TENTATIVE DRAFT

MARYLAND RULES OF PROCEDURE

CHAPTER 800

APPEALS TO THE COURT OF APPEALS

Published by

THE MICHIE COMPANY

CHARLOTTESVILLE, VIRGINIA

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Preface

There is herewith submitted to the Bar of Maryland a tentative draft of Chapter 800 of the Maryland Rules of Procedure. This Chapter deals solely with the matter of appeals to the Court of Appeals of Maryland.

Article 5 of the Code, dealing with appeals, has 108 sections, many of which contain elaborate provisions as to both substantive and procedural matters. In addition, it is estimated that there are in excess of 200 other statutes which contain provisions as to the time of appeal, time of filing records, advancing cases for argument, etc. Many of these statutes are referred to generally in the Committee notes following the Rules, but the Committee has not found it practical to specify in detail the effect of each rule upon all statutes. Checking so many widely scattered, often inconsistent or irreconcilable provisions, has in the past presented an intolerable burden to the busy and conscientious lawyer. It is hoped that the Chapter herewith submitted will simplify this task.

It was with this in mind, undoubtedly, that some judges of the Court of Appeals indicated that the Court would welcome a thorough-going revision of the present Rules, a view in which the members of the Committee wholeheartedly concurred. With this object in view, the Committee discarded its tentative codification of the existing statutes and rules respecting appeals and undertook to rewrite the appeals rules completely.

Accordingly, the accompanying tentative draft of Chapter 800, unlike the June, 1955, tentative draft of other Chapters of the Maryland Rules of Procedure, is not a codification of the existing rules or statutes but a complete revision, rewriting, rearrangement and overhauling, with much new material added in an attempt to provide a complete system of rules governing appeals to the Court of Appeals. For this reason it is exceedingly important that the Bench and Bar, in considering this Chapter, approach it not from the standpoint of what we presently have in the rules and statutes, but from the standpoint of whether the draft of this Chapter presents a logical and comprehensive system of rules governing appeals, whether the rules are stated simply and phrased clearly, and whether they are practicable and workable.

A comparison of the Table of Contents with the source lines will give some idea of the extent of the rearrangement. It will be noted that all rules in this Chapter apply to all types of appeals, including law, equity and criminal appeals, except as otherwise specified. The ordinary division of rule numbering to indicate rules applicable generally, those applicable in equity and those applicable at law, as employed in the Tentative Draft of June, 1955, is therefore not followed in this Chapter.

It will be noted that with the minor exception of Rule 809, the draft of Chapter 800 herewith submitted does not contain any provisions with respect to the question of when an appeal to the Court of Appeals of Maryland may or may not be allowed. The Committee felt that this was a substantive and not a procedural matter and hence was the subject of regulation by the Legislature rather than by the Court of Appeals. Rule 809 has been included only because it deals with a matter specifically delegated to the Court of Appeals by the Legislature.

There are no rules in this draft which have not been changed to some extent. This is true even of those rules recently adopted by the Court of Appeals, although changes in such rules are not extensive. For this reason it has not been practicable to indicate new matter by italicization, as was done in the Tentative Draft of June, 1955. However, except for two matters presently to be discussed, there is no substantial change in basic Maryland appellate practice. One of these changes is found in Rule 815, which requires an appeal bond by the appellant in the amount of $250.00 to cover costs. The other, change will be found in

Rules 806 and 837. The latter Rule contemplates a hearing on preliminary motions in the Court of Appeals in advance of argument on the merits. Thus a motion to dismiss, which might dispose of the entire appeal, may be heard by the Court on the preliminary question only and allow briefs to be subsequently filed on the merits in the event the motion does not prevail. Rule 806 provides for motion days to consider preliminary questions.

The Committee recognizes that these changes are innovations in Maryland practice. There is a difference of opinion among members of the Committee as to the wisdom of these changes and the Committee has withheld even tentative approval of these two Rules pending response from the Bar of the State with respect thereto. Accordingly the Committee submits these suggestions to the Bar for comment before taking final action thereon. It is urged that members of the Bar give special thought to these two suggestions and give the Committee the benefit of their views thereon.

The Committee repeats its admonition in the Preface to the Tentative Draft of June, 1955, that it has undoubtedly been guilty of errors both of commission and omission, and the request made in the Preface of that Tentative Draft is also repeated, that the Committee welcomes careful consideration, comment and criticism. Suggestions should be addressed to the Committee's Reporter, Mr. Frederic W. Invernizzi, 621 Court House, Baltimore 2, Maryland. The Committee feels sure that the rules governing appeals will be a whole lot easier to find, better integrated, and much less archaic and verbose in Chapter 800 as now submitted than in its statutory predecessor.

In view of the fact that the proposed Chapter 800 will render much of Article 5 (appeals) of the Code obsolete, it will be desirable to re-enact Article 5 to delete the procedural matters and re-state the substantive provisions.

The Committee has made a tentative draft of a bill to accomplish this purpose. A copy of this draft is being mailed to members of the State and Baltimore City Bar Associations with this tentative draft of Chapter 800, so that the entire field of suggested appellate law may be considered together. The proposed draft of Article 5 will be reconsidered by the Committee in the light of suggestions and criticisms received from members of the Bench and Bar. Thereafter it will be transmitted to the Department of Legislative Reference for its consideration and for submission to the General Assembly.

JOHN B. GRAY, JR.
Chairman

Chapter 800.

Appeals to the Court of Appeals.

RULES 801-899

DEFINITIONS

Rule 800. Definitions.

As used in Chapter 800:

(a) "This Court" means the Court of Appeals of Maryland.

(b) "Lower court" means the court from which an appeal is taken to the Court of Appeals of Maryland, and in case of an appeal from the Commissioner of the Land Office means the Commissioner of the Land Office.

(c) "Clerk of the lower court" also means the Register of Wills in the case of an appeal from the orphans' court, and the Commissioner of the Land Office in the case of an appeal from said Commissioner.

(Proposed.)

TERMS—DOCKET—APPEARANCE—MOTION DAY

Rule 803. Terms of Court—One Term Annually.

This Court shall hold one term annually, beginning on the first Monday in October in each year and continuing until the beginning of the next term.

(C. of A. 26 (4827) (10).)

Rule 804. Court Docket.

a. *Preparation—Order of Cases.*

In preparing the court docket for each term, the Clerk shall place the cases on said docket in the order in which the records are received by him, including all cases not disposed of at the preceding term. All records received on or after April first in any year shall be entered by the Clerk as of the term commencing on the first Monday in October of such year. The Clerk shall not place any case upon the docket until the record therein has been received in his office, nor shall he be required to file the record or docket the case until the filing fee provided by section d of Rule 811 (How Appeals to Be Taken) has been received by him.
(C. of A. 23 (as amended 3/22/55); C. of A. 27, §§ 1, 3 (4827) (11), W.B. 805a, c; C. of A. 10, § 6 (1954 Supp. 360) (6), art. 5, § 44.)

b. *Separate Appeals on Same Record.*

Separate appeals on the same record (whether in the same action or in two or more actions consolidated in the lower court) shall be docketed as one case on appeal.
(C. of A. 29 (4828) (12), W.B. 805e.)

c. *Publication.*

Before the beginning of each term and on the first Monday in every second month after the beginning of the term, the Clerk shall cause to be printed in The Daily Record of Baltimore a list of all cases docketed up to that time which have not been heard, including those continued or postponed and those ordered to be reargued, which list so printed in The Daily Record he shall cause to be sent to counsel of record in all cases on said list.
(C. of A. 27, § 2 (4827) (11), W.B. 805b.)

Committee Note.—The wording of section b of this Rule was substituted for the words "cross appeals."

Rule 805. Entry of Appearance of Counsel.

Upon the filing of the record on appeal, the Clerk of this Court shall enter the appearance of the counsel who appeared in the lower court, except such as have directed their appearance to be stricken out in the lower court, as shown by the record, or have ordered the Clerk of this Court not to enter their appearance. Other appearances may be entered on the written order of counsel filed with the Clerk of this Court.
(C. of A. 31 (1) (4828) (12), W.B. 818a.)

Rule 806. Motion Day.

a. *Designation by This Court.*

This Court will designate at least one day in each month as motion day for the hearing of motions which this Court has directed to be argued in advance of argument on the merits.

b. *Assignment of Motions for Hearing.*

All motions to dismiss which this Court has, pursuant to Rule 837 (Separate Oral Argument on Motion to Dismiss), ordered to be argued in advance of argument on the merits and such other motions as may be directed by the Chief Judge of this Court shall also be assigned for hearing on the earliest practicable motion day. The Clerk shall not assign more than ten motions for hearing on any one motion day.

c. *Notice to Counsel by Clerk.*

At least five days before each motion day the Clerk shall by telephone or mail

advise all counsel of record in all cases assigned for hearing on such motion day of the assignment thereof.
(Proposed.)

Committee note.—This Rule is entirely new and is submitted by the Committee without any definite recommendation. Mr. Young, the Deputy Clerk, thought that under the present practice such a day would not be necessary because of the infrequency of such motions requiring hearing. However, if Rule 837 (Separate Oral Argument on Motion to Dismiss) is adopted, motion days may become advisable. The fixing of such days was intentionally left in the discretion of the Court of Appeals.

APPEAL NOT ALLOWED

Rule 809. Order Overruling Demurrer Not Appealable.

An appeal shall not be allowed from an order of a court of equity overruling a demurrer to a bill of complaint, but the ruling of the lower court on the demurrer shall be reviewable upon appeal from the final decree.
(C. of A. 6A (4822) (3).)

METHOD OF APPEAL—TIMES FOR TAKING

Rule 810. Method of Review—By Appeal.

The sole method of securing review by this Court shall be by appeal, except where certiorari may be permitted by law. The writ of error, a petition assigning error, and an application or a petition to remove the record are abolished.
(C. of A. 1 (4821) (1), art. 5, § 4, W.B. 831.)

Committee note.—Because the use of writs of error as a method of getting to the Court of Appeals has become practically obsolete, the Committee was of the opinion that such writs, and the substitutes therefor, the petition or application to remove the record, provided for by Court of Appeals Rule 1, and art. 5, § 4, and the petition assigning errors, provided for by art. 5, § 3, should be abolished altogether.

Poe, Practice (Tiffany's Edition), in §§ 817-821 confirms the fact that writs of error have fallen into disuse, and in § 821 says that there is no distinction in principle between writs of error and appeals. Art. 5, § 29 provided for trials of issues of fact in connection with writs of error, but Poe, in § 819, points out that the matter can be handled much more simply on appeal, and the Court can remand for a new trial to have any disputed questions of fact determined.

Rule 811. How Appeal to Be Taken.

a. *By Filing Order.*

An appeal to this Court shall be taken by filing an order for appeal with the clerk of the lower court; provided, however, that an application for leave to prosecute an appeal in a habeas corpus case may be filed either with the Clerk of this Court or with the clerk of the lower court to be transmitted by him to this Court.
(Art. 5, § 1, C. of A. 49 (4833) (20).)

b. *By Application for Certiorari.*

An application to this court for a writ of certiorari where such writ is allowed by law shall be filed with the Clerk of this Court.
(Proposed.)

c. *Entry of Order—Transmitting Record.*

Upon the filing of an order for appeal, the clerk of the lower court shall enter such order upon his docket and transmit the record as provided in Rule 825 (Record—Time for Transmitting) and Rule 826 (Record on Appeal).
(Art. 5, § 1.)

d. *Filing Fee—Deposit with Clerk of Lower Court.*

Within the time prescribed for transmitting the record by Rule 825 (Record—Time for Transmitting) or by order entered pursuant thereto, the appellant shall deposit with the clerk of the lower court the fee prescribed by law or by these Rules to be paid to the Clerk of this Court for filing the record and all duties incident thereto. Such fee shall be forwarded to the Clerk of this Court with the record.

(C. of A. 23 (as amended 3/22/55), art. 5, § 53 (last sentence), art. 36, § 13 (1).)

Committee note.—Section b of this Rule was included to take care of the isolated situations where certiorari may still be used, of which the procedure set forth in art. 5, § 105, allowing certiorari to secure uniformity of decision after appeals from Justices of the Peace to the common-law courts is an example. The Committee recognizes that this Rule is not complete in that it does not prescribe the procedure to be followed where certiorari rather than appeal is used to obtain a review of the action of the lower court by the Court of Appeals. Certiorari is rarely used and at the present time, there is no rule or statute prescribing the procedure to be followed. The Committee has this matter under study and will, at a later date, recommend a rule prescribing the procedure to be followed in making application for a writ of certiorari.

Rule 812. Appeal—Time for Filing.

a. *Within Thirty Days.*

Whenever an appeal to this Court or an application to this Court for a writ of certiorari is permitted by law, the order for appeal or the application for a writ of certiorari shall be filed within thirty days from the date of the judgment appealed from, except as provided in section b of this Rule.

(C. of A. 2, art. 5, § 6, W.B. 832; C. of A. 3, art. 5, § 8, art. 47, § 33, W.B. 833; C. of A. 5, W.B. 811a; C. of A. 8, art. 5, § 91, W.B. 813; C. of A. 15, art. 5, § 73, W.B. 814.)

b. *Issues from Equity or Orphans' Court.*

In case of an appeal from a decision, determination or ruling of a court of law to which issues have been sent from an equity or an orphans' court to be tried, the order for appeal shall be filed within thirty days from the date the verdict was rendered unless a motion for a new trial was filed, in which event the order for appeal shall be filed within thirty days from the date such motion for a new trial was denied, overruled or dismissed.

(C. of A. 2, art. 5, § 6.)

Committee note.—The Committee calls attention to the fact that by this Rule the time for taking an appeal is uniformly made thirty days in all cases, civil as well as criminal. This is in line with a specific request of the Court of Appeals. Consequently, a great many statutes, providing for the most part for ultimate appeals to the Court of Appeals from lower court review of the actions of various administrative or quasi-judicial bodies, will be superseded, in so far as they specify different times for appeal. In addition to the longer or shorter time specified in such statutes, many contain indefinite provisions providing that appeals shall be taken "as in civil cases," "as in equity," "as other appeals," etc.

Many of the above statutes, the procedural portions of which will be superseded, also contain provisions for "prompt hearing," "immediate hearing," etc. In this connection the Committee contacted the Deputy Bank Commissioner, the Deputy Insurance Commissioner, and others experienced in the fields involved, and none of them were able to think of any reason for shortening the time for filing either the appeal or the record.

Perhaps the most radical change effected by this Rule is to lengthen the time for appeal in criminal cases. At the present time, except in capital cases, appeals in criminal cases must be filed within ten days. Granting the desirability of expeditious disposition of appeals in criminal cases, nevertheless, the Committee does not feel that it is necessary to shorten the appeal period to ten days in criminal cases, particularly since under the existing rule

sixty days is allowed for transmitting the record. Under the rules recommended in this Chapter the appeal time in criminal cases is made thirty days, but the time for transmitting the record is shortened to thirty days with authority in the lower court and the Court of Appeals either to shorten or lengthen the thirty day period for transmitting the record.

It should be noted that the Committee is recommending superseding the last portion of Court of Appeals Rule 5 which allows thirty days to appeal after the discovery of fraud or mistake. It does not seem necessary to make a special provision for appeal in the case of fraud or mistake because this can be taken care of in the lower court under procedures presently available. A bill to vacate may be used in the case of fraud (Miller, Equity Procedure, p. 370) and a petition to vacate may be used in the case of mistake (Miller, Equity Procedure, §§ 288-292.

Rule 813. When Lower Court May Strike Out Appeal.

If the clerk of the lower court has prepared the record as required by Rule 827 (Record on Appeal) and the appellant has neglected or omitted to pay for such record, or by reason of any other neglect or omission on the part of the appellant, the record has not been transmitted to this Court within the time prescribed pursuant to Rule 825 (Record—Time for Transmitting), the lower court may, on motion, strike out the order for appeal and issue execution or take other proceedings as if such order for appeal had not been filed.
(Art. 5, § 46.)

STAY AND BOND

Rule 815. Bond for Costs on Appeal.

a. *To Be Filed with Order for Appeal—Exceptions.*

An order for appeal shall not be effective unless a bond for costs on appeal is filed simultaneously therewith; except that a bond for costs on appeal shall not be required of the State of Maryland or any officer or agency thereof or of any other appellant who may be excused from giving such bond by order of the lower court. If a supersedeas bond is filed pursuant to Rule 817 (Stay of Execution of Final Judgment), a separate bond for costs on appeal pursuant to this Rule shall not be required.

b. *Penalty and Condition of Bond.*

A bond for costs on appeal shall be in the sum of two hundred fifty dollars ($250.00) unless the lower court fixes a different amount. The bond shall have sufficient surety to be approved by the clerk of the lower court and shall be conditioned to secure the payment of costs if the appeal is dismissed by the appellant or the payment of such costs as this Court may award against the appellant.
(Proposed.)

Committee note.—This Rule will impose a new requirement that a bond for costs on appeal be filed in every case unless the giving of such a bond is excused by the lower court. Under the existing rules and statutes there is no requirement that a bond for costs on appeal, as distinguished from a supersedeas bond, be given. Committee opinion as to the necessity for this Rule was divided and it is submitted for the consideration of the Bench and Bar. It is used successfully in many states and in the Federal practice (Rule 73 c).

Rule 816. Stay of Execution by Filing Order for Appeal.

In the following actions the filing of an order for appeal pursuant to Rule 812 (Appeal—Time for Filing) and an appeal bond pursuant to Rule 815 (Bond for Costs on Appeal) shall operate as a stay without the filing of a supersedeas bond pursuant to Rule 817 (Stay of Execution of Final Judgment) to the extent provided by the following sections of the Code of Public General Laws:

(a) Issues sent from an equity or orphans' court to a court of law to be tried —art. 5, § 5;

(b) Habeas corpus cases—art. 42, §§ 6 and 7;

(c) Decisions on actions of the Insurance Commissioner—art. 48A, § 12;
(d) Unfair deceptive practices in insurance matters—art. 48A, § 331;
(e) Child placement cases—art. 88A, § 25.
(Proposed.)

Rule 817. Stay of Execution of Final Judgment in Civil Cases.

a. *By Filing a Supersedeas Bond.*

Except as provided in section b of this Rule, an appellant may stay the execution of a civil judgment from which an appeal is taken pursuant to Rule 812 (Appeal—Time for Filing) by filing a supersedeas bond in the form and approved in the manner prescribed by Rules 818 (Form and Penalty of Supersedeas Bond) and 820 (Approval of Supersedeas Bond).

b. *Exceptions.*

A judgment in the following actions shall not be stayed by the filing of a supersedeas bond except to the extent provided by the following sections of the Code of Public General Laws:

(a) Boards of Liquor License Commissioners—art. 2B, § 166(e).
(b) Orphans' Courts—art. 5, § 68.
(c) Revocation or denial of private school's certificates of approval—art. 77, § 20.
(d) Tax assessments or classifications—art. 81, § 257.
(e) Sheriff's failure to turn over fees—art. 87, § 33.

c. *Where and When to Be Filed.*

A supersedeas bond may be filed with the clerk of the lower court at any time before satisfaction of the judgment from which the appeal is taken, but execution shall not be stayed until the bond is filed.
(C. of A. 16(8) (4824), art. 5, §§ 47, 58; art. 5, § 33, W.B. 816.)

d. *When Supersedeas to Be Issued—Partial Execution.*

If a judgment has been in part executed before the filing of supersedeas bond, the clerk of the lower court shall issue a supersedeas directed to the sheriff or other officer in whose hands the execution may be. Such sheriff or other officer upon receipt of such supersedeas, together with the costs which have accrued on said execution, shall stay all further proceedings and deliver up any property which may have been seized by him in the course of such execution.
(Proposed; art. 5, § 33, art. 5, § 59.)

e. *Lower Court May Refuse Stay.*

If the lower court shall determine that the case is not a proper one for a stay, it may pass an order upon such terms (as to duration, keeping accounts, giving security, or other matters) as to it may seem fit, directing that the judgment from which the appeal is taken shall not be stayed by the filing of such supersedeas bond, or only so far or on such terms as the lower court shall in its order direct.
(Art. 5, § 33.)

f. *Death of Appellant; Effect.*

A supersedeas bond filed pursuant to this Rule shall not be voided by the death of the appellant pending the appeal.
(Art. 5, § 63.)

Rule 818. Form and Penalty of Supersedeas Bond.

a. *Condition of Bond.*

A supersedeas bond filed pursuant to Rule 817 (Stay of Execution of Final Judgment in Civil Cases) shall be conditioned for the satisfaction of the judg-

ment from which the appeal is taken, in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and damages as this Court may adjudge and award.
(Proposed; art. 5, § 57.)

b. *Penalty of Bond.*

1. Money Judgment Not Otherwise Secured.

When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be such sum as will cover the whole amount of the judgment remaining unsatisfied, interest, and costs.

2. Disposition of Property.

When the judgment determines the disposition of the property in controversy as in real actions, replevin and actions to foreclose mortgages, or when such property, or the proceeds of the sale thereof, is in the custody of the lower court or of the sheriff, the amount of the bond shall be such sum as will secure the amount recovered for the use and detention of the property, interest, costs and damages for delay.

3. Other Cases.

In any other cases the amount of the bond shall be fixed by the lower court.
(Proposed.)

c. *No Avoidance for Matter of Form.*

A supersedeas bond conforming in substance to the provisions of this Rule shall not be avoided for mere matter of form.
(Art. 5, § 62.)

Rule 819. Stay of Execution of Interlocutory Order.

If a party intends, in the event of an appeal from a final judgment, to dispute any previous interlocutory order entered in the action, and upon the entry of such interlocutory order desires to stay the operation or execution thereof, he shall file with the clerk of the lower court a written statement of his intention to dispute such interlocutory order upon an appeal from the final judgment and shall give bond in such penalty as the lower court may prescribe, with surety to be approved by the lower court, to indemnify the other party from all loss and injury which such other party may sustain by reason of the stay of the operation or execution of such interlocutory order.
(Art. 5, § 34.)

Rule 820. Approval of Supersedeas Bond.

a. *When Not Required.*

When the amount of a supersedeas bond given pursuant to Rule 817 (Stay of Execution of Final Judgment) has been agreed to by the parties and the surety on such bond has been approved by the clerk of the lower court with which it is filed, approval of such bond by the lower court or by this Court shall not be required.

b. *Approval by Clerk.*

When the parties have been unable to agree upon the amount of the supersedeas bond given pursuant to Rule 817 (Stay of Execution of Final Judgment), the amount of the bond, except as otherwise provided in section b 3 of Rule 818 (Form and Penalty of Supersedeas Bond), and the surety thereon shall be approved by the clerk of the lower court.

c. *Approval by Court.*

If a party shall object to the amount of, or the surety on, a supersedeas bond

approved by the clerk pursuant to section b of this Rule, he may present such objections in writing to the lower court which shall after notice and hearing fix the amount of such bond and approve the surety thereon.

d. *Review by This Court of Approval by Lower Court.*

If a party shall feel himself aggrieved by the action of the lower court in fixing the amount of a superseadeas bond or approving or disapproving the surety thereon pursuant to section b 3 of Rule 818 (Form and Penalty of Supersedeas Bond) or section c of this Rule, he may by motion in writing present such objections to this Court which, after notice and hearing, may increase or decrease the amount of the supersedeas bond or pass such order as to the surety on such bond as may be proper.
(Proposed.)

Rule 821. Deposit in Lieu of Bond.

In lieu of filing an appeal bond pursuant to Rule 815 (Bond for Costs on Appeal) or a supersedeas bond pursuant to Rule 817 (Stay of Execution of Final Judgment in Civil Cases) or Rule 819 (Stay of Execution of Interlocutory Order), a party may deposit with the clerk of the lower court lawful money in an amount equal to the amount of the appeal bond or the supersedeas bond which would otherwise be required.
(Proposed.)

Committee note.—These Rules represent a complete revision of the present statutes, which are complicated, ambiguous, contradictory, inconsistent and almost incomprehensible, at least to the Committee. An example may be found in the conflicting provisions dealing with the amount of an appeal bond, in which the Court of Appeals Rule 16 is based on a statute in the corporation laws which was superseded in the last revision thereof. In drawing these Rules the Committee was guided by Vanderbilt, Minimum Standards of Judicial Administration (1949), Supersedeas Bonds, pp. 406-410, in which he criticises the Maryland requirement of a bond for double the amount of the judgment. He says, at p. 406:

"(4) That supersedeas bonds should be fixed by the court at such an amount only as will adequately secure to the appellee the full benefit of his judgment; that the filing of such bond should be permitted at any time before satisfaction of the judgment; and that enforcement of the judgment appealed from should not be stayed until the bond is filed."

The Committee has attempted to draft a series of rules on stays that are simple, clear and workable. As guides it has drawn on the Federal Rules, and the statutes or rules of New Jersey, Minnesota and Kentucky, among others.

It should be noted that Rule 817 (Stay of Execution of Final Judgment in Civil Cases) applies only to civil actions. The Committee still has under consideration procedures as to bail bonds in criminal actions and a special rule dealing with this subject will be submitted at a later date.

RECORD

Rule 825. Record—Time for Transmitting.

a. *Within Thirty Days.*

Promptly after an order for appeal is filed pursuant to Rule 812 (Appeal—Time for Filing), and in any event within thirty days after the first order for appeal is filed unless a different time shall be fixed by order entered pursuant to sections b and c of this Rule, the clerk of the lower court shall transmit the record of this Court.
(C. of A. 2, art. 5, § 6, W.B. 832; C. of A. 3, art. 5, § 8, art. 47, § 33, W.B. 833; C. of A. 6, art. 5, § 37, W.B. 862; C. of A. 8, art. 5, § 91, W.B. 813; C. of A. 15, art. 5, § 73, W.B. 814; C. of A. 24 (2), W.B. 815b.)

b. *Lower Court May Shorten or Extend Time.*

Upon application of any party and for sufficient cause shown, or upon its own

motion, the lower court may direct that the record be transmitted within such shorter or longer period of time, not exceeding ninety days after the first order for appeal is filed, as may be ordered.
(Proposed.)

c. *Court of Appeals May Shorten or Extend Time.*

Upon application of any party and for sufficient cause shown, or upon its own motion, this Court may direct that the record be transmitted within such shorter or longer period of time as may be ordered. Such an order will not be entered after the time for transmitting the record has expired unless it be shown that the failure to transmit the record was occasioned by the neglect, omission or inability of the clerk of the lower court or appellee. An order of this Court entered pursuant to this Section shall supersede and take precedence over any order of the lower court entered pursuant to section b of this Rule.
(Proposed; C. of A. 11 (4823) (7), art. 5, § 45, W.B. 833j.)

d. *Delay in Transmitting Due to Mistake.*

An appeal shall not be dismissed because the record has not been transmitted within the time prescribed, if it appears to this Court that such delay was occasioned by the neglect, omission or inability of the clerk of the lower court or appellee; provided, however, that such neglect, omission or inability shall not be presumed but must be shown by the appellant.
(C. of A. 11 (4823) (7), art. 5, § 45, W.B. 822j.)

Committee note.—The same principles that apply to Rule 612 (Appeal—Time for Filing) apply here, the effort being to have one standard time for transmitting the record in all cases. Here, also, a host of statutes providing for transmitting the record "immediately," "forthwith," etc., will have their procedural portions superseded, so that counsel will not have to guess at the meaning of such indefinite terms.

Attention is called to the fact that the time for transmitting the record is shortened to thirty days in *every case.* The only reason for not shortening the time that was advanced in Committee, by both county and city lawyers and judges, was the difficulty on the part of the court stenographers in preparing the transcript of testimony. The Committee feels that sufficient protection and flexibility is afforded by section b of this Rule, placing the control in the man most familiar with the stenographer's difficulties, the judge of the lower court, with a further right given to apply to the Court of Appeals by section c. These sections will also take care of the situations contemplated by the statutes above referred to, in cases where it may be deemed necessary to get the record down more promptly.

The portion of the Committee note to Rule 812 (Appeal—Time for Filing), dealing with the investigation made by the Committee, applies here.

The Committee *strongly* recommends the adoption of this Rule.

Rule 826. Record on Appeal.

a. *Not Necessary to Print—Exception.*

Unless ordered by this Court the record on appeal shall not be printed except to the extent provided in Rule 828 (Part of Record to Be Printed—Printed Record Extract).
(New; C. of A. 36 (as amended, 3/22/55).)

b. *On Original Papers.*

Except as provided in section f of this Rule, an appeal to this Court shall be heard on the original papers. The term "original papers" includes exhibits and the transcript of the testimony.
(C. of A. 10, § 1 (1954 Supp. 360) (4).)

c. *Contents of Record.*

1. Original Papers.

Unless otherwise ordered by the lower court pursuant to section f of this

Rule, all the original papers filed in the action in the lower court, except an appeal bond or supersedeas bond and such other papers as the parties may stipulate shall be omitted, shall constitute the record on appeal. The clerk of the lower court shall append his certificate identifying such papers with reasonable definiteness.

2. Transcript of Testimony.

Unless a copy of the transcript of testimony is already on file, the appellant shall promptly file with the clerk of the lower court for inclusion in the record a transcript of all the testimony, and shall also promptly serve a copy of such transcript upon the appellee. Instead of serving and filing a transcript of the testimony, the parties by written stipulation filed with the clerk of the lower court may, or upon order of the lower court shall file with the clerk of the lower court for inclusion in the record only such part of the transcript as the parties or the lower court may deem necessary for the appeal.
(C. of A. 10, § 2 (1954 Supp. 360) (5).)

3. Docket Entries; Statement of Costs.

With the record transmitted to this Court, the clerk of the lower court shall transmit a copy, certified by him, of the relevant docket entries in the lower court and a statement of the cost of making up and certifying the record. The clerk of the lower court shall also mark on the record the amount of the costs taxed against the plaintiff and defendant, respectively, to the time the order for appeal is filed, including the cost of the transcript of the testimony and a copy, if any, thereof for each of the parties.
(Art. 5, § 70.)

d. *Form in Which to Be Transmitted.*

The original papers shall be fastened together in one or more binders in the form of a transcript of record; the pages shall be numbered consecutively, except that the pages of a transcript of testimony need not be renumbered. A cover page and a complete table of contents of the record shall be attached at the beginning.
(C. of A. 10, § 3 (1954 Supp. 360) (5).)

e. *Approval of Record by Lower Court Not Necessary.*

It shall not be necessary for the record on appeal to be approved by the lower court except as provided in sections c 2 or g of this Rule, but if any difference arises as to whether the record truly discloses what occurred in the lower court, the difference shall be submitted to and settled by the lower court and the record made to conform to the truth.
(C. of A. 10, § 4 (1954 Supp. 360) (5).)

f. *Transcript Instead of Original Papers When Lower Court So Orders.*

If the lower court is of the opinion that it is necessary that the original papers in the action be kept in the lower court pending the appeal for use in the trial of other litigation or for other valid reason, it may sign an order to that effect, and thereupon it shall be the duty of the clerk of the lower court to transmit to the Clerk of this Court a certified copy of the original papers which would otherwise have been transmitted to this Court in accordance with the provisions of section c of this Rule.
(C. of A. 10, § 5 (1954 Supp. 360) (6).)

g. *Statement of Case in Lieu of Pleadings and Evidence.*

When the questions presented by an appeal can be determined by this Court without an examination of all the pleadings and evidence, the parties with the approval of the lower court may prepare and sign a statement of the case showing how the questions arose and were decided, and setting forth so much only of the facts alleged and proved, or sought to be proved, as is essential to a deci-

sion of such questions by this Court. Such statement, when filed with the clerk of the lower court shall be treated as superseding, for the purposes of the appeal, all parts of the record other than the judgment from which the appeal is taken and any opinion of the lower court, and, together with such judgment and opinion, shall be certified to this Court as the record on appeal.

Rule 827. Correction of Error or Omission in Record.

a. *Writ of Diminution Abolished.*

An error in the record shall be corrected and an omission in the record supplied as may be directed by order of this Court. The writ of diminution is abolished.
(Proposed.)

b. *Motion for Order to Correct Record—Contents.*

1. In Writing—Affidavit.

A motion for an order of this Court to correct the record shall state the facts upon which the motion is founded and if such facts are not admitted by counsel for the other party they shall be verified by affidavit of counsel for the party making such motion.

2. Specification of Part of Record Omitted or in Error.

Such motion shall contain a specification of the parts of the record or proceedings in the lower court requisite to be supplied or of the parts of the record alleged to be erroneous. Such specification of error or omission shall also be incorporated in the order to correct the record for the guidance of the lower court.
(Art. 5, § 50.)

3. Necessary for Hearing on Merits—Not for Delay.

Such motion shall also state that the correction of the record is in the opinion of counsel for the party making the motion necessary for the proper consideration of the merits of the case on appeal, that such consideration cannot be had without said correction, and that the motion is not made for the purpose of delaying the argument of the case.
(C. of A. 45 (4832) (19), W.B. 817b.)

c. *Not to Delay Argument.*

A case will not be postponed or continued because of an error or omission alleged to exist in the record unless this Court is satisfied that there was no unreasonable delay in filing the motion, and that the additional or corrected record cannot be supplied in time for argument. In such case, this Court may direct the argument to proceed, and permit the additional or corrected record to be filed subsequently, when it shall have the same effect as if transmitted with the original record. If this Court determines that the order was unnecessary the cost thereof will be imposed on the party at whose instance it was granted.
(C. of A. 46 (4832) (20), art. 5, § 51, W.B. 817c.)

d. *Issuance of Order; Duty of Clerk of Lower Court.*

An order of this Court to correct the record shall be sent to the clerk of the lower court who shall forthwith transmit to this Court so much of the proceedings remaining of record in the lower court as may be specified in such order.
(C. of A. 14 (4824) (7), art. 5, § 52, W.B. 817a.)

Committee note.—Note that the misnomer "writ of diminution" (defined by one member of the Committee as an old Latin term meaning "raise heck with court and counsel") has been abolished in favor of more modern and accurate language, without substantial change in procedure. In view of the fact that the record now goes down on the original papers, the procedure will undoubtedly be used in a much lesser degree than formerly.

Rule 828. Part of Record to Be Printed—Printed Record Extract.

a. *Appellant to Print.*

The appellant shall cause to be printed, either as a separate volume or as an appendix to his brief, extracts from the record which shall include the parts thereof provided for by section b of this Rule arranged in the order in which the same appear in the record. The extracts from the record so printed shall be copied verbatim except as otherwise provided in section g of this Rule. Asterisks or other appropriate means shall be used to indicate omissions in the testimony or in exhibits, reference to the pages of the record shall be made and the names of the witnesses shall be indexed.
(C. of A. 37A, § 1 (adopted 3/22/55).)

b. *Contents.*

1. What to Be Included.

The printed extract shall contain such parts of the record as may reasonably be necessary for the determination of the questions presented by the appeal, and shall include:

(a) The judgment appealed from, together with the opinion or charge of the lower court, if any.

(b) So much of the evidence, pleadings or other parts of the record as is material to any question the determination of which depends upon the sufficiency of the evidence, pleadings or other matter contained in the record to sustain any action, ruling, order or judgment of the lower court.

(c) Such other parts of the record as may be designated by the parties pursuant to section c of this Rule.

2. What to Be Excluded.

The printed extract should not include those parts of the record which:

(a) Support facts set forth in an agreed statement of facts pursuant to section g of this Rule; or

(b) Are summarized in a stipulation pursuant to section g of this Rule.
(C. of A. 37A, § 2 (adopted 3/22/55).)

c. *Designation by Parties.*

1. Agreement Where Possible.

Whenever possible, the parties shall by stipulation agree on the parts of the record to be included in the printed extract.

2. Procedure Where Agreement Impossible.

If the parties are unable so to agree, then within ten days after the filing of the record in this Court the appellant shall deliver to the appellee a written statement of the parts of the record he proposes to include in the printed extract. Within ten days after the delivery of such statement by the appellant to the appellee, the appellee shall deliver to the appellant a written statement of any additional parts of the record the appellee desires to be included in the printed extract. Within ten days after the delivery of the appellee's statement to the appellant, the appellant may deliver to the appellee a statement of any additional parts of the record he proposes to include in the printed extract in view of the parts of the record designated in the statement of the appellee.
(C. of A. 37A, § 3 (adopted 3/22/55).)

d. *When Appellant May Omit Part Designated by Appellee.*

Notwithstanding the provisions of section b 1 (c) of this Rule, the appellant shall not be required to include in the printed extract any part of the record designated by the appellee pursuant to section c 2 of this Rule which the appellant does not deem material to the questions presented, if within two days after demand therefor by the appellant the appellee has failed to secure the payment of the estimated cost of including in the printed extract the part of the record so

designated by the appellee. If pursuant to this section the appellant omits from the printed extract any part of the record designated by the appellee, he shall include in the printed extract a statement of the reason for such omission.
(C. of A. 37A, § 4 (adopted 3/22/55).)

e. *When Appellee May Include Appendix in Brief.*

If by reason of inadvertence, or failure of the appellee to secure the payment of the estimated cost of printing pursuant to section d of this Rule, or for any other reason, the printed extract does not contain some part of the record which the appellee deems material and which he desires this Court to read, the appellee may print such parts of the record as an appendix to his brief together with a statement of the reasons therefor. Parties and counsel are cautioned that the cost of printing such appendix may be withheld or divided under section c of Rule 882 (Awarding of Costs).
(C. of A. 37A, § 5 (adopted 3/22/55).)

f. *When Appellant May Include Appendix in Reply Brief.*

The appellant may include in an appendix to his reply brief such additional part of the record as he deems material and which he desires this Court to read in view of the matter contained in the appellee's brief or appendix. Such appendix to the appellant's reply brief shall be prefaced by a statement of the reasons therefor. Parties and counsel are cautioned that the cost of printing such appendix may be withheld or divided under section c of Rule 882 (Awarding of Costs).
(C. of A. 37A, § 6 (adopted 3/22/55).)

g. *Agreed Statement of Facts.*

The parties may agree upon a statement of undisputed facts, which agreed statement may be included in the printed extract or, if the parties so agree, may be included as all or a part of the statement of facts in the appellant's brief. If facts are disputed, or if the parties cannot agree upon a statement of undisputed facts, the parties may, by stipulation, summarize the testimony of any witnesses or the contents of any exhibits and include such stipulation in the printed extract in lieu of the testimony and exhibits summarized therein. This section shall be so construed as to authorize but not require the parties, by agreement, to state all or part of the testimony in narrative form.
(C. of A. 37A, § 7 (adopted 3/22/55).)

h. *Forty Copies to Be Filed.*

If the record extract is printed as a separate volume, forty copies thereof shall be filed with the Clerk at the same time the appellant's brief is filed. It shall be printed with clear readable type and on good paper, the pages to be 6-⅛" x 9-¼".
(C. of A. 37A, § 8 (adopted 3/22/55).)

i. *Penalties—Correction.*

For violation of section b of this Rule, this Court may require that additional portions of the record be printed or otherwise furnished, or it may dismiss the appeal, or make any other appropriate order with respect to the case. Inadvertent omissions or misstatements in the printed extract or in any appendix may be corrected by direction of this Court on application or of its own motion.
(C. of A. 37A, § 9 (adopted 3/22/55).)

BRIEFS

Rule 830. Filing of Briefs.

a. *Time for; Number.*

1. Appellant's Brief.

Within forty days after the filing of the record in this Court, except in a habeas corpus case, appellant shall file with the Clerk forty copies of a printed brief conforming to the requirements of Rule 831 (Style and Contents of Briefs). In a habeas corpus case the applicant may, in lieu of a brief, rely on the statement in his application of the reasons why the order should be reversed.
(C. of A. 49 (4833) (20).)

2. Appellee's Brief.

Within twenty days after the filing of the appellant's brief the appellee shall file forty copies of a printed brief conforming to the requirements of Rule 831 (Style and Contents of Briefs).

3. Appellant's Reply Brief.

A reply brief may be filed by the appellant provided forty printed copies thereof are filed within twenty days after the filing of the appellee's brief, but in any event not later than three days before the case is called for argument.
(C. of A. 40, § 1 (as amended 3/22/55), art. 5, § 55, W.B. 824.)

b. *When Case Advanced.*

If a case is advanced by order of this Court pursuant to section c of Rule 845 (Assignment of Cases for Argument), such order shall fix the times within which the briefs of the respective parties shall be filed and exchanged.
(C. of A. 40, § 3 (as amended 3/22/55), art. 5, § 55, W.B. 824c.)

c. *When Counsel Is Member of General Assembly.*

In a case in which a member of the General Assembly of Maryland is counsel of record the period of any legislative session shall be excluded in calculating the time allowed under this Rule for the filing of a brief by such counsel; and if such counsel is also a member of the Legislative Council of Maryland or of a committee or subcommittee thereof, there shall also be excluded the days when said Legislative Council or committee or subcommittee thereof is holding a meeting.
(New; art. 75, § 75 (1954 Supp.).)

d. *Extension of Time.*

1. By Stipulation.

The time for filing a brief may be extended by stipulation of counsel filed with the Clerk if such extension will not delay the argument of the case, but in any event the appellant's brief and the appellee's brief shall be filed at least ten days and the reply brief, if any, at least three days before the case is called for argument.

2. By Order.

The time for filing a brief may be extended by this Court on its own motion or upon motion of counsel for good cause shown.
(C. of A. 40, § 4 (as amended 3/22/55), art. 5, § 55, W.B. 824d.)

e. *Copies to Be Furnished Counsel.*

1. By Counsel.

One copy of each brief and printed extract shall be furnished by counsel filing the same to each of the counsel of record on the opposite side as soon as the same are forwarded to the Clerk of this Court for filing.

2. By Clerk.

One copy of each brief and printed extract filed shall forthwith be furnished by the Clerk of this Court to each of the counsel of record on the opposite side.
(C. of A. 40, § 1 (as amended 3/22/55), art. 5, § 55, W.B. 824.)

f. *Default.*

When an appellant is in default under this Rule the case may be dismissed on motion or by this Court of its own motion; and when an appellee is in default, he will not be heard except upon consent of the appellant, or by request of this Court.

(C. of A. 40, § 2 (as amended 3/22/55), art. 5, § 55, W.B. 824b.)

Committee note.—Note that section c has been drafted to make the exclusion of the period while the Legislature is in session automatic.

Rule 831. Style and Contents of Brief.

a. *Style.*

A brief shall be printed with clear readable type and on good paper, the pages to be 6⅛" x 9¼". References to the record shall be indicated as (R....), to the transcript of testimony as contained in the record as (T....), to the printed extract, whether printed as a separate volume or as an appendix to appellant's brief, as (E....), to an appendix to appellee's brief as (Apx.....) and to an appendix to a reply brief as (Rep. Apx.....). The cover of an appellant's brief shall be white, an appellee's brief blue, a reply brief brown and a brief of an *amicus curiæ* gray.

(Proposed; C. of A. 38 (4829) (15), W.B. 823a.)

b. *Length of—50 Pages.*

A brief shall not exceed fifty pages in length except by special permission of this Court; but this limitation shall not apply to an appendix under sections a, e and f of Rule 828 (Part of Record to Be Printed—Printed Record Extract) nor to the tables of contents and citations.

(C. of A. 39, § 4 (as amended 3/22/55).)

c. *Contents of Appellant's Brief.*

The brief of the appellant shall contain:

1. Tables of Contents and Citations.

A table of contents and a table of citations with cases alphabetically arranged. When Maryland cases are cited, the citation shall include a reference to the Maryland Reports, if published.

2. Statement of the Case—Questions Presented.

A brief statement of the case together with a succinct statement of the questions presented, separately numbered.

3. Statement of Facts.

A clear, concise statement of the facts material to a determination of the questions presented. If there is any dispute with regard to any of the facts asserted by the appellant, or a possibility of such a dispute, the appellant shall so state. Reference shall be made to the pages of the record or the transcript of the testimony as contained in the record supporting his assertions, or if such portions of the record are included in the printed extract pursuant to Rule 828 (Part of Record to Be Printed—Printed Record Extract), such reference shall be to the pages of the printed extract.

4. Argument.

Argument in support of the position of the appellant.

(C. of A. 39, § 1 (as amended 3/22/55), W.B. 823b.)

d. *Contents of Appellee's Brief.*

The brief of the appellee shall contain:

1. Tables of Contents and Citations.

A table of contents and a table of citations with cases alphabetically arranged. Where Maryland cases are cited, the citation shall include a reference to the Maryland Reports, if published.

2. Statement of the Case—Questions Presented.

A brief statement of the case together with a succinct statement of the questions presented separately numbered, if the appellee disagrees with the statements of the appellant.

3. Statement of Facts.

A statement of any additional facts necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate. Reference shall be made to pages of the record or transcript of the testimony as contained in the record supporting the assertions, or if such portions of the record are included in the printed extract or in an appendix pursuant to sections a and e of Rule 828 (Part of Record to be Printed—Printed Record Extract), such reference shall be to the pages of the printed extract or appendix.

4. Argument.

Argument in support of the position of the appellee.
(C. of A. 39, § 2 (as amended 3/22/55), W.B. 823.)

e. *Appellant's Reply Brief.*

The appellant may file a reply brief and may include therewith an appendix as provided in section f of Rule 828 (Part of Record to Be Printed—Printed Record Extract).
(C. of A. 39, § 3 (as amended 3/22/55).)

Committee note.—The second sentence of section a was included to assure uniformity of referencing to the various documents, and the Committee was unanimously in favor of it. It is used with great success in the District of Columbia.

In connection with subsections c 3 and d 3 of this Rule, the Court of Appeals Rules originally required the appendices to refer to "the pages of the typewritten or printed transcript," "the pages of the transcript," and to "to pages of the typewritten or printed testimony." Since Rule 826 (Record on Appeal) now provides that the record shall consist of the original papers, and section d of that Rule provides "the pages shall be numbered consecutively, except that the pages of any transcript of testimony need not be renumbered," the Committee has adopted the uniform wording "pages of the record or transcript of testimony as contained in the record."

DISMISSAL

Rule 835. Dismissal of Appeal.

a. *By the Court.*

1. From Pro Forma Orders.

This Court will not entertain or consider an appeal taken from a pro forma order, judgment or decree, but will treat every such appeal as prematurely taken and will dismiss the same whenever it appears on the face of the record, or otherwise, that the appeal is from such pro forma order, judgment or decree.
(C. of A. 25 (4827) (10), W.B. 809.)

2. Any Other Cause.

This Court may, on its own motion, dismiss an appeal for any cause set forth in section b of this Rule.
(Proposed.)

b. *On Motion.*

On motion filed by any party, an appeal may be dismissed for any one of the following reasons:

(1) The appeal is not allowed by law or by Rule 809 (Order Overruling Demurrer Not Appealable).

(2) The appeal has not been properly taken pursuant to Rule 811 (How Appeals to Be Taken) and Rule 815 (Bond for Costs on Appeal).

(3) The order for appeal has not been filed with the lower court within the time prescribed by Rule 812 (Appeal—Time for Filing).

(4) The record has not been transmitted within the time prescribed by Rule 825 (Record—Time for Transmitting).

(5) The contents of the printed record extract do not comply with section b of Rule 828 (Part of Record to Be Printed—Printed Record Extract).

(6) A brief has not been filed by the appellant within the time prescribed by Rule 830 (Filing of Briefs).

(7) The case has become moot.

(Proposed.)

c. *Striking Out Order.*

If an appeal has been dismissed pursuant to subsection (4) or subsection (6) of section b of this Rule, the order dismissing the appeal may, upon motion filed within twenty days thereafter be rescinded if this Court be satisfied that the failure to transmit the record or to file a brief within the time prescribed by these Rules was unavoidable by reason of sickness or other sufficient cause. In such event the case shall be reinstated on the Docket on such terms as may be prescribed by this Court.

(C. of A. 35 (4829) (14), W.B. 819.)

Rule 836. Motion to Dismiss Appeal and Answer thereto.

a. *Form and Contents.*

A motion to dismiss an appeal shall be either printed or typewritten. The motion shall be in the form prescribed by section a of Rule 855 (Motion in Court of Appeals), and in addition shall cite the specific section of these Rules on the authority of which it is contended the appeal should be dismissed. If it is desired that oral argument on said motion be had in advance of argument on the merits, the motion shall so state.

(Proposed.)

b. *To Be Filed with Clerk—Number of Copies.*

An original and five legible copies of the motion shall be filed with the Clerk after a copy thereof has been served pursuant to section b of Rule 855 (Motion in Court of Appeals).

(Proposed.)

c. *Time for Filing.*

If the motion is based upon subsections (1), (2), (3) or (4) of section b of Rule 835 (Dismissal of Appeal), the motion shall be filed within ten days from the date the record is filed with this Court, or within ten days from the date the record should have been filed with this Court pursuant to Rule 825 (Record—Time for Transmitting). If the motion is based upon subsection (5) or (6) of section b of Rule 835 (Dismissal of Appeal), the motion shall be filed within ten days from the date the appellant's brief is filed or should have been filed pursuant to Rule 830 (Filing of Briefs). If the motion is based upon subsection (7) of section b of Rule 835 (Dismissal of Appeal), the motion shall be filed within ten days from the date the record is filed with this Court, or within ten days after the case has become moot, whichever is later. The motion shall not be filed later than five days before the case is assigned for argument unless the motion is based on some cause arising after that time. This section shall not apply if the motion to dismiss is included in the appellee's brief pursuant to section d of this Rule.

(Proposed.)

d. *May Be Included in Appellee's Brief.*

A motion to dismiss may be included in the appellee's brief. In such event the argument in support of the motion shall also be included in the appellee's brief, and the appellant may in a reply brief include his argument in opposition to such motion.
(Proposed.)

e. *Answer to Motion.*

The appellant may file an answer to a motion to dismiss within five days after the motion is filed. Such answer shall be in the same form, the same number of copies shall be filed, and copies thereof shall be served in the same manner as is required by this Rule for a motion to dismiss. If it is desired that oral argument on said motion be had in advance of argument on the merits, the answer shall so state.
(Proposed.)

Rule 837. Separate Oral Argument on Motion to Dismiss.

a. *Not unless Directed by This Court.*

Oral argument on a motion to dismiss an appeal in advance of argument on the merits shall not be permitted unless directed by order of this Court.
(Proposed.)

b. *Briefs.*

If this Court directs oral argument on a motion to dismiss in advance of argument on the merits the parties may, but shall not be required to file briefs in support of or in opposition to said motion. Such briefs if filed may be either printed or typewritten; the original and five legible copies thereof shall be filed with the Clerk, and copies shall be exchanged between counsel not later than the day before the case is assigned for argument. Such briefs shall not exceed ten pages in length except by special permission of this Court.
(Proposed.)

c. *Oral Argument—Time—Number of Counsel.*

Oral argument on a motion to dismiss will be restricted to one-half hour a side and only one counsel will be heard for each side. Additional time may be allowed and additional counsel may be heard only by special permission of this Court.
(Proposed.)

Committee note.—These Rules authorize the filing of motions to dismiss in advance of the filing of briefs and leave to the Court of Appeals the decision as to whether separate oral argument on a motion to dismiss should be had in advance of argument on the merits. The Rule is not mandatory on either parties or the Court, but does provide the mechanics for advance filing of a motion to dismiss in cases where that might prove highly desirable. The Committee had no strong feeling about these Rules, but is sympathetic toward them, and will welcome the ideas of both Bench and Bar. Mr. Young thought they were worth submitting to the Court of Appeals. These Rules should be considered together with Rule 806 (Motion Day).

ARGUMENT

Rule 845. Assignment of Cases for Argument.

a. *Regular Order.*

Unless advanced or postponed pursuant to this Rule, cases will be assigned for argument in their numerical order as they appear on the court docket. No more than five cases will be assigned for argument on any one day, and all cases

reached in their regular order on the docket shall be argued or otherwise disposed of unless postponed pursuant to this Rule.
(C. of A. 28 (4827) (11), W.B. 805d; Proposed.)

b. *Not to Be Assigned until after Briefs Filed.*

Unless advanced by order of this Court pursuant to section c of this Rule, a case will not be assigned for argument until ten days after the appellant's brief and the appellee's brief have each been filed or pursuant to Rule 830 (Filing of Briefs) should have been filed.
(C. of A. 40, § 1 (as amended 3/22/55), art. 5, § 55, W.B. 824.)

c. *When Cases Argued in Advance of Regular Order.*

A case may be argued in advance of its regular order on the docket only upon motion and for cause shown unless, upon its own motion, this Court advances the case for argument.
(Proposed.)

d. *Postponement of Argument by Stipulation or by Order.*

The argument of a case may be postponed by stipulation of the parties approved by this Court, or by order of this Court upon motion for cause shown, or by order of this Court upon its own motion.
(C. of A. 30 (4828) (12).)

e. *Postponement of Argument When Counsel Is Member of General Assembly.*

1. During Legislative Sessions.

Upon request of a member of the General Assembly of Maryland the argument of a case in which such member is counsel of record shall be postponed during the period of any legislative session and until ten days after the adjournment thereof.

2. During Meeting of Legislative Council or Committees Thereof.

Upon request of a member of the Legislative Council the argument of a case in which such member is counsel of record shall be postponed when the Legislative Council or any committee or subcommittee thereof is holding a meeting.
(New; art. 75, § 75 (1954 Supp.).)

f. *Absence of Counsel at Argument.*

The argument of a case will not be postponed by reason of the absence of counsel on either side unless such absence be occasioned by sickness or other sufficient cause.
(C. of A. 34 (4829) (14), W.B. 818e.)

Committee note.—This Rule will supersede the procedural provisions of many statutes providing for automatic advancement of cases, or giving them priority or precedence, leaving the control solely in the discretion of the Court of Appeals. A glance at the source lines will indicate that this Rule has pulled together in what seems to be a logical and orderly sequence provisions presently scattered throughout many rules and statutes. Section d has been completely rewritten to fit modern conditions.

Rule 846. Oral Argument.

a. *Time Limit.*

Oral argument will be restricted to one hour a side to be divided as counsel desire, provided always that there shall be an adequate opening by appellant. Additional time may be allowed only by special permission of this Court.
(C. of A. 41 (4831) (18), W.B. 828a.)

b. *Number of Counsel.*

Except by special permission of this Court, not more than two counsel will be

permitted to argue a case on the same side, and when oral argument is not made for one side, only one counsel will be heard for the adverse party.
(C. of A. 41 (4831) (18), W.B. 828a, b.)

c. *Separate Appeals in Same Case—Order of Argument.*

Where there is more than one appeal in the same case, the order of argument by counsel will be determined by this Court. In the absence of determination by this Court, counsel for appellant first in order on the docket will open and close unless otherwise agreed by the parties.
(C. of A. 42 (4831) (18) amendment of 2/17/50), W.B. 828c.)

d. *Court May Require Argument.*

The Court may require oral argument from either side or both sides, notwithstanding the previous submission of the case by counsel; but if prior to the day when a case is assigned for argument counsel for both parties notify the clerk that the same is submitted on brief by all parties, it shall not be necessary for counsel to attend on the day assigned for argument unless otherwise directed by this Court.
(C. of A. 41 (4831) (18) (amendment of 2/17/50).)

e. *Failure to Appear.*

If a party shall fail to appear when the case is reached for argument, the opposite party may argue the case orally or submit on brief.
(C. of A. 32 (4828) (13), W.B. 818d.)

REARGUMENT

Rule 850. Reargument.

a. *Motion for—Time—Reply.*

A motion for reargument distinctly stating the grounds for the same may be filed within thirty days after the opinion of this Court has been filed, but no reargument will then be allowed unless a majority of the judges who concurred in the opinion consent to it. An opportunity will be given the opposite party to file a reply to such motion if any member of this Court who concurred in the opinion requests it before the motion is acted on. In addition to the original, five legible copies of a motion and any reply shall be filed.
(C. of A. 43, § 1 (4832) (18).)

b. *Motion Not to Operate as Stay.*

A motion for reargument shall not delay the issuance of the mandate or otherwise stay the proceedings, unless so ordered by this Court.
(C. of A. 43, § 2 (4832) (19).)

PLEADINGS IN THE COURT OF APPEALS—SERVICE OF COPY—ADMINISTRATIVE MATTERS—AUTHORITY OF JUDGES

Rule 855. Motion in Court of Appeals.

a. *Form of.*

An application to this Court for an order shall be made by motion which shall state briefly and clearly the facts upon which it is based; such motion, other than a motion to dismiss an appeal, shall be accompanied by a form of the order which the party desires the Court to enter.

b. *Service of Copy.*

Unless specially authorized by this Court a motion shall not be filed with the clerk of this Court or presented to this Court until a copy thereof has been

served upon counsel of record for all other parties in the manner prescribed by section c of Rule 306 (Service of Pleading) and proof of such service made in the manner prescribed by section d of Rule 306 (Service of Pleading).

c. *Opportunity for Hearing.*

An order of this Court upon motion of a party will not be entered until after all other parties affected by such order have been given an opportunity to be heard. In an exceptional case an order will be entered by this Court on motion of a party without a prior hearing of the other party affected by such order, but such other party may at any time thereafter file a motion to strike out such order and be given an opportunity to be heard thereon.
(Proposed.)

Rule 856. Order to Be Entered by the Chief Judge or Senior Associate Judge Present.

a. *By Chief Judge.*

An order of this Court other than an order affirming, reversing or modifying the judgment appealed from or an order dismissing an appeal, may be passed on behalf of this Court by the Chief Judge thereof.

b. *By Senior Associate Judge Present.*

In the absence of the Chief Judge any order other than an order affirming, reversing or modifying the judgment appealed from or an order dismissing an appeal, may be passed on behalf of this Court by the Senior Associate Judge present. If this Court is not in session, such order may be passed on behalf of this Court by the Chief Judge or any Associate Judge.
(Proposed.)

Rule 857. Process.

a. *Power of Court to Issue.*

This Court may issue process of any sort to any part of the State.

b. *To Whom Directed.*

Process requiring action by a person shall be directed to the person of whom such action is required. Where the sheriff or other officer is required by law to take action the process requiring him to do so shall be directed to the sheriff or such other officer.
(Proposed.)

Committee note.—These rules are entirely new. They provide that all applications for an order of the Court of Appeals shall be by motion, require service of a copy of all motions on other counsel and specifically provide for an opportunity for a hearing on any order requested of the Court. This does not necessarily require a formal hearing in open court, but is merely an assurance that an opportunity to be heard will be given to any party.

Rule 856 has been drafted pursuant to a suggestion of the Chief Judge who called attention to the fact that there was presently no rule delineating the authority of the Chief Judge or the associate judges with respect to orders to be signed by the Court. The rule has been made purposely as broad as possible so as to indicate that in all matters except the actual decision or dismissal of appeals the Chief Judge or the Senior Associate Judge present shall act for the Court.

Rule 857 has been drafted because there is presently no rule with respect to the issuance of process by the Court of Appeals, although the issuance of such process is referred to in certain other rules and statutes. Section c of Rule 865 (Death—Substitution of Parties), and its statutory predecessor, for instance, refers to the issuance of process in the case of the death of a party, and Rule 878 (Execution) refers to the issuance of process in cases of execution and *scire facias* in the Court of Appeals.

DEATH—SUBSTITUTION OF PARTY

Rule 865. Death—Substitution of Party.

a. *Civil Case Not to Abate by Death of Party—Exceptions.*

A civil case in which an appeal has been taken, whether or not the record has been transmitted to this Court, shall not abate by the death of any party to such appeal; provided, however, that where a party to a case for slander shall die, the case shall abate as to such party unless a judgment in favor of the plaintiff has been entered in the lower court, and a case in equity shall abate upon the death of a party where the right involved in the case does not survive the death of such party; and provided further that when a case has become moot by reason of the death of a party, it may be dismissed pursuant to Rule 835 (Dismissal of Appeal).

(Proposed; art. 5, § 81.)

b. *Motion by Successor in Interest.*

The successor in interest of a deceased party may appear, and, by motion in writing suggesting the death of the decedent, be made a party to the case on appeal in place of such decedent and prosecute or defend the same. Such motion shall be granted as of right.

(Art. 5, § 81.)

c. *Motion by Opposite Party.*

1. When Made.

If the successor in interest shall fail to make the necessary motion within thirty days after the death of a party or within twenty days after the filing of the record in this Court, whichever shall last occur, any other party to the appeal may, by motion in writing suggest said death, setting forth therein when the death occurred, the identity of the successor in interest and how he succeeds to the interest of the decedent.

2. Process.

Upon filing of such motion, process shall immediately issue out of this Court to the party named in said suggestion to appear at a day to be named therein, and be made a party to the case on appeal.

(Art. 5, § 81.)

d. *Failure of Successor in Interest to Appear.*

If the successor in interest shall fail to appear after being summoned or given notice by publication, this Court may proceed with the case on appeal to the same extent as if the party dying were alive. If the residence of any successor in interest be unknown, or if he secrete himself or in any manner evade the service of process, or leave the state, he may be proceeded against as if he were a nonresident.

(Art. 5, §§ 83, 84; Proposed.)

Committee note.—These Rules have been substantially rewritten to conform to the modern practice and to dispense with antiquated procedures.

EXECUTION—MANDATE—JUDGMENT

Rule 870. Decision by This Court—Finality.

Except as otherwise provided by Rules 835 (Dismissal of Appeal) and 871 (Remand), this Court will either affirm or reverse the judgment from which the appeal was taken, or direct the manner in which it shall be modified, changed or amended. The decision of this Court shall be final and conclusive.

(Art. 5, § 67; Proposed.)

Cross reference.—See § 15 of article IV of Constitution of Maryland.

Rule 871. Remand.

a. *For Further Proceedings.*

If it shall appear to this Court that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment from which the appeal was taken, or that the purposes of justice will be advanced by permitting further proceedings in the cause, either through amendment of the pleadings, introduction of additional evidence, making of additional parties, or otherwise, then this Court, instead of entering a final order affirming, reversing or modifying the judgment from which the appeal was taken, may order the case to be remanded to the lower court. Upon remand to the lower court, such further proceedings shall be had by amendment of the pleadings, introduction of additional evidence, making of additional parties, or otherwise, as may be necessary for determining the action upon its merits as if no appeal had been taken and the judgment from which the appeal was taken had not been entered; provided, however, that the order entered by this Court in remanding said case, and the opinion of this Court on which said order is passed, shall be conclusive as to the points finally decided thereby. In such an order remanding a case, this Court will express the purpose for so remanding and in its opinion filed with said order will determine all questions which may have been properly presented.
(Art. 5, § 42.)

b. *In Criminal Case.*

If in an appeal in a criminal action this Court shall reverse the judgment for error in the judgment or in the sentence, this Court will remand the case to the lower court in order that such court may pronounce the proper judgment or sentence.
(Art. 5, § 87.)

Rule 872. Affirmance in Part and Reversal in Part.

a. *Severable Controversy.*

If it appears to this Court that a reversible error affects a severable item or part only of the matters in controversy, this Court may affirm the judgment from which the appeal was taken as to the remaining parts or items thereof and may remand the case and order a new trial as to the severable item or part only.
(Art. 5, § 25.)

b. *Several Plaintiffs or Several Defendants.*

Where there was more than one plaintiff or more than one defendant in the action in the court below, and it shall appear to this Court that the judgment should be affirmed, modified or reversed as to one or more or all of said parties, then this Court will so direct. This section shall not apply to affect a judgment in favor of or against a person not a party to the case on appeal.
(Proposed; art. 5, § 26.)

Rule 873. Reversal—Limitations on.

a. *None for Want of Form.*

If this Court is of the opinion that there is sufficient matter of substance on an appeal to enable it to proceed thereon, the judgment from which the appeal was taken will not be reversed for *mere* matter of form, and this Court will permit any entry to be made by either party during the pendency of the appeal which might have been made by such party in the lower court after verdict.
(Art. 5, § 19.)

b. *None for Excessive Verdict.*

A judgment will not be reversed because the verdict was rendered for a larger sum than the amount claimed in the declaration, if the plaintiff in the action in the lower court amends the record by entering in this Court a release of the excess above the sum claimed in the declaration.
(Art. 5, § 21.)

Rule 874. Affirmance or Reversal with New Trial; Removal.

a. *Remand for New Trial.*

Where the judgment from which the appeal was taken shall be affirmed or reversed by this Court and it shall appear to this Court that a new trial ought to be had, such new trial will be awarded and the case remanded to the lower court therefor.
(C. of A. 4, § 1 (4822) (2), art. 5, § 24 (1), W.B. 834A.)

b. *Removal; Exception.*

If on reversal of the judgment in an action at law from which the appeal was taken a new trial shall be awarded, this Court, upon suggestion in writing by a party supported by affidavits or other proper evidence, that a fair and impartial trial cannot be had in the lower court from which the appeal was taken, may direct the Clerk of this Court to transmit the record to the clerk of the court of some other county with an order to such court directing it to proceed in such action and to a new trial thereof. Such removal will not be granted if the party applying therefor has theretofore exercised the right of removal.
(Proposed; art. 5, § 27.)

Rule 875. Final Judgment in This Court.

a. *On Reversal—Judgment as Ought to Have Been Given.*

On reversing a judgment, or part of a judgment, this Court may enter such judgment as ought to have been entered by the lower court.
(Art. 5, § 17.)

b. *Alteration of Judgment Due to Amendments.*

If an entry or amendment which this Court may permit would require an alteration of the judgment from which the appeal was taken, this Court may enter such judgment as the entry or amendment may require.
(Art. 5, § 22.)

c. *Upon Submission of Parties.*

If a judgment or part of a judgment is reversed and the case remanded for new trial, the parties may by agreement in writing filed with the Clerk submit the case to this Court for final adjudication and judgment upon the facts set forth in the record. Upon such submission by the parties, this Court will pass upon all questions of fact and of law arising in the case and enter final judgment thereon.
(Art. 5, § 18.)

Rule 876. Mandate.

a. *To Evidence Order of This Court.*

The order of this Court dismissing an appeal or affirming or reversing in whole or in part, or modifying the judgment from which the appeal was taken, or awarding a new trial, or entering a final judgment pursuant to Rule 875 (Final Judgment in This Court) shall be evidenced by the mandate of this Court which shall be certified under the seal of this Court by the Clerk. It shall not be necessary

for any formal order or judgment other than the mandate to be signed or transmitted to the lower court.
(Proposed; Order Dec. 6, 1949 (D.R. 12/8/49).)

b. *When to Be Issued.*

Unless otherwise ordered by this Court, the mandate shall be issued as of course by the Clerk upon the expiration of thirty days after the opinion of this Court has been filed or the order or judgment of this Court has been entered, and shall be transmitted by him to the lower court.
(Proposed.)

c. *To Contain Statement of Costs.*

The mandate shall contain a statement of the costs taxable to the appellant and to the appellee and of the order of this Court awarding costs.
(Proposed.)

d. *Effect of Mandate.*

When the mandate has been transmitted the lower court shall proceed according to the tenor and directions thereof.
(Art. 5, § 67.)

Rule 877. Return of Original Papers to Lower Court.

Except as may be otherwise directed pursuant to section b of Rule 874 (Affirmance or Reversal with New Trial—Removal), the original papers comprising the record shall be returned to the lower court at the time the mandate of this Court is transmitted.
(C. of A. 10, § 7 (1954 Supp.) (361) (6).)

Rule 878. Execution.

a. *May Issue on a Judgment of This Court.*

This Court may enforce by execution or appropriate order a judgment entered by it.
(Art. 5, § 17.)

b. *Fieri Facias or Attachment.*

1. Issuance by Clerk.

A writ of *fieri facias* or attachment shall upon request of a party be issued by the Clerk upon a judgment of this Court and shall be directed to the sheriff of the county in which the judgment from which the appeal was taken was entered. The writ shall be returnable to the court for such county.

2. Issuance by Leave of Court.

At the same time a writ of *fieri facias* or attachment is issued by the Clerk pursuant to subsection 1 of section b of this Rule, an additional writ may also be issued by leave of this Court upon motion for good cause shown, and upon such terms as this Court shall prescribe, directed to the sheriff of any other county in the State and returnable to the court of such county, or to the Superior Court of Baltimore City.

3. Copy of Judgment; Proceedings in Lower Court.

With each copy of the writ issued pursuant to subsections 1 or 2 section b of this Rule, there shall be sent a copy of the mandate of this Court, and each of said writs shall be proceeded in and renewed as if it had been issued from the court to which it is returnable.
(Art. 5, §§ 75, 76.)

c. *Scire Facias.*

1. Against Heirs or Terre Tenants.

If a writ of *scire facias* shall be issued by this Court against heirs or terre

tenants, not all of whom reside in the same county, the *scire facias* shall be directed to the sheriff of the proper county and be returnable by him to the court thereof or to the Superior Court of Baltimore City. A duplicate of said writ of *scire facias* shall be issued and directed to the sheriff of each county wherein an heir or terre tenant resides, and such duplicate shall be returnable to the court of the county to which the original *scire facias* was returnable. The court to which said writ is returnable shall proceed therein in the same manner as if said writ had issued from such court.
(Art. 5, §§ 78, 79.)

2. May Be Sent to County Where Defendant Resides or Land Lies.

A writ of *scire facias* from this Court against an heir or terre tenant may be sent to the county where the defendant in the original judgment resided, or to the county where the land to be affected by such writ lies.
(Art. 5, § 80.)

Committee note.—Parts of these rules are new, parts are redrafts of existing rules and statutes. The Committee has attempted to bring them together in a logical and orderly arrangement. The Committee recommends the supersession of the last clause of art. 5, § 19.

COSTS

Rule 880. Clerk's Costs.

In each case docketed in this Court, the Clerk shall charge such costs as may be prescribed by law.

Cross reference.—See Code (1955 Supp.), art. 36, § 13, for fees of the Clerk of the Court of Appeals.

Rule 881. Taxing of Costs.

a. *What to Be Included.*

In taxing the costs in a case the Clerk shall include the cost of printing the briefs, the record extract and any necessary appendices to briefs, the amount, if any, paid by the appellant for the original and two copies of the stenographic transcript of testimony furnished pursuant to section c 2 of Rule 826 (Record on Appeal), and the cost of printing a motion to dismiss if the motion is granted.
(C. of A. 37A, § 10 (adopted 3/22/55); C. of A. 39, § 5 (as amended 3/22/55), art. 5, § 72.)

b. *What to Be Excluded.*

If the record is printed without order of this Court, the cost of printing shall not be taxed as costs except where for special cause shown this Court shall otherwise order. The cost of printing briefs, appendices or record extracts of amici curiae shall not be taxed as part of the costs unless otherwise ordered by this Court.
(C. of A. 36 (4829) (14); C. of A. 37A, § 10 (adopted 3/22/55); C. of A. 39, § 5 (as amended 3/22/55).)

Rule 882. Awarding of Costs.

a. *Generally.*

In all cases in this Court the awarding of costs shall be in the discretion of this Court, but unless it is otherwise ordered by this Court costs shall be awarded against the losing party.
(Art. 5, §§ 16, 30, 71.)

b. *Separate Appeals in the Same Record.*

Where there is more than one appeal on the same record costs may be awarded

to any party or apportioned between the parties, in the discretion of this Court.
(C. of A. 12 (4827) (7), art. 5, § 47.)

c. *Unnecessary Printing.*

When unnecessary matter has been included in a printed extract or appendix the cost of printing may be withheld or divided as this Court may direct.
(C. of A. 37A, § 10 (adopted 3/22/55); C. of A. 39, § 5 (as amended 3/22/55).)

d. *Where Order to Correct Record Unnecessary.*

If this Court determines that an order to correct the record pursuant to Rule 827 (Correction of Error or Omission in Record) was unnecessary, the costs resulting therefrom will be imposed on the party at whose instance such order was granted.
(C. of A. 46 (4832) (20).)

e. *Amicus Curiae.*

Costs shall not be allowed to or awarded against an *amicus curiae.*
(Proposed.)

f. *Against State Agency.*

Costs shall be allowed to or awarded against the State of Maryland or any instrumentality, department, commission, agency or political subdivision thereof which is a party to a case in this Court in the same manner as costs are allowed to or awarded against a private litigant; provided, however, that in a criminal appeal which is decided against the State in favor of the appellant the costs shall be awarded against the political subdivision of the State of Maryland in which the case originated.
(Art. 5, § 72A (1954 Supp.).)

Rule 883. Waiver of Costs.

a. *Habeas Corpus Case.*

In a habeas corpus case arising out of a criminal offense this Court may permit an appeal without the payment of costs.
(Art. 42, § 6.)

b. *Death Sentence—Pauper's Oath.*

In a criminal case where a sentence of death is imposed and the defendant files an oath "in forma pauperis" and an order for appeal pursuant to Rule 811 (How Appeals to Be Taken) within thirty days after the date of the sentence, the lower court shall sign an order directing the record to be transmitted to this Court at the expense of the State of Maryland.
(Art. 5, § 89.)

Committee note.—The rules on costs are almost entirely new, but are based on scattered references to costs, taxing of costs and awarding of costs in various rules and statutes. The Committee has attempted to bring all the rules respecting costs together in one set of rules. These Rules do not specify the amount of the fees which may be charged by the Clerk. The fees are at the present time prescribed by statute with one minor exception, and the Committee thought this was a matter for the Legislature rather than the Court of Appeals.

SCOPE OF REVIEW

Rule 885. Scope of Review—Limited to Questions Decided by Lower Court.

This Court will not ordinarily decide any point or question which does not plainly appear by the record to have been tried and decided by the lower court; but where a point or question of law was presented to the lower court and a

decision of such point or question of law by this Court is necessary or desirable for the guidance of the lower court or to avoid the expense and delay of another appeal to this Court, such point or question of law may be decided by this Court even though not decided by the lower court. Where jurisdiction cannot be conferred on the Court by waiver or consent of the parties, a question as to the jurisdiction of the lower court may be raised and decided in this Court whether or not raised and decided in the lower court.
(C. of A. 9 (4823) (4), art. 5, § 10, W.B. 807a; Proposed.)

Committee note. — The Committee invites the careful attention of Bench and Bar to this Rule, because it seems impossible to determine how far the Court of Appeals intended to go in lifting the exact wording of Art. 5, § 10, dealing with appeals from courts of law, and making it Rule 9 dealing with appeals generally. The annotations to § 10 should be carefully considered. The last clause of the Rule was added to give effect to Close v. Southern Maryland Agr. Assn., 134 Md. 629, 633, 108 A. 209.

It will be noted that the Rule proposed by the Committee is broader than the existing rules in that in certain cases the Court of Appeals may decide a question presented to but not decided by the lower court. For instance, a case may present two separate legal questions both of which might be argued fully in the lower court. It might be that the lower court would decide one of the questions and then deem it unnecessary to decide the other. Under the Rule as recommended the Court of Appeals could decide both questions.

Rule 886. Review When Action Tried by Lower Court without Jury.

a. *Upon Both Law and Evidence.*

When an action has been tried by the lower court without a jury, this Court will review the case upon both the law and the evidence, but the judgment of the lower court will not be set aside on the evidence unless clearly erroneous and due regard will be given to the opportunity of the lower court to judge the credibility of the witnesses.
(G.R.P.P. Pt. Three, III, Rule 9c (4882) (89), W.B. 539d.)

b. *Disbarment Case.*

In an appeal by an attorney disciplined by the lower court for professional misconduct, malpractice, fraud, deceit, crime involving moral turpitude, conduct prejudicial to the administration of justice, or for being a subversive person, this Court will review the entire proceedings and decide the case as the substantial merits of the cause and the ends of justice may require.
(Art. 10, § 5 (1954 Supp.).)

Rule 887. Interlocutory Orders—When Reviewable.

On an appeal from a final judgment, every interlocutory order which has previously been entered in the action shall be open to review by this Court unless an appeal has theretofore been taken from such interlocutory order and been decided on the merits by this Court.
(Art. 5, § 32.)

MISCELLANEOUS

Rule 890. Counsel May Act for Party.

Whenever in this Chapter it is provided that a party may act, or any action is to be performed, such act may be performed by his counsel. Where any notice is to be given by or to a party, such notice shall be given by or to counsel of record for such party.
(C. of A. 37A, § 11 (adopted 3/22/55).)