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CODE REVISION IN MARYLAND: THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE

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On August 22, 1973, Governor Mandel signed chapter 2, Acts of the First Special Session of 1973.¹ This chapter, which is one of the first three revision bills presented to the General Assembly by the Governor's Commission to revise the Annotated Code of Maryland,² contains a comprehensive new article of the Anno-

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1. A ceremonial signing of this bill and actual signing of two other Code revision bills took place on September 5, 1973.

2. The other two bills were chapter 6 (Agriculture), and chapter 4 (Natural Resources), Acts of the First Special Session of 1973.

The Commission to Revise the Annotated Code [hereinafter referred to as the Commission or as Code Revision Commission] was established in July, 1970 by Governor Marvin Mandel. Senate President William S. James was named as its chairman and House Speaker Thomas Hunter Lowe named as its vice-chairman. Other present members of the Commission are: State Court Administrator, William H. Adkins, II (Talbot County); County Solicitor R. Bruce Alderman (Baltimore County); Lowell R. Bowen, Esq. (Baltimore City); Attorney General Francis B. Burch; Circuit Court Judge David L. Cahoon (Montgomery County); James J. Cromwell, Esq. (Montgomery County); Dean William P. Cunningham (University of Maryland School of Law); former Circuit Court Judge Philip Dorsey, Jr. (St. Mary's County); S. Ronald Ellison, Esq. (Baltimore City); C. Edward Jones, Esq. (Baltimore City); Deputy Attorney General Henry R. Lord; James McSherry, Esq. (Frederick County); Assistant Attorney General J. Michael McWilliams (State Department of Transportation); Court of Special Appeals Judge Jerrold V. Powers (Prince George's County); Norman P. Ramsey, Esq. (Baltimore City); Roger D. Redden, Esq. (Baltimore City); Zelig Robinson, Esq. (Baltimore City); Richard D. Rosenthal, Esq. (Baltimore City); Doris P. Scott, Esq. (Cecil County); Shale D. Stiller, Esq. (Baltimore City); Melvin J. Sykes, Esq. (Baltimore City); Howard J. Thomas, Esq. (Montgomery County); Chief Legislative Officer Alan Wilner (Anne Arundel County); Charles W. Woodward, Jr., Esq. (Montgomery County); and Circuit Court Judge James L. Wray (Anne Arundel County). Former Speaker Lowe, now a Judge of the Court of Special Appeals, remains a member of the Commission. The current House Speaker, the Honorable John Hanson Briscoe (St. Mary's County), has assumed the vice-chairmanship.

Former Commission members include District Court Judge George W. Bowling (Charles County); Frederick R. Buck, Esq. (Baltimore City); District Court Judge Walter E. Buck, Jr. (Cecil County); Joseph A. Ciotola, Esq. (Baltimore City); Court of Appeals Judge John C. Eldridge (Anne Arundel County); Dr. Carl N. Everstine (Director, Depart-

tated Code dealing with courts and judicial proceedings.³

The Courts and Judicial Proceedings Article, one of twenty-one articles which will eventually constitute the Maryland Annotated Code,⁴ reflects the concept adopted by the Commission that

ment of Legislative Reference); former States Attorney Samuel A. Green, Jr. (Baltimore County); and former Supreme Bench Judge Thomas J. Kenney (Baltimore City).

Assistant Attorney General Fred Oken has frequently represented Commissioner Burch.

In July of 1972 the staff, led by a director who is also State Revisor of Statutes, became the Division of Statutory Revision within the State Department of Legislative Reference. Ch. 182, [1972] Md. Laws 695. The members of the staff include: Revisor of Statutes Avery Aisenstark; Associate Revisors Jack L. Kenner, Robert A. Melville, and Dushan Zdravkovich; Assistant Revisors C. Elizabeth Buckler, Ralph Hughes, and Gerald Winegrad; Editor-Librarian Carol Apperson, Assistant Editor Marie Marangoni; and Secretaries Jean Carter, Phyllis Helmick, Earlene Johnson, Linette Johnson, and Alice Sears. Former staff members, in addition to the author, include Revisor of Statutes J. Kemp Bartlett; Assistant Revisors Bruce C. Bereano, Curtis J. Karpel, and Sharon K. Tucker; Assistant Revisor David Anderson; and Secretaries Loretta Brewer, and Peggy Jones. Those chiefly concerned with drafting the Courts Article were the author (titles 1, 4, 12 & 13), Mr. Zdravkovich (titles 3, 7, and 11), Mr. Bartlett (titles 9 and 10), and Mr. Melville (titles 2, 4, 5, 6 & 8).

Governor Mandel delineated the rationale for the establishment of the Commission as well as its mission at the organizational meeting of the Commission on September 18, 1970:

The last comprehensive revision of the Code of Public General Laws of Maryland was completed in 1888. During the intervening 82 years, a great number of new statutes has been added to the Code, many on subjects not imagined by the codifiers, with the result that the organization of what is now the Annotated Code of Maryland and the relationship of its different subjects has lost the rational cohesiveness it once had. It is increasingly difficult to use the Code in a simple, intelligent and efficient manner. Moreover, there now exist in the Code numerous inconsistencies in the statutory treatment of similar subjects which have no rational justification

Therefore, I believe that this Commission should: Study these and related problems; Prepare a new Code of Public General Laws of Maryland; Submit its proposals and recommendations to the General Assembly of Maryland at such time or times as it may deem expedient.

Minutes of the Governor's Commission to Revise the Annotated Code of Maryland 1 (Sept. 18, 1970) [hereinafter cited as Commission Minutes]. More extended discussion of the establishment and purposes of the Commission may be found in Code Revision Commission, Revisor's Manual (2d ed. Nov. 1973). See also Adkins, *Good News for Modern Man*, 4 MD. BAR J. 10 (Jan. 1972).

3. This new code article replaced in whole or in part 26 articles of the 1957 Code: Md. Ann. Code arts. 5, 7, 9, 16, 17, 24, 26, 31A, 35, 36, 40, 42, 50, 51, 57, 60, 67, 75, 75C, 79, 80, 83, 87, 88, 90, and 96.

4. Those articles are:

Agriculture	Local Government
Business Regulation	Natural Resources
Commercial Law	Occupations and Professions
Corporations and Associations	Public Health
Courts and Judicial Proceedings	Public Safety
Criminal Law	Real Property
Education	Social Services

any article within the topically oriented Code⁵ should be a substantial repository for logically-related statutes.⁶ Because of the previous lack of any logical relationship in organization among the various code provisions dealing with the judicial system in Maryland, the Code Revision Commission gave high priority to the revision of the Courts Article.⁷

The onerous task of clarifying the logical relationship among code provisions related to the judicial system, while avoiding any substantive change in these provisions,⁸ came to fruition in 1973

Elections	State Government
Estates and Trusts	Taxation & Revenue
Family Law	Transportation
General Provisions	

Twenty articles were originally proposed. See Commission Minutes (Apr. 26, 1971). The twenty-first was added in 1972. Commission Minutes 2 (May 12, 1972).

5. There are basically two systems of code organization, the "alphabetical" system and the "topical" system. In an "alphabetical" system the articles or major divisions of a code are simply arranged in alphabetical order of the article names, as exemplified by the Maryland Code of 1888 and, basically, by the 1957 Michie Code (Maryland Code Annotated). In a "topical" system there is an effort to group materials according to topic or subject matter. Because the "topical" system produces, relatively, a few major divisions, the Commission chose the "topical" approach to code organization. Subcommittee on Classification and Numbering, Recommendation No. 1 at 9-10 (Mar. 24, 1971—revised Apr. 15, 1971), as adopted by the Commission on April 26, 1971. See Commission Minutes 9 (Apr. 26, 1971).

6. Each article proposed by the Commission is divided into titles, subtitles, and sections; the numbering system is similar to that of article 21 of the present Code. See MD. ANN. CODE art. 21 (1973). The new articles, most of which are to be published in separate volumes, will be cited by name only rather than by number in order to avoid the necessity of translating an article number into a subject heading. Commission Minutes 2 (May 12, 1972). See also Subcommittee on Long Range Planning, Recommendation No. 2 (May 1, 1972).

7. Consideration of those criteria adopted by the Commission as guides to determine priorities for revision dictated the decision to give priority to the Courts Article. These criteria included the general importance of the statutory material to the public as a whole, or to identifiable portions of the public; the present state of organization and draftsmanship of the material; the recentness of legislative review of the material; the state of obsolescence, unconstitutionality, or duplication observed in the material; and the proposal of early revision of the material by any Commission member, state agency, or private individual or group. See Staff Report No. 4, "Priorities for Revision" (Feb. 25, 1971), adopted by the Commission on April 26, 1971 (Commission Minutes 14 (Apr. 26, 1971)).

8. The purpose of formal code revision, succinctly put, is "to improve the form of the statutes without changing the substantive meaning." Texas Study Committee on Statutory Revision, Report to Texas Legislative Council (Dec. 29, 1966). See also Wheeler, *Statute Revision: Its Nature, Purpose and Method*, 16 TUL. L. REV. 165 (1943).

The Maryland Court of Appeals, in *Welch v. Humphrey*, 200 Md. 410, 90 A.2d 686 (1952), has recognized the function of code revision to be clarification rather than substantive alteration:

It is true that a codification of previously enacted legislation, eliminating repealed laws and systematically arranging the laws by subject matter, becomes an official Code when adopted by the Legislature, and, since it constitutes the latest expression of the legislative will, it controls over all previous expressions on the

after eighteen months of work by the Commission, its staff and the Subcommittee on Courts.⁹ Throughout these eighteen months, the goal of an orderly presentation of a body of civil judicial law guided the work of the Commission,¹⁰ which determined that the Courts Article should have the following structure:¹¹

subject, if the Legislature so provides. However, the principal function of a Code is to reorganize the statutes and state them in simpler form. Consequently any changes made in them by a Code are presumed to be for the purpose of clarity rather than change of meaning. Therefore, even a change in the phraseology of a statute by a codification thereof will not ordinarily modify the law, unless the change is so radical and material that the intention of the Legislature to modify the law appears unmistakably from the language of the Code.

Id. at 416, 90 A.2d 689.

9. The initial revision effort was delegated in April of 1970 to a subcommittee which organized the 1957 Code provisions relating to the Courts Article into twelve proposed titles, including: (1) court structure and organization; (2) clerks, officers, sheriffs; (3) jurisdiction—trial courts; (4) special causes of action; (5) venue, process, pleading, and practices; (6) prohibited actions/limitations; (7) costs and fees; (8) juries; (9) evidence; (10) judgments; (11) appeals; and (12) court supporting agencies. Staff Memorandum No. 1 to Subcommittee on Courts and Judicial Proceedings, "Organization of the Courts and Judicial Proceedings Article" (June 16, 1971). Modifications of this organization were the result of policy considerations and actions taken by the General Assembly, such as the repeal of articles 20 and 52 of the 1957 Code by chapter 181, Laws of 1972, ch. 181, [1972] Md. Laws 533. The Courts subcommittee consisted of Shale D. Stiller, Chairman, and Commissioners Alderman, Burch, Cahoon, Ciotola, Cromwell, Powers, Ramsey, Sykes, Woodward, and Wray.

10. After appraisal of the structure to govern the Courts Article, the Commission and its subcommittee began formulating the substance of the article, drafts of which were submitted to a special committee appointed by the Section Council of the Maryland State Bar Association Section of Judicial Administration. This committee, later designated as a special committee of the Maryland State Bar Association, Inc., in order to testify in connection with S.B. 1, was comprised of Joseph S. Kaufman, Chairman, and Messrs. David H. Feldman, Lee M. Miller, and William J. Smith, Jr. Titles 1, 4, 8, 12 and 13 were also presented to a special joint committee of the Legislative Council composed of Delegate (now Judge) Martin A. Kircher, Chairman; State Senator (now Congressman) Robert E. Bauman; State Senators Edward T. Conroy, J. Joseph Curran, Jr., James S. McAuliffe, and Melvin A. Steinberg; and Delegates James A. Lombardi, John S. McInerney, Joseph E. Owens, and Frank Heintz. See Code Revision Commission Reports to the Legislative Council Nos. 3 (Aug. 4, 1972); 3A (Sept. 8, 1972); 3B (Sept. 21, 1972); 3C (Oct. 3, 1972); 3D (Oct. 5, 1972); and 3E (Nov. 1, 1972). Parts of the article were also submitted to such interested parties as the Director of the Administrative Office of the Courts, the Chief Judge of the District Court, the Maryland State Court Clerks' Association and the Sheriffs' Association.

After submission of the draft of the Courts Article to members of the General Assembly during a Special Session which convened on July 30, 1973, the Senate Committee on Judicial Proceedings and the House Judiciary Committee began twenty-one hours of joint hearings on S.B. 1, the Courts Bill. The Senate Committee on Judicial Proceedings reported the bill favorably on August 3 with 100 amendments, mostly technical in nature. After adoption of two additional amendments on the Senate floor, the Senate passed the bill on August 15, an action which was subsequently confirmed by the House of Delegates without further amendment. As previously noted, Governor Mandel signed the bill on August 22, 1973.

- Title 1. Court Structure and Organization
- Title 2. Court Personnel
- Title 3. Courts of General Jurisdiction — Jurisdiction/Special Causes of Action
- Title 4. District Court — Jurisdiction
- Title 5. Limitations and Prohibited Actions
- Title 6. Personal Jurisdiction, Venue, Process, and Practice
- Title 7. Costs
- Title 8. Juries
- Title 9. Witnesses
- Title 10. Evidence
- Title 11. Judgments
- Title 12. Appeals
- Title 13. Court Supporting Agencies

Assessment of the product of this extensive effort, which in bill form embraced 382 pages with 166 pages of related cross-reference tables, and of its effect on the substantive law of the State is the purpose of this article. Examination and analysis of the provisions of the new Courts Article will proceed on a title-by-title basis.

TITLE 1: COURT STRUCTURE AND ORGANIZATION

The seven subtitles of title 1 deal with general powers of the courts, the composition and organization of the courts, judicial compensation, and some administrative aspects of the court structure. The specific subtitles are Definitions; General; Court of Appeals; Court of Special Appeals; Trial Courts of General Jurisdiction; District Court; and Judicial Salaries and Allowances.

The definitional subtitle of title 1 reflects the Commission's concern with the objective of classification of the law rather than substantive change. For example, although provisions dealing with judicial pensions¹² were originally placed in title 1,¹³ this material was transferred to article 73B because of the danger of an even inadvertent substantive change resulting from formal revision.¹⁴ This approach also has the advantage of placing the

11. This structure was approved by the full Commission in September, 1971. Commission Minutes 4-12 (Sept. 13, 1971).

12. See Md. Ann. Code art. 26, §§ 49-50C (Supp. 1973), § 125 (Supp. 1973), § 125A (1973), § 144 (d)-(e) (1973), § 160 (Supp. 1973).

13. See Commission Minutes 5 (Sept. 27, 1972).

14. This transfer was accomplished by ch. 2, § 12 [1973 Extraordinary Sess.] Md. Laws 408.

The Commission Minutes of September 27, 1972 reflect this concern with substantive change:

judicial pension laws with other provisions dealing with pensions of State employees.

The concern with the objectives of formal code revision is also embodied in subtitle 2 dealing with general matters relating to courts and judges. Section 1-201, pertaining to the rule-making power, demonstrates the application of three objectives of formal revision in the production of a currently viable statutory provision, those being the assembly of related provisions, the elimination of duplications and the repeal of obsolete or unconstitutional statutes.¹⁵ Assembly of overlapping provisions, all related to the same subject, has been accomplished by the combination, in section 1-201, of article 16, section 99, and article 26, sections 1, 2 and 27. The revision has eliminated possible conflicts between Maryland Rules¹⁶ and former statutes and has removed obsolete provisions dealing with terms of courts and recesses.¹⁷

The former provisions of article 26, section 25 prohibiting rule-making for criminal cases have also been deleted as contrary to the grants of rule-making power contained in sections 18 and

Commissioner Stiller looked with foreboding at the labyrinth of pension laws. No commissioner was anxious to enter the maze. The Chaney report was noted, and all recognized the additional complexities it exposed. Commissioners questioned the need for including the pension material in the Courts Article, even if it could be understood by the average human mind. It was noted that a Legislative Council Subcommittee chaired by Senator Staten is considering some aspects of the pension system.

Commission Minutes at 5 (Sept. 27, 1972). The report referred to in the Minutes was that prepared by Robert L. Chaney, Esq. See Staff Report No. 16, "Courts Article — Title 1, Court Structure and Organization" (Sept. 21, 1972). Some substantive revision of the judicial pension system did occur at the 1973 regular session. See ch. 369, 545, 560 and 665, [1973] Md. Laws 820, 1182, 1202, and 1389, respectively. The Governor's Commission on Judicial Reform, in conjunction with a special committee of the Maryland State Bar Association Section of Judicial Administration, has been examining some of the problems of the pension system; the result of this effort was the introduction of S.B. 575 and H.B. 968 at the 1974 regular session. The latter was enacted on the last day of the session and has been signed. Ch. 483, [1974] Md. Laws 1752.

Provisions relating to the Orphans Courts and to the Maryland Tax Court were also not included in title 1. The limited jurisdictional ambit of the Orphans Courts as well as the convenience of retaining the Orphans Courts material in article 93 mandated the exclusion of that material. See MD. ANN. CODE art. 93, § 2-102 (1969). Maryland Tax Court material was omitted since the Tax Court is an administrative agency and not a court (MD. ANN. CODE art. 81, § 224 (1968)). See Commission Minutes 8-9 (June 15, 1972), and Staff Report No. 12, "Courts and Judicial Proceedings — Some Preliminary Matters," at 5-9 (June 6, 1972).

15. Section 1-201 is based mainly on former article 26, section 25. See Md. Ann. Code art. 26, § 25 (1973). Former article 26, section 144(b) dealing with the rule-making power of the Chief Judge of the District Court is found in section 1-605(b) of the Courts Article.

16. Md. R. P. 1.

17. See Md. Ann. Code art. 26, § 2 (1973).

18A of article IV of the Maryland Constitution.¹⁸ For the same reasons, a requirement that rules be submitted to the General Assembly before becoming effective has been deleted. However, the portion of former section 27 giving rule-making power to Orphans' Courts has been preserved by transferring that part of the section to article 93, section 2-102.¹⁹

The additional revision objective of the correction of ambiguous, unclear, or misleading statutes is exemplified by section 1-202(a). Section 1-202(a) is derived from former article 26, section 4 which purported to limit the power of the courts to inflict summary punishment for contempt.²⁰ Section 4 was fraught with ambiguity because of judicial decisions holding that the power to punish summarily for contempt was inherent in a court of record and was not subject to limitation by statute.²¹ Article 26, section 4 was thereby interpreted to be merely declaratory of the common law and not even an all-inclusive statement of the common law.²² It was recognized, moreover, that it would have been unconstitutional for the legislature to strip the courts of their inherent contempt process.²³ Accordingly, section 1-202(d) merely notes that a court may exercise the power to punish for contempt in the manner prescribed by rule. The misleading limiting language has been removed, and the development of the law of contempt is left with the courts. The statute, in other words, is brought into conformity with the actual state of the law. This process produces clarification without substantive change.

The next section of subtitle 2, section 1-203, which prohibits the practice of law by judges, offers an example of the limited kind of substantive change that may occur in formal revision. This limited alteration illustrates the application of the formal revision objectives of uniformity, consistency and the codification of presently uncodified rules. Subsection (d) of 1-203 is substan-

18. MD. CONST. art. IV, §§ 18, 18A (1972).

19. Ch. 2, § 4, [1973 Extraordinary Sess.] Md. Laws 394, recodified in MD. ANN. CODE, Est. & Tr. Art., § 2-102 (1974).

20. Md. Ann. Code art. 26, § 4 (1973).

21. See *Robinson v. State*, 19 Md. App. 20, 308 A.2d 712 (1973); *Ex parte Maulsby*, 13 Md. 625 (1859).

22. *Weaver v. State*, 244 Md. 640, 224 A.2d 684 (1966).

23. *Baltimore Radio Show v. State*, 193 Md. 300, 57 A.2d 697 (1948), *cert. denied*, 338 U.S. 912 (1950).

Other recent cases in this general line of authority include *McDaniel v. McDaniel*, 256 Md. 684, 262 A.2d 52 (1970); *Kandel v. State*, 252 Md. 668, 250 A.2d 853 (1969); *Roll v. State*, 15 Md. App. 31, 288 A.2d 605 (1972), *aff'd*, 267 Md. 714, 298 A.2d 867 (1973); *Muckus v. State*, 14 Md. App. 348, 286 A.2d 783 (1972); *Goldborough v. State*, 12 Md. App. 348, 278 A.2d 623 (1971).

tially a revision of article 26, section 144(b), although the revised statute prohibits all private practice by any fulltime judge, while former section 144(b) prohibited the practice of law only by district court judges.²⁴ This section also addresses one particular problem. The provision that a judge may not "profit directly or indirectly from the practice of law" contained in section 1-203(d) of the Courts Article raises the question of the remuneration received by judges under agreements which entitle a judge as a former partner in a law firm to receive, over a limited period of time, payments which represent his interest in the firm's profits as of the date he assumes his judicial office. Upon receipt of these payments, is the judge then profiting "indirectly from the practice of law"?²⁵ This situation has never been addressed to any Maryland appellate court, in part because the specific prohibition against indirectly profiting from the practice of law was applicable exclusively to District Court judges and applicable to them only since July, 1971.²⁶

In any event, the Commission felt that a provision should be included expressly permitting payment to a judge within certain limits. In this context the Commission adopted section 1-203(b),²⁷ which as originally drafted was partially based upon an informal decision of the American Bar Association Committee in Professional Ethics:

[U]pon accession to a judicial office agreement should be reached as to the portion of services rendered by a judge [to

24. Md. Ann. Code. art. 26, § 144(b) (1973). Article 10, section 29 of the Code also barred a judge from acting "as attorney or solicitor in any court of law or equity in this State." Md. Ann. Code art. 10, § 29 (Supp. 1973). Additional limitations on non-judicial activities of a judge are contained in article 16, section 199A, and article 93, section 5-104(b), as well as in articles 33 and 35 of the Declaration of Rights, Md. CONST., Declaration of Rights, art. 33, 35 (1972).

In addition to these statutory provisions, the Court of Appeals in 1971 adopted Maryland Rule 1231, embodying CANONS AND RULES OF JUDICIAL ETHICS. Canon XXX prohibits all private practice of law by a judge, as that position is defined in section 1-101(d) of the Courts Article. Ethical Rule 5 contains a similar prohibition, although both Canon XXX and Ethical Rule 5 provide certain exceptions with respect to "a judge of a court of limited jurisdiction who is not forbidden by law" to practice. This exception in effect applies only to Orphans' Court judges who are governed by the provisions of Md. ANN. CODE art. 10, § 30 (1968), and MD. ANN. CODE, Est. & Tr. Art., § 2-109 (1974).

25. The Subcommittee on Courts and Judicial Proceedings feared that this might be the case. See Minutes of the Subcommittee on Courts and Judicial Proceedings 5 (May 10, 1972) [hereinafter cited as Subcommittee Minutes].

26. Ch. 528, [1970] Md. Laws 1254. Prior to that time the language applied only to judges of the former Municipal Court of Baltimore City. See Md. Ann. Code art. 26, § 125(d) (1973).

27. See Commission Minutes 3 (Sept. 27, 1972).

his former firm] and in the absence of such agreement, appropriate steps should be taken to obtain their current value under the partnership contract. This sum should then be paid to the judge as rapidly as is possible under the circumstances²⁸

This draft was submitted to the Legislative Council Joint Committee with the comment that

the legislature could insist that the judge-designate forego any such earnings. Or it could force him to take a lump-sum payment before going on the bench. However, the former approach could be financially hard on the judge, and the latter would [could] impose financial difficulties on the firm and an extremely adverse tax impact on the judge. In either case, the effect would be to discourage able persons from accepting judgeships.²⁹

Accepting the desirability of the policy embodied in section 1-203(b), the Committee adopted a modification indicating that contingent fees should be taken into account in fixing the liquidated value of the judges' interest in his former firm.³⁰

Subsection 1-203(b) was further altered by the Senate's adoption of an amendment requiring that any remunerative agreement between the judge and his former firm be reduced to writing and filed with the Secretary of the Maryland Judicial Conference.³¹ Even with Ethical Rule 7,³² which requires a judge to report certain income, other than his judicial salary, to the Secretary of the Maryland Judicial Conference, the inclusion of a filing requirement in section 1-203(b) clearly maximizes the strength of the statute.

It was nevertheless recognized during the committee hearings at the 1973 special session that a judge receiving any pay-

28. ABA COMM. ON PROFESSIONAL ETHICS, INFORMAL DECISION, No. C-676 (Aug. 8, 1963).

29. Code Revision Commission, Report No. 3C to the Legislative Council, at 3 (Oct. 3, 1972).

30. Minutes of the Special Committee to Revise Proposed Recodification of Laws Pertaining to Courts and Judicial Proceedings at 1 (Oct. 17, 1972) and at 1 (Nov. 14, 1972). This modification appears as the last sentence of section 1-203(b).

31. Amendment No. 101, proposed by Senator Bishop and adopted by a vote of 32 to 2.

32. Ethical Rule 7 was superseded on February 15, 1974, by a broad financial disclosure rule requiring the income reporting formerly included in Rule 7 as well as much broader disclosure. Under Ethical Rule 7 judicial financial reports were available to the Court of Appeals, the Commission on Judicial Disabilities, and the Judicial Ethics Committee created by Ethical Rule 14; under the February 15th order disclosure statements are matters of public record.

ments from his former firm had an identifiable interest in the firm's financial stability and had, at least indirectly, an interest in the firm's success in litigation. Consequently, an amendment was proposed to require a judge to disqualify himself in any case in which his former firm appeared during the period the judge was receiving payments from the firm.³³ The amendment was rejected by vote of 11 to 10 in committee, but it was offered again on the Senate floor,³⁴ where it was adopted by a vote of 31 to 4. The amendment appears as subsection (c) of sec. 1-203.³⁵

Subtitle 3 of title 1, dealing with the Court of Appeals, represents the application of the code revision objective of symmetry. Although informationally unnecessary since provisions involving the structure or organization of the Court of Appeals are found in the Constitution,³⁶ subtitle 3 was added to provide mention of the State's highest court, a useful place for the listing of cross-references to constitutional provisions, and location for any future statutes bearing on the court's organization or structure.³⁷

The structure and organization of the Court of Special Appeals, on the other hand, are mainly dealt with by statute. The provisions of former article 26, section 130 appear in subtitle 4 without substantive change. The portion of Section 130 defining appellate judicial circuits is omitted because circuits are described in the Constitution.³⁸

Organizational provisions relating to trial courts of general jurisdiction, the focus of subtitle 5, are also in pertinent part, described in the Constitution.³⁹ However, section 1-503 now lists in convenient form the number of Circuit Court judges authorized

33. Actually, a provision to this effect was proposed by Commissioner Richard Rosenthal during the Commission's consideration of title 1. The proposal was rejected as beyond the scope of code revision. Commission Minutes 3-4 (Sept. 27, 1972).

34. Amendment No. 102, proposed by Senator Bishop.

35. Although this disqualification might be regarded as a substantive change, it should be viewed merely as a legislative definition of the "significant financial interest" in a matter which requires disqualification. Ethical Rule 2. See also Canon IV, providing that a "judge's official conduct should be free of impropriety and the appearance of impropriety." See generally Note, *Disqualification of Judges and Justices in the Federal Courts*, 86 HARV. L. REV. 736 (1973).

36. See, e.g., MD. CONST. art. IV, §§ 1, 2, 4, 4B, 5, 14, 15, 16, 17, 18 and 18A (1972).

37. General provisions dealing with appellate jurisdiction appear in title 12 of the Courts and Judicial Proceedings Article, which is chiefly based on former article 5 of the Maryland Annotated Code. See note 225 *et seq.* *infra* and accompanying text.

38. See MD. CONST. art. IV, § 14. Former section 131 of article 26, authorizing the General Assembly to add judges to the Court of Special Appeals, was omitted as an unnecessary statement of what the General Assembly may do in any event.

39. See MD. CONST. art. IV, § 19 (1972), § 20 (Supp. 1973), § 21 (1972) and §§ 27-33 (1972).

for each county and the number of Supreme Bench judges provided for Baltimore City.⁴⁰

The concise presentation of information was also the focus of subtitle 6, describing the organization of the District Court and the powers and duties of its chief judge. Its eight new sections are the result of rearrangement of all or parts of former article 26, sections 139, 140, 141, 150, 151, and 153 of the 1957 Code.

Subtitle 7, covering judicial salaries and allowances,⁴¹ clarifies existing law in the area. Section 1-701, for example, prohibits diminution of a judge's salary "during his continuance in office." Although this provision in part duplicates Constitutional provisions,⁴² Section 1-701 was included since there appears to be no precisely similar constitutional provision applicable to judges of the Court of Special Appeals.⁴³

Sections 1-702 through 1-705 set forth present law governing judicial salaries, including the changes enacted by chapter 343, Acts of 1972.⁴⁴ This act eliminated from the Code the listing of specific judicial salaries, relegating the fixing of judicial compensation to the annual budget (subject to the anti-diminution provision) and providing for automatic salary increases in certain cases of general salary increases to other State employees.⁴⁵

Section 1-706 makes it clear that all judges are entitled to reimbursement for expenses incurred in travel while on court business. The provision of subsection (c), prohibiting an appellate judge from collecting reimbursement for normal commuting expenses, now in the Code, reflects the prevailing practice in early 1972 when title 1 was first drafted. Subsequently, this practice was changed, but word of the change did not reach the Commission until the 1973 extraordinary session had begun. Representatives of the judicial bench did not, however, request any amend-

40. The third Circuit Court judgeship provided for Harford County took effect on July 1, 1974. See ch. 2, § 21d, [1973 Extraordinary Sess.] Md. Laws 431.

Heretofore, finding the number of judgeships allotted to a particular county or to Baltimore City was not an easy task. For example, to ascertain this information with respect to the Sixth Circuit, it was necessary to examine article IV, section 21 of the Constitution; article 26, sections 323 and 326 of the 1957 Code; as well as chapter 894, Laws of 1965, and chapter 450, Laws of 1960.

41. For a discussion of the arrangement of judicial pension provisions, see note 14 *supra* and accompanying text.

42. See MD. CONST. art. IV, §§ 14, 24, 31, and 41H (1972).

43. Similar language appeared in former article 26, section 130 of the 1957 Code.

44. Ch. 343, [1972] Md. Laws 951.

45. Chapter 373, Laws of 1972, amended article III, section 52(6) of the Constitution to permit the General Assembly to increase or reduce the judicial budget, subject to the proviso that "the salary or compensation of any public officer shall not be decreased during his term of office; . . ." Ch. 373, [1972] Md. Laws 1235.

ment of the provision.⁴⁶

Section 1-707 continues provisions relative to certain benefits available to judges blanketed into the District Court in 1971. It is a transitory provision which should be repealed when the last of these judges leaves the bench.

TITLE 2: COURT PERSONNEL

Having described the general structure and organization of the courts to the extent contained in statutes, the Courts Article then proceeds to discuss other officials needed to carry out the daily work of the courts.

In six subtitles⁴⁷ multifarious statutes dealing with the court-related functions of such officers as clerks and sheriffs are gathered together. However, the Courts Article does not include a discussion of other functions, such as the license-issuing duties of clerks or the law-enforcement duties of sheriffs.

An organizational lapse occurs at the beginning of title 2, entitled Court Personnel. Section 2-101, containing definitions, applies to the entire title, and not just to subtitle 1 as the reader would be led to believe. This definitional section should have been placed in a separate subtitle, as was the definitional section in title 1, to prevent confusion.

The following section, section 2-102, is a broad provision permitting a court to appoint temporary officers in specific proceedings. Some of the common types of officers, both statutory and non-statutory, are listed, such as auditors, surveyors, masters, and examiners. Appointment of "counsel for a party" is sanctioned "if authorized by law or rule" in order to prevent conflict with section 6 of article 27A which permits a court to appoint counsel within the Public Defender System for a criminal defendant under certain circumstances.⁴⁸ There is also a blanket authorization permitting the appointment of any "other officer"⁴⁹ in order to enable the court to appoint whichever officers it needs to carry out its duties.

Replacement of obsolete provisions in the Code is the focus of the next section in subtitle 2. Section 2-103 makes it clear that

46. S.B. 749 [1974] would have adjusted this situation, but was not enacted.

47. The six subtitles include a general rule dealing with officers, oaths, and bonds; two specific ones relating to clerks and sheriffs; and three subtitles containing additional material relating to particular court levels (appellate, courts of general jurisdiction, and the district court).

48. See MD. ANN. CODE art. 27A, § 6 (Supp. 1973).

49. The basis for this blanket authorization is article IV, section 9 of the Maryland Constitution.

when any officer covered by title 2 leaves office for any reason, all duties then unperformed, including collection of fees, devolve upon his successor. Heretofore, when a sheriff died or otherwise left his office, statutes of ancient origin required cumbersome procedures to be followed.⁵⁰ Some of these provisions authorized the former sheriff or his personal representative to collect fees after the sheriff left office or died;⁵¹ this arrangement was quite appropriate when the sheriff was compensated by his fees, but it is totally inappropriate today, when all sheriffs are salaried.⁵² The removal of these obsolete provisions simplifies the law in this area.⁵³

Section 2-104, on the other hand, synthesizes numerous former provisions applicable to court officers, dealing with oaths or affirmations.⁵⁴ In a similar manner, section 2-105 consolidates in convenient form a variety of former statutes relating to official bonds.⁵⁵ This section simplifies and updates some requirements as well. For example, while former section 3 of article 87 required a sheriff to give a new bond annually, the revision section, section 2-105(f), provides that all bonds shall remain in effect during the officer's tenure in office.

Filling a gap in the law and providing consistency are the basis for section 2-106 relating to the failure to qualify for office. Under the 1957 Code, a person required to take an oath of office but who failed to do so was deemed to have refused the office.⁵⁶ However, a sheriff who took the oath but failed to give bond vacated the office.⁵⁷ While other officers in the same situation were merely prohibited from receiving fees,⁵⁸ subsection (d) of section 2-106 now equalizes the treatment for all officers required to be sworn or bonded, so that any officer who fails to take the oath or to provide the required bond is deemed to have refused the office. The office is thereby rendered vacant.

50. See Md. Ann. Code art. 87, §§ 21-25, 33-34, 36 and 39 (1969).

51. Md. Ann. Code art. 87, §§ 33-34 (1969).

52. See Md. ANN. CODE, Cts. & Jud. Proc. Art., § 2-309 (1974).

53. As originally drafted, section 2-103 included a statement that every officer "is personally responsible for the performance of his official duties." The Senate struck out this provision, probably because it was thought to be unnecessary.

54. See, e.g., Md. Ann. Code art. 16, § 6 (1973); art. 26, §§ 14, 153(c) and 154(d) (1973); art. 70, §§ 4, 13 (1970); and art. 87, § 6 (1972).

See also MD. CONST. art. I, § 6 (which contains the prescribed oath of office) and art. XV, § 10 (1972) (which is referred to in § 2-104(c)).

55. Included are Md. Ann. Code art. 17, §§ 46, 46B and 47 (1973); art. 26, §§ 149(e), 154(d) (1973); and art. 87, § 2 (1969).

56. Md. Ann. Code art. 70, § 11 (1970). See also MD. CONST. art. I, § 7 (1972).

57. Md. Ann. Code art. 87, § 4 (1969).

58. Md. Ann. Code art. 17, §§ 38, 48 (1973).

The provisions of subtitle 2 of title 2, derived from former provisions of article 17, covers the general duties of clerks of court. The subtitle lists common functions of clerks, but the list is not intended to be all-inclusive, as indicated in section 2-201. Rather, this subtitle is intended to reflect current practices and to promote flexibility and ease of administration by speaking in general terms.

Some attention, however, should be given to section 2-203, which replaces article 10, section 9. That section, if construed to limit free inspection of the records of a clerk of a court to attorneys or their agents, would be totally inconsistent with the provisions of article 76A, which, subject to some limitation, allow inspection of public records by "any person."⁵⁹ This possible inconsistency is now obviated by section 2-203 which, while preserving the confidentiality of those records protected by law or order of court,⁶⁰ allows public inspection.

While administrative burdens may have been increased by the provisions of section 2-203, sections 2-204 and 2-206 are designed to alleviate administrative problems in the court system. section 2-204 allows the judge exercising the functions of administrative judge in a county to set the hours of a clerk's office,⁶¹ while section 2-204 allows the county administrative judge to approve the proposed destruction of certain records.⁶²

The General Assembly struck from the Courts Article section 2-207, which provided a \$100 penalty for the failure of a clerk to perform certain duties.⁶³ The apparent view was that the \$100 penalty was relatively unimportant and that a person injured by a clerk's failure could recover under the clerk's bond or in a tort or similar action.

Subtitle 3 deals with sheriffs. Aside from a minor legislative clarification of the language of section 2-301, pertaining to service of process, the subtitle contains very little changes. Its lengthiest

59. MD. ANN. CODE art. 76A, § 3(a) (Supp. 1973).

60. For example, certain juvenile records are confidential. See MD. ANN. CODE, Cts. & Jud. Proc. Art., § 3-838 (1974).

61. The question arises whether this provision in any way conflicts with article IV, section 10 of the Constitution, which provides that the "Judges" of a court may make "rules and regulations for the government of . . . Clerks and for the performance of the duties of their offices . . ." [emphasis supplied]. See also MD. R.P. 1215.

62. This was a legislative modification. See Amendment No. 12. Formerly, and somewhat ambiguously, this power was vested in the county administrative judge or in a majority of the resident circuit court judges. See Md. Ann. Code art. 17, § 1A (1973).

63. See, e.g., MD. ANN. CODE art. 17, §§ 9, 32, 40 and 43 (1973); art. 75, § 89 (Supp. 1972).

provisions cover sheriffs' salaries and expenses.⁶⁴

However, section 2-302 does modify the present law, by providing that a writ of execution shall be returned to the court which issued the writ. Under Maryland Rules⁶⁵ and Maryland District Rule 622.h.2., if the writ issues to a sheriff of a county other than the one in which judgment was entered, *i. e.* the county in which the property was located, the writ was returned to the court for the county to which the writ was sent. Each of these positions no doubt has attendant advantages and disadvantages, although it is impossible to determine exactly why the Commission proposed the adoption of the first position except than through inadvertance.⁶⁶ In any event, the Court of Appeals superseded the statute by adopting amended Maryland Rule 622.h. on December 13, 1973.⁶⁷

Subtitle 3 does contain a number of ancient statutes specifying the duties of sheriffs and the consequences of failure to perform them.⁶⁸ Although the Commission recognized the obsolescence of many of these statutes, it concluded that the legislature should make any appropriate changes because of possible policy considerations. The General Assembly did not take any action on these provisions at the special session, although further legislative consideration of these matters is likely.

Subtitle 4, a brief discussion of personnel in appellate courts,

64. See MD. ANN. CODE, Cts. & Jud. Proc. Art., § 2-309 (1974).

65. MD. R.P. 622.h.2.

66. Subtitle 3 was considered by the Subcommittee on Courts and Judicial Proceedings on March 6 and March 26, 1973, and by the full Commission on May 6 and 7, 1973, but the Minutes of all of those meetings are silent on this particular point. Nor is there any discussion of it in Staff Memorandum No. 14 to the Subcommittee on Courts and Judicial Proceedings (Feb. 21, 1973), in Staff Report No. 3F (Apr. 17, 1973), or in Code Revision Commission, Report No. 31 to the General Assembly (July 16, 1973).

67. MD. R.P. 622.h. now states:

A writ of execution so issued and directed to the sheriff of another county shall be made returnable to the court for the county to which it may be sent. If sent to the City of Baltimore, the writ shall be returnable to the Superior Court of Baltimore City. *A copy of the return shall be sent to the court which issued the writ.*

S.B. 81 [1973], enacted on March 8, 1974, ch. 32 [1974] Md. Laws 496, conforms the section to the amended rule by stating:

A writ of execution or attachment shall be directed to the Sheriff of the county where the property is located. He shall execute the writ and file the return pursuant to the Maryland Rules or the Maryland District Rules.

Ch. 32, [1974] Md. Laws 496.

68. Examples of this type of provision are the amercement and contempt provisions of section 2-304 of the Courts Article. Another example of an ancient provision is that of section 2-308(b), based on former section 40 of article 87, which indicates that a sheriff "is answerable for all penalties imposed on an inhabitant of his county of a court of the State unless he shows that the person liable for the penalty is insolvent."

consolidates several portions of the 1957 Code.⁶⁹ However, definition of the term "appellate court" is found outside of the subtitle, in section 2-101, and a discussion of the general duties of the clerks of these courts is not included in subtitle 4, since subtitle 2, applicable to all clerks, contains these provisions.

Subtitle 5 contains specific provisions relating to employees of trial courts of general jurisdiction. The main thrust of this subtitle is in the direction of simplification and consolidation. Thus, section 2-501 gives blanket authority to the judge to employ appropriate personnel.⁷⁰ However, although section 2-502 lists some specific dockets to be maintained by the clerks of courts of general jurisdiction, most provisions of this type will be codified with the relevant substantive law. Finally, the provision regarding criers in section 2-506 was added by the General Assembly after ascertaining that this office still exists in a few counties.⁷¹

Subtitle 6 is nothing more than a restatement of the statutes dealing with District Court officers and employees. Transitional matters relating to retirement or health benefits for certain blanketed-in District Court employees are not appropriate for codification and appear elsewhere in the Courts bill.⁷²

TITLE 3: COURTS OF GENERAL JURISDICTION— JURISDICTION/SPECIAL CAUSES OF ACTION

As already noted,⁷³ the Commission's original plan was to devote title 3 of the Courts Article to jurisdictional provisions for all courts and to devote title 4 to statutes pertaining to special causes of action. These early plans envisaged an internal title breakdown generally on the bases of law, equity, and District Court. However, three reasons argued against the use of this organizational structure. First of all, it is not always easy to determine, on the one hand, what is related to subject matter jurisdiction and, on the other, what is not jurisdictional but, rather, is concerned with a "special cause of action." Second, the use of this distinction presupposes that the code user will draw the same lines as the Commission in this somewhat subjective field. Third,

69. These portions were mainly former sections 45 and 46A of article 17 and sections 29 and 29A of former article 26.

70. This section deals with employment of permanent personnel as opposed to section 2-102 which is concerned with appointment of temporary officers in particular cases. See note 47 *et seq. supra* and accompanying text.

71. Amendment No. 16.

72. Ch. 2, § 15, [1973 Extraordinary Sess.] Md. Laws 428.

73. See note 9 *supra*.

the use of the historically-appropriate but functionally-foolish distinction between law and equity assumes that the user already knows some of the answers he is presumably seeking.

Consequently, title 3 emerged as a comprehensive collection of subject-matter jurisdiction and special causes of action with respect to courts of general jurisdiction. Structural divisions based on law and equity were eliminated, and similar provisions for the District Court were placed in title 4. Because of its breadth, title 3 is the longest title in the Courts Article, being composed of nine subtitles discussing essentially civil jurisdictional provisions relating to: absent persons; arbitration and award; attachment; declaratory judgment; defamation; family law; habeas corpus; juvenile causes; and wrongful death.⁷⁴ In organizing this voluminous material, the Commission attempted to place a jurisdictional or special cause of action provision with the substantive law to which it relates, if appropriate within the total sphere of organization of the revised code or if very difficult to separate from related substantial provisions; other jurisdictional and special causes of action material appear in title 4.

Since title 3 includes statutes concerning civil subject matter jurisdiction or creating civil special causes of action, criminal matters and some civil proceedings having a close relationship to criminal law were not included.⁷⁵ Likewise, venue provisions are excluded.⁷⁶ Substantive or procedural details are also often excluded; for example, although subtitle 6, entitled family law, contains jurisdictional measures relating to divorce, alimony, adoption and the like, provisions relating to grounds for divorce are excluded as are the provisions of article 89C, the Uniform Reciprocal Enforcement of Support Act.⁷⁷

Despite its length, title 3 engenders very few changes in the statutes that have been recodified. Its major virtue, if any, is from the viewpoint of organization. However, subtitle 1, entitled Absent Persons, although derived from the Uniform Absence as Evi-

74. These subtitles are derived from the following provisions: Md. Ann. Code art. 16, §§ 200-211 (1973); Md. Ann. Code art. 7 (1968 and Supp. 1972); Md. Ann. Code art. 9, § 1 (Supp. 1972), § 2 (1968), § 14 (1968); Md. Ann. Code art. 31A (1971), art. 88 (1969), and art. 75, § 6 (1969); Md. Ann. Code art. 16, §§ 1, 2, 22, 29, 66(a) and 68 (1973), art. 16, § 24 (Supp. 1973), art. 42, §§ 1, 3, 4, 14, 17 (1971), art. 42, § 19(Supp. 1973); Md. Ann. Code art. 26, § 51 (1973), §§ 70-71A (Supp. 1973), § 91 (Supp. 1973), and §§ 92-101 (1973); and Md. Ann. Code art. 67 (1970, Supp. 1973).

75. One such civil proceeding is that included within the purview of the Defective Delinquent Law. See MD. ANN. CODE art. 31B (1971, Supp. 1973).

76. Venue provisions appear in title 6 of the Courts Article. See note 143 *et seq. infra* and accompanying text.

77. This provision will be placed in the Family Law Article.

dence of Death and Absentees' Property Act,⁷⁸ offers a good example of the rare instance of major modification of a uniform act. Former section 202 of the Act called for a rather complex receivership proceeding and carefully delineated the duties and powers of the receiver who had charge of the absentee's property.⁷⁹ Subsequent to the enactment of section 202, the legislature adopted article 93A,⁸⁰ entitled Protection of Minors and Disabled Persons, which authorized the appointment of a guardian with broad authority⁸¹ to administer the estate of a person if a court determines, *inter alia*, that "the person is unable to manage his property and affairs effectively because of . . . disappearance"⁸²

Early in its proceedings the Courts Subcommittee raised the question of whether the article 93A guardianship proceedings should not be substituted for the article 16 receivership proceedings in order to provide uniformity and simplicity.⁸³ Resistance to this proposal prevailed in the Subcommittee,⁸⁴ because of the extent of substantive change involved and because of a feeling that the matter could best be considered in the context of a study of the entire substantive law dealing with absent persons.⁸⁵ However, the full Commission subsequently adopted the article 93A guardianship provisions, and section 3-104 now incorporates these provisions by reference.⁸⁶

Although the adoption of the article 93A guardianship proceedings help to simplify the provisions relating to absent persons, the state of this portion of the law still necessitates further study by the legislature. Section 3-107 is one example of an area within subtitle 1 requiring further consideration. This section provides for an absentee insurance fund out of which certain persons whose property has been distributed after disappearance may obtain some reimbursement. However, practical experience

78. Md. Ann. Code art. 16, §§ 200-212 (1973). This Uniform Act was promulgated in 1939 and has been adopted in only two states other than Maryland. See TENN. CODE ANN. §§ 30-1801 to 30-1815 (1956); WISC. STAT. ANN. §§ 268.22 to .34 (1967).

79. Md. Ann. Code art. 16, § 202 (1973).

80. Ch. 4, [1969] Md. Laws 105.

81. See MD. ANN. CODE, EST. & TR. ART., §§ 13-203, -204, -206, and -208 to -222 (1974).

82. MD. ANN. CODE, EST. & TR. ART., § 13-201(b) (1974).

83. Subcommittee Minutes at 6-7 (Nov. 13, 1972) and at 2-3 (Feb. 12, 1973).

84. *Id.* at 1-2 (Mar. 27, 1973).

85. See Staff Memorandum No. 17 to the Subcommittee on Courts and Judicial Proceedings (Mar. 30, 1973).

86. Another change in the Uniform Absence as Evidence of Death and Absentees' Property Act is the elimination of the jury trial provision of section 200(1) of article 16. Since the proceedings are in equity, this provision seemed inconsistent with normal equity practice.

has shown that this provision serves no useful purpose, since in twenty-three years only six payments, totaling \$2,306.43, have been made to this fund and no claims have ever been made against it.⁸⁷

Subtitle 2, entitled Arbitration and Award, is also based upon a uniform act, the Uniform Arbitration Act, to which the Commission added a related statute, former section 18 of article 75.⁸⁸ Although many changes in the Uniform Arbitration Act are merely in style and organization,⁸⁹ two alterations are worthy of note. The first modification is found in section 3-202, which is derived from former article 7, section 16, the provisions of which gave a Maryland court jurisdiction to enforce an arbitration agreement "providing for arbitration in this State." Since the legislative committees were advised that the majority of arbitration agreements tend to provide for arbitration "under the law of" Maryland, section 3-202 was amended to reflect this situation.⁹⁰ Secondly, former article 7, section 18, providing for appeals from certain orders in arbitration cases, is not included in subtitle 3 because of revisions made in title 12.

Subtitle 3 restates with stylistic changes the present law dealing with judgments and attachments on original process.⁹¹ Certain omissions from the subtitle, however, should be noted. Former sections 31 and 32 of article 9 of the 1957 Code, covering wage attachments, will be included in the Commercial Law Article, scheduled for presentation to the 1975 General Assembly. Furthermore, section 49 of article 9, providing for certain liens in favor of the State, will probably be placed in the proposed Real Property Article.

Subtitle 4 embodies the Uniform Declaratory Judgments Act.⁹² The insertion of section 3-403, which asserts that the District Court lacks declaratory judgment power, was necessary since former article 31A, section 1 gave authority to issue declaratory judgments to "[c]ourts of record within their respective jurisdictions"⁹³ Although the District Court is a court of

87. Code Revision Commission, Report No. 3F to the General Assembly, at 26 (July 16, 1973).

88. Section 3-230 of the Courts Article is derived from article 75, section 18.

89. Venue provisions are included in section 3-203 of subtitle 2, rather than in title 6 of the Courts Article, because they are somewhat unusual and because of convenience in placing them with the other provisions of the Uniform Act.

90. Amendment No. 20.

91. The venue provisions of former article 9, section 36 of the 1957 Code appear in title 6 of the Courts Article.

92. Md. Ann. Code art. 31A (1971).

93. Md. Ann. Code art. 31A, § 1 (1971).

record,⁹⁴ it was generally agreed that the legislature had not intended to grant the power to issue declaratory judgments to the District Court. Hence, section 3-403 was drafted to reflect this agreement.

Section 3-404, also a clarifying provision, is intended to limit the right of jury trial in declaratory judgment proceedings to appropriate actions at law. Former article 31A, section 9 apparently permitted a jury determination of any issue of fact in a declaratory judgment case, including an equity suit. This provision may have been appropriate in 1939, when advisory jury verdicts in equity were permitted.⁹⁵ However, since Maryland Rule 517 abolishes advisory jury verdicts in equity, the provision seemed inconsistent with modern equity practice.

Although clarification and consistency were the bases for the enactment of the previous sections, section 3-502 within subtitle 5 covering defamation may engender a violation of article 46 of the Maryland Declaration of Rights.⁹⁶ Section 3-502 (a), based on former article 88, permits a woman to recover for defamatory remarks about her chastity without proving actual damages. A husband is also permitted to maintain an action against a person who has thus slandered his wife under the provisions of section 3-502(b). However, a man may not reap the benefits of section 3-502(a), and a wife may not maintain an action of slander under section 3-502(b). Because of the possible conflict with article 46 of the Declaration of Rights, the Commission suggested that the General Assembly might wish to extend these protections "to all persons regardless of sex."⁹⁷ However, the legislature did not accept the invitation.

Subtitle 6 of the title 3 was designated as "Family Law" to indicate its relationship to the eventual revised article which will bear the same name and which will include most of the substantive statutes in the domestic relations and similar areas.⁹⁸ The subtitle is limited to jurisdictional provisions pertaining to adoption, child custody, guardianship, maintenance, divorce, and

94. See MD. CONST. art. IV, § 1 (1972).

95. The Declaratory Judgments Act was enacted by chapter 294, Laws of 1939. See ch. 294, [1939] Md. Laws 656.

96. "Equality of rights under the law shall not be abridged or denied because of sex." MD. CONST., Declaration of Rights, art. 46 (Supp. 1973).

97. Code Revision Commission, Report No. 3F to the General Assembly, at 29 (July 16, 1973).

98. This article is tentatively scheduled for enactment in 1976. See Code Revision Commission, Revisor's Manual, Appendix B (2d ed. Nov. 1973).

annulment, including disposition of personal property incident to a divorce.⁹⁹

Subtitle 7, which includes various provisions of article 42 of the 1957 Code dealing with habeas corpus,¹⁰⁰ appears in title 3 because habeas corpus is a civil proceeding and because the writ may be sought for unlawful confinements unrelated to criminal matters. One change, however, that should be noted is reflected in section 3-707, which corrects an error appearing in former section 20 of article 42. That section in part provided: "The application [for leave to appeal] shall include a transcript of any proceedings conducted incident to the habeas corpus petition unless the application . . . is granted, in which event the court may order the preparation of a transcript" In *Bigley v. Warden*,¹⁰¹ the Court of Special Appeals noted that the word "not" should be inserted between "shall" and "include" in the first part of the sentence. Section 3-707(d) (3) now reflects the correct language.

Subtitle 8 is the longest and most complex portion of title 3 because it deals with one of our most complex statutory areas—juvenile causes, other than juvenile causes in Montgomery County. Since the District Court has juvenile jurisdiction in that county,¹⁰² those statutes appear in title 4 of the Courts Article. This fact in itself was organizationally troublesome. Obviously, the provisions of former article 26, sections 51, 67, 67-70, 70-1 through 70-26, 71, and 71A dealing with juvenile causes were intended to serve the same ends as former article 26, sections 72-88 dealing with juvenile causes in Montgomery County. Furthermore, many of the procedural details of these two subtitles of former article 26 were similar, if not identical. Because of these similarities, the staff's first reaction was to attempt to merge the

99. The subtitle is derived from former article 16, sections, 2, 22, 24, 29, 66(a) and 68 of the Code. Venue provisions generally appear in title 6 of the Courts Article. See note 143 *et seq. infra* and accompanying text.

100. Former section 21 of article 42 has been repealed as obsolete. Sections 11 and 12 of article 42 have been transferred to title 2 of the Courts Article, while sections 13 and 18 of former article 42 have been transferred to article 27 because they relate exclusively to criminal law and only marginally to habeas corpus. Ch. 2, §§ 3, 9, [1973 Extraordinary Sess.] Md. Laws at 392 and 405, respectively.

Thus, only section 23 through section 28 remain in article 42. These constitute the Uniform Act for Extradition of Persons of Unsound Mind, which has no connection with habeas corpus. Eventually, this Act should probably be allocated with other provisions relating to extradition (see MD. ANN. CODE art. 41, §§ 16 *et seq.* (1971, Supp. 1973)) or perhaps with those pertaining to mental health. See MD. ANN. CODE art. 59 (1972, Supp. 1973).

101. 16 Md. App. 1, 294 A.2d 141 (1972).

102. MD. ANN. CODE, Cts. & Jud. Proc. Art., § 4-403 (1974).

two sets of provisions.¹⁰³ However, there were too many diverse provisions to make this feasible,¹⁰⁴ and the full Commission decided on the present arrangement.¹⁰⁵

Structurally, this is logically defensible. Unfortunately, the decision in effect meant that the two sets of juvenile provisions were drafted by different people at different times and were also considered by the Subcommittee and the Commission at different times. These facts tended to produce the undesirable side effect of the use of somewhat dissimilar phraseology to express very similar concepts. For example, section 3-833 of the Courts Article provides: "No adjudication of the status of a child under this subtitle is a criminal conviction for any purpose nor does it impose any of the civil disabilities ordinarily imposed by a criminal conviction."¹⁰⁶ The comparable Montgomery County provision, section 4-520(a), reads: "Adjudication of the status of a child under this subtitle is not a criminal conviction for any purpose nor does it impose any of the civil disabilities ordinarily imposed by a criminal conviction."¹⁰⁷ There is no reason why one of these provisions should have been cast in the negative and the other in the positive, when each is stating precisely the same concept.

Because similar inconsistencies can be found in other juvenile causes sections,¹⁰⁸ this material needs further attention.¹⁰⁹ In terms of code revision, although Emerson teaches us that a "foolish consistency is the hobgoblin of little minds,"¹¹⁰ he condemns only "foolish" consistency. Consistency in bill drafting is not foolish, but highly desirable, and I am inclined to agree with one of the Commission members that "a Commission such as ours

103. Staff Memorandum No. 1 to Subcommittee on Courts and Judicial Proceedings, Exhibit B (June 16, 1971).

104. Staff Report No. 18 at 4 (Oct. 16, 1972).

105. Commission Minutes 3 (Oct. 23, 1972).

106. MD. ANN. CODE, Cts. & Jud. Proc. Art., § 3-833 (1974).

107. MD. ANN. CODE, Cts. & Jud. Proc. Art., § 4-520(a) (1974).

108. Other examples of inconsistency are found in sections 3-834 and 4-520(c); sections 3-838 and 4-521; and sections 3-839 and 4-518 of the Courts Article.

109. At one time the Subcommittee on Courts and Judicial Proceedings gave some thought to placing all of this material in the proposed article on Family Law. Subcommittee Minutes 8 (July 29, 1971). However, the idea was rejected, possibly on the basis that this sort of material (especially quasi-criminal material like that dealing with delinquency) really is not germane to such typical Family Law subjects as divorce, custody, adoption, and support. Nevertheless, a further study of the subject should not be precluded, particularly if Maryland moves towards establishment of a family court which would have juvenile jurisdiction.

110. R. EMERSON, *Self-Reliance*, in *ESSAYS: FIRST SERIES* 43, 53 (1885).

should not tolerate inconsistent drafting.”¹¹¹

Turning to other aspects of subtitle 8, the reader will observe the application of code guidelines. Material in this subtitle is rearranged in a logical fashion, and lengthy sections are broken into subsections or even separate sections.¹¹² To facilitate the location of any given word or phrase, the definitions in section 3-801 are placed in alphabetical order. The definition of “property” for the purpose of section 3-839, entitled liability for acts of child, is also broadened to comply with assumed legislative intent.¹¹³ Finally, provisions relating to concurrent guardianship and paternity jurisdiction are clarified to make it plain that a juvenile court may exercise these species of jurisdiction only in a case otherwise within its jurisdiction.¹¹⁴

The most noteworthy features of subtitle 8 probably relate to omissions of certain material. Two of these omissions are the result of errors in the preparation of the Courts Article. Former article 26, section 70-2(d), embodied in section 3-808 of the Courts Article, was amended by chapters 129 and 772, Acts of 1973. Chapter 129 added “unauthorized use of occupancy of a boat” to the offenses retained within juvenile jurisdiction. Although this provision was inserted in a draft of the Courts Article and chapter 129 was mentioned in the Revisor’s Notes, the new language was omitted from paragraph (3) of section 3-808 apparently through a combination of terminal operator and proofreading problems plus inadequate communication between draftsmen and editors. In a similar fashion, a reference to the offense of tampering with

111. Letter from Commissioner Shale D. Stiller to the author (July 23, 1973).

Indeed, recent developments suggest that much more than inconsistent drafting is involved in the differences between the Montgomery County juvenile provisions and those applicable to the rest of the State. In *Matter of Trader and State v. Trader*, 20 Md. App. 1, 315 A.2d 528 (1974), *cert. granted*, ___ Md. ___, ___ A.2d ___ (Apr. 17, 1974), the Court of Special Appeals held section 3-817 of the Courts Article unconstitutional on equal protection and due process grounds, because under that section a juvenile waiver order is interlocutory and not appealable, whereas in Montgomery County such an order is final and immediately appealable. Similarly, section 3-808(4) of the Courts Article has been held unconstitutional because it excludes from juvenile jurisdiction any charge of armed robbery allegedly committed by a person 16 years old or older, whereas such charges are within juvenile jurisdiction in Montgomery County. *State v. Stokes*, Indictment No. 3 (7303976-78, Crim. Court of Baltimore City 4/2/74) (Liss, J.). S.B. 1099 [1974], introduced near the end of the 1974 legislative session, attempted to solve the equal protection problem by repealing most of the Montgomery County juvenile provisions. It did not pass. The 1974 Legislative Council has referred the problem to the Judiciary Committee.

112. *See, e.g.*, former article 26, section 70-2 (Supp. 1973), the provisions of which now appear in some seven different sections to facilitate comprehension and future amendment.

113. MD. ANN. CODE, Cts. & Jud. Proc. Art., § 3-801(C) (1974).

114. MD. ANN. CODE, Cts. & Jud. Proc. Art., §§ 3-806 to -807 (1974).

a boat was omitted from section 3-815(b)¹¹⁵

An additional omission or deletion from subtitle 8 is the result of a deliberate policy choice. In studying the juvenile causes subtitle of former article 26, the Commission observed that section 70-2(a)(7) gave juvenile jurisdiction over an adult charged with causing a child to be adjudicated "neglected, delinquent, or in need of supervision" only if adjudication with respect to the status of the child had been completed. On the other hand, the Commission interpreted former article 26, section 91, under the subtitle *Minors Without Proper Care or Guardianship*, as permitting proceedings against an adult prior to a judicial determination that a child was "without proper care or guardianship." Because of the apparent inconsistency between the two sections, the Commission decided to propose the full repeal of most of the "*Minors Without Proper Care or Guardianship*" subtitle, and to eliminate the precondition of adjudication of the juvenile with respect to charges of "contributing" against an adult;¹¹⁶ the latter decision was reflected in section 3-805(a) of the Courts Article. However, when this approach was presented to the Senate Judicial Proceedings and House Judiciary Committees at the special session, the committee members promptly decided that the proposal involved fundamental policy considerations, and thus should not be included in a revision bill. Consequently, section 3-805 was amended to restore the present language regarding prior adjudication,¹¹⁷ although the elimination of most of the "*Minors Without Proper Care or Guardianship*" material was approved.¹¹⁸

Contrasted to subtitle 8 is subtitle 9, entitled *Wrongful Death*, which involves only style and arrangement changes in its incorporation of former article 67 of the 1957 Code—Maryland's Lord Campbell's Act. Although the Commission did give consideration to codifying the "pecuniary loss" rule as enunciated in *Hutzell v. Boyer*,¹¹⁹ it decided that codification might result in advertent modification of the rule and that any such change should be left to the General Assembly.¹²⁰ Also rejected was a

115. See Md. Ann. Code, art. 26, § 70-3 (1973).

116. Commission Minutes 6-7 (May 23, 1973). See also Staff Report No. 37 (May 21, 1973).

117. Amendment No. 34.

118. MD. ANN. CODE, Cts. & Jud. Proc. Art., §§ 3-841 and 3-842 (1974) are the retained portions of the former subtitle.

119. 252 Md. 227, 249 A.2d 449 (1969). See also ch. 352, [1969] Md. Laws 811.

120. See Subcommittee Minutes (Mar. 26, 1973).

proposal to extend the provisions of section 3-904(d)¹²¹ to a parent other than a "spouse."¹²²

TITLE 4: DISTRICT COURT—JURISDICTION

Title 4, the basis of which is former article 26, especially section 145, contains within its purview provision for criminal jurisdiction in subtitle 3.¹²³ Although, as previously mentioned, criminal matters are usually excluded from the Courts Article, the inclusion of criminal jurisdiction was dictated by the convenience of retaining all District Court jurisdictional statutes in one place as well as the difficulty of re-allocation of former article 26, section 145(b).¹²⁴

Subtitle 3 begins with a statement of the District Court's exclusive original jurisdiction in criminal cases in section 4-301, then lists exceptions to that jurisdiction in section 4-302. Actually, some of the "exceptions" might be more accurately characterized as "conditions," but the meaning of the five sections, taken together, is clear enough. Section 4-303 is a new statutory provision, codifying an Attorney General's opinion,¹²⁵ intended to make it clear that if a juvenile court waives jurisdiction over a person charged with an offense within the general criminal jurisdiction of the District Court, then the District Court may hear the criminal case, despite the normal 18 year old age minimum prescribed by section 4-301.

Although provision for the District Court's criminal jurisdiction is thereby incorporated within subtitle 3, those familiar with criminal practice in the District Court will note that subtitle 3, and the Courts Article in general, omits a number of provisions

121. (d) *Damages if spouse of minor child dies.* — For the death of a spouse or minor child, the damages awarded under subsection (c) are not limited or restricted by the "pecuniary loss" or "pecuniary benefit" rule but may include damages for mental anguish, emotional pain and suffering, loss of society, companionship, comfort, protection, marital care, parental care, filial care, attention, advice, counsel, training, guidance, or education where applicable.

Md. ANN. CODE, Cts. & Jud. Proc. Art., § 3-904(d) (1974).

122. See Subcommittee Minutes (Mar. 26, 1973).

123. "Criminal cases" within the jurisdiction of the District Court now includes motor vehicle violations by virtue of section 4-101(c). Thus, a degree of repetition has been avoided by the consolidation of statutes dealing with criminal and motor vehicle jurisdiction. This combination was possible because present motor vehicle violations are, in fact, criminal offenses and subject to the usual rules relating to jury trials and criminal procedure and due process in general.

124. This difficulty was the result of the fact that there is no provision in the 1957 Code containing general grants of criminal jurisdiction.

125. 57 OP. ATT'Y GEN. 141 (1972). This opinion is incorrectly cited in the Revisor's note for section 4-303.

of former article 26 dealing with criminal venue, bail, warrants, sentencing powers of judges, and the like.¹²⁶ These criminal venue and procedure statutes have been transferred to article 27 and placed with similar statutes pertaining to other courts.¹²⁷ These transfers serve both to remove criminal material from the Courts Article and to pave the way for the preparation of a revised Criminal Law Article.¹²⁸

The last two subtitles of title 4 include very few substantive changes. Subtitle 4, structured along the lines of subtitle 3, includes the prohibition against declaratory judgment jurisdiction in section 4-402(c),¹²⁹ which is the only new statutory material in this subtitle. Subtitle 5, which parallels subtitle 8 of title 3, sets forth detailed material pertaining to juvenile charges in Montgomery County.

One final noteworthy feature of title 4 is the absence of provisions providing for an automatic right of removal in the District Court, formerly contained in article 26, section 145(f). The omission of these provisions was dictated by the subsequent adoption by the Court of Appeals of Maryland of District Rules 542 and 738 which provided for discretionary transfers of causes in the District Court; because the rules superseded the statute under article IV, section 18 of the Constitution,¹³⁰ the Commission included in the Courts Bill a repeal of article 26, section 145(f).¹³¹

TITLE 5: LIMITATIONS AND PROHIBITED ACTIONS

Title 5 contains three subtitles, dealing with limitations, computation of time, and prohibited actions, respectively. Based chiefly on article 57 of the 1957 Code, the title does not cover certain "notice" statutes (requiring notice as a condition precedent to filing suit) or statutes in which the "limitation" provision

126. Omitted are sections 145(b) (5) (i), 145 (b) (6), 145 (b) (7), 145(b) (10), 146, and 159 of former article 26.

127. Ch. 2, §§ 3 and 6-10, [1973 Extraordinary Sess.] Md. Laws at 392 and 397, respectively.

128. Additional provisions have been repealed because they are adequately dealt with elsewhere. This list includes: Md. Ann. Code art. 26, § 145 (b)(8) (1973) — covered by article 27A, section 6(f) as amended by section 6 of the Courts Bill; Md. Ann. Code art. 26, § 145(b) (9) (Supp. 1973)—covered by article 59, section 23, article 2C and article 43B; Md. Ann. Code art. 26, § 147 (1973) — covered by MD. R.P. 764.

129. See note 93 *et seq. supra* and accompanying text.

130. See 56 OP. ATT'Y GEN. 91 (1971). In 1972, two bills, S.B. 531 and H.B. 246, were introduced for the purpose of reinstating the statute and superseding the rules. However, neither was enacted into law.

131. The repeal of article 26, section 145(f) was accomplished by ch. 2, [1973 Extraordinary Sess.] Md. Laws 4.

is in fact a condition precedent to the right of action.¹³² Also unaffected are sections 15, 17 and 18 of article 57, which deal with pre-suit notice to certain political subdivisions; these provisions will eventually be incorporated in the Local Government Article.

Subtitle 1, entitled Limitations, contains a few minor substantive changes. In contrast to the former section 1 of article 57, which applied a three-year period of limitation to certain specified actions, section 5-101 applies a blanket three-year provision to all civil actions at law in the absence of a specific statutory provision to the contrary. Similarly, for the sake of consistency, all officers' bonds rather than only those of sheriffs and constables have been excluded from the twelve-year limitation provision of section 5-102.¹³³ Likewise, the provisions of former section 6 of article 57, applicable only to sheriffs', constables', and coroners' bonds, have been extended to all officers' bonds by section 5-104. Finally, the portion of old section 12 of article 57, establishing a one-month period of limitations for instituting a prosecution for blasphemy, has been dropped, since the statute establishing the crime of blasphemy was held unconstitutional in *State v. West*.¹³⁴

Subtitle 2 contains factors to be considered in computing the times prescribed by subtitle 1. Here again, a substantive change is found. Former sections 2, 3, 3A, 4, 6 and 7 of article 57 in effect provided that if a plaintiff was under the disability when his cause of action accrued, and the disability was later removed, he could thereafter have brought suit within either the period provided by the applicable statute of limitations, if less than five years, or half that period, if longer than five years. Section 5-201 requires suit to be brought within the lesser of three years or the applicable period of limitations, after removal of the disabilities. This provision promotes uniformity and reduces the possibility of undue delay in bringing suit, particularly in land actions. However, the new rule will apply only to a cause of action accruing on or after January 1, 1974.¹³⁵

Although a substantive change can be found in section 5-201 of the Courts Article, section 5-205 reinstates the substance of sections 4 and 5 of article 57. These sections denied the benefit of limitations to certain persons leaving the State, moving from

132. See, e.g., MD. ANN. CODE, Cts. & Jud. Proc. Art., § 3-904 (1974) and other provisions such as MD. ANN. CODE art. 43, § 64 (1971); art. 45, § 1 (1971); art. 47, § 23 (1971); art. 93, § 8-103 (Supp. 1972); art. 100 § 55D (Supp. 1973); and art. 101 § 58 (Supp. 1973).

133. Compare this provision with Md. Ann. Code, art. 57, § 3 (1972).

134. 9 Md. App. 270, 263 A.2d 602 (1970).

135. Ch. 2, § 21, [1973 Extraordinary Sess.] Md. Laws 431.

county to county, or absent from the State when the cause of action accrued. While the Commission thought that modern venue provisions and the long-arm statute rendered these statutes largely obsolete,¹³⁶ the General Assembly saw the matter otherwise, and section 5-201 reflects the retention of these statutes.¹³⁷

Subtitle 3 concerns prohibited actions, and, aside from some miscellaneous provisions,¹³⁸ the subtitle is based on article 75C. The Commission defined a prohibited action as one barred because a statute provides that certain facts are not actionable, as distinguished from a limitation, which deals with the time for bringing a suit, assuming actionable facts.¹³⁹

One provision of subtitle 3 which produced some debate with respect to its prohibition of actions for breach of promise to marry was section 5-301. The former statute¹⁴⁰ permitted this action if "pregnancy exists . . ." The Commission staff contended that article 46 of the Declaration of Rights required this language to be construed to give a right of action to either the jilted man or the jilted woman, if the woman were pregnant.¹⁴¹ The Commission thought, however, that the legislative intent was to limit the right of action to a pregnant woman, and that any Constitutional problem should be resolved by the General Assembly.¹⁴² Section 5-301 reflects that view.

TITLE 6: PERSONAL JURISDICTION, VENUE, PROCESS AND PRACTICE

As its name indicates, title 6, composed of four subtitles, is something of mixed bag, deriving mostly from article 75 of the 1957 Code. However, it draws important material from article 96 as well. As will be seen, there are numerous close relationships between title 6 and the Maryland Rules and Maryland District Rules, and in several instances what was once statutory material has been left to rules treatment.

Section 6-101, although largely cast in the form of a definition, includes a number of concepts derived from article 96. Arti-

136. See Staff Report No. 21 at 9 (Nov. 17, 1972); Subcommittee Minutes 5 (Nov. 13, 1972).

137. Amendment No. 57.

138. See former Md. Ann. Code art. 16A, § 37 (1973); art. 23A, § 1A (Supp. 1973); art. 25, § 1A (Supp. 1973); art. 25A § 3A (Supp. 1973); art. 25B, § 10A (Supp. 1973).

139. Code Revision Commission, Report No. 3F to the General Assembly, at 44 (July 16, 1973).

140. Md. Ann. Code art. 75C, § 2 (1969).

141. Staff Report No. 21 at 7-8 (Nov. 17, 1972).

142. See Commission Minutes 26 (May 6-7, 1973).

cle 96, designated "United States," contains a hodge-podge of provisions dealing with certain relationships between Maryland and the United States. Many of these provisions merely consent to the acquisition of land by the United States.¹⁴³ Others are phrased as retentions of jurisdiction over acts occurring on specific federal lands or in terms of the power of the State to serve process on those lands.¹⁴⁴ Still others are blanket provisions covering all federal land and retaining jurisdiction to the fullest extent consistent with federal law and the Constitution.¹⁴⁵

Because of the varied nature of article 96, no attempt was made to revise or repeal any part of it. Instead, parts of it were duplicated in section 1-601, which also incorporates some concepts found in sections 23 and 69 of article 16. Basically, section 6-101 defines "State" and "County" as including federal enclaves and makes it clear that for purposes of personal jurisdiction, venue, and service of process, "resident" includes one residing on a federal enclave. Subsection (d) of section 6-101 restates the general policy of extending State jurisdiction over persons to those on federal lands, to the maximum permissible extent.

Of the remaining portions of subtitle 1, the most significant is section 6-103, the Maryland Long Arm statute. Paragraph (1) of subsection (b) slightly expands the language of former article 75, section 96, by adding the phrase "or performs any character of work or service in the State." However, in view of the stated legislative intent in adopting the Long Arm statute, this is not thought of as a change of substance.¹⁴⁶

Subtitle 2 is concerned with venue. Its drafting presented real difficulties, and the venue provisions still appear to be unduly complex.¹⁴⁷ There is little that can be done about this, absent major legislative review of the entire venue area. Such a review should address, among other things, the desirability of venue distinctions based on the corporate or individual status of the defendant, and whether there is continuing need for the distinction between transitory and local actions.¹⁴⁸

143. Md. Ann. Code art. 96, § 35 (1964) is typical. It permits the United States to erect "a bridge across Spesutie Narrows to connect Spesutie Island with Maryland in Harford County. . . ."

144. See, e.g., Md. Ann. Code art. 96, § 29 (1964) relating to jurisdiction over and service of process on a rifle range in Anne Arundel County.

145. Md. Ann. Code art. 96, § 47 (1964) is an example.

146. See *Van Wagenberg v. Van Wagenberg*, 241 Md. 154, 215 A.2d 812 (1966).

147. Various efforts were made to draft these provisions according to classes of action, classes of defendants, and so on. The present provisions were approved at the Commission meeting held on May 6-7, 1973. Commission Minutes 28 (May 6-7, 1973).

148. Although venue seems essentially a procedural matter, the Court of Appeals

In any event, the major changes in subtitle 2 are structural. Section 6-201 states the general rule, both for individual and multiple defendants. It applies to both corporate and non-corporate defendants.¹⁴⁹ The fundamental policy of the former law in laying venue where the defendant lives or works is essentially continued.

Section 6-202 incorporates former statutory provisions for additional venues in certain types of cases.¹⁵⁰ It also draws upon Maryland Rules 570 and BQ 4Q and 53.¹⁵¹ It should be noted that this provision is intended to permit the plaintiff to choose either a venue permitted by section 6-201 or one permitted by section 6-202. That is, the sections are cumulative and not mutually exclusive.¹⁵²

Section 6-203 provides venues for actions to which the general rule of section 6-201 does not apply. If an action is listed in section 6-203, the venue provided in that section governs, unless section 6-202 provides an alternate venue for the same action, in which event, the plaintiff may choose between section 6-202 and section 6-203. Thus, it is probable that subtitle 2 reflects a modest liberalization of venue provisions. With our increasingly mobile population and extensive use of the automobile, no real inconvenience to defendants should accrue.

Subtitle 3 pertains to service of process. The Commission's underlying philosophy here was to leave such matters to rule when possible. Other provisions relating to the mechanics of process-serving are found in subtitle 3 of title 2 of the Courts Article.

Worthy of comment here, however, is the Commission's con-

has tended not to deal with it under its rule-making power. Only a few rules, such as S70, T41, and BQ40 include venue provisions. This may well be because there are many sensitive public policy considerations involved in venue, and under most circumstances, they may be especially appropriate for legislative resolution.

149. This section synthesizes Md. Ann. Code art. 75, § 75(a) (Supp. 1973), § 75(b) (1969), and § 75A(a) (1969). *See also* Zouck v. Zouck, 204 Md. 285, 104 A.2d 573 (1954); Md. Ann. Code art. 16, §§ 100, 101 (1973) and art. 50, § 5 (1972). A number of statutory venue provisions are not included, mainly because they seemed especially closely related to certain provisions of substantive law, and thus more conveniently codified with the appropriate substantive law. Some of these are sections 3-203 and 3-818 of the Courts Article (Arbitration and Award, and Juvenile Causes); MD. ANN. CODE art. 43, § 108 (Abatement of Nuisances) (1971); art. 47, § 1 (Insolvents) (1971); art. 78A, § 91 (Public Service Companies) (1969); and art. 93A, § 202 (Minors) (1969).

150. These statutory sources range from article 9 through articles 16, 26, 75 and 90 of the 1957 Code.

151. Paragraph (11) of section 6-202 also codifies case-law. *See* Alcares v. Stinger, 197 Md. 236, 78 A.2d 651 (1951).

152. Code Revision Commission, Report No. 3F to the General Assembly, at 47 (July 16, 1973).

cern with several statutory provisions providing for fictional appointment of various State officials for the purpose of service of process. Typical of these provisions are former article 66½, section 9-301, and former article 75, sections 76, 77, and 78. All enacted prior to the Long Arm Statute, these laws called for service on the Secretary of State, but also required some sort of actual notice to the defendant, in accordance with Constitutional notions of due process including actual notice of suit and opportunity to be heard.¹⁵³ Because both the Constitution and the statutes required some sort of actual notice to the defendant, the provisions for service on a State official had really become redundant.¹⁵⁴

Initially, the Commission staff included these statutes in the drafts.¹⁵⁵ The Courts Subcommittee, however, favored elimination of these provisions, which was certainly a step towards clarification and simplification of the law. The Subcommittee supported the concept of leaving service on non-residents to Maryland Rule 107, with some sort of back-up provision for service on the Secretary of State.¹⁵⁶ Pursuant to the subcommittee's instructions, the staff checked with the State agencies authorized to be served with process. The concept of a single State agency to serve this function drew what the staff described as a "luke-warm" response.¹⁵⁷ At the Commission meeting on May 6-7, 1973, Commissioner Stiller argued forcefully that all statutory provisions for service on State officials in connection with non-resident defendants should be abolished; he was supported by Commissioners Sykes and Powers. However, Chairman James thought that too much substantive change might be involved, and in this he was supported by the representative of the Attorney General's Office.¹⁵⁸

Eventually, Commissioner Sykes proposed that provisions for service on the Secretary of State should be repealed, but that statutes dealing with service on the Insurance Commissioner, the Blue-Sky Commissioner, and other officials exercising some regu-

153. See, e.g., *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and the more recent statement of similar constitutional concepts (not including non-residents) in *Fuentes v. Shevin*, 407 U.S. 67 (1973).

154. This situation was emphasized by the adoption in 1966 of Maryland Rule 107 providing for service of process outside the State. See Md. R. P. 107.

155. See Staff Memorandum No. 15 to Subcommittee on Courts and Judicial Proceedings 5 (Feb. 23, 1973).

156. Subcommittee Minutes 7 (Apr. 12, 1973).

157. Staff Report No. 32 at 4 (Apr. 30, 1973).

158. Commission Minutes 28-29 (May 6-7, 1973).

latory functions should be retained. The alternatives of retention of existing statutes as well as repeal of all statutes authorizing service on State officials were also discussed, but the Sykes proposal was eventually adopted.¹⁵⁹ Subtitle 3 of title 6 now reflects this position, as well as the philosophy of leaving many process matters to the rules.¹⁶⁰ Although this produced minor substantive change, the alterations abolish archaic provisions and simplify procedure. They are also consistent with Constitutional theory.

Subtitle 4, "Practice," gathers a miscellany of statutes which could not readily be allocated elsewhere. Little comment is required, except to note that in connection with section 6-401, the Commission concluded that, while abatement of an action was procedural,¹⁶¹ survival was a substantive matter and should be included in the Code.¹⁶² The Commission also proposed a substantive change in article 75, section 22 of the 1957 Code. As it formerly existed, this section required approval of certain tort settlements by the Orphans' Courts, although article 93A, sections 401 and 408 provide for supervision by a circuit court of a tort recovery for the benefit of a minor in excess of \$2,000. Section 6-405 of the courts article now gives the court in which suit is pending, not the Orphans' Court, the power to approve settlements. The Commission believed this would simplify procedures and reduce duplication of effort, since the law court would have before it all details of the case and would make an informed judgment of the fairness of the proposed settlement even more effectively than could an Orphans' Court hearing the matter.¹⁶³

TITLE 7: COSTS

Consolidation is the major task performed in title 7, since it brings together numerous statutes dealing with court costs.¹⁶⁴ The four subtitles of title 7 relate to costs in the appellate courts, costs

159. *Id.* at 29-30.

160. Surviving statutes (outside the Courts Article) dealing with service on officials include MD. ANN. CODE art. 32A, § 38 (Securities Commissioner) (1971); art. 48A, §§ 57, 205, & 347 (Insurance Commissioner) (1972); and art. 56, § 219 (Real Estate Commission) (1972).

161. See MD. R. P. 220.

162. Code Revision Commission, Report No. 3F to the General Assembly, at 50 (July 16, 1973).

163. *Id.* at 50-51. The provisions of article 93A will appear as sections 13-401 through 13-407 of the Estates and Trusts Article. Ch. 11, [1974] Md. Laws 17.

The Uniform Contribution Among Tort-Feasors Act was originally drafted as subtitle 5 of title 6, but the Subcommittee on Courts and Judicial Proceedings decided not to include this material in the Courts Article. Subcommittee Minutes 10 (Apr. 12, 1973).

164. Md. Ann. Code art. 24 (1973); 36 (1971); 5 (1968); 17 (1973); and 26 (1973).

in the circuit courts, costs in the District Court, and miscellaneous costs.

A minor substantive change appears in section 7-103(c), pertaining to petitions for certiorari filed by indigents. The new provision requires the court in which the petition is filed to make the determination of indigency. Under the old law,¹⁶⁵ this determination was made by the lower court; thus, action was required by two courts in every case of this type. The Commission thought the court receiving the petition could consider both the affidavit of indigency and the petition.¹⁶⁶ The statute is also clarified by providing for payment by the State, if indigency is found, regardless of whether the petition is granted or rejected.¹⁶⁷

Two problems are presented by title 7, both probably requiring corrective action. Section 7-201 is based on former article 36, section 12(a), as amended by chapter 532, Acts of 1973. That section dealt with mandatory advance filing fees. Paragraph (2) of that section was, however, badly garbled in the 1973 regular session. This created ambiguity about whether the paragraph was intended to exempt from the advance filing fees only appeals from the Workmen's Compensation Commission or appeals from all administrative agencies, as well as civil appeals from the District Court. The Commission adopted the "all administrative appeals" approach on the basis of *Glanville v. David Hairstylist*¹⁶⁸ but this interpretation may not have been the correct reading of the legislative intent.¹⁶⁹

In addition, the Commission omitted from title 7 the language of article 36, section 12(d) (2) of the 1957 Code. This paragraph exempts political subdivisions from charges for "the services enumerated herein." The Commission apparently thought that "herein" referred to paragraph (1) of subsection (d), which lists certain non-court related activities of clerks. A closer reading of old section 12 suggests, however, that "herein" may refer to all of the section except the advance filing fee provision. That was the construction suggested by the Court of Appeals in *Baltimore*

165. Md. Ann. Code art. 5, §§ 15, 15A and 15B (1968).

166. See Commission Minutes 3 (May 23, 1973).

167. Another minor substantive change is the addition of section 7-204(b)(3), permitting Baltimore City Court employees to use the Bar Library. Amendment No. 64, adopted by the Senate.

168. 249 Md. 162, 238 A.2d 917 (1967). See Code Revision Commission, Report No. 3F to the General Assembly, at 53-54.

169. In point of fact, the 1974 General Assembly enacted H.B. 466, which exempted from advance filing fees (in addition to indigent cases) only appeals from the Workmen's Compensation Commission and certain appeals in unemployment compensation cases. Ch. 444 [1974] Md. Laws 1693.

*v. Clerk of Supreme Bench.*¹⁷⁰ The 1974 General Assembly apparently agreed with this view, since by chapter 684, Acts of 1974, it repealed and re-enacted section 7-202 of the Courts Article adding, among other things, a new subsection (c) reading: "The Clerk may not charge any county or Baltimore City any fee provided by this Subtitle, unless the county and Baltimore City first gives its consent."¹⁷¹

However, the legislature may have broadened the exemption considerably. The old exemption, as construed in *Baltimore v. Clerk of Supreme Bench*,¹⁷² did not extend to the advance filing fee prescribed by section 7-202(a) of the Courts Article. The new exemption extends to "any fee provided by this Subtitle" (emphasis supplied) and this would seem to apply to the advance filing fee as well.

It has been suggested in some quarters that enactment of the Courts Article also had the effect of subjecting the State of Maryland and its agencies to the payment of court costs, including advance filing fees. It is difficult to follow this argument, because case law after 1832 has held that neither the State nor a State agency may be charged with court costs, in the absence of an express statutory provision.¹⁷³ While an express statutory provision permitting the award of costs against the State is found in section 7-104,¹⁷⁴ neither section 7-201 nor section 7-202 of the Courts Article contains an *express* authorization for the award of costs against the State, in the sense of specifically mentioning the State as a party against which costs may be assessed.

On the other hand, neither does either of these sections expressly exempt the State.¹⁷⁵ Indeed, there does not seem to be any general statutory exemption for the State. Rather, if there is an exemption for the State, it exists by virtue of case law and has neither been granted nor been taken away by the Courts Article.

TITLE 8: JURIES

To recapitulate briefly, we have traced the Courts Article

170. 270 Md. 316, 311 A. 2d 261 (1973), construing statutes as they existed before article 36 was amended. Md. Ann. Code art. 24, §§ 10, 11 and 12, repealed by ch. 532 [1973] Md. Laws 1159.

171. Ch. 684 [1974] Md. Laws 2306.

172. 270 Md. 316, 311 A.2d 261 (1973).

173. *State ex rel. President, Charlotte Hall School v. Greenwell*, 4 G.&J. 407 (1832). See also *State Tax Commission v. Standard Oil Co.*, 181 Md. 637, 31 A.2d 621 (1943) and *State v. Williams*, 101 Md. 529, 61 A. 297 (1905).

174. MD. ANN. CODE, Cts. & Jud. Proc. Art., § 7-104 (1974). This section was formerly Md. Ann. Code, art. 5, § 23 (1968). See also Md. R. P. 882 and 1082.

175. Compare also M. R. P. 604.

from the organization and structure of the courts and their officers (titles 1 and 2) through subject matter jurisdiction, (titles 3 and 4), limitations (title 5), personal jurisdiction, venue and process (title 6), and court costs (title 7). In short, we have gotten the potential litigant into court; the trial is about to begin, and the next step is jury selection and other jury-related matters. These are the contents of title 8.¹⁷⁶

In 1967 and 1968, the Committee on Judicial Administration of the Maryland State Bar Association engaged in a study of jury selection procedure in Maryland.¹⁷⁷ In 1969, the Section of Judicial Administration, through a distinguished committee headed by former United States Senator Joseph D. Tydings, presented a state-wide jury selection bill which was approved by the Association.¹⁷⁸ This became chapter 408, Acts of 1969, which comprised most of article 51 of the 1957 Code. Chapter 408 has been transferred to the Courts Article virtually without change, except for differences in structure and minor changes in language. Structural changes are reflected in the organization of title 8. The first of the four subtitles includes general provisions, such as definitions, policy statements, and a section on juror compensation.¹⁷⁹ Subtitle 2 includes selection provisions common to all juries, both grand and petit. Subtitle 3 contains provisions applicable only to petit juries. Subtitle 4 gathers penalty provisions.

Two particularly interesting code revision problems are illuminated by title 8. The first is the problem of public local laws. Still on the statute books are numerous public local laws dealing with jury selection. Even prior to the 1969 overhaul of former article 51, article 51 and the public local laws were in frequent conflict. Indeed, in some of the local laws, the statutory cross-references still refer to provisions of the Code of 1888.¹⁸⁰ The area of juror compensation shows good examples of this. For instance,

176. It should be noted that detailed provisions concerning grand juries are not included in the Courts Article, other than provisions common to both grand and petit juries, because the grand jury material was deemed to be more related to criminal law. Thus, former article 51, section 20, dealing with powers of grand juries, was transferred to article 27 by ch. 841, [1973] Md. Laws 4926.

177. MD. STATE BAR ASS'N TRANSCRIPT No. 1 at 24, 25 (1968) [hereinafter cited as MSBA TRANS.].

178. 74 MSBA TRANS. No. 1 at 46, 48-67 (1969).

179. MD. ANN. CODE, Cts. & Jud. Proc. Art., § 9-106 (1974). The Commission was disturbed by the substantial non-uniformity of these provisions but believed that local policy was involved and that the Commission should not attempt to achieve uniformity in this area.

180. See Code Revision Commission, Report No. 3F to the General Assembly, at 60 (July 16, 1973).

the public local laws applicable to Garrett County provide that jurors receive \$3.50 per day compensation and 12½ cents per mile for travel.¹⁸¹ Former Article 51 provided \$10 per day and 10 cents per mile, as does the Courts Article.¹⁸² Despite the statutory rule that “[w]here the public general law and the public local law of any county. . . are in conflict, the public local law shall prevail”,¹⁸³ the Garrett County officials paid jurors as provided in former Article 51.¹⁸⁴

Although in *Loker v. State*¹⁸⁵ the Court of Appeals decided that a previously adopted provision of public local law prevailed over certain conflicting portions of former article 51, the 1969 rewriting of article 51 probably superseded all conflicting local laws.¹⁸⁶ Nevertheless, the existence of conflicting provisions in the statute books is confusing, and should be eliminated.

The problem extends well beyond the area of jury selection, since numerous public local laws contain archaic and conflicting provisions pertaining to matters covered by the Courts Article. While the Code Revision Commission was not directed to revise the public local laws,¹⁸⁷ it did feel that the problem should be brought to the attention of the county delegations in the General Assembly. To this end, in September, 1973, each county delegation was furnished a listing of local laws inconsistent with the Courts Article.¹⁸⁸ It is gratifying to note that some seventeen counties have so far responded to this situation, in one form or another.¹⁸⁹

181. GARRETT COUNTY, MD., CODE OF PUBLIC LOCAL LAWS art. 12, § 20-1 (1971).

182. See Md. Ann. Code art. 51, § 19(h) (1972) and MD. ANN. CODE, Cts. & Jud. Proc. Art., § 8-106(b) (12) (1974).

183. MD. ANN. CODE art. 1, § 13 (1968).

184. See Code Revision Commission, Report No. 3F to the General Assembly, at 60 (July 16, 1973). This report lists all conflicting local jury provisions.

185. 2 Md. App. 1, 233 A.2d 342 (1967), *aff'd*, 250 Md. 677, 245 A.2d 814 (1968), *cert. denied*, 393 U.S. 1082 (1969).

186. The purpose of chapter 408, Laws of 1969, was clearly to provide uniform, state-wide jury selection procedures. When a public general law manifests a plain intent to establish a state-wide policy, inconsistent public local laws must give way. See *Kirkwood v. Provident State Bank*, 205 Md. 48, 106 A.2d 103 (1954). The legislative intent is made patent by section 4, chapter 408, Laws of 1969, repealing “all other acts or parts of acts including portions of the several codes of public local laws” to the extent inconsistent with chapter 408. In charter counties, public general laws supersede inconsistent local laws in any event. MD. CONST. art. XI-A, § 3.

187. The Governor directed the Commission to “[r]ecommend solutions to the problems of publishing . . . public local laws . . .” Commission Minutes 1 (Sept. 18, 1970).

188. Report from legal intern Alan V. Cecil to director, Code Revision Commission (Feb. 13, 1974).

189. *Id.* at 3. Some of the bills on this subject introduced [Results shown in brack-

The second matter of special interest connected with title 8 has to do with British statutes.¹⁹⁰ In the course of drafting title 8, it was discovered that a number of British statutes at one time and possibly still in effect in Maryland related to juries and jury selection. These statutes are not always easy to locate, and many lawyers and judges probably do not even attempt to locate them in most cases.¹⁹¹ Nevertheless, British statutes apparently in conflict with present law should be repealed to avoid possible confusion, while those still viable should be properly codified so as to be readily accessible to the Bench, Bar and public. A beginning of this process was generated by work on title 8 and will continue as code revision progresses.¹⁹²

TITLE 9: WITNESSES

In the beginning of its work, the Code Revision Commission staff visualized a single title dealing with witnesses and evidence—essentially the subject-matter of former article 35 of the Code.¹⁹³ However, the subcommittee on Courts and Judicial Proceedings directed the use of two titles, one dealing with witnesses and one with evidence.¹⁹⁴ Title 9 is concerned with basic questions of competence, compellability, and privilege (subtitle 1); atten-

ets] at the 1974 Session of the General Assembly include: H.B. 100 (Calvert County) [Failed]; H.B. 453 (Allegany County) [Failed]; H.B. 736 (Frederick County) [ch. 104 [1974] Md. Laws —]; H.B. 872 (Charles County) [ch. 107 [1974] Md. Laws 631]; H.B. 953 [Failed] & 1319 (Washington County) [ch. 797, [1974] Md. Laws]; H.B. 1210 [ch. 250 [1974] Md. Laws 913], 1213 [ch. 253 [1974] Md. Laws 918], & 1214 [ch. 254 [1974] Md. Laws 919] (Queen Anne's County); H.B. 1299 (Worcester County) [ch. 793, [1974] Md. Laws]; H.B. 1339 (Carroll County) [ch. 537, [1974] Md. Laws 1847]; H.B. 1467 (Caroline County) [ch. 269 [1974] Md. Laws 939]; H.B. 1507 (Kent County) [ch. 816 [1974] Md. Laws 2733]; H.B. 1557 (Frederick County) [ch. 275 [1974] Md. Laws 948]; H.B. 1565 (Somerset County) [ch. 277 [1974] Md. Laws 953]; and S.B. 882 (Cecil County) [Vetoed by Governor Mandel].

190. Under article 5 of the Maryland Declaration of Rights, the citizens are "entitled . . . to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; . . ." MD. CONST., Declaration of Rights art. 5.

191. The most readily available compilation is W.B. COE, ALEXANDER'S BRITISH STATUTES (2d ed. 1912).

192. As a preliminary to the Courts Article, a number of British statutes were abolished at the 1973 regular session of the General Assembly. These included 33 Edw. 1, stat. 4 (1305); 5 Hen. 8, c. 6 (1513); 35 Hen. 8, c. 6 (1543); 4 & 5 Phil. & M., c. 7 (1557); 14 Eliz. 1, c. 9 (1572); and 6 & 7 W. & M., c. 4 (1694) — all declared inapplicable by chapter 648, Laws of 1973; and 28 Edw. 3, c. 3 (1354) declared inapplicable by chapter 611, Laws of 1973. Compare the similar procedures followed by the Maryland State Bar Association Section of Real Property, Planning and Zoning Law in its revision of article 21 Md. Ann. Code art. 21, § 14-114 (1973).

193. Staff Memorandum No. 1 to the Subcommittee on Courts and Judicial Proceedings (June 16, 1971).

194. Subcommittee Minutes 1 (July 29, 1971). It was thought that this division was

dance and pay (subtitle 2); attendance of out-of-state witness (subtitle 3); and foreign depositions (subtitle 4).

Perhaps the major innovation attempted in title 9 was the codification of common law or case law rules of evidence not previously contained in article 35 or elsewhere in the Code. Sections 9-101 and 9-103, as contained in the first reader copy of Senate Bill 1, took this approach by providing that in general a person was deemed competent to testify unless otherwise provided in the subtitle and by specifying rules concerning testimony by persons of unsound mind and by infants. The thought was that it would be more useful for the code user to have a full and comprehensive statutory code of evidence, as opposed to rules of evidence partially statutory and partially only discoverable by extensive research in case reports and texts; the objective was to restate uncodified rules of evidence without change.

The General Assembly rejected this approach. There was concern about the accuracy of the statutory restatement of case law. There were also doubts about the wisdom of encyusting case law in the Code, which perhaps would inhibit its flexible application and further development. As a result, the original sections 9-101, 9-102, and 9-103 were stricken from the bill, and a new section 9-101 was inserted.¹⁹⁵

As might be expected, the Dead Man's statute caused considerable drafting problems.¹⁹⁶ The Commission's objective was to make no substantive change whatsoever, and the division of former article 35, section 3 into two sections, sections 9-116 and 9-117, was intended to, and probably did, clarify the law. However, the Commission's general purpose to preserve the Dead Man's statute, as construed, without change may not have been expressed with sufficient clarity. At least one distinguished commentator on Maryland's law of evidence has suggested that it would be difficult to construe section 9-116 as not changing the law in some respects.¹⁹⁷ Appropriately, corrective action has been

consistent with digest and textbook treatment of the subject. The full Commission approved the change. Commission Minutes (Sept. 13, 1971). See also Subcommittee Minutes 15-16 (Apr. 12, 1973).

195. Amendment No. 69, adopted in the Senate. The statutory reference, however, to the attorney-client privilege in section 9-108 was left untouched. Also left untouched was the press-shield law [Md. Ann. Code art. 35, § 2 (1971); MD. ANN. CODE, Cts. & Jud. Proc. Art., § 9-112 (1974)] because of the legislative rejection of any change at the regular 1973 session of the General Assembly. Commission Minutes 37 (May 6-7, 1973).

196. See Subcommittee Minutes 14 (Apr. 12, 1973); Staff Report No. 33 at 3 (May 1, 1973); Commission Minutes 37 (May 6-7, 1973).

197. See letter from Professor John M. Brumbaugh, University of Maryland School of Law, to J. Kemp Bartlett, Director, Code Revision Commission (Jan. 16, 1974).

undertaken.¹⁹⁸

The care with which the joint legislative committees reviewed the Courts Article is again evident in title 9. Legislative amendments to sections 9-115, 9-116, and 9-117 were all designed to clarify restatement of pre-existing law and to avoid unintended substantive change.¹⁹⁹ One small substantive change was made in the title, however. Former article 26, section 148(a) provided a penalty of \$300 for failure of a summonsed witness to appear and testify in District Court. An older statute, article 35, section 14, provided a penalty of \$50 for a similar offense in the circuit court. The Commission thought that this difference had no basis in reason and proposed adopting the article 26 provisions.²⁰⁰ The General Assembly, by enacting section 9-102, agreed.²⁰¹

TITLE 10: EVIDENCE

The nine subtitles of title 10, containing a large number of uniform acts,²⁰² include: proof of accounts and records; public statutes, office copies, and official certificate; motor vehicle laws; wire tapping; foreign laws; foreign debt; foreign judgments; simultaneous death; and miscellaneous rules. In general, only stylistic changes have been made in the uniform acts, although consolidation of repetitive provisions has also occurred.

For example, former article 35, sections 67 and 82, and chapter 708 of the Acts of 1973, contained numerous and often reiterative provisions relating to the admissibility of the records of a variety of State agencies. The substance of these former sections have been restated in a single section, section 10-204, which is applicable to records of all State and local agencies, subject to the confidentiality provisions of section 10-205. Likewise, provisions relating to the proof of local ordinances and regulations have been

198. See S.B. 766, 1974 Session of the General Assembly, introduced by the President of the Senate on February 28, 1974. This bill was vetoed by Governor Mandel. The Governor stated in his veto message of May 31, 1974 that the bill had a defective title, thereby violating Article III, Section 29 of the Constitution.

199. Amendments 70-73, adopted in the Senate.

200. Code Revision Commission, Report No. 3F to the General Assembly, at 63-64 (July 16, 1963).

201. Although the Commission thought that many of the provisions relating to compensation of witnesses were "irrational and frequently obsolete," it concluded that modernization of these laws was a policy matter for the General Assembly. *Id.* at 64.

202. MD. ANN. CODE, Cts. & Jud. Proc. Art., § 10-102—Uniform Photographic Copies of Business and Public Records as Evidence Act; § 10-202—Uniform Proof of Statutes Act; Subtitle 5—Uniform Judicial Notice of Foreign Law Act; Subtitle 7—Uniform Foreign Money—Judgments Recognition Act; and Subtitle 8—Uniform Simultaneous Death Act [1974].

consolidated in section 10-203.²⁰³

Conceivably, this process of consolidation may have gone a bit far. For example, former article 35, section 40 was repealed as obsolete.²⁰⁴ However, a noted commentator has pointed out that while section 10-204 adequately covers domestic public records, it may not apply to foreign public records.²⁰⁵ He observes, nevertheless, that a federal statute²⁰⁶ solves most of the problem.

The most noteworthy feature of title 10, however, is the treatment of two constitutional problems. The first problem arose when the Commission proposed the repeal of article 35, sections 5 and 6 (sometimes in part referred to as the "Bouse Act") relating to use of illegally-seized evidence.²⁰⁷ It was thought that the prohibition against use of illegally-seized evidence was rendered unnecessary by *Mapp v. Ohio*²⁰⁸ and its progeny and that other portions of those sections purporting to admit some illegally-seized evidence were rendered unconstitutional by the same cases; this recommendation was accepted by the General Assembly.

Secondly, the Commission attempted to address a problem relating to wire-tapping. In *State v. Siegal*,²⁰⁹ the Court of Appeals invalidated former article 35, section 94(f), on the grounds that its provisions were less restrictive than the pertinent federal statute.²¹⁰ Subsequently, at the 1973 regular session, the General Assembly enacted H.B. 962, which revised Maryland's interceptions of communications laws to make them conform substantially to provisions in the federal law, including measures permitting wire-taps under circumstances in which State law prohibited them. Governor Mandel vetoed the bill, saying that its effect would be "to allow the police, and anyone else, to intercept, listen in, and record the private conversations of people when only one party to the conversation has given consent to such activity"; he also indicated that he thought that this "opportunity for unwarranted spying and intrusions on people's privacy. . . is frightening" ²¹¹

203. As rewritten by Amendment No. 82, adopted in the Senate.

204. Ch. 2, § 1, [1973 Extraordinary Sess.] Md. Laws 332.

205. See note 197 *supra*.

206. 28 U.S.C. § 1739 (1970).

207. Commission Minutes 31 (May 6-7, 1973).

208. 367 U.S. 643 (1961).

209. 266 Md. 256, 292 A.2d 86 (1972), *aff'g*, 13 Md. App. 444, 285 A.2d 671 (1971).

210. Omnibus Crime Control Act, 18 U.S.C. §§ 2518 (4)(e) and 2518(5) (1970).

211. [1973] Md. Laws 1924-25 (Veto Message of June 1, 1973). This veto was sustained at the 1973 Special Session.

In the light of this judicial and legislative history, the Code Revision Commission drafted a provision intended only to correct the deficiency perceived in *Siegal*.²¹² However, the joint Senate Judicial Proceedings and House Judiciary Committee took the position that the entire wire-tapping law needed rewriting and that the Commission's proposal represented only a "band-aid" approach. Accordingly, an amendment was adopted to restore to section 10-403 the precise language invalidated in *Siegal*.²¹³

While the General Assembly was indulging in this perhaps dubious exercise of restoring to the Code provisions stricken down by both of the appellate courts of the State, it and the Commission were overlooking another problem of possible conflict with federal wire-tapping law. Former article 26, section 145(b)(6), as enacted by chapter 528, Acts of 1970, gave every District Court judge "the power to issue warrants . . . for search and seizure or for interception of communications, when and in the manner authorized by law" This law was intended to give District Court judges the same wire-tap authority as judges at the circuit court level and was duly written into section 10-403. However, federal law in 1970 and at the present time indicates that interception of communications may be authorized only by a judge of any court "of general criminal jurisdiction of a State" ²¹⁴ Whether the District Court of Maryland falls within this category seems highly debatable. Thus, although there are no cases construing the federal provision, it appears that the wire-tapping portion of title 10 may require further legislative attention.²¹⁵

TITLE 11: JUDGMENTS

Most of the titles of the Courts Article are in large part based on a single article of the 1957 Code.²¹⁶ Title 11 is unusual in that it can claim no such lineage. It seeks to collect a variety of provisions, found in such diverse locations as articles 9, 16, 17, 26, 29, 50, 75, 83 and 85, relating to the measure of damages (subtitle 2), interest on judgments (subtitle 3), judgment liens (subtitle 4),

212. This provision appears in the first reader copy of S.B. 1 [1974] at section 10-403 of the Courts Article.

213. Amendment No. 85, adopted in the Senate.

214. 18 U.S.C. § 2510(9)(b) (1970). The writer thanks Chief Judge Sweeney of the District Court for bringing this point to his attention.

215. H.B. 384, 1974 regular session, if enacted, would resolve the District Court problem by deleting wire-tapping authority for judges of that court. It would also resolve the *Siegal* problem. However, this bill was not enacted.

216. For example, title 4 is derived chiefly from former article 26; title 8 from former article 51; titles 9 and 10 from former article 35; and title 12 from former article 5.

execution (subtitle 5), pleas by garnishees (subtitle 6), District Court judgments (subtitle 7), and miscellaneous matters (subtitle 1).

The reader will immediately observe that title 11 constitutes far less than a comprehensive treatment of the law relating to judgments and their enforcement. In point of fact, there is relatively little statutory material bearing on the subject, much having been left to case law and rule. Title 11, accordingly, could be construed merely as a repository for most of the Code provisions. However, in a few instances, obsolete provisions were deleted.²¹⁷ In others, the effects of judicial decisions have been written into the statutes,²¹⁸ and a number of former statutory provisions have been repealed because covered by rule.²¹⁹

A minor substantive change appears in section 11-504, which reduces from two to one the number of appraisers required in connection with property claimed as exempt from execution. This change was made because of the reported difficulty of obtaining appraisers in some parts of the State. During discussion of this change at the special session, questions were raised about the need for any appraisers, at least absent a dispute about the value of the property claimed as exempt. In the fall of 1973, the House Judiciary Committee studied the matter and recommended to the Legislative Council that the section "be amended to provide that the sheriff himself. . . perform this appraisal, but that if either the judgment creditor or the defendant objects to the valuation. . . , then the sheriff shall obtain a disinterested appraiser to value the property selected."²²⁰ An appropriate bill was introduced at the 1974 legislative session.²²¹

One other alteration worthy of note is the General Assembly's amendment of section 11-507, providing that exemptions from execution do not impair certain liens. The law already re-

217. For example, section 11-103 eliminates obsolete references to terms of court formerly contained in article 26, section 19 of the 1957 Code.

218. Section 11-201 (formerly article 75, section 41) incorporates the judicial construction contained in *Superior Construction Co. v. Elmo*, 204 Md. 1, 102 A.2d 739 (1954). See also *Strathmore Mining Co. v. Bayard Coal & Coke Co.*, 139 Md. 355, 115 A. 620 (1921); and *Mount Savage George's Creek Coal Co. v. Monahan*, 132 Md. 654, 104 A. 480 (1918).

219. Examples include article 17, section 20 (Md. R. P. 619); article 50, section 4 (Md. R. P. 622); and several portions of article 26, sections 147 and 150 (Md. R. P. 607, 624, 625, and 642).

220. See Legislative Council of Maryland, Report of the Judiciary Committee to the General Assembly of 1974 at 308-09.

221. H.B. 387 [1974]. Although clearing a vote in the House, this bill did not get the requisite number of votes in the Senate.

ferred to purchase money liens on land, mechanics liens, tax liens, and mortgage liens. The legislature added liens of deeds of trust and other security interests, on the theory that this was consistent with the basic intent of the law.²²²

It should be pointed out that the District Court provisions in subtitle 7 are extremely brief. Judgment lien provisions appear in section 11-402, and many former statutes dealing with District Court judgments are found in rules.²²³ Section 11-701 is intended chiefly as a statutory basis for the rules.²²⁴

TITLE 12: APPEALS, CERTIORARI, AND CERTIFICATION OF QUESTIONS

This title is probably one of the most interesting of the Courts Article, since it illustrates many of the fundamental concepts of formal code revision. To begin with, there is the matter of organization and structure. Article 5 of the 1957 Code was organized on the basis of the court to which the appeal is to be taken. Thus, its two major subtitles were "Appeals to Court of Appeals" and "Appeals to Circuit Courts for Counties and Superior Court of Baltimore City." That scheme of organization presupposed that the lawyer who wanted to take an appeal knew to which court he should go. The Code Revision Commission thought it more useful to organize the title on the basis of the court from which the appeal was to be taken; while a lawyer who has just lost a case knows in what court he was unsuccessful, he may not know what court has jurisdiction over the appeal.²²⁵ Thus, following the definitions in subtitle 1, the title includes subtitle 2, "Review of Cases in Court of Special Appeals"; subtitle 3, "Review of Decisions of Trial Courts of General Jurisdiction"; subtitle 4, "Review of Decisions of District Court"; and subtitle 5, "Review of Decisions of Orphans' Courts." The remaining two subtitles deal with certification of questions of law and practice on appeal.

Also, from the organizational point of view, article 5 provisions dealing with costs on appeal were placed in title 7 of the Courts Article with other statutes dealing with court costs.²²⁶ Former sections 27 and 29 of article 5, relating to appeals from county commissioners, were also transferred to article 25.²²⁷ The latter

222. Amendment No. 93, adopted by the Senate.

223. See note 219; *supra*.

224. See Commission Minutes 36 (May 6-7, 1973).

225. See Code Revision Commission, Report No. 3F to the General Assembly, at 75-76 (July 16, 1973).

226. MD. ANN. CODE, Cts. & Jud. Proc. Art., § 7-103 (1974).

227. Ch. 2, § 5, [1973 Extraordinary Sess.] Md. Laws 396. These particular provi-

action is consistent with the Commission policy of excluding from the Courts Article statutes dealing with appeals from administrative agencies and local governmental bodies. These statutes differ greatly in detail, and are more conveniently codified with the substantive law to which they pertain.²²⁸

Another facet of code revision illustrated by title 12 is limited substantive change. This is best exemplified by section 12-301, authorizing an appeal from the final judgment of a trial court of general jurisdiction.²²⁹ Article 5, section 1 of the 1957 Code contained similar language. What the former statute did not disclose was an exception to the general rule developed by case law. That exception prohibited an appeal from a final judgment of a law court if the judgment was entered in the exercise of special, original, limited, statutory jurisdiction conferred on the court. In such cases, an appeal was permitted only if specifically provided for by statute.²³⁰

At the September 7, 1972, Commission meeting, it was pointed out that "the present statute is a trap for the unwary" ²³¹ Article 5, section 1 was especially a pitfall for the legislative draftsman, who could have created a special jurisdiction thinking that appellate review was provided by the general appeals statute.²³² Therefore, the Commission thought that the substantive law required modification in the interests of fairness and clarity.²³³ The legislature agreed, and section 12-301 now permits an "appeal. . . from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law."²³⁴ However, it should be noted that this change does not

sions in fact would only apply in road opening and closing cases such as those of *Urbana Civil Ass'n v. Urbana Mobile Village*, 260 Md. 458, 272 A.2d 628 (1971); *Ertler v. North Washington Cemetary*, 200 Md. 251, 88 A.2d 578 (1952).

228. See Staff Report No. 13 at 7 (Aug. 25, 1972). See also Code Revision Commission, Report No. 3F to the General Assembly, at 76 (July 16, 1973).

229. For a perceptive discussion of the effect of the adoption of section 12-301 in general, and as applied to appeals in juvenile causes in particular, see Chief Judge Orth's able opinion in *Matter of Anderson*, 20 Md. App. 31, 315 A.2d 540 (1974).

230. See *Simpler v. State ex rel. Boyd*, 223 Md. 456, 165 A.2d 464 (1960). Compare *Montchester Gun Club, Inc. v. Honga River Gun Club, Inc.*, 257 Md. 79, 262 A.2d 372 (1970).

231. Commission Minutes 15 (Sept. 7, 1972).

232. For example, after the decision in *Simpler*, the legislature promptly enacted chapter 49, Laws of 1962, providing for an appeal in the *Simpler* situation.

233. Code Revision Commission, Report No. 3F to the General Assembly, at 77-78 (July 16, 1973).

234. The insertion of this language has made it possible to repeal numerous special appeal provisions, such as former article 7, section 18 (appeals from arbitration awards) and former article 31A, section 7 (appeals from declaratory judgments).

permit an appeal as of right when the court of general trial jurisdiction is itself acting in an appellate capacity, as, for example, when it is reviewing the decision of the District Court or an administrative agency.²³⁵

Another minor substantive change is found in section 12-402, providing for appeals from the District Court in contempt cases. Formerly, those appeals had to be noted within ten days from the contempt order.²³⁶ The Commission, however, saw no reason why the basic 30-day rule should not apply in cases of this sort. On the other hand, several provisions for short appeal times in certain landlord-tenant cases were preserved because there seemed to be valid policy reasons supporting them.²³⁷

A third, and even more minor, substantive modification is found in section 12-305, which deals with discretionary review of the decisions of trial courts of general jurisdiction acting in an appellate capacity. Former article 5, section 21 permitted such review when, *inter alia*, "the same statute has been construed differently by the courts of two or more circuits." But the prior law did not address the problem of different constructions of the same statute by two or more judges in a multi-judge county.²³⁸ Section 12-305(1) attempts to fill that gap by permitting, although not requiring, grant of certiorari if "the same statute has been construed differently by two or more judges."²³⁹

Albeit that limited substantive change is one facet of code revision represented by title 12, one of the more difficult problems addressed by the Commission in this area was codification of judicial decisions. One example of the resolution of this problem is section 12-702, dealing with sentencing following an appeal, which melds statutory enactment with judicial pronouncement. In this regard, the first sentence of section 12-702(d) has as its basis former article 5, section 17, which provided, in effect, that upon remand for sentencing, the trial court should give credit for time served by the defendant under the previous sentence from the date of his conviction. Embodied in the second sentence of subsection (a) is the holding in *Wright v. State*,²⁴⁰ which provided that if the original sentence had been a statutory maximum sen-

235. See MD. ANN. CODE, Cts. & Jud. Proc. Art., § 12-302(a) (1974).

236. See Md. Ann. Code art. 26, § 148(c) (1973).

237. See MD. ANN. CODE, Cts. & Jud. Proc. Art., § 12-401(b)(2) (1974).

238. See Code Revision Commission, Report No. 3F to the General Assembly, at 78-79 (July 16, 1973).

239. MD. ANN. CODE, Cts. & Jud. Proc. Art., § 12-305(1) (1974).

240. 11 Md. App. 673, 276 A.2d 411 (1971).

tence, the resentencing court also had to give credit for pre-conviction incarceration related to the same offense.

This subsection, however, does not reach the issue of whether credit must be given for pre-conviction incarceration if the sentence was less than the statutory maximum. Although in *State v. Ewell*²⁴¹ the Court of Appeals answered that question in the negative, implications from subsequent Supreme Court decisions²⁴² could arguably be thought to necessitate a statutory overruling of the *Ewell* decision. The determination of this issue was expressly left open by the Court of Special Appeals in *Wright*, and the Commission, following its generally conservative approach, proposed no action in this regard, preferring to await either further development of the case law or specific action by the General Assembly.²⁴³

One of the Supreme Court decisions, *North Carolina v. Pearce*,²⁴⁴ which raised questions about the validity of the *Ewell* decision raised other questions as well. After that decision, the Court of Special Appeals decided *Cherry v. State*²⁴⁵ and applied the *Pearce* limitations on sentence increase to a sentence following a *de novo* appeal. The *Pearce* decision is codified in section 12-702 (b) and the *Cherry* decision in section 12-702 (c).²⁴⁶ While, however, *Pearce* remains generally good law, *Cherry* was in effect overruled by *Colten v. Kentucky*,²⁴⁷ in which a divided Supreme Court concluded that the *Pearce* restrictions on increased sentences did not apply to sentences after *de novo* appeals. This has caused some to argue that codification of decisions, especially Supreme Court decisions, is unwise, because those decisions are subject to change.

This view, however, is short-sighted and almost irresponsible. A decision of the Supreme Court on a constitutional point is

241. 234 Md. 56, 198 A.2d 275 (1964).

242. See *North Carolina v. Pearce*, 395 U.S. 711 (1969), in which strict limitations were placed on increasing sentences after appeal; *Benton v. Maryland*, 395 U.S. 784 (1969), in which federal double jeopardy standards were applied to the states.

243. See Code Revision Commission, Report No. 3F to the General Assembly, at 81 (July 16, 1973). In this connection, ch. 605, [1973] Md. Laws 1257 should be consulted. The Criminal Code drafted by the Governor's Commission on Criminal Law would mandate credit for all pre-trial incarceration. See section 70.30.3 of its proposed Criminal Code, Governor's Commission on Criminal Law, Interim Report and Preliminary Print of Provisions Relating to Sentences, Proposed Criminal Code 51 (Oct. 16, 1971).

244. 395 U.S. 711 (1969).

245. 9 Md. App. 1416, 264 A.2d 887 (1970).

246. Actually, the *Cherry* rule was written into former article 5, section 43, by chapter 181, Laws of 1972, and was simply recodified in section 12-702(c). The *Pearce* rule was not expressly codified until enactment of the Courts Article.

247. 407 U.S. 104 (1973).

the law of the land. To have statutes which purport to permit something, such as increasing sentences after appeal, when authoritative court decisions say that action is not permitted, produces confusion at best and chaos at worst.²⁴⁸ The wiser course, it would seem, is to amend the law to comply with judicial constructions of the Constitution. Should a judicial construction subsequently be changed, the statute can always be amended, if the legislature so desires. In the meantime, a degree of harmony and consistency is maintained.²⁴⁹

TITLE 13: COURT SUPPORTING AGENCIES

The last title of the Courts Article was the first to be drafted.²⁵⁰ It was, in fact, selected as an exercise in drafting because it is short, simple, and uncontroversial. Its brevity is illustrated by the fact that title 13 includes only four subtitles. The title covers the Administrative Office of the Courts and the Administrative Office of the Seventh Circuit (subtitle 1); the State Reporter (subtitle 2); the Standing Committee on Rules (subtitle 3); and the Commission on Judicial Disabilities (subtitle 4). Statutes relating to the Board of Law Examiners²⁵¹ were not included, because they are allocated to the future Occupations and Professions Article, where many other licensing statutes will appear.²⁵²

A few minor changes appear in title 13, mostly for conformity to actual practice or for internal consistency. For example, former article 26, section 6 permitted the Director of the State Administrative Office of the Courts to be a part-time employee. That provision is omitted from section 13-101, because the duties of the office require full-time attention. For the same reason, section 13-101(c) makes it clear that neither the director nor any employee of his office may practice law in any jurisdiction.²⁵³

248. This was the situation prior to July 1, 1972, when chapter 181 became effective; see note 241 *supra*. Prior to that date, article 5, section 43 of the Code provided: "If the defendant so appealing is convicted in said trial de novo on appeal the Criminal Court of Baltimore may impose any sentence authorized by law . . . irrespective of the sentence imposed in the Municipal Court." This was plainly contrary to the decision in *Cherry*.

249. Although *Colten* was decided in 1973, the General Assembly has not yet amended what is now section 12-702(c) of the Courts Article. However, the Legislative Committee of the Maryland Judicial Conference has recommended its repeal. Minutes of Meeting of Steering Committee of Legislative Committee of the Judicial Conference 1 (Jan. 16, 1974).

250. Commission Minutes (June 15, 1972).

251. MD. ANN. CODE art. 10, §§ 2-8 (1968, Supp. 1973).

252. See Code Revision Commission, Revisor's Manual (2d ed. Nov. 1973) at A-9.

253. See Code Revision Commission, Report No. 3F to the General Assembly, at 82

From the viewpoint of code revision in general, however, title 13 was the vehicle for an ill-fated experiment with skip-numbering.²⁵⁴ One of the problems facing code revision is that of inserting new material, adopted by subsequent legislative action, in the logically appropriate location. If sections are numbered consecutively, and a new section is to be placed between, let us say, section 13-101 and section 13-102, there are several alternatives. One is to renumber all sections, but this is troublesome and makes referencing and indexing difficult. Another is to use a capital letter (section 13-101A) or a decimal number (section 13-101.1) or a fraction (section 13-101½), but these methods can produce complex and confusing numbers.

Another alternative is skip-numbering whereby sections are not numbered consecutively, but rather gaps of five or ten or more numbers are left between the original sections. Thus, at least initially, insertions may be made without difficulty. However, since it is difficult to estimate how rapidly law will expand, it is not easy to determine how wide the gaps should be, and when they have all been filled, the basic problem is again presented. Moreover, there are those who contend that the existence of gaps is in itself confusing. Because of these difficulties, the Commission rejected the concept of skip-numbering;²⁵⁵ insertions are to be handled by a decimal system.²⁵⁶

The "Back of the Bill"

No discussion of code revision vis-a-vis the Courts Article would be complete without brief mention of what the Commission staff referred to as "The back of the bill." The "back of the bill" encompasses the twenty sections following section 1 of Senate Bill 1,²⁵⁷ containing the text of the Courts Article, which include repealers (section 2) and transfers (section 3) plus a number of other sections designed to implement the concepts of code

(July 16, 1973). Similar anti-practice provisions were inserted in section 13-102(c), applicable to the Seventh Circuit Administrative Office, after consultation with the judges on the Seventh Circuit. The Seventh Circuit Administrative Office is the only local administrative office discussed in the Courts Article because it was established by public general law. The Supreme Bench Administrator was established by chapter 224, Laws of 1966, a public local law, while Baltimore and Montgomery Counties have provided local administrators without enabling legislation.

254. Staff Report No. 12 at 16 (June 12, 1972).

255. See Commission Minutes 13 (June 15, 1972).

256. Code Revision Commission, Revisor's Manual (2d ed. Nov. 1973) 8-9. Inserted subtitles, however, will be indicated by capital letters.

257. Ch. 2 [1973 Extraordinary Sess.] Md. Laws 4.

revision by permitting the repeal of entire former articles or otherwise making changes consistent with revision policies.²⁵⁸ These other sections include sections 6, 7,²⁵⁹ 8, 9 and 10, which transfer to article 27 various statutes so related to criminal law that they could not appropriately be included in the Courts Article, and section 12 which transfers the judicial pension statutes of former article 26 to article 73B, where they are placed with other sections dealing with State pensions and retirement benefits.²⁶⁰ The remaining sections deal with construction and interpretation of the Courts Article and its effective date.

A full understanding of the Courts Article and the scope of revision associated with it cannot be obtained without consideration of these sections. While detailed discussion of them is not necessary here, the Code user should be aware of their existence.

THE IMMEDIATE AND MORE DISTANT FUTURE

By July 1, 1975, over one-third of the projected revised Code should be in effect;²⁶¹ the task should be completed by July 1, 1979. Of course, the process of code revision is neither short nor simple. Despite the difficulties and temporary drawbacks and despite the fact that errors in the revision will surface from time to time, Code revision in Maryland shows great promise. Although some might paraphrase Dr. Johnson's comment about a woman preaching and say, "It is not done well; but you are surprised to find it done at all,"²⁶² it is submitted, as this article suggests, that real advances are being made in the organization and style of the Code through the process of code revision.

258. One example of such a transfer was the shift of former sections 27 and 29 of article 5 to article 25 in order to permit repeal of article 5. Actually, this purpose was not accomplished. Through an oversight, article 5, section 22 was not repealed. However, this has been corrected by the enactment of S.B. 1070 (Ch. 691, [1974] Md. Laws 2354), and the adoption of an appropriate rule by the Court of Appeals.

259. At the Special Session, the General Assembly inserted section 7A to clarify article 27, section 592, as enacted by chapter 840, Laws of 1973, with respect to procedures relating to indictment, information and preliminary hearings. Amendment No. 95, adopted by the Senate.

260. See notes 12-14 *supra* and accompanying text.

261. The Agriculture and Natural Resources Articles as well as the article on Court & Judicial Proceedings were enacted during the First Special Session in 1973. At the 1974 Session, the General Assembly enacted the revised articles on Estates and Trusts and on Real Property, Ch. 11 and 12, [1974] Md. Laws 17 and 248 respectively. Revised articles on Commercial Law, Corporations, and Public Health are to be considered at the 1975 legislative session.

262. That well-known male chauvinist of the eighteenth century is reputed to have remarked: "Sir, a woman preaching is like a dog's walking on his hind legs. It is not done well; but you are surprised to find it done at all." 1 J. BOSWELL, LIFE OF DR. JOHNSON 287.

Benefits will be realized through the closing of gaps and with the elimination of inconsistencies, conflicts, and unconstitutional provisions. More importantly, the refining process of Code revision will bring to general attention numerous problems of policy and substantive law, often unrecognized in the past. In other words, the process of formal revision in itself generates a healthy interest in substantive revision of both public general and public local laws.²⁶³

It is not too much to hope that the Code Revision Commission and the General Assembly will adhere to the high standards so far followed. To avoid erosion of the benefits of code revision, steps must be taken to guarantee that a well-written, well-organized Code is not allowed to fall into a poorly-written and disorganized state merely because no one pays attention to editorial and organizational matters. The early establishment of a continuing revision process is essential in order to insure that form is at least on a parity with substance.²⁶⁴ Beginning now, the Division of Statutory Revision must set up procedures for reviewing all bills to make sure that they are consistent with the stylistic and organizational guidelines now established.²⁶⁵

263. Several detailed comments on this process have already been made. Numerous other examples will be found in bills filed during the 1974 session of the General Assembly. It might also be noted that following the 1973 Special Session, the Commission itself submitted 47 such suggestions in the courts area alone to legislative committees. These suggestions were largely gleaned from comments made during committee hearings of the Special Session. See letters of August 8 and August 16, 1973 from Revisor of Statutes to Chairman of the Senate Judicial Proceedings and House Judiciary Committees.

264. Recognizing the interdependence of form and substance, the General Assembly required the Division of Statutory Revision, created in 1972, to carry on the work of continuous formal revision of the statutory law of the State by preparing and submitting recommendations to the General Assembly for the repeal, amendment, or other modification of any statute which is obsolete, antiquated, in conflict with another statute, or inconsistent with another statute; or which has been declared unconstitutional or otherwise is in need of formal revision . . . [and to] make recommendations to correct manifest spelling, grammatical, clerical, or typographical errors, or errors by way of additions or omissions, as well as generally to maintain the clarity, simplicity, and consistency of style of statutory law.

MD. ANN. CODE art. 40, § 53C(3) (Supp. 1973).

265. An outstanding example of failure to do this is H.B. 1588, 1974 Regular Session which died in the General Assembly. The thrust of this bill was to abolish the doctrine of intrafamily immunity in tort. For some reason, the draftsman had elected to do this by an amendment to section 9-105 of the Courts Article. Basically, this portion of the witnesses title deals with confidential communications between spouses.

Machinery to accomplish the review of bills is provided by Rule 31 of the Maryland Senate and Rule 31 of the House of Delegates. Each of these Rules provides that no bill may be filed unless first approved by the Department of Legislative Reference as to form and codification. Intensified training of legislative bill drafters would also help assure that Code revision concepts are adhered to in the regular work of the General Assembly.

Among the procedures which will help to accomplish these ends are those designed to improve the handling of so-called "corrective bills." The Maryland Constitution requires that the General Assembly, "in amending any article, or section of the Code of Laws of this State, . . . [shall] enact the same, as the said Article, or section would read when amended."²⁶⁶ This means that the most trivial correction of a typographical error, a stylistic *gaffe*, a punctuation mistake, or the misstatement of an agency name must be corrected by a full-blown legislative act. The same is true of changes in organization of the laws even though they do not change substance. This requirement clearly obstructs the work of the Revisor of Statutes in his capacity as guardian of the stylistic and organizational purity of the revised Code; it is also an expensive process.²⁶⁷

This procedure need not be followed. At least 15 states employ simpler, less expensive methods for editing their Codes, when no substantive change is involved.²⁶⁸ Typical is the State of Washington, which allows the Code Revisor, under the supervision of a committee, to apply uniform style guidelines, insert proper dates, "[r]earrange any misplaced statutory material", correct spelling, clerical, or typographical errors, correct errors in numbering and references, divide long sections into two or more sections, "rearrange the order of sections to conform to logical arrangement of subject matter," reword section captions, delete "provisions manifestly obsolete," and perform numerous other editorial functions.²⁶⁹ Although the revisor may not make a substantive change in the law, he may perform his editorial tasks without the necessity of legislation.

Techniques like this should be applied in Maryland. Serious attention should be given to the adoption of a Constitutional amendment and the implementation of legislation which would in substance permit the Revisor of Statutes to submit an annual report to the General Assembly, proposing appropriate editorial and organizational changes in the Code. This report could be

266. MD. CONST. art. III, § 29 (1972).

267. According to data prepared in 1973, it costs \$25.74 per page to print a bill, exclusive of the services of the bill drafter. At the 1973 regular session, there were about 60 corrective bills, totaling 246 pages. Thus, the cost of printing these bills was \$6,332.04. Letter and attached memoranda forwarded by the writer to Hon. Thomas Hunter Lowe, Chairman, Legislative Council Committee on Rules, Organization and Facilities (June 18, 1973). The financial analysis was largely performed by legal intern Jon H. Shoup.

268. Alaska, Arizona, Colorado, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nevada, North Dakota, Tennessee, Vermont, Virginia and Washington.

269. WASH. REV. CODE Ann. § 1.08.015 (1961).

rejected in whole or in part by the General Assembly, but, to the extent not rejected, it would take effect and become part of the Code. A procedure such as this would save some money, conserve a good deal of legislative time, and allow efficient, thorough, continuous editorial supervision of the style, arrangement, and organization of the revised Code. It would, in effect, comply with the article 40 mandate for "continuous formal revision."²⁷⁰

Secondly, a study needs to be undertaken to determine the best and least expensive way of making the new Code available to the greatest number of Code users. Already, the format of the new Code means that individuals interested only in specific subject areas may purchase only the volume or volumes relating to their areas instead of an entire set of the Code. However, the matter does not end here; there is much to be said for the proposition that a State that enacts laws has a duty to make the printed volumes of those laws available to its citizens promptly and inexpensively. Should Maryland print and publish its own edition of the Code, annotated, or unannotated? Should the Code be updated by pocket parts, by supplemental pamphlets, by loose-leaf services, or by other means? Various states use various methods, and State publication of some form of Code by no means precludes private publication of another edition of the same Code.

In conclusion, the achievements so far demonstrated in the Code revision process and the collateral benefits which this process inevitably generates make it reasonable to hope that when the project has been completed

the citizens of this State will be the beneficiaries of a body of public general laws organized in a logical fashion and written in a clear, non-technical style. The General Assembly will have produced for the public laws which are easier to find and, once found, easier to understand. In a society in which every citizen is presumed to know the law, and in which statutory law plays an increasingly important part in everyone's life, the importance of this project is obvious.²⁷¹

270. MD. ANN. CODE art. 40, § 53 C (3), (Supp. 1973). See also Staff Memorandum No. 4 to the Subcommittee on Long Range Planning, "A Continuous Revision Program," (Aug. 24, 1971, revised Sept. 17, 1971 and May 13, 1972).

271. Opening statement of Revisor of Statutes to joint meeting of Senate Judicial Proceedings and House Judiciary Committees (July 30, 1973).