STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Eighty-Eighth Report to the Court of Appeals, transmitting thereby the proposed deletion of the Rules in Title 17, Chapter 400 and Rules 4-281, 8-206, and 8-306; proposed new Title 17, Chapter 400 and Rules 4-223 and 8-206; and proposed amendments to Rules 1-311, 1-321, 1-402, 2-321, 2-412, 2-415, 2-416, 2-419, 2-601, 2-603, 2-613, 2-633, 3-633, 4-203, 4-216.1, 4-217, 4-251, 4-252, 4-254, 4-262, 4-263, 4-312, 4-313, 4-331, 4-348, 4-406, 4-504, 4-703, 4-707, 4-709, 5-101, 5-606, 6-456, 8-205, 8-207, 8-301, 8-411, 8-412, 8-423, 8-602, 10-106, 15-304, 15-308, 16-1005, 16-1006, 16-1009, 20-101, 20-102, 20-103, 20-106, 20-107, and 20-203 and Form 4-504.1.

The Committee's One Hundred Eighty-Eighth Report and the proposed Rules changes are set forth below.

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before November 6, 2015 any written comments they may wish to make to:

Sandra F. Haines, Esq.
Reporter, Rules Committee
2011-D Commerce Park Drive
Annapolis, Maryland 21401

Bessie M. Decker
Clerk
Court of Appeals of Maryland

October 6, 2015

The Honorable Mary Ellen Barbera,
Chief Judge
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.
The Honorable Sally D. Adkins
The Honorable Robert N. McDonald,
The Honorable Shirley M. Watts
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 Eighty-Eighth Report, and recommends that the Court adopt the new Rules and amendments to existing Rules set forth in this Report. The Report comprises ten categories of proposals.

Category 1 consists of amendments to Rules 20-101, 20-102, 20-103, 20-106, 20-107, 20-203, and 1-311, all but the last of which are MDEC Rules. The amendments deal with three matters.

First: MDEC is to be implemented sequentially throughout the State and, because different procedures apply with respect to the filing and service of documents and access to those documents in MDEC counties, it is important for the public to know which counties are under MDEC and which are not. The initial MDEC Rules contemplated that each MDEC county would be listed in Rule 20-102 as it came under MDEC and would be known as an "applicable county," a defined term.

At the suggestion of the State Court Administrator, the Rules Committee has reconsidered that approach and believes that, instead of having to amend Rule 20-102 every time a county is added, it would be easier to have the sequential implementation of MDEC declared and evidenced by an administrative order of the

Chief Judge of the Court of Appeals posted on the Judiciary website. That would provide equivalent public notice and avoid the need to involve the Rules Committee and the Court each time a county is added. The amendments to Rule 20-101 (c) and 20-102 (a) accomplish that result.

Second: Rule 20-103 requires the State Court Administrator to prepare and publish two documents – policies and procedures for the implementation of MDEC and an instructional pamphlet explaining the MDEC system. A Policies and Procedures Manual has been published, as have several brief explanatory announcements. What was anticipated to be in the instructional pamphlet was folded instead into the Policies and Procedural Manual, so there is no need for a separate document. The amendment to Rule 20-103 deletes the requirement of that pamphlet.

Third: For filing, service, and access purposes, it is important for MDEC to know whether the filer or person seeking access is an attorney. Upon registering as a registered user, an attorney is identified through his or her Client Protection Fund (CPF) number. When the MDEC Rules were adopted, it was anticipated that MDEC would automatically match that number with the password used by the attorney in filing or seeking access to documents. The Committee has learned, however, that MDEC presently is incapable of making that match, so it is necessary for the attorney to include his or her CPF number on each filing. The amendment to Rule 20-107 imposes that requirement. The amendments to Rules 20-106, 20-203, and 1-311 are conforming ones.

Category 2 consists of amendments to the following Rules to conform to or implement legislation enacted in the 2015 Session of the General Assembly:

• Rule 6-456 (Modified Administration – Extension of Time to File a Final Report and to Make Distribution) to conform to Chapter 30;

• Rule 10-106 (Guardianships – Appointment of Attorney or Investigator) to conform to Chapter 400;

• Rules 16-1005, 16-1006, and 16-1009 (Access to Court Records) to conform to Chapter 313;

• Rules 1-402 and 8-423 (Supersedeas Bonds) to conform to Chapter 225;

• Rule 8-301 (Method of Securing Review - Court of Appeals) to conform to Chapter 396 and to remove a reference to death penalty cases;

• Rules 2-633 and 3-633 (Discovery in Aid of Enforcement of Judgment) to implement Chapter 152);

• Rule 4-217 (Bail Bonds) to conform to Chapter 402;

• Rule 4-504 and Form 4-504.1 (Expungement) to implement Chapters 69, 314, and 374;

• Rules 4-703 and 4-709 (Post Conviction DNA Testing) to conform to Chapter 369;

• Rules 4-223, 4-216.1, 4-251, and 4-252 (Detention of Juvenile Pending Transfer to Juvenile Court) to conform to Chapter 442;

• Rule 4-262 (Discovery in District Court) to conform to Chapter 357; and

• Rule 4-263 (Discovery in Circuit Court) also to conform to Chapter 357 and to remove a reference to death penalty cases.

The referenced bills are attached to this Report as Appendix 1.

Category 3 consists of amendments to Rules 4-254, 4-312, 4-313, 4-331, 4-348, 4-406, 5-101, 5-606, 15-304, and 15-308 and the deletion of Rules 4-281 and 8-306 to delete references to death penalty cases.

Category 4 consists of revisions to Title 17, Chapter 400 and Rule 8-206 and conforming amendments to Rules 8-205, 8-207, 8-411, 8-412, and 8-602 to clarify and harmonize procedures applicable to the mediation, prehearing conference, and scheduling conference programs operated by the Court of Special Appeals. Attached as Appendix 2 to this Report are the proposed Rules, marked to show changes from the current Rules.

Category 5 consists of an amendment to Rule 1-321 and a conforming cross-reference in Rule 2-613. The amendment to Rule 1-321 requires that a request for entry of judgment arising out of an order of default under Rule 2-613 be served on the defaulting party. The basis for that proposal is that, even

though the party is in default and cannot contest liability, the party has a right to contest the amount of damages or other relief requested.

Category 6 consists of amendments to Rules 2-601 and 2-603, dealing with judgments entered in a Circuit Court. They were requested by some Circuit Court clerks and concern the assessment of costs. The thrust of the amendments is to require the judgment – the separate document – to include a statement regarding the allowance of costs, to require the judge to determine who is the prevailing party in the event of any uncertainty by the clerk, and to permit a motion for court review of the clerk's assessment of costs within ten days after notice of that assessment is sent to the parties.

Category 7 consists of amendments to Rules 2-412, 2-415, 2-416, and 2-419 to permit and set guidelines for the taking of depositions by electronic audio and audio-video means and not just by audio or video tape.

Category 8 consists of amendments to Rule 4-203 to prohibit charging documents from containing charges against more than one defendant. The Rules Committee was advised that MDEC cannot accommodate charging documents containing charges against multiple defendants. The Committee was also advised that only one State's Attorney's Office currently charges multiple defendants in one charging document and that there is little advantage to doing so.

Category 9 consists of an amendment to Rule 4-707 to bring the text of the Rule into conformity with the Court's holding in *Fuster v. State*, 437 Md. 653 (2014).

Category 10, consisting of an amendment to Rule 2-321, closes a gap by providing an automatic extension of the time for filing an answer when a matter is remanded from an appellate or a Federal Court.

For the further guidance of the Court and the public, following the proposed new Rules and the proposed amendments to each of the existing Rules is a Reporter's note describing in further detail the reasons for the proposals. *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: Bessie M. Decker, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-101 to revise the definitions of "Applicable County" and "Applicable Date" and to add a Committee note, as follows:

Rule 20-101. DEFINITIONS

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

(a) Affected Action

"Affected action" means an action to which this Title is made applicable by Rule 20-102.

Cross reference: For the definition of an "action" see Rule 1-202.

(b) Appellate Court

"Appellate court" means the Court of Appeals or the Court of Special Appeals, whichever the context requires.

(c) Applicable County

"Applicable county" means ~~a county listed in Rule 20-102 (a)~~ each county in which, pursuant to an administrative order of the Chief Judge of the Court of Appeals posted on the Judiciary website, MDEC has been implemented.

Committee note: The MDEC Program was implemented in Anne Arundel County on October 14, 2014. It will be installed sequentially in other counties over a period of time by administrative order of the Chief Judge of the Court of Appeals.

(d) Applicable Date

"Applicable date" ~~for an applicable county means the date stated in Rule 20-102 (a) pertaining to that county~~ means the date, specified in an administrative order of the Chief Judge of the Court of Appeals posted on the Judiciary website, from and after which a county is an applicable county.

. . .

REPORTER'S NOTE

So that a Rule change is not required whenever a county is added during the MDEC "roll-out," Rules 20-101 and 20-102 are proposed to be amended to allow a county to become an "applicable county" by issuance of an administrative order of the Chief Judge of the Court of Appeals. The administrative order will specify the "applicable date" for the county, and it will be posted on the Judiciary website.

A new Committee note, based on one that is proposed for deletion from Rule 20-102, describes the roll-out.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-102 to change the title of the Rule, to delete subsection (a)(1) and the Committee note following subsection (a)(1), and to make stylistic changes, as follows:

Rule 20-102. APPLICATION OF TITLE ~~TO COURTS AND ACTIONS~~

(a) Trial Courts

~~(1) Applicable Counties and Dates~~

~~(A) Anne Arundel County is an applicable county from and after October 14, 2014.~~

~~(B) There are no other applicable counties.~~

~~Committee note: The MDEC Program will be installed sequentially in other counties over a period of time. As additional counties become applicable counties, they will be listed in new subsections (a)(1)(B) through (a)(1)(X).~~

~~(2) Actions, Submissions, and Filings~~

~~(A)~~ (1) New Actions and Submissions

On and after the applicable date, this Title applies to ~~(i)~~ (A) new actions filed in a trial court for an applicable county, ~~(ii)~~ (B) new submissions in actions then pending in that court, ~~(iii)~~ (C) new submissions in actions in that court that were concluded as of the applicable date but were reopened on or after that date, ~~(iv)~~ (D) new submissions in actions remanded to

that court by a higher court or the United States District Court, and ~~(v)~~ (E) new submissions in actions transferred or removed to that court.

~~(B)~~ (2) Existing Documents; Pending and Reopened Cases

With the approval of the State Court Administrator, ~~(i)~~ (A) the County Administrative Judge of the circuit court for an applicable county, by order, may direct that all or some of the documents that were filed prior to the applicable date in a pending or reopened action in that court be converted to electronic form by the clerk, and ~~(ii)~~ (B) the Chief Judge of the District Court, by order, may direct that all or some of the documents that were filed prior to the applicable date in a pending or reopened action in the District Court be converted to electronic form by the clerk. Any such order shall include provisions to ensure that converted documents comply with the redaction provisions applicable to new submissions.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 20-101.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILING AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-103 by deleting section (c), as follows:

Rule 20-103. ADMINISTRATION OF MDEC

(a) General Authority of State Court Administrator

Subject to supervision by the Chief Judge of the Court of Appeals, the State Court Administrator shall be responsible for the administration of the MDEC system and shall implement the procedures established by the Rules in this Title.

(b) Policies and Procedures

(1) Authority to Adopt

The State Court Administrator shall adopt policies and procedures that are (A) necessary or useful for the proper and efficient implementation of the MDEC System and (B) consistent with (i) the Rules in this Title, (ii) other provisions in the Maryland Rules that are not superseded by the Rules in this Title, and (iii) other applicable law.

(2) Publication of Policies and Procedures

Policies and procedures adopted by the State Court Administrator that affect the use of the MDEC system by court personnel, attorneys, or members of the public shall be posted on the Judiciary website and, upon written request, shall be made

available in printed form by the State Court Administrator.

~~(c) Instructional Pamphlet~~

~~(1) Generally~~

~~The State Court Administrator shall prepare, post on the Judiciary website, and make generally available to the public in printed form an instructional pamphlet explaining the MDEC system and providing clear and simple instructions as to how to use and access the system and as to any limitations or conditions on such use and access.~~

~~(2) Updated Pamphlets~~

~~The State Court Administrator shall keep the pamphlet current to reflect and highlight changes in policy and procedures.~~

Source: This Rule is new.

REPORTER'S NOTE

The MDEC policies and procedures adopted and posted on the Judiciary website include detailed instructions regarding access to, and use of, the MDEC system, as well as limitations and conditions on such access and use. Because no separate instructional materials are needed, section (c) is proposed for deletion.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILINGS AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-106 (d) to delete references to Rule 20-201 (d), to add the phrase "for the presence of a signature and," and to delete an obsolete provision from subsection (d)(5), as follows:

Rule 20-106. WHEN ELECTRONIC FILING REQUIRED; EXCEPTIONS

. . .

(d) Paper Submissions

(1) Compliance with MDEC Rules

A paper submission shall comply with Rule 20-201 (f) and (i). If applicable, a paper submission also shall comply with Rule 20-201 (g).

(2) Review by Clerk; Scanning

(A) Except as provided in subsection (d)(2)(B) of this Rule, upon receipt of a submission in paper form, the clerk shall review the submission <u>for the presence of a signature and</u> for compliance with <u>Rule 20-107 (a)(1) and</u> Rule 20-201 ~~(d),~~ (e), (f)(1)(B), and (i). If the submission is in compliance, the clerk shall scan it into the MDEC system, verify that the electronic version of the submission is legible, and docket the submission. If the submission is not in compliance, the clerk

shall decline to scan it and promptly notify the filer in person or by first class mail that the submission was rejected and the reason for the rejection.

Committee note: The clerk's pre-scanning review is a ministerial function, limited to ascertaining whether any required fee has been paid (Rule 20-201 (i)) and the presence of the filer's signature ~~(Rule 20-201 (d))~~; a certificate of service if one is required (Rule 20-201 (e)); and a certificate as to the absence or redaction of restricted information (Rule 20-201 (f)(1)(B)).

(B) Upon receipt of a submission in paper form that is required by the Rules in this Title to be filed electronically, the clerk shall (i) decline to scan the submission, (ii) notify the filer electronically that the submission was rejected because it was required to be filed electronically, and (iii) enter on the docket that the submission was received and that it was not entered into the MDEC system because of non-compliance with Rule 20-106. The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court.

Committee note: Subsection (d)(2)(B) of this Rule is necessary to enforce the electronic filing requirement of Rule 20-106. It is intended to be used only when it is clear that the filer is a registered user who is required to file submissions electronically and that none of the exceptions in sections (b) or (c) of this Rule appear to be applicable.

(3) Destruction of Paper Submission

Subject to subsections (d)(4) and (e)(2) of this Rule, the clerk may destroy a paper submission after scanning it and verifying the legibility of the electronic version of it.

(4) Optional Return of Paper Document

The State Court Administrator may approve procedures for identifying and, where feasible, returning paper documents that must be preserved in their original form.

(5) Public Notice

~~Prior to the date specified in Rule 20-102 (a)(1)(A), the~~ The State Court Administrator shall provide public notice alerting the public to the procedure set forth in subsections (d)(2), (3), and (4) of this Rule.

Committee note: If submissions properly filed in paper form are to be destroyed by the clerk following their being scanned into MDEC, the public must be given reasonable notice of that policy. Notice may be given in a variety of ways, including on the Judiciary website, on on-line and pre-printed forms prepared by the Judiciary, on summonses or other notices issued by the clerks, and by postings in the clerks' offices.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 20-107 pertaining to the proposed changes to Rule 20-106 (d)(2)(A) and the Committee note that follows that subsection.

The language in Rule 20-106 (d)(5) requiring the posting of a public notice "prior to the date specified in Rule 20-102 (a)(1)(A)" [October 14, 2014] is proposed for deletion as obsolete. Language requiring ongoing public notice "alerting the public to the procedure set forth in subsections (d)(2), (3), and (4) of this Rule" is retained.

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILINGS AND CASE MANAGEMENT

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 20-107 to divide section (a) into subsections and to require that an attorney filer who electronically signs a submission under MDEC include the attorney's Client Protection Fund ID number, as follows:

Rule 20-107. ELECTRONIC SIGNATURES

(a) Signature by Filer; Generally

(1) Subject to sections (b), (c), (d), and (e) of this Rule, when a filer is required to sign a submission, the filer shall electronically sign the submission by inserting a ~~(1)~~ (A) facsimile signature or ~~(2)~~ (B) typographical signature.

(2) The filer shall insert the electronic signature above the filer's typed name, address, e-mail address, and telephone number and, if the filer is an attorney, the attorney's Client Protection Fund ID number. An electronic signature on an electronically filed submission constitutes and has the same force and effect as a signature required under Rule 1-311.

(b) Signature by Judge or Judicial Appointee

A judge or judicial appointee shall sign a submission electronically by (1) personally affixing the judge's or judicial appointee's digital signature or (2) hand-signing a paper version

of the submission and scanning or directing an assistant to scan the hand-signed submission to convert the handwritten signature to a facsimile signature in preparation for electronic filing.

Cross reference: For delegation by an attorney, judge, or judicial appointee to file a signed submission, see Rule 20-108.

(c) Signature by Clerk

When a clerk is required to sign a submission electronically, the clerk's signature shall be a digital signature or a facsimile signature.

(d) Multiple Signatures on a Single Document

When the signature of more than one person is required on a document, the filer shall (1) confirm that the content of the document is acceptable to all signers; (2) obtain the handwritten, facsimile, or digital signatures of all signers; and (3) file the document electronically, indicating the signers in the same manner as the filer's signature. Filers other than judges, judicial appointees, clerks, and judicial personnel shall retain the signed document until the action is concluded.

(e) Signature Under Oath, Affirmation, or with Verification

When a person is required to sign a document under oath, affirmation, or with verification, the signer shall hand-sign the document. The filer shall scan the hand-signed document, converting the signer's handwritten signature to a facsimile signature, and file the scanned document electronically. The filer shall retain the original hand-signed document until the

action is concluded or for such longer period ordered by the court. At any time prior to the conclusion of the action, the court may order the filer to produce the original hand-signed document.

(f) Verified Submissions

When a submission is verified or attaches a document under oath, the electronic signature of the filer constitutes a certification by the filer that (1) the filer has read the entire document; (2) the filer has not altered, or authorized the alteration of, the text of the verified material; and (3) the filer has either personally filed the submission or has authorized a designated assistant to file the submission on the filer's behalf pursuant to Rule 20-108.

Cross reference: For the definition of "hand-signed," see Rule 20-101.

Source: This Rule is new.

REPORTER'S NOTE

The amendments proposed to Rule 20-107 would accomplish two things.

First, in conjunction with proposed amendments to Rule 1-311, an attorney who is filing submission under MDEC must include the attorney's Client Protection Fund ID number, which is the unique user identification number that MDEC has been using. The amendments require that the Client Protection Fund ID number be placed beneath the attorney's signature, which will assist clerks if there is confusion over an attorney's identity.

The second purpose of the proposed amendments is to modify the responsibilities of the clerk to strike a non-conforming pleading or paper. Presently, Rule 20-203 (c) requires a clerk

to strike a submission if it fails to comply with Rule 20-201 (d). Rule 20-101 (d) requires that a submission be signed in accordance with Rule 20-107 if a signature is required. In the proposed amendment to Rule 20-107 (a) the signature requirement is broken into two parts: subsection (a)(1) will require an electronic signature by facsimile signature or typographic signature, and subsection (a)(2) will require that the electronic signature be placed above the filer's typed name, address, e-mail address, and telephone number. The proposed amendment adds the requirement that if the filer is an attorney, the submission must contain the attorney's Client Protection Fund ID number.

Conforming changes are proposed to Rule 20-106 (d)(2), to substitute the phrase, "for the presence of a signature," for the current reference to Rule 20-201 (d).

In conjunction with the proposed amendments, Rule 20-203 (c) is being changed to require a clerk to strike a submission if it fails to comply with the requirements of Rule 20-107 (a)(1). Therefore, a pleading that contains a facsimile or a typographical signature will not be stricken automatically, even if it does conform with the requirements of subsection (a)(2). Instead, under Rule 20-203 (d)(1), the clerk will send a deficiency notice and under subsection (d)(2), "If the deficiency is not corrected within two business days of the notice, any party may move to strike the submission."

MARYLAND RULES OF PROCEDURE

TITLE 20 - ELECTRONIC FILINGS AND CASE MANAGEMENT

CHAPTER 200 - FILING AND SERVICE

AMEND Rule 20-203 (c) to delete references to Rule 20-201 (d) and to add two references to Rule 20-107 (a)(1), as follows:

Rule 20-203. REVIEW BY CLERK; STRIKING OF SUBMISSION; DELINQUENCY NOTICE; CORRECTION; ENFORCEMENT

(a) Time and Scope of Review

As soon as practicable, the clerk shall review a submission, other than a submission filed by a judge or judicial appointee, for compliance with Rule 20-201 (d), (e), (f)(1)(B), and (i) and the published policies and procedures for acceptance established by the State Court Administrator. Until the submission is accepted by the clerk, it remains in the clerk's queue and shall not be docketed.

(b) Docketing

(1) Generally

The clerk shall promptly correct errors of non-compliance that apply to the form and language of the proposed docket entry for the submission. The docket entry as described by the filer and corrected by the clerk shall become the official docket entry for the submission.

(2) Submission Signed by Judge or Judicial Appointee

The clerk shall enter on the docket each judgment, order, or other submission signed by a judge or judicial appointee.

(3) Submission Generated by Clerk

The clerk shall enter each writ, notice, or other submission generated by the clerk into the MDEC system for docketing in the manner required by Rule 16-305.

(c) Striking of Certain Non-compliant Submissions

If, upon review pursuant to section (a) of this Rule, the clerk determines that a submission, other than a submission filed by a judge or judicial appointee, fails to comply with the requirements of Rule 20-107 (a)(1) or Rule 20-201 ~~(d),~~ (e)~~,~~ or (f)(1)(B), the clerk shall (1) strike the submission, (2) notify the filer and all other parties of the striking and the reason for it, and (3) enter on the docket that the submission was received, that it was stricken for non-compliance with the applicable section of Rule 20-107 (a)(1) or Rule 20-201 ~~(d),~~ (e)~~,~~ or (f)(1)(B), and that notice pursuant to this section was sent. The filer may seek review of the clerk's action by filing a motion with the administrative judge having direct administrative supervision over the court.

(d) Deficiency Notice

(1) Issuance of Notice

If, upon review, the clerk concludes that a submission is not subject to striking under section (c) of this Rule but

materially violates a provision of the Rules in Title 20 or an applicable published policy or procedure established by the State Court Administrator, the clerk shall send to the filer with a copy to the other parties a deficiency notice describing the nature of the violation.

(2) Correction; Enforcement

If the deficiency is not corrected within two business days after the date of the notice, any party may move to strike the submission.

(e) Restricted Information

(1) Shielding Upon Issuance of Deficiency Notice

If, after filing, a submission is found to contain restricted information, the clerk shall issue a deficiency notice pursuant to section (d) of this Rule and shall shield the submission from public access until the deficiency is corrected.

(2) Shielding of Unredacted Version of Submission

If, pursuant to Rule 20-201 (f)(2), a filer has filed electronically a redacted and an unreadacted submission, the clerk shall docket both submissions and shield the unredacted submission from public access. Any party and any person who is the subject of the restricted information contained in the unredacted submission may file a motion to strike the unredacted submission. Upon the filing of a motion and any timely answer, the court shall enter an appropriate order.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 20-107.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-311 to require that every pleading or paper signed by an attorney pursuant to Rule 20-107 contain the attorney's Client Protection Fund ID number, as follows:

Rule 1-311. SIGNING OF PLEADINGS AND OTHER PAPERS

(a) Requirement

Every pleading and paper of a party represented by an attorney shall be signed by at least one attorney who has been admitted to practice law in this State and who complies with Rule 1-312. Every pleading and paper of a party who is not represented by an attorney shall be signed by the party. Every pleading or paper filed shall contain (1) the signer's address, telephone number, facsimile number, if any, and e-mail address, if any, and (2) if the pleading or paper is signed by an attorney pursuant to Rule 20-107, the attorney's Client Protection Fund ID number.

Committee note: The requirement that a pleading contain a facsimile number, if any, and e-mail address, if any, does not alter the filing or service rules or time periods triggered by the entry of a judgment. See *Blundon v. Taylor*, 364 Md. 1 (2001).

(b) Effect of Signature

The signature of an attorney on a pleading or paper

constitutes a certification that the attorney has read the pleading or paper; that to the best of the attorney's knowledge, information, and belief there is good ground to support it; and that it is not interposed for improper purpose or delay.

(c) Sanctions

If a pleading or paper is not signed as required (except inadvertent omission to sign, if promptly corrected) or is signed with intent to defeat the purpose of this Rule, it may be stricken and the action may proceed as though the pleading or paper had not been filed. For a wilful violation of this Rule, an attorney is subject to appropriate disciplinary action.

Source: This Rule is derived as follows:
Section (a) is derived from former Rules 302 a, 301 f, and the 1937 version of Fed. R. Civ. P. 11.
Section (b) is derived from former Rule 302 b and the 1937 version of Fed. R. Civ. P. 11.
Section (c) is derived from the 1937 version of Fed. R. Civ. P. 11.

REPORTER'S NOTE

At the request of the Judicial Information Systems and the State Court Administrator, an amendment is proposed to Rule 1-311 to require that every pleading or paper signed by an attorney pursuant to Rule 20-107 contain the attorney's Client Protection Fund ID number. Requiring an attorney to include the Client Protection Fund ID number, a unique identifier, will assist clerks if there is any confusion over an attorney's identity.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-456 by adding a new section (c) that permits a further extension, by adding a new section (d), containing a new form, and by making a stylistic change, as follows:

Rule 6-456. MODIFIED ADMINISTRATION - EXTENSION OF TIME TO FILE A FINAL REPORT AND TO MAKE DISTRIBUTION

(a) Generally

The initial time periods for filing a final report and for making distribution to each legatee and heir may be extended for 90 days if the personal representative and each interested person sign the form set out in section (b) of this Rule and file the form within 10 months of the date of appointment of the personal representative.

(b) Form

A consent to an extension of time to file a final report and to make distribution in a modified administration shall be in substantially the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

IN THE ESTATE OF _____ Estate No. _____

Date of Death _____

Date of Appointment of Personal Representative _____

CONSENT TO EXTEND TIME TO FILE FINAL REPORT AND TO MAKE DISTRIBUTION IN A MODIFIED ADMINISTRATION

We, the Personal Representative and Interested Persons in the above-captioned estate, consent to extend for 90 days the time to file a final report and to make distribution in the modified administration of the estate. We acknowledge that this consent must be filed within 10 months of the date of appointment of the personal representative.

Personal Representative(s)
(Type or Print Names)

_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature

Interested Persons
(Type or Print Names)

_____	_____
Name	Signature
_____	_____
Name	Signature

_____ _____
Name Signature

(c) Further Extension

A register of wills is permitted to extend the time periods for filing a final report and for making distribution to each legatee and heir for an additional period not to exceed 90 days if a prior request for an additional extension had been filed, and the time periods have already been extended as permitted by section (a) of this Rule. The request shall be signed by the personal representative and consented to by each interested person. The request shall be delivered to the register of wills before the date for filing a final report as extended under section (a) of this Rule.

(d) Form

A request for and consent to an additional extension of the time period to file a final report and to make distribution to each legatee and heir in a modified administration shall be in substantially the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND

IN THE ESTATE OF _____ Estate No. _____

Date of Death _____

Date Final Report was Due After First Extension_____

REQUEST FOR AND CONSENT TO FURTHER EXTEND TIME TO FILE A FINAL REPORT AND TO MAKE DISTRIBUTION IN A MODIFIED ADMINISTRATION

I, the Personal Representative, in the above-captioned estate request an additional extension of time, not to exceed 90 days, to file a final report and make distribution to each legatee and heir in the modified administration of the estate.

Personal Representative(s)
(Type or Print Names)

_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature

We, the Interested Persons, in the above-captioned estate consent to further extend for _____ days (not to exceed 90) the time to file a final report and to make distribution to each legatee and heir in the modified administration of the estate.

We acknowledge that this consent has been delivered to the register of wills before the expiration of the first extension period for filing the final report.

Interested Persons
(Type or Print Names)

_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature

_____
Register of Wills

Source: The Rule is new.

REPORTER'S NOTE

Chapter 30, Laws of 2015 (SB 418) amended Code, Estates and Trusts Article, §5-703 to provide for a further extension of the time periods for filing a final report and for making distribution to each legatee and heir after the first extension of 90 days in a modified administration. The Rules Committee recommends amending Rule 6-456, including the addition of a new form, to conform to the statutory changes.

MARYLAND RULES OF PROCEDURE

TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-106 by deleting language from and adding language to section (a), by adding a new subsection (a)(2) pertaining to disabled persons, and by making stylistic changes, as follows:

Rule 10-106. APPOINTMENT OF ATTORNEY OR INVESTIGATOR

(a) Appointment of Attorney by the Court

(1) Minor Persons

Upon the filing of a petition for guardianship of the person or property of a ~~disabled person or~~ minor who is not represented by an attorney, the court ~~shall promptly~~ may appoint an attorney ~~for the disabled person and may appoint an attorney~~ for the minor. The fee of an appointed attorney shall be fixed by the court and shall be paid out of the fiduciary estate or as the court shall direct. ~~To the extent the estate is insufficient, the fee of an attorney appointed for a disabled person shall be paid by the State.~~

(2) Disabled Persons

Upon the filing of a petition for guardianship of the person or property of a disabled person who is not represented by an attorney, the court shall promptly appoint an attorney for the

disabled person and may require the deposit of an appropriate sum into the court registry or the appointed attorney's escrow account within 30 days after the order of appointment has been entered, subject to further order of the court. If the person is indigent, the State shall pay a reasonable attorney's fee. The court may not require the deposit of an appropriate sum into the court registry or the appointed attorney's escrow account under this section if payment for the services of the court-appointed attorney for the alleged disabled person is the responsibility of (A) a government agency paying benefits to the disabled person, (B) a local department of Social Services, or (C) an agency eligible to serve as the guardian of the disabled person under Code, Estates and Trusts Article, §13-707.

Cross reference: Code, Estates and Trusts Article, §§13-211 (b) and 13-705 (d). See also Rule 1.14 of the Maryland Lawyers' Rules of Professional Conduct with respect to the attorney's role and obligations.

(b) Automatic Termination of Appointment; Continuation of Representation if Public Guardian Appointed

If no appeal is taken from a judgment dismissing the petition or appointing a guardian other than a public guardian, the attorney's appointment shall terminate automatically upon expiration of the time for filing an appeal unless the court orders otherwise. If a public guardian has been appointed for the disabled person, the court shall either continue the attorney's appointment or appoint another attorney to represent

the disabled person before the Adult Public Guardianship Review Board.

Cross reference: Code, Family Law Article, §14-404 (c)(2).

(c) Investigator

The court may appoint an independent investigator to investigate the facts of the case and report written findings to the court. The fee of an appointed investigator shall be fixed by the court and shall be paid out of the fiduciary estate or as the court shall direct. To the extent the estate is insufficient, the fee of an independent investigator appointed by the court shall be paid by the State.

Source: This Rule is derived in part from former Rules R76 and V71 and is in part new.

REPORTER'S NOTE

Chapter 400, Laws of 2015 (HB 109) amended Code, Estates and Trusts Article, §13-705 to add a provision that an attorney who has been appointed by the court to represent an alleged disabled person in a guardianship of the person proceeding may be required to deposit money into the court registry or into the attorney's escrow account. The Rules Committee recommends amending Rule 10-106 (a) to conform to the amended statute.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1005 by adding a cross reference following section (b), as follows:

Rule 16-1005. CASE RECORDS - REQUIRED DENIAL OF INSPECTION - IN GENERAL

. . .

(b) Unless inspection is otherwise permitted by the Rules in this Chapter, a custodian shall deny inspection of a case record or any part of a case record if inspection would be contrary to a statute enacted by the Maryland General Assembly, other than the Maryland Public Information Act (Code, General Provisions Article, Title 4), that expressly or by necessary implication applies to a court record.

Cross reference: For an example of a statute enacted by the General Assembly that restricts inspection of a case record, see Code, Criminal Procedure Article, Title 10, Subtitle 3.

Committee note: Subsection (a)(5) allows a court to seal a record or otherwise preclude its disclosure. So long as a court record is under seal or subject to an order precluding or limiting disclosure, it may not be disclosed except in conformance with the order. The authority to seal a court record must be exercised in conformance with the general policy of these Rules and with supervening standards enunciated in decisions of the United States Supreme Court and the Maryland Court of Appeals.

Source: This Rule is new.

REPORTER'S NOTE

A proposed amendment to Rule 16-1005 adds a cross reference to Code, Criminal Procedure Article, Title 10, Subtitle 3, which requires that certain criminal case records be shielded, and which also provides for certain exceptions where inspection is to be permitted.

A comparable change will be proposed for Rule 16-905 (Case Records - Required Denial of Inspection - In General), which is currently before the Court as part of the 178th Report, Part I.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1006 by adding a new subsection (h)(7), as follows:

Rule 16-1006. REQUIRED DENIAL OF INSPECTION - CERTAIN CATEGORIES OF CASE RECORDS

. . .

(h) The following case records in criminal actions or proceedings:

(1) A case record that has been ordered expunged pursuant to Rule 4-508.

(2) The following case records pertaining to search warrants:

(A) The warrant, application, and supporting affidavit, prior to execution of the warrant and the filing of the records with the clerk.

(B) Executed search warrants and all papers attached thereto filed pursuant to Rule 4-601.

(3) The following case records pertaining to an arrest warrant:

(A) A case record pertaining to an arrest warrant issued under Rule 4-212 (d) and the charging document upon which the warrant was issued until the conditions set forth in Rule 4-212

(d)(3) are satisfied.

(B) Except as otherwise provided in Code, General Provisions Article, §4-316, a case record pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued.

(4) A case record maintained under Code, Courts Article, §9-106, of the refusal of a person to testify in a criminal action against the person's spouse.

(5) A presentence investigation report prepared pursuant to Code, Correctional Services Article, §6-112.

(6) A case record pertaining to a criminal investigation by (A) a grand jury, (B) a State's Attorney pursuant to Code, Criminal Procedure Article, §15-108, (C) the State Prosecutor pursuant to Code, Criminal Procedure Article, §14-110, or (D) the Attorney General when acting pursuant to Article V, §3 of the Maryland Constitution or other law.

Committee note: Although this Rule shields only case records pertaining to a criminal investigation, there may be other laws that shield other kinds of court records pertaining to such investigations. This Rule is not intended to affect the operation or effectiveness of any such other law.

(7) A case record required to be shielded by Code, Criminal Procedure Article, Title 10, Subtitle 3.

. . .

REPORTER'S NOTE

A new subsection (h)(7) is proposed to be added to Rule 16-1006 to add to the category of criminal case records that are required to be shielded by Code, Criminal Procedure Article, Title 10, Subtitle 3. Those provisions require the shielding of certain criminal records, but also set forth exceptions to permit inspection for certain purposes.

A comparable change will be proposed for Rule 16-906 (Required Denial of Inspection - Certain Categories of Case Records), which is currently before the Court as part of the 178th Report, Part I.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 -ACCESS TO COURT RECORDS

AMEND Rule 16-1009 by specifying that a motion to shield a court record pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3 be filed in the county where the judgment of conviction was entered; by requiring that service be provided and proceedings held in accordance with the statute; by specifying that subsection (b)(1) does not apply to petitions filed under the statute; by requiring that a final order granting relief under the statute include the applicable provisions of the statute; by adding certain provisions pertaining to appeals from the District Court and to actions that were removed pursuant to Rule 4-254; by providing that a certain order not be open to public inspection if otherwise provided by law; and by making stylistic changes, as follows:

Rule 16-1009. COURT ORDER DENYING OR PERMITTING INSPECTION OF CASE RECORD

(a) Motion

(1) A party to an action in which a case record is filed, including a person who has been permitted to intervene as a party, and a person who is the subject of or is specifically identified in a case record may file a motion:

(A) to seal or otherwise limit inspection of a case record filed in that action that is not otherwise shielded from inspection under the Rules in this Chapter or Title 20; or

(B) to permit inspection of a case record filed in that action that is not otherwise subject to inspection under the Rules in this Chapter or Title 20.

(2) ~~The~~ Except as provided in subsection (a)(3) of this Rule, the motion shall be filed with the court in which the case record is filed and shall be served on:

(A) all parties to the action in which the case record is filed; and

(B) each identifiable person who is the subject of the case record.

(3) A petition to shield a court record pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3 shall be filed in the county where the judgment of conviction was entered. Service shall be provided and proceedings shall be held as directed in that Subtitle.

(b) Shielding Upon Motion or Request

(1) Preliminary Shielding upon Motion

Subsection (b)(1) of this Rule does not apply to a petition filed pursuant to Code, Criminal Procedure Article, Title 10, Subtitle 3. Upon the filing of a motion to seal or otherwise limit inspection of a case record pursuant to section

(a) of this Rule, the custodian shall deny inspection of the case record for a period not to exceed five business days, including the day the motion is filed, in order to allow the court an opportunity to determine whether a temporary order should issue.

(2) Shielding upon Request

If a request to shield information in a case record is filed by or on behalf of a person entitled to request the shielding under Code, Courts Article, Title 3, Subtitle 15 (peace orders) or Code, Family Law Article, Title 4, Subtitle 5 (domestic violence), and the request is granted, or if a request to shield the address or telephone number of a victim, victim's representative, or witness is filed in a criminal action, and the request is granted, a custodian shall deny inspection of the shielded information. The shield remains in effect until terminated or modified by order of court. If the request is denied, the person seeking to shield information may file a motion under section (a) of this Rule.

Committee note: If a court or District Court Commissioner grants a request to shield information under subsection (b)(2) of this Rule, no adversary hearing is held unless a person seeking inspection of the shielded information files a motion under section (a) of this Rule.

(c) Temporary Order Precluding or Limiting Inspection

(1) The court shall consider a motion filed under this Rule on an expedited basis.

(2) In conformance with the provisions of Rule 15-504

(Temporary Restraining Order), the court may enter a temporary order precluding or limiting inspection of a case record if it clearly appears from specific facts shown by affidavit or other statement under oath that (A) there is a substantial basis for believing that the case record is properly subject to an order precluding or limiting inspection, and (B) immediate, substantial, and irreparable harm will result to the person seeking the relief if temporary relief is not granted before a full adversary hearing can be held on the propriety of a final order precluding or limiting inspection.

(3) A court may not enter a temporary order permitting inspection of a case record that is not otherwise subject to inspection under the Rules in this Chapter in the absence of an opportunity for a full adversary hearing.

(d) Final Order

(1) After an opportunity for a full adversary hearing, the court shall enter a final order:

(A) precluding or limiting inspection of a case record that is not otherwise shielded from inspection under the Rules in this Chapter;

(B) permitting inspection, under such conditions and limitations as the court finds necessary, of a case record that is not otherwise subject to inspection under the Rules in this Chapter; or

(C) denying the motion.

(2) A final order shall include findings regarding the interest sought to be protected by the order.

(3) A final order that precludes or limits inspection of a case record shall be as narrow as practicable in scope and duration to effectuate the interest sought to be protected by the order.

(4) A final order granting relief under Code, Criminal Procedure Article, Title 10, Subtitle 3 shall include the applicable provisions of the statute. If the order pertains to a judgment of conviction in (A) an appeal from a judgment of the District Court or (B) an action that was removed pursuant to Rule 4-254, the order shall apply to the records of each court in which there is a record of the action, and the clerk shall transmit a copy of the order to each such court.

~~(4)~~ (5) In determining whether to permit or deny inspection, the court shall consider:

(A) if the motion seeks to preclude or limit inspection of a case record that is otherwise subject to inspection under the Rules in this Chapter, whether a special and compelling reason exists to preclude or limit inspection of the particular case record; and

(B) if the motion seeks to permit inspection of a case record that is otherwise not subject to inspection under the

Rules in this Chapter, whether a special and compelling reason exists to permit inspection.

(C) if the motion seeks to permit inspection of a case record that has been previously sealed by court order under subsection (d)(1)(A) of this Rule and the movant was not a party to the case when the order was entered, whether the order satisfies the standards set forth in subsections (d)(2), (3), and (4)(A) of this Rule.

~~(5)~~ (6) Unless the time is extended by the court on motion of a party and for good cause, the court shall enter a final order within 30 days after a hearing was held or waived.

(e) Filing of Order

A copy of any ~~preliminary~~ temporary or final order shall be filed in the action in which the case record in question was filed and, except as otherwise provided by law, shall be subject to public inspection.

(f) Non-exclusive Remedy

This Rule does not preclude a court from exercising its authority at any time to enter an order that seals or limits inspection of a case record or that makes a case record subject to inspection.

Source: This Rule is new.

REPORTER'S NOTE

The Maryland Second Chance Act of 2015 ("the Act"), Chapter

313, Laws of 2015, effective October 1, 2015, will permit a person to petition a court to shield the person's court records relating to one or more shieldable convictions, subject to certain restrictions and exceptions. The intent of the amendments proposed to Rule 16-1009 is to harmonize the Rule to the statute.

New subsection (a)(3) is proposed to provide that a petition to shield a court record pursuant to the Act shall be filed in the county where the judgment of conviction was entered. It was anticipated that there may be some confusion in cases where an action had been removed from one county to another. Also, subsection (a)(3) specifies that service shall be provided in accordance with the Act. This proposal is necessary because Code, Criminal Procedure Article, §10-303 (e)(1) conflicts with the Rule by requiring that "the Court shall have a copy of the petition for shielding served on the State's Attorney," and §10-303 (f) requires the court to send written notice of the proposed action to all listed victims to advise them of the right to offer information relevant to the shielding. In contrast, Rule 16-1009 (a)(2) imposes on the movant the duty to serve the motion on all parties to the action and each identifiable person who is the subject of the case record.

New subsection (d)(4) of Rule 16-1009 requires that an order granting relief under the Act include the applicable provisions of the statute. As such, the court will be "order[ing] the shielding of all police records and court records relating to the conviction or convictions" pursuant to Code, Criminal Procedure Article, §10-303 (f)(2), and the records, although shielded, are to remain "fully accessible by" the person listed in Code, Criminal Procedure Article, §10-302 (b). Subsection (d)(4) also addresses a gap in the statute by providing that, if the order pertains to a judgment of conviction in an appeal from the District Court or in an action that was removed pursuant to Rule 4-254, the order shall apply to the records of each court in which there is a record of the action. Subsection (d)(4) also requires the clerk to transmit a copy of the order to each such court.

Two changes are proposed to section (e). First, the word "temporary" is proposed to substitute for the word "preliminary," for the sake of consistency between sections (c) and (e). Second, an amendment is proposed to state that a copy of a temporary or final order shall be subject to public inspection, *except as otherwise provided by law*. The exception that is added reflects that, in addition to the Second Chance Act, there are other laws that direct that the shielding of court records must

include the court orders in the case. In Code, Criminal Procedure Article, §10-301(b) the term "court record" is defined to have the meaning stated in Code, Criminal Procedure Article, §10-101. Section 10-101 (c)(2)(ii) defines a court record to include "an index, docket entry, charging document, pleading, memorandum, transcription of proceedings, electronic recording, order, and judgment." Similarly, in two other shielding statutes, Code, Courts Article, §3-1510 (a)(2)(ii)2 and Code, Family Law Article, §4-512 (a)(2)(ii)1, the term "court record" is defined to include "an index, a docket entry, a petition, a memorandum, a transcription of proceedings, an electronic recording, an order, and a judgment."

A comparable change will be proposed to Rule 16-909 (Court Order Denying or Permitting Inspection of Case Record), which is currently before the Court as part of the 178th Report, Part I.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 400 - BOND

AMEND Rule 1-402 to add a cross reference following section (d) and to delete a cross reference following section (g), as follows:

Rule 1-402. FILING AND APPROVAL

. . .

(d) Increase or Decrease in Face Amount of Bond

At any time for good cause shown, the court may require an increase or decrease in the face amount of a bond. The approval of a new bond does not discharge a bond previously filed from any liability which accrued before the change was approved.

Cross reference: For limits on the amount of a supersedeas bond and remedies pertaining to dissipation or diversion of assets, *see* Code, Courts Article, §12-301.1.

. . .

(g) Recording

Every approved bond shall be recorded by the clerk.

~~Cross-reference: Code, Courts Article, §2-502.~~

. . .

REPORTER'S NOTE

A new cross reference to Code, Courts Article, §12-301.1 is proposed to be added following section (d) of Rule 1-402 to reflect Chapter 225, Laws of 2015 (HB 164).

The reference to Code, Courts Article, §2-502 is deleted as obsolete. Section 2-502 was amended by Chapter 454, Laws of 2002, (SB 199) to remove the requirement that a clerk "record, index, or maintain ... [a]ll bonds of every nature and kind ..."

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-423 (b)(1) to provide that the amount of a bond shall be subject to Code, Courts Article, §12-301.1, as follows:

Rule 8-423. SUPERSEDEAS BOND

. . .

(b) Amount of Bond

Unless the parties otherwise agree, the amount of the bond shall be as follows:

(1) Money Judgment Not Otherwise Secured

~~When~~ Subject to Code, Courts Article, §12-301.1, when the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be the sum that will cover the whole amount of the judgment remaining unsatisfied plus interest and costs, except that the court, after taking into consideration all relevant factors, may reduce the amount of the bond after making specific findings justifying the amount.

. . .

REPORTER'S NOTE

Code, Courts Article, §12-301.1 provides that a supersedeas bond may not exceed $100,000,000 unless a court determines that

the appellant has dissipated or diverted assets outside the course of business or is in the process of doing so. A proposed amendment to Rule 8-423 makes subsection (b)(1) subject to that provision.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 300 - OBTAINING APPELLATE REVIEW IN COURT OF APPEALS

AMEND Rule 8-301 to delete language from subsection (a)(1), to delete a reference to Code, Criminal Law Article, §2-401, to add to the cross reference following subsection (a)(4) a reference to Code, Election Law Article, §16-1003, to delete a reference to the death penalty in section (b), and to make a stylistic change, as follows:

Rule 8-301. METHOD OF SECURING REVIEW –- COURT OF APPEALS

(a) Generally

Appellate review by the Court of Appeals may be obtained only:

(1) by direct appeal ~~or application for leave to appeal,~~ where allowed by law;

(2) pursuant to the Maryland Uniform Certification of Questions of Law Act;

(3) by writ of certiorari upon petition filed pursuant to Rules 8-302 and 8-303; or

(4) by writ of certiorari issued on the Court’s own initiative.

Cross reference: For Code provisions governing direct appeals to

the Court of Appeals, see ~~Code, Criminal Law Article, §2-401 concerning automatic review in death penalty cases;~~ Code, Election Law Article, §12-203 concerning appeals from circuit court decisions regarding contested elections; Code, Election Law Article, §16-1003 concerning appeals from circuit court decisions regarding injunctive relief sought for certain violations of election law; and Code, Financial Institutions Article, §9-712 (d)(2) concerning appeals from circuit court decisions approving transfer of assets of savings and loan associations. For the Maryland Uniform Certification of Questions of Law Act, see Code, Courts Article, §§12-601 through 12-613. For the authority of the Court to issue a writ of certiorari on its own initiative, see Code, Courts Article, §12-201.

(b) Direct Appeals ~~or Applications~~ to Court of Appeals

~~(1) An appeal or application for leave to appeal to the Court of Appeals in a case in which a sentence of death was imposed is governed by Rule 8-306.~~

~~(2) Any other~~ A direct appeal to the Court of Appeals allowed by law is governed by the other rules of this Title applicable to appeals, or by the law authorizing the direct appeal. In the event of a conflict, the law authorizing the direct appeal shall prevail. Except as otherwise required by necessary implication, references in those rules to the Court of Special Appeals shall be regarded as references to the Court of Appeals.

(c) Certification of Questions of Law

Certification of questions of law to the Court of Appeals pursuant to the Maryland Uniform Certification of Questions of Law Act is governed by Rule 8-305.

Source: This Rule is in part derived from Rule 810 and in part new.

REPORTER'S NOTE

Rule 8-301 is proposed to be amended to reflect recent statutory changes.

Subsection (b)(1) and language from subsection (a)(1) and from the cross reference following section (a) are stricken because the death penalty was abolished through Chapter 156, Laws of 2013 (SB 276).

A cross reference to Code, Election Law Article, §16-1003 is added to reflect Chapter 396, Laws of 2015 (HB 73), which permits a direct, expedited appeal to the Court of Appeals from a circuit court decision that involves certain election law violations.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-633 to make section (b) subject to section (c), to replace the word "may" with the word "shall" in section (b), to delete from section (b) a certain requirement of an affidavit or other proof, and to add new section (c) concerning subsequent examinations, as follows:

Rule 2-633. DISCOVERY IN AID OF ENFORCEMENT

(a) Methods

A judgment creditor may obtain discovery to aid enforcement of a money judgment (1) by use of depositions, interrogatories, and requests for documents, and (2) by examination before a judge or an examiner as provided in section (b) of this Rule.

Committee note: The discovery permitted by this Rule is in addition to the discovery permitted before the entry of judgment, and the limitations set forth in Rules 2-411 (d) and 2-421 (a) apply separately to each. Thus, a second deposition of an individual previously deposed before the entry of judgment may be taken after the entry of judgment without leave of court. A second post-judgment deposition of that individual, however, would require leave of court. *Melnick v. New Plan Realty*, 89 Md. App. 435 (1991). Furthermore, leave of court is not required under Rule 2-421 to serve interrogatories on a judgment debtor solely because 30 interrogatories were served upon that party before the entry of judgment.

(b) Examination Before a Judge or an Examiner

Subject to section (c) of this Rule, on request of a judgment creditor, filed no earlier than 30 days after entry of a money judgment, the court where the judgment was entered or recorded ~~may~~ shall issue an order requiring the appearance for examination under oath before a judge or examiner of (1) the judgment debtor, or (2) any other person ~~if the court is satisfied by affidavit or other proof that it is probable that the person has~~ who may have property of the judgment debtor, ~~is~~ be indebted for a sum certain to the judgment debtor, or ~~has~~ have knowledge of any concealment, fraudulent transfer, or withholding of any assets belonging to the judgment debtor. The order shall specify when, where, and before whom the examination will be held and that failure to appear may result in the person served being held in contempt. The order shall be served upon the judgment debtor or other person in the manner provided by Rule 2-121. The judge or examiner may sequester persons to be examined, with the exception of the judgment debtor.

Cross reference: Code, Courts Article, §9-119.

(c) Subsequent Examinations

After an examination of a person has been held pursuant to section (b) of this Rule, a judgment creditor may obtain additional examinations of the person in accordance with this section. On request of the judgment creditor, if more than one year has elapsed since the most recent examination of the person,

the court shall order a subsequent appearance for examination of the person. If less than one year has elapsed since the most recent examination of the person, the court may require a showing of good cause.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 627.
Section (b) is in part new and in part derived from former Rule 628 b.
Section (c) is new.

REPORTER'S NOTE

Chapter 152, Laws of 2015 (SB 121) permits a judgment creditor to conduct one oral examination of the judgment debtor or other person each year without the judgment creditor having to show good cause. If the judgment creditor wishes to conduct a subsequent oral examination of the person before one year has elapsed, the court may require a showing of good cause.

Proposed amendments to Rules 2-633 and 3-633 conform the Rules to the new statute.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 3-633 to make section (b) subject to section (c), to replace the word "may" with the word "shall" in section (b), to delete from section (b) a certain requirement of an affidavit or other proof, to delete language from section (c) concerning subsequent examinations, and to add language to section (c) concerning subsequent examinations, as follows:

Rule 3-633. DISCOVERY IN AID OF ENFORCEMENT

(a) Methods

A judgment creditor may obtain discovery to aid enforcement of a money judgment (1) by use of interrogatories pursuant to Rule 3-421, and (2) by examination before a judge or an examiner as provided in section (b) of this Rule.

Committee note: The discovery permitted by this Rule is in addition to the discovery permitted before the entry of judgment, and the limitations set forth in Rule 3-421 (b) apply separately to each. Thus, leave of court is not required under Rule 3-421 to serve one set of not more than 15 interrogatories on a judgment debtor solely because interrogatories were served upon that party before the entry of judgment.

(b) Examination Before a Judge or an Examiner

Subject to section (c) of this Rule, on request of a judgment creditor, filed no earlier than 30 days after entry of a money judgment, the court where the judgment was entered or

recorded ~~may~~ shall issue an order requiring the appearance for examination under oath before a judge or person authorized by the Chief Judge of the Court to serve as an examiner of (1) the judgment debtor, or (2) any other person ~~if the court is satisfied by affidavit or other proof that it is probable that the person has~~ who may have property of the judgment debtor, ~~is~~ be indebted for a sum certain to the judgment debtor, or ~~has~~ have knowledge of any concealment, fraudulent transfer, or withholding of any assets belonging to the judgment debtor. The order shall specify when, where, and before whom the examination will be held and that failure to appear may result in the person served being held in contempt. The order shall be served upon the judgment debtor or other person in the manner provided by Rule 3-121. The judge or examiner may sequester persons to be examined, with the exception of the judgment debtor.

Cross reference: Code, Courts Article, §9-119.

(c) Subsequent Examinations

After an examination of a ~~defendant or other~~ person has been held pursuant to section (b) of this Rule, ~~the court may order a subsequent appearance for examination of that defendant or other person on request of the same judgment creditor only for good cause shown.~~ a judgment creditor may obtain additional examinations of the person in accordance with this section. On request of the judgment creditor, if more than one year has

elapsed since the most recent examination of the person, the court shall order a subsequent appearance for examination of the person. If less than one year has elapsed since the most recent examination of the person, the court may require a showing of good cause.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 627.
Section (b) is in part new and in part derived from former M.D.R. 628 b.
Section (c) is new.

REPORTER'S NOTE

See the Reporter's note to the proposed amendments to Rule 2-633.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-217 (i) to add certain provisions pertaining to setting and posting a bond in connection with a warrant issued under that section, as follows:

Rule 4-217. BAIL BONDS

. . .

(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 and may set a new bond in the action. The clerk shall promptly notify any surety on the defendant's original bond, and the State's Attorney, of the forfeiture of ~~the~~ that bond and the issuance of the warrant.

Cross reference: Code, Criminal Procedure Article, §5-211.

(2) On Defendant's Posting a Bond After Issuance of Warrant

If a new bond is set under subsection (i)(1) of this Rule and the defendant posts the bond:

(A) a judicial officer shall mark the warrant satisfied; and

(B) the court shall reschedule the hearing or trial.

~~(2)~~ (3) 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)~~ (5)(A) of this section, and (C) order the remission in whole or in part of the penalty sum paid pursuant to subsection ~~(3)~~ (4) 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)~~ (4) 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)~~ (5) 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)~~ (6) Subsequent Appearance of Defendant

When the defendant is produced in court after the period allowed under subsection ~~(3)~~ (4) 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. 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)~~ (4) of this section.

~~(6)~~ (7) Where Defendant Incarcerated Outside this State

(A) If, within the period allowed under subsection ~~(3)~~ (4) 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)~~ (4) 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, 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 strike

out the forfeiture 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)~~ (4) 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)~~ (4) 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

Amendments to Rule 4-217 are proposed to conform the Rule to Chapter 402, Laws of 2015 (HB 120).

An amendment to subsection (i)(1) permits the judge who issues an arrest warrant based on a defendant's failure to appear also to set a new bond in the action.

New subsection (i)(2) provides that if the defendant posts the new bond, the bench warrant is satisfied and the hearing or trial for which the defendant failed to appear is rescheduled.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-504 by adding language to section (a) that refers to a certain exception for venue and by adding a cross reference to reflect statutory changes, 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, except that for criminal proceedings that began in a circuit court or the District Court and were transferred to a juvenile court under Code, Criminal Procedure Article, §§4-202 or 4-202.2, the petition shall be filed in the court that issued the order of transfer. 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. See also Criminal Procedure Article, §10-105 (a)(11), which permits a person who has been convicted of a crime to file a petition for expungement when the act on which the conviction is based no longer is a crime, and Criminal Procedure Article, §10-105 (e)(4), which permits a person to petition for an expungement for an act on which a probation before judgment was based no longer is a crime.

(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 69, Laws of 2015 (HB 131) provides an exception to the venue for the filing of a petition for expungement when a proceeding began in one court and was transferred to another court. The procedure has been that a petition for expungement of the records of those proceedings shall be filed in the court to which the proceeding was transferred. Code, Criminal Procedure Article, §§10-105 and 10-106 have been amended to provide that if the proceeding began in one court and was transferred to the juvenile court under Code, Criminal Procedure Article, §§4-202 or 4-202.2, the petition for expungement shall be filed in the court of original jurisdiction from which the order of transfer was entered.

Chapter 374, Laws of 2015 (SB 651) creates a new Criminal Procedure Article §10-105 (a)(11) to authorize an individual to petition for expungement when the person "was convicted of a crime and the act on which the conviction was based is no longer a crime." Chapter 314, Laws of 2015 (HB 304) provides that a person who had been granted a probation before judgment based on an act that no longer is a crime also is eligible for an expungement.

The Rules Committee recommends amending Rule 4-504 and Form 4-504.1 to conform to Chapters 69, 314, and 374.

MARYLAND RULES OF PROCEDURE

FORMS FOR EXPUNGEMENT OF RECORDS

AMEND Form 4-504.1 to add a paragraph concerning the expungement of a conviction based on an act that is no longer a crime, to add a paragraph concerning expungement of a judgment of probation before judgment where the act on which judgment was based is no longer a crime, to add a sentence and cross reference to the paragraph pertaining to expungement of records in a criminal case transferred to 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 _____, I was [ ] arrested, [ ] served with
(Date)

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.

[ ] I was convicted of a crime, but the act on which the conviction was based is no longer a crime.

[ ] (1) A judgment of probation before judgment was entered on a charge that is not a violation of (a) Code*, Transportation Article, §21-902 ~~or~~ (b) Code*, Criminal Law Article, §§2-503, 2-504, 2-505, or 2-506, or (c) former Code*, Article 27, §388A or §388B; ~~and~~ (2) either (a) at least three years have passed since the disposition, or (b) I have been discharged from probation, whichever is later~~. Since~~; (3) since the date of disposition, I have

not been convicted of any crime**~~,~~; and (4) I am not now a defendant in any pending criminal action**.

[ ] A judgment of probation before judgment was entered on a charge, but the act on which the judgment was based is no longer a crime.

[ ] (1) A Nolle Prosequi was entered and either three years have passed since disposition, or a General Waiver and Release is attached~~. Since~~; (2) since the date of disposition, I have not been convicted of any crime**~~,~~; and (3) I am not now a defendant in any pending criminal action**.

[ ] (1) The proceeding was stetted; ~~and~~ (2) three years have passed since disposition~~. Since~~; (3) since the date of disposition, I have not been convicted of any crime**~~,~~; and (4) I am not now a defendant in any pending criminal action**.

[ ] (1) I was convicted of a crime specified in Code*, Criminal Procedure Article, §10-105 (a)(9); (2) three years have passed since the later of the conviction or satisfactory completion of the sentence, including probation; (3) since the date of that conviction, I have not been convicted of any crime**; and (4) I am not now a defendant in any pending criminal action**.

[ ] (1) I was found not criminally responsible for a crime

specified in Code*, Criminal Procedure Article, §10-105 (a)(9) or (a)(10); (2) three years have passed since the finding of not criminally responsible; (3) I have not been convicted of any crime**; and (4) I am not now a defendant in any pending criminal action**.

[ ] 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. This petition shall be filed in the court that issued the order of transfer.)

[ ] The case was compromised or dismissed pursuant to (1) Code*, Criminal Law Article, §3-207, (2) former Code*, Article 27, §12A-5, or (3) former Code*, Article 10, §37, and three years have passed since disposition.

[ ] (1) On or about _____ , I
(Date)
was granted 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~~; (2) more than ten years have passed since the Governor signed the pardon, ~~and~~ (3) since the date the Governor signed the pardon I have not been convicted of any crime**, and (4) I am not now a defendant

in any pending criminal action**.

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.

** References to "crime" and to "criminal action" in this Petition mean any criminal offense other than a violation of the vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

REPORTER'S NOTE

See the Reporter's note to Rule 4-504.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 700 - POST CONVICTION DNA TESTING

AMEND Rule 4-703 to conform to Chapter 369, Laws of 2015 (SB 583), as follows:

Rule 4-703. COMMENCEMENT OF PROCEEDING; VENUE

(a) Generally

A proceeding under this Chapter is commenced by the filing of a petition under Code, Criminal Procedure Article, §8-201 by a person who:

(1) was convicted of a ~~violation of one or more of the following sections of Code, Criminal Law Article: §§2-201, 2-204, 2-207, 3-303, 3-304, 3-305, and 3-306~~ crime of violence under Code, Criminal Law Article, §14-101; and

(2) seeks (A) DNA testing of scientific identification evidence that (i) the State either possesses or may acquire, on its own initiative or by court order, from a third party and (ii) is related to the judgment of conviction, or (B) a search by a law enforcement agency of a law enforcement database or log for the purpose of identifying the source of physical evidence used for DNA testing.

(b) Venue

The petition shall be filed in the criminal action in the

circuit court where the charging document was filed.

Source: This Rule is new.

REPORTER'S NOTE

Rule 4-703 is proposed for amendment to conform the Rule to Chapter 369, Laws of 2015 (SB 583).

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 700 - POST CONVICTION DNA TESTING

AMEND Rule 4-709 to conform an internal reference to Chapter 369, Laws of 2015 (SB 583), as follows:

Rule 4-709. HEARING; PROCEDURE IF NO HEARING

(a) When Required

Except as otherwise provided in subsection (b)(2) of this Rule, the court shall hold a hearing if, from the petition, answer, and any response, the court finds that the petitioner has standing to file the petition and the petition is filed in the appropriate court, and finds one of the following:

(1) specific scientific identification evidence exists or may exist that is related to the judgment of conviction, a method of DNA testing of the evidence may exist that is generally accepted within the relevant scientific community, and there is or may be a reasonable probability that the testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing;

(2) if the State contends that it has been unable to locate the evidence, there is a genuine dispute as to whether the State's search was adequate;

(3) if the State contends that the evidence existed or may

have existed but was destroyed, there is a genuine dispute whether the destruction was in conformance with any relevant governing protocols or was otherwise lawful;

(4) the State is unable to produce scientific evidence that the State was required to preserve pursuant to Code, Criminal Procedure Article, §8-201 ~~(i)(1)~~ (j)(1); or

(5) there is some other genuine dispute as to whether DNA testing or a DNA database or log search by a law enforcement agency should be ordered.

. . .

REPORTER'S NOTE

A proposed amendment to Rule 4-709 conforms the Rule to Chapter 369, Laws of 2015 (HB 583).

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

ADD new Rule 4-223, as follows:

Rule 4-223. DETENTION OF JUVENILE DEFENDANT PENDING A DETERMINATION OF TRANSFER OF CASE TO JUVENILE COURT

Pending a determination of whether to transfer a District Court or circuit court criminal case to juvenile court pursuant to Code, Criminal Procedure Article, §4-202, the court shall order the juvenile defendant to be held in a secure juvenile facility unless:

(a) the juvenile defendant is released on bail, recognizance, or other conditions of pretrial release;

(b) the Department of Juvenile Services determines that there is not available capacity in a secure juvenile facility; or

(c) the court finds that detention in a secure juvenile facility would be a risk of harm to the juvenile defendant or others. The court shall state the reasons for the finding on the record.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 442, Laws of 2015 (HB 618) modified the procedure for holding a child charged in a criminal case pending a determination by the District Court or the circuit court whether

to transfer jurisdiction of the case to the juvenile court. Previously, Code, Criminal Procedure Article, §4-202 had provided that the court may order the child to be held in a secure juvenile facility, and the hearing on a motion requesting that the child be held in a juvenile facility pending a transfer determination had to be held not later than the next court day unless extended for good cause shown. The statute has been modified to provide that pending a determination of transfer to the juvenile court, the court shall order the child to be held in a secure juvenile facility unless the child is (1) released on bail, recognizance, or other conditions of pretrial release, (2) there is not available capacity in a secure juvenile facility, as determined by the Department of Juvenile Services, or (3) the court finds that detention in a secure juvenile facility would post a risk of harm to the child or others. The requirement that a hearing on a motion to transfer jurisdiction to the juvenile court be held the next day unless good cause is shown has been eliminated.

The Rules Committee recommends adding new Rule 4-223 and amending Rules 4-216.1 4-251, and 4-252 to conform to the amended statute.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216.1 by deleting the second sentence of section (d) and by adding a cross reference after section (d), as follows:

Rule 4-216.1. REVIEW OF COMMISSIONER'S PRETRIAL RELEASE ORDER

. . .

(d) 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.~~

Cross reference: See Rule 4-223 for the procedure for detaining a juvenile defendant pending a determination of transfer of the case to the juvenile court.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-223.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-251 by deleting subsection (b)(3), by adding a cross reference after current subsection (b)(4), and by making stylistic changes, as follows:

Rule 4-251. MOTIONS IN DISTRICT COURT

. . .

(b) When Made; Determination

(1) A motion asserting a defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense shall be made and determined before the first witness is sworn and before evidence is received on the merits.

(2) A motion filed before trial to suppress evidence or to exclude evidence by reason of any objection or defense shall be determined at trial.

~~(3) A motion requesting that a child be held in a juvenile facility pending a transfer determination shall be heard and determined not later than the next court day after it is filed unless the court sets a later date for good cause shown.~~

~~(4)~~ (3) A motion to transfer jurisdiction of an action to the juvenile court shall be determined within 10 days after the

hearing on the motion.

Cross reference: See Rule 4-223 for the procedure for detaining a juvenile defendant pending a determination of transfer of the case to the juvenile court.

~~(5)~~ (4) Other motions may be determined at any appropriate time.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-223.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-252 by deleting subsection (g)(2)(A), by adding a cross reference after current subsection (g)(2)(B), and by making stylistic changes, as follows:

Rule 4-252. MOTIONS IN CIRCUIT COURT

. . .

(g) Determination

(1) Generally

Motions filed pursuant to this Rule shall be determined before trial and, to the extent practicable, before the day of trial, except that the court may defer until after trial its determination of a motion to dismiss for failure to obtain a speedy trial. If factual issues are involved in determining the motion, the court shall state its findings on the record.

(2) ~~(A)~~ Motions Concerning Transfer of Jurisdiction to the Juvenile Court

~~A motion requesting that a child be held in a juvenile facility pending a transfer determination shall be heard and determined not later than the next court day after it is filed unless the court sets a later date for good cause shown.~~

~~(B)~~ A motion to transfer jurisdiction of an action to the

juvenile court shall be determined within 10 days after the hearing on the motion.

Cross reference: See Rule 4-223 for the procedure for detaining a juvenile defendant pending a determination of transfer of the case to the juvenile court.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-223.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-262 by adding a new subsection (e)(2) providing for disclosure of a certain affirmative defense, by adding language to section (i) providing for a certain exception to the time for discovery, and by making stylistic changes, as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

. . .

(e) Disclosure by Defense

On written request of the State's Attorney, the defense shall provide to the State's Attorney:

(1) Reports or Statements of Experts

As to each defense witness the defense intends to call to testify as an expert witness:

(A) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the findings and the opinions to which the expert is expected to testify, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert; and

(2) Defense of Duress

Notice of an intention to rely on a defense of duress pursuant to Code, Criminal Law Article, §11-306 (c).

~~(2)~~ (3) Documents, Computer-generated Evidence, and Other Things

The opportunity to inspect, copy, and photograph any documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the defense intends to use at a hearing or at trial.

. . .

(i) Procedure

To the extent practicable, the discovery and inspection required or permitted by this Rule shall be completed before the hearing or trial, except that asserting a defense pursuant to subsection (e)(2) of this Rule shall be made at least 10 days before the trial. If a request was made before the date of the hearing or trial and the request was refused or denied, or pretrial compliance was impracticable, the court may grant a delay or continuance in the hearing or trial to permit the inspection or discovery.

. . .

REPORTER'S NOTE

Chapter 357, Laws of 2015 (SB 520) adds a new provision allowing a defendant charged with violating Code, Criminal Law Article, §11-306 (House of Prostitution) to assert an affirmative defense of duress if the defendant committed the act as a result of being a victim of an action of another who was charged with violating the prohibition against human trafficking under Code, Criminal Law Article, §11-303. To assert this defense, the defendant must notify the State's Attorney at least 10 days prior to trial.

The Rules Committee recommends adding a provision to section (e) of Rules 4-262 and 4-263 as well as adding language to section (i) of Rule 4-262 and subsection (h)(2) of Rule 4-263 to inform defendants about the procedure for asserting this defense.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-263 by deleting subsection (d)(11), by adding a new subsection (e)(6) providing for disclosure of a certain affirmative defense, by adding language to subsection (h)(2) providing for a certain exception to the time for discovery, and by making stylistic changes, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

. . .

(d) Disclosure by the State's Attorney

Without the necessity of a request, the State's Attorney shall provide to the defense:

. . .

(9) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; and

(10) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at

trial~~; and~~.

~~(11) Evidentiary Statement and Identification of Materials in Capital Cases~~

~~If the defendant is charged with a first degree murder that is eligible for a sentence of death and the State filed a notice of intention to seek a death sentence pursuant to Code, Criminal Law Article, §2-202 (a), (A) a statement of whether the material disclosed constitutes biological evidence or DNA evidence that links the defendant to the act of murder, a videotaped, voluntary interrogation and confession of the defendant to the murder, or a video recording that conclusively links the defendant to the murder, and, (B) if so, identification of the material that constitutes such evidence.~~

(e) Disclosure by Defense

Without the necessity of a request, the defense shall provide to the State's Attorney:

(1) Defense Witness

The name and, except when the witness declines permission, the address of each defense witness other than the defendant, together with all written statements of each such witness that relate to the subject matter of the testimony of that witness. Disclosure of the identity and statements of a person who will be called for the sole purpose of impeaching a State's witness is not required until after the State's witness

has testified at trial.

(2) Reports or Statements of Experts

To each defense witness the defense intends to call to testify as an expert witness:

(A) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the findings and the opinions to which the expert is expected to testify, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert;

(3) Character Witnesses

As to each defense witness the defense intends to call to testify as to the defendant's veracity or other relevant character trait, the name and, except when the witness declines permission, the address of that witness;

(4) Alibi Witnesses

If the State's Attorney has designated the time, place, and date of the alleged offense, the name and, except when the witness declines permission, the address of each person other than the defendant whom the defense intends to call as a witness

to show that the defendant was not present at the time, place, or date designated by the State's Attorney;

(5) Insanity Defense

Notice of any intention to rely on a defense of not criminally responsible by reason of insanity, and the name and, except when the witness declines permission, the address of each defense witness other than the defendant in support of that defense; and

Committee note: The address of an expert witness must be provided. See subsection (e)(2)(A) of this Rule.

(6) Defense of Duress

Notice of an intention to rely on a defense of duress pursuant to Code, Criminal Law Article, §11-306 (c).

~~(6)~~ (7) Documents, Computer-generated Evidence, and Other Things

The opportunity to inspect, copy, and photograph any documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the defense intends to use at a hearing or at trial.

. . .

(h) Time for Discovery

Unless the court orders otherwise:

(1) the State's Attorney shall make disclosure pursuant to section (d) of this Rule within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant

before the court pursuant to Rule 4-213 (c), and

(2) the defense shall make disclosure pursuant to section (e) of this Rule no later than 30 days before the first scheduled trial date, except that asserting a defense pursuant to subsection (e)(6) of this Rule shall be made at least 10 days before the first scheduled trial date.

. . .

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death penalty. The Rules Committee recommends amending Rule 4-263 by removing subsection (d)(11), which refers to capital cases and the death penalty, consistent with the repeal of former Code, Criminal Law Article, §§2-202 and 2-301.

See the Reporter's note to Rule 4-262 for an explanation of changes to section (e) and subsection (h)(2).

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-254 by deleting subsection (b)(1), by changing the tagline of new subsection (b)(1), by deleting a reference to the death penalty in section (b), and by making stylistic changes, as follows:

Rule 4-254. REASSIGNMENT AND REMOVAL

. . .

(b) Removal in Circuit Courts

~~(1) Capital Cases~~

~~If a defendant is charged with an offense for which the maximum penalty is death and the State's Attorney has filed a notice of intention to seek the death penalty, either party may file a suggestion under oath that the party cannot have a fair and impartial trial in the court in which the action is pending. A suggestion by a defendant shall be under the defendant's personal oath, and a suggestion filed by the State shall be under the oath of the State's Attorney. When a suggestion is filed, the court shall order that the action be transferred for trial to another court having jurisdiction, and the Circuit Administrative Judge of the court ordering removal shall designate the county to which the case is to be removed.~~

~~(2)~~ (1) ~~Non-capital Cases~~ Suggestion and Order

When ~~a defendant is not eligible for the death penalty and~~ either party files a suggestion under oath that the party cannot have a fair and impartial trial in the court in which the action is pending, the court shall order that the action be transferred for trial to another court having jurisdiction only if the court is satisfied that the suggestion is true or that there is reasonable ground for it. The Circuit Administrative Judge of the court ordering removal shall designate the county to which the case is to be removed. A party who has obtained one removal may obtain further removal pursuant to this section.

~~(3)~~ (2) Transfer of Case File - Trial

Upon the filing of an order for removal, the clerk shall transmit the case file and a certified copy of the docket entries to the clerk of the court to which the action is transferred and the action shall proceed as if originally filed there. After final disposition of the action, the clerk shall return a certified copy of the docket entries to the clerk of the court in which the action was originally instituted for entry on the docket as final disposition of the charges.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 744.
Section (b) is derived from former Rule 744.

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death

penalty. The Rules Committee recommends amending Rule 4-254 to be consistent with the repeal of former Code, Criminal Law Article, §2-202 and §2-301.

Specifically, Rule 4-254 is proposed to be amended by deleting subsection (b)(1), which pertains only to capital cases.

New subsection (b)(1) is further proposed to be amended by changing the tagline from "Non-capital Cases" to "Suggestion and Order" and by deleting the phrase "a defendant is not eligible for the death penalty and."

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-312 by deleting a cross reference, as follows:

Rule 4-312. JURY SELECTION

(a) Jury Size and Challenge to the Array

(1) Size

Before a trial begins, the trial judge shall decide (A) the required number of sworn jurors, including any alternates and (B) the size of the array of qualified jurors needed.

Cross reference: See Code, Courts Article, §8-420 (b) ~~and Code, Criminal Law Article, §2-303 (d)~~.

(2) Insufficient Array

If the array is insufficient for jury selection, the trial judge may direct that additional qualified jurors be summoned at random from the qualified juror pool as provided by statute.

(3) Challenge to the Array

A party may challenge the array on the ground that its members were not selected or summoned according to law, or on any other ground that would disqualify the array as a whole. A challenge to the array shall be made and determined before any individual member of the array is examined, except that the trial

judge for good cause may permit the challenge to be made after the jury is sworn but before any evidence is received.

. . .

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death penalty. The Rules Committee recommends amending Rule 4-312 by removing from subsection (a)(1) a cross reference to the repealed former Code, Criminal Law Article, §2-303.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-313 by removing references to the death penalty in subsection (a)(2) and by adding a cross reference, as follows:

Rule 4-313. PEREMPTORY CHALLENGES

(a) Number

(1) Generally

Except as otherwise provided by this section, each party is permitted four peremptory challenges.

(2) Cases Involving ~~Death or~~ Life Imprisonment

Each defendant who is subject on any single count to a sentence of ~~death or~~ life imprisonment, except when charged with a common law offense for which no specific penalty is provided by statute, is permitted 20 peremptory challenges and the State is permitted ten peremptory challenges for each defendant.

(3) Cases Involving Imprisonment for 20 years or more, but Less than Life

Each defendant who is subject on any single count to a sentence of imprisonment for 20 years or more, but less than life, except when charged with a common law offense for which no specific penalty is provided by statute, is permitted ten peremptory challenges and the State is permitted five peremptory

challenges for each defendant.

(4) Alternate Jurors

For each alternate juror to be selected, the State is permitted one additional peremptory challenge for each defendant and each defendant is permitted two additional peremptory challenges. The additional peremptory challenges may be used only against alternate jurors, and other peremptory challenges allowed by this section may not be used against alternate jurors.

Cross reference: See Code, Courts Article, §8-420 (a).

. . .

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death penalty. The Rules Committee recommends amending Rule 4-313 by removing references to the death penalty in subsection (a)(2). The Committee recommends adding a cross reference to Code, Courts Article, §8-420 (a), which is the basis for subsections (b)(2) and (b)(3) of Rule 4-313.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-331 by deleting subsection (c)(2) and by making a stylistic change, as follows:

Rule 4-331. MOTIONS FOR NEW TRIAL; REVISORY POWER

. . .

(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 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; and

~~(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)~~ (2) 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).

. . .

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death penalty. The Rules Committee recommends amending Rule 4-331 by deleting subsection (b)(2), which pertains to a motion for a new trial that may be filed if a death sentence is imposed.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-348 by deleting section (a) and the Committee note following it, by deleting a cross reference, and by relettering the Rule, as follows:

Rule 4-348. STAY OF EXECUTION OF SENTENCE

~~(a) Sentence of Death~~

~~(1) Definition~~

~~In this section, "state post conviction review process" has the meaning stated in Code, Correctional Services Article, §3-902.~~

~~(2) Stay~~

~~A sentence of death shall be stayed during the direct review process and the state post conviction review process.~~

~~Committee note: The direct review process includes certiorari in the Supreme Court of the United States.~~

~~(b)~~ (a) Sentence of Imprisonment

The filing of an appeal or a petition for writ of certiorari in any appellate court, including the Supreme Court of the United States, stays a sentence of imprisonment during any period that the defendant is released pursuant to Rule 4-349, unless a court orders otherwise pursuant to section (d) of that

Rule. On the filing of a notice of appeal in a case that is tried de novo, the circuit court, on motion or by consent of the parties, may stay a sentence of imprisonment imposed by the District Court and release the defendant pending trial in the circuit court, subject to any appropriate terms and conditions of release.

Cross reference: See Rule 4-349.

~~(c)~~ (b) Fine

Upon the filing of an appeal or petition of writ of certiorari in any appellate court, a sentence to pay a fine or a fine and costs may be stayed by the court upon terms the court deems proper, but any bond required to stay the payment pending appeal may not exceed the unpaid amount of the fine and costs, if any.

~~(d)~~ (c) Other Sentences

Any other sentence or any order or condition of probation may be stayed upon terms the court deems proper.

Source: This Rule is derived from former Rule 778 a and M.D.R. 778 a.

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death penalty. The Rules Committee recommends amending Rule 4-348 by deleting section (a) and the Committee note following that section because they pertain to a sentence of death and include a reference to former Code, Correctional Services Article, §3-902, which has been repealed.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 400 - POST CONVICTION PROCEDURE

AMEND Rule 4-406 by deleting two cross references and adding a cross reference, as follows:

Rule 4-406. HEARING

(a) When Required

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

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

. . .

(d) Presence of Petitioner

The petitioner has the right to be present at any hearing

on the petition.

Cross reference: For post conviction procedure, right to counsel and hearing, see Code, Criminal Procedure Article, §§7-101 - 7-108 ~~and §§7-201 - 7-204~~; victim notification, Criminal Procedure Article, §§7-105, 11-102, 11-104, and 11-503. For right of a victim or victim's representative to address the court, see Code, Criminal Procedure Article, §11-403.

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

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death penalty. The Rules Committee recommends amending Rule 4-406 by removing two cross references.

The first cross reference proposed to be deleted is after section (a) and refers to the repealed former Code, Criminal Procedure Article, §7-204.

The second cross reference proposed to be deleted is after section (d) and refers to the repealed former Code, Criminal Procedure Article, §§7-201 - 7-204.

The Committee recommends adding a cross reference to Code, Criminal Procedure Article, §11-102 because it also pertains to victim notification.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 5-101 by amending language from subsection (b)(9) and by deleting a Committee note, as follows:

Rule 5-101. SCOPE

. . .

(b) Rules Inapplicable

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

. . .

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

(10) Issuance of a search warrant under Rule 4-601;

(11) Detention and shelter care hearings under Rule 11-112; and

(12) Any other proceeding in which, prior to the adoption of the rules in this Title, the court was traditionally not bound by the common-law rules of evidence.

~~Committee note: The Rules in this Chapter are not intended to limit the Court of Appeals in defining the application of the rules of evidence in sentencing proceedings in capital cases or to override specific statutory provisions regarding the admissibility of evidence in those proceedings. See, for example, *Tichnell v. State*, 290 Md. 43 (1981); Code, Correctional Services Article, §6-112 (c).~~

. . .

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death penalty. The Rules Committee recommends amending Rule 5-101 by removing the phrase "in non-capital cases" in subsection (b)(9) and by removing the Committee note after section (b), which refers to sentencing proceedings in capital cases, to be consistent with the proposed amendment to the title of Rule 4-342.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 600 - WITNESSES

AMEND Rule 5-606 (c) by deleting statutory references and by adding the word "law," as follows:

Rule 5-606. COMPETENCY OF JUROR AS WITNESS

. . .

(c) "Verdict" Defined

For purposes of this Rule, "verdict" means (1) a verdict returned by a trial jury or (2) a sentence returned by a trial jury in a sentencing proceeding conducted pursuant to ~~Code, Criminal Law Article, §2-303 or §2-304~~ law.

Committee note: This Rule does not address or affect the secrecy of grand jury proceedings.

Source: This Rule is derived in part from F.R.Ev. 606.

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death penalty. The Rules Committee recommends amending Rule 5-606 by removing a reference to the repealed former Code, Criminal Law Article, §2-303. It also recommends removing any references to specific statutes setting forth the jury's sentencing authority and instead adding the word "law."

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 300 - HABEAS CORPUS

AMEND Rule 15-304 by deleting a cross reference, as follows:

Rule 15-304. ALTERNATE REMEDY - POST CONVICTION PROCEDURE ACT

When a petition for a writ of habeas corpus is filed by or on behalf of an individual confined as a result of a sentence for a criminal offense, including a criminal contempt, or a commitment order in a juvenile delinquency proceeding, the judge may order that the petition be treated as a petition under the Post Conviction Procedure Act if the individual confined consents in writing or on the record and the judge is satisfied that the post conviction proceeding is adequate to test the legality of the confinement. Upon entry of the order, the judge shall transmit the petition, a certified copy of the order, and any other pertinent papers to the court in which the sentence or judgment was entered. Subsequent procedure shall be as in a post conviction proceeding.

Cross reference: See Rules 4-401 through 4-408 and Code, Criminal Procedure Article, §§7-101 - 7-108 ~~and §§7-201 – 7-204~~.

Source: This Rule is derived from former Rule Z55.

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death

penalty. The Rules Committee recommends amending Rule 15-304 by deleting a cross reference to former Code, Criminal Procedure Article, §§7-201 - 7-204, which have been repealed.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 300 - HABEAS CORPUS

AMEND Rule 15-308 to correct an internal reference, as follows:

Rule 15-308. NOTICE TO STATE'S ATTORNEY AND ATTORNEY GENERAL

If a judge grants a writ with respect to an individual confined as a result of a sentence for a criminal offense, including a criminal contempt, or as a result of an order in a juvenile proceeding, the judge shall instruct the clerk to give notice of the time and place of the hearing to the State's Attorney for the county in which the sentence or order was entered. If the petition presents an issue of illegal confinement in the Division of Correction unrelated to the underlying conviction or order, notice shall also be directed to the Attorney General.

Cross reference: For the entry of judgment in a removed case, see Rule 4-254 ~~(b)(3)~~ (b)(2).

Source: This Rule is derived from Rule Z50.

REPORTER'S NOTE

Subsection (b)(1) of Rule 4-254 has been proposed for deletion, because it pertains to removal of death penalty cases. Chapter 156, Laws of 2013 (SB 276) repealed the death penalty, so any references to it in the Rules have to be deleted. The cross reference at the end of Rule 15-308 conforms to the proposed change to Rule 4-254.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

DELETE Rule 4-281, as follows:

~~Rule 4-281. MOTION RELATING TO DEATH PENALTY NOTICE~~

~~(a) Motion~~

~~Upon completion of discovery, a defendant may move to preclude the State from filing a notice of intention to seek a sentence of death pursuant to Code, Criminal Law Article, §2-301 or to strike a notice already filed on the ground that the State has failed to produce in discovery evidence of an aggravating circumstance listed in Code, Criminal Law Article, §2-303 (g), or one of the following:~~

~~(1) biological evidence or DNA evidence that links the defendant to the act of murder;~~

~~(2) a video taped voluntary interrogation and confession of the defendant to the murder; or~~

~~(3) a video recording that conclusively links the defendant to the murder.~~

~~(b) Order~~

~~After an opportunity for a hearing, the court shall promptly rule on the motion and enter an order.~~

~~Source: This Rule is new.~~

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death penalty. The Rules Committee recommends deleting Rule 4-281 consistent with the repeal of former Code, Criminal Law Article, §2-301.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 300 - OBTAINING APPELLATE REVIEW IN COURT OF APPEALS

DELETE Rule 8-306, as follows:

~~Rule 8-306. CAPITAL CASES - REVIEW IN COURT OF APPEALS~~

~~(a) Scope~~

~~This Rule applies to appellate proceedings in cases in which a sentence of death was imposed, including direct appeal, an application for leave to appeal from a judgment granting or denying relief in a post conviction proceeding brought to review a judgment imposing a sentence of death, and an application for leave to appeal from an order determining the competence or incompetence of an inmate upon whom a sentence of death was imposed.~~

~~(b) Applicability of Other Rules~~

~~Except as otherwise expressly or by necessary implication provided in this Rule, the other rules of this Title apply to appeals and applications for leave to appeal under this Rule. In the event of a conflict between this Rule and another rule in this Title, this Rule shall prevail.~~

~~(c) Automatic Appeal from Judgment~~

~~(1) Whenever a sentence of death is imposed, there shall be~~

~~an automatic appeal to the Court of Appeals of both the determination of guilt and the sentence, whether or not the determination of guilt was based on a plea of guilty.~~

~~(2) The clerk of the circuit court shall enter on the docket a notice of appeal on behalf of the defendant within 10 days after the later of (A) entry of the judgment, or (B) entry of a notice withdrawing a timely motion for new trial filed pursuant to Rule 4-331 (a) or an order denying the motion. The clerk shall promptly notify the Attorney General, the defendant, and counsel for the defendant of the entry of the notice of appeal.~~

~~(3) Unless the parties have elected to proceed in accordance with Rule 8-413 (b), the clerk, upon docketing the notice of appeal, shall direct the court reporter to prepare a transcript of both the trial and sentencing proceedings in conformance with Rule 8-411 (a). Within 10 days after receipt of the transcript, the clerk shall transmit the record to the Clerk of the Court of Appeals. The statement of costs required by Rule 8-413 (c) shall separately state the cost applicable to the sentencing proceeding. The State shall pay those costs.~~

~~(4) The Court of Appeals shall consider (A) those issues concerning the sentence required by Code, Criminal Law Article, § 2-401 (d) and (B) all other issues properly before the Court on appeal and necessary to a decision in the case.~~

~~(d) Transcript in Lieu of Record Extract~~

~~In any proceeding under section (c) of this Rule, the parties, by agreement, may file with the Court 10 copies of a complete transcript of the proceedings under review instead of extracts from the transcript.~~

~~(e) Other Applications~~

~~Rule 8-204 applies to all applications for leave to appeal subject to this Rule, except that~~

~~(1) the application for leave to appeal to the Court of Appeals shall be made by filing the application with the Clerk of the Court of Appeals;~~

~~(2) upon the filing of the application, the Clerk of the Court of Appeals shall notify the clerk of the trial court who shall transmit the record to the Court of Appeals within 60 days after the filing of the application unless a different time is fixed by order of the Court of Appeals on motion or on its own initiative; and~~

~~(3) if the application for leave to appeal from a judgment granting or denying relief in a post conviction proceeding is granted, a transcript of the post conviction proceeding in the trial court shall be transmitted to the Court of Appeals not later than 60 days after the grant of leave to appeal unless a different time is fixed by order of the Court of Appeals on motion or on its own initiative.~~

~~(f) Oral Argument~~

~~Unless otherwise ordered by the Court of Appeals, oral argument in a direct appeal or pursuant to an order granting an application for leave to appeal and directing further proceedings shall be held within 150 days after transmittal of the record.~~

~~Committee note: This Rule recognizes that Code, Courts Article, §12-302 (e) does not apply to death penalty cases.~~

~~Source: This Rule is in part derived from former Rule 898 and in part new.~~

REPORTER'S NOTE

Chapter 156, Laws of 2013 (SB 276) repealed the death penalty. The Rules Committee recommends deleting Rule 8-306 consistent with the repeal of former Code, Criminal Law Article, §§2-202, 2-203, 2-401 and the subtitle "Subtitle 4. Review by Court of Appeals."

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

TABLE OF CONTENTS

Rule 17-401. GENERAL PROVISIONS

(a) Applicability of Chapter

(1) Generally

This Chapter applies to appeals to the Court of Special Appeals in civil actions for which an information report is required by Rule 8-205.

(2) Scheduling Conference

Nothing in this Chapter precludes the Court from conducting scheduling conferences pursuant to Rule 8-206 in any appeal to the Court.

(b) ADR Programs

The Court of Special Appeals may create and implement a prehearing conference program and a mediation program in accordance with the Rules in this Chapter.

(c) ADR Division

(1) Creation

The Chief Judge of the Court of Special Appeals may create, as a unit of the Court, an ADR Division to be headed by a Director appointed by and serving at the pleasure of the Chief Judge.

(2) Duties

Subject to supervision by the Chief Judge, the ADR Division is responsible for administering the ADR programs of the Court of Special Appeals, as set forth in the Rules in this Chapter.

(d) Delegation by Chief Judge

The Chief Judge may delegate to one or more judges of the Court any of the duties and authority assigned to the Chief Judge by the Rules in this Chapter.

(e) Judicial Function

Court-designated mediators, individuals conducting prehearing conferences, and all court employees involved in the ADR program when acting in their official capacity and within the scope of their authority shall be regarded as performing a judicial function.

Cross reference: See 93 Opinions of the Attorney General 68 (2008).

Source: This Rule is derived in part from former Rule 17-401 (b)(1), (2), and (3) (2015) and is in part new.

REPORTER'S NOTE

Proposed revisions to the Rules in Title 17, Chapter 400 and Rule 8-206, together with conforming amendments to Rules 8-205, 8-207, 8-411, 8-412, and 8-602, are intended to clarify and harmonize procedures applicable to the mediation, prehearing conference, and scheduling conference programs operated by the Court of Special Appeals.

Key features of the revisions include:

(1) elimination of "settlement conferences," in favor of "prehearing conferences;"

(2) expanded provisions pertaining to scheduling conferences;

(3) changing the name of the Court of Special Appeals Office of ADR Programs (labeled "CSA-ADR Division" in the current Rules) to "ADR Division";

(4) clarification of -- and revisions to -- the roles of the Chief Judge (or designee), the staff of the ADR Division, and the participants in the programs; and

(5) revisions to the timing and contents of orders pertaining to ADR.

Proposed revised Rule 17-401 contains general provisions pertaining to the applicability of the Chapter and the creation, implementation, and administration of the ADR programs of the Court of Special Appeals. Section (d) is carried forward from current Rule 17-402 (b)(2), with a clarifying change that delegation of the Chief Judge's duties and authority under the Rules in the Chapter may be to more than one judge. Section (e) is carried forward from current Rule 17-401 (b)(3), with the reference to "settlement conference chairs" replaced by "individuals conducting prehearing conferences."

Rule 17-402. ASSIGNMENT OF CASE TO ADR

(a) Screening of Information Reports

The ADR Division shall screen all civil information reports filed pursuant to Rule 8-205 and promptly make a recommendation to the Chief Judge as to whether the parties and their attorneys should be ordered to participate in a prehearing conference or a mediation pursuant to the Rules in this Chapter.

(b) Communication With Parties

Personnel in the ADR Division may communicate orally and in writing with any party's attorney and any self-represented party regarding whether a prehearing conference or mediation should be recommended to the Chief Judge. Such communications do not constitute prohibited *ex parte* communications.

(c) Determination by Chief Judge

(1) On Recommendation of ADR Division

The Chief Judge is not bound by a recommendation of the ADR Division. Promptly upon receipt of such a recommendation, the Chief Judge shall enter an order:

(A) that the appeal proceed in accordance with the Rules in Title 8 without referral to a prehearing conference or mediation;

(B) that a prehearing conference be conducted in accordance with Rule 17-403; or

(C) that a mediation be conducted in accordance with Rule 17-404.

(2) Authority of Chief Judge

At any time during the appellate process before oral argument, the Chief Judge may enter an order directing a prehearing conference or mediation, even if the Chief Judge initially had determined that the appeal should proceed without such a conference or mediation. If the parties concur, the Chief Judge may order a prehearing conference or mediation after oral argument but before a dispositive opinion or order in the appeal is issued.

Source: This Rule is derived in part from former Rules 8-206 (a) and 17-401 (b)(4) and (5) (2015) and is in part new.

REPORTER'S NOTE

Proposed revised Rule 17-402 contains procedures for assigning an action to ADR or making a determination that the action should proceed without an assignment to ADR.

Sections (a) and (b) are derived from current Rule 17-401 (b)(4), with stylistic changes.

Section (c) represents an amalgamation of parts of current Rules 17-401 (b)(5) and 8-206 (a).

Subsection (c)(1) clarifies that the Chief Judge is not bound by a recommendation of the ADR Division. Subsection (c)(1)(A) provides that the Chief Judge may order that the appeal proceed without a prehearing conference or mediation. Subsection (c)(1)(B) provides that the Chief Judge may order that a prehearing conference be conducted, subsection (c)(1)(C) provides

that the Chief Judge may order that a mediation be conducted.

Subsection (c)(2) states that the Chief Judge at any time before oral argument may order a prehearing conference or mediation, even if the Chief Judge had initially determined that the appeal should proceed without a conference or mediation. The proposed change provides flexibility in the timing of court-ordered ADR, and it permits the Court to order a different form of ADR if the original form of ADR did not work. In contrast, current Rule 8-206 (a)(2) provides that the Chief Judge may order "one mediation session or one settlement conference session."

Subsection (c)(2) is new. It provides that, with the parties' concurrence, the Chief Judge may order a prehearing conference or mediation after oral argument but before a dispositive opinion or order is issued.

Rule 17-403. PREHEARING CONFERENCE

(a) Purpose

The purpose of a prehearing conference is for the parties, their attorneys, or both to meet with an incumbent or retired judge of the Court designated by the Chief Judge to discuss:

(1) settlement of the case, in whole or in part;

(2) methods of implementing any settlement;

(3) clarifying or limiting the issues on appeal; and

(4) if settlement cannot then be agreed upon, whether (A) proceedings should be stayed for a specified period of time to allow further discussions among the parties or attorneys, or (B) it would be useful for the case to be referred to mediation pursuant to Rule 17-404 or for the parties to engage in an ADR process that is not under the auspices of the ADR division.

(b) Order of Chief Judge

An order of the Chief Judge referring the appeal to a prehearing conference shall direct the parties, their attorneys, or both to appear before a designated incumbent or retired judge of the Court at a time and place specified in the order or to be determined by the designated judge.

(c) Scheduling Conference

If the parties are unable to achieve any of the objectives set forth in section (a) of this Rule but agree that a scheduling conference pursuant to Rule 8-206 would be useful, the Chief Judge may authorize the judge who conducted the prehearing conference to conduct a scheduling conference or direct the parties, their attorneys, or both to appear before another judge of the Court designated by the Chief Judge for that purpose.

(d) Order on Completion of Prehearing Conference

(1) In General

Within 30 days after conclusion of a prehearing conference, the parties or the judge may present to the Chief Judge a proposed order to implement any agreements or determinations made at the conference. The Chief Judge shall review the proposed order and proceed in the manner set forth in Rule 17-404 (f)(2) and (3).

(2) Scheduling Conference

Any order implementing actions to be taken pursuant to a scheduling conference conducted pursuant to Rule 8-206 shall be entered in accordance with the procedures set forth in subsection (b)(3) of that Rule.

(3) Copies

The clerk shall send a copy of an order entered under this section to each party.

(e) Sanctions

Upon the failure of a party or attorney to comply with an order entered under section (b) of this Rule, the Court, after an opportunity for a hearing, may impose any appropriate sanction, including (1) dismissal of the appeal, (2) assessing against the party or attorney the reasonable expenses caused by the failure including reasonable attorney's fees, and (3) assessing against the party or attorney all or part of the appellate costs.

(f) Recusal

A judge who conducts a prehearing conference under this Rule may not sit as a member of a panel, including an in banc panel, assigned to hear the appeal if it proceeds, and shall not participate in any court conference regarding a judicial resolution of the appeal or whether an opinion in the appeal should be designated as reported.

Source: This Rule is new.

REPORTER'S NOTE

Proposed revised Rule 17-403 establishes a prehearing conference procedure, which replaces the current, more narrow, settlement conference procedure.

Prior to January 1, 2014, Rule 8-206 (b) contained a "prehearing conference" feature. Revised Rule 17-403 reestablishes that procedure for the purposes set forth in section (a) of the revised Rule.

Under section (b), a prehearing conference, unlike a mediation, may be conducted only by an incumbent or retired judge of the Court.

Section (c) provides that if the parties are unable to achieve the objectives set forth in section (a) but agree that a scheduling conference would be useful, the Chief Judge may authorize the judge who conducted the prehearing conference to conduct a scheduling conference or designate another judge of the Court to conduct one.

Except as provided in subsection (d)(2), the procedures set forth in sections (d), (e), and (f), pertaining to the entry of an order upon completion of a prehearing conference, sanctions, and recusal, respectively, are based upon comparable procedures set forth in Rule 17-404 (Mediation). Subsection (d)(2) provides that an order implementing actions taken pursuant to a scheduling conference shall be entered in accordance with the procedures set forth in Rule 8-206 (b)(3).

Rule 17-404. MEDIATION

(a) Selection of Mediators

When mediation is ordered pursuant to Rule 17-402 (c), the ADR Division, subject to the approval of the Chief Judge, shall select one or more mediators determined by the Chief Judge to have the qualifications required by Rule 17-405 to conduct the mediation. In selecting a mediator, the ADR Division is not required to choose at random or in any particular order from among the qualified individuals and 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 mediators.

(b) Order of Chief Judge

Upon the Chief Judge's approval of a selected mediator, the Chief Judge shall enter an order directing the parties, their attorneys, or both to appear before the mediator at a time and place specified in the order or to be determined by the ADR Division.

(c) Length of Mediation

A mediation conducted under this Rule may not last more

than four hours without the consent of the parties.

(d) Full Settlement Not Achieved

If a full settlement of the issues in the appeal is not achieved, the mediator and the parties may discuss (1) extending the mediation session, (2) further mediation sessions, (3) engaging in other forms of ADR, or (4) holding a scheduling conference pursuant to Rule 8-206.

(e) Full or Partial Settlement Achieved

If a full or partial settlement of the issues in the appeal is achieved and an order is necessary, the parties shall proceed in accordance with section (f) of this Rule.

(f) Order Implementing Settlement

(1) Proposed Order

Within 30 days after the conclusion of a Court-ordered mediation at which a full or partial settlement is achieved, if an order is necessary to implement the settlement, the parties shall submit a proposed order for review by the Chief Judge. The proposed order may include dismissal of the appeal, proceeding with the appellate process, limiting issues, a remand pursuant to Rule 8-602 (e), or any other appropriate directives necessary to implement the settlement.

(2) Review by Chief Judge

After review, the Chief Judge shall (A) sign the order as presented, (B) reject the proposed order, or (C) return the order

to the parties with recommended changes, but the Chief Judge may not preclude an appellant from dismissing the appellant's appeal as permitted by Rule 8-601 or preclude the parties from otherwise proceeding in a manner authorized by the Rules in Title 8.

(3) Recommended Changes

If the Chief Judge returns an order with recommended changes and, within 15 days after return of the order, the parties do not accept the recommended changes, the appeal shall proceed as if no agreement had been reached, unless the Chief Judge agrees to withdraw an unaccepted recommended change. If the parties accept the recommended changes, the Chief Judge shall sign the order with those changes included.

(4) Duty of Clerk

The clerk shall send a copy of a signed order to each party and to the ADR Division.

(g) Sanctions

Upon the failure of a party or attorney to comply with an order entered under section (b) of this Rule, the Court, after an opportunity for a hearing, may impose any appropriate sanction, including (1) dismissal of the appeal, (2) assessing against the party or attorney the reasonable expenses caused by the failure, including reasonable attorney's fees, and (3) assessing against the party or attorney all or part of the appellate costs.

(h) Recusal

A judge who participates in conducting a mediation under this Rule may not sit as a member of a panel, including an in banc panel, assigned to hear the appeal if it proceeds, and shall not participate in any court conference regarding a judicial resolution of the appeal or whether an opinion in the appeal should be designated as reported.

Source: This Rule is derived in part from former Rules 8-206 (a)(2) and 17-402 (b), (d), (e), and (f) (2015) and is in part new.

REPORTER'S NOTE

Proposed revised Rule 17-404 is derived from current Rules 8-206 (a)(2) and 17-402 (b), (d), and (e). In addition to stylistic changes, the revised Rule (1) clarifies that the selection of a mediator is subject to the approval of the Chief Judge, (2) limits the length of a court-ordered mediation to four hours unless the parties consent to additional time, (3) clarifies the process for entry of an order that implements a full or partial settlement, (4) adds to section (g), Sanctions, the word "reasonable" in two places and the express requirement of "an opportunity for a hearing" prior to the imposition of sanctions, and (5) adds to section (h), Recusal, the phrase, "or whether an opinion in the appeal should be designated as reported."

Rule 17-405. QUALIFICATIONS OF COURT-DESIGNATED MEDIATORS

(a) Initial Approval

To be approved as a mediator by the Chief Judge, an individual shall:

(1) be (A) an incumbent judge of the Court of Special Appeals; (B) a retired judge of the Court of Appeals, the Court of Special Appeals, or a circuit court approved for recall for service under Code, Courts Article, 1-302; or (C) a staff attorney from the Court of Special Appeals designated by the Chief Judge;

(2) have (A) completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104, or (B) conducted at least two Maryland appellate mediations prior to January 1, 2014 and completed advanced appellate mediation training approved by the ADR Division;

(3) unless waived by the ADR Division, have observed at least two Court of Special Appeals mediation sessions and have participated in a debriefing with a staff mediator from the ADR Division after the mediations; and

(4) be familiar with the Rules in Titles 8 and 17 of the

Maryland Rules;

(b) Continued Approval

To retain approval as a mediator by the Chief Judge, an individual shall:

(1) abide by mediation standards adopted by the Court of Appeals, if any;

(2) comply with mediation procedures and requirements established by the Court of Special Appeals;

(3) submit to periodic monitoring by the ADR Division of mediations conducted by the individual; and

(4) unless waived by the Chief Judge, complete in each calendar year four hours of continuing mediation-related education in one or more topics set forth in Rule 17-104 or any other advanced mediation training approved by the ADR Division.

Source: This Rule is derived from former Rule 17-403 (a) (2015).

REPORTER'S NOTE

Proposed revised Rule 17-405 is derived from current Rule 17-403 (a).

The changes to the Rule are primarily stylistic, except that under the revised Rule, it is the Chief Judge of the Court of Special Appeals -- rather than the staff of the ADR Division -- who (1) pursuant to subsection (a)(1)(C), approves a staff attorney to serve as a mediator, and (2) pursuant to subsection (b)(4), authorizes any waiver of the continuing mediation-related education requirement.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

Rule 17-406. NO FEE FOR COURT-ORDERED ADR

Subject to Rules 17-403 (e) and 17-404 (g), Court of Special Appeals litigants and their attorneys shall not be required to pay a fee or additional court costs for participating in a prehearing conference or mediation ordered by the Court.

Source: This Rule is derived from former Rule 17-404 (2015).

REPORTER'S NOTE

Proposed revised Rule 17-406 is derived from current Rule 17-404, with language added to make clear that imposition of a sanction under Rule 17-403 (e) or 17-404 (g) that involves the payment of money does not violate the prohibition against charging a fee for court-ordered ADR.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

DELETE current Rule 8-206 and ADD new Rule 8-206, as follows:

Rule 8-206. ADR; SCHEDULING CONFERENCE; ORDER TO PROCEED

(a) ADR

Upon the filing of an appellant's information report pursuant to Rule 8-205, the Court of Special Appeals may enter an order referring the parties, their attorneys, or both to a prehearing conference or mediation pursuant to the Rules in Title 17, Chapter 400.

(b) Scheduling Conference

(1) Order to Attend

Upon the filing of any appeal to the Court of Special Appeals, the Chief Judge or a judge designated by the Chief Judge, on motion of a party or on the judge's own initiative, may enter an order directing the parties, their attorneys, or both, to appear before an incumbent or retired judge of the Court at a time and place specified in the order or to be determined by the designated judge.

(2) Purposes

The primary purposes of a scheduling conference are to identify and attempt to resolve any special procedural issues and to examine ways to expedite the appeal, if practicable. The participants may discuss:

(A) any claim that the appeal is not timely, that there is no final or otherwise appealable judgment, that the appeal is moot, or that an issue sought to be raised in the appeal is not preserved for appellate review and, in the absence of an agreement to dismiss the appeal or limit the issues, whether it is feasible for any such issue to be presented to the Court in an appropriate preliminary motion;

(B) whether there are any problems with or any dispute over the record and how any such problem or dispute may be resolved;

(C) if there will be no substantial disagreement as to the relevant facts, whether it is feasible to proceed on an agreed statement of the case in lieu of a record and record extract, pursuant to Rule 8-413 (b);

(D) if there are multiple parties raising similar issues, whether one or more consolidated briefs may be feasible and whether any adjustments to the timing and length of such briefs may be useful;

(E) if the appeal will hinge on one or two issues of Statewide importance, whether a petition to the Court of Appeals for *certiorari* may be useful;

(F) whether, because of existing or anticipated circumstances, further proceedings in the Court of Special Appeals should be expedited or delayed; and

(G) any other administrative matter or issue that may make the appellate process more efficient or expeditious.

(3) Implementing Order

Within 30 days after conclusion of a scheduling conference, the parties or the judge may present to the Chief Judge a proposed order to implement any agreements or determinations made at the conference. The Chief Judge shall review a proposed order and proceed in the manner set forth in Rule 17-404 (f)(2) and (3).

(4) Sanctions

Upon the failure of a party or attorney to comply with an order entered under subsection (b)(1) of this Rule, the Court, after an opportunity for a hearing, may impose any appropriate sanction, including (A) dismissal of the appeal, (B) assessing against the party or attorney the reasonable expenses caused by the failure, including reasonable attorney's fees, and (C) assessing against the party or attorney all or part of the appellate costs.

(c) Order to Proceed

The Court shall enter an order to proceed with the appeal in conformance with the Rules in this Title if (1) the Court does

not enter an order under section (a) or (b) of this Rule, or (2) at the conclusion of ADR ordered pursuant to section (a) or a scheduling conference ordered pursuant to section (b), it appears that the appeal will not be dismissed.

Source: This Rule is new.

REPORTER'S NOTE

Proposed revised Rule 8-206 replaces current Rule 8-206.

Section (a) applies only to actions in which Rule 8-205 requires that an information report be filed. Under section (a), the Court of Special Appeals may -- but is not required to -- enter an order for mediation or a prehearing conference pursuant to the Rules in Title 17, Chapter 400.

Sections (b) and (c) apply to all actions in the Court of Special Appeals.

Under section (b), the Court may -- but is not required to -- enter an order to attend a scheduling conference. The purpose of a scheduling conference is procedural, involving the identification of procedural issues and discussion of ways to make the appeal proceed as smoothly as possible. Included in subsection (b)(2) is a list of possible topics to be discussed. Any agreements or determinations made at the conference are implemented by an order entered pursuant to subsection (b)(3). Subsection (b)(4), which tracks comparable sanctions provisions in Rules 17-403 and 17-404, permits the Court to impose sanctions for the failure of a party or attorney to attend a scheduling conference.

Section (c) is new. It memorializes current practice that, if it appears that an appeal will not be dismissed, an order to proceed is entered.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-205 to conform to proposed revised Rule 8-206 and to revise a cross reference, as follows:

Rule 8-205. INFORMATION REPORTS

(a) Applicability

This Rule applies to appeals in all civil actions in the Court of Special Appeals except juvenile causes, appeals from guardianships terminating parental rights, appeals from actions for a writ of error coram nobis, and applications and appeals by prisoners seeking relief relating to confinement or conditions of confinement.

(b) Report by Appellant Required

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

(c) Time for Filing

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

Cross reference: Rule 8-202 (c).

(d) Report by Appellee

Within seven days after service of appellant's information report, each appellee may file with the Clerk of the Court of Special Appeals a supplemental report containing any other information needed to clarify the issues on appeal or otherwise assist in the ~~prehearing judge~~ implementation of Rule 8-206.

(e) Disclosure of Post-judgment Motions

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

(f) Confidentiality

Information contained in an information report or a supplemental report shall not (1) be treated as admissions, (2)

limit the disclosing party in presenting or arguing that party's case, or (3) be referred to except at a scheduling conference under Rule 8-206 or during ADR under Title 17, Chapter 400 of these Rules.

Cross reference: See Rule 17-102 (a) for the definition of ADR and Rule ~~17-401~~ 17-402 concerning the use of information reports by the ~~CSA~~ ADR division.

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

REPORTER'S NOTE

Proposed amendments to Rule 8-205 conform the Rule to proposed revised Rule 8-206 and revise the cross reference at the end of the Rule to conform to the revisions to Title 17, Chapter 400.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-207 to conform to proposed revised Rule 8-206, as follows:

Rule 8-207. EXPEDITED APPEAL

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

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

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

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

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

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

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

any oral argument shall be held within 120 days after transmission of the record. The decision shall be rendered within 60 days after oral argument or submission of the appeal on the briefs filed.

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

(b) By Election of Parties

(1) Election

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

(2) Statement of Case and Facts

Within 15 days after the filing of the joint election, the parties shall file with the Clerk four copies of an agreed statement of the case, including the essential facts, as prescribed by Rule 8-413 (b). By stipulation of counsel filed with the clerk, the time for filing the agreed statement of the

case may be extended for no more than an additional 30 days.

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

(3) Withdrawal

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

(4) Appellant's Brief

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

(5) Appellee's Brief

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

(6) Reply Brief

A reply brief may be filed only with permission of the

Court.

(7) Briefs in Cross-appeals

An appellee who is also a cross-appellant shall include in the brief filed under subsection (b)(5) of this Rule the issue and argument on the cross-appeal as well as the response to the brief of the appellant. The combined brief shall not exceed 15 pages in length. Within ten days after the filing of an appellee/cross-appellant's brief, the appellant/cross-appellee shall file a brief, not exceeding ten pages in length, in response to the issues and argument raised on the cross-appeal.

(8) Oral Argument

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

(9) Decision

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

(10) Applicability of Other Rules

The Rules of this Title governing appeals to the Court

of Special Appeals shall be applicable to expedited appeals except to the extent inconsistent with this Rule.

Source: This Rule is derived from former Rule 1029.

REPORTER'S NOTE

Proposed amendments to Rule 8-207 conform the Rule to proposed revised Rule 8-206.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-411 to conform to proposed revised Rule 8-206, as follows:

Rule 8-411. TRANSCRIPT

(a) Ordering of Transcript

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

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

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

(3) if relevant to the appeal and in the absence of a written stipulation by all parties to the contents of the recording, a transcription of any audio or audiovisual recording or portion thereof offered or used at a hearing or trial.

(b) Time for Ordering

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

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

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

Cross reference: Rule 8-207 (a).

(c) Filing and Service

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

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

REPORTER'S NOTE

Proposed amendments to Rule 8-411 conform the Rule to proposed revised Rule 8-206.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-412 to conform to proposed revised Rule 8-206 and to add a provision pertaining to transmission of the record in accordance with Rule 20-402, as follows:

Rule 8-412. RECORD - TIME FOR TRANSMITTING

(a) To the Court of Special Appeals

Unless a different time is fixed by order entered pursuant to section (d) of this Rule, the clerk of the lower court shall transmit the record to the Court of Special Appeals within sixty days or thirty days in child in need of assistance cases and guardianships terminating parental rights cases, or other cases proceeding under Rule 8-207 (a)(1) after:

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

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

Cross reference: Rule 8-207 (a).

(b) To the Court of Appeals

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

(c) When Record is Transmitted

For purposes of this Rule the record is transmitted when it is (1) delivered to the Clerk of the appellate court; ~~or when it is~~ (2) sent by certified mail by the clerk of the lower court, addressed to the Clerk of the appellate court; or (3) transmitted to the Clerk of the appellate court in accordance with Rule 20-402.

(d) Shortening or Extending the Time

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

appellee.

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

REPORTER'S NOTE

In conformance with the proposed revision of Rule 8-206, proposed amendments to Rule 8-412 (a)(1) provide that, in all civil actions specified in Rule 8-205 (a), the date by which the record must be transmitted is the date specified in the order to proceed entered pursuant to Rule 8-206 (c).

In Rule 8-412 (c), a provision is added to refer to the electronic transmission of a record in accordance with Rule 20-402.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 600 - DISPOSITION

AMEND Rule 8-602 to make a stylistic change and to delete an obsolete cross reference, as follows:

Rule 8-602. DISMISSAL BY COURT

. . .

(e) Entry of Judgment not Directed under Rule 2-602

(1) If the appellate court determines that the order from which the appeal is taken was not a final judgment when the notice of appeal was filed but that the lower court had discretion to direct the entry of a final judgment pursuant to Rule 2-602 (b), the appellate court ~~may~~, as it finds appropriate, may (A) dismiss the appeal, (B) remand the case for the lower court to decide whether to direct the entry of a final judgment, (C) enter a final judgment on its own initiative or (D) if a final judgment was entered by the lower court after the notice of appeal was filed, treat the notice of appeal as if filed on the same day as, but after, the entry of the judgment.

(2) If, upon remand, the lower court decides not to direct entry of a final judgment pursuant to Rule 2-602 (b), the lower court shall promptly notify the appellate court of its decision

and the appellate court shall dismiss the appeal. If, upon remand, the lower court determines that there is no just reason for delay and directs the entry of a final judgment pursuant to Rule 2-602 (b), the case shall be returned to the appellate court after entry of the judgment. The appellate court shall treat the notice of appeal as if filed on the date of entry of the judgment.

(3) If the appellate court enters a final judgment on its own initiative, it shall treat the notice of appeal as if filed on the date of the entry of the judgment and proceed with the appeal.

~~Cross reference: Rule 8-206.~~

Source: This Rule is in part derived from former Rules 1035 and 835 and in part new.

REPORTER'S NOTE

Proposed amendments to Rule 8-602 make a stylistic change to subsection (e)(1) and delete an obsolete cross reference to Rule 8-206 at the end of the Rule.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-321 (b) to require service of a request for entry of judgment arising out of an order of default, as follows:

Rule 1-321. SERVICE OF PLEADINGS AND PAPERS OTHER THAN ORIGINAL PLEADINGS

(a) Generally

Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties. If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at the office of the person to be served with an individual in charge; or, if there is no one in charge, leaving it in a conspicuous place in the office; or, if the office is closed or the person to be served has no office, leaving it at the dwelling house or

usual place of abode of that person with some individual of suitable age and discretion who is residing there. Service by mail is complete upon mailing.

(b) Party in Default - Exceptions

No pleading or other paper after the original pleading need be served on a party in default for failure to appear except:

(1) a pleading asserting a new or additional claim for relief against the party shall be served in accordance with the rules for service of original process; and

(2) a request for entry of judgment arising out of an order of default under Rule 2-613 shall be served in accordance with section (a) of this Rule.

(c) Requests to Clerk - Exception

A request directed to the clerk for the issuance of process or any writ need not be served on any party.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 306 a 1 and c and the 1980 version of Fed. R. Civ. P. 5 (a).
Section (b) is derived from former Rule 306 b and the 1980 version of Fed. R. Civ. P. 5 (a).
Section (c) is new.

REPORTER'S NOTE

An order of default under Rule 2-613 is an interlocutory determination of liability. It is not a judgment for a specific amount of money damages or for other relief. In some cases, after an order of default has been entered, it may be necessary for the court to consider additional evidence before entering a judgment. Even after an order of default has been entered, the defendant has the right to participate in any further proceedings in the action on the issue of damages or other relief to be

granted. See *Banegura v. Taylor*, 312 Md. 609 (1988) and *Greer v. Inman*, 79 Md. App. 350 (1989).

The Rules Committee recommends that Rule 1-321 (b) be amended by the addition of the requirement for service of a request for entry of judgment arising out of an order of default under Rule 2-613 to make clear that a request for entry of judgment arising out of an order for default under Rule 2-613 is to be served on the defendant. The Committee also recommends that Rule 2-613 be amended by the addition of a cross reference to the new subsection of Rule 1-321 (b).

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-613 by adding a cross reference after section (f), as follows:

Rule 2-613. DEFAULT JUDGMENT

. . .

(f) Entry of Judgment

If a motion was not filed under section (d) of this Rule or was filed and denied, the court, upon request, may enter a judgment by default that includes a determination as to the liability and all relief sought, if it is satisfied (1) that it has jurisdiction to enter the judgment and (2) that the notice required by section (c) of this Rule was mailed. If, in order to enable the court to enter judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the court, may rely on affidavits, conduct hearings, or order references as appropriate and, if requested, shall preserve to the plaintiff the right to trial by jury.

Cross reference: For the requirement that a request for entry of judgment under section (f) of this Rule be served on the defendant, see Rule 1-321 (b)(2).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 1-321.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-601 by requiring that a judgment document include a statement of an allowance of costs, by adding a Committee note after section (a), and by making stylistic changes, as follows:

Rule 2-601. ENTRY OF JUDGMENT

(a) Separate Document - Prompt Entry ~~- Separate Document~~

(1) Each judgment shall be set forth on a separate document and include a statement of an allowance of costs as determined in conformance with Rule 2-603.

(2) Upon a verdict of a jury or a decision by the court allowing recovery only of costs or a specified amount of money or denying all relief, the clerk shall forthwith prepare, sign, and enter the judgment, unless the court orders otherwise.

(3) Upon a verdict of a jury or a decision by the court granting other relief, the court shall promptly review the form of the judgment presented and, if approved, sign it, and the clerk shall forthwith enter the judgment as approved and signed.

(4) A judgment is effective only when so set forth and when entered as provided in section (b) of this Rule.

(5) Unless the court orders otherwise, entry of the judgment

shall not be delayed pending determination of the amount of costs.

Committee note: The judgment document need not include the amount of costs but only which party or parties are to be charged with them. If the prevailing party is to be allowed costs, it will suffice to state in the document that the judgment is in favor of that party "with costs."

. . .

REPORTER'S NOTE

Amendments to Rules 2-601 and 2-603 are proposed to address issues raised by circuit court clerks regarding costs assessed when a judgment is entered. The amendments are intended to clarify procedures pertaining to the assessment and computation of costs.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-603 by adding to section (a) a provision concerning the determination of any question the clerk has regarding the allocation of costs, by specifying that the sheriff's fees assessed pursuant to section (b) are fees that have been reported to the clerk, by adding a provision pertaining to an invoice for open costs, by changing the time within which a party may file a motion for court review of the action of the clerk to ten days after the clerk's notice is issued, and by adding a Committee note, as follows:

Rule 2-603. COSTS

(a) Allowance and Allocation

Unless otherwise provided by rule, law, or order of court, the prevailing party is entitled to costs. The court, by order, may allocate costs among the parties. If the clerk has any question regarding the allocation of costs, including which party is the prevailing party, the court shall determine the matter.

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

(b) Assessment by the Clerk

(1) The clerk shall assess as costs (A) all fees of the clerk, ~~and~~ (B) all fees of the sheriff that have been reported to

the clerk by the sheriff or a party, and, (C) in proceedings under Title 7, Chapter 200 of these Rules, the costs specified by Rule 7-206 (b).

(2) On written request of a party filed within 15 days after the later of the entry of judgment or the entry of an order denying a motion filed under Rules 2-532, 2-533, or 2-534, the clerk shall assess other costs prescribed by rule or other law.

(3) The clerk shall notify each party of the assessment in writing. On motion of any party filed within ~~five days after the party receives notice of the clerk's assessment~~ ten days after the notice is issued, the court shall review the action of the clerk.

Committee note: The clerk may include with the assessment an invoice for open costs, directed to the party responsible for payment.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-601.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-412 to permit a deposition to be recorded by electronic audio or audio-video means of recording and to replace the present limitation of electronically recording a deposition to videotape or audiotape, as follows:

Rule 2-412. DEPOSITION - NOTICE

(a) Generally

A party desiring to take a deposition shall serve a notice of deposition upon oral examination at least ten days before the date of the deposition or a notice of deposition upon written questions in accordance with Rule 2-417. The notice shall state the time and place for taking the deposition and the name and address of the person to be examined or, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena is to be served on the person to be examined, it shall be served at least ten days before the date of the deposition.

(b) ~~Videotape or Audiotape~~ Audio and Audio-Video Recording

If the deposition is to be recorded by ~~videotape or audiotape~~ electronic audio or audio-video means, the notice shall specify the method of recording. If a ~~videotape~~ deposition is to

be ~~taken~~ recorded by electronic audio-video means for use at trial pursuant to Rule 2-419 (a)(4), the notice shall so specify.

(c) Documents or Other Tangible Things

The notice to a party deponent may contain or be accompanied by a request for the production of documents or other tangible things at the taking of the deposition, in which case the provisions of Rule 2-422 shall apply to the request. A non-party deponent may be required to produce documents or other tangible things at the taking of the deposition by a subpoena. If a subpoena requiring the production of documents or other tangible things at the taking of the deposition is to be served on a party or nonparty deponent, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice and the subpoena shall be served at least 30 days before the date of the deposition.

(d) Designation of Person to Testify for an Organization

A party may in a notice and subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, managing agents, or other persons who will testify on its behalf regarding the matters described and may set forth the matters on which each person designated will testify. A subpoena shall

advise a nonparty organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization.

(e) Objection to Form

Any objection to the form of the notice for taking a deposition is waived unless promptly served in writing.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 405 a 1 and a 2 (a) and the 1980 version of Fed. R. Civ. P. 30 (b)(1).
Section (b) is derived from Rule 410 c.
Section (c) is derived from the 1980 version of Fed. R. Civ. P. 30 (b)(5).
Section (d) is derived from the 1980 version of Fed. R. Civ. P. 30 (b)(6) and former Rule 405 a 2 (b).
Section (e) is derived from former Rule 412 a.

REPORTER'S NOTE

Merriam-Webster defines a videotape as "a recording of visual images and sound (as of a television production) made on a magnetic tape; *also*: the magnetic tape used for such a recording." Videotape Definition, Merriam-Webster, http://www.merriam-webster.com/dictionary (last visited May 8, 2015). Recording data on magnetic tape is becoming obsolete. The amendments being proposed to Rules 2-412, 2-415, 2-416, and 2-419 reflect that modern technology allows the recording of data on more than magnetic tape and the language is broad enough to encompass technological changes on how data will be electronically recorded in the future.

The proposed new "electronic audio and audio-video" terminology conforms to the terminology used in current Rule 16-405 [proposed revised Rule 16-504].

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-415 to permit a deposition to be recorded by electronic audio or audio-video means of recording, to replace the present limitation of the means of electronically recording a deposition to videotape or audiotape, to add a new section (g) pertaining to interpreters for depositions, and to make stylistic changes, as follows:

Rule 2-415. DEPOSITION - PROCEDURE

(a) Oath and Record of Testimony

The deponent shall be put on oath by the officer before whom a deposition is taken, and the testimony of the deponent shall be recorded by the officer or by someone acting under the direction and in the presence of the officer. The testimony shall be recorded stenographically or, pursuant to Rule 2-416, by ~~videotape or audiotape~~ electronic audio or audio-video recording. The testimony shall also be transcribed unless the parties agree otherwise or unless the court orders otherwise to avoid expense, hardship, or injustice. The court may order one or more of the parties to pay the cost of transcription.

(b) Examination and Cross-examination

When a deposition is taken upon oral examination,

examination and cross-examination of the deponent may proceed as permitted in the trial of an action in open court. The cross-examination need not be limited to the subject matter of the examination in chief, but its use shall be subject to the provisions of Rule 2-419. Instead of participating in the oral examination, a party served with a notice of deposition may transmit written questions to the officer before whom the deposition is taken, who shall propound them to the deponent.

(c) Materials Produced

Any party may inspect and copy documents and other tangible things produced by a deponent and may require them to be marked for identification and attached to and returned with the transcript. However, if the person producing the materials requests their return, (1) the person producing the materials, upon affording each party an opportunity to verify the copies by comparison with the originals, may substitute copies to be marked for identification and attached to and returned with the transcript, or (2) the person producing the materials may offer the originals to be marked for identification, after affording each party an opportunity to inspect and copy them, in which event the materials may be used in the same manner as if attached to and returned with the transcript. Any party may move for an order that the originals be attached to and returned with the transcript to the court, pending final disposition of the case.

(d) Signature and Changes

Unless changes and signing are waived by the deponent and the parties, the officer shall submit the transcript to the deponent, accompanied by a notice in substantially the following form:

[Caption of case]

NOTICE TO [name of deponent]

The enclosed transcript of your deposition in the above-captioned case is submitted to you on [date of submission of the transcript to the deponent] for your signature and any corrections or other changes you wish to make. All corrections and other changes will become part of your sworn testimony.

After you have read the transcript, sign it and, if you are making changes, attach to the transcript a separate correction sheet stating the changes and the reason why each change is being made. Return the signed transcript and any correction sheet to [name and address of officer before whom the deposition was taken] no later than 30 days after the date stated above.

If you fail to return the signed transcript and any correction sheet within the time allowed, the transcript may be used as if signed by you. See Rules 2-415 and 2-501 of the Maryland Rules of Procedure.

Within 30 days after the date the officer mails or otherwise submits the transcript to the deponent, the deponent shall (1) sign the transcript and (2) note any changes to the form or substance of the testimony in the transcript on a separate correction sheet, stating the reason why each change is being made. The officer promptly shall serve a copy of the correction sheet on the parties and attach the correction sheet to the transcript. The changes contained on the correction sheet become part of the transcript. If the deponent does not timely sign the transcript, the officer shall sign the transcript, certifying the date that the transcript was submitted to the deponent with the notice required by this section and that the transcript was not signed and returned within the time allowed. The transcript may then be used as if signed by the deponent, unless the court finds, on a motion to suppress under section ~~(j)~~ (k) of this Rule, that the reason for the failure to sign requires rejection of all or part of the transcript.

Cross reference: See Rule 2-501 (e) for the consequences of filing an affidavit or other written statement under oath that contradicts deposition testimony that was not changed within the time allowed by this section.

(e) Certification and Notice

The officer shall attach to the transcript a certificate that the deponent was duly sworn and that the transcript is a true record of the testimony given. A transcript prepared from a certified ~~videotape or audiotape~~ electronic audio or audio-video

recording may be certified by any person qualified to act as a deposition officer. The officer shall then securely seal the transcript in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of deponent)."

(f) Copy to be Furnished

Upon receiving payment of reasonable charges, the officer shall furnish a copy of the transcript to any party or to the deponent.

(g) Interpreter

If the deponent is an individual who needs an interpreter, as defined in Rule 1-333 (a)(1), the party who issued the notice of deposition is responsible for obtaining an interpreter at that party's expense. The interpreter shall meet the requirements of Rule 1-333 (c)(1).

~~(g)~~ (h) Objections

All objections made during a deposition shall be recorded with the testimony. An objection to the manner of taking a deposition, to the form of questions or answers, to the oath or affirmation, to the conduct of the parties, or to any other kind of error or irregularity that might be obviated or removed if objected to at the time of its occurrence is waived unless a timely objection is made during the deposition. An objection to the competency of a witness or to the competency, relevancy, or materiality of testimony is not waived by failure to make it

before or during a deposition unless the ground of the objection is one that might have been obviated or removed if presented at that time. The grounds of an objection need not be stated unless requested by a party. If the ground of an objection is stated, it shall be stated specifically, concisely, and in a non-argumentative and non-suggestive manner. If a party desires to make an objection for the record during the taking of a deposition that reasonably could have the effect of coaching or suggesting to the deponent how to answer, then the deponent, at the request of any party, shall be excused from the deposition during the making of the objection.

Committee note: During the taking of a deposition, it is presumptively improper for an attorney to make objections that are not consistent with Rule 2-415 ~~(g)~~ (h). Objections should be stated as simply, concisely, and non-argumentatively as possible to avoid coaching or making suggestions to the deponent and to minimize interruptions in the questioning of the deponent. Examples include "objection, leading;" "objection, asked and answered;" and "objection, compound question."

~~(h)~~ (i) Refusals to Answer

When a deponent refuses to answer a question, the proponent of the question shall complete the examination to the extent practicable before filing a motion for an order compelling discovery.

~~(i)~~ (j) Further Deposition Upon Substantive Changes to Transcript

If a correction sheet contains substantive changes, any party may serve notice of a further deposition of the deponent

limited to the subject matter of the substantive changes made by the deponent unless the court, on motion of a party pursuant to Rule 2-403, enters a protective order precluding the further deposition.

~~(j)~~ (k) Motions to Suppress

An objection to the manner in which testimony is transcribed, ~~videotaped, or audiotaped~~ recorded by electronic audio or audio-video means, or to the manner in which a transcript is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer is waived unless a motion to suppress all or part of the deposition is made promptly after the defect is or with due diligence might have been ascertained. In ruling on a motion to suppress, the court may grant leave to any party to depose the deponent further on terms and conditions the court deems appropriate.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 409 c.
Section (b) is derived from former Rule 409 a.
Section (c) is derived from former Rule 411 b 3.
Section (d) is derived from in part from former Rules 411 a and 412 e and in part from the 1993 version of Fed. R. Civ. P. 30 (e).
Section (e) is derived from former Rule 411 b 1, 2 and 5.
Section (f) is derived from former Rule 411 b 4.
Section (g) is new.
Section ~~(g)~~ (h) is derived from former Rules 409 c 2, and 412 c 1 and 2.
Section ~~(h)~~ (i) is derived from former Rule 422 a 2.
Section ~~(i)~~ (j) is new.
Section ~~(j)~~ (k) is derived from former Rule 412 d and e.

REPORTER'S NOTE

The Maryland Rules do not address the issue of interpreters for depositions. The Rules Committee recommends adding a new section (g) to Rule 2-415 that would require a party who issues a notice of deposition for a deponent who needs an interpreter to be responsible for obtaining the interpreter. The interpreter would have to meet the requirements of Rule 1-333 (c)(1).

See the Reporter's note to Rule 2-412, concerning the proposed amendments to sections (a), (e), and (k).

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-416 to change the title of the Rule, to permit a deposition to be recorded by electronic audio or audio-video means of recording, and to replace the present limitation of the means of electronically recording a deposition to videotape or audiotape, as follows:

Rule 2-416. DEPOSITION - ~~VIDEOTAPE AND AUDIOTAPE~~ AUDIO AND AUDIO-VIDEO RECORDINGS

(a) Permitted

Any deposition may be recorded by ~~videotape or audiotape~~ electronic audio or audio-video means without a stenographic record, but a party may cause a stenographic record of the deposition to be made at the party's own expense. Except as otherwise provided by this Rule, the rules of this chapter apply to videotape and audiotape depositions.

(b) Deferral

On motion of a party made prior to the deposition, the court may order that ~~a videotape~~ an electronic audio or audio-video deposition intended for use at trial be postponed or begun subject to being continued, on such terms as are just, if the court finds that the deposition is to be taken before the moving

party has had an adequate opportunity to prepare, by discovery deposition of the deponent or other means, for cross-examination of the deponent.

(c) Physical Arrangements

The area to be used for recording testimony shall be suitable in size, have adequate lighting, and be reasonably quiet. The physical arrangements shall not be unduly suggestive or otherwise prejudicial.

(d) Operator

The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in accordance with this Rule. The operator may be an employee of the attorney taking the deposition unless the operator is also the officer before whom the deposition is being taken.

(e) Operation of the Equipment

The operator shall not distort the appearance or demeanor of participants in the deposition by the use of camera or sound recording techniques.

(f) Procedure

The deposition shall begin by the operator stating on camera or on the ~~audiotape~~ electronic audio or audio-video recording: (1) the operator's name and address, (2) the name and address of the operator's employer, (3) the date, time, and place of the deposition, (4) the caption of the case, (5) the name of

the deponent, and (6) the name of the party giving notice of the deposition. The officer before whom the deposition is taken shall identify himself or herself and swear the deponent on camera or on the ~~audiotape~~ electronic audio or audio-video recording. At the conclusion of the deposition, the operator shall state on camera or on the ~~audiotape~~ electronic audio or audio-video recording that the deposition is concluded. When more than one tape, disk or similar electronic data unit of recording is used, the operator shall announce the end of each ~~tape~~ unit and the beginning of the next ~~tape on camera or on the audiotape~~ unit of audio or audio-video recording. A ~~videotape~~ deposition recorded under this subsection shall be timed by a clock or indicator that shall show on camera or on the recording whenever possible each hour, minute, and second of the deposition.

(g) Objections

The officer shall keep a log of all objections made during the deposition and shall reference them to the time shown on the clock on camera or to the ~~videotape or audiotape~~ indicator on the audio or audio-video recording. Evidence objected to shall be taken subject to the objection. A party intending to offer a ~~videotape or audiotape~~ deposition recorded by audio or audio-video means in evidence shall notify the court and all parties in writing of that intent and of the parts of the deposition to be

offered within sufficient time to allow for objections to be made and acted upon before the trial or hearing. Objections to all or part of the deposition shall be made in writing within sufficient time to allow for rulings on them and for editing of the ~~tape~~ electronic audio or audio-video recording before the trial or hearing. The court may permit further designations and objections as justice may require. In excluding objectionable testimony or comments or objections of counsel, the court may order that an edited copy of the ~~videotape or audiotape~~ electronic audio or audio-video recording be made or that the person playing the ~~tape~~ recording at trial suppress the objectionable portions of the ~~tape~~ recording. In no event, however, shall the original ~~videotape or audiotape~~ of the recording be affected by any editing process.

Committee note: This section supplements Rule 2-415 (g).

(h) Certification

After the deposition has been taken, the officer shall review the ~~videotape or audiotape~~ electronic audio or video recording promptly and attach to it a certificate that the recording is a correct and complete record of the testimony given by the deponent.

(i) Custody

The attorney for the party taking the deposition or any other person designated by the court or agreed to by the parties

represented at the deposition shall take custody of the ~~videotape or audiotape~~ electronic audio or audio-video recording and be responsible for its safeguarding, permit its viewing or hearing by a party or the deponent, and provide a copy of the ~~videotape~~ electronic audio-video recording or its audio portion or of the audiotape, upon the request and at the cost of a party or the deponent. ~~A videotape or audiotape~~ An electronic audio or audio-video recording offered or admitted in evidence at a trial or hearing shall be marked and retained as an exhibit.

Source: This Rule is derived from former Rule 410 with the exception of section (g), which is derived from former Rule 409 c 2 and 413 c.

REPORTER'S NOTE

See the Reporter's note to Rule 2-412.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-419 to permit a deposition to be recorded by electronic audio or audio-video means of recording and to replace the present limitation of the means of electronically recording a deposition to videotape or audiotape, as follows:

Rule 2-419. DEPOSITION - USE

(a) When May be Used

(1) Contradiction and Impeachment

A party may use a deposition transcript and any correction sheets to contradict or impeach the testimony of the deponent as a witness.

(2) By Adverse Party

The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, managing agent, or a person designated under Rule 2-412 (d) to testify on behalf of a public or private corporation, partnership, association, or governmental agency which is a party may be used by an adverse party for any purpose.

(3) Witness not Available or Exceptional Circumstances

The deposition of a witness, whether or not a party, may be used by any party for any purpose against any other party who

was present or represented at the taking of the deposition or who had due notice thereof, if the court finds:

(A) that the witness is dead; or

(B) that the witness is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(C) that the witness is unable to attend or testify because of age, mental incapacity, sickness, infirmity, or imprisonment; or

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon motion and reasonable notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) ~~Videotape~~ Audio-video Deposition of Expert

~~A videotape~~ An electronic audio-video deposition of a treating or consulting physician or of any expert witness may be used for any purpose even though the witness is available to testify if the notice of that deposition specified that it was to be taken for use at trial.

(b) Use of Part of Deposition

If only part of a deposition is offered in evidence by a

party, an adverse party may require the offering party to introduce at that time any other part that in fairness ought to be considered with the part offered and any party may introduce any other part in accordance with this Rule.

(c) Deposition Taken in Another Action

A deposition lawfully taken in another action may be used like any other deposition if the other action was brought in any court of this State, of any other state, or of the United States, involved the same subject matter, and was brought between the same parties or their representatives or predecessors in interest.

(d) Objection to Admissibility

Subject to Rules 2-412 (e), 2-415 (g) and (j), 2-416 (g), and 2-417 (c), an objection may be made at a hearing or trial to receiving in evidence all or part of a deposition for any reason that would require the exclusion of the evidence if the witness were then present and testifying.

(e) Effect of Deposition

A party does not make a person that party's own witness by taking the person's deposition. The introduction in evidence of all or part of a deposition for any purpose other than as permitted by subsections (a)(1) and (a)(2) of this Rule makes the deponent the witness of the party introducing the deposition. At a hearing or trial, a party may rebut any relevant evidence

contained in a deposition, whether introduced by that party or by any other party.

Source: This Rule is derived from former Rule 413.

REPORTER'S NOTE

See the Reporter's note to Rule 2-412.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-203 to prohibit a charging document from containing charges against more than one defendant, as follows:

Rule 4-203. CHARGING DOCUMENT - JOINDER OF OFFENSES AND DEFENDANTS

(a) Multiple Offenses

Two or more offenses, whether felonies or misdemeanors or any combination thereof, may be charged in separate counts of the same charging document if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Multiple Defendants - ~~Circuit Court~~ Separate Charing Documents

~~In the circuit court,~~ Regardless of whether two or more defendants~~, whether principals or accessories, may be charged in the same charging document if they~~ are alleged to have participated in the same act or transaction or in the same series of acts or transactions~~,~~ ~~constituting an offense or offenses. The defendants may be charged in one or more counts together or separately, and it is not necessary to charge all defendants in~~

~~each count~~ a charging document may not contain charges against more than one defendant.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 712 a and M.D.R. 712.
Section (b) is derived from former Rule 712 b.

REPORTER'S NOTE

Rule 4-203 is proposed to be amended to prohibit charges against more than one defendant in a charging document. This conforms to requirements of the MDEC system.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 700 - POST CONVICTION DNA TESTING

AMEND Rule 4-707 (b) to substitute the word "may" for the word "shall," as follows:

Rule 4-707. DENIAL OF PETITION; APPOINTMENT OF COUNSEL

. . .

(b) Appointment of Counsel

If the court finds that a petitioner who has requested the appointment of counsel is indigent, the court ~~shall~~ may appoint counsel within 30 days after the State has filed its answer unless (1) the court denies the petition as a matter of law or (2) counsel has already filed an appearance to represent the petitioner.

Source: This Rule is new.

REPORTER'S NOTE

The Rules Committee recommends revising Rule 4-707 (b) to substitute the word "may" for "shall," to conform to the holding of the Court of Appeals in *Fuster v. State*, 437 Md. 653 (2014).

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-321 (c) to add language referring to matters that have been remanded from certain courts, as follows:

Rule 2-321. TIME FOR FILING ANSWER

. . .

(c) Automatic Extension

When a motion is filed pursuant to Rule 2-322 or when a matter is remanded from an appellate court or a federal court, the time for filing an answer is extended without special order to 15 days after entry of the court's order on the motion or remand or, if the court grants a motion for a more definite statement, to 15 days after the service of the more definite statement.

. . .

REPORTER'S NOTE

An attorney pointed out that the Maryland Rules do not provide for the time for filing a paper following a remand from a federal court or a State appellate court. The attorney suggested amending Rule 1-203 (e). The Rules Committee recommends amending Rule 2-321 (c) to address this gap in the Rules.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

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Rule 17-401. GENERAL PROVISIONS

~~(a) Definitions~~

~~The following definitions apply in this Chapter:~~

~~(1) Chief Judge~~

~~"Chief Judge" means the Chief Judge of the Court of Special Appeals.~~

~~(2) CSA ADR Division~~

~~"CSA ADR Division" means the Court of Special Appeals Office of ADR Programs, a unit within the Court of Special Appeals.~~

~~(3) Settlement Conference~~

~~"Settlement conference" means a conference at which the parties, their attorneys, or both appear before an impartial individual to discuss settlement, dismissal of the appeal, and methods of streamlining the appellate process, including limitation of issues, contents of and times for filing the record and record extract, consolidation of multiple appeals, consolidated briefs, prehearing motions, seeking certiorari in the Court of Appeals, and other procedures under Title 8 of these Rules.~~

(a) Applicability of Chapter

(1) Generally

This Chapter applies to appeals to the Court of Special Appeals in civil actions for which an information report is required by Rule 8-205.

(2) Scheduling Conference

Nothing in this Chapter precludes the Court from conducting scheduling conferences pursuant to Rule 8-206 in any appeal to the Court.

(b) ADR Programs

The Court of Special Appeals may create and implement a prehearing conference program and a mediation program in accordance with the Rules in this Chapter.

(c) ADR Division

(1) Creation

The Chief Judge of the Court of Special Appeals may create, as a unit of the Court, an ADR Division to be headed by a Director appointed by and serving at the pleasure of the Chief Judge.

(2) Duties

Subject to supervision by the Chief Judge, the ADR Division is responsible for administering the ADR programs of the Court of Special Appeals, as set forth in the Rules in this Chapter.

~~(b) Administration of ADR Programs~~

~~(1) CSA ADR Division~~

~~Subject to supervision by the Chief Judge, the CSA ADR Division is responsible for performing the duties assigned to it by the Rules in this Chapter and generally administering the ADR programs of the Court of Special Appeals. The Chief Judge shall appoint a Director of the Division, who shall serve at the pleasure of the Chief Judge.~~

~~(2)~~ (d) Delegation by Chief Judge

The Chief Judge may delegate to ~~another judge of the Court of Special Appeals~~ one or more judges of the Court any of the duties and authority assigned to the Chief Judge by the Rules in this Chapter.

~~(3)~~ (e) Judicial Function

Court-designated mediators, ~~settlement conference chairs~~ individuals conducting prehearing conferences, and all court employees involved in the ADR program when acting in their official capacity and within the scope of their authority shall be regarded as performing a judicial function.

Cross reference: See 93 Opinions of the Attorney General 68 (2008).

Source: This Rule is ~~new~~ derived in part from former Rule 17-401 (b)(1), (2), and (3) (2015 and is in part new.

Rule 17-402. ASSIGNMENT OF CASE TO ADR

~~(4)~~ (a) Screening of Information Reports

~~(A) Recommendation of CSA ADR Division~~

The ~~CSA~~ ADR Division shall screen all civil ~~appeal~~ information reports filed pursuant to Rule 8-205 and promptly make a recommendation to the Chief Judge as to whether the parties and their attorneys should be ordered to participate in a prehearing conference or a mediation ~~or settlement conference in accordance with Rule 8-206 and~~ pursuant to the Rules in this Chapter.

~~(B)~~ (b) ~~Screening Communications~~ Communication With Parties

~~In the screening, the CSA ADR Division~~ Personnel in the ADR Division may communicate orally and in writing with any party's attorney and any self-represented party ~~with respect to referral of the issues in the appeal to ADR. Such a communication is not a prohibited ex parte communication. Whether or not ADR is ordered, communications with the CSA ADR Division have the same status as mediation communications under Rule 17-105.~~ regarding whether a prehearing conference or mediation should be recommended to the Chief Judge. Such communications do not

constitute prohibited *ex parte* communications.

~~Cross reference: For the confidentiality of information reports and supplemental reports, see Rule 8-205 (f).~~

~~(5) Order by the Chief Judge~~

~~The Chief Judge shall consider the recommendation of the CSA ADR Division and, within 30 days after the filing of the appellant's information report, enter an order in accordance with Rule 8-206 (a).~~

(c) Determination by Chief Judge

(1) On Recommendation of ADR Division

The Chief Judge is not bound by a recommendation of the ADR Division. Promptly upon receipt of such a recommendation, the Chief Judge shall enter an order:

(A) that the appeal proceed in accordance with the Rules in Title 8 without referral to a prehearing conference or mediation;

(B) that a prehearing conference be conducted in accordance with Rule 17-403; or

(C) that a mediation be conducted in accordance with Rule 17-404.

(2) Authority of Chief Judge

At any time during the appellate process before oral argument, the Chief Judge may enter an order directing a prehearing conference or mediation, even if the Chief Judge initially had determined that the appeal should proceed without such a conference or mediation. If the parties concur, the Chief

Judge may order a prehearing conference or mediation after oral argument but before a dispositive opinion or order in the appeal is issued.

Source: This Rule is ~~new~~ derived in part from former Rules 8-206 (a) and 17-401 (b)(4) and (5) (2015) and is in part new.

Rule 17-403. PREHEARING CONFERENCE

(a) Purpose

The purpose of a prehearing conference is for the parties, their attorneys, or both to meet with an incumbent or retired judge of the Court designated by the Chief Judge to discuss:

(1) settlement of the case, in whole or in part;

(2) methods of implementing any settlement;

(3) clarifying or limiting the issues on appeal; and

(4) if settlement cannot then be agreed upon, whether (A) proceedings should be stayed for a specified period of time to allow further discussions among the parties or attorneys, or (B) it would be useful for the case to be referred to mediation pursuant to Rule 17-404 or for the parties to engage in an ADR process that is not under the auspices of the ADR division.

(b) Order of Chief Judge

An order of the Chief Judge referring the appeal to a prehearing conference shall direct the parties, their attorneys, or both to appear before a designated incumbent or retired judge of the Court at a time and place specified in the order or to be determined by the designated judge.

(c) Scheduling Conference

If the parties are unable to achieve any of the objectives set forth in section (a) of this Rule but agree that a scheduling conference pursuant to Rule 8-206 would be useful, the Chief Judge may authorize the judge who conducted the prehearing conference to conduct a scheduling conference or direct the parties, their attorneys, or both to appear before another judge of the Court designated by the Chief Judge for that purpose.

(d) Order on Completion of Prehearing Conference

(1) In General

Within 30 days after conclusion of a prehearing conference, the parties or the judge may present to the Chief Judge a proposed order to implement any agreements or determinations made at the conference. The Chief Judge shall review the proposed order and proceed in the manner set forth in Rule 17-404 (f)(2) and (3).

(2) Scheduling Conference

Any order implementing actions to be taken pursuant to a scheduling conference conducted pursuant to Rule 8-206 shall be entered in accordance with the procedures set forth in subsection (b)(3) of that Rule.

(3) Copies

The clerk shall send a copy of an order entered under this section to each party.

(e) Sanctions

Upon the failure of a party or attorney to comply with an order entered under section (b) of this Rule, the Court, after an opportunity for a hearing, may impose any appropriate sanction, including (1) dismissal of the appeal, (2) assessing against the party or attorney the reasonable expenses caused by the failure including reasonable attorney's fees, and (3) assessing against the party or attorney all or part of the appellate costs.

(f) Recusal

A judge who conducts a prehearing conference under this Rule may not sit as a member of a panel, including an in banc panel, assigned to hear the appeal if it proceeds, and shall not participate in any court conference regarding a judicial resolution of the appeal or whether an opinion in the appeal should be designated as reported.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

Rule ~~17-402~~ 17-404. ~~ADR PROCEEDINGS~~ MEDIATION

~~(a) Applicability~~

~~This Rule applies to an ADR proceeding ordered pursuant to Rule 8-206.~~

~~(b) Mediation~~

~~(1)~~ (a) Selection of Mediators

~~If~~ When mediation is ordered~~, the CSA ADR Division~~ pursuant to Rule 17-402 (c), the ADR Division, subject to the approval of the Chief Judge, shall select one or more mediators ~~approved~~ determined by the Chief Judge ~~as having~~ to have the qualifications ~~prescribed~~ required by Rule ~~17-403 (a)~~ 17-405 to conduct the mediation. In selecting a mediator, the ~~CSA~~ ADR Division is not required to choose at random or in any particular order from among the qualified individuals and 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 mediators.

(b) Order of Chief Judge

Upon the Chief Judge's approval of a selected mediator, the Chief Judge shall enter an order directing the parties, their

attorneys, or both to appear before the mediator at a time and place specified in the order or to be determined by the ADR Division.

(c) Length of Mediation

A mediation conducted under this Rule may not last more than four hours without the consent of the parties.

~~(2)~~ (d) ~~If~~ Full Settlement ~~is~~ Not ~~Reached~~ Achieved

If a full settlement of the issues in the appeal is not achieved, the mediator and the parties may discuss ~~the prospect of (A)~~ (1) extending the mediation session, ~~(B)~~ (2) further mediation sessions, ~~(C)~~ (3) engaging in other forms of ADR, or ~~(D)~~ (4) ~~a settlement conference to consider appropriate methods of streamlining the appellate process~~ holding a scheduling conference pursuant to Rule 8-206.

~~(3)~~ (e) ~~If~~ Full or Partial Settlement Achieved

If a full or partial settlement of the issues in the appeal is achieved and an order is necessary, the parties shall proceed in accordance with section ~~(d)~~ (f) of this Rule.

~~(c) Settlement Conference~~

~~(1) Chair~~

~~If a settlement conference is ordered, the Chief Judge shall select a judge having the qualifications prescribed by Rule 17-403 (b) to serve as the chair of the settlement conference.~~

~~(2) If Full Settlement is Not Achieved~~

~~If a full settlement of the issues in the appeal is not achieved, the settlement conference chair and the parties may discuss the prospect of (1) another settlement conference, (2) engaging in other forms of alternative dispute resolution, or (3) methods of streamlining the appellate process, including limitation of issues, contents of and times for filing the record and record extract, consolidation of multiple appeals, consolidated briefs, prehearing motions, seeking certiorari in the Court of Appeals, and other procedures under Title 8 of these Rules.~~

~~(3) If Full or Partial Settlement Achieved~~

~~If a full or partial settlement is achieved and an order is necessary, the parties shall proceed in accordance with section (d) of this Rule.~~

~~(d)~~ (f) ~~Consent~~ Order Implementing Settlement

(1) Proposed Order

Within 30 days after the conclusion of a Court-ordered ~~ADR proceeding~~ mediation at which a full or partial settlement ~~or any other agreement was reached~~ is achieved, if an order is necessary to implement ~~their agreement~~ the settlement, the parties shall ~~file one or more proposed orders~~ submit a proposed order for review by the Chief Judge. The proposed order may include dismissal of the appeal, proceeding with the appellate process, limiting issues, a remand pursuant to Rule 8-602 (e), or

any other appropriate directives necessary to implement the settlement.

~~Committee note: The provisions of a proposed order may include dismissal of the appeal, proceeding with the appellate process, limiting issues, a remand pursuant to Rule 8-602 (e), and implementing other agreements reached by the parties with respect to the appeal.~~

(2) ~~Action of~~ Review by Chief Judge

After review, the Chief Judge shall (A) sign the order as presented, (B) reject ~~it~~ the proposed order, or (C) return ~~it~~ the order to the parties with recommended changes, but the Chief Judge may not preclude ~~the~~ an appellant from dismissing the appellant's appeal as permitted by Rule 8-601 or preclude the parties from otherwise proceeding in a manner authorized ~~under~~ by the Rules in Title 8.

(3) ~~Action on~~ Recommended Changes

~~Subject to subsection (d)(2) of this Rule, if~~ If the Chief Judge returns an order with recommended changes and, within 15 days after return of the order, the parties do not accept ~~any~~ the recommended changes ~~within 15 days after an order is returned to them~~, the appeal shall proceed as if no agreement had been reached, unless the Chief Judge agrees to withdraw an unaccepted recommended change. If the parties accept the recommended changes, the Chief Judge shall sign the order ~~including~~ with those changes included.

(4) ~~Duties~~ Duty of Clerk

The clerk shall ~~serve~~ send a copy of ~~each~~ a signed order ~~on~~ to each party ~~pursuant to Rule 1-321 and transmit a copy~~ and to the ~~CSA~~ ADR Division.

~~(e)~~ (g) Sanctions

Upon the failure of a party or attorney to comply with an order ~~issued~~ entered under section (b) of this Rule, the Court, after an opportunity for a hearing, may impose any appropriate sanction, including (1) ~~dismiss part or all~~ dismissal of the appeal, (2) ~~assess~~ assessing against the ~~failing~~ party or attorney ~~any~~ the reasonable expenses caused by the failure, including reasonable attorney's fees ~~or expenses incurred by the other party and part or all of the appellate costs, and (3) impose any other appropriate sanction~~, and (3) assessing against the party or attorney all or part of the appellate costs.

~~(f)~~ (h) Recusal

A judge who ~~conducts or~~ participates in ~~an ADR proceeding~~ conducting a mediation under this Rule ~~shall~~ may not sit as a member of a panel, including an in banc panel, assigned to hear the appeal if it proceeds, and shall not participate in any court conference regarding ~~the~~ a judicial resolution of the appeal or whether an opinion in the appeal should be designated as reported.

Source: This Rule is ~~new~~ derived in part from former Rules 8-206 (a)(2) and 17-402 (b), (d), (e), and (f) (2015) and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

Rule ~~17-403~~ 17-405. QUALIFICATIONS OF COURT-DESIGNATED MEDIATORS ~~AND SETTLEMENT CONFERENCE CHAIRS~~

(a) ~~Qualifications of Mediators~~ Initial Approval

To be approved as a mediator by the Chief Judge, an individual shall:

(1) be (A) an incumbent judge of the Court of Special Appeals; (B) a retired judge of the Court of Appeals, the Court of Special Appeals, or a circuit court~~,~~ approved for recall for service under Code, Courts Article, §1-302; or (C) a staff attorney from the Court of Special Appeals designated by the ~~CSA ADR Division~~ Chief Judge;

(2) have ~~either~~ (A) completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104, or ~~have~~ (B) conducted at least two Maryland appellate mediations prior to ~~the adoption of this Rule~~ January 1, 2014 and

~~(3) have~~ completed advanced appellate mediation training approved by the ~~CSA~~ ADR Division;

~~(4)~~ (3) unless waived by the ~~CSA~~ ADR Division, have observed at least two Court of Special Appeals mediation sessions and have participated in a debriefing with a staff mediator from the ~~CSA~~

ADR Division after the mediations; and

~~(5)~~ (4) be familiar with the Rules in Titles 8 and 17 of the Maryland Rules;

(b) Continued Approval

To retain approval as a mediator by the Chief Judge, an individual shall:

~~(6)~~ (1) abide by ~~any~~ mediation standards adopted by the Court of Appeals, if any;

~~(7)~~ (2) comply with mediation procedures and requirements established by the Court of Special Appeals;

~~(8)~~ (3) submit to periodic monitoring by the ~~CSA~~ ADR Division of mediations conducted by the individual; and

~~(9)~~ (4) unless waived by the ~~CSA ADR Division~~ Chief Judge, 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~~,~~ or any other advanced mediation training approved by the ~~CSA~~ ADR Division.

~~(b) Qualifications of Settlement Conference Chair~~

~~To be designated by the Chief Judge to serve as the chair of a settlement conference, an individual shall be:~~

~~(1) a judge of the Court of Special Appeals; or~~

~~(2) a retired judge of the Court of Appeals or the Court of Special Appeals approved for recall for service under Code, Courts Article, §1-302.~~

Source: This Rule is ~~new~~ derived from former Rule 17-403 (a) (2015).

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

Rule ~~17-404~~ 17-406. NO FEE FOR COURT-ORDERED ADR

Subject to Rules 17-403 (e) and 17-404 (g), Court of Special Appeals litigants and their attorneys shall not be required to pay a fee or additional court costs for participating in a prehearing conference or mediation ~~or settlement conference~~ ordered by the Court.

Source: This Rule is ~~new~~ derived from former Rule 17-404 (2015).

Rule 8-206. ADR; ~~AND~~ SCHEDULING CONFERENCE~~S~~; ORDER TO PROCEED

~~(a) Initial Determination by Court~~

~~Within 30 days after the filing of appellant's information report, the Chief Judge of the Court of Special Appeals or a judge of the Court designated by the Chief Judge shall consider any recommendation of the CSA ADR Division made pursuant to Rule 17-401 (b)(4) and enter an order:~~

~~(1) that the appeal proceed without ADR under Title 17, Chapter 400 of these Rules or a scheduling conference;~~

~~(2) that the parties, their attorneys, or both the parties and their attorneys appear at a designated time and place for one mediation session or one settlement conference session in accordance with the applicable provisions of Rule 17-402;~~

~~(3) that the parties, their attorneys, or both the parties and their attorneys appear before the Chief Judge or a judge of the Court designated by the Chief Judge at a designated time and place for a scheduling conference in accordance with section (b) of this Rule; or~~

~~(4) upon the written request of the parties, that proceedings~~

~~be stayed for a period of time stated in the order so that the parties, their attorneys, or both the parties and their attorneys may participate in a form of ADR other than a court-ordered mediation session or settlement conference.~~

~~Cross reference: For the definition of "ADR," see Rule 17-102 (a) and for the definition of "CSA ADR Division," see Rule 17-401 (a)(2).~~

~~(b) Scheduling Conference~~

~~(1) Purpose and Order to Attend~~

~~On its own initiative pursuant to subsection (a)(3) of this Rule or on written request of a party, the court may enter an order setting a scheduling conference. The purpose of a scheduling conference is to discuss the contents of the record and record extract, the time or times for filing the record and briefs, and other administrative matters that do not relate to the merits of the case.~~

~~(2) Order upon Completion of Scheduling Conference~~

~~On completion of a scheduling conference, the judge shall enter an order reciting the actions taken and any agreements reached by the parties. The judge may order additional conferences and may enter an order of remand pursuant to Rule 8-602 (e). The Clerk shall serve a copy of the order on each party pursuant to Rule 1-321.~~

(a) ADR

Upon the filing of an appellant's information report

pursuant to Rule 8-205, the Court of Special Appeals may enter an order referring the parties, their attorneys, or both to a prehearing conference or mediation pursuant to the Rules in Title 17, Chapter 400.

(b) Scheduling Conference

(1) Order to Attend

Upon the filing of any appeal to the Court of Special Appeals, the Chief Judge or a judge designated by the Chief Judge, on motion of a party or on the judge's own initiative, may enter an order directing the parties, their attorneys, or both, to appear before an incumbent or retired judge of the Court at a time and place specified in the order or to be determined by the designated judge.

(2) Purposes

The primary purposes of a scheduling conference are to identify and attempt to resolve any special procedural issues and to examine ways to expedite the appeal, if practicable. The participants may discuss:

(A) any claim that the appeal is not timely, that there is no final or otherwise appealable judgment, that the appeal is moot, or that an issue sought to be raised in the appeal is not preserved for appellate review and, in the absence of an agreement to dismiss the appeal or limit the issues, whether it is feasible for any such issue to be presented to the Court in an

appropriate preliminary motion;

(B) whether there are any problems with or any dispute over the record and how any such problem or dispute may be resolved;

(C) if there will be no substantial disagreement as to the relevant facts, whether it is feasible to proceed on an agreed statement of the case in lieu of a record and record extract, pursuant to Rule 8-413 (b);

(D) if there are multiple parties raising similar issues, whether one or more consolidated briefs may be feasible and whether any adjustments to the timing and length of such briefs may be useful;

(E) if the appeal will hinge on one or two issues of Statewide importance, whether a petition to the Court of Appeals for *certiorari* may be useful;

(F) whether, because of existing or anticipated circumstances, further proceedings in the Court of Special Appeals should be expedited or delayed; and

(G) any other administrative matter or issue that may make the appellate process more efficient or expeditious.

(3) Implementing Order

Within 30 days after conclusion of a scheduling conference, the parties or the judge may present to the Chief Judge a proposed order to implement any agreements or determinations made at the conference. The Chief Judge shall

review a proposed order and proceed in the manner set forth in Rule 17-404 (f)(2) and (3).

~~(c)~~ (4) Sanctions

Upon the failure of a party or attorney to comply with ~~Rule 8-205, this Rule, or~~ an order entered under subsection (b)(1) of this Rule, the Court ~~of Special Appeals may: (1)~~, after an opportunity for a hearing, may impose any appropriate sanction, including (A) ~~dismiss part of all~~ dismissal of the appeal, ~~(2) assess~~ (B) assessing against the party or attorney the reasonable expenses caused by the failure, including reasonable attorney's fees, ~~(3) assess~~ and (C) assessing against the party or attorney all or part of the appellate costs~~, or (4) impose any other appropriate sanction~~.

(c) Order to Proceed

The Court shall enter an order to proceed with the appeal in conformance with the Rules in this Title if (1) the Court does not enter an order under section (a) or (b) of this Rule, or (2) at the conclusion of ADR ordered pursuant to section (a) or a scheduling conference ordered pursuant to section (b), it appears that the appeal will not be dismissed.

Source: This Rule is ~~in part derived from former Rule 1024 and in part~~ new.