STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Sixty-Second Report to the Court of Appeals, transmitting thereby proposed new Title 4, Chapter 700 (Post Conviction DNA Testing), Rules 2-507.1 and 16-778, and Appendix: Form Interrogatories, Forms 11 and 12; and proposed amendments to Rules 1-332, 1-402, 2-504.3, 2-508, 2-516, 4-214, 4-216, 4-217, 4-252 (c) and (h)(1), 4-327, 4-314, 4-322, 4-331, 4-342, 4-343 (Alternatives 1 and 2), 4-346, 4-347, 4-351, 4-406, 4-642, 7-108, 7-114, 8-111, 8-205, 8-207, 8-302, 8-306, 8-411, 8-412, 8-413, 8-501, 8-502, 8-503, 8-504, 8-602, 9-210, 15-207, 15-303, 15-303 (b), 15-309, 15-1202, 16-101, 16-404, 16-406, 16-608, 16-751, 16-760, 16-819, 16-903, 16-1006 (d)(3) and (d)(4); Appendix: Form Interrogatories, Forms 2, 7, 8; and Rule 19 of the Rules Governing Admission to the Bar of Maryland.

The Committee’s One Hundred Sixty-Second Report and the proposed new rules, forms, and amendments are set forth below.

Interested persons are asked to consider the Committee's Report and proposed rules changes and forward on or before August 17, 2009 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

July 1, 2009

The Honorable Robert M. Bell,
Chief Judge
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.
The Honorable Joseph F. Murphy, Jr.
The Honorable Sally D. Adkins
The Honorable Mary Ellen Barbera,
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 Sixty-Second Report, and recommends that the Court adopt the new Rules and amendments to existing Rules transmitted with this Report. This Report is a comprehensive one, comprising fifteen categories of proposed changes.

Category One consists of two alternative proposals to implement Chapter 186 of the 2009 Md. Laws. That Act, which was initially intended to repeal the death penalty in Maryland, instead retained that penalty but added new conditions to its imposition, namely (1) that the State has presented to the court or jury "(i) biological evidence or DNA evidence that links the defendant to the act of murder; (ii) a video taped, voluntary interrogation and confession of the defendant to the murder, or (iii) a video recording that conclusively links the defendant to the murder," and (2) that the State has not relied "solely on evidence provided by eye witnesses." That will likely require four additional findings by the sentencing authority.

As the Court is aware, the sentencing authority in a death penalty case must make several other specific findings in order to impose the death sentence. It must find that the defendant was either a principal in the first degree to the murder or a principal in the second degree under the circumstances set forth in Code, Criminal Law Article, §2-202 (a)(2)(ii). To the extent the issues are presented, it must find that the defendant was 18 years old or older when the murder was committed and that the defendant was not mentally retarded at that time, and it must find that at least one of the statutory aggravating factors listed in the State's notice of intent to seek the death sentence exists and outweighs any mitigating factors that may be found.

The Court can implement Chapter 186 by simply adding the new statutory conditions to the verdict form set forth in Rule 4-343. Alternative No. 1 accomplishes that result by amending Rule 4-343 to add the four new issues, as preliminary ones for the sentencing authority to resolve.

In considering that approach, several members of the Rules Committee, and a number of consultants advising the Committee, expressed concern that the task facing the sentencing authority, particularly a jury, was already complex enough, and that adding four more questions to the existing verdict form, especially in light of some ambiguities inherent in each of them, might make its task significantly more difficult. The Committee has therefore drafted and presents to the Court for its consideration, as Alternative No. 2, a different approach, intended to make the sentencing process more focused and more efficient. It would rewrite, rather than amend, Rule 4-343 to bifurcate the sentencing proceeding.

Phase One would require the sentencing authority to consider only six fact-based preconditions to imposition of the death penalty – principalship, age, and the four new factors. The evidence, instructions, and argument would be limited to those issues and would not get into retardation, aggravating or mitigating factors, or any weighing process. If the State does not prevail on those Phase One issues, there would be no need for the sentencing authority to do anything more but enter a sentence of life imprisonment and determine whether it should be without parole. If the State does prevail on the Phase One issues, or such of them as would qualify the defendant for the death penalty, the findings would be entered in the record as special verdicts and the sentencing authority would proceed to Phase Two. In that proceeding, it would resolve any issue of whether the defendant was mentally retarded, determine the existence of and weigh the aggravating and mitigating factors, and, through that process, decide whether the sentence should be death, life imprisonment without parole, or life imprisonment with the possibility of parole. The Rules Committee has placed the issue

of retardation in Phase Two, in part because the defendant has the burden of proof on that issue, but more because much of the evidence and argument regarding the issue could relate as well to mitigating factors and would likely be presented in Phase Two in any event.

The Rules Committee presents these two alternatives without recommendation as between them, as a policy issue for the Court to resolve.

Category Two consists of proposed new Rules 4-701 through 4-711, intended to provide a procedure for the post-conviction DNA testing of scientific identification evidence possessed by the State, as authorized by Code, Criminal Procedure Article, §8-201.

Category Three consists of the addition of a new section (c) to Rule 4-214, to define when joint representation exists in a criminal case and to specify certain duties on the part of the court when presented with that situation. The proposed Rule generally tracks Fed. R. Crim. P. 44 but focuses on whether there is an "impermissible" conflict and requires the court to advise the defendants of their right to separate counsel and advise counsel to consider potential areas of conflict rather than to make specific inquiries of the defendants or counsel.

Category Four proposes the addition of a new section (e) to Rule 4-327, to require that an objection to inconsistent verdicts in a criminal case be made before the jury is discharged, in order to allow the trial court an opportunity to remedy the error. This follows a recommendation made in a Concurring Opinion in *Price v. State*, 407 Md. 10, 40-42 (2008).

Category Five proposes an amendment to Rule 4-217 (d) to require the clerks of the Circuit and District Courts to inform the Insurance Commissioner of the names of surety insurers who fail to resolve bond forfeitures, as required by a 2008 amendment to Code, Insurance Article, §21-103, and to Rule 4-252 (h)(1), to resolve a possible conflict between that Rule and Code, Courts Article, §12-302.

Category Six proposes new cross references in Rules 4-216, 4-252 (c), 4-314, 4-331, 4-346, 4-347, 4-351, 4-406, 8-413, 15-303, and 15-309 to statutes relating to victims' rights.

Category Seven includes proposed amendments to Rules 4-322, 2-504.3, 2-516, 16-404, 8-411, 16-406, 4-342, 4-642, 7-108, 7-114, 8-306, 8-412, 8-602, and 16-101, all dealing with court reporters. Most of the changes merely substitute the term "court reporter" for "stenographer." The amendments to Rules 4-322,

2-516, and 16-404 are of greater significance. The first two, which are identical, require a party who offers or uses an audio, audiovisual, or visual recording at a hearing or trial to ensure that (1) the recording is marked for identification and made part of the record and that a copy is given to the court, and (2) if only a part of the recording is offered or used, a description identifying the part offered or used is made part of the record. Comparable requirements are proposed when the party offers or uses a transcript of a recording. The proposed amendment to Rule 16-404 is to make clear that the court reporter need not record an audio or audiovisual recording offered or used at a hearing or trial.

Categories Eight, Nine, and Ten deal with attorneys.

Category Eight consists of proposed new Rule 16-778 and amendments to Rule 16-751, which implement a 2007 amendment to Code, Family Law Article §10-119.3. That statute includes the Court of Appeals as a licensing authority that may sanction a lawyer who is in arrears of child support. The proposed Rule provides a procedure for sending a referral by the Child Support Enforcement Administration to Bar Counsel, sets forth the duties of Bar Counsel, the possible action by the Court, the presumptive effect of a referral, and the termination of any suspension imposed by the Court.

Category Nine proposes amendments to Rule 16-608 to provide for the decertification of lawyers who fail to file an annual report providing information on IOLTA accounts, similar to the provision for decertifying lawyers who fail to file pro bono reports. The Court requested the Rules Committee to consider and draft such a proposal. Conforming amendments are proposed to Rules 16-903 and 16-1006 (d)(4).

Category Ten proposes several sets of amendments to Bar Admission Rule 19, all dealing with the confidentiality and permissible disclosures of information collected by the Board of Law Examiners. Proposed amendments to sections (a) and (b) provide for the confidentiality of information collected by the Accommodation Review Committee and its panels. Amendments to subsection (c)(4) would permit disclosures to Bar Admission and lawyer and judicial disciplinary agencies in other States. Amendments to subsection (c)(7) revise the kind of information that may be sent to the National Conference of Bar Examiners. Amendments to subsections (c)(8) and (c)(9) would permit disclosures of certain information to members of character committees and to the Child Support Enforcement Administration. Finally, amendments to section (d) would clarify the extent of confidentiality when an application reaches the Court of Appeals. A conforming amendment is also proposed to Rule 16-1006 (d)(3).

Category Eleven consists of proposed new Rule 2-507.1 and a proposed cross reference in Rule 2-508. Rule 2-507.1 would require the court to stay an action upon a joint motion by all parties. The cross reference in Rule 2-508 is to the Chief Judge's Administrative Order for Continuances for Conflicting Case Assignments or Legislative Duties.

Category Twelve consists of amendments to Rule 1-402, to call attention that a court may accept as security for a supersedeas bond assets other than the commitment of a surety.

Category Thirteen consists of largely housekeeping amendments to Rules 8-111, 8-205, 8-207, 8-302, 8-501, 8-502, 8-503, and 8-504.

Category Fourteen consists of additions to Form Interrogatories 2, 7, and 8, and new Form Interrogatories 11 and 12. New Forms 11 and 12 contain form interrogatories for use in medical malpractice cases.

Category Fifteen consists of miscellaneous amendments to Rules 9-210, 15-207, 15-303, 15-1202, 16-760, 16-819, and 1-332.

For the further guidance of the Court and the public, following each proposed amendment to each Rule is a Reporter's Note describing in further detail the reasons for the proposal and any changes that would be effected in current law or practice. 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

Linda M. Schuett
Vice Chair

AMW/LMS:cdc

ALTERNATIVE #1
[Amend current Rule 4-343, without bifurcation of sentencing proceeding]

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-343 by adding to the form set forth in section (h) a new "Preliminary" section containing five issues for determination, by adding a new paragraph to Section VI of the form referring to the new "Preliminary" section, by deleting the last sentence of section (i), and by making stylistic changes, as follows:

Rule 4-343. SENTENCING - PROCEDURE IN CAPITAL CASES

. . .

(h) Form of Written Findings and Determinations

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

(CAPTION)

FINDINGS AND SENTENCING DETERMINATION

VICTIM: [Name of murder victim]

Preliminary

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

Statement 1. The State has produced biological evidence or DNA evidence that links the defendant to the act of murder.

_____ proved _____ not proved

Statement 2. The State has produced a videotaped, voluntary interrogation and confession of the defendant to the murder.

_____ proved _____ not proved

Statement 3. The State has produced a video recording that conclusively links the defendant to the murder.

_____ proved _____ not proved

(If one or more of the above statements are marked "proved," proceed to statements 4 and 5. If statements 1, 2, and 3 are all marked "not proved," proceed to Section VI and enter "Imprisonment for Life.")

Statement 4. At the time of the murder, the defendant was 18 years of age or older.

_____ proved _____ not proved

Statement 5. The State has not relied solely on evidence provided by eyewitnesses.

_____ proved _____ not

proved

(If statements 4 and 5 are BOTH marked “proved,” proceed to Section I. If one or both statements are marked “not proved,” proceed to Section VI and enter “Imprisonment for Life.”)

Section I

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

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

_____ proved _____ not proved

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

_____ proved _____ not proved

3. The victim was a law enforcement officer who, while in the performance of the officer's duties, was murdered by one or more persons, and the defendant was a principal in the second degree who: (A) willfully, deliberately, and with premeditation intended the death of the law enforcement officer; (B) was a major participant in the murder; and (C) was actually present at the time and place of the murder.

_____ proved _____ not proved

(If one or more of the above statements are marked "proved," proceed to Section II. If all are marked "not proved," proceed

to Section VI and enter "Imprisonment for Life.")

Section II

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

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

_____ proved _____ not proved

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

Section III

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

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

_____ proved _____ not proved

2. The defendant committed the murder ~~at a time when~~ while

confined in a correctional facility.

_____ proved _____ not proved

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

_____ proved _____ not proved

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

_____ proved _____ not proved

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

_____ proved _____ not proved

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

_____ proved _____ not proved

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

_____ _____

proved not proved

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

_____ _____
proved not proved

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

_____ _____
proved not proved

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

_____ _____
proved not proved

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

Section IV

From our consideration of the facts and circumstances of this case, we make the following determinations as to mitigating circumstances:

1. The defendant has not previously (i) been found guilty of a crime of violence; (ii) entered a plea of guilty or nolo

contendere to a charge of a crime of violence; or (iii) been granted probation before judgment for a crime of violence.

(As used in the preceding paragraph, "crime of violence" means abduction, arson in the first degree, carjacking, armed carjacking, escape in the first degree, kidnapping, mayhem, murder, robbery under Code, Criminal Law Article, §3-402 or §3-403, rape in the first or second degree, sexual offense in the first or second degree, manslaughter other than involuntary manslaughter, an attempt to commit any of these offenses, or the use of a handgun in the commission of a felony or another crime of violence.)

(Mark only one.)

[ ] (a) We unanimously find that it is more likely than not that the above circumstance exists.

[ ] (b) We unanimously find that it is more likely than not that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find that it is more likely than not that the above circumstance exists.

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

(Mark only one.)

[ ] (a) We unanimously find that it is more likely than not that the above circumstance exists.

[ ] (b) We unanimously find that it is more likely than not that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find that it is more likely than not that the above circumstance exists.

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

(Mark only one.)

[ ] (a) We unanimously find that it is more likely than not that the above circumstance exists.

[ ] (b) We unanimously find that it is more likely than not that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find that it is more likely than not that the above circumstance exists.

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

(Mark only one.)

[ ] (a) We unanimously find that it is more likely than not that the above circumstance exists.

[ ] (b) We unanimously find that it is more likely than not that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find that it is more likely than not that the above circumstance exists.

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

(Mark only one.)

[ ] (a) We unanimously find that it is more likely than not that the above circumstance exists.

[ ] (b) We unanimously find that it is more likely than not that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find that it is more likely than not that the above circumstance exists.

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

(Mark only one.)

[ ] (a) We unanimously find that it is more likely than not that the above circumstance exists.

[ ] (b) We unanimously find that it is more likely than not that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find that it is more likely than not that the above circumstance exists.

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

(Mark only one.)

[ ] (a) We unanimously find that it is more likely than not

that the above circumstance exists.

[ ] (b) We unanimously find that it is more likely than not that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find that it is more likely than not that the above circumstance exists.

8. (a) We unanimously find that it is more likely than not that the following additional mitigating circumstances exist:

_____

_____

_____

_____

(Use reverse side if necessary)

(b) One or more of us, but fewer than all 12, find that it is more likely than not that the following additional mitigating circumstances exist:

_____

_____

_____

_____

(Use reverse side if necessary)

(If the jury unanimously determines in Section IV that no mitigating circumstances exist, do not complete Section V. Proceed to Section VI and enter "Death." If the jury or any juror determines that one or more mitigating circumstances exist, complete Section V.)

Section V

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

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

_____ yes _____ no

Section VI

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

a. If statements 1, 2, and 3 in the “Preliminary” Section are all marked “not proved,” enter “Imprisonment for Life.”

b. If statement 4 in the “Preliminary” Section is marked “not proved,” enter “Imprisonment for Life.”

c. If statement 5 in the “Preliminary” Section is marked “not proved,” enter “Imprisonment for Life.”

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

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

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

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

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

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

We unanimously determine the sentence to be _____.

Section VII

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

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

	yes	no
Foreperson		
Juror 2		
Juror 3		
Juror 4		
Juror 5		
Juror 7		
Juror 8		
Juror 9		
Juror 10		
Juror 11		

_____ _____
Juror 6 Juror 12

or, _____
JUDGE

(i) Deletions from Form

Section II of the form set forth in section (h) of this Rule shall not be submitted to the jury unless the issue of mental retardation is generated by the evidence. Unless the defendant requests otherwise, Section III of the form shall not include any aggravating circumstance that the State has not specified in the notice required under Code, Criminal Law Article, §2-202 (a) of its intention to seek a sentence of death. ~~Section VII of the form shall not be submitted to the jury unless the State has given the notice required under Code, Criminal Law Article, §2-203 of its intention to seek a sentence of imprisonment for life without the possibility of parole.~~

Committee note: Omission of some aggravating circumstances from the form is not intended to preclude argument by the defendant concerning the absence of those circumstances.

. . .

REPORTER'S NOTE

Amendments to Rule 4-343 are proposed to conform the Rule to Chapter 186, Acts of 2009 (SB 279), which precludes a sentence of death unless the State did not rely solely on evidence provided by eyewitnesses and there is (1) biological evidence or DNA evidence that links the defendant to the act of murder, (2) a videotaped, voluntary interrogation and confession of the defendant to the murder, or (3) a video recording that conclusively links the defendant to the murder.

Because the issues are threshold ones, a new section is added to the beginning of the Findings and Sentencing

Determination form in section (h), requiring determination as to whether any of the conditions for eligibility for the death penalty have been proved. Imposition of the death penalty also is prohibited if the defendant was under 18 years of age at the time of the murder. A determination as to that issue also is added to the new section. References to this new "Preliminary" section are added to Section VI.

The statute provides that if the State failed to present the requisite evidence and had filed a notice under Code, Criminal Law Article, §2-202 that it intended to seek the death penalty, that notice is considered to have been withdrawn, and it is deemed that the State filed the proper notice under Code, Criminal Law Article, §2-203 to seek a sentence of life imprisonment without the possibility of parole. Therefore, the last sentence of section (i), which requires the State to give §2-203 notice before Section VII can be submitted to the jury, is deleted.

The changes to Sections I and III of the form set forth in section (h) are stylistic, only.

ALTERNATIVE #2

[Rule 4-343 - Bifurcated Sentencing Proceeding]

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

DELETE current Rule 4-343 and ADD new Rule 4-343, as follows:

Rule 4-343. SENTENCING - BIFURCATED PROCEDURE IN CAPITAL CASES

(a) Applicability

This Rule applies when:

(1) a sentence of death is sought under Code, Criminal Law Article, §2-303; and

(2) the defendant has been found guilty of murder in the first degree, the State has given the notice required under Code, Criminal Law Article, §2-202 (a), and the defendant may be subject to a sentence of death.

(b) Statutory Sentencing Procedure; Bifurcation of Proceeding

A sentencing proceeding, separate from the proceeding at which the defendant's guilt was adjudicated, shall be conducted as soon as practicable after the trial pursuant to the provisions of Code, Criminal Law Article, §2-303 and this Rule. Upon recording the verdicts returned by the jury or judge, the court shall bifurcate the sentencing proceeding into two phases. A Phase I Findings form required by section (h) of this Rule and, if necessary, a separate Phase II Findings and Sentencing

Determination form required by section (i) of this Rule shall be completed with respect to each death for which the defendant is subject to a sentence of death.

(c) Presentence Disclosures by the State's Attorney

If not previously disclosed pursuant to Rule 4-263, the State's Attorney shall disclose to the defendant or counsel, sufficiently in advance of Phase I of the sentencing proceeding to afford the defendant a reasonable opportunity to investigate, any information that the State expects to present to the court or jury for consideration in sentencing. Upon request by the defendant, the court may postpone the sentencing proceeding if the court finds that the defendant reasonably needs additional time to investigate the State's disclosure.

(d) Reports of Defendant's Experts

Upon request by the State after the defendant has been found guilty of murder in the first degree, the defendant shall produce and permit the State to inspect and copy all written reports made in connection with the action by each expert the defendant expects to call as a witness at the sentencing proceeding, including the results of any physical or mental examination, scientific test, experiment, or comparison, and shall furnish to the State the substance of any such oral report or conclusion. The defendant shall provide this information to the State sufficiently in advance of Phase I of the sentencing proceeding to afford the State a reasonable opportunity to investigate the information. Upon request by the State, the

court may postpone the sentencing proceeding if the court finds that the State reasonably needs additional time to investigate the defendant’s disclosure.

(e) Judge

Except as provided in Rule 4-361, the judge who presided at trial shall preside at both phases of the sentencing proceeding.

(f) Notice and Right of Victim's Representative to Address the Court or Jury

(1) Notice and Determination

Notice to a victim's representative of proceedings under this Rule is governed by Code, Criminal Procedure Article, §11-104 (e). The court shall assure that the requirements of that section have been satisfied.

(2) Right to Address the Court or Jury

The right of a victim's representative to address the court or jury during a sentencing proceeding under this Rule is governed by Code, Criminal Procedure Article, §§11-403 and 11-404. That right may be exercised only during Phase II of the sentencing proceeding.

Committee note: Code, Criminal Procedure Article, §11-404 permits the court (1) to hold a hearing outside the presence of the jury to determine whether a victim's representative may present an oral statement to the jury and (2) to limit any unduly prejudicial portion of the proposed statement. See *Payne v. Tennessee*, 501 U.S. 808 (1991), generally permitting the family members of a victim to provide information concerning the individuality of the victim and the impact of the crime on the victim's survivors to the extent that the presentation does not offend the Due Process Clause of the Fourteenth Amendment, but

leaving undisturbed a prohibition against information concerning the family member's characterization of and opinions about the crime, the defendant, and the appropriate sentence.

Cross reference: See Code, Criminal Procedure Article, §§11-103 (b), 11-403 (e), and 11-404 (c) concerning the right of a victim's representative to file an application for leave to appeal under certain circumstances.

(g) Allocution

Before sentence is determined, the court shall afford the defendant the opportunity, personally and through counsel, to make a statement, and shall afford the State the opportunity to respond. If the defendant elects to allocute during the sentencing proceeding, the statements and response shall be made during Phase II of that proceeding.

Committee note: A defendant who elects to allocute may do so before or after the State's rebuttal closing argument. If allocution occurs after the State's rebuttal closing argument, the State may respond to the allocution.

(h) Phase I of Sentencing Proceeding

(1) Issues, Evidence, Instruction, and Argument

In Phase I of the Sentencing proceeding, only the issues contained on the “Phase I Findings” form set forth in subsection (h)(2) of this Rule shall be presented to the sentencing jury or judge for determination by special verdict. The Court shall limit additional evidence, instructions, and argument in the Phase I proceeding to the issues presented.

(2) Findings

The findings of the jury or judge in the Phase I proceeding shall be made in the following form, except that the

requirement of unanimity applies only if the issues are submitted to a jury:

(CAPTION)

PHASE I FINDINGS

VICTIM: [Name of murder victim]

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

1. At the time of the murder, the defendant was 18 years of age or older.

_____ proved _____ not proved

2. The State has produced biological evidence or DNA evidence that links the defendant to the act of murder.

_____ proved _____ not proved

3. The State has produced a videotaped, voluntary interrogation and confession of the defendant to the murder.

_____ proved _____ not proved

4. The State has produced a video recording that conclusively links the defendant to the murder.

_____ proved _____ not proved

5. The State has not relied solely on evidence provided by eyewitnesses.

_____ proved _____ not proved

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

_____ proved _____ not proved

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

_____ proved _____ not proved

8. The victim was a law enforcement officer who, while in the performance of the officer's duties, was murdered by one or more persons, and the defendant was a principal in the second degree who: (A) willfully, deliberately, and with premeditation intended the death of the law enforcement officer; (B) was a major participant in the murder; and (C) was actually present at the time and place of the murder.

_____ proved _____ not proved

_____	_____
Foreperson	Juror 7
_____	_____
Juror 2	Juror 8
_____	_____
Juror 3	Juror 9
_____	_____
Juror 4	Juror 10
_____	_____
Juror 5	Juror 11
_____	_____
Juror 6	Juror 12

or, _____
JUDGE

(4) Entry of Findings

If the Phase I findings were made by a jury, the written findings shall be returned to the court and entered as special verdicts. If the findings were made by a judge, they shall be entered in the record.

(i) Phase II of Sentencing Proceeding

(1) Findings and Sentencing Determinations

(A) In Phase II, subject to the deletions permitted or required by section (j) of this Rule, the sentencing jury or judge shall complete the Phase II Findings and Sentencing Determination form set forth in this section if on the Phase I Findings form:

(i) the statement numbered 1, if submitted to the sentencing authority, was marked “proved;”

(ii) at least one of the statements numbered 2, 3, or 4 was marked “proved;”

(iii) the statement numbered 5 was marked “proved;” and

(iv) at least one of the statements numbered 6, 7, or 8 was marked “proved.”

(B) In all other cases, if the judge is the sentencing authority, the judge shall enter a sentence of “Imprisonment for Life” and determine whether the imprisonment shall be without the possibility of parole. If the jury is the sentencing authority, the judge shall instruct the jury to enter a sentence of “Imprisonment for Life,” and to complete only Section V of the Findings and Sentencing Determination form.

(2) Form of Written Phase II Findings and Determinations

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

(CAPTION)

PHASE II

FINDINGS AND SENTENCING DETERMINATION

VICTIM: [Name of murder victim]

Section I

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

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

_____ proved _____ not proved

(If the above statement is marked “proved,” proceed to Section V and enter “Imprisonment for Life.” If it is marked “not proved,” complete Section II.)

Section II
(Aggravating Circumstances)

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

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

_____ proved _____ not proved

2. The defendant committed the murder while confined in a correctional facility.

_____ proved _____ not proved

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

correctional facility or by a law enforcement officer.

_____ proved _____ not proved

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

_____ proved _____ not proved

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

_____ proved _____ not proved

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

_____ proved _____ not proved

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

_____ proved _____ not proved

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

_____ proved _____ not proved

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

_____ proved _____ not proved

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

_____ proved _____ not proved

(If one or more of the above are marked "proved," complete Section III.)

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

Section III
(Mitigating Circumstances)

From our consideration of the facts and circumstances of this case, we make the following determinations as to mitigating circumstances:

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

(As used in the preceding paragraph, "crime of violence" means abduction, arson in the first degree, carjacking, armed carjacking, escape in the first degree, kidnapping, mayhem, murder, robbery under Code, Criminal Law Article, §3-402 or §3-403, rape in the first or second degree, sexual offense in the first or second degree, manslaughter other than involuntary manslaughter, an attempt to commit any of these offenses, or the use of a handgun in the commission of a felony or another crime of violence.)

(Mark only one.)

[ ] (a) We unanimously find that it is more likely than not that the above circumstance exists.

[ ] (b) We unanimously find that it is more likely than not that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find that it is more likely than not that the above circumstance exists.

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

(Mark only one.)

[ ] (a) We unanimously find that it is more likely than not that the above circumstance exists.

[ ] (b) We unanimously find that it is more likely than not that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find that it is more likely than not that the above circumstance exists.

3. The defendant acted under substantial duress, domination, or provocation of another person, even though not so substantial

as to constitute a complete defense to the prosecution.

(Mark only one.)

[ ] (a) We unanimously find that it is more likely than not that the above circumstance exists.

[ ] (b) We unanimously find that it is more likely than not that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find that it is more likely than not that the above circumstance exists.

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

(Mark only one.)

[ ] (a) We unanimously find that it is more likely than not that the above circumstance exists.

[ ] (b) We unanimously find that it is more likely than not that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find that it is more likely than not that the above circumstance exists.

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

(Mark only one.)

[ ] (a) We unanimously find that it is more likely than not that the above circumstance exists.

[ ] (b) We unanimously find that it is more likely than not that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find that it is more likely than not that the above circumstance exists.

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

(Mark only one.)

[ ] (a) We unanimously find that it is more likely than not that the above circumstance exists.

[ ] (b) We unanimously find that it is more likely than not that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find that it is more likely than not that the above circumstance exists.

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

(Mark only one.)

[ ] (a) We unanimously find that it is more likely than not that the above circumstance exists.

[ ] (b) We unanimously find that it is more likely than not

that the above circumstance does not exist.

[ ] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find that it is more likely than not that the above circumstance exists.

8. (a) We unanimously find that it is more likely than not that the following additional mitigating circumstances exist:

_____

_____

_____

_____

(Use reverse side if necessary)

(b) One or more of us, but fewer than all 12, find that it is more likely than not that the following additional mitigating circumstances exist:

_____

_____

_____

_____

(Use reverse side if necessary)

(If the jury unanimously determines in Section III that no mitigating circumstances exist, do not complete Section IV. Proceed to Section V and enter "Death." If the jury or any juror determines that one or more mitigating circumstances exist, complete Section IV.)

Section IV
(Weighing of Aggravating and Mitigating Circumstances)

Each individual juror has weighed the aggravating circumstances found unanimously to exist against any mitigating

circumstances found unanimously to exist, as well as against any mitigating circumstance found by that individual juror to exist.

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

_____ yes _____ no

Section V
(Determination of Sentence of Death or Imprisonment for Life)

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

1. If, based upon the special verdicts entered in Phase I, the court finds or instructs the jury to enter “Imprisonment for Life,” enter “Imprisonment for Life.”

2. If the answer in Section I is marked “proved,” enter “Imprisonment for Life.”

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

4. If Section III was completed and the judge, if sitting as the sentencing body, or the jury unanimously determined that no mitigating circumstance exists, enter "Death."

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

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

"Death."

We unanimously determine the sentence to be _____.

Section VI
(Parole Eligibility)

If "Imprisonment for Life" is entered in Section V or if the judge has instructed you that the defendant's sentence is determined to be "Imprisonment for Life," answer the following question:

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

_____ yes _____ no

_____	_____
Foreperson	Juror 7
_____	_____
Juror 2	Juror 8
_____	_____
Juror 3	Juror 9
_____	_____
Juror 4	Juror 10
_____	_____
Juror 5	Juror 11

_____ _____

Juror 6 Juror 12

or, _____

JUDGE

(j) Deletions from Phase II Form

Section I of the Phase II form set forth in section (i) of this Rule should not be submitted to the jury unless the issue of mental retardation is generated by the evidence. Unless the defendant requests otherwise, Section III of the Phase II form shall not include any aggravating circumstance that the State has not specified in the notice required under Code, Criminal Law Article, §2-202 (a) of its intention to seek a sentence of death.

Committee note: Omission of some aggravating circumstances from the form is not intended to preclude argument by the defendant concerning the absence of those circumstances.

(k) Advice of the Judge

At the time of imposing a sentence of death, the judge shall advise the defendant that the determination of guilt and the sentence will be reviewed automatically by the Court of Appeals, and that the sentence will be stayed pending that review. At the time of imposing a sentence of imprisonment for life, the court shall cause the defendant to be advised in accordance with Rule 4-342 (i).

Cross reference: Rule 8-306.

(l) Report of Judge

After sentence is imposed, the judge promptly shall prepare and send to the parties a report in the following form:

(CAPTION)

REPORT OF TRIAL JUDGE

I. Data Concerning Defendant

A. Date of Birth

B. Sex

C. Race

D. Address

E. Length of Time in Community

F. Reputation in Community

G. Family Situation and Background

1. Situation at time of offense (describe defendant's living situation including marital status and number and age of children)

2. Family history (describe family history including pertinent data about parents and siblings)

H. Education

I. Work Record

J. Prior Criminal Record and Institutional History (list any prior convictions, disposition, and periods of incarceration)

K. Military History

L. Pertinent Physical or Mental Characteristics or History

M. Other Significant Data About Defendant

II. Data Concerning Offense

A. Briefly describe facts of offense (include time, place, and manner of death; weapon, if any; other participants and nature of participation)

B. Was there any evidence that the defendant was impaired by alcohol or drugs at the time of the offense? If so describe.

C. Did the defendant know the victim prior to the offense?

Yes ..... No .....

1. If so, describe relationship.

2. Did the prior relationship in any way precipitate the offense? If so, explain.

D. Did the victim's behavior in any way provoke the offense? If so, explain.

E. Data Concerning Victim

1. Name

2. Date of Birth

3. Sex

4. Race

5. Length of time in community

6. Reputation in community

F. Any Other Significant Data About Offense

III. A. Plea Entered by Defendant:

Not guilty .....; guilty .....; not criminally

responsible .....

B. Mode of Trial:

Court ..... Jury .....

If there was a jury trial, did defendant challenge the jury selection or composition? If so, explain.

C. Counsel

1. Name

2. Address

3. Appointed or retained

(If more than one attorney represented defendant, provide data on each and include stage of proceeding at which the representation was furnished.)

D. Pre-Trial Publicity - Did defendant request a mistrial or a change of venue on the basis of publicity? If so, explain. Attach copies of any motions made and exhibits filed.

E. Was defendant charged with other offenses arising out of the same incident? If so, list charges, state whether they were tried at same proceeding, and give disposition.

IV. Data Concerning Sentencing Proceeding

A. List aggravating circumstance(s) upon which State relied in the pretrial notice.

B. Was the proceeding conducted

before same judge as trial? .....

before same jury? .....

If the sentencing proceeding was conducted before a jury other than the trial jury, did the defendant challenge the selection or composition of the jury? If so, explain.

C. Counsel - If counsel at sentencing was different from trial counsel, give information requested in III C above.

D. Which aggravating and mitigating circumstances were raised by the evidence?

E. On which aggravating and mitigating circumstances were the jury instructed?

F. Sentence imposed: Imprisonment for life
Death
Imprisonment for life without the possibility of parole

V. Chronology

Date of Offense

Arrest

Charge

Notification of intention to seek penalty of death

Trial (guilt/innocence) - began and ended

Post-trial Motions Disposed of

Sentencing Proceeding - began and ended

Sentence Imposed

VI. Recommendation of Trial Court As To Whether Imposition of Sentence of Death is Justified.

VII. A copy of the Findings and Sentencing Determination made in this action is attached to and made a part of this report.

.....
Judge

CERTIFICATION

I certify that on the ..... day of ....., ...,
(month) (year)

I sent copies of this report to counsel for the parties for comment and have attached any comments made by them to this report.

.....
Judge

Within five days after receipt of the report, the parties may submit to the judge written comments concerning the factual accuracy of the report. The judge promptly shall file with the clerk of the trial court and with the Clerk of the Court of Appeals the report in final form, noting any changes made, together with any comments of the parties.

Committee note: The report of the judge is filed whenever a sentence of death is sought, regardless of the sentence imposed.

Source: This Rule is derived in part from the 2008 version of former Rule 4-343 and is in part new.

REPORTER'S NOTE

The proposed revision of Rule 4-343 provides for a bifurcated sentencing procedure in capital cases.

In Phase I, the sentencing jury or judge makes the initial findings necessary to determine whether the technical requirements of eligibility for the death penalty have been met.

In Phase II, the sentencing jury or judge, after determining whether any “mental retardation” defense has been proved, finds and weighs aggravating and mitigating circumstances and determines whether the sentence is for “imprisonment for life” or “death.” Also in Phase II, if “imprisonment for life” is the sentence, whether as a result of the Phase I determinations or as a result of the Phase II process, the sentencing jury or judge then determines whether “imprisonment for life” is with or without the possibility of parole.

MARYLAND RULES OF PROCEDURE

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CHAPTER 700 – POST CONVICTION DNA TESTING

ADD new Rule 4-701, as follows:

Rule 4-701. SCOPE

The Rules in this Chapter apply to proceedings filed under Code, Criminal Procedure Article, §8-201.

Source: This Rule is new.

REPORTER'S NOTE

Rules 4-701 through 4-710 are new and implement the provisions of Chapter 337, Acts of 2008 (SB 211), which became effective on January 1, 2009 and amended Code, Criminal Procedure Article, §8-201.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 700 – POST CONVICTION DNA TESTING

ADD new Rule 4-702, as follows:

Rule 4-702. DEFINITIONS

In this Chapter, the terms “biological evidence,” “DNA,” “law enforcement agency,” and “scientific identification evidence” have the meanings set forth in Code, Criminal Procedure Article, §8-201 (a).

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 700 – POST CONVICTION DNA TESTING

ADD new Rule 4-703, 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; 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.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 700 – POST CONVICTION DNA TESTING

ADD new Rule 4-704, as follows:

Rule 4-704. PETITION

(a) Content

(1) In General

Each petition shall state:

(A) the petitioner's name and, if applicable, place of confinement and inmate identification number;

(B) the court in which the charging document was filed, the date and place of trial, each offense of which the petitioner was convicted, and the sentence imposed for each offense;

(C) a description of all previous proceedings in the case, including direct appeals, motions for new trial, habeas corpus proceedings, post-conviction proceedings, and all other collateral proceedings, including (i) the court in which each proceeding was filed, (ii) the case number of each proceeding, (iii) the determinations made in each proceeding, and (iv) the date of each determination; and

(D) a statement regarding whether the petitioner is able to pay the cost of testing and to employ counsel. If indigent, the petitioner may request that the court appoint counsel.

(2) Request for DNA Testing

If the request is for DNA testing of scientific identification evidence, the petition shall contain:

(A) a description of the specific scientific identification evidence that the petitioner seeks to have tested;

(B) a statement of the factual basis for the claims that (i) the State possesses that evidence or is able to acquire it from a third party on its own initiative or by court order, (ii) the evidence is related to the conviction, including a concise description of how the evidence is related to the conviction, and (iii) a reasonable probability exists that the requested DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing; and

(C) to the extent known: (i) a description of the type of DNA testing the petitioner seeks to employ and (ii) a statement of the factual basis for a claim that the DNA testing method has achieved general acceptance within the relevant scientific community.

(3) Request for Search of Law Enforcement Database or Log

If the request is for a search of a law enforcement agency database or log for the purpose of identifying the source of physical evidence used for DNA testing, the petition shall:

(A) identify with particularity the law enforcement agency whose database or log is to be searched; and

(B) state the factual basis for any claim that there is a reasonable probability that a search of the database or log will

produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing or will identify the source of physical evidence used for DNA testing of a law enforcement database or log.

Committee note: A petition filed by an unrepresented petitioner may be lacking in some of the details required by subsections (a)(2) and (3) of this Rule. To justify an order requiring DNA testing or a search of law enforcement databases or logs, however, those details must be provided at some point. That may be achieved by the appointment of counsel under Rule 4-707 and an appropriate amendment to the petition.

(b) Amendment

Amendments to the petition shall be freely allowed in order to do substantial justice. If an amendment is made, the court shall allow the State a reasonable opportunity to respond to the amendment.

(c) Withdrawal

On motion of a petitioner, the court may grant leave for the petitioner to withdraw a petition. If the motion is filed before the court orders DNA testing or a search of a law enforcement agency DNA database or log, the leave to withdraw shall be without prejudice. If such an order has been issued, the leave to withdraw shall be with prejudice unless the court, for good cause, orders otherwise.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 700 – POST CONVICTION DNA TESTING

ADD new Rule 4-705, as follows:

Rule 4-705. NOTICE OF PETITION

(a) To State’s Attorney

Upon receipt of a petition, the clerk promptly shall forward a copy of it to the State’s Attorney and the county administrative judge. If the petition seeks a search of the DNA database or log of an identified law enforcement agency, the State’s Attorney shall send a copy of the petition to that law enforcement agency.

(b) To Public Defender

If the petition alleges that the petitioner is unable to pay the costs of testing or to employ counsel, the clerk shall promptly forward a copy of the petition to the Public Defender’s Inmate Services Division.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 700 – POST CONVICTION DNA TESTING

ADD new Rule 4-706, as follows:

Rule 4-706. ANSWER; MOTION TO TRANSFER

(a) Duty to File

The State’s Attorney shall file an answer to the petition or a motion to transfer based on improper venue.

(b) Motion to Transfer

(1) Time for Filing

A motion to transfer shall be filed no later than 30 days after the State’s Attorney receives notice of the petition.

(2) Content

A statement of facts establishing proper venue, including the case number of the case in which the judgment of conviction was entered, shall be attached to the motion to transfer.

(3) Determination; Transfer

The court promptly shall grant or deny the motion to transfer. If the court grants the motion, the court shall transfer the action to the circuit court of the county where the petition should have been filed.

(4) Notice of Transfer

If an action is transferred pursuant to subsection

(b)(3) of this Rule, the clerk of the receiving court promptly shall comply with the notice requirements of Rule 4-705.

(c) Answer

(1) Time for Filing

The answer shall be filed no later than the later of 60 days after the State's Attorney receives notice of the filing or transfer of the petition or 60 days after the court denies a motion to transfer. If an answer is not filed within the time required by this Rule or an extended time allowed by the court, the court shall take such action as it deems appropriate.

Cross reference: For extension of time requirements, see Rule 1-204.

(2) Content

The answer shall state or contain:

(A) whether the specific scientific identification evidence that the petitioner desires to have tested exists and, if so, the location of the evidence, the name and business address of the custodian of the evidence, whether the evidence is appropriate for DNA testing, and if not, the reasons why it is not appropriate for DNA testing;

(B) if the State asserts that it has been unable to locate the evidence, an affidavit containing a detailed description of all steps it took to locate the evidence, including (i) a description of all law enforcement records, databases, and logs that were searched, (ii) a description and documentation of when and how the searches were conducted, and (iii) the names and

business addresses of the persons who conducted them;

(C) if the State asserts that the evidence has been destroyed, an affidavit (i) containing a description and documentation of all relevant protocols and legal requirements pertaining to the destruction of the evidence, and (ii) stating whether the evidence was destroyed in conformance with those protocols and legal requirements and, (a) if so, providing documentation of that fact, and, (b) if not, stating the reasons for non-compliance with the protocols or legal requirements; and

(D) a response to each allegation in the petition.

(d) Service

The State’s Attorney shall serve a copy of the answer or motion to transfer on the petitioner and, if the petitioner alleges an inability to pay the costs of testing or to employ counsel, on the Public Defender’s Inmate Services Division.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 700 – POST CONVICTION DNA TESTING

ADD new Rule 4-707, as follows:

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

(a) Denial of Petition

Upon consideration of the State's answer, the court may deny the petition if it finds as a matter of law that (1) the petitioner has no standing or (2) the facts alleged in the petition do not entitle the petitioner to relief.

(b) Appointment of Counsel

If the court finds that a petitioner who has requested the appointment of counsel is indigent, the court shall 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.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 700 – POST CONVICTION DNA TESTING

ADD new Rule 4-708, as follows:

Rule 4-708. RESPONSE TO ANSWER

The petitioner may file a response to the answer no later than 60 days after the later of service of the State's answer or entry of an order appointing counsel pursuant to Rule 4-707. The response may (1) challenge the adequacy or the accuracy of the answer, (2) request that a search of other law enforcement agency databases or logs be conducted for the purpose of identifying the source of physical evidence used for DNA testing, and (3) be accompanied by an amendment to the petition. The petitioner shall serve the response on the State's Attorney.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 700 – POST CONVICTION DNA TESTING

ADD new Rule 4-709, 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)(l); 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.

(b) When Not Required

(1) For Denial of Petition

The court shall deny the petition without a hearing if it finds that:

(A) the petitioner has no standing to request DNA testing or a search of a law enforcement agency DNA database or logs; or

(B) as a matter of law, the facts alleged in the petition pursuant to subsections (a)(2) and (3) of Rule 4-704 do not entitle the petitioner to relief under Code, Criminal Procedure Article, §8-201.

(2) For Grant of Petition

The court may enter an order granting the petition without a hearing if the State and the petitioner enter into a written stipulation as to DNA testing or a DNA database or log search and the court is satisfied with the contents of the stipulation. An order for DNA testing shall comply with the requirements of Rule 4-710 (a)(2)(B).

(c) When Hearing is Discretionary

In its discretion, the court may hold a hearing when one is not required.

(d) Time of Hearing

Any hearing shall be held within (1) 90 days after service of any response to the State's answer or, (2) if no response is timely filed, 120 days after service of the State's answer.

(e) Written Order If No Hearing

If the court declines to hold a hearing, it shall enter a written order stating the reasons why no hearing is required. A copy of that order shall be served on the petitioner and the State's Attorney.

Cross reference: For victim notification, see Code, Criminal Procedure Article, §§11-104 and 11-503.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 700 – POST CONVICTION DNA TESTING

ADD new Rule 4-710, as follows:

Rule 4-710. DISPOSITION OF PETITION AFTER A HEARING

(a) DNA Testing

(1) Denial of Petition

The court shall deny a petition for DNA testing if it finds that:

(A) the State has made an adequate search for scientific identification evidence that is related to the judgment of conviction, that no such evidence exists within its possession or within its ability to acquire from a third party on its own initiative or by court order, and that no such evidence that the State was required by law or applicable protocol to preserve was intentionally and willfully destroyed; or

(B) scientific identification evidence exists but the method of testing requested by petitioner is not generally accepted in the relevant scientific community, or that there is no reasonable probability that DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing.

(2) Grant of Petition

(A) Order for DNA Testing

The court shall order DNA testing if (i) the State agrees to the testing, or (ii) after considering the petition, the answer by the State's Attorney, any response by the petitioner, and any evidence adduced at a hearing on the petition, the court finds that specific scientific identification evidence exists that is related to the judgment of conviction and there is a reasonable probability that the requested testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing.

(B) Contents of Order

(i) An order for DNA testing shall:

(a) designate the specific evidence to be tested;

(b) specify the method of testing to be used;

(c) specify the laboratory where the testing is to be performed, provided that, if the parties cannot agree on a laboratory, the court may approve testing at any laboratory accredited by the American Society of Crime Laboratory Directors, the Laboratory Accreditation Board, or the National Forensic Science Technology Center;

(d) require that the laboratory send a report of the results of the testing as well as the raw data and the laboratory notes to the petitioner and the State's Attorney; and

(e) contain a provision concerning the payment of the cost of the testing.

(ii) An order for DNA testing also may:

(a) provide for the release of biological evidence by a third party;

(b) require the preservation of some of the sample for replicate testing and analysis or, if that is not possible, the preservation of some of the DNA extract for testing by the State; and

(c) contain any other appropriate provisions.

Cross reference: Code, Courts Article, §10-915.

(3) Inability of State to Produce Scientific Evidence

If the State is unable to produce scientific evidence that the State was required to preserve pursuant to Code, Criminal Procedure Article, §8-201 (j) or former Code, Criminal Procedure Article, §8-201 (i), and the court, after a hearing, determines that the failure to produce evidence was the result of intentional and willful destruction, the court shall:

(i) if no post conviction proceeding was previously filed by the petitioner under Code, Criminal Procedure Article, §7-102, open such a proceeding;

(ii) if a post conviction proceeding is currently pending, permit the petitioner to amend the petition in that proceeding in light of the court's finding; or

(iii) if a post conviction proceeding was previously filed by petitioner under Code, Criminal Procedure Article, §7-102, but is no longer pending, reopen the proceeding under Code, Criminal Procedure Article, §7-104.

At any such post conviction hearing, the court shall infer that

the results of the post conviction DNA testing would have been favorable to the petitioner.

(b) DNA Database or Log Search

The court shall order a database or log search by a law enforcement agency for the purpose of identifying the source of physical evidence used for DNA testing if (i) the State agrees to the search, or (ii) after considering the petition, the answer by the State's Attorney, any response by the petitioner, and any evidence adduced at a hearing on the petition, the court finds that a reasonable probability exists that the database or log search will produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing. In all other cases, the court shall deny the petition.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 700 – POST CONVICTION DNA TESTING

ADD new Rule 4-711, as follows:

Rule 4-711. FURTHER PROCEEDINGS FOLLOWING TESTING

(a) If Test Results Unfavorable to Petitioner

If the test results fail to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing, the court shall dismiss the petition and assess the cost of DNA testing against the petitioner.

(b) If Test Results Favorable to Petitioner

(1) If the test results produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing, the court shall order the State to pay the costs of the testing and:

(A) if no post conviction proceeding was previously filed by the petitioner under Code, Criminal Law Article, §7-102, open such a proceeding;

(B) if a post conviction proceeding is currently pending, permit the petitioner to amend the petition in that proceeding; or

(C) if a post conviction proceeding was previously filed by the petitioner under Code, Criminal Law Article, §7-102, reopen the proceeding under Code, Criminal Law Article, §7-104; or

(D) if the court finds that a substantial possibility exists that the petitioner would not have been convicted if the DNA testing results had been known or introduced at trial, order a new trial.

(2) If the court finds that (A) the test results produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing but (B) a substantial possibility does not exist that the petitioner would not have been so convicted or sentenced if the test results had been known or introduced at trial, the court may order a new trial if it also finds that such action is in the interest of justice.

(3) If the court grants a new trial under subsection (b)(1)(D) or (b)(2) of this Rule, the court may order the release of the petitioner on bond or on conditions that the court finds will reasonably assure the presence of the petitioner at trial.
Cross reference: Code, Criminal Procedure Article, §8-201 (i).
Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-214 by adding a new section (c) pertaining to joint representation of defendants and a cross reference following section (c), as follows:

Rule 4-214. DEFENSE COUNSEL

(a) Appearance

Counsel retained or appointed to represent a defendant shall enter an appearance in writing within five days after accepting employment, after appointment, or after the filing of the charging document in court, whichever occurs later. An appearance entered in the District Court will automatically be entered in the circuit court when a case is transferred to the circuit court because of a demand for jury trial. In any other circumstance, counsel who intends to continue representation in the circuit court after appearing in the District Court must re-enter an appearance in the circuit court.

(b) Extent of Duty of Appointed Counsel

When counsel is appointed by the Public Defender or by the court, representation extends to all stages in the proceedings, including but not limited to custody, interrogations, preliminary hearing, pretrial motions and hearings, trial, motions for modification or review of sentence or new trial, and appeal. The

Public Defender may relieve appointed counsel and substitute new counsel for the defendant without order of court by giving notice of the substitution to the clerk of the court. Representation by the Public Defender's office may not be withdrawn until the appearance of that office has been stricken pursuant to section ~~(c)~~ (d) of this Rule. The representation of appointed counsel does not extend to the filing of subsequent discretionary proceedings including petition for writ of certiorari, petition to expunge records, and petition for post conviction relief.

(c) Inquiry Into Joint Representation

(1) Joint Representation

Joint representation occurs when:

(A) an offense is charged that carries a potential sentence of incarceration;

(B) two or more defendants have been charged jointly or joined for trial under Rule 4-253 (a); and

(C) the defendants are represented by the same counsel or by counsel who are associated in the practice of law.

(2) Court's Responsibilities in Cases of Joint Representation

If a joint representation occurs, the court, on the record, promptly and personally shall (A) advise each defendant of the right to effective assistance of counsel, including separate representation and (B) advise counsel to consider carefully any potential areas of impermissible conflict of interest arising from the joint representation. Unless there is

good cause to believe that no impermissible conflict of interest is likely to arise, the court shall take appropriate measures to protect each defendant's right to counsel.

Cross reference: See Rule 1.7 of the Maryland Lawyers' Rules of Professional Conduct.

~~(c)~~ (d) Striking Appearance

A motion to withdraw the appearance of counsel shall be made in writing or in the presence of the defendant in open court. If the motion is in writing, moving counsel shall certify that a written notice of intention to withdraw appearance was sent to the defendant at least ten days before the filing of the motion. If the defendant is represented by other counsel or if other counsel enters an appearance on behalf of the defendant, and if no objection is made within ten days after the motion is filed, the clerk shall strike the appearance of moving counsel. If no other counsel has entered an appearance for the defendant, leave to withdraw may be granted only by order of court. The court may refuse leave to withdraw an appearance if it would unduly delay the trial of the action, would be prejudicial to any of the parties, or otherwise would not be in the interest of justice. If leave is granted and the defendant is not represented, a subpoena or other writ shall be issued and served on the defendant for an appearance before the court for proceedings pursuant to Rule 4-215.

Cross reference: Code, Courts Article, §6-407 (Automatic Termination of Appearance of Attorney).

Source: This Rule is in part derived from former Rule 725 and M.D.R. 725 and in part from the 2009 version of Fed. R. Crim. P. 44.

REPORTER'S NOTE

A judge of the Circuit Court for Baltimore City, suggested that Maryland adopt a rule similar to Fed. R. Crim. P. 44 (c) that places a burden on the trial judge to inquire when two or more defendants are represented by the same lawyer. *Duvall v. State*, 399 Md. 210 (2007) addressed this issue, but there is no Maryland Rule on point.

The Rules Committee recommends adding a new section (c) that is derived in part from the federal rule, and that recognizes that whether a conflict exists depends upon the facts of the particular case. See *Pugh v. State*, 103 Md. App. 624 (1995).

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-327 to add a new section (e) pertaining to inconsistent verdicts and to reletter the Rule, as follows:

Rule 4-327. VERDICT - JURY

(a) Return

The verdict of a jury shall be unanimous and shall be returned in open court.

(b) Sealed Verdict

With the consent of all parties, the court may authorize the rendition of a sealed verdict during a temporary adjournment of court. A sealed verdict shall be in writing and shall be signed by each member of the jury. It shall be sealed in an envelope by the foreperson of the jury who shall write on the outside of the envelope "Verdict Case No. ....." "State of Maryland vs. ....." and deliver the envelope to the clerk. The jury shall not be discharged, but the clerk shall permit the jury to separate until the court is again in session at which time the jury shall be called and the verdict opened and received as other verdicts.

(c) Two or More Defendants

When there are two or more defendants, the jury may return a verdict with respect to a defendant as to whom it has agreed,

and any defendant as to whom the jury cannot agree may be tried again.

(d) Two or More Counts

When there are two or more counts, the jury may return a verdict with respect to a count as to which it has agreed, and any count as to which the jury cannot agree may be tried again.

(e) Inconsistent Verdicts

Any objection to a jury's verdict or verdicts on the ground that the verdict or verdicts are legally inconsistent shall be made before the jury is discharged to allow the trial court an opportunity to remedy the error. A failure to note a timely objection constitutes a waiver.

Cross reference: See *Price v. State*, 405 Md. 10 (2008).

~~(e)~~ (f) Poll of Jury

On request of a party or on the court's own initiative, the jury shall be polled after it has returned a verdict and before it is discharged. If the sworn jurors do not unanimously concur in the verdict, the court may direct the jury to retire for further deliberation, or may discharge the jury if satisfied that a unanimous verdict cannot be reached.

Cross reference: See Rule 16-813, Maryland Code of Judicial Conduct, Canon 3B (1), regarding praise or criticism of a jury's verdict.

Source: This Rule is in part derived from former Rule 759 and in part new.

REPORTER'S NOTE

Price v. State, 405 Md. 10 (2008), held that inconsistent jury verdicts shall not be allowed where the issue was preserved. A concurring opinion recommended that any objection to allegedly inconsistent verdicts must be made before the verdicts become final and the jury is discharged, or the claim is waived.

The Rules Committee recommends adding a new section (e) to Rule 4-327, which provides that any objection to a jury's verdict or verdicts on the ground of legal inconsistency must be made before the jury is discharged. If the objection is not timely, the objection is waived.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-217 by adding language to subsection (d)(1) pertaining to certain notifications as to surety insurers in default and by adding language referring to a "circuit court clerk" to the cross reference after subsection (d)(2), as follows:

Rule 4-217. BAIL BONDS

. . .

(d) Qualification of Surety

(1) In General

The Chief Clerk of the District Court shall maintain a list containing: (A) the names of all surety insurers who are in default, and have been for a period of 60 days or more, in the payment of any bail bond forfeited in any court in the State, (B) the names of all bail bondsmen authorized to write bail bonds in this State, and (C) the limit for any one bond specified in the bail bondsman's general power of attorney on file with the Chief Clerk of the District Court. The clerk of each circuit court and the Chief Clerk of the District Court shall notify the Insurance Commissioner of the name of each surety insurer who has failed to resolve or satisfy bond forfeitures for a period of 60 days or more. The clerk of each circuit court also shall send a copy of

the list to the Chief Clerk of the District Court.

Cross reference: For penalties imposed on surety insurers in default, see Code, Insurance Article, §21-103 (a).

(2) Surety Insurer

No bail bond shall be accepted if the surety on the bond is on the current list maintained by the Chief Clerk of the District Court of those in default. No bail bond executed by a surety insurer directly may be accepted unless accompanied by an affidavit reciting that the surety insurer is authorized by the Insurance Commissioner of Maryland to write bail bonds in this State.

Cross reference: For the obligation of the District Court Clerk or a circuit court clerk to notify the Insurance Commissioner concerning a surety insurer who fails to resolve or satisfy bond forfeitures, see Code, Insurance Article, §21-103 (b).

(3) Bail Bondsman

No bail bond executed by a bail bondsman may be accepted unless the bondsman's name appears on the most recent list maintained by the Chief Clerk of the District Court, the bail bond is within the limit specified in the bondsman's general power of attorney as shown on the list or in a special power of attorney filed with the bond, and the bail bond is accompanied by an affidavit reciting that the bail bondsman:

(A) is duly licensed in the jurisdiction in which the charges are pending, if that jurisdiction licenses bail bondsmen;

(B) is authorized to engage the surety insurer as surety on the bail bond pursuant to a valid general or special power of attorney; and

(C) holds a valid license as an insurance broker or agent in this State, and that the surety insurer is authorized by the Insurance Commissioner of Maryland to write bail bonds in this State.

Cross reference: Code, Criminal Procedure Article, §5-203 and Rule 16-817 (Appointment of Bail Bond Commissioner - Licensing and Regulation of Bail Bondsmen).

. . .

REPORTER'S NOTE

Chapter 192, Laws of 2008 (SB 571) amended Code, Insurance Article, §21-103, which had previously required the District Court Clerk to notify the Insurance Commissioner of surety insurers who fail to resolve or satisfy bond forfeitures. The amendment now also requires circuit court clerks to notify the Insurance Commissioner about surety insurers in default.

To conform Rule 4-217 to the amended statute, the Rules Committee recommends adding a sentence to subsection (d)(1) providing that the clerk of each circuit court, as well as the Chief Clerk of the District Court, shall send to the Insurance Commissioner a list of the names of each surety insurer who fails to resolve or satisfy bond forfeitures for a period of 60 days or more. The amendment also requires that the clerk of the circuit court send a copy of the list to the Chief Clerk of the District Court. This complies with the current procedure, which is that the Chief Clerk of the District Court maintains a list of all surety insurers in default in both the District Court and the circuit courts. The Committee also proposes adding a reference to a circuit court clerk to the cross reference after subsection (d)(2).

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-252 (h)(1) to delete language and to add language to conform to Code, Courts Article, §12-302, as follows:

Rule 4-252. MOTIONS IN CIRCUIT COURT

. . .

(h) Effect of Determination of Certain Motions

(1) Defect in Prosecution or Charging Document

If the court ~~granted~~ grants a motion based on a defect in the institution of the prosecution or in the charging document, ~~it may order that the defendant be held in custody or that the conditions of pretrial release continue for a specified time, not to exceed ten days, pending the filing of a new charging document~~ it shall order the defendant released on personal recognizance unless the crime charged is a crime of violence as defined in Code, Criminal Law Article, §14-101, in which case the court may release the defendant on any terms and conditions that the court considers appropriate or may order that the defendant be remanded to custody for a specific time period not to exceed ten days pending the filing of a new charging document.

. . .

REPORTER'S NOTE

A possible conflict exists between the language of Code, Courts Article, §12-302 and Rule 4-252 (h)(1). The statute provides that unless a defendant is charged with a crime of violence, pending an appeal from a final judgment granting a motion to dismiss or quashing any indictment, information, presentment, or inquisition, a defendant shall be released on personal recognizance. The Rule provides that if a court granted a motion based on a defect in the institution of the prosecution or in the charging document, the court may order that the defendant be held in custody or that the conditions of pretrial release continue for a specified time, not to exceed ten days, pending the filing of a new charging document. The Rules Committee recommends modifying the language in subsection (h)(1) to conform to the statutory language.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216 by adding a cross reference at the end of subsection (e)(6), as follows:

Rule 4-216. PRETRIAL RELEASE

. . .

(e) Conditions of Release

The conditions of release imposed by a judicial officer under this Rule may include:

(1) committing the defendant to the custody of a designated person or organization that agrees to supervise the defendant and assist in ensuring the defendant's appearance in court;

(2) placing the defendant under the supervision of a probation officer or other appropriate public official;

(3) subjecting the defendant to reasonable restrictions with respect to travel, association, or residence during the period of release;

(4) requiring the defendant to post a bail bond complying with Rule 4-217 in an amount and on conditions specified by the judicial officer, including any of the following:

(A) without collateral security;

(B) with collateral security of the kind specified in Rule 4-217 (e)(1)(A) equal in value to the greater of $100.00 or 10%

of the full penalty amount, and if the judicial officer sets bail at $2500 or less, the judicial officer shall advise the defendant that the defendant may post a bail bond secured by either a corporate surety or a cash deposit of 10% of the full penalty amount;

(C) with collateral security of the kind specified in Rule 4-217 (e)(1)(A) equal in value to a percentage greater than 10% but less than the full penalty amount;

(D) with collateral security of the kind specified in Rule 4-217 (e)(1) equal in value to the full penalty amount; or

(E) with the obligation of a corporation that is an insurer or other surety in the full penalty amount;

(5) subjecting the defendant to any other condition reasonably necessary to:

(A) ensure the appearance of the defendant as required,

(B) protect the safety of the alleged victim, and

(C) ensure that the defendant will not pose a danger to another person or to the community; and

(6) imposing upon the defendant, for good cause shown, one or more of the conditions authorized under Code, Criminal Law Article, §9-304 reasonably necessary to stop or prevent the intimidation of a victim or witness or a violation of Code, Criminal Law Article, §9-302, 9-303, or 9-305.

Cross reference: See Code, Criminal Procedure Article, §5-201 (a)(2) concerning protections for victims as a condition of release. See Code, Criminal Procedure Article, §5-201 (b), and

Code, Business Occupations and Professions Article, Title 20, concerning private home detention monitoring as a condition of release.

. . .

REPORTER'S NOTE

Proposed amendments to Rules 4-216, 4-252, 4-314, 4-331, 4-346, 4-347, 4-351, 4-406, 8-413, 15-303, and 15-309 add cross references to various provisions of the Criminal Procedure Article pertaining to rights of victims of crime and their representatives.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-252 by adding a cross reference at the end of section (c), as follows:

Rule 4-252. MOTIONS IN CIRCUIT COURT

. . .

(c) Motion to Transfer to Juvenile Court

A request to transfer an action to juvenile court pursuant to Code, Criminal Procedure Article, §4-202 shall be made by separate motion entitled "Motion to Transfer to Juvenile Court." The motion shall be filed 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, if not so made, is waived unless the court, for good cause shown, orders otherwise.

Cross reference: For notification of victims of their right to file a victim impact statement in transfers of actions to juvenile court, see Code, Criminal Procedure Article, §11-402 (c).

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-314 by adding language to the cross reference at the end of section (a), as follows:

Rule 4-314. DEFENSE OF NOT CRIMINALLY RESPONSIBLE

(a) Bifurcation of Trial

(1) Who May Request

If a defendant has entered pleas of both not guilty and not criminally responsible by reason of insanity and has elected a jury trial, the defendant or the State may move for a bifurcated trial in which the issue of criminal responsibility will be heard and determined separately from the issue of guilt.

(2) Time for Filing Motion

A motion for a bifurcated trial shall be filed no later than 15 days before trial, unless otherwise ordered by the court.

(3) Granting of Motion

(A) The court shall grant a motion made by the defendant unless it finds and states on the record a compelling reason to deny the motion.

(B) The court may grant a motion made by the State if it finds and states on the record (i) a compelling reason to bifurcate the trial and (ii) that the defendant will not be substantially prejudiced by the bifurcation.

Cross reference: See *Treece v. State*, 313 Md. 665 (1988). For victim notification procedures, see Code, Criminal Procedure Article, §§3-123 and 11-104.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-331 to add to the list of Code cross references at the end of section (c), as follows:

Rule 4-331. MOTIONS FOR NEW TRIAL

. . .

(e) Disposition

The court may hold a hearing on any motion filed under this Rule and shall hold a hearing on a motion filed under section (c) if the motion satisfies the requirements of section (d) and a hearing was requested. The court may revise a judgment or set aside a verdict prior to entry of a judgment only on the record in open court. The court shall state its reasons for setting aside a judgment or verdict and granting a new trial.

Cross reference: Code, Criminal Procedure Article, §§6-105, 6-106, ~~and~~ §11-104, and 11-503.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-346 by adding language to the cross reference at the end of the Rule, as follows:

Rule 4-346. PROBATION

. . .

Cross reference: For orders of probation or parole recommending that a defendant reside in or travel to another state as a condition of probation or parole, see the Interstate Compact for Adult Offender Supervision, Code, Correctional Services Article, §6-201 et seq. For evaluation as to the need for drug or alcohol treatment before probation is ordered in cases involving operating a motor vehicle or vessel while under the influence of or impaired by drugs or alcohol, see Code, Criminal Procedure Article, §6-220. For victim notification procedures, see Code, Criminal Procedure Article, §11-104 (f). For procedures concerning compliance with restitution judgments, see Code, Criminal Procedure Article, §11-607.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-347 by adding a cross reference at the end of section (b), as follows:

Rule 4-347. PROCEEDINGS FOR REVOCATION OF PROBATION

. . .

(b) Notice

A copy of the petition, if any, and the order shall be served on the defendant with the summons or warrant.

Cross reference: For victim notification procedures, see Code, Criminal Procedure Article, §§11-104, 11-503, and 11-507.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-351 by adding language to the cross reference at the end of section (a), as follows:

Rule 4-351. COMMITMENT RECORD

(a) Content

When a person is convicted of an offense and sentenced to imprisonment, the clerk shall deliver to the officer into whose custody the defendant has been placed a commitment record containing:

(1) The name and date of birth of the defendant;

(2) The docket reference of the action and the name of the sentencing judge;

(3) The offense and each count for which the defendant was sentenced;

(4) The sentence for each count, the date the sentence was imposed, the date from which the sentence runs, and any credit allowed to the defendant by law;

(5) A statement whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of the preceding term or to any other outstanding or unserved sentence; and

(6) the details or a copy of any order or judgment of restitution.

Cross reference: See Code, Criminal Procedure Article, §6-216 (c) concerning Maryland Sentencing Guidelines Worksheets prepared by a court. See Code, Criminal Procedure Article, §11-104 (f) for notification procedures for victims. See Code, Criminal Procedure Article, §11-607 for procedures concerning compliance with restitution judgments.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 400 - POST CONVICTION PROCEDURE

AMEND Rule 4-406 to add language to the cross reference at the end of section (d), as follows:

Rule 4-406. HEARING

. . .

(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, 11-104, and 11-503. For right of a victim or victim's representative to address the court, see Code, Criminal Procedure Article, §11-403.

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 400 - PRELIMINARY PROCEDURES

AMEND Rule 8-413 to add a cross reference at the end of the Rule, as follows:

Rule 8-413. RECORD - CONTENTS AND FORM

. . .

Cross reference: See Code, Criminal Procedure Article, §11-104 (f)(2) for victim notification procedures.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 300 - HABEAS CORPUS

AMEND Rule 15-303 by adding a cross reference at the end of the Rule, as follows:

Rule 15-303. PROCEDURE ON PETITION

. . .

Cross reference: For victim notification procedures, see Code, Criminal Procedure Article, §§11-104 and 11-503.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 300 - HABEAS CORPUS

AMEND Rule 15-309 by adding a cross reference at the end of the Rule, as follows:

Rule 15-309. HEARING

Upon the production of the individual confined or restrained, the judge shall conduct a hearing immediately to inquire into the legality and propriety of the individual's confinement or restraint. The individual confined or restrained for whom the writ is issued may offer evidence to prove the lack of legal justification for the confinement or restraint, and evidence may be offered on behalf of the person having custody to refute the claim.

Cross reference: 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 from former Rules Z46 b and Z48.

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-322 by changing the title of the Rule; by adding a new section (c) pertaining to audio, audiovisual, and visual recordings; and by making stylistic changes, as follows:

Rule 4-322. EXHIBITS, COMPUTER-GENERATED EVIDENCE, AND RECORDINGS

(a) Generally

All exhibits marked for identification, whether or not offered in evidence and, if offered, whether or not admitted, shall form part of the record and, unless the court orders otherwise, shall remain in the custody of the clerk. With leave of court, a party may substitute a photograph or copy for any exhibit.

Cross reference: Rule 16-306.

(b) Preservation of Computer-generated Evidence

~~The party offering~~ A party who offers or uses computer-generated evidence at any proceeding shall preserve the computer-generated evidence, furnish it to the clerk in a manner suitable for transmittal as a part of the record on appeal, and present the computer-generated evidence to an appellate court if the court so requests.

Cross reference: For the definition of "computer-generated evidence," see Rule 2-504.3.

Committee note: This section requires the proponent of computer-generated evidence to reduce the computer-generated evidence to a medium that allows review on appeal. The medium used will depend upon the nature of the computer-generated evidence and the technology available for preservation of that computer-generated evidence. No special arrangements are needed for preservation of computer-generated evidence that is presented on paper or through spoken words. Ordinarily, the use of ~~standard VHS videotape or equivalent~~ technology that is in common use by the general public at the time of the hearing or trial will suffice for preservation of other computer generated evidence. However, when the computer-generated evidence involves the creation of a three-dimensional image or is perceived through a sense other than sight or hearing, the proponent of the computer-generated evidence must make other arrangements for preservation of the computer-generated evidence and any subsequent presentation of it that may be required by an appellate court.

(c) Audio, Audiovisual, or Visual Recordings

(1) Recording

A party who offers or uses an audio, audiovisual, or visual recording at a hearing or trial shall: (A) ensure that the recording is marked for identification and made part of the record and that an additional copy is provided to the court, so that it is available for future transcription, and (B) if only a portion of the recording is offered or used, ensure that a description that identifies the portion offered or used is made part of the record.

(2) Transcript of Recording

A party who offers or uses a transcript of the recording at a hearing or trial shall: (A) ensure that the transcript is made part of the record and provide an additional copy to the court, and (B) if the recording is not on a medium in common use by the general public, preserve it, furnish it to the clerk in a manner suitable for transmittal as part of the record on appeal,

and upon request present it to an appellate court in a format designated by the court.

Cross reference: For a schedule of retention and disposal of court records, see Rule 16-505.

Source: This Rule is new.

REPORTER'S NOTE

The Office of the Public Defender requested that the Rules be amended to require that sound recordings that are played at hearings or trials be transcribed and made part of the record. The Committee is advised that frequently, neither written transcriptions of recordings nor the recordings themselves are part of the record on appeal. Transcriptions prepared by an agent of a party may be of questionable reliability, because they were not prepared by a neutral person, such as a court reporter. Also, in many cases, only a portion of a recording is played in court, and what is played is not decided until the time of trial, so even if the recording and a written transcription are included in the record, it may not be clear what was heard at the trial.

A representative from the Office of the Public Defender suggested that court reporters be required to report and transcribe sound recordings, but the Committee is concerned that this approach would impose an untenable burden on court reporters, especially as to sound recordings on which several unidentified voices are speaking at the same time.

The Committee recommends an approach applicable not only to audio recordings but also to audiovisual and visual recordings that is based upon the method of handling computer-generated evidence at trial.

The party offering or using the recording must have it marked for identification and made part of the record. The party also must provide an extra copy to the court.

A party who offers or uses only a portion of a recording must clearly identify the portion used and ensure that the identification is made part of the record.

The party is not required to provide a transcript, but if one is provided, the party must ensure that the transcript is made part of the record and provide an extra copy to the court.

The use of any recording not on a medium in common use follows a procedure similar to the procedure set out in Rule 4-322

(b) as to computer-generated evidence. The party who uses or offers the recording must preserve it, furnish it to the clerk in a manner suitable for transmittal as part of the record on appeal, and, upon request, present it to the appellate court in a format designated by the court.

This procedure is contained in new section (c), proposed to be added to Rule 4-322. The amendments to section (b) are stylistic, only. Amendments to Rule 2-504.3 and 2-516 make the procedural and stylistic changes to Rule 4-322 also applicable in civil actions in the circuit court.

Because the party who offers or uses a recording is responsible for ensuring that the recording is made part of the record, providing an additional copy to the court for future transcription, preserving any recording that is not on a medium in common use by the general public, etc., an amendment to Rule 16-404 provides that the court reporter need not record an audio or audiovisual recording offered or used at a hearing or trial.

An amendment to Rule 8-411 adds to the contents of the transcript that the appellant orders from the court reporter a transcription of any audio or audiovisual recording or portion thereof offered or used at a hearing or trial, if it is relevant to the appeal, unless the parties provide a written stipulation as to the contents of the recording.

The amendment to Rule 16-406 adds the word “court reporter” to subsection (d)(1)(B).

Amendments to Rules 4-342, 4-642, 7-108, 7-114, 8-306, 8-412, 8-602, and 16-101, are stylistic only, replacing the word “stenographer” with the words “court reporter.”

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-504.3 to make stylistic changes, as follows:

Rule 2-504.3. COMPUTER-GENERATED EVIDENCE

. . .

(f) Preservation of Computer-generated Evidence

~~The party offering~~ A party who offers or uses computer-generated evidence at any proceeding shall preserve the computer-generated evidence, furnish it to the clerk in a manner suitable for transmittal as a part of the record on appeal, and present the computer-generated evidence to an appellate court if the court so requests.

Committee note: This section requires the proponent of computer-generated evidence to reduce the computer-generated evidence to a medium that allows review on appeal. The medium used will depend upon the nature of the computer-generated evidence and the technology available for preservation of that computer-generated evidence. No special arrangements are needed for preservation of computer-generated evidence that is presented on paper or through spoken words. Ordinarily, the use of ~~standard VHS videotape or equivalent~~ technology that is in common use by the general public at the time of the hearing or trial will suffice for preservation of other computer-generated evidence. However, when the computer-generated evidence involves the creation of a three-dimensional image or is perceived through a sense other than sight or hearing, the proponent of the computer-generated evidence must make other arrangements for preservation of the computer-generated evidence and any subsequent presentation of it that may be required by an appellate court.

. . .

REPORTER'S NOTE

The proposed amendments to Rule 2-504.3 conform it stylistically to proposed amendments to Rule 4-322 (b) and the Committee note following that section.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-516 by changing the title of the Rule; by adding a new section pertaining to audio, audiovisual, and visual recordings, and by adding a cross reference, as follows:

Rule 2-516. EXHIBITS AND RECORDINGS

(a) Generally

All exhibits marked for identification, whether or not offered in evidence and, if offered, whether or not admitted, shall form part of the record and, unless the court orders otherwise, shall remain in the custody of the clerk. With leave of court, a party may substitute a photograph or copy for any exhibit.

Cross reference: Rule 16-306.

(b) Audio, Audiovisual, or Visual Recordings

(1) Recording

A party who offers or uses an audio, audiovisual, or visual recording at a hearing or trial shall: (A) ensure that the recording is marked for identification and made part of the record and that an additional copy is provided to the court, so that it is available for future transcription, and (B) if only a portion of the recording is offered or used, ensure that a description that identifies the portion offered or used is made part of the

record.

(2) Transcript of Recording

A party who offers or uses a transcript of the recording at a hearing or trial shall: (A) ensure that the transcript is made part of the record and provide an additional copy to the court, and (B) if the recording is not on a medium in common use by the general public, preserve it, furnish it to the clerk in a manner suitable for transmittal as part of the record on appeal, and upon request present it to an appellate court in a format designated by the court.

Cross reference: For a schedule of retention and disposal of court records, see Rule 16-505.

Source: This Rule is derived in part from former Rule 635 b and is in part new.

REPORTER'S NOTE

New section (b) and a cross reference following section (b) proposed to be added to Rule 2-516 track verbatim proposed new Rule 4-322 (c) and the cross reference following section (c) of that Rule.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT AND OTHER PERSONS

AMEND Rule 16-404 (e) by adding language pertaining to an exception for audio or audiovisual recordings and by making stylistic changes, as follows:

Rule 16-404. ADMINISTRATION OF COURT REPORTERS

a. Applicability.

Section b of this Rule applies to court reporters in the circuit courts and the District Court. Sections c, d, and e apply in the circuit courts only.

b. Establishment of Regulations and Standards.

The Chief Judge of the Court of Appeals shall prescribe regulations and standards regarding court reporters and the system of reporting in the courts of the State. The regulations and standards may include:

(1) the selection, qualifications, and responsibilities of court reporters;

(2) procedures and regulations;

(3) preparation, typing, and format of transcripts;

(4) charges for transcripts and copies;

(5) preservation and maintenance of reporting notes and records, however recorded;

(6) equipment and supplies utilized in reporting; and

(7) procedures for filing and maintaining administrative records and reports.

Cross reference: Rule 16-504.

c. Number of Court Reporters - Supervisory Court Reporter.

Each circuit court shall have the number of court reporters recommended by the County Administrative Judge and approved by the Chief Judge of the Court of Appeals. In a county with more than one court reporter, the County Administrative Judge shall designate one as supervisory court reporter, who shall serve at the pleasure of the County Administrative Judge. The Chief Judge of the Court of Appeals shall prescribe the duties of the supervisory court reporter.

d. Supervision of Court Reporters.

Subject to the general supervision of the Chief Judge of the Court of Appeals, the County Administrative Judge shall have the supervisory responsibility for the court reporters in that county. The County Administrative Judge may delegate supervisory responsibility to the supervisory court reporter, including the assignment of court reporters.

e. Methods of Reporting - Proceedings to be Recorded.

Each court reporter assigned to record a proceeding shall record verbatim by shorthand, stenotype, mechanical, or electronic audio recording methods, electronic word or text processing methods, or any combination of these methods, and shall maintain that record subject to regulations and standards prescribed by the Chief Judge of the Court of Appeals, except that a court reporter

need not record an audio or audiovisual recording offered or used at a hearing or trial. ~~Unless the court and the parties agree otherwise, all~~ All proceedings held in open court, including opening statements, closing arguments, and hearings on motions, shall be recorded in their entirety, unless the court and the parties agree otherwise.

Cross reference: See Rules 2-516 and 4-322. See also Rule 16-1006 (g), which provides that backup audio recordings made by any means, computer disks, and notes of a court reporter that have not been filed with the clerk or are not part of the official court record are not ordinarily subject to public inspection.

Source: This Rule is derived from former Rule 1224.

REPORTER'S NOTE

See the Reporter's note to Rule 4-322.

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 by adding subsection (a)(3) pertaining to audio and audiovisual recordings and by making stylistic changes, as follows:

Rule 8-411. TRANSCRIPT

(a) Ordering of Transcript

Unless a copy of the transcript is already on file, the appellant shall order in writing from the court ~~stenographer~~ 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) or directed by the lower court in an order; ~~and~~

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

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

(b) Time for Ordering

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

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

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

Cross reference: Rule 8-207 (a).

(c) Filing and Service

The appellant shall (1) file a copy of the written order to the ~~stenographer~~ 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

See the Reporter's note to Rule 4-322.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT AND OTHER PERSONS

AMEND Rule 16-406 (d)(1)(B) to add the words "court reporter," as follows:

Rule 16-406. ACCESS TO ELECTRONIC AUDIO AND AUDIO-VIDEO RECORDINGS OF PROCEEDINGS IN THE CIRCUIT COURT

. . .

d. Right to Copy of Audio-video Recording; Restrictions.

1. Upon written request and the payment of reasonable costs, the authorized custodian of an official videotape recording shall make a copy of the recording, or any part requested, available to:

(A) a party to the action or the party's attorney;

(B) a stenographer<u>, court reporter,</u> or transcription service designated by the court for the purpose of preparing an official transcript from the recording; and

(C) the Commission on Judicial Disabilities or its designee.

. . .

<u>REPORTER'S NOTE</u>

See the Reporter's note to Rule 4-322.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 (i) to change the word "stenographer" to the word "reporter," as follows:

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

. . .

(i) Advice to the Defendant

At the time of imposing sentence, the court shall cause the defendant to be advised of any right of appeal, any right of review of the sentence under the Review of Criminal Sentences Act, any right to move for modification or reduction of the sentence, and the time allowed for the exercise of these rights. At the time of imposing a sentence of incarceration for a violent crime as defined in Code, Correctional Services Article, §7-101 and for which a defendant will be eligible for parole as provided in §7-301 (c) or (d) of the Correctional Services Article, the court shall state in open court the minimum time the defendant must serve for the violent crime before becoming eligible for parole. The circuit court shall cause the defendant who was sentenced in circuit court to be advised that within ten days after filing an appeal, the defendant must order in writing a transcript from the court ~~stenographer~~ reporter.

. . .

REPORTER’S NOTE

See the Reporter’s note to Rule 4-322.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 600 - CRIMINAL INVESTIGATIONS AND MISCELLANEOUS PROVISIONS

AMEND Rule 4-642 (c)(1) to change the word "stenographer" to the words "court reporter," as follows:

Rule 4-642. SECRECY

. . .

(c) Grand Jury - Who May Be Present

(1) While the Grand Jury is in Session

The following persons may be present while the grand jury is in session: one or more attorneys for the State; the witness being questioned; any ~~stenographer~~ court reporter appointed pursuant to Code, Courts Article, §2-503; and, when needed, interpreters, so long as an audio recording is made if the interpreter is present for a witness.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-322.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 - APPEALS FROM THE DISTRICT COURT

TO THE CIRCUIT COURT

AMEND Rule 7-108 (c) to change the word “stenographer” to the word “reporter,” as follows:

Rule 7-108. RECORD - TIME FOR TRANSMITTING

. . .

(c) Shortening or Extending the Time

On motion or on its own initiative, the District Court or the circuit court 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 it finds that the inability to transmit the record was caused by the act or omission of a judge, a clerk of court, the court ~~stenographer~~ reporter, or a person other than the moving party.

Source: This Rule is derived from former Rule 1325.

REPORTER’S NOTE

See the Reporter’s note to Rule 4-322.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 - APPEALS FROM THE DISTRICT COURT

TO THE CIRCUIT COURT

AMEND Rule 7-114 (d) to change the word “stenographer” to the words “court reporter,” as follows:

Rule 7-114. DISMISSAL OF APPEAL

On motion or on its own initiative, the circuit court may dismiss an appeal for any of the following reasons:

(a) the appeal is not allowed by law;

(b) the appeal was not properly taken pursuant to Rule 7-103;

(c) the notice of appeal was not filed with the District Court within the time prescribed by Rule 7-104;

(d) the record was not transmitted within the time prescribed by Rule 7-108, 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, a ~~stenographer~~ court reporter, or the appellee; (e) an appeal to be heard de novo has been withdrawn pursuant to Rule 7-112; or

(f) the case has become moot.

Cross reference: Rule 2-311.

Source: This Rule is derived from former Rule 1335.

REPORTER’S NOTE

See the Reporter’s note to Rule 4-322.

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 8-306 (c)(3) to change the word "stenographer" to the word "reporter," as follows:

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

. . .

(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 ~~stenographer~~ 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.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-322.

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 (d) to change the word "stenographer" to the word "reporter," as follows:

Rule 8-412. RECORD - TIME FOR TRANSMITTING

. . .

(d) Shortening or Extending the Time

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

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-322.

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 (a)(5) to change the word "stenographer" to the word "reporter," as follows:

Rule 8-602. DISMISSAL BY COURT

(a) Grounds

On motion or on its own initiative, the Court may dismiss an appeal for any of the following reasons:

(1) the appeal is not allowed by these rules or other law;

(2) the appeal was not properly taken pursuant to Rule 8-201;

(3) the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202;

(4) the appellant has failed to comply with the requirements of Rule 8-205;

(5) the record was not transmitted within the time prescribed by Rule 8-412, unless the court finds that the failure to transmit the record was caused by the act or omission of a judge, a clerk of court, the court ~~stenographer~~ reporter, or the appellee;

(6) the contents of the record do not comply with Rule 8-413;

(7) a brief or record extract was not filed by the appellant within the time prescribed by Rule 8-502;

(8) the style, contents, size, format, legibility, or method

of reproduction of a brief, appendix, or record extract does not comply with Rules 8-112, 8-501, 8-503, or 8-504;

(9) the proper person was not substituted for the appellant pursuant to Rule 8-401; or

(10) the case has become moot.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-322.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE, JUDICIAL DUTIES, ETC.

AMEND Rule 16-101 (d)(2)(iv) to change the word "stenographer" to the word "reporter," as follows:

Rule 16-101. ADMINISTRATIVE RESPONSIBILITY

. . .

d. County Administrative Judge.

. . .

2. Duties.

Subject to the supervision of the Circuit Administrative Judge, a County Administrative Judge shall be responsible for the administration of justice and for the administration of the court for that county. The duties shall include:

. . .

(iv) ordering the purchase of all equipment and supplies for the court and its ancillary services, such as master, auditor, examiner, court administrator, court ~~stenographer~~ reporter, jury commissioner, staff of the medical and probation offices, and all additional court personnel other than personnel comprising the Clerk of Court's office;

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-322.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

ADD new Rule 16-778, as follows:

Rule 16-778. REFERRAL FROM CHILD SUPPORT ENFORCEMENT ADMINISTRATION

(a) Referral

The Commission promptly shall transmit to Bar Counsel a referral from the Child Support Enforcement Administration pursuant to Code, Family Law Article, §10-119.3 (e)(3) and direct Bar Counsel to file a Petition for Disciplinary or Remedial Action in the Court of Appeals pursuant to Rule 16-751 (a)(1). A copy of the Administration's referral shall be attached to the Petition, and a copy of the Petition and notice shall be served on the attorney in accordance with Rule 16-753.

Committee note: The procedures set out in Code, Family Law Article, §10-119.3 (f)(1), (2), and (3) are completed before the referral to the Attorney Grievance Commission.

(b) Show Cause Order

When a petition and notice of referral have been filed, the Court of Appeals shall order that Bar Counsel and the attorney, within 15 days from the date of the order, show cause in writing why the attorney should not be suspended from the practice of law.

(c) Action by the Court of Appeals

Upon consideration of the petition and any answer to the order to show cause, the Court of Appeals may enter an order: (1) immediately and indefinitely suspending the attorney from the practice of law, (2) designating a judge pursuant to Rule 16-752 to hold a hearing in accordance with Rule 16-757, or (3) containing any other appropriate provisions. The provisions of Rule 16-760 apply to an order under this section that suspends an attorney.

(d) Presumptive Effect of Referral

A referral from the Child Support Enforcement Administration to the Attorney Grievance Commission is presumptive evidence that the attorney falls within the criteria specified in Code, Family Law Article, §10-119.3 (e)(1), but the introduction of such evidence does not preclude Bar Counsel or the attorney from introducing additional evidence or otherwise showing cause why no suspension should be imposed.

(e) Termination of Suspension

(1) On Notification by the Child Support Enforcement Administration

Upon notification by the Child Support Enforcement Administration that the attorney has complied with the provisions of Code, Family Law Article, §10-119.3 (j), the Court of Appeals shall order the attorney reinstated to the practice of law, unless other grounds exist for the suspension to remain in effect.

(2) On Verified Petition by Attorney

In the absence of a notification by the Child Support Enforcement Administration pursuant to subsection (e)(1) of this Rule, the attorney may file with the Court of Appeals a verified petition for reinstatement. The petition shall allege under oath that (A) the attorney is in compliance with the provisions of Code, Family Law Article, §10-119.3 (j) and is not currently in arrears in the payment of child support, (B) at least 15 days prior to filing the verified petition, the attorney gave written notice of those facts to the Child Support Enforcement Administration and requested that the Child Support Enforcement Administration notify the Court, (C) the Child Support Enforcement Administration has failed or refused to file such a notification, and (D) the attorney is entitled to be reinstated. All relevant documents shall be attached to the petition as exhibits. A copy of the petition and exhibits shall be served on Bar Counsel, who shall file an answer within 15 days after service. Upon consideration of the petition and answer, the Court of Appeals may enter an order reinstating the attorney, an order denying the petition, or any other appropriate order.

(f) Other Disciplinary Proceedings

Proceedings under this Rule shall not preclude (1) the use of the facts underlying the referral from the Child Support Enforcement Administration when relevant to a pending or subsequent disciplinary proceeding against the attorney or (2) prosecution of a disciplinary action based upon a pattern of

conduct adverse to the administration of justice.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 256, Laws of 2007 (HB 792) amended Code, Family Law Article, §10-119.3 to include the Court of Appeals as one of the licensing authorities that can issue a sanction against someone who is in arrears of paying child support. The statute provides that if the person in arrears is an attorney, the Child Support Enforcement Administration (CSEA) may refer the matter to the Attorney Grievance Commission for disciplinary action. If an attorney is found to be in arrears in paying child support, the Court of Appeals may suspend his or her license or take any other action authorized by the Rules in Title 16, Chapter 700.

To make the Rules consistent with the statutory change, the Attorneys Subcommittee recommends the addition of new Rule 16-778, establishing procedures to be followed after a matter has been referred by the CSEA.

Sections (a), (b), (c), and (d) are based on sections (b), (c), (f), and (g), respectively, of Rule 16-773, Reciprocal Discipline or Inactive Status, except that: (1) in Rule 16-778 (a), Bar Counsel receives a directive from the Commission to file a Petition for Disciplinary or Remedial Action pursuant to Rule 16-751 (a)(1) [rather than the discretionary authorization of Rule 16-773 (b) to file a Petition for Disciplinary and Remedial Action pursuant to Rule 16-751 (a)(2)]; and (2) in Rule 16-778 (d), a referral from the CSEA has a "presumptive" effect, rather than the "conclusive" effect of an adjudication that is provided by Rule 16-773 (g). Sections (e) and (f) are new.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-751 by changing the tagline to subsection (a)(1), as follows:

Rule 16-751. PETITION FOR DISCIPLINARY OR REMEDIAL ACTION

(a) Commencement of Disciplinary or Remedial Action

(1) Upon Approval <u>or Direction</u> of Commission

Upon approval or direction of the Commission, Bar Counsel shall file a Petition for Disciplinary or Remedial Action in the Court of Appeals.

(2) Conviction of Crime; Reciprocal Action

If authorized by Rule 16-771 (b) or 16-773 (b), Bar Counsel may file a Petition for Disciplinary or Remedial Action in the Court of Appeals without prior approval of the Commission. Bar Counsel promptly shall notify the Commission of the filing. The Commission on review may direct the withdrawal of a petition that was filed pursuant to this subsection.

. . .

<u>REPORTER'S NOTE</u>

The proposed amendment to the tagline to Rule 16-751 (a)(1) conforms the tagline to the text of the subsection.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 600 - ATTORNEY TRUST ACCOUNTS

AMEND Rule 16-608 b to add certain provisions concerning IOLTA Compliance Reports and to add a decertification procedure, as follows:

Rule 16-608. INTEREST ON FUNDS IN ATTORNEY TRUST ACCOUNTS

a. Generally.

Any interest paid on funds deposited in an attorney trust account, after deducting service charges and fees of the financial institution, shall be credited and belong to the client or third person whose funds are on deposit during the period the interest is earned, except to the extent that interest is paid to the Maryland Legal Services Corporation Fund as authorized by law. The attorney or law firm shall have no right or claim to the interest.

Cross reference: See Rule 16-610 b 1 (D) providing that certain fees may not be deducted from interest that otherwise would be payable to the Maryland Legal Services Corporation Fund.

b. Duty to Report IOLTA Participation.

1. Required as a Condition of Practice.

As a condition precedent to the practice of law, ~~Each attorney~~ each lawyer admitted to practice in Maryland shall report annually in accordance with this Rule information concerning all IOLTA accounts, including name, address, location,

and account number, on a form approved by the Court of Appeals ~~and mailed and returned annually as directed by the Court of Appeals~~.

2. Oversight of the Reporting Process.

The Court of Appeals shall designate an employee of the Administrative Office of the Courts to oversee the reporting process set forth in this Rule.

3. Mailing by the Administrative Office of the Courts.

On or before January 10 of each year, the Administrative Office of the Courts shall mail an IOLTA Compliance Report form to each lawyer on the list maintained by the Client Protection Fund of the Bar of Maryland. The addresses on that list shall be used for all notices and correspondence pertaining to the reports.

4. Due Date.

IOLTA Compliance Reports for each year shall be filed with the Administrative Office of the Courts on or before February 15 of that year.

5. Enforcement.

(A) Notice of Default.

As soon as practicable after May 1 of each year, the Administrative Office of the Courts shall notify each defaulting lawyer of the lawyer's failure to file a report. The notice shall (i) state that the lawyer has not filed the IOLTA Compliance Report for that year, (ii) state that continued failure to file the Report may result in the entry of an order by

the Court of Appeals prohibiting the lawyer from practicing law in the State, and (iii) be sent by first-class mail. The mailing of the notice of default shall constitute service.

(B) Additional Discretionary Notice of Default.

In addition to the mailed notice, the Administrative Office of the Courts may give additional notice to defaulting lawyers by any of the means enumerated in Rule 16-811 f 3.

(C) List of Defaulting Lawyers.

As soon as practicable after July 1 of each year but no later than August 1, the Administrative Office of the Courts shall prepare, certify, and file with the Court of Appeals a list that includes the name and address of each lawyer engaged in the practice of law who has failed to file the IOLTA Compliance Report for that year.

(D) Certification of Default; Order of Decertification.

The Administrative Office of the Courts shall submit with the list a proposed Decertification Order stating the names and addresses of those lawyers who have failed to file their IOLTA Compliance Report. At the request of the Court of Appeals, the Administrative Office of the Courts also shall furnish additional information from its records or give further notice to the defaulting lawyers. If satisfied that the Administrative Office of the Courts has given the required notice to each lawyer named on the proposed Decertification Order, the Court of Appeals shall enter a Decertification Order prohibiting each of them from practicing law in the State.

(E) Mailing of Decertification Order.

The Administrative Office of the Courts shall mail by first-class mail a copy of the Decertification Order to each lawyer named in the Order. The mailing of the copy of the Decertification Order shall constitute service.

(F) Recertification; Restoration to Good Standing.

If a lawyer thereafter files the outstanding IOLTA Compliance Report, the Administrative Office of the Courts shall request the Court of Appeals to enter an order that recertifies the lawyer and restores the lawyer to good standing. Upon entry of that order, the Administrative Office of the Courts promptly shall furnish confirmation to the lawyer. After a lawyer is recertified, the fact that the lawyer had been decertified need not be disclosed by the lawyer in response to a request for information as to whether the lawyer has been the subject of a disciplinary or remedial proceeding.

(G) Notices to Clerks and Maryland Legal Services Corporation.

The Clerk of the Court of Appeals shall send a copy of each Decertification Order and each order that recertifies a lawyer and restores the lawyer to good standing entered pursuant to this Rule to the Clerk of the Court of Special Appeals, the Clerk of each circuit court, the Chief Clerk of the District Court, and the Register of Wills for each county, and the Maryland Legal Services Corporation.

(H) Certain Information Furnished to the Maryland Legal

Services Corporation.

The Administrative Office of the Courts promptly shall submit to the Maryland Legal Services Corporation the data from electronically submitted IOLTA Compliance Reports and, upon request, shall forward the paper Compliance Reports.

(I) Confidentiality.

Except as provided in subsection b 5 (H) of this Rule, IOLTA Compliance Reports, whether in paper or electronic form, are confidential and are not subject to inspection or disclosure under Code, State Government Article, §10-615 (2) (iii). The Administrative Office of the Courts shall not release the Reports to any person or agency, except as provided in this Rule or upon order of the Court of Appeals. Nonidentifying information and data contained in a lawyer's IOLTA Compliance Report are not confidential.

Cross reference: See Code, Business Occupations and Professions Article, §10-303.

Source: Section a of this Rule is former Rule BU8. Section b is new.

REPORTER'S NOTE

The Rules Committee is advised that in 2008, 923 lawyers failed to timely file an IOLTA Compliance Report. Even after a November 2008 letter from Bar Counsel to the noncomplying lawyers, 324 Reports remained overdue. This number includes Reports due from 124 lawyers who cannot be located; Bar Counsel's letters to them were returned by the Post Office as not being deliverable to the lawyers at the addresses listed in the Client Protection Fund records.

The proposed amendments to Rule 16-608 provide for decertification of a lawyer who fails to file an IOLTA Compliance Report. The amendments are based on similar provisions in Rule

16-903, pertaining to the failure to file a Pro Bono Legal Service Report. Added to both Rules is a new sentence, based upon similar language in Rule 16-735 (c)(1), that provides that in response to a request for information as to whether the lawyer has been the subject of a disciplinary or remedial proceeding, a recertified lawyer need not disclose that the lawyer had been decertified.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 900 - PRO BONO LEGAL SERVICE

AMEND Rule 16-903 to add the phrase "in accordance with this Rule" to section (a), to correct obsolete references in section (c) and subsection (e)(2), and to add to subsection (e)(2) a sentence allowing a recertified lawyer not to disclose the decertification under certain circumstances, and to make stylistic changes, as follows:

Rule 16-903. REPORTING PRO BONO LEGAL SERVICE

(a) Required as a Condition of Practice

As a condition precedent to the practice of law, each lawyer ~~authorized~~ admitted to practice ~~law~~ in Maryland shall file annually with the Administrative Office of the Courts, in accordance with this Rule, a Pro Bono Legal Service Report on a form approved by the Court of Appeals. The form shall not require the identification of pro bono clients.

Committee note: The purpose of pro bono legal service reporting is to document the pro bono legal service performed by lawyers in Maryland and determine the effectiveness of the Local Pro Bono Action Plans, the State Pro Bono Action Plan, the Rules in this Chapter, and Rule 6.1 of the Maryland Lawyers' Rules of Professional Conduct.

(b) ~~Designated Employee of the Administrative Office of the Courts~~ Oversight of the Reporting Process

The Court of Appeals shall designate an employee of the Administrative Office of the Courts to oversee the reporting

process set forth in this Rule.

(c) Mailing by the Administrative Office of the Courts

On or before January 10 of each year, the Administrative Office of the Courts shall mail a Pro Bono Legal Service Report form to each lawyer on the list maintained by the ~~Clients' Security Trust Fund~~ Client Protection Fund of the Bar of Maryland. The addresses on that list shall be used for all notices and correspondence pertaining to the reports.

(d) Due Date

Pro Bono Legal Service Reports for a given calendar year shall be filed with the Administrative Office of the Courts on or before February 15 of the following calendar year.

(e) Enforcement

(1) Notice of Default

As soon as practicable after May 1 of each year, the Administrative Office of the Courts shall ~~give notice of the failure to file a report to~~ notify each defaulting lawyer of the lawyer's failure to file a report. The notice shall (A) state that the lawyer has not filed the Pro Bono Legal Service Report for the previous calendar year, (B) state that continued failure to file the Report may result in the entry of an order by the Court of Appeals prohibiting the lawyer from practicing law in the State, and (C) be sent by first-class mail. The mailing of the notice of default shall constitute service.

(2) Additional Discretionary Notice of Default

In addition to the mailed notice, the Administrative

Office of the Courts may give additional notice to defaulting lawyers by any of the means enumerated in Rule 16-811 ~~g 3~~ f 3.

(3) List of Defaulting Lawyers

As soon as practicable after July 1 of each year but no later than August 1, the Administrative Office of the Courts shall prepare, certify, and file with the Court of Appeals a list that includes the name and address of each lawyer engaged in the practice of law who has failed to file the Pro Bono Legal Service Report for the previous year.

(4) Certification of Default; Order of Decertification

The Administrative Office of the Courts shall submit with the list a proposed Decertification Order stating the names and addresses of those lawyers who have failed to file their Pro Bono Legal Service Reports for the specified calendar year. At the request of the Court of Appeals, the Administrative Office of the Courts also shall furnish additional information from its records or give further notice to the defaulting lawyers. If satisfied that the Administrative Office of the Courts has given the required notice to each lawyer named on the proposed Decertification Order, the Court of Appeals shall enter a Decertification Order prohibiting each of them from practicing law in the State.

(5) Mailing of Decertification Order

The Administrative Office of the Courts shall mail by first class mail a copy of the Decertification Order to each lawyer named in the Order. The mailing of the copy of the

Decertification Order shall constitute service.

(6) Recertification; Restoration to Good Standing

If a lawyer thereafter files the outstanding Pro Bono Legal Service Report, the Administrative Office of the Courts shall request the Court of Appeals to enter an order that recertifies the lawyer and restores the lawyer to good standing. Upon entry of ~~an~~ that order~~, that recertifies the lawyer and restores the lawyer to good standing,~~ the Administrative Office of the Courts promptly shall furnish confirmation to the lawyer. After a lawyer is recertified, the fact that the lawyer had been decertified need not be disclosed by the lawyer in response to a request for information as to whether the lawyer has been the subject of a disciplinary or remedial proceeding.

(7) Notices to Clerks

The Clerk of the Court of Appeals shall send a copy of each Decertification Order and each order that recertifies a lawyer and restores the lawyer to good standing entered pursuant to this Rule to the Clerk of the Court of Special Appeals, the Clerk of each circuit court, the Chief Clerk of the District Court, and the Register of Wills for each county.

(f) Certain Information Furnished to the Standing Committee on Pro Bono Legal Service

The Administrative Office of the Courts shall submit promptly to the Standing Committee on Pro Bono Legal Service a compilation of non-identifying information and data from the Pro Bono Legal Service Reports.

(g) Confidentiality

Pro Bono Legal Service Reports are confidential and are not subject to inspection or disclosure under Code, State Government Article, §10-615 (2)(iii). The Administrative Office of the Courts shall not release the Reports to any person or agency, except upon order of the Court of Appeals. Nonidentifying information and data contained in a lawyer's Pro Bono Legal Service Report are not confidential.

Source: This Rule is new.

REPORTER'S NOTE

Upon admission to the bar, a new attorney may practice law prior to the date the attorney's initial Pro Bono Legal Services Report is due. To clarify Rule 16-903 in this regard, the phrase "in accordance with this Rule" is added to section (a).

An amendment to section (c) corrects an obsolete reference to the "Clients' Security Trust Fund" to read "Client Protection Fund of the Bar of Maryland."

An amendment to subsection (e)(2) corrects an obsolete reference to "Rule 16-811 g 3" to read "Rule 16-811 f 3."

An amendment to subsection (e)(6), based upon similar language in Rule 16-735 (c)(1), provides that in response to a request for information as to whether the lawyer has been the subject of a disciplinary or remedial proceeding, a recertified lawyer need not disclose the fact that the lawyer had been decertified.

Other changes to the Rule are stylistic, only.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1006 (d)(4) to add IOLTA Compliance Reports, as follows:

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

Except as otherwise provided by law, court order, or the Rules in this Chapter, the custodian shall deny inspection of:

. . .

(d) The following case records in actions or proceedings involving attorneys or judges:

. . .

(4) Case records consisting of <u>IOLTA Compliance Reports filed by an attorney pursuant to Rule 16-608 and</u> Pro Bono Legal Service Reports filed by an attorney pursuant to Rule 16-903.

. . .

<u>REPORTER'S NOTE</u>

The proposed amendment to Rule 16-1006 (d)(4) adds to the subsection IOLTA Compliance Reports filed pursuant to Rule 16-608.

MARYLAND RULES OF PROCEDURE

RULES GOVERNING ADMISSION TO THE BAR OF MARYLAND

AMEND Rule 19 of the Rules Governing Admission to the Bar of Maryland to add to section (a) and subsection (b)(1) provisions concerning the Accommodations Review Committee and its panels, to add to section (c) provisions concerning disclosures to bar admission agencies of other jurisdictions and to judicial and attorney disciplinary authorities, to expand upon the disclosures to the National Conference of Bar Examiners allowed by subsection (c)(7), to allow disclosure of the report of any Character Committee or the Board to be disclosed to any member of a Character Committee, to allow disclosure of certain information to the Child Support Enforcement Administration upon its request, and to provide for access to and confidentiality of certain records and proceedings in the Court of Appeals, as follows:

Rule 19. CONFIDENTIALITY

(a) Proceedings Before Committee or Board; General Policy

Except as provided in sections (b)<u>,</u> ~~and~~ (c)<u>, and (d)</u> of this Rule, <u>the</u> proceedings before <u>the Accommodations Review Committee and its panels,</u> a Character Committee, ~~or~~ <u>and</u> the Board and the <u>related</u> papers, evidence, and information ~~relating to those proceedings~~ are confidential and shall not be open to public inspection or subject to court process or compulsory disclosure.

(b) Right of Applicant

(1) Except as provided in paragraph (2) of this section, an applicant has the right to attend all hearings before a panel of the Accommodations Review Committee, a Character Committee, ~~or~~ and the Board pertaining to his or her application and to be informed of and inspect all papers, evidence, and information received or considered by the panel, Committee, or the Board pertaining to the applicant.

(2) This section does not apply to (A) papers or evidence received or considered by a Character Committee of the Board if the Committee or Board, without a hearing, recommends the applicant's admission; (B) personal memoranda, notes, and work papers of members or staff of a Character Committee or the Board; (C) correspondence between or among members or staff of a Character Committee or the Board; or (D) an applicant's bar examination grades and answers, except as authorized in Rule 8 and Rule 13.

(c) When Disclosure Authorized

The Board may disclose:

(1) statistical information that does not reveal the identity of any individual applicant;

(2) the fact that an applicant has passed the bar examination and the date of the examination;

(3) any material pertaining to an applicant that the applicant would be entitled to inspect under section (b) of this Rule, if the applicant has consented in writing to the

disclosure;

(4) any material pertaining to an applicant requested by

(A) a court of this State, another state, or the United States,

(B) Bar Counsel, the Attorney Grievance Commission, or the attorney disciplinary authority in another state,

(C) the authority in another jurisdiction that is responsible for investigating the character and fitness of an applicant for admission to the bar of that jurisdiction, or

(D) Investigative Counsel, the Commission on Judicial Disabilities, or the judicial disciplinary authority in another jurisdiction for use in:

~~(A)~~ (i) a pending disciplinary proceeding ~~pending in that court~~ against the applicant as an attorney or judge;

~~(B)~~ (ii) a pending proceeding ~~pending in that court~~ for reinstatement of the applicant as an attorney after disbarment; or

~~(C)~~ (iii) a pending proceeding ~~pending in that court~~ for original admission of the applicant to the Bar;

(5) any material pertaining to an applicant requested by a judicial nominating commission or the Governor of this State, a committee of the Senate of Maryland, or a committee of the United States Senate in connection with an application by or nomination of the applicant for judicial office;

(6) to a law school, the names of persons who graduated from that law school who took a bar examination and whether they

passed or failed the examination; ~~and~~

(7) to the National Conference of Bar Examiners, ~~identifying~~ the following information regarding ~~(including name, Social Security Number, birthdate, date of application, and date of examination) of~~ persons who have filed applications for admission pursuant to Rule 2 or petitions to take the attorney's examination pursuant to Rule 13~~.~~: the applicant's name and aliases, applicant number, birthdate, Law School Admission Council number, law school, date that juris doctor degree conferred, bar examination results and pass/fail status, and number of bar examination attempts;

(8) to any member of a Character Committee, the report of any Character Committee or the Board following a hearing on an application; and

(9) to the Child Support Enforcement Administration, upon its request, the name, Social Security number, and address of a person who has filed an application pursuant to Rule 2 or a petition to take the attorney's examination pursuant to Rule 13.

Unless information disclosed pursuant to paragraphs (4) and (5) of this section is disclosed with the written consent of the applicant, an applicant shall receive a copy of the information and may rebut, in writing, any matter contained in it. Upon receipt of a written rebuttal, the Board shall forward a copy to the person or entity to whom the information was disclosed.

(d) Proceedings and Access to Records in the Court of Appeals

(1) Subject to reasonable regulation by the Court of

Appeals, Bar Admission ceremonies shall be open.

(2) Unless the Court otherwise orders in a particular case~~,~~:

(A) ~~proceedings~~ hearings in the Court of Appeals shall be open~~.~~, and

(B) if the Court conducts a hearing regarding a bar applicant, any report by the Accommodations Review Committee, a Character Committee, or the Board filed with the Court, but no other part of the applicant's record, shall be subject to public inspection.

(3) The Court of Appeals may make any of the disclosures that the Board may make pursuant to section (c) of this Rule.

(4) Except as provided in paragraphs (1), (2), and (3) of this section or as otherwise required by law, proceedings before the Court of Appeals and the related papers, evidence, and information are confidential and shall not be open to public inspection or subject to court process or compulsory disclosure.

Source: This Rule is new.

REPORTER'S NOTE

Several amendments to Rule 19 of the Rules Governing Admission to the Bar are proposed.

Provisions concerning the Accommodations Review Committee and its panels are added to section (a) and subsections (b)(1) and (d)(2).

In section (c), the list of permissible disclosures is expanded to include disclosures to bar admission authorities in other states, authorities in other jurisdictions responsible for investigating the character and fitness of a bar applicant, Bar Counsel, the Attorney Grievance Commission, attorney disciplinary authorities in other states, and judicial disciplinary entities in Maryland and other jurisdictions.

Amendments to subsection (c)(7) are at the request of the State Board of Law Examiners. The Board wishes to participate in a data collection initiative of the National Conference of Bar Examiners ("NCBE") to make the collection of accurate bar passage data universal. The amendments to subsection (c)(7) authorize the Board to provide the necessary information to the NCBE. The reference to "Social Security number" is deleted from the subsection.

New subsection (c)(8) allows a report of a Character Committee or the Board following a hearing to be disclosed to any member of a Character Committee.

Code, Family Law Article §10-119.3 (b) requires a "licensing authority," as defined in §10-119.3 (a)(3)(ii), to require each applicant for a license to disclose the applicant's Social Security number. Code, Family Law Article, §10-119.3 (d) requires the "licensing authority," upon request of the Child Support Enforcement Administration ("CSEA"), to provide certain information to the CSEA. Chapter 256, Laws of 2007 (HB 792) added the Court of Appeals to the list of licensing authorities to which the statute applies. New subsection (c)(9) allows the Board, upon request of the CSEA, to disclose to the CSEA the name, Social Security number, and address of a person who has filed an application to take the bar examination or petition to take the attorney's examination in Maryland.

Subsection (d)(1) provides that Bar Admission Ceremonies are open, subject to reasonable regulation by the Court of Appeals –- for example, a limit on the number of tickets to the ceremony available to the family and friends of each new admittee.

Subsection (d)(2) provides that hearings in the Court of Appeals regarding a bar applicant are open, unless the Court otherwise orders in a particular case. If a hearing is conducted, the report of the Accommodations Review Committee, Character Committee, or Board are open to public inspection, but other parts of the applicant's record -- which may contain medical, financial, and other personal information not related to the subject matter of the proceeding -- remain confidential.

Subsection (d)(3) allows the Court to make any disclosure that the Board may make.

Subsection (d)(4) maintains the confidentiality of Bar admission materials filed with the Court, except as provided by the Rule or otherwise required by law.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1006 (d)(3) to add references to case records relating to bar admission proceedings before the Accommodations Review Committee and its panels, the State Board of Law Examiners, and the Court of Appeals, as follows:

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

Except as otherwise provided by law, court order, or the Rules in this Chapter, the custodian shall deny inspection of:

. . .

(d) The following case records in actions or proceedings involving attorneys or judges:

. . .

(3) Subject to the provisions of Rule 19 (b)<u>,</u> ~~and~~ (c)<u>, and (d)</u> of the Rules Governing Admission to the Bar, case records relating to <u>bar admission</u> proceedings before <u>the Accommodations Review Committee and its panels,</u> a Character Committee<u>, the State Board of Law Examiners, and the Court of Appeals</u>.

. . .

<u>REPORTER'S NOTE</u>

The proposed amendment to Rule 16-1006 (d)(3) conforms the subsection to Rule 19 of the Rules Governing Admission to the Bar.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

ADD new Rule 2-507.1, as follows:

Rule 2-507.1. STAY

If, by joint motion, all parties request that an action be stayed, the court shall grant the motion. On written request of any party, the court shall lift the stay. Unless a joint request to extend the stay is made within the time set forth in section (c) of Rule 2-507, the action shall be subject to dismissal for lack of prosecution under the provisions of that Rule.

Committee note: Administrative timeliness standards do not apply to an action that is stayed pursuant to this Rule. This Rule does not limit motions to stay an action for reasons other than the joint request of the parties.

Cross reference: For a continuance on motion of a party or on the initiative of the court, see Rule 2-508.

Source: This Rule is new.

REPORTER'S NOTE

The Rules Committee recommends the adoption of new Rule 2-507.1, which provides for the stay of a civil action in a circuit court upon joint motion of all parties. The Committee believes that the Rule will help alleviate the problem circuit courts have in meeting administrative timeliness standards in actions in which the parties wish neither to move the action forward nor dismiss the action. Reasons that an action may be in this status include: (1) the defendant is about to move or otherwise become difficult to serve, so the plaintiff files suit, serves the defendant, and then works toward settlement of the action; (2) the parties have entered into a settlement agreement, performance of which will require a period of time, and the plaintiff does not wish to dismiss the action until performance

is complete; (3) limitations are about to run, but the parties need additional time to resolve all details of a settlement; (4) the parties are attempting to resolve the matter by participating in alternative dispute resolution proceedings; or (5) in a divorce action, reconciliation efforts are being made.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-508 by adding a cross reference to a certain Administrative Order, as follows:

Rule 2-508. CONTINUANCE

. . .

(e) Costs

When granting a continuance for a reason other than one stated in section (d), the court may assess costs and expenses occasioned by the continuance.

Cross reference: For the Revised Administrative Order for Continuances for Conflicting Case Assignments or Legislative Duties, see the Maryland Judiciary Website, www.mdcourts.gov.

. . .

REPORTER'S NOTE

In lieu of a Rule governing continuances, the Rules Committee recommends adding to Rule 2-508 a cross reference to the website of the Maryland Judiciary, so that lawyers can more easily locate the Administrative Order pertaining to continuances. The Committee is advised that the Conference of Circuit Judges prefers that continuances remain governed by Administrative Order, rather than by Rule, because an Administrative Order provides greater flexibility and can be amended more easily than a Rule.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 400 - BOND

AMEND Rule 1-402 by adding to section (e) language providing for examples of other security for the performance of a bond and by adding a new section (f) pertaining to additional or different collateral security, as follows:

Rule 1-402. FILING AND APPROVAL

(a) Filing; Surety

Every bond shall be filed with the clerk. Unless otherwise expressly provided, there shall be a surety on every bond filed.

(b) Approval

Except as provided in this section, a bond is subject to approval by the clerk as to form, amount, and surety. If the clerk refuses to approve the bond, if an adverse party objects in writing to the bond, or if a rule requires that the court approve the bond, the bond is subject to approval by the court, after notice and an opportunity for any hearing the court may direct.

(c) Bond in Name of State

When the obligees on a bond are numerous, the court may permit a bond to be given in the name of the State for the benefit of the obligees. Any independent action on the bond or proceeding pursuant to Rule 1-404 shall be brought in the name of

the State for the benefit of the party in interest.

(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.

(e) Security Instead of Surety

Instead of a surety on a bond, the court may accept other security for the performance of a bond, including letters of credit, escrow agreements, certificates of deposit, marketable securities, liens on real property, and cash deposits. When other security is accepted, it may not be released except upon order of court entered after notice to all parties.

(f) Additional or Different Collateral Security

Upon a finding that the collateral security originally deposited, pledged, or encumbered is insufficient to ensure collection of the penalty sum of the bond, the court, on motion or on its own initiative and after notice and opportunity for hearing, may require additional or different collateral security.

~~(f)~~ (g) Recording

Every approved bond shall be recorded by the clerk.

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

Source: This Rule is derived as follows:
Section (a) is derived from former Rule H 2 a.
Section (b) is derived from former Rule H 2 b 1 and 2.
Section (c) is derived from former Rule H 7 a and b.
Section (d) is derived from former Rule H 4 a and b.
Section (e) is derived from former Rule H 3 a 2 and b.

Section (f) is new.
Section ~~(f)~~ (g) is derived from former Rule H 2 a.

REPORTER'S NOTE

An article in the July 16, 2007 issue of the Daily Record encouraged the Rules Committee to revisit the issue of filing a supersedeas bond to stay a judgment pending an appeal. The article notes that these bonds are becoming scarce and suggests that the Rules focus on alternatives for staying a judgment pending appeal.

The Rules Committee recommends adding to the Rule examples of other forms of security for the performance of a bond. Examples were found in similar rules in Alaska and Illinois and in a summary of a journal article from 76 Def. Couns. J. 140 (2009) entitled *Staying Enforcement of a Money Judgment Pending Appeal: An Overview*.

Because of the possibility of a decrease in value of the security originally accepted for the performance of the bond, the Committee recommends the addition of a new section (f) that allows the court to require additional or different security. Section (f) is based on the language of Rule 4-217 (e)(3).

MARYLAND RULES OF PROCEDURE

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

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 8-111 to add the word "opposing" to subsection (a)(1), as follows:

Rule 8-111. DESIGNATION OF PARTIES; REFERENCES

(a) Formal Designation

(1) No Prior Appellate Decision

When no prior appellate decision has been rendered, the party first appealing the decision of the trial court shall be designated the appellant and the adverse party shall be designated the appellee. Unless the Court orders otherwise, the opposing parties to a subsequently filed appeal shall be designated the cross-appellant and cross-appellee.

(2) Prior Appellate Decision

In an appeal to the Court of Appeals from a decision by the Court of Special Appeals or by a circuit court exercising appellate jurisdiction, the party seeking review of the most recent decision shall be designated the petitioner and the adverse party shall be designated the respondent. Except as otherwise specifically provided or necessarily implied, the term "appellant" as used in the rules in this Title shall include a

petitioner and the term "appellee" shall include a respondent.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 8-111 clarifies the Rule by adding the word "opposing" to subsection (a)(1).

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 (a) by adding a reference to "actions for a writ of error coram nobis," 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.

. . .

REPORTER'S NOTE

The Rules Committee recommends adding appeals from actions for a writ of error coram nobis to the list of civil actions in Rule 8-205 (a) in which an information report does not have to be filed.

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 (a)(1) to clarify that an appeal from a judgment granting or denying a petition in a CINA proceeding is to be expedited and to make stylistic changes, 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) ~~contesting a judgment~~ from a judgment granting, denying, or establishing custody of or visitation with a minor child~~, including an appeal~~ 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) or an order pursuant to Rule 8-206 (d) directing preparation of the record, the appellant shall order the transcript and make an agreement for payment to assure its preparation. The court reporter or other person responsible for preparation of the transcript shall give priority to transcripts required for appeals subject to this section and shall complete and file the transcripts with the clerk of the lower court within 20 days after receipt of an order of the party directing their preparation and an agreement for payment of the cost. An extension of time may be granted only for good cause.

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

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

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

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

. . .

REPORTER'S NOTE

The Rules Committee recommends amending subsection (a)(1) of Rule 8-207 to make clear that an appeal from a judgment granting or denying a petition to declare that a child is a child in need of assistance should be an expedited appeal.

Other changes are stylistic, only.

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 8-302 (a) by adding language providing for an alternative period for the filing of a petition for a writ of certiorari, as follows:

Rule 8-302. PETITION FOR WRIT OF CERTIORARI - TIMES FOR FILING

(a) From Appeal to Court of Special Appeals

If a notice of appeal to the Court of Special Appeals has been filed pursuant to Rule 8-201, a petition for a writ of certiorari may be filed either before or after the Court of Special Appeals has rendered a decision, but not later than the later of 15 days after the Court of Special Appeals issues its mandate or 30 days after the filing of that court's opinion.

. . .

REPORTER'S NOTE

Sterling v. Atlantic Automotive Corporation, 399 Md. 375 (2007) addressed the issue of timeliness in filing a petition for a writ of certiorari. Rule 8-302 (a) provides that the time for filing the petition is not later than 15 days after the Court of Special Appeals issues its mandate. In *Sterling*, the Court held that Rule 1-203 (c) does not extend the time allowed under Rule 8-302 (a) for filing the petition. The Court pointed out that in accordance with Rule 8-606 (b), the Court of Special Appeals ordinarily issues its mandate 30 days after its opinion is filed, so a party ordinarily has at least 45 days in which to prepare and file the petition.

A concurring opinion noted that a hardship may arise if the intermediate appellate court decides to issue its mandate right away, which it is entitled to do under Rule 8-606 (b), although this is an infrequent occurrence. In that situation, a party may have very little time to analyze the opinion and prepare a petition for a writ of certiorari.

The proposed amendment to Rule 8-302 adds to section (a) an alternative period for the filing of a petition for a writ of certiorari, ensuring that a party has at least 30 days in which to file the petition.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-501 (a) to conform to Rule 8-502 (c), as follows:

Rule 8-501. RECORD EXTRACT

(a) Duty of Appellant

Unless otherwise ordered by the appellate court or provided by this Rule, the appellant shall prepare and file a record extract in every case in the Court of Appeals, subject to section (k) of this Rule, and in every civil case in the Court of Special Appeals. The record extract shall be included as an appendix to appellant's brief, or filed as a separate volume with the brief in the ~~same~~ number of copies required by Rule 8-502 (c).

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 8-502.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 500 - RECORD EXTRACTS, BRIEFS, AND ARGUMENT

AMEND Rule 8-502 (c) to conform to the current requirements of the Court of Special Appeals, as follows:

Rule 8-502. FILING OF BRIEFS

. . .

(c) Filing and Service

In an appeal to the Court of Special Appeals, 15 copies of each brief and ~~seven~~ 10 copies of each record extract shall be filed, unless otherwise ordered by the court. In the Court of Appeals, 20 copies of each brief and record extract shall be filed, unless otherwise ordered by the court. Two copies of each brief and record extract shall be served on each party pursuant to Rule 1-321.

. . .

REPORTER'S NOTE

An attorney noted an inconsistency between Rules 8-501 (a) and 8-502 (c) concerning the number of record extracts to be filed when an appeal to the Court of Special Appeals is filed. Rule 8-501 (a) provides that the number of copies of record extracts to be filed is the same as the number of copies of the brief to be filed. Rule 8-502 (c) provides that 15 copies of each brief and seven copies of each record extract shall be filed. When the attorney asked a staff person at the Court of Special Appeals what the correct number is, he was told that an administrative order of the Court of Special Appeals dated November 1, 2006 is in effect that requires 10 copies of the

record extract to be filed. The Chief Deputy Clerk of the Court of Special Appeals suggests that section (c) of Rule 8-502 be amended to change the number of copies from seven to 10 to conform to the practice in the Court. The Rules Committee also recommends changing section (a) of Rule 8-501 to refer to Rule 8-502 (c).

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 - RECORD EXTRACTS, BRIEFS, AND ARGUMENT

AMEND Rule 8-503 (c) to add the e-mail address as part of the information required for the cover page of a brief, and to make stylistic changes, as follows:

Rule 8-503. STYLE AND FORM OF BRIEFS

. . .

(c) Covers

A brief shall have a back and cover of the following color:

(1) In the Court of Special Appeals:

(A) appellant's brief - yellow;

(B) appellee's brief - green;

(C) reply brief - light red;

(D) amicus curiae brief - gray.

(2) In the Court of Appeals:

(A) appellant's brief - white;

(B) appellee's brief - blue;

(C) reply brief - tan;

(D) amicus curiae brief - gray.

The cover page shall contain the name, address, ~~and~~ telephone number, and e-mail address, if available, of at least one

attorney for a party represented by an attorney or of the party if not represented by an attorney. If the appeal is from a decision of a trial court, the cover page shall also name the trial court and each judge of that court whose ruling is at issue in the appeal. The name typed or printed on the cover constitutes a signature for purposes of Rule 1-311.

. . .

REPORTER'S NOTE

The Chief Judge of the Court of Special Appeals has requested that Rule 8-503 (c) be amended to include the e-mail address, if available, as part of the information that is required on the cover page of the brief. This addition will be helpful in the efficient operation of the Court by facilitating the dissemination of opinions to the parties via e-mail.

MARYLAND RULES OF PROCEDURE

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

CHAPTER 500 - RECORD EXTRACTS, BRIEFS, AND ARGUMENT

AMEND Rule 8-504 (b) to add language providing for a certain exception, as follows:

Rule 8-504. CONTENTS OF BRIEF

. . .

(b) Appendix

Unless the material is included in the record extract pursuant to Rule 8-501, ~~The~~ the appellant shall reproduce, as an appendix to the brief, the pertinent part of every ruling, opinion, or jury instruction of each lower court that deals with points raised by the appellant on appeal. If the appellee believes that the part reproduced by the appellant is inadequate, the appellee shall reproduce, as an appendix to the appellee's brief, any additional part of the instructions or opinion believed necessary by the appellee.

Committee note: Rule 8-501 (j) allows a party to include in an appendix to a brief any material that inadvertently was omitted from the record extract.

. . .

REPORTER'S NOTE

Certain material is required to be filed in both the record extract pursuant to Rule 8-501 and the appendix pursuant to Rule 8-504 (b). To avoid this duplication, the Rules Committee

recommends adding an exception to the filing requirement in Rule 8-504 (b) for materials already filed in the record extract.

MARYLAND RULES OF PROCEDURE

APPENDIX - FORM INTERROGATORIES

AMEND Form Interrogatories, Form 2, General Definitions, to add "electronically stored information" and other language to the definition of "document," as follows:

Form 2. General Definitions.

Definitions

In these interrogatories, the following definitions apply:

(a) **Document** includes ~~a~~ electronically stored information and any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation stored in any medium from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form. (Standard General Definition (a).)

. . .

REPORTER'S NOTE

Standard General Definition (a), Document, is proposed to be amended to include electronically stored information and other terminology used in the December 4, 2007 amendments to Rule 2-422 (a) (effective January 1, 2008).

MARYLAND RULES OF PROCEDURE

APPENDIX: FORMS

FORM INTERROGATORIES

AMEND Form Interrogatories, Form 7, Motor Vehicle Tort Interrogatories, by adding a new Standard Motor Vehicle Tort Interrogatory No. 26, as follows:

Form 7. Motor Vehicle Tort Interrogatories.

Interrogatories

. . .

26. If you were **in a vehicle** at the time of the **occurrence**, state whether there were any electronic devices capable of two-way voice, text, data, or image transmission **in the vehicle** and for each device:

(a) state the type of device (e.g., cellular telephone, personal digital assistant, citizens' band radio, mobile data terminal);

(b) **identify** the owner of the device;

(c) **identify** the **person** who had **possession** of the device at the time of the **occurrence**;

(d) state whether the device was in use at the time of the **occurrence**;

(e) **identify** the service provider for the device;

(f) state the account number with the service provider; and

(g) if the device has a telephone number, state the number, including the area code.

(Standard Motor Vehicle Tort Interrogatory No. 26)

REPORTER'S NOTE

The Rules Committee considered a suggestion that a new Form Interrogatory concerning the use of cellular telephones be added to Form 7, Motor Vehicle Tort Interrogatories. The Committee has expanded upon that suggestion and recommends a new form interrogatory that includes all "electronic devices capable of two-way voice, text, data, or image transmission." Proposed new Standard Motor Vehicle Tort Interrogatory No. 26, which otherwise would be subject to objection as a compound question, will count as a single interrogatory in accordance with Rules 2-421 (a) and 3-421 (b). The Committee believes that the interrogatory will enhance the efficient exchange of meaningful discovery information concerning the electronic devices encompassed by the interrogatory.

MARYLAND RULES OF PROCEDURE

APPENDIX - FORM INTERROGATORIES

AMEND Form Interrogatories, Form 8, Personal Injury Interrogatories, by adding a new Standard Personal Injury Interrogatory No. 10, as follows:

Form 8. Personal Injury Interrogatories.

. . .

10. State whether you have applied for any Medicare, Medicaid, or other federally funded benefits with respect to the injuries or **occurrence** complained of in this action, and if so, for each such application:

(a) state the type of benefits involved;

(b) **identify** the funding source to which you applied;

(c) state the case number, policy number, or other identifier assigned to your application;

(d) state the amount of benefits paid, if any; and

(e) **identify** all **documents** that contain any of the information requested in this interrogatory.

(Standard Personal Injury Interrogatory No. 10.)

REPORTER'S NOTE

With respect to a personal injury case of a plaintiff whose medical bills were paid or in the future may be paid by Medicare or other federal programs, the federal government has a statutory "super lien" against any funds paid or promised to settle the case, or to satisfy a judgment in the case. To enforce its lien,

the federal government has a direct-action right against any of the parties to the personal injury case, their respective attorneys, and the defendant’s insurer. Recovery may be sought even if the parties, the attorneys, and the insurer had no actual knowledge of the claimed lien. See 42 C. F. R. §411.24 (i)(2). Proposed new Standard Personal Injury Interrogatory No. 10 elicits information concerning liens of this nature.

MARYLAND RULES OF PROCEDURE

APPENDIX - FORM INTERROGATORIES

ADD new Form 11, Medical Malpractice Definitions, to Appendix: Form Interrogatories, as follows:

Form 11. Medical Malpractice Definitions

Definitions

(a) **Defendant** includes the agents, servants, and employees of the defendant.

(Standard Medical Malpractice Definition (a).)

(b) **Patient** means the individual, whether alive or dead, whose medical care is the subject of this action.

(Standard Medical Malpractice Definition (b).)

REPORTER'S NOTE

New Form 11, Medical Malpractice Definitions, is proposed by the Rules Committee in conjunction with its recommendation that Medical Malpractice Form Interrogatories be added to the Appendix of Form Interrogatories.

ADD new Form 12, Medical Malpractice Form Interrogatories, to Appendix: Form Interrogatories, as follows:

Form 12. Medical Malpractice Interrogatories

Interrogatories for Use by Either Party

1. If you intend to rely upon or use in direct examination any medical article, treatise, or other publication, **identify** the **document** and state:

(a) the title of the publication, journal, magazine, or treatise in which each **document** was published,

(b) the name and address of the publisher,

(c) the date of publication, and

(d) the volume and page or section referenced.

(Standard Medical Malpractice Interrogatory No. 1.)

Interrogatories to Defendant from Plaintiff

31. Describe the nature and duration of the professional or business relationship between you and any other Defendant.

(Standard Medical Malpractice Interrogatory No. 31.)

32. State your professional medical training, qualifications and experience, including:

(a) each university or college you attended, each degree awarded to you, and the date of each award;

(b) each hospital with which you have been affiliated at any time up to the present, and the nature and inclusive dates of each affiliation.

(c) each medical society or association of which you have ever been a member, and the inclusive dates of your membership;

(d) each specialty or subspecialty for which you have been certified by an American speciality or subspecialty board, and the date of each certification; and

(e) a bibliography of all your publications, including titles, dates and publishers.

(Standard Medical Malpractice Interrogatory No. 32.)

33. List, by date and time of day, each occasion on which you saw the **Patient**, and as to each occasion, describe in detail:

(a) the nature and scope of your examination of the **Patient**;

(b) the nature and scope of any conversation you had with the **Patient** or with anyone who accompanied the **Patient**;

(c) what you observed or were told about the **Patient's** condition; and

(d) the treatment you provided or ordered to be provided for the **Patient**.

(Standard Medical Malpractice Interrogatory No. 33.)

34. Describe in detail and chronological order each test, procedure, or other treatment performed or ordered as part of your care of the **Patient**, and for each:

(a) **identify** all **persons** present during the test, procedure, or treatment and state the **person's** professional relationship to you, if any; and

(b) state the reasons for, and result of, the test, procedure, or treatment.

(Standard Medical Malpractice Interrogatory No. 34.)

35. For each conversation you had with any other physician or medical professional relating in any way to the care and treatment of the **Patient**, state the substance, date, time, and place of the conversation, and **identify** all **persons** involved.

(Standard Medical Malpractice Interrogatory No. 35.)

36. **Identify**, in chronological order, each writing or dictation known to you and prepared by anyone concerning the treatment of the **Patient** and made since you first undertook care of the **Patient**, and set forth as to each:

(a) the date on which the writing or dictation was made;

(b) the **identity** of the person who made it;

(c) the meanings, in both lay and medical terms, of all abbreviations and symbols used in it; and

(d) attach a copy or transcription of it to your answers to these interrogatories.

(Standard Medical Malpractice Interrogatory No. 36.)

37. Summarize in detail each conversation that you had with the **Patient** or with any Plaintiff about any aspect of the **Patient's** diagnosis, treatment, care or medical condition, and state the date and place of each such conversation.
(Standard Medical Malpractice Interrogatory No. 37.)

38. If you gave any advice, instruction, or warning that the **Patient** did not follow, state:

(a) the advice, instruction, or warning that was given;

(b) the **identity** of all **persons** to whom you gave the advice, instruction, or warning;

(c) when and where the advice, instruction, or warning was given; and

(d) all reasons given, if any, for not following the advice, instruction or warning.
(Standard Medical Malpractice Interrogatory No. 38.)

39. If you contend that, by any act or omission occurring at any time during or following the **Patient's** care and treatment, the **Patient** caused or contributed to the **Patient's** injury or death, state the facts that support your contention.
(Standard Medical Malpractice Interrogatory No. 39.)

40. State your contention as to each cause of the **Patient's** death or injury that is alleged in the complaint and, as to each cause:

(a) state the facts upon which you rely;

(b) **identify** each **document** containing information that supports your contention;

(c) **Identify** each **person** who you contend is responsible, in whole or in part, for the **Patient's** death or injury that is alleged in the complaint and your reasons for contending that the **person** is responsible; and

(d) state the professional relationship to you, if any, of each **person** named in your response to this Interrogatory. (Standard Medical Malpractice Interrogatory No. 40.)

41. List by author, title, publisher or publication, any texts, treaties, articles or other works which, at the time the **Patient** was under your care, you regarded as reliable authority with respect to the care that you rendered to the **Patient**. (Standard Medical Malpractice Interrogatory No. 41.)

42. **Identify** each instance in which you have been named a defendant, or have testified as an expert witness, in any other claim or suit for personal injury, negligence, or medical malpractice, including in your answer to this Interrogatory:

(a) the **identity** of the **person** or organization who brought each claim or suit;

(b) the date of the filing of each claim or suit;

(c) the identifying number of each claim or suit;

(d) the date, place, and nature of the occurrence from which the claim or suit arose; and

(e) the final disposition of each claim or suit.

(Standard Medical Malpractice Interrogatory No. 42.)

43. **Identify** each **person** that undertook an investigation of the events surrounding the **Patient's** death, and for each also state:

(a) the **person's** title or position;

(b) the date(s) upon which the **person** conducted the investigation;

(c) the **identity** of each **person** contacted or to whom the investigator spoke regarding the events giving rise to this action;

(d) any remedial or corrective action taken as a result of the investigation; and

(e) whether there is a written report or other **document** containing the results of the investigation.

(Standard Medical Malpractice Interrogatory No. 43.)

Interrogatories to Plaintiff from Defendant

61. State chronologically and in detail:

(a) the cause and origin of the injuries alleged in the complaint;

(b) if you contend the injuries changed or worsened over time, state how and when;

(c) the course of the treatment provided by each **defendant**;

(d) each procedure that was performed by each **defendant**;

(e) the substance of your conversations with each **defendant** prior to and after each procedure or other treatment, including how the proposed procedure or treatment was described to you; and

(f) the extent of your knowledge of, and consent to, each procedure or other treatment. **Identify** all sources of information about the procedure or other treatment that you consulted before it was performed or rendered, including any sources on the Internet.

(Standard Medical Malpractice Interrogatory No. 61.)

62. With respect to **defendant** [insert name], describe in detail each act or omission that you contend constitutes a breach of the applicable standard of professional care for the **Patient** or that otherwise forms a basis for your claim against the **defendant**, and for each such act or omission:

(a) explain how you contend it caused or contributed to the **Patient's** injuries or death alleged in the Complaint; and

(b) **identify** each **person** and **document** having or containing information that supports your contention.

(Standard Medical Malpractice Interrogatory No. 62.)

63. If you contend that any portion of any medical record, chart, or report is inaccurate, false, or altered:

(a) **identify** each **document** and each part of it that you contend is inaccurate, false, or altered, and

(b) as to each contention, state the factual basis for it.

(Standard Medical Malpractice Interrogatory No. 63.)

64. State the substance of all written and oral advice, instructions, and warnings you received from **defendant** [insert name] before and after each procedure or other treatment, and attach a copy of each written advice, instruction, or warning. If you no longer have the document, summarize your recollection of its substance.

(Standard Medical Malpractice Interrogatory No. 64.)

REPORTER'S NOTE

The Rules Committee recommends the addition of Form 12, Medical Malpractice Form Interrogatories, to the Appendix of Form Interrogatories.

As with Form 10, Product Liability Interrogatories, Form 12 is divided into three sections: Interrogatories for Use by Either Party, Interrogatories to Defendant from Plaintiff, and Interrogatories to Plaintiff from Defendant. The numbering of the Interrogatories in the three sections allows for additional interrogatories to be included in each section, if necessary or advisable in the future.

The Medical Malpractice Definitions and Interrogatories are intended to be used in conjunction with General Definitions and Interrogatories (Forms 2 and 3) and Personal Injury Definitions and Interrogatories (Forms 7 and 8), as well as any case-specific interrogatories framed by the parties. As noted in the Committee note that precedes Form 1, Instructions, appropriate use of a Form Interrogatory provides, as to that Interrogatory, a safe harbor from the counting rules.

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 200 - DIVORCE, ANNULMENT AND ALIMONY

AMEND Rule 9-210 by adding a cross reference after section (b), as follows:

Rule 9-210. ATTACHMENT, SEIZURE, AND SEQUESTRATION

(a) Alimony from a Nonresident Defendant

A plaintiff who seeks alimony from a nonresident defendant under Code, Family Law Article §11-104, may request an order for the attachment or sequestration of the defendant's property in accordance with the procedures of Rule 2-115. The court may enter any appropriate order regarding the property that is necessary to make the award effective.

(b) Enforcement of an Order Awarding Child Support, Alimony, Attorney's Fees, or a Monetary Award

When the court has ordered child support, alimony, attorney's fees, or a monetary award, the property of a noncomplying obligor may be seized or sequestered in accordance with the procedures of Rules 2-648 and 2-651.

Cross reference: For statewide Child Support Payment Incentive Program, see Code, Family Law Article, §10-112.1.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 16, Laws of 2007 (HB 263) added Code, Family Law Article, §10-112.1. The statute requires the Child Support Enforcement Administration to develop a statewide Child Support Payment Incentive Program to encourage payment of child support. The Rules Committee recommends adding a cross reference following section (b) of Rule 9-210 to draw attention to the program.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 200 - CONTEMPT

AMEND Rule 15-207 to add a cross reference following section (e), as follows:

Rule 15-207. CONSTRUCTIVE CONTEMPT; FURTHER PROCEEDINGS

. . .

(e) Constructive Civil Contempt - Support Enforcement Action

(1) Applicability

This section applies to proceedings for constructive civil contempt based on an alleged failure to pay spousal or child support, including an award of emergency family maintenance under Code, Family Law Article, Title 4, Subtitle 5.

Committee note: Sanctions for attorneys found to be in contempt for failure to pay child support may include referral to Bar Counsel pursuant to Rule 16-731. See Code, Family Law Article, §10-119.3.

(2) Petitioner's Burden of Proof

Subject to subsection (3) of this section, the court may make a finding of contempt if the petitioner proves by clear and convincing evidence that the alleged contemnor has not paid the amount owed, accounting from the effective date of the support order through the date of the contempt hearing.

(3) When a Finding of Contempt May Not be Made

The court may not make a finding of contempt if the alleged contemnor proves by a preponderance of the evidence that

(A) from the date of the support order through the date of the contempt hearing the alleged contemnor (i) never had the ability to pay more than the amount actually paid and (ii) made reasonable efforts to become or remain employed or otherwise lawfully obtain the funds necessary to make payment, or (B) enforcement by contempt is barred by limitations as to each unpaid spousal or child support payment for which the alleged contemnor does not make the proof set forth in subsection (3)(A) of this section.

Cross reference: Code, Family Law Article, §10-102.

(4) Order

Upon a finding of constructive civil contempt for failure to pay spousal or child support, the court shall issue a written order that specifies (A) the amount of the arrearage for which enforcement by contempt is not barred by limitations, (B) any sanction imposed for the contempt, and (C) how the contempt may be purged. If the contemnor does not have the present ability to purge the contempt, the order may include directions that the contemnor make specified payments on the arrearage at future times and perform specified acts to enable the contemnor to comply with the direction to make payments.

Committee note: Section (e) modifies the holding in *Lynch v. Lynch*, 342 Md. 509 (1996), by allowing a court to make a finding of constructive civil contempt in a support enforcement action even if the alleged contemnor does not have the present ability to purge. In support enforcement cases, as in other civil contempt cases, after making a finding of contempt, the court may specify imprisonment as the sanction if the contemnor has the present ability to purge the contempt.

If the contemnor does not have the present ability to purge the contempt, an example of a direction to perform specified acts that a court may include in an order under subsection (e)(4) is a provision that an unemployed, able-bodied contemnor look for work and periodically provide evidence of the efforts made. If the contemnor fails, without just cause, to comply with any provision of the order, a criminal contempt proceeding may be brought based on a violation of that provision.

Cross reference: See *Arrington v. Department of Human Resources*, 402 Md. 79 (2007).

Source: This Rule is derived in part from former Rule P4 c and d 2 and is in part new.

REPORTER'S NOTE

The proposed amendment to Rule 15-207 adds a cross reference to *Arrington v. Department of Human Resources*, 402 Md. 79 (2007).

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 300 - HABEAS CORPUS

AMEND Rule 15-303 by adding a cross reference at the end of the Rule, as follows:

Rule 15-303. PROCEDURE ON PETITION

. . .

Cross reference: For victim notification procedures, see Code, Criminal Procedure Article, §§11-104 and 11-503.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1200 - CORAM NOBIS

AMEND Rule 15-1202 by adding a cross reference after subsection (b)(1)(E), as follows:

Rule 15-1202. PETITION

(a) Filing; Caption

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

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

(b) Content

(1) The petition shall include:

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

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

(C) a statement of all previous proceedings, including appeals, motions for new trial, post conviction petitions, and

previous petitions for writ of error *coram nobis*, and the results of those proceedings;

(D) the facts that would have resulted in the entry of a different judgment and the allegations of error upon which the petition is based;

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

Cross reference: See *Holmes v. State*, 401 Md. 429 (2007).

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

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

(H) a demand for relief.

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

(c) Attachments

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

(d) Service

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

(e) Amendment

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

Source: This Rule is new.

REPORTER'S NOTE

In *Holmes v. State*, 401 Md. 429 (2007), the Court held that if an individual who enters a guilty plea and has been informed of his or her right to file an application for leave to appeal does not do so, the individual may have waived the right to later file a petition for a writ of error *coram nobis*. The Rules Committee recommends adding a cross reference to this case after subsection (b)(1)(E) of Rule 15-1202.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-760 by adding a cross reference after section (a), as follows:

Rule 16-760. ORDER IMPOSING DISCIPLINE OR INACTIVE STATUS

(a) Effective Date of Order

Unless otherwise stated in the order, an order providing for the disbarment, suspension, or reprimand of a respondent or the placement of a respondent on inactive status shall take effect immediately. The order may provide that the disbarment, suspension, reprimand, or placement on inactive status be deferred for a specified period of time to allow the respondent a reasonable opportunity to comply with the requirements of section (c) of this Rule.

Cross reference: For the implementation of this Rule, see *Attorney Grievance Commission v. Maignan*, 402 Md. 39 (2007).

. . .

REPORTER'S NOTE

In *Attorney Grievance Commission v. Maignan*, 402 Md. 39 (2007), the Court of Appeals discussed the issue of when a suspended lawyer has to stop representing existing clients. The Court suggested that subsection (c)(2) of Rule 16-760 needs some clarification. To address this, the Rules Committee recommends that a cross reference to the case be added after section (a) of Rule 16-760.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-819 (b)(2) by changing the time for submitting an application for the appointment of an interpreter from five to 30 days before the proceeding for which the interpreter is required, as follows:

Rule 16-819. COURT INTERPRETERS

. . .

(b) Application for the Appointment of an Interpreter

A person who needs an interpreter may apply to the court for the appointment of an interpreter. As far as practicable, an application for the appointment of an interpreter shall be (1) presented on a form approved by administrative order of the Court of Appeals and available from the clerk of the court and (2) submitted not less than ~~five~~ 30 days before the proceeding for which the interpreter is requested.

. . .

REPORTER'S NOTE

The Chair of the Judiciary's Court Interpreter Commission, requested that the time period for submitting an application for interpreter services be expanded from the current period of submission "not less than five days" before the proceeding for which the interpreter is requested. She explained that the five-day time period is burdensome, because of the number of proceedings that now require the use of interpreters. She suggested that the number of days be changed to 30 days, and the Committee agrees. Because a request for a sign language

interpreter is included not only in Rule 16-819 but also in Rule 1-322, a conforming amendment to the time period set forth in Rule 1-322 also is proposed.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-332 for conformity with the time period in Rule 16-819, as follows:

Rule 1-332. NOTIFICATION OF NEED FOR ACCOMMODATION

A person requesting an accommodation under the Americans With Disabilities Act, 42 U.S.C. §12101, et seq., for an attorney, a party, or a witness shall notify the court promptly. As far as practicable, a request for an accommodation shall be (1) presented on a form approved by administrative order of the Court of Appeals and available from the clerk of the court and (2) submitted not less than ~~five~~ 30 days before the proceeding for which the accommodation is requested.

Source: This Rule is new.

REPORTERS NOTE

See the Reporter's note to Rule 16-819.