COURT OF APPEALS STANDING COMMITTEE
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Training Rooms 1 & 2 of the Judicial Education and Training Center, 2011-D Commerce Park Drive, Annapolis, Maryland on October 11, 2013.

Members present:

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

Robert R. Bowie, Jr., Esq.
James E. Carbine, Esq.
Mary Anne Day, Esq.
Christopher R. Dunn, Esq.
Hon. Angela M. Eaves
Ms. Pamela Q. Harris
Hon. Joseph H. H. Kaplan
Hon. Thomas J. Love
Derrick William Lowe, Esq., Clerk
Timothy F. Maloney, Esq.
Donna Ellen McBride, Esq.
Hon. Danielle M. Mosley
Scott G. Patterson, Esq.
Hon. W. Michel Pierson
Hon. Paula A. Price
Sen. Norman R. Stone, Jr.
Steven M. Sullivan, Esq.
Melvin J. Sykes, Esq.
Del. Joseph F. Vallario, Jr.
Robert Zarbin, Esq.

In attendance:

Sandra F. Haines, Esq., Reporter
Sherie B. Libber, Esq., Assistant Reporter
Cheryl Lyons-Schmidt, Esq., Assistant Reporter
Victor Stone, Esq., Maryland Crime Victim's Resource Center
Michael Charnasky, District Court Commissioner's Office, Baltimore County
James Tuomey, Law Clerk, District Court, Baltimore County
Natalie Wheltor, Law Clerk, District Court, Baltimore County
Kimberly Smalkin Barranco, Esq., Executive Director, Baltimore City Criminal Justice Coordinating Council
David W. Weissert, Coordinator of Commissioner Activity, District Court of Maryland
Richard Montgomery, Esq., Maryland State Bar Association
Claire Rossmark, Esq., Department of Legislative Services
Scott Shellenberger, Esq., State's Attorney for Baltimore County
Douglas L. Colbert, Esq., University of Maryland School of Law
Hon. Alexandra N. Williams, District Court for Baltimore County
Hon. Ben C. Clyburn, Chief Judge, District Court of Maryland
Paul B. DeWolfe, Jr., Esq., Public Defender

Brian L. Zavin, Esq., Appellate Division, Office of the Public Defender
Ricardo Flores, Esq., Office of the Public Defender
Donald Zaremba, Esq., Office of the Public Defender
Jonathan Kucskar, Esq., Governor's Office of Legal Counsel
Michael Schatzow, Esq., Venable LLP
Chris Flohr, Esq., Blackford & Flohr, LLC
Hon. Leo Ryan, Jr., District Court for Baltimore County
P. Tyson Bennett, Esq.
Suzanne Pelz, Esq., Deputy Director, Office of Government Relations, Maryland Judiciary
Kelley O'Connor, Esq., Director, Office of Government Relations, Maryland Judiciary

The Chair convened the meeting. He told the Committee that they had been sent a memorandum on October 4, 2013, which brought up to date as of then the issue of Rules being drafted in light of *DeWolfe v. Richmond*, 434 Md. 444 (2013), filed September 25, 2013. That decision found a Constitutional right to counsel under Article 24 of the Maryland Declaration of Rights at initial appearances before a judicial officer. The Chair and the Reporter had put together a draft of changes that they believed would be useful to implement the latest decision of the Court. The draft was based in part on the decisions by Paul DeWolfe, Esq., the Public Defender, and the Honorable Ben C. Clyburn, Chief Judge of the District Court of Maryland, not to seek reconsideration from the Court and in part on the supposition that the Office of the Public Defender ("OPD") would, in fact, represent eligible defendants at initial appearances before the commissioners.

The Chair said that a meeting with the principal stakeholders was held on October 3, 2013 to review the draft of

the Rules. The Public Defender, Chief Judge Clyburn, Scott Shellenberger, representing the prosecutors, a representative from the Attorney General's office, and counsel for the plaintiffs in the *Richmond* case were present. Several amendments had been made as a result of that discussion. The meeting ended with a broad consensus. On the same day, proposed amendments to the Rules were received from Delegate Vallario pertaining to one aspect of the proposed approach. The next day Delegate Vallario's proposed changes were sent to the Committee along with the meeting materials. The Reporter had prepared an alternative version, available as a handout item, that incorporates Delegate Vallario's proposed changes.

The Chair said that apart from any comments as to the language itself, Delegate Vallario's proposal was an issue that stands alone. It was whether representation by the Public Defender at the initial appearance or at a bail review must be provisional and must end at the conclusion of those proceedings, unless the defendant makes a new application for further representation and then is qualified under the statutory criteria. The issue was on the agenda for the meeting.

The Chair commented that in the meantime, there were two other developments that had happened after the meeting materials had been sent out. The first was a comment received from Russell P. Butler, Esq., Executive Director of the Maryland Crime Victims' Resource Center, which included proposed amendments to Rule 4-216. His proposal also had been distributed to the

Committee for consideration at the meeting.

The Chair noted that the second development, which had been confirmed in a letter sent the previous day from the Office of the Public Defender, was to clarify that the willingness of the Public Defender to represent eligible defendants at hearings before commissioners was contingent on receiving adequate funding from the legislature.

The Chair commented that when the first draft of the Rules had been completed, the Chair and the Reporter had taken account of this prospect. At the meeting on October 3, 2013, however, it appeared that this was not going to be an issue and that the Public Defender would be able to represent these defendants, so the draft had been changed to take out the language which assumed that the Public Defender would not have the funding. The current draft puts this language back into the Rules and provides for alternate counsel to be appointed by the District Administrative Judges of the District Court. They would appoint attorneys in their district to represent these defendants if the Public Defender is not going to do so.

Mr. Maloney asked if the outside attorneys would be paid for their services. The Chair answered affirmatively. He assumed that the pay would be at market rate, and the costs would be assessed against the State of Maryland. Hopefully, either this would not happen at all, or this representation would be temporary in nature. The Chair commented that there is an alternate draft that puts private counsel back in play, and this

draft is available as a handout. It must be considered if the Public Defender is not going to be representing these defendants.

The Chair suggested that the easiest way to proceed was to use the version that had mostly been approved at the October 3, 2013 meeting, which is Alternative Version 1.5. This has a blue tab at the top of the first page. It consists mostly of the language that had been in the Rules sent out in the meeting materials. The only difference was the addition of some language addressing appointment of counsel by the District Administrative Judges if the Public Defender is unable to represent these defendants. Alternate version 1.5 has everything in it, and it could be used as the basic document. The other issues could be reached without difficulty.

The Chair said that the first matter to be discussed was the Committee's view of Alternate Version 1.5. To provide some context, the Chair explained that the latest decision of the Court of Appeals in *Richmond* II held that under Maryland Declaration of Rights Article 24, there is a constitutional right to an attorney at an initial appearance before the commissioner. In footnote 15 of that opinion, the Court said that the attorney could be provided by the Public Defender or by some other method if the legislature comes up with one. There is a constitutional right to an attorney, but "state-furnished counsel" (the Court's language) must be provided for indigent defendants.

The Chair commented that the question was who will provide representation if the Public Defender, for budget reasons, is not

going to do so. The Court had said that it must be "state-furnished counsel." The only alternative that the Chair and the Reporter could think of was to have court-appointed counsel, but they cannot be appointed ad hoc. The commissioner hearings sometimes arise in the middle of the night, and the commissioner may have 20 minutes' notice with 10 people deposited at his or her office. No court is in session to appoint anybody. The Chair and the Reporter thought that the appointment of counsel would have to be done in advance. The Chief Judge of the District Court could do it, but the District Administrative Judges would probably be a better choice, because they are more familiar with the attorneys in their district. All these suggestions are on the table for the Committee to discuss.

The Chair commented that the appointment of the attorney would have to be done in advance, so that the attorneys would be available on a standby notice and be paid for their services. The Chair was not sure how to accomplish this. He asked the Committee if anyone had any other thoughts as to how to provide "state-furnished counsel," other than the Public Defender. The Chair noted that the actual language did not have to be discussed at this point. What was important was the policy. He again asked if anyone had any other ideas as to how to address this issue if the Public Defender does not provide representation.

Mr. Patterson said that he was going to tell the Committee about a discussion he had previously had with the Chair after the first *Richmond* opinion (*DeWolfe v. Richmond*, 434 Md. 403 (2012)).

Mr. Patterson had gained some support for his proposition after the filing of the second opinion and because of the fact that the legislature changed the statute pertaining to the Public Defender in between the two decisions. As Mr. Patterson had read *Richmond* II, and in particular as he had read the three-judge dissent, the issue concerning the representation by anyone, whether a Public Defender or a private attorney, before the commissioner upon an arrest, relates to the question of setting bail. If that portion is taken out from the commissioner's function, the rest of what the commissioner is doing is clerical. The reason that the commissioners are able to set bail is because all of the Rules proposed for change refer to a "judicial officer." The definition of the term "judicial officer" in Rule 4-102, Definitions, is that it means a judge or District Court commissioner.

Mr. Patterson noted that it would seem that the elimination of the words "or District Court commissioner" from that Rule limits what is meant by a "judicial officer" to a judge. Then when the Rules refer to a "judicial officer," many of the suggested changes are eliminated, because the commissioner is not a judicial officer but is a clerk performing clerical functions, not making a decision as to whether someone should or should not be incarcerated on any particular bail that would require representation. The person who is arrested then comes before a judicial officer the very next day and has a bail set. The Chair noted that this assumes that the person had been arrested on a

weekday and what follows is a weekday.

Mr. Patterson said that he understood that at times, the next day is not a court day. It would seem that for the purposes of bail-setting, putting a judicial officer in place within 24 hours to review bail is going be much less expensive than the millions of dollars that the Public Defender will need, and the rights of the defendant will not be violated under the existing Rules. Mr. Patterson expressed the view that the "train was going on an uphill track" when through a simple deletion, the problem could be solved. The Chair responded that this idea had been discussed, and this was an option that the legislature had discussed at some length in 2012. It was a matter that was to be discussed, and recommendations were to be made by the Task Force that the legislature had created in 2012. This had not happened.

The Chair commented that the problem was that first of all, the matter of commissioners and their role in pretrial release is in the Maryland Constitution, Article IV, §41G. It is also in some statutes, including Code, Criminal Procedure Article, §§5-201 and 5-202. The Chair was not sure that the Court of Appeals can do by rule what Mr. Patterson had suggested and without regard to the merits of it. The General Assembly had discussed at great length more than once in 2012 the issue of having quicker presentments to District Court judges. The problem was that if a weekend or a holiday intervenes, unless there are going to be night courts with judges on duty in the evening or on weekends and holidays, or the 24-hour rule is extended to a

longer period of time, the situation is what it is now. It is not just a matter of a rule.

Mr. Patterson commented that he did not believe that the creation of the position of commissioner made the commissioners judicial officers constitutionally. Other states such as Colorado have a grid that the commissioners follow. The commissioner tells the defendant what his or her charge is, where the charge fits on the grid, and what the bail is. It is not a question of debating what the bail should be and requiring that the defendant be represented. It is a clerical function which would satisfy the constitutional requirements. The commissioners set bail, but it is not within their discretion to do so. The Chair responded that this issue had been discussed thoroughly, and Delegate Vallario had been involved more than anyone, except maybe Mr. DeWolfe. All of this had been on the table in 2012, including the idea of the grids with preset bail amounts for whatever the person is charged with, including whether any bond has to be secured. This is done in other states, but not in Maryland. The Chair was not sure that the Court of Appeals is the one to try to make this change by rule.

Mr. Patterson said that he understood that all of this had been discussed in 2012, but on the basis of what Mr. Patterson had read in *Richmond* II as it relates to what happened in 2012, the situation now was that the landscape was changing. The Chair said that he had spoken recently with Delegate Vallario and with Chief Judge Clyburn as to where the task force that had been

created in 2012 is going. There is now a second task force chaired by the Honorable John R. Hargrove, Jr., a District Court judge in Baltimore City, to look at pretrial release issues.

Delegate Vallario told the Committee that he had some comments on the issue of whether a schedule is appropriate. Many states have these schedules, including Florida, where each county determines what the schedule provides. One of the issues might very well be that the entity providing pretrial services gets involved. In Delegate Vallario's jurisdiction, when a defendant appears in front of a judge, the judge makes a determination that the bond is $25,000, for example, but if the Pretrial Release Services Division would like to take charge of the defendant, they may do so. This is what ends up happening in the majority of the cases in his jurisdiction. In most of these cases, if Pretrial Release Services could be allowed to have input from the first time that someone has been arrested, it would be helpful.

Delegate Vallario noted that another issue is that when the person who has been arrested appears in front of a commissioner at midnight, and he or she is represented by a Public Defender, with the State's Attorney present, and the commissioner sets a bond, what the purpose of a second hearing is 10 hours later when both parties have been represented. Maryland is one of the very few jurisdictions where there are two hearings on a bond-setting situation. The estimated cost of representation for defendants at the hearing before the commissioner is $33 million. The

legislature would prefer to spend that money elsewhere. The legislature will have to consider the *Richmond* II opinion.

Delegate Vallario said that another issue was removing the authority of a commissioner to set bail. This may require a constitutional amendment. The Chair commented that it would require at least a statutory change. Delegate Vallario noted that in the federal system, if someone is to be locked up on a federal warrant, there is no federal jail in Maryland. The federal court system rents space in the jail of whatever county gives the lowest bid, and the defendants are sent there. When the defendant goes to the county jail, he or she does not see a commissioner. However, the next day or the next time that court is open, the defendant is presented to the closest federal magistrate.

Delegate Vallario remarked that he had been involved in some of those cases. The Pretrial Services Division is always ready to act, and they do a full-blown investigation and present a complete report on the defendant to a judge. The government is also prepared, and a reasonable bond is set. One of the models that Maryland should look at is something similar to the federal system. One of the issues to be determined is whether there should be two hearings on the same bond, and another is whether there should be a schedule with a preset bond. It is possible that a preset bond and pretrial release services would be ordered in a majority of cases. At times, the judge will ask the Pretrial Release Services Division if they would like to take

charge of the defendant. Pretrial Release Services may answer that due to the seriousness of the charge, such as a gun involved, they do not want to step in. Whatever bond the judge sets will remain.

The Chair noted that the problem is one of timing. The Court of Appeals had issued an opinion stating that there is a constitutional right to state-supplied counsel at commissioner hearings. The commissioners are involved, because the laws provide for this. The existing Rules implement the statutes. The mandate had not yet issued on that opinion. No one had requested that the opinion be delayed, so the mandate will be issued. If the Court follows what they had done for the previous *Richmond* opinion, they will not issue the mandate until they have seen the Rules that would implement the required procedure.

The Chair added that he thought that the Court may hold the mandate that long and have a hearing on whatever the Committee sends to them on November 21, 2013. However, at some point, the mandate will issue, and the constitutional right to representation will be there. The Committee has to address the ramifications of the opinion and put something in place early. If the General Assembly in the 2014 session decides to modify the structure of this, then the Committee will have to draft more rules. The options of the Committee are very limited at this point. The Chair added that he was not saying that Mr. Patterson's suggestion was not a good one.

Mr. Patterson responded that he understood that the

Committee must take action. The recent ruling by the Court pertained to hearings before the commissioner. To the best of Mr. Patterson's knowledge, the only issue that commissioners hear is bail. The Chair added that they also hear the issue of pretrial release. Mr. Patterson agreed, and he said that the Rules refer to this, because commissioners are qualified as judicial officers. The Chair pointed out that some of the statutes, including Code, Criminal Procedure Article, §5-205, also refer to commissioners as judicial officers.

Mr. Patterson noted that the legislature cannot change the Rules. The Court of Appeals changes the Rules based on recommendations made by the Committee. The Committee could recommend a change to the Rules, so that commissioners are non-judicial officers. Mr. Patterson remarked that he was not against the commissioner system. The commissioners perform many helpful tasks in processing cases, but this involves clerical work. It is not necessary that they hear pretrial release matters. If they cannot hold hearings, because they are not judicial officers, then the problem of representation presented in *Richmond* II is eliminated.

The Chair asked Mr. Patterson if his suggestion was to change the Rule to delete the word "commissioner" as a judicial officer. Mr. Patterson replied affirmatively. The Chair asked what the next step would be. Mr. Patterson answered that the Rules should then be reviewed to see what happens with judicial officers regarding pretrial release. It should be determined

whether a need for representation exists if they are not holding a hearing. If there is no hearing, then that constitutional right *Richmond II* refers to is eliminated.

The Chair inquired whether the arrested defendants should have to sit in jail for three or four days if they are arrested on a holiday or a weekend. Mr. Patterson replied that this issue should be addressed, but it will be a simpler issue than the way the system is now. The Chair said that he did not think that the Committee had the authority to eliminate commissioners as judicial officers. Mr. Patterson agreed, but he pointed out that the Court of Appeals has the authority to do this.

Mr. Patterson moved that Rule 4-102 (f) be amended to eliminate the language "or District Court commissioner." Mr. Maloney seconded the motion for the purpose of discussion. Mr. Sykes expressed the view that this change cannot be made alone. It should be judged in light of what follows. Mr. Maloney opposed the motion. In defense of what Mr. Patterson said, Mr. Maloney wanted to comment based on something Delegate Vallario had spoken about earlier. In the federal system, the concept of a bail bond is virtually unknown. If someone is arrested, one of three events occurs. If the charge is a misdemeanor, the defendant is not immediately presented before a court official. The person generally gets a citation and is told to appear for a court hearing.

Mr. Maloney said that in contrast, if someone is arrested in one of the Maryland counties, the person is taken before a

commissioner, and unless the person has prior offenses, the commissioner will release the individual on personal recognizance. There is an overuse of the commissioner system for misdemeanors, and the use of the system should be limited to situations where the person arrested is a flight risk.

Mr. Maloney commented that with respect to felonies in the federal system, the defendant will typically be in one of two places, either in the Charles County jail or under the supervision of Pretrial Services. As Delegate Vallario had said earlier, the federal system has a really effective Pretrial Services program. If the State of Maryland is going to spend $33 million, this money ought to be spent on pretrial services and not on Public Defenders and State's Attorneys on the midnight shift. Mr. Maloney expressed the opinion that this is not a good allocation of resources. What should be considered is what value the bail bond process adds to securing appearances of defendants. This is virtually unknown in the federal system.

Mr. Maloney expressed the view that making the changes to the procedures pursuant to *Richmond* II cannot be accomplished by changing rules. This is a matter that the legislature should address quickly, and the task force that Judge Hargrove is chairing ought to be looking very carefully at the role Pretrial Release Services can play to eliminate the discretionary role of a District Court commissioner. The procedures can be done by citation, by preset bond determination, or by pretrial services, so that there no longer is a discretionary pretrial release

determination except before a District Court judge. Commissioners can still handle domestic violence petitions and peace orders.

Mr. Maloney said that the latest *Richmond* decision means that the only way to avoid Public Defenders and State's Attorneys doing the midnight shift is to either include a specific time of day, do away with a 24-hour rule, or reduce the commissioner to a ministerial officer who has no discretion on pretrial release determinations. The following day or following Monday the District Court judge would make that discretionary determination. Mr. Maloney reiterated that he did not think that this could be formulated at the Rules Committee meeting that day. This should be arranged quickly. In the meantime, the Committee should pass this. This is what they were about to pass after *Richmond* I. The Chair added that most of the Rule is what the Committee had approved back in February of 2012.

Mr. Stone told the Committee that he was an attorney for the Maryland Crime Victims' Resource Center. He asked if there could be a combination solution. His view was that the commissioner could still make release decisions, but the rule could provide that the commissioner cannot make a bail decision or a decision to hold someone. If the commissioner sees a defendant, and the commissioner would like to release the defendant on his or her own recognizance either with or without the Pretrial Release Services supervision officer recommending this, the commissioner could let the defendant go. But if the commissioner cannot

recommend release, which in Delegate Vallario's scenario would be one out of 20 people, only that one would be bounced to the District Court for a hearing. A rule could be written to provide that the vast majority of these cases can be disposed of, and then there could be a schedule or something similar for when the commissioner cannot make a decision as to the defendant's release.

The Chair pointed out that under the statute, Code, Criminal Procedure Article, §5-202, and the Rules that conform to the statute, there are certain kinds of crimes that a defendant is charged with for which the commissioner cannot release the defendant. The Court of Appeals has said that if there is to be a proceeding in which the defendant's release is at issue, he or she is entitled to counsel. All the work that was done in 2012 will have to be redone with the legislative options being a little more limited than they were in 2012. It may be that whatever the Committee does now is going to be of short duration until the legislature can put something else in play. In the meantime, something is needed.

Judge Price referred to the language in section (e) of Rule 4-216 providing that the District Administrative Judge of the District Court shall appoint attorneys to represent defendants before funding for the Public Defender is available. There are only two criminal defense attorneys who do not work for the State's Attorney's Office in her entire county. She did not know how she could implement this appointment of attorneys without

Public Defenders. The Chair responded that he did not know the answer. He and the Reporter had come up with the idea of the District Administrative Judge doing the appointing, because they did not know who else could be tapped to do it.

The Honorable Leo Ryan, Jr., a District Court judge in Baltimore County, suggested that removing the commissioners from the definition of "judicial officer" might have far-reaching effects in other areas as to other duties performed by the commissioners. Such a change should give the Rules Committee pause before considering this. He had not done the research to know if it would affect the ability of the District Court to issue peace orders and protective orders and to accept bonds if bonds are set. All of the other functions that the commissioners do might be affected by a change in whether they are judicial officers.

The Chair called for a vote on Mr. Patterson's motion which failed with one in favor.

The Chair told the Committee that the version of the Rules to be used for discussion was entitled "Richmond Rules - Version 1.5 - Alternative Version." The Reporter added that this version had a blue tab in the right corner of the first page.

The Chair presented Rule 4-216, Pretrial Release - Authority of Judicial Officer; Procedure, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216 to delete a reference to the death penalty; to delete current section (e) and the cross reference following section (e); to add a new section (e) outlining the duties of the Public Defender, court-appointed attorneys, and judicial officers with respect to a defendant's right to counsel; to provide that the initial appearance is separate and distinct from any other stage of a criminal action; to permit an attorney to enter a limited appearance under certain circumstances; to provide that section (e) prevails over any inconsistent provision in Rule 4-214; to add provisions concerning waiver of counsel; to allow attorneys to appear remotely under certain circumstances; to add section (h) providing for a temporary commitment order under certain circumstances; to add section (i) requiring a judicial officer to make a written record of the proceeding; and to make stylistic changes, as follows:

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

(a) Arrest Without Warrant

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

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

(b) Communications with Judicial Officer

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

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

(c) Defendants Eligible for Release by Commissioner or Judge

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

(d) Defendants Eligible for Release only by a Judge

A defendant charged with an offense for which the maximum penalty is ~~death or~~ life imprisonment or with an offense listed under Code, Criminal Procedure Article,

§5-202 (a), (b), (c), (d), (e), (f) or (g) may not be released by a District Court Commissioner, but may be released before verdict or pending a new trial, if a new trial has been ordered, if a judge determines that all requirements imposed by law have been satisfied and that one or more conditions of release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community.

~~(e) Initial Appearance Before a Judge~~

~~(1) Applicability~~

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

~~(2) Duty of Public Defender~~

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

~~(3) Waiver of Counsel for Initial Appearance~~

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

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

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

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

~~(B) If the defendant indicates a desire~~

~~to waive counsel and the court finds that the defendant knowingly and voluntarily waives the right to counsel for purposes of the initial appearance, the court shall announce on the record that finding and proceed pursuant to this Rule.~~

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

~~(4) Waiver of Counsel for Future Proceedings~~

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

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

(e) Attorney

(1) Generally

(A) Right to Representation by Attorney

(i) A defendant has the right to be represented by an attorney at an initial appearance before a judicial officer.

(ii) Unless the defendant waives that right, if the defendant is indigent within the meaning of the Public Defender Act (Code, Criminal Procedure Article, §16-201) and no other attorney has entered an appearance for the defendant, the defendant shall be represented by the Public Defender or, at a proceeding before a District Court commissioner, by an attorney appointed for that purpose by the District Court **pursuant to subsection (e)(1)(A)(iii) of this Rule if~~,~~ ~~because of a conflict or other good reason,~~** the Public Defender declines to provide representation.

(iii) Unless the Public Defender has agreed to represent eligible defendants at initial appearance proceedings before a

commissioner, the District Administrative Judges of the District Court shall appoint attorneys to represent such defendants at those proceedings in the various districts and charge the cost of such representation against the State of Maryland.

(B) Entry of Appearance

The appearance of an attorney providing representation to a defendant at an initial appearance may be entered in writing, electronically, or by telecommunication. If the entry is not in written form, the judicial officer shall note in the record of the proceeding the appearance and the method by which it was received.

(C) Appearance Separate and Distinct

For purposes of section (e) of this Rule, an initial appearance before a judicial officer shall be separate and distinct from any other stage of a criminal action. This stage commences with the appearance of the defendant before the judicial officer and ends when (1) the defendant is released, or (2) the judicial officer has complied with all applicable requirements of sections (f) and (g) of this Rule.

(2) Duty of Public Defender or Appointed Attorney

(A) Provisional Representation by Public Defender

Unless the Public Defender has entered a general appearance pursuant to Rule 4-214, any appearance entered by the Public Defender at an initial appearance of the defendant shall be a provisional one. For purposes of this Rule, eligibility for provisional representation shall be determined by the Office of the Public Defender as of the time of the proceeding.

Cross reference: See Code, Criminal Procedure Article, §16-210 (c)(4) concerning provisional representation by the Public

Defender.

(B) Entry of Limited Appearance

If the Public Defender provides provisional representation or a court-appointed attorney provides representation, the representation shall be limited to the initial appearance before the judicial officer and shall terminate automatically upon the conclusion of that stage of the criminal action, subject to being extended or renewed pursuant to Rule 4-216.1.

(C) Effect of Conflict with Rule 4-214

Section (e) of this Rule prevails over any inconsistent provision in Rule 4-214.

(3) Waiver

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

(i) the defendant has a right to an attorney at the initial appearance and for any proceeding under Rule 4-216.1;

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

(iii) ~~**if the defendant is eligible, the Public Defender will provide representation to the defendant at the initial appearance and at any proceeding under Rule 4-216.1**~~ **if the defendant is eligible, the Public Defender or a court-appointed attorney will represent the defendant at the initial appearance;**

(iv) if the defendant is represented by a court-appointed attorney, the representation is only for the purpose of the initial appearance, but the defendant will be represented by the Public Defender in any

proceeding under Rule 4-216.1;

~~**(iv)**~~ **(v)** unless the Public Defender determines otherwise, any further representation by the Public Defender will depend on a timely application for such representation by the defendant and a determination that the defendant is an indigent individual, as defined in Code, Criminal Procedure Article, §§16-101 (d) and 16-210; and

~~**(v)**~~ **(vi)** if the defendant chooses to waive representation at this time, the waiver is effective only for the initial appearance and does not preclude the defendant from having an attorney at subsequent proceedings.

(vii) if it is impracticable under the circumstances for an attorney to be present in person, the attorney will be able to consult privately with the defendant and participate in the proceeding by electronic means or by telecommunication.

(viii) if the defendant is not indigent and desires to be represented by a private attorney retained by the defendant and that attorney is not able to be present in person or able to participate by electronic means or telecommunication, the hearing may need to be postponed, in which event the defendant will be temporarily committed until the earliest opportunity that the defendant can be presented to the next available judicial officer.

Committee note: Rule 4-213 (a)(2) requires the judicial officer to advise the defendant of the right to an attorney generally. In providing that advice, the judicial officer should explain that it pertains to the right to an attorney for all proceedings after the initial appearance under this Rule and any review hearing under Rule 4-216.1.

(B) If, after the giving of this advice, the defendant indicates a desire to waive the right to an attorney at the initial

appearance and the judicial officer finds that the waiver is knowing and voluntary, the judicial officer shall announce and record that finding and proceed pursuant to sections (f) and (g) of this Rule.

(C) Any waiver found under this Rule is applicable only to the initial appearance under this Rule.

(4) Electronic or Telecommunication Appearance

(A) By State's Attorney

The State's Attorney may participate in the proceeding, but is not required to do so. When the physical presence of the State's Attorney is impracticable under the circumstances, the State's Attorney may participate in the proceeding electronically or by telecommunication provided that the equipment at the judicial officer's location and the State's Attorney's location is adequate to permit the State's Attorney to participate meaningfully in the proceeding.

(B) By Defense Attorney

When the physical presence of a defense attorney is impracticable under the circumstances, the attorney may consult with the defendant and participate in the proceeding electronically or by telecommunication provided that the equipment at the judicial officer's location and the defense attorney's location is adequate to permit the attorney to consult privately with the defendant and participate meaningfully in the proceeding.

(f) Duties of Judicial Officer

(1) Consideration of Factors

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

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

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

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

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

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

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

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

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

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

(2) Statement of Reasons - When Required

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

(3) Imposition of Conditions of Release

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

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

(B) protect the safety of the alleged victim by ordering the defendant to have no contact with the alleged victim or the alleged victim's premises or place of employment or by other appropriate order, and

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

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

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

(g) Conditions of Release

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

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

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

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

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

(A) without collateral security;

(B) with collateral security of the kind specified in Rule 4-217 (e)(1)(A) equal in value to the greater of $100.00 or 10% of the full penalty amount, and if the judicial officer sets bail at $2500 or less, the judicial officer shall advise the defendant that the defendant may post a bail bond secured by either a corporate surety or a cash deposit of 10% of the full penalty amount;

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

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

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

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

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

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

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

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

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

(h) Temporary Commitment Order

If, for any legitimate reason, an initial appearance before a commissioner cannot proceed as scheduled, the commissioner may enter a temporary commitment order, but in that event, the defendant shall be presented at the earliest opportunity to the next available judicial officer for an initial appearance. If the judicial officer is a judge, there shall be no review of the judge's order pursuant to Rule 4-216.1.

(i) Record

The judicial officer shall make a brief written record of the proceeding, including:

(1) whether notice of the time and place of the proceeding was given to the State's Attorney and the Public Defender or any other defense attorney and, if so, the time and method of notification;

(2) if a State's Attorney has entered an appearance, the name of the State's Attorney and whether the State's Attorney was physically present at the proceeding or appeared remotely;

(3) if an attorney has entered an appearance for the defendant, the name of the attorney and whether the attorney was physically present at the proceeding or

appeared remotely;

(4) if the defendant waived an attorney, a confirmation that the advice required by subsection (e)(3) of this Rule was given and that the defendant's waiver was knowing and voluntary;

(5) confirmation that the judicial officer complied with each requirement specified in section (f) of this Rule and in Rule 4-213 (a);

(6) whether the defendant was ordered held without bail;

(7) whether the defendant was released on personal recognizance; and

(8) if the defendant was ordered released on conditions pursuant to section (g) of this Rule, the conditions of the release.

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

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

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

Rule 4-216 was accompanied by the following Reporter's note.

Amendments to Rule 4-216 are proposed to implement the holding in *DeWolfe v. Richmond*, ___ Md. ___ (No. 34, September Term, 2011, filed September 25, 2013) that "under Article 24 of the Maryland Declaration of Rights, an indigent defendant is entitled to state-furnished counsel at an initial hearing before a District Court Commissioner" [Slip opinion at p. 21].

Many of the structural features of the proposed Rule changes had been included in the Rules Committee's February 3, 2012 One Hundred Seventy-Third Report [submitted to implement the January 4, 2012 Opinion and Order of the Court, which was based, in part,

on a subsequently amended portion of the Public Defender Act].

The proposed amendments to Rule 4-216 recognize the time and space constraints inherent in providing representation at an initial appearance before a Commissioner, while assuring that the defendant is afforded his or her right to an attorney.

The amendments allow an attorney to appear and participate in the proceeding from a remote location, electronically or by telecommunication. The defendant and his or her attorney must be able to consult privately, and the equipment used by the attorney and the Commissioner to facilitate the attorney's participation from a remote location must be adequate to permit meaningful participation in the proceeding. The Public Defender or a court-appointed attorney for the defendant may enter a limited appearance, which terminates at the conclusion of the initial appearance.

Prior to a judicial officer's acceptance of a waiver of counsel, a detailed advice must be provided and a knowing and voluntary waiver found and recorded by the judicial officer.

Section (h) authorizes a commissioner to enter a temporary commitment order if, for a legitimate reason, an initial appearance before a commissioner cannot be held as originally scheduled. An example of such a reason is to allow time for a non-indigent defendant to obtain private counsel and for that attorney to appear and participate in the proceeding. If a temporary commitment order is entered, the initial appearance shall be held at the earliest opportunity before the next available judicial officer.

Section (i) requires a judicial officer to make a written record of the proceeding, including a record as to the eight topics listed in the section.

Conforming amendments are proposed to Rules 4-202, 4-212, 4-213, 4-214, 4-215, 4-

> 217, 4-231, 4-349, 5-101, and 15-303. An unrelated amendment to Rule 4-216 also is proposed. In section (d), the words "death or" are deleted to conform the Rule to the recent repeal of the death penalty by Chapter 156, Laws of 2013 (SB 276).

The Chair explained that the first change to Rule 4-216 was stylistic and was in section (d). In the first sentence, the words "death or" had been deleted, because there is no longer a death penalty in Maryland. One substantive change was the deletion of current section (e) of Rule 4-216. The reason for the deletion was that this section addresses the presentment of defendants before judges. This was based on a statute that had been enacted in 2012, which stated that a person who is going to be before a judge does need an attorney, but someone who is going to be in front of a commissioner does not. Under *Richmond* II, that is no longer good law. Section (e) needs to be rewritten. Most of what was in this version of the Rule was basically what the Committee had approved the first time it considered this issue in 2012. The language that had been bolded was different than what the Committee had approved earlier.

The Chair pointed out that subsection (e)(1)(A) of Rule 4-216 had been changed to codify what the Court of Appeals had held in *Richmond* II, which is that a defendant has the right to be represented at an initial appearance before a judicial officer. Unless the defendant waives that right, if he or she is indigent and no other attorney has entered an appearance, the defendant must be represented either by the Public Defender or by an

attorney appointed by the District Court pursuant to subsection (e)(1)(A)(iii), which states that the District Administrative Judge appoints the attorneys who are not represented by the Public Defender. It was anticipated that if this goes into effect, the District Administrative Judge will work with the county bar association or anyone else and that the charge for the attorney would be against the State, because the Court of Appeals had said that it must be "state-furnished counsel." It is the State's obligation.

The Chair said that up to subsection (e)(3) of Rule 4-216, the language in the Rule was what had been drafted previously. The appearance before a judicial officer is a separate stage of the proceeding, and the appointment of counsel for that proceeding does not carry over to further proceedings. This is in subsection (e)(1) and (e)(2). Subsection (e)(3) addresses the waiver of counsel. Subsections (e)(3)(A)(i) and (ii) were approved previously by the Committee. For the first time, there was the possibility of a waiver at the commissioner level, because for the first time, there is going to be the right of counsel, which can be waived. To take account of the fact that the attorney may be or may not be the Public Defender, language had been added providing that either the Public Defender or another attorney will represent the defendant at an initial appearance. If the defendant is represented by a court-appointed attorney, the representation is only for the initial appearance, but the defendant will be represented by the Public Defender at

any review proceeding, because that is in the statute.

The Chair noted that Delegate Vallario's point about counsel reapplying to represent a defendant after the initial appearance first came up in subsection (e)(3) of Rule 4-216. Subsection (e)(3)(A)(v) stated that unless the Public Defender determines otherwise, any further representation by the Public Defender will depend on a determination that an individual is indigent under the statute. That was the first time this appeared. It appeared also in subsection (e)(2)(A) of Rule 4-216, which provided that unless the Public Defender has entered a general appearance, any appearance by the Public Defender at an initial appearance is provisional and ends when the proceeding ends. This would be the place to consider Delegate Vallario's alternatives.

Professor Colbert, who told the Committee that he was a professor at the University of Maryland School of Law, asked if he could comment on the provisional representation section of Rule 4-216. The Chair answered that he could comment, but first the Chair preferred to present Delegate Vallario's alternative, which was that any representation is provisional and that the representation ends at the end of the proceeding. Then, if the Public Defender is to represent the defendant further, the Public Defender has to go through the application process. The Chair asked for the Committee's view on this suggestion, because the decision will have a bearing on how the presentation of the Rule will proceed.

Professor Colbert remarked that he questioned whether the

Committee wanted to take away a constitutional right to counsel by limiting an appearance to a particular proceeding by calling it provisional. There are issues as to the constitutional right to an attorney continuing and also an issue in terms of the ethical obligation of the attorney to continue representation, especially where it would be harmful to the defendant to leave the representation. As far as the provisional representation, Professor Colbert said that he also wanted to hear from Delegate Vallario but thought that there were some important issues that the Committee should discuss at some point in terms of whether it is proper and lawful to be taking away the constitutional right by limiting representation to the initial appearance only. He expressed the opinion that this raises a serious constitutional issue.

The Chair said he had intended to discuss this issue in two stages. The first was to specifically address Delegate Vallario's proposal that the representation would be provisional and cannot go beyond the bail review proceeding without the defendant going through the full application and qualification process for further representation. Delegate Vallario commented that Rule 4-216, which was being considered with respect to the appearance in front of the commissioner, was similar to the version of the Rule that had been presented to the Rules Committee last year and had been approved by the full Committee with respect to the appearance before a judge. Unfortunately, the Court of Appeals saw otherwise and did not adopt the Rule at

that time. Since that time, two new judges have been added to the Court and hopefully the Court will go along with the version of the Rule that the Rules Committee had adopted some time ago.

Delegate Vallario told the Committee that he would explain the differences between last year's version and this year's version of Rule 4-216. He had already pointed this out to the Public Defender in a case in which Delegate Vallario had been involved where a $3500 cash bond had been put up. The Public Defender did not know about the bond. If they had investigated it, they would have probably gotten out of the case. The problem is that it is more costly to do the investigation or to check these cases out. There is no investigation. The Public Defender in Maryland has the ability to find out what someone who they are defending earned in the past year. No other jurisdiction has the authority to do this, except in child support cases.

Delegate Vallario stated that he was sure that the Public Defender never investigates this information in these cases. When someone is in jail, and the defendant is coming up for a bond hearing, he or she is entitled to counsel in front of a judicial officer or in front of the court. When the defendants fill out their applications inside of the jail, their circumstances often change. For example, a large number of these cases are narcotics cases. The defendant may be asked if he or she owns a car, and the answer is that the car was impounded by the police. If asked about having money, the defendant may reply that his or her money was taken, also.

Delegate Vallario said that if the defendant is on a $100,000 bond and remains incarcerated, the defendant always has a right to have a Public Defender, who will be in that case from the beginning of the case to the end. The defendant will not have to file an application from inside the jail. If the person is on a $50,000 bond, and is asked if he or she is able to afford counsel, the person may not know the answer, because he or she may not know what the bond is. The judge may have told the defendant that he or she was entitled to pretrial release, and once the defendant got out, his or her circumstances had changed.

Delegate Vallario noted that the version of Rule 4-216 that had been adopted the previous year would be the same as the one where it was agreed that the representation by the Public Defender is limited if it is in front of the commissioner. It also applied to a defendant who goes before a judge, because the defendant's circumstances at that moment had completely changed. When asked if he or she has a job, the defendant may answer that it would depend on whether he or she would be getting out of jail. If the defendant were to get out on pretrial release, he or she may have a job. But if the defendant remains in jail, the job may no longer be available, and he or she may not be able to afford counsel. The situation may be entirely different from the Saturday night that the person is locked up to the time of the hearing.

Delegate Vallario said that he was asking the Committee to adopt the same Rule that applies when the defendant appears in

front of the commissioner. The Public Defender's budget should go down. The reason is exemplified by this: in Delegate Vallario's jurisdiction, the Public Defender goes to the jail and asks all of the defendants being represented by the Public Defender to fill out applications. This means that all of those people do not have to come to the office of the Public Defender. If all of the people in the jail have qualified and are going in front of the judge the next day, the Public Defender already has the initial information. When someone gets released, the circumstances may have changed. Then the person can go to the Public Defender's office and ask for a continuation of the services.

Delegate Vallario said that he was asking for the Rule to include this. If this is not put into the Rule, it would suggest and encourage fraud. The Rule provides that unless the Public Defender dismisses the defendant as their client, which they never do, the client remains with a free attorney despite the change in circumstances. The law and the Constitution provide that an indigent person is entitled to representation, but not everyone is entitled. Delegate Vallario reiterated that he was asking that Rule 4-216 provide that the defendant who gets released be required to ask the Public Defender if the defendant qualifies for further representation.

Mr. DeWolfe commented that Delegate Vallario was correct that the Rules Committee did pass a similar version of Rule 4-216 in 2012. The Rule was rejected by the Court of Appeals for a

number of reasons, but the most important was that the statute provides that the Public Defender can determine indigency and that the Rules Committee cannot by rule change the authority of the Public Defender to determine who is indigent and who is not. A change like this would have to be done by the General Assembly, so the Court of Appeals had rejected this Rule. Delegate Vallario had put in a bill to change the statute and provide that there be provisional representation at bail review hearings, but the bill did not pass.

Mr. DeWolfe said that he would explain how the process works. The Public Defender has the authority to determine who is indigent and who is not. This is done when the individual applies to the Public Defender for representation. It is either done prior to the bail review hearing currently, not before the commissioner hearing, or if the commissioner releases an individual, then that person comes into the Public Defender office, and this is what Delegate Vallario is concerned about. The Public Defender has intake staff in all of the jails, and they do a full qualification process. The individuals whom Delegate Vallario is worried about are the ones whose circumstances change after they are released by a judge. Mr. DeWolfe emphasized that the number of people whose circumstances change in the 30 days from the time they have a bail review until they appear before the District Court is small. This is mostly a District Court process, because the people in circuit court are usually incarcerated.

Mr. DeWolfe noted that the Public Defender has a mechanism for determining any change in circumstances, but to put a rule in that would require everyone to qualify twice is an administrative nightmare, and it is unnecessary, because the OPD does a full qualification ahead of time. For those who do get out after the commissioner hearing, the Public Defender uses the mechanism that if the circumstances change and there is anyone, a judge, a prosecutor, and mostly an attorney from their intake department who has information to call into question the original qualification process, then Mr. DeWolfe's office asks that the case be referred to the District Public Defender, who will investigate and who has the authority to disqualify that person. However, the percentage of people who actually get out of jail in that 30 days and have a change of circumstances, such as getting a job that would disqualify them is very small.

Mr. DeWolfe noted that the qualification process in the jail prior to the bail review is the exact same process that the Public Defender uses when someone later comes to the Public Defender office. It is really a duplication of effort and unnecessary. Mr. DeWolfe reiterated that he did not think that the Rules Committee had the authority to change this process. The Chair clarified that the Court of Appeals, not the Rules Committee, makes the Rules. Mr. DeWolfe said that the Court does not have the authority to change the statutory authority of the Public Defender to determine indigency.

The Chair asked Mr. DeWolfe if the issue raised by Delegate

Vallario was only with a continuation after the bail review hearing. Mr. DeWolfe answered affirmatively. The Chair inquired if Mr. DeWolfe had a problem with the provisional representation at an initial appearance ending when the commissioner proceeding ends. Mr. DeWolfe answered that he did not have a problem with it. He noted that the statute provides now that if the Public Defender is unable to make the determination as to whether someone qualifies, they have the authority to enter provisional representation. It is their belief that at 2 a.m. or at any time, they would not be able to make a full qualification process without doubling their intake staff and adding complications to a process that is already complicated. Because they have the authority to enter a case provisionally, when they cannot make a determination, they enter provisionally. They accept the rule to provide representation at commissioner hearings. Two events will occur. One is that if the person is detained, someone from the OPD will talk with the person at the jail the next day. The other is that if the person is released, that person will be encouraged to come to the office of the Public Defender.

The Chair asked Mr. DeWolfe if the Public Defender would be entering any general appearances at the commissioner hearing. The Chair pointed out that in subsection (e)(2)(A) of Rule 4-216, the language that read: "[u]nless the Public Defender has entered a general appearance pursuant to Rule 4-214" had been added. He asked if Mr. DeWolfe had any objection to dropping that language.

Mr. DeWolfe replied that he had no objection, because the

Public Defender would not be making a qualification procedure prior to the initial appearance. Mr. Maloney inquired how many people the Public Defender would not be representing before the commissioner. Mr. DeWolfe responded that they did not have enough experience to hazard a guess. In consideration of the waiver provision, when someone is presented to a commissioner and the person is given an opportunity to have an attorney or to waive an attorney, the person probably ought to have the attorney. This is why there is some wisdom in the appearance of the Public Defender being provisional, because then if the defendant has an attorney or would like to contact an attorney for the bail review or for representation in court, the defendant is able to do so. Mr. DeWolfe added that the answer to Mr. Maloney's question about the number of people who would not be represented by a Public Defender in front of the commissioner would be: not many people.

Mr. Maloney asked whether the practical reality of this is that the private bar would not be available in the middle of the night or on weekends to represent defendants. Mr. DeWolfe replied that in order to move forward, there will have to be a hybrid system, and they are mandated to develop it. He did not think that the Public Defender could staff 24/7 representation, so they would call upon the private bar, panel attorneys, pro bono attorneys, and law students to help. They would be paid. The Public Defender would have to develop a hybrid system whereby they use panel attorneys and contract with attorneys to the

extent possible to fulfill this now-constitutional obligation. This is the way that Mr. DeWolfe envisioned this.

Delegate Vallario commented that the statutory change that had been presented to the legislature had passed the House of Delegates, had gotten out of the Senate Judicial Proceedings Committee, and had gone to the full Senate. Some amendments had been made to the bill that were not acceptable, and the bill died for lack of a vote. It had not been killed; it simply was not voted on. He was not sure that the Public Defender would take any case on a provisional basis. The person in jail is not certain of his or her financial status, not because the person is going to inherit money when he or she gets out of jail, but because the person may not be sure that he or she is still employed.

The Chair noted that provisional representation had two sources to it. One was the fact that the Public Defender statute, Code, Criminal Procedure Article, §16-210, permits provisional representation. The second source was that under Rule 4-214, Defense Counsel, if an attorney enters an appearance in a criminal case, he or she is in that case and cannot withdraw without following the procedures in section (d) of Rule 4-214. Because representing people at the commissioner level might involve representing people who would, on a more complete investigation, would not qualify as indigent, the provisional representation assures that the Public Defender, or an appointed attorney, could provide the representation at that hearing but

not risk being in the case for anything more, especially, in the Public Defender situation, if it turns out that the defendant does not qualify as indigent.

Judge Price said that she agreed with Mr. DeWolfe about the duplication of services. In her experience, the people who can afford attorneys do not ask the Public Defender for representation. If the Public Defender has the discretion to enter an appearance in a case, it alleviates much work for the District Court. It would not be necessary for a preliminary inquiry, if the Public Defender enters an appearance at the commissioner level. There would be two hearings, but at least there would not be three.

In most of the cases that Judge Price sees in her county, the defendant will not have a change in circumstances. In 95% of the cases, the defendant has some disability or other condition that will not change in the 30 days between the bail review hearing and the appearance in District Court. There is a major lack of transportation for people to be able to get to the Public Defender's office, and the people will be hurt if they cannot get there, because they will be without representation. Judge Price expressed the view that the Public Defender needs the discretion to enter an appearance in the case at the first hearing before the commissioner.

Mr. Schatzow expressed his agreement with Mr. DeWolfe. He referred to the Chair's comment about deleting the language in subsection (e)(2)(A) that addresses the Public Defender entering

a general appearance. The Public Defender is statutorily bound to determine eligibility. Once the Public Defender has determined that someone is eligible for their services, the Public Defender should enter an appearance and remain in the case. Mr. Schatzow expressed the opinion that this involves serious constitutional issues. The initial appearance is the first step in the criminal proceeding, and the right to counsel attaches there. There seems to be no tolerance for removing an attorney once the right to counsel has attached. Article 21 of the Maryland Constitution gives the right to counsel. Once this right has attached and counsel has been appointed, as long as the person needing representation is eligible and has been qualified by the Public Defender, there is no constitutional basis to remove that counsel.

The Chair commented that he was assuming that as the case progresses, the defendant is not necessarily going to end up with the same attorney at trial that the defendant had at the commissioner hearing. Mr. Schatzow responded that this is a question of how the Public Defender chooses to manage the workload, but the fact is that the Public Defender will still be counsel for that person. That person should have a right to have that counsel after the investigation has been completed instead of the attorney being taken away from representing the person. The only basis for that would be if the Public Defender has not done the financial eligibility review.

The Chair noted that the beginning clause in subsection

(e)(2)(A) of Rule 4-216 permits a general appearance, but it is not required. If the Public Defender decides to represent a defendant provisionally, the idea was not to lock the Public Defender into Rule 4-214. Mr. Schatzow agreed, but he remarked that no one knows exactly how this is all going to play out. In those circumstances where the Public Defender has the time to qualify the person before going into the commissioner hearing, and the person is eligible, there is no reason that the Public Defender will not enter a general appearance, and so this should still be provided for in the Rule. He expressed the view that it would be poor policy and unconstitutional where a person so qualified has the representation taken away from him or her by making the representation provisional in circumstances where it has been determined that the person is financially eligible for representation by the Public Defender.

Mr. DeWolfe said that Mr. Zavin, one of his attorneys, had told him that Mr. Schatzow was correct. Judge Ryan expressed the concern that the framework onto which Rule 4-216 would be superimposed is unknown. It may not be the Public Defender who is supplying these attorneys. At two o'clock in the morning, the District Court Administrative Judge may call someone who is six months out of law school. This attorney may be completely competent to handle the initial appearance before the commissioner, but the defendant may have been charged with murder. That young attorney may not be constitutionally competent to represent the defendant throughout that proceeding.

The Chair responded that there is a separate provision in Rule 4-216 for court-appointed counsel, subsection (e)(3)(A)(iv), which does terminate at the end of the proceeding. The defendant may qualify for representation by the Public Defender later. Judge Ryan remarked that if the provisional representation is in violation of the Constitution, then because of the constitutional right of someone to be represented by an attorney in the beginning and throughout the case, that would call into question the provision in the Rule allowing termination of representation.

Professor Colbert told the Committee that about 15 years ago, law students in the clinic that he teaches began representing defendants at the earlier stage in the proceedings. He realized that legal representation is entering a new chapter in the issue of Maryland rights for an accused person to be given legal representation that will ensure a fairer and more just outcome. This year, the 50th anniversary of *Gideon v. Wainwright*, 372 U.S. 335 (1963) is being celebrated. The case holds that being represented by an attorney is a necessity, not a luxury. He mentioned this, because as of two weeks ago, there had been a sea change in Maryland Constitutional law. It was that every indigent person is entitled to representation at the first event in a criminal proceeding. The Chair clarified that it is every person who is so entitled. Professor Colbert said that for indigent people, it is required that the Public Defender represent them at the early stage.

Professor Colbert remarked that during the last session of

the legislature, Delegate Vallario had introduced almost the same change in terms of limiting representation to one time only. The defendant's attorney would go to the bail review, and then he or she would be out of the case. Professor Colbert and others testified against that bill, because they were concerned that one day someone may have an attorney, but the next day, the person is back being unrepresented. They felt that this might promote the situation where people would remain without an attorney for weeks after. During that period, not only is there greater pressure on an accused person to plead guilty to try to get out of jail, there is also pressure on the individual and the family to hire a private attorney if they can afford it. The Maryland Senate had decided not to approve any change that would leave people without an attorney. This was before the *Richmond* II decision.

Professor Colbert noted that there is a constitutional right that has never before been given to indigent people. If someone has representation by the Public Defender or assigned counsel, there is a much greater likelihood that people who are charged with non-violent crimes would not have to stay in jail. More than 90% of people are arrested for relatively minor charges, but because of the bail issue, people stay in jail. Before Professor Colbert became a law professor, he had been an assistant public defender in New York City for 11 years. A small group of private attorneys has always claimed that the Public Defender is taking away clients from them. This claim has been around as long as Professor Colbert has been practicing law, but it has hardly ever

been validated. As Mr. DeWolfe had pointed out, most people's conditions do not change. They are indigent and they remain so, after a weekend, a week, or a month.

Professor Colbert suggested that this was an opportunity for the Rules Committee to truly embrace representation at the beginning of a case and continuing up to the moment of trial or disposition. Delegate Vallario's proposal would give the defendant an attorney at the initial appearance and then leave him or her without an attorney until the person can prove his or her eligibility. That period of time for many indigent people who cannot get to a Public Defender's office is going to leave them in a very vulnerable position.

Professor Colbert urged the Committee to use the *Richmond* II decision as an opportunity to provide greater justice to indigent people and to save taxpayers enormous amounts of money from unnecessary pretrial incarceration of persons charged with a crime. He agreed with Mr. Schatzow that provisional representation borders on impermissibly taking away a constitutional right by putting up barriers that prevent people from exercising that right. Professor Colbert expressed the view that provisional representation would be challenged, and the challenge would be successful.

Professor Colbert commented that there may be some period of time when Mr. DeWolfe would have to do a further investigation. Rule 1.16, Declining or Terminating Representation, which is one of the Maryland Rules of Professional Conduct, refers to the

withdrawal of an attorney from a case. If it turned out that a defendant was earning more money or was not eligible for Public Defender representation, then the Public Defender would be correct in asking to be relieved from that representation, but the attorney cannot simply abandon the client at that stage in the proceedings.

Professor Colbert noted that there are several reasons why Delegate Vallario's proposal runs afoul of rights that have just been established for the first time. It jeopardizes the role of the Public Defender to make the determination. If the Public Defender finds that the defendant's circumstances have changed, the Public Defender attorney would immediately tell the defendant that he or she must get a private attorney. Up until that time, it will be the responsibility of the State of Maryland to make sure that indigent people are represented at the first hearing and that the representation continues up until the time of the person's trial.

Mr. Zarbin asked Professor Colbert if his clinic at the law school entered appearances at the bail review hearings. Professor Colbert answered that they participate in re-review hearings which were done with the permission of the then-District Administrative Judge of Baltimore City, the Honorable Keith Mathews. Mr. Zarbin inquired if Professor Colbert was comfortable with the clinic that had entered an appearance for the bail hearing being in the case for the entire duration. He then questioned whether Professor Colbert preferred to be

provisional or not provisional at the clinic.

Professor Colbert answered that because of the educational experience and because the students are gaining the experience of Rule 16, Legal Assistance by Law Students, the feeling was that the clinic could assist the Public Defender for people who had been identified as having low bail amounts and who were spending one, two, or three weeks in jail, because they did not have $100 or $200. For a very limited group of people, the clinic was able to represent them for that purpose.

Mr. Zarbin said that it appeared that the clinic would offer provisional representation at the bail review hearing and then send the case to the Public Defender. Professor Colbert explained that it is the Public Defender's case and with their permission, the law school clinic has the opportunity of working within their representation. Mr. Zarbin noted that the clinic is a subset of the Public Defender. Professor Colbert responded that the clinic does everything with the permission of Mr. DeWolfe. The clinic is not acting outside of this. Because the Public Defender is limited in staff, they usually welcome the involvement of the clinic, since they can give the Public Defender's clients some additional representation.

The Chair said that with the Committee's approval, he would treat Delegate Vallario's proposal as a motion. By consensus, the Committee approved this. Mr. Maloney seconded the motion.

Mr. Flohr told the Committee that he was familiar with the argument about private counsel being shut out, and he knew about

some of the concerns of his colleagues at the private bar. He had been an assistant public defender in New York and was now a private practitioner in Maryland. He reiterated Professor Colbert's comment that the change in procedure is new and will be a "sea change." Some of his colleagues are concerned that their private practices will dry up. Mr. Flohr's office gets calls every day from people who say that they cannot afford the services of Mr. Flohr's office, but they do not want the Public Defender handling their case. When a family gets a call that their son has been locked up and is going before a commissioner, all they know is to call Mr. Flohr's office. They are not familiar with the idea that the attorney can appear right then, and this was before *Richmond* II. This will highlight to families that they can hire an attorney to go before the commissioner.

Mr. Flohr said that having worked on both sides, whether the attorney is a public defender or is private, if the attorney makes a good showing at the initial determination and the defendant gets released, the attorney is viewed as a superhero. The family will want to retain the services of that attorney, and if necessary, they will try to find the resources to pay for the representation.

As to the concerns of private counsel, Mr. Flohr, as President of the Maryland Criminal Defense Attorneys Association, expressed the view that the Public Defender should be encouraged to be able to decide whether or not to stay in a case. This is the way it is done in other jurisdictions, and this is the way it

was done in New York when Mr. Flohr practiced there. The court did not mandate that the Public Defender had to get out of the case immediately for fear that somehow it will dry up private business, because this is not going to happen. Any business lost by the private bar would be business that the private bar did not want in the first place. Mr. Flohr added that he wanted to allay some of the fears and concerns about the private bar. Once this procedure goes into effect, more people will contact the private bar at an earlier stage, and it will actually benefit the private bar.

Mr. Patterson said that he wanted to comment as to the way the original proposed amendment to Rule 4-216 was written and the way Delegate Vallario had proposed to amend Rule 4-216 to include the provisional representation. Mr. Patterson noted that he would vote against Delegate Vallario's proposed amendment, not because he did not think that Rule 4-216 was a good Rule the way that it was written, but because of the fact that every place in the Rule where it refers to "judicial officer," if that would mean only a judge, it would be a great Rule. Subsection (f)(4) of the alternative version of Rule 4-216, provides that the judicial officer shall make a written record of the amount and any terms of the bail. Mr. Patterson had some doubts about the written record made by the commissioners if this version of Rule 4-216 goes into effect. He had on his desk a stack of charging documents with incorrect dates. The date on the charging document should be the date that the person comes in and not the

date of the offense. He reiterated that he had a standing objection to including commissioners as judicial officers.

The Chair called the question on Delegate Vallario's motion. The motion failed on a vote of nine in favor and ten opposed.

The Chair drew the Committee's attention to subsection (e)(3) of Rule 4-216, which addressed waiver of counsel. If there is a waiver, it is limited to the initial appearance, and it does not carry over to any other part of the proceedings. Subsection (e)(3)(A) pertains to the advice to be given to the defendant.

The Chair noted that subsections (e)(3)(A)(vii) and (viii) are new. Subsection (e)(3)(A)(vii) provides that the defendant is to be advised that if it is impracticable for an attorney to be present in person, the attorney will be able to consult privately and participate by electronic means. The ability to do this is in Rule 4-216 itself substantively. Subsection (e)(3)(A)(viii) had been discussed thoroughly, and it tacks onto section (h) of the Rule. What happens if a hearing is scheduled before a commissioner, and for some reason, the hearing cannot proceed? It may be that one of the parties is sick, or that the defendant wants a private attorney who is not able to attend a hearing until three days later. The commissioners were concerned as to what their authority was.

The Chair remarked that section (h) of Rule 4-216, which had been approved by consensus of the stakeholders, provided that the commissioner will issue a temporary commitment order. The

defendant has to go somewhere. He or she cannot sit for three days in the commissioner's office waiting for the attorney to show up. The temporary commitment order would be issued with the requirement that the defendant be presented at the earliest opportunity to the next available judicial officer. This may be the defendant being presented to the judge the next day. If this is the case, the defendant would not get another bail review. The judge would make the pre-release decision, and another judge would not be needed to look over the first judge's shoulder the next day.

The Chair commented that it may also be that the next available judicial officer is a commissioner. It may be the same commissioner or a different one. It may be a weekend or a holiday situation. Subsection (e)(3)(A)(viii) of Rule 4-216 provides that the defendant is told that if he or she wants a private attorney, and that attorney cannot get there, the defendant is going to go back to detention until the attorney can get there. This is not an attractive scenario, but there does not seem to be any other recourse. The defendant should know that he or she has this right to contact a private attorney, but that if the private attorney cannot get there soon after the defendant has been arrested, the defendant cannot remain in the commissioner's office until the attorney can get there.

Judge Mosley noted that subsection (e)(3)(A)(viii) is applicable if the defendant is not indigent. What if an indigent defendant does want a private attorney? She suggested that the

language "is not indigent and" be taken out, so that the beginning of subsection (e)(3)(A)(viii) would read, "if the defendant desires to be represented...". By consensus, the Committee agreed to this change.

Mr. Shellenberger told the Committee that he was the State's Attorney in Baltimore County. He thanked the Chair for letting him participate in the stakeholder meetings. Mr. Shellenberger said that he had previously brought up the point that he believed that stronger language needed to be added concerning the defendant's ability to waive. The reason is that every year there are 176,000 of these hearings. About half of the defendants are released on personal recognizance. In Mr. Shellenberger's county, 60 to 65% of the defendants are released on personal recognizance.

Mr. Shellenberger expressed the view that defendants should be told the real truth, which is that if the defendant would like his or her attorney present, including a Public Defender, there will be a delay. All of the stakeholders who had been at the meetings where Rule 4-216 was discussed, including Judge Clyburn and Mr. Weissert, Coordinator of Commissioner Activity, felt that this part of the procedure slows down the rest of the procedure. Often Baltimore City currently runs up against the rule that the defendant has to be seem within 24 hours, and this is with seven commissioners working around the clock. In Baltimore County, people get out usually within three hours. With the new procedure, there will be qualification, consultations, and waits

for the Public Defender or private counsel in cases where almost half of the defendants are getting out for free.

Mr. Shellenberger suggested that in subsection (e)(3)(A) of Rule 4-216 before subsection (vi), language should be added that would inform the defendant that if he or she would like to have an attorney present for the hearing, it may cause a delay in conducting the hearing. It is necessary to tell the defendants who have been arrested that they have the right to an attorney, but they need to know that it may cause a delay. This allows the defendants to make a knowing and intelligent decision of what the reality is going to be in the District Courts all over the State of Maryland.

Judge Price noted that there was a typographical error in subsection (e)(3)(A)(vi) of Rule 4-216. The word "representative" should be the word "representation." By consensus, the Committee agreed to make this change.

Judge Clyburn said that he had a question about subsection (e)(3)(A)(vii) of Rule 4-216, which provides that if it is impractical for an attorney to be present in person, the attorney will be able to consult and participate in the proceeding electronically or by telecommunication if the jurisdiction has that unique circumstance and also has video bail. He suggested that the Committee might want to consider making this provision either/or. To take advantage of the technology that the work group and the task force is looking at, it should be clear what the impact is on video bail and if that defendant is entitled to

video bail in light of the language in subsection (e)(3)(A)(vii).

The Chair responded that this had been discussed the day before. Section (d) of Rule 4-231, Presence of Defendant, which is part of the Rules that address video conference bail review proceedings and permit them, provides that there cannot be a video proceeding at the bail review stage if the proceeding before the commissioner was conducted by video conferencing. This was added in 1999, and the Chair's understanding was that a judicial officer should be able to see the defendant in person in at least one of those proceedings.

The Chair said that the previous day, the discussion had been that some of the burden on the commissioner could be lessened if that proceeding is conducted by video conferencing. The defendant would not have to be physically present in a small commissioner's office. This could be done if the right equipment was available. If this is done, it would run afoul of the provision in Rule 4-231 (d) that would preclude the review process from being conducted in that manner. This may be the case depending on the interpretation of Rule 4-231 (d) and who is not present. The attorneys are able to participate electronically, but if the defendant is not physically present, there may be a question as to whether the bail review can be conducted electronically. There is a legitimate issue about this unless Rule 4-231 is changed.

Mr. Shellenberger expressed the view that Rule 4-231 (d)(4) should be stricken. With modern technology, in many of the

courtrooms all over the State, the judicial officer sees the defendant, but the defendant is not physically in one of the tiny commissioners' offices. Mr. Shellenberger added that the change should be made, so that other counties have the option to use technology to avoid the necessity of driving the defendants back and forth until it is certain that the hearing will be able to be conducted. Rule 4-231 (d)(4) may have been appropriate when it was added, but with modern technology, such as i-pads and other devices, the judicial officer can see the defendant. It is antiquated to require that one of the two hearings have to be in person. The judicial officer is not permitted to serve papers on the defendant anyway, so there is no reason to require the defendant to be in the same room as the judicial officer. Mr. Shellenberger expressed his agreement with Judge Clyburn that Rule 4-231 (d)(4) should be stricken, so that both hearings can be conducted by way of video conferencing.

The Chair said that a question that came up at the meeting the day before was how this procedure would work. What was proposed was that a defendant would remain in the precinct (in Baltimore County) or jail and would be able to communicate by some electronic process, such as Skype, with the commissioner, who is located somewhere else. The problem with this was how the waiver hearing is to be conducted without some concern about coercion when the defendant is sitting in the police station waiving counsel. If this procedure is to be instituted, some protection needs to be built in, so that the court can have

confidence if the defendant waives counsel.

Mr. Shellenberger pointed out that the protection is the commissioner. He or she is a judicial officer and has conducted waiver hearings with two police officers standing right behind the defendant. The officers may have brought the defendant in handcuffs. This has been going on for decades in Maryland. Because the commissioner is able to view the defendant, as long as the commissioner is satisfied that the discussion is knowing and intelligent, he or she is the person who is to be trusted. The commissioner has experience in making this kind of judgment. In most of the major jurisdictions, including Baltimore County, the second-day bail hearing are often conducted by video conferencing. In that circumstance, the defendant is in a detention center and had probably been there for almost 24 hours or 48 if it was a weekend. The person has all of the trappings of being in custody, and until last year, no attorney was ever present. Many of those hearings were being conducted, and almost no one had complained about it.

Mr. Shellenberger expressed the opinion that the procedures should take advantage of modern technology, which would save some money. The current procedures are shifting tremendous costs onto the counties and onto the police department. Police who used to get back onto the road quickly are going to be "babysitting" the defendants for a longer period of time. People who used to get moved in and out of the District Court quickly will have to sit handcuffed to benches for a long period of time. This is a "sea

change," and modern technology should be applied to save time and money.

Mr. DeWolfe agreed with Mr. Shellenberger that the change to Rule 4-216 is a "sea change." He said that the new procedure is causing him some real concern, because if the thought is that the defendant is going to be in the police station and is going to be talking to a commissioner at some remote place about the defendant's right to counsel and the ability to waive that right to counsel to avoid delay, the commissioner will be giving legal advice. This had never happened before, and it would be because the commissioner tells the defendant that he or she can get out of jail more quickly if the defendant waives counsel, or the hearing will be scheduled more quickly, if the defendant waives counsel. It would not then be necessary for the defendant to be taken to a remote place or to the commissioner. The hearing would be held immediately, and the defendant would be told to waive his or her right to counsel. This causes some real concern.

Mr. DeWolfe added that he did not have a problem with the technology aspect, but the situation is now that where an attorney will be available, he or she should have access face-to-face with the client. How the hearing occurs is another question. The attorney who is now going to be available by reason of *Richmond* II should have access to that client to be able to have the discussion about whether to waive counsel or not or about whatever else is going to be said at the hearing. Mr.

DeWolfe said that he sees this as a formula to coerce waiver.

Judge Williams told the Committee that she is a District Court judge in Baltimore County. They had had a meeting of some of their stakeholders the previous day. Baltimore County is somewhat unique in that they have 10 separate police precincts. The county is like a big horseshoe all the way from Dundalk and down around to Towson and then to Halethorpe, and it encompasses over 600 square miles. Baltimore County also has nine other police agencies, including the campus police of Towson University and the State police. The way the process works is that when a defendant is arrested, he or she is taken to one of the 19 facilities. At night, the guards will make a circuit around the county, which creates the delay. If the purpose of *Richmond* II is to get people out quicker, using technology is going to allow them to do that. Prohibiting the use of technology means that the police officer is going to be driving from Dundalk and stopping at Parkville and then maybe at Towson to transport jailed defendants to the commissioner's office. When they get to the commissioner's office, there may be 15 prisoners at a time. If they are lucky, two Public Defenders will be there to interview all 15 defendants.

Judge Williams said that she did not think that the Public Defender is involved in the waiver, because they do not represent the defendants before they make their election. The commissioners are certainly competent in explaining the rights to defendants. The appropriate waiver had been drafted by the

legislature and the Judiciary. If the District Court has the option of using technology, it will allow them to look at ways to get the 60% of defendants who will be released on personal recognizance out without the necessity of driving them to a commissioner's office and without the necessity of sitting in a lockup where the defendants may be handcuffed to chairs. It is a difficult situation, and the more options that the Rules can give them, the faster they are going to be able to accomplish the dictates of *Richmond* II, which is to get the defendants out more quickly.

The Chair said that as he read Rule 4-231, it permits video conferencing at commissioner hearings. The language of subsection (d)(4) is: "if the initial appearance under Rule 4-213 is conducted by video conferencing, the review under Rule 4-216.1 (a) shall not be...". This recognizes that the commissioner hearing can be conducted by video conferencing. Nothing in the Rules prohibits this. The Chair did not think that there was anything in the Rules being considered at the meeting that day that would prohibit it. The issue is that the video conferencing cannot be conducted twice. This is what had been requested for amendment.

Judge Williams agreed, noting that this is what she would propose that the Rules Committee consider. In Baltimore County, they do the video bails at the judge level. It works very well. It seems to work better than the days when prisoners were handcuffed, because, although it is done electronically, the

judge is one-on-one with the defendant, who is not handcuffed to other people. Judge Williams expressed the opinion that the video bail reviews are more effective in judges advising defendants of their rights and conducting the bail review. In Baltimore County, they were doing the bail review in front of a judge via video. Judge Williams asked that the other counties be given the option to do so.

The Chair asked whether there would be any value in having a judge, such as the District Administrative Judge or the Chief Judge, approve the plan as to how this would be done, including equipment considerations, etc., if the commissioner hearing would be conducted by video. Judge Clyburn responded that wherever that type of technology is to be employed in the District Court, it has to go through an approval process. Whatever affords flexibility for the process that had been established, the technology should be reviewed in light of Maryland Electronic Courts (MDEC). He and his colleagues will look at the issues of coercion and where the waiver will take place. The Chair noted that this may be the way that the Baltimore District Court and police department prefer to handle this. Judge Clyburn responded that the procedure has to be reviewed by his office, and their technical experts look at it.

Delegate Vallario remarked that he had a serious problem with eliminating one of the two hearings to be held in front of a judicial officer. If someone gets locked up and has a hearing with a commissioner by video conferencing, the commissioner may

put him or her on a $25,000 bond but tell the defendant that he or she will go in front of a judge the next day. The next day the defendant is told that he or she will not really see a judge but will be videoed in to the judge. The judge will say that nothing had changed since the previous day, so the bond remains the same. A preliminary hearing is scheduled for 30 days later, but by that time, the defendant has already been indicted, so there is no preliminary hearing. The defendant is told that his or her arraignment is on a certain date, and the Public Defender enters a preliminary appearance at the arraignment. The defendant is told that the Public Defender filed all of the necessary motions, but the hearing on the motions is about three or four months away.

Delegate Vallario said that three months elapse, and then the Public Defender says that the motions were not granted, but the trial is scheduled 30 days from then. By the time the next 30 days go by, the defendant has been in jail for seven months. The Public Defender comes in and tells the defendant that his case is going to be nol prossed. The defendant asks where the courthouse is and if there are really judges in that jurisdiction. This is a scenario that could happen where a person would never see a judge. Delegate Vallario expressed the concern about the continuation of televised hearings. Everyone has a right to confront a judge.

The Chair pointed out that Rule 4-231 currently permits either a hearing before a commissioner or a bail review hearing

to be conducted by video conferencing, but not both. Delegate Vallario said that he wanted to make sure that somewhere in the proceeding, the defendant sees a judicial officer. The arraignment in the circuit court is conducted by video, also. How far has this gone? Parole hearings are now being conducted by video conferencing. It used to be that the Parole Commissioner drove around the State to hold parole hearings. The prisoner had a chance to confront the commissioner. Next the defendants may have to see their Public Defender on television. Delegate Vallario reiterated that at least one of the two hearings should be live.

Mr. Flohr told the Committee that he had two practical concerns about video conferencing. One was that where the attorney does his or her business matters. As an example, Part 40 is a courtroom in Baltimore City in Central Booking. While some pretend that this is a real courtroom, it is not. The fundamental difference is that recently Mr. Flohr had walked into Part 40, and the officer in charge told him that he was not allowed to bring in his cell phone, because this is a rule of Central Booking. The phone had to be locked up. This deprived Mr. Flohr of the ability to use that tool when he was trying to get in touch with the victim in the case. He cannot turn to a family member like he can in a bail review courtroom to tell them what is happening with the case, because the family is downstairs in the lobby behind a locked door that Mr. Flohr cannot get through unless the officer lets him out.

Mr. Flohr said that the other concern was in terms of bail review. He was not sure when Rule 4-231 had been put into effect, but he guessed that the reason why was that when he is hired as private counsel to go to a bail review hearing, unlike the Public Defender who is in the room and can talk with the client, he is not given the opportunity to talk to his client. Even though many of the videos permit some type of hookup, this is a major cause of delay and confusion in trying to clear the courtroom, so that he can have a private conversation. He tried this once in the District Court in Baltimore City at Wabash, and it was a very bad situation. On paper, the video equipment seems to be very efficient by allowing an attorney to speak to someone, but often, there are already many people in the courtroom, and the courtroom has to be cleared for the attorney to speak privately with his or her client.

Mr. Flohr reiterated that there is a concern logistically that he does not get to talk to his client for a bail review. Currently, if Mr. Flohr is hired to represent a defendant in front of the commissioner, at least Mr. Flohr can sit down next to the client and try to have a conversation with the client. He echoed Mr. DeWolfe's concern about having the waiver discussed in the commissioner's office under any circumstances and telling the defendant that asking for counsel would slow down the process.

Mr. Flohr noted that one aspect of this which had not been discussed is the fact that the officers have the ability to charge by summons or by citation and avoid the situation being

discussed. The previous day, a client came to Mr. Flohr's office, and the client had gone to Central Booking. She had done a "walk-through." She reported that she had been taken in to Central Booking and stayed there for about five hours. She was then released without seeing the commissioner. These are some of the practical concerns, because most of the charges are low-level misdemeanors that could be addressed with a summons or citation at the outset. There will not be as big a backlog as there was previously. Maybe this "sea change" will bring about some practical change.

Professor Colbert commented that he shared Delegate Vallario's concern about the overuse of video conferencing, and he thought that the point of *Richmond* II was to make sure that an attorney has the opportunity to speak to a client, which is very important. He referred to Mr. Shellenberger's concern about trying to get people home as quickly as possible, but when the walk-through is done, there are State's Attorneys now who are reviewing cases early and making recommendations for release on personal recognizance, so that the defendants do not have to go before a judicial officer.

Professor Colbert remarked that at times, some State's Attorneys, when reviewing the history of someone who is caught smoking marijuana or who is charged with a minor traffic offense which is criminal, may recommend release of those defendants. State's Attorneys now in different parts of the State are reviewing cases. Comment 1 of Rule 3.8, Special Responsibilities

of a Prosecutor, provides that a prosecutor has the responsibility of a minister of justice. A minister of justice is someone who focuses on the people who need to be detained, and at the same time, allows people to regain their freedom when they do not represent a safety risk or a risk of not appearing.

The Chair asked if anyone else had a comment on the point about amending Rule 4-231 (d)(4). It would take a motion to propose a deletion of subsection (d)(4). Currently, either the hearing before the judicial officer or the hearing on pretrial release pursuant to Rule 4-216.1 can be conducted by video conferencing, but not both. Judge Love moved to delete subsection (d)(4) of Rule 4-321, the motion was seconded, and it passed on a vote of 11 to four.

The Chair drew the Committee's attention to subsection (e)(4) of Rule 4-216. He said that the Committee had approved this when *Richmond* I had been discussed previously. When the Rule appeared in the 173rd Report to the Court of Appeals, it seemed that the Public Defender would be representing people. However, this matter is back. This involves the ability of defense counsel to interview the client privately and participate in the proceeding electronically, provided that the equipment is available. Mr. Butler's comments, which had been distributed to the Committee, apply to this.

The Chair pointed out that Mr. Butler had suggested an amendment to subsections (e)(1)(B) and (e)(4)(A) of Rule 4-216. He proposed to add the words "or a victim" to subsection

(e)(1)(B) and the words "victim," "victims," and "or victim's attorney" to subsection (e)(4)(A), which is the provision pertaining to State's Attorneys. This would mean that the victim or victim's attorney would be able to "participate in the proceeding" by electronic means. The Chair asked Mr. Stone if he wanted to address the Committee on Mr. Butler's behalf.

Mr. Stone told the Committee that Mr. Butler was not able to be present. He and his colleagues had asked for a technical and minor amendment to Rule 4-216 (e)(1)(B) that was not meant to change the status of the victim or the victim's attorney. The second change would be to Rule 4-216 (e)(4), and it would allow the victims to participate in the proceeding, so that they can comply with Code, Criminal Procedure Article, §5-201. The Chair asked about the change to the first sentence. Mr. Stone answered that this would give the victim the same right to be present if the hearing is to be held electronically.

The Chair noted that this is not what their proposed amendment to Rule 4-216 (e)(4) provides. It states that the victim may participate in the proceeding. Mr. Stone remarked that victims already have this ability under Code, Criminal Procedure Article, §5-201. The victim has a right to ask to be present and to ask the commissioner for a "no contact" order. Mr. Flohr had just pointed out that he had been in a hearing where he was not able to contact the victim. Unless the victims have the ability to participate electronically under Rule 4-216, the victims will technically be excluded, and they will not find

out what took place until after the hearing is over. Particularly in domestic violence cases, sometimes the victims fear for their lives, and they have no idea that the defendant has been released without a "no contact" order in place. This is typically where this issue arises. The Maryland Crime Victims' Resource Center was asking to add the words "or a victim" to subsection (e)(1)(B) of Rule 4-216.

The Chair commented that the victim would not be looking to enter an appearance. Mr. Stone responded that sometimes the victims do enter an appearance. Judges require this as a means of identifying the victim. If the victims would like counsel, counsel has to enter an appearance. The Chair noted that it is the attorney who enters the appearance, not the victim. Mr. Stone clarified that it would be the appearance of an attorney providing representation to a defendant or a victim. The attorneys at the Maryland Crime Victims' Resource Center would like to not be required to have to personally appear at all of these hearings. The Chair pointed out that the proposed change to Rule 4-216 (e)(4)(A) would provide that the victims may participate in the proceeding. They are not allowed to participate at trial. They can be at the trial and make a victim impact statement at sentencing, and they can ask for restitution, but they do not participate in any other stage of the proceedings.

Mr. Stone said that as they had pointed out in their cover letter, he and his colleagues were considering the fact that when

bail and release are issues, under Code, Criminal Procedure Article, §5-201 (a), the victim can request from the court or from a District Court commissioner reasonable protections for safety. The Chair suggested that the language to be added to the Rule could provide that the victim can request a "no contact" order electronically. This would not be "participation" in the proceedings. The requested change by the Maryland Crime Victims' Resource Center would make it appear that the victim would be able to participate fully in the proceedings.

Mr. Stone asked whether then the victim in all of the proceedings could participate if a victim's right is involved. The commissioner may ask why the victim needs a "no contact" order. The Chair inquired whether what is being requested electronically is limited to a "no contact" order. Mr. Stone replied that this is the most obvious example, but it also may be that the commissioner is ready to release the defendant on personal recognizance, and the victim may wish to tell the commissioner that the victim has been injured by the defendant. The victim may wish to show the injuries to the commissioner when the victim tells the commissioner that the victim's view is that the defendant should not be released on his or her own recognizance. The victim has the right to make this request of the commissioner. The commissioner has the right to ignore the victim's statement. There needs to be a discussion about the pending release of the defendant. The "no contact" order is the most obvious request made, but sometimes the case is more

serious. Some of the victims fear for their lives in the domestic violence situations.

Mr. Patterson referred to the concerns that need to be raised in front of a judge and noted that these concerns are brought up by the State's Attorney involved in the case. To Mr. Patterson's knowledge, the State criminal procedure is a two-party one, the defendant and the State. Under the victims' rights amendment, the State's Attorney represents the victim in every case. The victims come forward to comment that the court needs to hear about the alleged offense. If the State's Attorney is going to be involved in the pretrial release hearings in front of the commissioners, the victim would have someone to espouse their concerns and bring these matters before the commissioner or the judge who is going to make a determination as to certain aspects of the case. The amendments proposed by the Maryland Crime Victims' Resource Center turn the proceedings into a three-party procedure.

The Chair said that he had looked at Code, Criminal Procedure Article, §11-102. He asked Mr. Stone if he was relying on that particular statute. Mr. Stone answered that he was relying on §§11-102 and 11-103, but Rule 1-326, Proceedings Regarding Victims and Victims' Representatives, is also pertinent. The Chair responded that he was asking about which statutes are being relied on. Mr. Stone remarked that at this stage of the proceedings, he was relying on Code, Criminal Procedure Article, §5-201 (a). Rule 1-326 (a) reads as follows:

"An attorney may enter an appearance on behalf of a victim or a victim's representative in a proceeding under Title 4, Title 8, or Title 11...". The State's Attorney does not have to be present at these initial appearances. Only an officer, who picked up one of the spouses after a fight between the two, may be present. The officer does not know about the history and just brings in the spouse. A charge is made, and unless the victim gets a chance to tell the commissioner the previous history of abuse, no investigation has been made yet. Mr. Stone added that he agreed that the State's Attorney may well do a great job if he or she had a chance to find out about the case, but not at this first appearance.

The Chair pointed out that Code, Criminal Procedure Article, §5-201 (a)(2) reads as follows: "If a victim has requested reasonable protection for safety, the court or a District Court commissioner shall consider including, as a condition of pretrial release, provisions regarding no contact with the alleged victim or alleged victim's premises or place of employment." One question is whether the victim can communicate this electronically to ask the commissioner to include in any pretrial release a no contact order. However, the requested change to the Rule looks like the victim can participate totally in the entire proceeding.

Mr. Stone noted that subsection (a)(1) of Code, Criminal Procedure Article, §5-201 is not limited to asking for no contact. It reads as follows: "The court or a District Court

commissioner shall consider including, as a condition of pretrial release for a defendant, reasonable protections for the safety of the alleged victim." Subsection (a)(2) is not limited to "no contact" orders. Sometimes a "no contact" order may not be enough to placate the spouse, and the person would like to be able to report the situation directly to the commissioner, especially when no State's Attorney is present. The spouse may want the commissioner to know that some conditions are needed.

The Chair asked if the victim should be able to recommend that no bail should be set, or the bail should be set very high. Mr. Stone remarked that as Mr. Flohr had pointed out, if the victim cannot get to the hearing, it does not hurt to let the victim participate electronically if he or she would like to. The Chair asked if there was any further comment on the proposal of the Maryland Crime Victims' Resource Center. None was forthcoming.

The Chair noted that sections (f) and (g) of Rule 4-216 had not been changed from what is in the current Rule. He said that section (h) addresses the temporary commitment order, which had already been discussed. Section (i) pertains to the record that the judicial officer has to make. The Chair asked Mr. Weissert if this provision presents any problems for the commissioners and Mr. Weissert responded that it did not. They will have to revise their reporting system to make sure that the commissioners advise the defendants of their rights.

Mr. Schatzow thanked the Committee for allowing him to

participate in the meeting of the stakeholders. He questioned the language of section (h). He noted that the stakeholders had agreed to the need for this section. In the context of the example used in the Reporter's note, one concern that Mr. Schatzow had when he had read the note related to the language used in the draft Rule, which read: "[i]f for any legitimate reason...," was that there was no real effort to describe what a "legitimate reason" is compared to an illegitimate reason. The Chair explained that this language refers mostly to the context of an attorney not being able to get to the initial appearance. Someone had stated previously that there could be other reasons, including that the initial appearance cannot proceed as scheduled. Mr. Schatzow suggested that the word "legitimate" needs to be qualified, so that it does not negatively impact the right to have the hearing.

Judge Clyburn commented that situations occur where the defendant may be intoxicated, or his or her mental state may cause problems. In these situations, the commissioner has the authority to make that temporary commitment. Mr. Shellenberger remarked that it is important to face the fact that a legitimate reason might be that the legislature does not give the Public Defender the $30 million it needs to be able to represent defendants at the initial appearance. The Chair responded that at the expense of the State, someone will be there to represent defendants at the initial hearing. Mr. Shellenberger commented that it will be interesting to see if this happens. There could

be a legitimate reason that there would not be any attorney available at 2 o'clock a.m. somewhere. Therefore, the commissioner would need to send the defendant to temporary custody.

Mr. Zavin, an Assistant Public Defender, said that given the Committee's vote on the issue of video conferencing at commissioner hearings, it may be wise to explicitly state in the Rule that in all cases, defense counsel shall be afforded the opportunity to have a private consultation with the defendant prior to the initial appearance. One way to do this would be add a section (iv) to subsection (e)(1)(A) of Rule 4-216. It would provide that defense counsel shall be afforded the opportunity to consult privately with the defendant prior to the initial appearance.

Mr. Shellenberger noted that it is the defendant's right. He or she may not want to speak with the Public Defender. Why is it necessary to give the Public Defender the power now? What if the waiver hearing is conducted, and the defendant gives a knowing, intelligent waiver? The proposed change would presuppose that it is necessary for the Public Defender to talk to the defendant before he or she has been qualified, or the Public Defender has been retained. Mr. Zavin explained that he was referring to defense counsel prior to the initial appearance. This would afford the Public Defender the opportunity to meet with the defendant, but the defendant does not have to accept.

The Chair commented that if the Rule is to allow defense

counsel to meet with the defendant prior to any waiver inquiry, it may be premature. If the defendant does not waive, and the Public Defender or other counsel will be in the case, then there should be the right of counsel to consult with the defendant before the hearing proceeds. What right is there of counsel to consult defendants prior to a waiver? Mr. DeWolfe noted that subsection (e)(1)(A)(ii) provides that the defendant has the right to representation by the Public Defender unless the defendant waives that right. Judge Price suggested that the phrase "unless waived" could be added to Mr. Zavin's proposed language. The Chair asked if anyone objected to the addition of Mr. Zavin's language to Judge Price's suggested language. Mr. Zavin said that the new language would be: "Unless there is a waiver of representation, defense counsel shall be afforded the opportunity to consult with the defendant prior to the initial appearance." The Reporter asked how this would work logistically. What would the timing be?

Mr. Weissert responded that this is all new ground. At all of the sessions where this issue had been considered, the stakeholders had discussed looking at how the presentment is structured. When does the hearing start? Someone is arrested and processed by the local jurisdiction. Then the person is brought to the commissioner, who will have to determine probable cause for the arrest and then proceed with the advice of rights and whatever Rule 4-213, Initial Appearance of Defendant, requires. On the front end, this will require an earlier advice

of right to counsel, so the commissioner will determine whether the defendant is going to waive counsel before Rule 4-216, which addresses pretrial release, applies. Mr. Weissert said that he was not sure exactly how this would work. Judge Price remarked that if the defendant wants an attorney, then before the actual hearing, the attorney has the right to meet with the defendant privately and discuss the situation. Mr. Weissert noted that this would be if the determination is made before the person is presented to the commissioner.

Mr. Patterson observed that the problem is with the language "unless waived," because that means that it happens before anything else happens even if the defendant has been advised. The phrase at the beginning of the sentence should be "if representation is elected...". Then the attorney would have the opportunity to meet with the defendant. The defendant has to make the election that he or she wants the attorney, before the defendant has a right to talk to the attorney. It is the same issue whenever the person arrested says that he or she would like an attorney. What does the commissioner do at that point? Does the commissioner wait for an attorney to show up? How does this come about? Once the defendant asks for an attorney, and that attorney shows up, then the point of the suggested new provision, subsection (e)(1)(A)(iv), would be to offer the defendant an opportunity to confer with the attorney.

The Chair noted that subsection (e)(3)(A)(4)(B) read as follows: "When the physical presence of a defense attorney is

impracticable under the circumstances, the attorney may consult with the defendant and participate in the proceeding electronically...". This would be the case provided that the equipment is such that it can permit the attorney to consult privately with the defendant and participate meaningfully in the proceeding. This assumes that the attorney has the right to meet with his or her client if the attorney is present, and if not present, the right is not waived. This can be done electronically as long as the equipment is available to permit private communications. Does this cover it?

Mr. DeWolfe remarked that the experience of the OPD in the bail review process is that counsel is made available to the defendants, and prior meetings occur. Then the defendants go before the judge, and they can still waive the presence of counsel. At least, the opportunity to meet with counsel in a private meeting occurs before the hearing. What is being proposed is unworkable, because the defendant would go in front of the commissioner first for advice as to whether or not he or she should meet with counsel. This would delay the process. From the experience of the OPD with bail reviews, if the Rule provides for the opportunity for the defendant to meet with an attorney, so the defendant can decide whether he or she would like to be represented by an attorney, then the attorney appears at the hearing where the commissioner goes through the probable cause issue and then the bail issue. The Chair remarked that this would assume counsel is present.

Judge Clyburn said that this cannot be compared to the bail procedure. During the bail procedure, the defendant has been processed and taken into custody by the detention center, and then the person has been prepped to see the Public Defender. In the situation being discussed, the police officer gets the defendant off the street. The question is when will the commissioner talk to the defendant to give him or her the advice of rights. The defendant will then go through the waiver procedure. If the defendant asks for counsel, there will be some delay where the District Court will have to work out with the detention center or the arresting officer what will happen to the defendant until a Public Defender can be obtained. This is not comparable to the bail review situation, because it is not known who is going to control and keep the defendant at the point in time until a Public Defender can be found. This will have to be worked out with each locality. It will be driven by whether there is a central booking detention center or a cell in a police station.

Mr. Zavin explained that the reason for the new provision he had suggested was so that the Public Defender would have the opportunity to consult with the defendant prior to the initial appearance. Regardless of when the waiver occurs, the private consultation has to happen before the initial hearing. It is not dependent on the clause "unless waived." The Chair asked if this would be for every defendant. Judge Clyburn said that for every person the Public Defender represents, an attorney will be

available, and each detention center is going to decide who will be in the room with the defendant or if there will be a private room and where the policeman will be. All of this will be worked out in each of the locations. Mr. Patterson added that this is the case for every defendant who has elected to be represented.

The Chair commented that he was somewhat concerned about the use of the term "elected." The Court of Appeals had discussed this when they considered jury trials. A defendant does not elect a jury trial. The defendant gets one unless the he or she waives it. Would the same analysis apply to the right to counsel? The defendant gets an attorney, unless he or she waives it. Mr. Patterson acknowledged this, but he pointed out that one does not get a jury trial before the person has decided whether he or she would like one or not. Someone does not get an attorney before the person has decided whether or not he or she would like to waive that right. The language "unless waived" means that everyone who is arrested gets an attorney before the person has decided whether he or she wants an attorney.

Judge Price suggested that the commissioners could have a form which would indicate whether the defendant elects to waive counsel. If the defendant does not waive the right to counsel, then he or she has the right to meet privately with counsel before the hearing is held. Mr. Patterson noted that the clause at the beginning of the sentence suggested by Mr. Zavin should not be "unless waived," it should be "after advice of rights."

Judge Williams commented that this would not be any

different than an unrepresented defendant who appears in front of Judge Williams for a trial. If the defendant does not have an attorney, Judge Williams says to the person, "You have a right to an attorney. This is what an attorney can do for you. You can tell me now if you would like an attorney, or if you would like to give up that right." Judge Williams does not say to the defendant "Go consult with an attorney before you make that election." Why would this procedure be changed at the commissioner level? This would invite delay.

Mr. Schatzow remarked that the purpose of *Richmond* II is so that people will not be incarcerated without having counsel. He did not think that the purpose was that people who are arrested would go before a commissioner, be asked if they would like counsel, and then go off and wait for counsel. The procedure would be that before someone goes in front of a commissioner, the person would have counsel to accompany him or her. There may need to be different procedures in different locations, but in Baltimore City, just like in a bail review hearing, people may be there for 24 hours. They are not being processed every minute. They are moving from cell to cell while nothing is happening. During this period of time, it is envisioned that the Public Defender or whatever counsel the Public Defender works out with contract and panel attorneys would talk to the defendants, and if the defendants do not want a Public Defender or any attorney at all, that would be allowed.

Mr. Schatzow said that if what is being proposed here is a

system for counties that do not have centralized booking areas where the waiver conversation is going to be to tell someone that he or she does not need an attorney, because the person can be released in 20 minutes if he or she waives the right to counsel, then there will be many unknowing, unintelligent, involuntary waivers. As a practical matter, Mr. DeWolfe is planning a system where there is going to be coverage for every place where a commissioner is located. The attorneys should be speaking to the defendants before they go in front of the commissioner.

Mr. Shellenberger expressed the view that it is the defendant's right to representation, and *Richmond* II states that the Public Defender needs to be at the commissioner hearing to provide the representation if the defendant would like to be represented. It is not the right of the attorney, it is the right of the defendant, who should be able to be advised of his or her rights and make a decision as to whether he or she would like representation. This is how it has been done in every single stage of the proceeding. The defendant has a right to represent himself or herself. As a practical matter, there are 7,500 defendants in the State every year, and the Public Defender at the judicial hearing is unable to keep them out of jail. If someone is charged with murder, and the commissioner tells the person that he or she has the right to a Public Defender who will help the defendant and will arrive soon, the commissioner also has to tell the defendant that under the statute, the commissioner cannot release the defendant. It is the defendant's

right to make choices. It is not Mr. DeWolfe's right to say that he represents everyone. The Chair remarked that no one is making that statement.

Mr. Zavin explained that the Public Defender does not require defendants to elect the right to counsel on the record in all cases. When the defendant shows up with an attorney, presumably the defendant has exercised that right. The only time the defendant is advised and the waiver inquiry is conducted is when the defendant shows up without counsel. The Chair said that he would suppose that if the Public Defender is present at the commissioner hearing, at the precinct, or wherever the defendant is, the Public Defender can talk to the defendant. This could happen at the police station, at a prerelease center, or anywhere.

Mr. DeWolfe responded that this is not what he had been hearing. What he had been hearing from one side is that there is to be an election as to whether to meet with an attorney. Mr. DeWolfe agreed that if the Public Defender is present where the defendant is and is afforded the ability to talk to the defendants whether it is in the police station, Central Booking, or anywhere, then the defendant can make an intelligent and knowing waiver if the defendant so chooses. However, if the process that had been discussed at the meeting is put into place, where the defendant is brought before a commissioner or put in front of a commissioner by video and is told that the defendant can have counsel, but it will delay the hearing, the defendant

would be asked how he or she chooses to proceed.

Mr. DeWolfe agreed with Mr. Schatzow that counsel should be available according to the constitutional rights pointed out by *Richmond* II, and the defendant should have the ability to meet with counsel to prepare for the hearing and to move forward. This is the way that it is done in all proceedings. Defendants often waive counsel, but it is usually after the ability to consult with counsel and make a knowing decision as to whether the defendant would like to proceed with or without counsel. Mr. DeWolfe expressed the view that this is the spirit of the opinion.

Professor Colbert remarked that he could appreciate the difficulty of what was being discussed, because this procedure is all new, and it has to be figured out as to when certain events take place and the timing of them. In the jurisdictions in which he had practiced and with which he was familiar, the individual who has been accused of a crime has often been in police custody for some period of time. It could be a lengthy period of time. Some police officers will tell an accused person that he or she does not really need an attorney in the case, and that the officer will put in a good word for the defendant, or the officer will recommend that the defendant be sent home.

Professor Colbert pointed out that the notion of the right to counsel is that the defendant will have an attorney who is loyal to the defendant and will be giving the defendant the proper advice. The defendant should not be represented by a

state official, not even a judicial officer. The relationship is not with an arm of the State, it is the attorney-client relationship. It is the same way that a private attorney would have been contacted by the defendant's family, and the attorney would go to speak to the client before that defendant appears in front of a judicial officer. It is no different for indigent people. They must see their Public Defender and talk with him or her. Many defendants have said that they do not want a Public Defender or a Legal Aid attorney.

The Chair suggested that subsection (e)(1)(A)(iv) could read as follows: "An attorney who will be representing a defendant at the initial appearance shall have the ability to consult with the defendant prior to the commencement of the proceeding." Judge Clyburn asked why this is any different than other stages of the proceeding. The Public Defender would be giving advice to that client as to whether the client should waive counsel. The Chair explained that this was not what he was suggesting. His suggestion was that an attorney will be representing the defendant who becomes the attorney's client. Judge Clyburn commented that the commissioner may have to delay the process. He and his colleagues were prepared to formulate a waiver process just like the one used in court.

Mr. Carbine noted that the job of the Rules Committee is to write rules of procedure. It is not to write a textbook or manual on how to preserve constitutional rights. There is no pending motion on changing Rule 4-216. He expressed the opinion

that the Rule is perfectly workable the way it is now and that a rule cannot be written that can cover every single possible eventuality and scenario that may arise. The Chair agreed that the rules are not intended to be a textbook on criminal procedure. However, the Committee should try to make sure that the rules have sufficient flexibility to make the new procedure work. It will have to be done in different ways in different parts of the State. He would not like to see anything in Rule 4-216 and its companion Rules that would limit legitimate discretion.

Mr. Carbine asked if the commissioner could tell an attorney that he or she cannot talk to the defendant. The Chair replied that he hoped that this would not happen. One of the issues that came up at the meeting the week before was that the first thing that the attorney may want to tell his or her client is that the client should not say anything.

The Chair asked if anyone had a motion to add language to Rule 4-216. No motion was forthcoming. By consensus, the Committee approved Rule 4-216 as presented. The Chair remarked that the issues discussed can be worked out.

The Chair presented Rule 4-216.1, Further Proceedings Regarding Pretrial Release; new Rule 4-216.2, Further Proceedings Regarding Pretrial Release; and Rules 4-102, Definitions; Rule 4-202, Charging Document - Content; 4-212, Issuance, Service, and Execution; 4-213, Initial Appearance of Defendant; 4-214, Defense Counsel; 4-215, Waiver of Counsel; 4-217, Bail Bonds; 4-231,

Presence of Defendant; 4-349, Release After Conviction; 5-101, Scope; and 15-303, Procedure on Petition, for the Committee's consideration.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216.1 to change the title of the Rule; to delete sections (b), (c), (d), and (e); and to revise taglines, reletter the Rule, and make additional stylistic changes, as follows:

Rule 4-216.1. ~~FURTHER PROCEEDINGS REGARDING PRETRIAL RELEASE~~ REVIEW OF COMMISSIONER'S PRETRIAL RELEASE ORDER

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

Generally

~~(1) Generally~~

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

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

~~(2)~~ (b) ~~Counsel~~ Attorney for Defendant

~~(A)~~ (1) Duty of Public Defender

Unless another attorney has entered an appearance or the defendant has

waived the right to ~~counsel~~ an attorney for purposes of the review hearing in accordance with this section, the Public Defender shall provide representation to an eligible defendant at the review hearing.

~~(B)~~ (2) Waiver

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

~~(a)~~ (i) the defendant has a right to ~~counsel~~ an attorney at the review hearing;

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

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

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

~~(ii)~~ (B) If, after the giving of this advice, the defendant indicates a desire to waive ~~counsel~~ an attorney for purposes of the review hearing and the court finds that the ~~defendant knowingly and voluntarily waives the right to counsel for purposes of the review hearing~~ waiver is knowing and voluntary, the court shall announce on the record that finding and proceed pursuant to this Rule.

~~(iii)~~ (C) Any waiver found under this Rule is applicable only to the proceeding under this Rule.

~~(C)~~ (3) Waiver of ~~Counsel~~ Attorney for Future Proceedings

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

~~(3)~~ (c) Determination by Court

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

~~(4)~~ (d) Juvenile Defendant

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

~~(b) Continuance of Previous Conditions~~

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

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

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

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

~~In order to eliminate unnecessary~~

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

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

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

~~Cross reference: See Rule 1-361, Execution of Warrants and Body Attachments. See also, Rule 4-347, Proceedings for Revocation of Probation, which preserves the authority of a judge issuing a warrant to set the conditions of release on an alleged violation of probation.~~

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

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

Source: This Rule ~~is new but~~ is derived~~, in part,~~ from former ~~sections (f), (g), (h), (i), (j), and (k) of Rule 4-216~~ section (a) of Rule 4-216.1 (2012).

Rule 4-216.1 was accompanied by the following Reporter's note.

Rule 4-216.1 is proposed to be split into two separate Rules: Rule 4-216.1, applicable only to review of a Commissioner's

pretrial release order, and new Rule 4-216.2, applicable to further proceedings regarding pretrial release.

Sections (a), (b), (c), and (d) of Rule 4-216.1, as amended, are derived, with stylistic changes, from current Rule 4-216.1 (a)(1), (2), (3), and (4).

Sections (a), (b), (c), and (d) of new Rule 4-216.2 are derived verbatim, from current Rule 4-216.1 (b), (c), (d), and (e).

The provisions of current Rule 2-416.1 (f) [Title 5 not Applicable] are included as section (e) in both Rule 4-216.1 and Rule 4.216.2.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

ADD new Rule 4-216.2, as follows:

DRAFTER'S NOTE: Although Rule 4-216.2 is shown as a new Rule, the language of the Rule is derived *verbatim* from current Rule 4-216.1 (b), (c), (d), (e), and (f).

Rule 4-216.2. FURTHER PROCEEDINGS REGARDING PRETRIAL RELEASE

(a) Continuance of Previous Conditions

When conditions of pretrial release have been previously imposed in the District Court, the conditions continue in the circuit court unless amended or revoked pursuant to section (b) of this Rule.

(b) Amendment of Pretrial Release Order

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

(c) Supervision of Detention Pending Trial

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

(d) Violation of Condition of Release

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

Cross reference: See Rule 1-361, Execution of Warrants and Body Attachments. See also, Rule 4-347, Proceedings for Revocation of Probation, which preserves the authority of a judge issuing a warrant to set the conditions of release on an alleged violation of probation.

(e) Title 5 Not Applicable

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

Source: This Rule is new but is derived, in part, from former ~~sections (f), (g), (h), (i), (j), and (k) of Rule 4-216~~ sections (b), (c), (d), (e), and (f) of Rule 4-216.1 (2012).

Rule 4-216.2 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 4-216.1.

DRAFTER'S NOTE: The amendments to Rule 4-102 were contained in the 177th Report and have been approved by the Court. They are included here for completeness. No additional amendments are proposed.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 100 - GENERAL

AMEND Rule 4-102 by adding a new section (j) pertaining to a preliminary inquiry, by adding a Committee note after section (l), and by making stylistic changes, as follows:

Rule 4-102. DEFINITIONS

The following definitions apply in this Title:

(a) Charging Document

"Charging document" means a written accusation alleging that a defendant has committed an offense. It includes a citation, an indictment, an information, and a statement of charges.

(b) Citation

"Citation" means a charging document, other than an indictment, information, or statement of charges, issued to a defendant by a peace officer.

(c) Defendant

"Defendant" means a person who has been arrested for an offense or charged with an offense in a charging document.

(d) Indictment

"Indictment" means a charging document returned by a grand jury and filed in a circuit court.

(e) Information

"Information" means a charging document filed in a court by a State's Attorney.

(f) Judicial Officer

"Judicial Officer" means a judge or District Court commissioner.

(g) Offense

"Offense" means a violation of the criminal laws of this State or political subdivision thereof.

(h) Peace Officer

"Peace officer" means (1) a "law enforcement officer" as defined in Code, Public Safety Article, §3-101 (e), (2) a "police officer" as defined in Code, Criminal Procedure Article, §2-101 (c), and (3) any

other person authorized by State or local law to issue citations.

(i) Petty Offense

"Petty offense" means an offense for which the penalty may not exceed imprisonment for a period of three months or a fine of five hundred dollars.

(j) Preliminary Inquiry

"Preliminary inquiry" means a pretrial proceeding conducted by a judicial officer when a defendant, who has been served with a citation or summons, appears as directed before the judicial officer for advice of rights in accordance with Rules 4-213 and 4-215.

~~(j)~~ (k) Statement of Charges

"Statement of charges" means a charging document, other than a citation, filed in District Court by a peace officer or by a judicial officer.

~~(k)~~ (l) State's Attorney

"State's Attorney" means a person authorized to prosecute an offense.

Committee note: The definition of "State's Attorney" in Rule 4-102 (l) includes the elected or appointed State's Attorney for a county, the State Prosecutor, the Attorney General when conducting a criminal investigation or prosecution pursuant to Article V, §3 of the Maryland Constitution or other law, and assistants in those offices authorized to conduct a criminal prosecution. *See State v. Romulus*, 315 Md. 526 (1989).

~~(l)~~ (m) Verdict

"Verdict" means the finding of the jury or the decision of the court pertaining to the merits of the offense charged.

~~(m)~~ (n) Warrant

"Warrant" means a written order by a judicial officer commanding a peace officer to arrest the person named in it or to search for and seize property as described in it.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 702 a and M.D.R. 702 a.
Section (b) is derived from former M.D.R. 702 c.
Section (c) is derived from former Rule 702 b and M.D.R. 702 d.
Section (d) is derived from former Rule 702 c.
Section (e) is derived from former Rule 702 d and M.D.R. 702 e.
Section (f) is derived from former M.D.R. 702 f.
Section (g) is derived from former Rule 702 e and M.D.R. 702 g.
Section (h) is new.
Section (i) is derived from former M.D.R. 702 h.
Section (j) is new.
Section ~~(j)~~ (k) is derived from former M.D.R. 702 i.
Section ~~(k)~~ (l) is derived from former Rule 702 f and M.D.R. 702 j.
Section ~~(l)~~ (m) is derived from former Rule 702 g and M.D.R. 702 l.
Section ~~(m)~~ (n) is derived from former Rule 702 h and M.D.R. 702 m.

Rule 4-102 was accompanied by the following Reporter's note.

The amendments to Rule 4-102 were contained in the 177th Report and have been approved by the Court. They are included here for completeness. No additional amendments are proposed.

DRAFTER'S NOTE: The amendments to Rule 4-202 were contained in the 177th Report and have been approved by the Court, <u>except</u> the amendments shown in boldface type are new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-202 by adding to the form in section (a) the phrase "and remain in custody" and language pertaining to a preliminary inquiry, **by requiring the form of notice in a charging document set forth in section (a) to include a notification regarding representation of eligible defendants by the Office of the Public Defender [or a court-appointed attorney] for purposes of the initial appearance and subsequent review hearing**; by changing subsection (b)(1)(A) to refer to a "peace officer"; by adding a cross reference after subsection (b)(1)(A)(i); by specifying who must sign each type of charging document; by adding subsection (b)(2) pertaining to the method of signing a charging document; by adding subsection (c)(1) pertaining to certain specific requirements of citations; by modifying subsection (c)(1)(B) to delete language pertaining to the defendant's signed promise to appear and clarifying the defendant's duty to appear when required; by adding subsection (c)(2) pertaining to a statement of charges; by adding subsection (c)(4) pertaining to a summons in District Court; and by making stylistic changes, as follows:

Rule 4-202. CHARGING DOCUMENT - CONTENT

(a) General Requirements

A charging document shall contain the name of the defendant or any name or

description by which the defendant can be identified with reasonable certainty, except that the defendant need not be named or described in a citation for a parking violation. It shall contain a concise and definite statement of the essential facts of the offense with which the defendant is charged and, with reasonable particularity, the time and place the offense occurred. An allegation made in one count may be incorporated by reference in another count. The statute or other authority for each count shall be cited at the end of the count, but error in or omission of the citation of authority is not grounds for dismissal of the charging document or for reversal of a conviction.

A charging document also shall contain a notice to the defendant in the following form:

TO THE PERSON CHARGED:

1. This paper charges you with committing a crime.

2. If you have been arrested and remain in custody, you have the right to have a judicial officer decide whether you should be released from jail until your trial.

3. If you have been served with a citation or summons directing you to appear before a judicial officer for a preliminary inquiry at a date and time designated or within five days of service if no time is designated, a judicial officer will advise you of your rights, the charges against you, and penalties. The preliminary inquiry will be cancelled if a lawyer has entered an appearance to represent you.

~~3.~~ 4. You have the right to have a lawyer.

~~4.~~ 5. A lawyer can be helpful to you by:

(A) explaining the charges in this paper;

(B) telling you the possible penalties;

(C) helping you at trial;

(D) helping you protect your constitutional rights; and

(E) helping you to get a fair penalty if convicted.

~~5.~~ 6. Even if you plan to plead guilty, a lawyer can be helpful.

~~6.~~ 7. **If you are eligible, the Public Defender or a court-appointed attorney will represent you at your initial appearance before a judicial officer and at any proceeding under Rule 4-216.1 to review an order of a District Court commissioner regarding pretrial release.** If you want a lawyer **for any further proceeding, including trial,** but do not have the money to hire one, the Public Defender may provide a lawyer for you. The court clerk will tell you how to contact the Public Defender.

~~7.~~ 8. If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.

~~8.~~ 9. DO NOT WAIT UNTIL THE DATE OF YOUR TRIAL TO GET A LAWYER. If you do not have a lawyer before the trial date, you may have to go to trial without one.

(b) Signature on Charging Documents

(1) Requirement – Who Must Sign

(A) Before a citation is issued, ~~A citation~~ it shall be signed by ~~a person authorized by law to do so before it is issued~~ the peace officer who issues it.

Cross reference: See Rule 4-102 (h) for definition of "peace officer."

(B) A Statement of Charges shall be

signed by ~~a~~ the peace officer or ~~by a~~ judicial officer who issues it.

(C) An indictment ~~or information~~ shall be signed by the foreperson or acting foreperson of the grand jury and also may be signed by a ~~the~~ State's Attorney ~~of a county or by any other person authorized by law to do so~~.

(D) A criminal information shall be signed by a State's Attorney.

(2) Method of Signing

(A) A charging document filed in paper form shall contain either the handwritten signature of the individual who signed the document or a facsimile signature of that individual affixed in a manner that assures the genuineness of the signature.

(B) Subject to the Rules in Title 20, a charging document filed electronically shall contain a facsimile or digital signature of the individual purporting to be the signer, which shall be affixed in a manner that assures the genuineness of the signature.

(C) If an indictment or criminal information is not signed personally by the elected or appointed State's Attorney for the county but is properly signed by another individual authorized to sign the document, the typed name of the elected or appointed State's Attorney may also appear on the document.

(3) Waiver of Objection

A plea to the merits waives any objection that the charging document is not signed.

(c) Specific Requirements

(1) Citation

(A) A citation shall be (i) under oath of the peace officer who signs it, or (ii) accompanied by a Statement of Probable Cause

signed under oath by the same or another peace officer.

(B) A citation shall contain a command to the defendant to appear in District Court when ~~notified, and shall contain the signed promise of the defendant to appear when required, except in a citation for a parking violation~~ required. ~~Failure of the defendant to sign the promise does not invalidate the citation.~~

(2) Statement of Charges

A Statement of Charges shall include or be accompanied by (A) a Statement of Probable Cause signed under oath, or (B) an Application for Statement of Charges signed under oath, which is sufficient to establish probable cause.

~~(2)~~ (3) Indictment

An indictment shall conclude with the words "against the peace, government, and dignity of the State."

(4) Summons in District Court

A District Court summons shall contain a command to the defendant to appear in District Court as directed.

Cross reference: See Section 13 of Article IV of the Constitution of Maryland and *State v. Dycer*, 85 Md. 246, 36 A. 763 (1897).

(d) Matters Not Required

A charging document need not negate an exception, excuse, or proviso contained in a statute or other authority creating or defining the offense charged. It is not necessary to use the word "feloniously" or "unlawfully" to charge a felony or misdemeanor in a charging document. In describing money in a charging document, it is sufficient to refer to the amount in current money, without specifying the particular notes, denominations, coins, or certificates circulating as money of which

the amount is composed.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 711 a and Rule 711 a.
Section (b) is derived from former M.D.R. 711 b 2 and Rule 711 c.
Section (c) is derived from former M.D.R. 711 b 1 and Rule 711 b.
Section (d) is derived from former Rule 711 d and e and M.D.R. 711 c and d.

Rule 4-202 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-212 (f)(1) to add a reference to new Rule 4-216.2, as follows:

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

. . .

(f) Procedure - When Defendant in Custody

(1) Same Offense

When a defendant is arrested without a warrant, the defendant shall be taken before a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after arrest. When a charging document is filed in the District Court for the offense for which the defendant is already in custody a warrant or summons need not issue. A copy of the charging

document shall be served on the defendant promptly after it is filed, and a return shall be made as for a warrant. When a charging document is filed in the circuit court for an offense for which the defendant is already in custody, a warrant issued pursuant to subsection (d)(2) of this Rule may be lodged as a detainer for the continued detention of the defendant under the jurisdiction of the court in which the charging document is filed. Unless otherwise ordered pursuant to Rule 4-216, ~~or~~ 4-216.1, or 4-216.2, the defendant remains subject to conditions of pretrial release imposed by the District Court.

. . .

Rule 4-212 was accompanied by the following Reporter's note.

Rules 4-212 (f)(1), 4-217, 4-349 (c), 5-101 (b)(6), and 15-303 (b)(1) are proposed to be amended by the addition of references to new Rule 4-216.2. Additionally in Rule 4-217 (j)(1)(D), a reference to Rule 4-216.1 is revised to refer to Rule 4-216.2.

DRAFTER'S NOTE: The amendments to Rule 4-213 were contained in the 177th Report and have been approved by the Court, except the amendments shown in boldface type are new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-213 to add the language "or citation" to subsection (b)(1), to add a new subsection (b)(2) pertaining to preliminary inquiries, **to revise a cross reference**

following subsection (a)(2), and to make stylistic changes, as follows:

Rule 4-213. INITIAL APPEARANCE OF DEFENDANT

(a) In District Court Following Arrest

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

(1) Advice of Charges

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

(2) Advice of Right to Counsel

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

Cross reference: See Rules 4-216 (e) with respect to ~~**counsel**~~ **the right to an attorney** at an initial appearance before a ~~**judge**~~ **judicial officer** and 4-216.1 ~~(a)~~ **(b)** with respect to ~~**counsel**~~ **the right to an attorney** at a hearing to review a pretrial release

decision of a commissioner.

(3) Advice of Preliminary Hearing

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

(4) Pretrial Release

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

(5) Certification by Judicial Officer

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

(6) Transfer of Papers by Clerk

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

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

(b) In District Court ~~Following Summons~~ **Following Summons or Citation**

(1) **Generally**

When a defendant appears before the District Court pursuant to a summons or

citation, the court shall proceed in accordance with Rule 4-301.

(2) Preliminary Inquiry

When a defendant has (A) been charged by a citation or served with a summons and charging document for an offense that carries a penalty of incarceration and (B) has not previously been advised by a judicial officer of the defendant's rights, the defendant may be brought before a judicial officer for a preliminary inquiry advisement if no attorney has entered an appearance on behalf of the defendant. The judicial officer shall inform the defendant of each offense with which the defendant is charged and advise the defendant of the right to counsel and the matters set forth in subsection (a)(1), (2), and (3) of this Rule. The judicial officer shall certify in writing the judicial officer's compliance with this subsection.

(c) In Circuit Court Following Arrest or Summons

The initial appearance of the defendant in circuit court occurs when the defendant (1) is brought before the court by reason of execution of a warrant pursuant to Rule 4-212 (e) or (f)(2), or (2) appears in person or by written notice of counsel in response to a summons. In either case, if the defendant appears without counsel the court shall proceed in accordance with Rule 4-215. If the appearance is by reason of execution of a warrant, the court shall (1) inform the defendant of each offense with which the defendant is charged, (2) ensure that the defendant has a copy of the charging document, and (3) determine eligibility for pretrial release pursuant to Rule 4-216.

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

Rule 4-213 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-214 to add cross references following sections (a) and (d), as follows:

Rule 4-214. DEFENSE COUNSEL

(a) Appearance

Counsel retained or appointed to represent a defendant shall enter an appearance in writing within five days after accepting employment, after appointment, or after the filing of the charging document in court, whichever occurs later. An appearance entered in the District Court will automatically be entered in the circuit court when a case is transferred to the circuit court because of a demand for jury trial. In any other circumstance, counsel who intends to continue representation in the circuit court after appearing in the District Court must re-enter an appearance in the circuit court.

Cross reference: See Rules 4-216 (e) and 4-216.1 (b) with respect to the automatic termination of the appearance of the Public Defender or court-appointed attorney upon the conclusion of an initial appearance before a judicial officer and upon the conclusion of a hearing to review a pretrial release decision of a commissioner if no general appearance under this Rule is entered.

(b) Extent of Duty of Appointed Counsel

When counsel is appointed by the Public Defender or by the court, representation extends to all stages in the proceedings, including but not limited to custody, interrogations, preliminary hearing, pretrial motions and hearings, trial, motions for modification or review of sentence or new trial, and appeal. The Public Defender may relieve appointed counsel and substitute new counsel for the defendant without order of court by giving notice of the substitution to the clerk of the court. Representation by the Public Defender's office may not be withdrawn until the appearance of that office has been stricken pursuant to section (d) of this Rule. The representation of appointed counsel does not extend to the filing of subsequent discretionary proceedings including petition for writ of certiorari, petition to expunge records, and petition for post conviction relief.

(c) Inquiry into Joint Representation

(1) Joint Representation

Joint representation occurs when:

(A) an offense is charged that carries a potential sentence of incarceration;

(B) two or more defendants have been charged jointly or joined for trial under Rule 4-253 (a); and

(C) the defendants are represented by the same counsel or by counsel who are associated in the practice of law.

(2) Court's Responsibilities in Cases of Joint Representation

If a joint representation occurs, the court, on the record, promptly and personally shall (A) advise each defendant of the right to effective assistance of counsel, including separate representation and (B) advise counsel to consider carefully any potential areas of impermissible conflict of interest

arising from the joint representation. Unless there is good cause to believe that no impermissible conflict of interest is likely to arise, the court shall take appropriate measures to protect each defendant's right to counsel.

Cross reference: See Rule 1.7 of the Maryland Lawyers' Rules of Professional Conduct.

(d) Striking Appearance

A motion to withdraw the appearance of counsel shall be made in writing or in the presence of the defendant in open court. If the motion is in writing, moving counsel shall certify that a written notice of intention to withdraw appearance was sent to the defendant at least ten days before the filing of the motion. If the defendant is represented by other counsel or if other counsel enters an appearance on behalf of the defendant, and if no objection is made within ten days after the motion is filed, the clerk shall strike the appearance of moving counsel. If no other counsel has entered an appearance for the defendant, leave to withdraw may be granted only by order of court. The court may refuse leave to withdraw an appearance if it would unduly delay the trial of the action, would be prejudicial to any of the parties, or otherwise would not be in the interest of justice. If leave is granted and the defendant is not represented, a subpoena or other writ shall be issued and served on the defendant for an appearance before the court for proceedings pursuant to Rule 4-215.

Cross reference: Code, Courts Article, §6-407 (Automatic Termination of Appearance of Attorney). **See Rules 4-216 (e) and 4-216.1 (b) providing for a limited appearance by the Public Defender or court-appointed attorney in initial appearance proceedings before a judicial officer and hearings to review a pretrial release decision by a commissioner if no general appearance under this Rule is entered.**

Source: This Rule is in part derived from former Rule 725 and M.D.R. 725 and in part from the 2009 version of Fed. R. Crim. P. 44.

Rule 4-214 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 4-216.

DRAFTER'S NOTE: The amendments to Rule 4-215 were contained in the 177th Report and have been approved by the Court, except the amendments shown in boldface type are new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-215 by adding a new subsection (a)(6)pertaining to a defendant charged with an offense that carries a penalty of incarceration, by adding to section (c) a reference to Rule 4-213 (b), **and by revising a cross reference following section (e),** as follows:

Rule 4-215. WAIVER OF COUNSEL

(a) First Appearance in Court Without Counsel

At the defendant's first appearance in court without counsel, or when the defendant appears in the District Court without counsel, demands a jury trial, and the record does not disclose prior compliance with this section by a judge, the court shall:

(1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel.

(2) Inform the defendant of the right to counsel and of the importance of assistance of counsel.

(3) Advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any.

(4) Conduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel.

(5) If trial is to be conducted on a subsequent date, advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.

(6) If the defendant is charged with an offense that carries a penalty of incarceration, determine whether the defendant had appeared before a judicial officer for an initial appearance pursuant to Rule 4-213 or a hearing pursuant to Rule 4-216 and, if so, that the record of such proceeding shows that the defendant was advised of the right to counsel.

The clerk shall note compliance with this section in the file or on the docket.

(b) Express Waiver of Counsel

If a defendant who is not represented by counsel indicates a desire to waive counsel, the court may not accept the waiver until after an examination of the defendant on the record conducted by the court, the State's Attorney, or both, the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to counsel. If the file or docket does not reflect compliance with section (a) of this Rule, the court shall comply with that section as part of the

waiver inquiry. The court shall ensure that compliance with this section is noted in the file or on the docket. At any subsequent appearance of the defendant before the court, the docket or file notation of compliance shall be prima facie proof of the defendant's express waiver of counsel. After there has been an express waiver, no postponement of a scheduled trial or hearing date will be granted to obtain counsel unless the court finds it is in the interest of justice to do so.

(c) Waiver by Inaction - District Court

In the District Court, if the defendant appears on the date set for trial without counsel and indicates a desire to have counsel, the court shall permit the defendant to explain the appearance without counsel. If the court finds that there is a meritorious reason for the defendant's appearance without counsel, the court shall continue the action to a later time, comply with section (a) of this Rule, if the record does not show prior compliance, and advise the defendant that if counsel does not enter an appearance by that time, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds that there is no meritorious reason for the defendant's appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the trial only if (1) the defendant received a copy of the charging document containing the notice as to the right to counsel and (2) the defendant either (A) is charged with an offense that is not punishable by a fine exceeding five hundred dollars or by imprisonment, or (B) appeared before a judicial officer of the District Court pursuant to Rule 4-213 (a) or (b) or before the court pursuant to section (a) of this Rule and was given the required advice.

(d) Waiver by Inaction - Circuit Court

If a defendant appears in circuit court without counsel on the date set for

hearing or trial, indicates a desire to have counsel, and the record shows compliance with section (a) of this Rule, either in a previous appearance in the circuit court or in an appearance in the District Court in a case in which the defendant demanded a jury trial, the court shall permit the defendant to explain the appearance without counsel. If the court finds that there is a meritorious reason for the defendant's appearance without counsel, the court shall continue the action to a later time and advise the defendant that if counsel does not enter an appearance by that time, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds that there is no meritorious reason for the defendant's appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the hearing or trial.

(e) Discharge of Counsel - Waiver

If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits the defendant to discharge counsel, it shall comply with subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance.

Cross reference: See Rule 4-216 (e) with

respect to waiver of ~~**counsel**~~ **an attorney** at an initial appearance before a judge and Rule 4-216.1 ~~**(a)**~~ **(b)** with respect to waiver of ~~**counsel**~~ **an attorney** at a hearing to review a pretrial release decision of a commissioner.

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

Rule 4-215 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-217 by deleting a certain reference to Rule 4-216.1 and adding references to new Rule 4-216.2, as follows:

Rule 4-217. BAIL BONDS

(a) Applicability of Rule

This Rule applies to all bail bonds taken pursuant to Rule 4-216, ~~or~~ 4-216.1, or 4-216.2, and to bonds taken pursuant to Rules 4-267, 4-348, and 4-349 to the extent consistent with those rules.

. . .

(j) Discharge of Bond - Refund of Collateral Security

(1) Discharge

The bail bond shall be discharged when:

(A) all charges to which the bail bond applies have been stetted, unless the bond has been forfeited and 10 years have elapsed since the bond or other security was posted; or

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

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

(D) the court has revoked the bail bond pursuant to Rule ~~4-216.1~~ 4-216.2 or the defendant has been convicted and denied bail pending sentencing; or

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

Cross reference: See Code, Criminal Procedure Article, §5-208 (d) relating to discharge of a bail bond when the charges are stetted. See also Rule 4-349 pursuant to which the District Court judge may deny release on bond pending appeal or may impose different or greater conditions for release after conviction than were imposed for the pretrial release of the defendant pursuant to Rule 4-216, ~~or~~ 4-216.1, or 4-216.2.

. . .

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

See the Reporter's note to Rule 4-212.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-231 to conform internal references to amendments to Rule 4-216.1 and to add a sentence to the Committee note at the end of the Rule, as follows:

Rule 4-231. PRESENCE OF DEFENDANT

(a) When Presence Required

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

(b) Right to be Present - Exceptions

A defendant is entitled to be physically present in person at a preliminary hearing and every stage of the trial, except (1) at a conference or argument on a question of law; (2) when a nolle prosequi or stet is entered pursuant to Rules 4-247 and 4-248. Cross reference: Code, Criminal Procedure Article, §11-303.

(c) Waiver of Right to be Present

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

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

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

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

(d) Video Conferencing in District Court

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

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

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

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

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

Committee note: Except when specifically covered by this Rule, the matter of presence of the defendant during any stage of the proceedings is left to case law and the Rule is not intended to exhaust all situations. By the addition of section (d) to the Rule, the Committee intends no inference concerning the use of video conferencing in other contexts. **Subsection (d)(4) does not preclude the conducting of a review proceeding under Rule 4-216.1 by video conferencing merely because the State's Attorney or a defendant's attorney participated in an initial appearance electronically or by telecommunication pursuant to Rule 4-216 (e)(4) if the defendant was physically present before the judicial officer.**

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

Rule 4-231 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-349 (c) to add a reference to new Rule 4-216.2, as follows:

Rule 4-349. RELEASE AFTER CONVICTION

. . .

(c) Conditions of Release

The court may impose different or greater conditions for release under this Rule than had been imposed upon the defendant before trial pursuant to Rule 4-216, ~~or~~ Rule 4-216.1, 4-216.2. When the defendant is released pending sentencing, the condition of any bond required by the court shall be that the defendant appear for further proceedings as directed and surrender to serve any sentence imposed. When the defendant is released pending any appellate review, the condition of any bond required by the court shall be that the defendant prosecute the appellate review according to law and, upon termination of the appeal, surrender to serve any sentence required to be served or appear for further proceedings as directed. The bond shall continue until discharged by order of the court or until surrender of the

defendant, whichever is earlier.

. . .

Rule 4-349 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 4-212.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 5-101 (b) to add a reference to new Rule 4-216.2, as follows:

Rule 5-101. SCOPE

. . .

(b) Rules Inapplicable

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

(1) Proceedings before grand juries;

(2) Proceedings for extradition or rendition;

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

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

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

(6) Pretrial release under Rule 4-216, ~~or~~ 4-216.1, or 4-216.2 or release after conviction under Rule 4-349;

(7) Preliminary hearings under Rule 4-221;

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

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

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

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

(12) Any other proceeding in which, prior to the adoption of the rules in this Title, the court was traditionally not bound by the common-law rules of evidence.

Committee note: The Rules in this Chapter are not intended to limit the Court of Appeals in defining the application of the rules of evidence in sentencing proceedings in capital cases or to override specific statutory provisions regarding the admissibility of evidence in those proceedings. See, for example, *Tichnell v. State*, 290 Md. 43 (1981); Code, Correctional Services Article, §6-112 (c).

. . .

Rule 5-101 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 4-212.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 300 - HABEAS CORPUS

AMEND Rule 15-303 (b) to add a reference to new Rule 4-216.2, as follows:

Rule 15-303. PROCEDURE ON PETITION

. . .

(b) Bail

(1) Pretrial

If a petition by or on behalf of an individual who is confined prior to or during trial seeks a writ of habeas corpus for the purpose of determining admission to bail or the appropriateness of any bail set, the judge to whom the petition is directed may deny the petition without a hearing if a judge has previously determined the individual's eligibility for pretrial release or the conditions for such release pursuant to Rule 4-216, ~~or~~ 4-216.1, or 4-216.2 and the petition raises no grounds sufficient to warrant issuance of the writ other than grounds that were raised when the earlier pretrial release determination was made.

Cross reference: Rule 4-213 (c).

(2) After Conviction

(A) Except as otherwise provided in subsection (2)(B) of this section, if a petition by or on behalf of an individual confined as a result of a conviction pending sentencing or exhaustion of appellate review seeks a writ of habeas corpus for the purpose of determining admission to bail or the appropriateness of any bail set, the judge to whom the petition is directed may deny the writ and order that the petition be treated as a motion for release or for amendment of

an order of release pursuant to Rule 4-349. Upon entry of the order, the judge shall transmit the petition, a certified copy of the order, and any other pertinent papers to the trial judge who presided at the proceeding as a result of which the individual was confined. Upon receiving of the transmittal, the trial judge shall proceed in accordance with Rule 4-349.

(B) If a petition directed to a circuit court judge is filed by or on behalf of an individual confined as a result of a conviction in the District Court that has been appealed to a circuit court, the circuit court judge shall act on the petition and may not transmit or refer the petition to a District Court judge.

. . .

Rule 15-303 was accompanied by the following Reporter's note.

See the Reporter's note to Rule 4-212.

The Chair told the Committee that Rule 4-216.1 had very few changes, all of which were stylistic. The decision to split Rule 4-216.1 into two rules was purely for style reasons. This is why Rule 4-216.1 and Rule 4-216.2 have been drafted. The remainder of the Rules, except for Rule 4-231, had already been approved by the Committee, except for the bolded language in those Rules, which consisted of mostly stylistic changes or the addition of cross references. What was added to the Rules was language that the Committee had approved previously, not on the issue discussed at the meeting today, but on the issue of providing for a preliminary inquiry, which the District Court had requested to be added. Those amendments had already been approved by the

Committee and sent to the Court of Appeals. The Court had held a hearing on the Rules and approved them, but the Rules had not yet been adopted. Since these same Rules were being amended for the purpose of today's meeting, the two sets of amendments had been put together, so the Rules do not have to be amended twice. This was the reason that the conforming amendments in the Rules addressing preliminary inquiries had been included in the meeting materials.

By consensus, the Committee approved Rules 4-216.1, 4-216.2, 4-102, 4-202, 4-212, 4-213, 4-214, 4-215, 4-217, 4-349, 5-101, and 15-303 as presented.

The Chair noted that the only other change that was substantive was to Rule 4-231, and it was an addition of one sentence to the Committee note in the Alternate Version of the Rule. The Reporter pointed out that this addition became moot with the deletion of subsection (d)(4) of Rule 4-216, so it was not necessary. The Committee approved Rule 4-231 as presented in the meeting materials.

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