STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Seventy-Seventh Report to the Court of Appeals, transmitting thereby proposed new Rules 2-701, 2-702, 2-703, 2-704, 2-705, and 2-706, 3-741, 17-401, 17-402, 17-403, and 17-404; new Appendix: Guidelines Regarding Compensable and Non-Compensable Attorneys' Fees and Related Expenses; and amendments to Rules 1-101, 1-341, 2-305, 2-433, 2-521, 2-603, 3-305, 4-102, 4-202, 4-213, 4-215, 4-262, and 4-263, 4-301, 4-326, 8-205, 8-206, 8-503, and 17-101.

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

Interested persons are asked to consider the Committee's Report and proposed rules changes and to forward on or before May 20, 2013 any written comments they may wish to make to:

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BESSIE M. DECKER
Clerk
Court of Appeals of Maryland

March 28, 2013

The Honorable Robert M. Bell,
Chief Judge
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.
The Honorable Sally D. Adkins
The Honorable Mary Ellen Barbera,
The Honorable Robert N. McDonald
Judges
The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its One Hundred Seventy-Seventh Report and recommends that the Court adopt the new Rules and amendments to existing Rules transmitted with this Report. The Report comprises five categories.

Category One consists of new Rules 2-701 through 2-706, new Rule 3-741, and conforming amendments to Rules 1-341, 2-433, and 2-603, principally designed to set forth procedures for dealing with claims for attorneys' fees and related expenses in cases in which, either by law or pursuant to contract, a party may be entitled to reimbursement for such fees and expenses by another party. Also included in this Category are Guidelines Regarding Compensable and Non-Compensable Attorneys' Fees and Related Expenses, proposed to be added as an Appendix to the Maryland Rules, as well as amendments to Rules 2-305 and 3-305, adding to those Rules cross references that call attention to the new procedures.

The development of these Rules turned out to be far more complicated than initially appeared, in large part because the contexts in which these claims arise vary and both the procedures

suitable for their resolution and the substantive and evidentiary standards that the Court has established for their resolution vary with the context. The Committee came to appreciate that "one size does not fit all" and has endeavored to draft the Rules to provide a sensible road map for attorneys and judges in dealing with these claims.

As will be further explained, Rule 2-703 deals with circuit court cases in which fee-shifting is allowed by law, rather than by contract. Rule 2-704 deals with circuit court cases in which attorneys' fees are allowed by contract as an element of damages for the breach of a contractual obligation. Rule 2-705 deals with circuit court cases in which, by *contract*, an award of attorneys' fees is allowed to the "prevailing party," not as an element of damages for breach of a contractual obligation but simply by prevailing in the litigation.[1] Rule 2-706 deals with claims for attorneys' fees incurred in connection with appellate proceedings, and Rule 3-741 deals with claims for attorneys' fees in District Court cases. Because of the complexities and because some of the procedures recommended by the Committee are innovative, this part of the Report will be somewhat more detailed than normally is the case.

Rule 2-701. Definitions

To avoid having to repeat "and related expenses" throughout the Rules, Rule 2-701 defines "attorneys' fees" as including "related expenses" – such things as charges for copying, out-of-pocket expenses, travel expenses, etc. -- that are normally recoverable as part of attorneys' fees. The one new element is compensation for paralegals and law clerks who worked on the case. As explained in the Committee Note, in *Friolo v. Frankel*, 373 Md. 501, 530 (2003), the Court held, for purposes of the Wage Payment Act and the Wage and Hour Act, that such expenses were subsumed in the fees charged for attorney work product and should not be separately charged as additional counsel fees. Most courts do allow the recovery of such compensation, however. The Committee recommends following the majority approach, in order to encourage attorneys to reduce the dollar amount of claims by using paralegals and law clerks when it is appropriate to do so, but, precisely because those individuals are not attorneys, to regard that expense as a "related expense" rather than as attorneys' fees.

[1] There are statutes that provide for an award of attorneys' fees to the prevailing party in litigation arising from the statute. Claims for attorneys' fees under those statutes would be under Rule 2-703, not Rule 2-705.

Rule 2-702. Scope of Chapter

Rule 2-702 exempts from the *procedural* requirements of the Rules in Chapter 700 claims for attorneys' fees (1) in family law actions, where an award is not dependent on the claiming party having prevailed, (2) awards permissible as a sanction or remedy for violating a Rule or court order, such as under Rules 1-341 or 2-433, (3) by an attorney seeking to recover a fee from the attorney's own client for legal services rendered, and (4) in a foreclosure action under the Title 14 Rules. Those proceedings have their own procedural jurisprudence, but Rule 2-702 does allow the court to apply in those proceedings the *evidentiary* requirements and standards in the Chapter 700 Rules.

Rule 2-703. Attorneys' Fees Allowed by Law

Rule 2-703 applies to actions in which an award of attorneys' fees is allowed by law – mostly statutory claims, such as actions under 42 U.S.C. §§ 1983 and 1988 or the myriad of statutory actions in the Maryland Code.[2] They may permit an award only to a successful plaintiff or to any prevailing party in the litigation. Those kinds of actions can run the gamut from the relatively simple to the very complex and protracted, and the Committee concluded that, rather than mandate one set of procedures for all such cases, which might be unnecessary in one setting and inadequate in another, those cases, unless the court for good cause decides otherwise, should be set in for an early scheduling conference, at which the parties and the court could develop the appropriate procedure for the particular case.

The Rule does provide guidance and options for the court to consider – to determine whether enhanced documentation should be required, whether evidence regarding attorneys' fees could practicably be submitted during the parties' cases-in-chief or should await a verdict or finding on the underlying cause of action, and whether a determination as to attorneys' fees could be included in the judgment on the underlying cause of action or entered as a separate judgment. Section (d) sets forth the kinds of enhanced procedures and requirements that may be useful in complex cases but not in the more routine cases.

Sections (e) and (f) provide evidentiary standards for determining the reasonableness of any fee, which are in accord with the Court's holdings in *Monmouth Meadows v. Hamilton*, 416 Md. 325, 333-34 (2010). Consistent with the Court's rulings in *Admiral Mortgage v. Cooper*, 357 Md. 533, 550-53 (2000) and *Friolo v. Frankel*, 403 Md. 443, 457, n. 12 (2008), the Rule also

[2] We have discovered over 100 Maryland statutes permitting an award of attorneys' fees for violation of the statute.

specifies that the reasonableness of a fee in these statutory claims must be determined by the judge. Section (g) permits the denial or grant of an award to be included either in the judgment entered on the underlying claim or in a separate judgment, but does require the court, in either event, to state the basis for its findings.

Rule 2-704. Attorneys' Fees Allowed by Contract as an Element of Damages

Claims for attorneys' fees under this Rule also can run from the relatively simple collection case to the complex commercial dispute. As with Rule 2-703, the Committee believes that it is impracticable to mandate any particular set procedure but proposes instead, unless the court concludes otherwise, to require an early scheduling conference at which the court, with input from the parties, can devise the procedure best suited for the case. With two exceptions, the structure of the Rule is similar to that of Rule 2-703. There is a special Committee Note admonition that, if the court chooses to defer consideration of the attorneys' fee claim until after a verdict is rendered on the underlying claim, it must make certain that no judgment is entered on the verdict until the attorneys' fee claim is resolved, because, unlike a statutory claim, both *must* be resolved in the one judgment.

The first difference from Rule 2-703 is in Rule 2-704 (e). Because under Rule 2-704, the claim for attorneys' fees is part of contractual damages, if the case is tried by a jury, the Committee believes that the entitlement to an award and the amount thereof is a jury issue. On the other hand, the court also has a role to play in determining the reasonableness of an attorneys' fee award. The Committee considered several options in trying to synchronize the respective roles of the jury and judge and opted for the provision in subsection (e)(3) – allowing the jury to make the initial determination as part of its ascertainment of damages but, on motion of a party, requiring the judge to determine whether the jury's attorneys' fee award, if there is one, is reasonable and, if not, to modify the award accordingly. If there is an appeal, the appellate court would then have before it both amounts and could determine, based on the record, whether the judge's modification was within the bounds of his or her discretion.

The second difference appears in subsection (e)(4) and is derived from a comparable provision in the District Court Rule – Rule 3-741. It is common in consumer transactions for the contract to provide, in the event of judicial collection efforts, for an attorneys' fee of 15% of the amount found due. Indeed, the General Assembly, in statutes regulating consumer

transactions, has expressly permitted a 15% attorneys' fee, thereby, at least implicitly, finding such a fee to be reasonable. *See*, for example, Code, Commercial Law Article, §§12-307.1 (consumer loans) and 12-623 (retail installment sales).

The District Court deals with thousands of collection cases in which the attorneys' fee claim does not exceed 15% of the amount due, and the Committee suggests that it would be an unnecessary burden on both the parties and the court for the parties to have to offer evidence on all of the *Monmouth Meadows* factors in all such cases. The general civil jurisdiction of the District Court is capped at $30,000, 15% of which is $4,500. Cases in which the plaintiff's claim for attorneys' fees does not exceed the lesser of 15% of the amount due or $4,500 may also be filed in the Circuit Courts, either initially or on appeal from the District Court, and the Committee believes that they should be treated no differently there than in the District Court.

Though recognizing that this approach – a "carve-out" for these smaller claims – is inconsistent with pronouncements of the Court in *Monmouth Meadows*, the Committee recommends that the Court consider allowing the trial court, in those cases, to excuse the parties from addressing all of the *Monmouth* factors, provided, as the Rule specifies, there is evidence otherwise sufficient to demonstrate that the claim is reasonable and does not exceed the fee that the claiming party has agreed to pay that party's attorney. The "carve-out" would be discretionary with the court, so that, in a case where it appears that very little work was actually done by the attorney, the court could require evidence of all of the *Monmouth Meadows* factors.

Rule 2-705. Attorneys' Fees to a Prevailing Party Pursuant to Contract

Rule 2-705 applies to an attorneys' fee claim pursuant to a contractual provision that permits an award of such fees to the prevailing party in litigation arising out of the contract, where the fees are not regarded as part of the damages for breach of the contract (Rule 2-704) or permitted as part of a statutory claim (Rule 2-703). The structure of the Rule is similar to that of Rules 2-703 and 2-704 to the extent of requiring, unless excused by the court, a scheduling conference to determine the procedures to be followed. Because the fees are not part of contractual damages, the judge would decide (1) who is the prevailing party and (2) the amount of any award. The judge would apply the *Monmouth Meadows* factors as set forth in Rule 2-703 (f)(3) but, as in Rules 2-703 and 2-704, may excuse the need

for evidence on all of those factors where the claim does not exceed the lesser of 15% of the amount due or $4,500. In this setting, that provision may have limited application where the defendant is the prevailing party.

Rule 2-706. Fees For Appellate Litigation

Rule 2-706 requires a party seeking attorneys' fees incurred in connection with an appellate proceeding to file a motion for such fees in the circuit court from which the appellate proceeding emanated, which is where proceedings on the motion would occur. The Committee's intent is that the circuit court resolve the matter even if the action was initially filed in the District Court and reached the circuit court on appeal.

Rule 3-741. Attorneys' Fees

Rule 3-741 is the District Court counterpart to Rules 2-703 through 2-705 but covers the three situations in one Rule. It applies to claims for attorneys' fees pursuant to law or contract. It follows some of the structure and evidentiary standards of the circuit court Rules but includes a provision for judgment on affidavit. Although pretrial conferences are permitted in District Court cases (Rule 3-504), the need for them is not likely to be as great as in the circuit courts.

Appendix: Guidelines Regarding Compensable and Non-compensable Attorneys' Fees and Related Expenses

Proposed as an Appendix to the Maryland Rules is a set of Guidelines designed to assist the court in determining the reasonableness of a claim for attorneys' fees and, by extension, to discourage attorneys from inflating claims unnecessarily. They may be used not only for claims filed under the Title 2, Chapter 700 Rules and Rule 3-741, but also for claims under Rules 1-341 and 2-433. The Guidelines are derived from those adopted by the U.S. District Court for the District of Maryland, which are found in Appendix B to the Local Rules of that Court.

Conforming amendments to Rules 1-341, 2-305, 2-433, 2-603, and 3-305

The amendments proposed to Rules 1-341 (Bad Faith – Unjustified Proceeding) and 2-433 (Sanctions for Discovery Violations) are intended to make the evidentiary standards for determining the reasonableness of requests for attorneys' fees under those Rules comparable to the standards applicable under the Title 2, Chapter 700 Rules. The amendments proposed to Rules 2-305, 2-603, and 3-305 are essentially "housekeeping" in nature.

Category Two consists of the addition of a new Chapter 400 to Title 17 and conforming amendments to Rules 1-101, 8-205, 8-206 and 17-101, setting forth an alternative dispute resolution program for the Court of Special Appeals. That Court has been operating a pilot ADR program since 2010 under an Administrative Order of the Chief Judge of the Court of Appeals. The Rules proposed in new Chapter 400 are derived in part from that Administrative Order and in part from changes requested by Chief Judge Krauser.

In place of the prehearing conference currently provided for in Rule 8-206, the new Rules and proposed amendments to Rule 8-206 create a settlement conference and a mediation program, to be overseen by a new "CSA ADR Division" of the Court. Rule 17-401 defines terms, creates the CSA ADR Division, and provides for the screening of information reports and the referral of appeals to a settlement conference or mediation. At the request of Chief Judge Krauser, subsection (b)(3) declares that court-designated mediators, settlement conference chairs, and court employees involved in the ADR program are performing a judicial function.

Rule 17-402 provides for the selection of mediators and settlement conference chairs, for what occurs if a full or partial settlement is or is not achieved, and for sanctions that may be imposed if a party or attorney fails to comply with an order entered by the Court. A judge who participates in an ADR proceeding may not sit as a member of any panel assigned to hear the appeal or participate in any Court conference on the appeal.

Rule 17-403 sets forth the qualifications for mediators and settlement conference chairs. A mediator must be an incumbent judge of the Court of Special Appeals, a retired appellate or circuit court judge, or a staff attorney of the Court. Mediations under the Administrative Order have traditionally been co-conducted by a retired judge and a staff attorney, and it is anticipated that that procedure will continue. A settlement conference chair must be either an incumbent judge of the Court of Special Appeals or a retired appellate judge approved for recall. Rule 17-404 makes clear that the ADR program is free to the parties

Category Three consists of amendments to Rules 4-102, 4-202, 4-213, 4-215, 4-301, 4-262, and 4-263. Those amendments have three principal objectives.

Some of the amendments are for the purpose of placing in the Rules a provision for a preliminary *inquiry* – not to be confused with a preliminary *hearing* under Rule 4-221. The preliminary

inquiry would be before a judicial officer when a defendant has been charged by means of a citation or charged by means of a Statement of Charges served with a summons under Rule 4-212, rather than served in the course of an arrest. In those instances, the defendant would not have appeared before a judicial officer pursuant to Rules 4-213 and 4-216 and therefore would not likely have been advised by a judicial officer of his or her various rights, including the right to counsel.

In some parts of the State, the District Court has been conducting preliminary inquiries in those instances; in other parts of the State, there has been a reluctance to do so because there is no provision in the Rules for such proceedings. At the request of the District Court, the Rules Committee recommends that provision for a preliminary inquiry be included in the Title 4 Rules. Such a proceeding would continue to be discretionary with the court and not mandatory. That objective is accomplished by specifically authorizing a preliminary inquiry in Rule 4-213 (b)(2), by defining the term in Rule 4-102 (j), and by adding to Rule 4-202 (c) a requirement that, if a preliminary inquiry is to be ordered, the citation or summons direct the defendant to appear before a judicial officer at a time certain or within a fixed time. Conforming amendments to Rules 4-202 (a), 4-215 (a), and 4-301 (a) also are proposed.

A second objective is to clarify who may or must sign charging documents and how those signatures may or must be affixed. Some clarification of the current Rule is advisable generally simply because different procedures are being used in the various subdivisions, but the actual impetus for the proposed amendments was the identification of issues arising when police officers sign and issue citations or Statements of Charges electronically. In Baltimore City, police officers who make arrests at the scene prepare and electronically forward proposed Statements of Charges and Statements of Probable Cause to the City's central booking facility, where the final decision is made as to the offense to be charged and whether to terminate an arrest in favor of a citation. The idea is to keep the officer on his or her "beat" rather than requiring the officer to travel to the central booking facility with the defendant and the paperwork.

The problem is that the Statement of Charges signed by the arresting officer, based on that officer's personal knowledge, may be amended or replaced and, in altered form, filed by a prosecutor or other police officer who does not have that personal knowledge. The current Rules do not adequately address that situation, which may expand to counties also having central booking facilities.

The Rules Committee's principal suggestions are found in amendments to Rule 4-202 (b) and (c) but are introduced by a Committee note to Rule 4-102 (j) clarifying that the term "State's Attorney" includes the elected or appointed State's Attorney for a county, the State Prosecutor, the Attorney General when prosecuting criminal cases pursuant to law, and authorized assistants in those various offices.

The proposed amendments to Rule 4-202 (b)(1) deal with who may or must sign the different kinds of charging documents. A citation must be signed by the "peace officer" who issues it, the term "peace officer" being broadly defined in Rule 4-102 (h). A Statement of Charges must be signed by the peace officer or the judicial officer who issues it. If issued by a peace officer, it must be accompanied by a Statement of Probable Cause; if issued by a judicial officer, it must be accompanied by an application, signed under oath, containing a statement of facts sufficient to establish probable cause. A criminal information must be signed by a State's Attorney, and an indictment *must* be signed by the foreperson or acting foreperson of the grand jury but also *may* be signed by a State's Attorney.

Rule 4-202 (b)(2) deals with the method of signing. A charging document filed in paper form must contain either the handwritten signature of the signer or a facsimile signature of that individual affixed in a manner that assures the genuineness of the signature. A charging document that is filed electronically must contain either a facsimile or digital signature of the signer, affixed in a manner that assures the genuineness of the signature. Subsection (b)(2)(C) authorizes the current practice of allowing the typed name of the elected or appointed State's Attorney for the county to be printed on an indictment or criminal information, even if that individual did not actually sign the document, so long as the document is properly signed by another individual authorized to sign it.

The proposed amendments to Rule 4-202 (c) are designed to accommodate the ability of an officer or prosecutor at a central booking facility or other remote location to alter or replace the charging document prepared and signed by the arresting officer. This most often occurs when the officer or prosecutor at the central booking facility concludes that a reduced charge or a citation is appropriate in light of the facts. In that event, the individual who ultimately issues the charging document must sign it and not rely on the signature of the arresting officer on the original charging document. The issuing officer, however, may rely on the Statement of Probable Cause signed under oath by the arresting officer, assuming it suffices to establish probable cause. If that occurs, the Statement of Probable Cause (or, when the Statement of Charges is based on an application under oath, a

copy of the application) must accompany and be served on the defendant with the Statement of Charges.

The final proposal is to amend Rules 4-262 -- the criminal discovery Rule applicable in the District Court -- to require the State to disclose the names of individuals the State intends to call as witnesses and the addresses of those individuals, unless subject to shielding, even if the witness has not given or adopted a written statement. This requirement is clearly stated in Rule 4-263 – the criminal discovery Rule applicable in the circuit courts -- and it appears that some State's Attorneys are not providing that information in the District Court unless the individual has made or adopted a written statement. Amendments to both Rule 4-262 and Rule 4-263 require the State to disclose the telephone numbers of those witnesses, if known, unless that information is subject to shielding.

Category Four consists of amendments to Rules 2-521 (d) and 4-326 (d), which are comparable Rules -- one for civil cases, one for criminal – dealing with jury communications.

An earlier draft of those Rules was submitted to the Court in the Committee's One Hundred Seventy-Fourth Report. Following the submission of that Report, but prior to the Court's open hearing on it, the Court filed its Opinion in *Black v. State*, 426 Md. 328 (2012), which raised an additional issue that the Committee believed should be addressed in those Rules. The Committee drafted language to deal with that issue – requiring court employees to inform the judge of any communication – but, because that language had not been circulated for public comment, the Committee withdrew its proposal and resubmits it with this Report.

The proposed amendments to section (d) of both Rules require any court official or employee who receives any communication from the jury pertaining to the action to immediately notify the judge who, before making any response, must direct that the parties be notified and invite and consider any position they may take with respect to a response. Any response by the judge must be in writing or on the record in open court. The clerk is directed to record on any written communication the date and time it was received by the judge and enter on the docket the communication, the date and time it was received by the judge, that the parties were notified and had an opportunity to state their position, how the communication was addressed by the judge, and any written response by the judge.

Category Five consists of an amendment to Rule 8-503 that is purely "housekeeping" to correct an internal reference.

For the further guidance of the Court and the public, following some of the proposed rules changes is a Reporter's Note describing in further detail the reasons for the proposal. *We caution that the Reporter's notes are not part of the Rules, have not been debated or approved by the Committee, and are not to be regarded as any kind of official comment or interpretation*. They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,

Alan M. Wilner
Chair

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

MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 700 – CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

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MARYLAND RULES OF PROCEDURE

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MARYLAND RULES OF PROCEDURE

TITLE 2 – CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 700 – CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

ADD new Rule 2-701, as follows:

Rule 2-701. DEFINITIONS

In this Chapter, except as otherwise provided or necessary implication requires:

(a) "Attorneys' fees" includes related expenses; and

(b) "Related expenses" means expenses related to and incurred as part of the provision of legal services, including compensation for the services of paralegals and law clerks.

Committee note: In *Friolo v. Frankel*, 373 Md. 501, 530 (2003), the Court held, for purposes of a claim under the Wage Payment Law, which allowed an award of reasonable "counsel fees," that charges for paralegals and law clerks were subsumed within the attorneys' fees and should not be separately charged as attorneys' fees. It appears that most courts do allow compensation for paralegals and law clerks to be included in a statutory fee-shifting claim. The intent of this Rule is to allow the compensation paid to paralegals and law clerks for work done in connection with a claim permitting the recovery of attorneys' fees to be included as a separately identified related expenses. This is intended to reduce the amounts claimed for attorneys' fees by encouraging attorneys to permit lower-paid paralegals and law clerks to perform tasks they properly can perform that otherwise would have to be done by the attorneys and would avoid the anomaly of labeling compensation paid to non-attorneys as attorneys' fees.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 700 - CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

ADD new Rule 2-702, as follows:

Rule 2-702. SCOPE OF CHAPTER

(a) Generally

Subject to section (b) of this Rule, the Rules in this Chapter apply to actions in which, by law or contract, a party is entitled to claim attorneys' fees from another party.

Committee note: Maryland generally follows the "American Rule" under which a party is not liable for the attorneys' fees of another party unless such liability is provided for by law or by a contract between the parties. Subject to the provisions of section (b) of this Rule, the Rules in this Chapter apply only to claims for attorneys' fees that fall under the exceptions to the "American Rule" in civil litigation in a circuit court. A comparable Rule for claims in civil litigation in the District Court appears as Rule 3-741.

(b) Particular Claims

The procedural requirements of these Rules do not apply to claims for attorneys' fees (1) in an action under Code, Family Law Article where an award of attorneys fees foes not depend on the applicant's having prevailed in the action or on any particular claim or issue in the action; (2) in a proceeding under Rules 1-341 or 2-433, or any other Rule permitting an award of reasonable attorneys' fees as a sanction or remedy for the violation of a Rule or court order; (3) by an attorney for legal services rendered by the attorney to the attorney's client; or

(4) in an action to foreclose a lien under Title 14 of the Maryland Rules. In determining the reasonableness of any requested fee in the proceedings enumerated in this section, the court may apply some or all of the evidentiary requirements and standards set forth in the Rules in this Chapter, as appropriate under the circumstances.

Cross reference: For the procedure to be followed in claiming attorneys' fees in foreclosure cases, see Rules 14-215, 14-305, and 14-306.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 700 - CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

ADD new Rule 2-703, as follows:

Rule 2-703. ATTORNEYS' FEES ALLOWED BY LAW

(a) Scope of Rule

This Rule applies to claims for attorneys' fees allowable by law to a party in an action in a circuit court.

Committee note: This Rule applies predominantly to actions in which attorneys' fees are allowed by statute. This Rule would also apply where attorneys' fees may be awarded under common law or by a Rule, other than as set forth in Rule 2-702 (b).

(b) Pleading

A party who seeks attorneys' fees from another party pursuant to this Rule shall include a claim for such fees in the party's initial pleading or, if the grounds for such a claim arise after the initial pleading is filed, in an amended pleading filed promptly after the grounds for the claim arose.

(c) Scheduling Conference and Order

Unless the court orders otherwise, if a claim for attorneys' fees is made pursuant to this Rule, the court shall conduct a scheduling conference and, as part of a scheduling order entered pursuant to Rule 2-504 shall:

(1) determine whether to require enhanced documentation, quarterly statements, or other procedures permitted by section

(d) of this Rule;

(2) determine whether evidence regarding the party's entitlement to attorneys' fees or the amount thereof may practicably be submitted during the parties' cases-in-chief with respect to the underlying cause of action or should await a verdict by the jury or finding by the court with respect to that underlying cause of action; and

(3) in light of the determination made under subsection (c)(2), determine whether, pursuant to section (f) of this Rule, any award of attorneys' fees will be included in the judgment entered on the underlying cause of action or as a separate judgment.

Committee note: If the court intends to delay the presentation of evidence on the claim for attorneys fees until after a determination of the underlying cause of action, but desires to enter one judgment that would include the denial or grant of an award of attorneys' fees, the jury's verdict or court findings on the underlying cause of action should be docketed, but the court must assure that no judgment is entered on the verdict or findings until the claim for attorneys' fees is resolved.

(d) Enhanced Procedures and Requirements for Certain Cases

Upon a determination by the court that the case is likely to result in a substantial claim for attorneys' fees for services over a significant period of time, the court may:

(1) require parties seeking an award (A) to keep time records in a specific manner, and (B) to provide to parties against whom an award is sought quarterly statements showing the total amount of time all attorneys, paralegals, and other professionals have spent on the case during the quarter and the total value of that

time;

(2) determine whether, and to what extent, the Guidelines Regarding Compensable and Non-Compensable Attorneys' Fees and Related Expenses contained in an Appendix to this Chapter shall be applied; and

(3) establish procedures and time schedules for the presentation of evidence and argument on issues relating to a party's entitlement to an award and the amount thereof.

(e) Evidence

Evidence in support of or in opposition to an award shall focus on the standards set forth in subsection (f)(3) of this Rule.

(f) Determination of Award

(1) If No Award Permitted

If, under applicable law, the verdict of a jury or the findings of the court on the underlying cause of action do not permit an award of attorneys' fees, the court shall include in its judgment entered on the underlying cause of action the denial of such an award.

(2) If Award Permitted or Required

If, under applicable law, the verdict of the jury or the findings of the court on the underlying cause of action permit but do not require an award of attorneys' fees, the court shall determine whether an award should be made. If the court determines that a permitted award should be made or that under applicable law an award is required, the court shall apply the

standards set forth in subsection (f)(3) of this Rule and determine the amount of the award.

Committee note: Where the claim for attorneys' fees is based on law, rather than a contract, the determination of whether, in light of the verdict or findings on the underlying cause of action, an award must or should be made and, if so, the amount thereof is for the court. See *Admiral Mortgage v. Cooper*, 357 Md. 533, 550-53 (2000); *Friolo v. Frankel*, 373 Md. 501, 519 (2003); *Friolo v. Frankel*, 403 Md. 443, 457, n.12 (2008).

(3) Factors To Be Considered

In making its determinations under subsection (f)(2) of this Rule, the court shall consider, with respect to the claims for which fee-shifting is permissible:

(A) the time and labor required;

(B) the novelty and difficulty of the questions;

(C) the skill required to perform the legal service properly;

(D) whether acceptance of the case precluded other employment by the attorney;

(E) the customary fee for similar legal services;

(F) whether the fee is fixed or contingent;

(G) any time limitations imposed by the client or the circumstances;

(H) the amount involved and the results obtained;

(I) the experience, reputation, and ability of the attorneys;

(J) the undesirability of the case;

(K) the nature and length of the professional relationship with the client; and

(L) awards in similar cases.

Committee note: The factors listed in subsection (f)(3) of this Rule have been approved by the Court of Appeals in statutory fee-shifting cases, where the "lodestar method" is applied in determining an award. See *Monmouth Meadows v. Hamilton*, 416 Md. 325, 333-34 (2010). See Rule 2-704 (f) for the factors to be applied in contractual fee-shifting actions.

(g) Judgment

Except as provided in subsection (f)(1) of this Rule, the grant or denial of an award of attorneys' fees may be included in the judgment on the underlying cause of action or in a separate judgment, as directed by the court. The court shall state on the record or in a memorandum filed in the record the basis for its grant or denial of an award.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 700 - CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

ADD new Rule 2-704, as follows:

Rule 2-704. ATTORNEYS' FEES ALLOWED BY CONTRACT AS AN ELEMENT OF DAMAGES

(a) Scope of Rule

This Rule applies to a claim for attorneys' fees in an action in a circuit court that are allowed by a contract as an element of damages for breach of that contract. It does not apply to a claim for an award of attorneys' fees to the prevailing party pursuant to a fee-shifting provision in a contract.

Cross reference: See Rule 2-705 for the procedure where a contract provides for an award of attorneys' fees to a prevailing party in the litigation.

(b) Pleading

A party who seeks attorneys' fees from another party pursuant to this Rule shall include a claim for such fees in the party's initial pleading or, if the grounds for such a claim arise after the initial pleading is filed, in an amended pleading filed promptly after the grounds for the claim arise.

(c) Scheduling Conference and Order

If a claim for attorneys' fees is made pursuant to this Rule, unless the court orders otherwise, the court shall conduct

a scheduling conference in conformance with Rule 2-703 (c).

Committee note: Unlike a claim under Rule 2-703 based on fee-shifting permitted by law, where attorneys' fees are an element of damages for breach of a contractual obligation, any award must be included in the judgment entered on the breach of contract claim. In complex cases, however, where the evidence regarding attorneys' fees is likely to be extensive, it may be expedient to defer the presentation of such evidence and resolution of that claim until after a verdict or finding by the court establishing an entitlement to an award. See section (d) of this Rule. In that event, the admonition in the Committee note to Rule 2-703 (c) is especially critical – that, although the verdict or findings on the underlying cause of action should be docketed, no judgment should be entered thereon until the claim for attorneys' fees is resolved and can be included in the judgment.

(d) Presentation of Evidence

(1) Generally

Evidence in support of or in opposition to a claim for attorneys' fees under this Rule shall be presented in the party's case-in-chief and shall focus on the standards set forth in Rule 2-703 (f)(3) or subsection (e)(4) of this Rule, as applicable.

(2) Judgment by Confession

If the party seeking attorneys' fees has requested judgment by confession pursuant to Rule 2-611, evidence establishing entitlement to such fees and the reasonableness of the amount requested shall be included in the affidavit required by Rule 2-611 (a). If judgment by confession is not entered or is stricken and the action proceeds to trial, the evidence may be submitted at trial in accordance with this Rule.

(e) Determination of Award

(1) If No Award Permitted

If a verdict returned by a jury or findings made by the

court do not permit an award of attorneys' fees, the court shall include in its judgment on the underlying cause of action a denial of such an award.

(2) Trial By Court

If the underlying cause of action is tried by the court, the court shall determine whether an award of attorneys' fees is required or permitted. If the court finds that an award is required, it shall determine the amount. If the court finds that an award is permitted but not required, it shall determine whether an award should be made and, if so, the amount thereof. In determining the amount of an award, the court shall apply the standards set forth in Rule 2-703 (f)(3) or subsection (e)(4) of this Rule, as applicable.

(3) Trial by Jury

If the underlying cause of action is tried by a jury, the jury, under appropriate instructions from the court, shall determine, as part of its verdict, whether an award of attorneys' fees should be made to a party based on a breach of the contract by another party and the amount of such an award. If an award is made, on motion by any party affected by the award, the court, applying the standards set forth in Rule 2-703 (f)(3) or subsection (e)(4) of this Rule, as applicable, shall determine whether the amount of the award is reasonable and, if not, shall modify the award accordingly. This determination does not preclude any other relief the court may grant under Rules 2-532, 2-533, or 2-535.

Committee note: This subsection preserves to the jury, in a breach of contract case where attorneys' fees are part of the alleged damages, the right to determine whether an award should be made and, if so, in what amount, but preserves to the trial court the right to determine whether the award is reasonable. Under this approach, in the event of an appeal, the appellate court will have available both the jury's and the trial court's determination of reasonableness.

(4) Limited Evidence Permitted

If the claim for an award of attorneys' fees does not exceed the lesser of 15% of the principal amount found to be due or $4,500, the court need not require evidence on all of the factors set forth in Rule 2-703 (f)(3) if the party claiming the award produces evidence otherwise sufficient to demonstrate that the amount claimed is reasonable and does not exceed the amount that the claiming party has agreed to pay that party's attorney.

Committee note: Section (e) follows the approach set forth in *Monmouth Meadows v. Hamilton*, 416 Md. 325 (2010), for contractual fee-shifting cases generally. Subsection (e)(4) is intended to permit the court to excuse the need to consider all of the Rule 2-703 (f)(3) factors where the claim for attorneys' fees does not exceed the lesser of 15% of the amount due or $4,500. Fees in those limited amounts are common in consumer transactions and have been found reasonable by the General Assembly in some of those settings. See Code, Commercial Law Article, §§12-307.1 (Consumer Loans) and 12-623 (Retail Installment Sales).

(f) Part of Judgment

An award of attorneys' fees shall be included in the judgment on the underlying cause of action but shall be separately stated.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 700 - CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

ADD new Rule 2-705, as follows:

Rule 2-705. ATTORNEYS' FEES TO A PREVAILING PARTY PURSUANT TO CONTRACT

(a) Scope of Rule

This Rule applies to a claim for an award of attorneys' fees to attributable to litigation in a circuit court pursuant to a contractual provision permitting an award of attorneys' fees to the prevailing party in litigation arising out of the contract. It does not apply to a claim for attorneys' fees allowed by contract as an element of damages for breach of the contract or to a claim for attorneys' fees authorized by statute or other law.

Cross reference: See Rules 2-703 and 2-704.

(b) Pleading

A party who seeks attorneys' fees from another party pursuant to this Rule shall include a claim for such fees in the party's initial pleading or, if the grounds for such a claim arise after the initial pleading is filed, in an amended pleading filed promptly after the grounds for the claim arise.

(c) Scheduling Conference and Order

If a claim for attorneys' fees is made pursuant to this

Rule, unless the court orders otherwise, the court shall conduct a scheduling conference in conformance with Rule 2-703 (c).

(d) Enhanced Procedures and Requirements for Certain Cases

Upon a determination by the court that the case is one that likely will result in a substantial claim for attorneys' fees covering a significant period of time, the court may enter orders in conformance with Rule 2-703 (d).

(e) Determination of Award by Court

Upon a jury verdict or, in an action tried by the court, a finding by the court in favor of a party entitled to attorneys' fees as a "prevailing party," the court shall determine the amount of an award in accordance with section (f) of this Rule.

(f) Factors to be Considered

(1) If the party seeking attorneys' fees prevailed with respect to a claim for which fee-shifting is permissible, the court shall consider the factors set forth in Rule 2-703 (f)(3) and the principal amount in dispute in the litigation, and may consider the agreement between party seeking the award and that party's attorneys and any other factor reasonably related to the fairness of an award.

(2) If the claim for an award of attorneys' fees does not exceed the lesser of 15% of the principal amount found to be due or $4,500, the court need not require evidence on all of the factors set forth in Rule 2-703 (f)(3) if the party claiming the award produces evidence otherwise sufficient to demonstrate that the amount claimed is reasonable and does not exceed the amount

that the claiming party has agreed to pay that party's attorney.

Committee note: Subsection (f)(1) of this Rule follows the approach set forth in *Monmouth Meadows v. Hamilton*, 416 Md. 325 (2010), for contractual fee-shifting cases generally. Subsection (f)(2) of this Rule is intended to permit the court to excuse the need to consider all of the Rule 2-703 (f)(3) factors where the claim for attorneys' fees does not exceed the lesser of 15% of the amount due or $4,500. Fees in those limited amounts are common in consumer transactions and have been found reasonable by the General Assembly in some of those settings. See Code, Commercial Law Article, §§12-307.1 (Consumer Loans) and 12-623 (Retail Installment Sales).

(g) Part of Judgment

An award of attorneys' fees shall be included in the judgment on the underlying cause of action but shall be separately stated. The court shall state on the record or in a memorandum filed in the record the basis for its findings and conclusions regarding the denial or issuance of an award.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 700 - CLAIMS FOR ATTORNEYS' FEES AND RELATED EXPENSES

ADD new Rule 2-706, as follows:

Rule 2-706. FEES FOR APPELLATE LITIGATION

A party who seeks an award of attorneys' fees incurred in connection with an appeal, application for leave to appeal, or petition for certiorari shall file a motion for such fees in the circuit court that entered the judgment or order that is the subject of the appellate litigation. The motion shall be filed within 30 days after entry of the last mandate or order disposing of the appeal, application, or petition. Proceedings on the motion shall be in the circuit court and shall be consistent with the standards and procedures set forth in Rule 2-703 or Rule 2-705, as applicable.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 700 - SPECIAL PROCEEDINGS

ADD new Rule 3-741, as follows:

Rule 3-741. ATTORNEYS' FEES

(a) Definitions

In this Rule "attorneys' fees" and "related expenses" have the meanings set forth in Rule 2-701.

(b) Scope of Rule

This Rule applies to claims made in an action in the District Court for attorneys' fees allowed by law or by contract. The Rule does not apply to a dispute between an attorney and the attorney's client over the attorney's fee and it does not apply to a proceeding under Rule 1-341 or other Rule permitting the award of reasonable counsel fees as a sanction or remedy for violation of a court order.

(c) Request

A claim for attorneys' fees shall be made in the complaint, other pleading allowed by Rule 3-302, or amendment to a pleading allowed by Rule 3-341.

(d) Presentation of Supporting Evidence

(1) Generally

Except as provided in subsections (d)(2) or (d)(3) of this Rule or otherwise ordered by the court, evidence in support

of or in opposition to the entitlement to such fees and the reasonableness of the amount requested shall be presented at trial of the underlying cause of action.

(2) Judgment on Affidavit

If the party seeking attorneys' fees filed a motion for judgment on affidavit pursuant to Rule 3-306, evidence establishing the right to such fees and the reasonableness of the requested fee shall be included in an accompanying affidavit. If the action proceeds to trial, the evidence may be supplemented at trial.

Cross reference: See Rule 3-306 (d) for additional requirements if the action is based on an assigned consumer debt.

(3) Judgment by Confession

If the party seeking attorneys' fees has requested judgment by confession pursuant to Rule 3-611, evidence establishing the right to such fees and the reasonableness of the requested fee shall be included in the affidavit required by Rule 3-611 (a). If judgment by confession is not entered or is stricken and the action proceeds to trial, the evidence may be supplemented at trial.

(e) Determination of Award

(1) Generally

If the court concludes that an award of attorneys' fees is permitted but not required, the court shall determine whether an award should be made and, if so, the amount thereof. If the court concludes that an award is required, it shall determine the

amount thereof.

(2) Amount

Except as provided in subsection (e)(3) of this Rule:

(A) if the claimed right to attorneys' fees is based on law, the court shall apply the standards set forth in Rule 2-703 (f)(3);

(B) if the claimed right is based on a contract, the court shall apply the standards set forth in Rule 2-704 (e)(2) or 2-705 (f)(1), as applicable.

(3) Exception

If the claim for an award of attorneys' fees does not exceed the lesser of 15% of the principal amount found to be due to $4,500, the court need not require evidence on all of the factors set forth in Rule 2-703 (f)(3) if the party claiming the award produces evidence otherwise sufficient to demonstrate that the amount claimed is reasonable and does not exceed the amount that the claiming party has agreed to pay that party's attorney.

Committee note: Subsection (e)(2)(B) of this Rule follows the approach set forth in *Monmouth Meadows v. Hamilton*, 416 Md. 325 (2010), for contractual fee-shifting cases generally. Subsection (e)(3) of this Rule is intended to permit the court to excuse the need to consider all of the Rule 2-703 (f)(3) factors where the claim for attorneys' fees does not exceed the lesser of 15% of the amount due or $4,500. Fees in those limited amounts are common in consumer transactions and have been found reasonable by the General Assembly in some of those settings. See Code, Commercial Law Article, §§12-307.1 (Consumer Loans) and 12-623 (Retail Instalment Sales).

(f) Judgment

An award of attorneys' fees shall be included in the judgment on the underlying cause of action but shall be

separately stated.

Source: This Rule is new.

APPENDIX: GUIDELINES REGARDING COMPENSABLE AND NON-COMPENSABLE ATTORNEYS' FEES AND RELATED EXPENSES

ADD a new Appendix, as follows:

APPENDIX: GUIDELINES REGARDING COMPENSABLE AND NON-COMPENSABLE ATTORNEYS' FEES AND RELATED EXPENSES

(a) Guidelines Regarding Compensable and Non-compensable Attorneys' Fees

(1) Lead Attorney

If different attorneys represent plaintiffs with both common and conflicting interests, there should be a lead attorney for each task, such as preparing for and speaking at depositions on issues of common interest and preparing pleadings, motions, and memoranda. Attorneys other than the lead attorney should be compensated if they provide input into an activity that is directly related to their own client's interests.

(2) Deposition Attendance

Ordinarily, only one attorney for each separately represented party should be compensated for attending depositions.

Committee note: Compensation for more than one attorney may be allowed if a valid reason is shown for having more than one attorney at the deposition. For example, a less senior attorney's presence may be necessary because that attorney organized numerous documents important to the deposition, but the deposition is of a critical witness whom the more senior attorney should properly depose. Departure from this subsection also may be appropriate upon a showing that more than one attorney

representing an opposing party attended the deposition and charged the time for attending.

(3) Hearings Other Than Trial

Ordinarily, only one attorney for each party should be compensated for attending hearings other than trial.

Committee note: The same considerations discussed in the last Committee note concerning attendance by more than one attorney at a deposition apply to attendance by more than one attorney at a hearing.

There is no guideline as to whether more than one attorney for each party should be compensated for attending trial. This depends on the complexity of the case and the role of each attorney.

(4) Conferences

Ordinarily, only one attorney should be compensated for client, third party, and intra-office conferences, although if only one attorney is compensated, the time may be charged at the rate of the more senior attorney. Compensation may be paid for the attendance of more than one attorney if justified for specific purposes, such as periodic conferences of defined duration held for the purpose of work organization, strategy, and delegation of tasks when the conferences are reasonably necessary for the proper management of the litigation.

(5) Travel

(A) Substantive Work During Travel Time

Whenever possible, time spent in traveling should be devoted to doing substantive work for a client and should be billed at the usual rate to that client. A fee request should not include travel time during which the attorney works on a

matter other than the matter for which fees are sought. If the travel time is devoted to substantive work for the client whose representation is the subject of the fee request, the time should be billed for the substantive work, not travel time.

(B) No Substantive Work During Travel Time

Up to three hours of travel time each way and each day to and from a court appearance, deposition, witness interview, or similar proceeding or event that cannot be devoted to substantive work should ordinarily be charged at the attorney's hourly rate. Time spent above the three-hour limit should ordinarily be charged at one-half of the attorney's hourly rate.

(b) Guidelines Regarding Expenses Related to Attorneys' Fees

(1) Out-of-Pocket Expenses

Ordinarily, reasonable out-of-pocket expenses, including long-distance telephone calls, express and overnight delivery services, computerized on-line research, and faxes, are compensable at actual cost.

(2) Mileage

Mileage should be compensable at the rate of reimbursement for official State of Maryland government travel in effect at the time the expense was incurred.

(3) Copy Work

Copy work should be compensable at a reasonable commercial rate.

Source: These Guidelines are derived in part from Guidelines adopted by the U.S. District Court for the District of Maryland that appear in Appendix B to the Local Rules of that Court.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-341 to make a stylistic change, to add a sentence pertaining to a memorandum in support of a motion, and to add a sentence referring to the Guidelines Regarding Compensable and Non-compensable Attorneys' Fees and Related Expenses, as follows:

Rule 1-341. BAD FAITH - UNJUSTIFIED PROCEEDING

In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification the court may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable ~~attorney's~~ attorneys' fees, incurred by the adverse party in opposing it. A memorandum in support of a motion filed for an award of costs and expenses shall comply with Rule 2-433 (e). In deciding a motion under this Rule, the court may consider the Guidelines Regarding Compensable and Non-compensable Attorneys' Fees and Related Expenses contained in the Appendix to these Rules.

Source: This Rule is derived in part from former Rule 604 b and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-305 to add a cross reference concerning attorneys' fees, as follows:

Rule 2-305. CLAIMS FOR RELIEF

A pleading that sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for the relief sought. Unless otherwise required by law, (a) a demand for a money judgment that does not exceed $75,000 shall include the amount of damages sought, and (b) a demand for a money judgment that exceeds $75,000 shall not specify the amount sought, but shall include a general statement that the amount sought exceeds $75,000. Relief in the alternative or of several different types may be demanded.

Cross reference: For pleading requirements and other procedures when attorneys' fees are claimed, see the Rules in Title 2, Chapter 700.

Committee note: If the amount sought exceeds $75,000, a general statement to that effect is necessary in order to determine if the case may be removed to a federal court based on diversity of citizenship. See 28 U.S.C.S. §1332. A specific dollar amount must be given when the damages sought are less than or equal to $75,000 because the dollar amount is relevant to determining whether the amount is sufficient for circuit court jurisdiction or a jury trial.

Source: This Rule is derived in part from former Rules 301 c, 340 a, and 370 a 3 and the 1966 version of Fed. R. Civ. P. 8 (a) and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 400 - DISCOVERY

AMEND Rule 2-433 to add to sections (a) and (d) the words "costs and" before the word "expenses," to add language to the tagline of section (d), to change section (d) by adding a reference to Rule 2-434, changing the word "shall" to "may," deleting certain language at the end of the first paragraph, adding the words "on motion" to the second paragraph, and deleting certain language at the end of the second paragraph, to add a new section (e) pertaining to a memorandum regarding costs and expenses, and attorneys' fees, to add a new section (f) referring to the Guidelines Regarding Compensable and Non-compensable Attorneys' Fees and Related Expenses, and to make stylistic changes, as follows:

Rule 2-433. SANCTIONS

(a) For Certain Failures of Discovery

Upon a motion filed under Rule 2-432 (a), the court, if it finds a failure of discovery, may enter such orders in regard to the failure as are just, including one or more of the following:

(1) An order that the matters sought to be discovered, or any other designated facts shall be taken to be established for the purpose of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; or

(3) An order striking out pleadings or parts thereof, or staying further proceeding until the discovery is provided, or dismissing the action or any part thereof, or entering a judgment by default that includes a determination as to liability and all relief sought by the moving party against the failing party if the court is satisfied that it has personal jurisdiction over that party. If, in order to enable the court to enter default judgment, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any matter, the court may rely on affidavits, conduct hearings or order references as appropriate, and, if requested, shall preserve to the plaintiff the right of trial by jury.

Instead of any order or in addition thereto, the court, after opportunity for hearing, shall require the failing party or the attorney advising the failure to act or both of them to pay the reasonable <u>costs and</u> expenses, including attorneys' fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of <u>costs and</u> expenses unjust.

(b) For Loss of Electronically Stored Information

Absent exceptional circumstances, a court may not impose sanctions under these Rules on a party for failing to provide

electronically stored information that is no longer available as a result of the routine, good-faith operations of an electronic information system.

(c) For Failure to Comply with Order Compelling Discovery

If a person fails to obey an order compelling discovery, the court, upon motion of a party and reasonable notice to other parties and all persons affected, may enter such orders in regard to the failure as are just, including one or more of the orders set forth in section (a) of this Rule. If justice cannot otherwise be achieved, the court may enter an order in compliance with Rule 15-206 treating the failure to obey the order as a contempt.

(d) Award of Costs and Expenses, Including Attorneys' Fees

If a motion filed under ~~Rule 2-432 or under Rule 2-403~~ Rule 2-403, 2-432, or 2-434 is granted, the court, after opportunity for hearing, ~~shall~~ may require (1) the party or deponent whose conduct necessitated the motion, ~~or~~ (2) the party or the attorney advising the conduct, or (3) both of them to pay to the moving party the reasonable costs and expenses incurred in obtaining the order, including attorneys' fees~~, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust~~.

If the motion is denied, the court, on motion after opportunity for hearing, ~~shall~~ may require the (1) moving party, ~~or~~ (2) the attorney advising the motion, or (3) both of them to pay to the party or deponent who opposed the motion the reasonable

costs and expenses incurred in opposing the motion, including ~~attorney's~~ attorneys' fees~~, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust~~.

If the motion is granted in part and denied in part, the court may apportion the reasonable costs and expenses incurred in relation to the motion among the parties and persons in a just manner.

(e) Memorandum Regarding Costs and Expenses, Including Attorneys' Fees

A motion requesting an award of costs and expenses, including attorneys' fees, shall be supported by a memorandum that sets forth the information required in subsections (e)(1) and (e)(2) of this Rule, as applicable; however, the moving party may defer the filing of the memorandum until 15 days after the court determines the party's entitlement to costs and expenses, including attorneys' fees.

(1) Costs and Expenses Other Than Attorneys' Fees

The memorandum in support of a motion for costs and expenses other than attorneys' fees shall itemize the type and amount of the costs and expenses requested and include any available documentation of either.

(2) Attorneys' Fees

Except as otherwise provided by order of court, the memorandum in support of a motion for attorneys' fees shall set forth:

(A) a detailed description of the work performed, broken down by hours or fractions thereof expended on each task;

(B) the amount or rate charged or agreed to in the retainer;

(C) the attorney's customary fee for similar legal services;

(D) the customary fee prevailing in the attorney's legal community for similar legal services;

(E) the fee customarily charged for similar legal services in the county where the action is pending; and

(F) any additional relevant factors that the moving party wishes to bring to the court's attention.

(f) Guidelines

In deciding a motion under this Rule in which attorneys' fees and related expenses are sought, the court may consider the Guidelines Regarding Compensable and Non-compensable Attorneys' Fees and Related Expenses contained in the Appendix to these Rules.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 422 c 1 and 2.
Section (b) is new and is derived from the 2006 version of Fed. R. Civ. P. 37 (f).
Section (c) is derived from former Rule 422 b.
Section (d) is derived from the 1980 version of Fed. R. Civ. P. 37 (a) (4) and former Rule 422 a 5, 6 and 7.
Section (e) is new.
Section (f) is new.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE – CIRCUIT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 2-603 (b) to delete an obsolete provision and to require that a request for the assessment of certain costs be filed within a specified time, as follows:

Rule 2-603. COSTS

. . .

(b) Assessment by the Clerk

The clerk shall assess as costs all fees of the clerk and sheriff~~, statutory fees actually paid to witnesses who testify,~~ and, in proceedings under Title 7, Chapter 200 of these Rules, the costs specified by Rule 7-206 (a). On written request of a party filed within 15 days after the later of the entry of judgment or the entry of an order denying a motion filed under Rules 2-532, 2-533, or 2-534, the clerk shall assess other costs prescribed by rule or law. The clerk shall notify each party of the assessment in writing. On motion of any party filed within five days after the party receives notice of the clerk's assessment, the court shall review the action of the clerk.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-305 to add a cross reference concerning attorneys' fees, as follows:

Rule 3-305. CLAIMS FOR RELIEF

A pleading that sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for the relief sought. Relief in the alternative or of several different types may be demanded.

Cross reference: For pleading requirements and other procedures when attorneys' fees are claimed, see Rule 3-741.

Source: This Rule is derived from former M.D.R. 301 a (ii) and the 1966 version of Fed. R. Civ. P. 8 (a).

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

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MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

ADD new Rule 17-401, as follows:

Rule 17-401. GENERAL PROVISIONS

(a) Definitions

The following definitions apply in this Chapter:

(1) Chief Judge

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

(2) CSA ADR Division

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

(3) Settlement Conference

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

(b) Administration of ADR Programs

(1) CSA ADR Division

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

(2) Delegation by Chief Judge

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

(3) Judicial Function

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

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

(4) Screening of Information Reports

(A) Recommendation of CSA ADR Division

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

in this Chapter.

(B) Screening Communications

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

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

(5) Order by the Chief Judge

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

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

ADD new Rule 17-402, as follows:

Rule 17-402. ADR PROCEEDINGS

(a) Applicability

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

(b) Mediation

(1) Selection of Mediator

If mediation is ordered, the CSA ADR Division shall select one or more mediators approved by the Chief Judge as having the qualifications prescribed by Rule 17-403 (a) to conduct the mediation. In selecting a mediator, the CSA ADR Division is not required to choose at random or in any particular order from among the qualified individuals and may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available mediators.

(2) If Full Settlement is Not Reached

If a full settlement of the issues in the appeal is not achieved, the mediator and the parties may discuss the prospect of (A) extending the mediation session, (B) further mediation sessions, (C) engaging in other forms of ADR, or (D) a settlement

conference to consider appropriate methods of streamlining the appellate process.

(3) If Full or Partial Settlement Achieved

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

(c) Settlement Conference

(1) Chair

If a settlement conference is ordered, the Chief Judge shall select a judge having the qualifications prescribed by Rule 17-403 (b) to serve as the chair of the settlement conference.

(2) If Full Settlement is Not Achieved

If a full settlement of the issues in the appeal is not achieved, the settlement conference chair and the parties may discuss the prospect of (1) another settlement conference, (2) engaging in other forms of alternative dispute resolution, or (3) methods of streamlining the appellate process, including limitation of issues, contents of and times for filing the record and record extract, consolidation of multiple appeals, consolidated briefs, prehearing motions, seeking certiorari in the Court of Appeals, and other procedures under Title 8 of these Rules.

(3) If Full or Partial Settlement Achieved

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

(d) Consent Order

(1) Proposed Order

Within 30 days after the conclusion of a Court-ordered ADR proceeding at which settlement or any other agreement was reached, if an order is necessary to implement their agreement, the parties shall file one or more proposed orders.

Committee note: The provisions of a proposed order may include dismissal of the appeal, proceeding with the appellate process, limiting issues, a remand pursuant to Rule 8-602 (e), and implementing other agreements reached by the parties with respect to the appeal.

(2) Action of Chief Judge

The Chief Judge shall sign the order as presented, reject it, or return it to the parties with recommended changes, but the Chief Judge may not preclude the appellant from dismissing the appeal as permitted by Rule 8-601 or preclude the parties from otherwise proceeding in a manner authorized under the Rules in Title 8.

(3) Action on Recommended Changes

Subject to subsection (d)(2) of this Rule, if the parties do not accept any recommended changes within 15 days after an order is returned to them, the appeal shall proceed as if no agreement had been reached. If the parties accept the recommended changes, the Chief Judge shall sign the order including those changes.

(4) Duties of Clerk

The clerk shall serve a copy of each signed order on each party pursuant to Rule 1-321 and transmit a copy to the CSA ADR

Division.

(e) Sanctions

Upon the failure of a party or attorney to comply with an order issued under this Rule, the court may (1) dismiss part or all of the appeal, (2) assess against the failing party or attorney any expenses caused by the failure, including attorney's fees or expenses incurred by the other party and part or all of the appellate costs, and (3) impose any other appropriate sanction.

(f) Recusal

A judge who conducts or participates in an ADR proceeding under this Rule shall not sit as a member of a panel, including an in banc panel, assigned to hear the appeal and shall not participate in any court conference regarding the judicial resolution of the appeal.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

ADD new Rule 17-403, as follows:

Rule 17-403. QUALIFICATIONS OF MEDIATORS AND SETTLEMENT CONFERENCE CHAIRS

(a) Qualifications of Mediators

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

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

(2) have either completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104 or have conducted at least two Maryland appellate mediations prior to the adoption of this Rule;

(3) have completed advanced appellate mediation training approved by the CSA ADR Division;

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

(5) be familiar with the Rules in Titles 8 and 17 of the Maryland Rules;

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

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

(8) submit to periodic monitoring by the CSA ADR Division; and

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

(b) Qualifications of Settlement Conference Chair

To be designated by the Chief Judge to serve as the chair of a settlement conference, an individual shall be:

(1) a judge of the Court of Special Appeals; or

(2) a retired judge of the Court of Appeals or the Court of Special Appeals approved for recall for service under Code, Courts Article, §1-302.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 400 - PROCEEDINGS IN THE COURT OF SPECIAL APPEALS

ADD new Rule 17-404, as follows:

Rule 17-404. NO FEE FOR COURT-ORDERED ADR

Court of Special Appeals litigants and their attorneys shall not be required to pay a fee or additional court costs for participating in a mediation or settlement conference ordered by the Court.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 100 - APPLICABILITY AND CITATION

AMEND Rule 1-101 to conform section (q) to revisions of Title 17, as follows:

Rule 1-101. APPLICABILITY

. . .

(q) Title 17

Title 17 applies to alternative dispute resolution proceedings in civil actions in the District Court, a circuit court, and the Court of Special Appeals, except for actions or orders to enforce a contractual agreement to submit a dispute to alternative dispute resolution.

. . .

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 by deleting a reference to a prehearing conference; by adding a reference to Alternative Dispute Resolution under Title 17, Chapter 400; and by adding a cross reference, as follows:

Rule 8-205. INFORMATION REPORTS

. . .

(f) Confidentiality

Information contained in an information report or a supplemental report shall not (1) be treated as admissions, (2) limit the disclosing party in presenting or arguing that party's case, or (3) be referred to except at a ~~prehearing or~~ scheduling conference or during ADR under Title 17, Chapter 400 of these Rules.

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

. . .

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 8-206 to change the title of the Rule, to change the time for the initial determination under section (a) from 20 days to 30 days, to delete provisions pertaining to a prehearing conference, to add certain provisions pertaining to alternative dispute resolution, and to make stylistic changes, as follows:

Rule 8-206. ~~PREHEARING AND~~ ADR AND SCHEDULING ~~PROCEDURE~~ CONFERENCES

(a) Initial Determination by Court

Within ~~20~~ 30 days after the filing of appellant's information report, the Chief Judge of the Court of Special Appeals ~~shall enter an order~~ or a judge of the Court designated by the Chief Judge shall consider any recommendation of the CSA ADR Division made pursuant to Rule 17-401 (b)(4) and enter an order:

(1) that the appeal proceed without ~~a prehearing~~ ADR under Title 17, Chapter 400 of these Rules or a scheduling conference; ~~or~~

(2) that the parties, their attorneys, or both the parties and their attorneys appear ~~before the Chief Judge or a judge of the Court designated by the Chief Judge at a designated time and place for a prehearing conference or a scheduling conference~~ at a

designated time and place for one mediation session or one settlement conference session in accordance with the applicable provisions of Rule 17-402;

(3) that the parties, their attorneys, or both the parties and their attorneys appear before the Chief Judge or a judge of the Court designated by the Chief Judge at a designated time and place for a scheduling conference in accordance with section (b) of this Rule; or

(4) upon the written request of the parties, that proceedings be stayed for a period of time stated in the order so that the parties, their attorneys, or both the parties and their attorneys may participate in a form of ADR other than a court-ordered mediation session or settlement conference.

Cross reference: For the definition of "ADR," see Rule 17-102 (a) and for the definition of "CSA ADR Division," see Rule 17-401 (a)(2).

~~(b) Prehearing Conference~~

~~The purpose of a prehearing conference is to discuss settlement, dismissal of the appeal, limitation of the issues, contents of the record and record extract, continuance of the appeal, the time or times for filing the record and briefs, and other pertinent matters. Information disclosed at a prehearing conference shall be regarded as disclosed solely for purposes of settlement negotiations and shall not (1) be treated as admissions, (2) limit the disclosing party in presenting or arguing that party's case, or (3) be referred to except at a prehearing conference.~~

~~(c)~~ (b) Scheduling Conference

(1) Purpose and Order to Attend

On its own initiative pursuant to subsection (a)(3) of this Rule or on written request of a party, the court may enter an order setting a scheduling conference. The purpose of a scheduling conference is to discuss the contents of the record and record extract, the time or times for filing the record and briefs, and other administrative matters that do not relate to the merits of the case.

~~(d)~~ (2) Order upon Completion of Scheduling Conference

On completion of ~~any conference conducted under this Rule~~ a scheduling conference, the judge shall enter an order reciting the actions taken and any agreements reached by the parties. The judge may order additional conferences and may enter an order of remand pursuant to Rule 8-602 (e). The Clerk shall serve a copy of the order on each party pursuant to Rule 1-321.

~~(e)~~ (c) Sanctions

Upon failure of a party or attorney to comply with Rule 8-205, this Rule, or an order under this Rule, the Court of Special Appeals may: (1) dismiss part or all of the appeal, (2) assess against the party or attorney the reasonable expenses caused by the failure, including attorney's fees, (3) assess against the party or attorney part or all of the appellate costs, or (4) impose any other appropriate sanction.

~~(f) Recusal~~

~~A judge who conducts a prehearing conference shall not sit~~

~~as a member of the panel assigned to hear the appeal in that case.~~

Source: This Rule is in part derived from former Rule 1024 and in part new.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 – GENERAL PROVISIONS

AMEND Rule 17-101 to correct a Committee note and to add section (e) pertaining to the applicability of Chapter 400, as follows:

Rule 17-101. APPLICABILITY

(a) General Applicability of Title

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

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

(b) Exceptions

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

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

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

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

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

(c) Applicability of Chapter 200

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

(d) Applicability of Chapter 300

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

(e) Applicability of Chapter 400

The Rules in Chapter 400 apply to civil appeals pending in the Court of Special Appeals.

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

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 100 - GENERAL

AMEND Rule 4-102 by adding a new section (j) pertaining to a preliminary inquiry, by adding a Committee note after section (l), and by making stylistic changes, as follows:

Rule 4-102. DEFINITIONS

The following definitions apply in this Title:

(a) Charging Document

"Charging document" means a written accusation alleging that a defendant has committed an offense. It includes a citation, an indictment, an information, and a statement of charges.

(b) Citation

"Citation" means a charging document, other than an indictment, information, or statement of charges, issued to a defendant by a peace officer.

(c) Defendant

"Defendant" means a person who has been arrested for an offense or charged with an offense in a charging document.

(d) Indictment

"Indictment" means a charging document returned by a grand jury and filed in a circuit court.

(e) Information

"Information" means a charging document filed in a court by

a State's Attorney.

(f) Judicial Officer

"Judicial Officer" means a judge or District Court commissioner.

(g) Offense

"Offense" means a violation of the criminal laws of this State or political subdivision thereof.

(h) Peace Officer

"Peace officer" means (1) a "law enforcement officer" as defined in Code, Public Safety Article, §3-101 (e), (2) a "police officer" as defined in Code, Criminal Procedure Article, §2-101 (c), and (3) any other person authorized by State or local law to issue citations.

(i) Petty Offense

"Petty offense" means an offense for which the penalty may not exceed imprisonment for a period of three months or a fine of five hundred dollars.

(j) Preliminary Inquiry

"Preliminary inquiry" means a pretrial proceeding conducted by a judicial officer when a defendant, who has been served with a citation or summons, appears as directed before the judicial officer for advise of rights in accordance with Rules 4-213 and 4-215.

~~(j)~~ (k) Statement of Charges

"Statement of charges" means a charging document, other than a citation, filed in District Court by a peace officer or by

a judicial officer.

~~(k)~~ (l) State's Attorney

"State's Attorney" means a person authorized to prosecute an offense.

Committee note: The definition of "State's Attorney" in Rule 4-102 (l) includes the elected or appointed State's Attorney for a county, the State Prosecutor, the Attorney General when conducting a criminal investigation or prosecution pursuant to Article V, §3 of the Maryland Constitution or other law, and assistants in those offices authorized to conduct a criminal prosecution. *See State v. Romulus*, 315 Md. 526 (1989).

~~(l)~~ (m) Verdict

"Verdict" means the finding of the jury or the decision of the court pertaining to the merits of the offense charged.

~~(m)~~ (n) Warrant

"Warrant" means a written order by a judicial officer commanding a peace officer to arrest the person named in it or to search for and seize property as described in it.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 702 a and M.D.R. 702 a.
Section (b) is derived from former M.D.R. 702 c.
Section (c) is derived from former Rule 702 b and M.D.R. 702 d.
Section (d) is derived from former Rule 702 c.
Section (e) is derived from former Rule 702 d and M.D.R. 702 e.
Section (f) is derived from former M.D.R. 702 f.
Section (g) is derived from former Rule 702 e and M.D.R. 702 g.
Section (h) is new.
Section (i) is derived from former M.D.R. 702 h.
Section (j) is new.
Section ~~(j)~~ (k) is derived from former M.D.R. 702 i.
Section ~~(k)~~ (l) is derived from former Rule 702 f and M.D.R. 702 j.
Section ~~(l)~~ (m) is derived from former Rule 702 g and M.D.R. 702 l.
Section ~~(m)~~ (n) is derived from former Rule 702 h and M.D.R. 702 m.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-202 by adding to the form in section (a) the phrase "and remain in custody" and language pertaining to a preliminary inquiry; by changing subsection (b)(1)(A) to refer to a "peace officer"; by adding a cross reference after subsection (b)(1)(A)(i); by specifying who must sign each type of charging document; by adding subsection (b)(2) pertaining to the method of signing a charging document; by adding subsection (c)(1) pertaining to certain specific requirements of citations; by modifying subsection (c)(1)(B) to delete language pertaining to the defendant's signed promise to appear and clarifying the defendant's duty to appear when required; by adding subsection (c)(2) pertaining to a statement of charges; by adding subsection (c)(4) pertaining to a summons in District Court; and by making stylistic changes, as follows:

Rule 4-202. CHARGING DOCUMENT - CONTENT

(a) General Requirements

A charging document shall contain the name of the defendant or any name or description by which the defendant can be identified with reasonable certainty, except that the defendant need not be named or described in a citation for a parking violation. It shall contain a concise and definite statement of

the essential facts of the offense with which the defendant is charged and, with reasonable particularity, the time and place the offense occurred. An allegation made in one count may be incorporated by reference in another count. The statute or other authority for each count shall be cited at the end of the count, but error in or omission of the citation of authority is not grounds for dismissal of the charging document or for reversal of a conviction.

A charging document also shall contain a notice to the defendant in the following form:

TO THE PERSON CHARGED:

1. This paper charges you with committing a crime.

2. If you have been arrested and remain in custody, you have the right to have a judicial officer decide whether you should be released from jail until your trial.

3. If you have been served with a citation or summons directing you to appear before a judicial officer for a preliminary inquiry at a date and time designated or within five days of service if no time is designated, a judicial officer will advise you of your rights, the charges against you, and penalties. The preliminary inquiry will be cancelled if a lawyer has entered an appearance to represent you.

~~3.~~ 4. You have the right to have a lawyer.

~~4.~~ 5. A lawyer can be helpful to you by:

(A) explaining the charges in this paper;

(B) telling you the possible penalties;

(C) helping you at trial;

(D) helping you protect your constitutional rights; and

(E) helping you to get a fair penalty if convicted.

~~5.~~ 6. Even if you plan to plead guilty, a lawyer can be helpful.

~~6.~~ 7. If you want a lawyer but do not have the money to hire one, the Public Defender may provide a lawyer for you. The court clerk will tell you how to contact the Public Defender.

~~7.~~ 8. If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.

~~8.~~ 9. DO NOT WAIT UNTIL THE DATE OF YOUR TRIAL TO GET A LAWYER. If you do not have a lawyer before the trial date, you may have to go to trial without one.

(b) Signature on Charging Documents

(1) Requirement – Who Must Sign

(A) Before a citation is issued, ~~A citation~~ it shall be signed by ~~a person authorized by law to do so before it is issued~~ the peace officer who issues it.

Cross reference: See Rule 4-102 (h) for definition of "peace officer."

(B) A Statement of Charges shall be signed by ~~a~~ the peace officer or ~~by a~~ judicial officer who issues it.

(C) An indictment ~~or information~~ shall be signed by the foreperson or acting foreperson of the grand jury and also may be

signed by a ~~the~~ State's Attorney ~~of a county or by any other person authorized by law to do so~~.

(D) A criminal information shall be signed by a State's Attorney.

(2) Method of Signing

(A) A charging document filed in paper form shall contain either the handwritten signature of the individual who signed the document or a facsimile signature of that individual affixed in a manner that assures the genuineness of the signature.

(B) Subject to the Rules in Title 20, a charging document filed electronically shall contain a facsimile or digital signature of the individual purporting to be the signer, which shall be affixed in a manner that assures the genuineness of the signature.

(C) If an indictment or criminal information is not signed personally by the elected or appointed State's Attorney for the county but is properly signed by another individual authorized to sign the document, the typed name of the elected or appointed State's Attorney may also appear on the document.

(3) Waiver of Objection

A plea to the merits waives any objection that the charging document is not signed.

(c) Specific Requirements

(1) Citation

(A) A citation shall be (i) under oath of the peace officer who signs it, or (ii) accompanied by a Statement of Probable Cause

signed under oath by the same or another peace officer.

(B) A citation shall contain a command to the defendant to appear in District Court when ~~notified, and shall contain the signed promise of the defendant to appear when required, except in a citation for a parking violation~~ required. ~~Failure of the defendant to sign the promise does not invalidate the citation.~~

(2) Statement of Charges

A Statement of Charges shall include or be accompanied by (A) a Statement of Probable Cause signed under oath, or (B) an Application for Statement of Charges signed under oath, which is sufficient to establish probable cause.

~~(2)~~ (3) Indictment

An indictment shall conclude with the words "against the peace, government, and dignity of the State."

(4) Summons in District Court

A District Court summons shall contain a command to the defendant to appear in District Court as directed.

Cross reference: See Section 13 of Article IV of the Constitution of Maryland and *State v. Dycer*, 85 Md. 246, 36 A. 763 (1897).

(d) Matters Not Required

A charging document need not negate an exception, excuse, or proviso contained in a statute or other authority creating or defining the offense charged. It is not necessary to use the word "feloniously" or "unlawfully" to charge a felony or misdemeanor in a charging document. In describing money in a charging document, it is sufficient to refer to the amount in current money, without

specifying the particular notes, denominations, coins, or certificates circulating as money of which the amount is composed.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 711 a and Rule 711 a.
Section (b) is derived from former M.D.R. 711 b 2 and Rule 711 c.
Section (c) is derived from former M.D.R. 711 b 1 and Rule 711 b.
Section (d) is derived from former Rule 711 d and e and M.D.R. 711 c and d.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-213 to add the language "or citation" to subsection (b)(1), to add a new subsection (b)(2) pertaining to preliminary inquiries, and to make stylistic changes, as follows:

Rule 4-213. INITIAL APPEARANCE OF DEFENDANT

(a) In District Court Following Arrest

When a defendant appears before a judicial officer of the District Court pursuant to an arrest, the judicial officer shall proceed as follows:

(1) Advice of Charges

The judicial officer shall inform the defendant of each offense with which the defendant is charged and of the allowable penalties, including mandatory penalties, if any, and shall provide the defendant with a copy of the charging document if the defendant does not already have one and one is then available. If one is not then available, the defendant shall be furnished with a copy as soon as possible.

(2) Advice of Right to Counsel

The judicial officer shall require the defendant to read the notice to defendant required to be printed on charging documents in accordance with Rule 4-202 (a), or shall read the

notice to a defendant who is unable for any reason to do so. A copy of the notice shall be furnished to a defendant who has not received a copy of the charging document. The judicial officer shall advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.

Cross reference: See Rule 4-216 (e) with respect to counsel at an initial appearance before a judge and Rule 4-216.1 (a) with respect to counsel at a hearing to review a pretrial release decision of a commissioner.

(3) Advice of Preliminary Hearing

When a defendant has been charged with a felony that is not within the jurisdiction of the District Court and has not been indicted, the judicial officer shall advise the defendant of the right to have a preliminary hearing by a request made then or within ten days thereafter and that failure to make a timely request will result in the waiver of a preliminary hearing. If the defendant then requests a preliminary hearing, the judicial officer may either set its date and time or notify the defendant that the clerk will do so.

(4) Pretrial Release

The judicial officer shall comply with the applicable provisions of Rules 4-216 and 4-216.1 governing pretrial release.

(5) Certification by Judicial Officer

The judicial officer shall certify compliance with this section in writing.

(6) Transfer of Papers by Clerk

As soon as practicable after the initial appearance by the defendant, the judicial officer shall file all papers with the clerk of the District Court or shall direct that they be forwarded to the clerk of the circuit court if the charging document is filed there.

Cross reference: Code, Courts Article, §10-912. See Rule 4-231 (d) concerning the appearance of a defendant by video conferencing.

(b) In District Court ~~Following Summons~~

(1) Following Summons or Citation

When a defendant appears before the District Court pursuant to a summons or citation, the court shall proceed in accordance with Rule 4-301.

(2) Preliminary Inquiry

When a defendant has (A) been charged by a citation or served with a summons and charging document for an offense that carries a penalty of incarceration and (B) has not previously been advised by a judicial officer of the defendant's rights, the defendant may be brought before a judicial officer for a preliminary inquiry advisement if no attorney has entered an appearance on behalf of the defendant. The judicial officer shall inform the defendant of each offense with which the defendant is charged and advise the defendant of the right to counsel and the matters set forth in subsection (a)(1), (2), and (3) of this Rule. The judicial officer shall certify in writing the judicial officer's compliance with this subsection.

(c) In Circuit Court Following Arrest or Summons

The initial appearance of the defendant in circuit court occurs when the defendant (1) is brought before the court by reason of execution of a warrant pursuant to Rule 4-212 (e) or (f)(2), or (2) appears in person or by written notice of counsel in response to a summons. In either case, if the defendant appears without counsel the court shall proceed in accordance with Rule 4-215. If the appearance is by reason of execution of a warrant, the court shall (1) inform the defendant of each offense with which the defendant is charged, (2) ensure that the defendant has a copy of the charging document, and (3) determine eligibility for pretrial release pursuant to Rule 4-216.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 723.
Section (b) is new.
Section (c) is derived from former Rule 723 a.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-215 by adding a new subsection (a)(6) pertaining to a defendant charged with an offense that carries a penalty of incarceration and by adding to section (c) a reference to Rule 4-213 (b), as follows:

Rule 4-215. WAIVER OF COUNSEL

(a) First Appearance in Court Without Counsel

At the defendant's first appearance in court without counsel, or when the defendant appears in the District Court without counsel, demands a jury trial, and the record does not disclose prior compliance with this section by a judge, the court shall:

(1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel.

(2) Inform the defendant of the right to counsel and of the importance of assistance of counsel.

(3) Advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any.

(4) Conduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel.

(5) If trial is to be conducted on a subsequent date, advise

the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.

(6) If the defendant is charged with an offense that carries a penalty of incarceration, determine whether the defendant had appeared before a judicial officer for an initial appearance pursuant to Rule 4-213 or a hearing pursuant to Rule 4-216 and, if so, that the record of such proceeding shows that the defendant was advised of the right to counsel.

The clerk shall note compliance with this section in the file or on the docket.

(b) Express Waiver of Counsel

If a defendant who is not represented by counsel indicates a desire to waive counsel, the court may not accept the waiver until after an examination of the defendant on the record conducted by the court, the State's Attorney, or both, the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to counsel. If the file or docket does not reflect compliance with section (a) of this Rule, the court shall comply with that section as part of the waiver inquiry. The court shall ensure that compliance with this section is noted in the file or on the docket. At any subsequent appearance of the defendant before the court, the docket or file notation of compliance shall be prima facie proof of the defendant's express waiver of counsel. After there has been an

express waiver, no postponement of a scheduled trial or hearing date will be granted to obtain counsel unless the court finds it is in the interest of justice to do so.

(c) Waiver by Inaction - District Court

In the District Court, if the defendant appears on the date set for trial without counsel and indicates a desire to have counsel, the court shall permit the defendant to explain the appearance without counsel. If the court finds that there is a meritorious reason for the defendant's appearance without counsel, the court shall continue the action to a later time, comply with section (a) of this Rule, if the record does not show prior compliance, and advise the defendant that if counsel does not enter an appearance by that time, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds that there is no meritorious reason for the defendant's appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the trial only if (1) the defendant received a copy of the charging document containing the notice as to the right to counsel and (2) the defendant either (A) is charged with an offense that is not punishable by a fine exceeding five hundred dollars or by imprisonment, or (B) appeared before a judicial officer of the District Court pursuant to Rule 4-213 (a) or (b) or before the court pursuant to section (a) of this Rule and was given the required advice.

(d) Waiver by Inaction - Circuit Court

If a defendant appears in circuit court without counsel on the date set for hearing or trial, indicates a desire to have counsel, and the record shows compliance with section (a) of this Rule, either in a previous appearance in the circuit court or in an appearance in the District Court in a case in which the defendant demanded a jury trial, the court shall permit the defendant to explain the appearance without counsel. If the court finds that there is a meritorious reason for the defendant's appearance without counsel, the court shall continue the action to a later time and advise the defendant that if counsel does not enter an appearance by that time, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds that there is no meritorious reason for the defendant's appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the hearing or trial.

(e) Discharge of Counsel - Waiver

If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious

reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits the defendant to discharge counsel, it shall comply with subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance.

Cross reference: See Rule 4-216 (e) with respect to waiver of counsel at an initial appearance before a judge and Rule 4-216.1 (a) with respect to waiver of counsel at a hearing to review a pretrial release decision of a commissioner.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 723 b 1, 2, 3 and 7 and c 1.
Section (b) is derived from former Rule 723.
Section (c) is in part derived from former M.D.R. 726 and in part new.
Section (d) is derived from the first sentence of former M.D.R. 726 d.
Section (e) is new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-301 to add a new subsection (a)(5) pertaining to a defendant charged with an offense that carries a penalty of incarceration, as follows:

Rule 4-301. BEGINNING OF TRIAL IN DISTRICT COURT

(a) Initial Procedures

Immediately before beginning a trial in District Court, the court shall (1) make certain the defendant has been furnished a copy of the charging document; (2) inform the defendant of each offense charged; (3) inform the defendant, when applicable, of the right to trial by jury; (4) comply with Rule 4-215, if necessary; (5) if the defendant is charged with an offense that carries a penalty of incarceration, determine whether the defendant had appeared before a judicial officer for an initial appearance pursuant to Rule 4-213 or a hearing pursuant to Rule 4-216 and, if so, that the record of such proceeding shows that the defendant was advised of the right to counsel; and ~~(5)~~ (6) thereafter, call upon the defendant to plead to each charge.

(b) Demand for Jury Trial

(1) Form and Time of Demand

A demand in the District Court for a jury trial shall be made either

(A) in writing and, unless otherwise ordered by the court or agreed by the parties, filed no later than 15 days before the scheduled trial date, or

(B) in open court on the trial date by the defendant and the defendant's counsel, if any.

(2) Procedure Following Demand

Upon a demand by the defendant for jury trial that deprives the District Court of jurisdiction pursuant to law, the clerk may serve a circuit court summons on the defendant requiring an appearance in the circuit court at a specified date and time. The clerk shall promptly transmit the case file to the clerk of the circuit court, who shall then file the charging document and, if the defendant was not served a circuit court summons by the clerk of the District Court, notify the defendant to appear before the circuit court. The circuit court shall proceed in accordance with Rule 4-213 (c) as if the appearance were by reason of execution of a warrant. Thereafter, except for the requirements of Code, Criminal Procedure Article, §6-103 and Rule 4-271 (a), or unless the circuit court orders otherwise, pretrial procedures shall be governed by the rules in this Title applicable in the District Court.

(c) Discovery

Discovery in an action transferred to a circuit court upon a jury trial demand made in accordance with subsection (b)(1)(A) of this Rule is governed by Rule 4-263. In all other actions transferred to a circuit court upon a jury trial demand, discovery

is governed by Rule 4-262.

Source: This Rule is derived as follows:
Section (a) is derived from former M.D.R. 751.
Section (b) is new.
Section (c) is new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-262 by correcting an internal reference in the cross reference after section (b), by rewriting subsection (d)(2)(B) to clarify that the State is required to provide the names of certain witnesses under certain circumstances, and by adding a requirement that the State provide the telephone numbers of witnesses under certain circumstances, as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

. . .

(b) Definitions

In this Rule, the terms "defense," "defense witness," "oral statement," "provide," "State's witness," and "written statement" have the meanings stated in Rule 4-263 (b).

Cross reference: For the definition of "State's Attorney," see Rule 4-102 ~~(k)~~ (l).

. . .

(d) Disclosure by the State's Attorney

(1) Without Request

Without the necessity of a request, the State's Attorney shall provide to the defense all material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged and all material or

information in any form, whether or not admissible, that tends to impeach a State's witness.

Cross reference: See *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Giglio v. U.S.*, 405 U.S. 150 (1972); *U.S. v. Agurs*, 427 U.S. 97 (1976); *Thomas v. State*, 372 Md. 342 (2002); *Goldsmith v. State*, 337 Md. 112 (1995); and *Lyba v. State*, 321 Md. 564 (1991).

(2) On Request

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

(A) Statements of Defendant and Co-defendant

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

(B) Written Statements, Identity, and Telephone Numbers of State's Witnesses

As to each State's witness the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony~~, those written statements of the witness that relate to the offense charged and are (i) signed by or adopted by the witness or (ii) contained in a police or investigative report, together with the name and, except as provided under Code, Criminal Procedure Article, §11-205 or Rule 16-1009 (b), the address of the witness~~ : (i) the name of the witness; (ii) except as provided under Code, Criminal Procedure Article, §11-205 or Rule 16-1009 (b), the address and, if known to the State's Attorney, the telephone number of the witness, and (iii) the

statements of the witness relating to the offense charged that are in a writing signed or adopted by the witness or are in a police or investigative report;

(C) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(i) specific searches and seizures, eavesdropping, or electronic surveillance including wiretaps; and

(ii) pretrial identification of the defendant by a State's witness;

(D) Reports or Statements of Experts

As to each State's witness the State's Attorney intends to call to testify as an expert witness other than at a preliminary hearing:

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

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

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

(E) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all

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

(F) Property of the Defendant

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

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-263 by conforming an internal reference in the cross reference after subsection (b)(5) to the relettering of Rule 4-102, by adding a requirement that the State provide the telephone numbers of witnesses under certain circumstances, and by making stylistic changes to subsection (d)(3), as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

. . .

(b) Definitions

In this Rule, the following definitions apply:

(1) Defense

"Defense" means an attorney for the defendant or a defendant who is acting without an attorney.

(2) Defense Witness

"Defense witness" means a witness whom the defense intends to call at a hearing or at trial.

(3) Oral Statement

"Oral statement" of a person means the substance of a statement of any kind by that person, whether or not reflected in an existing writing or recording.

(4) Provide

Unless otherwise agreed by the parties or required by Rule

or order of court, "provide" information or material means (A) to send or deliver it by mail, e-mail, facsimile transmission, or hand-delivery, or (B) to make the information or material available at a specified location for purposes of inspection if sending or delivering it would be impracticable because of the nature of the information or material.

(5) State's Witness

"State's witness" means a witness whom the State's Attorney intends to call at a hearing or at trial.

Cross reference: For the definition of "State's Attorney," see Rule 4-102 ~~(k)~~ (l).

(6) Written Statement

"Written statement" of a person:

(A) includes a statement in writing that is made, signed, or adopted by that person;

(B) includes the substance of a statement of any kind made by that person that is embodied or summarized in a writing or recording, whether or not signed or adopted by the person;

(C) includes a statement contained in a police or investigative report; but

(D) does not include attorney work product.

. . .

(d) Disclosure by the State's Attorney

. . .

(3) State's Witnesses

~~The name and,~~ As to each State's witness the State's

Attorney intends to call to prove the State's case in chief or to rebut alibi testimony: (A) the name of the witness; (B) except as provided under Code, Criminal Procedure Article, §11-205 or Rule 16-1009 (b), the address ~~of each State's witness whom the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony, together with~~ and, if known to the State's Attorney, the telephone number of the witness; and (C) all written statements of the ~~person~~ witness that relate to the offense charged;

. . .

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-521 to delete current section (d) and add a new section (d) specifying certain duties of judges, clerks, and other court officials and employees concerning written and oral communications from the jury, as follows:

Rule 2-521. JURY - REVIEW OF EVIDENCE - COMMUNICATIONS

(a) Jurors' Notes

The court may, and on request of any party shall, provide paper notepads for use by sworn jurors, including any alternates, during trial and deliberations. The court shall maintain control over the jurors' notes during the trial and promptly destroy the notes after the trial. Notes may not be reviewed or relied upon for any purpose by any person other than the author. If a sworn juror is unable to use a notepad because of a disability, the court shall provide a reasonable accommodation.

(b) Items Taken to Jury Room

Sworn jurors may take their notes with them when they retire for deliberation. Unless the court for good cause orders otherwise, the jury may also take exhibits that have been admitted in evidence, except that a deposition may not be taken into the jury room without the agreement of all parties and consent of the court. Written or electronically recorded instructions may be

taken into the jury room only with the permission of the court. Cross reference: See Rule 5-802.1 (e).

(c) Jury Request to Review Evidence

The court, after notice to the parties, may make available to the jury testimony or other evidence requested by it. In order that undue prominence not be given to the evidence requested, the court may also make available additional evidence relating to the same factual issue.

(d) Communications with Jury

~~The court shall notify the parties of the receipt of any communication from the jury pertaining to the action as promptly as practicable and in any event before responding to the communication. All such communications between the court and the jury shall be on the record in open court or shall be in writing and filed in the action. The clerk or the court shall note on a written communication the date and time it was received from the jury.~~

(1) Notification of Judge; Duty of Judge

A court official or employee who receives any written or oral communication from the jury pertaining to the action shall immediately notify the presiding judge of the communication. The judge shall promptly, and before responding to the communication, direct that the parties be notified of the communication and invite and consider, on the record, the parties' position on any response. The judge may respond to the communication (A) in writing, or (B) orally in open court on the record.

(2) Duty of Clerk

The clerk shall (A) record on any written communication the date and time it was received by the judge, and (B) enter on the docket (i) any written communication and the nature of any oral communication, (ii) the date and time the communication was received by the judge, (iii) that the parties were notified and had an opportunity on the record to state their position on any response, (iv) how the communication was addressed by the judge, and (v) any written response by the judge to the communication.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rules 558 a, b and d and 758 b.
Section (c) is derived from former Rule 758 c.
Section (d) is derived in part from former Rule 758 d and is in part new.

REPORTER'S NOTE

Amendments to Rules 2-521 and 4-326 are proposed in light of *Black v. State*, 426 Md. 328 (2012) and *State v. Harris*, 428 Md. 700 (2012).

In the 174th Report of the Rules Committee, the Committee had proposed the addition of the following sentence to Rules 2-521 (d) and 4-326 (d):

> The court shall state on the record the nature of the communication, that the parties were notified of the communication, and how the communication was addressed.

Those amendments subsequently were withdrawn, in favor of a more comprehensive revision of section (d). The section now has been rewritten in its entirety to specify in detail the procedures that must be followed whenever there is a communication from the jury pertaining to the action.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-326 to delete current section (d) and add a new section (d) specifying certain duties of judges, clerks, and other court officials and employees concerning written and oral communications from the jury, as follows:

Rule 4-326. JURY - REVIEW OF EVIDENCE - COMMUNICATIONS

(a) Jurors' Notes

The court may, and on request of any party shall, provide paper notepads for use by sworn jurors, including any alternates, during trial and deliberations. The court shall maintain control over the jurors' notes during the trial and promptly destroy the notes after the trial. Notes may not be reviewed or relied upon for any purpose by any person other than the author. If a sworn juror is unable to use a notepad because of a disability, the court shall provide a reasonable accommodation.

(b) Items Taken to Jury Room

Sworn jurors may take their notes with them when they retire for deliberation. Unless the court for good cause orders otherwise, the jury may also take the charging document and exhibits that have been admitted in evidence, except that a deposition may not be taken into the jury room without the agreement of all parties and the consent of the court.

Electronically recorded instructions or oral instructions reduced to writing may be taken into the jury room only with the permission of the court. On request of a party or on the court's own initiative, the charging documents shall reflect only those charges on which the jury is to deliberate. The court may impose safeguards for the preservation of the exhibits and the safety of the jury.

Cross reference: See Rule 5-802.1 (e).

(c) Jury Request to Review Evidence

The court, after notice to the parties, may make available to the jury testimony or other evidence requested by it. In order that undue prominence not be given to the evidence requested, the court may also make available additional evidence relating to the same factual issue.

(d) Communications with Jury

~~The court shall notify the defendant and the State's Attorney of the receipt of any communication from the jury pertaining to the action as promptly as practicable and in any event before responding to the communication. All such communications between the court and the jury shall be on the record in open court or shall be in writing and filed in the action. The clerk or the court shall note on a written communication the date and time it was received from the jury.~~

(1) Notification of Judge; Duty of Judge

A court official or employee who receives any written or oral communication from the jury pertaining to the action shall

immediately notify the presiding judge of the communication. The judge shall promptly, and before responding to the communication, direct that the parties be notified of the communication and invite and consider, on the record, the parties' position on any response. The judge may respond to the communication (A) in writing, or (B) orally in open court on the record.

(2) Duty of Clerk

The clerk shall (A) record on any written communication the date and time it was received by the judge, and (B) enter on the docket (i) any written communication and the nature of any oral communication, (ii) the date and time the communication was received by the judge, (iii) that the parties were notified and had an opportunity on the record to state their position on any response, (iv) how the communication was addressed by the judge, and (v) any written response by the judge to the communication.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is derived from former Rule 758 a and b and 757 e.
Section (c) is derived from former Rule 758 c.
Section (d) is derived in part from former Rule 758 d and is in part new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-521.

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 8-503 to correct an internal reference, as follows:

Rule 8-503. STYLE AND FORM OF BRIEFS

. . .

(d) Length

Except as otherwise provided in section (e) of this Rule or with permission of the Court, a brief of the appellant and appellee shall not exceed 35 pages in the Court of Special Appeals or 50 pages in the Court of Appeals. This limitation does not apply to (1) the table of contents and citations required by Rule 8-504 (a)(1); (2) the citation and text required by Rule 8-504 ~~(a)(7)~~ (a)(8); and a motion to dismiss and argument supporting or opposing the motion. Except with permission of the Court, any portion of a brief pertaining to a motion to dismiss shall not exceed an additional ten pages in the Court of Special Appeals or 25 pages in the Court of Appeals. Any reply brief filed by the appellant shall not exceed 15 pages in the Court of Special Appeals or 25 pages in the Court of Appeals.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 8-503 corrects an internal reference in section (d).