STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Seventy-Fourth Report to the Court of Appeals, transmitting thereby the proposed deletion of existing Rules in Title 17 of the Maryland Rules and a proposed new Title 17, the proposed deletion of Rule 9-205 and a proposed new Rule 9-205, the proposed deletion of Rule 11-601, and proposed amendments to Rules 2-214, 2-303, 2-305, 2-311, 2-401, 2-403, 2-504.1, 2-510, 2-521, 2-643, 3-305, 3-510, 3-722, 4-212, 4-214, 4-216, 4-216.1, 4-217, 4-242, 4-243, 4-262 (a) and (m), 4-263 (a) and (m), 4-266, 4-326, 4-331, 4-345, 4-501, 4-504, 4-711, 5-404, 6-416, 7-112, 9-105, 14-212, 15-1001, and 15-1201, Form 4-504.1, and Rules 4 and 19 of the Rules Governing Admission to the Bar of Maryland.

The Committee's One Hundred Seventy-Fourth 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 September 10, 2012 any written comments they may wish to make to:

Sandra F. Haines, Esq.
Reporter, Rules Committee
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Annapolis, Maryland 21401

BESSIE M. DECKER
Clerk
Court of Appeals of Maryland

July 26, 2012

The Honorable Robert M. Bell,
Chief Judge
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.
The Honorable Sally D. Adkins
The Honorable Mary Ellen Barbera,
The Honorable Robert N. McDonald
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 Seventy-Fourth Report and recommends that the Court adopt the new Rules and amendments to existing Rules transmitted with this Report. The Report comprises twelve categories. For the Court's convenience, we have included in the Category One submission, a clean version of the proposed new Rules and a marked version showing the changes from the existing Rules.

Category One consists of (1) a revision of the existing Rules in Title 17 of the Maryland Rules that apply to court-ordered ADR in general civil actions in the Circuit Courts, (2) a new set of Rules for court-ordered ADR in civil actions in the District Court, (3) a re-writing of Rule 9-205 dealing with court-ordered mediation in child custody and visitation cases, to make that Rule more self-contained and to conform it to some of the requirements and limitations applicable to court-ordered mediation in other civil actions in the Circuit Courts, and (4) conforming amendments to Rules 2-504.1 (Scheduling Conference) and 14-212 (Alternative Dispute Resolution).

The new Title 17 would be divided into three Chapters – Chapter 100 containing some general provisions, Chapter 200

dealing with general civil actions in the Circuit Courts, and Chapter 300 dealing with civil actions in the District Court. The Committee has reserved a Chapter 400 for court-ordered ADR in the Court of Special Appeals and a possible Chapter 500 for court-ordered ADR in the orphans' courts. With limited exceptions, the most notable being Rules 9-205 (child custody and visitation) and 14-212 (foreclosure actions), the goal is to have all of the Rules governing court-ordered ADR centered in one Title.

The development of these proposed changes and additions has been through an extensive vetting process. The ADR Subcommittee, which met numerous times, had the benefit of consultants from the circuit and district courts and from the ADR community, and the full Committee considered presentations from an even broader spectrum of interested groups and individuals at two open meetings.

Category Two consists of proposed amendments to Rules 2-521 and 4-326 (Jury – Review of Evidence – Communications), to require judges, when receiving a communication from a jury, to confirm on the record that the parties were notified of the communication, the nature of the communication, and how the court addressed the communication. The intent is to help ensure, and to have the record document, compliance with the requirements of those Rules.

Category Three consists of amendments to Rule 15-1001 (Wrongful Death) to conform with holdings in *University of Md. Medical Systems v. Muti*, ___ Md. ___ (2012), including the duty of the named plaintiffs to make a good faith and reasonably diligent effort to identify, locate, and name as "use plaintiffs" all individuals who may qualify as such, to send a certain notice to such individuals, to require certain action by such individuals who wish to make a claim, and to provide for a waiver of the right of use plaintiffs to make a claim.

Category Four consists of further proposed amendments to Rules 4-216 (Pretrial Release - Authority of Judicial Officer; Procedure) and 4-216.1 (Further Proceedings Regarding Pretrial Release), to provide that representation of defendants at a bail review hearing by the Public Defender shall be a provisional one limited to that proceeding and that any further representation by the Public Defender is dependent on the defendant qualifying as indigent under the statutory standards set forth in the Criminal Procedure Article. Also in this category is an amendment to Rule 4-214 that adds two cross references to Rules 4-216 and 4-216.1.

Category Five consists of amendments to Rule 4-242 (d) (Pleas) to permit a defendant, with the consent of the State and

the court and subject to certain conditions, to enter a written conditional plea of guilty to an offense charged by indictment or criminal information in a circuit court or transferred to that court by a prayer for jury trial entered in the District Court. By 2012 Md. Laws, Ch. 410, the General Assembly has allowed a direct appeal to be taken from a conviction based on such a plea, with appellate review limited to those dispositive issues specifically reserved in the plea. The proposed amendment is in general accord with Federal practice. A Committee note proposed to Rule 4-242 (a) calls attention to problems that have surfaced with respect to a current practice of defendants who desire to avoid a full evidentiary trial but nonetheless reserve a right of appeal entering a plea of not guilty but acquiescing in a trial on an agreed statement of fact or stipulated evidence. The Committee Note recommends that, when appropriate, a conditional plea of guilty be used to achieve that result. A conforming amendment is proposed to Rule 4-243 (c)(4) (Plea Agreements).

Category Six consists of two proposed amendments to Rule 4-331 (Motions for New Trial; Revisory Power). The first adds a new subsection (b)(2) to implement a 2011 statute (Code, Criminal Procedure Article, §8-302) giving a court revisory power over a judgment of conviction for prostitution upon a showing that the defendant was acting under duress caused by an act of another committed in violation of the law against human trafficking. The second would amend subsection (c)(1) to clarify that the one year period allowed under that subsection for filing a motion based on newly discovered evidence dates from the later of the date the court imposed sentence or the date the court received a mandate issued by the final appellate court to consider a direct appeal from the judgment or a belated appeal permitted as post conviction relief. That amendment is in response to the Court's request for clarification in *Matthews v. State*, 415 Md. 286 (2010).

Category Seven consists of amendments to Rules 4-266 (c) (Subpoenas – Generally), 2-510 (e) and (f), and 3-510 (e) and (f) (Subpoenas) to permit a person named in a subpoena or named or depicted in an item specified in the subpoena to move for and be granted a protective order. Amendments to Rules 2-403, 4-262 (m), and 4-263 (m), which do not reference subpoenas, permit a person named or depicted in an item sought to be discovered to move for and be granted a protective order.

Category Eight consists of amendments to Rules 4 (Eligibility to Take Bar Examination) and 19 (Confidentiality) of the Rules Governing Admission to the Bar of Maryland. The first would permit the Board of Law Examiners to allow an individual who graduated from a law school not located in an American State or territory to take the Bar Examination if the individual is

admitted to practice in a jurisdiction that is not a State but has obtained an additional degree from an American Bar Association approved law school in Maryland that meets the requirements prescribed by the Board Rules. At present, this would apply to some individuals in a Masters of Law program at the University of Baltimore Law School. The second would allow the Board to provide to any bona fide bar association in Maryland the name and address of persons recommended for admission pursuant to Rule 10. Both amendments were recommended to the Committee by the Board of Law Examiners.

Category Nine consists of amendments to several Rules governing civil actions.

The proposed amendment to Rule 2-305 (Claims for Relief) eliminates the current requirement of pleading a specific amount of damages, which, with one exception, the Committee believes is not necessary and often leads to artificially inflated demands that have no practical meaning. The amendment provides that a demand for damages in excess of $75,000 – the current threshold for removal to a U.S. District Court based on diversity of citizenship – shall state only that the claim exceeds $75,000. If the claim is for less than $75,000, the complaint must continue to specify the amount of the claim, which is relevant in determining whether the claim may be tried in Circuit of District Court and is subject to the right of jury trial. A stylistic change to the first sentence of Rule 2-305 also is made to the first sentence of Rule 3-305.

Rule 2-214 (Intervention) requires a person who moves to intervene in a civil action in circuit court to attach to the motion a copy of the proposed *pleading* setting forth the claim or defense for which intervention is sought. The proposed amendment would allow the intervenor, as an alternative, to attach a motion or other response, not constituting a pleading, setting forth the claim or defense.

The proposed amendment to Rule 2-311 (Motions) permits a party who has filed a motion to which a response has been filed, to file a reply to the response. It cautions, however, that a reply is limited to correcting a misstatement of fact or law in the response or to addressing a matter raised for the first time in the response. At present, the Rules are silent on whether a party is allowed to file a reply, and some judges have apparently taken the position that they are not allowed. The Committee believes that, in the limited circumstances noted, they should be allowed. Conforming amendments are proposed to Rules 2-303, 2-401, and 2-643.

Category Ten consists of amendments to several Rules governing criminal actions.

Rule 7-112 (f)(4) (Appeals Heard De Novo) provides that if an appeal to a circuit court by a defendant who was sentenced in the District Court to a term of confinement and released pending the appeal pursuant to Rule 4-349 is dismissed, the circuit court shall issue a warrant directing that the defendant be taken into custody and brought before a judge *or commissioner* so that sentence may be reimposed. A commissioner is not authorized to reimpose a sentence, however. An amendment is proposed to require that the defendant be taken before a judge the next day that the court is in session.

2012 Md. Laws, Ch. 563 requires the court to grant a request for expungement of records of criminal charges that were transferred to Juvenile Court under Code, Criminal Procedure Article, §§4-202 or 4-202.2. An amendment to Form 4-504.1 (Petition for Expungement of Records) is proposed to conform with the statute. Rule 11-601 (Expungement of Criminal Charges Transferred to the Juvenile Court) is recommended for deletion, and a conforming amendment is proposed to Rule 4-501 (Applicability).

Category Eleven consists of amendments to Rule 6-416 (Attorneys' Fees or Personal Representatives' Commissions) to implement a 2011 statute (Code, Estates and Trusts Article, §7-604 (a)(2)) that permits an Estate, without prior court approval but upon certain conditions, to pay attorneys' fees to an attorney who represented the Estate in litigation under a contingency fee agreement.

Category Twelve consists of "housekeeping" amendments to Rules 3-722 (Receivers), 4-212 (Issuance, Service, and Execution of Summons or Warrant), 4-217 (Bail Bonds), 4-342 (Sentencing – Procedure in Non-Capital Cases), 4-345 (Sentencing – Revisory Power of Court), 4-262 (a) (Discovery in District Court, 4-263 (a) (Discovery in Circuit Court), 4-504 (Petition for Expungement When Charges Filed), 4-711 (Further Proceedings Following Testing), 5-404 (Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes), 9-105 (Show Cause Order; Disability of a Party; Other Notice), and 15-1201 (Applicability). The nature of those amendments is explained in the respective Reporter's notes.

For the further guidance of the Court and the public, following each proposed rule change is a Reporter's Note describing in further detail the reasons for the proposal. *We caution that the Reporter's Notes are not part of the Rules, have not been debated or approved by the Committee, and 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,

Alan M. Wilner
Chair

AMW:cdc
cc: Hon. Robert A. Zarnoch, Vice-Chair
Bessie M. Decker, Clerk

MARYLAND RULES OF PROCEDURE

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CHAPTER 100 – GENERAL PROVISIONS

Rule 17-101. APPLICABILITY

(a) General Applicability of Title

Except as provided in section (b) of this Rule, the Rules in this Title apply when a court refers all or part of a civil action or proceeding to ADR.

Committee note: The Rules is this Title do not apply to an ADR process in which the parties participate without a court order of referral to that process.

(b) Exceptions

Except as otherwise provided by Rule, the Rules in this Title do not apply to:

(1) an action or order to enforce a contractual agreement to submit a dispute to ADR;

(2) an action to foreclose a lien against owner-occupied residential property subject to foreclosure mediation conducted by the Office of Administrative Hearings under Rule 14-209.1;

(3) an action pending in the Health Care Alternative Dispute Resolution Office under Code, Courts Article, Title 3, Subtitle 2A, unless otherwise provided by law; or

(4) a matter referred to a master, examiner, auditor, or parenting coordinator pursuant to Rule 2-541, 2-542, 2-543, or 9-205.2.

(c) Applicability of Chapter 200

The Rules in Chapter 200 apply to actions and proceedings pending in a circuit court.

(d) Applicability of Chapter 300

The Rules in Chapter 300 apply to actions and proceedings pending in the District Court.

Source: This Rule is derived from former Rule 17-101 (2011).

REPORTER'S NOTE

Rule 17-101 outlines the applicability of the Rules in Title 17.

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Rule 17-102. DEFINITIONS

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

(a) ADR

"ADR" means "alternative dispute resolution."

(b) ADR Organization

"ADR organization" means an entity, including an ADR unit of a court, that is designated by the court to select individuals with the applicable qualifications required by Rule 9-205 or the Rules in this Title to conduct a non-fee-for-service ADR ordered by the court.

(c) ADR Practitioner

"ADR practitioner" means an individual who conducts ADR under the Rules in this Title.

(d) Alternative Dispute Resolution

"Alternative dispute resolution" means the process of resolving matters in pending litigation through arbitration, mediation, neutral case evaluation, neutral fact-finding, settlement conference, or a combination of those processes.

(e) Arbitration

"Arbitration" means a process in which (1) the parties

appear before one or more impartial arbitrators and present evidence and argument to support their respective positions, and (2) the arbitrators render an award that is not binding unless the parties agree otherwise in writing.

Committee note: Under the Federal Arbitration Act, the Maryland Uniform Arbitration Act, the International Commercial Arbitration Act, and at common law, arbitration awards are binding unless the parties agree otherwise.

(f) Fee-for-service

"Fee-for-service" means that a party will be charged a fee by an ADR practitioner designated by a court to conduct ADR.

(g) Mediation

"Mediation" means a process in which the parties work with one or more impartial mediators who, without providing legal advice, assist the parties in reaching their own voluntary agreement for the resolution of all or part of a dispute.

Cross reference: For the role of the mediator, see Rule 17-103.

(h) Mediation Communication

"Mediation communication" means a communication, whether spoken, written, or nonverbal, made as part of a mediation, including a communication made for the purpose of considering, initiating, continuing, reconvening, or evaluating a mediation or a mediator.

(i) Neutral Case Evaluation

"Neutral case evaluation" means a process in which (1) the parties, their attorneys, or both appear before an impartial evaluator and present in summary fashion the evidence and

arguments to support their respective positions, and (2) the evaluator renders an evaluation of their positions and an opinion as to the likely outcome of the litigation.

(j) Neutral Expert

"Neutral expert" means an individual with special expertise to provide impartial technical background information, an impartial opinion, or both in a specific area.

(k) Neutral Fact-finding

"Neutral fact-finding" means a process in which (1) the parties, their attorneys, or both appear before an impartial individual and present the evidence and arguments to support their respective positions as to disputed factual issues, and (2) the individual makes findings of fact as to those issues that are not binding unless the parties agree otherwise in writing.

(l) Settlement Conference

"Settlement conference" means a conference at which the parties, their attorneys, or both appear before an impartial individual to discuss the issues and positions of the parties in an attempt to agree on a resolution of all or part of the dispute by means other than trial. A settlement conference may include neutral case evaluation and neutral fact-finding, and the impartial individual may recommend the terms of an agreement.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is new.
Section (c) is new.
Section (d) is derived from former Rule 17-102 (a) (2011).
Section (e) is derived from former Rule 17-102 (b) (2011).
Section (f) is derived from former Rule 17-102 (c) (2011).

Section (g) is derived from former Rule 17-102 (d) (2011).
Section (h) is derived from former Rule 17-102 (e) (2011).
Section (i) is derived from former Rule 17-102 (f) (2011).
Section (j) is new.
Section (k) is derived from former Rule 17-102 (g) (2011).
Section (l) is derived from former Rule 17-102 (h) (2011).

REPORTER'S NOTE

Rule 17-102 carries forward from current Rule 17-102 the definitions of "Alternative Dispute Resolution," "Fee-for-service," "Mediation," "Mediation Communication," "Neutral Case Evaluation," "Neutral Fact-finding," and "Settlement Conference." Changes to those definitions are primarily stylistic, with the exception of the transfer of the last two sentences of the current definition of "mediation" to a separate Rule [Rule 17-103, Role of Mediator], and the addition of the concept of "evaluating" a mediation or mediator to the definition of "mediation communication."

The definitions of "ADR," "ADR Practitioner," and "Neutral Expert" are new.

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Rule 17-103. ROLE OF MEDIATOR

A mediator may help identify issues and options, assist the parties and their attorneys in exploring the needs underlying their respective positions, and, upon request, record points of agreement expressed and adopted by the parties. While acting as a mediator, the mediator does not engage in any other ADR process and does not recommend the terms of an agreement.

Committee note: Mediators often record points of agreement expressed and adopted by the parties to provide documentation of the results of the mediation. Because a mediator who is not a Maryland lawyer is not authorized to practice law in Maryland and a mediator who is a Maryland lawyer ordinarily would not be authorized to provide legal advice or services to parties in conflict, a mediator should not be authoring agreements regarding matters in litigation for the parties to sign. If the parties are represented by counsel, the mediator should advise them not to sign the document embodying the points of agreement until they have consulted their attorneys. If the parties, whether represented or not, choose to sign the document, a statement should be added that the points of agreement as recorded by the mediator constitute the points of agreement expressed and adopted by the parties.

Source: This Rule is derived from the last two sentences of former Rule 17-102 (d) (2011).

REPORTER'S NOTE

Rule 17-103 is derived from the last two sentences of current Rule 17-102 (d) with clarifying and stylistic changes. A Committee note provides guidance concerning a mediator's role in recording points of agreement expressed and adopted by the parties.

Rule 17-104. BASIC MEDIATION TRAINING PROGRAMS

To qualify under Rule 17-205 or 17-304, a basic mediation training program shall include the following:

(a) conflict resolution and mediation theory, including causes of conflict, interest-based versus positional bargaining, and models of conflict resolution;

(b) mediation skills and techniques, including information-gathering skills; communication skills; problem-solving skills; interaction skills; conflict management skills; negotiation techniques; caucusing; cultural, ethnic, and gender issues; and strategies to (1) identify and respond to power imbalances, intimidation, and the presence and effects of domestic violence, and (2) safely terminate a mediation when such action is warranted;

(c) mediator conduct, including conflicts of interest, confidentiality, neutrality, ethics, and standards of practice; and

(d) simulations and role-playing, monitored and critiqued by experienced mediator trainers.

Source: This Rule is derived from former Rule 17-106 (a) (2011).

REPORTER'S NOTE

Rule 17-104 lists the required components of a basic mediation program. It is derived from current Rule 17-106 (a). Rule 17-104 adds to the current Rule required training regarding (1) ethnic issues, (2) strategies to identify and respond to intimidation and to the presence and effects of domestic violence, and (3) strategies to safely terminate a mediation when warranted.

Subsection (a)(4) of current Rule 17-106, which requires training regarding rules, statutes, and practice in the circuit courts, is not included in the new Rule because Rule 17-104 is a general Rule, which does not solely apply to the circuit courts. This concept has therefore been transferred to Rule 17-205 (a)(3) and Rule 17-304 (a)(3). Rule 17-205 (a)(3) requires a mediator to be "familiar" with the rules, statutes and practices governing mediation in the circuit court. Rule 17-304 (a)(3) requires a mediator to be familiar with the Rules in Title 17 of the Maryland Rules.

Rule 17-105. 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

Except as provided in sections (c) and (d) of this Rule:

(1) a party to a mediation and any person present or who otherwise participates in a mediation at the request of a party may not disclose or be compelled to disclose a mediation communication in any judicial, administrative, or other proceeding; and

(2) the parties may enter into a written agreement to maintain the confidentiality of mediation communications and to require all persons who are present or who otherwise participate in a mediation to join in that agreement.

Cross reference: See Rule 5-408 (a)(3).

(c) Signed Document

A document signed by the parties that records points of

agreement expressed and adopted by the parties or that constitutes an agreement reached by the parties as a result of mediation is not confidential, unless the parties agree otherwise in writing.

Cross reference: See Rule 9-205 (g) concerning the submission of a document embodying 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, a party, and a person who was present or who otherwise participated in a mediation may disclose or report mediation communications:

(1) to a potential victim or to the appropriate authorities to the extent they reasonably believe necessary to help prevent serious bodily harm or death to the potential victim;

(2) when relevant to the assertion of or defense against allegations of mediator misconduct or negligence; or

(3) when relevant to a claim or defense that an agreement arising out of a mediation should be rescinded because of fraud, duress, or misrepresentation.

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 not subject to discovery, but information that is otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its

use in mediation.

Cross reference: See Rule 5-408 (b). See also Code, Courts Article, Title 3, Subtitle 18, which does not apply to mediations to which the Rules in Title 17 apply.

Source: This Rule is derived from former Rule 17-109 (2011).

REPORTER'S NOTE

Rule 17-105 is derived from current Rule 17-109, Mediation Confidentiality.

Section (a) is carried forward, without change.

Sections (b) and (d) are restyled for clarity.

Section (c) is restyled to reflect the terminology used in new Rule 17-103 regarding the recordation of points of agreement expressed and adopted by the parties.

In section (e), the words "privileged and" are deleted.

A Committee note pertaining to neutral experts is deleted.

Two cross references to Rule 5-408 are added.

Additionally, a cross reference to Code, Courts Article, Title 3, Subtitle 18 is added to highlight the existence of distinctions between mediation confidentiality under the Maryland Mediation Confidentiality Act and mediation confidentiality under this Rule. The statutory mediation confidentiality provisions are inapplicable to mediations to which the Rules in Title 17 apply.

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CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

Rule 17-201. AUTHORITY TO ORDER ADR

(a) Generally

A circuit court may order a party and the party's attorney to participate in ADR but only in accordance with the Rules in this Chapter and in Chapter 100 of this Title.

(b) Referral Prohibited

The court may not enter an order of referral to ADR in a protective order action under Code, Family Law Article, Title 4, Subtitle 5, Domestic Violence.

(c) Mediation of Child Custody or Visitation Disputes

Rule 9-205 governs the authority of a circuit court to order mediation of a dispute as to child custody or visitation, and the Rules in Title 17 do not apply to proceedings under that Rule except as otherwise provided in that Rule.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 17-103 (a) (2011).
Section (b) is new.
Section (c) is derived from former Rule 17-103 (c)(1) (2011).

REPORTER'S NOTE

Rule 17-201 is derived in part from current Rule 17-103.

Section (a) generally states a circuit court's authority to order ADR.

Section (b) prohibits the court from entering an order of referral to ADR in a protective order action.

Section (c) states that Rule 9-205 governs custody and visitation disputes and that the Rules in Title 17 do not apply, except as otherwise provided in that Rule.

Rule 17-202. GENERAL PROCEDURE

(a) Scope

This Rule does not apply to health care malpractice actions under Code, Courts Article, Title 3, Subtitle 2A, which are governed by Rule 17-203.

(b) Participation Requirements

(1) Non-fee-for-service Settlement Conference

The court may require the parties and their attorneys to participate in a non-fee-for-service settlement conference.

Committee note: If a settlement conference is required, it should be conducted subsequent to any other court-referred ADR.

(2) Other ADR

The court may refer all or part of an action to one ADR process in accordance with sections (c), (d), and (e) of this Rule, but the court may not require participation in that ADR if a timely objection is filed in accordance with section (f) of this Rule.

(c) Designation of ADR Practitioner

(1) Direct Designation

In an order referring all of part of an action to ADR, the court may designate, from a list of approved ADR practitioners maintained by the court pursuant to Rule 17-207, an

ADR practitioner to conduct the ADR.

(2) Indirect Designation if ADR is Non-fee-for-service

If the ADR is non-fee-for-service, the court may delegate authority to an ADR organization selected from a list maintained by the court pursuant to Rule 17-207 or to an ADR unit of the court to designate an ADR practitioner qualified under Rules 17-205 or 17-206, as applicable, to conduct the ADR. An individual designated by the ADR organization pursuant to the court order has the status of a court-designated ADR practitioner.

Committee note: Examples of the use of indirect designation are referrals of indigent litigants to publicly funded community mediation centers and referrals of one or more types of cases to a mediation unit of the court.

(d) Discretion in Designation

In designating an ADR practitioner, the court is not required to choose at random or in any particular order from among the qualified ADR practitioners or organizations on its lists. The court should endeavor to use the services of as many qualified persons as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective designees.

(e) Contents of Order of Referral; Termination or Extension of ADR; Restriction on Fee Increase

An order of referral to ADR shall specify a maximum number of hours of required participation by the parties. An order to a

fee-for-service ADR shall also specify the hourly rate that may be charged for ADR services in the action, which may not exceed the maximum stated in the applicable fee schedule. The parties may participate for less than the number of hours stated in the order if they and the ADR practitioner agree that no further progress is likely. The parties, by agreement, may extend the ADR beyond the number of hours stated in the order. During any extension of the ADR, the ADR practitioner may not increase the practitioner's hourly rate for providing services relating to the action.

Committee note: Having a maximum number of hours in the court's order of referral encourages participation in ADR by assuring the parties that the ADR does not require an open-ended commitment of their time and money. Although the parties, without further order of court, may extend the ADR beyond the maximum, an amendment to the time requirements contained in a scheduling order may be made only by order of the court.

Cross reference: See Rule 2-504, concerning scheduling orders, and Rule 17-208, concerning fee schedules and sanctions for noncompliance with an applicable schedule.

(f) Objection; Alternatives

(1) Applicability

This section applies to a referral to ADR other than a non-fee-for-service settlement conference.

(2) Time for Filing

If the court issues an order referring all or part of an action to ADR, a party, within 30 days after entry of the order, may file (A) an objection to the referral, (B) an alternative proposal, or (C) a "Request to Substitute ADR Practitioner" substantially in the form set forth in section (g) of this Rule.

If the order delegates authority to an ADR organization to designate an ADR practitioner, the objection, alternative proposal, or "Request to Substitute ADR Practitioner" shall be filed no later than 30 days after the party is notified by the ADR organization of the designation.

(3) Notification of Rights

An order referring all or part of an action to ADR, an order delegating authority to an ADR organization to designate an ADR practitioner, and an announcement of a determination to enter an order referring all or part of an action to ADR shall include the information set forth in subsection (f)(2) of this Rule.

(4) If No Objection or Alternative Filed

If an objection, alternative proposal, or "Request to Substitute ADR Practitioner" is not filed within the time allowed by this section, the order shall stand, subject to modification by the court.

(5) Ruling

If a party timely objects to a referral, the court shall revoke its order. If the parties offer an alternative proposal or agree on a different ADR practitioner, the court shall revoke or modify its order, as appropriate.

(g) Form of Request to Substitute ADR Practitioner

A Request to Substitute ADR Practitioner shall be substantially in the following form:

[Caption of Case]

Request to Substitute ADR Practitioner and

Selection of ADR Practitioner by Stipulation

We agree to attend ADR conducted by _____

_____.
(Name, address, and telephone number of ADR Practitioner)

We have made payment arrangements with the ADR Practitioner and we understand that the court's fee schedules do not apply to this ADR. We request that the court substitute this ADR Practitioner for the ADR Practitioner designated by the court.

_____	_____
(Signature of Plaintiff)	(Signature of Defendant)
_____	_____
(Signature of Plaintiff's Attorney, if any)	(Signature of Defendant's Attorney, if any)

[Add additional signature lines for any additional parties and attorneys.]

I, _____,
(Name of ADR Practitioner)

agree to conduct the following ADR in the above-captioned case [check one]:

- ❑ mediation in accordance with Rules 17-103 and 17-105.
- ❑ ADR other than mediation:_____[specify type of ADR].

At the conclusion of the ADR, I agree to comply with the provisions of Rule 17-202 (h).

I solemnly affirm under the penalties of perjury that I have the qualifications prescribed by the following Rules [check all that are true]:

- ❑ Rule 17-205 (a) [Basic mediation]
- ❑ Rule 17-205 (b) [Business and Technology]
- ❑ Rule 17-205 (c) [Economic Issues - Divorce and Annulment]
- ❑ Rule 17-205 (d) [Health Care Malpractice]
- ❑ Rule 17-205 (e) [Foreclosure]
- ❑ Rule 17-206 [ADR other than mediation]
- ❑ None of the above.

_____
Signature of ADR Practitioner

(h) Evaluation Forms; Notification to Court

At the conclusion of an ADR, the ADR practitioner shall give to the parties any ADR evaluation forms and instructions provided by the court and promptly advise the court whether all, some, or none of the issues in the action has been resolved.

Source: This Rule is derived in part from former Rule 17-103 (b) and (c)(2)-(4) (2011) and is in part new.

REPORTER'S NOTE

Rule 17-202 outlines the general procedure for participating in ADR and for designating an ADR practitioner. It is derived, in part, from current Rule 17-103.

Section (a) states that the Rule does not apply to health care malpractice actions under Code, Courts Article, Title 3, Subtitle 2A. ADR in those actions is governed by Rule 17-203.

Section (b) provides that the court may require the parties to participate in a non-fee-for-service settlement conference. The parties may, however, opt out of other court-referred ADR in accordance with the provisions of section (f).

Section (c) prescribes the procedures for direct and indirect designation of an ADR practitioner. An ADR practitioner may be selected from a list of approved ADR practitioners maintained by the court, or, if the ADR is non-fee-for-service, the court may delegate the authority to select an ADR practitioner to an ADR organization or to an ADR unit of the court.

A Committee note following section (c) provides examples of the use of indirect designation.

Section (d) is derived from current Rule 17-103 (c)(4). It provides that, in designating an ADR practitioner, the court is not required to choose at random or in any particular order from among the qualified ADR practitioners or organizations on its lists.

Section (e) is new. It provides that an order of referral to ADR shall specify a maximum number of hours of participation by the parties. As stated in a Committee Note following section (e), this encourages parties to participate in ADR by assuring that the ADR does not require an open-ended commitment of time and money. The parties may agree to extend the ADR beyond the maximum number of hours; however, any time requirements in a scheduling order that would be affected are not changed unless the court amends its scheduling order. Section (e) also prohibits an ADR practitioner from increasing the practitioner's hourly rate in the event that the parties agree to extend the ADR beyond the maximum number of hours.

A cross reference is added following section (e) to Rule 2-504, concerning scheduling orders, and Rule 17-208, concerning fee schedules and noncompliance with an applicable schedule.

Section (f) outlines the time and types of objections a party may file to a referral to ADR other than a non-fee-for-service settlement conference. Subsection (f)(3) provides that the parties must be notified of their right to object to the referral. Subsection (f)(4) provides that an order of referral will stand if the parties do not timely object, offer an alternative proposal, or request a different ADR practitioner.

Subsection (f)(5) provides that, if a party timely objects to a referral or offers an alternative proposal, the court shall revoke or modify its order, as appropriate. Thus, as in the current Rules, the court may not require an objecting party or

that party's attorney to participate in an ADR other than a non-fee-for-service settlement conference.

Section (g) contains a form for a Request to Substitute ADR Practitioner.

Section (h) is new. It requires the ADR practitioner to give to the parties any evaluation forms and instructions provided by the court and to notify the court whether all, some, or none of the issues in the action have been resolved. This section is added at the request of a circuit court judge. This section ensures that the parties have the opportunity to evaluate the ADR practitioner, that the court is informed regarding the status of the case, and that the court receives information from which statistics can be generated.

Rule 17-203. HEALTH CARE MALPRACTICE ACTIONS

(a) Applicability

This Rule applies to health care malpractice actions under Code, Courts Article, Title 3, Subtitle 2A.

(b) Mandatory Referral to ADR; Timing

Within 30 days after a defendant has filed an answer to the complaint or within 30 days after a defendant has filed a certificate of a qualified expert pursuant to Code, Courts Article, Title 3, Subtitle 2A-04, whichever is later, the court shall issue a scheduling order requiring the parties to engage in ADR at the earliest practicable date, unless all parties file with the court an agreement not to engage in ADR and the court finds that ADR would not be productive.

Cross reference: See Rule 2-504 (b)(2)(C) and Code, Courts Article, §3-2A-06C (b).

(c) Designation

(1) By the Parties

Within 30 days after the defendant has answered the complaint or filed a certificate of a qualified expert pursuant to Code, Courts Article, Title 3, Subtitle 2A-04, whichever is later, the parties may agree on an ADR practitioner and shall promptly notify the court of their agreement and the name of the

ADR practitioner. A Notice of Selection of ADR Practitioner shall be substantially in the following form:

[Caption of Case]

Notice of Selection of ADR Practitioner by Stipulation

We agree to attend ADR conducted by _____

_____.
(Name, address, and telephone number of ADR Practitioner)

We have made payment arrangements with the ADR Practitioner and we understand that the court's fee schedules do not apply to this ADR. We request that the court designate this ADR Practitioner in lieu of any court-appointed ADR Practitioner.

_____	_____
(Signature of Plaintiff)	(Signature of Defendant)
_____	_____
(Signature of Plaintiff's Attorney, if any)	(Signature of Defendant's Attorney, if any)

[Add additional signature lines for any additional parties and attorneys.]

I, _____,
(Name of ADR Practitioner)

agree to conduct the following ADR in the above-captioned case [check one]:

- ❑ mediation in accordance with Rules 17-103 and 17-105.
- ❑ ADR other than mediation:_____[specify type of ADR].

At the conclusion of the ADR, I agree to comply with the provisions of Rule 17-203 (f).

I solemnly affirm under the penalties of perjury that I have the qualifications prescribed by the following Rules [check all that are true]:

- ❑ Rule 17-205 (a) [Basic mediation]
- ❑ Rule 17-205 (b) [Business and Technology]
- ❑ Rule 17-205 (c) [Economic Issues - Divorce and Annulment]
- ❑ Rule 17-205 (d) [Health Care Malpractice]
- ❑ Rule 17-205 (e) [Foreclosure]
- ❑ Rule 17-206 [ADR other than mediation]
- ❑ None of the above.

_____
Signature of ADR Practitioner

(2) By the Court

If the parties do not timely notify the court that they have agreed upon an ADR practitioner, the court promptly shall appoint a mediator who meets the qualifications prescribed by Rule 17-205 (d) and notify the parties. Within 15 days after the court notifies the parties of the name of the mediator, a party may object in writing, stating the reason for the objection. If the court sustains the objection, the court shall appoint a different mediator.

(d) Initial Conference; Outline of Case

The ADR practitioner shall schedule an initial conference

with the parties as soon as practicable. At least 15 days prior to the initial conference, each party shall provide to the ADR practitioner a brief written outline of the strengths and weaknesses of the party's case. A party is not required to provide the outline to any other party, and the ADR practitioner shall not provide the outline or disclose its contents to anyone unless authorized by the party who submitted the outline.

Cross reference: See Code, Courts Article, §3-2A-06C (h)(2) and (k).

(e) Discovery

If the ADR practitioner determines that discovery is necessary to facilitate the ADR, the ADR practitioner, consistent with the scheduling order, may mediate the scope and schedule of that discovery, adjourn the initial conference, and reschedule an additional conference for a later date.

(f) Evaluation Forms

At the conclusion of the ADR, the ADR practitioner shall give to the parties any ADR evaluation forms and instructions provided by the court.

(g) Notification to the Court

The parties shall notify the court if the case is settled. If the parties agree to settle some but not all of the issues in dispute, the ADR practitioner shall file a notice of partial settlement with the court. If the parties have not agreed to a settlement, the ADR practitioner shall file a notice with the court that the case was not settled.

(h) Costs

Unless otherwise agreed by the parties, the costs of the ADR shall be divided equally between the parties.

Source: This Rule is new.

REPORTER'S NOTE

New Rule 17-203 is proposed because health care malpractice actions are governed by a statute that includes a mandatory referral to ADR. *See* Code, Courts Article, Title 3, Subtitle 2A. A specific Rule, pertaining only to health care malpractice actions, is warranted in order to implement the statute and to ensure that the ADR process conforms with the statute.

Section (a) states that the Rule applies to health care malpractice actions.

Section (b) prescribes the procedure for the mandatory referral to ADR. In practice, courts order ADR in the scheduling order. The Rule codifies this practice.

Section (c) prescribes the procedure for selecting an ADR practitioner, and provides a form for this purpose. The procedure for selecting the practitioner is derived from Code, Courts Article, §3-2A-06C (e) and (f).

Section (d) addresses the scheduling of an initial conference and the parties' submission of written case outlines to the ADR practitioner. Section (d) is derived from Code, Courts Article, §3-2A-06C (g) and (h).

Section (e) provides that the ADR practitioner may mediate the scope and schedule of discovery needed to proceed with ADR, and may adjourn and reschedule the initial conference. This acknowledges the reality that the productivity of ADR in medical malpractice actions depends, in large part, on the amount of discovery that has taken place. Section (e) is derived in part from Code, Courts Article, §3-2A-06C (i).

Section (f) requires the ADR practitioner to give to the parties any ADR evaluation forms and instructions provided by the court. A similar provision is included in new Rule 17-202. It is intended to ensure that the parties have the opportunity to evaluate the ADR practitioner and that the court receives information from which statistics can be generated.

Section (g) requires the parties to notify the court regarding the outcome of the ADR and is derived from Code, Courts Article, §3-2A-06C (n).

Section (h) provides that, unless the parties agree otherwise, the costs of ADR shall be divided equally between the parties. This section is derived from Code, Courts Article, §3-2A-06C (o).

Rule 17-204. NEUTRAL EXPERTS

(a) Appointment

With the consent of all parties participating in the ADR, a court-designated ADR practitioner may select a neutral expert to participate in the ADR. The expense of the neutral expert shall be allocated among the parties in accordance with their agreement.

(b) Confidentiality

(1) Mediation Proceedings

In a mediation, the provisions of Rule 17-105 apply to the neutral expert.

(2) Other ADR

In all ADR other than mediation, the parties and the ADR practitioner may require the neutral expert to enter into a written agreement binding the neutral expert to confidentiality. The written agreement may include provisions stating that the expert may not disclose or be compelled to disclose any communications related to the ADR in any judicial, administrative, or other proceedings. Communications related to the ADR that are confidential under an agreement allowed by this subsection are 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 related to the ADR.

Source: This Rule is derived from former Rule 17-105.1 (2011).

REPORTER'S NOTE

Rule 17-204 is derived from current Rule 17-105.1. The Rule deletes the definition of the term "neutral expert" because this term is defined in new Rule 17-102 (j).

The entire Rule is restyled for clarification.

Rule 17-205. QUALIFICATIONS OF COURT-DESIGNATED MEDIATORS

(a) Basic Qualifications

A mediator designated by the court shall:

(1) unless waived by the parties, be at least 21 years old;

(2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104 or, for individuals trained prior to [effective date of the Rule], former Rule 17-106;

(3) be familiar with the rules, statutes, and practices governing mediation in the circuit courts;

(4) have mediated or co-mediated at least two civil cases;

(5) complete in each calendar year four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104;

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

(7) submit to periodic monitoring of court-ordered mediations by a qualified mediator designated by the county administrative judge; and

(8) 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,

upon request by the court, a reasonable number of referrals at a reduced-fee or pro bono.

(b) Business and Technology Cases

A mediator designated by the court for a Business and Technology Program case shall, unless the parties agree otherwise:

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

(2) within the two-year period preceding an application for approval pursuant to Rule 17-207, have served as a mediator in at least five non-domestic civil mediations, at least two of which involved types of conflicts assigned to the Business and Technology Case Management Program.

(c) Economic Issues in Divorce and Annulment Cases

A mediator designated by the court for issues in divorce or annulment cases other than those subject to Rule 9-205 shall:

(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 economic issues in divorce and annulment cases; and

(3) have served as a mediator or co-mediator in at least two mediations involving marital economic issues.

(d) Health Care Malpractice Claims

A mediator designated by the court for a health care malpractice claim shall, unless the parties agree otherwise:

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

(2) within the two-year period preceding an application for approval pursuant to Rule 17-207, have served as a mediator in at least five non-domestic civil mediations, at least two of which involved types of conflicts assigned to the Health Care Malpractice Claims ADR Program;

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

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

Cross reference: See Code, Courts Article, §3-2A-06C.

(e) Foreclosure Cases

(1) This section does not apply to an ADR practitioner selected by the Office of Administrative Hearings to conduct a "foreclosure mediation" pursuant to Code, Real Property Article, §7-105.1 and Rule 14-209.1.

(2) A mediator designated by the court in a proceeding to foreclose a lien instrument shall, unless the parties agree otherwise:

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

(B) through experience, training, or education, be knowledgeable about lien instruments and federal and Maryland laws, rules, and regulations governing foreclosure proceedings.

(f) Experience Requirement

The experience requirements in this Rule may be met by mediating in the District Court or the Court of Special Appeals.

Source: This Rule is derived in part from former Rule 17-104 (a),(c),(d),(e), and (f) (2011) and is in part new.

REPORTER'S NOTE

Rule 17-205, Qualifications of Court-Designated Mediators, is derived from current Rule 17-104 (a), (c), (d), (e), and (f).

Subsection (a)(1) omits the requirement that a court-designated mediator have at least a bachelor's degree. The Subcommittee has been advised that studies indicate that a mediator's formal education is not particularly relevant to the mediator's success in resolving disputes. Another change to subsection (a)(1) permits the parties, instead of the court, to waive the requirement that a mediator be at least 21 years of age.

Subsection (a)(2) requires the completion of 40 hours of basic mediation training in a program that meets the requirements of new Rule 17-104. Individuals who were trained prior to the effective date of the Rule must have completed a training program that meets the requirements of current Rule 17-106.

Subsection (a)(3) requires a mediator to be "familiar" with the rules, statutes, and practices governing mediation in the circuit courts. This concept replaces a similar concept in current Rule 17-106 (a)(4), which requires the mediation training program to include the rules, statutes, and practices governing mediation in the circuit courts.

Subsection (a)(4) adds a requirement for the mediator to have mediated or co-mediated at least two civil cases.

Subsection (a)(5) requires a mediator to complete four hours of continuing mediation-related education per year. This concept replaces a similar concept in current Rule 17-104 (a)(3), which requires a mediator to complete eight hours of continuing mediation-related training in every two-year period.

A stylistic change is made to the introductory clause of section (b), Business and Technology Cases. Subsection (b)(1) is carried forward from current Rule 17-104 (c), without change.

In subsection (b)(2), the requirements of current Rule 17-104 (c)(2) have been revised and replaced with a requirement that the mediator, within the two-year period preceding the mediator's

application, must have served as mediator in at least five non-domestic civil mediations, at least two of which involved the types of conflicts assigned to the Business and Technology Program. The language requiring that the mediations be "circuit court" mediations of "comparable complexity" is deleted.

The language in current Rule 17-104 (c)(3), which requires a mediator to agree to serve as co-mediator with individuals who have not yet met the requirements of the Rule, is deleted.

In section (c), Economic Issues in Divorce and Annulment Cases, the word "annulment" is added. A requirement that the mediator must have served as a mediator or co-mediator in at least two mediations involving marital economic issues replaces the requirement in current Rule 17-104 (d)(3), which requires the mediator to have observed or co-mediated at least eight hours of divorce mediation sessions involving marital property issues.

In section (d), Health Care Malpractice Claims, the vague phrase "of comparable complexity" is deleted. A requirement is added that, in the two-year period preceding the mediator's application for approval, the mediator must have served as mediator in at least five non-domestic civil mediations, at least two of which involved the types of conflicts assigned to the Health Care Malpractice ADR program. The requirement that the mediations be "circuit court" mediations is deleted.

In section (e), Foreclosure Cases, language from current Rule 17-104 (f)(2), which requires a mediator to have completed at least five non-domestic circuit court mediations or five non-domestic non-circuit court mediations of comparable complexity, is deleted. In subsection (e)(2), a broader and continuing requirement of knowledge regarding the federal and Maryland laws, rules, and regulations governing foreclosure proceedings replaces the general requirement in current Rule 17-104 (f)(3) that the mediator "be knowledgeable about lien instruments and foreclosure proceedings."

Section (f) clarifies that, in addition to other ways in which the experience requirements set forth in the Rule may be met, the experience requirements may be met by mediating in the District Court or the Court of Special Appeals.

Subsections (c)(4), (e)(4), and (f)(4) of current Rule 17-104, pertaining to continuing education training, are deleted. Continuing education requirements are set forth in subsection (a)(5).

Rule 17-206. QUALIFICATIONS OF COURT-DESIGNATED ADR PRACTITIONERS OTHER THAN MEDIATORS

(a) Generally

Except as provided in section (b) of this Rule, an ADR practitioner designated by the court to conduct ADR other than mediation shall, unless the parties agree otherwise:

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

(2) submit to periodic monitoring of court-ordered ADR proceedings by a qualified person designated by the county administrative judge;

(3) 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, upon request by the court, to accept a reasonable number of referrals at a reduced-fee or pro bono;

(4) either (A) be a member in good standing of the Maryland bar and have at least five years experience as (i) a judge, (ii) a practitioner in the active practice of law, (iii) a full-time teacher of law at a law school accredited by the American Bar Association, or (iv) a Federal or Maryland administrative law judge, or (B) have equivalent or specialized knowledge and

experience in dealing with the issues in dispute; and

(5) have completed any training program required by the court.

(b) Judges and Masters

An active or retired judge or a master of the court may chair a non-fee-for-service settlement conference.

Cross reference: Rule 16-813, Maryland Code of Judicial Conduct, Canon 4F and Rule 16-814, Maryland Code of Conduct for Judicial Appointees, Canon 4F.

Source: This Rule is derived from former Rule 17-105 (2011).

REPORTER'S NOTE

Rule 17-206 is derived from current Rule 17-105. Stylistic changes are made to the introductory clause of section (a) and to subsection (a)(1).

Subsections (a)(2), (3), and (4) are carried forward, without change.

Subsection (a)(5) changes the requirements of current Rule 17-105 (a)(5). Under current Rule 17-105 (a)(5), unless waived by the court, an ADR practitioner other than a mediator must have completed a training program that has been approved by the county administrative judge and is at least eight hours long. New subsection (a)(5) requires a court-designated ADR practitioner, other than a mediator, to complete any training program required by the court.

Stylistic changes are made to subsection (b) to clarify that an active or retired judge or a master may chair a non-fee-for-service settlement conference.

Rule 17-207. PROCEDURE FOR APPROVAL

(a) Generally

(1) Scope

This section applies to individuals who seek eligibility for designation by a court to conduct ADR pursuant to Rule 9-205, Rule 14-212, or Rule 17-201 other than in actions assigned to the Business and Technology Case Management Program or the Health Care Malpractice Claims ADR Program.

(2) Application

An individual seeking designation to conduct ADR shall file an application with the clerk of the circuit court from which the individual is willing to accept referrals. The application shall be substantially in the form approved by the State Court Administrator and shall be available from the clerk of each circuit court. The clerk shall transmit each completed application, together with all accompanying documentation, to the county administrative judge or the judge's designee.

(3) Documentation

(A) An application for designation as a mediator shall be accompanied by documentation demonstrating that the applicant meets the requirements of Rule 17-205 (a) and, if applicable, Rule 9-205 (c)(2) and Rule 17-205 (c) and (e).

(B) An application for designation to conduct ADR other than mediation shall be accompanied by documentation demonstrating that the applicant is qualified as required by Rule 17-206 (a).

(C) The State Court Administrator may require the application and documentation to be provided in a word processing file or other electronic format.

(4) Action on Application

After such investigation as the county administrative judge deems appropriate, the county administrative judge or designee shall notify the applicant of the approval or disapproval of the application and the reasons for a disapproval.

(5) Court-Approved ADR Practitioner and Organization Lists

The county administrative judge or designee of each circuit court shall maintain a list:

(A) of mediators who meet the qualifications set forth in Rule 17-205 (a), (c), and (e);

(B) of mediators who meet the qualifications of Rule 9-205 (c);

(C) of other ADR practitioners who meet the applicable qualifications set forth in Rule 17-206 (a); and

(D) of ADR organizations approved by the county administrative judge.

(6) Public Access to Lists

The county administrative judge or designee shall provide to the clerk of the court a copy of each list, together

with a copy of the application filed by each individual on the lists. The clerk shall make these items available to the public.

(7) Removal from List

After notice and a reasonable opportunity to respond, the county administrative judge may remove a person from a court-approved list for failure to maintain the qualifications required by Rule 17-205, Rule 9-205 (c), or Rule 17-206 (a) or for other good cause.

(b) Business and Technology and Health Care Malpractice Programs

(1) Scope

This section applies to individuals who seek eligibility for designation by a court to conduct ADR pursuant to Rule 17-201 in an action assigned to the Business and Technology Case Management Program or pursuant to Rule 17-203 in an action assigned to the Health Care Malpractice Claims ADR Program.

(2) Application

An individual seeking designation to conduct ADR shall file an application with the Administrative Office of the Courts, which shall transmit the application to the Committee of Program Judges appointed pursuant to Rule 16-108 b. 4. The application shall be substantially in the form approved by the State Court Administrator and shall be available from the clerk of each circuit court.

(3) Documentation

(A) An application for designation as a mediator, shall be

accompanied by documentation demonstrating that the applicant meets the applicable requirements of Rule 17-205.

(B) An application for designation to conduct ADR other than mediation shall be accompanied by documentation demonstrating that the applicant is qualified as required by Rule 17-206 (a).

(C) The State Court Administrator may require the application and documentation to be provided in a word processing file or other electronic format.

(4) Action on Application

After such investigation as the Committee of Program Judges deems appropriate, the Committee shall notify the Administrative Office of the Courts that the application has been approved or disapproved and the reasons for a disapproval. The Administrative Office of the Courts shall notify the applicant of the action of the Committee and the reasons for a disapproval.

(5) Court-Approved ADR Practitioner Lists

The Administrative Office of the Courts shall maintain a list:

(A) of mediators who meet the qualifications of Rule 17-205 (b);

(B) of mediators who meet the qualifications of Rule 17-205 (d); and

(C) of other ADR practitioners who meet the qualifications of Rule 17-206 (a).

(6) Public Access to Lists

The Administrative Office of the Courts shall attach to the lists such additional information as the State Court Administrator specifies, keep the lists current, and transmit a copy of each current list and attachments to the clerk of each circuit court, who shall make these items available to the public.

Committee note: Examples of information that the State Court Administrator may specify as attachments to the lists include information about the individual's qualifications, experience, and background and any other information that would be helpful to litigants selecting an individual best qualified to conduct ADR in a specific case.

(7) Removal from List

After notice and a reasonable opportunity to respond, the Committee of Program Judges may remove an individual from a court-approved practitioner list for failure to maintain the qualifications required by Rule 17-205 or Rule 17-206 (a) or for other good cause.

Source: This Rule is derived in part from former Rule 17-107 (2011) and is in part new.

REPORTER'S NOTE

Rule 17-207 is derived in part from current Rule 17-107 (a) and (b).

Subsection (a)(1) states that section (a) does not apply to actions assigned to the Business Technology Case Management Program or the Health Care Malpractice ADR Program.

Language is added to subsection (a)(2) which provides that the clerk is responsible for transmitting each completed application and accompanying documentation to the county administrative judge or the judge's designee.

Subsection (a)(3) outlines the required documentation to accompany an application.

Subsection (a)(4) is changed to allow a designee of the county administrative judge to provide the required notification as to the approval or disapproval of an application.

Subsection (a)(5) requires the county administrative judge or the judge's designee to maintain a list of court-approved mediators, other ADR providers, and approved ADR organizations.

Subsection (a)(6) provides for public access to all lists, and to the applications filed by each individual on the lists.

Stylistic changes are made to subsection (a)(7).

Section (b) carves out similar procedures for the Business and Technology Case Management Program and the Health Care Malpractice Claims ADR Program.

The lists in section (b) are state-wide, whereas the lists in section (a) are specific to each county. The Committee on Program Judges makes decisions on applications under section (b), whereas, the county administrative judges make decisions on applications under section (a).

Rule 17-208. FEE SCHEDULES

(a) Authority to Adopt

Subject to the approval of the Chief Judge of the Court of Appeals, the county administrative judge of each circuit court shall develop and adopt maximum hourly rate fee schedules for court-designated individuals conducting each type of fee-for-service ADR. In developing the fee schedules, the county administrative judge shall take into account the availability of qualified individuals willing to provide those services and the ability of litigants to pay for them.

(b) Compliance

A court-designated ADR practitioner may not charge or accept a fee for the ADR in excess of that allowed by court order, and the amount stated in the court order may not exceed the fee stated in the applicable schedule. Violation of this Rule shall be cause for removal from court-approved ADR practitioner lists.

Committee note: The maximum hourly rates in a fee schedule may vary based on the type the alternative dispute resolution proceeding, the complexity of the action, and the qualifications of the ADR practitioner.

Source: This Rule is derived from former Rule 17-108 (2011).

REPORTER'S NOTE

Rule 17-208 is derived from current Rule 17-108.

In section (a), three changes are made from current Rule 17-108. Rule 17-208 states that the "county administrative judge" of each circuit court "shall" develop and adopt maximum hourly rate fee schedules for court-designated individuals conducting fee-for-service ADR. Current Rule 17-108 states that the "circuit administrative judge" "may" develop and adopt maximum fee schedules fee schedules. Also, Rule 17-208 requires the adoption of maximum "hourly rate" fee schedules, whereas, under the current Rule, the fee schedules could be based upon per hour, per case, or per session charges.

Section (b) provides that an ADR practitioner may not accept or charge for ADR in a particular case a greater fee than that allowed by the court's order in that case. The fee allowed by the court's order may not exceed the maximum hourly rate set by the fee schedule. Violation of this Rule is cause for removal from court-approved ADR provider lists.

A Committee note following section (b) notes that the maximum hourly rates in the fee schedule may vary based on several factors.

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Rule 17-301. ADR OFFICE

(a) Definition

"ADR Office" means the District Court Alternative Dispute Resolution Office, a unit within the Office of the Chief Judge of the District Court.

(b) Duties

The ADR Office is responsible for administering the ADR programs of the District Court. Its duties include processing applications for approval as ADR practitioners, conducting orientation for approved ADR practitioners and applicants for approval as such practitioners, arranging the scheduling of ADR practitioners at each District Court location, collecting and maintaining statistical information about the District Court ADR programs, and performing such other duties involving ADR programs as are required by the Rules in this Chapter or are assigned by the Chief Judge of the District Court.

Source: This Rule is new.

REPORTER'S NOTE

Rule 17-301 explains that the ADR Office exists as a unit within the Office of the Chief Judge of the District Court, and outlines the duties of the ADR Office.

Rule 17-302. GENERAL PROCEDURES AND REQUIREMENTS

(a) Authority to Order ADR

Except as provided in sections (b) and (c) of this Rule and Rule 17-303, the court, on or before the day of a scheduled trial, may order a party and the party's attorney to participate in one non-fee-for-service mediation or one non-fee-for-service settlement conference.

Committee note: Under this Rule, an order of referral to ADR may be entered regardless of whether a party is represented by an attorney. This Rule does not preclude the court from offering an additional ADR upon request of the parties.

(b) When Referral Prohibited

The court may not enter an order of referral to ADR in an action for a protective order under Code, Family Law Article, Title 4, Subtitle 5, Domestic Violence.

(c) Objection by Party

(1) Notice of Right to Object

If, on the day of a scheduled trial, an order of referral is contemplated or entered by the court, the court shall inform the parties that they have a right to object to the referral at that time. If a written order of referral is entered and served on the parties prior to the date of the scheduled trial, the order shall inform the parties that they have a right

to object to a referral and state a reasonable time and method by which the objection may be made.

(2) Consideration of Objection

(A) If a party objects to a referral, the court shall give the party a reasonable opportunity to explain the basis of the objection and give fair and prompt consideration to it.

(B) If the basis of the objection is that the parties previously engaged in good faith in an ADR process that did not succeed and the court finds that to be true, the court may offer the opportunity for, but may not require, participation in a new court-referred mediation or settlement conference.

Source: This Rule is new.

REPORTER'S NOTE

Rule 17-302 outlines the general procedures and requirements regarding ADR proceedings in the District Court.

Section (a) provides the District Court with the authority to order a party and the party's attorney to participate in one non-fee-for-service mediation or one non-fee-for-service settlement conference.

Section (b) prohibits an order of referral to ADR in a protective order action.

Section (c) provides that the parties may object to a referral to ADR, and that the court shall give the objecting party a reasonable opportunity to explain the objection. If a party objects because the parties have previously engaged in good faith in an ADR process that did not succeed, the court may not require the parties to engage in a new court-referred mediation or settlement conference.

Rule 17-303. DESIGNATION OF MEDIATORS AND SETTLEMENT CONFERENCE CHAIRS

(a) Limited to Qualified Individuals

(1) Court-Designated Mediator

A mediator designated by the court or pursuant to court order shall possess the qualifications prescribed in Rule 17-304 (a).

(2) Court-Designated Settlement Conference Chair

A settlement conference chair designated by the court or pursuant to court order shall possess the qualifications prescribed in Rule 17-304 (b).

(b) Designation Procedure

(1) Court Order

The court by order may designate an individual to conduct the ADR or may direct the ADR Office, on behalf of the court, to select a qualified individual for that purpose.

(2) Duty of ADR Office

If the court directs the ADR Office to select the individual, the ADR Office may select the individual or may arrange for an ADR organization to do so. An individual selected by the ADR Office or by the ADR organization has the status of a court-designated mediator or settlement conference chair.

(3) Discretion in Designation or Selection

Neither the court nor the ADR Office is required to choose at random or in any particular order from among the qualified individuals. They should endeavor to use the services of as many qualified individuals as practicable, but the court or ADR Office may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective designees.

(4) ADR Practitioner Selected by Agreement of Parties

If the parties agree on the record to participate in ADR but inform the court of their desire to select an individual of their own choosing to conduct the ADR, the court may (A) grant the request and postpone further proceedings for a reasonable time, or (B) deny any request for postponement and proceed with a scheduled trial.

Source: This Rule is new.

REPORTER'S NOTE

Rule 17-303 outlines the procedures for designating mediators and settlement conference chairs.

Section (a) provides that the individual shall have the qualifications prescribed in Rule 17-304.

Section (b) outlines the designation procedure, and provides that the court may designate an individual to conduct the ADR, or may direct the ADR office to select a qualified individual.

Subsection (b)(3) provides that neither the court nor the ADR Office is required to choose at random or in any particular order from the list of qualified individuals.

Subsection (b)(4) provides that an ADR practitioner may be selected by agreement of the parties.

Rule 17-304. QUALIFICATIONS AND SELECTION OF MEDIATORS AND SETTLEMENT CONFERENCE CHAIRS

(a) Qualifications of Court-Designated Mediator

To be designated by the court as a mediator, an individual shall:

(1) unless waived by the parties, be at least 21 years old;

(2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of (A) Rule 17-104 or (B) for individuals trained prior to [effective date of the Rule], former Rule 17-106;

(3) be familiar with the Rules in Title 17 of the Maryland Rules;

(4) submit a completed application in the form required by the ADR Office;

(5) attend an orientation session provided by the ADR Office;

(6) unless waived by the ADR Office, observe, on separate dates, at least two District Court mediation sessions and participate in a debriefing with the mediator after each mediation;

(7) unless waived by the ADR Office, mediate on separate

dates, at least two District Court cases while being reviewed by an experienced mediator or other individual designated by the ADR Office and participate in a debriefing with the observer after each mediation;

(8) agree to volunteer at least six days in each calendar year as a court-designated mediator in the District Court day-of-trial mediation program;

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

(10) submit to periodic monitoring by the ADR Office;

(11) in each calendar year complete four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104; and

(12) comply with the procedures and requirements posted on the ADR Office's website relating to diligence and quality assurance.

(b) Qualifications of Court-Designated Settlement Conference Chair

To be designated by the court as a settlement conference chair, an individual shall be:

(1) a judge of the District Court;

(2) a retired judge approved for recall for service under Maryland Constitution, Article IV, §3A; or

(3) an individual who, unless the parties agree otherwise, shall:

(A) abide by any applicable standards adopted by the Court

of Appeals;

(B) submit to periodic monitoring of court-ordered ADR by a qualified person designated by the ADR Office;

(C) be a member in good standing of the Maryland Bar and have at least three years experience in the active practice of law;

(D) unless waived by the court, have completed a training program of at least six hours that has been approved by the ADR Office; and

(E) comply with the procedures and requirements posted on the ADR Office's website relating to diligence and quality assurance.

(c) Procedure for Approval

(1) Filing Application

An individual seeking designation to mediate or conduct settlement conferences in the District Court shall submit to the ADR Office a completed application substantially in the form required by that Office. The application shall be accompanied by documentation demonstrating that the applicant has met the applicable qualifications required by this Rule.

Committee note: Application forms are available from the ADR Office and on the Maryland Judiciary's website, www.mdcourts.gov/district/forms/general/adr001.pdf.

(2) Action on Application

After such investigation as the ADR Office deems appropriate, the ADR Office shall notify the applicant of the approval or disapproval of the application and the reasons for a

disapproval.

(3) Court-Approved ADR Practitioner and Organization Lists

The ADR Office shall maintain a list:

(A) of mediators who meet the qualifications of section (a) of this Rule;

(B) of settlement conference chairs who meet the qualifications set forth in subsection (b)(3) of this Rule; and

(C) of ADR organizations approved by the ADR Office.

(4) Public Access to Lists

The ADR Office shall provide to the Administrative Clerk of each District a copy of each list for that District maintained pursuant to subsection (c)(3) of this Rule. The clerk shall make a copy of the list available to the public at each District Court location. A copy of the completed application of an individual on a list shall be made available by the ADR Office upon request.

(5) Removal from List

After notice and a reasonable opportunity to respond, the ADR Office may remove a person as a mediator or settlement conference chair for failure to maintain the applicable qualifications of this Rule or for other good cause.

Source: This Rule is new.

REPORTER'S NOTE

Rule 17-304 outlines the qualifications and selection of mediators and settlement conference chairs.

Section (a) outlines the required qualifications for a court-designated mediator.

Subsection (a)(2) requires that a court-designated mediator complete at least 40 hours of basic mediation training in a program that meets the requirements of new Rule 17-104. Individuals trained prior to the effective date of new Rule 17-104, must instead meet the requirements of current Rule 17-106.

Section (b) outlines the required qualifications for a court-designated settlement conference chair. The individual may be a judge, a retired judge, or an individual who meets certain requirements, unless these requirements are waived by the parties. The requirements include being a Maryland attorney with at least 3 years of experience and complying with the other requirements listed in subsection (b)(3).

Section (c) outlines the procedures for the approval of prospective ADR practitioners, the maintenance of court-approved ADR provider lists, and the removal of individuals from the lists.

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Rule 17-305. NO FEE FOR COURT-ORDERED ADR

District Court litigants and their attorneys shall not be required to pay a fee or additional court costs for participating in a mediation or settlement conference before a court-designated ADR practitioner in the District Court.

Source: This Rule is new.

REPORTER'S NOTE

Rule 17-305 provides that District Court litigants and their attorneys shall not be required to pay a fee for court-ordered ADR. In contrast, in circuit court, litigants may be required to pay a fee for court-ordered ADR under certain circumstances.

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Rule 17-101. APPLICABILITY

[Showing changes from current Rule 17-101:]

~~(a) Generally~~

~~The rules in this Chapter apply to all civil actions in circuit court except (1) they 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.~~

(a) General Applicability of Title

Except as provided in section (b) of this Rule, the Rules in this Title apply when a court refers all or part of a civil action or proceeding to ADR.

Committee note: The Rules is this Title do not apply to an ADR

process in which the parties participate without a court order of referral to that process.

(b) Exceptions

Except as otherwise provided by Rule, the Rules in this Title do not apply to:

(1) an action or order to enforce a contractual agreement to submit a dispute to ADR;

(2) an action to foreclose a lien against owner-occupied residential property subject to foreclosure mediation conducted by the Office of Administrative Hearings under Rule 14-209.1;

(3) an action pending in the Health Care Alternative Dispute Resolution Office under Code, Courts Article, Title 3, Subtitle 2A, unless otherwise provided by law; or

(4) a matter referred to a master, examiner, auditor, or parenting coordinator pursuant to Rule 2-541, 2-542, 2-543, or 9-205.2.

(c) Applicability of Chapter 200

The Rules in Chapter 200 apply to actions and proceedings pending in a circuit court.

(d) Applicability of Chapter 300

The Rules in Chapter 300 apply to actions and proceedings pending in the District Court.

Source: This Rule is derived from former Rule 17-101 (2011).

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Rule 17-102. DEFINITIONS

[Showing changes from current Rule 17-102:]

In this ~~Chapter~~ Title, the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(a) ADR

"ADR" means "alternative dispute resolution."

(b) ADR Organization

"ADR organization" means an entity, including an ADR unit of a court, that is designated by the court to select individuals with the applicable qualifications required by Rule 9-205 or the Rules in this Title to conduct a non-fee-for-service ADR ordered by the court.

(c) ADR Practitioner

"ADR practitioner" means an individual who conducts ADR under the Rules in this Title.

~~(a)~~ (d) Alternative Dispute Resolution

"Alternative dispute resolution" means the process of resolving matters in pending litigation through ~~a settlement conference,~~ arbitration, mediation, neutral case evaluation, neutral fact-finding, ~~arbitration, mediation, other non-judicial dispute resolution process,~~ settlement conference, or a

combination of those processes.

~~Committee note: Nothing in these Rules is intended to restrict the use of consensus-building to assist in the resolution of disputes. Consensus-building means a process generally used to prevent or resolve disputes or to facilitate decision making, often within a multi-party dispute, group process, or public policy-making process. In consensus-building processes, one or more neutral facilitators may identify and convene all stakeholders or their representatives and use techniques to open communication, build trust, and enable all parties to develop options and determine mutually acceptable solutions.~~

~~(b)~~ (e) Arbitration

"Arbitration" means a process in which (1) the parties appear before one or more impartial arbitrators and present evidence and argument to support their respective positions, and (2) the arbitrators render ~~a decision in the form of~~ an award that is not binding~~,~~ unless the parties agree otherwise in writing.

Committee note: Under the Federal Arbitration Act, the Maryland Uniform Arbitration Act, the International Commercial Arbitration Act, and at common law, ~~and in common usage outside the context of court-referred cases,~~ arbitration awards are binding unless the parties agree otherwise.

~~(c)~~ (f) Fee-for-service

"Fee-for-service" means that a party will be charged a fee by ~~the person or persons conducting the alternative dispute resolution proceeding~~ an ADR practitioner designated by a court to conduct ADR.

~~(d)~~ (g) Mediation

"Mediation" means a process in which the parties work with one or more impartial mediators who, without providing legal advice, assist the parties in reaching their own voluntary

agreement for the resolution of ~~the~~ all or part of a dispute. ~~A mediator may identify issues and options, assist the parties or their attorneys in exploring the needs underlying their respective positions, and, upon request, record points of agreement reached by the parties. While acting as a mediator, the mediator does not engage in arbitration, neutral case evaluation, neutral fact-finding, or other alternative dispute resolution processes and does not recommend the terms of an agreement.~~

Cross reference: For the role of the mediator, see Rule 17-103.

~~(e)~~ (h) Mediation Communication

"Mediation communication" means a communication, whether ~~speech, writing, or conduct~~ spoken, written, or nonverbal, made as part of a mediation, including a communication~~s~~ made for the purpose of considering, initiating, continuing, ~~or~~ reconvening, or evaluating a mediation or ~~retaining~~ a mediator.

~~(f)~~ (i) Neutral Case Evaluation

"Neutral case evaluation" means a process in which (1) the parties, their attorneys, or both appear before an impartial ~~person~~ evaluator and present in summary fashion the evidence and arguments ~~supporting~~ to support their respective positions, and (2) the ~~impartial person~~ evaluator renders an evaluation of their positions and an opinion as to the likely outcome of the ~~dispute or issues in the dispute if the action is tried~~ litigation.

(j) Neutral Expert

"Neutral expert" means an individual with special

expertise to provide impartial technical background information, an impartial opinion, or both in a specified area.

~~(g)~~ (k) Neutral Fact-finding

"Neutral fact-finding" means a process in which (1) the parties, their attorneys, or both appear before an impartial ~~person~~ individual and present the evidence and arguments ~~supporting~~ to support their respective positions as to ~~particular~~ disputed factual issues, and (2) the ~~impartial person~~ individual makes findings of fact as to those issues~~. Unless~~ that are not binding unless the parties otherwise agree in writing~~, those findings are not binding~~.

~~(h)~~ (l) Settlement Conference

"Settlement conference" means a conference at which the parties, their attorneys, or both appear before an impartial ~~person~~ individual to discuss the issues and positions of the parties in ~~the action in~~ an attempt to ~~resolve the dispute or issues in the dispute by agreement or by means other than trial~~ agree on a resolution of all or part of the dispute by means other than trial. A settlement conference may include neutral case evaluation and neutral fact-finding, and the impartial ~~person~~ individual may recommend the terms of an agreement.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is new.
Section (c) is new.
Section (d) is derived from former Rule 17-102 (a) (2011).
Section (e) is derived from former Rule 17-102 (b) (2011).
Section (f) is derived from former Rule 17-102 (c) (2011).
Section (g) is derived from former Rule 17-102 (d) (2011).
Section (h) is derived from former Rule 17-102 (e) (2011).

Section (i) is derived from former Rule 17-102 (f) (2011).
Section (j) is new.
Section (k) is derived from former Rule 17-102 (g) (2011).
Section (l) is derived from former Rule 17-102 (h) (2011).

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Rule 17-103. ROLE OF MEDIATOR

[Showing changes from current Rule 17-102 (d):]

A mediator may help identify issues and options, assist the parties ~~or~~ and their attorneys in exploring the needs underlying their respective positions, and, upon request, record points of agreement ~~reached~~ expressed and adopted by the parties. While acting as a mediator, the mediator does not engage in ~~arbitration, neutral case evaluation, neutral fact-finding, or other alternative dispute resolution processes~~ any other ADR process and does not recommend the terms of an agreement.

Committee note: Mediators often record points of agreement expressed and adopted by the parties to provide documentation of the results of the mediation. Because a mediator who is not a Maryland lawyer is not authorized to practice law in Maryland and a mediator who is a Maryland lawyer ordinarily would not be authorized to provide legal advice or services to parties in conflict, a mediator should not be authoring agreements regarding matters in litigation for the parties to sign. If the parties are represented by counsel, the mediator should advise them not to sign the document embodying the points of agreement until they have consulted their attorneys. If the parties, whether represented or not, choose to sign the document, a statement should be added that the points of agreement as recorded by the mediator constitute the points of agreement expressed and adopted by the parties.

Source: This Rule is derived from the last two sentences of former Rule 17-102 (d) (2011).

Rule 17-104. BASIC MEDIATION TRAINING PROGRAMS

[Showing changes from current Rule 17-106 (a):]

To qualify under Rule ~~17-104 (a)(2)~~ 17-205 or 17-304, a basic mediation training program ~~must~~ shall include the following:

(a) conflict resolution and mediation theory, including causes of conflict, interest-based versus positional bargaining, and models of conflict resolution;

(b) mediation skills and techniques, including information-gathering skills; communication skills; problem-solving skills; interaction skills; conflict management skills; negotiation techniques; caucusing; cultural, ethnic, and gender issues; and strategies to (1) identify and respond to power ~~balances~~ imbalances, intimidation, and the presence and effects of domestic violence, and (2) safely terminate a mediation when such action is warranted;

(c) mediator conduct, including conflicts of interest, confidentiality, neutrality, ethics, and standards of practice; and

~~(4) rules, statutes, and practice governing mediation in the circuit courts~~

(d) simulations and role-playing, monitored and critiqued by

experienced mediator trainers.

Source: This Rule is derived from former Rule 17-106 (a) (2011).

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Rule 17-105. MEDIATION CONFIDENTIALITY

[Showing changes from current Rule 17-109:]

(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~~ Except as provided in sections (c) and (d) of this Rule~~,~~:

(1) ~~The parties~~ a party to a mediation and any person ~~who is~~ present or who otherwise ~~participating~~ participates in ~~the~~ a mediation at the request of a party may not disclose or be compelled to disclose a mediation communication in any judicial, administrative, or other proceeding; and

(2) the parties may enter into a written agreement to maintain the confidentiality of mediation communications and to require ~~any person~~ all persons who are present or who otherwise ~~participating~~ participate in ~~the~~ a mediation ~~at the request of a party to maintain the confidentiality of mediation communications~~

to join in that agreement.

Cross reference: See Rule 5-408 (a)(3).

(c) Signed Document

A document signed by the parties that ~~reduces to writing an~~ records points of agreement ~~reached~~ expressed and adopted by the parties or that constitutes an agreement reached by the parties as a result of mediation is not confidential, unless the parties agree otherwise in writing ~~otherwise~~.

Cross reference: See Rule 9-205 ~~(d)~~ (g) concerning the submission of a document embodying 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, and a person who was present or who otherwise participated in a mediation may disclose or report mediation communications:

(1) to a potential victim or to the appropriate authorities to the extent ~~that~~ they reasonably believe ~~it~~ necessary to help~~:~~ ~~(1)~~ prevent serious bodily harm or death to the potential victim;

(2) ~~assert or defend~~ when relevant to the assertion of or defense against allegations of mediator misconduct or negligence; or

(3) ~~assert or defend~~ when relevant to ~~against~~ a claim or defense that an agreement arising out of a mediation should be rescinded because of fraud, duress, or misrepresentation ~~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 that is 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.~~

Cross reference: See Rule 5-408 (b). See also Code, Courts Article, Title 3, Subtitle 18, which does not apply to mediations to which the Rules in Title 17 apply.

Source: This Rule is derived from former Rule 17-109 (2011).

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Rule 17-208. FEE SCHEDULES

(a) Authority to Adopt
(b) Compliance

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Rule 17-201. AUTHORITY TO ORDER ADR

(a) Generally

[Showing changes from current Rule 17-103 (a):]

A circuit court may ~~not require~~ order a party and the party's attorney to participate in ~~alternative dispute resolution proceeding except in accordance with this Rule~~ ADR but only in accordance with the Rules in this Chapter and in Chapter 100 of this Title.

(b) Referral Prohibited

The court may not enter an order of referral to ADR in a protective order action under Code, Family Law Article, Title 4, Subtitle 5, Domestic Violence.

(c) Mediation of Child ~~Access~~ Custody or Visitation Disputes

[Showing change from current Rule 17-103 (c)(1):]

~~This section does not apply to proceedings under Rule 9-205.~~ Rule 9-205 governs the authority of a circuit court to order mediation of a dispute as to child custody or visitation, and the Rules in Title 17 do not apply to proceedings under that Rule except as otherwise provided in that Rule.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 17-103 (a) (2011).
Section (b) is new.
Section (c) is derived from former Rule 17-103 (c)(1) (2011).

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CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

Rule 17-202. GENERAL PROCEDURE

[Showing changes from current Rule 17-103 (b) and (c)(2) - (4):]

(a) Scope

This Rule does not apply to health care malpractice actions under Code, Courts Article, Title 3, Subtitle 2A, which are governed by Rule 17-203.

(b) Participation Requirements

(1) Non-fee-for-service Settlement Conference

The court may require the parties and their attorneys to participate in a non-fee-for-service settlement conference.

Committee note: If a settlement conference is required, it should be conducted subsequent to any other court-referred ADR.

(2) Other ADR

The court may refer all or part of an action to one ADR process in accordance with sections (c), (d), and (e) of this Rule, but the court may not require participation in that ADR if a timely objection is filed in accordance with section (f) of this Rule.

(c) Designation of ADR Practitioner

(1) Direct Designation

In an order referring all or part of an action to ~~an alternative dispute resolution proceeding~~ ADR, the court may ~~tentatively~~ designate, ~~any person qualified under these rules to~~

~~conduct the proceeding.~~ from a list of approved ADR practitioners maintained by the court pursuant to Rule 17-207, an ADR practitioner to conduct the ADR.

(2) Indirect Designation if ADR is Non-fee-for-service

If the ADR is non-fee-for-service, the court may delegate authority to an ADR organization selected from a list maintained by the court pursuant to Rule 17-207 or to an ADR unit of the court to designate an ADR practitioner qualified under Rules 17-205 or 17-206, as applicable, to conduct the ADR. An individual designated by the ADR organization pursuant to the court order has the status of a court-designated ADR practitioner.

Committee note: Examples of the use of indirect designation are referrals of indigent litigants to publicly funded community mediation centers and referrals of one or more types of cases to a mediation unit of the court.

(d) Discretion in Designation

In designating an ADR practitioner, the court is not required to choose at random or in any particular order from among the qualified ADR practitioners or organizations on its lists. ~~Although the~~ The court should endeavor to use the services of as many qualified persons as ~~possible~~ practicable, but the court may consider ~~whether~~, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament ~~may be helpful and may designate a person possessing those special qualifications~~ of the available prospective designees.

(e) Contents of Order of Referral; Termination or Extension of ADR; Restriction on Fee Increase

An order of referral to ADR shall specify a maximum number of hours of required participation by the parties. An order to a fee-for-service ADR shall also specify the hourly rate that may be charged for ADR services in the action, which may not exceed the maximum stated in the applicable fee schedule. The parties may participate for less than the number of hours stated in the order if they and the ADR practitioner agree that no further progress is likely. The parties, by agreement, may extend the ADR beyond the number of hours stated in the order. During any extension of the ADR, the ADR practitioner may not increase the practitioner's hourly rate for providing services relating to the action.

Committee note: Having a maximum number of hours in the court's order of referral encourages participation in ADR by assuring the parties that the ADR does not require an open-ended commitment of their time and money. Although the parties, without further order of court, may extend the ADR beyond the maximum, an amendment to the time requirements contained in a scheduling order may be made only by order of the court.

Cross reference: See Rule 2-504, concerning scheduling orders, and Rule 17-208, concerning fee schedules and sanctions for noncompliance with an applicable schedule.

(f) Objection; Alternatives

(1) Applicability

This section applies to a referral to ADR other than a non-fee-for-service settlement conference.

(2) Time for Filing

~~If the court enters an order or determines to enter an~~

~~order referring a matter to an alternative dispute resolution process, the court, shall give the parties a reasonable opportunity (A) to object to the referral, (B) to offer an alternative proposal, and (C) to agree on a person to conduct the proceeding. The court may provide that opportunity before the order is entered or upon request of a party filed within 30 days after the order is entered.~~

If the court issues an order referring all or part of an action to ADR, a party, within 30 days after entry of the order, may file (A) an objection to the referral, (B) an alternative proposal, or (C) a "Request to Substitute ADR Practitioner" substantially in the form set forth in section (g) of this Rule. If the order delegates authority to an ADR organization to designate an ADR practitioner, the objection, alternative proposal, or "Request to Substitute ADR Practitioner" shall be filed no later than 30 days after the party is notified by the ADR organization of the designation.

(3) Notification of Rights

An order referring all or part of an action to ADR, an order delegating authority to an ADR organization to designate an ADR practitioner, and an announcement of a determination to enter an order referring all or part of an action to ADR shall include the information set forth in subsection (f)(2) of this Rule.

(4) If No Objection or Alternative Filed

If an objection, alternative proposal, or "Request to Substitute ADR Practitioner" is not filed within the time allowed

by this section, the order shall stand, subject to modification by the court.

(5) Ruling

If a party timely objects to a referral, the court shall revoke its order. If the parties offer an alternative proposal or agree on a different ADR practitioner, the court shall revoke or modify its order, as appropriate.

(g) Form of Request to Substitute ADR Practitioner

A Request to Substitute ADR Practitioner shall be substantially in the following form:

[Caption of Case]

Request to Substitute ADR Practitioner and

Selection of ADR Practitioner by Stipulation

We agree to attend ADR conducted by _____

_____.

(Name, address, and telephone number of ADR Practitioner)

We have made payment arrangements with the ADR Practitioner and we understand that the court's fee schedules do not apply to this ADR. We request that the court substitute this ADR Practitioner for the ADR Practitioner designated by the court.

_____	_____
(Signature of Plaintiff)	(Signature of Defendant)
_____	_____
(Signature of Plaintiff's Attorney, if any)	(Signature of Defendant's Attorney, if any)

[Add additional signature lines for any additional parties and attorneys.]

I, _____,
(Name of ADR Practitioner)

agree to conduct the following ADR in the above-captioned case [check one]:

- ❑ mediation in accordance with Rules 17-103 and 17-105.
- ❑ ADR other than mediation: _____ [specify type of ADR].

At the conclusion of the ADR, I agree to comply with the provisions of Rule 17-202 (h).

I solemnly affirm under the penalties of perjury that I have the qualifications prescribed by the following Rules [check all that are true]:

- ❑ Rule 17-205 (a) [Basic mediation]
- ❑ Rule 17-205 (b) [Business and Technology]
- ❑ Rule 17-205 (c) [Economic Issues - Divorce and Annulment]
- ❑ Rule 17-205 (d) [Health Care Malpractice]
- ❑ Rule 17-205 (e) [Foreclosure]
- ❑ Rule 17-206 [ADR other than mediation]
- ❑ None of the above.

_____
Signature of ADR Practitioner

(h) Evaluation Forms; Notification to Court

At the conclusion of an ADR, the ADR practitioner shall

give to the parties any ADR evaluation forms and instructions provided by the court and promptly advise the court whether all, some, or none of the issues in the action have been resolved.

Source: This Rule is derived in part from former Rule 17-103 (b) and (c)(2)-(4) (2011) and is in part new.

Rule 17-203. HEALTH CARE MALPRACTICE ACTIONS

(a) Applicability

This Rule applies to health care malpractice actions under Code, Courts Article, Title 3, Subtitle 2A.

(b) Mandatory Referral to ADR; Timing

Within 30 days after a defendant has filed an answer to the complaint or within 30 days after a defendant has filed a certificate of a qualified expert pursuant to Code, Courts Article, Title 3, Subtitle 2A-04, whichever is later, the court shall issue a scheduling order requiring the parties to engage in ADR at the earliest practicable date, unless all parties file with the court an agreement not to engage in ADR and the court finds that ADR would not be productive.

Cross reference: See Rule 2-504 (b)(2)(C) and Code, Courts Article, §3-2A-06C (b).

(c) Designation

(1) By the Parties

Within 30 days after the defendant has answered the complaint or filed a certificate of a qualified expert pursuant to Code, Courts Article, Title 3, Subtitle 2A-04, whichever is later, the parties may agree on an ADR practitioner and shall promptly notify the court of their agreement and the name of the

ADR practitioner. A Notice of Selection of ADR Practitioner shall be substantially in the following form:

[Caption of Case]

Notice of Selection of ADR Practitioner by Stipulation

We agree to attend ADR conducted by _____

_____.
(Name, address, and telephone number of ADR Practitioner)

We have made payment arrangements with the ADR Practitioner and we understand that the court's fee schedules do not apply to this ADR. We request that the court designate this ADR Practitioner in lieu of any court-appointed ADR Practitioner.

_____	_____
(Signature of Plaintiff)	(Signature of Defendant)
_____	_____
(Signature of Plaintiff's Attorney, if any)	(Signature of Defendant's Attorney, if any)

[Add additional signature lines for any additional parties and attorneys.]

I, _____,
(Name of ADR Practitioner)

agree to conduct the following ADR in the above-captioned case [check one]:

- ❑ mediation in accordance with Rules 17-103 and 17-105.
- ❑ ADR other than mediation:_____[specify type of ADR].

At the conclusion of the ADR, I agree to comply with the provisions of Rule 17-203 (f).

I solemnly affirm under the penalties of perjury that I have the qualifications prescribed by the following Rules [check all that are true]:

- ❑ Rule 17-205 (a) [Basic mediation]
- ❑ Rule 17-205 (b) [Business and Technology]
- ❑ Rule 17-205 (c) [Economic Issues - Divorce and Annulment]
- ❑ Rule 17-205 (d) [Health Care Malpractice]
- ❑ Rule 17-205 (e) [Foreclosure]
- ❑ Rule 17-206 [ADR other than mediation]
- ❑ None of the above.

_____
Signature of ADR Practitioner

(2) By the Court

If the parties do not timely notify the court that they have agreed upon an ADR practitioner, the court promptly shall appoint a mediator who meets the qualifications prescribed by Rule 17-205 (d) and notify the parties. Within 15 days after the court notifies the parties of the name of the mediator, a party may object in writing, stating the reason for the objection. If the court sustains the objection, the court shall appoint a different mediator.

(d) Initial Conference; Outline of Case

The ADR practitioner shall schedule an initial conference

with the parties as soon as practicable. At least 15 days prior to the initial conference, each party shall provide to the ADR practitioner a brief written outline of the strengths and weaknesses of the party's case. A party is not required to provide the outline to any other party, and the ADR practitioner shall not provide the outline or disclose its contents to anyone unless authorized by the party who submitted the outline.

Cross reference: See Code, Courts Article, §3-2A-06C (h)(2) and (k).

(e) Discovery

If the ADR practitioner determines that discovery is necessary to facilitate the ADR, the ADR practitioner, consistent with the scheduling order, may mediate the scope and schedule of that discovery, adjourn the initial conference, and reschedule an additional conference for a later date.

(f) Evaluation Forms

At the conclusion of the ADR, the ADR practitioner shall give to the parties any ADR evaluation forms and instructions provided by the court.

(g) Notification to the Court

The parties shall notify the court if the case is settled. If the parties agree to settle some but not all of the issues in dispute, the ADR practitioner shall file a notice of partial settlement with the court. If the parties have not agreed to a settlement, the ADR practitioner shall file a notice with the court that the case was not settled.

(h) Costs

Unless otherwise agreed by the parties, the costs of the ADR shall be divided equally between the parties.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 - PROCEEDINGS IN CIRCUIT COURT

Rule 17-204. NEUTRAL EXPERTS

[Showing changes from current Rule 17-105.1:]

~~(a) Definition~~

~~A "neutral expert" means a person who has special expertise to provide impartial technical background information, an impartial opinion, or both in a specific area.~~

~~(b) Selection~~

~~When a court-appointed alternative dispute resolution practitioner or one or both of the parties believe that it would be helpful to have the assistance of a neutral expert, the practitioner may select a neutral expert, with the consent of the parties and at their expense, to be present at or participate in the mediation at the request of the practitioner.~~

(a) Appointment

With the consent of all parties participating in the ADR, a court-designated ADR practitioner may select a neutral expert to participate in the ADR. The expense of the neutral expert shall be allocated among the parties in accordance with their agreement.

~~(c)~~ (b) Confidentiality

(1) Mediation Proceedings

In a mediation, the provisions of ~~sections (a), (b), and~~

~~(e) of Rule 17-109~~ Rule 17-105 apply to the neutral expert.

(2) Other ~~Alternative Dispute Resolution Proceedings~~ ADR

In all ~~alternative dispute resolution proceedings,~~ ADR other than mediation, the parties and the ~~alternative dispute resolution~~ ADR practitioner may require the neutral expert to enter into a written agreement binding the neutral expert to confidentiality. The written agreement may include provisions stating that the expert may not disclose or be compelled to disclose any communications related to the ~~alternative dispute resolution proceeding~~ ADR in any judicial, administrative, or other proceedings. Communications related to the ~~alternative dispute resolution proceeding~~ ADR that are confidential under an agreement allowed by this subsection 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 related to the ~~alternative dispute resolution proceeding~~ ADR.

Source: This Rule is derived from former Rule 17-105.1 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

Rule 17-205. QUALIFICATIONS OF COURT-DESIGNATED MEDIATORS

[Showing changes from current Rule 17-104 (a):]

(a) Basic Qualifications ~~In General~~

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

(1) unless waived by the ~~court~~ parties, 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 basic mediation training in a program meeting the requirements of Rule ~~17-106~~ 17-104 or, for individuals trained prior to [effective date of the Rule], former Rule 17-106;

(3) be familiar with the rules, statutes, and practices governing mediation in the circuit courts;

(4) have mediated or co-mediated at least two civil cases;

(5) complete in ~~every two-year period eight hours~~ each calendar year four hours of continuing mediation-related education in one or more of the topics set forth in Rule ~~17-106~~ 17-104;

(6) abide by any mediation standards adopted by the Court of

Appeals;

(7) submit to periodic monitoring of court-ordered mediations by a qualified mediator designated by the county administrative judge; and

(8) 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, upon request by the court, a reasonable number of referrals ~~on~~ at a reduced-fee or pro bono ~~basis upon request by the court~~.

[Showing changes from current Rule 17-104 (c):]

(b) Business and Technology Cases

~~To be~~ A mediator designated by the court ~~as a mediator of~~ for a Business and Technology Program case~~s~~, ~~other than by agreement of the parties, the individual must~~ shall, unless the parties agree otherwise:

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

(2) within the two-year period preceding an application for approval pursuant to Rule 17-207, have ~~completed~~ served as a mediator in at least five non-domestic ~~circuit court~~ civil mediations ~~of comparable complexity (A)~~, at least two of which ~~are among~~ involved ~~the~~ types of ~~cases~~ conflicts ~~that are~~ assigned to the Business and Technology Case Management Program ~~or (B) have co-mediated 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.~~

[Showing changes from current Rule 17-104 (d):]

(c) Economic Issues in Divorce and Annulment Cases

~~To be~~ A mediator designated by the court ~~as a mediator~~ for issues in divorce or annulment cases ~~with partial property issues, the person~~ other than those subject to Rule 9-205 ~~must~~ shall:

(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~~ economic issues in divorce and annulment cases; and

(3) have served as a mediator or co-mediator in at least two mediations involving marital economic issues.

[Showing changes from current Rule 17-104 (e):]

(d) Health Care Malpractice Claims

~~To be~~ A mediator designated by the court ~~as a mediator of~~ for a health care malpractice claim~~s, other than by agreement of~~ shall, unless the parties~~, the person must~~ agree otherwise:

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

Rule;

(2) ~~have completed~~ within the two-year period preceding an application for approval pursuant to Rule 17-207, have served as a mediator in at least five non-domestic ~~circuit court~~ civil mediations, ~~or five non domestic non circuit court mediations of comparable complexity~~ at least two of which involved types of conflicts assigned to the Health Care Malpractice Claims ADR Program;

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

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

Cross reference: See Code, Courts Article, §3-2A-06C.

[Showing changes from current Rule 17-104 (f):]

(e) Foreclosure Cases

(1) This section does not apply to an ADR practitioner selected by the Office of Administrative Hearings to conduct a "foreclosure mediation" pursuant to Code, Real Property Article, §7-105.1 and Rule 14-209.1. ~~to be~~

(2) A mediator designated by the court ~~as a mediator~~ in a proceeding to foreclose a lien instrument~~, other than by agreement of~~ shall, unless the parties~~, the person must~~ agree otherwise:

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

~~(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)~~ (B) through experience, training, or education, be knowledgeable about lien instruments and federal and Maryland laws, rules, and regulations governing foreclosure proceedings ~~because of experience, training, or education; and~~.

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

(f) Experience Requirement

The experience requirements in this Rule may be met by mediating in the District Court or the Court of Special Appeals.

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

Source: This Rule is derived in part from former Rule 17-104 (a),(c),(d),(e), and (f) (2011) and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

Rule 17-206. QUALIFICATIONS OF COURT-DESIGNATED ADR PRACTITIONERS OTHER THAN MEDIATORS

[Showing changes from current Rule 17-105:]

(a) Generally

Except as provided in section (b) of this Rule, an ADR practitioner ~~to be~~ designated by the court to conduct ADR other than mediation~~, a person~~ shall, unless the parties agree otherwise~~, must~~:

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

(2) submit to periodic monitoring of court-ordered ADR proceedings by a qualified person designated by the county administrative judge;

(3) 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, upon request by the court, to accept a reasonable number of referrals ~~on~~ at a reduced-fee or pro bono ~~basis upon request by the court~~;

(4) either (A) be a member in good standing of the Maryland bar and have at least five years experience ~~in the active practice of law~~ as (i) a judge, (ii) a practitioner in the active practice of law, (iii) a full-time teacher of law at a law school

accredited by the American Bar Association, or (iv) a Federal or Maryland administrative law judge, or (B) have equivalent or specialized knowledge and experience in dealing with the issues in dispute; and

(5) ~~unless waived by the court,~~ have completed ~~a~~ any training program ~~that consists of at least eight hours and has been approved by the county administrative judge~~ required by the court.

(b) Judges and Masters

~~A~~ An active or retired judge or a master of the court may ~~conduct~~ chair a non-fee-for-service settlement conference.

Cross reference: Rule 16-813, Maryland Code of Judicial Conduct, Canon 4F and Rule 16-814, Maryland Code of Conduct for Judicial Appointees, Canon 4F.

Source: This Rule is derived from former Rule 17-105 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

Rule 17-207. PROCEDURE FOR APPROVAL

[Showing changes from current Rule 17-107 (a):]

(a) Generally

(1) Scope

This section applies to individuals who seek eligibility for designation by a court to conduct ADR pursuant to Rule 9-205, Rule 14-212, or Rule 17-201 other than in actions assigned to the Business and Technology Case Management Program or the Health Care Malpractice Claims ADR Program.

~~(1)~~ (2) ~~Filing~~ Application

~~A person~~ An individual seeking designation to conduct ~~alternative dispute resolution proceedings pursuant to Rule 2-504 in actions other than those assigned to the Business and Technology Case management Program~~ ADR shall file an application with the clerk of the circuit court from which the ~~person~~ individual is willing to accept referrals. The application shall be substantially in the form approved by the State Court Administrator and shall be available from the clerk of each circuit court. The clerk shall transmit each completed application, together with all accompanying documentation, to the county administrative judge or the judge's designee.

(3) Documentation

(A) ~~If the person is applying~~ An application for designation as a mediator~~, the application~~ shall be accompanied by documentation demonstrating that the applicant ~~has the qualifications required by Rule 17-104~~ meets the requirements of Rule 17-205 (a) and, if applicable, Rule 9-205 (c)(2) and Rule 17-205 (c) and (e).

(B) ~~If the person is applying~~ An application for designation to conduct ~~alternative dispute resolution proceedings~~ ADR other than mediation~~, the application~~ shall be accompanied by documentation demonstrating that the applicant ~~has the qualifications required by Rule 17-105 (a)~~ is qualified as required by Rule 17-206 (a).

(C) The State Court Administrator may require the application and documentation to be provided in a word processing file or other electronic format.

~~(2)~~ (4) Action on Application

After ~~any~~ such investigation ~~that~~ as the county administrative judge deems appropriate, the county administrative judge or designee shall notify ~~each~~ the applicant of the approval or disapproval of the application and the reasons for a disapproval.

~~(3)~~ (5) ~~Approved~~ Court-Approved ADR Practitioner and Organization Lists

~~The Administrative Office of the Courts shall prepare a list of mediators found by the Committee to meet the qualifications required by Rule 17-104 and a list of persons~~

~~found by the Committee to meet the qualifications required by Rule 17-105 (a). The Administrative Office of the Courts shall (A) attach to the lists such additional information as the State Court Administrator specifies; (B) keep the lists current; and (C) transmit a copy of each current list to the clerk of each circuit court, who shall make them available to the public.~~

The county administrative judge or designee of each circuit court shall maintain a list:

(A) of mediators who meet the qualifications set forth in Rule 17-205 (a), (c), and (e);

(B) of mediators who meet the qualifications of Rule 9-205 (c);

(C) of other ADR practitioners who meet the applicable qualifications set forth in Rule 17-206 (a); and

(D) of ADR organizations approved by the county administrative judge.

(6) Public Access to Lists

The county administrative judge or designee shall provide to the clerk of the court a copy of each list, together with a copy of the application filed by each individual on the lists. The clerk shall make these items available to the public.

~~(4)~~ (7) Removal from List

After notice and a reasonable opportunity to respond, the county administrative judge ~~shall~~ may remove a person from a court-approved list for failure to maintain the ~~applicable~~ qualifications ~~of Rule 17-104 or Rule 17-105 (a)~~ required under

Rule 17-205, Rule 9-205 (c), or Rule 17-206 (a) or for other good cause.

(b) Business and Technology ~~Case Management~~ and Health Care Malpractice Programs

(1) Scope

This section applies to individuals who seek eligibility for designation by a court to conduct ADR pursuant to Rule 17-201 in an action assigned to the Business and Technology Case Management Program or pursuant to Rule 17-203 in an action assigned to the Health Care Malpractice Claims ADR Program.

~~(1)~~ (2) ~~Filing~~ Application

~~A person~~ An individual seeking designation to conduct ~~alternative dispute resolution proceedings pursuant to Rule 2-504 in actions assigned to the Business and Technology Case Management Program~~ ADR shall file an application with the Administrative Office of the Courts, which shall transmit the application to the Committee of Program Judges appointed pursuant to Rule 16-108 b. 4. The application shall be substantially in the form approved by the State Court Administrator and shall be available from the clerk of each circuit court.

(3) Documentation

(A) ~~If the person is applying~~ An application for designation as a mediator, ~~the application~~ shall be accompanied by documentation demonstrating that the applicant ~~has the qualifications required by Rule 17-104~~ meets the applicable requirements of Rule 17-205.

(B) ~~If the person is applying~~ An application for designation to conduct ADR other than mediation~~, the application~~ shall be accompanied by documentation demonstrating that the applicant ~~has the qualifications~~ is qualified as required by Rule ~~17-105 (a)~~ 17-206 (a).

(C) The State Court Administrator may require the application and documentation to be provided in a word processing file or other electronic format.

~~(2)~~ (4) Action on Application

After ~~any~~ such investigation ~~that~~ as the Committee of Program Judges deems appropriate, the Committee shall notify the Administrative Office of the Courts that the application has been approved or disapproved~~, and if disapproved, shall state~~ and the reasons for the disapproval. The Administrative Office of the Courts shall notify ~~each~~ the applicant of the action of the Committee and the reasons for a disapproval.

~~(3)~~ (5) ~~Approved~~ Court-Approved ADR Practitioner Lists

The Administrative Office of the Courts shall ~~prepare a list of mediators found by the Committee to~~ maintain a list:

(A) of mediators who meet the qualifications ~~required by~~ of Rule ~~17-104~~ 17-205 (b);

(B) ~~and a list of persons found by the Committee to~~ of mediators who meet the qualifications ~~required by~~ of Rule ~~17-105 (a)~~ 17-205 (d); and

(C) of other ADR practitioners who meet the qualifications of Rule 17-206 (a).

(6) Public Access to Lists

The Administrative Office of the Courts shall~~: (A)~~ attach to the lists such additional information as the State Court Administrator specifies, ~~; (B)~~ keep the lists current, ~~;~~ and ~~(C)~~ transmit a copy of each current list and attachments to the clerk of each circuit court, who shall make ~~them~~ these items available to the public.

Committee note: Examples of information that the State Court Administrator may specify as attachments to the lists include information about the ~~person's~~ individual's qualifications, experience, and background and any other information that would be helpful to litigants selecting ~~a person~~ an individual best qualified to conduct ADR in a specific case.

(7) Removal from List

After notice and a reasonable opportunity to respond, the Committee of Program Judges ~~shall~~ may remove ~~a person~~ an individual from a court-approved practitioner list for failure to maintain the ~~applicable~~ qualifications ~~of~~ required by Rule ~~17-104~~ 17-205 or Rule ~~17-105~~ 17-206 (a) or for other good cause.

Source: This Rule is derived in part from former Rule 17-107 (2011) and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDING IN CIRCUIT COURT

Rule 17-208. FEE SCHEDULES

[Showing changes from current Rule 17-108:]

(a) Authority to Adopt

Subject to the approval of the Chief Judge of the Court of Appeals, the ~~circuit~~ county administrative judge of each circuit court ~~may~~ shall develop and adopt maximum hourly rate fee schedules for ~~persons~~ court-designated individuals conducting each type of ~~alternative dispute resolution proceeding other than on a volunteer basis~~ fee-for-service ADR. In developing the fee schedules, the ~~circuit~~ county administrative judge shall take into account the availability of qualified ~~persons~~ individuals willing to provide those services and the ability of litigants to pay for ~~those services~~ them.

(b) Compliance

~~A person designated by the court, other than with the agreement of the parties, to conduct an alternative dispute resolution proceeding under Rule 2-504~~ A court-designated ADR practitioner may not charge or accept a fee for ~~that proceeding~~ the ADR in excess of that allowed by court order, and the amount stated in the court order may not exceed the fee stated in the applicable schedule. Violation of this Rule shall be cause for removal from ~~all~~ court-approved ADR practitioner lists.

Committee note: The maximum hourly rates in a fee schedule may vary based on the type the alternative dispute resolution proceeding, the complexity of the action, and the qualifications of the ADR practitioner.

Source: This Rule is derived from former Rule 17-108 (2011).

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 300 - PROCEEDINGS IN THE DISTRICT COURT

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(4) Public Access to Lists
(5) Removal from List

Rule 17-305. NO FEE FOR COURT-ORDERED ADR

Rule 17-301. ADR OFFICE

(a) Definition

"ADR Office" means the District Court Alternative Dispute Resolution Office, a unit within the Office of the Chief Judge of the District Court.

(b) Duties

The ADR Office is responsible for administering the ADR programs of the District Court. Its duties include processing applications for approval as ADR practitioners, conducting orientation for approved ADR practitioners and applicants for approval as such practitioners, arranging the scheduling of ADR practitioners at each District Court location, collecting and maintaining statistical information about the District Court ADR programs, and performing such other duties involving ADR programs as are required by the Rules in this Chapter or are assigned by the Chief Judge of the District Court.

Source: This Rule is new.

Rule 17-302. GENERAL PROCEDURES AND REQUIREMENTS

(a) Authority to Order ADR

Except as provided in sections (b) and (c) of this Rule and Rule 17-303, the court, on or before the day of a scheduled trial, may order a party and the party's attorney to participate in one non-fee-for-service mediation or one non-fee-for-service settlement conference.

Committee note: Under this Rule, an order of referral to ADR may be entered regardless of whether a party is represented by an attorney. This Rule does not preclude the court from offering an additional ADR upon request of the parties.

(b) When Referral Prohibited

The court may not enter an order of referral to ADR in an action for a protective order under Code, Family Law Article, Title 4, Subtitle 5, Domestic Violence.

(c) Objection by Party

(1) Notice of Right to Object

If, on the day of a scheduled trial, an order of referral is contemplated or entered by the court, the court shall inform the parties that they have a right to object to the referral at that time. If a written order of referral is entered and served on the parties prior to the date of the scheduled trial, the order shall inform the parties that they have a right

to object to a referral and state a reasonable time and method by which the objection may be made.

(2) Consideration of Objection

(A) If a party objects to a referral, the court shall give the party a reasonable opportunity to explain the basis of the objection and give fair and prompt consideration to it.

(B) If the basis of the objection is that the parties previously engaged in good faith in an ADR process that did not succeed and the court finds that to be true, the court may offer the opportunity for, but may not require, participation in a new court-referred mediation or settlement conference.

Source: This Rule is new.

Rule 17-303. DESIGNATION OF MEDIATORS AND SETTLEMENT CONFERENCE CHAIRS

(a) Limited to Qualified Individuals

(1) Court-Designated Mediator

A mediator designated by the court or pursuant to court order shall possess the qualifications prescribed in Rule 17-304 (a).

(2) Court-Designated Settlement Conference Chair

A settlement conference chair designated by the court or pursuant to court order shall possess the qualifications prescribed in Rule 17-304 (b).

(b) Designation Procedure

(1) Court Order

The court by order may designate an individual to conduct the ADR or may direct the ADR Office, on behalf of the court, to select a qualified individual for that purpose.

(2) Duty of ADR Office

If the court directs the ADR Office to select the individual, the ADR Office may select the individual or may arrange for an ADR organization to do so. An individual selected by the ADR Office or by the ADR organization has the status of a court-designated mediator or settlement conference chair.

(3) Discretion in Designation or Selection

Neither the court nor the ADR Office is required to choose at random or in any particular order from among the qualified individuals. They should endeavor to use the services of as many qualified individuals as practicable, but the court or ADR Office may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective desingees.

(4) ADR Practitioner Selected by Agreement of Parties

If the parties agree on the record to participate in ADR but inform the court of their desire to select an individual of their own choosing to conduct the ADR, the court may (A) grant the request and postpone further proceedings for a reasonable time, or (B) deny any request for postponement and proceed with a scheduled trial.

Source: This Rule is new.

Rule 17-304. QUALIFICATIONS AND SELECTION OF MEDIATORS AND SETTLEMENT CONFERENCE CHAIRS

(a) Qualifications of Court-Designated Mediator

To be designated by the court as a mediator, an individual shall:

(1) unless waived by the parties, be at least 21 years old;

(2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of (A) Rule 17-104 or (B) for individuals trained prior to [effective date of the Rule], former Rule 17-106;

(3) be familiar with the Rules in Title 17 of the Maryland Rules;

(4) submit a completed application in the form required by the ADR Office;

(5) attend an orientation session provided by the ADR Office;

(6) unless waived by the ADR Office, observe, on separate dates, at least two District Court mediation sessions and participate in a debriefing with the mediator after each mediation;

(7) unless waived by the ADR Office, mediate on separate

dates, at least two District Court cases while being reviewed by an experienced mediator or other individual designated by the ADR Office and participate in a debriefing with the observer after each mediation;

(8) agree to volunteer at least six days in each calendar year as a court-designated mediator in the District Court day-of-trial mediation program;

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

(10) submit to periodic monitoring by the ADR Office;

(11) in each calendar year complete four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104; and

(12) comply with the procedures and requirements posted on the ADR Office's website relating to diligence and quality assurance.

(b) Qualifications of Court-Designated Settlement Conference Chair

To be designated by the court as a settlement conference chair, an individual shall be:

(1) a judge of the District Court;

(2) a retired judge approved for recall for service under Maryland Constitution, Article IV, §3A; or

(3) an individual who, unless the parties agree otherwise, shall:

(A) abide by any applicable standards adopted by the Court

of Appeals;

(B) submit to periodic monitoring of court-ordered ADR by a qualified person designated by the ADR Office;

(C) be a member in good standing of the Maryland Bar and have at least three years experience in the active practice of law;

(D) unless waived by the court, have completed a training program of at least six hours that has been approved by the ADR Office; and

(E) comply with the procedures and requirements posted on the ADR Office's website relating to diligence and quality assurance.

(c) Procedure for Approval

(1) Filing Application

An individual seeking designation to mediate or conduct settlement conferences in the District Court shall submit to the ADR Office a completed application substantially in the form required by that Office. The application shall be accompanied by documentation demonstrating that the applicant has met the applicable qualifications required by this Rule.

Committee note: Application forms are available from the ADR Office and on the Maryland Judiciary's website, www.mdcourts.gov/district/forms/general/adr001.pdf.

(2) Action on Application

After any investigation as the ADR Office deems appropriate, the ADR Office shall notify the applicant of the approval or disapproval of the application and the reasons for a

disapproval.

(3) Court-Approved ADR Practitioner and Organization Lists

The ADR Office shall maintain a list:

(A) of mediators who meet the qualifications of section (a) of this Rule;

(B) of settlement conference chairs who meet the qualifications set forth in subsection (b)(3) of this Rule; and

(C) of ADR organizations approved by the ADR Office.

(4) Public Access to Lists

The ADR Office shall provide to the Administrative Clerk of each District a copy of each list for that District maintained pursuant to subsection (c)(3) of this Rule. The clerk shall make a copy of the list available to the public at each District Court location. A copy of the completed application of an individual on a list shall be made available by the ADR Office upon request.

(5) Removal from List

After notice and a reasonable opportunity to respond, the ADR Office may remove a person as a mediator or settlement conference chair for failure to maintain the applicable qualifications of this Rule or for other good cause.

Source: This Rule is new.

Rule 17-305. NO FEE FOR COURT-ORDERED ADR

District Court litigants and their attorneys shall not be required to pay a fee or additional court costs for participating in a mediation or settlement conference before a court-designated ADR practitioner in the District Court.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 200 - DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT, AND CHILD CUSTODY

DELETE current Rule 9-205 and ADD new Rule 9-205, as follows:

Rule 9-205. MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTES

(a) Scope of Rule

This Rule applies to any action or proceeding under this Chapter in which the custody of or visitation with a minor child is an issue, including:

(1) an initial action to determine custody or visitation;

(2) an action to modify an existing order or judgment as to custody or visitation; and

(3) a petition for contempt by reason of non-compliance with an order or judgment governing custody or visitation.

(b) Duty of Court

(1) Promptly after an action subject to this Rule is at issue, the court shall determine whether:

(A) mediation of the dispute as to custody or visitation is appropriate and likely would be beneficial to the parties or the child; and

(B) a mediator possessing the qualifications set forth in section (c) of this Rule is available to mediate the dispute.

(2) If a party or a child represents to the court in good faith that there is a genuine issue of abuse, as defined in Code, Family Law Article, §4-501, of the party or child, and that, as a result, mediation would be inappropriate, the court may not order mediation.

(3) If the court concludes that mediation is appropriate and likely to be beneficial to the parties or the child and that a qualified mediator is available, it shall enter an order requiring the parties to mediate the custody or visitation dispute. The order may stay some or all further proceedings in the action pending the mediation on terms and conditions set forth in the order.

Cross reference: With respect to subsection (b)(2) of this Rule, see Rule 1-341 and Rules 3.1 and 3.3 of the Maryland Lawyers' Rules of Professional Conduct.

(c) Qualifications of Court-Designated Mediator

To be eligible for designation as a mediator by the court, an individual shall:

(1) have the basic qualifications set forth in Rule 17-205 (a);

(2) have completed at least 20 hours of training in a family mediation training program that includes:

(A) Maryland law relating to separation, divorce, annulment, child custody and visitation, and child and spousal support;

(B) the emotional aspects of separation and divorce on adults and children;

(C) an introduction to family systems and child development theory;

(D) the interrelationship of custody, visitation, and child support; and

(E) if the training program is given after [effective date of the Rule], strategies to (i) identify and respond to power imbalances, intimidation, and the presence and effects of domestic violence, and (ii) safely terminate a mediation when termination is warranted; and

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

(d) Court Designation of Mediator

(1) In an order referring a matter to mediation, the court shall:

(A) designate a mediator from a list of qualified mediators approved by the court;

(B) if the court has a unit of court mediators that provides child access mediation services, direct that unit to select a qualified mediator; or

(C) direct an ADR organization, as defined in Rule 17-102, to select a qualified mediator.

(2) If the referral is to a fee-for-service mediation, the order shall specify the hourly rate that the mediator may charge

for mediation in the action, which may not exceed the maximum stated in the applicable fee schedule.

(3) A mediator selected pursuant to subsection (d)(1)(B) or (d)(1)(C) of this Rule has the status of a court-designated mediator.

(4) In designating a mediator, the court is not required to choose at random or in any particular order. The court should endeavor to use the services of as many qualified mediators as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective designees.

(5) The parties may request to substitute for the court-designated mediator another mediator who has the qualifications set forth in Rule 17-205 (a)(1), (2), (3), and (6) and subsection (c)(2) of this Rule, whether or not the mediator's name is on the court's list, by filing with the court no later than 15 days after service of the order of referral to mediation a Request to Substitute Mediator.

(A) The Request to Substitute Mediator shall be substantially in the following form:

[Caption of Case]

Request to Substitute Mediator and

Selection of Mediator by Stipulation

We agree to attend mediation proceedings pursuant to Rule 9-205 conducted by _____

_____,

(Name, address, and telephone number of mediator)

and we have made payment arrangements with the mediator. We request that the court substitute this mediator for the mediator designated by the court.

_____	_____
(Signature of Plaintiff)	(Signature of Defendant)
_____	_____
(Signature of Plaintiff's Attorney, if any)	(Signature of Defendant's Attorney, if any)

I, _____,
(Name of Mediator)

agree to conduct mediation proceedings in the above-captioned case in accordance with Rule 9-205 (e), (f), (g), (h), (i) and (j).

I solemnly affirm under the penalties of perjury that I have the qualifications prescribed by Rule 9-205 (d)(5).

_____
Signature of Mediator

(B) If the Request to Substitute Mediator is timely filed, the court shall enter an order striking the original designation and substituting the individual selected by the parties to conduct the mediation, unless the court determines after notice and opportunity to be heard that the individual does not have the qualifications prescribed by subsection (d)(5) of this Rule. If no Request to Substitute Mediator is timely filed, the mediator shall be the court-designated mediator.

(C) A mediator selected by stipulation of the parties and substituted by the court pursuant to subsection (d)(5)(B) of this Rule is not subject to the fee schedule provided for in section (j) of this Rule and Rule 17-208 while conducting mediation proceedings pursuant to the stipulation and designation, but shall comply with all other obligations of a court-designated mediator.

Committee note: Nothing in this Rule or the Rules in Title 17 prohibits the parties from selecting any individual, regardless of qualifications, to assist them in the resolution of issues by participating in ADR that is not court-ordered.

(e) Role of Mediator

The role of a mediator designated by the court or agreed upon by the parties is as set forth in Rule 17-103.

(f) Confidentiality

Confidentiality of mediation communications under this Rule is governed by Rule 17-105.

Cross reference: For the definition of "mediation communication,"

see Rule 17-102 (h).

Committee note: By the incorporation of Rule 17-105 by reference in this Rule, the intent is that the provisions of the Maryland Mediation Confidentiality Act are inapplicable to mediations under Rule 9-205. See Code, Courts Article, §3-1802 (b)(1).

(g) Scope of Mediation; Restriction on Fee Increase

(1) The court's initial order may require the parties to attend a maximum of four hours in not more than two mediation sessions. For good cause and upon the recommendation of the mediator, the court may order up to four additional hours. The parties, by agreement, may extend the mediation beyond the number of hours stated in the initial or any subsequent order.

Committee note: Although the parties, without further order of court, may extend the mediation, an amendment to the time requirements contained in a scheduling order may be made only by order of the court.

Cross reference: See Rule 2-504.

(2) Mediation under this Rule shall be limited to the issues of custody and visitation unless the parties agree otherwise in writing.

(3) During any extension of the mediation pursuant to subsection (f)(1) of this Rule or expansion of the issues that are the subject of the mediation pursuant to subsection (f)(2) of this Rule, the mediator may not increase the mediator’s hourly rate for providing services relating to the action.

Cross reference: See Rule 17-208, concerning fee schedules and sanctions for noncompliance with an applicable schedule.

(h) If Agreement

If the parties agree on some or all of the disputed issues,

the mediator shall provide copies of any document embodying the points of agreement to the parties and their attorneys for review and signature. If the document is signed by the parties as submitted or as modified by the parties, a copy of the signed document shall be sent to the mediator, who shall submit it to the court.

Committee note: Mediators often will record points of agreement expressed and adopted by the parties to provide documentation of the results of the mediation. Because a mediator who is not a Maryland lawyer is not authorized to practice law in Maryland, and a mediator who is a Maryland lawyer ordinarily would not be authorized to provide legal advice or services to parties in conflict, a mediator should not be authoring agreements regarding matters in litigation for the parties to sign. If the parties are represented by counsel, the mediator should advise them not to sign the document embodying the points of agreement until they have consulted their attorneys. If the parties, whether represented or not, choose to sign the document, a statement should be added that the points of agreement as recorded by the mediator constitute the points of agreement expressed and adopted by the parties.

(i) If No Agreement

If no agreement is reached or the mediator determines that mediation is inappropriate, the mediator shall so advise the court but shall not state the reasons. If the court does not order mediation or the case is returned to the court after mediation without an agreement as to all issues in the case, the court promptly shall schedule the case for hearing on any pendente lite or other appropriate relief not covered by a mediation agreement.

(j) Evaluation Forms

At the conclusion of the mediation, the mediator shall give to the parties any evaluation forms and instructions provided by the court.

(k) Costs

(1) Fee Schedule

Fee schedules adopted pursuant to Rule 17-208 shall include maximum fees for mediators designated pursuant to this Rule, and a court-designated mediator appointed under this Rule may not charge or accept a fee for a mediation proceeding conducted pursuant to that designation in excess of that allowed by that schedule.

(2) Payment of Compensation and Expenses

Payment of the compensation and reasonable expenses of a mediator may be compelled by order of court and assessed among the parties as the court may direct. In the order for mediation, the court may waive payment of the compensation and reasonable expenses.

Source: This Rule is derived in part from the 2010 version of former Rule 9-205 and is in part new.

REPORTER'S NOTE

Rule 9-205, Mediation of Child Custody and Visitation Disputes, is proposed to replace current Rule 9-205. It is a new, more self-contained Rule, which is derived from current Rules 9-205, 17-104, 17-106, and 17-103.

Sections (a) and (b) are derived from current Rule 9-205 (a) and (b). Stylistic changes are made.

Section (c) is derived from current Rules 17-104 (b)(1) and (2) and 17-106 (b). Stylistic changes are made to section (c), with the exception of the addition of subsection (c)(2)(E). Subsection (c)(2)(E) requires a family mediation training program, if it is given after the effective date of this Rule, to include strategies to identify and respond to power imbalances, intimidation, and the presence or effects of domestic violence, and strategies to safely terminate a mediation when such action is warranted.

Subsections (d)(1) through (3) are new. Subsection (d)(1) provides that the court may designate a mediator from a court-approved list, or may direct a unit of court mediators or an ADR organization to designate a mediator. Subsection (d)(2) provides that a court order referring a matter to a fee-for-service mediation must specify the hourly rate that the mediator may charge. Subsection (d)(3) states that a mediator selected by a unit of court mediators or an ADR organization pursuant to subsection (d)(1) is deemed to be a court-designated mediator.

Subsection (d)(4) is derived from 17-103 (c)(4). Stylistic changes are made.

Subsection (d)(5) is new. It allows the parties to request to substitute for the court-designated mediator a mediator who has the qualifications prescribed by the relevant Rules, by filing a Request to Substitute Mediator with the court no later than 15 days after service of the order of referral. A form for this purpose is provided in subsection (d)(5)(A).

Subsection (d)(5)(B) provides that, if the Request to Substitute Mediator is timely filed, the court shall strike the original designation, unless the court determines, after notice and an opportunity to be heard, that the individual does not have the proper qualifications.

Subsection (d)(5)(C) provides that a mediator selected by stipulation of the parties and substituted by the court pursuant to subsection (d)(5)(B) is not subject to the fee schedule, but is required to comply with all other Rules.

A Committee note following section (d) notes that nothing in any of the Rules prohibits the parties from selecting any individual, regardless of qualifications, to participate in ADR that is not court-ordered.

Section (e) is new. It references the role of a court-designated mediator, as set forth in Rule 17-103.

Section (f) is derived from current 9-205 (f). A cite to a Rule is corrected to conform with the numbering and content of the new Rules. A Committee note following section (f) calls attention to the inapplicability of the Maryland Mediation Confidentiality Act to mediations under Rule 9-205.

Subsection (g)(1) is derived from current Rule 9-205 (c). The current Rule provides that the court's initial order of referral may not require the parties to attend more than two mediation sessions, but is silent regarding the length of a mediation session. Subsection (g)(1) is amended to provide that the court's initial order may require the parties to attend not

more than four hours of mediation in not more than two mediation sessions. For good cause, the court may order a maximum of four additional hours. The parties may agree to extend the mediation beyond the number of hours stated in the initial order or any subsequent order.

A Committee note following subsection (g)(1) makes clear that, although the parties may agree to extend mediation, any time requirements in a scheduling order that would be affected are not changed unless the court amends its scheduling order.

Subsection (g)(2) is carried forward without change from current Rule 9-205 (c).

Subsection (g)(3) is new. It prohibits the mediator from increasing the mediator's hourly rate for providing services relating to the action.

Section (h) is derived from current Rule 9-205 (d). Language is both added and deleted regarding the recordation of points of agreement expressed and adopted by the parties, in order to conform to the concepts in Rule 17-103, Role of Mediator and its accompanying Committee note.

Following section (h), a new Committee note replaces a Committee note that follows section (d) of the current Rule. The new Committee note mirrors the Committee note following new Rule 17-103.

Section (i) is carried forward without change from Rule 9-205 (e).

Section (j) is new. It requires the mediator to give to the parties any evaluation forms and instructions provided by the court. This section is added at the request of a circuit court judge. It ensures that the parties have the opportunity to evaluate the ADR practitioner, that the court is informed regarding the status of the case, and that the court receives information from which statistics can be generated.

Subsection (k)(1), regarding fee schedules, is new.

Subsection (k)(2) is carried forward from current Rule 9-205 (g), with stylistic changes.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 200 - DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT, AND CHILD CUSTODY

DELETE current Rule 9-205 and ADD new Rule 9-205, as follows:

Rule 9-205. MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTES

[showing changes from current Rule 9-205 (a):]

(a) Scope of Rule

This Rule applies to any ~~case~~ action or proceeding under this Chapter in which the custody of or visitation with a minor child is an issue, including:

(1) an initial action to determine custody or visitation;

(2) an action to modify an existing order or judgment as to custody or visitation; and

(3) a petition for contempt by reason of non-compliance with an order or judgment governing custody or visitation.

[showing changes from current Rule 9-205 (b):]

(b) Duty of Court

(1) Promptly after an action subject to this Rule is at issue, the court shall determine whether:

(A) mediation of the dispute as to custody or visitation is appropriate and ~~would~~ likely would be beneficial to the parties or the child; and

(B) ~~a properly qualified mediator~~ a mediator possessing the qualifications set forth in section (c) of this Rule is available to mediate the dispute.

(2) If a party or a child represents to the court in good faith that there is a genuine issue of ~~physical or sexual~~ abuse, as defined in Code, Family Law Article, §4-501, of the party or child, and that, as a result, mediation would be inappropriate, the court ~~shall~~ may not order mediation.

(3) If the court concludes that mediation is appropriate and ~~feasible~~ likely would be beneficial to the parties or to the child and that a qualified mediator is available, it shall enter an order requiring the parties to mediate the custody or visitation dispute. The order may stay some or all further proceedings in the action pending the mediation on terms and conditions set forth in the order.

Cross reference: With respect to subsection (b)(2) of this Rule, see Rule 1-341 and Rules 3.1 and 3.3 of the Maryland Lawyers' Rules of Professional Conduct.

[showing changes from current Rule 17-104 (b)(1) and (2):]

(c) Qualifications of Court-Designated Mediator

To be ~~designated~~ eligible for designation as a mediator by the court ~~as a mediator with respect to issues concerning child access, the person must~~, an individual shall:

(1) have the basic qualifications ~~prescribed in section (a) of this Rule~~ set forth in Rule 17-205 (a);

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

that includes:

[showing changes from current Rule 17-106 (b):]

(A) Maryland law relating to separation, divorce, annulment, child custody and visitation, and child and spousal support;

(B) the emotional aspects of separation and divorce on adults and children;

(C) an introduction to family systems and child development theory; ~~and~~

(D) the interrelationship of custody, visitation, and child support; and

(E) if the training program is given after [effective date of the Rule], strategies to (i) identify and respond to power imbalances, intimidation, and the presence and effects of domestic violence, and (ii) safely terminate a mediation when termination is warranted; and

[showing changes from Rule 17-104 (b)(3):]

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

[New:]

(d) Court Designation of Mediator

(1) In an order referring a matter to mediation, the court shall:

(A) designate a mediator from a list of qualified mediators approved by the court;

(B) if the court has a unit of court mediators that provides child access mediation services, direct that unit to select a qualified mediator; or

(C) direct an ADR organization, as defined in Rule 17-102, to select a qualified mediator.

(2) If the referral is to a fee-for-service mediation, the order shall specify the hourly rate that the mediator may charge for mediation in the action, which may not exceed the maximum stated in the applicable fee schedule.

(3) A mediator selected pursuant to subsection (d)(1)(B) or (d)(1)(C) of this Rule has the status of a court-designated mediator.

[showing changes from the last two sentences of current Rule 17-103 (c)(4):]

(4) In ~~making a designation~~ designating a mediator, ~~when there is no agreement by the parties,~~ the court is not required to choose at random or in any particular order ~~from among the qualified persons~~. ~~Although the~~ The court should endeavor to use the services of as many qualified ~~persons~~ mediators as possible, but the court may consider ~~whether~~, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament ~~may be helpful and may designate a person possessing those special qualifications~~ of the available prospective designees.

[New:]

(5) The parties may request to substitute for the court-designated mediator another mediator who has the qualifications set forth in Rule 17-205 (a)(1), (2), (3), and (6) and subsection (c)(2) of this Rule, whether or not the mediator's name is on the court's list, by filing with the court no later than 15 days after service of the order of referral to mediation a Request to Substitute Mediator.

(A) The Request to Substitute Mediator shall be substantially in the following form:

[Caption of Case]

Request to Substitute Mediator and

Selection of Mediator by Stipulation

We agree to attend mediation proceedings pursuant to Rule 9-205 conducted by _____

_____,

(Name, address, and telephone number of mediator)

and we have made payment arrangements with the mediator. We request that the court substitute this mediator for the mediator designated by the court.

_____	_____
(Signature of Plaintiff)	(Signature of Defendant)
_____	_____
(Signature of Plaintiff's Attorney, if any)	(Signature of Defendant's Attorney, if any)

I, _____,
(Name of Mediator)

agree to conduct mediation proceedings in the above-captioned case in accordance with Rule 9-205 (e), (f), (g), (h), (i) and (j).

I solemnly affirm under the penalties of perjury that I have the qualifications prescribed by Rule 9-205 (d)(5).

_____
Signature of Mediator

(B) If the Request to Substitute Mediator is timely filed, the court shall enter an order striking the original designation and substituting the individual selected by the parties to conduct the mediation, unless the court determines after notice and opportunity to be heard that the individual does not have the qualifications prescribed by subsection (d)(5) of this Rule. If no Request to Substitute Mediator is timely filed, the mediator shall be the court-designated mediator.

(C) A mediator selected by stipulation of the parties and substituted by the court pursuant to subsection (d)(5)(B) of this Rule is not subject to the fee schedule provided for in section (j) of this Rule and Rule 17-208 while conducting mediation proceedings pursuant to the stipulation and designation, but shall comply with all other obligations of a court-designated mediator.

Committee note: Nothing in this Rule or the Rules in Title 17 prohibits the parties from selecting any individual, regardless of qualifications, to assist them in the resolution of issues by participating in ADR that is not court-ordered.

(e) Role of Mediator

The role of a mediator designated by the court or agreed upon by the parties is as set forth in Rule 17-103.

[showing changes from current Rule 9-205 (f):]

(f) Confidentiality

Confidentiality of mediation communications under this Rule is governed by Rule ~~17-109~~ 17-105.

Cross reference: For the definition of "mediation communication," see Rule 17-102 (h).

Committee note: By the incorporation of Rule 17-105 by reference in this Rule, the intent is that the provisions of the Maryland Mediation Confidentiality Act are inapplicable to mediations under Rule 9-205. See Code, Courts Article, §3-1802 (b)(1).

[showing changes from current Rule 9-205 (c):]

~~(c)~~ (g) Scope of Mediation; Restriction on Fee Increase

(1) The court's initial order may ~~not~~ require the parties to attend a maximum of four hours in not more than two mediation sessions. For good cause ~~shown~~ and upon the recommendation of the mediator, the court may order up to ~~two~~ four additional ~~mediation sessions~~ hours. The parties, ~~may agree to further mediation~~ by agreement, may extend the mediation beyond the number of hours stated in the initial or any subsequent order.

Committee note: Although the parties, without further order of court, may extend the mediation, an amendment to the time requirements contained in a scheduling order may be made only by order of the court.

Cross reference: See Rule 2-504.

(2) Mediation under this Rule shall be limited to the issues of custody and visitation unless the parties agree otherwise in writing.

(3) During any extension of the mediation pursuant to subsection (f)(1) of this Rule or expansion of the issues that are the subject of the mediation pursuant to subsection (f)(2) of this Rule, the mediator may not increase the mediator's hourly rate for providing services relating to the action.

Cross reference: See Rule 17-208, concerning fee schedules and sanctions for noncompliance with an applicable schedule.

[showing changes from current Rule 9-205 (d):]

~~(d)~~ (h) If Agreement

If the parties agree on some or all of the disputed issues, the mediator ~~may~~ shall ~~assist the parties in making a record of~~ provide copies of any document embodying the points of agreement to the parties and their attorneys for review and signature. ~~The mediator shall provide copies of any memorandum of points of agreement to the parties and their attorneys for review and signature. If the memorandum is signed by the parties as submitted or as modified by the parties, a copy of the signed memorandum shall be sent to the mediator, who shall submit it to the court.~~ If the document is signed by the parties as submitted or as modified by the parties, a copy of the signed document shall be sent to the mediator, who shall submit it to the court.

~~Committee note: It is permissible for a mediator to make a brief record of points of agreement reached by the parties during the~~

~~mediation and assist the parties in articulating those points in the form of a written memorandum, so that they are clear and accurately reflect the agreements reached. Mediators should act only as scribes recording the parties' points of agreement, and not as drafters creating legal memoranda.~~

Committee note: Mediators often will record points of agreement expressed and adopted by the parties to provide documentation of the results of the mediation. Because a mediator who is not a Maryland lawyer is not authorized to practice law in Maryland, and a mediator who is a Maryland lawyer ordinarily would not be authorized to provide legal advice or services to parties in conflict, a mediator should not be authoring agreements regarding matters in litigation for the parties to sign. If the parties are represented by counsel, the mediator should advise them not to sign the document embodying the points of agreement until they have consulted their attorneys. If the parties, whether represented or not, choose to sign the document, a statement should be added that the points of agreement as recorded by the mediator constitute the points of agreement expressed and adopted by the parties.

[showing changes from current Rule 9-205 (e):]

~~(e)~~ (i) If No Agreement

If no agreement is reached or the mediator determines that mediation is inappropriate, the mediator shall so advise the court but shall not state the reasons. If the court does not order mediation or the case is returned to the court after mediation without an agreement as to all issues in the case, the court promptly shall schedule the case for hearing on any pendente lite or other appropriate relief not covered by a mediation agreement.

[New:]

(j) Evaluation Forms

At the conclusion of the mediation, the mediator shall give to the parties any evaluation forms and instructions provided by the court.

[showing changes from current Rule 9-205 (g):]

~~(g)~~ (k) Costs

(1) Fee Schedule

Fee schedules adopted pursuant to Rule 17-208 shall include maximum fees for mediators designated pursuant to this Rule, and a court-designated mediator appointed under this Rule may not charge or accept a fee for a mediation proceeding conducted pursuant to that designation in excess of that allowed by that schedule.

(2) Payment of Compensation and Expenses

Payment of the compensation~~, fees, and costs~~ and reasonable expenses of a mediator may be compelled by order of court and assessed among the parties as the court may direct. In the order for mediation, the court may waive payment of the compensation~~, fees, and costs~~ and reasonable expenses.

Source: This Rule is derived in part from the 2010 version of former ~~S73A~~ Rule 9-205 and is in part new.

REPORTER'S NOTE

Rule 9-205, Mediation of Child Custody and Visitation Disputes, is proposed to replace current Rule 9-205. It is a new, more self-contained Rule, which is derived from current Rules 9-205, 17-104, 17-106, and 17-103.

Sections (a) and (b) are derived from current Rule 9-205 (a) and (b). Stylistic changes are made.

Section (c) is derived from current Rules 17-104 (b)(1) and (2) and 17-106 (b). Stylistic changes are made to section (c), with the exception of the addition of subsection (c)(2)(E). Subsection (c)(2)(E) requires a family mediation training program, if it is given after the effective date of this Rule, to include strategies to identify and respond to power imbalances, intimidation, and the presence or effects of domestic violence,

and strategies to safely terminate a mediation when such action is warranted.

Subsections (d)(1) through (3) are new. Subsection (d)(1) provides that the court may designate a mediator from a court-approved list, or may direct a unit of court mediators or an ADR organization to designate a mediator. Subsection (d)(2) provides that a court order referring a matter to a fee-for-service mediation must specify the hourly rate that the mediator may charge. Subsection (d)(3) states that a mediator selected by a unit of court mediators or an ADR organization pursuant to subsection (d)(1) is deemed to be a court-designated mediator.

Subsection (d)(4) is derived from 17-103 (c)(4). Stylistic changes are made.

Subsection (d)(5) is new. It allows the parties to request to substitute for the court-designated mediator a mediator who has the qualifications prescribed by the relevant Rules, by filing a Request to Substitute Mediator with the court no later than 15 days after service of the order of referral. A form for this purpose is provided in subsection (d)(5)(A).

Subsection (d)(5)(B) provides that, if the Request to Substitute Mediator is timely filed, the court shall strike the original designation, unless the court determines, after notice and an opportunity to be heard, that the individual does not have the proper qualifications.

Subsection (d)(5)(C) provides that a mediator selected by stipulation of the parties and substituted by the court pursuant to subsection (d)(5)(B) is not subject to the fee schedule, but is required to comply with all other Rules.

A Committee note following section (d) notes that nothing in any of the Rules prohibits the parties from selecting any individual, regardless of qualifications, to participate in ADR that is not court-ordered.

Section (e) is new. It references the role of a court-designated mediator, as set forth in Rule 17-103.

Section (f) is derived from current 9-205 (f). A cite to a Rule is corrected to conform with the numbering and content of the new Rules. A Committee note following section (f) calls attention to the inapplicability of the Maryland Mediation Confidentiality Act to mediations under Rule 9-205.

Subsection (g)(1) is derived from current Rule 9-205 (c). The current Rule provides that the court's initial order of referral may not require the parties to attend more than two

mediation sessions, but is silent regarding the length of a mediation session. Subsection (g)(1) is amended to provide that the court's initial order may require the parties to attend not more than four hours of mediation in not more than two mediation sessions. For good cause, the court may order a maximum of four additional hours. The parties may agree to extend the mediation beyond the number of hours stated in the initial order or any subsequent order.

A Committee note following subsection (g)(1) makes clear that, although the parties may agree to extend mediation, any time requirements in a scheduling order that would be affected are not changed unless the court amends its scheduling order.

Subsection (g)(2) is carried forward without change from current Rule 9-205 (c).

Subsection (g)(3) is new. It prohibits the mediator from increasing the mediator's hourly rate for providing services relating to the action.

Section (h) is derived from current Rule 9-205 (d). Language is both added and deleted regarding the recordation of points of agreement expressed and adopted by the parties, in order to conform to the concepts in Rule 17-103, Role of Mediator and its accompanying Committee note.

Following section (h), a new Committee note replaces a Committee note that follows section (d) of the current Rule. The new Committee note mirrors the Committee note following new Rule 17-103.

Section (i) is carried forward without change from Rule 9-205 (e).

Section (j) is new. It requires the mediator to give to the parties any evaluation forms and instructions provided by the court. This section is added at the request of a circuit court judge. It ensures that the parties have the opportunity to evaluate the ADR practitioner, that the court is informed regarding the status of the case, and that the court receives information from which statistics can be generated.

Subsection (k)(1), regarding fee schedules, is new.

Subsection (k)(2) is carried forward from current Rule 9-205 (g), with stylistic changes.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-504.1 to conform terminology and internal references to the revision of the Rules in Title 17, as follows:

Rule 2-504.1. SCHEDULING CONFERENCE

. . .

(c) Order for Scheduling Conference

An order setting a scheduling conference may require that the parties, at least ten days before the conference:

(1) complete sufficient initial discovery to enable them to participate in the conference meaningfully and in good faith and to make decisions regarding (A) settlement, (B) consideration of available and appropriate forms of alternative dispute resolution, (C) limitation of issues, (D) stipulations, (E) any issues relating to preserving discoverable information, (F) any issues relating to discovery of electronically stored information, including the form in which it is to be produced, (G) any issues relating to claims of privilege or of protection, and (H) other matters that may be considered at the conference; and

(2) confer in person or by telephone and attempt to reach agreement or narrow the areas of disagreement regarding the matters that may be considered at the conference and determine whether the action or any issues in the action are suitable for

referral to ~~an~~ alternative dispute resolution ~~process~~ in accordance with Title 17, Chapter<u>s</u> 100 <u>and 200</u> of these Rules.

Committee note: Examples of matters that may be considered at a scheduling conference when discovery of electronically stored information is expected, include:

(1) its identification and retention;
(2) the form of production, such as PDF, TIFF, or JPEG files, or native form, for example, Microsoft Word, Excel, etc.;
(3) the manner of production, such as CD-ROM;
(4) any production of indices;
(5) any electronic numbering of documents and information;
(6) apportionment of costs for production of electronically stored information not reasonably accessible because of undue burden or cost;
(7) a process by which the parties may assert claims of privilege or of protection after production; and
(8) whether the parties agree to refer discovery disputes to a master or Special Master.

The parties may also need to address any request for metadata, for example, information embedded in an electronic data file that describes how, when, and by whom it was created, received, accessed, or modified or how it is formatted. For a discussion of metadata and factors to consider in determining the extent to which metadata should be preserved and produced in a particular case, see, The Sedona Conference, The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production, (2d ed. 2007), Principle 12 and related Comment.

. . .

(e) Scheduling Order

Case management decisions made by the court at or as a result of a scheduling conference shall be included in a scheduling order entered pursuant to Rule 2-504. A court may not order a party or counsel for a party to participate in ~~an~~ alternative dispute resolution ~~process~~ under Rule 2-504 except in accordance with Rule 9-205 or Rule ~~17-103~~ <u>17-201</u>.

Source: This Rule is new.

REPORTER'S NOTE

The amendments to Rule 2-504.1 conform terminology and internal references to the revision of the Rules in Title 17.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-212 to conform internal references to the revision of the Rules in Title 17, as follows:

Rule 14-212. ALTERNATIVE DISPUTE RESOLUTION

(a) Applicability

This Rule applies to actions that are ineligible for foreclosure mediation under Code, Real Property Article, §7-105.1.

(b) Referral to Alternative Dispute Resolution

In an action in which a motion to stay the sale and dismiss the action has been filed, and was not denied pursuant to Rule 14-211 (b)(1), the court at any time before a sale of the property subject to the lien may refer a matter to mediation or another appropriate form of alternative dispute resolution, subject to the provisions of Rule ~~17-103~~ 17-201, and may require that individuals with authority to settle the matter be present or readily available for consultation.

Cross reference: For qualifications of a mediator other than one selected by agreement of the parties, see Rule ~~17-104 (f)~~ 17-205 (e).

Source: This Rule is new.

REPORTER'S NOTE

Amendments to Rule 14-212 conform internal references to the revision of the Rules in Title 17.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-521 (d) to add a sentence requiring the court to place on the record certain information pertaining to communications with the jury, as follows:

Rule 2-521. JURY - REVIEW OF EVIDENCE - COMMUNICATIONS

. . .

(d) Communications with Jury

The court shall notify the parties of the receipt of any communication from the jury pertaining to the action as promptly as practicable and in any event before responding to the communication. All such communications between the court and the jury shall be on the record in open court or shall be in writing and filed in the action. The court shall state on the record the nature of the communication, that the parties were notified of the communication, and how the communication was addressed. The clerk or the court shall note on a written communication the date and time it was received from the jury.

. . .

REPORTER'S NOTE

In some cases on appeal, the record is insufficient to allow the appellate court to review how the trial court handled a communication from the jury. Proposed amendments to Rules 2-521 (d) and 4-326 (d) require the court to state on the record the

nature of the communication from the jury, the fact that the parties were notified of the communication, and how the communication was addressed.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-326 (d) to add a sentence requiring the court to place on the record certain information pertaining to communications with the jury, as follows:

Rule 4-326. JURY - REVIEW OF EVIDENCE - COMMUNICATIONS

. . .

(d) Communications with Jury

The court shall notify the defendant and the State's Attorney of the receipt of any communication from the jury pertaining to the action as promptly as practicable and in any event before responding to the communication. All such communications between the court and the jury shall be on the record in open court or shall be in writing and filed in the action. The court shall state on the record the nature of the communication, that the defendant and the State's Attorney were notified of the communication, and how the communication was addressed. The clerk or the court shall note on a written communication the date and time it was received from the jury.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-521.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1000 - OTHER SPECIAL PROCEEDINGS

AMEND Rule 15-1001 to add a Committee note following section (a); to add to the cross reference following section (a) language concerning statutes of limitations; to reverse the order of sections (c) and (d); to add language to section (c) requiring a good faith and reasonably diligent effort with respect to identifying, locating, and naming plaintiffs; to add a specific form of notice to use plaintiffs; to change the procedure for service of the complaint and notice; to add new section (e) providing for a waiver by inaction; to add new section (f) concerning use plaintiffs identified after a complaint is filed; and generally to implement holdings of the Court in *University of Md. Medical Systems v. Muti*, ___ Md. ___ (2012), as follows:

Rule 15-1001. WRONGFUL DEATH

(a) Applicability

This Rule applies to an action involving a claim for damages for wrongful death.

Committee note: Under Code, Courts Article, §3-903 (a), if the wrongful act causing the decedent's death occurred in the District of Columbia or in another State or territory of the United States, a Maryland court must apply the substantive law of that jurisdiction. Under Code, Courts Article, §3-903 (b), however, a Maryland court must apply the Maryland Rules of pleading and procedure. This Rule sets forth the pleading and procedural requirements particularly applicable to a wrongful death action filed in a Maryland court.

Cross reference: See Code, Courts Article, §§3-901 through 3-904, relating to wrongful death claims generally. See Code, Courts Article, §3-905 (g) for the statute of limitations generally and §5-201 (a) for statutes of limitations as to wrongful death claims involving minors, individuals under a disability, and actions arising from criminal homicide. See Code, Courts Article, §5-806, relating to wrongful death claims between parents and children arising out of the operation of a motor vehicle. See also Code, Labor and Employment Article, §9-901 et seq. relating to wrongful death claims when workers' compensation may also be available, and Code, Insurance Article, §20-601, relating to certain wrongful death claims against the Maryland Automobile Insurance Fund. See also Code, Estates and Trusts Article, §8-103, relating to the limitation on presentation of claims against a decedent's estate.

(b) Required Plaintiffs

~~If the wrongful act occurred in this State, all~~ All persons who are or may be entitled by law to claim damages by reason of the wrongful death shall be named as plaintiffs whether or not they join in the action. The words "to the use of" shall precede the name of any person named as a plaintiff who does not join in the action.

~~(d)~~ (c) Complaint

~~In addition to complying with Rules 2-303 through 2-305,~~ ~~the~~ The complaint shall state (1) the relationship of each plaintiff to the decedent whose death is alleged to have been caused by the wrongful act~~.~~, (2) the last known address of each use plaintiff, and (3) that the party bringing the action conducted a good faith and reasonably diligent effort to identify, locate, and name as use plaintiffs all individuals who might qualify as use plaintiffs. The court may not dismiss a complaint for failure to join all use plaintiffs if the court finds that the party bringing the action made such a good faith and reasonably

diligent effort.

~~(c)~~ (d) Notice to Use Plaintiff

The party bringing the action shall ~~mail~~ serve a copy of the complaint ~~by certified mail to any use plaintiff at the use plaintiff 's last known address. Proof of mailing shall be filed as provided in Rule 2-126.~~ on each use plaintiff pursuant to Rule 2-121. The complaint shall be accompanied by a notice in substantially the following form:

[Caption of case]

NOTICE TO [Name of Use Plaintiff]

You may have a right under Maryland law to claim an award of damages in this action. You should consult Maryland Code, §3-904 of the Courts Article for eligibility requirements. Only one action on behalf of all individuals entitled to make a claim is permitted. If you decide to make a claim, you must file with the clerk of the court in which this action is pending a motion to intervene in the action in accordance with the Maryland Rules no later that the earlier of (1) the applicable deadline stated in §3-904 (g) and §5-201 (a) of the Courts Article ["the statutory deadline"] or (2) 30 days after being served with the complaint and this Notice if you reside in Maryland, 60 days after being served if you reside elsewhere in the United States, or 90 days after being served if you reside outside of the United States ["the served notice deadline"]. You may represent yourself, or you may obtain an attorney to represent you. If the court does

not receive your written motion to intervene by the earlier of the applicable deadlines, the court may find that you have lost your right to participate in the action and claim any recovery.

(e) Waiver by Inaction

(1) Definitions

In this section and in section (f) of this Rule, "statutory deadline" means the applicable deadline stated in Code, Courts Article, §3-904 (g) and §5-201 (a), and "served notice deadline" means the additional applicable deadline stated in the notice given pursuant to section (d) of this Rule.

(2) Failure to Satisfy Statutory Time Requirements

An individual who fails to file a complaint or motion to intervene by the statutory deadline may not participate in the action or claim a recovery.

(3) Other Late Filing

If a use plaintiff who is served with a complaint and notice in accordance with section (d) of this Rule does not file a motion to intervene by the served notice deadline, the use plaintiff may not participate in the action or claim any recovery unless, for good cause shown, the court excuses the late filing. The court may not excuse the late filing if the statutory deadline is not met.

(f) Subsequently Identified Use Plaintiff

Notwithstanding any time limitations contained in Rule 2-341 or in a scheduling order entered pursuant to Rule 2-504, if, despite conducting a good faith and reasonably diligent effort to

identify, locate, and name all use plaintiffs, an individual entitled to be named as a use plaintiff is not identified until after the complaint is filed, but is identified by the statutory deadline, the newly identified use plaintiff shall be added by amendment to the complaint as soon as practicable and served in accordance with section (d) of this Rule and Rule 2-341 (d).

Source: This Rule is derived as follows:
Section (a) is derived from former Rule Q40.
Section (b) is derived from former Rule Q41 a.
Section ~~(d)~~ (c) is derived in part from former Rule Q42 and is in part new.
Section ~~(c)~~ (d) is new.
Section (e) is new.
Section (f) is new.

REPORTER'S NOTE

The consolidated cases of *Ace American Insurance, et al. v. Williams, et al.* and *Williams, et al. v. Work, et al.*, 418 Md. 400 (2011) address the issue of notice to use plaintiffs in wrongful death actions. A judge of the Court of Appeals requested that the Rules Committee consider whether any changes to the Rules pertaining to notice to use plaintiffs as a means of protecting statutory beneficiaries are necessary. The Rules Committee recommends expanding the notice provision in Rule 15-1001 to include a specific form of notice to use plaintiffs and changing the way notice is served on use plaintiffs. Instead of notice sent by certified mail to the last known address of the use plaintiff, the amendment requires service in accordance with Rule 2-121.

A new Committee note following section (a) calls attention to statutory provisions governing the applicability of substantive and procedural law when the wrongful act that caused the decedent's death occurred outside the State of Maryland.

References to Code, Courts Article, §§3-905 (g) and 5-201 (a) [concerning statutes of limitations] are added to the cross reference following section (a).

An amendment to section (b) unifies the procedure for all wrongful death cases that are filed in Maryland, regardless of whether the wrongful death occurred in Maryland.

In *University of Maryland Medical Systems Corporation v. Muti*, ___ Md. ___ [No. 42, September Term, 2011 (filed May 3, 2012)], the Court held that identifying all use plaintiffs within three years of death is not a condition precedent to maintaining the cause of action by joined plaintiffs. Borrowing language from *Muti*, the amendment to section (c) requires the party filing suit to affirmatively plead that a "good faith and reasonably diligent" effort has been made to identify, locate, and name all use plaintiffs. If that effort is made, the court may not dismiss the complaint for failure to join all use plaintiffs.

A stylistic change, reversing the order of current sections (c) and (d), is made.

Amendments to section (d) change the procedure for service of the complaint and accompanying notice by requiring service in accordance with Rule 2-121. The amendments also add a specific form of notice to use plaintiffs. The notice informs use plaintiffs of a potential right to claim damages, provides basic instructions for participation in the action, and warns use plaintiffs concerning a potential waiver by inaction.

New section (e) implements the waiver stated in the notice. Although a court may excuse late filing by a plaintiff who fails to meet the "served notice deadline," the court may not excuse late filing by a plaintiff who fails to meet the "statutory deadline," as those terms are defined in the Rule.

New section (f) requires the amendment of a complaint to add a use plaintiff who is identified subsequent to the filing of the original complaint.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216 to add language to section (e) regarding provisional representation by the Public Defender and to correct an internal reference in subsection (f)(3), as follows:

Rule 4-216. PRETRIAL RELEASE – AUTHORITY OF JUDICIAL OFFICER; PROCEDURE

(a) Arrest Without Warrant

If a defendant was arrested without a warrant, the judicial officer shall determine whether there was probable cause for each charge and for the arrest and, as to each determination, make a written record. If there was probable cause for at least one charge and the arrest, the judicial officer shall implement the remaining sections of this Rule. If there was no probable cause for any of the charges or for the arrest, the judicial officer shall release the defendant on personal recognizance, with no other conditions of release, and the remaining sections of this Rule are inapplicable.

Cross reference: See Rule 4-213 (a)(4).

(b) Communications with Judicial Officer

Except as permitted by Rule 2.9 (a)(1) and (2) of the Maryland Code of Conduct for Judicial Appointees or Rule 2.9 (a)(1) and (2) of the Maryland Code of Judicial Conduct, all

communications with a judicial officer regarding any matter required to be considered by the judicial officer under this Rule shall be (1) in writing, with a copy provided, if feasible, but at least shown or communicated by the judicial officer to each party who participates in the proceeding before the judicial officer, and made part of the record, or (2) made openly at the proceeding before the judicial officer. Each party who participates in the proceeding shall be given an opportunity to respond to the communication.

Cross reference: See also Rule 3.5 (a) of the Maryland Lawyers' Rules of Professional Conduct.

(c) Defendants Eligible for Release by Commissioner or Judge

In accordance with this Rule and Code, Criminal Procedure Article, §§5-101 and 5-201 and except as otherwise provided in section (d) of this Rule or by Code, Criminal Procedure Article, §§5-201 and 5-202, a defendant is entitled to be released before verdict on personal recognizance or on bail, in either case with or without conditions imposed, unless the judicial officer determines that no condition of release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community.

(d) Defendants Eligible for Release Only by a Judge

A defendant charged with an offense for which the maximum penalty is death or life imprisonment or with an offense listed under Code, Criminal Procedure Article, §5-202 (a), (b), (c), (d), (e), (f) or (g) may not be released by a District Court

Commissioner, but may be released before verdict or pending a new trial, if a new trial has been ordered, if a judge determines that all requirements imposed by law have been satisfied and that one or more conditions of release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community.

(e) Initial Appearance Before a Judge

(1) Applicability

This section applies to an initial appearance before a judge. It does not apply to an initial appearance before a District Court commissioner.

(2) ~~Duty of Public Defender~~ Provisional Representation

(A) Duty of Public Defender

Unless another attorney has entered an appearance or the defendant has waived the right to counsel for purposes of an initial appearance before a judge in accordance with this section, the Public Defender shall provide provisional representation to an eligible defendant at the initial appearance. Provisional representation under this subsection shall be limited solely to the initial appearance and shall terminate automatically upon the conclusion of the proceeding. This subsection prevails over any inconsistent provision in Rule 4-214.

Cross reference: See Code, Criminal Procedure Article, §16-210 (c)(4).

(B) Advice by Court

If the Public Defender provides provisional

representation at the initial appearance, the court shall:

(i) comply with the requirements of Rule 4-415 (a) as though the defendant had appeared without counsel, and

(ii) advise the defendant that any further representation by the Public Defender will depend on a timely application for such representation by the defendant and a determination that the defendant is an indigent individual, as defined in Code, Criminal Procedure Article, §§16-101 (d) and 16-210 (b).

(3) Waiver of Counsel for Initial Appearance

(A) Unless ~~an~~ the Public Defender is providing provisional representation or another attorney has entered an appearance, the court shall advise the defendant that:

(i) the defendant has a right to counsel at this proceeding;

(ii) an attorney can be helpful in advocating that the defendant should be released on recognizance or on bail with minimal conditions and restrictions; and

(iii) if the defendant is eligible, the Public Defender will represent the defendant at this proceeding.

(B) If the defendant indicates a desire to waive counsel and the court finds that the defendant knowingly and voluntarily waives the right to counsel for purposes of the initial appearance, the court shall announce on the record that finding and proceed pursuant to this Rule.

(C) Any waiver found under this section applies only to the initial appearance.

(4) Waiver of Counsel for Future Proceedings

For proceedings after the initial appearance, waiver of counsel is governed by Rule 4-215.

Cross reference: For the requirement that the court also advise the defendant of the right to counsel generally, see Rule 4-215 (a).

(f) Duties of Judicial Officer

(1) Consideration of Factors

In determining whether a defendant should be released and the conditions of release, the judicial officer shall take into account the following information, to the extent available:

(A) the nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the potential sentence upon conviction;

(B) the defendant's prior record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings;

(C) the defendant's family ties, employment status and history, financial resources, reputation, character and mental condition, length of residence in the community, and length of residence in this State;

(D) any recommendation of an agency that conducts pretrial release investigations;

(E) any recommendation of the State's Attorney;

(F) any information presented by the defendant or defendant's counsel;

(G) the danger of the defendant to the alleged victim,

another person, or the community;

(H) the danger of the defendant to himself or herself; and

(I) any other factor bearing on the risk of a wilful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

(2) Statement of Reasons - When Required

Upon determining to release a defendant to whom section (c) of this Rule applies or to refuse to release a defendant to whom section (b) of this Rule applies, the judicial officer shall state the reasons in writing or on the record.

(3) Imposition of Conditions of Release

If the judicial officer determines that the defendant should be released other than on personal recognizance without any additional conditions imposed, the judicial officer shall impose on the defendant the least onerous condition or combination of conditions of release set out in section ~~(e)~~ (g) of this Rule that will reasonably:

(A) ensure the appearance of the defendant as required,

(B) protect the safety of the alleged victim by ordering the defendant to have no contact with the alleged victim or the alleged victim's premises or place of employment or by other appropriate order, and

(C) ensure that the defendant will not pose a danger to another person or to the community.

(4) Advice of Conditions; Consequences of Violation; Amount and Terms of Bail

The judicial officer shall advise the defendant in writing or on the record of the conditions of release imposed and of the consequences of a violation of any condition. When bail is required, the judicial officer shall state in writing or on the record the amount and any terms of the bail.

(g) Conditions of Release

The conditions of release imposed by a judicial officer under this Rule may include:

(1) committing the defendant to the custody of a designated person or organization that agrees to supervise the defendant and assist in ensuring the defendant's appearance in court;

(2) placing the defendant under the supervision of a probation officer or other appropriate public official;

(3) subjecting the defendant to reasonable restrictions with respect to travel, association, or residence during the period of release;

(4) requiring the defendant to post a bail bond complying with Rule 4-217 in an amount and on conditions specified by the judicial officer, including any of the following:

(A) without collateral security;

(B) with collateral security of the kind specified in Rule 4-217 (e)(1)(A) equal in value to the greater of $100.00 or 10% of the full penalty amount, and if the judicial officer sets bail at $2500 or less, the judicial officer shall advise the defendant

that the defendant may post a bail bond secured by either a corporate surety or a cash deposit of 10% of the full penalty amount;

(C) with collateral security of the kind specified in Rule 4-217 (e)(1)(A) equal in value to a percentage greater than 10% but less than the full penalty amount;

(D) with collateral security of the kind specified in Rule 4-217 (e)(1) equal in value to the full penalty amount; or

(E) with the obligation of a corporation that is an insurer or other surety in the full penalty amount;

(5) subjecting the defendant to any other condition reasonably necessary to:

(A) ensure the appearance of the defendant as required,

(B) protect the safety of the alleged victim, and

(C) ensure that the defendant will not pose a danger to another person or to the community; and

(6) imposing upon the defendant, for good cause shown, one or more of the conditions authorized under Code, Criminal Law Article, §9-304 reasonably necessary to stop or prevent the intimidation of a victim or witness or a violation of Code, Criminal Law Article, §9-302, 9-303, or 9-305.

Cross reference: See Code, Criminal Procedure Article, §5-201 (a)(2) concerning protections for victims as a condition of release. See Code, Criminal Procedure Article, §5-201 (b), and Code, Business Occupations and Professions Article, Title 20, concerning private home detention monitoring as a condition of release.

(h) Title 5 Not Applicable

Title 5 of these rules does not apply to proceedings conducted under this Rule.

Source: This Rule is derived in part from former Rule 721, M.D.R. 723 b 4, and is in part new.

REPORTER'S NOTE

Amendments to Rules 4-216 and 4-216.1 provide for provisional representation of eligible defendants by the Public Defender at an initial appearance before a judge (Rule 4-216) and at a bail review hearing (Rule 4-261.1). The provisional representation automatically terminates at the conclusion of the proceeding.

Because the defendant, upon termination of the proceeding, will no longer have an attorney, provisions are included in both Rules requiring the court to (1) comply with the requirements of Rule 4-415 (a) as though the defendant had appeared without counsel and (2) advise the defendant to timely file an application with the Public Defender if the defendant seeks further representation by the Public Defender.

An amendment to Rule 4-216 (f)(3) corrects an internal reference in that subsection.

In Rule 4-214, the addition of two cross references highlight the provisions of Rules 4-216 and 4-216.1 pertaining to the automatic termination of the appearance of the Public Defender upon the conclusion of an initial appearance before a judge and upon the conclusion of a review hearing.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216.1 to add language to section (a) regarding provisional representation by the Public Defender, as follows:

Rule 4-216.1. FURTHER PROCEEDINGS REGARDING PRETRIAL RELEASE

(a) Review of Pretrial Release Order Entered by Commissioner

(1) Generally

A defendant who is denied pretrial release by a commissioner or who for any reason remains in custody after a commissioner has determined conditions of release pursuant to Rule 4-216 shall be presented immediately to the District Court if the court is then in session, or if not, at the next session of the court.

Cross reference: See Rule 4-231 (d) concerning the presence of a defendant by video conferencing.

(2) Counsel for Defendant

(A) ~~Duty of Public Defender~~ Provisional Representation

(i) Duty of Public Defender

Unless another attorney has entered an appearance or the defendant has waived the right to counsel for purposes of the review hearing in accordance with this section, the Public Defender shall provide provisional representation to an eligible defendant at the review hearing. Provisional representation under this subsection shall be limited solely to the review hearing and

shall terminate automatically upon the conclusion of the hearing. This subsection prevails over any inconsistent provision in Rule 4-214.

Cross reference: See Code, Criminal Procedure Article, §16-210 (c)(4).

(ii) Advice by Court

If the Public Defender provides provisional representation at the review hearing, the court shall:

(a) comply with the requirements of Rule 4-415 (a) as though the defendant had appeared without counsel, and

(b) advise the defendant that any further representation by the Public Defender will depend on a timely application for such representation by the defendant and a determination that the defendant is an indigent individual, as defined in Code, Criminal procedure Article, §§16-101 (d) and 16-210 (b).

(B) Waiver

(i) Unless ~~an~~ the Public Defender is providing provisional representation or another attorney has entered an appearance, the court shall advise the defendant that:

(a) the defendant has a right to counsel at the review hearing;

(b) an attorney can be helpful in advocating that the defendant should be released on recognizance or on bail with minimal conditions and restrictions; and

(c) if the defendant is eligible, the Public Defender will represent the defendant at this proceeding.

(ii) If the defendant indicates a desire to waive counsel and the court finds that the defendant knowingly and voluntarily waives the right to counsel for purposes of the review hearing, the court shall announce on the record that finding and proceed pursuant to this Rule.

(iii) Any waiver found under this Rule applies only to the review hearing.

(C) Waiver of Counsel for Future Proceedings

For proceedings after the review hearing, waiver of counsel is governed by Rule 4-215.

Cross reference: For the requirement that the court also advise the defendant of the right to counsel generally, see Rule 4-215 (a).

(3) Determination by Court

The District Court shall review the commissioner's pretrial release determination and take appropriate action in accordance with Rule 4-216 (f) and (g). If the court determines that the defendant will continue to be held in custody after the review, the court shall set forth in writing or on the record the reasons for the continued detention.

(4) Juvenile Defendant

If the defendant is a child whose case is eligible for transfer to the juvenile court pursuant to Code, Criminal Procedure Article, §4-202 (b), the District Court, regardless of whether it has jurisdiction over the offense charged, may order that a study be made of the child, the child's family, or other appropriate matters. The court also may order that the child be

held in a secure juvenile facility.

(b) Continuance of Previous Conditions

When conditions of pretrial release have been previously imposed in the District Court, the conditions continue in the circuit court unless amended or revoked pursuant to section (c) of this Rule.

(c) Amendment of Pretrial Release Order

After a charging document has been filed, the court, on motion of any party or on its own initiative and after notice and opportunity for hearing, may revoke an order of pretrial release or amend it to impose additional or different conditions of release. If its decision results in the detention of the defendant, the court shall state the reasons for its action in writing or on the record. A judge may alter conditions set by a commissioner or another judge.

(d) Supervision of Detention Pending Trial

In order to eliminate unnecessary detention, the court shall exercise supervision over the detention of defendants pending trial. It shall require from the sheriff, warden, or other custodial officer a weekly report listing each defendant within its jurisdiction who has been held in custody in excess of seven days pending preliminary hearing, trial, sentencing, or appeal. The report shall give the reason for the detention of each defendant.

(e) Violation of Condition of Release

A court may issue a bench warrant for the arrest of a

defendant charged with a criminal offense who is alleged to have violated a condition of pretrial release. After the defendant is presented before a court, the court may (1) revoke the defendant's pretrial release or (2) continue the defendant's pretrial release with or without conditions.

Cross reference: See Rule 1-361, Execution of Warrants and Body Attachments. See also, Rule 4-347, Proceedings for Revocation of Probation, which preserves the authority of a judge issuing a warrant to set the conditions of release on an alleged violation of probation.

(f) Title 5 Not Applicable

Title 5 of these rules does not apply to proceedings conducted under this Rule.

Source: This Rule is new but is derived, in part, from former sections (f), (g), (h), (i), (j), and (k) of Rule 4-216.

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-214 to add cross references following sections (a) and (d), as follows:

Rule 4-214. DEFENSE COUNSEL

(a) Appearance

Counsel retained or appointed to represent a defendant shall enter an appearance in writing within five days after accepting employment, after appointment, or after the filing of the charging document in court, whichever occurs later. An appearance entered in the District Court will automatically be entered in the circuit court when a case is transferred to the circuit court because of a demand for jury trial. In any other circumstance, counsel who intends to continue representation in the circuit court after appearing in the District Court must re-enter an appearance in the circuit court.

Cross reference: See Rules 4-216 (e)(2)(A) and 4-216.1 (a)(2)(A)(i) with respect to the automatic termination of the appearance of the Public Defender upon the conclusion of an initial appearance before a judge and upon the conclusion of a hearing to review a pretrial release decision of a commissioner.

. . .

(d) Striking Appearance

A motion to withdraw the appearance of counsel shall be made in writing or in the presence of the defendant in open court.

If the motion is in writing, moving counsel shall certify that a written notice of intention to withdraw appearance was sent to the defendant at least ten days before the filing of the motion. If the defendant is represented by other counsel or if other counsel enters an appearance on behalf of the defendant, and if no objection is made within ten days after the motion is filed, the clerk shall strike the appearance of moving counsel. If no other counsel has entered an appearance for the defendant, leave to withdraw may be granted only by order of court. The court may refuse leave to withdraw an appearance if it would unduly delay the trial of the action, would be prejudicial to any of the parties, or otherwise would not be in the interest of justice. If leave is granted and the defendant is not represented, a subpoena or other writ shall be issued and served on the defendant for an appearance before the court for proceedings pursuant to Rule 4-215.

Cross reference: Code, Courts Article, §6-407 (Automatic Termination of Appearance of Attorney). See Rules 4-216 (e)(2)(A) and 4-216.1 (a)(2)(A)(i) with respect to the automatic termination of the appearance of the Public Defender upon the conclusion of an initial appearance before a judge and upon the conclusion of a hearing to review a pretrial release decision of a commissioner.

Source: This Rule is in part derived from former Rule 725 and M.D.R. 725 and in part from the 2009 version of Fed. R. Crim. P. 44.

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-242 to add a Committee note after section (a); to clarify that section (c) applies to all pleas of guilty, including a conditional plea of guilty; to add a new section (d) pertaining to conditional pleas of guilty; to add to section (h) references to conditional pleas of guilty; and to make stylistic changes, as follows:

Rule 4-242. PLEAS

(a) Permitted Pleas

A defendant may plead not guilty, guilty, or, with the consent of the court, nolo contendere. In addition to any of these pleas, the defendant may enter a plea of not criminally responsible by reason of insanity.

Committee note: It has become common in some courts for defendants to enter a plea of not guilty but, in lieu of a normal trial, to proceed on an agreed statement of ultimate fact to be read into the record or on a statement of proffered evidence to which the defendant stipulates, the purpose being to avoid the need for the formal presentation of evidence but to allow the defendant to argue the sufficiency of the agreed facts or evidence and to appeal from a judgment of conviction. That kind of procedure is permissible only if there is no material dispute in the statement of facts or evidence. *See Bishop v. State*, 417 Md. 1 (2010); *Harrison v. State*, 382 Md. 477 (2004); *Morris v. State*, 418 Md. 194 (2011). Parties to a criminal action in a circuit court who seek to avoid a formal trial but to allow the defendant to appeal from specific adverse rulings are encouraged to proceed by way of a conditional plea of guilty pursuant to section (d) of this Rule, to the extent that section is applicable.

(b) Method of Pleading

(1) Manner

A defendant may plead not guilty personally or by counsel on the record in open court or in writing. A defendant may plead guilty or nolo contendere personally on the record in open court, except that a corporate defendant may plead guilty or nolo contendere by counsel or a corporate officer. A defendant may enter a plea of not criminally responsible by reason of insanity personally or by counsel and the plea shall be in writing.

(2) Time in the District Court

In District Court the defendant shall initially plead at or before the time the action is called for trial.

(3) Time in Circuit Court

In circuit court the defendant shall initially plead within 15 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213 (c). If a motion, demand for particulars, or other paper is filed that requires a ruling by the court or compliance by a party before the defendant pleads, the time for pleading shall be extended, without special order, to 15 days after the ruling by the court or the compliance by a party. A plea of not criminally responsible by reason of insanity shall be entered at the time the defendant initially pleads, unless good cause is shown.

(4) Failure or Refusal to Plead

If the defendant fails or refuses to plead as required by this section, the clerk or the court shall enter a plea of not

guilty.

Cross reference: See *Treece v. State*, 313 Md. 665 (1988), concerning the right of a defendant to decide whether to interpose the defense of insanity.

(c) Plea of Guilty

The court may not accept a plea of guilty, including a conditional plea of guilty, until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section ~~(e)~~ (f) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

(d) Conditional Plea of Guilty

(1) Scope of Section

This section applies only to an offense charged by indictment or criminal information and set for trial in a circuit court or that is scheduled for trial in a circuit court pursuant to a prayer for jury trial entered in the District Court.

Committee note: Section (d) of this Rule does not apply to appeals from the District Court.

(2) Entry of Plea; Requirements

With the consent of the court and the State, a defendant may enter a conditional plea of guilty. The plea shall be in writing and, as part of it, the defendant may reserve the right to appeal one or more issues specified in the plea that (A) were raised by and determined adversely to the defendant, and, (B) if determined in the defendant's favor would have been dispositive of the case. The right to appeal under this subsection is limited to those pretrial issues litigated in the circuit court and set forth in writing in the plea.

Committee note: This Rule does not affect any right to file an application for leave to appeal under Code, Courts Article, §12-302 (e)(2).

(3) Withdrawal of Plea

A defendant who prevails on appeal with respect to an issue reserved in the plea may withdraw the plea.

Cross reference: Code, Courts Article, §12-302.

~~(d)~~ (e) Plea of Nolo Contendere

A defendant may plead nolo contendere only with the consent of court. The court may require the defendant or counsel to provide information it deems necessary to enable it to determine whether or not it will consent. The court may not accept the plea until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that the defendant is pleading voluntarily with understanding of the nature of the charge and the consequences of the plea. In addition, before

accepting the plea, the court shall comply with section ~~(e)~~ (f) of this Rule. Following the acceptance of a plea of nolo contendere, the court shall proceed to disposition as on a plea of guilty, but without finding a verdict of guilty. If the court refuses to accept a plea of nolo contendere, it shall call upon the defendant to plead anew.

~~(e)~~ (f) Collateral Consequences of a Plea of Guilty, Conditional Plea of Guilty, or Plea of Nolo Contendere

Before the court accepts a plea of guilty, a conditional plea of guilty, or a plea of ~~or~~ nolo contendere, the court, the State's Attorney, the attorney for the defendant, or any combination thereof shall advise the defendant (1) that by entering the plea, if the defendant is not a United States citizen, the defendant may face additional consequences of deportation, detention, or ineligibility for citizenship, (2) that by entering a plea to the offenses set out in Code, Criminal Procedure Article, §11-701, the defendant shall have to register with the defendant's supervising authority as defined in Code, Criminal Procedure Article, §11-701 (p), and (3) that the defendant should consult with defense counsel if the defendant is represented and needs additional information concerning the potential consequences of the plea. The omission of advice concerning the collateral consequences of a plea does not itself mandate that the plea be declared invalid.

Committee note: In determining whether to accept the plea, the court should not question defendants about their citizenship or immigration status. Rather, the court should ensure that all

defendants are advised in accordance with this section. This Rule does not overrule *Yoswick v. State*, 347 Md. 228 (1997) and *Daley v. State*, 61 Md. App. 486 (1985).

~~(f)~~ (g) Plea to a Degree

A defendant may plead not guilty to one degree and plead guilty to another degree of an offense which, by law, may be divided into degrees.

~~(g)~~ (h) Withdrawal of Plea

At any time before sentencing, the court may permit a defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere when the withdrawal serves the interest of justice. After the imposition of sentence, on motion of a defendant filed within ten days, the court may set aside the judgment and permit the defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere if the defendant establishes that the provisions of section (c) or ~~(d)~~ (e) of this Rule were not complied with or there was a violation of a plea agreement entered into pursuant to Rule 4-243. The court shall hold a hearing on any timely motion to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere.

Committee note: The entry of a plea may waive technical defects in the charging document and waives objections to venue. See, e.g., Rule 4-202 (b) and *Kisner v. State*, 209 Md. 524, 122 A.2d 102 (1956).

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 731 a and M.D.R. 731 a.
Section (b)
Subsection (1) is derived from former Rule 731 b 1 and M.D.R. 731 b 1.
Subsection (2) is new.

Subsection (3) is derived from former Rule 731 b 2.

Subsection (4) is derived from former Rule 731 b 3 and M.D.R. 731 b 2.

Section (c) is derived from former Rule 731 c and M.D.R. 731 c.

Section (d) is new.

Section ~~(d)~~ (e) is derived from former Rule 731 d and M.D.R. 731 d.

Section ~~(e)~~ (f) is new.

Section ~~(f)~~ (g) is derived from former Rule 731 e.

Section ~~(g)~~ (h) is derived from former Rule 731 f and M.D.R. 731 e.

REPORTER'S NOTE

In *Bishop v. State*, 417 Md. 1 (2010), the Court suggested that the Rules Committee consider whether to adopt a Rule providing for a conditional guilty plea similar to Fed. R. Crim. Proc. 11 (a). Chapter 410, Laws of 2012 (HB 1031) authorizes conditional guilty pleas to be taken in accordance with the Maryland Rules. Proposed new section (d) implements the provisions of that statute.

To call attention to problems that have occurred when a defendant who wishes to reserve a right of appeal enters a plea of not guilty and proceeds on stipulated evidence or an agreed statement of facts, a Committee note is proposed to be added following section (a). The Committee note recommends that, when appropriate, the parties should consider the use of a conditional plea of guilty.

Additionally, although not expressly debated by the Committee, language referring to conditional pleas of guilty has been drafted for inclusion in sections (c) and (h). This addition is in the nature of a non-substantive clarification that a conditional plea of guilty is a subset of the broader category of guilty pleas to which sections (c) and (h) would necessarily apply in any event.

A conforming amendment is proposed to Rule 4-243 (c)(4).

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-243 (c)(4) to conform an internal reference to a proposed amendment to Rule 4-242, as follows:

Rule 4-243. PLEA AGREEMENTS

. . .

(c) Agreements of Sentence, Disposition, or Other Judicial Action

. . .

(4) Rejection of Plea Agreement

If the plea agreement is rejected, the judge shall inform the parties of this fact and advise the defendant (A) that the court is not bound by the plea agreement; (B) that the defendant may withdraw the plea; and (C) that if the defendant persists in the plea of guilty, conditional plea of guilty, or a plea of nolo contendere, the sentence or other disposition of the action may be less favorable than the plea agreement. If the defendant persists in the plea, the court may accept the plea of guilty only pursuant to Rule 4-242 (c) and the plea of nolo contendere only pursuant to Rule 4-242 ~~(d)~~ (e).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-242.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-331 to add a new subsection (b)(2) concerning a motion filed pursuant to Code, Criminal Procedure Article, §8-302; to add language to clarify the time for filing a motion under section (c); and to make stylistic changes, as follows:

Rule 4-331. MOTIONS FOR NEW TRIAL; REVISORY POWER

(a) Within Ten Days of Verdict

On motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial.

Cross reference: For the effect of a motion under this section on the time for appeal see Rules 7-104 (b) and 8-202 (b).

(b) Revisory Power

(1) Generally

The court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial:

~~(1)~~ (A) in the District Court, on motion filed within 90 days after its imposition of sentence if an appeal has not been perfected;

~~(2)~~ (B) in the circuit courts, on motion filed within 90 days after its imposition of sentence.

Thereafter, the court has revisory power and control over the judgment in case of fraud, mistake, or irregularity.

(2) Act of Prostitution While under Duress

On motion filed pursuant to Code, Criminal Procedure Article, §8-302, the court has revisory power and control over a judgment of conviction of prostitution to vacate the judgment, modify the sentence, or grant a new trial.

(c) Newly Discovered Evidence

The court may grant a new trial or other appropriate relief on the ground of newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial pursuant to section (a) of this Rule:

(1) on motion filed within one year after the later of (A) the date the court imposed sentence or (B) the date ~~it~~ the court received a mandate issued by the ~~Court of Appeals or the Court of Special Appeals~~ final appellate court to consider a direct appeal from the judgment or a belated appeal permitted as post conviction relief; ~~whichever is later;~~

(2) on motion filed at any time if a sentence of death was imposed and the newly discovered evidence, if proved, would show that the defendant is innocent of the capital crime of which the defendant was convicted or of an aggravating circumstance or other condition of eligibility for the death penalty actually found by the court or jury in imposing the death sentence; and

(3) on motion filed at any time if the motion is based on DNA identification testing not subject to the procedures of Code, Criminal Procedure Article, §8-201 or other generally accepted scientific techniques the results of which, if proved, would show

that the defendant is innocent of the crime of which the defendant was convicted.

Committee note: Newly discovered evidence of mitigating circumstances does not entitle a defendant to claim actual innocence. See *Sawyer v. Whitley*, 112 S. Ct. 2514 (1992).

(d) DNA Evidence

If the defendant seeks a new trial or other appropriate relief under Code, Criminal Procedure Article, §8-201, the defendant shall proceed in accordance with Rules 4-701 through 4-711. On motion by the State, the court may suspend proceedings on a motion for new trial or other relief under this Rule until the defendant has exhausted the remedies provided by Rules 4-701 through 4-711.

Cross reference: For retroactive applicability of Code, Criminal Procedure Article, §8-201, see *Thompson v. State*, 411 Md. 664 (2009).

(e) Form of Motion

A motion filed under this Rule shall (1) be in writing, (2) state in detail the grounds upon which it is based, (3) if filed under section (c) of this Rule, describe the newly discovered evidence, and (4) contain or be accompanied by a request for hearing if a hearing is sought.

(f) Disposition

The court may hold a hearing on any motion filed under this Rule. Subject to section (d) of this Rule, the court shall hold a hearing on a motion filed under section (c) if a hearing was requested and the court finds that: (1) if the motion was filed pursuant to subsection (c)(1) of this Rule, it was timely filed,

(2) the motion satisfies the requirements of section (e) of this Rule, and (3) the movant has established a prima facie basis for granting a new trial. The court may revise a judgment or set aside a verdict prior to entry of a judgment only on the record in open court. The court shall state its reasons for setting aside a judgment or verdict and granting a new trial.

Cross reference: Code, Criminal Procedure Article, §§6-105, 6-106, 11-104, and §11-503.

Source: This Rule is derived in part from former Rule 770 and M.D.R. 770 and is in part new.

REPORTER'S NOTE

New subsection (b)(2) is proposed to be added to Rule 4-331 in light of Chapter 218, Laws of 2011 (SB 327), which allows a person convicted of prostitution under Code, Criminal Law Article, §11-306 to file a motion to vacate the judgment if, when the person committed the crime, the person was acting under duress caused by the act of another person committed in violation of Code, Criminal Law Article, §11-303, the prohibition against human trafficking. The new law allows the court to vacate the judgment of conviction, modify the sentence, or grant a new trial.

The amendment to Rule 4-331 (c)(1) is proposed in response to a referral from the Court of Appeals. In *State v. Matthews*, 415 Md. 286 (2010), the Court referred the clarification of the Rule to the Rules Committee. *Id.* at 298.

The Court of Appeals explained that, in *Matthews v. State*, 187 Md. App. 496 (2009), the Court of Special Appeals determined

> ...that Rule 4-331 (c)(1) is ambiguous because it permits a motion filed within one year after imposition of sentence or "the date it received a mandate issued by the Court of Appeals or the Court of Special Appeals, whichever is later," and thus, it is unclear whether Subsection (c)(1) "applies to *any* mandate," or only to a mandate issued at the conclusion of a direct appeal. *Matthews*, 187 Md. App. at 504, 979 A.2d at 203. *Matthews*, 415 Md. at 298-99 (emphasis in original).

The Court of Appeals analyzed former versions of the Rule and the accompanying legislative history. In so doing, the Court found support for the position that the term "mandate" should be construed as referring only to the mandate issued at the conclusion of a direct appeal. *Id.* at 299-306. The Rules Committee also recommends including belated appeals permitted as post conviction relief.

The proposed amendment to subsection (c)(1) resolves the ambiguity highlighted by the Court of Special Appeals, and is consistent with the Court of Appeals' interpretation of the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-266 to add language to section (c) to expand the categories of persons who may file a motion for a protective order and to make stylistic changes, as follows:

Rule 4-266. SUBPOENAS - GENERALLY

(a) Form

Every subpoena shall contain: (1) the caption of the action, (2) the name and address of the person to whom it is directed, (3) the name of the person at whose request it is issued, (4) the date, time, and place where attendance is required, and (5) a description of any documents, recordings, photographs, or other tangible things to be produced.

(b) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). A subpoena may be served by a sheriff of any county or by a person who is not a party and who is not less than 18 years of age. A subpoena issued by the District Court may be served by first class mail, postage prepaid, if the administrative judge of the district so directs.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public

records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort.

(c) Protective Order

Upon motion of a party, ~~or of the witness~~ a person named in the subpoena, or a person named or depicted in an item specified in the subpoena filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance the court ~~may~~, for good cause shown, may enter an order which justice requires to protect the party or ~~witness~~ person from annoyance, embarrassment, oppression, or undue burden or expense, including one of the following:

(1) That the subpoena be quashed;

(2) That the subpoena be complied with only at some designated time or place other than that stated in the subpoena, or before a judge, or before some other designated officer;

(3) That certain matters not be inquired into or that the scope of examination or inspection be limited to certain matters;

(4) That the examination or inspection be held with no one present except parties to the action and their counsel;

(5) That the transcript of any examination or matters produced or copies, after being sealed, not be opened or the contents be made public only by order of court; or

(6) That a trade secret or other confidential research development or commercial information not be disclosed or be disclosed only in a designated way.

(d) Attachment

A witness personally served with a subpoena under this Rule is liable to a body attachment and fine for failure to obey the subpoena without sufficient excuse. The writ of attachment may be executed by the sheriff or peace officer of any county and shall be returned to the court issuing it. The witness attached shall be taken immediately before the court if then in session. If the court is not in session, the witness shall be taken before a judicial officer of the District Court for a determination of appropriate conditions of release to ensure the witness' appearance at the next session of the court that issued the attachment.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 742 c and M.D.R. 742 b.
Section (b) is derived from former Rule 737 b and M.D.R. 737 b.
Section (c) is derived from former Rule 742 d and M.D.R. 742 c.
Section (d) is derived from former Rule 742 e and M.D.R. 742 d.

REPORTER'S NOTE

The Rules Committee believes that allowing a motion for a protective order to be filed only by a "party" or "the witness named in the subpoena" is too restrictive. For example, if a document sought by a subpoena duces tecum pertains to a victim of a crime [who is not the witness named in the subpoena], the victim should be allowed to move for a protective order if the standard set forth in Rule 4-266 (c) can be met.

The Committee recommends an amendment to Rule 4-266 (c) that expands the description of who may file a motion for a protective order to include (1) a "party," (2) a "person named in the subpoena," and (3) "a person named or depicted in an item specified in the subpoena."

The Committee also recommends comparable amendments to Rules 2-403, 2-510, 3-510, 4-262, and 4-263. In Rules 2-403, 4-262, and 4-263, which do not reference subpoenas, the phrase "item sought to be discovered" is used, rather than "item specified in the subpoena."

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-403 to add language to section (a) that refers to persons named or depicted in an item sought to be discovered and to make stylistic changes, as follows:

Rule 2-403. PROTECTIVE ORDERS

(a) Motion

On motion of a party, ~~or of~~ a person from whom discovery is sought, or a person named or depicted in an item sought to be discovered, and for good cause shown, the court may enter any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had, (2) that the discovery not be had until other designated discovery has been completed, a pretrial conference has taken place, or some other event or proceeding has occurred, (3) that the discovery may be had only on specified terms and conditions, including an allocation of the expenses or a designation of the time or place, (4) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery, (5) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters, (6) that discovery be conducted with no one present except persons

designated by the court, (7) that a deposition, after being sealed, be opened only by order of the court, (8) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way, (9) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

(b) Order

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

Source: This Rule is derived as follows:

Section (a) is derived from the 1980 version of Fed. R. Civ. P. 26 (c) and the 1980 version of Fed. R. Civ. P. 33 (b) and from former Rule 406 a.

Section (b) is derived from the 1980 version of Fed. R. Civ. P. 26 (c).

REPORTER'S NOTE

See the Reporter's note to Rule 4-266.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-510 to add language to sections (e) and (f) that refers to persons named or depicted in an item specified in the subpoena, as follows:

Rule 2-510. SUBPOENAS

. . .

(e) Objection to Subpoena for Court Proceedings

On motion of a person served with a subpoena to attend a court proceeding (including a proceeding before a master, auditor, or examiner) or a person named or depicted in an item specified in the subpoena filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance, the court may enter an order that justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden or cost, including one or more of the following:

(1) that the subpoena be quashed or modified;

(2) that the subpoena be complied with only at some designated time or place other than that stated in the subpoena;

(3) that documents, electronically stored information, or tangible things designated in the subpoena be produced only upon the advancement by the party serving the subpoena of the reasonable costs of producing them; or

(4) that documents, electronically stored information, or tangible things designated in the subpoena be delivered to the court at or before the proceeding or before the time when they are to be offered in evidence, subject to further order of court to permit inspection of them.

A motion filed under this section based on a claim that information is privileged or subject to protection as work product materials shall be supported by a description of the nature of each item that is sufficient to enable the demanding party to evaluate the claim.

(f) Objection to Subpoena for Deposition

A person served with a subpoena to attend a deposition may seek a protective order pursuant to Rule 2-403. If the subpoena also commands the production of documents, electronically stored information, or tangible things at the deposition, the person served or a person named or depicted in an item specified in the subpoena may seek a protective order pursuant to Rule 2-403 or may file, within ten days after service of the subpoena, an objection to production of any or all of the designated materials. The objection shall be in writing and shall state the reasons for the objection. If an objection is filed, the party serving the subpoena is not entitled to production of the materials except pursuant to an order of the court from which the subpoena was issued. At any time before or within 15 days after completion of the deposition and upon notice to the deponent, the party serving the subpoena may move for an order to compel the production.

A claim that information is privileged or subject to protection as work product materials shall be supported by a description of each item that is sufficient to enable the demanding party to evaluate the claim.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-266.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 500 - TRIAL

AMEND Rule 3-510 to add language to sections (e) and (f) that refers to persons named or depicted in an item specified in the subpoena, as follows:

Rule 3-510. SUBPOENAS

. . .

(e) Objection to Subpoena for Court Proceedings

On motion of a person served with a subpoena to attend a court proceeding (including a proceeding before an examiner) or a person named or depicted in an item specified in the subpoena filed promptly and, whenever practicable, at or before the time specified in the subpoena for compliance, the court may enter an order that justice requires to protect the person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the subpoena be quashed or modified;

(2) that the subpoena be complied with only at some designated time or place other than that stated in the subpoena;

(3) that documents or other tangible things designated in the subpoena be produced only upon the advancement by the party serving the subpoena of the reasonable costs of producing them; or

(4) that documents or other tangible things designated in the subpoena be delivered to the court at or before the proceeding or before the time when they are to be offered in evidence, subject to further order of court to permit inspection of them.

(f) Objection to Subpoena for Deposition

A person served with a subpoena to attend a deposition may seek a protective order pursuant to Rule 2-403. If the subpoena also commands the production of documents or other tangible things at the deposition, the person served or a person named or depicted in an item specified in the subpoena may seek a protective order pursuant to Rule 2-403 or may file, within ten days after service of the subpoena, an objection to production of any or all of the designated materials. The objection shall be in writing and shall state the reasons for the objection. If an objection is filed, the party serving the subpoena is not entitled to production of the materials except pursuant to an order of the court from which the subpoena was issued. At any time before or within 15 days after completion of the deposition and upon notice to the deponent, the party serving the subpoena may move for an order to compel the production.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-266.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-262 to add language to section (m) that refers to persons named or depicted in an item sought to be discovered and to make stylistic changes, as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

. . .

(m) Protective Orders

On motion of a party, ~~or~~ a person from whom discovery is sought, or a person named or depicted in an item sought to be discovered, the court, for good cause shown, may order that specified disclosures be denied or restricted in any manner that justice requires.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-266.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-263 to add language to subsections (m)(1) and (2) that refers to persons named or depicted in an item sought to be discovered and to make stylistic changes, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

. . .

(m) Protective Orders

(1) Generally

On motion of a party, ~~or~~ a person from whom discovery is sought, or a person named or depicted in an item sought to be discovered, the court, for good cause shown, may order that specified disclosures be denied or restricted in any manner that justice requires.

(2) In Camera Proceedings

On request of a party, ~~or~~ a person from whom discovery is sought, or a person named or depicted in an item sought to be discovered, the court may permit any showing of cause for denial or restriction of disclosures to be made in camera. A record shall be made of both in court and in camera proceedings. Upon the entry of an order granting relief in an in camera proceeding, all confidential portions of the in camera portion of the proceeding shall be sealed, preserved in the records of the court,

and made available to the appellate court in the event of an appeal.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-266.

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND

AMEND Rule 4 to expand the Board's discretion to waive the requirements of Bar Admission Rules 3 and 4 (a)(2) under certain circumstances and to make stylistic changes, as follows:

Rule 4. ELIGIBILITY TO TAKE BAR EXAMINATION

(a) Legal Education

(1) In order to take the bar examination of this State an ~~person~~ individual either shall have graduated or shall be unqualifiedly eligible for graduation from a law school.

(2) The law school shall be located in a state and shall be approved by the American Bar Association.

(b) Waiver

The Board shall have discretion to waive the requirements of subsection (a)(2) of this Rule and Rule 3 for any ~~person~~ individual who, in the Board's opinion, is qualified by reason of education, experience, or both to take the bar examination and:

(1) has passed the bar examination of another state and is a member in good standing of the Bar of that state; or

(2) is admitted to practice in a jurisdiction that is not defined as a state by Rule 1 and has obtained an additional degree from an American Bar Association approved law school in Maryland that meets the requirements prescribed by the Board Rules.

(c) Minors

If otherwise qualified, an ~~person~~ individual who is under 18 years of age is eligible to take the bar examination but shall not be admitted to the Bar until 18 years of age.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 5 b.
Section (b) is derived from former Rule 5 c.
Section (c) is derived from former Rule 5 d.

REPORTER'S NOTE

The proposed amendment to Bar Admission Rule 4 expands the Board's discretion to waive the education prerequisites to taking the bar examination under certain circumstances. The current rule limits waivers to applicants who are members of a bar of another state. The amendment permits the Board to grant a waiver to an applicant who has been admitted to practice law in a jurisdiction that is not a state, provided that the applicant has also received an additional degree from an ABA approved Maryland law school.

The amendment to Rule 4 is accompanied by a Board Rule that sets forth the requirements for the additional degree to qualify under Rule 4, and requires the applicant to furnish to the Board certain documents and certifications.

The word "person" is changed to "individual." Rule 1-202 (l) defines "individual" as a human being, and defines "person" to include corporations and partnerships, among other things.

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND

AMEND Rule 19 of the Rules Governing Admission to the Bar of Maryland to add to subsection (c)(7) language regarding the disclosure of applicant information to bar associations and to make stylistic changes, as follows:

Rule 19. CONFIDENTIALITY

. . .

(c) When Disclosure Authorized

The Board may disclose:

(1) statistical information that does not reveal the identity of an individual applicant;

(2) the fact that an applicant has passed the bar examination and the date of the examination;

(3) any material pertaining to an applicant that the applicant would be entitled to inspect under section (b) of this Rule if the applicant has consented in writing to the disclosure;

(4) any material pertaining to an applicant requested by

(A) a court of this State, another state, or the United States;

(B) Bar Counsel, the Attorney Grievance Commission, or the attorney disciplinary authority in another state;

(C) the authority in another jurisdiction responsible for investigating the character and fitness of an applicant for

admission to the bar of that jurisdiction, or

(D) Investigative Counsel, the Commission on Judicial Disabilities, or the judicial disciplinary authority in another jurisdiction for use in:

(i) a pending disciplinary proceeding against the applicant as an attorney or judge;

(ii) a pending proceeding for reinstatement of the applicant as an attorney after disbarment; or

(iii) a pending proceeding for original admission of the applicant to the Bar;

(5) any material pertaining to an applicant requested by a judicial nominating commission or the Governor of this State, a committee of the Senate of Maryland, or a committee of the United States Senate in connection with an application by or nomination of the applicant for judicial office;

(6) to a law school, the names of persons who graduated from that law school who took a bar examination and whether they passed or failed the examination;

(7) to the Maryland State Bar Association and any other bona fide bar association in the State of Maryland ~~and to each entity selected to give the course on legal professionalism required by Rule 11~~, the name and address of a person recommended for bar admission pursuant to Rule 10;

(8) to each entity selected to give the course on legal professionalism required by Rule 11, the name and address of a person recommended for bar admission pursuant to Rule 10;

~~(8)~~ (9) to the National Conference of Bar Examiners, the following information regarding persons who have filed applications for admission pursuant to Rule 2 or petitions to take the attorney's examination pursuant to Rule 13: the applicant's name and aliases, applicant number, birthdate, Law School Admission Council number, law school, date that a juris doctor degree was conferred, bar examination results and pass/fail status, and the number of bar examination attempts;

~~(9)~~ (10) to any member of a Character Committee, the report of any Character Committee or the Board following a hearing on an application; and

~~(10)~~ (11) to the Child Support Enforcement Administration, upon its request, the name, Social Security number, and address of a person who has filed an application pursuant to Rule 2 or a petition to take the attorney's examination pursuant to Rule 13.

Unless information disclosed pursuant to paragraphs (4) and (5) of this section is disclosed with the written consent of the applicant, an applicant shall receive a copy of the information and may rebut, in writing, any matter contained in it. Upon receipt of a written rebuttal, the Board shall forward a copy to the person or entity to whom the information was disclosed.

. . .

REPORTER'S NOTE

The State Board of Law Examiners has requested an amendment to Bar Admission Rule 19, Confidentiality, which would allow it to disclose to local and State bar associations the names and addresses of applicants who have passed the bar examination. The purpose of disclosure is to enable bar associations to mail to

applicants information regarding membership, networking events, programs, and receptions.

The Court amended Rule 19 on March 7, 2011 to allow disclosure to the Maryland State Bar Association. The proposed amendment is broader and permits disclosure to any bona fide bar association in the State of Maryland.

Stylistic changes also are made.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-305 to change the circumstances under which a party is required to include the amount of damages sought in a demand for a money judgment, to add a Committee note, and to make a stylistic change, as follows:

Rule 2-305. CLAIMS FOR RELIEF

A pleading that sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for the relief sought. Unless otherwise required by law, (a) a demand for a money judgment that does not exceed $75,000 shall include the amount of damages sought, and (b) a demand for a money judgment that exceeds $75,000 shall not specify the amount sought, but shall include a general statement that the amount sought exceeds $75,000. Relief in the alternative or of several different types may be demanded.

Committee note: If the amount sought exceeds $75,000, a general statement to that effect is necessary in order to determine if the case may be removed to a federal court based on diversity of citizenship. *See* 28 U.S.C.S. § 1332. A specific dollar amount must be given when the damages sought are less than or equal to $75,000 because the dollar amount is relevant to determining whether the amount is sufficient for circuit court jurisdiction or a jury trial.

Source: This Rule is derived in part from former Rules 301 c, 340 a, and 370 a 3 and the 1966 version of Fed. R. Civ. P. 8 (a) and is in part new.

REPORTER'S NOTE

The proposed amendment to Rule 2-305 changes the current Rule's requirement that a party, unless otherwise required by law, must include the amount sought in a demand for a money judgment. The Rule is amended to provide that, unless otherwise required by law, a demand for a money judgment that is less than or equal to $75,000 must include a specific dollar amount; however, a demand for a money judgment that is greater than $75,000 may not specify the amount sought, but must include a general statement that the amount sought is greater than $75,000.

The amendment is proposed in light of discussions with attorneys who recommend eliminating the requirement to plead specific amounts in favor of a framework similar to that used in medical malpractice cases. *See* Code, Courts Article, §3-2A-02 (b). It is thought that *ad damnum* clauses are damaging to defendants who become frightened upon receiving complaints with huge amounts specified in the clauses; to plaintiffs who may become disillusioned as to the value of their cases; and to the legal profession because they lead to a negative public perception by distorting the attorney's actual valuation of the case.

The Subcommittee has been advised that defendants and insurance companies do not exclusively rely upon the amount of damages sought in *ad damnum* clauses to determine the value of the case. Insurance companies set aside reserves based upon their own investigation and experience. Defendants and insurance companies obtain information about the actual value of the case during the discovery process.

The Committee note explains that $75,000 is used as the benchmark because it is the amount necessary to remove a case to federal court based upon diversity of citizenship. A specific dollar amount must be pled if it is less than or equal to $75,000 because the dollar amount may be relevant for purposes of circuit court jurisdiction and the right to a jury trial.

The addition of the word "the" to the first sentence of the Rule is stylistic, only.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-305 to make a stylistic change, as follows:

Rule 3-305. CLAIMS FOR RELIEF

A pleading that sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for the relief sought. Relief in the alternative or of several different types may be demanded.

Source: This Rule is derived from former M.D.R. 301 a (ii) and the 1966 version of Fed. R. Civ. P. 8 (a).

REPORTER'S NOTE

See the Reporter's note to Rule 2-305.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 200 - PARTIES

AMEND Rule 2-214 to authorize the filing of a motion or response that is not a pleading with a motion to intervene, as follows:

Rule 2-214. INTERVENTION

(a) Of Right

Upon timely motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law; or (2) when the person claims an interest relating to the property or transaction that is the subject of the action, and the person is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless it is adequately represented by existing parties.

(b) Permissive

(1) Generally

Upon timely motion a person may be permitted to intervene in an action when the person's claim or defense has a question of law or fact in common with the action.

(2) Governmental Interest

Upon timely motion the federal government, the State, a political subdivision of the State, or any officer or agency of

any of them may be permitted to intervene in an action when the validity of a constitutional provision, charter provision, statute, ordinance, regulation, executive order, requirement, or agreement affecting the moving party is drawn in question in the action, or when a party to an action relies for ground of claim or defense on such constitutional provision, charter provision, statute, ordinance, regulation, executive order, requirement, or agreement.

(3) Considerations

In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure

A person desiring to intervene shall file and serve a motion to intervene. The motion shall state the grounds therefor and shall be accompanied by a copy of the proposed pleading, motion, or response setting forth the claim or defense for which intervention is sought. An order granting intervention shall designate the intervenor as a plaintiff or a defendant. Thereupon, the intervenor shall promptly file the pleading, motion, or response and serve it upon all parties.

Source: This Rule is derived as follows:
Section (a) is derived from the 1966 version of Fed. R. Civ. P. 24 (a).
Section (b)
Subsection (b)(1) is derived from former Rule 208 b 1.
Subsection (b)(2) is derived from former Rule 208 b 2.
Subsection (b)(3) is derived from the last sentence of the 1966 version of Fed. R. Civ. P. 24 (b).

Section (c) is derived from the 1966 version of Fed. R. Civ. P. 24 (c) and former Rule 208 c.

REPORTER'S NOTE

Rule 2-214 currently directs a person to file a proposed *pleading* with a motion to intervene.

Rule 1-202 (u) defines pleading as a complaint, counterclaim, cross-claim, third-party complaint, answer, answer to a counterclaim, answer to a cross-claim, answer to a third party complaint, a reply to an answer, or a charging document as used in Title 4.

An amendment is proposed because a person may wish to intervene for the purpose of filing a motion or response that is not a pleading. For example, an intervenor may wish to file a motion to dismiss based on lack of standing.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-311 to add a new section (c) to allow a party to file a reply within 10 days after being served with a response, to add a Committee note following section (c), to allow a party to include in a reply a request for a hearing, and to make stylistic changes, as follows:

Rule 2-311. MOTIONS

(a) Generally

An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, and shall set forth the relief or order sought.

(b) Response

Except as otherwise provided in this section, a party against whom a motion is directed shall file any response within 15 days after being served with the motion, or within the time allowed for a party's original pleading pursuant to Rule 2-321 (a), whichever is later. Unless the court orders otherwise, no response need be filed to a motion filed pursuant to Rule 1-204, 2-532, 2-533, or 2-534. If a party fails to file a response required by this section, the court may proceed to rule on the motion.

Cross reference: See Rule 1-203 concerning the computation of time.

(c) Reply

Unless otherwise ordered by the court, a party may file a reply within 10 days after being served with a response. A reply shall not present matters that do not relate to the response.

Committee note: Replies should not be filed as a matter of course, but may be filed to correct a misstatement of fact or law in a response or to address a matter raised for the first time in a response.

~~(c)~~ (d) Statement of Grounds and Authorities; Exhibits

A written motion and a response to a motion shall state with particularity the grounds and the authorities in support of each ground. A party shall attach as an exhibit to a written motion, ~~or~~ response, or reply any document that the party wishes the court to consider in ruling on the motion or response unless the document is adopted by reference as permitted by Rule 2-303 (d) or set forth as permitted by Rule 2-432 (b).

~~(d)~~ (e) Affidavit

A motion, ~~or~~ a response to a motion, or a reply that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based.

~~(e)~~ (f) Hearing - Motions for Judgment Notwithstanding the Verdict, for New Trial, or to Amend the Judgment

When a motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the court shall determine in each case whether a hearing will be held, but it may not grant the motion without a hearing.

~~(f)~~ (g) Hearing - Other Motions

A party desiring a hearing on a motion, other than a motion

filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion, ~~or~~ response, or reply under the heading "Request for Hearing." The title of the motion, ~~or~~ response, or reply shall state that a hearing is requested. Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 321 a.
Section (b) is new.
Section (c) is new.
Section ~~(c)~~ (d) is derived from former Rule 319.
Section ~~(d)~~ (e) is derived from former Rule 321 b.
Section ~~(e)~~ (f) is derived from former Rule 321 d.
Section ~~(f)~~ (g) is new but is derived in part from former Rule 321 d.

REPORTER'S NOTE

New section (c), Reply, is proposed in order to provide guidance to practitioners and courts regarding replies. Section (c) expressly authorizes the filing of a reply and requires a party who wishes to file one to do so within 10 days after being served with the response to the motion. The second sentence is borrowed from Fed. R. App. P. 27, with a stylistic change. A Committee note following section (c) cautions that replies are appropriate in limited circumstances and should not be filed as a matter of course. An amendment to section (g) allows a party to include a request for a hearing in the party's reply memorandum.

Currently, the Rules are silent regarding replies. This silence has caused differences of opinion among courts and practitioners as to whether replies are permitted at all. Also, some practitioners have taken the position that a reply may be filed on the day of the hearing on the motion because no filing deadline for replies is mentioned in Rule 2-311 or Rule 2-504 (b).

Although replies are not necessary in most cases, they provide a party (ordinarily the moving party) an opportunity to

address matters raised for the first time in a response and to correct any misstatements of fact or law in the response.

Conforming amendments are made to Rules 2-303, 2-401, and 2-643.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-303 to correct a reference in the Committee note following the rule and to conform the Committee note to amendments to Rule 2-311, as follows:

Rule 2-303. FORM OF PLEADINGS

. . .

Cross reference: Rules 1-301; 1-311 through 1-313.

Committee note: This Rule, authorizing the adoption by reference of statements in "papers of record" other than pleadings, must be read in conjunction with Rule 2-311 ~~(c)~~ (d), which requires documents to be attached to a motion, or response, or reply incorporated by reference, or set forth verbatim as permitted by Rule 2-432 (b), and Rule 2-501 ~~(e)~~ (f), which permits the court to rule on a motion for summary judgment based on the motion and response. The court need not consider a document in ruling on a motion unless the document is (1) attached as an exhibit, (2) filed and incorporated by reference, or (3) set forth verbatim in a motion to compel discovery. Since Rule 2-401 (d) prohibits the routine filing of discovery materials, any party who wishes the court to consider them will have to use one of these methods.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-311.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-401 to conform a cross reference to the relettering of Rule 2-311, as follows:

Rule 2-401. GENERAL PROVISIONS GOVERNING DISCOVERY

. . .

(d) Discovery Material

(1) Defined

For purposes of this section, the term "discovery material" means a notice of deposition, an objection to the form of a notice of deposition, the questions for a deposition upon written questions, an objection to the form of the questions for a deposition upon written questions, a deposition transcript, interrogatories, a response to interrogatories, a request for discovery of documents and property, a response to a request for discovery of documents and property, a request for admission of facts and genuineness of documents, and a response to a request for admission of facts and genuineness of documents.

(2) 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. Instead, the party generating the discovery material shall serve the discovery material on all other parties and promptly shall

file with the court a notice stating (A) the type of discovery material served, (B) the date and manner of service, and (C) the party or person served. 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.

Cross reference: Rule 2-311 ~~(c)~~ (d).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-311.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-643 to conform a reference in section (f) to the relettering of Rule 2-311 and to make a stylistic change, as follows:

Rule 2-643. RELEASE OF PROPERTY FROM LEVY

. . .

(f) Hearing

A party desiring a hearing on a motion filed pursuant to this Rule shall so request pursuant to Rule 2-311 ~~(f)~~ (g). ~~and, if requested, a hearing shall be held promptly~~ The court shall hold a requested hearing promptly.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-311.

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 7-112 (f)(4) to delete language referring to a "commissioner" and to add a sentence addressing the unavailability of a judge, as follows:

Rule 7-112. APPEALS HEARD DE NOVO

. . .

(f) Dismissal of Appeal; Entry of Judgment

(1) An appellant may dismiss an appeal at any time before the commencement of trial. The court shall dismiss an appeal if the appellant fails to appear as required for trial or any other proceeding on the appeal.

(2) Upon the dismissal of an appeal, the clerk shall promptly return the file to the District Court. Any statement of satisfaction shall be docketed in the District Court.

(3) On motion filed in the circuit court within 30 days after entry of a judgment dismissing an appeal, the circuit court, for good cause shown, may reinstate the appeal upon the terms it finds proper. On motion of any party filed more than 30 days after entry of a judgment dismissing an appeal, the court may reinstate the appeal only upon a finding of fraud, mistake, or irregularity. If the appeal is reinstated, the circuit court shall notify the

District Court of the reinstatement and request the District Court to return the file.

(4) If the appeal of a defendant in a criminal case who was sentenced to a term of confinement and released pending appeal pursuant to Rule 4-349 is dismissed, the circuit court shall (A) issue a warrant directing that the defendant be taken into custody and brought before a judge ~~or commissioner~~ of the District Court or (B) enter an order that requires the defendant to appear before a judge ~~or commissioner~~. If a judge is not available on the day the warrant or order is served, the defendant shall be brought before a judge the next day that the court is in session. The warrant or order shall identify the District Court case by name and number and shall provide that the purpose of the appearance is the entry of a commitment that conforms to the judgment of the District Court.

Source: This Rule is derived in part from former Rule 1314 and in part new.

REPORTER'S NOTE

Communications from a clerk of the District Court of Maryland, the Chief Clerk for the District Court of Maryland, and the Coordinator of Commissioner Activity have indicated a problem with the wording of subsection (f)(4) of Rule 7-112. The Rule provides that if the appeal of a defendant in a criminal case, who was sentenced to a term of confinement and released pending appeal, is dismissed, the circuit court shall either issue a warrant directing that the defendant be taken into custody and brought before a judge or commissioner of the District Court or enter an order that requires the defendant to appear before a judge or commissioner, so that the original sentence can be imposed. The problem is that a commissioner has no authority to reimpose a sentence. Since a commitment order has already been issued, there is no need for the defendant to go before a commissioner. The Rules Committee recommends amending Rule 7-112

to clarify that the defendant is to be brought before a judge. If a judge is not available, the defendant will be brought before a judge the next available business day.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

FORMS FOR EXPUNGEMENT OF RECORDS

AMEND Form 4-504.1 to add a category for cases transferred to the juvenile court and to make stylistic changes, 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 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.

[ ] I was convicted of a crime specified in Code*, Criminal Procedure Article, §10-105 (a)(9); three years have passed since the later of the conviction or satisfactory completion of the sentence, including probation; 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 transferred to the juvenile court pursuant to Code*, Criminal Procedure Article, §§4-202 or 4-202.2.

(Note: The expungement is only of the records in the criminal case, not those records in the juvenile court. See Code*, Criminal Procedure Article, §10-106.)

[ ] 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

Form 4-504.1 is proposed to be amended to refer to cases that have been transferred to the juvenile court. The 2012 amendments to Code, Criminal Procedure Article, §10-106 [Chapter 563, Laws of 2012 (SB 678)], require the court to grant a request for expungement of a criminal charge that was transferred to the juvenile court under Code, Criminal Procedure Article, §§4-202 or 4-202.2. The language proposed for addition to Form 4-504.1 refers to cases transferred to the juvenile court pursuant to those sections.

The new paragraph of Form 4-504.1 replaces Rule 11-601, which is proposed to be deleted.

MARYLAND RULES OF PROCEDURE

TITLE 11 - JUVENILE CAUSES

CHAPTER 600 - EXPUNGEMENT

DELETE Rule 11-601, as follows:

~~Rule 11-601. EXPUNGEMENT OF CRIMINAL CHARGES TRANSFERRED TO THE JUVENILE COURT~~

~~(a) Procedure~~

~~A petition for expungement of records may be filed by a respondent who is eligible under Code, Criminal Procedure Article, §10-106 to request expungement. Proceedings for expungement shall be in accordance with Title 4, Chapter 500 of these Rules, except that the petition shall be filed in the juvenile court and shall be substantially in the form set forth in section (b) of this Rule.~~

~~(b) Form of Petition~~

~~A petition for expungement of records under this Rule shall be substantially in the following form:~~

~~(Caption)~~

~~PETITION FOR EXPUNGEMENT OF RECORDS~~

~~(Code*, Criminal Procedure Article, §10-106)~~

~~1. On or about _____ , I was arrested 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. The charge was transferred to the juvenile court under former Code*, Article 27, §594A or Code*, Criminal Procedure Article, §4-202 and (check one of the following boxes):

[ ] No petition under Code*, Courts Article, §3-810 was filed;
[ ] The decision on the juvenile petition was a finding of facts not sustained; or
[ ] I was adjudicated delinquent and I am now at least 21 years of age.

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.~~

~~Source: This Rule is new.~~

REPORTER'S NOTE

See the Reporter's note to Form 4-504.1.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-501 by deleting the cross reference at the end of the Rule, as follows:

Rule 4-501. APPLICABILITY

The procedure provided by this Chapter is exclusive and mandatory for use in all judicial proceedings for expungement of records whether pursuant to Code, Criminal Procedure Article, §§10-102 through 10-109 or otherwise.

~~Cross reference: For expungement of criminal charges transferred to the juvenile court, see Rule 11-601 and Code, Criminal Procedure Article, §10-106.~~

Source: This Rule is derived from former Rule EX2.

REPORTER'S NOTE

The cross reference at the end of Rule 4-501 is proposed to be deleted in light of the deletion of Rule 11-601. The reference to Code, Criminal Procedure Article, §10-106 is transferred to Form 4-504.1.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-416 to change a word in subsection (a)(1), to add language to section (b) pertaining to certain conditions for payment of attorneys' fees without court approval, and to make stylistic changes, as follows:

Rule 6-416. ATTORNEY'S FEES OR PERSONAL REPRESENTATIVE'S COMMISSIONS

(a) Subject to Court Approval

(1) Contents of Petition

When a petition for the allowance of attorney's fees or personal representative's commissions is required, it shall be verified and shall state: (A) the amount of all fees or commissions previously allowed, (B) the amount of fees or commissions that the petitioner reasonably ~~anticipates~~ estimates will be requested in the future, (C) the amount of fees or commissions currently requested, (D) the basis for the current request in reasonable detail, and (E) that the notice required by subsection (a)(3) of this Rule has been given.

(2) Filing - Separate or Joint Petitions

Petitions for attorney's fees and personal representative's commissions shall be filed with the court and may be filed as separate or joint petitions.

(3) Notice

The personal representative shall serve on each unpaid creditor who has filed a claim and on each interested person a copy of the petition accompanied by a notice in the following form:

NOTICE OF PETITION FOR ATTORNEY'S FEES OR PERSONAL REPRESENTATIVE'S COMMISSIONS

You are hereby notified that a petition for allowance of attorney's fees or personal representative's commissions has been filed.

You have 20 days after service of the petition within which to file written exceptions and to request a hearing.

(4) Allowance by Court

Upon the filing of a petition, the court, by order, shall allow attorney's fees or personal representative's commissions as it considers appropriate, subject to any exceptions.

(5) Exception

An exception shall be filed with the court within 20 days after service of the petition and notice and shall include the grounds therefor in reasonable detail. A copy of the exception shall be served on the personal representative.

(6) Disposition

If timely exceptions are not filed, the order of the court allowing the attorney's fees or personal representative's commissions becomes final. Upon the filing of timely exceptions, the court shall set the matter for hearing and notify the personal

representative and other persons that the court deems appropriate of the date, time, place, and purpose of the hearing. (b) Payment of Attorney's Fees and Personal Representative's Commissions Without Court Approval

~~(b)~~ (1) ~~Consent in Lieu of Court Approval~~ Payment of Contingency Fee for Services Other Than Estate Administration

~~(1) Conditions for Payment~~

Payment of attorney's fees ~~and personal representative's commissions~~ may be made without court approval if:

(A) the fee is paid to an attorney representing the estate in litigation under a contingency fee agreement signed by the decedent or the current personal representative of the decedent's estate;

(B) the fee does not exceed the terms of the contingency fee agreement;

(C) a copy of the contingency fee agreement is on file with the register of wills; and

(D) the attorney files a statement with each account stating that the scope of the representation by the attorney does not extend to the administration of the estate.

(2) Consent in Lieu of Court Approval

Payment of attorney's fees and personal representative's commissions may be made without court approval if:

(A) the combined sum of all payments of attorney's fees and personal representative's commissions does not exceed the amounts provided in Code, Estates and Trusts Article, §7-601; and

(B) a written consent stating the amounts of the payments signed by (i) each creditor who has filed a claim that is still open and (ii) all interested persons, is filed with the register in the following form:

BEFORE THE REGISTER OF WILLS FOR ....., MARYLAND

IN THE ESTATE OF:

_____ Estate No. _____

CONSENT TO COMPENSATION FOR

PERSONAL REPRESENTATIVE AND/OR ATTORNEY

I understand that the law, Estates and Trusts Article, §7-601, provides a formula to establish the maximum total compensation to be paid for personal representative's commissions and/or attorney's fees without order of court. If the total compensation being requested falls within the maximum allowable amount, and the request is consented to by all unpaid creditors who have filed claims and all interested persons, this payment need not be subject to review or approval by the Court.
A creditor or an interested party may, but is not required to, consent to these fees.

The formula sets total compensation at 9% of the first $20,000 of the gross estate PLUS 3.6% of the excess over $20,000.

Based on this formula, the total allowable statutory maximum based on the gross estate known at this time is_____, LESS any personal representative's commissions and/or attorney's

fees previously approved as required by law and paid. To date, $_____ in personal representative's commissions and $_____ in attorney's fees have been paid.

Cross reference: See 90 Op. Att'y. Gen. 145 (2005).

Total combined fees being requested are $_____, to be paid as follows:

Amount	To	Name of Personal Representative/Attorney
_____	_____	
_____	_____	
_____	_____	
_____	_____	

I have read this entire form and I hereby consent to the payment of personal representative and/or attorney's fees in the above amount.

Date	Signature	Name (Typed or Printed)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

_____ _____
Attorney Personal Representative

_____ _____
Address Personal Representative

_____
Address

_____
Telephone Number

_____
Facsimile Number

_____
E-mail Address

Committee note: Nothing in this Rule is intended to relax requirements for approval and authorization of previous payments.

~~(2)~~ (3) Designation of Payment

When rendering an account pursuant to Rule 6-417 or a final report under modified administration pursuant to Rule 6-455, the personal representative shall designate any payment made under this section as an expense.

Cross reference: Code, Estates and Trusts Article, §§7-502, 7-601, 7-602 and 7-604.

REPORTER'S NOTE

The Rules Committee recommends changing the word "anticipates" in subsection (a)(1) to the word "estimates" for clarification purposes. An attorney may be unable to anticipate the exact amount of future fees, but will be able to estimate an amount.

Chapter 80, Laws of 2011 (SB 673) authorizes the payment of certain contingency fees without court approval if certain conditions are met. The Committee recommends including these conditions in Rule 6-416.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 700 - SPECIAL PROCEEDINGS

AMEND Rule 3-722 to correct obsolete citations in the cross reference following section (a), as follows:

Rule 3-722. RECEIVERS

(a) Applicability

This Rule applies to a receiver appointed to take charge of property for the enforcement of a local or state code or to abate a nuisance.

Cross reference: For the power of the District Court to appoint a receiver, see Code, Courts Article, §§4-401 ~~(7)(i)~~ (8) and 4-402 (b); Code, Real Property Article, §14-120; and Baltimore City Building Code, ~~1997~~ 2011 Edition, §~~123.9~~ 121.

. . .

REPORTER'S NOTE

The proposed amendments delete obsolete references to Code, Courts Article, §4-401 (7)(i) and Baltimore City Building Code, 1997 Edition, §123.9, and replace those references with updated references to Code, Courts Article, §4-401 (8) and Baltimore City Building Code, 2011 Edition, §121.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-212 to add a cross reference after section (e), as follows:

Rule 4-212. ISSUANCE, SERVICE, AND EXECUTION OF SUMMONS OR WARRANT

. . .

(e) Execution of Warrant - Defendant Not in Custody

Unless the defendant is in custody, a warrant shall be executed by the arrest of the defendant. Unless the warrant and charging document are served at the time of the arrest, the officer shall inform the defendant of the nature of the offense charged and of the fact that a warrant has been issued. A copy of the warrant and charging document shall be served on the defendant promptly after the arrest. The defendant shall be taken before a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after arrest or, if the warrant so specifies, before a judicial officer of the circuit court without unnecessary delay and in no event later than the next session of court after the date of arrest. The court shall process the defendant pursuant to Rule 4-216 and may make provision for the appearance or waiver of counsel pursuant to Rule 4-215.

Committee note: The amendments made in this section are not intended to supersede Code, Courts Article §10-912.

Cross reference: See Code, Criminal Procedure Article, §4-109 concerning invalidation and destruction of unserved warrants, summonses, or other criminal process for misdemeanor offenses.

. . .

REPORTER'S NOTE

Chapter 525, Laws of 2012 (SB 496) sets out a procedure for the invalidation and destruction of unexecuted warrants, summonses, and other criminal process. The Rules Committee recommends adding a cross reference after section (e) of Rule 4-212 to draw attention to the new statute.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-217 by adding a cross reference after section (c), by deleting language from and adding language to subsection (i)(5) to include a condition to striking out the forfeiture of bail, by adding language to subsection (i)(6)(B) to include conditions to striking out the forfeiture of bail where the defendant is incarcerated outside the State, and by adding a new subsection (i)(6)(C) to provide for an exception to subsection (i)(6)(B), as follows:

Rule 4-217. BAIL BONDS

. . .

(c) Authorization to Take Bail Bond

Any clerk, District Court commissioner, or other person authorized by law may take a bail bond. The person who takes a bail bond shall deliver it to the court in which the charges are pending, together with all money or other collateral security deposited or pledged and all documents pertaining to the bail bond.

Cross reference: Code, Criminal Procedure Article, §§5-204 and 5-205. <u>See Code, Insurance Article, §10-309, which requires a signed affidavit of surety by the defendant or the insurer that shall be provided to the court if payment of premiums charged for bail bonds is in installments.</u>

. . .

(i) Forfeiture of Bond

(1) On Defendant's Failure to Appear - Issuance of Warrant

If a defendant fails to appear as required, the court shall order forfeiture of the bail bond and issuance of a warrant for the defendant's arrest. The clerk shall promptly notify any surety on the defendant's bond, and the State's Attorney, of the forfeiture of the bond and the issuance of the warrant.

Cross reference: Code, Criminal Procedure Article, §5-211.

(2) Striking Out Forfeiture for Cause

If the defendant or surety can show reasonable grounds for the defendant's failure to appear, notwithstanding Rule 2-535, the court shall (A) strike out the forfeiture in whole or in part; and (B) set aside any judgment entered thereon pursuant to subsection (4)(A) of this section, and (C) order the remission in whole or in part of the penalty sum paid pursuant to subsection (3) of this section.

Cross reference: Code, Criminal Procedure Article, §5-208(b)(1) and (2) and *Allegany Mut. Cas. Co. v. State*, 234 Md. 278, 199 A.2d 201 (1964).

(3) Satisfaction of Forfeiture

Within 90 days from the date the defendant fails to appear, which time the court may extend to 180 days upon good cause shown, a surety shall satisfy any order of forfeiture, either by producing the defendant in court or by paying the penalty sum of the bond. If the defendant is produced within such time by the State, the court shall require the surety to pay the expenses of the State in producing the defendant and shall treat

the order of forfeiture satisfied with respect to the remainder of the penalty sum.

(4) Enforcement of Forfeiture

If an order of forfeiture has not been stricken or satisfied within 90 days after the defendant's failure to appear, or within 180 days if the time has been extended, the clerk shall forthwith:

(A) enter the order of forfeiture as a judgment in favor of the governmental entity that is entitled by statute to receive the forfeiture and against the defendant and surety, if any, for the amount of the penalty sum of the bail bond, with interest from the date of forfeiture and costs including any costs of recording, less any amount that may have been deposited as collateral security; and

(B) cause the judgment to be recorded and indexed among the civil judgment records of the circuit court of the county; and

(C) prepare, attest, and deliver or forward to any bail bond commissioner appointed pursuant to Rule 16-817, to the State's Attorney, to the Chief Clerk of the District Court, and to the surety, if any, a true copy of the docket entries in the cause, showing the entry and recording of the judgment against the defendant and surety, if any.

Enforcement of the judgment shall be by the State's Attorney in accordance with those provisions of the rules relating to the enforcement of judgments.

(5) Subsequent Appearance of Defendant

When the defendant is produced in court after the period allowed under subsection (3) of this section, the surety may apply for the refund of any penalty sum paid in satisfaction of the forfeiture less any expenses permitted by law. ~~If the penalty sum has not been paid, the court, on application of the surety and payment of any expenses permitted by law, shall strike the judgment against the surety entered as a result of the forfeiture.~~ The court shall strike out a forfeiture of bail or collateral and deduct only the actual expense incurred for the defendant's arrest, apprehension, or surrender provided that the surety paid the forfeiture of bail or collateral during the period allowed for the return of the defendant under subsection (3) of this section.

(6) Where Defendant Incarcerated Outside this State

(A) If, within the period allowed under subsection (3) of this section, the surety produces evidence and the court finds that the defendant is incarcerated in a penal institution outside this State and that the State's Attorney is unwilling to issue a detainer and subsequently extradite the defendant, the court shall strike out the forfeiture and shall return the bond or collateral security to the surety.

(B) If, after the expiration of the period allowed under subsection (3) of this section, but within 10 years from the date the bond or collateral was posted, the surety produces evidence and the court finds that the defendant is incarcerated in a penal institution outside this State, ~~and~~ that the State's Attorney is unwilling to issue a detainer and subsequently extradite the

defendant, and that the surety agrees in writing to defray the expense of returning the defendant to the jurisdiction in accordance with Code, Criminal Procedure Article, §5-208 (c), subject to subsection (C) of this section, the court shall ~~(i)~~ strike out the forfeiture~~; (ii) set aside any judgment thereon; and (iii) order the return of the forfeited bond or collateral or the remission of any penalty sum paid pursuant to subsection (3) of this section~~ and refund the forfeited bail bond or collateral to the surety provided that the surety paid the forfeiture of bail or collateral within the time limits established under subsection (3) of this section.

(C) On motion of the surety, the court may refund a forfeited bail bond or collateral that was not paid within the time limits established under subsection (3) of this section if the surety produces evidence that the defendant was incarcerated when the judgment of forfeiture was entered, and the court strikes out the judgment for fraud, mistake, or irregularity.

. . .

REPORTER'S NOTE

Chapter 244, Laws of 2012 (HB 742) requires that an affidavit of surety be provided to the court if a premium for a bail bond is to be paid in installments. The Rules Committee recommends adding a cross reference after section (c) of Rule 4-217 to draw attention to the new statute.

Chapter 598, Laws of 2011 (HB 682) added a condition to a court's striking a forfeiture of bail or collateral. This condition is that the surety must have paid the forfeiture during the period allowed by the statute for the return of the defendant. The law also added the same condition to a court giving back the forfeited bail bond or collateral when the defendant is confined in a correctional facility outside the State, the State's Attorney

is unwilling to issue a detainer and later extradite the defendant, and the surety agrees in writing to defray the expense of returning the defendant to the jurisdiction, but it included an exception if the surety produces evidence that the defendant was incarcerated when the judgment of forfeiture was entered, and the court strikes out the judgment of forfeiture for fraud, mistake, or irregularity.

The Rules Committee recommends modifying subsection (i)(5) to conform to the statutory change. The Committee also recommends adding language to subsection (i)(6)(B) that conforms to the recent statutory change and that conforms to an earlier change, which added the condition of the surety agreeing in writing to defray the expense of returning the defendant to the jurisdiction as one of the conditions the court must determine to strike out a forfeiture. A third change is the addition of a new subsection (i)(6)(C) to conform to the recent legislation. It allows the court to refund a forfeited bail bond on collateral if the defendant was incarcerated when the judgment of forfeiture was entered, and the court strikes out the judgment for fraud, mistake, or irregularity.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 to add a cross reference at the end of section (e) to a certain statute, as follows:

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

. . .

(e) Notice and Right of Victim to Address the Court

(1) Notice and Determination

Notice to a victim or a victim's representative of proceedings under this Rule is governed by Code, Criminal Procedure Article, §11-104 (e). The court shall determine whether the requirements of that section have been satisfied.

(2) Right to Address the Court

The right of a victim or a victim's representative to address the court during a sentencing hearing under this Rule is governed by Code, Criminal Procedure Article, §11-403.

Cross reference: See Code, Criminal Procedure Article, §§11-103 (b) and 11-403 (e) concerning the right of a victim or victim's representative to file an application for leave to appeal under certain circumstances. See Code, Criminal Procedure Article, §11-103 (e) for the right of a victim to file a motion requesting restitution.

. . .

REPORTER'S NOTE

Chapter 362, Laws of 2011, (HB 801) authorizes a victim who alleges that his or her right to restitution was not considered or was improperly denied to file a motion requesting relief within 30

days of the denial or alleged failure to consider. To draw attention to the new law, the Criminal Subcommittee recommends adding a cross reference to it after section (e).

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-345 to add a cross reference at the end of the Rule to a certain statute, 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).

Committee note: The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Department of Health and Mental Hygiene if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied. See Code, Health General Article, §8-507.

(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.

(3) Inquiry by Court

Before considering a motion under this Rule, the court

shall inquire if a victim or victim's representative is present. If one is present, the court shall allow the victim or victim's representative to be heard as allowed by law. If a victim or victim's representative is not present and the case is one in which there was a victim, the court shall inquire of the State's Attorney on the record regarding any justification for the victim or victim's representative not being present, as set forth in Code, Criminal Procedure Article, §11-403 (e). If no justification is asserted or the court is not satisfied by an asserted justification, the court may postpone the hearing.

(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.

Cross reference: See Code, Criminal Procedure Article, §8-302, which allows the court to vacate a judgment, modify a sentence, or grant a new trial for an individual convicted of prostitution if, when the crime was committed, the individual was acting under duress caused by the act of another committed in violation of Code, Criminal Law Article, §11-303, the prohibition against human trafficking.

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

REPORTER'S NOTE

Chapter 218, Laws of 2011 (SB 327) allows a person convicted of prostitution under Code, Criminal Law Article, §11-306 to file a motion to vacate the judgment if, when the individual committed the crime, the individual was acting under duress cause by the act of another person committed in violation of Code, Criminal Law Article, §11-303, the prohibition against human trafficking. The new law allows the court to vacate the conviction, modify the sentence, or grant a new trial. To draw attention to the new law, the Rules Committee recommends adding a cross reference to it at the end of Rule 4-345.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-262 to add a Committee note after section (a), as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

(a) Applicability

This Rule governs discovery and inspection in the District Court. Discovery is available in the District Court in actions that are punishable by imprisonment.

Committee note: This Rule also governs discovery in actions transferred from District Court to circuit court upon a jury trial demand made in accordance with Rule 4-301 (b)(1)(B). See Rule 4-301 (c).

. . .

REPORTER'S NOTE

A circuit court judge suggested the addition of Committee note in Rules 4-262 and 4-263 to Rule 4-301 (c), which provides that discovery in an action transferred to a circuit court upon a jury trial demand is governed by Rules 4-262 or 4-263, depending on whether the demand is made (1) in writing and, unless otherwise ordered by the court or agreed to by the parties, filed no later than 15 days before the scheduled trial date, or (2) in open court on the trial date by the defendant and the defendant's counsel. The Rules Committee recommends adding a Committee note after section (a) of Rule 4-262 referring to Rule 4-301 (b)(1)(B) and after section (a) of Rule 4-263 referring to Rule 4-301 (b)(1)(A).

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-263 to add a Committee note after section (a), as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

(a) Applicability

This Rule governs discovery and inspection in a circuit court.

Committee note: This Rule also governs discovery in actions transferred from District Court to circuit court upon a jury trial demand made in accordance with Rule 4-301 (b)(1)(A). See Rule 4-301 (c).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-262.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-504 to add a cross reference after section (a), as follows:

Rule 4-504. PETITION FOR EXPUNGEMENT WHEN CHARGES FILED

(a) Scope and Venue

A petition for expungement of records may be filed by any defendant who has been charged with the commission of a crime and is eligible under Code, Criminal Procedure Article, §10-105 to request expungement. The petition shall be filed in the original action. If that action was commenced in one court and transferred to another, the petition shall be filed in the court to which the action was transferred. If an appeal was taken, the petition shall be filed in the circuit court that had jurisdiction over the action.

Cross reference: See Code, Criminal Procedure Article, §10-104, which permits the District Court on its own initiative to order expungement when the State has entered a nolle prosequi as to all charges in a case in which the defendant has not been served. See Code, Criminal Procedure Article, §10-105, which allows an individual's attorney or personal representative to file a petition for expungement if the individual died before disposition of the charge by nolle prosequi or dismissal.

(b) Contents - Time for Filing

The petition shall be substantially in the form set forth at the end of this Title as Form 4-504.1. The petition shall be filed within the times prescribed in Code, Criminal Procedure

Article, §10-105. When required by law, the petitioner shall file with the petition a duly executed General Waiver and Release in the form set forth at the end of this Title as Form 4-503.2.

(c) Copies for Service

The petitioner shall file with the clerk a sufficient number of copies of the petition for service on the State's Attorney and each law enforcement agency named in the petition.

(d) Procedure Upon Filing

Upon filing of a petition, the clerk shall serve copies on the State's Attorney and each law enforcement agency named in the petition.

(e) Retrieval or Reconstruction of Case File

Upon the filing of a petition for expungement of records in any action in which the original file has been transferred to a Hall of Records Commission facility for storage, or has been destroyed, whether after having been microfilmed or not, the clerk shall retrieve the original case file from the Hall of Records Commission facility, or shall cause a reconstructed case file to be prepared from the microfilmed record, or from the docket entries.

Source: This Rule is derived from former Rule EX3 b and c.

REPORTER'S NOTE

Chapter 359, Laws of 2012 (HB 187) authorizes a decedent's attorney or personal representative to file a petition for expungement on behalf of the decedent, if he or she died before the disposition of certain charges by nolle prosequi or dismissal. The Rules Committee recommends adding a cross reference after section (a) of Rule 4-504 to draw attention to the new statute.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 700 - POST CONVICTION DNA TESTING

AMEND Rule 4-711 to correct internal references in section (b), as follows:

Rule 4-711. FURTHER PROCEEDINGS FOLLOWING TESTING

(a) If Test Results Unfavorable to Petitioner

If the test results fail to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing, the court shall dismiss the petition and assess the cost of DNA testing against the petitioner.

(b) If Test Results Favorable to Petitioner

(1) If the test results produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing, the court shall order the State to pay the costs of the testing and:

(A) if no post conviction proceeding was previously filed by the petitioner under Code, ~~Criminal Law~~ Criminal Procedure Article, §7-102, open such a proceeding;

(B) if a post conviction proceeding is currently pending, permit the petitioner to amend the petition in that proceeding; or

(C) if a post conviction proceeding was previously filed by the petitioner under Code, ~~Criminal Law~~ Criminal Procedure

Article, §7-102, reopen the proceeding under Code, ~~Criminal Law~~ Criminal Procedure Article, §7-104; or

(D) if the court finds that a substantial possibility exists that the petitioner would not have been convicted if the DNA testing results had been known or introduced at trial, order a new trial.

(2) If the court finds that (A) the test results produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing but (B) a substantial possibility does not exist that the petitioner would not have been so convicted or sentenced if the test results had been known or introduced at trial, the court may order a new trial if it also finds that such action is in the interest of justice.

(3) If the court grants a new trial under subsection (b)(1)(D) or (b)(2) of this Rule, the court may order the release of the petitioner on bond or on conditions that the court finds will reasonably assure the presence of the petitioner at trial.

Cross reference: Code, Criminal Procedure Article, §8-201 (i).

Source: This Rule is new.

REPORTER'S NOTE

Rule 4-711 (b) contains three references to "Code, Criminal Law Article," which should be references to the Criminal Procedure Article. Proposed amendments to the Rule correct the references.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 400 - RELEVANCY AND ITS LIMITS

AMEND Rule 5-404 (b) to correct a certain term and an obsolete statutory reference, as follows:

Rule 5-404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES

. . .

(b) Other Crimes, Wrongs, or Acts

Evidence of other crimes, wrongs, or acts including delinquent acts as defined by Code, Courts Article, ~~§3-801~~ §3-8A-01 is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

. . .

REPORTER'S NOTE

The amendment to Rule 5-404 corrects an obsolete statutory reference and corrects the term "acts" to read "delinquent acts."

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 100 - ADOPTION; GUARDIANSHIP TERMINATING PARENTAL RIGHTS

AMEND Rule 9-105 to delete the obsolete citation to Code, Article 27A, §4 in the cross reference following section (b), and to replace it with the updated citation to Code, Criminal Procedure Article, §16-204.

Rule 9-105. SHOW CAUSE ORDER; DISABILITY OF A PARTY; OTHER NOTICE

. . .

(b) Appointment of Attorney for Disabled Party

(1) If the parties agree that a party who is not represented has a disability that makes the party incapable of consenting or participating effectively in the proceeding, the court shall appoint an attorney who shall represent the disabled party throughout the proceeding.

(2) If there is a dispute as to whether a party who is not represented has a disability that makes the party incapable of consenting or participating effectively in the proceeding, the court shall:

(A) hold a hearing promptly to resolve the dispute;

(B) appoint an attorney to represent the alleged disabled party at that hearing;

(C) provide notice of that hearing to all parties; and

(D) if the court finds at the hearing that the party has

such a disability, appoint an attorney who shall represent the disabled party throughout the proceeding.

Cross reference: See Code, Family Law Article, §§5-307 as to a Public Agency Guardianship; 5-307 as to a Public Agency Adoption without Prior TPR; 5-3A-07 as to a Private Agency Guardianship; and 5-3B-06 as to an Independent Adoption. For eligibility of an individual for representation by the Office of the Public Defender, see Code, Family Law Article §5-307 and ~~Code, Article 27A, §4~~ Code, Criminal Procedure Article, §16-204.

. . .

REPORTER'S NOTE

The proposed amendment deletes an obsolete reference to Code, Article 27A, §4 and replaces it with an updated reference to Code, Criminal Procedure Article, §16-204.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1200 - CORAM NOBIS

AMEND Rule 15-1201 to add a Committee note at the end of the Rule, as follows:

Rule 15-1201. 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. The failure to seek an appeal in a criminal case does not constitute a waiver of the right to file a petition for writ of error coram nobis. See Code, Criminal Procedure Article, §8-401.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 437, Laws of 2012 (HB 1418) stated that the failure to seek an appeal in a criminal case may not be construed as a waiver of the right to file a petition for writ of error coram nobis. The Rules Committee recommends adding a Committee note after Rule 15-1201 to point out the new law.