STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Fifty-Fifth Report to the Court of Appeals, transmitting thereby proposed new Rules 1-326 (Proceedings Regarding Victims and Victims' Representatives), 2-605 (Offers of Judgment - Health Care Malpractice Claims), and 7-211 (Request for Impleader of the Subsequent Injury Fund); proposed new Title 7, Chapter 400 (Administrative Mandamus) and proposed new Title 15, Chapter 1100 (Coram Nobis); and proposed amendments to Rules 2-126, 2-202, 2-325, 2-332, 2-341, 2-506, 3-126, 3-202, 3-506, 4-231, 4-262, 4-263, 4-342, 4-343, 4-345, 4-406, 4-507, 4-508, 4-509, 4-510, 5-101, 5-706, 5-802.1, 5-803, 5-804, 5-902, 6-415, 7-208, 7-301, 8-204, 8-205, 8-207, 8-411, 8-412, 8-511, 8-604, 14-206, 14-503, 15-402, 15-701, 16-814, 17-101, 17-104, and 17-109 and Forms 4-504.1 and 4-508.1.

The Committee's One Hundred Fifty-Fifth Report and the proposed new rules and amendments are set forth below.

Interested persons are asked to consider the Committee's Report and proposed rules changes and to forward on or before October 31, 2005 any written comments they may wish to make to:

Sandra F. Haines, Esq.
Reporter, Rules Committee
Room 1.517
100 Community Place
Crownsville, Maryland 21032-2030

ALEXANDER L. CUMMINGS

Clerk

Court of Appeals of Maryland

September 12, 2005

ONE HUNDRED FIFTY-FIFTH REPORT
OF THE
STANDING COMMITTEE ON RULES
OF PRACTICE AND PROCEDURE

The Honorable Robert M. Bell,
Chief Judge
The Honorable Irma S. Raker
The Honorable Alan M. Wilner
The Honorable Dale R. Cathell
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.,
Judges
The Court of Appeals of Maryland
Robert C. Murphy Courts of
Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its One Hundred Fifty-Fifth Report, and recommends that the Court adopt the proposed Rules changes transmitted with this Report. The proposed changes fall into eleven categories. Following is a brief description of the principal proposals in each category.

In **Category One** are proposed amendments to seven Rules in Titles 2 and 3. Rules 2-126 and 3-126 are proposed to be amended to require certain additional descriptive and identifying information from an individual making service of process. Amendments to Rules 2-202 and 3-202 clarify procedures for settlement of suits on behalf of minors and add references to pertinent statutory provisions. A new section (e) added to Rule 2-341 requires a party filing an amended pleading to highlight the changes made by the amendment. Amendments to Rules 2-506 and 3-506 clarify that a stipulation of dismissal is signed by the parties to the complaint, counterclaim, cross-claim, or third-

party claim that is being dismissed, and that the stipulation need not be signed by any of the other parties who remain in the law suit. Also, cross references concerning the settlement of suits on behalf of minors are added by the amendments to Rules 2-506 and 3-506.

Category Two comprises proposed new Rule 2-605 and proposed amendments to Rules 2-332, 5-706, 5-804 (b)(4), 15-402, 17-101, and 17-104, adoption of which the Committee recommends in light of the Maryland Patients' Access to Quality Health Care Act of 2004, Chapter 5 (HB 2), Acts of the 2004 Special Legislative Session.

Proposed changes to four Rules and two Forms pertaining to expungement of records in criminal causes are in **Category Three**. The amendments to Rule 4-507 allow a court, without holding a hearing, to dismiss without prejudice a petition or application if the court determines from the record that as a matter of law there is no entitlement to expungement. The amendments to Rules 4-508, 4-509, and 4-510 and Form 4-508.1 are directed to (1) address timing issues that have arisen under the current Rules, (2) significantly reduce the need to unseal sealed records, (3) allow custodians of records and the Central Repository sufficient time to do any investigation necessary to identify the records to be expunged and then expunge them, and (4) provide additional notice to the parties and the custodians of records concerning the status of the expungement proceedings. The amendment to Form 4-504.1 is stylistic, only.

Category Four contains proposed amendments to seven other Rules in Title 4. The amendments to Rules 4-231 and 4-345 resolve a possible conflict between the two Rules. Amendments to Rules 4-263 and 4-262 clarify the discovery obligations set forth in the two Rules; address issues that have arisen with respect to compliance with the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963); and provide that ordinarily discovery materials are not filed with the court. In Rules 4-342, 4-343, and 4-406, amendments add cross references to applicable statutes pertaining to DNA sample collection, testing, and preservation.

Category Five consists of proposed amendments to three Rules in Title 5. The addition of the word "was" to Rule 5-802.1 (a)(2) clarifies that the statement to which the subsection refers must have been signed by, but need not have been written by, the declarant. Amendments to Rule 5-804 add a hearsay exception for certain statements of a declarant whose unavailability was procured through wrongdoing that a party engaged in, directed, or conspired to commit. Conforming amendments are made to Rule 5-803. Amendments to Rule 5-902 add to subsection (a)(11) specific notice and certification

procedures that the proponent of self-authenticated records under that subsection must follow. A procedure for objecting to the self-authentication also is added.

In **Category Six** are new Rule 7-211 and amendments to Rule 8-604, proposed in response to the Court's observation in *Carey v. Chessie Computer Services, Inc.*, 369 Md. 741 (2002) that there is no express procedure in Title 7, Chapter 200 or elsewhere in the Rules that provides for impleading the Subsequent Injury Fund in a Workers' Compensation Action pending in a circuit court.

Category Seven contains proposed new Title Seven, Chapter 400, Administrative Mandamus, governing actions for judicial review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law. Conforming and related amendments are made to Rules 7-208, 7-301, and 15-701.

Category Eight comprises proposed amendments to six Rules in Title 8. Amendments to Rule 8-204 add procedures for an application for leave to appeal from an interlocutory or final order that denies or fails to consider certain rights of a victim, as authorized by Code, Criminal Procedure Article, §11-103. The amendment to Rule 8-205 adds appeals from guardianships terminating parental rights to the list of categories of actions for which information reports are not required. The amendment to Rule 8-207 clarifies that the only subsection of Code, Courts Article, §12-303 to which section (a) of the Rule applies is subsection (3)(x). Amendments to Rules 8-411 and 8-412 provide for certain time periods within which the transcript must be ordered and the record must be transmitted in child in need of assistance cases. An amendment to Rule 8-511 requires an *amicus curiae* to disclose certain information pertaining to other persons or entities that contributed to the preparation or submission of a brief.

Category Nine is composed of proposed amendments to two Rules in Title 14. The amendment to Rule 14-206 conforms it to recent legislation concerning the timing and content of the notice of sale that is sent to the record owner. The amendment to Rule 14-503 allows notice of a tax sale to be posted by a private person.

Proposed new Title 15, Chapter 1100 is in **Category Ten**. The new Rules are applicable to proceedings for a writ of *coram nobis* where the underlying judgment is in a criminal action. They are based primarily on existing Title 4, Chapter 400, Post Conviction Proceedings; 39 Am. Jur. 2d, *Habeas Corpus and Post Conviction Remedies*, §256 (2003); and *Skok v. State*, 361 Md. 52 (2000). A proposed amendment to Rule 5-101 conforms the Rule to the Rules

in the new Chapter and to the holding in *In Re: Ashley E.*, 387 Md. 260 (2005).

The final Category, **Category Eleven**, contains five miscellaneous proposed Rules changes. New Rule 1-326 establishes uniform procedures by which an attorney may enter an appearance to represent a victim or victim's representative in proceedings under Title 4 or Title 11 of the Rules. The amendment to Rule 6-415 highlights, by an addition to an existing cross reference, a recent statutory change concerning the allowance for funeral expenses. The amendment to Rule 17-109 permits disclosure of otherwise confidential mediation communication when necessary to assist or defend against a claim or defense that because of fraud or duress a contract arising out of a mediation should be rescinded. The amendments to Rules 2-325 and 16-814 are "housekeeping," only.

For the guidance of the Court and the public, following each proposed Rules change is a Reporter's Note describing the reasons for the proposal and any changes that would be effected in current law or practice. We caution that these Reporter's Notes were prepared initially for the benefit of the Rules Committee; they are not part of the Rules and have not been debated or approved by the Committee; and they are not to be regarded as any kind of official comment or interpretation. They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,

Joseph F. Murphy, Jr.
Chairperson

Linda M. Schuett
Vice Chairperson

JFM/LMS:cdc

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 2-126 to require an individual serving process to provide certain additional information, as follows:

Rule 2-126. PROCESS - RETURN

(a) Service by Delivery or Mail

An individual making service of process by delivery or mailing shall file proof of the service with the court promptly and in any event within the time during which the person served must respond to the process.

(1) If service is by delivery, ~~The~~ the proof shall set ~~out~~ forth the name of the person served, the date, and the particular place and manner of service. If service is made under Rule 2-121 (a)(2), the proof also shall set forth a description of the individual served and the facts upon which the individual making service concluded that the individual served is of suitable age and discretion.

(2) If service is made by an individual other than a sheriff, the individual also shall file proof under affidavit ~~which shall also~~ that includes the name, address, and telephone number of the affiant and ~~state~~ a statement that the affiant is of the age of 18 or over.

(3) If service is by certified mail, the proof shall include

the original return receipt.

(b) Service by Publication or Posting

Promptly and in any event within the time during which the person notified must respond, ~~An~~ an individual making service of process pursuant to Rule 2-122 shall file with the court (1) the name, address, and telephone number of the individual making service, (2) proof of compliance with the Rule, and (3) ~~file with the court proof of compliance with the Rule together with~~ a copy of the publication or posted notice ~~promptly and in any event within the time during which the person notified must respond~~. The certificate of the publisher constitutes proof of publication.

(c) Other Process

When process requires for its execution a method other than or in addition to delivery or mailing, or publication or posting pursuant to Rule 2-122, the return shall be filed in the manner prescribed by rule or law promptly after execution of the process.

(d) Service Not Made

An individual unable to make service of process in accordance with these rules shall file a return as soon thereafter as practicable and in no event later than ten days following the termination of the validity of the process.

(e) Return to Include Process

A return shall include a copy of the process if served and the original process if not served.

(f) Place of Return

In every instance the return shall be filed with the court issuing process. In addition, when a writ of attachment, a writ of execution, or any other writ against property is executed in another county, a return shall be filed with the court of that county.

(g) Effect of Failure to Make Proof of Service

Failure to make proof of service does not affect the validity of the service.

Source: This Rule is derived as follows:
Section (a) is derived from former Rules 104 b 2, 107 a 2 and 116 c 1 and 2.
Section (b) is derived from former Rule 105 b 1 (a) and b 2.
Section (c) is new.
Section (d) is new.
Section (e) is new.
Section (f) is derived from former Rules 104 a (2) and 622 h 2.
Section (g) is derived from the 1980 version of Fed.R.Civ.P. 4 (g) and former Rules 104 h 3 (c) and 116 c 3.

REPORTER'S NOTE

A proposed amendment to section (a) of Rules 2-126 and 3-126 requires an individual making service under Rule 2-121 (a)(2) or 3-121 (a)(2) to include in the proof of service a statement of the facts upon which the individual making service concluded that the individual served is of suitable age and discretion.

Additional proposed amendments to Rules 2-126 and 3-126 are based on a recommendation from Master Richard J. Gilbert of the Circuit Court for Baltimore County. Master Gilbert has suggested that an individual serving process be required to include his or her name, address, and telephone number with the affidavit of service. He had presided over a modification of custody proceeding involving an order of default against the child's mother in which the child's father's girlfriend had served the motion. This was not evident from the affidavit and only came to light from the father's testimony at the hearing. Master Gilbert

pointed out there is no hardship in requiring this information from the affiant, and it could be useful later if there are questions relating to the manner of service.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE--DISTRICT COURT

CHAPTER 100 - COMMENCEMENT OF ACTION AND PROCESS

AMEND Rule 3-126 to require an individual serving process to provide certain additional information, as follows:

Rule 3-126. PROCESS - RETURN

(a) Service by Delivery or Mail

An individual making service of process by delivery or mailing shall file proof of the service with the court promptly and in any event within the time during which the person served must respond to the process.

(1) If service is by delivery, ~~The~~ the proof shall set ~~out~~ forth the name of the person served, the date, and the particular place and manner of service. If service is made under Rule 3-121 (a)(2), the proof also shall set forth a description of the individual served and the facts upon which the individual making service concluded that the individual served is of suitable age and discretion.

(2) If service is made by an individual other than a sheriff or clerk, the individual shall file proof under affidavit ~~which shall also~~ that includes the name, address, and telephone number of the affiant and a ~~state~~ statement that the affiant is of the age of 18 or over~~, and if~~. If service ~~is~~ by certified mail is made by a person other than the clerk, the proof shall include

the original return receipt.

(3) If service by certified mail is made by the clerk, the receipt returned through the Post Office shall be promptly filed by the clerk as proof of service.

(b) Service by Publication or Posting

Promptly and in any event within the time during which the person notified must respond, ~~An~~ an individual making service of process pursuant to Rule 2-122 shall file with the court (1) the name, address, and telephone number of the individual making service, (2) proof of compliance with the Rule, and (3) ~~file with the court proof of compliance with the Rule together with~~ a copy of the publication or posting notice ~~promptly and in any event within the time during which the person notified must respond~~. The certificate of the publisher constitutes proof of publication.

(c) Other Process

When process requires for its execution a method other than or in addition to delivery or mailing, or publication or posting pursuant to Rule 2-122, the return shall be filed in the manner prescribed by rule or law promptly after execution of the process.

(d) Service Not Made

An individual unable to make service of process in accordance with these rules shall file a return as soon thereafter as practicable and in no event later than ten days following the termination of the validity of the process.

(e) Return to Include Process

A return shall include a copy of the process if served and the original process if not served.

(f) Place of Return

In every instance the return shall be filed with the court issuing process. In addition, when a writ of attachment, a writ of execution, or any other writ against property is executed in another county, a return shall be filed with the court of that county.

(g) Effect of Failure to Make Proof of Service

Failure to make proof of service does not affect the validity of the service.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 104 b 2 and h 3 (a), 107 a 2 and 116 c 1 and 2.
Section (b) is derived from former Rule 105 b 1 (a) and b 2.
Section (c) is new.
Section (d) is derived from former M.D.R. 103 d 2.
Section (e) is new.
Section (f) is derived from former M.D.R. 104 a (ii) and 622 h 2.
Section (g) is derived from the 1980 version of Fed.R.Civ.P. 4 (g) and former M.D.R. 104 h 3 (c) and 116 c 3.

REPORTER'S NOTE

See the Reporter's Note to Rule 2-126.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 200 - PARTIES

AMEND Rule 2-202 to add a new section (c) concerning settlement of suits on behalf of minors and to add a certain cross reference, as follows:

Rule 2-202. CAPACITY

(a) Generally

Applicable substantive law governs the capacity to sue or be sued of an individual, a corporation, a person acting in a representative capacity, an association, or any other entity.

(b) Suits by Individuals Under Disability

An individual under disability to sue may sue by a guardian or other like fiduciary or, if none, by next friend, subject to any order of court for the protection of the individual under disability. When a minor is in the sole custody of one of its parents, that parent has the exclusive right to sue on behalf of the minor for a period of one year following the accrual of the cause of action, and if the custodial parent fails to institute suit within the one year period, any person interested in the minor shall have the right to institute suit on behalf of the minor as next friend upon first mailing notice to the last known address of the custodial parent.

(c) Settlement of Suits on Behalf of Minors

A next friend who files an action for the benefit of a minor may settle the claim in accordance with this subsection. If the next friend is not a parent or person *in loco parentis* of the child, the settlement is not effective unless approved by each living parent or person *in loco parentis*. If (1) both parents are dead and there is no person *in loco parentis* of the child or (2) one of the parents does not approve the settlement, the settlement is not effective unless approved by the court in which the suit is pending. Approval may be granted only on verified application by the next friend, stating the facts of the case and why the settlement is in the best interest of the child.

Cross reference: For settlement of suits on behalf of minors, see Code, Courts Article, §6-405. For settlement of a claim not in suit asserted by a parent or person *in loco parentis* under a liability insurance policy, see Code, Insurance Article, §9-113.

~~(c)~~ (d) Suits Against Individuals Under Disability

In a suit against an individual under disability, the guardian or other like fiduciary, if any, shall defend the action. The court shall order any guardian or other fiduciary in its jurisdiction who fails to comply with this section to defend the individual as required. If there is no such guardian or other fiduciary, the court shall appoint an attorney to represent and defend the individual.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rule 205 c and d.
Section (c) is new.
Section ~~(c)~~ (d) is derived from former Rule 205 e 1 and 2.

REPORTER'S NOTE

Chapter 553, (HB 1520), Acts of 2004 added new §9-113 to Code, Insurance Article, allowing a parent of a minor or a person *in loco parentis* of the minor to settle a claim under a liability insurance policy brought by the parent or person *in loco parentis* for the benefit of the minor, without litigation. The Committee recommends the addition of cross references to the new statute, as well as to Code, Courts Article, §6-405 (pertaining to settlement of suits on behalf of minors) to Rules 2-202, 3-202, 2-506, and 3-506.

Additionally, the Committee recommends the addition of a new section (c) to Rules 2-202 and 3-202, which sets out the requirements of Code, Courts Article, §6-405 and augments that statutory provision by expressly providing for court approval of a settlement on behalf of a minor when a parent does not approve the settlement.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 200 - PARTIES

AMEND Rule 3-202 to add a new section (c) concerning settlement of suits on behalf of minors and to add a certain cross reference, as follows:

Rule 3-202. CAPACITY

(a) Generally

Applicable substantive law governs the capacity to sue or be sued of an individual, a corporation, a person acting in a representative capacity, an association, or any other entity.

(b) Suits by Individuals Under Disability

An individual under disability to sue may sue by a guardian or other like fiduciary or, if none, by next friend, subject to any order of court for the protection of the individual under disability. When a minor is in the sole custody of one of its parents, that parent has the exclusive right to sue on behalf of the minor for a period of one year following the accrual of the cause of action, and if the custodial parent fails to institute suit within the one year period, any person interested in the minor shall have the right to institute suit on behalf of the minor as next friend upon first mailing notice to the last known address of the custodial parent.

(c) Settlement of Suits on Behalf of Minors

A next friend who files an action for the benefit of a minor may settle the claim in accordance with this subsection. If the next friend is not a parent or person *in loco parentis* of the child, the settlement is not effective unless approved by each living parent or person *in loco parentis*. If (1) both parents are dead and there is no person *in loco parentis* of the child or (2) one of the parents does not approve the settlement, the settlement is not effective unless approved by the court in which the suit is pending. Approval may be granted only on verified application by the next friend, stating the facts of the case and why the settlement is in the best interest of the child.

Cross reference: For settlement of suits on behalf of minors, see Code, Courts Article, §6-405. For settlement of a claim not in suit asserted by a parent or person *in loco parentis* under a liability insurance policy, see Code, Insurance Article, §9-113.

~~(c)~~ (d) Suits Against Individuals Under Disability

In a suit against an individual under disability, the guardian or other like fiduciary, if any, shall defend the action. The court shall order any guardian or other fiduciary in its jurisdiction who fails to comply with this section to defend the individual as required. If there is no such guardian or other fiduciary, the court shall appoint an attorney to represent and defend the individual.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former M.D.R. 205 c and d.
Section (c) is new.
Section ~~(c)~~ (d) is derived from former M.D.R. 205 e.

REPORTER'S NOTE

See the Reporter's note to Rule 2-202.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-341 to add certain requirements concerning the highlighting of amendments to pleadings, as follows:

Rule 2-341. AMENDMENT OF PLEADINGS

(a) Prior to 15 Days of Trial Date

A party may file an amendment to a pleading at any time prior to 15 days of a scheduled trial date. Within 15 days after service of an amendment, any other party to the action may file a motion to strike setting forth reasons why the court should not allow the amendment. If an amendment introduces new facts or varies the case in a material respect, an adverse party who wishes to contest new facts or allegations shall file a new or additional answer to the amendment within the time remaining to answer the original pleading or within 15 days after service of the amendment, whichever is later. If no new or additional answer is filed within the time allowed, the answer previously filed shall be treated as the answer to the amendment.

(b) Within 15 Days of Trial Date and Thereafter

Within 15 days of a scheduled trial date or after trial has commenced, a party may file an amendment to a pleading only by written consent of the adverse party or by leave of court. If the amendment introduces new facts or varies the case in a material respect, the new facts or allegations shall be treated

as having been denied by the adverse party. The court shall not grant a continuance or mistrial unless the ends of justice so require.

Committee note: By leave of court, the court may grant leave to amend the amount sought in a demand for a money judgment after a jury verdict is returned.

(c) Scope

An amendment may seek to (1) change the nature of the action or defense, (2) set forth a better statement of facts concerning any matter already raised in a pleading, (3) set forth transactions or events that have occurred since the filing of the pleading sought to be amended, (4) correct misnomer of a party, (5) correct misjoinder or nonjoinder of a party so long as one of the original plaintiffs and one of the original defendants remain as parties to the action, (6) add a party or parties, (7) make any other appropriate change. Amendments shall be freely allowed when justice so permits. Errors or defects in a pleading not corrected by an amendment shall be disregarded unless they affect the substantial rights of the parties.

(d) If New Party Added

If a new party is added by amendment, the amending party shall cause a summons and complaint, together with a copy of all pleadings, scheduling notices, court orders, and other papers previously filed in the action, to be served upon the new party.

(e) Highlighting of Amendments

Unless the court orders otherwise, a party filing an amended pleading shall also file a comparison copy of the amended pleading showing by lining through or enclosing in brackets

material that has been stricken and by underlining or setting forth in bold-faced type new material.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 320.
Section (b) is new and is derived in part from former Rule 320 e.
Section (c) is derived from sections a 2, 3, 4, b 1 and d 5 of former Rule 320 and former Rule 379.
Section (d) is new.
Section (e) is derived from the 2001 version of L.R. 103 (6)(c) of the Rules of the United States District Court for the District of Maryland.

REPORTER'S NOTE

Based on a suggestion from the Honorable Paul A. Hackner, the Rules Committee recommends that Rule 2-341 be amended to require that a party filing an amended pleading highlight the changes made by the amendment. The Committee recommends a procedure similar to the procedure set forth in L.R. 103 (6)(c) of the Rules of the United States District Court for the District of Maryland.

Because pleadings in the District Court of Maryland tend to be less complex and are amended less frequently than pleadings in circuit court and in light of the prevalence of *pro se* litigants in the District Court, no comparable amendment to Rule 3-341 is proposed.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE — CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-506 to clarify that a stipulation of dismissal is signed by the parties to the complaint, counterclaim, cross-claim, or third-party claim being dismissed, to delete the phrase "or a motion for summary judgment" from section (a), to delete section (e), to add a certain cross reference concerning settlement of claims on behalf of minors, and to make certain stylistic changes, as follows:

Rule 2-506. VOLUNTARY DISMISSAL

(a) By Notice of Dismissal or Stipulation

Except as otherwise provided in these rules or by statute, a ~~plaintiff may dismiss an action~~ party who has filed a complaint, counterclaim, cross-claim, or third-party claim may dismiss all or part of the claim without leave of court ~~(1)~~ by filing (1) a notice of dismissal at any time before the adverse party files an answer ~~or a motion for summary judgment~~ or (2) ~~by filing~~ a stipulation of dismissal signed by all parties ~~who have appeared in the action~~ to the claim being dismissed.

(b) By Order of Court

Except as provided in section (a) of this Rule, a ~~plaintiff~~ party who has filed a complaint, counterclaim, cross-claim, or third-party claim may dismiss ~~an action~~ the claim only

by order of court and upon such terms and conditions as the court deems proper. If a counterclaim has been ~~pleaded prior to~~ filed before the filing of a plaintiff's motion for voluntary dismissal, the action shall not be dismissed over the objection of the party who ~~pleaded~~ filed the counterclaim unless the counterclaim can remain pending for independent adjudication by the court.

(c) Effect

Unless otherwise specified in the notice of dismissal, stipulation, or order of court, a dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a party who has previously dismissed in any court of any state or in any court of the United States an action based on or including the same claim.

(d) Costs

Unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action or the part dismissed.

Cross reference: Code, Courts Art., §7-202.

~~(e) Dismissal of Counterclaims, Cross-claims, or Third-party Claims~~

~~The provisions of this Rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim, except that a notice of dismissal filed by a claimant pursuant to section (a) of this Rule shall be filed before the filing of an answer.~~

Cross reference: For settlement of suits on behalf of minors,

see Code, Courts Article, §6-405 and Rule 2-202. For settlement of a claim not in suit asserted by a parent or person *in loco parentis* under a liability insurance policy, see Code, Insurance Article, §9-113.

Source: This Rule is derived as follows:
Section (a) is derived in part from the 1968 version of Fed. R. Civ. P. 41 (a) (1) and is in part new.
Section (b) is derived from former Rule 541 b and the 1968 version of Fed. R. Civ. P 41 (a) (2).
Section (c) is derived from former Rule 541 c.
Section (d) is derived from former Rules 541 d and 582 b.
~~Section (e) is derived from the 1968 version of Fed. R. Civ. P. 41 (c).~~

REPORTER'S NOTE

The proposed amendments to section (a) of Rules 2-506 and 3-506 clarify that a stipulation of dismissal is signed by the parties to the complaint, counterclaim, cross-claim or third-party claim that is being dismissed. The stipulation need not be signed by any of the other parties who remain in the lawsuit. See *Garlock v. Gallagher*, 149 Md. App. 189 (2003) (allowing a cross-claim to be dismissed by the parties to the cross-claim only), *cert. denied*, 274 Md. 359 (2003).

In section (a) of Rule 2-506, the phrase "or a motion for summary judgment" is proposed to be deleted as unnecessary, in that an answer to a claim would be filed before or contemporaneously with a defendant's motion for summary judgment as to that claim.

Stylistic changes are proposed to be made to section (b). With those changes, section (e) is proposed to be deleted as unnecessary.

Cross references are proposed to be added at the end of Rules 2-506 and 3-506. The proposed cross references direct the practitioner to statutes and Rules pertaining to settlement of suits on behalf of minors (Code, Courts Article, §6-405 and Rules 2-202 and 3-202) and settlement of a claim not is suit asserted by a parent or person *in loco parentis* under a liability insurance policy (Code, Insurance Article, §9-113).

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 500 - TRIAL

AMEND Rule 3-506 to clarify that a stipulation of dismissal is signed by the parties to the complaint, counterclaim, cross-claim, or third-party claim being dismissed, to add a new section (b) pertaining to dismissal upon stipulated terms, to delete current section (f), to add a certain cross reference concerning settlement of claims on behalf of minors, and to make certain stylistic changes, as follows:

Rule 3-506. VOLUNTARY DISMISSAL

(a) By Notice of Dismissal or Stipulation

Except as otherwise provided in these rules or by statute, ~~a plaintiff may dismiss an action~~ a party who has filed a complaint, counterclaim, cross-claim, or third party claim may dismiss all or part of the claim without leave of court ~~(1)~~ by filing (1) a notice of dismissal at any time before the adverse party files a notice of intention to defend, or if the notice of dismissal specifies that it is with prejudice, at any time before judgment, or (2) ~~by filing~~ a stipulation of dismissal signed by all parties ~~who have appeared in the action~~ to the claim being dismissed.

(b) Dismissal Upon Stipulated Terms

If an action is settled upon written stipulated terms and

dismissed, the action may be reopened at any time upon request of any party to the settlement to enforce the stipulated terms through the entry of judgment or other appropriate relief.

~~(b)~~ (c) By Order of Court

Except as provided in section (a) of this Rule, a ~~plaintiff~~ party who has filed a complaint, counterclaim, cross-claim, or third party claim may dismiss ~~an action~~ the claim only by order of court and upon such terms and conditions as the court deems proper.

~~(c)~~ (d) Effect on Claim

Unless otherwise specified in the notice of dismissal, stipulation, or order of court, a dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a party who has previously dismissed in any court of any state or in any court of the United States an action based on or including the same claim.

~~(d)~~ (e) Effect on Counterclaim

If a counterclaim has been pleaded before the filing of a notice of dismissal or motion for voluntary dismissal, the dismissal of the action shall not affect the continued pendency of the counterclaim.

~~(e)~~ (f) Costs

Unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action or the part dismissed.

Cross reference: Code, Courts Art., §7-202.

~~(f) Dismissal of Counterclaims, Cross-claims, or Third-party Claims~~

~~The provisions of this Rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim.~~

Cross reference: For settlement of suits on behalf of minors, see Code, Courts Article, §6-405 and Rule 3-202. For settlement of a claim not in suit asserted by a parent or person *in loco parentis* under a liability insurance policy, see Code, Insurance Article, §9-113.

Source: This Rule is derived as follows:
Section (a) is derived in part from the 1968 version of Fed. R. Civ. P. 41 (a)(1) and is in part new.
Section (b) is new.
Section ~~(b)~~ (c) is derived from former Rule 541 b and the 1968 version of Fed. R. Civ. P. 41 (a)(2).
Section ~~(c)~~ (d) is derived from former M.D.R. 541 b.
Section ~~(d)~~ (e) is derived from former Rule 541 b and the 1968 version of Fed. R. Civ. P. 41 (a)(2).
Section ~~(e)~~ (f) is derived from former Rules 541 d and 582 b.
~~Section (f) is derived from the 1968 version of Fed. R. Civ. P. 41 (c).~~

REPORTER'S NOTE

See the Reporter's Note to the proposed amendment to Rule 2-506 concerning the proposed amendment to section (a) of Rule 3-506.

The Committee on Civil Procedures of the District Court of Maryland has asked that a new provision be added to Rule 3-506, pertaining to dismissal upon stipulated terms. No uniform procedure exists to handle cases that have been settled by the parties but are not ready to be dismissed. The new language would allow judges to pass a case for settlement, especially when the case has been settled but the defendant needs some time to complete the terms of settlement. It would provide a viable mechanism to settle cases without the entry of a judgment, allow for an agreed-upon payment schedule, and make the court more responsive to the needs of *pro se* and other litigants. The Rules Committee recommends that the proposed change be added to the Rule as new section (b).

Current section (b) is relettered (c), and stylistic changes are made to it. With those changes, current section (f) is proposed to be deleted as unnecessary.

See the last paragraph of the Reporter's note to Rule 2-506 concerning the proposed addition of a cross reference at the end of Rule 3-506.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 - JUDGMENT

ADD new Rule 2-605, as follows:

Rule 2-605. OFFERS OF JUDGMENT - HEALTH CARE MALPRACTICE CLAIMS

A party to a health care malpractice claim may serve on the adverse party an offer of judgment pursuant to Code, Courts Article, §3-2A-08A.

Cross reference: With respect to "costs" as used in Code, Courts Article, §3-2A-08A, see Rule 2-603.

Source: This Rule is new.

REPORTER'S NOTE

The Maryland Patients' Access to Quality Health Care Act of 2004, Chapter 5 (HB 2), Acts of 2004 Special Legislative Session, contains a section providing for a procedure for a party to a health care malpractice claim to make an offer of judgment. Proposed new Rule 2-605 refers to the new statute and is followed by a cross reference to Rule 2-603, Costs.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-332 by adding a cross reference to a certain Code provision at the end of the Rule, as follows:

Rule 2-332. THIRD-PARTY PRACTICE

(a) Defendant's Claim Against Third Party

A defendant, as a third-party plaintiff, may cause a summons and complaint, together with a copy of all pleadings, scheduling notices, court orders, and other papers previously filed in the action, to be served upon a person not previously a party to the action who is or may be liable to the defendant for all or part of a plaintiff 's claim against the defendant. A person so served becomes a third-party defendant.

(b) Response by Third Party

A third-party defendant shall assert defenses to the third-party plaintiff's claim as provided by Rules 2-322 and 2-323 and may assert counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided by Rule 2-331. The third-party defendant may assert against the plaintiff any defenses that the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(c) Plaintiff's Claim Against Third Party

The plaintiff shall assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert defenses as provided by Rules 2-322 and 2-323 and may assert counterclaims and cross-claims as provided by Rule 2-331. If the plaintiff fails to assert any such claim against the third-party defendant, the plaintiff may not thereafter assert that claim in a separate action instituted after the third-party defendant has been impleaded. This section does not apply when a third-party claim has been stricken pursuant to section (e) of this Rule.

(d) Additional Parties

A third-party defendant may proceed under this Rule against any person who is or may be liable to the third-party defendant for all or part of the claim made in the pending action. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances that would entitle a defendant to do so under this Rule.

(e) Time for Filing

If a party files a third-party claim more than 30 days after the time for filing that party's answer, any other party may file, within 15 days of service of the third-party claim, a motion to strike it or to sever it for separate trial. When such a motion is filed, the time for responding to the third-party

claim is extended without special order to 15 days after entry of the court's order on the motion. The court shall grant the motion unless there is a showing that the late filing of the third-party claim does not prejudice other parties to the action.

Cross reference: For third-party practice in health care malpractice cases, see Code, Courts Article, §3-2A-04.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 315 a.
Section (b) is derived from former Rule 315 c 1, c 2 and d 1.
Section (c) is derived from former Rule 315 d.
Section (d) is derived from former Rule 315 f 1 and 2.
Section (e) is derived from former Rule 315 b.

REPORTER'S NOTE

The Maryland Patients' Access to Quality Health Care Act of 2004, Chapter 5 (HB 2), Acts of 2004 Special Legislative Session contains new language providing that the court may allow a third-party claim against a health care provider to be filed later than the 30-day response provided for in the statute. The Rules Committee recommends adding a cross reference in Rule 2-332 to Code, Courts Article, §3-2A-04 to draw attention to the new language.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 700 - OPINIONS AND EXPERT TESTIMONY

AMEND Rule 5-706 by adding a cross reference to a certain Code provision at the end of the Rule, as follows:

Rule 5-706. COURT APPOINTED EXPERTS

(a) Appointment

The court, on its own initiative or on the motion of any party, may enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness's duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness's findings, if any; the witness's deposition may be taken by any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

(b) Compensation

Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The

compensation thus fixed is payable from funds which may be provided by law in civil actions, proceedings involving just compensation for the taking of property, and criminal actions. In other civil actions the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) Disclosure of Appointment

In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(d) Parties' Experts of Own Selection

Nothing in this Rule limits the parties in calling expert witnesses of their own selection.

Cross reference: Rule 2-603. See Code, Courts Article, §3-2A-09 concerning court-appointed experts in health care malpractice cases.

Source: This Rule is derived without substantive change from F.R.Ev. 706. Any language differences are solely for purposes of style and clarification.

REPORTER'S NOTE

The Maryland Patients' Access to Quality Health Care Act of 2004, Chapter 5 (HB 2), Acts of 2004 Special Legislative Session contains a section providing that a court may on its own initiative or on motion of a party, employ a neutral expert witness to testify on the issue of a plaintiff's future medical expenses or future loss of earnings. The Rules Committee recommends adding a cross reference in Rule 5-706 to Code, Courts Article, §3-2A-09 to draw attention to the new language.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 800 - HEARSAY

AMEND Rule 5-804 (b)(3) by adding a cross reference to a certain Code provision, as follows:

Rule 5-804. HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE

. . .

(b) Hearsay Exceptions

The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

. . .

(3) Statement Against Interest

A statement which was at the time of its making so contrary to the declarant's pecuniary or proprietary interest, so tended to subject the declarant to civil or criminal liability, or so tended to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Cross reference: See Code, Courts Article, §10-920, distinguishing expressions of regret or apology by health care providers from admissions of liability or fault.

. . .

REPORTER'S NOTE

The Maryland Patients' Access to Quality Health Care Act of 2004, Chapter 5 (HB 2), Acts of 2004 Special Legislative Session contains language providing that an apology or expression of regret made by a health care provider is not an admission of fault in a health care malpractice claim. The Rules Committee recommends adding a cross reference in Rule 5-804 to Code, Courts Article, §10-920 to draw attention to the new language.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 400 - HEALTH CLAIMS ARBITRATION

AMEND Rule 15-402 by modifying the definition of the term "Director" to comply with a statutory change, as follows:

Rule 15-402. DEFINITIONS

In these Rules the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(a) Arbitration Panel

"Arbitration panel" means the arbitrators selected to determine a health care malpractice claim in accordance with Code, Courts Article, Title 3, Subtitle 2A.

(b) Award

"Award" means a final determination of a health care malpractice claim by an arbitration panel or by the panel chair.

Cross reference: For the authority of the panel chair to rule on issues of law, see Code, Courts Article, §3-2A-05 (a).

(c) Defendant

"Defendant" means the health care provider.

(d) Director

"Director" means the Director of the Health ~~Claims Arbitration~~ Care Alternative Dispute Resolution Office.

(e) Plaintiff

"Plaintiff" means the party making a claim against a health care provider.

Source: This Rule is new.

REPORTER'S NOTE

The proposed amendment to Rule 15-402 conforms the Rule to the change of name of the Health Claims Arbitration Office to the Health Care Alternative Dispute Resolution Office. This change was made by the Maryland Patients' Access to Quality Health Care Act of 2004, Chapter 5 (HB 2), Acts of 2004 Special Legislative Session.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-101 to exclude health care malpractice claims from the applicability of the Rules in Title 17 with the exception of Rule 17-104 and to add a certain Committee note after section (a), as follows:

Rule 17-101. APPLICABILITY

(a) Generally

The rules in this Chapter apply ~~only~~ to all civil actions in ~~a~~ circuit court except (1) they~~. The rules in this Chapter~~ do not apply to actions or orders to enforce a contractual agreement to submit a dispute to alternative dispute resolution and (2) other than Rule 17-104, they do not apply to health care malpractice claims.

Committee note: Alternative dispute resolution proceedings in a health care malpractice claim are governed by Code, Courts Article, §3-2A-06C.

(b) Rules Governing Qualifications and Selection

The rules governing the qualifications and selection of a person designated to conduct court-ordered alternative dispute resolution proceedings apply only to a person designated by the court in the absence of an agreement by the parties. They do not apply to a master, examiner, or auditor appointed under Rules 2-541, 2-542, or 2-543.

Source: This Rule is new.

REPORTER'S NOTE

The Maryland Patients' Access to Quality Health Care Act of 2004 (HB 2) contains a section providing for alternative dispute resolution in health care malpractice claims. To conform the Rules in Title 17 to the new statute, the Rules Committee recommends amending Rule 17-101 to provide that the Rules in Title 17, Chapter 100, with the exception of Rule 17-104, do not apply to health care malpractice claims. The Committee also recommends adding a Committee note following section (a) of the Rule that refers to the new statute.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-104 by deleting the phrase "on a non-paid basis" from section (c), by adding a new section (e) pertaining to qualifications of mediators of health care malpractice claims, and by adding a certain cross reference, as follows:

Rule 17-104. QUALIFICATIONS AND SELECTION OF MEDIATORS

(a) Qualifications in General

To be designated by the court as a mediator, other than by agreement of the parties, a person must:

(1) unless waived by the court, be at least 21 years old and have at least a bachelor's degree from an accredited college or university;

Committee note: This subsection permits a waiver because the quality of a mediator's skill is not necessarily measured by age or formal education.

(2) have completed at least 40 hours of mediation training in a program meeting the requirements of Rule 17-106;

(3) complete in every two-year period eight hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-106;

(4) abide by any standards adopted by the Court of Appeals;

(5) submit to periodic monitoring of court-ordered mediations by a qualified mediator designated by the county administrative

judge; and

(6) comply with procedures and requirements prescribed in the court's case management plan filed under Rule 16-202 b. relating to diligence, quality assurance, and a willingness to accept a reasonable number of referrals on a reduced-fee or pro bono basis upon request by the court.

(b) Additional Qualifications - Child Access Disputes

To be designated by the court as a mediator with respect to issues concerning child access, the person must:

(1) have the qualifications prescribed in section (a) of this Rule;

(2) have completed at least 20 hours of training in a family mediation training program meeting the requirements of Rule 17-106; and

(3) have observed or co-mediated at least eight hours of child access mediation sessions conducted by persons approved by the county administrative judge, in addition to any observations during the training program.

(c) Additional Qualifications - Business and Technology Case Management Program Cases

To be designated by the court as a mediator of Business and Technology Program cases, other than by agreement of the parties, the person must:

(1) have the qualifications prescribed in section (a) of this Rule;

(2) within the two-year period preceding application for

approval pursuant to Rule 17-107, have completed as a mediator at least five non-domestic circuit court mediations or five non-domestic non-circuit court mediations of comparable complexity (A) at least two of which are among the types of cases that are assigned to the Business and Technology Case Management Program or (B) have co-mediated~~, on a non-paid basis,~~ an additional two cases from the Business and Technology Case Management Program with a mediator already approved to mediate these cases;

(3) agree to serve as co-mediator with at least two mediators each year who seek to meet the requirements of subsection (c)(2)(B) of this Rule; and

(4) agree to complete any continuing education training required by the Circuit Administrative Judge or that judge's designee.

(d) Additional Qualifications - Marital Property Issues

To be designated by the court as a mediator in divorce cases with marital property issues, the person must:

(1) have the qualifications prescribed in section (a) of this Rule;

(2) have completed at least 20 hours of skill-based training in mediation of marital property issues; and

(3) have observed or co-mediated at least eight hours of divorce mediation sessions involving marital property issues conducted by persons approved by the county administrative judge, in addition to any observations during the training program.

(e) Additional Qualifications - Health Care Malpractice Claims

To be designated by the court as a mediator of health care malpractice claims, other than by agreement of the parties, the person must:

(1) have the qualifications prescribed in section (a) of this Rule;

(2) have completed as a mediator at least five non-domestic circuit court mediations or five non-domestic non-circuit court mediations of comparable complexity;

(3) be knowledgeable about health care malpractice claims because of experience, training, or education; and

(4) agree to complete any continuing education training required by the court.

Cross reference: Code, Courts Article, §3-2A-06C (c).

Source: This Rule is new.

REPORTER'S NOTE

The Rules Committee recommends deleting the words "on a non-paid basis" from subsection (c)(2) of Rule 17-104 because the Committee believes that this requirement is too restrictive.

The Committee also recommends the addition of a new section (e) to Rule 17-104, setting out additional qualifications for mediators in health care malpractice cases in light of the Maryland Patients' Access to Quality Health Care Act of 2004 (HB 2).

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-507 to allow the court to dismiss an application or a petition under certain circumstances without holding a hearing and to require a prompt hearing on a motion for reconsideration filed within 30 days after an order of dismissal without a hearing, as follows:

Rule 4-507. DISMISSAL WITHOUT HEARING; HEARING

(a) Dismissal Without a Hearing

Upon review of the docket entries and the application or petition, if the court determines that as a matter of law the applicant or petitioner is not entitled to expungement, the court, without holding a hearing, may dismiss the application or petition without prejudice. On motion for reconsideration filed within 30 days after entry of the order of dismissal, the court promptly shall hold a hearing on the motion.

~~(a)~~ (b) Hearing On Application

In the case of an application for expungement that has not been dismissed pursuant to section (a) of this Rule, a hearing shall be held not later than 45 days after the filing of the application.

Cross reference: Code, Criminal Procedure Article, §10-103 (f).

~~(b)~~ (c) Hearing On Petition

In the case of a petition for expungement that has not been dismissed pursuant to section (a) of this Rule, a hearing shall be held only if the State's Attorney or law enforcement agency objects to the petition by way of timely answer.

Cross reference: Code, Criminal Procedure Article, §10-105 (e).

Source: This Rule is in part derived from former Rule EX6 and in part new.

REPORTER'S NOTE

The proposed amendment to Rule 4-507 allows the court, without holding a hearing, to dismiss an application or petition, without prejudice, when as a matter of law an expungement should not be granted.

Because of the statutory entitlement to a hearing set forth in Code, Criminal Procedure Article, §§10-103 (f) and 10-105 (e), the proposed amendment also provides for a prompt hearing on a motion for reconsideration that is filed within 30 days after entry of an order of dismissal without a hearing.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-508 to provide under certain circumstances for an automatic stay of an order granting expungement, to eliminate the thirty-day delay in serving custodians of records with orders granting expungements, and to make certain stylistic changes, as follows:

Rule 4-508. COURT ORDER FOR EXPUNGEMENT OF RECORDS

(a) Content

An order for expungement of records shall be substantially in the form set forth at the end of this Title as Form 4-508.1, as modified to suit the circumstances of the case. If the court determines that the procedures for expungement of court records set forth in Rule 4-511 are not practicable in the circumstances, the order shall specify the alternative procedures to be followed.

Cross reference: Code, Criminal Procedure Article, §§10-103 (f) and 10-105 (f).

(b) Stay

(1) Entry

If the court, over the objection of a State's Attorney or law enforcement agency, enters an order granting expungement, the order is stayed for 30 days after entry and thereafter if a timely notice of appeal is filed, pending the disposition of the

appeal and further order of court.

(2) Lifting

A stay shall be lifted upon disposition of any appeal or, if no notice of appeal was timely filed, upon expiration of the time prescribed for filing a notice of appeal. If an order for expungement has been stayed and no appeal is pending, a stay based upon an application may be lifted upon written consent of the law enforcement agency, and a stay based upon a petition may be lifted upon written consent of the State's Attorney.

(3) Notice

Promptly upon the lifting of a stay, the clerk shall send notice of the lifting of the stay to the parties and to each custodian of records, including the Central Repository, to which an order for expungement and a compliance form are required to be sent pursuant to section (d) of this Rule.

~~(b)~~ (c) Finality

An order of court for expungement of records, whether or not stayed, or an order denying an application or petition for expungement, is a final judgment.

Cross reference: Code, ~~(1957, 1989 Repl. Vol.)~~ Courts Article, §12-301.

~~(c)~~ (d) Service of Order and Compliance Form

Upon entry of a court order granting or denying expungement, the clerk forthwith shall serve a true copy of the order and any stay of the order on all parties to the proceeding. ~~Thirty days after the~~ Upon entry of an order granting expungement

~~or upon expiration of any stay~~, the clerk shall serve on each custodian of records designated in the order and on the Central Repository a true copy of the order together with a blank form of Certificate of Compliance set forth at the end of this Title as Form 4-508.3.

Source: This Rule is derived in part from former Rule EX7 and is in part new.

REPORTER'S NOTE

Proposed amendments to Rules 4-508, 4-509, and 4-510 and Form 4-508.1, together with an Administrative Order on Expungement of Criminal Records dated December 27, 2004, are intended to (1) address timing issues that have arisen under the current Rules, (2) significantly reduce the need to unseal sealed records, (3) allow custodians of records and the Central Repository sufficient time to do any investigation necessary to identify the records to be expunged and then expunge them, and (4) provide additional notice to the parties and the custodians of records concerning the status of the expungement proceedings.

Proposed new subsection (b)(1) adds to Rule 4-508 an automatic 30-day stay of an order granting expungement if the order was entered over the objection of a State's Attorney or law enforcement agency. This allows for the *status quo* to be maintained during the time allowed for the State to note an appeal. There is no automatic stay of an order for expungement on an uncontested application or petition. In conjunction with this change, a new "Order" paragraph is proposed to be added to Form 4-508.1, to provide in each order whether or not it is stayed.

Proposed new subsection (b)(2) provides for the lifting of a stay that was entered pursuant to subsection (b)(1). The stay is lifted upon the disposition of an appeal or, if no appeal is filed, upon expiration of the time prescribed for filing a notice of appeal. If no appeal is pending, the stay may be lifted before the appeal time runs if, in the case of an order for expungement based on an application, the law enforcement agency consents or, in the case of an order for expungement based on a petition, the State's Attorney consents.

Proposed new subsection (b)(3) requires the clerk promptly to send notice of the lifting of a stay to all parties and all custodians of records.

An amendment to section (c) makes clear that a stay of an order for expungement does not affect the finality of the order for purposes of appeal.

The amendment to section (d) eliminates the thirty-day delay in the clerk's distribution of copies of the order to custodians. Instead, the order is transmitted upon its entry. Prompt notification allows the custodian to begin any necessary investigation and identification of records, even while the order is stayed. If the order for expungement is not stayed (having been entered on an uncontested application or petition), the Administrative Order requires prompt removal of the court record from public inspection but allows access to the record by designated personnel of the Central Repository for purposes of complying with the order for expungement. The Administrative Order provides that the court records are not sealed until after the Central Repository has carried out its responsibilities.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-509 to delete existing section (b) and to add a new section (b) requiring the clerk to send certain notices, as follows:

Rule 4-509. APPEAL

(a) How Taken

Any party may appeal within 30 days after entry of the order by filing a notice of appeal with the clerk of the court from which the appeal is taken and by serving a copy on the opposing party or attorney.

~~(b) Stay~~

~~The filing of a notice of appeal stays the court order pending the determination of the appeal.~~

(b) Notice

Promptly upon the disposition of an appeal, the clerk of the court from which the appeal was taken shall send notice of the disposition to the parties and to each custodian of records, including the Central Repository, to which an order for expungement and a compliance form were sent pursuant to Rule 4-508 (d).

Cross reference: Code, Criminal Procedure Article, §10-105(g).

Source: This Rule is derived in part from former Rule EX8 and is

in part new.

REPORTER'S NOTE

Section (b), Stay, is deleted from Rule 4-509 in light of a new stay provision that is proposed to be added to Rule 4-508.

Proposed new section (b), Notice, of Rule 4-509 requires the clerk of the court from which the appeal was taken promptly to send notice of the disposition of an appeal to all parties and all custodians of records.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-510 to require a custodian to remove records from public inspection forthwith upon receipt of an order for expungement that is not stayed or notice that a stay has been lifted and to require compliance with an order for expungement no later than 60 days after the entry of an unstayed order or 30 days after the lifting of a stay of the order, as follows:

Rule 4-510. COMPLIANCE WITH COURT ORDER FOR EXPUNGEMENT

Upon receipt of an order for expungement that is not stayed or notice that a stay has been lifted, each custodian of records subject to the order shall forthwith remove the records from public inspection. ~~Within 30~~ As soon as practicable but in no event later than 60 days after ~~service~~ the entry of a court order for expungement, or if the order for expungement is stayed, 30 days after the stay is lifted, every custodian of police records and court records subject to the order shall comply with the order, file an executed Certificate of Compliance, and serve a copy of the certificate on the applicant or petitioner.

Source: This Rule is derived from former Rule EX9.

REPORTER'S NOTE

The proposed amendments to Rule 4-510 require a custodian of records subject to an unstayed order for expungement to remove the records from public inspection forthwith upon receipt of the order or notice of the lifting of a stay of an order for expungement. The amendments also incorporate into the Rule the provision of Code, Criminal Procedure Article, §10-105 (f) that requires full compliance with an unstayed order for expungement "within 60 days after the entry of the order." If the order for expungement is stayed, the amendment requires compliance within 30 days after the stay is lifted. The 30-day time period provides a specific time requirement for the prompt expungement of records following an unsuccessful appeal by the State.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

EXPUNGEMENT FORMS

AMEND Form 4-508.1 to conform to certain proposed amendments to the Rules in Title 4, Chapter 500, to add a new "Order" paragraph requiring a certain removal of records from public inspection, to add a new "Order" paragraph pertaining to stays, to add a certain Notice, and to make certain stylistic changes, as follows:

Form 4-508.1. ORDER FOR EXPUNGEMENT OF RECORDS

(Caption)

ORDER FOR EXPUNGEMENT OF RECORDS

~~The applicant/petitioner/defendant~~ Having found that

_____
(Name)

of_____
(Address)

~~having been found to be~~ is entitled to expungement of the police records pertaining to ~~the~~ his/her arrest, detention, or confinement ~~of the applicant/petitioner/defendant~~ on or about

_____, at _____
(Date)

_____,

Maryland, by a law enforcement officer of the _____

_____
(Law Enforcement Agency)

and the court records in this action, it is by the _____ _____ Court for _____ _____ City/County, Maryland, this _____ day of _____ , _____.
(Month) (Year)

ORDERED that the clerk forthwith shall serve a true copy of this Order on each of the parties to this proceeding; and it is further

ORDERED that ~~30 days after entry of this Order or upon expiration of any stay,~~ the clerk <u>forthwith</u> shall serve on each custodian of police and court records designated in this Order and on the Central Repository a copy of this Order together with a blank form of Certificate of Compliance; and it is further

ORDERED that within ~~30~~ <u>60</u> days after ~~service~~ <u>the entry</u> of this Order <u>or, if this Order is stayed, 30 days after the stay is lifted,</u> the clerk and the following custodians of court and police records and the Central Repository shall (1) expunge all court and police records pertaining to this action or proceeding in their custody, (2) file an executed Certificate of Compliance, and (3) serve a copy of the Certificate of Compliance on the applicant/petitioner/defendant<u>; and it is further</u>

<u>ORDERED that the clerk and other custodians of records forthwith upon receipt of this Order if it is not stayed or</u>

notice that the stay is lifted shall remove the records from public inspection; and it is further

ORDERED that this Order

☐ is stayed pending further order of the court.

☐ is not stayed.

_____

(Custodian) (Address)

_____

_____

_____

_____

_____

_____

Date Judge

NOTICE TO APPLICANT/PETITIONER/DEFENDANT: Until a custodian of records has received a copy of this Order AND filed a Certificate of Compliance, expungement of the records in the custody of that custodian is not complete and may not be relied upon.

REPORTER'S NOTE

Form 4-508.1 is proposed to be amended in conformity with the amendments to Rules 4-508, 4-509, and 4-510, described in the Reporter's notes to those Rules.

The proposed new "Notice to Applicant/Petitioner/Defendant" makes clear that expungement does not occur instantaneously and that a person who, for example, is the subject of a background check for employment or security clearance purposes cannot rely on the expungement until certificates of compliance have been filed.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

FORMS FOR EXPUNGEMENT OF RECORDS

AMEND Form 4-504.1 to make a certain stylistic change, as follows:

Form 4-504.1. PETITION FOR EXPUNGEMENT OF RECORDS

(Caption)

PETITION FOR EXPUNGEMENT OF RECORDS

1. (Check one of the following boxes) On or about _____, (Date)
I was [ ] arrested, [ ] served with a summons, or [ ] served with a citation by an officer of the _____ (Law Enforcement Agency)
at _____, Maryland, as a result of the following incident _____
_____
_____.

2. I was charged with the offense of _____
_____.

3. On or about _____, (Date)
the charge was disposed of as follows (check one of the following boxes):

[ ] I was acquitted and either three years have passed since

disposition or a General Waiver and Release is attached.

[ ] The charge was dismissed or quashed and either three years have passed since disposition or a General Waiver and Release is attached.

[ ] A judgment of probation before judgment was entered on a charge that is not a violation of Code*, Transportation Article, §21-902 or Code*, Criminal Law Article, §§2-503, 2-504, 2-505, or 2-506, or former Code*, Article 27, §388A or §388B, and either (a) at least three years have passed since the disposition, or (b) I have been discharged from probation, whichever is later. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

[ ] A Nolle Prosequi was entered and either three years have passed since disposition or a General Waiver and Release is attached. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or

regulations not carrying a possible sentence of imprisonment.

[ ] The proceeding was ~~placed on the Stet docket~~ stetted and three years have passed since disposition. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

[ ] The case was compromised or dismissed pursuant to Code*, Criminal Law Article, §3-207, former Code*, Article 27, §12A-5, or former Code*, Article 10, §37 and three years have passed since disposition.

[ ] On or about _____ , I was granted
(Date)

a full and unconditional pardon by the Governor for the one criminal act, not a crime of violence as defined in Code*, Criminal Law Article, §14-101 (a), of which I was convicted. Not more than ten years have passed since the Governor signed the pardon, and since the date the Governor signed the pardon I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in

any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

WHEREFORE, I request the Court to enter an Order for Expungement of all police and court records pertaining to the above arrest, detention, confinement, and charges.

I solemnly affirm under the penalties of perjury that the contents of this Petition are true to the best of my knowledge, information and belief, and that the charge to which this Petition relates was not made for any nonincarcerable violation of the Vehicle Laws of the State of Maryland, or any traffic law, ordinance, or regulation, nor is it part of a unit the expungement of which is precluded under Code, Criminal Procedure Article, §10-107.

_____ _____
(Date) (Signature)

_____
(Address)

_____

_____
(Telephone No.)

* References to "Code" in this Petition are to the Annotated Code of Maryland.

REPORTER'S NOTE

Faye Gaskin, of the Administrative Office of the Courts, pointed out that there is no separate docket for stetted cases and suggested that the term "stet docket" in Form 4-504.1 be

replaced by other language. Accordingly, the Form is proposed to be amended by replacing the words “placed on the Stet docket” with the word “stetted.”

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-231 (b) to clarify that the right to be present is the right to be physically present and to delete language pertaining to a reduction of sentence pursuant to certain Rules, as follows:

Rule 4-231. PRESENCE OF DEFENDANT

(a) When Presence Required

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

(b) Right to be Present - Exceptions

A defendant is entitled to be physically present in person at a preliminary hearing and every stage of the trial, except (1) at a conference or argument on a question of law~~,~~ and (2) when a nolle prosequi or stet is entered pursuant to Rules 4-247 and 4-248~~; or (3) at a reduction of sentence pursuant to Rules 4-344 and 4-345~~.

Cross reference: Code, Criminal Procedure Article, §11-303.

(c) Waiver of Right to be Present

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

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

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

courtroom; or

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

(d) Video Conferencing in District Court

In the District Court, if the Chief Judge of the District Court has approved the use of video conferencing in the county, a judicial officer may conduct an initial appearance under Rule 4-213 (a) or a review of the commissioner's pretrial release determination under Rule 4-216 (f) with the defendant and the judicial officer at different locations, provided that:

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

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

(3) if the initial appearance under Rule 4-213 is conducted by video conferencing, the review under Rule 4-216 (f) shall not be conducted by video conferencing.

Committee note: Except when specifically covered by this Rule, the matter of presence of the defendant during any stage of the proceedings is left to case law and the Rule is not intended to exhaust all situations. By the addition of section (d) to the

Rule, the Committee intends no inference concerning the use of video conferencing in other contexts.

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

REPORTER'S NOTE

A former intern for the Rules Committee pointed out a possible conflict between (1) Rule 4-231 (b), which provides that a defendant is entitled to be present at every stage of the trial, except a reduction of sentence hearing pursuant to Rules 4-344 and 4-345, and (2) Rule 4-345 (f), which provides that the court may reduce a sentence only on the record in open court after hearing from the defendant. Since research into the history of the two Rules revealed no explanation of the inconsistency, the Committee recommends deleting subsection (b)(3) of Rule 4-231, removing a reduction of sentence hearing as an exception to the requirement that the defendant must be present at every stage of the trial, and amending Rule 4-345 to allow the defendant to waive the right to be present. This would solve any conflict that may exist between the two Rules.

The Rule also is proposed to be amended to clarify that the right to be present is the right to be physically present in person.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-345 to state that the defendant may waive the right to be present at a hearing under this Rule, as follows:

Rule 4-345. SENTENCING - REVISORY POWER OF COURT

(a) Illegal Sentence

The court may correct an illegal sentence at any time.

(b) Fraud, Mistake, or Irregularity

The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

(c) Correction of Mistake in Announcement

The court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

(d) Desertion and Non-support Cases

At any time before expiration of the sentence in a case involving desertion and non-support of spouse, children, or destitute parents, the court may modify, reduce, or vacate the sentence or place the defendant on probation under the terms and conditions the court imposes.

(e) Modification Upon Motion

(1) Generally

Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

Cross reference: Rule 7-112 (b).

(2) Notice to Victims

The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, §11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, §11-503 that states (A) that a motion to modify or reduce a sentence has been filed; (B) that the motion has been denied without a hearing or the date, time, and location of the hearing; and (C) if a hearing is to be held, that each victim or victim's representative may attend and testify.

(f) Open Court Hearing

The court may modify, reduce, correct, or vacate a sentence only on the record in open court, after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. The

defendant may waive the right to be present at the hearing. No hearing shall be held on a motion to modify or reduce the sentence until the court determines that the notice requirements in subsection (e)(2) of this Rule have been satisfied. If the court grants the motion, the court ordinarily shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.

Source: This Rule is derived in part from former Rule 774 and M.D.R. 774, and is in part new.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 4-231.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-263 to require each party to exercise due diligence in identifying material and information to be disclosed, to reletter certain sections, to clarify the disclosure obligation of the State's Attorney under subsection (b)(1), to require that the State's Attorney file a certain written statement, to add language to subsection (c)(1) referring to a certain statute, to add the phrase "or required" to section (g), and to provide that ordinarily discovery material is not filed with the court, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

Discovery and inspection in circuit court shall be as follows:

~~(g)~~ (a) Obligations of ~~State's Attorney~~ the Parties

Each party obligated to provide material or information under this Rule shall exercise due diligence to identify all of the material and information that must be disclosed. The obligations of the State's Attorney under this Rule extend to material and information in the possession or control of the State's Attorney and staff members and any others who have participated in the investigation or evaluation of the action and who either regularly report, or with reference to the particular

action have reported, to the office of the State's Attorney.

~~(a)~~ (b) Disclosure Without Request

Without the necessity of a request, the State's Attorney shall furnish to the defendant:

(1) Any material or information ~~tending to~~ in any form, whether or not admissible, that tends to (A) exculpate the defendant, (B) establish that a State's witness has made a statement that is **[Alternative language suggested by State's Attorneys: add the word, "materially"]** inconsistent with the witness's anticipated testimony, (C) demonstrate interest or bias of a State's witness, (D) mitigate the offense, or (E) negate or mitigate the guilt or punishment of the defendant as to the offense charged and a written statement that reasonably identifies the materials furnished; and

Committee note: The State's disclosure obligation under subsection (b)(1) of this Rule is coextensive with that established by *Brady v. Maryland*, 373 U.S. 83 (1963). The requirement of a written statement is intended to establish a written record of what the prosecutor actually disclosed to the defense.

Cross reference: See Rule 3.8 of the Maryland Lawyers' Rules of Professional Conduct.

(2) Any relevant material or information regarding: (A) specific searches and seizures, wire taps or eavesdropping, (B) the acquisition of statements made by the defendant to a State agent that the State intends to use at a hearing or trial, and (C) pretrial identification of the defendant by a witness for the

State.

~~(b)~~ (c) Disclosure Upon Request

Upon request of the defendant, the State's Attorney shall:

(1) Witnesses

Disclose to the defendant the name and, except as provided under Code, Criminal Procedure Article, §11-205, the address of each person then known whom the State intends to call as a witness at the hearing or trial to prove its case in chief or to rebut alibi testimony;

(2) Statements of the Defendant

As to all statements made by the defendant to a State agent that the State intends to use at a hearing or trial, furnish to the defendant, but not file unless the court so orders: (A) a copy of each written or recorded statement, and (B) the substance of each oral statement and a copy of all reports of each oral statement;

(3) Statements of Codefendants

As to all statements made by a codefendant to a State agent which the State intends to use at a joint hearing or trial, furnish to the defendant, but not file unless the court so orders: (A) a copy of each written or recorded statement, and (B) the substance of each oral statement and a copy of all reports of each oral statement;

(4) Reports or Statements of Experts

Produce and permit the defendant to inspect and copy all written reports or statements made in connection with the action

by each expert consulted by the State, including the results of any physical or mental examination, scientific test, experiment, or comparison, and furnish the defendant with the substance of any such oral report and conclusion;

(5) Evidence for Use at Trial

Produce and permit the defendant to inspect, copy, and photograph any documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the State intends to use at the hearing or trial;

(6) Property of the Defendant

Produce and permit the defendant to inspect, copy, and photograph any item obtained from or belonging to the defendant, whether or not the State intends to use the item at the hearing or trial.

~~(c)~~ (d) Matters Not Subject to Discovery by the Defendant

This Rule does not require the State to disclose:

(1) Any documents to the extent that they contain the opinions, theories, conclusions, or other work product of the State's Attorney, or

(2) The identity of a confidential informant, so long as the failure to disclose the informant's identity does not infringe a constitutional right of the defendant and the State's Attorney does not intend to call the informant as a witness, or

(3) Any other matter if the court finds that its disclosure would entail a substantial risk of harm to any person outweighing the interest in disclosure.

~~(d)~~ (e) Discovery by the State

Upon the request of the State, the defendant shall:

(1) As to the Person of the Defendant

Appear in a lineup for identification; speak for identification; be fingerprinted; pose for photographs not involving reenactment of a scene; try on articles of clothing; permit the taking of specimens of material under fingernails; permit the taking of samples of blood, hair, and other material involving no unreasonable intrusion upon the defendant's person; provide handwriting specimens; and submit to reasonable physical or mental examination;

(2) Reports of Experts

Produce and permit the State to inspect and copy all written reports made in connection with the action by each expert whom the defendant expects to call as a witness at the hearing or trial, including the results of any physical or mental examination, scientific test, experiment, or comparison, and furnish the State with the substance of any such oral report and conclusion;

(3) Alibi Witnesses

Upon designation by the State of the time, place, and date of the alleged occurrence, furnish the name and address of each person other than the defendant whom the defendant intends to call as a witness to show that the defendant was not present at the time, place, and date designated by the State in its request.

(4) Computer-generated Evidence

Produce and permit the State to inspect and copy any computer-generated evidence as defined in Rule 2-504.3 (a) that the defendant intends to use at the hearing or trial.

~~(e)~~ (f) Time for Discovery

The State's Attorney shall make disclosure pursuant to section ~~(a)~~ (b) of this Rule within 25 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213. Any request by the defendant for discovery pursuant to section ~~(b)~~ (c) of this Rule, and any request by the State for discovery pursuant to section ~~(d)~~ (e) of this Rule shall be made within 15 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213. The party served with the request shall furnish the discovery within ten days after service.

~~(f)~~ (g) Motion to Compel Discovery

If discovery is not furnished as requested or required, a motion to compel discovery may be filed within ten days after receipt of inadequate discovery or after discovery should have been received, whichever is earlier. The motion shall specifically describe the requested matters that have not been furnished. A response to the motion may be filed within five days after service of the motion. The court need not consider any motion to compel discovery unless the moving party has filed a certificate describing good faith attempts to discuss with the

opposing party the resolution of the dispute and certifying that they are unable to reach agreement on the disputed issues. The certificate shall include the date, time, and circumstances of each discussion or attempted discussion.

(h) Continuing Duty to Disclose

A party who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly.

(i) Not to be Filed With Court

Except as otherwise provided in these rules or by order of court, discovery material shall not be filed with the court. The party generating the discovery material shall retain the original and shall make it available for inspection by any other party. This section does not preclude the use of discovery material at trial or as exhibits to support or oppose motions.

~~(i)~~ (j) Protective Orders

On motion and for good cause shown, the court may order that specified disclosures be restricted. If at any time during the proceedings the court finds that a party has failed to comply with this Rule or an order issued pursuant to this Rule, the court may order that party to permit the discovery of the matters not previously disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances.

Source: This Rule is derived as follows:
Section ~~(g)~~ (a) is derived in part from former Rule 741 a 3 and is in part new.
Section ~~(a)~~ (b) is derived from former Rule 741 a 1 and 2.
Section ~~(b)~~ (c) is derived from former Rule 741 b.
Section ~~(c)~~ (d) is derived from former Rule 741 c.
Section ~~(d)~~ (e) is derived in part from former Rule 741 d and is in part new.
Section ~~(e)~~ (f) is derived from former Rule 741 e 1.
Section ~~(f)~~ (g) is derived from former Rule 741 e 2.
Section (h) is derived from former Rule 741 f.
Section (i) is new.
Section ~~(i)~~ (j) is derived from former Rule 741 g.

REPORTER'S NOTE

Albert D. Brault, Esq. brought to the attention of the Rules Committee a 2003 Report of the American College of Trial Lawyers, describing the problem that some federal prosecutors fail to provide information required to be furnished to a criminal defendant pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963). Mr. Brault spoke with local criminal defense attorneys in Montgomery County, who noted similar problems with some State prosecutors. To address this, the Honorable Albert J. Matricciani and the Honorable M. Brooke Murdock, Judges of the Circuit Court for Baltimore City, drafted a proposed amendment to current subsection (a)(1), which is proposed to be relettered (b)(1), of Rule 4-263, the concept of which has been approved by the Rules Committee. The Committee's proposal blends language suggested by Judges Matricciani and Murdock with language currently in the subsection and adds a requirement that the State's Attorney provide to the defendant a written statement that reasonably identifies the material furnished. A proposed new Committee note following subsection (b)(1) makes clear that the disclosure obligation set forth in the subsection is coextensive with that established by *Brady*. A proposed cross reference to Rule 3.8 of the Maryland Lawyers' Rules of Professional Conduct highlights certain special ethical responsibilities applicable to prosecutors.

Robert L. Dean, Esq. brought to the Committee's attention a problem with subsection (b)(1), which is proposed to be relettered (c)(1), of Rule 4-263 and section (a) of Rule 4-262. Some witnesses in criminal cases are reluctant to testify because their address is given to the defendant pursuant to the Rules. Russell Butler, Esq., suggested that to address this problem, a reference to Code, Criminal Procedure Article, §11-205 should be added to Rules 4-263 and 4-262. The Code provision states that upon request of the State, a victim of or a witness to a felony, or a victim's representative, the address of a victim or a

witness may be withheld before a trial unless a judge determines that good cause has been shown for the release of the information. The Committee agrees with Mr. Butler's suggestion.

The words "or required" are proposed to be added to section (f) to clarify that a motion to compel discovery may be based on a failure to provide required discovery as well as a failure to provide requested discovery.

Current section (g), Obligations of State's Attorney, is proposed to be amended to require that each party who is obligated to provide material or information under the Rule exercise due diligence in identifying the material and information to be disclosed. Because of the importance of this obligation, section (g) is proposed to be moved to the beginning of the Rule and relettered (a).

Proposed new section (i) provides that, with certain exceptions, discovery material is not filed with the court. In light of the adoption of Title 16, Chapter 1000, Access to Court Records, proposed new section (i) is intended to eliminate unnecessary materials in court files and reduce the amount of material in the files for which redaction, sealing, or other denial of inspection would be required. The language of the section is borrowed *verbatim* from the first, third, and fourth sentences of Rule 2-401 (d)(2). The section conforms the Rule to current practice in many jurisdictions.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-262 to require each party to exercise due diligence in identifying material and information to be disclosed, to reletter certain sections, to add language to section (b) referring to a certain statute, to clarify the disclosure obligation of the State's Attorney under subsection (b)(1), and to provide that ordinarily discovery material is not filed with the court, as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

~~(c)~~ (a) Obligations of the ~~State's Attorney~~ Parties

Each party obligated to provide material or information under this Rule shall exercise due diligence to identify all of the material and information that must be disclosed. The obligations of the State's Attorney under this Rule extend to material and information in the possession or control of the State's Attorney and staff members and any others who have participated in the investigation or evaluation of the action and who either regularly report, or with reference to the particular action have reported, to the office of the State's Attorney.

~~(a)~~ (b) Scope

Discovery and inspection pursuant to this Rule is available in the District Court in actions for offenses that are

punishable by imprisonment, and, except as provided under Code, Criminal Procedure Article, §11-205, shall be as follows:

(1) The State's Attorney shall furnish to the defendant any material or information ~~that tends to negate or mitigate the guilt or punishment of the defendant as to the offense charged~~ provided for in Rule 4-263 (b)(1), except that the State is not required to file a written statement that reasonably identifies the material furnished.

(2) Upon request of the defendant the State's Attorney shall permit the defendant to inspect and copy (A) any portion of a document containing a statement or containing the substance of a statement made by the defendant to a State agent that the State intends to use at trial or at any hearing other than a preliminary hearing and (B) each written report or statement made by an expert whom the State expects to call as a witness at a hearing, other than a preliminary hearing, or trial.

(3) Upon request of the State the defendant shall permit any discovery or inspection specified in subsection ~~(d)(1)~~ (e)(1) of Rule 4-263.

Committee note: This Rule is not intended to limit the constitutional requirement of disclosure by the State. See *Brady v. State,* 226 Md. 422, 174 A.2d 167 (1961), aff'd, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963).

~~(b)~~ (c) Procedure

The discovery and inspection required or permitted by this Rule shall be completed before the hearing or trial. A request for discovery and inspection and response need not be in writing

and need not be filed with the court. If a request was made before the date of the hearing or trial and the request was refused or denied, the court may grant a delay or continuance in the hearing or trial to permit the inspection or discovery.

(d) Not to be Filed With Court

Except as otherwise provided in these Rules or by order of court, discovery material shall not be filed with the court. The party generating the discovery material shall retain the original and shall make it available for inspection by any other party. This section does not preclude the use of discovery material at trial or as exhibits to support or oppose motions.

Source: This Rule is new.

REPORTER'S NOTE

The proposed amendments to Rule 4-262 track the proposed amendments to Rule 4-263, to the extent the Committee believes desirable in the District Court.

Section (c) of Rule 4-262 is proposed to be moved to the beginning of the Rule and relettered (a). The amended language of the section tracks the language of the comparable amendments to Rule 4-263, verbatim.

In section (b), a reference to Code, Criminal Procedure Article, §11-205 is proposed to be added for the reason stated in the Reporter's note to Rule 4-263.

Subsection (b)(1) is proposed to be amended to clarify that the disclosure obligations of *Brady v. Maryland*, 373 U.S. 83 (1963) apply in the District Court, as well as in circuit court. The amendment requires the State's Attorney to furnish to the defendant the material and information provided for in Rule 4-263 (b)(1). Due to the volume of cases in the District Court, State's Attorneys believe that the "written statement that reasonably identifies the materials furnished," which is included in the proposed amendments to Rule 4-263, would be burdensome in Rule 4-262. The Committee agrees, and has expressly excluded this written statement from the provisions of Rule 4-262 (b)(1).

Proposed new section (d) tracks the language of new section (i) in Rule 4-263. It is added for the reasons stated in the Reporter's note to that Rule.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 to add a certain cross reference after section (a), as follows:

Rule 4-342. SENTENCING - PROCEDURE IN NON-CAPITAL CASES

(a) Applicability

This Rule applies to all cases except those governed by Rule 4-343.

Cross reference: For procedures pertaining to collection of DNA samples from an individual convicted of a felony or a violation of Code, Criminal Law Article, §§6-205 or 6-206, see Code, Public Safety Article, §2-504.

. . .

REPORTER'S NOTE

By Chapter 449 (HB 240), Acts of 2005, new language was added to Code, Public Safety Article, §2-504 providing for the collection of a DNA sample from an individual who has been convicted of a felony or a violation of Code, Criminal Law Article, §§6-205 or 6-206. The sample may be collected at a suitable location in a circuit court following the imposition of sentence. This is an alternative to the current language that provides for the DNA sample to be collected on intake to a correctional facility. The Rules Committee recommends adding a cross reference to the statute to Rules 4-342 and 4-343.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-343 to add a certain cross reference following section (a) and to make certain stylistic changes, as follows:

Rule 4-343. SENTENCING – PROCEDURE IN CAPITAL CASES

(a) Applicability

This Rule applies whenever a sentence of death is sought under Code, Criminal Law Article, §2-303.

Cross reference: For procedures pertaining to collection of DNA samples from an individual convicted of a felony, see Code, Public Safety Article, §2-504.

. . .

(h) Form of Written Findings and Determinations

Except as otherwise provided in section (i) of this Rule, the findings and determinations shall be made in writing in the following form:

(CAPTION)

FINDINGS AND SENTENCING DETERMINATION

VICTIM: [Name of murder victim]

Section I

Based upon the evidence, we unanimously find that each of the following statements marked "~~proven~~ proved" has been ~~proven~~ proved BEYOND A REASONABLE DOUBT and that each of those statements marked "not ~~proven~~ proved" has not been ~~proven~~ proved BEYOND A REASONABLE DOUBT.

1. The defendant was a principal in the first degree to the murder.

_____	_____
~~proven~~	not
proved	~~proven~~
	proved

2. The defendant engaged or employed another person to commit the murder and the murder was committed under an agreement or contract for remuneration or the promise of remuneration.

_____	_____
~~proven~~	not
proved	~~proven~~
	proved

3. The victim was a law enforcement officer who, while in the performance of the officer's duties, was murdered by one or more persons, and the defendant was a principal in the second degree who: ~~(A)~~ (a) willfully, deliberately, and with premeditation

intended the death of the law enforcement officer; ~~(B)~~ (b) was a major participant in the murder; and ~~(C)~~ (c) was actually present at the time and place of the murder.

_____	_____
~~proven~~ proved	not ~~proven~~ proved

(If one or more of the above are marked "~~proven~~ proved," proceed to Section II. If all are marked "not ~~proven~~ proved," proceed to Section VI and enter "Imprisonment for Life.")

Section II

Based upon the evidence, we unanimously find that the following statement, if marked "~~proven~~ proved," has been ~~proven~~ proved BY A PREPONDERANCE OF THE EVIDENCE or that, if marked "not ~~proven~~ proved," it has not been ~~proven~~ proved BY A PREPONDERANCE OF THE EVIDENCE.

At the time the murder was committed, the defendant was mentally retarded.

_____	_____
~~proven~~ proved	not ~~proven~~ proved

(If the above statement is marked "~~proven~~ proved," proceed to Section VI and enter "Imprisonment for Life." If it is marked "not ~~proven~~ proved," complete Section III.)

Section III

Based upon the evidence, we unanimously find that each of the following aggravating circumstances that is marked "~~proven~~ proved" has been ~~proven~~ proved BEYOND A REASONABLE DOUBT and we unanimously find that each of the aggravating circumstances marked "not ~~proven~~ proved" has not been ~~proven~~ proved BEYOND A REASONABLE DOUBT.

1. The victim was a law enforcement officer who, while in the performance of the officer's duties, was murdered by one or more persons.

_____ ~~proven~~ proved

_____ not ~~proven~~ proved

2. The defendant committed the murder at a time when confined in a correctional facility.

_____ ~~proven~~ proved

_____ not ~~proven~~ proved

3. The defendant committed the murder in furtherance of an escape from or an attempt to escape from or evade the lawful custody, arrest, or detention of or by an officer or guard of a correctional facility or by a law enforcement officer.

_____ ~~proven~~ proved

_____ not ~~proven~~ proved

4. The victim was taken or attempted to be taken in the course of a kidnapping or abduction or an attempt to kidnap or

abduct.

~~proven~~	not
proved	~~proven~~
	proved

5. The victim was a child abducted in violation of Code, Criminal Law Article, §3-503 (a)(1).

~~proven~~	not
proved	~~proven~~
	proved

6. The defendant committed the murder under an agreement or contract for remuneration or the promise of remuneration to commit the murder.

~~proven~~	not
proved	~~proven~~
	proved

7. The defendant engaged or employed another person to commit the murder and the murder was committed under an agreement or contract for remuneration or the promise of remuneration.

~~proven~~	not
proved	~~proven~~
	proved

8. At the time of the murder, the defendant was under the sentence of death or imprisonment for life.

~~proven~~	not
proved	~~proven~~
	proved

9. The defendant committed more than one offense of murder in the first degree arising out of the same incident.

~~proven~~ proved	not ~~proven~~ proved

10. The defendant committed the murder while committing or attempting to commit a carjacking, armed carjacking, robbery, under Code, Criminal Law Article, §3-402 or §3-403, arson in the first degree, rape in the first degree, or sexual offense in the first degree.

~~proven~~ proved	not ~~proven~~ proved

(If one or more of the above are marked "~~proven~~ proved," complete Section IV. If all of the above are marked "not ~~proven~~ proved," do not complete Sections IV and V and proceed to Section VI and enter "Imprisonment for Life.")

Section IV

Based upon the evidence, we make the following determinations as to mitigating circumstances:

1. The defendant has not previously ~~(i)~~ (a) been found guilty of a crime of violence; ~~(ii)~~ (b) entered a plea of guilty or nolo contendere to a charge of a crime of violence; or ~~(iii)~~ (c) been granted probation before judgment for a crime of violence.

(As used in the preceding paragraph, "crime of violence" means abduction, arson in the first degree, carjacking, armed carjacking, escape in the first degree, kidnapping, mayhem,

murder, robbery under Code, Criminal Law Article, §3-402 or §3-403, rape in the first or second degree, sexual offense in the first or second degree, manslaughter other than involuntary manslaughter, an attempt to commit any of these offenses, or the use of a handgun in the commission of a felony or another crime of violence.)

(Mark only one.)

[ ] (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

[ ] (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

2. The victim was a participant in the defendant's conduct or consented to the act which caused the victim's death.

(Mark only one.)

[ ] (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

[ ] (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

3. The defendant acted under substantial duress, domination, or provocation of another person, even though not so substantial as to constitute a complete defense to the prosecution.

(Mark only one.)

[ ] (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

[ ] (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

4. The murder was committed while the capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired as a result of mental incapacity, mental disorder, or emotional disturbance.

(Mark only one.)

[ ] (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

[ ] (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

5. The defendant was of a youthful age at the time of the murder.

(Mark only one.)

[ ] (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

[ ] (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

6. The act of the defendant was not the sole proximate cause of the victim's death.

(Mark only one.)

[ ] (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

[ ] (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

7. It is unlikely that the defendant will engage in further criminal activity that would constitute a continuing threat to

society.

(Mark only one.)

[ ] (a) We unanimously find by a preponderance of the evidence that the above circumstance exists.

[ ] (b) We unanimously find by a preponderance of the evidence that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find by a preponderance of the evidence that the above circumstance exists.

8. (a) We unanimously find by a preponderance of the evidence that the following additional mitigating circumstances exist:

_____

_____

_____

_____

(Use reverse side if necessary)

(b) One or more of us, but fewer than all 12, find by a preponderance of the evidence that the following additional mitigating circumstances exist:

_____

_____

_____

_____

(Use reverse side if necessary)

(If the jury unanimously determines in Section IV that no

mitigating circumstances exist, do not complete Section V. Proceed to Section VI and enter "Death." If the jury or any juror determines that one or more mitigating circumstances exist, complete Section V.)

Section V

Each individual juror shall weigh the aggravating circumstances found unanimously to exist against any mitigating circumstances found unanimously to exist, as well as against any mitigating circumstance found by that individual juror to exist.

We unanimously find that the State has ~~proven~~ proved BY A PREPONDERANCE OF THE EVIDENCE that the aggravating circumstances marked "~~proven~~ proved" in Section III outweigh the mitigating circumstances in Section IV.

_____ yes _____ no

Section VI

Enter the determination of sentence either "Imprisonment for Life" or "Death" according to the following instructions:

1. If all of the answers in Section I are marked "not ~~proven~~ proved," enter "Imprisonment for Life."

2. If the answer in Section II is marked "~~proven~~ proved," enter "Imprisonment for Life."

3. If all of the answers in Section III are marked "not ~~proven~~ proved," enter "Imprisonment for Life."

4. If Section IV was completed and the jury unanimously determined that no mitigating circumstance exists, enter "Death."

5. If Section V was completed and marked "no," enter "Imprisonment for Life."

6. If Section V was completed and marked "yes," enter "Death."

We unanimously determine the sentence to be _____.

Section VII

If "Imprisonment for Life" is entered in Section VI, answer the following question:

Based upon the evidence, does the jury unanimously determine that the sentence of imprisonment for life previously entered shall be without the possibility of parole?

_____	_____
yes	no

_____	_____
Foreman	Juror 7
_____	_____
Juror 2	Juror 8
_____	_____
Juror 3	Juror 9
_____	_____
Juror 4	Juror 10

_____	_____
Juror 5	Juror 11
_____	_____
Juror 6	Juror 12

or,

_____
JUDGE

. . .

REPORTER'S NOTE

See the Reporter's Note to Rule 4-342 concerning the proposed cross reference following section (a).

The substitution of the word "proved" for "proven" and the relettering of certain portions of the Form are stylistic, only.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 400 - POST CONVICTION PROCEDURE

AMEND Rule 4-406 by adding a certain cross reference after section (c), as follows:

Rule 4-406. HEARING

(a) When Required

A hearing shall be held promptly on a petition under the Uniform Post Conviction Procedure Act unless the parties stipulate that the facts stated in the petition are true and that the facts and applicable law justify the granting of relief. If a defendant requests that the court reopen a post conviction proceeding that was previously concluded, the court shall determine whether a hearing will be held, but it may not reopen the proceeding or grant the relief requested without a hearing unless the parties stipulate that the facts stated in the petition are true and that the facts and applicable law justify the granting of relief.

Cross reference: For time requirements applicable to hearings in death penalty cases, see Code, Criminal Procedure Article, §7-204.

(b) Judge

The hearing shall not be held by the judge who presided at trial except with the consent of the petitioner.

(c) Evidence

Evidence may be presented by affidavit, deposition, oral testimony, or in any other form as the court finds convenient and just. In the interest of justice, the court may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses.

Cross reference: For procedures concerning DNA testing and preservation of DNA evidence in post conviction cases, see Code, Criminal Procedure Article, §8-201.

(d) Presence of Petitioner

The petitioner has the right to be present at any hearing on the petition.

Cross reference: For post conviction procedure, right to counsel and hearing, see Code, Criminal Procedure Article, §§7-101 - 7-108 and §§7-201 - 7-204; victim notification, Criminal Procedure Article, §11-104.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rule BK44 c.
Section (c) is derived from former Rule BK44 d.
Section (d) is derived from former Rule BK44 e.

REPORTER'S NOTE

Code, Criminal Procedure Article, §8-201 provides for DNA testing and for preservation of scientific identification evidence that the State has reason to know contains DNA material in post conviction cases. The Rules Committee recommends adding a cross reference after section (c) of Rule 4-406 to draw attention to the statute.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 800 - HEARSAY

AMEND Rule 5-802.1 to clarify subsection (a)(2), as follows:

Rule 5-802.1. HEARSAY EXCEPTIONS - PRIOR STATEMENTS BY WITNESSES

The following statements previously made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement are not excluded by the hearsay rule:

(a) A statement that is inconsistent with the declarant's testimony, if the statement was (1) given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition; (2) reduced to writing and <u>was</u> signed by the declarant; or (3) recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement;

. . .

<u>REPORTER'S NOTE</u>

The proposed amendment to Rule 5-802.1 (a)(2) makes clear that although the subsection requires that the writing must have been signed by the declarant, there is no requirement that the declarant be the person who reduced the statement to writing.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 800 - HEARSAY

AMEND Rule 5-804 to delete current subsection (b)(5) and to provide that under certain circumstances certain statements of a declarant whose unavailability was procured through wrongdoing that a party engaged in, directed, or conspired to commit are not excluded by the hearsay rule, as follows:

Rule 5-804. HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE

(a) Definition of Unavailability

"Unavailability as a witness" includes situations in which the declarant:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;

(2) refuses to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;

(3) testifies to a lack of memory of the subject matter of the declarant's statement;

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of the statement has been unable to procure the declarant's attendance

(or in the case of a hearsay exception under subsection (b)(2), (3), or (4) of this Rule, the declarant's attendance or testimony) by process or other reasonable means.

A statement will not qualify under section (b) of this Rule if the unavailability is due to the procurement or wrongdoing of the proponent of the statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay Exceptions

The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former Testimony

Testimony given as a witness in any action or proceeding or in a deposition taken in compliance with law in the course of any action or proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement Under Belief of Impending Death

In a prosecution for an offense based upon an unlawful homicide, attempted homicide, or assault with intent to commit a homicide or in any civil action, a statement made by a declarant, while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be his or her impending death.

(3) Statement Against Interest

A statement which was at the time of its making so

contrary to the declarant's pecuniary or proprietary interest, so tended to subject the declarant to civil or criminal liability, or so tended to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) Statement of Personal or Family History

(A) A statement concerning the declarant's own birth; adoption; marriage; divorce; legitimacy; ancestry; relationship by blood, adoption, or marriage; or other similar fact of personal or family history, even though the declarant had no means of acquiring personal knowledge of the matter stated.

(B) A statement concerning the death of, or any of the facts listed in subsection (4)(A) about another person, if the declarant was related to the other person by blood, adoption, or marriage or was so intimately associated with the other person's family as to be likely to have accurate information concerning the matter declared.

(5) ~~Other Exceptions~~ Witness Unavailable Because of Party's Wrongdoing

(A) Civil Actions

~~Under exceptional circumstances, the following are not excluded by the hearsay rule, even though the declarant is~~

~~unavailable as a witness: A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the intention to offer the statement and the particulars of it, including the name and address of the declarant.~~ In civil actions in which a witness is unavailable because of a party's wrongdoing, a statement that (i) was (a) given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition; (b) reduced to writing and was signed by the declarant; or (c) recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement, and (ii) is offered against a party who has engaged in, directed, or conspired to commit wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness, provided however the statement may not be admitted unless, as soon as practicable after the proponent of the

statement learns that the declarant will be unavailable, the proponent makes known to the adverse party the intention to offer the statement and the particulars of it.

Committee note: A "party" referred to in subsection (b)(5)(A) also includes an agent of the government.

(B) Criminal Causes

In criminal causes in which a witness is unavailable because of a party's wrongdoing, admission of the witness's statement under this exception is governed by Code, Courts Article, §10-901.

Committee note: Subsection (b)(5) of this Rule does not affect the law of spoliation, "guilty knowledge," or unexplained failure to produce a witness to whom one has superior access. See *Washington v. State*, 293 Md. 465, 468 n. 1 (1982); *Breeding v. State*, 220 Md. 193, 197 (1959); *Shpak v. Schertle*, 97 Md. App. 207, 222-27 (1993); *Meyer v. McDonnell*, 40 Md. App. 524, 533, (1978), rev'd on other grounds, 301 Md. 426 (1984); *Larsen v. Romeo*, 254 Md. 220, 228 (1969); *Hoverter v. Director of Patuxent Inst.*, 231 Md. 608, 609 (1963); and *DiLeo v. Nugent*, 88 Md. App. 59, 69-72 (1991). The hearsay exception set forth in subsection (b)(5)(B) is not available in criminal causes other than those listed in Code, Criminal Procedure Article, §10-901 (a).

Cross reference: ~~See Committee note to~~ For the residual hearsay exception applicable regardless of the availability of the declarant, see Rule 5-803 (b)(24).

Source: This Rule is derived from F.R.Ev. 804.

REPORTER'S NOTE

Subsequent to the Rules Committee's approval of proposed changes to Rule 5-804 as a response to problems of witness intimidation, the legislature enacted Chapter 446 (Senate Bill 188), Acts of 2005, to deal with the same problem. The Committee reconsidered Rule 5-804 with the goal of conforming it to Code, Courts Article, §10-901, added by the recent legislation. Because Senate Bill 188 applies only to certain criminal proceedings, the Committee recommends reorganizing proposed new subsection (b)(5) by dividing it into two parts, one pertaining

to civil actions, one pertaining to criminal causes. The latter would simply refer to the new statute.

As originally approved by the Committee, proposed new subsection (b)(5)(A) contained the phrase, "engaged or acquiesced in wrongdoing." This phrase was taken from Fed. R. Ev. 804 (b)(6). On reconsideration of the Rule subsequent to the enactment of Chapter 446, the Committee concluded that the language of the new statute is preferable to the federal language. Thus, the phrase "engaged in, directed, or conspired to commit wrongdoing" is used in subsection (b)(5)(A).

Current subsection (b)(5) in Rule 5-804, containing the residual exception in the Rule, is proposed to be deleted. No substantive change is intended. Rather, the Committee believes that any evidence that is admissible under current Rule 5-804 (b)(5) would be admissible under Rule 5-803 (b)(24), which is broader because the availability of the declarant is immaterial under that Rule.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 800 - HEARSAY

AMEND Rule 5-803 to conform to the proposed deletion of current subsection (b)(5) of Rule 5-804, as follows:

Rule 5-803. HEARSAY EXCEPTIONS: UNAVAILABILITY OF DECLARANT NOT REQUIRED

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

. . .

(24) Other Exceptions

Under exceptional circumstances, the following are not excluded by the hearsay rule~~, even though the declarant is available as a witness~~: A statement not specifically covered by any of the ~~foregoing~~ hearsay exceptions listed in this Rule or in Rule 5-804, but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the

adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the intention to offer the statement and the particulars of it, including the name and address of the declarant.

Committee note: The residual ~~exceptions~~ exception provided by Rule 5-803 (b) (24) ~~and Rule 5-804 (b)(5) do~~ does not contemplate an unfettered exercise of judicial discretion, but ~~they do~~ it does provide for treating new and presently unanticipated situations which demonstrate a trustworthiness within the spirit of the specifically stated exceptions. Within this framework, room is left for growth and development of the law of evidence in the hearsay area, consistently with the broad purposes expressed in Rule 5-102.

It is intended that the residual hearsay ~~exceptions~~ exception will be used very rarely, and only in exceptional circumstances. The Committee does not intend to establish a broad license for trial judges to admit hearsay statements that do not fall within one of the other exceptions contained in Rules 5-803 and 5-804 (b). The residual ~~exceptions are~~ exception is not meant to authorize major judicial revisions of the hearsay rule, including its present exceptions. Such major revisions are best accomplished by amendments to the Rule itself. It is intended that in any case in which evidence is sought to be admitted under ~~these subsections~~ this subsection, the trial judge will exercise no less care, reflection, and caution than the courts did under the common law in establishing the now-recognized exceptions to the hearsay rule.

. . .

REPORTER'S NOTE

The proposed amendments to Rule 5-803 conform the Rule to the proposed deletion of current subsection (b)(5) of Rule 5-804, which contains the residual exception in that Rule.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 900 - AUTHENTICATION AND IDENTIFICATION

AMEND Rule 5-902 to move the text of current section (b) into section (a), to require the proponent of business records proposed to be authenticated pursuant to new section (b) to give a certain notice to the adverse party and make certain materials available to the adverse party, to require that an objection to authentication pursuant to section (b) must be filed no later than five days after service of the proponent's notice, to add a certain form to section (b), to add a certain Committee note following section (b), and to correct certain statutory references, as follows:

Rule 5-902. SELF-AUTHENTICATION

(a) Generally

As used in this Rule, "certifies," "certificate," or "certification" means, with respect to a domestic record or public document, a written declaration under oath subject to the penalty of perjury and, with respect to a foreign record or public document, a written declaration signed in a foreign country which, if falsely made, would subject the maker to criminal penalty under the laws of that country. The certificate relating to a foreign record or public document must be accompanied by a final certification as to the genuineness of the

signature and official position (1) of the individual executing the certificate or (2) of any foreign official who certifies the genuineness of signature and official position of the executing individual or is the last in a chain of certificates that collectively certify the genuineness of signature and official position of the executing individual. A final certificate may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country who is assigned or accredited to the United States.

Except as otherwise provided by statute, extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic Public Documents Under Seal

A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the trust territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Domestic Public Documents Not Under Seal

A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in subsection (a)(1) of this Rule, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee

certifies under seal that the signer has the official capacity and that the signature is genuine.

(3) Foreign Public Documents

A document purporting to be executed or attested in an official capacity by a person authorized by the laws of a foreign country to make the execution or attestation and accompanied by a final certification. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may, for good cause shown, order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) Certified Copies of Public Records

A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with this Rule or complying with any applicable statute or these rules.

(5) Official Publications

Books, pamphlets, or other publications purporting to be issued or authorized by a public agency.

(6) Newspapers and Periodicals

Printed materials purporting to be newspapers or periodicals.

(7) Trade Inscriptions and the Like

Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

(8) Acknowledged Documents

Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) Commercial Paper and Related Documents

To the extent provided by applicable commercial law, commercial paper, signatures thereon, and related documents.

Cross reference: See, e.g., Code, Commercial Law Article, §§1-202, ~~3-307~~ 3-308, and ~~3-510~~ 3-505.

(10) Presumptions under Statutes or Treaties

Any signature, document, or other matter declared by applicable statute or treaty to be presumptively genuine or authentic.

~~(11) Certified Records of Regularly Conducted Business Activity~~

~~The original or a duplicate of a record of regularly conducted business activity, within the scope of Rule 5-803 (b)(6), which the custodian or another qualified individual certifies (A) was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters, (B) is made and kept in the course of the regularly conducted business activity, and (C)~~

~~was made and kept by the regularly conducted business activity as a regular practice, unless the sources of information or the method or circumstances of preparation indicate lack of trustworthiness; but a record so certified is not self-authenticating under this subsection unless the proponent makes an intention to offer it known to the adverse party and makes it available for inspection sufficiently in advance of its offer in evidence to provide the adverse party with a fair opportunity to challenge it.~~

~~(12)~~ (11) Items as to Which Required Objections Not Made

Unless justice otherwise requires, any item as to which, by statute, rule, or court order, a written objection as to authenticity is required to be made before trial, and an objection was not made in conformance with the statute, rule, or order.

Committee note: As used in this Rule "document" is a generic term. It includes public records encompassed by Code, Courts Article, §10-204.

~~(b) Definition~~

~~As used in this Rule, "certifies," "certificate," or "certification" means, with respect to a domestic record or public document, a written declaration under oath subject to the penalty of perjury and, with respect to a foreign record or public document, a written declaration signed in a foreign country which, if falsely made, would subject the maker to criminal penalty under the laws of that country. The certificate relating to a foreign record or public document must be~~

~~accompanied by a final certification as to the genuineness of the signature and official position (1) of the individual executing the certificate or (2) of any foreign official who certifies the genuineness of signature and official position of the executing individual or is the last in a chain of certificates that collectively certify the genuineness of signature and official position of the executing individual. A final certificate may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country who is assigned or accredited to the United States.~~

(b) Certified Records of Regularly Conducted Business Activity

(1) Procedure

Testimony of authenticity as a condition precedent to admissibility is not required as to the original or a duplicate of a record of regularly conducted business activity, within the scope of Rule 5-803 (b)(6) that has been certified pursuant to subsection (b)(2) of this Rule, provided that at least ten days prior to the commencement of the proceeding in which the record will be offered into evidence, (A) the proponent (i) notifies the adverse party of the proponent's intention to authenticate the record under this subsection and (ii) makes a copy of the certificate and record available to the adverse party and (B) the adverse party has not filed within five days after service of the proponent's notice written objection on the ground that the sources of information or the method or circumstances of

preparation indicate lack of trustworthiness.

Committee note: An objection to self-authentication under subsection (b)(1) of this Rule made in advance of trial does not constitute a waiver of any other ground that may be asserted as to admissibility at trial.

(2) Form of Certificate

For purposes of subsection (b)(1) of this Rule, the original or duplicate of the business record shall be certified in substantially the following form:

Certification of Custodian of Records or Other Qualified Individual

I, _____, do hereby certify that:

(1) I am the Custodian of Records of or am otherwise qualified to administer the records for _____ (identify the organization that maintains the records), and

(2) The attached records

(a) are true and correct copies of records that were made at or near the time of the occurrence of the matters set forth, by or from the information transmitted by, a person with knowledge of these matters; and

(b) were kept in the course of the regulated conducted activity; and

(c) were made and kept by the regularly conducted business activity as a regular practice.

I declare under penalty of perjury that the foregoing is

true and correct.

_____
Signature and Title

_____
Date

Source: This Rule is in part derived from F.R.Ev. 902 and in part new.

REPORTER'S NOTE

The proposed amendments to Rule 5-902 require the proponent of a business record that the proponent intends to authenticate pursuant to section (b), Certified Records of Regularly Conducted Business Activity, to notify the adverse party of that intention at least ten days prior to the proceeding at which the record will be offered into evidence. A form for certification by the custodian of the record, which is based on a form used in the United States District Court for the District of Maryland, is included in subsection (b)(2). The amendment requires that a copy of the certificate and record be made available to the adverse party. The adverse party has five days after service of the proponent's notice to file an objection to admissibility on the ground that the sources of information or the circumstances of preparation of the record lack trustworthiness. A Committee note makes clear that other grounds as to admissibility that may be made at trial are not waived.

A proposed amendment to the cross reference following subsection (a)(9) corrects two obsolete statutory references.

As a matter of style, the text of current section (b), Definitions, is moved to section (a).

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW

IN CIRCUIT COURT

CHAPTER 200 - JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY DECISIONS

ADD new Rule 7-211, as follows:

Rule 7-211. REQUEST FOR IMPLEADER OF THE SUBSEQUENT INJURY FUND

(a) Generally

If a party files a request for impleader of the Subsequent Injury Fund more than 60 days before trial, the court shall grant the request. If a party files a request for impleader within the 60-day period before trial, the court shall determine whether there is good cause to grant the request.

(b) Order Granting Request for Impleader

If the court grants a request for impleader, the court shall suspend further proceedings and remand the case to the Workers' Compensation Commission.

(c) Information To Be Provided to the Subsequent Injury Fund

Within 10 days after the date of an order granting a request for impleader, the impleading party shall provide to the Subsequent Injury Fund and all other parties:

(1) a copy of the original claim, any amendments, each issue previously filed, and any award or order entered by the

Commission on the claim;

(2) identification, by claim number if available, of prior awards or settlements to the claimant for permanent disability made or approved by the Commission, by a comparable commission of another state as defined in Code, Labor and Employment Article, §1-101;

(3) all relevant medical evidence relied on to implead the Subsequent Injury Fund; and

(4) a certification that a copy of the request for impleader and all required information and documents have been mailed to the Subsequent Injury Fund and all other parties.

Cross reference: COMAR 14.09.01.13.

Source: This Rule is new.

REPORTER'S NOTE

In *Carey v. Chessie Computer Services, Inc.*, 369 Md. 741 (2002), the Court noted that there is no express procedure in Title 7, Chapter 200 or elsewhere in the Rules that provides for impleading the Subsequent Injury Fund ("SIF") in a Workers' Compensation action pending in a circuit court. Chapter 276 (HB 122), Acts of 2003 modified Code, Labor and Employment Article, §9-807 by adding a good cause showing before proceedings are suspended and remanded to the Workers' Compensation Commission when the SIF is impleaded less than 60 days before a trial in a circuit court or hearing in the Court of Special Appeals. The addition of Rule 7-211 and subsection (d)(3) of Rule 8-604 will provide a procedure for impleading the SIF that conforms to the statutory changes and uses language based on the corresponding COMAR provision in section (c) of Rule 7-211 and subsection (d)(3)(C) of Rule 8-604 to describe the impleading requirements.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 600 - DISPOSITION

AMEND Rule 8-604 by adding a new subsection (d)(3) pertaining to requests for impleading the Subsequent Injury Fund in an appeal from a Workers' Compensation Commission, as follows:

Rule 8-604. DISPOSITION

(a) Generally

As to each party to an appeal, the Court shall dispose of an appeal in one of the following ways:

(1) dismiss the appeal pursuant to Rule 8-602;

(2) affirm the judgment;

(3) vacate or reverse the judgment;

(4) modify the judgment;

(5) remand the action to a lower court in accordance with section (d) of this Rule; or

(6) an appropriate combination of the above.

(b) Affirmance in Part and Reversal, Modification, or Remand in Part

If the Court concludes that error affects a severable part of the action, the Court, as to that severable part, may reverse or modify the judgment or remand the action to a lower court for further proceedings and, as to the other parts, affirm the judgment.

(c) Correctible Error

(1) Matters of Form

A judgment will not be reversed on grounds of form if the Court concludes that there is sufficient substance to enable the Court to proceed. For that purpose, the appellate court shall permit any entry to be made by either party during the pendency of the appeal that might have been made by that party in the lower court after verdict by the jury or decision by the court.

(2) Excessive Amount of Judgment

A judgment will not be reversed because it is for a larger amount than claimed in the complaint if the plaintiff files in the appellate court a release of the excess.

(3) Modified Judgment

For purposes of implementing subsections (1) and (2), the Court may modify the judgment.

(d) Remand

(1) Generally

If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate court shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct any further proceedings necessary to determine the action in accordance with the opinion and order of the appellate court.

Committee note: This Rule is not intended to change existing case law regarding limited remands in criminal cases; see *Gill v.*

State, 265 Md. 350 (1972); *Wiener v. State*, 290 Md. 425 (1981); *Reid v. State*, 305 Md. 9 (1985).

(2) Criminal Case

In a criminal case, if the appellate court reverses the judgment for error in the sentence or sentencing proceeding, the Court shall remand the case for resentencing.

(3) Request for Impleader of the Subsequent Injury Fund in an Appeal from a Workers' Compensation Commission Decision

(A) Generally

If a party files a request for impleader of the Subsequent Injury Fund more than 60 days before trial, the Court shall grant the request. If a party files a request for impleader within the 60-day period before trial, the Court shall determine whether there is good cause to grant the request.

(B) Order Granting Request for Impleader

If the Court grants a request for impleader, the Court shall suspend further proceedings and remand the case to the Workers' Compensation Commission for further proceedings.

(C) Information To Be Provided to the Subsequent Injury Fund and Parties

Within 10 days after the date of an order granting a request for impleader, the impleading party shall provide to the Subsequent Injury Fund and all other parties:

(i) a copy of the original claim, any amendments, each issue previously filed, and any award or order entered by the Commission on the claim;

(ii) identification, by claim number if available, of prior

awards or settlements to the claimant for permanent disability made or approved by the Commission, by a comparable commission of another state as defined in Code, Labor and Employment Article, §1-101;

(iii) all relevant medical evidence relied on to implead the Subsequent Injury Fund; and

(iv) a certification that a copy of the request for impleader and all required information and documents have been mailed to the Subsequent Injury Fund and all other parties.

Cross reference: COMAR 14.09.01.13.

(e) Entry of Judgment

In reversing or modifying a judgment in whole or in part, the Court may enter an appropriate judgment directly or may order the lower court to do so.

Source: This Rule is derived as follows:
Section (a) is derived from former Rules 1070 and 870.
Section (b) is derived from former Rules 1072 and 872.
Section (c) is derived from former Rules 1073 and 873.
Section (d) is in part derived from former Rules 1071 and 871 and in part new.
Section (e) is derived from former Rules 1075 and 875.

REPORTER'S NOTE

See the Reporter's note to Rule 7-211.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 400 - ADMINISTRATIVE MANDAMUS

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MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 400 - ADMINISTRATIVE MANDAMUS

ADD new Rule 7-401, as follows:

Rule 7-401. GENERAL PROVISIONS

(a) Applicability

The rules in this Chapter govern actions for judicial review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law.

Committee note: A writ of mandamus is an appropriate remedy for review of a quasi-judicial order or action of an administrative agency only when no other right of appeal is provided by state or local law. See *Heaps v. Cobb*, 185 Md. 372 (1945). Ordinarily, administrative finality is required, but see *Prince George's County v. Blumberg*, 288 Md, 275 (1980) and *Holiday Spas v. Montgomery County*, 315 Md. 390 (1989).

Cross reference: For judicial review of an order or action of an administrative agency where judicial review is authorized by statute, see Title 7, Chapter 200 of these Rules.

(b) Definition

As used in this Chapter, "administrative agency" means any agency, board, department, district, commission, authority, Commissioner, official, or other unit of the State or of a political subdivision of the State.

Committee note: This Rule does not apply to writs of mandamus in aid of appellate jurisdiction.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Title 7, Chapter 400 governs actions for review of quasi-judicial actions of administrative agencies where review is not expressly authorized by law.

Rule 7-401 is patterned after Rule 7-201, with the necessary distinctions.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW

IN CIRCUIT COURT

CHAPTER 400 - ADMINISTRATIVE MANDAMUS

ADD new Rule 7-402, as follows:

Rule 7-402. PROCEDURES

(a) Complaint and Response

An action for a writ of administrative mandamus is commenced by the filing of a complaint, the form, contents, and timing of which shall comply with Rules 7-202 and 7-203. A response to the filing of the complaint shall comply with the provisions of Rule 7-204.

(b) Stay

The filing of the complaint does not stay the order or action of the administrative agency. The court may grant a stay in accordance with the provisions of Rule 7-205.

(c) Discovery

The court may permit discovery, in accordance with the provisions of Title 2, Chapter 400, that the court finds to be appropriate, but only in cases where the party challenging the agency action makes a strong showing of the existence of fraud or extreme circumstances that occurred outside the scope of the administrative record, and a remand to the agency is not a viable alternative.

(d) Record

If a record exists, the record shall be filed in accordance with the provisions of Rule 7-206. If no record exists, the agency shall provide (1) a verified response that fully sets forth the grounds for its decision and (2) any written materials supporting the decision. The court may remand the matter to the agency for further supplementation of materials supporting the decision.

(e) Memoranda

Memoranda shall be filed in accordance with the provisions of Rule 7-207.

(f) Hearing

The court may hold a hearing. If a hearing is held, additional evidence in support of or against the agency's decision is not allowed unless permitted by law.

Source: This Rule is new.

REPORTER'S NOTE

Rule 7-402 incorporates many of the procedures of Title 7, Chapter 200, with the addition of section (c), Discovery, which is based upon *Montgomery County v. Stevens*, 337 Md. 471 (1995). Section (c) provides that discovery is available only upon a showing of fraud or extreme circumstances which occurred outside the scope of the administrative record, and if a remand to the agency is not a viable alternative.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW

IN CIRCUIT COURT

CHAPTER 400 - ADMINISTRATIVE MANDAMUS

ADD new Rule 7-403, as follows:

Rule 7-403. DISPOSITION

The court may issue an order denying the writ of mandamus, or may issue the writ (1) remanding the case for further proceedings, or (2) reversing or modifying the decision if any substantial right of the plaintiff may have been prejudiced because a finding, conclusion, or decision of the agency:

(A) is unconstitutional,

(B) exceeds the statutory authority or jurisdiction of the agency,

(C) results from an unlawful procedure,

(D) is affected by any error of law,

(E) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted,

(F) is arbitrary or capricious, or

(G) is an abuse of its discretion.

Source: This Rule is new.

REPORTER'S NOTE

Rule 7-403 is patterned after Rule 7-209. The proposed Rule provides for the issuance of a writ of mandamus in place of the order issued pursuant to Rule 7-209. The language in subsections (A) through (F) is taken from the Administrative Procedure Act, State Government Article, §10-222 (h). The language of subsection (G), adding abuse of discretion to the list of grounds for issuing the writ in judicial review of agency decisions, is taken from the concurring opinion by the Honorable Glenn T. Harrell, Jr. in *MTA v. King*, 369 Md. 274 (2002).

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW

IN CIRCUIT COURT

CHAPTER 200 - JUDICIAL REVIEW OF ADMINISTRATIVE AGENCY DECISIONS

AMEND Rule 7-208 to add a certain cross reference, as follows:

Rule 7-208. HEARING

(a) Generally

Unless a hearing is waived in writing by the parties, the court shall hold a hearing.

(b) Scheduling

Upon the filing of the record pursuant to Rule 7-206, a date shall be set for the hearing on the merits. Unless otherwise ordered by the court or required by law, the hearing shall be no earlier than 90 days from the date the record was filed.

(c) Additional Evidence

Additional evidence in support of or against the agency's decision is not allowed unless permitted by law.

Cross reference: Where a right to a jury trial exists, see Rule 2-325 (d). See *Montgomery County v. Stevens*, 337 Md. 471 (1995) concerning the availability of prehearing discovery.

Source: This Rule is in part derived from former Rules B10 and B11 and in part new.

REPORTER'S NOTE

With the proposed addition of new Rule 7-402 (c), concerning discovery in actions for judicial review of a quasi-judicial order or action of an administrative agency where review is not authorized by statute or local law, the Rules Committee recommends that a cross reference to *Montgomery County v. Stevens*, 337 Md. 471 (1995) be added to the Rules in Title 7, Chapter 200.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW

IN CIRCUIT COURT

CHAPTER 300 - CERTIORARI

AMEND Rule 7-301 to change certain terminology, to limit the applicability of the Rule to review of certain actions of the District Court or the Orphans' Court, to modify service and notice procedures, and to eliminate reference to a certain "show cause" order, as follows:

Rule 7-301. CERTIORARI IN THE CIRCUIT COURT

(a) Applicability; Definitions

This Rule governs applications in the circuit court for a writ of certiorari. As used in this Rule, ~~"defendant"~~ "respondent" means the ~~person or body~~ District Court or the Orphans' Court whose acts are sought to be reviewed. As used in this Rule, "party" means any party to a proceeding in the District Court or Orphans' Court other than the petitioner or petitioners in the circuit court.

(b) Petition

An application for a writ of certiorari shall be by petition filed in the circuit court for the county where the acts sought to be reviewed take, have taken, or would take effect. ~~and~~ The petition shall name as ~~defendant~~ respondent the ~~person or body~~ court whose acts are sought to be reviewed and the names and

addresses of all known parties in the proceeding with respect to which the review by the circuit court is sought. The petition shall be under oath and shall ~~contain~~ state (1) ~~a description~~ the name of the ~~defendant~~ respondent, ~~and of~~ (2) the matter sought to be reviewed, ~~(2)~~ (3) ~~a statement of~~ the interest of the ~~plaintiff~~ petitioner in the matter, and ~~(3)~~ (4) ~~a statement of~~ the facts relied on to show that the ~~defendant~~ respondent lacked jurisdiction or committed unconstitutional acts reviewable by writ of certiorari.

(c) Action on Petition; Bond

Upon the filing of a petition, the court shall (1) issue an order requiring the ~~defendant~~ respondent to file a response by a specified date ~~stated in the order~~ showing cause why the writ should not issue, (2) issue a writ of certiorari to the ~~defendant~~ respondent, requiring the production by a specified date of all records of the ~~defendant~~ respondent in the matter by a date stated in the writ, or (3) dismiss the petition if the court determines from the petition that it lacks jurisdiction. Before issuing a writ of certiorari, the court may require the ~~plaintiff~~ petitioner to file a bond conditioned on the payment to any person of any damages sustained because of the issuance of the writ if the court ultimately determines that the writ should not have issued.

Cross reference: Title 1, Chapter 400.

(d) Service and Notice

~~A copy of the petition, any show cause order, and any writ~~

~~of certiorari shall be served upon the defendant, or if the defendant is not an individual, upon an official of the defendant in the manner provided by Rule 2-121. Service of a writ of certiorari shall stay all further proceedings by the defendant. The court may require notice of the certiorari proceeding to be given to any other person.~~ Upon filing the petition, the petitioner shall deliver to the clerk one additional copy of the petition for the respondent and one additional copy for each party. The petitioner also shall notify the other parties in conformity with Rule 1-351 (b). The clerk shall promptly mail a copy of the petition to the clerk of the respondent and to each party, together with a notice stating:

(1) the date the petition was filed;

(2) the name of the court in which the petition was filed;

(3) the civil action number assigned to the petition; and

(4) that if the respondent or a party opposes the petition, the respondent or party shall file a response within 30 days after the date the notice was mailed or, if the court has shortened or extended the time for filing a response, within such other time stated in the notice. The clerk also shall mail a copy of the notice to each petitioner.

(e) Hearing

(1) If No Response is Filed

If no response to the petition is filed within the time allowed, the court may issue the writ without a hearing.

~~(1)~~ (2) ~~When Show Cause Order Issued~~ If a Response is Filed

If the ~~defendant~~ respondent or a party files a response to ~~a show cause order~~ the petition, the court shall hold a hearing to determine its own jurisdiction and whether to issue the writ. ~~If no response is filed, the court may issue the writ without a hearing.~~

~~(2)~~ (3) When Writ Issued

Upon the return of the writ and the production by the ~~defendant~~ respondent of its records, the court shall first determine ~~if~~ whether it has jurisdiction and, if so, shall review the jurisdiction and constitutionality of the acts of the ~~defendant~~ respondent.

(f) Motion to Intervene

Any person whose interest may be affected adversely by the certiorari proceeding may move to intervene pursuant to Rule 2-214.

Source: This Rule is derived in part from former Rules K41 through K48 and is in part new.

REPORTER'S NOTE

The Rules Committee recommends, in conjunction with other proposed changes to the Rules governing certiorari and mandamus, narrowing the scope of certiorari under Rule 7-301 so that the Rule applies only to review of actions of a judicial rather than an administrative tribunal. The recommendation is that review of administrative agency actions where review is not authorized by statute or local law will be in accordance with proposed new Title 7, Chapter 400, Administrative Mandamus.

The Committee proposes that the word "defendant" be changed to "respondent" in Rule 7-301 since the Rule is proposed to apply to review of actions of the District Court or orphans' court

only. Language has been added explaining that the term "party" will now be used in the Rule to mean someone involved in the proceeding other than the petitioner(s).

The proposed amendments to sections (d) and (e) set out in greater detail the procedures for service and notice, change the method of service upon the respondent from service "in the manner provided by Rule 2-121" to a notification in conformity with Rule 1-351 coupled with service of the petition by mail, and eliminate a show cause order procedure.

Additionally, stylistic changes are proposed.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 700 - MANDAMUS

AMEND Rule 15-701 to add an applicability section, to add a Committee note after section (b), and to delete current section (d), as follows:

Rule 15-701. MANDAMUS

(a) Applicability

This Rule applies to actions for writs of mandamus other than administrative mandamus pursuant to Title 7, Chapter 400 of these Rules or mandamus in aid of appellate jurisdiction.

~~(a)~~ (b) Commencement of Action

An action for a writ of mandamus shall be commenced by the filing of a ~~verified~~ complaint, the form and contents of which shall comply with Rules 2-303 through 2-305. The plaintiff shall have the right to claim and prove damages, but a demand for general relief shall not be permitted.

Committee note: Because a mandamus action is similar to an ordinary civil proceeding, the discovery rules and the Rules in Title 5 apply. Code, Courts Article, §3-8B-02 provides: "An action for a writ of mandamus shall be tried by a jury on request of either party." This has been judicially interpreted to apply to fact questions. See *Cicala v. Disability Review Board for Prince George's County*, 288 Md. 254 (1980).

~~(b)~~ (c) Defendant's Response

The defendant may respond to the complaint as provided in Rule 2-322 or Rule 2-323. An answer ~~shall be verified and~~ shall

fully and specifically set forth all defenses upon which the defendant intends to rely~~, but the defendant shall not assert any defense that the defendant might have relied upon in an answer to a previous complaint for mandamus by the same plaintiff for the same relief~~.

~~(c)~~ (d) Amendment

Amendment of pleadings shall be in accordance with Rule 2-341.

~~(d) Ex Parte Action on Complaint~~

~~(1) Upon Default by Defendant~~

~~If the defendant is in default for failure to appear , the court, on motion of the plaintiff, shall hear the complaint ex parte. The plaintiff shall be required to introduce evidence in support of the complaint. If the court finds that the facts and law authorize the granting of the writ, it shall order the writ to issue without delay. Otherwise, the court shall dismiss the complaint.~~

~~(2) Upon Striking of Defendant's Answer~~

~~If the court grants a motion to strike an answer filed pursuant to Rule 2-322 (e) and the court does not permit the filing of an amended answer, the court may enter an order authorizing the writ to issue without requiring the plaintiff to introduce evidence in support of the complaint.~~

(e) Writ of Mandamus

(1) Contents and ~~Time for~~ Compliance

The writ shall be peremptory in form and shall require

the defendant to perform immediately the duty sought to be enforced~~. For~~ , unless for good cause shown~~, however,~~ the court ~~may~~ extends the time for compliance. ~~It shall not be necessary for the writ to~~ The writ need not recite the reasons for its issuance.

(2) Certificate of Compliance

Immediately after compliance, the defendant shall file a certificate stating that all the acts commanded by the writ have been fully performed.

(3) Enforcement

Upon application by the plaintiff, the court may proceed under Rule 2-648 against a party who disobeys the writ.

(f) Adequate Remedy at Law

The existence of an adequate remedy in damages does not preclude the issuance of the writ unless the defendant establishes that property exists from which damages can be recovered or files a sufficient bond to cover all damages and costs.

Source: This Rule is derived from former Rules BE40, BE41, BE43, BE44, BE45, and BE46.

REPORTER'S NOTE

The proposed amendments to Rule 15-701 clarify the applicability of the Rule. Additionally, a Committee note stating that the discovery rules and the Rules in Title 5 apply to mandamus actions and referring to *Cicala v. Disability Review Board*, 288 Md. 254 (1980) (concerning when a jury trial is appropriate in mandamus cases) is proposed to be added to the Rule. The Committee also proposes stylistic changes to section

(e). Current section (d), Ex Parte Action on Complaint, is proposed to be stricken, because issues involving default or motions to strike are governed by the Rules applicable generally in civil actions.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-204 to reorganize sections (b) and (c), to add provisions concerning applications for leave to appeal the denial of victims' rights, and to make certain stylistic changes, as follows:

Rule 8-204. APPLICATION FOR LEAVE TO APPEAL TO COURT OF SPECIAL APPEALS

(a) Scope

This Rule applies to applications for leave to appeal to the Court of Special Appeals.

Cross reference: For Code provisions governing applications for leave to appeal, see Courts Article, §3-707 concerning bail; Courts Article, §12-302 (e) concerning guilty plea cases; Courts Article, §12-302 (g) concerning revocation of probation cases; Criminal Procedure Article, §11-103 concerning victims of violent crimes; Criminal Procedure Article, §7-109 concerning post conviction cases; Correctional Services Article, §10-206 et seq. concerning inmate grievances; and Health-General Article, §§12-117 (e) (2), 12-118 (d) (2), and 12-120 (k) (2) concerning continued commitment, conditional release, or discharge of an individual committed as not criminally responsible by reason of insanity or incompetent to stand trial.

(b) Application

(1) How Made~~; Time for Filing~~

An application for leave to appeal to the Court of Special Appeals shall be filed in duplicate with the clerk of the lower court.

(2) Time for Filing

(A) Generally

Except as otherwise provided in subsection (b)(2)(B) of this Rule, ~~The~~ the application shall be filed within 30 days after entry of the judgment or order from which the appeal is sought~~, except that an application for leave to appeal with regard to bail pursuant to Code, Courts Article, §3-707 shall be filed within ten days after entry of the order from which the appeal is sought~~.

(B) Interlocutory Appeal by Victim

An application with regard to an interlocutory appeal by a victim pursuant to Code, Criminal Procedure Article, §11-103 alleging that the trial court denied or failed to consider a victim's right may be filed at the time the victim's right is actually being denied or within 10 days after the request is made on behalf of the victim, whether or not the court has ruled on the request.

Committee note: Code, Courts Article, §11-103 (c) provides that the filing of an application for leave to appeal by a victim does not stay other proceedings in a criminal action unless all parties in the action consent to the stay.

(C) Bail

An application for leave to appeal with regard to bail pursuant to Code, Courts Article, §3-707 shall be filed within ten days after entry of the order from which the appeal is sought.

~~(2)~~ (3) Content

The application shall contain a concise statement of the reasons why the judgment should be reversed or modified and shall specify the errors allegedly committed by the lower court.

~~(3)~~ (4) Service

If the applicant is the State of Maryland, it shall serve a copy of the application on the adverse party in compliance with Rule 1-321. Any other applicant shall serve a copy of the application on the Attorney General in compliance with Rule 1-321. If the applicant is not represented by an attorney, the clerk of the lower court shall promptly mail a copy of the application to the Attorney General.

(c) Record on Application

(1) Time for Transmittal

Within (A) five days after the filing of an application by a victim for leave to file an interlocutory appeal pursuant to Code, Criminal Procedure Article, §11-103, (B) 30 days after the filing of an application for leave to appeal in any other case, or ~~within~~ (C) such shorter time as the appellate court may direct, the clerk of the lower court shall transmit the record, together with the application, to the Court of Special Appeals.

(2) Appeals from Post Conviction Proceedings

On application for leave to appeal from a post conviction proceeding, the record shall contain the petition, the State's Attorney's response, any subsequent papers filed in the proceeding, and the statement and order required by Rule 4-407.

(3) Appeals from Habeas Corpus Proceedings

On application for leave to appeal from a habeas corpus proceeding in regard to bail, the record shall contain the petition, any response filed by the State's Attorney, the order of the court, and the judge's memorandum of reasons.

(4) Appeals by Victims

On application by a victim for leave to appeal pursuant to Code, Criminal Procedure Article, §11-103, the record shall contain (A) the application; (B) any response to the application filed by the defendant, the State's Attorney, or the Attorney General; (C) any pleading regarding the victim's request including, if applicable, a statement that the court has failed to consider a right of the victim; and (D), if applicable, any order or decision of the court.

(5) Other Appeals

On any other application for leave to appeal, the record shall contain all of the original papers and exhibits filed in the proceeding.

Cross reference: Code, Courts Article §3-707.

(d) Response

Within 15 days after service of the application, any other party may file a response in the Court of Special Appeals stating why leave to appeal should be denied or granted, except that any response to an application for leave to appeal with regard to bail pursuant to Code, Courts Article, §3-707 or with regard to an interlocutory appeal by a victim pursuant to Code, Criminal

Procedure Article, §11-103 shall be filed within five days after service of the application.

(e) Additional Information

Before final disposition of the application, the Court of Special Appeals may require the clerk of the lower court to submit any portion of the stenographic transcript of the proceedings below and any additional information that the Court may wish to consider.

(f) Disposition

On review of the application, any response, the record, and any additional information obtained pursuant to section (e) of this Rule, without the submission of briefs or the hearing of argument, the Court shall:

(1) deny the application;

(2) grant the application and affirm the judgment of the lower court;

(3) grant the application and reverse the judgment of the lower court;

(4) grant the application and remand the judgment to the lower court with directions to that court; or

(5) grant the application and order further proceedings in the Court of Special Appeals in accordance with section (g) of this Rule.

The Clerk of the Court of Special Appeals shall send a copy of the order disposing of the application to the clerk of the lower court.

(g) Further Proceedings in Court of Special Appeals

(1) Generally

Further proceedings directed under subsection (f)(5) of this Rule shall be conducted pursuant to this Title and as if the order granting leave to appeal were a notice of appeal filed pursuant to Rule 8-202. If the record on application for leave to appeal is to constitute the entire record to be considered on the appeal, the time for the filing of the appellant's brief shall be within 40 days after the date of the order granting leave to appeal.

(2) Further Proceedings in Appeals of Denial of Victims' Rights

(A) Appeals from Final Orders

If the order involves an appeal by a victim from a final order pursuant to Code, Criminal Procedure Article, §11-103, the Court may consolidate the appeal with any other appeal filed in the criminal case.

(B) Appeals from Interlocutory Orders

If the order granting leave to appeal involves an interlocutory appeal by a victim pursuant to Code, Criminal Procedure Article, §11-103, the Court may schedule oral argument without the submission of briefs and shall consider the application and any responses in lieu of briefs.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rules 1093 a, 1095 a 1, 2 and 4, and 1096 a 1, 2, and 4.

Section (c) is derived from former Rules 1093 b, 1095 a 3, and 1096 a 3.

Section (d) is new.

Section (e) is derived from former Rules 1093 c, 1095 b, and 1096 b.

Section (f) is new.

Section (g) is derived from former Rules 1093 d, 1095 c, and 1096 c.

REPORTER'S NOTE

The proposed amendments to Rule 8-204 add procedures for an application for leave to appeal from an interlocutory or final order that denies or fails to consider certain rights of a victim, as authorized by Code, Criminal Procedure Article, §11-103. The proposed amendments also reorganize sections (b) and (c) of the Rule and make stylistic changes.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-205 (a) by adding appeals from guardianships terminating parental rights to the list of categories of actions for which information reports are not required, as follows:

Rule 8-205. INFORMATION REPORTS

(a) Applicability

This Rule applies to appeals in all civil actions in the Court of Special Appeals except juvenile causes<u>, appeals from guardianships terminating parental rights,</u> and applications and appeals by prisoners seeking relief relating to confinement or conditions of confinement.

(b) Report by Appellant Required

Upon the filing of a notice of appeal, the clerk of the lower court shall provide to the appellant an information report form prescribed by the Court of Special Appeals. Unless an expedited appeal is elected pursuant to Rule 8-207, the appellant shall file with the Clerk of the Court of Special Appeals a copy of the notice of appeal and a complete and accurate information report.

(c) Time for Filing

When a notice of appeal is filed more than ten days after

the entry of judgment, the information report shall be filed within ten days after the filing of the notice. When the notice of appeal is filed within ten days after the entry of judgment, the information report shall be filed within ten days after the expiration of that ten-day period, if no post-judgment motion pursuant to Rule 2-532, 2-533, or 2-534 or a notice for in banc review pursuant to Rule 2-551 has been timely filed.

Cross reference: Rule 8-202 (c).

(d) Report by Appellee

Within seven days after service of appellant's information report, each appellee may file with the Clerk of the Court of Special Appeals a supplemental report containing any other information needed to clarify the issues on appeal or otherwise assist the prehearing judge.

(e) Disclosure of Post-judgment Motions

If the filing, withdrawal, or disposition of a motion pursuant to Rule 2-532, 2-533, or 2-534 has not been disclosed in an information report or supplemental report, the party filing the motion shall notify the Clerk of the Court of Special Appeals of the filing and of the withdrawal or disposition.

(f) Confidentiality

Information contained in an information report or a supplemental report shall not (1) be treated as admissions, (2) limit the disclosing party in presenting or arguing that party's case, or (3) be referred to except at a prehearing or scheduling conference.

Source: This Rule is derived from former Rule 1023 with the exception of section (a) which is derived from former Rule 1022 and section (f), the substance of which was transferred from Rule 8-206.

REPORTER'S NOTE

The proposed amendment to Rule 8-205 eliminates the requirement of filing information reports in appeals from guardianships terminating parental rights. The Office of the Attorney General has requested that this category of actions be excluded from the scope of Rule 8-205 because information reports inform the court as to whether a prehearing conference could be helpful in resolving come or all of the issues of the case, and in most termination of parental rights cases, compromise or resolution of any issue is impossible. When a party fails to file an information report, delay often results, and termination of parental rights cases need to be resolved as quickly as possible. Eliminating the requirement of filing information reports will lead to more rapid resolution of these cases.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-207 to clarify the applicability of section (a) and to make a certain stylistic change to section (b), as follows:

Rule 8-207. EXPEDITED APPEAL

(a) Adoption, Guardianship, Child Access, Child in Need of Assistance Cases

(1) This section applies to every appeal to the Court of Special Appeals (A) from a judgment granting or denying a petition for adoption, guardianship terminating parental rights, or guardianship of the person of a minor or disabled person, and (B) contesting a judgment granting, denying, or establishing custody of or visitation with a minor child, ~~and (C) from an order entered pursuant to Code, Courts Article, §12-303~~ including an appeal from an interlocutory order taken pursuant to Code, Courts Article, §12-303 (3)(x). Unless otherwise provided for good cause by order of the Court of Special Appeals or by order of the Court of Appeals if that Court has assumed jurisdiction over the appeal, the provisions of this section shall prevail over any other rule to the extent of any inconsistency.

(2) In the information report filed pursuant to Rule 8-205,

the appellant shall state whether the appeal is subject to this section.

(3) Within five days after entry of an order pursuant to Rule 8-206 (a)(1) or an order pursuant to Rule 8-206 (d) directing preparation of the record, the appellant shall order the transcript and make an agreement for payment to assure its preparation. The court reporter or other person responsible for preparation of the transcript shall give priority to transcripts required for appeals subject to this section and shall complete and file the transcripts with the clerk of the lower court within 20 days after receipt of an order of the party directing their preparation and an agreement for payment of the cost. An extension of time may be granted only for good cause.

(4) The clerk of the lower court shall transmit the record to the Court of Special Appeals within thirty days after the date of the order entered pursuant to Rule 8-206 (a)(1) or Rule 8-206 (d).

(5) The briefing schedule set forth in Rule 8-502 shall apply, except that (A) an appellant's reply brief shall be filed within 15 days after the filing of the appellee's brief, (B) a cross-appellee's brief shall be filed within 20 days after the filing of a cross-appellant's brief, and (C) a cross-appellant's reply brief shall be filed within 15 days after the filing of a cross-appellee's brief. Unless directed otherwise by the Court, any oral argument shall be held within 120 days after transmission of the record. The decision shall be rendered

within 60 days after oral argument or submission of the appeal on the briefs filed.

(6) Any motion for reconsideration pursuant to Rule 8-605 shall be filed within 15 days after the filing of the opinion of the Court or other order disposing of the appeal. Unless the mandate is delayed pursuant to Rule 8-605 (d) or unless otherwise directed by the Court, the Clerk of the Court of Special Appeals shall issue the mandate upon the expiration of 15 days after the filing of the court's opinion or order.

(b) By Election of Parties

(1) Election

Within 20 days after the first notice of appeal is filed or within the time specified in an order entered pursuant to Rule 8-206 (d), the parties may file with the Clerk of the Court of Special Appeals a joint election to proceed pursuant to this Rule.

(2) Statement of Case and Facts

Within 15 days after the filing of the joint election, the parties shall file with the Clerk four copies of an agreed statement of the case, including the essential facts, as prescribed by Rule 8-413 (b). By stipulation of counsel filed with the clerk, the time for filing the agreed statement of the case may be extended for no more than an additional 30 days.

Committee note: Rule 8-413 (b) requires that an agreed statement of the case be approved by the lower court.

(3) Withdrawal

The election is withdrawn if ~~(1)~~ (A) within 15 days after its filing the parties file a joint stipulation to that effect or ~~(2)~~ (B) the parties fail to file the agreed statement of the case within the time prescribed by subsection (a)(2) of this Rule. The case shall then proceed as if the first notice of appeal had been filed on the date of the withdrawal.

(4) Appellant's Brief

The appellant shall file a brief within 15 days after the filing of the agreed statement required by subsection (a)(2) of this Rule. The brief need not include statement of facts, shall be limited to two issues, and shall not exceed ten pages in length. Otherwise, the brief shall conform to the requirements of Rule 8-504. The appellant shall attach the agreed statement of the case as an appendix to the brief.

(5) Appellee's Brief

The appellee shall file a brief within 15 days after the filing of the appellant's brief. The brief shall not exceed ten pages in length and shall otherwise conform to the requirements of Rule 8-504.

(6) Reply Brief

A reply brief may be filed only with permission of the Court.

(7) Briefs in Cross-appeals

An appellee who is also a cross-appellant shall include in the brief filed under subsection (a)(5) of this Rule the issue and argument on the cross-appeal as well as the response to the

brief of the appellant. The combined brief shall not exceed 15 pages in length. Within ten days after the filing of an appellee/cross-appellant's brief, the appellant/cross-appellee shall file a brief, not exceeding ten pages in length, in response to the issues and argument raised on the cross-appeal.

(8) Oral Argument

Except in extraordinary circumstances, any oral argument shall be held within 45 days after the filing of the appellee's brief or, if the Court is not in session at that time, within 45 days after commencement of the next term of the Court. The oral argument shall be limited to 15 minutes for each side.

(9) Decision

Except in extraordinary circumstances or when a panel of the Court recommends that the opinion be reported, the decision shall be rendered within 20 days after oral argument or, if all parties submitted on brief, within 30 days after the last submission.

(10) Applicability of Other Rules

The Rules of this Title governing appeals to the Court of Special Appeals shall be applicable to expedited appeals except to the extent inconsistent with this Rule.

Source: This Rule is derived from former Rule 1029.

REPORTER'S NOTE

The proposed amendment to Rule 8-207 clarifies that the only subsection of Code, Courts Article, §12-303 to which section (a) of the Rule applies is subsection (3)(x). The Rules Committee considered whether there should be an expedited appeal from all

interlocutory orders for which an appeal is authorized under Code, Courts Article, §12-303. The Committee concluded that the category of cases described in subsection (3)(x) is the only category for which an expedited appeal should be mandatory.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-411 to provide for a certain time period within which a transcript must be ordered in a child in need of assistance case and to add a certain cross reference after section (b), as follows:

Rule 8-411. TRANSCRIPT

(a) Ordering of Transcript

Unless a copy of the transcript is already on file, the appellant shall order in writing from the court stenographer a transcript containing:

(1) a transcription of (A) all the testimony or (B) that part of the testimony that the parties agree, by written stipulation filed with the clerk of the lower court, is necessary for the appeal or (C) that part of the testimony ordered by the Court pursuant to Rule 8-206 (d) or directed by the lower court in an order; and

(2) a transcription of any proceeding relevant to the appeal that was recorded pursuant to Rule 16-404 e.

(b) Time for Ordering

The appellant shall order the transcript within ten days or five days in child in need of assistance cases after:

(1) the date of an order entered pursuant to Rule 8-206 (a)(1) that the appeal proceed without a prehearing conference, or an order entered pursuant to Rule 8-206 (d) following a prehearing conference, unless a different time is fixed by that order, in all civil actions specified in Rule 8-205 (a), or

(2) the date the first notice of appeal is filed in all other actions.

Cross reference: Rule 8-207 (a).

(c) Filing and Service

The appellant shall (1) file a copy of the written order to the stenographer with the clerk of the lower court for inclusion in the record, (2) cause the original transcript to be filed promptly by the court reporter with the clerk of the lower court for inclusion in the record, and (3) promptly serve a copy on the appellee.

Source: This Rule is derived from former Rule 1026 a 2 and Rule 826 a 2 (b).

REPORTER'S NOTE

Child in need of assistance cases have been included in Rule 8-207 (a) as appropriate for an expedited appeal. However, pursuant to Rule 8-205 (a), information reports are not required in these cases. While information reports are required in adoption/guardianship cases and in cases involving issues of custody and visitation, they are not required in CINA cases. In cases controlled by Rule 8-207 and in which information reports are filed, the Court of Special Appeals issues orders directing that the cases proceed under Rule 8-207 (a) and setting out the shorter deadlines for ordering the transcript and for transmitting the record to the Court of Special Appeals. Absent such an order, circuit court clerks, attorneys, and *pro se* parties are likely to miss these deadlines. Leslie Gradet, Esq., Clerk of the Court of Special Appeals, suggests referring to

shorter time periods for CINA cases in Rules 8-411 and 8-412 rather than requiring circuit court clerks to earmark CINA cases on the monthly reports filed under Maryland Rule 16-309. She points out that even if the reports were modified by adding CINA cases, by the time they reach the Court of Special Appeals and are docketed, the five day period for ordering the transcript and the 30-day record transmittal period requirement would have passed. The Rules Committee recommends adding a reference to the time periods appropriate for CINA cases in Rule 8-411 and 8-412 and adding to those Rules a cross reference to Rule 8-207 (a).

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-412 to provide for a certain time period within which the record must be transmitted in child in need of assistance cases and to add a certain cross reference after section (a), as follows:

Rule 8-412. RECORD - TIME FOR TRANSMITTING

(a) To the Court of Special Appeals

Unless a different time is fixed by order entered pursuant to section (d) of this Rule, the clerk of the lower court shall transmit the record to the Court of Special Appeals within sixty days or thirty days in child in need of assistance cases after:

(1) the date of an order entered pursuant to Rule 8-206 (a)(1) that the appeal proceed without a prehearing conference, or an order entered pursuant to Rule 8-206 (d) following a prehearing conference, unless a different time is fixed by that order, in all civil actions specified in Rule 8-205 (a); or

(2) the date the first notice of appeal is filed, in all other actions.

Cross reference: Rule 8-207 (a).

(b) To the Court of Appeals

Unless a different time is fixed by order entered pursuant

to section (d) of this Rule, the clerk of the court having possession of the record shall transmit it to the Court of Appeals within 15 days after entry of a writ of certiorari directed to the Court of Special Appeals, or within sixty days after entry of a writ of certiorari directed to a lower court other than the Court of Special Appeals.

(c) When Record is Transmitted

For purposes of this Rule the record is transmitted when it is delivered to the Clerk of the appellate court or when it is sent by certified mail by the clerk of the lower court, addressed to the Clerk of the appellate court.

(d) Shortening or Extending the Time

On motion or on its own initiative, the appellate court having jurisdiction of the appeal may shorten or extend the time for transmittal of the record. If the motion is filed after the prescribed time for transmitting the record has expired, the Court will not extend the time unless the Court finds that the failure to transmit the record was caused by the act or omission of a judge, a clerk of court, the court stenographer, or the appellee.

Source: This Rule is derived from former Rules 1025 and 825.

REPORTER'S NOTE

See the Reporter's note to Rule 8-411.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-511 to require an amicus curiae to disclose certain information pertaining to other persons or entities that contributed to the preparation or submission of the brief, as follows:

Rule 8-511. AMICUS CURIAE

(a) Generally

A person may participate as an amicus curiae only with permission of the Court.

(b) Brief

The Court, on motion of an amicus curiae or a party or on its own initiative, may grant permission to the amicus curiae to file a brief. A motion requesting permission for an amicus curiae to file a brief shall (1) identify the interest of the amicus curiae, (2) state the reasons why the amicus brief is desirable, ~~and~~ (3) state the issues that the amicus curiae intends to raise, and (4) identify every person or entity, other than the amicus curiae, its members, or its counsel, who made a monetary or other contribution to the preparation or submission of the brief, and identify the nature of the contribution. The style (except for the color of the cover), content, and time for

filing of the amicus brief shall be the same as prescribed by these rules for the brief of the party whose position as to affirmance or reversal the amicus curiae supports.

(c) Oral Argument

The amicus curiae shall not participate in oral argument without permission of the Court. Permission shall be granted only for extraordinary reasons.

Source: This Rule is derived from ~~FRAP~~ Fed.R.App.P. 29 and Sup.Ct.R. 37 (b)6.

REPORTER'S NOTE

The proposed amendment to Rule 8-511 requires an amicus curiae to disclose any outside payments or other contributions toward the preparation of the amicus brief and the identity of the person or entity making the payment or contribution. The proposed new language is based upon Sup.Ct.R. 37 (b)6, with the addition of required disclosure as to non-monetary contributions.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-206 to conform subsection (b)(2) to recent legislation concerning the timing and content of the notice of sale sent to the record owner and to add a certain cross reference at the end of the Rule, as follows:

Rule 14-206. PROCEDURE PRIOR TO SALE

(a) Bond

Before making a sale of property to foreclose a lien, the person authorized to make the sale shall file a bond to the State of Maryland conditioned upon compliance with any court order that may be entered in relation to the sale of the property or distribution of the proceeds of the sale. Unless the court orders otherwise, the amount of the bond shall be the amount of the debt plus the estimated expenses of the proceeding. On application by a person having an interest in the property or by the person authorized to make the sale, the court may increase or decrease the amount of the bond pursuant to Rule 1-402 (d).

(b) Notice

(1) By Publication

After commencement of an action to foreclose a lien and before making a sale of the property subject to the lien, the person authorized to make the sale shall publish notice of the

time, place, and terms of sale in a newspaper of general circulation in the county in which the action is pending. "Newspaper of general circulation" means a newspaper satisfying the criteria set forth in Code, Article 1, Section 28. A newspaper circulating to a substantial number of subscribers in a county and customarily containing legal notices with respect to property in the county shall be regarded as a newspaper of general circulation in the county, notwithstanding that (1) its readership is not uniform throughout the county, or (2) its content is not directed at all segments of the population. For the sale of an interest in real property, the notice shall be given at least once a week for three successive weeks, the first publication to be not less than 15 days prior to sale and the last publication to be not more than one week prior to sale. For the sale of personal property, the notice shall be given not less than five days nor more than 12 days before the sale.

(2) By Certified and First Class Mail

(A) Before making a sale of the property, the person authorized to make the sale shall send notice of the time, place, and terms of sale by certified mail and by first class mail to the last known address of (i) the debtor, (ii) the record owner of the property, and (iii) the holder of any subordinate interest in the property subject to the lien.

(B) The notice of the sale shall be sent <u>to the record owner of the property no later than two days after the action to foreclose is docketed and shall include the notice required by</u>

Code, Real Property Article, §7-105 (a).

(C) The notice of the sale shall be sent not more than 30 days and not less than ten days before the date of the sale to all other such persons whose identity and address are actually known to the person authorized to make the sale or are reasonably ascertainable from a document recorded, indexed, and available for public inspection 30 days before the date of the sale.

(3) To Counties or Municipal Corporations

In addition to any other required notice, not less than 15 days prior to the sale of the property, the person authorized to make the sale shall send written notice to the county or municipal corporation where the property subject to the lien is located as to:

(A) the name, address, and telephone number of the person authorized to make the sale; and

(B) the time, place, and terms of sale.

(4) Other Notice

If the person authorized to make the sale receives actual notice at any time before the sale is held that there is a person holding a subordinate interest in the property and if the interest holder's identity and address are reasonably ascertainable, the person authorized to make the sale shall give notice of the time, place, and terms of sale to the interest holder as promptly as reasonably practicable in any manner, including by telephone or electronic transmission, that is reasonably calculated to apprise the interest holder of the sale.

This notice need not be given to anyone to whom notice was sent pursuant to subsection (b)(2) of this Rule.

(5) Return Receipt or Affidavit

The person giving notice pursuant to subsections (b)(2), (b)(3), and (b)(4) of this Rule shall file in the proceedings an affidavit (A) that the person has complied with the provisions of those subsections or (B) that the identity or address of the debtor, record owner, or holder of a subordinate interest is not reasonably ascertainable. If the affidavit states that an identity or address is not reasonably ascertainable, the affidavit shall state in detail the reasonable, good faith efforts that were made to ascertain the identity or address. If notice was given pursuant to subsection (b)(4), the affidavit shall state the date, manner, and content of the notice given.

(c) Postponement

If the sale is postponed, notice of the new date of sale shall be published in accordance with subsection (b)(1) of this Rule. No new or additional notice under subsection (b)(2) or (b)(3) of this Rule need be given to any person to whom notice of the earlier date of sale was sent, but notice shall be sent to persons entitled to notice under subsections (b)(2)(B) and (4) of this Rule to whom notice of the earlier date of sale was not sent.

Cross reference: Regarding foreclosure consulting contracts, see Code, Real Property Article, §§7-301 through 7-321.

Source: This Rule is derived in part from former Rule W74 and is in part new.

REPORTER'S NOTE

The General Assembly passed Chapter 509, (SB 761), Acts of 2005, pertaining to protection of homeowners in foreclosure. The Rules Committee recommends the addition of language to subsection (b)(2) of Rule 14-206 to conform to the notice provision in Code, Real Property Article, §7-105 that was added by the legislation and the addition of a cross reference at the end of Rule 14-206, referring to foreclosure consulting contracts, also added by the legislation.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 500 - TAX SALES

AMEND Rule 14-503 to add a new subsection (c)(2) allowing posting of property by a private person, as follows:

Rule 14-503. PROCESS

(a) Notice to Defendants Whose Whereabouts are Known

Upon the filing of the complaint, the clerk shall issue a summons as in any other civil action. The summons, complaint, and exhibits, including the notice prescribed by Rule 14-502 (b)(3), shall be served in accordance with Rule 2-121 on each defendant named in the complaint whose whereabouts are known.

(b) Notice to Defendants Whose Whereabouts are Unknown, Unknown Owners, and Unnamed Interested Persons

When the complaint includes named defendants whose whereabouts are unknown, unknown owners, or unnamed persons having or claiming to have an interest in the property, the notice filed in accordance with Rule 14-502 (b)(3), after being issued and signed by the clerk, shall be served in accordance with Rule 2-122.

(c) Posting of Property

Upon the filing of the complaint, the plaintiff shall cause ~~the sheriff to post a notice in a conspicuous place on the property. The content of the notice shall be as prescribed in~~

~~Rule 14-502 (b)(3).~~ a notice containing the information required by Rule 14-503 (b)(3) to be posted in a conspicuous place on the property. The posting may be made either by the sheriff or by a competent private person, appointed by the plaintiff, who is 18 years of age or older, including an attorney of record, but not a party to the action. A private person who posts the notice shall file with the court an affidavit setting forth the name and address of the affiant, the caption of the case, the date and time of the posting, and a description of the location of the posting and shall attach a photograph of the location showing the posted notice.

(d) Notice to Collector

Upon the filing of the complaint, the plaintiff shall mail a copy of the complaint and exhibits to the collector of taxes in the county in which the property is located.

Cross reference: For due process requirements, see *St. George Church v. Aggarwal*, 326 Md. 90 (1992).

Source: This Rule is new. Section (a) is derived in part from Code, Tax-Property Article, §14-839 (a). Section (b) is derived in part from Code, Tax-Property Article, §14-840. Section (c) is new. Section (d) is derived from Code, Tax-Property Article, §14-839 (c).

REPORTER'S NOTE

At the suggestion of John E. Reid, Esq., the Rules Committee recommends adding a provision to Rule 14-503 (c) allowing a private person to post notice of a tax sale on the property. Mr. Reid pointed out that often sheriffs cannot locate the property or cannot post the notice in a timely fashion. Allowing private persons to post the notice may speed up the process and conserve

the sheriffs' expenditures of resources. The Committee suggests that requiring private persons to file an affidavit containing a description and a photograph of the posting will safeguard the process.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 - CORAM NOBIS

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MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 - CORAM NOBIS

ADD new Rule 15-1101, as follows:

Rule 15-1101. APPLICABILITY

The Rules in this Chapter govern proceedings for a writ of coram nobis as to a prior judgment in a criminal action.

Committee note: The Rules in this Chapter are not intended to apply to proceedings for a writ of coram nobis as to judgments in civil actions.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 15-1101 provides that the Rules in this Chapter apply to proceedings for a writ of *coram nobis* where the underlying judgment is in a criminal action and are not intended to apply if the underlying judgment is in a civil action.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 - CORAM NOBIS

ADD new Rule 15-1102, as follows:

Rule 15-1102. PETITION

(a) Filing; Caption

An action for a writ of error coram nobis is commenced by the filing of a petition in the court where the conviction took place. The caption of the petition shall state the case number of the criminal action to which the petition relates. If practicable, the petition shall be filed in the criminal action.

Cross reference: For the authority of the District Court to issue a writ of error coram nobis, see Code, Courts Article, §1-609. See Rule 1-301 (a) for captioning and titling requirements of court papers.

(b) Content

(1) The petition shall include:

(A) the identity of the petitioner as the person subject to the judgment and sentence;

(B) the place and date of trial, the offense for which the petitioner was convicted, and the sentence imposed;

(C) a statement of all previous proceedings, including appeals, motions for new trial, post conviction petitions, and previous petitions for writ of error coram nobis, and the results of those proceedings;

(D) the facts that would have resulted in the entry of a

different judgment or the allegations of error upon which the petition is based;

(E) a statement that the allegations of error have not been waived;

(F) the significant collateral consequences that resulted from the challenged conviction;

(G) the unavailability of appeal, post conviction relief, or other remedies; and

(H) a demand for relief.

(2) The petition may include a concise argument with citation to relevant authority.

(c) Attachments

The petitioner shall attach to the petition all relevant portions of the transcript or explain why the petitioner is unable to do so.

(d) Service

The petitioner shall serve a copy of the petition and any attachments on the State's Attorney pursuant to Rule 1-321 (a).

(e) Amendment

Amendment of the petition shall be freely allowed when justice so permits.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 15-1102 is based in part on Rules 4-401 and 4-402, 39 Am. Jur. 2d, *Habeas Corpus and Post Conviction Remedies* §256 (2003), and *Skok v. State*, 361 Md. 52 (2000).

The Rules Committee recommends that, where practicable, the petition be filed in the criminal action to which it relates. The Committee considered whether the civil nature of coram nobis proceedings would be affected by filing the petition for a writ of error coram nobis in the underlying criminal action. The Committee examined other Rules in which a civil matter may be filed in a criminal action, such as Rule 15-206 (a) and the second sentence of Rule 4-403, and concluded that those Rules appear to be working satisfactorily.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 - CORAM NOBIS

ADD new Rule 15-1103, as follows:

Rule 15-1103. NOTICE OF PETITION

Upon the filing of a petition for a writ of error coram nobis, the clerk promptly shall notify the State's Attorney that the petition has been filed and the case number of the criminal action to which the petition relates.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 15-1103 is based on Rule 4-403, Notice of Petition.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 - CORAM NOBIS

ADD new Rule 15-1104, as follows:

Rule 15-1104. RESPONSE

The State's Attorney shall file a response to the petition within 30 days after the clerk gives notice of the filing, or within such other time as the court may order.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 15-1104 is based on Rule 4-404, Response. The Committee recommends, however, that the State's Attorney have 30 days to file a response after being notified that a petition was filed, instead of the 15 days provided for in Rule 4-404.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 - CORAM NOBIS

ADD new Rule 15-1105, as follows:

Rule 15-1105. VOLUNTARY DISMISSAL

Voluntary dismissal of a petition is governed by Rules 2-506 and 3-506.

Source: This Rule is new.

REPORTER'S NOTE

The Rules Committee recommends that Rules 2-506 and 3-506, rather than a new Rule based on Rule 4-405, the comparable post conviction Rule, govern voluntary dismissal of a petition.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 - CORAM NOBIS

ADD new Rule 15-1106, as follows:

Rule 15-1106. HEARING

(a) Generally

The court, in its discretion, may hold a hearing on the petition. The court may deny the petition without a hearing but may grant the petition only if a hearing is held. The court may permit evidence to be presented by affidavit, deposition, oral testimony, or any other manner that the court finds convenient and just. In the interest of justice, the court may decline to require strict application of the Rules in Title 5, except those relating to competency of witnesses.

(b) Notice to Victims

The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, §11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, §11-503. The notice shall state that (1) a petition for a writ of error coram nobis has been filed; (2) the petition has been denied without a hearing or the date, time, and location of the hearing; and (3)

each victim or victim's representative may attend any hearing and request the opportunity to be heard. The court may allow the testimony of a victim or victim's representative if relevant to an issue before the court.

Source: This Rule is new.

REPORTER'S NOTE

Section (a) of proposed new Rule 15-1106 is based on Rule 4-406, Hearing. Section (b) conforms the Rule to victims' rights laws, and is based on Rule 4-345 (e)(2).

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 - CORAM NOBIS

ADD new Rule 15-1107, as follows:

Rule 15-1107. STATEMENT AND ORDER OF COURT

(a) Statement

The judge shall prepare and file or dictate into the record a statement setting forth separately each ground on which the petition is based, the federal and state rights involved, the court's ruling with respect to each ground, and the reasons for the ruling.

(b) Order of Court

The statement shall include or be accompanied by an order granting or denying relief. If the order is in favor of the petitioner, the court may provide for rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper.

(c) Copy to the Parties

A copy of the order shall be filed promptly with the clerk and sent to the petitioner, petitioner's counsel, and the State's Attorney.

(d) Finality

The order constitutes a final judgment when entered by the clerk.

Committee note: An appeal from a District Court judgment under this Rule proceeds in accordance with the Rules in Title 7, Chapter 100 applicable in civil actions. An appeal from a circuit court judgment under this Rule proceeds in accordance with the Rules in Title 8.

Cross reference: See *Skok v. State*, 361 Md. 52 (2000).

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 15-1107 is based on Rule 4-407, Statement and Order of Court.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 5-101 to correct an obsolete statutory reference, to add language to subsection (c)(4) in light of the addition of rules pertaining to coram nobis proceedings, to add language to subsection (c)(7) to conform to a recent appellate opinion, and to make a certain stylistic change, as follows:

Rule 5-101. SCOPE

(a) Generally

Except as otherwise provided by statute or rule, the rules in this Title apply to all actions and proceedings in the courts of this State.

(b) Rules Inapplicable

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

(1) Proceedings before grand juries;

(2) Proceedings for extradition or rendition;

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

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

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

(6) Pretrial release under Rule 4-216 or release after conviction under Rule 4-349;

(7) Preliminary hearings under Rule 4-221;

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

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

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

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

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

Committee note: The Rules in this Chapter are not intended to limit the Court of Appeals in defining the application of the rules of evidence in sentencing proceedings in capital cases or to override specific statutory provisions regarding the admissibility of evidence in those proceedings. See, for example, *Tichnell v. State*, 290 Md. 43 (1981); Code, ~~Article 41, §4-609 (d)~~ Correctional Services Article, §6-112 (c).

(c) Discretionary Application

In the following proceedings, the court ~~may~~, in the interest of justice, may decline to require strict application of the rules in this Title other than those relating to the competency of witnesses:

(1) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 5-104 (a);

(2) Proceedings for revocation of probation under Rule 4-347;

(3) Hearings on petitions for post-conviction relief under Rule 4-406;

(4) Hearings on petitions for coram nobis under Rule 15-1106;

~~(4)~~ (5) Plenary proceedings in the Orphans' Court under Rule 6-462;

~~(5)~~ (6) Waiver hearings under Rule 11-113;

~~(6)~~ (7) Disposition hearings under Rule 11-115, including permanency planning hearings under Code, Courts Article, §3-823;

~~(7)~~ (8) Modification hearings under Rule 11-116; and

~~(8)~~ (9) Any other proceeding in which, prior to the adoption of the rules in this Title, the court was authorized to decline to apply the common-law rules of evidence.

Source: This Rule is derived from Uniform Rule of Evidence 1101.

REPORTER'S NOTE

The proposed amendments to Rule 5-101 make two additions to section (c) and correct an obsolete statutory reference.

Proposed new subsection (c)(4) conforms the Rule to proposed new Rule 15-1106, concerning hearings on a petition for a writ of *coram nobis* as to a prior judgment in a criminal action.

The proposed amendment to subsection (c)(7) conforms the Rule to the holding of *In Re: Ashley E.*, 387 Md. 260 (2005).

The amendment to the introductory clause of section (c) is stylistic, only.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

ADD new Rule 1-326, as follows:

Rule 1-326. PROCEEDINGS REGARDING VICTIMS AND VICTIMS' REPRESENTATIVES

(a) Entry of Appearance

An attorney may enter an appearance on behalf of a victim or a victim's representative in a proceeding under Title 4 or Title 11 of these Rules for the purpose of representing the rights of the victim or victim's representative.

(b) Service of Pleadings and Papers

A party shall serve, pursuant to Rule 1-321 on counsel for a victim or a victim's representative, copies of all pleadings or papers that relate to: (1) the right of the victim or victim's representative to be informed regarding the criminal or juvenile delinquency case, (2) the right of the victim or victim's representative to be present and heard at any hearing, or (3) restitution. Any additional pleadings and papers shall be served only if the court directs.

(c) Duties of Clerk

The clerk shall (1) send to counsel for a victim or victim's representative a copy of any court order relating to the rights of the victim referred to in section (b) of this Rule and

(2) notify counsel for a victim or a victim's representative of any hearing that may affect the rights of the victim or victim's representative.

Committee note: This Rule does not abrogate any obligation to provide certain notices to victims and victims' representatives required by statute or by other Rule.

Cross reference: See Maryland Declaration of Rights, Article 47; Rules 16-813, Maryland Code of Judicial Conduct, Canon 3B (6)(a); and Rule 16-814, Maryland Code of Conduct for Judicial Appointees, Canon 3B (6)(a). For definitions of "victim" and "victim's representative," see Code, Courts Article, §3-8A-01 and Code, Criminal Procedure Article, Title 11.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 1-326 establishes uniform procedures by which an attorney may enter an appearance to represent a victim or victim's representative in proceedings under Title 4 or Title 11 of these Rules. The Conference of Circuit Judges and the Maryland Crime Victims' Resource Center, Inc. support adoption of this Rule.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-415 by adding a certain cross reference, as follows:

Rule 6-415. PETITION AND ORDER FOR FUNERAL EXPENSES

When a petition for funeral expenses is required by law, it shall be filed in the following form:

[CAPTION]

PETITION AND ORDER FOR FUNERAL EXPENSES

I hereby request allowance of funeral expenses and I state that:

(1) The expenses are as follows (or as set forth in the attached statement or invoice):

_____

_____.

(2) The estate is (solvent) (insolvent).

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

Date: _____ _____

_____

Personal Representative(s)

_____
Attorney

_____
Address

_____

_____
Telephone Number

Certificate of Service

I hereby certify that on this _____ day of _____, (month)

_____, I delivered or mailed, postage prepaid, a copy of the (year)

foregoing Petition to the following persons: _____

_____.
(name and address)

_____
Signature

ORDER

Upon a finding that $_____ is a reasonable amount for funeral expenses, according to the condition and circumstances of the decedent, it is this _____ day of

_____, _____.
(month) (year)

ORDERED, by the Orphans' Court for _____ County, that this sum is allowed.

_____

_____

JUDGES

Cross reference: Code, Estates and Trusts Article, §§7-401 (i) and 8-106. For limitations on the amount of allowable funeral expenses, see Code, Estates and Trusts Article, §8-106 (b).

REPORTER'S NOTE

In Chapter 107, (SB 51) Acts of 2005, the legislature eliminated the maximum allowance for funeral expenses except for cases in administrative probate, judicial probate, and small estates. The Rules Committee recommends expanding the cross reference at the end of Rule 6-415 to draw attention to the amended statute, Code, Estates and Trusts Article, §8-106 (b).

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-109 to permit a certain disclosure pertaining to certain allegations of fraud or duress, as follows:

Rule 17-109. MEDIATION CONFIDENTIALITY

(a) Mediator

Except as provided in sections (c) and (d) of this Rule, a mediator and any person present or otherwise participating in the mediation at the request of the mediator shall maintain the confidentiality of all mediation communications and may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.

(b) Parties

Subject to the provisions of sections (c) and (d) of this Rule, (1) the parties may enter into a written agreement to maintain the confidentiality of all mediation communications and to require any person present or otherwise participating in the mediation at the request of a party to maintain the confidentiality of mediation communications and (2) the parties and any person present or otherwise participating in the mediation at the request of a party may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.

(c) Signed Document

A document signed by the parties that reduces to writing an agreement reached by the parties as a result of mediation is not confidential, unless the parties agree in writing otherwise.

Cross reference: See Rule 9-205 (d) concerning the submission of a memorandum of the points of agreement to the court in a child access case.

(d) Permitted Disclosures

In addition to any disclosures required by law, a mediator and a party may disclose or report mediation communications to a potential victim or to the appropriate authorities to the extent that they believe necessary to help:

(1) prevent serious bodily harm or death, ~~or~~

(2) assert or defend against allegations of mediator misconduct or negligence~~.~~, or

(3) assert or defend against a claim or defense that because of fraud or duress a contract arising out of a mediation should be rescinded.

Cross reference: For the legal requirement to report suspected acts of child abuse, see Code, Family Law Article, §5-705.

(e) Discovery; Admissibility of Information

Mediation communications that are confidential under this Rule are privileged and not subject to discovery, but information otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

Committee note: A neutral expert appointed pursuant to Rule 17-105.1 is subject to the provisions of sections (a), (b), and (e) of this Rule.

Source: This Rule is new.

REPORTER'S NOTE

At a Court conference on the One Hundred Fifty-Second Report of the Rules Committee, the Hon. Alan M. Wilner requested that the Rules Committee examine the issue of fraud in the mediation and consider recommending amendments to Rule 17-109 to address that issue.

The proposed addition of new subsection (d)(3) to Rule 17-109 expands upon Subsection 6 (b)(2) of the Uniform Mediation Act (2001), drafted by the National Conference of Commissioners on Uniform State Laws, which reads as follows:

> Section 6. Exceptions to Privilege.
>
> . . .
>
> (b) There is no privilege under Section 4 if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:
>
> . . .
>
> (2) except as otherwise provided in subsection (c), a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.
>
> (c) A mediator may not be compelled to provide evidence of a mediation communication referred to in subsection (a)(6) or (b)(2).

[**NOTE:** Subsection 6 (a)(6) to which Subsection 6 (c), above, refers, reads as follows:

(a) There is no privilege under Section 4 for a mediation communication that is:

. . .

(6) except as otherwise provided in subsection (c), sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice field against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation ...]

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-325 (d) to correct a reference to a certain agency, as follows:

Rule 2-325. JURY TRIAL

. . .

(d) Appeals from Administrative Agencies

In an appeal from the ~~Workmen's~~ Workers' Compensation Commission or other administrative body when there is a right to trial by jury, the failure of any party to file the demand within 15 days after the time for answering the petition of appeal constitutes a waiver of trial by jury.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 2-325 (d) corrects a reference to the Workmen's Compensation Commission, which should be a reference to the Workers' Compensation Commission.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-814 to add to the Terminology section a sentence concerning boldface type, as follows:

Rule 16-814. MARYLAND CODE OF CONDUCT FOR JUDICIAL APPOINTEES

. . .

Terminology

Terms explained below are noted in boldface type in the Canons and Comments where they appear.

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

(a) Fiduciary

"**Fiduciary**" includes administrator, attorney-in-fact by power of attorney, executor, guardian, personal representative, and trustee.

Cross reference: See Canons 3D (1)(c) and (2) and 4E. For a definition of "guardian," see Rule 1-202 (j).

. . .

REPORTER'S NOTE

The proposed amendment to Rule 16-814 adds to the Terminology section a sentence that explains the use of boldface type throughout the Rule. This sentence, which is included in Rule 16-813, Maryland Code of Judicial Conduct, was inadvertently omitted from Rule 16-814.