrative Hearings shall be made within the time required by subsection ~~(c)(1)(B)~~ (c)(2)(A)(ii) of this Rule, regardless of the status of a request for waiver or reduction of the ~~foreclosure~~ postfile mediation filing fee.

~~(C)~~ (iii) Ruling on Request for Fee Waiver or Reduction

The court promptly shall rule upon a request for an order waiving or reducing the ~~foreclosure~~ postfile mediation filing fee. The court may make its ruling ex parte and without a hearing. If the court does not waive the fee in its entirety, the court shall specify in its order the dollar amount to be paid and the amount of time, not to exceed ten days, within which the sum shall be paid. The order shall direct the clerk to strike the request for ~~foreclosure~~ postfile mediation if the sum is not paid within the time allowed and, if the request is stricken, to promptly notify the Office of Administrative Hearings that the request for ~~foreclosure~~ postfile mediation has been stricken.

~~(2)~~ (B) Motion to Strike Request for ~~Foreclosure~~ Postfile Mediation

No later than 15 days after service of a request for ~~foreclosure~~ postfile mediation, the secured party may file a motion to strike the request. The motion shall be accompanied by an affidavit that sets forth with particularity reasons sufficient to overcome the presumption that the borrower is entitled to ~~foreclosure~~ postfile mediation and why ~~foreclosure~~ postfile mediation is not appropriate.

~~(3)~~ (C) Response to Motion to Strike

No later than 15 days after service of the motion to strike, the borrower may file a response to the motion.

~~(4)~~ (D) Ruling on Motion

After expiration of the time for filing a response, the court shall rule on the motion, with or without a hearing. If the court grants the motion, the clerk shall notify the Office of Administrative Hearings that the motion has been granted.

(d) Notification from Office of Administrative Hearings

(1) If Extension Granted

If the Office of Administrative Hearings extends the time for completing ~~foreclosure~~ postfile mediation pursuant to Code, Real Property Article, §7-105.1 ~~(i)(2)(ii)~~ (k)(2)(ii), it shall notify the court no later than 67 days after the court transmitted the request for ~~foreclosure~~ postfile mediation and specify the date by which mediation shall be completed. If the Office of Administrative Hearings extends the time for completing ~~foreclosure~~ postfile mediation more than once, it shall notify the court of each extension and specify the new date by which mediation shall be completed.

(2) Outcome of ~~Foreclosure~~ Postfile Mediation

Within the time allowed by Code, Real Property Article, §7-105.1 ~~(j)(3)~~ (l)(4), the Office of Administrative Hearings shall file with the court a report that states (A) whether the ~~foreclosure~~ postfile mediation was held and, if not, the reasons why it was not held, or (B) the outcome of the ~~foreclosure~~ postfile mediation. The Office of Administrative Hearings promptly shall provide a copy of the report to each party to the ~~foreclosure~~ postfile mediation.

(e) Electronic Transmittals

By agreement between the

Administrative Office of the Courts and the Office of Administrative Hearings, notifications required by this Rule may be transmitted by electronic means rather than by mail and by a department of the Administrative Office of the Courts rather than by the clerk, provided that an appropriate docket entry is made of the transmittal or the receipt of the notification.

(f) Procedure Following ~~Foreclosure~~ Postfile Mediation

(1) If Agreement Results from Foreclosure Mediation

If the ~~foreclosure~~ postfile mediation results in an agreement, the court shall take any reasonable action reasonably necessary to implement the agreement.

(2) If No Agreement

If the ~~foreclosure~~ postfile mediation does not result in an agreement, the secured party may advertise the sale, subject to the right of the borrower to file a motion pursuant to Rule 14-211 to stay the sale and dismiss the action.

(3) If ~~Foreclosure~~ Postfile Mediation Fails Due to the Fault of a Party

(A) If the ~~foreclosure~~ postfile mediation is not held or is terminated because the secured party failed to attend or failed to provide the documents required by regulation of the Commissioner of Financial Regulation, the court, after an opportunity for a hearing, may dismiss the action.

(B) If the ~~foreclosure~~ postfile mediation is not held or is terminated because the borrower failed to attend or failed to provide the documents required by regulation of the Commissioner of Financial Regulation, the secured party may advertise the sale.

Source: This Rule is new.

Rule 14-209.1 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 14-202.

Ms. Ogletree told the Committee that Rule 14-209.1 had been updated. Subsection (c)(1) adds in the prefile mediation, which provides that the secured party can offer to participate in prefile mediation before the case is filed. The word "foreclosure" as it modifies the type of mediation has been changed throughout the Rule to the word "postfile." Language has been added to subsection (c)(2)(A)(i), which is required by House Bill 1374. It provides that the borrower may file a request for postfile mediation if the borrower has not participated in prefile mediation, or the prefile mediation agreement gives the borrower the right to participate in postfile mediation. These were the only substantive changes.

By consensus, the Committee approved Rule 14-209.1 as presented.

Ms. Ogletree presented Rule 14-211, Stay of the Sale; Dismissal of Action, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-211 (a)(2) to change the word "foreclosure" to the word "postfile," as follows:

Rule 14-211. STAY OF THE SALE; DISMISSAL OF ACTION

(a) Motion to Stay and Dismiss

(1) Who May File

The borrower, a record owner, a party to the lien instrument, a person who claims under the borrower a right to or interest in the property that is subordinate to the lien being foreclosed, or a person who claims an equitable interest in the property may file in the action a motion to stay the sale of the property and dismiss the foreclosure action.

Cross reference: See Code, Real Property Article, §§7-101 (a) and 7-301 (f)(1).

(2) Time for Filing

(A) Owner-occupied Residential Property

In an action to foreclose a lien on owner-occupied residential property, a motion by a borrower to stay the sale and dismiss the action shall be filed no later than 15 days after the last to occur of:

(i) the date the final loss mitigation affidavit is filed;

(ii) the date a motion to strike ~~foreclosure~~ postfile mediation is granted; or

(iii) if ~~foreclosure~~ postfile mediation was requested and the request was not stricken, the first to occur of:

(a) the date the ~~foreclosure~~ postfile mediation was held;

(b) the date the Office of Administrative Hearings files with the court a report stating that no ~~foreclosure~~ postfile mediation was held; or

(c) the expiration of 60 days after transmittal of the borrower's request for ~~foreclosure~~ postfile mediation or, if the

Office of Administrative Hearings extended the time to complete the ~~foreclosure~~ postfile mediation, the expiration of the period of the extension.

(B) Other Property

In an action to foreclose a lien on property, other than owner-occupied residential property, a motion by a borrower or record owner to stay the sale and dismiss the action shall be filed within 15 days after service pursuant to Rule 14-209 of an order to docket or complaint to foreclose. A motion to stay and dismiss by a person not entitled to service under Rule 14-209 shall be filed within 15 days after the moving party first became aware of the action.

(C) Non-compliance; Extension of Time

For good cause, the court may extend the time for filing the motion or excuse non-compliance.

Cross reference: See Rules 2-311 (b), 1-203, and 1-204, concerning the time allowed for filing a response to the motion.

(3) Contents

A motion to stay and dismiss shall:

(A) be under oath or supported by affidavit;

(B) state with particularity the factual and legal basis of each defense that the moving party has to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action;

Committee note: The failure to grant loss mitigation that should have been granted in an action to foreclose a lien on owner-occupied residential property may be a defense to the right of the plaintiff to foreclose in the pending action. If that defense is raised, the motion must state specific reasons why loss mitigation pursuant

to a loss mitigation program should have been granted.

(C) be accompanied by any supporting documents or other material in the possession or control of the moving party and any request for the discovery of any specific supporting documents in the possession or control of the plaintiff or the secured party;

(D) state whether there are any collateral actions involving the property and, to the extent known, the nature of each action, the name of the court in which it is pending, and the caption and docket number of the case;

(E) state the date the moving party was served or, if not served, when and how the moving party first became aware of the action; and

(F) if the motion was not filed within the time set forth in subsection (a)(2) of this Rule, state with particularity the reasons why the motion was not filed timely.

To the extent permitted in Rule 14-212, the motion may include a request for referral to alternative dispute resolution pursuant to Rule 14-212.

(b) Initial Determination by Court

(1) Denial of Motion

The court shall deny the motion, with or without a hearing, if the court concludes from the record before it that the motion:

(A) was not timely filed and does not show good cause for excusing non-compliance with subsection (a)(2) of this Rule;

(B) does not substantially comply with the requirements of this Rule; or

(C) does not on its face state a valid defense to the validity of the lien or the lien instrument or to the right of the

plaintiff to foreclose in the pending action.

Committee note: A motion based on the failure to grant loss mitigation in an action to foreclose a lien on owner-occupied residential property must be denied unless the motion sets forth good cause why loss mitigation pursuant to a loss mitigation program should have been granted is stated in the motion.

(2) Hearing on the Merits

If the court concludes from the record before it that the motion:

(A) was timely filed or there is good cause for excusing non-compliance with subsection (a)(2) of this Rule,

(B) substantially complies with the requirements of this Rule, and

(C) states on its face a defense to the validity of the lien or the lien instrument or to the right of the plaintiff to foreclose in the pending action, the court shall set the matter for a hearing on the merits of the alleged defense. The hearing shall be scheduled for a time prior to the date of sale, if practicable, otherwise within 60 days after the originally scheduled date of sale.

(c) Temporary Stay

(1) Entry of Stay; Conditions

If the hearing on the merits cannot be held prior to the date of sale, the court shall enter an order that temporarily stays the sale on terms and conditions that the court finds reasonable and necessary to protect the property and the interest of the plaintiff. Conditions may include assurance that (1) the property will remain covered by adequate insurance, (2) the property will be adequately maintained, (3) property taxes, ground rent, and other charges relating to the property that become due prior to the hearing will be paid, and (4) periodic

payments of principal and interest that the parties agree or that the court preliminarily finds will become due prior to the hearing are timely paid in a manner prescribed by the court. The court may require the moving party to provide reasonable security for compliance with the conditions it sets and may revoke the stay upon a finding of non-compliance.

(2) Hearing on Conditions

The court may, on its own initiative, and shall, on request of a party, hold a hearing with respect to the setting of appropriate conditions. The hearing may be conducted by telephonic or electronic means.

(d) Scheduling Order

In order to facilitate an expeditious hearing on the merits, the court may enter a scheduling order with respect to any of the matters specified in Rule 2-504 that are relevant to the action.

(e) Final Determination

After the hearing on the merits, if the court finds that the moving party has established that the lien or the lien instrument is invalid or that the plaintiff has no right to foreclose in the pending action, it shall grant the motion and, unless it finds good cause to the contrary, dismiss the foreclosure action. If the court finds otherwise, it shall deny the motion.

Committee note: If the court finds that the plaintiff has no right to foreclose in the pending action because loss mitigation should have been granted, the court may stay entry of its order of dismissal, pending further order of court, so that loss mitigation may be implemented.

Source: This Rule is new.

Rule 14-211 was accompanied by the following Reporter's

note.

See the Reporter's note to Rule 14-202.

Ms. Ogletree explained that the word "foreclosure" has been changed to the word "postfile" to conform to the changes made in Rule 14-209.1 and to House Bill 1374.

By consensus, the Committee approved Rule 14-211 as presented.

Ms. Ogletree presented Rule 14-214, Sale, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALE OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-214 to correct an internal reference in the cross reference after section (d), as follows:

Rule 14-214. SALE

(a) Only by Individual

Only an individual may sell property pursuant to the Rules in this Chapter.

(b) Under Power of Sale

(1) Individual Authorized to Conduct a Sale Other than Under a Deed of Trust

Except as provided in subsection (b)(2) of this Rule, a secured party authorized by the lien instrument to make the sale or any other individual designated by name in the lien instrument to exercise the power of sale shall conduct the sale.

(2) Individual Authorized to Conduct a Sale Under a Deed of Trust

An individual appointed as trustee in a deed of trust or as a substitute trustee shall conduct the sale of property subject to a deed of trust.

(3) Payment Terms

A sale of property under a power of sale shall be made upon the payment terms specified in the lien instrument. If no payment terms are specified in the lien instrument, the sale shall be made upon payment terms that are reasonable under the circumstances.

(c) Under Assent to a Decree

(1) Individual Authorized to Sell

An individual appointed as a trustee in a lien instrument or as a substitute trustee shall conduct the sale of property pursuant to an assent to a decree.

(2) Payment Terms

A sale of property under an order of court entered pursuant to an assent to a decree shall be made upon the payment terms provided in the order.

(d) No Power of Sale or Assent to Decree

(1) Individual Authorized to Sell

If there is no power or sale or assent to a decree in the lien instrument, or if the lien is a statutory lien, the sale shall be made by an individual trustee appointed by the court.

(2) Payment Terms

The sale shall be made upon payment terms that are reasonable under the circumstances.

Cross reference: For requirements concerning

the timing of the sale of residential property, see Code, Real Property Article, §7-105.1 ~~(l)~~ (n).

Source: This Rule is derived in part from the 2008 version of former Rule 14-207 (b) and (c) and is in part new.

Rule 14-214 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 14-202.

Ms. Ogletree said that the only change made to Rule 14-214 was the correction of an internal reference in the cross reference at the end of the Rule.

By consensus, the Committee approved Rule 14-214 as presented.

Ms. Ogletree presented Rule 14-215, Post-sale Procedures, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-215 to add cross references at the end of the Rule, as follows:

Rule 14-215. POST-SALE PROCEDURES

(a) Procedure Following Sale

The procedure following a sale made pursuant to this Chapter shall be as provided in Rules 14-305 and 14-306, except that an

audit is mandatory.

(b) Resale

If the court sets a sale aside, the court may order that the property be resold by the individual who made the previous sale or by a special trustee appointed by the court.

(c) Conveyance to Purchaser

(1) When Made

After the court has finally ratified a sale and the purchase money has been paid, the individual making the sale shall convey the property to the purchaser or the purchaser's assignee. If the conveyance is to the purchaser's assignee, the purchaser shall join in the deed.

(2) Under Power of Sale - When Vendor and Purchaser are the Same

If the individual making a sale and the purchaser at a sale made pursuant to a power of sale are the same person, the court shall appoint in the order of ratification a trustee to convey the property to the purchaser after payment of the purchase money. The trustee need not furnish a bond unless the court so provides in its order.

(3) To Substituted Purchaser

At any time after the sale and before a conveyance, the court, upon ex parte application and consent of the purchaser, substituted purchaser, and individual making the sale, may authorize the conveyance to be made to a substituted purchaser.

Cross reference: For a purchaser's obligation to notify the supervisor of assessments for the county in which the residential property is located of the ratification of the foreclosure sale, see Code, Real Property Article, §7-105.12. For requirements relating to registration by foreclosure purchasers with the Foreclosed

> Property Registry of the Department of Labor, Licensing, and Regulation, see Code, Real Property Article, §14-126.1.
>
> Source: This Rule is derived from the 2008 version of former Rule 14-207(d), (e), and (f).

Rule 14-215 was accompanied by the following Reporter's note.

> Chapter 461, Laws of 2012 (SB 123) requires the purchaser of residential property purchased at a foreclosure sale to provide a court order ratifying the foreclosure sale to the supervisor of assessments for the county in which the residential property is located. The Property Subcommittee recommends adding a cross reference to the new statute at the end of Rule 14-215 to draw attention to it.
>
> Chapter 155, Laws of 2012 (HB 1373) establishes a Foreclosed Property Registry as part of the Department of Labor, Licensing, and Regulation. Purchasers of residential property at foreclosure sales are required to register with this entity. The Property Subcommittee suggests adding a cross reference to the new statute, Code, Real Property Article, §14-126.1, at the end of Rule 4-215 to draw attention to it.

Ms. Ogletree explained that a cross reference to a new statute, Code, Real Property Article, §7-105.12, which was enacted by the legislature in Chapter 461, Laws of 2012 (SB 123), had been added at the end of Rule 14-215. This statute requires the purchaser of residential property purchased at a foreclosure sale to provide a copy of the court order ratifying the foreclosure sale to the supervisor of assessments for the county in which the residential property is located. Another cross

reference to a new statute, Code, Real Property Article, §14-126.1, which was enacted by the legislature in Chapter 155, Laws of 2012 (HB 1373), was also added. This statute addresses notice to the foreclosed property registry. The Subcommittee felt that these did not need to be substantively added to the Rule, but for the benefit of the practitioner, a cross reference would call attention to the new statutes.

By consensus, the Committee approved Rule 14-215 as presented.

Ms. Ogletree presented Rule 14-502, Foreclosure of Right of Redemption - Complaint, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 500 - TAX SALES

AMEND Rule 14-502 to add a new section (a) pertaining to certain notices to be sent, to add a new subsection (c)(4) pertaining to the addition of a certain affidavit, and to make stylistic changes, as follows:

Rule 14-502. FORECLOSURE OF RIGHT OF REDEMPTION - COMPLAINT

(a) Notices to be Sent

The holder of a certificate of sale may not file a complaint to foreclose the right of redemption until at least two months after sending the first notice and at least 30 days after sending the second notice, which notices are required by Code, Tax-Property Article, §14-833 (a-1) (1).

~~(a)~~ (b) Contents

In an action to foreclose the right of redemption in property sold at a tax sale, the complaint, in addition to complying with Rules 2-303 through 2-305, shall set forth:

(1) the fact of the issuance of the certificate of sale;

(2) a description of the property in substantially the same form as the description appearing on the certificate of tax sale;

(3) the fact that the property has not been redeemed by any party in interest; and

(4) a statement of the amount necessary for redemption.

~~(b)~~ (c) Documents

The complaint shall be accompanied by:

(1) the original certificate of sale, or a photocopy of the certificate;

(2) a copy of a title report supported by an affidavit by the person making the search that a complete search of the records has been performed in accordance with generally accepted standards of title examination for the period of at least 40 years immediately before the filing of the complaint; and

(3) a notice setting forth (A) the substance of the complaint and the relief sought, (B) a description of the property in substantially the same form as the description appearing on the collector's tax records, (C) the time within which a defendant must file an answer to the complaint or redeem the property, and (D) a statement that failure to answer or redeem the property within the time allowed may result in a judgment foreclosing the right of redemption.

(4) an affidavit (A) stating the date that the notices required by section (a) of

> this Rule were given, the name and address of the persons to whom the notices were given, and the manner of the delivery of the notice and (B) verifying that the amount that shall be paid to redeem the property complies with the requirements of Code, Tax Property Article, 14-833 (a-1)(3).
>
> Cross reference: See Code, Tax-Property Article, §14-833 for provisions governing limitations on the time for bringing an action to foreclose the right of redemption and Code, Tax-Property Article, §14-841 for the limitation on the number of certificates that may be joined in one action. See also Code, Tax-Property Article, §§14-836 and 14-837 governing parties to the action. For purchaser's obligations once a complaint has been filed, see *Scheve v. Shudder, Inc.*, 328 Md. 363 (1992).
>
> Source: This Rule is new but is consistent with Code, Tax-Property Article, §§14-835 and 14-838 and is derived in part from Code, Tax-Property Article, §§14-840 and 14-836.

Rule 14-502 was accompanied by the following Reporter's note.

> Chapter 188, Laws of 2012 (SB 182) adds to Code, Tax - Property Article, §§14-833 and 14-843. The law prohibits the holder of a certificate of tax sale from filing a complaint to foreclose the right of redemption until at least two months after sending the first of two required notices and at least 30 days after sending the second of the notices. The Property Subcommittee recommends amending Rule 14-502 to refer to the two notices and to add to the list of required documentation affidavits stating that the notices were sent.

Ms. Ogletree explained that Rule 14-502 requires that certain notices be sent and tracks the statutory language requiring the notices to be sent at two different times. The

statute is Code, Tax - Property Article, §§14-833 and 14-843, which was modified by Chapter 188, Laws of 2012 (SB 182). The notices address the amount that shall be paid to redeem property if the property is redeemed before an action to foreclose the right of redemption, and they are to be sent to the person who last appears as owner of the property and to the current mortgagee of the property, assignee of a mortgagee of record, or servicer of the current mortgage.

Ms. Ogletree said that new subsection (c)(4) refers to a new affidavit that is required. It states the date that the notices were given, the name and address of the persons to whom the notices were given, and the manner of the delivery of the notice. It also verifies that the amount required to be paid to redeem the property complies with the statutory requirements.

By consensus, the Committee approved Rule 14-502 as presented.

The Reporter inquired if all of the foreclosure rules were going to be sent back to the Property Subcommittee, and Ms. Ogletree replied that only Rules 14-207 and 14-209 had to be sent back. They will have to dovetail with the procedure for challenge to a certificate of vacancy or of property unfit for human habitation. The Chair suggested that because a time issue exists, the Property Subcommittee should draft a proposal for a procedure to challenge the certificates. It could be sent out to the members of the Committee without waiting until the October meeting, so that it could be sent to the Court of Appeals.

Agenda Item 2. Consideration of a proposed revised Title 16 (Court Administration) - Chapter 600 - (Extended Coverage of Court Proceedings), Chapter 700 - (Miscellaneous Judicial Units), and Chapter 800 - (Miscellaneous Court Administration Matters)

The Chair told the Committee that the remainder of the court administration rules were to be discussed.

The Chair presented Rule 16-601, Definitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 600 - EXTENDED COVERAGE OF COURT PROCEEDINGS

Rule 16-601. DEFINITIONS

In this Chapter, the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(a) Extended Coverage

"Extended coverage" means the recording or broadcasting of court proceedings by the use of recording, photographic, television, radio, or other broadcasting equipment operated by (1) the news media, or (2) a person engaged in the preparation of an educational film or recording relating to the Maryland legal or judicial system and intended for instructional use in an educational program offered by a public or accredited educational institution.

(b) Local Administrative Judge

"Local Administrative Judge" means the County Administrative Judge of a circuit court and the District Administrative Judge

of the District Court.

(c) Party

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

(d) Proceeding

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

(e) Presiding Judge

(1) "Presiding judge" means a judge designated to preside over a proceeding which is, or is intended to be, the subject of extended coverage.

(2) Where action by a presiding judge is required by this Rule and no judge has been designated to preside over the proceeding, "presiding judge" means the Local Administrative Judge.

(3) In an appellate court, "presiding judge" means the Chief Judge of that court or the senior judge of a panel of which the Chief Judge is not a member.

Source: This Rule is derived from former Rule 16-109 (a).

Rule 16-601 was accompanied by the following Reporter's note.

Rule 16-601 is derived from former Rule 16-109.

Section (a) is the same as former Rule 16-109 a. 1.

Section (b) is substantially the same as former Rule 16-109 a. 2.

Section (c) is the same as former Rule 16-109 a. 3.

Section (d) is substantially the same as former Rule 16-109 a. 4.

Section (e) is derived from former Rule 16-109 a. 5.

The Chair said that, as the Reporter's note indicates, most of Rule 16-601 is derived from the current Rule, Rule 16-109. The only change is in section (a), Extended Coverage. The current Rule's definition of "extended coverage" includes: "...persons engaged in the preparation of educational films or recordings with the written approval of the presiding judge." The proposed Rule covers that part, but it also limits it as follows: "...relating to the Maryland legal or judicial system and intended for instructional use in an educational program offered by a public or accredited educational institution." The thinking of the Subcommittee was that the extended coverage, which actually includes the broadcasting and not only the recording of court proceedings, is limited to the news media or recording in an educational institution program.

Mr. Michael inquired if this precluded Court TV, a television show that broadcasts trials. The Chair answered that it would not preclude it. Mr. Michael noted that Court TV does not fit into the definition in the Rule. The Chair responded that it would apply if it is for an educational purpose. As a practical matter, broadcasting is not permitted in a criminal case. Code, Criminal Procedure Article, §1-201, prohibits it. Broadcasting of a civil case is only allowed if all the parties

consent. This is why it is so rare.

The Chair reiterated that the only change to Rule 16-601 was to allow broadcasting for an educational program. The administrative judge cannot allow it to show a family member, for example.

By consensus, the Committee approved Rule 16-601 as presented.

The Chair presented Rule 16-602, Scope, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 600 - EXTENDED COVERAGE OF COURT PROCEEDINGS

Rule 16-602. SCOPE

The Rules in this Chapter do not apply to:

(1) The recording or broadcasting of court proceedings by the court or by court personnel acting within the scope of their official duties;

(2) The electronic recording of court proceedings by an official court reporter as a backup for the stenographic recording of the proceeding;

(3) Investiture or ceremonial proceedings, provided that the presiding judge may regulate the presence and use of cameras and recording and broadcasting equipment at the proceeding; or

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

> Source: This Rule is derived from former Rule 16-109 b. 7.

Rule 16-602 was accompanied by the following Reporter's note.

> Rule 16-602 is derived from former Rule 16-109 b. 7. The meaning of the exception in the former Rule for equipment used for "perpetuation of a court record" is not clear. The Rule was intended to cover the use of audio or video equipment to record court proceedings in lieu of the stenographic recording by court reporters, but this is not really perpetuation of the evidence. Subsection (1) is intended to include this, as well as the webcasting of court proceedings by the court itself, which the Court of Appeals does with its own equipment. Subsection (2) is new and covers the situation in which an official court reporter uses an electronic recording as a backup to the reporter's stenographic notes.

The Chair commented that Rule 16-602 was essentially the same as the current Rule, Rule 16-109 b.7. The Reporter's note indicates that the current Rule provides that the Rules in Chapter 600 do not apply to the use of photographic equipment by the court for the "perpetuation of the court record." The Subcommittee did not know what this language meant. They had thought that what was intended was that the Rules do not apply to court personnel recording court proceedings, either electronically or otherwise. This is what is in sections (1) and (2). This is really not "perpetuating the court record." It is reporting what is happening in the courtroom. Other than this, Rule 16-602 was the same as the current Rule.

By consensus, the Committee approved Rule 16-602 as

presented.

The Chair presented Rule 16-603, Extended Coverage Permissible, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 600 - EXTENDED COVERAGE OF COURT PROCEEDINGS

Rule 16-603. EXTENDED COVERAGE PERMISSIBLE

> Except as otherwise prohibited by law and subject to the exceptions, limitations, and conditions set forth in the Rules in this Chapter, extended coverage of proceedings in the trial and appellate courts of Maryland is permitted. Nothing in this Chapter is intended to restrict the general right of the news media to observe and report judicial proceedings.
>
> Committee note: Code, Criminal Procedure Article, §1-201 prohibits extended coverage of criminal proceedings in a trial court or before a grand jury.
>
> Source: This Rule is derived from former Rule 16-109 b.

Rule 16-603 was accompanied by the following Reporter's note.

> Rule 16-603 is derived from former Rule 16-109 b. 1. and b. 4.

The Chair told the Committee that Rule 16-603 was the same as the current Rule, Rule 16-109 b. 1.

By consensus, the Committee approved Rule 16-603 as presented.

The Chair presented Rule 16-604, Request to Allow Extended Coverage, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 600 - EXTENDED COVERAGE OF COURT PROCEEDINGS

Rule 16-604. REQUEST TO ALLOW EXTENDED COVERAGE

(a) When and Where Filed

A request to allow extended coverage of a proceeding shall be made in writing to the clerk of the court in which the proceeding is to be held at least five days before the proceeding is scheduled to begin. For good cause, the court may consider an untimely request.

(b) Content

(1) A request shall identify with particularity:

(A) the person or entity making the request;

(B) the proceeding for which extended coverage is sought, including the case name and number and the date when the proceeding is scheduled; and

(C) if the request is for the purpose of preparing an educational film or recording, the intended instructional use of the firm or recording.

(2) A request shall also identify the equipment to be used and contain a sufficient assurance that the equipment will satisfy the sound and light requirements of Rule 16-607.

(c) Notice

The clerk shall promptly give notice of a request to:

(1) the Local Administrative Judge;

(2) the judge designated to preside at the proceeding, if a judge has been designated; and

(3) all parties to the proceeding.

(d) When Proceeding Postponed or Continued

If the proceeding is postponed or continued, other than for normal recesses, weekends, or holidays, a separate request is required for later extended coverage.

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

Source: This Rule is derived from former Rule 16-109 c.

Rule 16-604 was accompanied by the following Reporter's note.

Rule 16-604 is derived from former Rule 16-109 c.

Section (a) is derived from former Rule 16-109 c. 1.

Section (b) is new. The Subcommittee felt that it would be helpful to set out the content of a request to allow extended coverage.

Section (c) is derived from former Rule 16-109 c. 1. The Subcommittee added the Local Administrative Judge and the judge designated to preside at the proceeding, if one had been designated as persons who are to receive notice of the request for extended coverage.

Section (d) is derived from former Rule 16-109 c. 2.

The Chair explained that Rule 16-604 was the same as the current Rule, Rule 16-109 c., except for section (b), which has been added and was intended to require the request to present more information. It should contain more than just a request. Mr. Sullivan pointed out a typographical error in subsection (b)(1)(C). The word "firm" should be the word "film."

By consensus, the Committee approved Rule 16-604 as amended.

The Chair presented Rule 16-605, Action on Request, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 600 - EXTENDED COVERAGE OF COURT PROCEEDINGS

Rule 16-605. ACTION ON REQUEST

(a) When Permission Prohibited

(1) Extended coverage may not be permitted of any proceeding:

(A) for which extended coverage is prohibited by Code, Criminal Procedure Article, §1-201;

(B) which by law is closed to the public; or

(C) which by law may be closed to the public and has been closed by the presiding judge.

(2) Extended coverage may not be permitted in a proceeding in a trial court unless all parties to the proceeding have filed a written consent or consent on the

record in open court, except that consent is not required from a party which is:

(A) a Federal, State, or local government;

(B) a unit of a Federal, State, or local government; or

(C) an official of a Federal, State, or local government sued or suing in an official governmental capacity.

(3) Consent once given under subsection (a)(2) of this Rule may not be withdrawn, but any party may, at any time, move to terminate or limit extended coverage.

(4) Consent of the parties is not required for extended coverage of a proceeding in the Court of Appeals or Court of Special Appeals, but any party may, at any time, move to terminate or limit extended coverage.

(b) Grant or Denial of Request

(1) Before commencement of the proceeding, the presiding judge shall deny a request for extended coverage or grant it, with such conditions or limitations as the judge finds appropriate.

(2) If the request is granted, the presiding judge shall promptly notify the Local Administrative Judge, who shall make arrangements to accommodate entry into and presence in the court facility of the necessary equipment and the persons designated to operate the equipment.

Source: This Rule is derived from former Rule 16-109 d., e., and f.

Rule 16-605 was accompanied by the following Reporter's note.

Rule 16-605 is derived from former Rule 16-109 d., e., and f. Subsection (a)(1) is derived from former Rule 16-109 f. 2. The

Subcommittee added a reference to Code, Criminal Procedure Article, §1-201.

Subsection (a)(2) is derived from former Rule 16-109 e. 1.

Subsection (a)(3) is substantially the same as former Rule 16-109 e. 2.

Subsection (a)(4) is substantially the same as former Rule 16-109 c. 3.

Subsection (b)(1) is derived from former Rule 16-109 d.

Subsection (b)(2) is derived from former Rule 16-109 d.

The Chair told the Committee that Rule 16-605 was essentially the current Rule, Rule 16-109 d., e., and f. It states that extended coverage may not be permitted if precluded by statute, if the proceeding by law is closed to the public, or if by law the proceeding may be closed and the judge has closed it.

By consensus, the Committee approved Rule 16-605 as presented.

The Chair presented Rule 16-606, General Limitations on Extended Coverage, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 600 - EXTENDED COVERAGE OF COURT PROCEEDINGS

Rule 16-606. GENERAL LIMITATIONS ON EXTENDED COVERAGE

(a) Where Possession of Equipment Prohibited

Possession of an "electronic device," including equipment used for extended coverage, in a "court facility" as those terms are defined in Rule 16-111 is governed by that Rule.

(b) Where Extended Coverage Prohibited

(1) Extended coverage in a court facility, as defined in Rule 16-208 is limited to proceedings in the courtroom in the presence of the presiding judge.

(2) Outside a courtroom but within a court facility, as defined in Rule 16-208, extended coverage is prohibited:

(A) of persons present for a judicial or grand jury proceeding; and

(B) where extended coverage is so close to a judicial or grand jury proceeding as likely to identify persons present for the proceeding or interfere with the proceeding or its dignity or decorum.

DRAFTER'S NOTE: Subsection (b)(1) is taken from Rule 16-109 f.3. Subsection (b)(2) is taken from Rule 16-109 b.2. If extended coverage is not permitted outside the courtroom, do we need (b)(2)? The two provisions seem inconsistent, especially in light of Rule 16-109 b.3 (subsection (a)(2)), which prohibits even the possession of the equipment in the hallways except when required for <u>permitted</u> extended coverage.

Source: This is Rule is derived from former Rule 16-109.

Rule 16-606 was accompanied by the following Reporter's note.

Rule 16-606 is derived from former Rule 16-109. Section (a) is new and was added to

clarify that electronic devices capable of photographing, recording, or transmitting sound or visual images may not be brought into the jury assembly or deliberation room. This takes into account the myriad of such devices that are available to the public.

Subsection (b)(1) is substantially the same as former Rule 16-109 f. 3.

Subsection (b)(2) is substantially the same as former Rule 16-109 b. 2.

The Chair commented that the drafter's note at the end of Rule 16-606 raises the question of whether subsection (b)(2) was necessary. Scott Shellenberger, Esq., State's Attorney for Baltimore County, had sent in a comment asking that subsection (b)(2) remain in the Rule. He had noted that in some courthouses, the grand jury room is very close to the exit doors. Often, jurors are given badges for identification. Mr. Shellenberger's opinion was that subsection (b)(2) of Rule 16-606 would prevent the media from trying to film grand jurors from outside a courthouse.

Ms. Harris pointed out that the tagline of section (b) is "Where Extended Coverage Prohibited," but subsection (b)(1) pertains to when extended coverage is allowed. The Chair suggested that the tagline could be "Where Extended Coverage Prohibited or Limited." By consensus, the Committee agreed to this change. Mr. Sullivan said that the syntax of subsection (b)(2)(A) is unusual. It reads: "...extended coverage is prohibited: (A) of persons present...". This should be restructured. He suggested that the wording could be: "extended

coverage of persons is prohibited". The Reporter suggested that this could be flagged for the Style Subcommittee.

By consensus, the Committee approved Rule 16-606 as amended, subject to being restyled.

The Chair presented Rule 16-607, Operational Requirements, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 600 - EXTENDED COVERAGE OF COURT PROCEEDINGS

Rule 16-607. OPERATIONAL REQUIREMENTS

(a) In General

(1) Extended coverage shall be conducted so as not to interfere with the right of any person to a fair and impartial trial or with the dignity and decorum of the proceeding.

(2) No proceeding shall be delayed or continued in order to allow for extended coverage, nor shall extended coverage influence any ruling on a motion for continuance.

(3) There shall be no audio coverage of private conferences, bench conferences, or conferences at counsel table.

(4) Only equipment that does not produce light or distracting sound may be employed.

(5) No artificial lighting device may be employed. With the approval of the presiding judge, modifications may be made to light sources existing in the courtroom, provided:

(A) they are made before commencement

of the proceeding or during a recess;

(B) they are installed and maintained without public expense; and

(C) unless the court orders otherwise, upon completion of the extended coverage the person conducting the extended coverage, at that person's expense, restores the light sources to their prior condition.

(6) Equipment may not be placed in or removed from a courtroom except before commencement or following adjournment of the proceeding each day or during a recess in the proceeding. Film magazines and still camera film and lenses may be changed in a courtroom only during a recess in the proceeding.

(7) Broadcast media representatives may not move about the courtroom while proceedings are in session, and microphones and recording equipment, once positioned, may not be moved during the pendency of the proceeding.

Committee note: Nothing in this Rule prohibits the granting of a reasonable request to use court-controlled electronic or photographic equipment or materials.

(b) Television or Movie Cameras

(1) Only one television camera shall be permitted in a trial court proceeding. Not more than two stationary television cameras shall be permitted in an appellate court proceeding.

(2) Television or movie camera equipment shall be positioned outside the rail of the courtroom or, if there is no rail, in the area reserved for spectators, at a location approved in advance by the presiding judge.

(3) Whenever possible, recording and broadcasting equipment which is not a component part of a television camera shall be located outside the courtroom in an area approved in advance by the presiding judge.

(c) Still Cameras

(1) Only one still photographer, using not more than two still cameras with not more than two lenses for each camera, and related equipment approved in advance by the presiding judge shall be permitted in any proceeding.

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

(d) Audio Equipment

(1) Only one audio system for broadcast purposes shall be permitted in a proceeding.

(2) Audio feed shall be accomplished from existing audio systems, except that, if no technically suitable audio system exists, unobtrusive microphones and related wiring may be located in places designated in advance by the presiding judge.

(3) Microphones located at the judge's bench and at counsel tables shall be equipped with mute switches.

(4) A directional microphone maybe mounted on a television or film camera, but no parabolic, lavalier, or similar microphone may be used.

(e) Pooling Arrangements

Any pooling arrangement required by the limitations in this Rule on equipment and personnel is the sole responsibility of the persons interested in the extended coverage,

without calling upon the presiding judge to mediate or resolve a dispute as to the appropriate representative or equipment authorized to provide extended coverage of a proceeding. If any such dispute is not resolved in advance, the presiding judge shall deny or terminate extended coverage.

Source: This Rule is derived from former Rule 16-109.

Rule 16-607 was accompanied by the following Reporter's note.

Rule 16-607 is derived from former Rule 16-109.

Subsection (a)(1) is the same as former Rule 16-109 b. 5.

Subsection (a)(2) is substantially the same as former Rule 16-109 b. 6.

Subsection (a)(3) is the same as former Rule 16-109 f. 4.

Subsection (a)(4) is derived from former Rule 16-109 g. 9.

Subsection (a)(5) is derived from former Rule 16-109 g. 8., g. 9., and g. 12. The Subcommittee added a condition for modifying light sources – that the person conducting the extended coverage must, at his or her own expense, restore the light sources to their prior condition.

Subsection (a)(6) is substantially the same as former Rule 16-109 g. 11.

Subsection (a)(7) is the same as former Rule 16-109 g. 3.

Subsection (b)(1) is substantially the same as former Rule 16-109 g. 4.

Subsection (b)(2) is substantially the same as former Rule 16-109 g. 1.

Subsection (b)(3) is substantially the same as former Rule 16-109 g. 1.

Subsection (c)(1) is substantially the same as former Rule 16-109 g. 5.

Subsection (c)(2) is substantially the same as former Rule 16-109 g. 2.

Subsection (d)(1) is substantially the same as former Rule 16-109 g. 6.

Subsection (d)(2) is substantially the same as former Rule 16-109 g. 6.

Subsection (d)(3) is substantially the same as former Rule 16-109 g. 6.

Subsection (d)(4) is substantially the same as former Rule 16-109 g. 6.

Section (e) is derived from former Rule 16-109 g. 7.

The Chair explained that except for some language that had been restyled, Rule 16-607 was similar to what is in the current Rule, Rule 16-109 b., f., and g. What the Subcommittee did was to split one rule into several rules. Rule 16-109 is a very long rule. Ms. Harris remarked that Montgomery County has allowed still cameras but not flash cameras in the courtroom. Flashes going off in the courtroom would be very disruptive. She asked if Rule 16-607 would prohibit flash cameras. Judge Weatherly responded that flash cameras would be prohibited by subsection (a)(4) of the Rule.

By consensus, the Committee approved Rule 16-607 as presented.

The Chair presented Rule 16-608, Limitation or Termination of Approval, for the Committee’s consideration.

\ MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 600 - EXTENDED COVERAGE OF COURT PROCEEDINGS

Rule 16-608. LIMITATION OR TERMINATION OF APPROVAL

The presiding judge, on the judge's own initiative or on the request of a party, witness, or juror, upon a finding of good cause, may limit or terminate extended coverage of all or any portion of a proceeding. When considering the request of a party, good cause shall be presumed in cases involving domestic violence, custody of or visitation with a child, divorce, annulment, minors, relocated witnesses, and trade secrets.

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

Source: This Rule is derived from former Rule 16-109 f. 1.

Rule 16-608 was accompanied by the following Reporter's note.

Rule 16-608 is derived from former Rule 16-109 f. 1.

The Chair said that Rule 16-608 is basically the same as the current Rule, Rule 16-109 f. 1.

By consensus, the Committee approved Rule 16-608 as presented.

The Chair presented Rule 16-701, Rules Committee, for the

Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 700 - MISCELLANEOUS JUDICIAL UNITS

ADD new Rule 16-701, as follows:

Rule 16-701. RULES COMMITTEE

(a) Existence

There is a Standing Committee on Rules of Practice and Procedure to assist the Court of Appeals in the exercise of its Constitutional and statutory rulemaking authority.

Cross reference: Code, Courts Article, §13-301.

(b) Membership

The Committee shall consist of one incumbent judge of the Court of Special Appeals, three incumbent circuit court judges, three incumbent judges of the District Court, one member of the State Senate, one member of the House of Delegates, one clerk of a circuit court, and such other persons determined by the Court of Appeals. All members shall be appointed by the Court of Appeals.

(c) Terms

(1) A member appointed from the State Senate or the House of Delegates has no term and serves at the pleasure of the Court of Appeals.

(2) The term of the person appointed by virtue of being a circuit court clerk is two years or during the incumbency of the person as a circuit court clerk, whichever is shorter. The clerk member may be reappointed

but may not serve more than three consecutive full terms.

(3) The term of an incumbent judge is three years or during the incumbency of the person as a judge of the court upon which the person was serving at the time of appointment, whichever is shorter.

(4) The term of each of the other members is three years.

(5) The three-year terms, including those of the incumbent judges, shall be staggered so that, insofar as practicable, the terms of one-third of those members will expire each year. Members who are appointed to a three-year term may be reappointed but may not serve more than two consecutive full terms. A member who is appointed to fill the unexpired term of a former member may not serve more than eight consecutive years.

(6) The full terms of all members having terms shall commence on July 1.

(d) Chair and Vice Chair

The Court of Appeals shall designate one member of the Committee as Chair of the Committee and one member as Vice-Chair. The Chair shall preside at meetings of the Committee and, with the assistance of the Reporter, generally supervise the work of the Committee. The Vice Chair shall perform the duties of the Chair in the absence of the Chair.

(e) Reporter and Other Staff

The Court shall appoint a Reporter to the Committee and such assistant or special reporters as may be required to assist the Committee in discharging its responsibilities. The Reporter and any assistant or special reporter shall be a member in good standing of the Maryland Bar. The Court shall appoint such additional staff as it deems necessary.

(f) Open Meetings

The Reporter shall cause to be posted on the Judiciary's website notice of all meetings of the Rules Committee, and subject to reasonable space limitations, all such meetings shall be open to the public. Minutes shall be kept of all meetings of the Committee, and those minutes shall be available to the public.

(g) Duties of Committee

The Rules Committee shall keep abreast of emerging trends and new developments in the law that may affect practice and procedure in the Maryland courts. It shall review relevant new legislation, Executive initiatives, judicial decisions, and proposals from persons interested in the Maryland judicial system to determine whether any new Rules of Procedure or changes to existing Rules may be advisable. Unless the Court of Appeals determines otherwise, every suggestion made to it for the adoption, amendment, or rescission of a Maryland Rule shall be referred to the Rules Committee for consideration.

Committee note: There are a number of committees, commissions, and conferences that are part of the Judicial branch. Some were created by statute, some by Rule, and some by Administrative Order of the Court of Appeals or the Chief Judge. Those that were created by statute or Rule and have a direct administrative relationship with an area of activity covered by Rule are included in the Rules governing that activity. Thus, for example, the Judicial Conference and the Judicial Council are included in Title 16, Chapter 100, dealing with general court administration, the Judicial Ethics Committee is included in Title 18, dealing with judges and judicial officers, and the Board of Law Examiners and the Attorney Grievance Commission are included in Title 19, dealing with attorneys. Other units, either created by Rule or initially created by Administrative Order, that have a somewhat permanent status and significant ongoing responsibilities are included in this Chapter 700 of Title 16. Those that were created by

> Administrative Order to study and make recommendations with respect to one or more particular subjects but are not likely to have a permanent existence are not included in the Rules.
>
> Source: This Rule is new but is derived from former Rule 16-801. The provisions in former Rule 16-801 that deal with the procedure for promulgating Rules rather than the structure and specific duties of the Rules Committee are placed in Rule 16-801.

Rule 16-701 was accompanied by the following Reporter's note.

> Rule 16-701 is based on former Rule 16-801, which addressed the composition of the Rules Committee, changes to the Rules, and maintenance of a record of the Rules. In the interest of transparency, the Subcommittee has extended the scope of the Rule to address the duties of the Chair, Vice Chair, and the staff of the Committee, and to also address meetings and duties of the Committee, all of which had not been set out in a Rule previously.

The Chair commented that the current Rule pertaining to the Rules Committee is Rule 16-801, which is not very informative. It covers both the Committee itself as well as the rulemaking process. The Subcommittee suggested splitting the Rule. The part of the Rule that would go into Chapter 700 would address the structure of judicial agencies. The rulemaking process would go into Chapter 800 as Rule 16-801, Promulgation of Rules. The Subcommittee added much of what is in the current Rule to take account of what the Court of Appeals had requested to go into the Rule.

Section (b), Membership, reflects the fact that the Court

has asked for three circuit court judges, three District Court judges, two legislators, and one clerk to be on the Committee. The Subcommittee added this to the Rule. Section (c) provides for the terms which the Court of Appeals had set up. Except for the legislative members who serve at the pleasure of the Court and the clerk-member who serves a two-year term, everyone else on the Committee serves a three-year term. The Court has now imposed term limits.

The Chair commented that section (d) was new. The current Rule does not refer to the Vice Chair. The Vice Chair suggested that the first sentence of section (d) could read as follows: "The Court of Appeals shall designate one member of the Committee as Chair and may designate one member as Vice Chair." Ms. Libber, an Assistant Reporter, pointed out that the term "Vice-Chair" should not be hyphenated. The Chair noted that there had not been a Vice Chair until 1996. When the Honorable Joseph F. Murphy, Jr. became Chair, because he had not served on the Committee prior to the appointment, the Court of Appeals named Linda Schuett, Esq. as the first Vice Chair. The position of Vice Chair has continued.

The Chair said that section (e) was new. The Rule states: "The Court shall appoint a Reporter to the Committee and such assistant or special reporters as may be required...". The Court has never actually appointed a reporter or assistant reporter; they have always been hired by the Committee. Section (f) had been added, because the Court has always regarded the Rules

Committee as being subject to the open meetings law. Section (g) was new. It provides what the Committee's function is. The last sentence of section (g) is in the current Rule. The Vice Chair asked if the last sentence of section (g), which provides that every suggestion made to the Committee for the adoption, amendment, or rescission of a Maryland Rule shall be referred to the Committee for consideration, should be changed to provide that every suggestion shall be made to a Subcommittee. The Chair responded that suggestions are referred to the Committee, and then the Committee sends them to a Subcommittee.

The Vice Chair remarked that he was referring to items that go to a Subcommittee and are never sent to the full Committee. The Chair said that the suggestions are made to the Committee, who can decide how to address them. Mr. Carbine noted that incoming communications come to the Rules Committee, and they can stay forever in the subcommittees. The Chair pointed out that the suggestions come in all forms. Some are letters from attorneys or lay people, some are referrals from executive agencies or from the legislature. Some referrals are from the Court of Appeals. This is not regarded as being sent to a Subcommittee.

The Vice Chair observed that what he had been thinking of in terms of actual consideration was when a communication is sent to the subcommittee and never gets in front of the full Committee. Judge Norton noted that this happens frequently, because some very poor suggestions are received. They are sent out to a

subcommittee, who decides not to forward them to the Committee. It is a good idea for the full Committee to know what is coming in, so that they can send it out to the correct subcommittee. The Chair commented that from time to time, a topic that did not go to a subcommittee will be added on to the Rules Committee agenda, which is what happened today with the Rules pertaining to jury notes.

By consensus, the Committee approved Rule 16-701 as presented.

The Chair presented Rule 16-702, Conference of Circuit Judges, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 700 - MISCELLANEOUS JUDICIAL UNITS

ADD new Rule 16-702, as follows:

Rule 16-702. CONFERENCE OF CIRCUIT JUDGES

(a) Existence; Membership; Terms

There is a Conference of Circuit Judges. The Conference consists of the Circuit Administrative Judge of each judicial circuit and one additional circuit court judge from each judicial circuit elected by the incumbent circuit court judges in that circuit. The elected members shall serve for a term of two years. If a vacancy occurs because an elected member resigns from the Conference, leaves judicial office, or is appointed to another judicial office, the incumbent circuit court judges in that judge's judicial circuit shall elect a replacement member to serve for the balance

of the unexpired term.

(b) Chair and Vice Chair

The Conference shall elect from its members a Chair and a Vice Chair. The election shall be held every two years, but an interim election shall be held if necessary because an incumbent chair or vice chair ceases to be a member of the Conference.

(c) Meetings; Quorum

The Conference shall meet at least four times a year. A majority of the authorized members of the Conference shall constitute a quorum.

(d) Powers and Duties

(1) Administration Policies

The Conference shall work collaboratively and in consultation with the Chief Judge of the Court of Appeals in developing policies affecting the administration of the circuit courts, including but not limited to:

(A) programs and practices that will enhance the administration of justice in the circuit courts;

(B) the level of operational and judicial resources for the circuit courts to be included in the Judiciary budget;

(C) recommending, opposing, or commenting on legislation that may affect the circuit courts; and

(D) the compensation and benefits for circuit court judges.

(2) Consultants

With the approval of the Chief Judge of the Court of Appeals, the Conference may retain consultants in matters relating to the circuit courts.

(3) Consultation with Chief Judge of the Court of Appeals

The Conference shall consult with the Chief Judge of the Court of Appeals:

(A) on the appointment of circuit court judges to committees of the Judicial Conference in accordance with Rule 16-108; and

(B) to recommend circuit court judges for membership on other committees and bodies of interest to the circuit courts.

(4) Business and Technology Case Management Committee

The Conference shall appoint a committee of not less than three program judges to perform the duties required by Rule 16-308 (d) and generally to advise the Conference regarding the Business and Technology Case Management Program.
Cross reference: For the definition of "program judge," see Rule 16-308 [16-205] (a)(3).

(5) Majority Vote

The Conference and the Executive Committee of the Conference each shall exercise its powers and carry out its duties pursuant to a majority vote of its authorized membership.

(e) Executive Committee

(1) Existence; Membership

There is an Executive Committee of the Conference. It consists of the Conference Chair and Vice Chair and the other members designated by the Conference.

(2) Authority

The Executive Committee is authorized to act with the full authority of the Conference when the Conference is not in session. The actions of the Executive

Committee shall be reported fully to the Conference at its next meeting.

(3) Quorum

A majority of the authorized membership of the Executive Committee shall constitute a quorum.

(4) Convening the Executive Committee

The Executive Committee shall convene at the call of the Conference Chair. In the absence of the Chair, the Vice Chair may convene the Executive Committee.

(f) Conference Staff

The Administrative Office of the Courts shall serve as staff to the Conference and its Executive Committee.

Source: This Rule is derived from former Rule 16-108.

Rule 16-702 was accompanied by the following Reporter's note.

Rule 16-702 is based on former Rule 16-108. The Subcommittee has added language that explains how a vacancy on the Conference is filled and provides for an interim election if the Chair or Vice Chair ceases to be a member of the Conference.

The Chair told the Committee that Rule 16-702 was taken from current Rule 16-108. The only change that the Subcommittee made was to add a requirement of a special election when a vacancy on the Conference is needed to be filled mid-term. The proposed Rule had been sent to the Conference of Circuit Judges, who had not indicated any problem with it.

By consensus, the Committee approved Rule 16-702 as presented.

The Chair presented Rule 16-703, Conference of Circuit Court Administrators, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 700 - MISCELLANEOUS JUDICIAL UNITS

ADD new Rule 16-703, as follows:

Rule 16-703. CONFERENCE OF CIRCUIT COURT ADMINISTRATORS

(a) Existence; Purpose

There is a Conference of Circuit Court Administrators. The purposes of the Conference are:

(1) to provide a forum for policy discussion, information exchange, and professional development; and

(2) to assist and act as a liaison to the Chief Judge of the Court of Appeals, the Maryland Judicial Council, the Conference of Circuit Judges, the Circuit and County Administrative Judges, the Administrative Office of the Courts, the Standing Committee on Rules of Practice and Procedure, and the Conference of Circuit Court Clerks.

(b) Membership

The Conference shall consist of each individual appointed to serve as the court administrator of a circuit court or of a judicial circuit and a representative of the Administrative Office of the Courts designated by the Chief Judge of the Court of Appeals.

(c) Chair and Vice Chair

The Conference shall elect from its members a Chair and a Vice Chair. The

election shall be held every two years, but an interim election shall be held if necessary because an incumbent chair or vice chair ceases to be a member of the Conference.

(d) Meetings; Quorum

The Conference shall meet at least four times a year. At least one of the meetings shall be in Annapolis. A majority of the authorized members of the Conference shall constitute a quorum.

(e) Duties

The Conference shall:

(1) exchange ideas and views on matters relating to the operation, management, and leadership of the circuit courts, including budget and grant administration, case management, library and information services, jury system operations, human resources, facilities management, automation and technology, alternative dispute resolution, and other programs related to the delivery of services, with particular attention to family law matters;

(2) make recommendations to the Chief Judge of the Court of Appeals, the Maryland Judicial Council, the Conference of Circuit Judges, the Administrative Office of the Courts, and the Standing Committee on Rules of Practice and Procedure as to policies intended for the improvement of the overall administration of the circuit courts;

(3) assist the Chief Judge of the Court of Appeals, the County Administrative Judges, and the Administrative Office of the Courts with respect to the preparation of the annual Judicial budget submitted to the Governor and the General Assembly, particularly as it pertains to grants, fiscal impact studies, and other management information reports related to program performance in the circuit courts;

(4) provide advice on other matters as

the Chief Judge of the Court of Appeals, the Maryland Judicial Council, the Conference of Circuit Judges, the Administrative Office of the Courts, the Standing Committee on Rules of Practice and Procedure, and the Conference of Circuit Court Clerks may request; and

(5) provide a forum for professional development and mentoring for court administrators.

Source: This Rule is new. It is derived from an Administrative Order of the Chief Judge of the Court of Appeals dated December 15, 2000.

Rule 16-703 was accompanied by the following Reporter's note.

Several of the conferences and commissions that are part of the Judiciary were created by Administrative Order of the Chief Judge of the Court of Appeals. Those that have a somewhat permanent status and significant ongoing responsibilities are being added to Chapter 700 of Title 16.

The Chair said that Rule 16-703 was derived from an Administrative Order of the Chief Judge of the Court of Appeals dated December 15, 2000.

There being no comment, by consensus, the Committee approved Rule 16-703 as presented.

The Chair presented Rule 16-704, Conference of Circuit Court Clerks, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 700 - MISCELLANEOUS JUDICIAL UNITS

ADD new Rule 16-704, as follows:

Rule 16-704. CONFERENCE OF CIRCUIT COURT CLERKS

(a) Existence; Purpose

There is a Conference of Circuit Court Clerks. The purpose of the Conference is to act as a liaison to the Court of Appeals, the Chief Judge of the Court of Appeals, the clerks of the circuit courts, the Administrative Office of the Courts, and the Standing Committee on Rules of Practice and Procedure.

(b) Membership

(1) Generally

Subject to subsection (b)(2) of this Rule, the Conference shall consist of:

(A) eight individuals chosen by the clerks and chief deputy clerks of the circuit courts;

(B) three individuals appointed by the Chair of the conference; and

(C) one employee of the Administrative Office of the Courts designated by the Chief Judge of the Court of Appeals.

(2) Conditions

(A) Except for the designee of the Chief Judge of the Court of Appeals, each member shall be either a clerk or a chief deputy clerk of a circuit court.

(B) At least three members must be a chief deputy clerk.

(C) Each judicial circuit shall be represented by at least one member.

(c) Chair; Vice Chair; Secretariat

The Conference shall elect from its members a Chair and a Vice Chair. The election shall be held every two years, but

an interim election shall be held if necessary because an incumbent Chair or Vice Chair ceases to be a member of the Conference. In the absence of the Chair, the Vice Chair shall act as Chair. The Administrative Office of the Courts shall serve as secretariat to the Conference.

(d) Meetings; Quorum

The Conference shall meet at least four times a year at the times the Conference determines. At least one of the meetings shall be in Annapolis. A majority of the authorized members of the Conference shall constitute a quorum.

(e) Duties

The Conference shall:

(1) exchange ideas and views on matters relating to the operations of the offices of circuit court clerks;

(2) promote and improve the proficiency of the offices of circuit court clerks through recommendations on matters such as long-range strategic planning, effective management, and training;

(3) make recommendations to the Court of Appeals, the Chief Judge of the Court of Appeals, the Conference of Circuit Judges, the Administrative Office of the Courts, and the Standing Committee on Rules of Practice and Procedure on legislation, Rules, as to policies intended for the improvement of operations of the offices of circuit court clerks or other units of the Judiciary that may affect the office of circuit court clerks;

(4) assist the Chief Judge of the Court of Appeals and the Administrative Office of the Courts with respect to the preparation of the annual judicial budget submitted to the Governor and the General Assembly to the extent it relates to the operation of the offices of circuit court clerks:

(5) in accordance with procedures established by the Chief Judge of the Court of Appeals or the Maryland Judicial Conference, make recommendations to the Maryland Judicial Conference with respect to proposed legislation that may affect the operations of the offices of circuit court clerks; and

(6) provide advice on other matters to the Chief Judge of the Court of Appeals, the Maryland Judicial Council, the Conference of Circuit Judges, the Administrative Office of the Courts, or the Standing Committee on Rules of Practice and Procedure.

Source: This Rule is new. It is derived from an Administrative Order of the Chief Judge of the Court of Appeals dated December 15, 1999.

Rule 16-704 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 16-703.

The Chair commented that Rule 16-704 was derived from an Administrative Order of the Chief Judge of the Court of Appeals dated December 15, 1999. The following two Rules are also derived from Administrative Orders. The thought was that these bodies are part of the judicial administration structure. They are permanent and have specific duties. They are proposed for addition to the Rules, so that everyone knows about them. The Conference of Circuit Court Clerks has already reviewed this Rule.

By consensus, the Committee approved Rule 16-704 as presented.

The Chair presented Rule 16-705, Conference of Orphans'

Court Judges, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 700 - MISCELLANEOUS JUDICIAL UNITS

ADD new Rule 16-705, as follows:

Rule 16-705. CONFERENCE OF ORPHANS' COURT JUDGES

(a) Existence; Purpose

There is a Conference of Orphans' Court Judges. The purpose of the Conference is to act as advisory body to the Chief Judge of the Court of Appeals in all matters relating to the orphans' courts.

(b) Membership; Terms

The Conference shall consist of fourteen orphans' court judges appointed by the Chief Judge of the Court of Appeals for a term of two years, subject to reappointment.

(c) Chair and Vice Chair; Secretariat

The Conference shall elect from its members a Chair and a Vice Chair. In the absence of the Chair, the Vice Chair shall act as Chair. The Administrative Office of the Courts shall serve as secretariat to the Conference.

(d) Meetings; Quorum

The Conference shall meet at least three times a year. A majority of the authorized members of the Conference shall constitute a quorum.

(e) Duties

The Conference shall:

(1) exchange ideas and views on matters relating to the operation, management, and leadership of the orphans' courts; and

(2) advise and make recommendations to the Chief Judge of the Court of Appeals on judicial policy matters directly affecting the orphans' courts with respect to legislation that may affect the operation of the orphans' courts and the administration of justice.

Source: This Rule is new. It is derived from an Administrative Order of the Chief Judge of the Court of Appeals dated November 18, 2003.

Rule 16-705 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 16-703.

The Chair observed that Rule 16-705 was derived from an Administrative Order of the Chief Judge of the Court of Appeals dated November 18, 2003. The Chair asked if someone was present to discuss Rule 16-705. The Honorable Vicky L. Orem, an Orphans' Court Judge for Prince George's County, said that the Orphans' Court supported the addition of Rule 16-705.

By consensus, the Committee approved Rule 16-705 as presented.

The Chair told the Committee that consideration of Rule 16-706, Commission on Professionalism, would be deferred. The Commission is currently being restructured, so that it will no longer be a commission. When this is completed, then the new structure can be placed into the Rule as the Court of Appeals has requested it.

The Chair presented Rule 16-801, Promulgation of Rules, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 800 - MISCELLANEOUS COURT ADMINISTRATION MATTERS

ADD new Rule 16-801, as follows:

Rule 16-801. PROMULGATION OF RULES

(a) Report of Rules Committee

All recommendations by the Standing Committee on Rules of Practice and Procedure for new Rules or changes to existing Rules shall be transmitted to the Court of Appeals in a consecutively numbered written report setting forth the changes proposed and the reasons for the proposed changes. A proposed new Rule shall show in plain type the text of the proposed Rule. Proposed amendments to existing Rules shall show in plain type the current Rule with proposed deletions indicated by strikeouts and proposed additions indicated by underlined language.

(b) Publication of Report; Opportunity for Comment

The Reporter to the Committee shall cause all reports and supplements to them that transmit proposed additions or changes to the Maryland Rules, together with the text of the changes proposed, to be posted for comment on the Judiciary website and, if so ordered by the Chief Judge of the Court of Appeals, published in the Maryland Register. Unless otherwise directed by the Court of Appeals, the comment period ordinarily shall be 30 days.

(c) Written Comments

Unless otherwise directed or approved by the Court of Appeals, comments to proposed additions or changes shall (1) be in writing, (2) identify the person or group making the comment, and (3) be sent to the Reporter to the Committee within the time specified in the notice posted on the Judiciary website. The Reporter shall collect and promptly transmit the comments to the Court. Comments not sent to the Reporter in accordance with this section ordinarily will not be considered by the Court.

(d) Court Proceedings

(1) Generally

(A) The Court of Appeals shall conduct all proceedings involving the exercise of its authority under Maryland Constitution, Article IV, Section 18 (a) to adopt or modify Rules of Procedure at a meeting open to the public. The meeting may consist of a public hearing pursuant to subsection (d)(2) or be limited to specific presentations invited by the Court and discussion and voting by the Court. The meeting may be in the courtroom, in the Court's conference room, or at any other suitable place designated by the Court. Advance notice of the meeting shall be given in the manner designated by the Court.

(B) The Clerk of the Court shall serve as recording secretary at all public hearings and open meetings. The Clerk shall monitor an audio recording of the proceedings which the Clerk shall retain as a permanent record and make available upon request. Recording of the proceedings by <u>other</u> persons in attendance is prohibited.

(C) In order to furnish easy access to Rules proceedings, doors to the court or conference room shall remain open at all times during all public hearings and open meetings.

(2) Public Hearing

(A) Unless, for good cause, the Court of Appeals orders otherwise, the Court, upon

the expiration of any comment period, shall hold a public hearing on all proposed additions or changes to the Maryland Rules.

(B) Persons desiring to be heard shall notify the Clerk of the Court at least two days before the hearing of their desire to be heard and of the amount of time requested to address the Court. The Court may prescribe a shorter period for oral presentation and may pose questions to the person addressing the Court.

(3) Extended Coverage

(A) In this Rule, "extended coverage" has the meaning set forth in Rule 16-601 (a).

(B) Ordinarily, extended coverage will be permitted at a public hearing conducted pursuant to subsection (d)(2) of this Rule, provided that a request for such coverage is made to the Clerk of the Court at least five days before the hearing. For good cause shown, the Court may honor a request which does not comply with the requirements of this subsection.

(C) Absent exceptional circumstances, extended coverage shall not be permitted during open meetings that are not public hearings conducted pursuant to subsection (d)(2) of this Rule. If extended coverage is sought, a written request setting forth the exceptional circumstances warranting extended coverage shall be made to the Clerk at least five days before the meeting coverage. A decision by the Court denying extended coverage is not intended to restrict the right of the media to report the proceedings.

(D) Extended coverage under this Rule is subject to the operational requirements set forth in Rule 16-607.

(e) Rules Order

New rules and the amendment or rescission of existing Rules adopted by the Court of Appeals shall be by a Rules Order of the Court.

(f) Effective Date

(1) Stated in Rules Order

The Rules Order shall state the effective date of the changes and the extent to which those changes will apply to proceedings pending on that date.

(2) Minimum Delay; Exception

Unless the Court of Appeals determines that, due to exigent circumstances, Rules changes should take effect sooner, Rules changes shall become effective no earlier than the later of:

(A) thirty days after publication of the Rules Order on the Judiciary website or in the Maryland Register pursuant to section (g), or

(B) the first day of January or the first day of July next succeeding publication of the Rules Order in the Maryland Register pursuant to section (g), whichever first occurs.

(g) Publication of Rules Order and Rules Changes

(1) Generally

A copy of every Rules Order shall be posted on the Judiciary website and published in the Maryland Register under a Notice of Rules Changes. The Court may direct that other forms of public notice also be given.

(2) Text of Rules Changes

(A) The text of each Rule adopted or amended shall be posted on the Judiciary website with the Rules Order.

(B) A Rules Order that adopts or amends a Rule in the form previously published in the Maryland Register as a proposed Rule change shall cite the number and page of the Maryland Register in which the proposed change appears. In that event, the text of

the Rule adopted or amended need not be republished in the Maryland Register with the Rules Order.

(C) If, pursuant to section (b), the proposed changes were not published in the Maryland Register, the full text of any new Rules and any amendments to existing Rules, showing deleted language by strikeouts and new language by underlining, shall be published on the Judiciary website with the Rules order and in the Maryland Register in the format prescribed by the Maryland Register.

(D) If a new Rule or an amendment of an existing Rule, as adopted by the Court, differs from the form proposed and previously published in the Maryland Register, the full text of the Rule or amendment as adopted, showing each change made by the Court from the previously published form, shall be published in the Maryland Register with the Rules Order.

(h) Record of Rules

The Clerk of the Court of Appeals shall maintain a separate record designated as the "Maryland Rules of Procedure," which shall contain all Rules and amendments adopted by the Court.

Source: This Rule is new. It is derived, in part, from current Rule 16-801 and Internal Operating Rules of the Court of Appeals 1 through 10.

Rule 16-801 was accompanied by the following Reporter's note.

Rule 16-801 is in part derived from former Rule 16-801, from internal Operating Rules of the Court of Appeals, and it is in part new. The portion of the former Rule pertaining to the structure of the Rules Committee is new in Rule 16-701. The description of the rulemaking process has been updated and set out in greater detail than in the former Rule. It addresses more

fully the comment process and publication of rules orders and rules changes. The Rule has new language addressing proceedings in the Court of Appeals and public hearings.

The Chair explained that the Committee had added language to the current Rule, which is very brief, fleshing out what the rulemaking process really is, so that it is transparent. One issue may need to go to the legislature. Currently, proposed rules that the Committee sends up to the Court of Appeals do not have to go to the Maryland Register unless the Chief Judge of the Court of Appeals orders it. The Subcommittee retained this provision. However, Code, State Government Article, §7-206 requires that any rules that are adopted must be published in the Maryland Register. This made sense when the Maryland Register was in print, but it is now no longer publicly available. It is online, and to obtain it, someone must have a paid subscription. The Judiciary of Maryland has a website that is exactly the same, except that it is free and items can be posted on it quicker than they would appear in the Maryland Register.

The Chair commented that it has been a problem complying with the requirement to put rules into the Maryland Register, because the Rules of Procedure are printed on 8 ½" by 11" pages. To get into the Maryland Register, Cathy Cox, Administrative Assistant to the Rules Committee, has to reformat every single rule that is changed or adopted both by the Committee and by the Court of Appeals. In addition to this, the Maryland Register only comes out every two weeks. It is necessary to get whatever

is being published to the Maryland Register within their deadline. If the deadline is missed, it could take another month for something to be published.

The Chair said that the Subcommittee had kept the statutory requirements in Rule 16-801, but they wanted to ask the legislative members of the Committee if they would consider exempting the Court of Appeals from the requirement of publishing rule changes in the Maryland Register as long as the rule changes are published on the Judiciary's website. As a practical matter, publishing in the Maryland Register does not provide any greater notice. It actually provides less notice, because what is being published may not appear until one month later. This change would be up to the legislature.

Mr. Maloney remarked that procedures in the Division of State Documents are somewhat archaic. Everything they do could be done online. Instead, they prefer to earn their revenue from paper documents. Mr. Maloney said that he hoped that the trend to put everything online would be started. The Chair responded that other State agencies probably have the same issues. The Judiciary has a dedicated website.

By consensus, the Committee approved Rule 16-801 as presented.

The Chair presented Rule 16-802, Continuity of Operations Plan, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 800 - MISCELLANEOUS COURT ADMINISTRATION MATTERS

ADD new Rule 16-802, as follows:

Rule 16-802. CONTINUITY OF OPERATIONS PLAN

(a) Duty to Prepare, Monitor, and Test

With the assistance of the Office of Emergency Preparedness and Court Security and the Administrative Office of the Courts, the Chief Judge of the Court of Appeals, the Chief Judge of the Court of Special Appeals, the County Administrative Judge of each Circuit Court in consultation with the Circuit Administrative Judge for the judicial circuit, and the Chief Judge of the District Court be responsible for:

(1) preparing, monitoring, and periodically testing and updating a detailed plan for the continuity of operations of their respective courts in the event of a public emergency or catastrophic health emergency; and

(2) assuring that the judges of their respective courts and other necessary judicial and non-judicial personnel are familiar with the plan.

(b) Conformance to AOC Guidelines

The plan shall conform to guidelines established by the Administrative Office of the Courts. The plan and any amendments to it shall be submitted to Office of Emergency Preparedness and Court Security and the State Court Administrator for review in the manner and form designated by the Office of Emergency Preparedness and Court Security and to the Court of Appeals for review and

approval. The plan and any amendments to it shall take effect upon approval by the Court of Appeals.

Source: This Rule is new.

Rule 16-802 was accompanied by the following Reporter's note.

Rule 16-802 is in part new and in part derived from current practices of the Office of Emergency Preparedness, which is a part of the Administrative Office of the Courts.

After Hurricane Katrina in 2005, the Federal Government and the National Center for State Courts recommended that state courts implement emergency planning. Since 2008, the Office of Emergency Preparedness, together with local courts, have prepared Continuity of Operations ("COOP") Plans under the authority of a letter written by Chief Judge Bell. The purpose of establishing a COOP Plan is to ensure that each court office is capable of providing basic services during a variety of operational disasters.

The Rule establishes procedures for the preparation of COOP plans for every level of court. Each plan and any amendment to it becomes effective upon approval by the Court of Appeals.

The Chair told the Committee that Rule 16-802 was new. It picks up the current practice of the Office of Emergency Preparedness. The plans set out in the Rule for the continuity of operations of the courts in the event of a public emergency or catastrophic health emergency are necessary and must be available. They have to conform to Administrative Office of the Courts (AOC) guidelines. The Subcommittee felt that a rule was necessary.

By consensus, the Committee approved Rule 16-802 as presented.

The Chair presented Rule 16-803, Continuances or Postponements for Conflicting Case Assignments or Legislative Duties, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 800 - MISCELLANEOUS COURT ADMINISTRATION MATTERS

ADD new Rule 16-803, as follows:

Rule 16-803. CONTINUANCES OR POSTPONEMENTS FOR CONFLICTING CASE ASSIGNMENTS OR LEGISLATIVE DUTIES

(a) Responsibilities of Attorneys

(1) Generally

When consulted as to the availability of dates for a trial or hearing, an attorney has the responsibility of assuring the absence of conflicting assignments on any date that the attorney indicates is acceptable.

(2) Cases in Which Attorney Already Knows of Conflict When Accepting Employment

If an attorney accepts employment in a case in which a date or time for hearing or trial has already been set after the attorney has been notified of a conflicting assignment for the same date or time, the attorney should not expect to be granted a postponement or continuance. In an extraordinary circumstance, the court may grant a postponement or continuance upon

findings that (A) all parties, witnesses, and attorneys can be notified of the postponement or continuance sufficiently in advance of the hearing or trial to avoid undue inconvenience, (B) the proceeding has not been postponed or continued an unreasonable number of times previously, and (C) the postponement or continuance would not otherwise impede the proper administration of justice.

(3) Cases in Which Conflict Develops After Representation Has Been Accepted

If a conflict in assignment dates or times develops after representation has been accepted, the attorney shall (A) notify the court having a lesser priority under section (b) of this Rule immediately upon becoming aware of the conflict, (B) make a prompt and good faith effort to resolve the conflict by obtaining the presence of a partner or associate to act in one of the cases before a postponement or continuance is requested, subject to any specific obligation that the attorney has to the client, and (C) if a change in an existing scheduling order is required, immediately file a motion for such a change. A request for a postponement or continuance shall include a statement that it is not practical for a partner or associate to handle one of the conflicting assignments.

(b) Priorities Where Conflicting Assignments Exist

(1) Publicly-Employed Attorneys

Except in an extraordinary circumstance, an attorney who (A) holds public office or employment as an attorney, (B) is permitted to engage also in the private practice of law, and (C) faces an assignment conflict between an action in which the attorney appears in a public capacity and an action in which the attorney appears in a private capacity, the attorney may not be granted a postponement or continuance in the action in which the attorney appears in a public capacity.

(2) Conflicts in Trial Court Assignments

In the event of a conflict in a hearing or trial date or time between a Maryland circuit court, the United States District Court for the District of Maryland, the United States Bankruptcy Court for the District of Maryland, or the District Court of Maryland, priority shall be given in accordance with the earliest date on which an assignment for hearing or trial was made, except that:

(A) if the provisions of the Federal Speedy Trial Act so require, first priority shall be given to a criminal proceeding in the United State District Court; and

(B) subject to subsection (b)(2)(A) of this Rule, if the provisions of Rule 4-271 so require, first priority shall be given to a criminal proceeding in a Maryland circuit court.

(3) Conflicts Between Appellate and Trial Court Proceedings

In the event of a conflict in a hearing or trial date or time between an action or proceeding pending in (A) the Court of Appeals of Maryland, the Court of Special Appeals, or the United States Court of Appeals for the Fourth Circuit, and (B) a Federal or State trial court, the appellate proceeding shall be given priority over the trial court proceeding unless otherwise agreed by the respective appellate and trial courts.

(4) Conflicts Between Judicial and Administrative Proceedings

In the event of a conflict between a judicial proceeding and an administrative proceeding, even where the attorney in the judicial proceeding is a member of the administrative agency, the judicial proceeding has priority, and the pendency of the administrative proceeding is not a basis for a postponement or continuance of the judicial proceeding.

(c) Attorneys Who are Members or Desk Officers of the General Assembly

A proceeding shall be continued in conformance with Code, Courts Article, §6-402 upon request by an attorney of record in the action who is a member or desk officer of the General Assembly. In accepting employment in the action, however, the attorney should consider the inconvenience to the public, the bar, and the judicial system produced by excessive continuances.

(d) Resolution of Conflict by Courts

Nothing in this Rule precludes the affected courts, when apprised of a conflict, from attempting to resolve the conflict informally in a manner other than in accordance with the priorities established in section (b) of this Rule.

Source: This Rule is new.

Rule 16-803 was accompanied by the following Reporter's note.

Rule 16-803 is in part derived from an Administrative Order of the Chief Judge of the Court of Appeals, in part derived from section (d) of Rule 2-508 and section (c) of Rule 3-508, and is in part new. The Subcommittee has added section (d). The Subcommittee recommends deleting section (d) of Rule 2-508 and section (c) of Rule 3-508, deleting the cross references in those Rules to the Administrative Order, and adding a cross reference to Rule 16-803 in Rules 2-508 and 3-508. This would provide a more accessible resource than the Administrative Order and avoid duplication of information.

The Chair explained that Rule 16-803 was taken from an Administrative Order that has been amended several times. It relates to conflicts in case assignments. An attorney should not accept a case that is set for trial or hearing at a given time if

the attorney is in another case that has been set for trial or hearing at the same time. The Rule also refers to the conflicts between courts, including federal, State, appellate, and trial courts. This issue has been in existence 20 to 30 years. The Chair inquired if the judges present had any comments. Judge Love responded that Rule 16-803 was exactly what is needed to address the problem. The District Court in Prince George's County has a postponement policy, which basically tracks these Administrative Orders. If their policy has the power of the Rule behind it, it would make his job much easier.

Mr. Michael spoke about the Maryland circuit court judges' experience in dealing with the U.S. District Court judges. He expressed the view that when there is a conflict, the federal judges do not pay much attention to the procedure set out in the proposed Rule and the Administrative Order. Mr. Maloney added that he had referred to this procedure when he had been in front of a three-judge panel in U.S. District Court, and the judges had said that they were not interested in it.

The Chair commented that this procedure had been worked out with the U.S. District Court when the Administrative Order had been written, and at the time, there was a State-Federal Judicial Council. They had been very accommodating as to the conflicts issue. Mr. Michael noted that this was 20 years ago. He said that he was not criticizing the contents of the proposed Rule. It is necessary and is appropriate. He expressed the opinion that there is an issue with the federal court having to accede to

a State circuit court or any other court.

The Chair observed that the State-Federal Judicial Council could be resuscitated. He had been on the Council, and the issue of case conflicts had been discussed. When the Chair had been on the Court of Special Appeals, a conflict between a federal case and a Court of Special Appeals case had arisen. He had called the federal judge, who had agreed to start the case at 11:00 a.m., so the Court of Special Appeals case could take place at 9:00 a.m.

Judge Weatherly remarked that when she was the family coordinating judge, the conflict problem arose frequently with legislators who came to scheduling conferences and accepted trial dates within the legislative session. They do not have to do this; the judges would be happy to work around their legislative commitments. Then, one week before the two-day trial, the legislators file for a postponement, citing legislative privilege. The Chair pointed out that there is a statute addressing continuances for legislative duties, Code, Courts Article, §6-402. Judge Weatherly said that she had thought that this was to help legislators, so that they would not have to turn down work. This problem tends to be limited to particular individuals.

Mr. Zarbin remarked that a case is pending in front of the Court of Appeals, which is a disbarment proceeding pertaining to a legislator/attorney (*Attorney Grievance Commission v. Alston*,

428 Md. 650 (2012)). One of the issues brought up in the rebuttal argument was a letter from an Assistant Attorney General stating that the legislator was not allowed to avoid case commitments due to the fact that the person is a legislator. The Court of Appeals may address this issue. Does a member of the legislature get an automatic postponement of cases? Judge Pierson added that the statute provides that the legislators do not have to comply with the court's postponement procedures.

The Chair commented that the Maryland State Bar Association can ask the Court of Appeals to consider resuscitating the State-Federal Judicial Council. The Council used to meet once or twice a year. The Honorable Joseph H. H. Kaplan, who is a member emeritus of the Rules Committee, was on the Council when he was the Administrative Judge for Baltimore City, and it was very useful.

The Chair asked if anyone had any more comments on Rule 16-803. Ms. Harris inquired whether a definition of the terms "continuance" and "postponement" could be added to the beginning of the Rule. The courts, as well as attorneys, have been struggling with differentiating the two terms. With MDEC soon to be instituted, the clerks' offices cannot figure out which is which. If a definition is added to the Rule, the attorneys will know what a postponement is and what a continuance is, since the two are different. The Honorable Robert M. Bell, Chief Judge of the Court of Appeals, had written a definition a number of years ago that would be helpful. A continuance is used when a case has

already been started. A postponement is for a case that had been set for trial or motion and is delayed. The new case management system will need to be able to differentiate which is which.

The Chair inquired what happens when a continuance is asked for in the following scenario. The attorney thought that the case would take two days, because that was how it was scheduled, so he or she took a conflicting assignment for the third day. However, the case had not finished in the two days allotted. Ms. Harris answered that the court would try to have the case go forward on the third day. The clerks' office would try to figure out which case would go forward. They try not to continue a case to a different week or a different month.

The Chair hypothesized that in a scheduling order, a case is set for two days, Monday and Tuesday, and based on this, the attorney schedules a case in a different court for Wednesday. When Tuesday afternoon arrives, the case is not over, and the judge tells the parties to come back the next day at 9:00 a.m. Ms. Harris said that this would be a postponement. The Chair inquired if it is a postponement because the second case has preference over the first case. Otherwise, it would be a continuance. Ms. Harris explained that because the attorney has requested it, it is a postponement. Mr. Dunn pointed out that Rule 2-508 is entitled "Continuance." Mr. Zarbin remarked that an attorney does not care what it is called, he or she just wants the case to be postponed.

Judge Weatherly commented that it is a very important

statistic for courts to know whether the two-day trial was a four-day trial, or whether the case was moved, because the court could not reach it, or because the attorneys wanted the case continued. The courts code these cases for purposes of case management. The courts have to figure out how many judges are needed to be on the bench on a given day. Mr. Zarbin noted that the word "continuance" in Code, Courts Article, §6-402 means to continue to another day, not tomorrow. Some judges feel that if the case is not over in the allotted two days, it is done. Judge Weatherly observed that continuing to another day could mean continuing to the next day.

The Chair asked Ms. Harris what the effect would be on Rule 16-803 if a definition would be added that draws the distinction between "continuance" and "postponement." Ms. Harris replied that it would allow people to request the proper procedure. It allows the courts to code things properly, so the statistics guide the courts in determining what resources are needed in the future. It also gives the courts the ability to determine whether the attorneys were wrong or the court was wrong in setting cases. If 70% of cases were set for two-day trials and most went three days, the court knows that scheduling of cases has to be handled differently. Or it could be the opposite, where four days are requested for a trial, but the judge allows only two days. This information helps the courts run more efficiently.

The Chair questioned whether Rule 16-803 was the appropriate

rule to put in the definitions of the words “continuance” and “postponement.” Requests for continuances and postponements appear throughout the Rules of Procedure. Would it be appropriate to place the definitions in Title 1? Ms. Harris responded that both terms have been added throughout Rule 16-803. She did not think that people actually understand the difference between the two terms.

Judge Norton remarked that most attorneys and many judges do not make the distinction between “continuance” and “postponement” and treat the two the same. He understood Ms. Harris’ point about how the difference may matter administratively. It is going to be an educational process for attorneys and judges to use the correct verbiage. The Reporter pointed out that a trap should not be set up for the attorney who asks for a continuance, and it is refused, because the attorney used the wrong terminology.

The Chair commented that Rule 16-803 may not be the correct place for the definitions. The difference does not matter in Rule 16-803. The Reporter said that the Subcommittee had gone through Rule 16-803 to make sure that the language was “postponed or continued,” although they missed one place, which will be changed. It does not matter in Rule 16-803, but the definitions could go in Title 1 and some of the other Rules.

By consensus, the Committee approved Rule 16-803 as amended.

The Chair presented Rule 16-804, Anti-nepotism Policy, for the Committee’s consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 800 - MISCELLANEOUS COURT ADMINISTRATION MATTERS

ADD new Rule 16-804, as follows:

Rule 16-804. ANTI-NEPOTISM POLICY

(a) Definition of "Relative"

In this Rule, "relative," with respect to an employee of the Maryland Judiciary, means:

(1) a spouse of the employee;

(2) a child of the employee or employee's spouse, including a stepchild and current foster child;

(3) a parent of an employee or employee's spouse, including a stepparent or other individual who took the place of a parent;

(4) a grandparent of the employee or employee's spouse, including a step-grandparent or other individual who took the place of a grandparent;

(5) a sibling of the employee or employee's spouse, including a step- and half-sibling;

(6) an aunt or uncle of the employee or employee's spouse;

(7) a nephew or niece of the employee or employee's spouse;

(8) a first cousin of the employee or employee's spouse;

(9) a son-in-law or daughter-in-law of the employee or employee's spouse; and

(10) a brother-in-law or sister-in-law of the employee or employee's spouse.

(b) Policy for Judiciary Employment

The policy of the Maryland Judiciary is that (1) recruitment, selection, promotion, reassignment, and transfer of employees be based on their demonstrated ability, knowledge, and skills and (2) demotion or other appropriate disciplinary action not be avoided or otherwise affected by familial relationships.

(c) Employment of Relatives

(1) Generally

Relatives who meet established requirements for job vacancies based on their qualifications and performance are eligible for Judiciary employment except as provided in subsection (c)(2).

(2) Exceptions and Limitations

Except as provided in subsection (c)(4), (i) an employee and the employee's relative may not become or continue to be employed in a superior-subordinate relationship; (ii) an employee may not act as an advocate for the employee's relative with respect to any condition of employment; promotion, reassignment, transfer, or demotion or other disciplinary action; (iii) unless employed by the Judiciary prior to _____, a relative of any incumbent judge, regardless of whether compensated from state or local funds, is ineligible for employment in the same court, unless that employee is filling a temporary position with a term limit; and (iv) more than one relative may not work for the same supervisor, without the prior approval of the Judiciary's Human Resources Department.

(3) Responsibility of Appointing Authority

If employees become relatives while employed by the Judiciary, the appointing

authority with control over the employees shall ensure that a superior-subordinate relationship does not occur.

(4) Approval of Employment of Relative by Court of Appeals

On recommendation of a Circuit Administrative Judge or District Administrative Judge, the Court of Appeals may approve the employment of a relative otherwise prohibited by subsection (c)(2) of this Rule but only in instances of unusual circumstances involving temporary and limited employment.

(d) Disclosure; Penalties

Each applicant for employment by the Judiciary shall disclose in writing the name of each relative employed by the Judiciary. Each employee of the Judiciary shall disclose in writing any prohibited relationship that may arise due to (1) demotion, promotion, reassignment, or transfer of the employee or (2) an election. Failure of an applicant or employee to provide complete and accurate information may result in termination of employment with the Judiciary.

(e) Department of Public Safety and Correctional Services

A judge of the Maryland Judiciary may not have any involvement in the hiring process for employees of any unit within the Department of Public Safety and Correctional Services.

(f) Application of Administrative Order dated May 4, 2006 and Rule

Any employee relationship that was permitted prior to _____ may continue subject to satisfactory job performance, but this Rule shall govern any promotion, reassignment, transfer, or disciplinary action occurring on or after its effective date as to the relationship.

Source: This Rule is new.

Rule 16-804 was accompanied by the following Reporter's note.

> Although an anti-nepotism policy for the Judiciary has been in existence since 1996, it has been located only in the Administrative Orders addressing it. The Subcommittee recommends the placement of the anti-nepotism policy in a Rule so it is more accessible to employees of the Judiciary and to the public.

The Chair told the Committee that Rule 16-804 was purely an administrative rule that had been located in various Administrative Orders, but the Subcommittee felt that it should be in a Rule. Mr. Michael asked if there was a policy that applied to employment prior to a certain date, which is no longer appropriate, noting the blanks in the Rule. The Chair explained that the blanks were for the effective date of the order. Mr. Michael inquired if hiring relatives had been allowed in the past. Was there a concern about grandfathering in this policy of hiring relatives? The Chair answered affirmatively.

Mr. Michael asked if the Committee has to address the blanks. The Chair responded that he was not sure which date should be put in where the blanks are, whether it is the effective date of Rule 16-804, or whether it should go back further. Mr. Carbine asked whether it would be the date of the Administrative Order. The Chair answered that it might be that date. The problem is that the Administrative Orders have been codified over the years. It may be necessary to track back to the dates the Orders became effective. The effective date of the

Rule may work.

Ms. Harris asked about the language at the end of subsection (b)(2) that reads "...without the prior approval of the Judiciary's Human Resources Department." On the local side, about 140 people are working directly for the Administrative Judge, and they do not go through the Human Resources Department of the Administrative Office of the Courts. She asked if the language "and the Administrative Judge" could be added after the word "Department." The Chair asked if the word after the word "Department" should be "or." Ms. Harris answered affirmatively. The Chair noted that this broadens the Rule greatly.

The Reporter inquired if this person referred to by Ms. Harris is a county employee. Ms. Harris answered that the person is an employee paid by the county who works under the direction of some county personnel human resources regulation. The Reporter asked if the person would be subject to the county's human resources policies. Ms. Harris replied that the counties have their own human resources policies that are separate from the policies of the AOC. She did not want the Administrative Judge to have to ask the human resources person of the AOC when the matter has nothing to do with the AOC personnel regulations. She suggested that the language of subsection (c)(2)(iv) could be stricken. The Chair pointed out that this language was in the Administrative Order. Ms. Harris expressed the view that it is dangerous. The Chair stated that he assumed that since this language is in the current Administrative Order, it was put there

by Chief Judge Bell. He suggested that Rule 16-804 be left as it is.

By consensus, the Committee approved Rule 16-804 as presented.

The Chair presented Rule 16-805, Appointment of Bail Bond Commissioners - Licensing and Regulation of Bail Bondsmen, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 800 - MISCELLANEOUS COURT ADMINISTRATION MATTERS

Rule 16-805. APPOINTMENT OF BAIL BOND COMMISSIONER - LICENSING AND REGULATION OF BAIL BONDSMEN

A majority of the judges of the circuit courts in any appellate judicial circuit may appoint a bail bond commissioner and license and regulate bail bondsmen and acceptance of bail bonds. Each bail bond commissioner appointed pursuant to this Rule shall prepare, maintain, and periodically distribute to all District Court commissioners and clerks within the jurisdiction of the appellate judicial circuit for posting in their respective offices, to the State Court Administrator, and to the Chief Clerk of the District Court, an alphabetical list of bail bondsmen licensed to write bail bonds within the appellate judicial circuit, showing the bail bondsman's name, business address and telephone number, and any limit on the amount of any one bond, and the aggregate limit on all bonds, each bail bondsman is authorized to write.

Source: This Rule is derived from former Rule 16-817.

Rule 16-805 was accompanied by the following Reporter's note.

Rule 16-805 carries forward current Rule 16-817 verbatim.

The Chair explained that Rule 16-805 had not been changed from the current Rule, Rule 16-817.

By consensus, the Committee approved Rule 16-805 as presented.

The Chair presented Rules 2-508 and 3-508, Continuance, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-508 to delete section (d), delete the cross reference, add a new cross reference to Rule 16-803, and make stylistic changes, as follows:

Rule 2-508. CONTINUANCE

(a) Generally

On motion of any party or on its own initiative, the court may continue a trial or other proceeding as justice may require.

(b) Discovery not Completed

When an action has been assigned a trial date, the trial shall not be continued on the ground that discovery has not yet been

completed, except for good cause shown.

(c) Absent Witness

A motion for a continuance on the ground that a necessary witness is absent shall be supported by an affidavit. The affidavit shall state: (1) the intention of the affiant to call the witness at the proceeding, (2) the specific facts to which the witness is expected to testify, (3) the reasons why the matter cannot be determined with justice to the party without the evidence, (4) the facts that show that reasonable diligence has been employed to obtain the attendance of the witness, and (5) the facts that lead the affiant to conclude that the attendance or testimony of the witness can be obtained within a reasonable time. The court may examine the affiant under oath as to any of the matters stated in the affidavit and as to the information or knowledge relied upon by the affiant in determining those facts to which the witness is expected to testify. If satisfied that a sufficient showing has been made, the court shall continue the proceeding unless the opposing party elects to stipulate that the absent witness would, if present, testify to the facts stated in the affidavit, in which event the court may deny the motion.

~~(d) Legislative Privilege~~

~~Upon request of an attorney of record who is a member or desk officer of the General Assembly, a proceeding that is scheduled during the period of time commencing five days before the legislative session convenes and ending ten days after its adjournment shall be continued. Upon request of an attorney of record who is a member of the Legislative Policy Committee or one of its committees or subcommittees or a member of a committee or subcommittee of the State legislature functioning during the legislative interim, a proceeding that is scheduled on the day of a meeting of the Committee or subcommittee shall be continued. When a brief or memorandum of law is required to be filed in a proceeding to be continued~~

~~under the provisions of this section, the proceeding shall be continued for a time sufficient to allow it to be prepared and filed.~~

~~(e)~~ (d) Costs

When granting a continuance for a reason other than one stated in section (d), the court may assess costs and expenses occasioned by the continuance.

Cross reference: ~~For the Revised Administrative Order for Continuances for Conflicting Case Assignments or Legislative Duties, see the Maryland Judiciary Website, www.mdcourts.gov.~~ See Rule 16-803 for postponements or continuances for conflicting case assignments or legislative duties.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 527 a 1.
Section (b) is derived from former Rule 526.
Section (c) is derived from former Rule 527 c 1, 2, 3, and 4.
Section (d) is derived from former Rule 527 b.
Section (e) is derived from former Rule 527 e.

Rule 2-508 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 16-803.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 500 - TRIAL

AMEND Rule 3-508 to delete section (c), add a cross reference to Rule 16-803, and

make stylistic changes, as follows:

Rule 3-508. CONTINUANCE

(a) Generally

On motion of any party or on its own initiative, the court may continue a trial or other proceeding as justice may require.

(b) Discovery not Completed

When an action has been assigned a trial date, the trial shall not be continued on the ground that discovery has not yet been completed, except for good cause shown.

~~(c) Legislative Privilege~~

~~Upon request of an attorney of record who is a member or desk officer of the General Assembly, a proceeding that is scheduled during the period of time commencing five days before the legislative session convenes and ending ten days after its adjournment shall be continued. Upon request of an attorney of record who is a member of the Legislative Policy Committee or one of its committees or subcommittees or a member of a committee or subcommittee of the State legislature functioning during the legislative interim, a proceeding that is scheduled on the day of a meeting of the Committee or subcommittee shall be continued. When a brief or memorandum of law is required to be filed in a proceeding to be continued under the provisions of this section, the proceeding shall be continued for a time sufficient to allow it to be prepared and filed.~~

~~(d)~~ (c) Costs

When granting a continuance for a reason other than one stated in section (c), the court may assess costs and expenses occasioned by the continuance.

Cross reference: See Rule 16-803 for postponements or continuances for conflicting

case assignments or legislative duties.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 527.
Section (b) is derived from former M.D.R. 526.
Section (c) is derived from former Rule 527 b.
Section (d) is derived from former Rule 527 e.

Rule 3-508 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 16-803.

The Chair told the Committee that Rules 2-508 and 3-508 have a conforming amendment. Section (d), Legislative Privilege, of Rule 2-508 and section (c) of Rule 3-508 have been eliminated, because they have been included in Rule 16-803. Ms. Harris asked whether the definitions of "continuance" and "postponement" could be added to Rules 2-508 and 3-508. Judge Norton expressed the view that the definitions would not belong in these Rules, unless the title or the language was changed. The Chair said that the language of Rules 2-508 and 3-508 could be "continuance or postponement" as it is in Rule 16-803. By consensus, the Committee approved this change.

By consensus, the Committee approved Rules 2-508 and 3-508 as amended.

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