

COURT OF APPEALS STANDING COMMITTEE  
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held via Zoom  
for Government on Friday, January 7, 2022.

Members present:

Hon. Alan M. Wilner, Chair

H. Kenneth Armstrong, Esq.  
Hon. Vicki Ballou-Watts  
Julia Doyle Bernhardt, Esq.  
Hon. Pamela J. Brown  
Hon. Yvette M. Bryant  
Hon. John P. Davey  
Mary Ann Day, Esq.  
Alvin I. Frederick, Esq.  
Pamela Q. Harris, Court  
Administrator  
Irwin R. Kramer, Esq.

Victor H. Laws, III, Esq.  
Dawne D. Lindsey, Clerk  
Bruce L. Marcus, Esq.  
Donna Ellen McBride, Esq.  
Stephen S. McCloskey, Esq.  
Hon. Douglas R.M. Nazarian  
Hon. Paula A. Price  
Scott D. Shellenberger, Esq.  
Gregory K. Wells, Esq.  
Hon. Dorothy J. Wilson

In attendance:

Sandra F. Haines, Esq., Reporter  
Colby L. Schmidt, Esq., Deputy Reporter  
Meredith E. Drummond, Esq., Assistant Reporter  
Heather Cobun, Esq., Assistant Reporter

Brandy Cannon, Esq.  
Brendan Costigan, Esq., Assistant Public Defender  
Tom Dolina, Esq., MSBA  
Diana Hsu, Senior Analyst, Maryland Hospital Association  
Lisa Mannisi, Esq., Case Administrator, Circuit Court for Anne  
Arundel County  
Hon. John Morrissey, Chief Judge, District Court  
Sarah Parks, Court Business Services, JIS  
Gillian Tonkin, Esq., District Court  
Victor Velazquez, Esq., CEO, MSBA

Agenda Item 1. Consideration of proposed amendments to Rule 19-303.8 (Special Responsibilities of a Prosecutor).

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Mr. Frederick presented Rule 19-303.8, Special Responsibilities of a Prosecutor, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 19 - ATTORNEYS

CHAPTER 300 - MARYLAND ATTORNEYS' RULES OF  
PROFESSIONAL CONDUCT

AMEND Rule 19-303.8 to adopt sections (g) and (h) of ABA Model Rule 3.8 as sections (f) and (g), to add the relevant Model Rule Comments with minor changes to mirror existing language, and to make stylistic changes, as follows:

RULE 19-303.8. SPECIAL RESPONSIBILITIES OF  
A PROSECUTOR (3.8)

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, an attorney and has been given reasonable opportunity to obtain an attorney;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal; ~~and~~

(e) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent an employee or other person under the control of the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 19-303.6 (3.6) or this Rule;

(f) when a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit; and

(g) when a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

COMMENT

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Precisely how far the prosecutor is required to go in this direction is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to Prosecution Function, which in turn are the product of prolonged and careful deliberation by attorneys experienced in both criminal prosecution and defense. See also Rule 19-303.3 (d) (3.3), governing ex parte proceedings, among which grand jury proceedings are included. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 19-308.4 (8.4).

[2] Section (c) of this Rule does not apply to an accused appearing self-represented with the approval of the tribunal. Nor does it forbid the lawful questioning of a suspect who has knowingly waived the rights to an attorney and silence.

[3] The exception in section (d) of this Rule recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[4] Section (e) of this Rule supplements Rule 19-303.6 (3.6), which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements which a prosecutor may make which comply with Rule 19-303.6 (b) (3.6) or 19-303.6 (c) (3.6).

[5] Like other attorneys, prosecutors are subject to Rules 19-305.1 (5.1) and 19-305.3 (5.3), which relate to responsibilities regarding attorneys and non-attorneys who work for or are associated with the attorney's office. Section (e) of this Rule reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, section (e) of this Rule requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

[6] When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a person outside the prosecutor's jurisdiction was convicted of a crime that the person did not commit,

section (f) of this Rule requires prompt disclosure to the court or other appropriate authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in the prosecutor's jurisdiction, section (f) of this Rule requires the prosecutor to examine the evidence and undertake further investigation to determine whether the defendant is in fact innocent or make reasonable efforts to cause another appropriate authority to undertake the necessary investigation, and to promptly disclose the evidence to the court and, absent court-authorized delay, to the defendant. Consistent with the objectives of Rules 19-304.2 (4.2) and 19-304.3 (4.3), disclosure to a represented defendant must be made through the defendant's attorney, and, in the case of an unrepresented defendant, would ordinarily be accompanied by a request to a court for the appointment of an attorney to assist the defendant in taking such legal measures as may be appropriate.

[7] Under section (g) of this Rule, once the prosecutor knows of clear and convincing evidence that the defendant was convicted of an offense that the defendant did not commit, the prosecutor must seek to remedy the conviction. Necessary steps may include disclosure of the evidence to the defendant, requesting that the court appoint an attorney for an unrepresented indigent defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

[8] A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of sections (f) and (g) of this Rule, though subsequently determined to have been erroneous, does not constitute a violation of this Rule.

Model Rules Comparison: Rule 19-303.8 (3.8) has been rewritten to retain elements of existing Maryland language and to incorporate some changes from the Ethics 2000 Amendments to the ABA Model Rules and from the 2008 amendments to ABA Model Rule 3.8. ABA Model Rule 3.8 (e) has not been adopted.

Rule 19-303.8 was accompanied by the following Reporter's note:

In *Attorney Grievance Commission of Maryland v. Cassilly*, \_\_\_ Md. \_\_ (2021), the Court of Appeals considered several Attorneys' Rules of Professional Conduct, including Rule 19-303.8 (3.8). The Court noted that the American Bar Association ("ABA") Model Rule 3.8 was amended in 2008 to add paragraphs (g) and (h) expressly addressing a prosecutor's ethical obligations after a conviction. In a footnote, the Court referred Rule 19-303.8 to the Committee to consider whether a similar amendment should be made to the Maryland Rule. See Slip Op. at 71.

Proposed amendments to Rule 19-303.8 add sections (g) and (h) of ABA Model Rule 3.8 as sections (f) and (g), respectively. Stylistic changes are made to this Rule to account for the addition of the new sections. The relevant Comments from the Model Rule, including Comments [7], [8], and [9] have also been added to Rule 19-303.8 as Comments [6], [7], and [8], with stylistic changes. The Model Rules Comparison is updated in accordance with the proposed amendments.

Mr. Frederick explained that the Court of Appeals, by footnote in *Attorney Grievance Commission of Maryland v. Cassilly*, \_\_\_ Md. \_\_ (2021), referred to the Committee whether

Rule 19-303.8 should be amended to expressly address a prosecutor's ethical obligations after a conviction. American Bar Association ("ABA") Model Rule 3.8 was amended to include this provision in 2008. The Model Rule and the proposed amendment to Rule 19-303.8 require certain affirmative steps by a prosecutor after a conviction if evidence is discovered creating a reasonable likelihood that the defendant did not commit the offense. He said that the Attorneys and Judges Subcommittee found the ABA language helpful and appropriate and that Mr. Shellenberger, who attended the Subcommittee meeting, concurred. The Chair asked if the "prosecutor" referenced in the Rule refers to an elected prosecutor only or if it can mean an assistant State's Attorney in the office. Mr. Shellenberger said that his understanding is that any attorney in his office is obliged to follow the Rule and not required to go through him first. He informed the Committee that he circulated the proposed amendment to the elected State's Attorneys and heard no opposition. Mr. Frederick said that in his experience defending assistant State's Attorneys in attorney grievance proceedings, the Attorney Grievance Commission reads the Rule as Mr. Shellenberger did as applying to any attorney in a prosecutor's office.

There being no motion to amend or reject the proposed Rule, it was approved as presented.



Agenda Item 2. Consideration of proposed amendments to Rule 2-652 (Enforcement of Attorney's Liens).

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Mr. Frederick presented Rule 2-652, Enforcement of Attorney's Liens, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-652 by deleting section (a) and the related cross reference, and by re-lettering and conforming subsequent sections to account for the deletion, as follows:

RULE 2-652. ENFORCEMENT OF ATTORNEY'S LIENS

~~—(a) Retaining Lien~~

~~————— Except as otherwise provided by the Maryland Attorneys' Rules of Professional Conduct, an attorney who has a common-law retaining lien for legal services rendered to a client may assert the lien by retaining the papers of the client in the possession of the attorney until the attorney's claim is satisfied.~~

~~Cross reference: Maryland Attorneys' Rules of Professional Conduct 19-301.8, 19-301.15, and 19-301.16.~~

~~(b) (a) Statutory Lien~~

An attorney who has a lien under Code, Business Occupations and Professions Article, § 10-501, may assert the lien by serving a written notice by certified mail or personal delivery upon the client and upon each person against whom the lien is to be enforced. The notice shall claim the lien, state the attorney's interest in the action, proceeding, settlement, judgment, or award, and inform the client or other person to hold any money payable or property passing to the client relating to the action, proceeding, settlement, judgment, or award.

Cross reference: Code, Business Occupations and Professions Article, § 10-501(d).

~~(e)~~ (b) Adjudication of Rights and Lien Disputes

(1) When a Circuit Court Action Has Been Filed

If a lien asserted pursuant to this Rule relates to an action that has been filed in a circuit court of this State, on motion filed by the attorney, the attorney's client in the action, or any person who has received a notice pursuant to section (b) (a) of this Rule, the court shall adjudicate the rights of the parties in relation to the lien, including the attorney's entitlement to a lien, any dispute as to the papers subject to a lien under section (a) of this Rule, and the amount of the attorney's claim.

(2) When No Circuit Court Action Has Been Filed

If a lien is asserted pursuant to this Rule and a related action has not been filed in a circuit court of this State, the attorney, the attorney's client, or any person who has received a notice pursuant to section ~~(b)~~ (a) of this Rule may file a complaint with a circuit court to adjudicate the rights of the parties in relation to the lien, including the attorney's entitlement

to a lien, any dispute as to the papers subject to a lien under section (a) of this Rule, and the amount of the attorney's claim.

Cross reference: For venue of a complaint filed pursuant to this section, see Code, Courts Article, §§ 6-201 - 203.

Source: This Rule is new.

Rule 2-652 was accompanied by the following Reporter's note:

Rule 2-652 addresses two types of attorney's liens: retaining liens and statutory liens, also known as charging liens. The retaining lien originated in common law and permits an attorney to retain papers of the client until the attorney's claim is satisfied. In practice, however, enforcing a retaining lien often conflicts with an attorney's ethical obligations. For example, Rule 19-301.15 (d) (1.15) requires that an attorney "deliver promptly to the client or third person any funds or other property that the client or third person is entitled to receive..." In addition, Rule 19-301.16 (d) (1.16) provides that, "[u]pon termination of representation, an attorney shall take steps to the extent reasonably practicable to protect a client's interests such as...surrendering papers and property to which the client is entitled..." In other words, if the client requires the papers to protect his or her interests, the attorney risks sanctions for professional misconduct pursuant to Rules 19-301.15 and 19-301.16 by asserting a retaining lien. In the alternative, if the papers being retained have no impact on the client's interests, the assertion of a retaining lien will likely have limited coercive effect on the client. As a result, it appears that an

attorney's retaining lien has limited utility in practice.

The Subcommittee considered that other states have limited or eliminated the common law retaining lien by Rule. For example, Rule 1.8 (i) of the Rules Governing the District of Columbia Bar provides that an attorney may only impose a lien upon his or her work product to the extent that payment has not been received for the product. However, "[t]his work product exception shall not apply when the client has become unable to pay, or when withholding the lawyer's work product would present a significant risk to the client or irreparable harm." DC R RPC Rule 1.8 (i). Similarly, the Virginia Rules of Professional Conduct appear to eliminate the attorney retaining lien by requiring certain documents from the attorney's file to be provided to the client upon request, "whether or not the client has paid the fees and costs owed the lawyer." Accordingly, it appears that other jurisdictions have recognized and acted upon the issues associated with an attorney's retaining lien.

Upon consideration of the above, proposed amendments to Rule 2-652 delete section (a) concerning retaining liens. The cross reference following the section is also deleted. Subsequent sections are re-lettered and updated accordingly.

Mr. Frederick said that there are two types of attorney liens: retaining liens, which involve holding the papers of the client until the attorney is paid, and charging liens. Mr. Kramer had alerted the Attorneys and Judges Subcommittee that section (a) of Rule 2-652 is a problem because it permits an attorney to retain papers and files of a client even though

other Rules explicitly prohibit it. Mr. Frederick said that the Subcommittee unanimously recommended this amendment with the support of Bar Counsel Lydia Lawless, who attended the Subcommittee meeting.

There being no motion to amend or reject the proposed amendment, it was approved as presented.

Agenda Item 3. Consideration of proposed amendments to Rule 3-306 (Judgment of Affidavit).

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Judge Wilson presented Rule 3-306, Judgment of Affidavit, for consideration.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-306 by revising the definition of "original creditor" in subsection (a)(5), as follows:

RULE 3-306. JUDGMENT ON AFFIDAVIT

(a) Definitions

In this Rule the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(1) Charge-Off

"Charge-off" means the act of a creditor that treats an account receivable or other debt as a loss or expense because payment is unlikely.

(2) Charge-Off Balance

"Charge-off balance" means the amount due on the account or debt at the time of charge-off.

(3) Consumer Debt

"Consumer debt" means a secured or unsecured debt that is for money owed or alleged to be owed and arises from a consumer transaction.

(4) Consumer Transaction

"Consumer transaction" means a transaction involving an individual seeking or acquiring real or personal property, services, future services, money, or credit for personal, family, or household purposes.

(5) Original Creditor

"Original creditor" means the lender, provider, or other person to whom a consumer originally was alleged to owe money pursuant to a consumer transaction.

"Original creditor" includes a creditor excluded from the definition of "debt buyer" in Code, Courts Article, § 5-1201(i)(2)(v) and the Central Collection Unit, a unit within the State Department of Budget and Management.

(6) Original Consumer Debt

"Original consumer debt" means the total of the consumer debt alleged to be owed to the original creditor, consisting of principal, interest, fees, and any other charges.

Committee note: If there has been a charge-off, the amount of the "original consumer debt" is the same as the "charge-off balance."

(7) Principal

"Principal" means the unpaid balance of the funds borrowed, the credit utilized, the sales price of goods or services obtained, or the capital sum of any other debt or obligation arising from a consumer transaction, alleged to be owed to the original creditor. It does not include interest, fees, or charges added to the debt or obligation by the original creditor or any subsequent assignees of the consumer debt.

(8) Future Services

"Future services" means one or more services that will be delivered at a future time.

(9) Future Services Contract

"Future services contract" means an agreement that obligates a consumer to purchase a future service from a provider.

(10) Provider

"Provider" means any person who sells a service or future service to a consumer.

(b) Demand for Judgment by Affidavit

In an action for money damages a plaintiff may file a demand for judgment on affidavit at the time of filing the complaint commencing the action. The complaint shall be supported by an affidavit showing that the plaintiff is entitled to judgment as a matter of law in the amount claimed.

(c) Affidavit and Attachments - General Requirements

The affidavit shall:

(1) be made on personal knowledge;

(2) set forth such facts as would be admissible in evidence;

(3) show affirmatively that the affiant is competent to testify to the matters stated in the affidavit; and

(4) include or be accompanied by:

(A) supporting documents or statements containing sufficient detail as to liability and damages, including the precise amount of the claim and any interest claimed;

(B) if interest is claimed, an interest worksheet substantially in the form prescribed by the Chief Judge of the District Court;

(C) if attorneys' fees are claimed, sufficient proof evidencing that the plaintiff is entitled to an award of attorneys' fees and that the fees are reasonable; and

(D) if the claim is founded upon a note, security agreement, or other instrument, the original or a photocopy of the executed instrument, or a sworn or certified copy, unless the absence thereof is explained in the affidavit.

(d) If Claim Arises From Assigned Consumer Debt

If the claim arises from consumer debt and the plaintiff is not the original creditor, the affidavit also shall include or be accompanied by (i) the items listed in this section, and (ii) an Assigned Consumer Debt Checklist, substantially in the form prescribed by the Chief Judge of the District Court, listing the items and information supplied in or with the affidavit in conformance with this Rule. Each document that accompanies the affidavit shall be clearly numbered as an exhibit and referenced by number in the Checklist.

(1) Proof of the Existence of the Debt or Account

Proof of the existence of the debt or account shall be made by a certified or



otherwise properly authenticated photocopy or original of at least one of the following:

(A) a document signed by the defendant evidencing the debt or the opening of the account;

(B) a bill or other record reflecting purchases, payments, or other actual use of a credit card or account by the defendant; or

(C) an electronic printout or other documentation from the original creditor establishing the existence of the account and showing purchases, payments, or other actual use of a credit card or account by the defendant.

(2) Proof of Terms and Conditions

(A) Except as provided in subsection (d)(2)(B) of this Rule, if there was a document evidencing the terms and conditions to which the consumer debt was subject, a certified or otherwise properly authenticated photocopy or original of the document actually applicable to the consumer debt at issue shall accompany the affidavit.

(B) Subsection (d)(2)(A) of this Rule does not apply if (i) the consumer debt is an unpaid balance due on a credit card; (ii) the original creditor is or was a financial institution subject to regulation by the Federal Financial Institutions Examination Council or a constituent federal agency of that Council; and (iii) the claim does not include a demand or request for attorneys' fees or interest on the charge-off balance in excess of the Maryland Constitutional rate of six percent per annum.

Committee note: This Rule is procedural only, and subsection (d)(2)(B)(iii) is not intended to address the substantive issue of whether interest in any amount may be charged on a part of the charge-off balance

that, under applicable and enforceable Maryland law, may be regarded as interest.

Cross reference: See Federal Financial Institutions Examination Council Uniform Retail Credit Classification and Account Management Policy, 65 Fed. Reg. 36903--36906 (June 12, 2000).

(3) Proof of Plaintiff's Ownership

The affidavit shall contain a statement that the plaintiff owns the consumer debt. It shall include or be accompanied by:

(A) a chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership of the debt, beginning with the name of the original creditor; and

(B) a certified or other properly authenticated copy of the bill of sale or other document that transferred ownership of the debt to each successive owner, including the plaintiff.

Committee note: If a bill of sale or other document transferred debts in addition to the consumer debt upon which the action is based, the documentation required by subsection (d)(3)(B) of this Rule may be in the form of a redacted document that provides the general terms of the bill of sale or other document and the document's specific reference to the debt sued upon.

(4) Identification and Nature of Debt or Account

The affidavit shall include the following information:

(A) the name of the original creditor;

(B) the full name of the defendant as it appears on the original account;

(C) the last four digits of the social security number for the defendant appearing on the original account, if known;

(D) the last four digits of the original account number; and

(E) the nature of the consumer transaction, such as utility, credit card, consumer loan, retail installment sales agreement, service, or future services.

(5) Future Services Contract Information

If the claim is based on a future services contract, the affidavit shall contain facts evidencing that the plaintiff currently is entitled to an award of damages under that contract.

(6) Account Charge-Off Information

If there has been a charge-off of the account, the affidavit shall contain the following information:

(A) the date of the charge-off;

(B) the charge-off balance;

(C) an itemization of any fees or charges claimed by the plaintiff in addition to the charge-off balance;

(D) an itemization of all post-charge-off payments received and other credits to which the defendant is entitled; and

(E) the date of the last payment on the consumer debt or of the last transaction giving rise to the consumer debt.

(7) Information for Debts and Accounts Not Charged Off

If there has been no charge-off, the affidavit shall contain:

(A) an itemization of all money claimed by the plaintiff, (i) including principal, interest, finance charges, service charges, late fees, and any other fees or charges added to the principal by

the original creditor and, if applicable, by subsequent assignees of the consumer debt and (ii) accounting for any reduction in the amount of the claim by virtue of any payment made or other credit to which the defendant is entitled;

(B) a statement of the amount and date of the consumer transaction giving rise to the consumer debt, or in instances of multiple transactions, the amount and date of the last transaction; and

(C) a statement of the amount and date of the last payment on the consumer debt.

(8) Licensing Information

The affidavit shall include a list of all Maryland collection agency licenses that the plaintiff currently holds and provide the following information as to each:

(A) license number,

(B) name appearing on the license, and

(C) date of issue.

Cross reference: See Code, Courts Article, § 5-1203 (b) (2), concerning the plaintiff's requirements if a judgment on affidavit under section (d) of this Rule is denied.

(e) Subsequent Proceedings

(1) When Notice of Intention to Defend Filed

If the defendant files a timely notice of intention to defend pursuant to Rule 3-307, the plaintiff shall appear in court on the trial date prepared for a trial on the merits. If the defendant fails to appear in court on the trial date, the court may proceed as if the defendant failed to file a timely notice of intention to defend.

(2) When No Notice of Intention to Defend Filed

(A) If the defendant fails to file a timely notice of intention to defend, the plaintiff need not appear in court on the trial date and the court may determine liability and damages on the basis of the complaint, affidavit, and supporting documents filed pursuant to this Rule. If the defendant fails to appear in court on the trial date and the court determines that the pleading and documentary evidence are sufficient to entitle the plaintiff to judgment, the court shall grant the demand for judgment on affidavit.

(B) If the court determines that the pleading and documentary evidence are insufficient to entitle the plaintiff to judgment on affidavit, the court may deny the demand for judgment on affidavit or may grant a continuance to permit the plaintiff to supplement the documentary evidence filed with the demand. If the defendant appears in court at the time set for trial and it is established to the court's satisfaction that the defendant may have a meritorious defense, the court shall deny the demand for judgment on affidavit. If the demand for judgment on affidavit is denied or the court grants a continuance pursuant to this section, the clerk shall set a new trial date and mail notice of the reassignment to the parties, unless the plaintiff is in court and requests the court to proceed with trial.

Cross reference: Rule 3-509.

(f) Reduction in Amount of Damages

Before entry of judgment, the plaintiff shall inform the court of any reduction in the amount of the claim by virtue of any payment or other credit.

(g) Notice of Judgment on Affidavit

When a demand for judgment on affidavit is granted, the clerk shall mail notice of the judgment promptly after its entry to each party at the latest address

stated in the pleadings. The notice shall inform (1) the plaintiff of the right to obtain a lien on real property pursuant to Rule 3-621, and (2) the defendant of the right to file a motion to vacate the judgment within 30 days after its entry pursuant to Rule 3-535 (a). The clerk shall ensure that the docket or file reflects compliance with this section.

Source: This Rule is derived as follows:

Section (a) is new.

Section (b) is derived from former M.D.R. 610 a.

Section (c) is derived from former M.D.R. 610 a.

Section (d) is new.

Section (e) is derived from former M.D.R. 610 b, c, and d.

Section (f) is derived from former M.D.R. 610 e.

Section (g) is derived from former M.D.R. 610 d.

Rule 3-306 was accompanied by the following Reporter's

note:

A plaintiff seeking an affidavit judgment pursuant to section (d) of Rule 3-306 is a plaintiff with a claim that arises from consumer debt who is not the original creditor. Rule 3-306 (d) requires plaintiffs to submit certain documentation when seeking an affidavit judgment. Code, Courts Article, § 5-1201 *et seq.* also addresses consumer debt collection actions. A plaintiff in § 5-1203 is a debt buyer or collector acting on behalf of a debt buyer in a consumer debt collection action. § 5-1203(b)(2) requires certain documentary evidence before a court may enter judgment in favor of a debt buyer. § 5-1201(i)(2) excludes several types of companies and entities from the definition of "debt buyer."

It was recently brought to the attention of the Committee that the definition of "original creditor" in Rule 3-306 (a) (5) is inconsistent with the definition of "debt buyer" in Code, Courts Article, § 5-1201. While all plaintiffs under Code, Courts Article, § 5-1203(b) (2) qualify as plaintiffs under Rule 3-306 (d), not all plaintiffs under the Rule qualify as plaintiffs under the Code section.

For example, consider a plaintiff sales finance company that provides financing for a vehicle. The plaintiff is not the original creditor and, therefore, the requirements of Rule 3-306 (d) apply if an affidavit judgment is requested. However, the plaintiff may be excluded from the definition of "debt buyer" in Code, Courts Article, § 5-1201(i) (2), if certain requirements are met, because it is "[a] sales finance company or any other person that acquires consumer debt arising from a retail installment sale agreement." As a result, although the documentary requirements of Rule 3-306 (d) apply to a request for an affidavit judgment from the plaintiff, the documentary requirements of Code, Courts Article, § 5-1203(b) (2) do not apply if a judgment on affidavit is denied.

To address this inconsistency, the definition of "original creditor" in Rule 3-306 is proposed to be amended to include those entities excluded from the definition of "debt buyer" in the Code.

Judge Wilson said that the proposed amendment alters the definition of "original creditor" in subsection (a) (5) by including creditors that are not defined as debt buyers by Code, Courts Article, § 5-1201 (i) (2) (v). As an example, she explained that in a typical affidavit judgment case for a retail

sales installment agreement, the original creditor is a finance company. However, the current definition of original creditor excludes a finance company and requires such a creditor to comply with section (d), which was intended to apply to assigned consumer debt. The statute excludes debt buyers from the finance company definition.

There being no motion to amend or reject the proposed Rule, it was approved as presented.

Agenda Item 4. Consideration of proposed amendments to Rules 3-533 (Motion for New Trial) and 3-534 (Motion to Alter or Amend Judgment).

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Judge Wilson presented Rules 3-533, Motion for New Trial, and 3-534, Motion to Alter or Amend Judgment, for consideration.

#### MARYLAND RULES

#### TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

#### CHAPTER 500 - TRIAL

AMEND Rule 3-533 by adding new subsection (a)(2) pertaining to the effect of a shortened appeal time by statute, by adding a cross reference after section (a), and by making stylistic changes, as follows:

Rule 3-533. MOTION FOR NEW TRIAL

(a) Time for Filing



(1) Generally

Subject to subsection (a)(2) of this Rule, any ~~Any~~ party may file a motion for new trial within ten days after entry of judgment. A party whose judgment has been amended on a motion to amend the judgment may file a motion for new trial within ten days after entry of the amended judgment.

(2) Appeal Time of Less than Ten Days Provided by Statute

Where a statute provides for an appeal time of less than ten days after entry of judgment, a motion under this Rule, even if timely filed, does not toll the time to appeal unless it is filed within the statutory time period.

Cross reference: For shorter appeal times provided by statute, see Code, Real Property Article, §§8-401 and 8A-1701. See Rule 7-104 (c) concerning the time for filing a notice of appeal when a motion has been filed under this Rule.

. . .

Rule 3-533 was accompanied by the following Reporter's note:

Proposed amendments to Rules 3-533 and 3-534 conform them to amendments made to Rule 7-104 relating to the impact of filing post-judgment motions in proceedings where a statute requires an appeal to be noted less than ten days after entry of judgment. See the Reporter's note following Rule 7-104 for more information.

The Appellate and District Court Subcommittees both discussed requiring a timely motion in these cases to be filed within the shorter appeal time.

Practitioners opposed this proposal because they advised that parties may learn of the judgment against them too late to appeal but do still want to file post judgment motions. An order denying those motions is appealable and subject to an abuse of discretion review.

Proposed new subsection (a)(2) is derived from the Committee note following section (c) in Rule 7-104. It clarifies that post-judgment motions pursuant to this Rule may be filed within 10 days and be considered timely, but must be filed within the statutory time to appeal to preserve that right.

## MARYLAND RULES

### TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

#### CHAPTER 500 - TRIAL

AMEND Rule 3-534 by adding new section (b) pertaining to the effect of a shortened appeal time by statute, by adding a cross reference after section (b), and by making stylistic changes, as follows:

Rule 3-534. MOTION TO ALTER OR AMEND  
JUDGMENT

(a) Generally

Subject to section (b) of this Rule,  
on ~~on~~ motion of any party filed within ten  
days after entry of judgment, the court may  
open the judgment to receive additional  
evidence, may amend its findings or its  
statement of reasons for the decision, may

set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial.

(b) Appeal Time of Less than Ten Days Provided by Statute

Where a statute provides for an appeal time of less than ten days after entry of judgment, a motion under this Rule, even if timely filed, does not toll the time to appeal unless it is filed within the statutory time period.

Cross reference: For shorter appeal times provided by statute, see Code, Real Property Article, §§8-401 and 8A-1701. See Rule 7-104 (c) concerning the time for filing a notice of appeal when a motion has been filed under this Rule.

Source: This Rule is derived from the 1983 version of Fed. R. Civ. P. 52 (b) and the 1966 version of Fed. R. Civ. P. 59 (a).

Rule 3-534 was accompanied by the following Reporter's note:

Proposed amendments to Rules 3-533 and 3-534 conform them to amendments made to Rule 7-104 relating to the impact of filing post-judgment motions in proceedings where a statute requires an appeal to be noted less than ten days after entry of judgment. See the Reporter's note following Rule 7-104 for more information.

Judge Wilson told the Committee that the Court of Appeals had referred to the Committee the issue of the time to appeal in a summary ejectment proceeding when timely post-judgment motions

are filed. The Appellate Subcommittee recommended amendments to Rule 7-104, which were approved by the Committee in October. The Appellate Subcommittee referred to the District Court Subcommittee a question regarding the appropriate time for filing those motions in District Court where the statutory time to appeal is shorter than ten days. She said that the District Court Subcommittee recommends amendments to the Rules conforming them to the proposed new Committee note following section (c) in Rule 7-104.

Judge Wilson explained that new subsection (a)(2) in Rule 3-533 states that a motion filed within ten days of judgment is timely, but it only tolls the time to appeal in a case where the statutory time to appeal is less than ten days if filed in the shortened time to appeal. A cross reference following section (a) refers to the statutes with shorter appeal times and Rule 7-104 (c).

The Chair clarified that the "it" in subsection (a)(2) refers to the motion. Judge Wilson confirmed that as the correct reading, and Judge Bryant suggested amending the Rule for clarification. The Chair also suggested rephrasing the first sentence of subsection (a)(2) to read "If a statute" rather than "Where a statute." By consensus, the Committee approved the amendments.

There being no motion to further amend or reject the proposed changes to Rule 3-533, the Rule was approved as amended.

Judge Wilson said that similar changes are proposed to Rule 5-334. She noted that the same stylistic changes should be made that were made to Rule 5-333. By consensus, the Committee approved Rule 3-534 as amended.

Agenda Item 5. Consideration of proposed amendments to Rule 7-102 (Modes of Appeal).

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Judge Wilson presented Rule 7-102, Modes of Appeal, for consideration.

MARYLAND RULES OF PROCEDURE  
TITLE 7 - APPELLATE AND OTHER JUDICIAL  
REVIEW IN CIRCUIT COURT  
CHAPTER 100 - APPEALS FROM THE DISTRICT  
COURT  
TO THE CIRCUIT COURT

AMEND Rule 7-102 by adding a cross reference after subsection (b) (1), as follows:

RULE 7-102. MODES OF APPEAL

(a) De Novo

Except as provided in section (b) of this Rule, an appeal shall be tried de novo in all civil and criminal actions.

Cross reference: For examples of appeals to the circuit court that are tried de novo, see Code, Courts Article, § 12-401(f), concerning a criminal action in which sentence has been imposed or suspended following a plea of guilty or nolo contendere and an appeal in a municipal infraction or Code violation case; Code, Courts Article, § 3-1506, concerning an appeal from the grant or denial of a petition seeking a peace order; and Code, Family Law Article, § 4-507, concerning an appeal from the grant or denial of a petition seeking relief from abuse.

(b) On the Record

An appeal shall be heard on the record made in the District Court in the following cases:

(1) a civil action in which the amount in controversy exceeds \$5,000 exclusive of interest, costs, and attorney's fees if attorney's fees are recoverable by law or contract;

Cross reference: For computation of the amount in controversy in an action involving a claim for possession or repossession of property, see *Velicky v. The Copycat Building LLC*, Md. (2021) and *Purvis v. Forest Street Apartments*, 286 Md. 398 (1979).

(2) any matter arising under § 4-401 (7) (ii) of the Courts Article;

(3) any civil or criminal action in which the parties so agree;

(4) an appeal from an order or judgment of direct criminal contempt if the sentence imposed by the District Court was less than 90 days' imprisonment; and

(5) an appeal by the State from a judgment quashing or dismissing a charging document or granting a motion to dismiss in a criminal case.

Source: This Rule is new but is derived in part from Code, Courts Article, § 12-401(b), (c), and (f).

Rule 7-102 was accompanied by the following Reporter's note:

On November 29, 2021, *Velicky v. The Copycat Building LLC*, \_\_ Md. \_\_ (2021) was filed. In *Velicky*, the Court held that the value of the right to repossession of property must be considered when determining the mode of an appeal from the District Court to a circuit court. Accordingly, a cross reference to *Velicky* addressing the computation of the amount in controversy in actions involving claims for possession or repossession of property is added after Rule 7-102 (b) (1). The proposed cross reference also cites *Purvis v. Forest Street Apartments*, 286 Md. 398 (1979), which contains the analysis relied upon by the Court in *Velicky*.

Judge Wilson explained that the proposed amendment to Rule 7-102 adds a cross reference to the recent Court of Appeals decision in *Velicky v. The Copycat Building LLC*, \_\_ Md. \_\_ (2021) and to a second case clarifying computation of the amount in controversy in actions involving claims for possession or repossession of property.

There being no motion to amend or reject the proposed Rule change, Rule 7-102 was approved as presented.

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