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C. *General Evidentiary Objections Still Valid in Maryland*

1. *Introduction*—The new Maryland Rules of Evidence offer practitioners a convenient and streamlined set of rules that will benefit trial practice in terms of both judicial economy and legal clarity.¹ Although modeled in part on Federal Rule 103, Maryland Rule 5-103 retains several attributes of the former Maryland common-law and court rules that governed objections to evidentiary rulings for preservation on appeal.² These disparities between new Maryland Rule 5-103 and its well-established federal counterpart are significant and may serve to undermine many of the advantages and opportunities sought through the codification process.

In effect, Maryland Rule 5-103, which changes current Maryland practice very little, contains three significant differences from Federal Rule 103. First, the Federal Rule requires that an attorney state the specific ground of objection,³ while the Maryland Rule only requires that an attorney state a general objection.⁴ Second, in Maryland, error may only be predicated on a ruling by which a party is "prejudiced,"⁵ while in federal court, error may be predicated on a ruling in which "a substantial right of the party is affected."⁶ Finally, the Federal Rule expressly allows the appellate court to take notice of plain errors that affect substantial rights although they were not brought to the attention of the trial court,⁷ while the Maryland Rule does not.

This Note will discuss the provisions of the new Maryland Rule and contrast them with the provisions of Federal Rule 103. Through this comparison, the likely effects of new Maryland Rule 5-103 on trial and appellate practice will be examined. The Note will also briefly address the matter of motions *in limine* which is treated tangentially by the new rule.

1. See LYNN MCLAIN, MARYLAND RULES OF EVIDENCE § 1.2 (1994).

2. See MCLAIN, *supra* note 1, §§ 2.103.2 to 2.103.3.

3. FED. R. EVID. 103(a)(1).

4. MD. R. 5-103(a)(1).

5. MD. R. 5-103(a).

6. FED. R. EVID. 103(a).

7. See FED. R. EVID. 103(d).

2. *Maryland Rule 5-103.*—Maryland Rule 5-103 controls the preservation for appeal of objections to evidentiary errors at trial.⁸ The Rule states that in order for an evidentiary ruling to be preserved as error for appeal, the ruling must have been prejudicial.⁹ If the alleged error was in the admission of evidence, a timely objection or motion to strike must appear on the record, stating the specific grounds of the objection if the specific grounds are requested by the court or required by rule.¹⁰ If, on the other hand, the alleged error was one that excluded evidence, the substance of the evidence must have been made known on the record if it was not apparent from the context in which it was offered.¹¹

The Rule further states that the court may add to any ruling an explanation of the character of the evidence, the form in which it was offered, and the objection made.¹² Finally, the Rule makes clear that proceedings on objections or offers of proof shall be conducted, to the extent practicable, in order to avoid jury exposure to inadmissible evidence.¹³ These latter two aspects of the rule are identical to the Federal Rule and have not given rise to controversy; they will not be discussed further in this Note.

3. *Federal Rule of Evidence 103.*—The note appended to the new Maryland Rule states that it is “derived in part from” Federal Rule of

8. Maryland Rule 5-103 states:

(a) Effect of Erroneous Ruling.—Error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling, and

(1) *Objection.*—In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was requested by the court or required by rule; or

(2) *Offer of Proof.*—In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was offered. The court may direct the making of an offer in question and answer form.

(b) Explanation of Ruling.—The court may add to the ruling any statement that shows the character of the evidence, the form in which it was offered, and the objection made.

(c) Hearing of Jury.—Proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to a jury by any means, such as making statements or offers of proof or asking questions within the hearing of the jury.

Md. R. 5-103.

9. Md. R. 5-103(a).

10. Md. R. 5-103(a)(1); *see infra* note 31 and accompanying text for discussion of the phrase “or required by rule.”

11. Md. R. 5-103(a)(2).

12. Md. R. 5-103(b).

13. Md. R. 5-103(c).

Evidence 103.¹⁴ The Federal Rule establishes the method by which evidence is offered by one party and objected to by another.¹⁵ The Rule places the responsibility on counsel, rather than on the court, to raise a timely objection to the admission of objectionable evidence.¹⁶ The failure to object in a timely fashion and to make a statement of the specific grounds therefor, if the specific grounds are not apparent from the context, amounts to a waiver of the objection on appeal.¹⁷ The only exception to this general approach is the plain error doctrine.¹⁸

The notion of plain error allows an appellate court to review items which were not objected to at the trial if they are sufficiently serious to merit such special treatment.¹⁹ Consequently, Federal Rule

14. Md. R. 5-103, source note.

15. Federal Rule 103 states:

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) *Objection*. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) *Offer of proof*. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

(b) Record of offer and ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.

(c) Hearing of jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.

(d) Plain error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

FED. R. EVID. 103.

16. See KENNETH S. BROUN ET AL., *McCORMICK ON EVIDENCE* § 52 (John W. Strong ed., 4th ed. 1992) [hereinafter *McCORMICK*].

17. *Id.*; see also *United States v. Atkinson*, 297 U.S. 157 (1936). The Supreme Court noted:

The verdict of a jury will not ordinarily be set aside for error not brought to the attention of the trial court. This practice is founded upon considerations of fairness to the court and to the parties and of the public interest in bringing litigation to an end after fair opportunity has been afforded to present all issues of law and fact.

Id. at 159.

18. FED. R. EVID. 103(d).

19. *McCORMICK*, *supra* note 16, § 52, at 78; see also *Atkinson*, 297 U.S. at 160 ("In exceptional circumstances, especially in criminal cases, appellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken, if the errors are obvious, or if they otherwise seriously affect the fairness, integrity or public reputation of judicial proceedings.").

of Evidence 103 places the responsibility on both the parties and the trial court to preserve a sufficient record of what happened during trial to enable an appellate court to determine whether reversible error occurred. If the court sustains an objection to a question posed to a witness, the proponent of the question should make an offer of proof to the judge as to what the witness would say if allowed to answer and what the proponent hoped to prove.²⁰ This offer of proof allows a trial judge to reconsider the question of admissibility²¹ and preserves information about the evidence that an appellate court should consider in determining whether the trial judge's ruling was correct.²² The offer of proof generally must be made out of the hearing of the jury so as not to influence it with excluded evidence.²³

4. *Comparison of the New Rule with Prior Practice in Maryland and with Federal Rule of Evidence 103.*—Prior to the enactment of Title 5 of the Maryland Rules, the law of evidence in Maryland had to be gleaned from “a crazy quilt of common law, sewn over here and there by newer patches of particular court rules and statutes.”²⁴ The most significant change that Title 5 represents for Maryland practice is that Maryland's law of evidence is now codified into a unified and coherent system.²⁵ This should greatly improve the accessibility of the law of evidence and the consistency with which the law is applied in Maryland courts.²⁶

An area of controversy related to the passage of these new rules is the extent to which they differ from the Federal Rules of Evidence. Judge Chasanow of the Court of Appeals dissented in part from the court's decision to adopt the new rules because he questioned the need to incorporate most of the differences with the Federal Rules.²⁷ Judge Chasanow argued that the Federal Rules are taught in law

20. MCCORMICK, *supra* note 16, § 51, at 73. *But see* United States v. Nevitt, 563 F.2d 406 (9th Cir. 1977) (holding that no offer of proof was necessary when trial court excluded impeachment evidence because court was fully aware of substance of the excluded evidence).

21. MCCORMICK, *supra* note 16, § 51, at 73. For example, a piece of evidence may be admissible only for a limited purpose. FED. R. EVID. 105. If the offer of proof clarifies that it is only being offered for that limited purpose, then the court may decide to overrule the objection and instruct the jury to consider the evidence only for the limited purpose for which it is admissible. *See id.*

22. MCCORMICK, *supra* note 16, § 51, at 73.

23. FED. R. EVID. 103(c).

24. McLAIN, *supra* note 1, § 1.2, at 3.

25. *Id.*

26. *Id.*

27. 21 Md. Reg. 1-3 (Jan. 7, 1994) (Chasanow, J., dissenting in part).

schools and are familiar to, and have been praised by, practitioners.²⁸ Thus, Judge Chasanow commented, "if it ain't broke, don't fix it."²⁹

The differences between Maryland Rule 5-103 and the Federal Rule seem, moreover, to have been designed simply to avoid changing Maryland practice in any significant way. Thus, prior Maryland case law will still determine what is meant by many of the requirements of Rule 5-103.³⁰

a. Specific vs. General Objections.—One of the more surprising aspects of Maryland Rule 5-103 is that it preserves a prior practice, which required only general objections to evidence, unless specific grounds are requested by the trial judge or required by rule.³¹

Once a general objection has been noted at trial, it can be the basis for any possible error on appeal because specific grounds for an objection are not required in Maryland.³² In practice, the Maryland Rule acts as an incentive not to state the grounds for an objection

28. *Id.* at 2.

29. *Id.* at 1.

30. For example, the Court of Appeals has long applied an objective standard for deciding at what point the basis for an objection becomes apparent. *Moxley v. State*, 205 Md. 507, 515, 109 A.2d 370, 373 (1954); *see also Covington v. State*, 282 Md. 540, 543, 386 A.2d 336, 337 (1978) (stating that litigant must make objection known to court "at the earliest practicable opportunity"). If it is reasonably clear that a question posed is objectionable, opposing counsel must object at the time the question is asked, rather than waiting to hear the answer. *Klecka v. State*, 149 Md. 128, 132, 131 A. 29, 30 (1925). *But see Moxley*, 205 Md. at 515, 109 A.2d at 373 ("[W]here the answer is not responsive to the question or, due to the general nature of the question, the answer is disconnected and introduces matter which could not be fairly anticipated, the trial court can strike it down on a timely motion.").

Moreover, if objectionable matter is raised a second or subsequent time, a second or subsequent objection must be made. *See S & S Bldg. Corp. v. Fidelity Storage Corp.*, 270 Md. 184, 190, 310 A.2d 778, 782-83 (1973) (holding that earlier objection did not apply to subsequent questioning where evidence to which objection was sustained was then elicited later with no objection raised); *cf. Beghtol v. Michael*, 80 Md. App. 387, 392-93, 564 A.2d 82, 84 (1989) (finding that appellant waived objection by failing to object at several times during the trial when opposing counsel asked objectionable questions), *cert. denied*, 318 Md. 514, 569 A.2d 643 (1990). The *Beghtol* court discussed the then-new concept of continuing objections as allowed by Md. R. 2-517(b) although such an objection was not made by the party claiming error in the case. *Id.* at 393-94, 564 A.2d at 84-85.

31. *See, e.g., Robert v. State*, 220 Md. 159, 151 A.2d 737 (1959) (general objection appropriate). The phrase "required by rule" in Maryland Rule 5-103 refers to Maryland Rules 2-520(e) and 4-325(e) which require that objections to jury instructions, in civil and criminal trials respectively, include a statement of the specific grounds for the objection. *See Md. R. 2-520(e) & 4-325(e)*.

32. *See Robert*, 220 Md. at 167-68, 151 A.2d at 741; *see also Bates v. State*, 32 Md. App. 108, 113, 359 A.2d 106, 110 (general objection to admissibility of confession may be regarded as encompassing both voluntariness of confession and taint derived from illegal arrest), *cert. denied*, 278 Md. 715 (1976).

because, if a specific objection is made, the appeal is limited to the specific ground raised.³³

The general objection rule may have made more sense when the law of evidence in Maryland was not codified into a single set of rules that could fit into a litigator's back pocket.³⁴ Tolerance for the general objection may promote sloppy practice in the courtroom, because lawyers can object any time they have a vague sense that something said is harmful to their client.³⁵ These lawyers hope that the trial judge will share their general sense that something was objectionable or, better, recognize a specific ground for objection, and sustain the objection without asking for the specific grounds.³⁶ By contrast, the Federal Rule places the responsibility on the opponent of the proffered evidence to make clear to the court why it is inadmissible.³⁷

Rule 5-103's requirement of a timely objection to the admission of evidence in order to preserve an error for appeal has long been recognized in Maryland.³⁸ This requirement arose out of considerations of judicial economy and fairness to the opposing party because it gives the court the opportunity to correct the error at the trial level and, perhaps, obviate the need for an appeal.³⁹ The argument for requiring a timely objection applies with equal force to the requirement for counsel to state specific grounds. Clearly, this was the motivation behind the specific objection requirement of Federal Rule 103.⁴⁰

The use of the general objection was not anticipated in an earlier published draft of the Maryland Rules of Evidence. Proposed Mary-

33. *Klein v. Weiss*, 284 Md. 36, 55, 395 A.2d 126, 137 (1978) (holding that because appellant's objections were specifically stated as based on relevancy grounds, he was limited to that ground on appeal); *Great Coastal Express, Inc. v. Schrufer*, 34 Md. App. 706, 724, 369 A.2d 118, 128 (stating that appellants' objection to leading questions of expert on direct was insufficient to preserve objection to relevance), *cert. denied*, 280 Md. 730 (1977).

34. Interview with Professor Alan Hornstein, University of Maryland School of Law, former Co-Special Reporter to the Maryland Rules Committee's Subcommittee on Evidence, in Baltimore, Md. (Sept. 20, 1994).

35. *Id.*

36. *Id.*

37. See MCCORMICK, *supra* note 16, § 52.

38. See, e.g., *Moxley v. State*, 205 Md. 507, 515, 109 A.2d 370, 373 (1954) ("The principle governing the time for objection, which has been stated and restated, is that the one against whom evidence is offered must object as soon as the applicability of the evidence is known or should reasonably have been known to him.").

39. See, e.g., *Zellinger v. CRC Dev. Corp.*, 281 Md. 614, 380 A.2d 1064 (1977).

40. The Advisory Committee's Note to Federal Rule of Evidence 103 states, in pertinent part: "Rulings on evidence cannot be assigned as error unless . . . the nature of the error was called to the attention of the judge, so as to alert him [or her] to the proper course of action and enable opposing counsel to take proper corrective measures." FED. R. EVID. 103 advisory committee's note.

land Rule 5-103 stated that grounds for an objection to the admission of evidence had to be stated specifically, unless the ground for objection was apparent from the context or the court excused the objecting party from stating the grounds—essentially a reflection of federal practice.⁴¹ The reporter's notes made clear that, at least initially, the Court of Appeals' Standing Committee on Rules of Practice and Procedure considered the federal specific objection rule to be preferable to the general objection rule.⁴² However, the Committee also recognized that it takes time for a change in the rules to establish itself in practice, especially when judges and attorneys are so used to the old ways. The 1992 draft consequently offered an "escape hatch" for attorneys who were excused from stating specific grounds by judges who were still in the mindset of the prior law.⁴³ The Committee minutes reveal that the Committee was closely divided on the initial decision to change Maryland practice to more closely conform to federal practice.⁴⁴

Professor Lynn McLain, who served as Co-Special Reporter to the Subcommittee on Evidence, explained to the Committee that, prior to 1957, the practice in Maryland was to give specific grounds for objections in order to provide the judge with an opportunity to correct the error, if possible, and to preserve the specific error for appeal.⁴⁵ However, Committee members argued that requiring a statement of specific grounds would slow down the docket, particularly where the grounds are often apparent⁴⁶ or where a requirement to state the grounds might necessitate constant bench conferences.⁴⁷ A subse-

41. COURT OF APPEALS STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE, PROPOSED TITLE 5 OF THE MARYLAND RULES OF PROCEDURE: EVIDENCE 4 (1992) [hereinafter PROPOSED TITLE 5].

42. *Id.* at 5. It should be mentioned that general objections are allowed in federal court. However, if they are overruled, they may not serve to preserve error for appeal. MCCORMICK, *supra* note 16, § 52, at 75.

43. PROPOSED TITLE 5, *supra* note 41, at 5. The language of this portion of Proposed Maryland Rule 5-103 stated that "a timely objection or motion to strike [must appear on the record] stating the specific ground of objection, if the specific ground was not apparent from the context or the court excused the objecting party from stating the specific grounds." *Id.* at 4 (emphasis added).

44. Adoption of the modified federal practice in the proposed Maryland Rules was apparently agreed upon by a one-vote margin. Minutes of the Court of Appeals Standing Committee on Rules of Practice and Procedure [hereinafter Minutes], May 15, 1992, at 10.

45. *Id.* at 9.

46. *Id.* at 10 (statement of Mr. Finnerty). The Federal Rule, however, specifies that it is not necessary to state the grounds for an objection if they are apparent from the context. *See, e.g.,* United States v. Barrett, 539 F.2d 244, 247 n.5 (1st Cir. 1976) (explaining that criminal defendant did not forfeit objection by failing to state grounds where they were apparent from context and were understood by all parties).

47. Minutes, May 15, 1992, *supra* note 44, at 10 (statement of Mr. Lombardi).

quent motion to change the rule in order to retain the prior Maryland practice carried unanimously.⁴⁸

b. Harmful Error.—The difference in wording between what constitutes harmful error in Maryland courts⁴⁹ and in the federal courts⁵⁰ may not be as significant as it appears at first glance. Judge Chasanow, however, saw this difference as an example of an “unnecessary, and perhaps confusing” change from the language of the equivalent federal rule.⁵¹

The Committee note states that the difference in language between the federal and Maryland rules is not meant to “change the existing standard for harmless error in a criminal case.”⁵² The Court of Appeals firmly established the criminal standard in *Dorsey v. State*,⁵³ where it held that in an appeal from a criminal trial, a defendant does not have to prove that an error is prejudicial.⁵⁴ Rather, the burden is on the appellate court to find beyond a reasonable doubt that an erroneous ruling was not harmful to the defendant’s case before the court may dismiss an appeal without ordering a new trial.⁵⁵ By contrast, in an appeal from a civil case, the burden is on the appellant to show by a preponderance of the evidence that the ruling affected the outcome of the case adversely to his or her interests.⁵⁶

By using the phrase “substantial rights affected,” the Federal Rule leaves room for a distinction between error which is prejudicial in a

48. *Id.* at 10-11.

49. “Error may not be predicated upon a ruling . . . unless the party is prejudiced by the ruling” MD. R. 5-103(a).

50. “Error may not be predicated upon a ruling . . . unless a substantial right of the party is affected” FED. R. EVID. 103(a).

51. 21 Md. Reg. 2 (Jan. 7, 1994) (Chasanow, J., dissenting in part).

52. MD. R. 5-103 committee note. It is important to bear in mind that “committee notes, source references, and annotations are not part of these rules.” MD. R. 1-201(e).

53. 276 Md. 638, 350 A.2d 665 (1976).

54. *Id.* at 659, 350 A.2d at 678.

55. *Id.* In *Dorsey*, the Court of Appeals adopted the test for constitutional error in criminal trials enunciated by the Supreme Court in *Chapman v. California*, 386 U.S. 18 (1967), as the test for all errors in criminal trials in Maryland. *Dorsey*, 276 Md. at 659, 350 A.2d at 678. The *Dorsey* court explained that when an appellate court, upon an independent review of the record, finds that properly admitted evidence has weighed overwhelmingly against the defendant and the prejudicial effect of any erroneously admitted evidence was insignificant by comparison, or was cumulative, it may conclude beyond a reasonable doubt that admitting the improper evidence was harmless error. *See id.* at 649, 350 A.2d at 672. A verdict will not be overturned for harmless error because the accused has a right to a fair trial, not a perfect trial. *Id.* at 647, 350 A.2d at 671.

56. *See Dorsey*, 276 Md. at 659 n.15, 350 A.2d at 678 n.15; *see also Rippon v. Mercantile Safe Deposit & Trust Co.*, 213 Md. 215, 222, 131 A.2d 695, 698 (1957) (in a civil appeal, burden is on appellant to show both prejudice and error).

civil case and error which is merely harmful to a defendant in a criminal trial. But the Maryland Rule, by using the word "prejudiced," suggests that error in criminal trials will now be reviewed on the basis of the more difficult test used for error in civil trials; that is, the error will be a basis for reversal only if the appellant can show prejudice.

Judge Chasanow pointed out the apparent change in Maryland law created by this language: "The Committee's note regarding the harmless error rule in criminal cases may clarify the rule, . . . but there still may be an ambiguity because the 'prejudice' requirement in the amended rule seems identical in civil and criminal cases."⁵⁷ It may be necessary for the Court of Appeals to explicate this rule in future case law to make clear that the standard for harmful error in criminal appeals has not changed as a result of the new Maryland Rule.

c. Plain Error.—Plain error is that error which is sufficiently serious to be reviewed on appeal even though it was not properly objected to and preserved at trial.⁵⁸ The Committee chose to delete the paragraph of the Federal Rule concerning plain error because it appeared "to be more a rule relating to appellate review than to evidence."⁵⁹ Also, Maryland, with one exception, does not use the "plain error" terminology.⁶⁰ The exception is the use of a plain error analysis for jury instructions in criminal cases, which an appellate court may examine if the error was material to the rights of the defendant, despite the defendant's failure to object at trial.⁶¹

In the Committee's view, the very limited reach of the plain error doctrine in Maryland was already sufficiently expressed by Maryland Rules 4-325(e) and 8-131(a).⁶² Rule 8-131, which gives an appellate court discretion to review errors not properly preserved for appeal "if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal,"⁶³ will continue to govern the review by the appellate court of errors not objected to at trial.⁶⁴

Judge Chasanow criticized the reasons given by the Committee for not including the plain error provision of Federal Rule of Evi-

57. 21 Md. Reg. 2 (Jan. 7, 1994) (Chasanow, J., dissenting in part).

58. MCCORMICK, *supra* note 16, § 52, at 78.

59. See 125TH REPORT OF COMMITTEE ON RULES 13 (1993).

60. *Id.*; see also PROPOSED TITLE 5, *supra* note 41, at 5 (explaining that Maryland does not recognize "plain error doctrine with regard to nonconstitutional evidentiary issues").

61. "An appellate court, on its own initiative or on the suggestion of a party, may however take cognizance of any plain error in the [jury] instructions, material to the rights of the [criminal] defendant, despite a failure to object." MD. R. 4-325(e).

62. See 125TH REPORT OF COMMITTEE ON RULES 13.

63. See MD. R. 8-131(a).

64. See MD. R. 5-103 cross reference.

dence 103.⁶⁵ First, if the plain error doctrine is more a rule of appellate review than a rule of evidence, so is the section of the Rule concerning what may be preserved for review.⁶⁶ Second, he disagreed with the implication of the Committee note that the only time the plain error terminology is used in Maryland is with regard to plain error in jury instructions in criminal matters.⁶⁷ He viewed it as “at least conceivable” that the plain error doctrine would be applied in other contexts.⁶⁸

d. Motions in Limine.—The Committee was concerned that Maryland Rule 5-103 would be perceived as changing the existing practice in Maryland with regard to the use of motions *in limine* because of the requirement that offers of proof be made “on the record.”⁶⁹ At issue is whether a motion *in limine*, typically made just before trial begins, counts as being on the record of the trial.

The Committee note to Maryland Rule 5-103 explains that the Rule does not preclude objections or offers of proof through motions *in limine*.⁷⁰ If a motion *in limine* to exclude evidence is denied, the general rule is that the moving party must renew the objection at trial, when the evidence that was the subject of the motion is offered, in order to preserve the objection for appeal.⁷¹ An offer of proof is not required, however, after a pretrial ruling to exclude evidence when the judge’s pretrial ruling was clearly intended to be the last word on the matter.⁷²

The controlling precedent is *Prout v. State*,⁷³ in which a criminal defendant made a motion *in limine* to “advise the court” that he planned to introduce evidence of the prior convictions of the state’s only witness in order to impeach her credibility.⁷⁴ The trial court

65. 21 Md. Reg. 2 (Jan. 7, 1994) (Chasanow, J., dissenting in part).

66. *Id.* But Rule 5-103(a) addresses what counsel must do during trial in order to preserve an error for appellate review, so it is properly a rule of trial practice. Md. R. 5-103(a). The plain error paragraph in the Federal Rule does not implicate any action that has to be taken at the trial level. See FED. R. EVID. 103(d). Rather, it clarifies that the Rule does not preclude the appellate court from consideration of plain errors which were not appropriately objected to at trial.

67. 21 Md. Reg. 2 (Jan. 7, 1994) (Chasanow, J., dissenting in part).

68. *Id.* But see *Nesbitt v. Bethesda Country Club, Inc.*, 20 Md. App. 226, 233, 314 A.2d 738, 742 (1974) (stating that discretion to review jury instructions not objected to at trial does not exist in civil cases).

69. Minutes, May 15, 1992, *supra* note 44, at 11.

70. MD. R. 5-103 committee note.

71. McCORMICK, *supra* note 16, § 52, at 75.

72. MD. R. 5-103 committee note.

73. 311 Md. 348, 535 A.2d 445 (1988).

74. *Id.* at 351, 535 A.2d at 446.

ruled that it would not allow into evidence the witness's prior convictions for prostitution and solicitation, which the court did not view as bearing on her credibility.⁷⁵ Defense counsel took exception to the court's ruling.⁷⁶ The defendant was later found guilty.⁷⁷

On appeal, the State argued that the defendant had not preserved the court's exclusion of the impeachment evidence.⁷⁸ The Court of Appeals held that when the trial judge resolves the motion *in limine* by excluding evidence, the proponent of the evidence is left with no choice but to follow the trial court's instructions not to proffer the evidence at trial.⁷⁹ Under these circumstances, the trial court's ruling on the motion *in limine* is preserved for review without further action on the part of counsel.⁸⁰

The Committee considered adding language to Rule 5-103 to address the *Prout* situation,⁸¹ however, it decided that *Prout* was an unusual enough circumstance that it did not need to be codified, but could simply be addressed by a Committee note.⁸²

5. *Conclusion.*—Maryland Rule 5-103 deviates from the comparable Federal Rule through the continuation of Maryland's general objection practice. This deviation is unfortunate because it does not contribute to the goal of judicial economy by establishing a solid basis to correct error at the trial level. The deviation is unnecessary because, under a unified code of evidence, there is no reason why Maryland lawyers cannot state the grounds for their objections with specificity. Other difficulties lurk: The language of Maryland Rule 5-103 suggests that there is no longer a distinction between what comprises harmful error in criminal and civil trials. The Committee's intent, nevertheless, was not to do away with the distinction between these standards. Also, the absence of a provision on plain error reflects the more limited use of that doctrine in Maryland in contrast to federal law. Finally, practice in Maryland with regard to motions *in limine* will not change as a result of the enactment of Maryland Rule 5-103.

75. *Id.* at 352-53, 535 A.2d at 447.

76. *Id.* at 353, 535 A.2d at 447.

77. *See id.*

78. *Id.* at 353-54, 535 A.2d at 447.

79. *Id.* at 356, 535 A.2d at 449.

80. *Id.*

81. *See* Minutes, May 15, 1992, *supra* note 44, at 13. "Mr. Titus moved to draft language to be put in subsection (a) (2) [of Rule 5-103] codifying the case law on motions in limine," and his motion carried unanimously. *Id.*

82. Minutes, June 19, 1992, *supra* note 44, at 50-51.

To the extent that future practice under the new rules will lead to change in the rules, any movement toward greater consistency between language and application of the state and federal rules can only strengthen them. In particular, the general objection requirement should be changed to place Maryland practice squarely in conformance with federal practice.

DINAH S. LEVENTHAL