COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in the Judiciary Education and Conference Center, Training Rooms 5 & 6, 2011-D Commerce Park Drive, Annapolis, Maryland on November 19, 2010.

Members present:

Hon. Alan M. Wilner, Chair

F. Vernon Boozer, Esq.
Albert D. Brault, Esq.
Hon. Ellen L. Hollander
Harry S. Johnson, Esq.
Hon. Joseph H. H. Kaplan
Richard M. Karceski, Esq.
Robert D. Klein, Esq.
J. Brooks Leahy, Esq.
Hon. Thomas J. Love
Timothy F. Maloney, Esq.
Robert R. Michael, Esq.
Anne C. Ogletree, Esq.
Hon. W. Michel Pierson
Debbie L. Potter, Esq.
Del. Joseph F. Vallario, Jr.
Hon. Julia B. Weatherly

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
P. Tyson Bennett, Esq., Chair, Rules of Practice Committee, Maryland State Bar Association
Sandra Martin, The Bay Weekly
Jeffrey Darsie, Esq., Assistant Attorney General
Joy Bramble, The Baltimore Times
Alex Knoll, The Bay Weekly
Karen Acton, The Maryland Independent
Tim Thomas, The Baltimore Sun
Steve Lash, The Daily Record
Tom Marquardt, Capital-Gazette Newspapers
Jack Murphy, MDDC Press Association
Denise Rolark Barnes, The Washington Informer
Charles O. Monk, II, Esq., Saul Ewing, LLP
James McLaughlin, The Washington Post
James F. X. Cosgrove, Esq. Legislative, MLTA
Rebecca Snyder, The Daily Record
Alyse Mitten, Executive Director, Mid-Atlantic Community Papers Association
Mr. George Lubeck, The East County Times

George Wilbanks, The East County Times
Jim Haigh, Mid-Atlantic Community Papers Association
Allan J. Gibber, Esq.
Alice Neff Lucan, Esq., News Law
Grace Connolly, Register of Wills, Baltimore County
Margaret H. Phipps, Register of Wills, Calvert County
David Hayes, Esq., Assistant Attorney General
Eric Lieberman, Esq., The Washington Post

The Chair convened the meeting. He announced the re-election to the General Assembly of Senator Norman R. Stone, Jr., who is the longest-serving member of the Senate. He was elected to the House of Delegates in 1962 and to the Senate in 1966. When he completes this term, he will have served 48 years as a legislator. The Chair also announced that Delegate Joseph F. Vallario, Jr. was re-elected to the House of Delegates in which he has served since 1974. He chairs the House Judiciary Committee. Master Zakia Mahasa is receiving an award today as an Outstanding Leader in Law.

The Chair told the Committee that he received a memorandum from the Honorable Robert M. Bell, Chief Judge of the Court of Appeals, copies of which were distributed to the Committee. (See Appendix 1). In the letter, Chief Judge Bell made an unusual request, asking the Committee to advise the Court on various aspects of the possibility of replacing the doctrine of contributory negligence with comparative fault. Much of the work with respect to Item 1 of the memorandum had already been done by the Department of Legislative Services in 2004. They did a complete study, which the Committee has a copy of, as to what every other state as of then had done with respect to

contributory negligence, comparative fault, and any legal principles associated with or affected by those doctrines. This study needs to be updated. North Carolina, one of the remaining states that has contributory negligence, had a bill in its legislature this most recent session that did not pass, but the legislature created a legislative committee to study the issue and to report to the 2011 session of their general assembly.

The Rules Committee was not being asked to make a recommendation to the Court of Appeals as to whether the Court should make any change by rule but only to advise, apart from the study, whether in the Committee's view the Court could change the contributory negligence doctrine by rule, and if so, what form such a rule should take.

The Chair said that he did not know what the motivation of the Court was for making this request. He said that he would appoint a subcommittee to superintend this task, and the subcommittee would be fairly balanced. In addition to the organizations mentioned in Chief Judge Bell's memorandum, the Chair proposed to include the Maryland Association of Counties and the Maryland Municipal League, which had taken an interest in this subject in the past. It was important to respond to this request with some dispatch. It was not an emergency, but the memorandum needed to be addressed fairly quickly. The Chair added that he would appoint a special subcommittee within the next week.

Agenda Item 1. Continued reconsideration of a proposed amendment to Rule 1-202 (Definitions), adding a definition of "newspaper of general circulation"

The Chair presented a Memorandum and Rule 1-202, Definitions, for the Committee's reconsideration.

MEMORANDUM

TO : Members of the Rules Committee

FROM : Sandra F. Haines, Esq., Reporter

DATE : November 8, 2010

SUBJECT : "Newspaper of general circulation"

At the April 2010 meeting, the Rules Committee approved the attached amendment to Rule 1-202, which adds to the Maryland Rules a definition of "newspaper of general circulation" that tracks the statutory definition set forth in Code, Article 1, §28. In conjunction with this decision, conforming or clarifying amendments to Rules 2-131, 2-221, 3-131, 3-221, 6-208, 9-107, 9-202, 14-210, 15-901, and 16-401 also were approved by the Committee. No changes were deemed necessary to the sixteen other Rules in which "newspaper" appears.

At its June 2010 meeting, the Committee was asked to reconsider its decision, so that newspapers that are distributed free of charge are included in the definition, provided that they possess other attributes of a newspaper of general circulation. The Committee deferred action on this matter, pending receipt of additional information from the proponents of a deviation from the statutory definition.

After the June 2010 meeting, the following additional (enclosed) materials were received:

- November 7, 2010 correspondence from Alice Neff Lucan, Esq.
- July 2, 2010 e-mail and *Washington Examiner* distribution chart from Michael Phelps, Publisher

- Correspondence dated November 19, 2010 from Jim Haigh on behalf of the Mid-Atlantic Community Papers Association

- Correspondence dated November 19, 2010 from George Wilbanks, Publisher, *East County Times*

- Correspondence dated November 19, 2010 from Loren Colburn, Executive Director, Association of Free Community Papers

- Correspondence dated November 19, 2010 from Daniel Buendo, President, Independent Free Papers of America

Also enclosed for the Committee's reference are the following previously distributed materials:

- June 14, 2010 correspondence from Eric Liebermann, Vice President and General Council, *Washington Post* [in opposition to deviation from the statutory definition of "newspaper"]

- June 10, 2010 correspondence from Ron Burke, Advertising and Marketing Director, *The Washington Informer*

- June 4, 2010 correspondence from Alice Neff Luncan, Esq.

- Memorandum dated May 25, 2010 from Ashelee Morrow, former Rules Committee Intern

- Memorandum dated February 5, 2009 from Erin Day, former Rules Committee Intern

SFH:cdc
Enclosures

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION,

AND DEFINITIONS

AMEND Rule 1-202 to add a definition of "newspaper of general circulation" and to make stylistic changes, as follows:

Rule 1-202. DEFINITIONS

. . .

(r) Newspaper of General Circulation

"Newspaper of general circulation" means a newspaper as defined in Code, Article 1, §28.

~~(r)~~ (s) Original Pleading

"Original pleading" means the first pleading filed in an action against a defendant and includes a third-party complaint.

~~(s)~~ (t) Person

"Person" includes any individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated associations, limited liability partnership, limited liability company, the State, its agencies or political subdivisions, any court, or any other governmental entity.

~~(t)~~ (u) Pleading

"Pleading" means a complaint, a counterclaim, a cross-claim, a third-party complaint, an answer, an answer to a counterclaim, cross-claim, or third-party complaint, a reply to an answer, or a charging document as used in Title 4.

~~(u)~~ (v) Proceeding

"Proceeding" means any part of an action.

~~(v)~~ (w) Process

"Process" means any written order

issued by a court to secure compliance with its commands or to require action by any person and includes a summons, subpoena, an order of publication, a commission or other writ.

~~(w)~~ (x) Property

"Property" includes real, personal, mixed, tangible or intangible property of every kind.

~~(x)~~ (y) Return

"Return" means a report of action taken to serve or effectuate process.

~~(y)~~ (z) Sheriff

"Sheriff " means the sheriff or a deputy sheriff of the county in which the proceedings are taken, any elisor appointed to perform the duties of the sheriff, and, with respect to the District Court, any court constable.

~~(z)~~ (aa) Subpoena

"Subpoena" means a written order or writ directed to a person and requiring attendance at a particular time and place to take the action specified therein.

~~(aa)~~ (bb) Summons

"Summons" means a writ notifying the person named in the summons that (1) an action against that person has been commenced in the court from which the summons is issued and (2) in a civil action, failure to answer the complaint may result in entry of judgment against that person and, in a criminal action, failure to attend may result in issuance of a warrant for that person's arrest.

~~(bb)~~ (cc) Writ

"Writ" means a written order issued by a court and addressed to a sheriff or other person whose action the court desires

to command to require performance of a specified act or to give authority to have the act done.

Source: This Rule is derived as follows:

. . .

Section (r) is new.
Section ~~(r)~~ (s) is derived from the last sentence of former Rule 5 v.
Section ~~(s)~~ (t) is derived from former Rule 5 q.
Section ~~(t)~~ (u) is new and adopts the concept of federal practice set forth in the 1963 version of Fed. R. Civ. P. 7 (a).
Section ~~(u)~~ (v) is derived from former Rule 5 w.
Section ~~(v)~~ (w) is derived from former Rule 5 y.
Section ~~(w)~~ (x) is derived from former Rule 5 z.
Section ~~(x)~~ (y) is new.
Section ~~(y)~~ (z) is derived from former Rule 5 cc.
Section ~~(z)~~ (aa) is derived from former Rule 5 ee.
Section ~~(aa)~~ (bb) is new.
Section ~~(bb)~~ (cc) is derived from former Rule 5 ff.

Rule 1-202 was accompanied by the following Reporter's Note.

The issue of defining the term "newspaper of general circulation" arose in the context of Rule 14-210, Notice Prior to Sale, addressing publication of a notice in a foreclosure action. In order to clarify the meaning of the term, the General Provisions Subcommittee recommends (1) adding to Rule 1-202 a definition of the term "newspaper of general circulation," which refers to the definition in Code, Article 1, §28, and (2) amending Rules 6-208, 9-107, and 15-901 to either conform to this term or to clarify the location of circulation of the newspaper that is referred to in the Rule. With the addition of the definition, the Committee note in Rule 14-210 after section (a) is no longer necessary and is proposed to be

deleted. Amendments to Rules 2-131, 2-221, 3-131, 3-221, 9-202, and 16-401 conform cross references in those Rules to the re-lettering of Rule 1-202.

The Chair said that Agenda Item 1 is a reconsideration of the Committee's action in April defining "newspaper of general circulation," for purposes of notice, as limited to newspapers available for purchase or subscription. Representatives of the non-subscription (free) newspapers requested the Committee to take another look at the issue. A presentation was made at the June 2010 meeting, and the issue had come back again. Since the request for reconsideration came from the free newspapers, the Chair asked them to present their views first.

Ms. Lucan told the Committee that on the table in front of them was a copy of The East County Times, the publisher of which was present at the meeting today, and the most recent copy of The Washington Examiner published by Michael Phelps, who could not attend the meeting today due to a death in the family. Publishers were also present from The Baltimore Times and The Washington Informer, as were members of the Mid-Atlantic Community Newspapers Association. All of the speakers would be brief. Ms. Lucan said that she was going to distribute publications called "shoppers" as the Vice Chair had requested at an earlier meeting. Ms. Lucan pointed out that the free newspapers had been in existence for a very long time. The Potomac Almanac was founded in 1784. The newer newspapers include The Bay Weekly, founded 17 years ago, and The Examiner

that was launched in 2005 as a new iteration of Journal newspapers, which were very old.

Ms. Lucan said that also on the table in front of the Committee was a story from The Washington Post that illustrated the point of the free newspapers. The story appeared in the Sunday edition of The Post and had been written by a very fine reporter, Annie Gowan. She had been writing a story about Tobytown, which is a poor enclave in Montgomery County. She noted that the residents of that area were having a much harder time economically than their affluent neighbors. They could not find jobs, and they were having difficulty getting to jobs even if they could find one.

A sentence from that article read as follows: "One recent afternoon, Shannon Braxton, 21, scooped up a free weekly from a stack of newspapers that was dropped at the community center, and she scanned the want ads." The point was that she scooped up a free weekly from a stack of newspapers at the community center, which Ms. Lucan and her clients had felt was important.

The free newspapers provide access to information where the paid newspapers do not or may not provide access. This may be information in the legal notices as opposed to the "help wanted" advertisements. The Baltimore Sun and The Washington Post cost $2.00 or $2.50 on Sundays and $.75 to $1.00 during the week. This is a high price for someone who is out of work and is trying to make ends meet. Their point was that free newspapers were a small, democratic way of distributing legal notice advertising.

Ms. Lucan stated that last June, Mr. Johnson had asked about distribution of The Examiner in Prince George's County. At today's meeting, maps had been given to the Committee that showed home delivery and single copy bulk locations. Mr. Johnson had used the word "redlining" because he felt that The Examiner was trying to reach people by home delivery who have enough money to buy what the advertisers are trying to sell. This is a goal for all newspapers, and it is not an atypical goal. The single copy distribution is the distribution with the dots on the map. That represents 133 places in Prince George's County plus 11 Metro stops where the free newspaper is distributed. This provides a great amount of access. The Post, in its letter that was distributed to the Committee, had raised a question about readership. Proving readership is not one of the legal requirements. Readership rests on assumptions. It cannot be argued that The Post has greater distribution than The Washington Examiner and any of the other newspapers that are represented at the meeting.

Ms. Lucan said the point she was making was access and local community coverage. These are valuable concepts that should not be overlooked. A newspaper that has been in existence for five years, 20 years, or however long would not be here if no one read it. Ms. Lucan noted that last June the Rules Committee had given her clients and her the assignment to help the Committee distinguish between the free newspapers and the "shoppers." In her first memorandum to the Committee in June, she had mentioned

Maryland Pennysaver Group v. Comptroller of the Treasury, 323 Md. 697 (1991). The mere description in that decision helps to distinguish quite easily between The Pennysaver, this particular "shopper," and the free newspapers that she was talking about at the meeting.

Ms. Lucan commented that there are simple ways to distinguish the two. A qualified free newspaper should have in it at least four pages, news items, and information that is of public interest. It should be published at least once a week for six months and should have general circulation throughout the community where the publication is published. These requirements are in Code, Article 1, §28, and the only missing item is the requirement that the newspaper be sold. If the Committee was not satisfied that these items were enough to distinguish the two, other simple indicia apply. One was to require a recent, independently conducted audit. Someone may want to simply look at the newspaper or ask for a publisher's affidavit that states the average ratio of the news to advertising. Their colleagues from the paid newspapers are going to argue to the Committee that this will confuse everyone. She disagreed, noting that it was overreaching to say that. The change would affect the Rules in only three or four categories of legal activity. The attorneys who practice in those areas are able to look at the Rules and see the changes.

Ms. Lucan continued that their colleagues from the paid newspapers would say that this is the way the system has worked,

and it is a proven way to test readership. The U.S. Post Office promulgated a rule in 1970 that assumed that if one paid for the newspaper, one read it, and if it was not paid for, it was a "shopper." She and her clients posit that this is no longer true. There is no longer a distinction between the paid newspapers and the qualified free newspapers. The assumption, which was only that and not proven, should be challenged and tested. The business model of The Examiner predicts the future at least in their minds. The plan is that there will be free distribution of this newspaper. The Examiner started out with saturation coverage, being tossed at many doorsteps within a zip code. By the end of January, The Examiner will be aimed at targeted homes, which means the homes of people who have requested the delivery of the newspaper. The Examiner predicts that the free newspapers are the wave of the future because of the internet and because of the costs of subscription distribution.

Ms. Lucan said that Ms. Barnes, the publisher of The Washington Informer, would speak next. Ms. Barnes told the Committee that she was distributing some copies of her newspaper to them. She said that it was a pleasure to be at the meeting with her colleagues to talk about one of the most difficult decisions that she had to make concerning her publication, The Washington Informer. It had been established in 1964 by her father, the late Calvin Rolark. When he started the newspaper, it was a paid newspaper. Right before he died in 1994, she and

her father had many conversations about whether they should change their model. She was inclined to change it, but he was not. She had to do the research to find out what would work best for their publication.

Ms. Barnes remarked that one of the challenges was that since their newspaper was based in Washington, D. C., it covers the African-American community, and that community had expanded beyond the borders of the District of Columbia to Montgomery and Prince George's Counties as well as parts of Northern Virginia. They had extreme challenges in that some of their readers who were immigrants were rejecting their newspaper in their stores. An option was free distribution, which made it easier to get the newspaper out, and it was more difficult to do so when they charged for the newspaper. The doors opened for them.

Ms. Barnes commented that she had contacted one of her fellow publishers, who publishes a newspaper in Missouri entitled The St. Louis American, one of the largest African-American newspapers in the country, and he had advised her to go the route of the free newspaper. He had said that she would be amazed at how the circulation of her newspaper would expand. What he had foreseen actually materialized. Her newspaper is one of the most widely read African-American newspapers in the area. Part of the challenges they had over the years was to overcome the challenge of being a weekly newspaper. When her father first started the newspaper, they could not get public notices published, because they were a weekly newspaper. They had to engage in the same

type of arguments referred to today before the legislature in D.C. to help them understand that weekly newspapers could be included in that definition of "newspaper of general circulation." Fortunately, the legislature changed its rules, and they were allowed to be included in the definition.

Ms. Barnes told the Committee that her newspaper was the official sponsor for the D.C. City Lights Spelling Bee, an event televised on Channel NBC4. The first year that they sought sponsorship, which was 29 years ago, they found out that their local winner could not participate in the National Spelling Bee because their newspaper was a weekly one. The rules required that only daily newspapers could participate in the national competition. They challenged that rule, and the next year weekly newspapers were allowed to participate. The winner of the National Spelling Bee came from Loudon County, Virginia, sponsored by a weekly newspaper.

Ms. Barnes expressed the opinion that rules should be more inclusive than exclusive to be able to reach a larger public and give them the kind of notice that they need to find out about foreclosures, etc. The point was well-taken that one of the aspects of their publication that people like is that they can pick it up anywhere, and they like the fact that it is an excellent publication. During these difficult economic times, that makes it even more valuable. Their job is to make sure that the newspaper is available. The model has worked for them over the past ten years. To be excluded from public notice, which is

so essential just because their 50,000 readers do not have to spend money for the publication, is not a valid argument. They can provide the public service by making sure that paid and free newspapers meet the necessary criteria. They are audited, and their advertisers require this. To compete, they have to prove that people are reading their newspaper. They are held to the same standard as the paid newspapers.

The Reporter asked if Ms. Barnes' newspaper had an internet presence. Ms. Barnes answered affirmatively. The Reporter inquired if the entire newspaper is put on the internet, including all of the advertisements, or if it is only excerpts. Ms. Barnes replied that the entire newspaper is on the internet. There are excerpts and a PDF of the entire publication. The Reporter questioned if this is contemporaneously with the distribution of the newspaper to the different outlets. Ms. Barnes responded that it was. The Reporter asked how many newspapers are returned to them, and how many are thrown away. Ms. Barnes replied that they survey this every week. Not many are returned because they are free. They have to maintain these numbers for their auditors. Mr. Klein questioned if they tracked and audited hits on their website and if they were able to do it by age level, so that they know if someone is checking a legal notice as opposed to a sports column. Ms. Barnes responded that they can do this. This is something that their advertisers ask for. Mr. Klein inquired if there was any cost to view the newspaper online, and Ms. Barnes answered that it did not cost to

do so.

Ms. Lucan told the Committee that George Lubeck was the publisher of The East County Times. Mr. Lubeck said that as the owner and publisher of that newspaper, he urged the Rules Committee to legalize his free newspaper. This would mean giving his journalistic enterprise the same legal standing as his larger corporate rivals. The origins of his newspaper dated back to 1962 with the founding of The Essex Times. He had personally carried the community publishing torch in eastern Baltimore County for the last decade and a half. If readers did not read his newspaper, and advertisers did not get results, the newspaper would not be in business today. Their success came from being free and sharing more news and information with more local readers as well as getting better results at a better price for advertisers. A handout was distributed to the Committee that showed that legal advertisers should get the same benefits that community and commercial advertisers can legally take advantage of now. There is three to four times the audited circulation at one-quarter of the price compared to The Baltimore Sun.

Mr. Lubeck commented that at issue is the fact that well-established free community newspapers were currently discriminated against by law from publishing legal advertising. The law says that they, their potential advertisers, and the community must be punished because the free newspapers choose not to charge their readers. Advertisers account for at least 80 percent of the revenues of all newspapers, including those who

choose to charge readers. One week ago, 100 percent of the other independent publishers called for change. This brought a large, loyal readership that is independently measured. They can show that with a third-party audience, they can achieve a level of verification that was never provided by the postal standards.

Mr. Lubeck asked the Committee three questions. How could he still be in business if no one read and advertisers did not get results from his newspaper? Why should The East County Times, their employees, community, and prospective advertisers be punished because they choose to share their newspaper free of charge? Why should his newspaper need to qualify for federal postal standards that are outdated? No one is checking the law for compliance. He thanked the Committee for the opportunity to speak and said that he would be happy to answer questions.

The Chair noted that the issue that had been presented generally was whether the Rule should depart from the statutory requirement that the newspaper has to be paid for and sold and whether the newspaper should be entitled to be entered as second class matter at the Post Office. Another issue had been raised, and he asked Mr. Lubeck for his response to it with respect to Mr. Lubeck's newspaper and some others that are like it. The statute refers to a "newspaper of general circulation." It does not state where it is circulated. Requirement #4 of the statute is: "[h]as general circulation throughout the community where the publication is published," and based on the circulation figures that have been presented for Mr. Lubeck's newspaper, it seems to

have general circulation in the eastern part of Baltimore County, including Essex and Middle River.

The Rules that address publication and legal notice speak in terms of "general circulation" in the county, not in a particular community. The Chair inquired if publication of the sale of a property in Towson or Catonsville was published in Mr. Lubeck's newspaper, which is circulated only in the eastern end of the county, it could be regarded for this purpose as "a newspaper of general circulation in the county." It is not likely that anyone outside of that area, the eastern part of Baltimore County, will see it.

Mr. Lubeck replied that if someone had a legal problem in Towson, they would not advertise in his newspaper, because they do not service Towson. But there are people within their service area who may be interested in what is happening in Towson, such as a house for sale where the people may want to bid on the house. The East County Times in Zone 20, which is Middle River, has an audited circulation of 9,299 people. For a legal notice of 72 lines, they charge $120.02. The Sun in that same zone only has an audited circulation of 2,949, and they charge $501.00. The same figures pertain to the Essex area.

The Chair said that he had seen the figures, and it is evident that Mr. Lubeck's newspaper has a broader circulation in that area of Baltimore County than The Baltimore Sun or The Washington Post does. The question is whether it can be regarded for purposes of the current Rule, not the statute, as a

"newspaper of general circulation" in the county. Mr. Lubeck responded that he knew the area his newspaper covers, but he did not know about other areas, unless the website was consulted.

Ms. Lucan said that the answer to the Chair's question is a practical one. Where is the notice needed, in what community, and in what county? At that point, the decision is made as to which is the best way to provide notice. The Chair noted that this is an issue that the Committee has been dealing with, paid vs. free newspapers. His question is if some of the more localized newspapers could qualify under the Rule. Ms. Lucan responded that looking at the Rule in isolation, the Chair raised a legitimate question. If someone is going to be dealing with probate or foreclosure in a particular area, it might make sense to make some choices. It is not necessary to buy the most expensive newspaper. Her understanding was that judges make decisions about where the publication ought to take place to give notice.

The Reporter told Mr. Lubeck that Senator Stone had called her. He had apologized for not being able to be present at the meeting due to a death in his family. He had complimentary things to say about Mr. Lubeck's newspaper. Mr. Brault inquired if The Sentinel newspapers in Montgomery County were allowed to publish legal notices. Ms. Lucan answered that they were a Post publication, but they did not carry legal advertising. Mr. Brault remarked that he thought that they had some subscriptions and some free newspapers. Ms. Lucan said that representatives of

The Post were present at the meeting, and they would answer questions. She told the Committee that the next speaker would be Joy Bramble from The Baltimore Times.

Ms. Bramble thanked the Committee members for their attention. She told them that The Baltimore Times had always been a free newspaper. It was 25 years old. Although some say newspapers are dead, her newspaper has not lost any circulation. They had managed to pick up a few more readers. She had distributed some of her newspapers. When they have a new distributor, because they are a free newspaper, she knows when the paper has not been distributed. Loyal readers will call and tell her that they have been to certain stores and places where there is no newspaper. The newspaper provides access. They are a black community newspaper. When people need information, the newspaper staff will go to churches and community centers and write stories about people. The public passes their newspaper around the neighborhood. Many people who read The Times may never read The Sun or The Post. The newspaper had the same problem in Baltimore City where they had to fight to be able to put in legal notices, because they were not a paid newspaper. Eventually, the newspaper prevailed, and they get to put in legal advertising in the City, but they cannot put in a full amount of advertising.

Mr. Klein remarked that he lived in Annapolis and had never seen the newspaper. He saw that it was free, but he asked if it was sold by mail. Ms. Bramble replied that it was not. Mr.

Klein inquired how the newspaper was distributed. Ms. Bramble responded that it was distributed in news boxes.

Ms. Lucan told the Committee that the next speaker would be Sandra Martin from The Bay Weekly. Ms. Martin stated that she is the editor, publisher, and co-owner of The Bay Weekly. Her business partner is Alex Knoll. She distributed copies of the publication to the Committee. She said that she would discuss the changing nature of readership generally, but Mr. Knoll would be able to speak more specifically because he dealt with the everyday aspects of running a newspaper.

Ms. Martin expressed the view that the Rule currently regulating legal notices in newspapers is somewhat like creationism -- it defines evolution. The traditional morning or afternoon daily that is delivered to one's door or is on sale at street corners, in stores, and in coin machines is no longer the way that most Americans get their news. Declining circulation is evidence of this. To reach people in their new habits, the news is delivered in new formats with changed content, frequency, and cost. Newspapers are not the only read medium that brings people their news in defined communities. News outlets are electronic as well as in print. Even some so-called newspapers no longer have printed editions. Free, controlled distribution newspapers are another branch of the evolution of journalism. Many of these newspapers are engendered by traditional dailies to seek new readers and keep their market strong. These offspring are not inferior to their parents as bearers of news, they are a new

generation of the same species.

Ms. Martin said that The Bay Weekly was another legitimate adaptation, an independent family startup. For nearly two decades, they have informed tens of thousands of weekly readers in Anne Arundel and Calvert Counties. The newspaper is a mix of local news, environment, politics, recreation, culture, and more for the Annapolis region. Fifteen thousand to 20,000 copies of their newspaper are delivered weekly by controlled distribution in over 500 shops and shelves where they are picked up by their readers by choice. Like traditional newspapers, they are a self-supporting, free-market enterprise, and they have to earn the right to publish their next edition.

Legal advertising is a reliable source of revenue jealously guarded by old-fashioned newspapers, because their other revenue sources such as classified advertising and subscriptions are departing. The new media are more likely to reach the greatest public. Even the Maryland Comptroller has changed with the times, using online posting of unclaimed property. Ms. Martin said that she and her colleagues are asking that the playing field be leveled by granting the same entitlement that other media already enjoy to solicit, accept, and put legal advertisements and notices in their newspaper. Ms. Martin added that Mr. Knoll can speak about the business issues.

Ms. Lucan told the Committee that Mr. Knoll is the general manager and the co-founder of The Bay Weekly. Mr. Knoll commented that the issue came down to a question of choice for

readers and advertisers. The question is who is better able to serve his or her community. For them as a free weekly newspaper and for the other free weekly newspapers, present today or not present, "the proof is in the pudding." The fact that the newspapers are picked up and read, and, more importantly, that the advertisers receive the benefits of their investment dollars, proves that the free weekly newspapers are serving their community just as ably as the paid circulation newspapers. A Committee member had asked earlier what happens to the newspapers that are not picked up. Unfortunately, this is a sad part of their business, but it is also a sad part of the business of the paid-circulation newspapers. If someone were to view the newspaper rack at a convenience store, the newspapers on the bottom rack are waiting to be picked up by the carrier. They are not all picked up; none of the newspapers have 100 percent reader saturation. The readers and the advertisers have choices to find the medium that best works for them, that best fits their budget, that best reaches their audience.

Mr. Knoll remarked that neither the advertisers nor the readers have the choice of legal notices. They have been denied the choice. Instead, the choice has been made by the U.S. Postal Service and by the courts, and it has been upheld and maintained by a powerful group of daily, paid-circulation newspapers who do not want to see competition in the marketplace. Who is better able to serve the community? Given that opportunity, his newspaper could ably serve the community with legal notices.

They saturate Anne Arundel and Calvert counties.

Mr. Knoll referred to the issue that was raised concerning the article in The Washington Post about the person who is not able to pay for a newspaper, so he or she picks up a free newspaper. He hoped that all of their readers were affluent and had a great amount of income to spend with his advertisers. Not everyone is so fortunate. If the reliance is on paid-circulation publications to get legal notices out to the masses, it seems to be similar to a poll tax. The people have to pay money just to have the opportunity to see if something is germane to life hidden within those legal notices. Giving the advertisers and the readers a choice is in the best interest of everyone. It is not going to diminish the legal advertisement revenue from the paid-circulation newspapers. Instead it opens up a new avenue to disseminate information, which is what journalism is all about.

Mr. Brault asked if the newspaper were delivered to homes or only to newspaper boxes. Mr. Knoll replied that their delivery is termed "stacks and racks." They are a free targeted newspaper that is delivered at restaurants, grocery stores, retail businesses. The benefit of this is that it is a free newspaper, so more people are able to pick it up. If Reader A is out of town on a particular weekend and is too busy to read the newspaper, it remains in its rack, and Reader B picks it up. Not every newspaper is picked up. It is not inexpensive to publish a newspaper, and the costs have skyrocketed. Mr. Knoll

said that he tried to modify the numbers with the delivery drivers to keep the newspapers out where people are picking them up. If not, the effect is that there are not enough readers, and the long-term effect is that the advertisers see a decline in their investment, and the enterprise collapses.

Mr. Brault inquired if there were any data that distinguished between free newspapers that are dropped at houses and free newspapers that have to be picked up somewhere in terms of readership showing that people actually read the newspapers. Mr. Knoll answered that he could give an anecdote. Several years ago, a law was passed in Maryland, because The Gazette newspapers were thrown onto people's lawns as a free newspaper, and people were calling in stating that they did not want the newspaper. The law passed, because this was a nuisance and an intrusion.

The Bay Weekly is not being thrown into people's mailboxes, and money for postage is not being wasted for people who are not going to read the newspaper, or gasoline is not being wasted by someone driving through neighborhoods putting the newspaper on people's doorsteps. To get the newspaper, someone is spending money on groceries or on other services, and the person is picking up the newspaper by choice. It is a matter of choice. Mr. Brault said that this was the point that he was making. He throws away Gazettes every week on his street, because people will not pick them up.

Ms. Lucan introduced Mr. Haigh who represents the Mid-Atlantic Community Newspaper Association. Mr. Haigh thanked the

Committee for the opportunity to speak. He said that he was a former publisher of both free and paid newspapers as well as a consultant to the Association. He said that the Committee had heard some articulate and passionate comments from members of this Association and some peers. He had submitted detailed comments in which he tried to address the issue that had been raised, which was why the newspaper must be paid and why the U.S. Postal Service is relied upon for dissemination.

Mr. Haigh expressed the opinion that these issues date back decades ago when it was simply a matter of convenience at a time when most homes actually subscribed to a daily newspaper and when most homes received a newspaper sent by second class mail. It was also a time before the rise of the free, community newspaper industry and before audits of circulation, and statistically certain surveys were available and embraced by the free-community-newspaper industry. All of this has been changed. Only one in ten households is receiving a paid newspaper via periodicals on a weekly basis. A minority of households is buying a paid, daily newspaper. At the same time, there are audits and standards, which would enhance what is on the books now as opposed to merely referencing the U.S. Postal Service.

Mr. Haigh said that as far as the second question, it concerns "A Tale of Two Audiences," what the paid, daily newspapers and the Press Association tell to all single advertisers, what they tell to legal advertisers, and what they tell to those who are able to make rules. One of the exhibits

that he had included in his comments was Exhibit B, which is a list of all of the newspapers that are part of the Maryland-D.C. Press Association's classified advertising network. This includes anyone who wants to place advertising. Eighty percent of the newspapers that are part of this network that they sell to are weeklies; 75 percent of those weeklies are free-circulation publications. They do not make a distinction that free newspapers are good for people, they tout it proudly, and they show the readership number of an average of 2.1 readers per copy.

Mr. Haigh noted that when looking at any other advertisers besides legal advertisers, the distinction between free and paid newspapers is certainly not an issue that is being raised. There seems to be a sense that if the newspaper is not going into someone's particular community, a copy cannot be delivered to that person. This does not apply to any of their newspapers. Just like any paid newspaper, if someone would like a copy of the newspaper, they will gladly add the person to a subscriber roll or send out any edition, so that if someone is outside of some concentric circle, at community, city, or county levels, the person can still get a copy of their newspaper. It might not be free at that point, but no one is denied access. Mr. Brault asked Mr. Haigh if their newspapers covered sports. Mr. Haigh responded that most of them did. Mr. Brault questioned whether high school sports were covered, since that is where most of the readers are. Mr. Haigh answered affirmatively.

The Chair inquired if Ms. Lucan's presentation was

concluded. She replied that it was, but she wanted to add that "general circulation" as defined in the cases does not mean that it reaches every single person. Mr. McLaughlin was present to represent the Md.-D.C. Press Association and The Washington Post. He said that he would ask Jack Murphy to introduce the speakers who would represent both free and paid newspapers.

Mr. Murphy told the Committee that he is the Executive Director of the Md.-D.C. Press Association. He introduced Tim Thomas, who is the vice president of The Baltimore Sun media group and who was in charge of that newspaper and has a role in the Patuxent and Homestead newspapers in Howard and Baltimore Counties. Karen Acton is the publisher of the Southern Maryland newspapers, including The Maryland Independent and The Calvert Reporter. She is also a vice president of The Gazette newspaper group that produces newspapers in Montgomery, Prince George's and Frederick counties. Tom Marquardt is the president, publisher, and editor of The Capital and The Capital Gazette newspapers of Annapolis, including The Crofton Crier.

The Chair said that in addition to anything else that any of the newspaper representatives would like to comment on, he would like to ask them to address the following question. Article 1, §28, which is the statute defining "newspaper in general circulation," states that it means that unless otherwise provided, a "newspaper in general circulation" has the five listed attributes. What does "unless otherwise provided" mean? Mr. Murphy responded that generally the phrase "unless otherwise

provided" in statutory construction means "unless otherwise provided by law." The Chair said that a rule adopted by the Court of Appeals has the force of law. Mr. Murphy answered that it is not statutory law. The Chair noted that under the Constitution of Maryland, a rule has the force of law.

Mr. Murphy responded that they were not arguing about whether the Committee has authority to promulgate laws. The Chair said that he understood that, but he remarked that his question was one of statutory construction. He asked if it would really be inconsistent with the statute if the Court were to adopt a rule that departed from the text of the statute. Mr. Murphy answered that this issue would be litigated. His view was that this was not what the intention of the legislature was. The legislature has repeatedly declined to extend the law this way. The parent company of his employer, The Washington Post, also publishes The Gazette. They have free publications as well. This is not a case of a big enterprise trying to step on a little one.

Mr. Murphy said that there are policy reasons that the legislature has determined to be valid repeatedly for preferring paid-circulation newspapers to free-circulation newspapers for the purposes of giving effective public notice. The first reason was readership. The Committee had heard repeatedly this morning that people do read free publications. This is true, but the data that are available show consistently that free newspapers were not read to the extent that paid newspapers were, which

should not be surprising, because of common sense. Anyone would be more likely to read something that they paid for than something given out unsolicited. The numbers that were cited in the comment they submitted pertained to The Post and The Examiner, and the numbers supported this. He had not heard that those numbers had been refuted.

Mr. Murphy commented that their point was not that no one reads free newspapers, but in the aggregate, the way that the Rules Committee or any policy-making body has to proceed, it is true that on average, free newspapers are not read to the extent that paid newspapers are, even at the same circulation level. The issue of access was another reason. The Press Association continues to contend that access is not as great by free publications to certain pockets of the population. Ms. Lucan's anecdote from The Post about someone being able to get a copy of a free newspaper at the community center was well-taken, but the bottom line was that The Examiner had no reported circulation in Prince George's County, a county that had been hard hit by the mortgage foreclosure crisis. Access in theory was one issue, but access in fact is another. The free publications were not effectively reaching all areas of the community.

Judge Hollander inquired if Mr. Murphy's point was that he had comparative numbers to show that the paid newspapers do better than the free ones. Mr. Murphy replied affirmatively, explaining that their statistics showed that The Post brings in a more significant reporting circulation than the free newspapers.

One of the exhibits attached to their letter was a distribution map of The Examiner, which indicated that the controlled circulation was not uniformly available. This was not a criticism of The Examiner, but there is a big difference between a newspaper that is selected or one that is available to anyone in a large area.

Mr. Murphy said that paid newspapers have a number of after-the-fact advantages that the legislature has recognized and that continue to be valid reasons for deferring to paid publications. Paid newspapers have the best archives, which are a critical part of determining after the fact whether notice has been given and whether it was proper. Paid newspapers over time have shown a much more stable market presence. A free newspaper may no longer be in existence in five years. Transactions associated with the purchase of each paid newspaper result in inherently more precise circulation audits. There are circulation audits of free newspapers, but they cannot match the accuracy of the paid ones. These are reasons why in the aggregate, paid newspapers provide a better vehicle for providing effective notice and for later being able to determine that notice was effective. The Committee is well aware what is going on with mortgage foreclosures and the burdens that are on the courts right now. The Chair's question about whether there is authority for the court to depart from the statute illustrated this.

The Chair clarified that his question was whether the language in the statute itself that reads "unless otherwise

provided," anticipates that the court may deviate from it. Mr. Murphy responded that an argument could be made that what that means is "unless otherwise provided by statutory law." The Chair noted that the Court of Appeals had held that when a statute used the word "law," it included a rule. If they meant "statute," that is the word that would have been used.

Mr. Murphy expressed the view that a conflict exists between a "statute" and a "court rule." It would be naive to think that there will not be litigation about that issue. It is not that it would never be resolved, but it would inject more uncertainty into the mortgage foreclosure proceedings. It is not just the legal issue, but it would mean that an entire new class of publications would have to be determined. Some of these newspapers clearly would qualify; others might not. Mr. Klein inquired if the three paid newspapers that currently exist in Prince George's County and would service that area are The Post, The Baltimore Sun, and The Daily Record. Mr. Murphy responded that he did not know of any other newspapers there. Ms. Potter pointed out that another paid newspaper in that county was The Washington Times.

Mr. Klein said that with the exception of The Washington Post, in terms of the number of subscriptions ending up in some of these places, he had trouble picturing residents of Prince George's County buying mass quantities of The Daily Record, which is an expensive publication. He inquired about the choice for saturating that county. Mr. Murphy replied that he did not have

circulation data for those publications with him. The point is that the publication is available to anyone who wants it. Anyone who purchases a home delivery subscription of one of those publications anywhere in Prince George's County can have it delivered to his or her home. The free publications are only found in certain portions of the county and may skip other portions of the county. If someone lives in the area that is skipped, and it has one of the highest foreclosure rates, why should those people not have equal access to the publication?

Mr. Klein said that he thought that he heard that free newspapers can be delivered to someone's house as long as the person pays for it, just like it would be for The Washington Post. Mr. Murphy responded that he believed that The Examiner was going to institute that policy in January, but it had not yet been instituted. The independent audited circulation data showed that there was no reported circulation by The Examiner in basically half the zip codes in Prince George's County. This is almost regardless of the niceties of whether theoretically the newspaper could be requested. The newspaper is simply not penetrating those areas.

Mr. Johnson commented that it had been mentioned several times that there had been an effort to change Code, Article 1, §28. When was that effort made, and how many times was it made? Mr. Murphy answered that this had been attempted numerous times. The last effort had been made in February, 2008. Mr. Klein inquired if the proposed change ever made it out of committee.

When was the last time that it was voted on by the General Assembly? Mr. Lieberman replied that it had been withdrawn from the Senate, and it did not get out of the House Judiciary Committee. Mr. Klein questioned if it had ever been voted on by the full legislative body. Mr. Lieberman replied that it had not.

Mr. Maloney asked Mr. Murphy to address a macro question. The discussion today had referred to the demise of print newspapers. Classified advertising generally has been devastated by Craigslist and similar services. The goal is not to subsidize classified advertising. The goal is to make sure that the citizenry has the best access possible to what is going on in their judiciary and otherwise. This would be the most effective way to get notice. There seemed to be two dinosaurs on the print side. One is paid and one is unpaid, fighting over a public subsidy. There is a government-driven and statute-driven subsidy for the newspaper industry. Twenty years from now, people will look back and say that the discussion was very quaint. When everything is online, no one will have to go to a newspaper online website service. Why not go to the Judiciary website and have judicial notices posted there? This is the most effective way to give notice. As a matter of policy, if the goal is the most cost-effective means of giving notice to the citizenry, why perpetuate a dying industry, which is classified advertising, when there is a far more efficient mechanism of online notice?

Mr. Maloney said that what was being done by statute was

adding millions of dollars to the cost of probate, trustee sales, and real estate transactions, but if the consumers of legal services were given the choice, they would prefer to post it online on the court website. Anyone who wants to know about those sales can log on. This is what will happen twenty years from now. The statute is so far behind the technology currently, why not do this right now? The Judiciary should be encouraged to study creating its own website. People could post the advertising for a fee, and anyone who wants to could log on in a central location.

Mr. Murphy said that historically, the policy had been that the notice was run by someone other than the government. If it were a government proceeding, checks and balances would require the public sector to administer the notice. He told Mr. Maloney that his concern was legitimate. Eventually it may be that notice in print publications is no longer used. The issue is if the notice is going to be in print publications, it should be in the ones that are actually most effected. The Chair suggested that the courts could offer an alternative, either a print medium or an online medium, if an online medium existed. Mr. Murphy responded that at this point, there is no online medium that would be as effective as large-circulation daily newspapers.

The Chair commented that he gets The Washington Post online. He asked Mr. Murphy if there are circulation audits that indicate how many people are hitting his newspaper online as opposed to receiving it in print form? Mr. Murphy answered that more people

are seeing it online rather than in print. The Chair pointed out that even now the access is greater online than it is in print. Mr. Murphy remarked that the level of engagement of people online is very limited. They probably will not look at legal notices.

Mr. Brault said that the Chair had raised the issue of countywide circulation as opposed to community circulation. There is a countywide Gazette, which is one of the exhibits, but The Gazette breaks down into The Potomac Gazette, The Rockville Gazette, The Silver Spring Gazette, The Bethesda Gazette, etc. Mr. Murphy noted that there are over 20 Gazettes. Mr. Brault added that there is The Wheaton Gazette, and there are some in Virginia. A clear distinction in readership exists on a community basis as opposed to a countywide basis. When high school coverage is done on a local basis, there is heavy readership because of local sports. Mr. Murphy agreed that this motivates people.

Mr. Brault hypothesized that a foreclosure was in the area where The Rockville Gazette, which is free, is delivered. The newspaper is delivered to all of the houses in that area. He asked if it would not be a good idea to advertise foreclosures in Rockville. He noted that sales of homes in Rockville are advertised in the real estate section of the newspaper in which the people in the community are advised about sales activity in real estate. Would it not be worthwhile for the courts to order that a foreclosure or estate sale should be put in the community newspaper where it is more likely to be read? Mr. Murphy

answered that it may be more likely to be read, or it may not be depending on what the alternatives are. As the Chair had pointed out, the court rule requires countywide notice, and the example of The East County Times that had been discussed earlier shows that many community newspapers do not have a broad distribution throughout the county in which they are located.

Mr. Brault asked whether the micro readership is preferable. Mr. Murphy replied that it is not necessarily preferable. It may be in some instances, but foreclosure and other legal notices can affect people outside of the community. Mr. Brault inquired if Mr. Murphy had any data on readership between the local newspapers in a given area and the circulated Washington Post in that same area. Mr. Murphy responded that he could get this data. There are reputable market research studies on readership as opposed to circulation. Mr. Brault said that it ought to be readership for The Rockville Gazette in Rockville compared to the countywide Gazette being read by people in Rockville. Mr. Murphy said that he would have to get this information.

Mr. Leahy noted that Mr. Murphy had indicated that there is no reported circulation in 16 zip codes in Prince George's County. Is this because the newspaper is delivered in a box, and that is how the circulation is measured, or is it a readership survey? Mr. Murphy replied that it is the circulation of the actual newspapers. Readership is a separate item. Some of the circulation figures in counties where it is reported include bulk deliveries to Metro stations and similar places.

Judge Hollander commented that she thought that Mr. Murphy had made some interesting points. She asked about the underlying premise that people who have to pay something for a newspaper are more likely to read it than if they got it for free. Her family loves to read newspapers, and they subscribe to The Times, The Wall Street Journal, and The Sun. When The Examiner was delivered to them, they read it as carefully as they had read the other three publications. She did not necessarily always get to read the ones for which they pay a fairly large amount of money. She questioned why the price would be a basis on which to qualify, because there is so much gamesmanship in the price. Someone can sign up at the supermarket for a newspaper at a very low price. Obviously, the newspapers are concerned about telling their advertisers that they have a great number of subscriptions, so that they can get revenues and reach more homes, but the price may be exceedingly low. She never heard of anyone making the decision about whether to read The Examiner based on whether they paid for it. Mr. Murphy responded that many people read free publications. His point was not that no one reads them. It was that on average, the readers-per-copy figures are lower.

Judge Hollander asked what it is that the people are reading? It may be recipes in the food section. She referred to Mr. Maloney's point that no one is reading the notices. Who can say what is being read? She pointed out that if the free newspapers were more available to her, she would be just as likely to read them in addition to anything else that she might

read. She said that she was having trouble understanding why price is the factor. Mr. Murphy said that if the publication costs money, price is a proxy for other goals. If publications are paid for, their circulation and their distribution can be calibrated much more precisely than those of a free publication. For the free publications, the number of copies printed can be counted as well as the number of copies left in particular locations. The numbers are more precise for publications that are requested.

The Reporter inquired who the auditors are and who audits them. Mr. Murphy replied that they are third-party companies that are in the business of auditing newspaper circulation. The newspapers pay for the audits, because there has to be a reliable auditor to show advertisers that they are reaching the public. The main group is the CAC (Certified Audit of Circulations). The Reporter inquired if the auditors are CPA's. Mr. Murphy replied that they are independent firms who have very stringent standards. It involves a process that takes up the full time of many people. They provide data and do spot audits. Their data is as good as it gets. There are auditors of free publications, also.

Mr. Lieberman said that he wanted to address the issue of choice, an issue that had been raised earlier. He represents a company that has many different choices for advertisers. The question in this context is if for legal notices, there should be unfettered choice available to people. The issue is the policy

of the statute that legal notices are different. It cannot be left up to people to choose without any standards, because what are the incentives to make sure that people actually get notice of foreclosure sales to ensure that the privacy at the foreclosure sale is fair to the homeowner? How can it be ensured that foreclosure notices are disseminated widely enough to make sure that the property has been properly marketed? The legislature has made a choice that they will impose certain standards for legal notices that are different than notices of consumer products being offered. There need to be vehicles to ensure that notice has been given to the community of these important events. The policy that has been established is that they be paid, and the readership data shows that his newspaper has great products.

Mr. Lieberman noted that the audited figures provided by the CAC address the distribution of newspapers, showing that they were placed on the racks, and showing that a certain number went out. They do not measure readership. ABC Audit measures the people who have paid for their product, and therefore it is a proxy that they read it. There is a better chance that they will actually see those notices. That is the public policy behind this. Before a rule change is considered, the Committee should look at the regulations of the U.S. Postal Service on free publications that qualify as periodicals. The Postal Service does not allow every free newspaper to qualify.

Mr. Lieberman hypothesized that he could have started a

four-page newspaper that was published for six weeks. Legal notices should not be placed in such a publication even if his newspaper qualified under the statute. The Postal Service requires that to get a periodicals permit as a free newspaper, it must be proven that 50 percent of the circulation has been requested. It is not a wise policy to leave legal notices, as opposed to other kinds of advertisements, with all of the choices that are being presented. It is important to ensure that the Rule is established that the least different categories of notices reach readers. Hopefully, this will not be the case twenty years from now. It may be that online notices will be predominant. The Chair remarked that this may be true, now. Mr. Lieberman noted that this is not the case for advertising. They have many page views on their websites, but the effectiveness of online advertising that is demonstrated by the prices, which are a fraction of what people pay in a print newspaper, proves that, although this may change, this is not the case in the foreseeable future.

The Chair asked Mr. Lieberman if he had statistics that indicate how many people read legal notices in the print publication. The Chair added that he would assume that anyone who is interested in what is advertised in legal notices would read them, because that is their business or their interest. He did not know how much of the general public ever looks at these notices. Judge Hollander commented that the discussion had reminded her of when certain utilities were deregulated. There

may be something to be said for "papers of record" as places where the notices are published, because those who may be looking for something would not have to worry about checking a vast number of places where something possibly could be; they would know that to the extent that they are trying to find out if there is a notice, it would likely be in a certain type of publication.

Ms. Ogletree remarked that one of the concerns in the rural areas is that there is only one newspaper for several counties, and when their cost for legal advertising is five times that of another county which may be 20 miles away, and no alternatives exist, it really is a problem for consumers and personal representatives in a small estate. A free newspaper could level the playing field and would allow someone a choice as to where to place advertisements. The Probate Subcommittee had discussed requiring the Registers of Wills to have a website on which to post legal notices. In Ms. Ogletree's county, the only way some of the residents can read what is on the website is to go to the public library. Having a free newspaper would certainly be an asset.

Mr. Lieberman agreed that there may be some circumstances similar to those referred to by Ms. Ogletree. It is possible to write a rule to address this type of gap. Standards have to be in place as proxies for readership. It is not enough to state that it is a free newspaper, and it should qualify. The Postal Service regulations are something to consider because they have a requirement that it must be shown that people are requesting the

newspaper and that it is not just being dropped on the street, being picked up by people serendipitously. In that community, he assumed that it would not be a problem for that newspaper.

Mr. Marquardt told the Committee that he is the editor and publisher of The Capital Newspapers of the Annapolis area. People who pay $.50 for The Maryland Gazette or $.75 for The Capital are more likely to read it. He knew this, because his newspaper also publishes three weekly newspapers distributed in Anne Arundel County. When stories appear in both publications, the one that draws the most reaction is the one that is in The Capital. There is a relevant value that comes with a paid newspaper. As their advertisers tell them, they are invited into the home. There is also a value associated with the newspaper. When someone pays for it, a value is associated with it. Items that are valued are read more often. He pointed out that The Capital, as is the case with most daily newspapers, is a for-the-record newspaper. It lists all of the police cases, all of the marriages, all of the divorces, all of the homes sold, and all the sports events every day. The newspaper is able to do this more so than the weekly newspapers, because it has a larger staff. If people perceive The Capital as the paper of record, this would be the place to which people would go to look for legal advertisements. In their market, their website has 84 percent of the market. If a place is established for people to go to read the legal advertisements, what are the odds that they will go to that place? People are not going to go to a website

just because it is there. People pick up a newspaper and go through it looking at various items, and they come across the advertisements.

Mr. Marquardt said that in the early 1970's, the Anne Arundel County Executive was not endorsed by The Capital. He had decided to place all of the legal advertising in one of the weekly newspapers. This was retaliation. Putting that power in the hands of any county executive, will result in some politics. The Capital fought this, and they won, because the County Executive lost the election. There was also a zoning issue, which the county had advertised incorrectly. The dates that they were required to advertise were violated. The case had to be re-advertised, and there had to be another hearing. If the county or any website had power over this, it is very easy to go back and make that change for historical purposes. His newspaper can change anything in their electronic archives, and although they do not, they could make the change and therefore change history. With a printed newspaper, this will not happen. This is history.

Ms. Acton told the Committee that she represents The Gazette and Southern Maryland newspapers. Many questions had been raised about The Gazette. They have a general circulation newspaper, The Friday Gazette, that is circulated throughout the county, and it carries legal advertising. The Gaithersburg Gazette carries legal advertising, because the city of Gaithersburg passed legislation that allows it. Her company has both paid and free

newspapers, and their position is that the best and most effective vehicle for public notice, which is very different from other advertising, is paid newspapers. The audited circulation, the record that cannot be changed, the separation from the government, being a separate entity that will run those legal advertisements and be able to make sure that all of the requirements have been complied with, is, in their view, best met by their paid newspapers rather than the free ones. There is a difference.

Mr. Thomas said that he represents The Baltimore Sun. His colleagues from the free newspapers want the Committee to draw an inference that The Sun is charging five times the rate of what the free newspapers would charge. To shed some additional light on this, the circulation that they are presenting is the circulation to cover Essex. For this, the newspaper will charge $120 for an advertisement. However, The Baltimore Sun charges $500 for an advertisement. The price cited by the free newspapers would be for coverage of the entire Baltimore market if that were true. In essence, the circulation for The Baltimore Sun is 350,000 newspapers. If this $500 amount were valid, The Sun would be charging five times the rate to cover 20 times the households. This is a good value. This is similar to why a commercial on The Today Show would be much more expensive than a commercial on the morning news on Channel 11. This is the comparison that is being drawn. The second issue is that the $500 amount is wrong. Their current rate for a 72-line

advertisement is $154.80. The industry pays $154.80 to cover the entire bulk of his market while The East County Times wants to charge $120 just to cover Essex. He wanted to correct these misrepresentations.

Mr. Maloney asked what The Sun's total legal advertising revenue was. Mr. Thomas replied that this is proprietary, and they do not share this information. However, it is not huge. In comparison, it is less than 4 percent. Mr. Maloney inquired if it were true that as a proportion of overall classified advertising, legal advertising has become more significant as opposed to other advertising. Mr. Thomas replied negatively, explaining that classified advertising includes automotive, real estate, and apartment rentals, so it is about the same amount.

Mr. Thomas remarked that he wanted to reiterate a point that Mr. Lieberman had raised earlier and address a question raised by Mr. Maloney about whether the newspaper should be put in the local neighborhood. The position on this issue really should center on what the appropriate geography is for public notice. If one's opinion about a house in Essex that is going to be foreclosed is that only the people in Essex should be informed about it, then that person should side with the free newspapers. The Chair stated that he did not think that the Rules of Procedure would permit this in any event apart from the statute, because the language of the Rule is: "newspaper of general circulation in the county." Mr. Thomas said that this is the point that he was trying to make. It is important to look at the

county from a countywide perspective. If this is the appropriate geography, the paid newspapers are the ones that provide the amount of coverage that is needed in the county as opposed to the smaller neighborhood newspapers.

The Chair said that this may be the case, but he did not know whether the fact that a newspaper is free or that it is subscribed to necessarily would govern the extent of the circulation. It may with some of the smaller, local newspapers. Mr. Thomas explained that he was trying to address the issue of whether one's choice as to the appropriate notice area will influence the decision whether the advertising should go into a smaller newspaper or in a newspaper that covers an entire county or an entire market. The Chair recollected that years ago there was an appellate case where the sale being advertised was of national significance, and the court required publication in a national newspaper.

Mr. Michael asked if the language in section (a) of the statute that reads "unless otherwise provided" would allow the reverse, that is if under appropriate circumstances, a judge could allow a free newspaper to publish a certain notice that might be uniquely situated in Essex, for example. The Chair responded that he did not know what that language meant. The legislature put that language in the statute for some reason. He did not know whether it would permit the Court of Appeals to exclude one of the categories in the statute or to add another one.

Ms. Lucan told Mr. Maloney that he was incorrect that print newspapers will die out. She pointed out that web circulation is discriminatory. To take advantage of web circulation, someone must have a certain amount of education and a certain amount of income. Most government websites are horrible to navigate. The newspapers that publish legal advertising could also be told to publish it on their website. But to rely totally on websites to provide notice is not fair.

Ms. Lucan noted that a point had been made about archives. The Examiner, at least, is archiving everything in three databases. She wanted to point out the longevity of each of the free newspapers that were represented today. On the issue of circulation data, she felt the absence of Mr. Phelps, and she was unable to respond. If there is a question about circulation, she said that she would ask Mr. Phelps, and he would respond. As for southern Prince George's County, there are 133 distribution points, referred to as "single copies," plus 11 coffers at 11 Metro stations. This provides an enormous amount of access to The Examiner. She added that she and the other newspaper representatives present appreciated the Committee's attention.

The Chair stated that what was before the Committee was the fact that in June, the Committee had approved an amendment to Rule 1-202, Definitions, to define the term "newspaper of general circulation" as follows: "'Newspaper of general circulation' means a newspaper as defined in Code, Article 1, §28." The issue before the Committee now was whether the Committee wished to

reconsider that determination. He asked the Committee if anyone had a motion to reconsider. Ms. Ogletree moved to reconsider, and the motion was seconded by Mr. Klein, who explained that he had seconded the motion, because since so much time had been spent discussing the issue, it deserved another vote. He was personally torn about this. The issue was the purpose of the notice function. He was not persuaded that it was a good idea to limit notice to the immediate community where a property or whatever the item at issue is located. If a property is located in eastern Baltimore County, notice should be given at least to the entire county. An argument can be made that it is difficult to draw the line, and maybe notice should be given to the entire State.

Mr. Klein remarked that where he was really conflicted was that he did not believe that the distinction between paid and unpaid newspapers had any relationship to geography. A free newspaper in a county could have as wide general circulation as a paid newspaper. "Paid vs. unpaid" is not a touchstone for dissemination. Some free newspapers may not be broadly circulated and should not be eligible without any comment on the quality of those newspapers and what they do for their immediate community. However, a newspaper like The Examiner seems to be fairly broadly circulated. He expressed the view that it was preferable to have another opportunity for access. The free vs. paid distinction was artificial, and was probably not a proxy that is valid now. He did not know what criteria were used to

determine which newspaper should contain notices, but he expressed the view that free vs. paid is not the touchstone.

Mr. Leahy inquired if the Committee had the authority to go against what the legislature did in Code, Article 1, §28. They had passed that law for a reason. The Chair pointed out that this issue had been raised. The answer depends on whether this is properly regarded under the Constitution of Maryland as involving practice and procedure in the courts. If it does, then the Court of Appeals has the constitutional authority to act inconsistently with the statute. In a sense, it is not the question of whether the Court could do this; it is whether the Court should do it in light of the fact that the General Assembly has passed this law and has declined to alter it on a number of occasions. In answer to Mr. Leahy's question, the Chair expressed the opinion that the Court could circumvent the statute if it so chooses. Delegate Vallario agreed with the Chair that the legislature had had an opportunity recently to change the law, and the bill did not make it out of committee. This matter should be left up to the legislature, which did have a full hearing on the matter.

The Chair said that this issue had been before the Committee many times. Sometimes the Committee and, ultimately, the Court of Appeals decide that a subject involves practice and procedure, and the Court makes changes to the Rules. Other times, the Committee and the Court have decided that some issues are political, or had already been addressed by the legislature, and

ought to remain in that venue. Mr. Maloney expressed the opinion that the Court has the authority to change the Rule on the issue of "newspaper of general circulation." The question is whether the Court should do so. The branches of government need to pick and choose when they are going to fight these kind of battles. He was not sure that a fight between two segments of the industry was the vehicle for the Court to pick a battle with the General Assembly. If the Court is intending to assert the separation of powers, it should take a broader look at the entire notice question and the current status of technology. If the Court is really interested in this topic, it may want to appoint a committee to look at current notice requirements in light of modern technology and make some judgments based not on paid vs. free, but rather, in light of the modern status of media, what an effective and appropriate method of notice is.

Mr. Michael remarked that this issue also had bothered him. Mortgage foreclosures had been discussed, and they are a more local issue, but what about the use plaintiff issue that had been discussed at another meeting? What constitutes appropriate notice to someone who may have a claim under Code, Courts Article, §3-904 pertaining to use plaintiffs in wrongful death cases? He did not see a local, free newspaper as an appropriate vehicle for him to argue that the rights of a person who has never appeared or been represented have been protected if the only notice that has ever been given was in a locally circulated newspaper. In discussing the notice provision, it is important

to consider cases other than mortgage foreclosures.

Mr. Maloney commented that one problem with the free newspapers is that they want to live by the statute when it serves their interest but not when it does not. They have expressed the view that the statute is outmoded, and there should not be a distinction between free and paid newspapers, so they have asked the court to override the statute and give them the same rights. If asked why notice cannot be provided by an internet posting, rather than in a printed newspaper, their answer is that the statute prohibits it. If the free newspapers are going to override the statute, then they should be thinking more broadly and not just look at the narrow question.

Mr. Brault expressed his agreement that the statute ought not to be circumvented. He would be in favor if a rule were changed to authorize the court in a specific case to order a different publication source. He also agreed with the example of a specific case that would cause the court to decide that a newspaper should publish somewhere else. The Chair said that this raises an interesting question about the meaning of the language "unless otherwise provided." Does it mean that the Court of Appeals could do something else by rule? Or does it go farther, suggesting that a judge on the circuit court could do something else in a given case? This has some interesting implications.

Mr. Brault said that he would be in favor of petitioning the court to allow national publication on Sotheby's website because

a property is so valuable it would merit this type of publication, or the property is so uniquely local, it should be advertised in the local newspaper. Judge Kaplan remarked that the arguments he had heard were very interesting and well-stated. The object of the Rule is to give notice, and he did not believe that a change in the Rule would guarantee or even strongly lean toward giving notice if it is left up to local jurisdictions or even countywide. An example would be a termination of parental rights and the notices that have to be given in that situation. These notices are critical. A parent may be in some other jurisdiction, and he or she would not get notice that the parental rights of that person may be terminated. However, the person would be more likely to see a notice published in a daily newspaper. Judge Kaplan said that he did not see a need to change the decision of the Committee that had been made at the June meeting.

The Chair stated that there was a motion on the floor that had been seconded. He called for a vote on the motion to change what the Committee had done in June, defining "newspaper of general circulation" as it is in the Code. The motion failed with no one in favor of it. The Chair thanked all of the people who had taken the time and interest to come to the meeting. The Committee would be proposing to the Court of Appeals what had been approved previously. This would go to the Court in a report from the Committee. The report would be published in The Maryland Register and would be on the Judiciary's website. The

Court of Appeals would have an open hearing on this at least after a 30-day comment period, and the date of that hearing would be posted on the Judiciary's website. Anyone can file written comments on that proposal, and they should be sent to the Reporter. The comments are collected and given to the Court. Anyone can come to the open hearing before the Court. Anyone can ask Ms. Decker, the Clerk of the Court, for permission to address the Court. The ultimate decision would be made by the Court itself after the open hearing. The Reporter said that anyone who gave her an e-mail address would be notified by e-mail when the Rule is put into a report.

The Chair said that the next agenda item would be Item 5, because Ms. Ogletree, Chair of the Property Subcommittee, had to leave the meeting soon.

Agenda Item 5. Consideration of proposed new Title 12, Chapter 700 - Dormant Mineral Interests - New Rule 12-701 (Definitions), New Rule 12-702 (Trust for Unknown or Missing Owner of Severed Mineral Interests), and New Rule 12-703 (Termination of Dormant Mineral Interest)

The Reporter told the Committee that the revised version of the Rules for discussion was labeled "Revision 2.0," and it was distributed today.

Ms. Ogeltree presented Title 12, Chapter 700, Severed Mineral Interests, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 700 - ~~DORMANT~~ SEVERED MINERAL INTERESTS

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MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 700 - ~~DORMANT~~ SEVERED MINERAL INTERESTS

ADD new Rule 12-701, as follows:

Rule 12-701. DEFINITIONS

In this Chapter, the terms "mineral," "mineral interest," "severed mineral interest," "surface estate," "surface owner," and "unknown or missing owner" have the meanings set forth in Code, Environment Article, §15-1201. A dormant mineral interest is a mineral interest that satisfies the criteria set forth in Code, Environment Article, §15-1203 (a)(2).

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 700 - ~~DORMANT~~ SEVERED MINERAL INTERESTS

ADD new Rule 12-702, as follows:

Rule 12-702. TRUST FOR UNKNOWN OR MISSING OWNER OF SEVERED MINERAL INTEREST

(a) Petition

(1) Generally

An owner in fee simple of a surface

estate ~~or estates~~ subject to a severed mineral interest that is vested, in whole or in part, in an unknown or missing owner may file a petition to place the mineral interest of the unknown or missing owner in trust. The petition shall be filed in the circuit court of ~~the~~ any county in which the surface estate ~~or estates are~~ is located.

Cross reference: Code, Environment Article, §§15-1201 through 15-1206.

(2) Contents

The petition shall be captioned "In the Matter of ..." stating the location of the surface estate ~~or estates~~ subject to the severed 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, ~~age,~~ and telephone number;

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

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

(D) to the extent known, the name, address, telephone number, and nature of the interest of all persons with a legal interest in the severed mineral interest, including any unknown or missing owners, and their heirs, successors, or assignees~~, if known~~;

(E) ~~if a person with a legal interest in the severed mineral interest cannot be identified or located, an affidavit of the petitioner filed pursuant to Rule 1-305 describing the attempts to identify and locate the unknown or missing interested person~~ an affidavit of the petitioner filed pursuant to Rule 1-305 describing the attempts to identify and locate each unknown or missing owner who is the subject of the petition;

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

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

(H) an affidavit ~~signed by~~ of the ~~surface owners~~ petitioner, affirming fee simple ownership of the surface estate ~~or estates~~ and including a reference to each recorded document establishing such ownership.

(b) Notice

The proceeding shall be deemed in rem or quasi in rem. Notice to all persons with a legal interest in the severed mineral interest named in the petition shall be given pursuant to Rule 2-122.

(c) Hearing

The court shall hold a hearing on the petition.

(d) Order Creating Trust

(1) If the court finds that the title to a severed mineral interest is vested, in whole or in part, in an unknown or missing owner, the court may enter an order:

(A) placing the severed mineral interest of the unknown or missing owner in trust ~~by order~~;

(B) appointing a trustee for the unknown or missing owner;

(C) if it is likely that any revenue will accrue to the benefit of the unknown or missing owner, directing the trustee to create a separate trust bank account to manage all trust assets; and

(D) authorizing the trustee to **[sell, execute, and deliver a valid lease on the minerals] [lease the mineral interest]** to the owner of the surface estate, subject to any

conditions the court deems appropriate.

(2) The court shall provide for notice of the order to be served on persons with a legal interest in the severed mineral interest in accordance with Rule 2-122.

(e) Administration of Trust

A trust created under this section shall be administered pursuant to Rules 10-702 to 10-712.

(f) Termination of Trust

(1) Petition by Unknown or Missing Owner

(A) Generally

An unknown or missing owner whose interest in a severed mineral interest has been placed in trust, at any time prior to the filing of a petition under subsection (f)(2) or (f)(3) of this Rule, may file a petition to terminate the trust and convey the interest to the petitioner. The petition shall be signed and verified by the petitioner, filed in the court that created the trust, and name as respondents the trustee and each surface owner.

(B) Contents

The petition shall be captioned "In the Matter of ..." and shall state:

(i) the petitioner's name, address, e-mail address, if any, and telephone number;

(ii) the name, address, e-mail address, if any, and telephone number of the trustee and each surface owner;

(iii) the nature and extent of the petitioner's legal interest in the severed mineral interest in trust and include a reference to each recorded document establishing that interest and be accompanied by any unrecorded document establishing that interest; and

(iv) whether, the petitioner has recorded or intends to record a notice of intent to preserve the mineral interest in accordance with Code, Environment Article, §15-1204.

(C) Service

The petition shall be served on the trustee and each surface owner.

(D) Response

The trustee and each surface owner shall file a response to the petition within the time prescribed by Rule 2-321.

(E) Hearing

Unless waived in writing by all parties, the court shall hold a hearing on the petition.

(F) Order

If the court finds that the petitioner is the unknown or missing owner whose severed mineral interest was placed in the trust, that the petition is timely and in compliance with this Rule, and that the trust with respect to that mineral interest should be terminated, it shall enter an order (i) terminating the trust as to that mineral interest, (ii) directing the trustee to file a final accounting, convey the mineral interest to the petitioner, and distribute all proceeds in accordance with the accounting, as approved by the court, and (iii) assessing costs as it deems just under the circumstances.

(2) Petition by Trustee

(A) Generally

If (i) the unknown or missing owner of a vested severed mineral interest to whom notice of the petition or order was given does not contest or move to terminate a trust created under section (d) of this Rule on or before five years after the date that

the court issued the order creating the trust, and (ii) the severed mineral interest has become a dormant mineral interest, the trustee ~~may~~ shall file a petition to terminate the trust and to convey to the surface owner title to the severed mineral interest. The petition shall name as respondents ~~the~~ each surface owner and ~~any other~~ each person with a legal interest in the severed mineral interest, including any unknown or missing owners.

(B) Contents

The petition shall be captioned "In the Matter of ..." stating the location of the surface estate ~~or estates~~ subject to the severed mineral interest. It shall be signed and verified by the petitioner and shall contain at least the following information:

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

(ii) a description of the putative property interests of each ~~of the parties~~ party;

(iii) the last known address of each ~~of the parties~~ party;

(iv) an affidavit signed by ~~the~~ each surface owner, affirming fee simple ownership of the surface estate ~~or estates~~ and requesting the court to convey title to the severed mineral interest at issue; and

(v) an affidavit signed by the ~~trustee~~ petitioner, affirming that after conducting a diligent inquiry, including a search in ~~the~~ each county where the severed mineral interest is located, performed in accordance with generally accepted standards of title examination of the land records of the county, the records of the register of wills of the county, and the records of the circuit court for the county, the trustee cannot locate the unknown or missing owner.

(C) Notice

Notice to all respondents shall be given pursuant to Rule 2-122.

(D) Hearing

The court shall hold a hearing on the petition.

(E) Order Terminating Trust

The court shall enter an order requiring the trustee to convey the unknown or missing owner's mineral interest to the named surface owner if (i) the unknown or missing owner does not appear to contest the petition, and (ii) the court finds that the ~~individuals~~ person named in the petition as surface owner ~~are~~ is in fact the fee simple owner of the surface estate ~~or estates~~ and that the severed mineral interest has become a dormant mineral interest. After receiving the final report of the trustee as required by Code, Environment Article, §15-1206, the court shall ~~order the trust terminated and the trustee discharged~~ enter an order (a) terminating the trust as to that mineral interest, (b) directing the trustee to file a final accounting, convey the mineral interest to the petitioner, and distribute all proceeds in accordance with the accounting, as approved by the court, and (c) assessing costs as it deems just under the circumstances.

(3) Petition by Surface Owner or Other Interested Person

~~If the trustee does not file the petition, any person with a legal interest in the severed mineral trust can petition for the termination of the trust.~~ If the trustee does not file the petition within the time prescribed in subsection (f)(2) of this Rule, the surface owner or any person with a legal or beneficial interest in the severed mineral interest placed in trust may file a petition to direct the trustee to comply with subsection (f)(2) of this Rule or to appoint a substitute trustee to do so. The petition

shall be served on the trustee in accordance with the provisions of Rule 2-121 and further proceedings shall be in accordance with subsection (f)(2) of this Rule.

Cross reference: For duties of the trustee, see Code, Environment Article, §15-1206.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 12 - PROPERTY ACTIONS

CHAPTER 700 - ~~DORMANT~~ SEVERED MINERAL INTERESTS

ADD new Rule 12-703, as follows:

Rule 12-703. 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 maintain an action to terminate a dormant mineral interest ~~as defined in Code, Environment Article, §15-1203 (a)~~ by filing a petition in the circuit court of ~~the~~ any county in which the real property is located, but if a trust created under Rule 12-702 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

the surface estate or estates 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, ~~age,~~ and telephone number;

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

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

(D) the name, address, telephone number, and nature of the interest of all interested persons;

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

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

(G) an affidavit signed by ~~the~~ each surface owner affirming fee simple ownership of the surface estate ~~or estates~~ , including a reference to each recorded document establishing such ownership.

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

(b) Service - Notice

(1) Service

The petitioner shall serve notice in accordance with Rule 2-121 on ~~any~~ each interested person ~~or any~~ and 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.

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

(2) Notice

If ~~the~~ an owner of the severed mineral interest is unknown or missing, the proceeding shall be deemed in rem or quasi in rem as to that owner, and notice to that owner shall be given pursuant to Rule 2-122.

(c) Late Notice of Intent to Preserve Interest

Unless the mineral interest has been unused for a period of 40 years or more proceeding 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, ~~if~~ 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. ~~This does not apply if the mineral interest has been unused for a period of 40 years or more proceeding the commencement of the action.~~

(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.

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

Source: This Rule is new.

The Chair said that Ms. Ogletree would present the Rules, but he would make a few introductory comments. This matter was before the legislature in 2009 and 2010. What triggered it was the Marcellus Shale, which is a deposit deep in the earth that

runs from New York down the east coast through Pennsylvania, Maryland, and into West Virginia. It is a mineral deposit that until recently had not been actively used, because it is difficult to reach, and it is expensive to do so. It produces natural gas, and more recently, the technology has been developed to harvest that gas.

In 1986, the Uniform Law Commissioners came up with a draft uniform law, not necessarily because of the Marcellus Shale, but because of minerals generally around the country. Many states have adopted it. It became more relevant in Maryland recently because some people want to harvest the natural gas imbedded in the Marcellus Shale. It is probably sitting under land that is being farmed, so the surface owner is doing something else with the land. The legislature passed this law. The Maryland General Assembly added a provision to the law that the Uniform Law Commissioners chose not to include in the Uniform Act.

The Chair explained that the law covers two different subjects. One is a provision that would permit the termination of mineral rights that have been severed from the land and that have essentially not been used for 20 years or more. As defined in the law, these are regarded as "dormant." Some of the owners of these interests may be unknown. The mineral rights may have been severed years ago. At some point, there was a deed or some recorded instrument that severed the rights. It may not be known who owns the rights now, or, if their identity is known, their whereabouts may be unknown. In Code, Environment Article, §15-

1203, if the interest has been unused for 20 years or more, the law permits the termination of the interest whether the owners are known or unknown.

The Chair said that the Maryland legislature added another provision that permits the surface owner, if there are unknown owners of the mineral interest, to come to the circuit court and ask the court to impose a trust on those unknown owners' mineral rights. If within five years, the unknown owner takes no action, which presumably would have been to file and record an intention to use the mineral interest, after five years, the trustee can, and under the statute must, file a petition to terminate the interest of the unknown owners. That interest would then be deeded to the surface owners.

The Chair said that aside from the fact that there are huge gaps in how the trust is be effected and terminated, it potentially creates an equal protection issue. The termination of the trust can be within five years, and the interest does not have to be dormant. The interest of the unknown owner can be terminated and deeded to the surface owner after five years, even though 20 years has not passed, because the interest does not have to be dormant. If the owner is known, the interest cannot be terminated until 20 years has passed. Unknown owners are being treated differently both procedurally and substantively, because their property rights conceivably can be terminated in a much shorter period of time than known owners.

The Chair remarked that in trying to draft rules to

implement the statute, Ms. Ogletree, the Reporter, and the Chair had picked up several problems with the statute. They tried to address those issues, which may be correctable by rule without affecting the statute. They tried to deal with the equal protection issue by stating in the rule that the trust can be created for an unknown owner, but it cannot be terminated until the interest has become dormant, so that there is parity with the known owners. This adds a condition that is not in the statute, but if the statute is unconstitutional, that provision could not be enforced, anyway. By making clear that no interest can be terminated unless it is dormant solves the possible equal protection problem.

Ms. Ogletree told the Committee that Jeffrey L. Darsie, Esq., the Assistant Attorney General who wrote the Attorney General's opinion that accompanied the statute on its way through the legislature and to the Governor, was present, and he had had a chance to review the proposed Rules. Mr. Darsie replied that he had not looked at this for some time. He had been advised about the concerns for equal protection, and he did not think that an equal protection issue existed. He looked at it from the point of view of assuming that there were no dormancy provisions with no way to foreclose on that interest after a period of dormancy, and all that was left was the receivership part. In that instance, an owner of the missing interest would be treated much differently than a known owner, because the known owner would never be at risk of losing his or her property, and the

missing owner could lose his or her interest after five years. The unequal treatment would be much more stark in that situation. If the dormancy period is added back, the unequal treatment is between five to 20 years. Merely adding this dormancy provision does not change the analysis that if the receivership law is sound on its own, there should be no equal protection problem.

Ms. Ogletree disagreed with Mr. Darsie. She pointed out that the statute contains two ways to terminate an interest. One provides a longer period, and another one allows for a different termination process for people who probably need greater protection because their identity and their whereabouts may be unknown. This creates a real issue. Cases such as *Mennonite Board of Missions v. Adams*, 462 U.S. 791 (1983) and similar cases addressing notice to people who are unavailable indicate that those people deserve more protection than simply putting the interest in trust and then giving the money away after five years. Mr. Darsie responded that this is an objection to the receivership mechanism itself.

The Chair asked what the receivership was, and Mr. Darsie replied that it is the trust. These kind of statutes exist in other states. He did not know if any of them had been challenged, but they have been in existence for a while. They are in Kentucky, Illinois, West Virginia, and a few other states. The objection that has been expressed regarding the missing owner exists regardless of the dormancy period. The 20-year period is a separate issue. Ms. Ogletree said that the 20-year period

treats everyone alike. When the trust provisions are tacked on in the same statute, the missing owners are being treated differently.

The Chair hypothesized a situation where he and Ms. Ogletree were co-tenants of the severed mineral interest. Her whereabouts were known, but his were not. To terminate her interest, someone would have to wait 20 years until it is dormant. But for the unknown co-tenant, a notice would have to be published somewhere, a trust would be created, and if the unknown tenant takes no action in five years, his interest can be terminated, but not hers. Ms. Ogletree asked how this could be equal. Mr. Darsie replied that if he knows the person, he can negotiate with that person for the rights. Ms. Ogletree noted that the rights are already there.

Mr. Darsie explained that if he knows who the person is, he can tell the person that he is the surface owner and has the opportunity to put in a gas well, for example, and he can either acquire the rights from the owner of the mineral interest or share in the agreement, but he would not be able to go to the Chair, as the unknown owner of the interest, and enter into any arrangement with him. The fact that he has disappeared is a much more serious encumbrance on the surface owner's ability to do anything with the property. There are two separate issues. The 20-year dormancy period is different and has been looked at in other contexts as a presumption of abandonment. Ms. Ogletree noted that this is similar to the same type of statutory format

for eliminating reverters, which was done years ago. If something is not recorded, the person involved may lose his or her rights. She had no problem with that aspect; her problem was allowing the termination of the trust to happen before it can be terminated when the owner is known.

Mr. Darsie explained his point was that if a trust is set up, and the law on its own allows the trust to be created, and after five years, the missing owner cannot be found, the trust can be closed, and the interest taken. The missing owner is being treated in a way that means that he or she can lose the property in five years, and the known owner can never lose his or her property. The Chair clarified that the known owner can lose the property in 20 years. Ms. Ogletree remarked that this has to be considered at the same time. Mr. Darsie said that the difference is between someone who has to lose his or her property after 20 years, and someone who has to lose his or her property after five years. Ms. Ogletree added that the five-year period is fair because the person cannot be found.

Mr. Darsie commented that in a state that does not have this law, the comparison would be between someone whose property is never at risk as opposed to someone who can lose his or her property in five years if the person is not known. This is the disparate treatment that is causing trouble, and the differential is much greater in the state that does not have the dormancy rule. The Chair disagreed, pointing out that if the trust provision were taken out, as most states have done, the unknown

and known owners are treated exactly the same. The trust can be terminated whether the owner is known or not, once the interest is dormant. If the trust provision in the statute were excised completely, there would be absolute comparability. Known and unknown owners would be treated exactly the same. When the trust provision is included, the ability to terminate only the unknown owners in five years is being added. This is not allowed under the first provision, which requires waiting 20 years to terminate. This is the problem, and it is difficult to circumvent. The fact that someone could negotiate with an owner does not mean that Maryland can wipe out what is essentially a fee simple interest.

Mr. Darsie agreed with this, and he noted that the objection is with the idea of the trust law. Regardless of anything else, what is troubling people is that a trust can be created. The Chair and Ms. Ogletree clarified that the problem is not the creation of the trust, it is the termination of it prior to the 20-year period. Mr. Darsie remarked that if the trust could be terminated within five years, and wipe out the owner's interest, this is the problem. The problem is not waiting 20 years.

The Chair explained that the value of the trust is that the mineral interest can be used, but the profits that belong to the unknown owner have to be put in the trust, so that the unknown owner is not hurt. The problem is not the creation of the trust, it is the termination of the interest. The legislature probably never considered this problem. They had put in the trust

provision, so that the mineral interest could be worked.

Ms. Ogletree added that the statute provides for this. The statute allows for the exploitation of the minerals involved, but it requires that whatever the original arrangement was or whatever the court decides is a fair arrangement, the money has to be paid to the owner of the subsurface rights. This is appropriate. The Chair stated that the Rule is trying to avoid this. This applies to title to land. Who is going to ensure a termination of the trust in five years given this issue? The Rule is attempting to provide that the mineral interest can be used, and the law can be implemented, but the trust can be terminated only at the same time it could have been terminated anyway without the trust when the interest is dormant.

Mr. Darsie apologized that he had not been able to do the research on this issue, but he believed that other states have trust provisions as well as dormancy provisions. He did not think that those jurisdictions have a requirement that the dormancy rule equals the length of the trust. The Chair inquired if there had been any cases in those states, and Mr. Darsie replied that he did not know. The Chair noted that this issue is rather new. Mr. Darsie remarked that the trust mechanisms have been in existence for a while. The Chair said that they were in existence in 1986, because the Uniform Law Commissioners commented on them and decided not to include them. The trusts have a value, because they permit someone to be able to use the mineral in the meantime.

Mr. Darsie commented that he did not know whether in the jurisdictions that have both the dormancy rule and a trust or receivership, there is a rule that they have to be of equal length. This law was based on the Illinois statute. Their trust is either five or seven years, which is a typical length for these trusts. Ms. Ogletree asked what their dormancy period is. Mr. Darsie responded that he thought that the dormancy period was 20 years, but he was not sure. Almost all of the dormancy statutes that he had seen were similar to the Model Act which requires 20 years of non-use before someone is entitled to presume that the owner cannot be found. Ms. Ogletree remarked that this is like adverse possession. The Chair added that he thought that this was the explanation in the Uniform Law Commissioners' report. They had been looking at the 20-year dormancy period as an effective statutory abandonment. If anyone were to try to terminate the trust when the interest is not dormant, he or she may not ever be able to get a title policy.

Mr. Darsie said that this does not appear to him to be a problem, although he had not seemed to persuade anyone present that this was so. He remarked that he would be happy to do the extra research in the other states to see if there is any case law on the equal protection issue. He expressed the view that a missing owner is in a much different situation than a known owner who is just not using the property. This justifies different treatment.

The Chair pointed out that when there is a known owner, the

surface owner can negotiate with the known owner. The problem may be the reverse. The known owner comes on to the land of the surface owner, who may be a farmer, and tells the farmer that the owner of the mineral interest is planning to put a mine shaft on the land. The trust equalizes this. If someone wants to use the minerals, the surface owner can negotiate with the person as long as his or her identity is known. If the surface owner does not know who the owner of the mineral interest is, a trust can be created so the interest can be used as long as the profits are put in trust for the missing owner.

The Chair referred to the case cited in the Attorney General's opinion, *Texaco v. Short*, 454 U.S. 516 (1982) addressing a similar situation in Indiana. The focus of that case and of the Attorney General's opinion was on due process -- how much time must be allowed before someone's rights that are not being used can be terminated? No attention at all was given to the equal protection problem when a disparity is created. Ms. Ogletree responded that she did not believe that there was a disparity in the Indiana case. It addressed the automatic termination of the interest. Mr. Darsie noted that the case had a different kind of equal protection issue. Holders of multiple interests were treated differently and given more rights than people who held only a single interest.

The Chair commented that if Mr. Darsie is correct that the statute is constitutional, then the Rule should implement the statute providing that after five years, the trust can be

terminated. Perceiving that a problem existed, the Subcommittee tried to eliminate this in the Rule by providing that the trust can be terminated, but only after the interest becomes dormant. There would be a complete parity between proceeding with the trust and waiting and then terminating the interest without any trust for the same unknown owner. If the trust is not created, it is necessary to wait 20 years to terminate when the owner is unknown. Ms. Ogletree remarked that she suspected that it might be a good idea to ask the legislative members of the Committee to look at this law again. The Chair added that if there is a problem, it would be easy to fix by doing what is being proposed for the Rule. The trust can be terminated after five years provided that the interest has become dormant. Ms. Ogletree suggested that the trust could be terminated the later of the five years or the 20 years.

Mr. Michael inquired as to what the recommendation of the Subcommittee was. Ms. Ogletree responded that the Subcommittee had opted for the equal protection route. Judge Pierson pointed out that no information could be brought back that Ms. Ogletree would find convincing to dissipate the equal protection problem. Ms. Ogletree responded that she saw it as a problem, but in some cases, it might not be, depending on when the dormancy occurred. Even if the interest has been dormant for 20 years anyway, situations will arise where it will be a problem.

The Chair said that this issue could be delayed. If the Attorney General's Office wants to assert that the law is

constitutional, a search could be made to see if any relevant case law exists. The matter can be delayed until the research is completed. Although this is not an emergency, there is some urgency to this. The issue has been before the legislature twice. He assumed that this is because some people in Western Maryland would like to start using their mineral interests. The law is in effect.

Judge Pierson pointed out that the constitutional problem may be able to be cured, but the period of time seems to affect whether someone is going to try to use the mineral interests. No economic incentive exists to put profits in trust if they are not going to be touched. Ms. Ogletree responded that mineral interests were handled on the Eastern Shore of Maryland in the late 1940's at the end of World War II, and a specified amount was in those documents, so that in some of the cases, there is going to be a fixed amount. If not, the Rule contains an authorization for the trustee to do a lease, so the trustee can negotiate with the surface owner or the person who is trying to exercise those rights, and the court would be asked to approve a fair rental for that right. The Chair commented that he had seen some literature on this topic. Until recently, it had not been economical to do this. It is difficult to reach these mineral interests, some of which are deep in the earth. Judge Pierson remarked that Ms. Ogletree's explanation clarified his concerns. It is not a matter of putting all of the profits aside; it is putting whatever the negotiated return is aside.

Mr. Brault said he wanted to make sure that he understood the Rule, which is considering a known person in an adverse possession situation, and the unknown person in a suit to quiet title situation. Ms. Ogletree clarified that both situations are a suit to quiet title. This is the flat 20-year issue. If the interest has been dormant for 20 years, and the dormancy has to be proved, this will apply to whoever owns the subsurface mineral right. Mr. Brault remarked that theoretically, these individuals are known. Ms. Ogletree responded that the person was known when the interest was originally severed. The mining company may have been out of business for many years. These interests may date back a hundred years or more. Some people will be known, and some entities may not be able to be found.

Mr. Brault commented that if someone is quieting title and does not know who may have an interest in the property, termination after five years would be constitutional. If the person is known, then it is an adverse possession situation. Ms. Ogletree questioned why the two would be treated differently. It is still the owner of an interest in land, and the person's interest cannot be taken without giving the person due process. Why should the process be different because the identity of the person is known or not known? Mr. Brault answered that if the identity is known, the person can be contacted. If the identity is not known, nothing can be done. Ms. Ogletree responded that this is not correct. The Rule proposes that a trust would be created. Mr. Brault asked if it would be held for 20 years. The

Chair answered negatively, explaining that the 20 years may have run already. Ms. Ogletree added that there will be some circumstances where the 20 years has not run, and this is where the treatment becomes unequal.

Mr. Maloney asked if anyone considered creating a registration system similar to the one used to extinguish a ground rent. Mr. Darsie replied that they had not done so. Ms. Ogletree noted that this situation is more like when possibilities of reverter were terminated. In that case, the person was given a period of time to file an intention to renew, and this would have to be filed every 30 years. If the person did not file, his or her interest expired, because it was abandoned. Judge Kaplan noted that people just buy the surface of many properties and do not own the mineral rights of those properties. Mr. Darsie said that there is a statute similar to the trust provision in Code, Environment Article, §15-1206, which is Code, Article 25, §112. It provides a method of going after unknown or missing owners trying to set up a trust in case of fractional ownership with hundreds of small owners where all of the owners cannot be located. Ms. Ogletree said that the unknown owners could be the stockholders of a defunct corporation. The Chair noted that the first opinion of the Attorney General was in 2008 involving a request to tap mineral interests, when there was no statute and nothing pending in the legislature at the time. The opinion stated that this could be done by statute, but Maryland did not have one at that time. In 2009, the Attorney

General's opinion was addressed to Senator Brian Frosh. There was a bill in the legislature similar to the current one, although the terms were different. That must not have passed, but the current one passed in 2010.

Mr. Brault inquired if there were a Uniform Law on this. Ms. Ogletree replied affirmatively, but she pointed out that the Uniform Law does not include the trust. The dormancy provision has been tested fairly well, and it is appropriate if enough notice is given to the people involved. The problem in the current statute is that the two are combined, and the standards for combining them are not the same. One has a 20-year wait, and the other has a five-year wait with the five years possibly being beyond the 20 years of dormancy. If it is beyond the 20 years, there is no problem, but if it is only eight years ago that the interest was terminated, there is a problem.

The Chair said that the Uniform Law Commission reported in 1986 that they had laid out the possible ways to terminate an interest, including abandonment, adverse possession, and reverters. They also had recommended this procedure that is in the Maryland Code to terminate a dormant interest and addressed the question of how long the interest has to be dormant in order to pass due process muster. Many states had adopted this. The Commission looked at the trust approach as an alternative, but decided that, because it did not require dormancy it did not belong in the dormancy law. That is why they did not put it in the Uniform Act.

Ms. Ogletree added that it is the combination of the two that creates the problem. It is not whether either one or the other might be valid, but when they are put together, people are treated differently. Mr. Brault noted that the Uniform Law Commissioners' Report minutes would not solve the problem. The Chair agreed but said that to the extent the Commissioners recognized that a trust is one of several ways to terminate an interest, they recommended that it not be put into a dormancy law. They did not get into the timing of trusts. The Chair told the Committee that he had a copy of the Uniform Law Commissioners report if anyone wished to look at it.

Mr. Hayes commented that there are some complex legal concepts involved. One is corporeal as opposed to incorporeal property, and one is the issue of licenses. Ms. Ogletree stated that what is being discussed is a fee simple interest. Mr. Hayes pointed out that this had been addressed previously. He read from the Attorney General's opinion of September 23, 2008 that had been handed out at the meeting: "One consequence of the incorporeal nature of a mineral interest is that traditional methods to extinguish another's ownership rights are unavailable or mostly ineffective. Adverse possession, for example, generally applies only to corporeal estates or interests." (See Appendix 2).

Ms. Ogletree said that this refers to surface interests as corporeal. The Chair noted that the interest may not be adverse. The farmer who is farming the land is not possessing adversely to

the owner of the mineral rights below it. The principle of pure adverse possession is not going to apply. The concept of abandonment is closer. To prove the common law of abandonment, it is necessary to prove an intention to abandon. Ms. Ogletree added that under Maryland law, a fee simple interest cannot be abandoned. The Chair commented that the Maryland law was an attempt at statutory abandonment.

Mr. Michael inquired if anything could be learned from doing additional research. The Chair responded that he was willing to defer the matter until the Office of the Attorney General gives the Committee an opinion. Mr. Darsie said that he could do some more research. The Chair cautioned that the matter cannot be deferred for too long, because the statute is already in effect. Mr. Darsie told the Committee that the Office of the Attorney General was very concerned about the adequacy of notice in terms of the grace period and notice to the individual who holds the interest. The first version of the law provided for a five-year grace period, which Mr. Darsie thought was a mistake. Then the grace period was changed to one year. His office had recommended that this could be fixed in the 2011 session by delaying the date of the law one more year, and this would solve the problem of too short a grace period. They were not sure if one year would have been appropriate. The Chair noted that the one-year period does not apply to the trust. Mr. Darsie responded that this was a good point.

Mr. Cosgrove told the Committee that he is from the Maryland

Land Title Association. They had monitored the bill as it went through the legislature, but they did not take an active part in it. The trust may have been included to facilitate gaining access to the minerals. The trust could satisfy third parties, and not so much the surface or subsurface owners, so that someone could sign a contract that could be relied upon. Ms. Ogletree stated that this is not a problem. The Subcommittee's problem is with the termination. Mr. Cosgrove responded that this may be why the legislature put in the trust.

The Chair said that the next meeting of the Rules Committee would not be until January. Mr. Darsie responded that he could do the research before then. He was not sure how much he could do, but he could look at a few states that have receivership laws to see if they have dormancy laws and how those two interact. He said he could also look at the equal protection aspect of the law. The Chair commented that there is no harm in waiting until January to reconsider this topic. He asked if a formal request for an opinion was necessary, and Mr. Darsie answered that it was not necessary. The Chair expressed the view that the research should be in an opinion, and not an advice letter, because this would influence a recommendation to the Court of Appeals.

Delegate Vallario inquired if Mr. Darsie would be recommending new legislation. If any new legislation were to be drafted, it should originate from the Office of the Attorney General who could recommend changes to the Chairman of the Senate Committee or House Committee that handles this matter. Mr.

Darsie said that if the Office of the Attorney General agrees that an equal protection problem exists, they could make that recommendation. They had met with legislative representatives several times when putting this law together.

The Committee agreed by consensus to defer this matter.

Agenda Item 2. Consideration of proposed new Rule 1-305 (Affidavit of Attempts to Locate) - Conforming amendments to: Rule 2-122 (Process - Service - In Rem or Quasi In Rem), Rule 2-611 (Confessed Judgment), Rule 2-626 (Satisfaction of Money Judgment), Rule 3-611 (Confessed Judgment), Rule 3-626 (Satisfaction of Money Judgment), Rule 6-443 (Meeting of Distributees and Distribution by Court), Rule 9-103 (Petition), Rule 10-402 (Petition by a Parent for Judicial Appointment of a Standby Guardian), and Rule 13-701 (Removal of Assignee, Receiver, or Professional)

After lunch, in the absence of Mr. Sykes, Chair of the Probate and Fiduciary Subcommittee, Mr. Gibber, a consultant to the Subcommittee, said that he would present the Rules in Agenda Item 2.

Mr. Gibber presented Rule 1-305, Affidavit of Attempts to Locate, and conforming amendments to Rules 2-122, Process - Service - In Rem or Quasi in Rem; 2-611, Confessed Judgment; 2-626, Satisfaction of Money Judgment; 3-611, Confessed Judgment; 3-626, Satisfaction of Money Judgment; 6-443, Meeting of Distributees and Distribution by Court; 9-103, Petition; 10-402, Petition by a Parent for Judicial Appointment of a Standby Guardian; and 13-701, Removal of Assignee, Receiver, or Professional, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

ADD new Rule 1-305, as follows:

Rule 1-305. AFFIDAVIT OF ATTEMPTS TO LOCATE

An affidavit of attempts to locate shall be in the following form:

[CAPTION]

AFFIDAVIT OF ATTEMPTS TO LOCATE

I, _____, a party in the above-captioned estate, have attempted to locate _____ _____ by the following means:

- I have directed correspondence to _____ at the person's last known address which is: _____ _____ _____.
- I have contacted the following relatives and friends of _____, who have stated they have no knowledge of the person's whereabouts (the names and addresses of these relatives following, to the extent available to me).

Names	Addresses
_____	_____

_____ _____

_____ _____

_____ _____

☐ I have searched the internet and telephone directory and have not found the name of _____ listed therein.

☐ I have taken the following additional reasonable efforts to locate the above-named person: _____

_____

_____

I solemnly affirm under the penalties of perjury that this affidavit is true and correct and I do not know the whereabouts of _____.

_____
Name of Party

Source: This Rule is new.

Rule 1-305 was accompanied by the following Reporter's Note.

> The Probate/Fiduciary Subcommittee recommends the addition of a specific form describing the attempts to locate a person. Many rules refer to filing an affidavit of attempts to locate a person, and the Subcommittee felt that it would be helpful to require litigants who cannot locate a person involved in a case to fill out a specific form explaining the attempts to locate an individual. If this form is adopted, it would affect many other rules which would require a reference to the form.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-122 (a) to add a reference to new Rule 1-305, as follows:

Rule 2-122. PROCESS – SERVICE –IN REM OR QUASI IN REM

(a) Service by Posting or Publication

In an in rem or quasi in rem action when the plaintiff has shown by affidavit filed pursuant to Rule 1-305 that the whereabouts of the defendant are unknown and that reasonable efforts have been made in good faith to locate the defendant, the court may order service by the mailing of a notice to the defendant's last known address and:

(1) by the posting of the notice by the sheriff at the courthouse door or on a bulletin board within its immediate vicinity, or

(2) by publishing the notice at least once a week in each of three successive weeks in one or more newspapers of general circulation published in the county in which the action is pending, or

(3) in an action in which the rights relating to land including leasehold interests are involved, by the posting of the notice by a person authorized to serve process in accordance with Rule 2-123 (a) in a conspicuous place on the land.

Additionally, the court may order any other means of notice that it deems appropriate in the circumstances.

. . .

Rule 2-122 was accompanied by the following Reporter's Note.

See the Reporter's note to Rule 1-305.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-611 (c) to add a reference to new Rule 1-305, as follows:

Rule 2-611. CONFESSED JUDGMENT

. . .

(c) Notice

Promptly upon entry of a judgment by confession, the clerk, instead of a summons, shall issue a notice informing the defendant of entry of judgment and of the latest time for filing a motion to open, modify, or vacate the judgment. If the address of the defendant is stated in the affidavit, the notice and copies of the original pleadings shall be served on the defendant in accordance with Rule 2-121. If the court is satisfied from the affidavit filed by the plaintiff pursuant to Rule 1-305 that despite reasonable efforts the defendant cannot be served or the whereabouts of the defendant cannot be determined, the court shall provide for notice to the defendant in accordance with Rule 2-122.

. . .

Rule 2-611 was accompanied by the following Reporter's Note.

See the Reporter's note to Rule 1-305.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-626 (b) to add a reference to new Rule 1-305, as follows:

Rule 2-626. SATISFACTION OF MONEY JUDGMENT

. . .

(b) Entry Upon Motion

If the judgment creditor fails to comply with section (a) of this Rule, the judgment debtor may file a motion for an order declaring that the judgment has been satisfied. The motion shall be served on the judgment creditor in the manner provided in Rule 2-121. If the court is satisfied from an affidavit filed by the judgment debtor pursuant to Rule 1-305 that despite reasonable efforts the judgment creditor cannot be served or the whereabouts of the judgment creditor cannot be determined, the court shall provide for notice to the judgment creditor in accordance with Rule 2-122.

. . .

Rule 2-626 was accompanied by the following Reporter's Note.

See the Reporter's note to Rule 1-305.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 3-611 (c) to add a reference to new Rule 1-305, as follows:

Rule 3-611. CONFESSED JUDGMENT

. . .

(c) Notice

Promptly upon entry of a judgment by confession, the clerk, instead of a summons, shall issue a notice informing the defendant of entry of judgment and of the latest time for filing a motion to open, modify, or vacate the judgment. If the address of the defendant is stated in the affidavit, the notice and copies of the original pleadings shall be served on the defendant in accordance with Rule 3-121. If the court is satisfied from the affidavit filed by the plaintiff pursuant to Rule 1-305 that despite reasonable efforts the defendant cannot be served or the whereabouts of the defendant cannot be determined, the court shall provide for notice to the defendant in accordance with Rule 2-122.

. . .

Rule 3-611 was accompanied by the following Reporter's Note.

See the Reporter's note to Rule 1-305.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 3-626 (b) to add a reference to new Rule 1-305, as follows:

Rule 3-626. SATISFACTION OF MONEY JUDGMENT

. . .

(b) Entry Upon Motion

If the judgment creditor fails to comply with section (a) of this Rule, the judgment debtor may file a motion for an order declaring that the judgment has been satisfied. The motion shall be served on the judgment creditor in the manner provided in Rule 3-121. If the court is satisfied from an affidavit filed by the judgment debtor pursuant to Rule 1-305 that despite reasonable efforts the judgment creditor cannot be served or the whereabouts of the judgment creditor cannot be determined, the court shall order service by the mailing of a copy of the motion to the judgment creditor's last known address.

. . .

Rule 3-626 was accompanied by the following Reporter's Note.

See the Reporter's note to Rule 1-305.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-443 (a) to add a reference to new Rule 1-305 and to make stylistic changes, as follows:

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

(a) Request

When the personal representative

cannot obtain agreement from all interested persons entitled to distribution, or if the personal representative has reason to believe that there may be a person entitled to distribution whose name, address, or survival is unknown, the personal representative may file with the court a request for a meeting, under the supervision of the court, of all interested persons entitled to distribution. The request shall set forth the purpose of the meeting, may include the proposed distribution, and shall ask the court to set a date for the meeting. If the personal representative has reason to believe that there may be an interested person entitled to distribution whose name, address, or survival is unknown, the request shall be accompanied by an affidavit ~~so stating and setting forth the good faith efforts made to identify and locate the person~~ filed pursuant to Rule 1-305 describing the attempts to identify and locate the person.

. . .

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

See the Reporter's note to Rule 1-305.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 100 - ADOPTION; GUARDIANSHIP

TERMINATING PARENTAL RIGHTS

AMEND Rule 9-103 to add to subsection (b)(2)(A)(x) a reference to new Rule 1-305, as follows:

Rule 9-103. PETITION

. . .

(b) Petition for Adoption

(1) Contents

. . .

(2) Exhibits

(A) The following documents shall accompany the petition as exhibits:

. . .

(x) If a parent of the person to be adopted cannot be identified or located, an affidavit of each petitioner and the other parent filed pursuant to Rule 1-305 describing the attempts to identify and locate the unknown or missing parent;

Cross reference: See Code, Family Law Article, §§5-331 and 5-334 as to a Public Agency Adoption without Prior TPR and 5-3B-15 as to an Independent Adoption.

. . .

Rule 9-103 was accompanied by the following Reporter's Note.

See the Reporter's note to Rule 1-305.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 400 - STANDBY GUARDIANS

AMEND Rule 10-402 (c)(14) to delete certain language and add a reference to new Rule 1-305, as follows:

Rule 10-402. PETITION BY A PARENT FOR JUDICIAL APPOINTMENT OF A STANDBY GUARDIAN

. . .

(c) Contents

The petition shall be captioned "In the Matter of . . ." [stating the name of the minor]. It shall be signed and verified by the petitioner and shall include the following information:

. . .

(14) If a person having parental rights does not join in the petition, (A) a statement that the identity or whereabouts of the person are unknown and ~~a description of the reasonable~~ an affidavit filed pursuant to Rule 1-305 describing the efforts made in good faith to identify and locate the person or (B) a statement that the person is not willing to join in the petition or has not responded to a request to join in the petition and a description of the reasonable efforts made in good faith to inform the person about the petition; and

. . .

Rule 10-402 was accompanied by the following Reporter's Note.

See the Reporter's note to Rule 1-305.

MARYLAND RULES OF PROCEDURE

TITLE 13 - RECEIVERS AND ASSIGNEES

CHAPTER 700 - REMOVAL AND RESIGNATIONS

AMEND Rule 13-701 (b) to add a reference to new Rule 1-305, as follows:

Rule 13-701. REMOVAL OF ASSIGNEE, RECEIVER, OR PROFESSIONAL

. . .

(b) Show Cause Order; Service

If removal proceedings are initiated, the court shall order the receiver, assignee, or professional to show cause why the receiver, assignee, or professional should not be removed or be subject to other sanctions. The order, together with a copy of any petition, shall be served pursuant to Rule 2-121 on the person sought to be removed or, if it is shown by affidavit filed pursuant to Rule 1-305 that the whereabouts of the person sought to be removed are unknown and that reasonable efforts have been made in good faith to locate the person, the court may order service pursuant to Rule 2-122. Copies of the show cause order and any petition shall also be sent by first class mail, postage prepaid, to the surety on the bond of the receiver or assignee and to any other persons directed by the court.

. . .

Rule 13-701 was accompanied by the following Reporter's Note.

See the Reporter's note to Rule 1-305.

Mr. Gibber explained that proposed new Rule 1-305 originated from the Subcommittee's drafting of new guardianship rules. One of the issues in a guardianship is to ensure that everyone who needs to be located has in fact been located with a special emphasis on locating parents. A group of Orphans' Court judges, registers of wills, and estates and trusts lawyers had developed a form for this, and when this form was presented to the Subcommittee, they had decided to make this issue more universal.

They had suggested that an affidavit of attempts to locate be added to the Rules wherever it is necessary, and these are the Rules in the meeting materials. This gives some format to the types of information that should be listed, including the methods the person used to try to give notice. When there is a statement that the parent cannot be located, the new affidavit form would add more substance than simply a blanket statement indicating that the person looked but could not find the missing individual.

The Chair pointed out that the first sentence of the affidavit form refers to an "estate." This Rule is in Title 1 and does not necessarily apply to estates. He asked if the word should be "matter" in place of the word "estate." Mr. Gibber agreed, noting that this was an appropriate change. When some of the Subcommittee members and consultants had looked at the proposed Rules earlier, they had determined that it also should not refer to "a party," because it is not necessarily a party who is the affiant.

The Reporter inquired if the wording should be "I, _____, on behalf of a party...". The Chair said that it could be "a party or a person interested in...". Mr. Brault added that it could be an attorney for the party. The Chair agreed that an attorney could sign the affidavit.

The Chair pointed out the second box appearing on the affidavit that reads "I have contacted the following relatives and friends of _____ ...". This is an affidavit that these people are in fact friends or relatives. Ms. Potter remarked

that she assumed that this affidavit would apply to confessed judgments. Would all of these boxes have to be filled out to be sufficient in a confessed judgment? The Chair noted that the word "or" does not appear, indicating that all of the boxes would have to be filled out. The Reporter suggested that the language could be "I have contacted the following individuals...". Ms. Potter inquired what the result would be if they were not contacted. In a debt collection case, the attorney would not know who the debtor's friends are. Mr. Gibber responded that the affiant could address that by using the word "none known." This is an attempt to make overly broad something that was initially specific. If someone is making an affidavit of the person's attempt to locate someone, there are defined steps. If all of those steps cannot be taken, then the affiant would simply say so.

The Chair suggested that the box could provide as follows: "I have contacted the persons listed below who have stated that they are friends or relatives of _____, but have no knowledge of the person's whereabouts." He asked if this would solve the problem. Ms. Potter answered that it would not, because Rules 2-611 and 3-611 are part of the Rules proposed to be changed. Without this change, the attorney would have to file an affidavit showing that he or she had made reasonable efforts. The changes would upset the debt collection bar who would not be happy at having to fill out all of the boxes on this proposed form. They should not have to knock on doors looking for friends

or relatives of the debtor. The Chair asked if this were true in every context in which an attempt to locate would be needed, or if it only were applicable with confessed judgments. The Reporter said that there are federal laws pertaining to debt collections that preclude someone from contacting certain people.

The Chair said that the proposal is to put this into Title 1, which means that it applies to everything. Mr. Leahy remarked that he had just filed an action to quiet title against unknown heirs including someone from 1883, and he would not be able to comply with the requirements of the proposed affidavit form other than the question about reasonable efforts. Mr. Gibber asked if it would not be appropriate for Mr. Leahy to tell the court that he cannot comply with the questions. This form arose out of a guardianship, and if someone is making a statement to the court that a parent is unknown and cannot be located, it is important that full attempts to locate should be documented.

The Chair questioned if the second box could be deleted. Someone could answer the questions in the first box, and then go to the third box where some specificity is needed. Ms. Potter pointed out that the current affidavit form requires documenting the reasonable efforts made to locate someone. If someone filled out the third box stating that they found the name of "Joseph Smith" in the telephone book and internet directory, there could be 200 people with that name. This could be very confusing.

The Chair asked what is needed to be done to comply. Ms. Potter answered that the affidavit of attempts to locate

initially requires that it shall (emphasis added) be in this form. This is a new affidavit that would replace what it is typically used now. Every box would have to be filled out. She did not see how she could affirm under the penalties of perjury that she had not found "Joseph Smith," because that name is indeed in the telephone book.

Mr. Michael noted that the breadth of the form should be somewhat related to what it is being used for. As far as the issue of relatives, he again referred to the use plaintiff issue in wrongful death cases. In those situations, to satisfy due process requirements, the attorney would have to talk to the relatives. The form must have a place for this to be recorded. This form would help in the recommendations made by the Committee concerning use plaintiffs. This type of affidavit would be valuable to let the plaintiff set forth what he or she has tried to do in light of the recent decisions on use plaintiffs in the Court of Special Appeals (*Williams v. Work, Williams v. Ace American Insurance Company*, 192 Md. App. 438 (2010)).

The Chair commented that if the word "additional" was taken out of the language after the last box, the affiant would have to list everything he or she did. Mr. Michael pointed out the language after the last box that reads "the above-named person." It could read "person or persons." The Chair referred to the beginning of the form. He asked if there were any problems with the first box that reads: "I have directed correspondence to _____ at the person's last known address...". Could the

next two boxes be dropped? Then the last box would remain with the word "additional" taken out.

Judge Pierson inquired what would this accomplish. The Chair said it would not accomplish much, but it forces the affiant to put in the affidavit what he or she has done to locate someone. Judge Pierson noted that the Rule already requires the affiant to establish that reasonable efforts have been made in good faith. How would this be accomplished other than by affidavit? If the Rule does not prescribe in great depth what the common elements of every affidavit should be, what is the point of having a form affidavit? It would be better to have a rule that requires this to be done by affidavit. Then it would be up to the court to determine what a sufficient demonstration of efforts is that could be case-dependent.

Judge Weatherly pointed out that in 87 percent of the family law cases in her county, one or both parties are *pro se*. Many *pro se* people file divorce cases, and notice may have to be by publication. In Prince George's County, more information is required than what the proposed affidavit requires. The court directs the person to explain what actions were taken, because in most cases, he or she does not have an attorney. The court often tells the affiants what they must do.

Mr. Gibber said that Rule 1-305 could be moved to Title 6. The Rule arose out of the guardianship arena. It was suggested to be put there for the same reason. Many *pro se* people are involved, and they simply tell the court that they do not know

where the other parent is. There should be some basis for the court to make its decision. A committee composed of registers of wills, Orphans' Court judges, and the probate bar wanted the form added to the guardianship rules. The Probate Subcommittee suggested that it be placed in Title 1. It seems that more work would have to be done before the Rule could go into Title 1. The Chair agreed that putting the Rule in Title 1 is a problem.

The Reporter inquired if there is a form in Prince George's County for this. Judge Weatherly replied that they send a memorandum if someone is struggling as to how to explain their efforts to locate. They have a form for putting in the names and addresses with a checklist as to what to do. The Reporter asked if this is promulgated by the court in Prince George's County or by the Family Division of the Administrative Office of the Courts. Judge Weatherly answered that it comes from their court, and she said that she would send a copy to the Reporter. Ms. Potter expressed the view that it is a good idea to move the Rule out of Title 1.

Judge Hollander questioned why every box has to be checked. The Chair said that a uniform form affidavit that tells the court the efforts the affiant made to locate someone can be accomplished by using the first and the last box of the proposed form and by adding a list of possibilities to the last box. It would not be necessary to take all of the actions listed, but the affiant would have to tell the court what he or she did do, so the court knows whether the affiant has done enough.

Judge Weatherly stated that in a divorce case, the court expects the affiant to make some real efforts to contact the missing spouse. The court would not want to terminate a marriage without giving the proper notice. Mr. Gibber suggested that the language of the third box could be: "I have searched the internet and the telephone directory and have not found the person listed above." Judge Pierson said that locking this into the Maryland Rules may not be as good as the benefit gained by giving people examples of what they can do to find missing persons.

The Chair acknowledged what Judge Pierson had said. The Chair added that if an attorney is the affiant, the form may not be necessary. If the affiant is a *pro se* person, and this is required for the court to go forward with the case, is there a benefit to using this type of form? Judge Pierson responded that the family division of Baltimore City has *pro se* forms. In a family case, there is a form similar to the one in the proposed Rule. Does this form really need to be in the Rules? The Chair remarked that a form like this has not been in the Rules so far.

Ms. Phipps, the Register of Wills in Calvert County, who was a consultant to the Probate and Fiduciary Subcommittee, told the Committee that the form was being designed for guardianship cases. The form was drafted so that if the affiant found 20 people with the same name, the affiant would have the responsibility to determine if one of those people is the one needed in the case. It is the only way to reach *pro se* people

who do not understand the system. Ms. Potter suggested that the affidavit form could be redrafted with examples of actions to take listed in the form. The Chair commented that what should be required is that the affiant list the reasonable efforts to locate a person and list some of the types of actions. The affiant would not have to do all of the items on the list, but if the person does not take some of the actions, the court is not going to proceed. Judge Pierson noted that providing information to self-represented litigants, which has to be done, does not equate with putting a form in the Rules. There are better ways to give the information than locking the Rule into a prescribed format.

Mr. Brault inquired whether someone is available to speak with the *pro se* person when he or she is given the form. Judge Pierson responded that Baltimore City has a unit that helps people in domestic cases. There may be some help in non-domestic cases as well. The Chair stated that this is one way to handle this issue. The down side is there will be 24 different lists in the 24 subdivisions for the same subject. It ought to be uniform statewide. Why should the Circuit Court of Baltimore City require something more than the Circuit Court of Baltimore County or something less? Judge Pierson responded that he had two answers to this question. The first was that with efforts to locate, it is case-specific and not just context-specific. The second answer is that there are innumerable ways in which the interaction of self-represented litigants in their civil

litigation system is creating new ways to modify their procedures. How should they modify their court system to meet all of the problems of the self-represented litigants?

The Chair acknowledged that contexts differ. As Ms. Potter had pointed out, certain information would not be required in a debt collection case that may be required to locate a missing person in another type of case. But whatever the context is, what is required ought to be the same throughout the State. It should not be that in Prince George's County, one would have to take three more actions than they would have to in Montgomery County. This is what could happen.

Judge Pierson remarked that it would be helpful to Baltimore City to have a form answer for self-represented litigants. He and the other judges spend a great amount of time interpreting a letter, a note, or something written on the back of a hotel bill that should be docketed as an answer. It would be better to have a statewide form and check off the boxes. Judge Weatherly reiterated that this is what they do in their family law cases. The Chair said that courts have been using boxes on forms more frequently.

Mr. Gibber commented that he would put this issue into a historical context. The attempt to develop standardized forms for guardianships arose when the Orphans' Court was given jurisdiction to hear cases involving guardianships of the person. As a result of this, there were many *pro se* litigants, and many problems have developed. They have been very careful to create

uniform practices and uniform forms for the Orphans' Court. Rule 6-102, No Local Rules, provides that the Orphans' Courts cannot make local rules. In the attempt to avoid having separate forms and separate procedures, this has been an overriding issue, especially when pertaining to the Orphans' Court in guardianship as well as estate matters where many litigants are *pro se*. The Chair said that he remembered that when the Title 6 Rules were written, it took about 10 years to finish them, because there had never been any probate rules before. The 24 subdivisions had many different procedures. This is why the forms were put into the Title 6 Rules to make the procedures uniform.

The Chair asked the Committee if there should be a Title 1 Rule. By consensus, the Committee's view was that there should not be a Title 1 Rule. The Reporter asked if proposed Rule 1-305 should be moved to Title 6 and Title 10. The Chair said that if this is going to be done, he had a suggestion for the language after the second box. The affiant may not know whether the people referred to are friends or relatives. He suggested that the language should be: "I have contacted the persons below who have stated that they are friends or relatives of _____, but have no knowledge of that person's whereabouts." Then the names and addresses would be listed. Ms. Potter remarked that to help the *pro se* litigants, employers or former employers could be listed as well.

Looking at the language after the third box, the Chair inquired if affiants would necessarily have access to the

internet to the extent that any affiants signing the form are *pro se*. Ms. Potter replied that not everyone has access to the internet. Mr. Gibber added that not everyone will have access to all sources of information, but the form should include a statement of the good faith effort made to try to find the missing person. Ms. Phipps noted that the public library has internet access. Mr. Hayes expressed the view that the language "the name of" should not be included. He suggested that the language could be: "I searched the internet and telephone directory in an effort to find _____ ."

The Chair pointed out that the affiant has to state that he or she has not found that person. Mr. Hayes noted that this is provided for at the end of the form. If something is not applicable, the person can simply write "not applicable or none" or something similar. The Chair asked what would be left.

Mr. Gibber pointed out that this Rule was started for a limited purpose, but it had grown when the Subcommittee broadened it. He suggested that the Subcommittee should look at it again considering the purposes that it originally started with. The Chair said if this is done, and the Rule is made applicable to Titles 6 and 10, it will affect all of the conforming amendments. Ms. Potter noted that this will eliminate most of the conforming amendments. The Reporter asked whether the word "person" should be changed to the word "individual," now that there is a definition of the word "individual," because in this context, no one is trying to contact corporations. Mr. Gibber said that in

an estate matter, someone could be trying to locate a corporation. The Reporter said that the word "person" should not be changed. The Chair said that proposed new Rule 1-305 would be sent back to the Probate and Fiduciary Subcommittee for further consideration.

Agenda Item 3. Consideration of proposed amendments to certain Rules in Title 6 (Settlement of Decedents' Estates) - Amendments to: Rule 6-122 (Petitions), Rule 6-411 (Election to Take Statutory Share), and Rule 6-416 (Attorney's Fees or Personal Representative's Commissions)

Mr. Gibber presented Rule 6-122, Petitions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 6-122 to add certain statements made by the personal representative to section 4. of the form, as follows:

Rule 6-122. PETITIONS

(a) Petition for Probate

The Petition for Probate shall be in the following form:

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO: _____

FOR:

[ ] REGULAR ESTATE PETITION FOR PROBATE Estate value in excess of $30,000. (If spouse is sole heir or legatee, $50,000.) Complete and attach Schedule A.	[ ] SMALL ESTATE PETITION FOR ADMINISTRATION Estate value of $30,000 or less. (If spouse is sole heir or legatee, $50,000.) Complete and attach Schedule B.	[ ] WILL OF NO ESTATE Complete items 2 and 5 [ ] LIMITED ORDERS Complete item 2 and attach Schedule C

The petition of:

_____ _____
Name Address

_____

_____ _____
Name Address

_____

_____ _____
Name Address

_____

Each of us states:

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

2. The Decedent, _____,
was domiciled in _____,

(County)

State of _____ and died on the

_____ day of _____, _____, at

_____.
(place of death)

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

_____.

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

_____

_____

and I am mentally competent, have not been convicted of a serious crime, and I am not excluded by other provisions of §5-105 (b) of the Estate and Trusts Article, Annotated Code of Maryland from serving as personal representative.

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

[ ] none exists; or

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

_____

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

_____ _____

_____ _____

_____ _____

6. Other proceedings, if any, regarding the decedent or the estate are as follows: _____

_____

_____.

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

_____.

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

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

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

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

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

[ ] that the following additional relief be granted: _____

_____

I solemnly affirm under the penalties of perjury that the

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

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

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO. _____

SCHEDULE - A

Regular Estate

Estimated Value of Estate and Unsecured Debts

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

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

Value of property subject to:

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

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

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

_____

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

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

.....

(FOR REGISTER'S USE)

Safekeeping Wills _____ Custody Wills _____

Bond Set $ _____ Deputy _____

IN THE ORPHANS' COURT FOR

(OR) _____, MARYLAND

BEFORE THE REGISTER OF WILLS FOR

IN THE ESTATE OF:

_____ ESTATE NO. _____

SCHEDULE - B

Small Estate - Assets and Debts of the Decedent

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

(a) A listing of all real and personal property owned by the

decedent, individually or as tenant in common, and of any other property to which the decedent or estate would be entitled, including descriptions, values, and how the values were determined:

_____

_____

_____

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

_____

_____

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

3. Attached is a List of Interested Persons.

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

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

_____ _____

Attorney Petitioner Date

_____ _____

Address Petitioner Date

_____ _____
Petitioner Date

_____ _____
Telephone Number Telephone Number (optional)

. . .

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

> The Probate/Fiduciary Subcommittee recommends changing the form, "Petition for Probate" to specifically refer to two of the more important factors affecting someone's entitlement to appointment as a personal representative cited in Code, Estates and Trusts Article, §5-105 (b), which are mental competence and not being convicted of a serious crime rather than simply referring to exclusion by the provisions of that Code section.

Mr. Gibber explained that there are certain requirements for to serving as a personal representative, most of which are listed on the petition for probate. These include the fact that the personal representative must be 18 years of age and a citizen. There also are requirements applicable to a trust company or other corporation that serves as a personal representative.

Two items that were left out are that the person must be mentally competent and, more importantly, that the person has not been convicted of a serious crime. Many of the courts have been faced with the fact that, if the questions are not asked, the court would not know if the potential personal representative should be disqualified because of the restrictions listed in Code, Estates and Trusts Article, §5-105. People who have been

convicted of a serious crime have been appointed as personal representative. In order to make sure that this does not happen, item 4 of the petition form has language added that would require the person to state that he or she is mentally competent and has not been convicted of a serious crime. Other provisions of Code, Estates and Trusts Article, §5-105 (b) that are not specifically stated are basically that the register of wills, the judge, and the clerk of the court should not be related to the personal representative within the third degree. Something this remote would not have to be spelled out on the form. The purpose of the change is to expand explicit statements of disqualification.

The Chair commented that these two bases of disqualification were taken from the Code provision. Ms. Potter inquired how a *pro se* personal representative would know what a serious crime is. Mr. Gibber responded that he or she would know the same way that an attorney does. It is not a well-defined term, but it is a statutory term. The Subcommittee did not want to change the definition.

Ms. Potter questioned whether a cross reference to the statutory definition should be added to item 4. The Reporter noted that many definitions exist, including one in Code, Criminal Law Article, §4-401. She was not sure that this should be done by rule. Ms. Potter asked if this is for *pro se* litigants, and Mr. Gibber answered that this applies to everyone. By highlighting this, someone would have to ask the meaning, and it will put the attorney or an individual on notice that there is

an issue.

The Chair pointed out that *LaGrange v. Hinton*, 91 Md. App. 294 (1992) cited in the annotations to Code, Estates and Trusts Article, §5-105 states: "A conviction under Article 27, §554 [now Code, Criminal Law Article, §3-322] fits into the category of 'serious crime' as enumerated in paragraph (b)(3) of this section...". He was not sure if the case in the context of this holding defines what is meant by "serious crime." Mr. Gibber responded that many circuit court cases define the term taking into consideration whether shoplifting or marijuana possession cases are considered to be serious.

Mr. Hayes commented that it is a subject of telephone calls from the registers from time to time as to whether a certain crime is considered to be serious. The person applying to be personal representative usually does not volunteer this kind of information, but sometimes the register is aware of the person's prior conviction, such as for cocaine possession, for which the person has served a substantial amount of time in prison. The register tells the person that he or she cannot serve, and the person says that he or she was not asked. This is why it is a good idea to include this in the petition form.

The Chair noted that this could be a trap in the sense that the language in the Rule is detached from the way the Rule is articulated in Code, Estates and Trusts Article, §5-105 (b). It suggests that this is something different, but it is not defined. The petition is an affidavit signed under oath. If the person

guesses wrong whether his or her conviction was for a serious crime, the person could be charged with perjury. If the term "serious crime" has been defined judicially, even though it is not defined in Code, Estates and Trusts Article, §5-105 (b), would it be helpful to put that definition in the Rule? Mr. Gibber replied that there is not enough clarity in the definitions. Shoplifting may be deemed serious in one case, but not in another. The Chair inquired if there is an explanation why a crime is serious. Mr. Hayes answered that one factor is serving time in prison. No absolute definition exists.

Judge Weatherly pointed out that the adoption petition, which was generated by the Administrative Office of the Courts, provides in subsection (b)(1)(N) of Rule 9-103, Petition, that the person filing the petition must state: "...whether the petitioner has ever been convicted of a crime other than a minor traffic violation...". The Chair responded that this may not be what it means for this purpose. Mr. Hayes said that the concern is with crimes pertaining to theft, burglary, shoplifting, or any breach of a fiduciary responsibility.

Mr. Gibber said that there is a case from the Orphans' Court of Baltimore City on shoplifting that holds that this is a serious crime for these purposes (In re Estate of Chapman, Docket 37, folio 147, issued March 9, 1984). Judge Weatherly commented that this has to be articulated to some extent whether it is for the clerks or the applicant. When is it decided that someone cannot serve as the personal representative because of a criminal

conviction? Is it at a hearing? Mr. Hayes responded that a register of wills had contacted him about someone who wanted to be a personal representative but had served five years in prison for cocaine possession. A person could proceed with his or her petition and ask the court to decide whether the crime was a "serious crime," but the register would not issue a letter administratively.

The Chair pointed out that the problem is that when the term is so ambiguous, someone has to sign an affidavit not knowing what the term means. Mr. Michael expressed the opinion that the clause "have not been convicted of a serious crime" should be deleted. It is very difficult to measure this because there is no criterion to measure it against, and people will have trouble knowing what it means. The language "...I am not excluded by other provisions of §5-105 (b)..." should remain in the Rule. Mr. Gibber responded that this is the standard in the statute.

Judge Weatherly remarked that a *pro se* person could be asking a clerk what this language means. Mr. Michael added that an attorney may not know the answer. The issue of the meaning of the term "serious crime" particularly for a lay person is impossible to understand unless a footnote or Committee note is added to explain it. Ms. Connolly asked if the wording could be "convicted of a crime." Mr. Michael commented that the preferable wording in the statute is "convicted of a felony." This would provide a bright line, because a "felony" is well defined.

The Chair said that someone could have 15 different convictions for petty theft, which is a misdemeanor, and that person should not serve as a personal representative. Mr. Gibber commented that if someone is signing under the penalties of perjury that he or she is not excluded by other provisions of Code, Estates and Trusts Article, §5-105 (b) and was convicted of a "serious crime," then the same perjury issue applies. This has not been changed. Instead of the language being only in the Code, it has been added to this form. The issue raised by the Chair exists regardless of whether the language is in the Rule.

The Chair said that if the language is: "I am not disqualified under statute," this is the simple solution, but it does not solve the problem. If a box is added that reads: "I have not been convicted of any crime other than a motor vehicle violation," and a second box is added that reads: "I have been convicted of the following crimes," then the court can decide if the crimes are or are not serious. Judge Hollander remarked that she had seen people who knew that they had been convicted of a crime, but they did not know exactly what crime it was. Often multiple charges are filed against the person.

Ms. Phipps told the Committee that when someone comes into the courthouse with this form, the person is signing under the penalties of perjury that he or she is not excluded from the provisions of Code, Estates and Trusts Article, §5-105 (b). The person may not know what is in that statute. The purpose of the added language is to try to draw attention to the most serious

provisions of that statute. She and her staff might not be able to answer completely what a "serious crime" is, because it is difficult to explain. Most people who work in a register's office would immediately call the Office of the Attorney General for clarification. If a client asks the question, her office will try to assist them with the aid of the Office of the Attorney General.

The Chair agreed with Ms. Phipps, pointing out that the problem exists whether it is articulated separately or whether the Rule refers to the statute, because the term is ambiguous. The only way to determine the issue is to ask the person what it is he or she has been convicted of. Then it is the court's determination whether the crime is serious. Ms. Phipps commented that instead of being handled administratively by the register, this type of case would have to go to court. The Chair responded that this is not necessarily so. If a person says that he or she has been convicted of second degree murder, the register will tell the person that this is serious. Mr. Leahy added that the register can call Mr. Hayes, the Assistant Attorney General responsible for this. Mr. Hayes remarked that ultimately this would be resolved in judicial probate by the Orphans' Court.

Ms. Potter commented that the register may want the information, but he or she may not know what to do with it. Mr. Gibber said that he has handled cases like this where he had listed the crime, and then he had told the register that he believed that the person should be able to serve as personal

representative. The point of the language is to bring this issue to the person's attention. The Chair responded that the person may think about it and decide that he or she has not been convicted of any serious crime, but this could cause problems.

Judge Weatherly pointed out that in the area of family law, the court has been dealing for a longer period of time with forms and instructions than in other legal areas. The court can give out instructions that are not necessarily in the forms. A form could be drafted applying to self-represented litigants. Some people are not as literate as others. Instructions can be given separately or in a pleading. The court does both in Prince George's County. The Chair cautioned that if the instructions are given on a form, and the form has distinctions as to what is serious and what is not, it must be correct.

Judge Pierson inquired what the Subcommittee's opinion would be as to modifying the form to state after a box: "I have not been convicted of any crimes, or I have been convicted of the following crimes:...". The information would then be available. The Chair said that it could be assumed that a motor vehicle violation carrying only a fine is not serious. The new language could be: "I have not been convicted of any crime, excluding motor vehicle violations carrying only a fine." Other rules have language that can be used. The Reporter noted that this is done in the expungement forms.

The Chair said that the second box could state: "I have been convicted of the following crimes... ." Judge Weatherly added

that the person could check off if he or she received a suspended sentence, but it was for a serious crime. A person can get a suspended sentence, but it is still a conviction of a serious crime. The person could be on probation. The Reporter noted that the petition for expungement of records form (Form 4-504.1, Petition for Expungement of Records), contains a box that states: "...Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment." How to word the language in Rule 6-122 depends on how detailed the Committee thinks that it should be.

Mr. Gibber pointed out that this is not the language of the statute. To be a disqualified person, one would have to be convicted of a "serious crime." The Chair said that if the person states that he or she has not been convicted of anything other than the described motor vehicle violation, there would be no conviction for a serious crime. If the person checks a second box stating that he or she has been convicted of one or more of the following crimes, and the crimes are listed, this information is given under oath, and the register initially or ultimately the court would have to determine if this crime is serious. The Reporter said that checking the first box would make the person eligible, but the second box requires more details. Judge

Weatherly added that it would be helpful for the register to know ahead of time that the person who wants to be a personal representative has been convicted of murder. The Chair cautioned that there are many crimes in the Criminal Law Article and even more under the common law.

Ms. Connolly noted that if the person has to state what crime he or she has been convicted of, it will force the register to ask what crime the person is referring to. The clerk will make a determination if this is serious enough to prevent the petition from going forward. The Reporter pointed out that the person makes the list of crimes. There would not be a checkoff of crimes, because so many crimes exist. By consensus, the Committee approved Judge Pierson's changes to #4. of the petition form. By consensus, the Committee approved Rule 6-122 as amended.

Mr. Gibber presented Rule 6-411, Extension to Take Statutory Share, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-411 (c) to change the word "granted" to the word "filed" and to change the word "extended" to the words "any further extension," as follows:

Rule 6-411. ELECTION TO TAKE STATUTORY SHARE

. . .

(c) Extension of Time for Making Election

Within the period for making an election, the surviving spouse may file with the court a petition for an extension of time. The petitioner shall deliver or mail a copy of the petition to the personal representative. For good cause shown, the court may grant extensions not to exceed three months at a time, provided each extension is ~~granted~~ filed before the expiration of the period originally prescribed or ~~extended~~ any further extension by a previous order. The court may rule on the petition without a hearing or, if time permits, with a hearing.

If an extension is granted without a hearing, the register shall serve notice on the personal representative and such other persons as the court may direct. The notice shall be in the following form:

[CAPTION]

NOTICE OF EXTENSION OF TIME

TO ELECT STATUTORY SHARE

On the _____ day of _____, _____, an extension
(month) (year)

of time to elect a statutory share of the estate was granted to

_____, the decedent's

surviving spouse. The extension expires on the _____ day of

_____, _____.
(month) (year)

If you believe there is good cause to object to the extension, within 20 days after service of this notice you may

file with the court, in writing, a petition to shorten the time for filing an election. A copy of the petition shall be served on the surviving spouse.

_____
Register of Wills

. . .

Rule 6-411 was accompanied by the following Reporter's Note.

> Chapter 146, Laws of 2010 (HB 329) authorizes a surviving spouse, within the period of time provided for making an election to take an elective share of the deceased spouse's estate, to file with the court a petition for a extension of time. To conform Rule 6-411 to the statute, the Probate/Fiduciary Subcommittee recommends amending the Rule by changing the word "granted" to the word "filed" in section (c).
>
> The Subcommittee also suggests changing the word "extended" to the words "any further extension" to clarify that there may be more than one extension of the period of time for making an election to take a statutory share.

Mr. Gibber explained that Rule 6-411 needs some further modifications. A surviving spouse may elect to take a statutory share of an estate instead of taking what the will provides. The spouse has a certain time in which to make this election. If the election is not made in time, the person can file a petition for an extension of time and would be entitled to an extension. The law used to provide that the extension had to be granted before the expiration of the period originally prescribed.

Mr. Gibber said that in 2010, the legislature enacted

Chapter 146, Laws of 2010 (HB 329), which changed the wording of the law to provide that an extension of the time to elect a statutory share would depend on whether the extension is filed before the expiration of the time originally prescribed. If someone petitions the court for an extension, and the petition is filed on time, the petitioner is in good standing provided the court agrees to the extension, but the court does not have to sign the order extending the time before the time has run. The Subcommittee has proposed changing the word "granted" to the word "filed," but more words need to be added. Mr. Gibber suggested that the wording should be "...provided each petition for extension is filed before the expiration of the period originally prescribed or any period further extended by previous order." This language conforms to the statute. By consensus, the Committee approved the suggested change.

By consensus, the Committee approved Rule 6-411 as amended.

Mr. Gibber presented Rule 6-416, Attorney's Fees or Personal Representative's Commissions, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-416 (b) to modify the "Consent to Compensation for Personal Representative and/or Attorney" form, as follows:

Rule 6-416. ATTORNEY'S FEES OR PERSONAL REPRESENTATIVE'S COMMISSIONS

(a) Subject to Court Approval

(1) Contents of Petition

When a petition for the allowance of attorney's fees or personal representative's commissions is required, it shall be verified and shall state: (A) the amount of all fees or commissions previously allowed, (B) the amount of fees or commissions that the petitioner reasonably anticipates will be requested in the future, (C) the amount of fees or commissions currently requested, (D) the basis for the current request in reasonable detail, and (E) that the notice required by subsection (a)(3) of this Rule has been given.

(2) Filing - Separate or Joint Petitions

Petitions for attorney's fees and personal representative's commissions shall be filed with the court and may be filed as separate or joint petitions.

(3) Notice

The personal representative shall serve on each unpaid creditor who has filed a claim and on each interested person a copy of the petition accompanied by a notice in the following form:

NOTICE OF PETITION FOR ATTORNEY'S FEES OR PERSONAL REPRESENTATIVE'S COMMISSIONS

You are hereby notified that a petition for allowance of attorney's fees or personal representative's commissions has been filed.

You have 20 days after service of the petition within which to file written exceptions and to request a hearing.

(4) Allowance by Court

Upon the filing of a petition, the court, by order, shall allow attorney's fees or personal representative's commissions as it considers appropriate, subject to any exceptions.

(5) Exception

An exception shall be filed with the court within 20 days after service of the petition and notice and shall include the grounds therefor in reasonable detail. A copy of the exception shall be served on the personal representative.

(6) Disposition

If timely exceptions are not filed, the order of the court allowing the attorney's fees or personal representative's commissions becomes final. Upon the filing of timely exceptions, the court shall set the matter for hearing and notify the personal representative and other persons that the court deems appropriate of the date, time, place, and purpose of the hearing.

(b) Consent in Lieu of Court Approval

(1) Conditions for Payment

Payment of attorney's fees and personal representative's commissions may be made without court approval if:

(A) the combined sum of all payments of attorney's fees and personal representative's commissions does not exceed the amounts provided in Code, Estates and Trusts Article, §7-601; and

(B) a written consent stating the amounts of the payments signed by (i) each creditor who has filed a claim that is still

open and (ii) all interested persons, is filed with the register in the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

IN THE ESTATE OF:

_____ Estate No. _____

CONSENT TO COMPENSATION FOR

PERSONAL REPRESENTATIVE AND/OR ATTORNEY

~~I consent to the following payments of compensation to the personal representative and/or attorney and acknowledge that, if consented to by all unpaid creditors who have filed claims and all interested persons, these payments will not be subject to review or approval by the Court. I also understand that the total compensation does not exceed the amounts provided in Estates and Trusts Article, §7-601 which are 9% of the first $20,000 of the gross estate plus 3.6% of the excess over $20,000.~~

I understand that the law, Estates and Trusts Article, §7-601, provides a formula to establish the maximum total compensation to be paid for Personal Representative's Commissions and/or Attorney's Fees without order of court. If the total compensation being requested falls within the maximum allowable amount, and the request is consented to by all unpaid creditors who have filed claims and all interested persons, this payment need not be subject to review or approval by the Court.

A creditor or an interested party may, but is not required to, consent to these fees.

The formula sets total compensation at 9% of the first $20,000 of the gross estate PLUS 3.6% of the excess over $20,000.

Based on this formula, the total allowable statutory maximum based on the gross estate known at this time = _____, LESS any Personal Representative's Commissions and/or Attorney's Fees previously approved as required by law and paid; to date, $_____ in Personal Representative's Commissions and $_____ in Attorney's Fees have been paid.

Cross reference: See 90 Op. Att'y. Gen. 145 (2005).

Total combined fees being requested are $_____, to be paid as follows:

Amount	To	Name of Personal Representative/Attorney
_____		_____
_____		_____
_____		_____
_____		_____

~~Consented to by:~~ I have read this entire form and I hereby consent to the payment of Personal Representative and/or Attorney's Fees in the above amount.

Date	Signature	Name (Typed or Printed)
_____	_____	_____

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____
Attorney Personal Representative

_____ _____
Address Personal Representative

_____
Address

_____
Telephone Number

Committee note: Nothing in this Rule is intended to relax requirements for approval and authorization of previous payments.

(2) Designation of Payment

When rendering an account pursuant to Rule 6-417 or a final report under modified administration pursuant to Rule 6-455, the personal representative shall designate any payment made under this section as an expense.

Cross reference: Code, Estates and Trusts Article, §§7-502, 7-601, 7-602 and 7-604.

Rule 6-416 was accompanied by the following Reporter's Note.

> The Conference of Orphans' Court Judges has suggested that the form in Rule 6-416 entitled "Consent to Compensation for Personal Representative and/or Attorney" be modified to ensure that lay persons who sign the form are giving informed consent. The Rules Committee recommends an amendment to the form, which has been developed with the

assistance of the Conference, representatives of the Registers of Wills, and members of the Bar.

Mr. Gibber explained that the change to Rule 6-416 is in the written consent to compensation for the personal representative and/or attorney. This Rule was before the Committee at an earlier time. The change was at the request of the Orphans' Court Association, and it is an issue of informed consent. The statute provides that a petition for attorney's fees or commissions is required before an attorney or a personal representative is allowed to take either fees or commissions from the estate. The exception is that if the total combined amount of the fees and the personal representative commissions is less than the statutory maximum, and consents from all unpaid creditors who have filed claims and interested persons are obtained, then it is not necessary to petition the court, and the fees or commissions can be obtained by consent. The statute and the Rule provided a form, which was revised to make consent a little more informed and to make it clear that the total amounts that could be taken were less than the total statutory maximum. The consent form is presented in a manner that the Orphans' Court felt was clearer to the individuals who were being asked to sign the form.

Mr. Gibber said that when Rule 6-416 was previously before the Committee, the issue was whether there was an implication that the amounts that were previously paid were somehow paid

without approval. The Chair pointed out that this was not a problem raised by the Committee, it was raised by the Honorable Lynne Battaglia, Judge of the Court of Appeals, so the Court of Appeals sent the Rule back to the Committee. Mr. Gibber commented that to resolve this problem, at the end of the form, the language was changed to read: "...Personal Representative's Commissions and/or Attorney's Fees previously approved as required by law and paid...". The words "as required by law" were added, so that it is a clear statement that anything that has been paid to date has already been approved whether it was by petition or by consent.

The Chair pointed out that Judge Battaglia had raised this issue because of a case in Howard County in which this was a problem. It is probably worthwhile to show this to Judge Battaglia to make sure that she approves of the newest version as long as the Committee is satisfied with the changes. By consensus, the Committee approved the changes to Rule 6-416 and approved the Rule as presented.

Agenda Item 4. Consideration of proposed amendments to certain Rules in Title 10 (Guardians and Other Fiduciaries) - New Rule 10-111 (Petition for Guardianship of Minor), New Rule 10-112 (Petition for Guardianship of Alleged Disabled Person) and Amendments to: Rule 10-201 (Petition for Appointment of a Guardian of Person), Rule 10-103 (Definitions), Rule 10-301 (Petition for Appointment of a Guardian of Property), Rule 10-202 (Certificates and Consents Required), Amendments to Rule 10-708 (Fiduciary's Account and Report of Trust Clerk), Amendments to Rule 10-710 (Termination of a Fiduciary Estate - Final Distribution)

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

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 10-111, as follows:

Rule 10-111. PETITION FOR GUARDIANSHIP OF MINOR

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

[CAPTION]

PETITION FOR GUARDIANSHIP OF MINOR

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

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

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

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

A birth certificate of the minor is attached.

2. The petitioner born in the _____ month of _____
(number) (year)

is the _____ of the minor.

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

(b) Petitioner has not been convicted of any crime other than a minor traffic violation, except: _____

_____.

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

[CAPTION]

LIST OF INTERESTED PERSONS

	Name	Address
Mother:	_____	_____
	_____	_____
Father:	_____	_____
	_____	_____
Guardian:	_____	_____
	_____	_____
Heirs at Law:	_____	_____

Government Agency: _____ _____

_____ _____

Minor's Attorney: _____ _____

_____ _____

Petitioner's Attorney: _____ _____

_____ _____

Other: _____ _____

_____ _____

Other: _____ _____

_____ _____

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

_____ _____
Attorney Petitioner

_____ _____
Address Petitioner

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

Names	Addresses	State Time Frame
_____	_____	_____
_____	_____	_____

_____ _____ _____

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

Names	Addresses
_____	_____
_____	_____
_____	_____
_____	_____

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

_____

_____

_____

7. If this Petition is for Guardianship of the Property, the following is the list of all the property in which the minor has any interest including an absolute interest, a joint interest, or an interest less than absolute (e.g. trust, life estate).

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

8 (a). All other proceedings regarding the minor (including

the guardianship of the person or property, Delinquency, CINS, CINA, Custody, Criminal) are, as follows:

_____

_____

_____

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

_____

_____

_____

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

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

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

_____	_____
Attorney	Petitioner
_____	_____
Address	Petitioner
_____	_____
Telephone Number	Address
	_____

Telephone Number

INSTRUCTIONS

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

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

(b) If the petition is for the appointment of a guardian for a minor who is a beneficiary of the Department of Veterans Affairs, a certificate of the Administrator or the Administrator's authorized representative, setting forth the age of the minor as shown by the records of the Veterans Administration, and the fact that appointment of a guardian is a condition precedent to the payment of any moneys due the minor from the Veterans Administration shall be prima facie evidence of the necessity for the appointment [Section 13-802, Estates & Trusts Article and Maryland Rule 10-301 (c)(3)]

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

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

> The Probate/Fiduciary Subcommittee initially proposed the addition of a new form of petition of a guardianship of a minor, new Rule 10-111. This form was drafted by a committee of registers of wills, Orphans' Court judges, members of the bar and of the Estates and Trusts Section of the Maryland State Bar Association. Currently, someone petitioning to be the guardian of the person of a minor is required to file a petition whose contents are described in section (c) of Rule 10-201, and someone petitioning to be the guardian of the property of a minor is required to file a petition whose contents are described in section (c) of Rule 10-301. The Subcommittee felt it would be easier and more uniform if the petitions were filed using a specific form. Because Rules 10-201 and 10-301 also address guardianships of the person or property or both of alleged

> disabled persons, the Subcommittee decided that it would be more consistent to also include a similar form for guardianships of alleged disabled persons. This would be in Rule 10-112. The adoption of these forms would mean that the contents provision of Rules 10-201 and 10-301 would no longer be necessary.

Mr. Gibber explained that as with some of the other Rules, the genesis for the changes to the Title 10 Rules was because the Orphans' Court was given jurisdiction over cases pertaining to guardianship of the person. The Orphans' Court group and the Subcommittee felt that forms could be developed that would bring all of the Rules together. What is recommended is a form for petition for a guardianship of a minor. It is a single petition that allows guardianship of a person and guardianship of the property and guardianship of both. The rules are divided up into Title 10, Chapters 2 and 3. The petition was put into the general rule and then provided the specific details, so that guardianship of the person and guardianship of the property refer back to this petition. The petition tracks accurately the requirements of the statute and the existing rules. The Subcommittee did not make changes, but they attempted to put it together in a single form.

Mr. Gibber commented that one change that was made was that the list of interested persons is incorporated into Item 3 of the petition. It was intended to be a separate rule, but the Subcommittee thought that the list should be incorporated into the Rule. After #3. of the petition, the words "[CAPTION] LIST

OF INTERESTED PERSONS" should come out. Also, after the list, the language "I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing are true and correct to the best of my knowledge, information, and belief" should be deleted as well as the attorney, petitioner, and address lines. The Subcommittee had incorporated more than they needed to.

Ms. Potter pointed out that subsection 2.(b) of the form applies to the earlier discussion of Rule 6-122. Mr. Gibber noted that this is from a different definition. The Chair said that this is similar to what had been decided to be changed in Rule 6-122 as box #1. Ms. Potter remarked that earlier the Committee was trying to find some language for the Rule. This is another way to do it. The Chair inquired what would happen if the person has been convicted of a crime other than a minor traffic violation. Does it depend on the crime as to whether the person gets appointed as a guardian? Mr. Gibber replied that it ought to be a consideration that the court makes when deciding on the appointment. It is important to know as much about the person as possible.

The Chair asked if the form should have the second box that states which crime the person has been convicted of. In Rule 6-122, the conviction could be a complete disqualification of someone who is applying to be a personal representative of an estate. Mr. Gibber noted that this form uses the word "except" followed by lines to fill out the pertinent crimes. The Reporter

suggested that more lines could be added to this. Judge Hollander remarked that the proposed language for Rule 6-122 might be better in this Rule. Judge Love noted that the suggested language for Rule 6-122 had been taken from Form 4-504.1. That defines a minor traffic violation as non-incarcerable. This gets into the same problem -- what is a serious crime? The Chair remarked that driving while intoxicated is not a minor traffic violation, because someone convicted can get prison time.

Judge Love pointed out that in Maryland if someone is speeding, it is not an incarcerable offense. In Virginia, if the person is measured driving at a certain speed, it is considered reckless driving, and it is incarcerable by a year in jail. It is the same speed, different jurisdictions, different consequences, and a different answer to the question. Someone who is going to be a guardian and had been convicted of speeding driving 90 miles an hour in Virginia, under the definition in the form, would have to answer the question affirmatively. The person could think that all he or she got was a speeding ticket and did not get prison time. The conviction, however, was for an incarcerable offense. Using the language the Reporter had read from the expungement form could be helpful. This could go into a footnote or a Committee note. Mr. Gibber said that there are instructions that go with this form, and the definition of a "minor traffic violation" could be added.

The Chair inquired if the word "minor" as used to modify the

words "traffic violations" would cause problems, as a practical matter. Judge Weatherly told the Committee that the AOC reminds them that the forms need to be written at a 7th grade reading level. Judge Love suggested that the language could be: "Petitioner has not been convicted of any crime other than a non-incarcerable traffic violation." This eliminates the word "minor." Judge Weatherly commented that one of the purposes of forms for self-represented litigants is to raise a red flag to which the court has to respond.

The Chair said that for this purpose, the language "minor traffic violation" works. If the word "non-incarcerable" is included, Judge Love had raised the point that the person may think that since he or she did not go to prison, the offense was "non-incarcerable." People know what the word "minor" means. Mr. Gibber pointed out that there is a difference on the personal representative and guardian side. The personal representative may be disqualified even if the decedent designated or nominated him or her as the personal representative. Something more than a regular crime is needed to disqualify. It would be a crime so serious that the decedent's right to designate must be overridden because the court does not trust the person who had been designated. The Chair said that if the language in the Rule that reads: "... has not been convicted of any crime other than a minor traffic violation, except _____" is used, the crimes have to be listed.

By consensus, the Committee approved Rule 10-111 as amended.

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

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 10-112, as follows:

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

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

[CAPTION]

PETITION FOR GUARDIANSHIP OF ALLEGED DISABLED PERSON

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

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

1. The alleged disabled person _____, age ____, born on the _____ day of _____, _____ at _____,
(place of birth)

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

child of _____ and _____.

2. The petitioner born in the _____ month of _____
(number) (year)
is the _____ of the alleged disabled person.

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

(b) Petitioner has not been convicted of any crime other than a minor traffic violation, except: _____
_____.

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

[CAPTION]

LIST OF INTERESTED PERSONS

	Name	Address
Mother:	_____	_____
	_____	_____
Father:	_____	_____

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

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

_____	_____
Attorney	Petitioner
_____	_____
Address	Petitioner

4. The names and addresses of the persons with whom the alleged disabled person resided over the past five years, and the

length of time of the alleged disabled person's residence with each person are, as follows:

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

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

Names	Addresses
_____	_____
_____	_____
_____	_____
_____	_____

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

_____

_____

_____

7. Guardianship is sought for the following reason(s) (include (a) allegations demonstrating an inability of the person to make or communicate responsible decisions concerning the person's health care, food, clothing, or shelter, because of mental disability, disease, habitual drunkenness, or addition to drugs, and (b) a description of less restrictive

alternatives that have been attempted and have failed):

_____

_____

_____

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

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

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

_____

_____

_____

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

_____

_____

_____

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

_____ _____
Name Address

_____
Court

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

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

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

_____ _____
Attorney Petitioner

_____ _____
Address Petitioner

_____ _____
Telephone Number Address

_____
Telephone Number

INSTRUCTIONS

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

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

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

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

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

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

Mr. Gibber explained that Rules 10-111 and 10-112 separate the guardianship of an alleged disabled person from the guardianship of a minor. Certain provisions apply in the guardianship of a disabled person that are not applicable in the guardianship of a minor, including the inability of the person to make or communicate responsible decisions concerning himself or herself. These were incorporated into new Rule 10-112 picking up the statutory requirements, and the Rule has the same changes that were made to Rule 10-111, which are appropriate for Rule 10-112.

By consensus, the Committee approved Rule 10-112 as presented.

Mr. Gibber presented Rule 10-201, Petition for Appointment

of a Guardian of Person, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-201 by adding a new section (b) pertaining to the form of petition, by deleting section (c), by adding a new section (d) containing a certain form, and by making stylistic changes, as follows:

Rule 10-201. PETITION FOR APPOINTMENT OF A GUARDIAN OF PERSON

(a) Who may File

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

(b) Form of Petition

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

~~(b)~~ (c) Venue

(1) Resident

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

licensed private facility as defined in Code, Health-General Article, §§10-501 to 10-511.

(2) Nonresident

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

~~(c) Contents~~

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

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

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

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

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

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

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

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

~~(7) A list of (A) the name, age, sex, and address of the minor or alleged disabled person, (B) the name and address of the persons with whom the minor or disabled person resides, and (C) if the minor or alleged disabled person resides with the petitioner, the name and address of another person on whom service can be made.~~

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

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

~~(10) A statement that the certificates required by Rule 10-202 are attached, or, if not, an explanation of their absence.~~

~~(11) If the petition also seeks a guardianship of the property, the additional information required by Rule 10-301.~~

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

(d) Designation of a Guardian by a Minor

A minor may designate a guardian of the minor's person. The designation shall be in substantially the following form:

[CAPTION]

MINOR'S DESIGNATION FOR GUARDIAN OR THE PERSON

I, _____, a minor child, over
(name of minor)

the age of 14, declare:

1. I am aware of the Petition of _____
(petitioner's name)

to become the Guardian of my person.

2. I hereby designate _____

as the Guardian of my person.

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

I do solemnly affirm under the penalties of perjury that the content of the foregoing minor's designation for Guardianship are true and correct to the best of my knowledge, information and belief.

_____
Signature of minor Date

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

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

> See the Reporter's note to Rule 10-111 as to the form of the petition.

Mr. Gibber stated that the Probate/Fiduciary Subcommittee recommends the addition of a form, "Minor's Designation for Guardian of the Person" to Rule 10-201, so the Rule is consistent with Code, Estates and Trusts Article, §13-702. This form was drafted by a committee of registers of wills, Orphans' Court judges, members of the bar and of the Estates and Trusts Section of the Maryland State Bar Association. The Subcommittee also suggests adding a definition to Rule 10-103 for "Designation of a Guardian" that refers to the statute.

The Chair inquired about the new language in Rule 10-201 providing that a minor can designate a guardian for himself or herself. Mr. Gibber replied that this is statutory. The Chair asked if this applies when the minor is six years old. Mr. Gibber answered that the statutory minimum age is 14 years old to designate the guardian of the person and 16 years old to designate a guardian of the property. Rule 10-201 now provides that the form to petition to be a the guardian of the person of a minor is in Rule 10-111, and the form to petition to be the guardian of the person of an alleged disabled person is in Rule 10-112. All of the requirements pertaining to the guardian of a person were taken out of Rule 10-201 and incorporated into the forms.

The Chair questioned whether a 14-year-old girl who is pregnant and wants an abortion can designate a guardian of her person that the court must appoint to consent to the abortion. Mr. Gibber responded that what the statute provides is that a guardian must be appointed unless the court finds out that it is not in the best interest of the child. It begins as mandatory but then allows discretion. He pointed out that in section (d), the title of the form is "Minor's Designation for Guardian of the Person," not "Guardian or the Person," which is what appears. This should be corrected.

By consensus, the Committee approved Rule 10-201 as amended.

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

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-103 by adding a new section (b) pertaining to a designation of a guardian and by making stylistic changes, as follows:

Rule 10-103. DEFINITIONS

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

(a) Court

"Court" means the circuit court for any county and, where it has jurisdiction,

the Orphans' Court.

Cross reference: See Code, Estates and Trusts Article, §13-105 for the jurisdiction of the Orphans' Court over guardians of the person of a minor and protective proceedings for minors. See also 92 Op. Atty. Gen. 009 (March 20, 1992).

(b) Designation of a Guardian

"Designation of a guardian" means a designation by a minor pursuant to Code, Estates and Trusts Article, §13-702.

~~(b)~~ (c) Disabled Person

(1) In connection with a guardianship of the person, "disabled person" means a person, other than a minor, who, because of mental disability, disease, habitual drunkenness, or addiction to drugs, has been adjudged by a court to lack sufficient understanding or capacity to make or communicate responsible decisions concerning himself or herself, such as provisions for health care, food, clothing, or shelter, and who, as a result of this inability, requires a guardian of the person.

(2) In connection with a guardianship of property, "disabled person" means a person, other than a minor, (A) who has been adjudged by a court to be unable to manage his or her property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance, (B) who has or may be entitled to property or benefits that require proper management, and (C) who, as a result of this inability, requires a guardian of the property.

Cross reference: Code, Estates and Trusts Article, §§13-101, 13-705 (b) and 13-201 (c).

~~(c)~~ (d) Fiduciary

"Fiduciary" means (1) a guardian of

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

~~(d)~~ (e) Fiduciary Estate

"Fiduciary estate" means real or personal property administered by a fiduciary.

~~(e)~~ (f) Heir

"Heir" means a person who would be entitled under the law of this State to inherit property if, at the applicable time, the owner of the property had died intestate.

~~(f)~~ (g) Interested Person

(1) In connection with a guardianship of the person or the authorization of emergency protective services, "interested person" means the minor or the disabled person; the guardian and heirs of that person; a governmental agency paying benefits to that person or a person or agency eligible to serve as guardian of the person under Code, Estates and Trusts Article, §13-707; the Department of Veterans Affairs as directed by Code, Estates and Trusts Article, §13-801; and any other person designated by the court.

(2) In connection with a guardianship of the property or other fiduciary proceedings, "interested person" means a person who would be an interested person under subsection (f)(1) of this Rule and a current income beneficiary of the fiduciary estate; a fiduciary and co-fiduciary of the fiduciary estate; and the creator of the fiduciary

estate.

(3) If an interested person is a minor or disabled person, "interested person" includes a fiduciary appointed for that person, or, if none, the parent or other person who has assumed responsibility for the interested person.

Cross reference: Code, Estates and Trusts Article, §13-101 (j) and §13-801.

~~(g)~~ (h) Minor

"Minor" means a person who is under the age of eighteen.

~~(h)~~ (i) Public Guardian

"Public guardian" means a guardian who is the director of a local department of social services, the State Department of Aging, or an area agency on aging.

~~(i)~~ (j) Temporary Guardian

"Temporary guardian" means (1) a person appointed under Rule 10-210 in a proceeding for emergency protective services, (2) a person who has been authorized to preserve and apply the property of a minor or alleged disabled person pending a hearing on a petition for guardianship, and (3) a guardian of the person or property appointed by the court pending the appointment of a substituted or successor guardian.

Cross reference: Code, Estates and Trusts Article, §§13-203 and 13-709 (c)(4).

Source: This Rule is derived as follows:
Section (a) is derived from former Rule R70 a.
Section (b) is new.
Section ~~(b)~~ (c) is derived from former Rule R70 b, and Code, Estates and Trusts Article, §§13-201 (c) (1) and 13-705 (b).
Section ~~(c)~~ (d) is derived in part from former Rule V70 b and is in part new.
Section ~~(d)~~ (e) is new.
Section ~~(e)~~ (f) is derived from former Rule

R70 c.

Section ~~(f)~~ (g). Subsection (1) is derived in part from former Rule R70 d and in part from Code, Estates and Trusts Article, §13-707. Subsection (2) is derived from former Rule V70 c.

Section ~~(g)~~ (h) is derived from former Rule R70 e.

Section ~~(h)~~ (i) is derived from Code, Estates and Trusts Article, §13-707 (a) (10).

Section ~~(i)~~ (j) is derived in part from Code, Estates and Trusts Article, §§13-203 and 13-709 and is in part new.

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

See the Reporter's note to Rule 10-201.

Mr. Gibber explained that because Rule 10-201 refers to "designation of a guardian," a definition of the term was added to Rule 10-103. Code, Estates and Trusts Article, §13-702 provides that the minor has the right to designate subject to the right of the court to find that this is not in the best interest of the minor. By consensus, the Committee approved Rule 10-103 as presented.

Mr. Gibber presented Rule 10-301, Petition for an Appointment of a Guardian of the Property, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 300 - GUARDIAN OF PROPERTY

AMEND Rule 10-301 to add a new section

(b) pertaining to the form of petition, by deleting section (c), and by making stylistic changes, as follows:

Rule 10-301. PETITION FOR APPOINTMENT OF A GUARDIAN OF PROPERTY

(a) Who May File

Any interested person may file a petition requesting a court to appoint a guardian of the property of a minor or an alleged disabled person.

(b) Form of Petition

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

~~(b)~~ (c) Venue

(1) Resident

If the minor or alleged disabled person is a resident of Maryland, the petition shall be filed in the county where the minor or alleged disabled person resides, even if the person is temporarily absent.

(2) Nonresident

If the minor or disabled person does not reside in this State, the petition shall be filed in the county in which a petition for guardianship of the person may be filed, or in the county where any part of the property is located. For purposes of determining the situs of property, the situs of tangible personal property is its location; the situs of intangible personal property is the location of the instrument, if any, evidencing a debt, obligation, stock or chose in action, or the residence of the debtor if there is no instrument evidencing a

debt, obligation, stock, or chose in action; and the situs of an interest in property held in trust is located where the trustee may be sued.

~~(c) Contents~~

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

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

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

~~(3) Whether the person who is the subject of the petition is a minor or an alleged disabled person and, if an alleged disabled person, a brief description of the alleged disability;~~

~~(4) The reasons why the court should appoint a guardian of the property and, if the subject of the petition is an alleged disabled person, allegations demonstrating an inability of the alleged disabled person to manage the person's property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance;~~

~~Cross reference: Code, Estates and Trusts Article, §13-201 (b) and (c).~~

~~(5) An identification of any instrument nominating a guardian for the minor or alleged disabled person or constituting a durable power of attorney;~~

~~Cross reference: Code, Estates and Trusts Article, §13-207 (a) (2) and (5).~~

~~(6) If a guardian or conservator has been appointed for the alleged disabled person in~~

~~another proceeding, the name and address of the guardian or conservator and the court that appointed the guardian or conservator. If a guardianship or conservatorship proceeding was previously filed in any other court, the name and address of the court, the case number, if known, and whether the proceeding is still pending in that court.~~

~~(7) The name, age, sex, and address of the minor or alleged disabled person, the name and address of the persons with whom the minor or alleged disabled person resides, and if the minor or alleged disabled person resides with the petitioner, the name and address of another person on whom service can be made;~~

~~(8) To the extent known or reasonably ascertainable, the name, address, telephone number, and nature of interest of all interested persons and all others exercising any control over the property of the estate;~~

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

~~(10) The nature, value, and location of the property of the minor or alleged disabled person;~~

~~(11) A brief description of all other property in which the minor or alleged disabled person has a concurrent interest with one or more individuals;~~

~~(12) A statement that the exhibits required by section (d) of this Rule are attached or, if not attached, the reason that they are absent; and~~

~~(13) A statement of the relief sought.~~

(d) Required Exhibits

The petitioner shall attach to the petition as exhibits (1) a copy of any instrument nominating a guardian; (2)(A) the certificates required by Rule 10-202, or (B)

if guardianship of the property of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought, in lieu of the requirements of Rule 10-202, a certificate of the Secretary of that Department or an authorized representative of the Secretary stating that the person has been rated as disabled by the Department in accordance with the laws and regulations governing the Department of Veterans Affairs; and (3) if the petition is for the appointment of a guardian for a minor who is a beneficiary of the Department of Veterans Affairs, a certificate of the Secretary of that Department or any authorized representative of the Secretary, in accordance with Code, Estates and Trusts Article, §13-802.

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

Rule 10-301 was accompanied by the following Reporter's Note.

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

Mr. Gibber told the Committee that Rule 10-301 is in the same format as in Rule 10-201, except that this applies to a guardianship of the property. The details of the petition have been removed and incorporated into the form in Rules 10-111 and 10-112, and then the Rule refers to the forms.

By consensus, the Committee approved Rule 10-301 as presented.

Mr. Gibber presented Rule 10-202, Certificates and Consents Required, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 200 - GUARDIAN OF PERSON

AMEND Rule 10-202 by adding a new section pertaining to parental consents and by making stylistic changes, as follows:

Rule 10-202. CERTIFICATES AND CONSENTS REQUIRED

(a) Certificates

~~(a)~~ (1) Generally Required

Except as provided in section (d), if guardianship of the person of a disabled person is sought, the petitioner shall file with the petition signed and verified certificates of ~~(1)~~ (A) two physicians licensed to practice medicine in the United States who have examined the disabled person, or ~~(2)~~ (B) one licensed physician or who has examined the disabled person and one licensed psychologist or certified clinical social worker who has seen and evaluated the disabled person. An examination or evaluation by at least one of the health care professionals under this subsection shall occur within 21 days before the filing of the petition.

~~(b)~~ (2) Contents

Each certificate shall state: ~~(1)~~ (A) the name, address, and qualifications of the person who performed the examination or evaluation, ~~(2)~~ (B) a brief history of the person's involvement with the disabled person, ~~(3)~~ (C) the date of the last examination or evaluation of the disabled

person, and ~~(4)~~ (D) the person's opinion as to: ~~(A)~~ (i) the cause, nature, extent, and probable duration of the disability, ~~(B)~~ (ii) whether institutional care is required, and ~~(C)~~ (iii) whether the disabled person has sufficient mental capacity to understand the nature of and consent to the appointment of a guardian.

~~(c)~~ (3) Delayed Filing of Certificates

~~(1)~~ (A) After Refusal to Permit Examination

If the petition is not accompanied by the required certificate and the petition alleges that the disabled person is residing with or under the control of a person who has refused to permit examination by a physician or evaluation by a psychologist or certified clinical social worker, and that the disabled person may be at risk unless a guardian is appointed, the court shall defer issuance of a show cause order. The court shall instead issue an order requiring that the person who has refused to permit the disabled person to be examined or evaluated appear personally on a date specified in the order and show cause why the disabled person should not be examined or evaluated. The order shall be personally served on that person and on the disabled person.

~~(2)~~ (B) Appointment of Health Care Professionals by Court

If the court finds after a hearing that examinations are necessary, it shall appoint two physicians or one physician and one psychologist or certified clinical social worker to conduct the examinations or the examination and evaluation and file their reports with the court. If both health care professionals find the person to be disabled, the court shall issue a show cause order requiring the alleged disabled person to answer the petition for guardianship and shall require the petitioner to give notice pursuant to Rule 10-203. Otherwise, the petition shall be dismissed.

~~(d)~~ (4) Beneficiary of the Department of Veterans Affairs

If guardianship of the person of a disabled person who is a beneficiary of the United States Department of Veterans Affairs is being sought, the petitioner shall file with the petition, in lieu of the two certificates required by ~~section (a)~~ subsection (a)(1) of this Rule, a certificate of the Secretary of that Department or an authorized representative of the Secretary stating that the person has been rated as disabled by the Department in accordance with the laws and regulations governing the Department of Veterans Affairs. The certificate shall be prima facie evidence of the necessity for the appointment.

(b) Consent to Guardianship of a Minor

(1) Generally

If guardianship of the person of a minor child is sought, the parent or parents shall sign a form consenting to the guardianship. If parental consent is not available because the parent or parents cannot be located, the petitioner shall file an Affidavit of Attempts to Locate pursuant to Rule 1-305. Otherwise, the petitioner shall state why the parent or parents' consent could not be obtained.

(2) Form of Parent's Consent to Guardianship

The parent's consent to guardianship of a minor shall be filed with the court in the following form:

[CAPTION]

PARENT'S CONSENT TO GUARDIANSHIP OF A MINOR

I, _____, _____
(name of parent) (relationship)

of _____, a minor child, declare that:
(minor's name)

1. I am aware of the Petition of _____
(petitioner's name)

to become guardian of _____.
(minor's name)

2. I understand that the reason the guardianship is needed is _____

_____

and this set of conditions is expected to end _____

_____.
(state time frame or date it is expected to end)

3. I feel that it is in the best interest of _____

_____ that the Petition for
(minor's name)

Guardianship be granted.

4. I understand that I have the right to revoke my consent at any time.

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

_____
Signature of parent Date

_____

_____
Address

_____
Telephone Number

Cross reference: Code, Estates and Trusts Article, §13-705.
Rule 1-341.

Source: This Rule is in part derived from former Rule R73 b 1 and b 2 and is in part new.

Rule 10-202 was accompanied by the following Reporter's Note.

> To ensure that parental consents are obtained when a guardianship of a minor has been filed, the Probate/Fiduciary Subcommittee recommends the addition of a form, "Consent to Guardianship of a Minor." This provision would require the filing of the form "Attempt to Locate," which has been proposed by the Subcommittee, when a parent cannot be located. The form was drafted by a committee of registers of wills, Orphans' Court judges, and members of the bar and of the Estates and Trusts Section of the Maryland State Bar Association.

Mr. Gibber explained that the changes to Rule 10-202 add in the procedures for consent to guardianship of a minor. The court cannot approve a guardianship unless there is parental consent, and the parent must fill out a consent form. If the parent is not available, the petitioner has to explain why the parent or parents cannot be located. The Chair noted that the last set of Rules discussed was in Title 10. Would those apply in Orphans' Court, also? Mr. Gibber answered affirmatively. Title 10 applies to the circuit court and to the Orphans' Court when it has jurisdiction. Judge Pierson pointed out that the reference to "Rule 1-305" in subsection (b)(1) has to be deleted, since the Rule was not approved. The Chair asked how the absence of a parent will be addressed. The Reporter answered that the language "Affidavit of Attempts to Locate" can be in lower case

letters, and a period can be added after the word "locate." By consensus, the Committee agreed with this suggestion.

By consensus, the Committee approved Rule 10-202 as amended.

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

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 700 - FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS OF THE PROPERTY

AMEND Rule 10-708 to change the form of the fiduciary's account, as follows:

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

(a) Form of Account

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

[CAPTION]

FIDUCIARY'S ACCOUNT

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

_____ to _____ .

~~Part I. The FIDUCIARY ESTATE now consists of the following assets: (attach additional sheets, if necessary; state amount of any mortgages, liens, or other indebtedness, but do not deduct when determining estimated fair market value)~~

~~A. REAL ESTATE~~

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

ESTIMATED FAIR MARKET VALUE

_____ $_____

_____ _____

_____ _____

_____ _____

TOTAL $_____

B. CASH AND CASH EQUIVALENTS

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

PRESENT FAIR MARKET VALUE

_____ $_____

_____ $_____

_____ $_____

TOTAL $_____

C. PERSONAL PROPERTY

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

ESTIMATED FAIR MARKET VALUE

_____ $_____

_____ $_____

_____ $_____

TOTAL $_____

D. STOCKS

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

~~PRESENT FAIR MARKET VALUE~~

_____ $_____

_____ $_____

_____ $_____

~~TOTAL~~ $_____

~~E. BONDS~~

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

~~PRESENT FAIR MARKET VALUE~~

_____ $_____

_____ $_____

_____ $_____

~~TOTAL~~ $_____

~~F. OTHER~~

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

~~ESTIMATED FAIR MARKET VALUE~~

_____ $_____

_____ $_____

_____ $_____

~~TOTAL~~ $_____

~~Part II. The following income was collected and disbursements were made: (attach additional sheets, if necessary)~~

~~A. INCOME~~

~~(State type, e.g. pensions, social security, rent, annuities,~~

dividends, interest, refunds)

	AMOUNT
	$
	$
	$
	$
	$
	$
	$
TOTAL	$

B. DISBURSEMENTS
(State to whom paid and purpose of payment)

	AMOUNT
	$
	$
	$
	$
	$
	$
	$
TOTAL	$

C. SUMMARY

Total Income	$
Total Disbursements	$( )
Net Income/(Loss)	$

Part III. The following changes in the assets of the Fiduciary Estate have occurred since the last account: (attach additional sheets, if necessary)

A. ASSETS ADDED

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

B. ASSETS DELETED

Date	Description of Transaction	Gross Sale Proceeds	Selling Costs	Carrying Value	Gain (loss)

A Summary of the Fiduciary Estate is as follows:

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

The Fiduciary bond, if any, has been filed in this action in the

~~amount of $_____.~~

The Fiduciary Estate consists of the following assets as [ ] reported on the Fiduciary's Inventory [ ] carried forward from last Fiduciary Account:

A. REAL ESTATE	$_____
B. CASH & CASH EQUIVALENTS	$_____
C. PERSONAL PROPERTY	$_____
D. STOCKS	$_____
E. BONDS	$_____
F. OTHER	$_____
TOTAL	$_____

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

A. INCOME
(State type, e.g., pensions, social security, rent, annuities, dividends, interest, refunds)

	AMOUNT
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____

_____ $_____

TOTAL $_____

B. DISBURSEMENTS
(State to whom paid and purpose of payment)

AMOUNT

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

_____ $_____

TOTAL $_____

C. ASSETS ADDED

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

D. ASSETS DELETED

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

SUMMARY

Total Income ..... $_____

Total Disbursements ..... $ (_____)

Total Assets Added ..... $ _____

Total Assets Deleted ..... $ (_____)

Total Changes ..... $ _____

A Summary of the Fiduciary Estate to be carried forward to next account:

A. REAL ESTATE ..... $ _____

B. CASH & CASH EQUIVALENTS ..... $ _____

C. PERSONAL PROPERTY ..... $ _____

D. STOCKS ..... $ _____

E. BONDS ..... $ _____

F. OTHER ..... $ _____

TOTAL ..... $ _____

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

VERIFICATION:

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

_____ _____

Date Date

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

_____
Name of Fiduciary's Attorney

_____
Address

_____
Telephone Number

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

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

REPORT OF TRUST CLERK AND ORDER OF COURT

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

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

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____ _____
Date Signature of Trust Clerk

_____ _____
Address of Trust Clerk Telephone No. of Trust Clerk

ORDER

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

ORDERED, that the attached Fiduciary's Account is accepted.

(or)

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

_____(date).

_____
JUDGE

Source: This Rule is new.

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

The Probate/Fiduciary Subcommittee recommends modifying the form in Rule 10-708 (1) to include a question about which assets

> in the fiduciary estate were reported on the inventory form and which were carried forward from the last account, (2) to eliminate the question about estimated fair market value of real estate, cash, personal property, stocks, and bonds, (3) to include a question about changes in the assets of the fiduciary estate, and (4) to reorganize the form and make it easier to read. The modifications to the form were suggested by the committee composed of registers of wills, Orphans' Court judges, members of the bar and of the Estates and Trusts Section of the Maryland state Bar Association.

Mr. Gibber explained that the change to the form in Rule 10-708 for filing the fiduciary's account and report of trust clerk is an attempt to make the form easier to understand. The trust clerks asked for the change to the Rule. The basis for the change was a starting point, activity within this accounting period. The next period would start off with the amount there was at the end of the last period and move it forward. Information is not being repeated or mixed up. The old system required listing property and assets, and it would be necessary to go back and figure out where the assets started and ended. This format is very similar to the procedure in the estate arena where the process begins with an asset that is taken care of in the first accounting, and then those assets are accounted for later. The form in Rule 10-708 is similar to the estate forms and give some continuity and clarification to the accounting process.

The Reporter referred to the part of the form addressing changes in the fiduciary estate that have occurred since the last

account, and she asked if the form requires a notation of where the dividends referred to in Section A., Income, came from, such as the particular stock or mutual fund, or if it is sufficient simply to list the amount of money comprising all dividends. Mr. Gibber responded that the way it should be done is to list wach dividend and not aggregate them. However, many times people just list dividends from a certain company without designating each payment separately. The Chair pointed out that the wording in the form is "State type...". Could all the dividends from 18 different corporations just be listed in one amount? Mr. Gibber responded that this could be done, but the trust clerks will ask for a verification of the amounts. Judge Hollander asked if the form should conform to what the trust clerks will need. The Chair added that it would be the same principle with rent. Judge Hollander inquired if this should be particularized. Mr. Gibber agreed that it should.

The Chair suggested that the language could be "State type and source...". Mr. Gibber said that it would be "State type and source for each receipt of _____." The Chair cautioned that someone should not be required to list "$200 rent for January, $200 rent for February...". Mr. Gibber answered that this is exactly what is done in estate work. When he fills out the form, he shows the income and the gaps. Judge Hollander suggested that it could require information such as "five rental payments of $200 each." The Chair commented that the person filling out the form will likely attach a computer printout. Is this allowed, or

is the form mandated? Mr. Gibber replied that it is allowed.

The Reporter inquired if the date of each receipt is necessary. Judge Pierson noted that this same language is already in the form now. Mr. Gibber remarked that the purpose of the change is to improve the form. The Reporter questioned whether, ordinarily, the person puts the date that each payment is received and likewise with disbursements, the date that the money is disbursed. Mr. Gibber replied that it depends on who is filling out the form. Most trust clerks are happy to get all of the information. Judge Pierson added that the trust clerks are happy to even get the form. By consensus, the Committee approved the change suggested by Mr. Gibber and the addition of the date of receipt as suggested by the Reporter.

Mr. Gibber presented Rule 10-710, Termination of a Fiduciary Estate - Final Distribution, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 700 - FIDUCIARY ESTATES INCLUDING GUARDIANSHIPS OF THE PROPERTY

AMEND Rule 10-710 to add a Committee note after section (f), as follows:

Rule 10-710. TERMINATION OF A FIDUCIARY ESTATE - FINAL DISTRIBUTION

(a) Cause for Termination

Grounds for the termination of a fiduciary estate shall include:

(1) the occurrence of the event specified in the instrument creating the estate;

(2) the distribution by the fiduciary of all remaining assets of the estate in a manner authorized by the instrument creating the estate;

(3) the attainment by a minor of the age of majority;

(4) the emancipation of a minor who has not attained the age of majority;

(5) the cessation of a disability;

(6) the death of the minor or disabled person; or

(7) any other good cause for termination.

(b) Time for Filing - Who May File

Within 45 days after the fiduciary discovers that the grounds for termination exist, the fiduciary shall file a petition requesting the court to terminate the estate. Thereafter, if the fiduciary has not timely filed the petition, an interested person may file a petition requesting the court to terminate the estate.

(c) Venue

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

(d) Contents

The petition shall be signed and verified by the petitioner and shall contain the following information:

(1) the petitioner's interest in the estate;

(2) the name and address of each interested person entitled to notice of the petition;

(3) a statement of facts establishing the grounds for termination; and

(4) documentation as set forth in this Rule.

(e) Documentation

(1) Proof of Age

If the cause for the termination of the guardianship of the property of a minor is the attainment of the age of majority, the petitioner shall file with the petition a copy of the minor person's birth certificate or other satisfactory proof of age.

(2) Marriage Certificate

If the cause for the termination of the guardianship of the property of a minor is emancipation because of the marriage of the minor person, the petitioner shall file with the petition a copy of the marriage certificate.

(3) Medical Certificate

If the cause for the termination of the guardianship of the property of a disabled person is the cessation of the disability, the petitioner shall file with the petition a certificate, signed by a physician who has examined the person within 21 days of the filing of the petition, attesting to the cessation of the disability.

(4) Death Certificate

If the cause for the termination of the guardianship of the property is the death of the minor or disabled person, the petitioner shall file with the petition a copy of the death certificate.

(f) Final Accounting

If the petitioner is the fiduciary, the petitioner shall file with the petition a final accounting containing the same information required in annual accountings by Rule 10-708, together with the proposed final distribution of any remaining assets of the estate. The accounting shall cover any period of the fiduciary's administration of the estate which has not been covered by annual accountings previously filed in the proceedings. If the petitioner is not the fiduciary, the fiduciary shall file an accounting as directed by the court.

Committee note: For the right of a guardian to pay from the guardianship estate all commissions, fees, and expenses of the guardianship before the balance of the guardianship estate is paid out to the personal representative or other person entitled to it, see Code, Estates and Trusts Article, §13-214, which overturns *Battley v. Banks*, 177 Md. App. 638 (2007).

(g) Notice

The petitioner shall give notice of the filing of the petition to the persons named as distributees in the proposed final distribution, to the other persons entitled to notice of annual accounts, and to all other persons designated by the court. The notice shall consist of mailing by ordinary mail a copy of the petition and a show cause order issued pursuant to Rule 10-104.

Source: This Rule is in part derived from former Rule V78 and in part new.

Rule 10-710 was accompanied by the following Reporter's Note.

Chapter 544, Laws of 2010 (SB 339) in response to *Battley v. Banks*, 177 Md. App. 638 (2007) specifically grants to a guardian the right to pay from a decedent's estate the commissions, fees, and expenses of the guardianship before the balance of the estate is paid out to the personal representative or other person entitled to it. The

Probate/Fiduciary Subcommittee recommends adding a Committee note after section (f) of Rule 10-710 to draw attention to the new law and to indicate that *Battley* was overturned.

Mr. Gibber explained that a Committee note has been suggested for addition to Rule 10-710. *Battley v. Banks*. 177 Md. App 638 (2007) held that while guardianship payments must be authorized by the circuit court, they may not be paid before the ward dies, and then they become a debt of the estate subject to the priorities of the estate. The statute was changed to allow for the guardianship to pay those final expenses out of the guardianship before the balance of the estate is paid out to the personal representative or other person entitled to it, and the Committee note was added to make this clear.

By consensus, the Committee approved Rule 10-710 as presented.

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