

The agenda for a meeting of the Rules Committee generally will be posted 7-10 days before the date of the meeting. At the discretion of the Chair, items may be deleted from or added to the agenda.

AGENDA FOR
RULES COMMITTEE MEETING

September 7, 2017
(Thursday)

Judiciary Education and Conference Center
Rooms UL4 & 5
2011 Commerce Park Drive
Annapolis, Maryland
9:30 a.m.

- | | | |
|---------|---|----------------|
| Item 1. | Consideration of a policy question pertaining to Rule 2-231 (Class Actions) | Judge Nazarian |
| Item 2. | Consideration of a policy question pertaining to Appearance Fees for Limited Scope Attorneys | Ms. Harris |
| Item 3. | Consideration of proposed amendments to Rule 16-907 (Case Records - Required Denial of Inspection - Certain Categories) | Judge Wilner |
| Item 4. | Consideration of Rules changes pertaining to Chapter 554, Laws of 2017 (SB 137), the Maryland Uniform Electronic Legal Materials Act [Materials to be distributed at the meeting] | Judge Wilner |
| Item 5. | Consideration of proposed new Rule 4-602 (Emergency Orders Pursuant to Code, Criminal Procedure Article, §11-110.1) | Mr. Marcus |

- Item 6. Consideration of proposed amendments to: Mr. Marcus
- Rule 4-342 (Sentencing - Procedure)
 - Rule 4-345 (Sentencing - Revisory Power of Court)
 - Rule 4-346 (Probation)
 - Rule 4-504 (Petition for Expungement When Charges Filed)
- Item 7. Consideration of proposed amendments to: Judge Wilner
- Rule 2-510 (Subpoenas - Court Proceedings and Depositions)
 - Rule 2-510.1 (Foreign Subpoenas in Conjunction With a Deposition)
 - Rule 3-510 (Subpoenas)
 - Rule 4-264 (Subpoena for Tangible Evidence Before Trial in Circuit Court)
 - Rule 4-265 (Subpoena for Hearing or Trial)
- Item 8. Consideration of proposed amendments to: Mr. Dunn
- Rule 14-102 (Judgment Awarding Possession)
 - Rule 14-210 (Notice Prior to Sale)
 - New Rule 14-214 (Postponement or Cancellation of the Sale)
 - Rule 14-214.1 (Sale) [renumbering of current Rule 14-214]
 - Rule 14-208 (Subsequent Proceedings if no Power of Sale or Assent to a Decree) [conforming to the renumbering]
 - Rule 14-502 (Foreclosure of Right of Redemption - Complaint)
- Item 9. Consideration of proposed new Title 2, Chapter 800 (Remote Electronic Participation in Judicial Proceedings) Judge Wilner
- Conforming amendments:
- Deletion of Rule 2-513 (Testimony Taken by Telephone)
 - Amendments to Rule 7-208 (Hearing)
 - Amendments to Rule 15-1305 (Hearing)

MEMORANDUM

TO: Rules Committee Members

FROM: David R. Durfee Jr., Assistant Reporter

SUBJECT: Rule 2-231, Class Actions and Interlocutory Appeals

DATE: July 27, 2017

At its June 30, 2017, meeting, the Appellate Subcommittee considered a written request from James Ulwick, Esq., to determine whether to recommend to the Rules Committee a proposal that Rule 2-231 be amended to add a provision similar to Rule 23 (f) of the Federal Rules of Civil Procedure, to allow a party to take an interlocutory appeal after the grant or denial of class certification. The Appellate Subcommittee did not reach a consensus on whether to recommend a rule change, but it did believe that the issue deserved consideration by the full Rules Committee, perhaps as a rule change, or perhaps as a recommendation from the Rules Committee that the Judiciary pursue a statutory change to authorize a rule.

This memorandum is intended to be a summary of the information that the Subcommittee considered, as well as a summary of additional information that came to light after the meeting that would be relevant to the Rules Committee.

Background

In addition to Mr. Ulwick's correspondence, the Subcommittee received correspondence from Joseph Mack, Esq., of Civil Justice, Inc., and Martin Wolf, Esq., of Gordon, Wolf, and Carney. See attached. Mr. Ulwick argued in his letter that it would be in the public's and litigants' interest to amend Rule 2-231 to contain an analog to Federal Rule of Civil Procedure 23 (f), which provides:

f. **Appeals.** A court of appeals may permit an appeal from an order granting or denying class-action certification under this rule if a petition for permission to appeal is filed with the circuit court within 14 days after the order is entered. An appeal does not state proceedings in the district court unless the district judge or the court of appeals so orders.

In his letter, Mr. Ulwick acknowledged that there was a legal issue whether the Court of Appeals could adopt a provision like Rule 23(f) because the Court would lack the statutory authority to make the class certification interlocutory order appealable: Courts Article, §§12-301 and 12-303 permit only a limited number of interlocutory orders to be appealed, and class

actions are not mentioned. At the meeting, Mr. Ulwirickck's associate, Louis Malick, argued that the Court of Appeals does have the authority to adopt such a rule, similar to its common law authority in adopting the collateral order doctrine.

Mr. Mack argued in his letter that the Court of Appeals lacks the authority to amend Rule 2-231 to adopt a provision like Rule 23 (f), because Code, Courts Article, §12-303 does not contain any authorization for the Court of Appeals to create rules permitting interlocutory decisions beyond those already permitted: action by the General Assembly will be necessary before such an amendment could be considered. He also argued that the requested change would not be desirable from a public policy perspective because it would interfere with the efficient management of class action cases and frustrate the purposes of the final judgment rule.

Also present at the meeting were Debra Gardner of the Public Justice Center and Phillip Robinson of the Consumer Law Center. Ms. Gardner believed that the argument that the Court could implement the change without statutory authority was weak. She also believed that allowing interlocutory appeals would end up having little effect on plaintiffs' attorneys class action practice, given the extreme deference appellate courts give to trial court rulings. Mr. Robinson said that he did not believe that the Court would have the legal authority to adopt a rule mimicking Fed.R.Civ.P. 23(f): the legislature has spoken on what interlocutory appeals could be taken.

The Subcommittee also discussed a recent Court of Appeals decision. The Court of Appeals, in *Deer Automotive Group, LLC t/a Liberty Ford v. Barbara Brown et al.*, ___ Md. ___, 2017 WL 2774607 (June 27, 2017), decided that an order denying a motion or petition to compel arbitration filed in an existing action is not a "final judgment" for purposes of appeal. Md. Code Ann., Cts. & Jud. Proc. §§12-101 (f), 12-301.¹ Therefore, an interlocutory appeal would not lie to the Court of Special Appeals.

The Subcommittee was made aware of, but did not have a chance to analyze, a recent Supreme Court decision. In *Microsoft Corporation v. Baker*, ___ U.S. ___, 137 S.Ct. 1702 (2017), the Supreme Court ruled that the plaintiffs in an action where they were denied class certification, could not voluntarily dismiss with prejudice their claims as a way of gaining a final judgment from which they could appeal (though they reserved the right to revive their claims should the appellate court reverse the trial court's certification denial). The Court held that the voluntary dismissal offered by the plaintiffs/respondents did not qualify as a "final decision" under 28 U.S.C §1291: "The tactic would undermine § 1291's firm finality principle, designed to guard against piecemeal appeals, and subvert the balanced solution Rule 23(f) put in place for immediate review of class-action orders." 137 S.Ct. at 1707.

Microsoft also provided the occasion for the Court to explain the genesis of Fed.R.Civ.Pro. 23 (f). Before the amendment to Rule 23 (f) in 1998, the Court had decided *Coopers & Lybrand v. Livesay*, 437 U.S. 463 (1978). In *Coopers*, the issue was whether an appellate court could apply the so-called "death-knell" doctrine to review a court order that had

¹ Interestingly, on July 10, 2017, the Bureau of Consumer Financial Protection issued final regulations in 12 CFR part 1040 to provide that banks, consumer lenders and other companies that offer financial services and products to consumers will no longer be able to require consumers to waive the right to bring class action lawsuits. https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201707_cfpb_Arbitration-Agreements-Rule.pdf

rejected class action status when the refusal to certify a class would end a lawsuit for all practical purposes. Under the court-created “death knell” doctrine, the order would effectively terminate the litigation and would be deemed to an appealable final decision under 28 U.S.C §1291. *Id.* at 469-71. The Supreme Court reversed. It determined that a refusal to certify a class is “inherently interlocutory.” *Id.* at 470. The parties had made arguments for or against the “death knell” doctrine based on whether, from a policy perspective, appeals in class actions decisions should be treated differently from other judicial decisions, e.g., rulings on discovery, on venue, or on summary judgment, where a ruling has such tactical economic significance that a defeat is tantamount to a death knell for the entire case. The court said that “Such policy arguments, though proper for legislative consideration, are irrelevant to the issue we must decide.” *Id.*

The decision in *Coopers & Lybrand* was highly influential to the Court of Appeals in *Snowden v. Baltimore Gas & Elec. Co.*, 300 Md. 555 (1984), a case involving former Rule 605a, the forerunner to Rule 2-602, Judgments Not Disposing of the Entire Action.² Judge Eldridge concluded that “the authorization in ... Maryland Rule 605 a for trial judges to make certain orders appealable, is limited to orders which, by their nature, have a characteristic of finality. Such orders must be completely dispositive of an entire claim or party.” *Id.* at 563. Orders denying class certification, rather than being final, were “inherently interlocutory.” *Id.*, quoting *Coopers and Lybrand*, 437 U.S. at 470.

At the federal level, the response to *Coopers & Lybrand* occurred in three steps. First, in 1990 Congress amended the Rules Enabling Act, 28 U.S.C. §2071 et seq., to authorize the Supreme Court to prescribe rules “defin[ing] when a ruling of a district court is final for the purposes of appeal under section 1291.” 28 U.S.C. §2072 (c). Second, two years later, Congress added a new subsection (e) to 28 U.S.C. §1292 that said that the Supreme Court may prescribe rules, in accordance with section 2072 of this title, to provide for an appeal of an interlocutory decision to the courts of appeals that is not otherwise provided for under subsection (a), (b), (c), or (d).” Third, that same year the Advisory Committee on the Federal Rules of Civil Procedure began to review proposals for what would become Rule 23 (f). *See Solimine & Hines, Deciding To Decide: Class Action Certification and Interlocutory Review by the United States Courts of Appeals Under Rule 23 (f)*, 41 *Wm. & Mary L. Rev.* 1531, 1563–1564, 1566, n. 189 (2000). In 1998 the Supreme Court approved Federal Rule of Civil Procedure 23(f), which authorizes “‘permissive interlocutory appeal’ from adverse class-certification orders in the discretion of the court of appeals.” *See Committee Note on Rule 23 (f)*.

Research performed after the subcommittee meeting also revealed that the Rules Committee had previously recommended that the Court of Appeals amend Rule 2-231 to add a provision like Fed.R.Civ.P. 23 (f). In its 152nd Report, the Committee recommended adding a new section (j) that would have provided: “A party may appeal an order of a circuit court granting or denying class certification under this Rule if a notice of appeal is filed within 30 days after entry of the order. An appeal does not stay proceedings in the circuit court unless the circuit court or the appellate court so orders.” The Reporter’s note added that “The Committee recommends that adoption of the proposed Rule change be coordinated with a legislative

² The decision in *Snowden* was not brought to the attention of the Appellate Subcommittee.

initiative for a like amendment to Code, Courts Article, §12-303, Appeals from Certain Interlocutory Orders.”

The Court of Appeals, however, rejected the proposed amendment. *See* Rules Order, November 12, 2003.³

It is hoped that this information will assist the full Committee in its decision of whether to proceed.

³ Federal Rule of Civil Procedure Rule 23 (f) begins by saying, “A court of appeals may permit an appeal ...” while the proposed amendment to Rule 2-231 said that “A party may appeal an order ...” It is speculation, but the difference could have been significant to the Court: the oversight role of the federal appellate court in permitting an interlocutory appeal gives the federal appellate court control over the number of appeals.

MEMORANDUM

TO : Members of the Rules Committee

FROM : Sandra F. Haines, Esq., Reporter

DATE : August 30, 2017

SUBJECT : Appearance Fee for Limited Scope Attorneys

Does the entry of a "limited appearance" by an attorney require the collection of an appearance fee pursuant to Code, Courts Article, §7-204? For MDEC programming purposes, the answer needs to be something other than "maybe."

Code, Courts Article, §7-204, with certain variations and exceptions among the counties, requires the collection of a fee for docketing the appearance of counsel when (1) "bringing or defending a civil action," (2) "prosecuting or defending a criminal action," (3) "bringing or defending a case in the Court of Appeals," or (4) "bringing or defending a criminal action."

In Rule 1-202, section (a) defines "action" as "collectively all the steps by which a party seeks to enforce any right in a court or all the steps in a criminal prosecution," and section (v) defines "proceeding" as "any part of an action."

Rules 2-131 (b) and 3-131 (b), in the circuit courts and the District Court, respectively, permit an attorney to "enter an appearance limited to participation in a discrete matter or judicial proceeding." Recent amendments to the Rules in Title 4 permit limited appearances in connection with pretrial release determinations. See, e.g., Rule 4-213.1 (g)(2). There is no limited appearance Rule applicable to an appearance in the Court of Appeals.

The General Assembly could not have contemplated assessment of a fee -- one way or another - for the entry of a limited appearance, because limited appearances did not exist when the legislation was enacted. There was no discussion of the fee

issue when any of the limited appearance Rules were proposed by the Rules Committee and adopted by the Court of Appeals.

It is not feasible to perform a case-by-case determination each time a limited appearance is entered. What is the recommendation of the Rules Committee for an across-the-board approach? The Committee's recommendation could be incorporated into a Committee note to Rules 2-131 and 3-131 and to one or more Rules in Title 4. The Committee note, subject to stylistic revisions, could read as follows:

Committee note: The entry of a limited appearance in accordance with this Rule [**constitutes**] [**does not constitute**] the entry of an appearance for the purpose of bringing, prosecuting, or defending an action and [**, in certain counties, requires**] [**does not require**] the payment of a fee under Code, Courts Article, §7-204.

SFH:cdc

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 900 - ACCESS TO JUDICIAL RECORDS

AMEND Rule 16-907 by adding to subsection (g)(5) a reference to Rules 16-902 (c) and 4-341, by reorganizing section (m) to delete a reference to Rule 9-202 and to move a reference to Rule 9-203 (d) to the end of section (m), by substituting the language "required to be shielded by" for the language "as provided in," as follows:

Rule 16-907. CASE RECORDS - REQUIRED DENIAL OF INSPECTION - CERTAIN CATEGORIES

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

(a) All case records filed in the following actions involving children:

(1) Actions filed under Title 9, Chapter 100 of the Maryland Rules for:

(A) adoption;

(B) guardianship; or

(C) to revoke a consent to adoption or guardianship for which there is no pending adoption or guardianship proceeding in that county.

(2) Delinquency, child in need of assistance, child in need

of supervision, and truancy actions in Juvenile Court, except that, if a hearing is open to the public pursuant to Code, Courts Article, §3-8A-13 (f), the name of the respondent and the date, time, and location of the hearing are open to inspection unless the record was ordered expunged.

Committee note: In most instances, the "children" referred to in this section will be minors, but, as Juvenile Court jurisdiction extends until a child is 21, in some cases, the children legally may be adults.

(b) The following case records pertaining to a marriage license:

(1) A certificate of a physician or certified nurse practitioner filed pursuant to Code, Family Law Article, §2-301, attesting to the pregnancy of a child under 18 years of age who has applied for a marriage license.

(2) Until a license becomes effective, the fact that an application for a license has been made, except to the parent or guardian of a party to be married.

Cross reference: See Code, Family Law Article, §2-402 (f).

(c) Case records pertaining to petitions for relief from abuse filed pursuant to Code, Family Law Article, §4-504, which shall be sealed until the earlier of service or denial of the petition.

(d) Case records required to be shielded pursuant to Code, Courts Article, §3-1510 (peace orders) or Code, Family Law Article, §4-512 (domestic violence protective orders).

(e) In any action or proceeding, a record created or maintained by an agency concerning child abuse or neglect that is required

by statute to be kept confidential.

(f) Papers filed by a fiduciary or a guardian of the property of a minor or disabled person pursuant to Title 10, Chapter 200, 400, or 700 of the Maryland Rules that include financial information regarding the minor or disabled person.

Committee note: Statutes that require child abuse or neglect records to be kept confidential include Code, Human Services Article, §§1-202 and 1-203 and Code, Family Law Article, §5-707.

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

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

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

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

(B) Executed search warrants and all papers attached thereto filed pursuant to Rule 4-601, except as authorized by a judge under that Rule.

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

(A) A case record pertaining to an arrest warrant issued under Rule 4-212 (d) and the charging document upon which the warrant was issued until the conditions set forth in Rule 4-212 (d)(3) are satisfied.

(B) Except as otherwise provided in Code, General Provisions Article, §4-316, a case record pertaining to an arrest

warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued.

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

(5) A Subject to Rules 16-902 (c) and 4-341, a presentence investigation report prepared pursuant to Code, Correctional Services Article, §6-112.

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

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

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

Cross reference: See Code, Criminal Law Article, §5-601.1 governing confidentiality of judicial records pertaining to a citation issued for a violation of Code, Criminal Law Article, §5-601 involving the use or possession of less than 10 grams of marijuana.

(h) A transcript or an audio, video, or digital recording of

any court proceeding that was closed to the public pursuant to Rule, order of court, or other law.

(i) Subject to the Rules in Title 16, Chapter 500, backup audio recordings, computer disks, and notes of a court reporter that are in the possession of the court reporter and have not been filed with the clerk.

(j) The following case records containing medical information:

(1) A case record, other than an autopsy report of a medical examiner, that (A) consists of a medical or psychological report or record from a hospital, physician, psychologist, or other professional health care provider, and (B) contains medical or psychological information about an individual.

(2) A case record pertaining to the testing of an individual for HIV that is declared confidential under Code, Health-General Article, §18-338.1 or §18-338.2.

(3) A case record that consists of information, documents, or records of a child fatality review team, to the extent they are declared confidential by Code, Health-General Article, §5-709.

(4) A case record that contains a report by a physician or institution concerning whether an individual has an infectious disease, declared confidential under Code, Health-General Article, §18-201 or §18-202.

(5) A case record that contains information concerning the consultation, examination, or treatment of a developmentally disabled individual, declared confidential by Code, Health-General Article, §7-1003.

(6) A case record relating to a petition for an emergency evaluation made under Code, Health-General Article, §10-622 and declared confidential under §10-630 of that Article.

(k) A case record that consists of the federal or Maryland income tax return of an individual.

(l) A case record that:

(1) a court has ordered sealed or not subject to inspection, except in conformance with the order; or

(2) in accordance with Rule 16-912 (b) is the subject of a motion to preclude or limit inspection.

(m) ~~As provided in Rule 9-203 (d), a~~ A case record that consists of a financial statement ~~filed pursuant to Rule 9-202 required to be shielded by Rule 9-203 (d).~~

(n) A document required to be shielded under Rule 20-203 (e)(1).

(o) An unredacted document filed pursuant to Rule 1-322.1 or Rule 20-203 (e)(2).

Source: This Rule is derived from former Rule 16-1006 (2016).

REPORTER'S NOTE

Subsection (g)(5) of Rule 16-907 is proposed to be amended to reference Rules 16-902 (c) and 4-341, which allow inspection of presentence investigation reports when they are part of an exhibit submitted in support of or in opposition to a motion that has been ruled on by the court or marked for identification at trial, or they have been admitted into evidence. These are exceptions to the confidentiality of presentence investigation reports.

Section (m) is proposed to be amended to clarify the requirement to shield financial statements in family law actions.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 600 - CRIMINAL INVESTIGATIONS AND MISCELLANEOUS
PROVISIONS

ADD new Rule 4-602, as follows:

Rule 4-602. EMERGENCY ORDERS PURSUANT TO CODE, CRIMINAL
PROCEDURE ARTICLE, §11-110.1

(a) Applicability; Definitions

(1) Applicability

This Rule applies to the application, issuance, and execution of emergency orders to obtain an oral swab to be tested for the presence of HIV pursuant to Code, Criminal Procedure Article, §11-110.1.

(2) Definitions

The definitions contained in Code, Criminal Procedure, §11-107 apply in this Rule.

(b) Application

An application for an emergency order under this Rule:

(1) shall be made as soon as possible after the alleged prohibited exposure to which it relates and no later than 72 hours after the alleged prohibited exposure;

(2) shall be in writing, signed and sworn to by the applicant, and accompanied by an affidavit that sets forth the

basis to believe that the person from whom an oral swab is requested has caused a prohibited exposure to a victim;

(3) may be submitted in the manner set forth in Rule 4-601 (b); and

(4) shall be sealed.

(c) Issuance

An emergency order shall be issued in the manner set forth in Rule 4-601 (c) and shall comply with the relevant requirements of Code, Criminal Procedure Article, §1-203.

(d) Execution of Emergency Order

An emergency order issued pursuant to this Rule shall be executed in the manner set forth in Code, Criminal Procedure Article, §11-110.1 (c) and (d).

Committee note: Code, Criminal Procedure Article, §11-110.1 (d)(2) provides that the results of a test conducted pursuant to the statute are not admissible as evidence of guilt or innocence in a criminal proceeding arising out of the alleged prohibited exposure.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 4-602 provides a procedure for the issuance of an emergency order to obtain an oral swab to be tested for the presence of HIV pursuant to Code, Criminal Procedure Article, §11-110.1, which was added by Chapter 486, Laws of 2017 (HB 1375).

NOTE TO RULES COMMITTEE: Proposed amendments to Rule 4-342 pertaining to the repeal of the death penalty, including re-titling of the Rule and deletion of section (a), are included in the 194th Report, which is currently pending before the Court of Appeals. The 194th Report changes have been incorporated into this draft.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 by adding language to the cross reference following section (f) to conform to Chapter 515, Laws of 2016, as follows:

Rule 4-342. SENTENCING - PROCEDURE

. . .

~~(g)~~ (f) Reasons

The court ordinarily shall state on the record its reasons for the sentence imposed.

Cross reference: For factors related to drug and alcohol abuse treatment to be considered by the court in determining an appropriate sentence, see Code, Criminal Procedure Article, §6-231 and Code, Criminal Law Article, §5-601 (e). For procedures to commit a defendant who has a drug or alcohol dependency to a treatment program in the Maryland Department of Health as a condition of release after conviction, see Code, Health General Article, §8-507. For procedures to be followed by the court to depart from a mandatory minimum sentence for certain drug-related offenses, see Code, Criminal Law Article, §5-609.1.

. . .

REPORTER'S NOTE

Chapter 515, Laws of 2016 (SB 1005) amended Code, Criminal Law Article, §5-601 (e) to provide that a court, before imposing sentence for a controlled dangerous substance offense, may order the Maryland Department of Health to conduct an assessment of the defendant for a substance use disorder, which the court shall consider when imposing sentence. The Criminal Rules Subcommittee recommends amending the cross reference following section (f) to reflect the amended statute.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-345 by adding language to the cross reference following section (f) to reflect amendments to Code, Criminal Law Article, §5-609.1, made by Chapter 515, Laws of 2016, as follows:

Rule 4-345. SENTENCING - REVISORY POWER OF COURT

. . .

(f) Open Court Hearing

The court may modify, reduce, correct, or vacate a sentence only on the record in open court, after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. The defendant may waive the right to be present at the hearing. No hearing shall be held on a motion to modify or reduce the sentence until the court determines that the notice requirements in subsection (e)(2) of this Rule have been satisfied. If the court grants the motion, the court ordinarily shall prepare and file or dictate into the record a statement setting forth the reasons on which the ruling is based.

Cross reference: See Code, Criminal Procedure Article, §8-302, which allows the court to vacate a judgment, modify a sentence, or grant a new trial for an individual convicted of prostitution if, when the crime was committed, the individual was acting

under duress caused by the act of another committed in violation of Code, Criminal Law Article, §11-303, the prohibition against human trafficking. See Code, Criminal Law Article, §5-609.1 regarding an application to modify a mandatory minimum sentence imposed for certain drug offenses prior to September 1, 2017, and for procedures relating thereto.

Source. This Rule is derived in part from former Rule 774 and M.D.R. 774, and is in part new.

REPORTER'S NOTE

Chapter 515, Laws of 2016 (SB 1005), amended Code, Criminal Law Article, §5-609.1, to provide:

(a) Notwithstanding any other provision of law and subject to subsection (c) of this section, a person who is serving a term of confinement that includes a mandatory minimum sentence imposed on or before September 30, 2017, for a violation of §§5-602 through 5-606 of this Subtitle may apply to the court to modify or reduce the mandatory minimum sentence as provided in Maryland Rule 4-345, regardless of whether the defendant filed a timely motion for reconsideration or a motion for reconsideration was denied by the court.

(b) The court may modify the sentence and depart from the mandatory minimum sentence unless the State shows that, giving due regard to the nature of the crime, the history and character of the defendant, and the defendant's chances of successful rehabilitation:

(1) retention of the mandatory minimum sentence would not result in substantial injustice to the defendant; and

(2) the mandatory minimum sentence is necessary for the protection of the public.

(c)(1) Except as provided in paragraph (2) of this subsection, an application for a hearing under subsection (a) of this section shall be submitted to the court or review panel on or before September 30, 2018.

(2) The court may consider an application after September 30, 2018, only for good cause shown.

(3) The court shall notify the State's Attorney of a request for a hearing.

(4) A person may not file more than one application for a hearing under subsection (a) of this section for a mandatory minimum sentence for a violation of §§5-602 through 5-606 of this Subtitle.

The Criminal Rules Subcommittee proposes adding a sentence to the cross reference following section (f) of Rule 4-345 to reflect §5-609.1.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-346 by adding a sentence to the cross reference following section (b) to reflect statutory changes effected by Chapter 515, Laws of 2016, as follows:

Rule 4-346. PROBATION

. . .

(b) Modification of Probation Order

During the period of probation, on motion of the defendant or of any person charged with supervising the defendant while on probation or on its own initiative, the court, after giving the defendant an opportunity to be heard, may modify, clarify, or terminate any condition of probation, change its duration, or impose additional conditions.

Cross reference: For orders of probation or parole recommending that a defendant reside in or travel to another state as a condition of probation or parole, see the Interstate Compact for Adult Offender Supervision, Code, Correctional Services Article, §6-201 et seq. For evaluation as to the need for drug or alcohol treatment before probation is ordered in cases involving operating a motor vehicle or vessel while under the influence of or impaired by drugs or alcohol, see Code, Criminal Procedure Article, §6-220. For victim notification procedures, see Code, Criminal Procedure Article, §11-104 (f). For procedures concerning compliance with restitution judgments, see Code, Criminal Procedure Article, §11-607. For procedures concerning a revocation of probation due to a technical violation of probation, as defined in Code, Correctional Services Article, §6-101 (m), see Code, Criminal Procedure Article, §§6-223 and 6-224.

Source. This Rule is derived from former Rule 775 and M.D.R. 775.

REPORTER'S NOTE

The Criminal Rules Subcommittee proposes adding a sentence to the cross reference following section (b) of Rule 4-346, to reflect statutory changes made to Code, Correctional Services Article, §6-101 (m) and Code, Criminal Procedure Article, §§6-223 and 6-224, by Chapter 515, Laws of 2016 (SB 1005), regarding possible revocation of probation due to a "technical violation" of probation.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-504 to conform to Chapter 515, Laws of 2016,
as follows:

Rule 4-504. PETITION FOR EXPUNGEMENT WHEN CHARGES FILED

(a) Scope and Venue

A petition for expungement of records may be filed by any defendant who has been charged with the commission of a crime and is eligible under Code, Criminal Procedure Article, §10-105 or Code, Criminal Procedure Article, §10-110, as applicable, to request expungement. The petition shall be filed in the original action. If that action was commenced in one court and transferred to another, the petition shall be filed in the court to which the action was transferred, except that for criminal proceedings that began in a circuit court or the District Court and were transferred to a juvenile court under Code, Criminal Procedure Article, §§4-202 or 4-202.2, the petition shall be filed in the court that issued the order of transfer. If ~~an appeal was taken, the petition shall be filed in the circuit court that had jurisdiction over the action~~ the proceeding in a court of original jurisdiction was appealed to a court

exercising appellate jurisdiction, the petition shall be filed in the appellate court.

Cross reference: See Code, Criminal Procedure Article, §10-104, which permits the District Court on its own initiative to order expungement when the State has entered a nolle prosequi as to all charges in a case in which the defendant has not been served. See Code, Criminal Procedure Article, §10-105, which allows an individual's attorney or personal representative to file a petition for expungement if the individual died before disposition of the charge by nolle prosequi or dismissal. See also Criminal Procedure Article, §10-105 (a)(11), which permits a person who has been convicted of a crime to file a petition for expungement when the act on which the conviction is based no longer is a crime, and Criminal Procedure Article, §10-105 (e)(4), which permits a person to petition for an expungement for an act on which a probation before judgment was based no longer is a crime. See Code, Criminal Procedure Article, §10-110 regarding petitions for expungement of certain misdemeanor convictions.

(b) Contents - Time for Filing

The petition shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the Clerks' offices. The petition shall be filed within the times prescribed in Code, Criminal Procedure Article, §10-105 or Code, Criminal Procedure Article, §10-110, as applicable. When required by law, the petitioner shall file with the petition a duly executed General Waiver and Release in the form set forth at the end of this Title as Form 4-503.2.

(c) Copies for Service

The petitioner shall file with the clerk a sufficient number of copies of the petition for service on the State's Attorney and each law enforcement agency named in the petition.

(d) Procedure Upon Filing

Upon filing of a petition, the clerk shall serve copies on the State's Attorney and each law enforcement agency named in the petition. If a petition is filed pursuant to Code, Criminal Procedure Article, §10-110, the court shall send written notice of the expungement request to each victim listed in the case in which the petitioner is seeking expungement at the address listed in the court file, advising the victim of the right to offer information relevant to the expungement petition to the court.

(e) Retrieval or Reconstruction of Case File

Upon the filing of a petition for expungement of records in any action in which the original file has been transferred to a Hall of Records Commission facility for storage, or has been destroyed, whether after having been microfilmed or not, the clerk shall retrieve the original case file from the Hall of Records Commission facility, or shall cause a reconstructed case file to be prepared from the microfilmed record, or from the docket entries.

Source: This Rule is derived in part from former Rule EX3 b and c and is in part new.

REPORTER'S NOTE

Proposed amendments to Rule 4-504 conform the Rule to Chapter 515, Laws of 2016 (SB 1005), the Justice Reinvestment Act. Among the provisions of the Act, new Code, Criminal Procedure Article, §10-110 permits expungement of certain misdemeanor convictions.

Section (a) is amended to conform to Code, Criminal procedure Article, §§10-105 (b)(3) and 10-110 (b)(3), both of which state that if a "proceeding in a court of original jurisdiction was appealed to a court exercising appellate jurisdiction," the petition for expungement is to be filed in the appellate court, and the "appellate court may remand the matter to the court of original jurisdiction." References to Code, Criminal Procedure Article, §10-110 are added to the text of section (a) and to the cross reference following section (a).

Section (b) is amended by adding a reference to Code, Criminal Procedure Article, §10-110 (e).

Section (d) is amended to include the requirements of Code, Criminal Procedure Article, §10-110 (e)(2).

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-510 to add Code references to the cross reference following section (d), as follows:

Rule 2-510. SUBPOENAS - COURT PROCEEDINGS AND DEPOSITIONS

. . .

(d) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. Unless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance. A violation of this provision shall constitute a violation of subsection (a)(3) of this Rule.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health

- General Article, §§4-302 and 4-306 (b)(6), 45 C.F.R. 164.512 regarding medical records; Code, Health - General Article, §4-307 regarding mental health records; and Code, Financial Institutions Article, §1-304.

. . .

REPORTER'S NOTE

An attorney pointed out that 45 C.F.R. §164.512 addresses disclosure of medical records without the written authorization of the patient to whom the records pertain. The attorney also noted that Code, Health - General Article, §4-302 pertains to the confidentiality and disclosure of medical records and Code, Health - General Article, §4-307 addresses the confidentiality and disclosure of mental health records. The attorney recommended adding the citations to these statutes to the statutes already cross referenced in Rules 2-510, 2-510.1, 3-510, 4-264, and 4-265, which will be helpful for attorneys who would like to subpoena medical information. The General Court Administration Subcommittee approved adding these citations to the cross references in the rules pertaining to subpoenas.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-510.1 to add Code references to the cross reference following section (f), as follows:

Rule 2-510.1. FOREIGN SUBPOENAS IN CONJUNCTION WITH A DEPOSITION

. . .

(f) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 2-121 (a)(3). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health - General Article, §§4-302 and 4-306 (b)(6), 45 C.F.R. 164.512 regarding medical records; Code, Health - General Article, §4-307 regarding mental health records; and Code, Financial Institutions Article, §1-304.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-510.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 500 - TRIAL

AMEND Rule 3-510 to add Code references to the cross reference following section (d), as follows:

Rule 3-510. SUBPOENAS

. . .

(d) Service

A subpoena shall be served by delivering a copy to the person named or to an agent authorized by appointment or by law to receive service for the person named or as permitted by Rule 3-121 (a)(3). Service of a subpoena upon a party represented by an attorney may be made by service upon the attorney under Rule 1-321 (a). A subpoena may be served by a sheriff of any county or by any person who is not a party and who is not less than 18 years of age. Unless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing. A person may not serve or attempt to serve a subpoena more than 60 days after its issuance. A violation of this provision shall constitute a violation of subsection (a)(3) of this Rule.

Cross reference: See Code, Courts Article, §6-410, concerning service upon certain persons other than the custodian of public records named in the subpoena if the custodian is not known and cannot be ascertained after a reasonable effort. As to additional requirements for certain subpoenas, see Code, Health

- General Article, §§4-302 and 4-306 (b)(6), 45 C.F.R. 164.512 regarding medical records; Code, Health - General Article, §4-307 regarding mental health records; and Code, Financial Institutions Article, §1-304.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-510.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-264 to add Code references to the cross reference at the end of the Rule, as follows:

Rule 4-264. SUBPOENA FOR TANGIBLE EVIDENCE BEFORE TRIAL IN CIRCUIT COURT

On motion of a party, the circuit court may order the issuance of a subpoena commanding a person to produce for inspection and copying at a specified time and place before trial designated documents, recordings, photographs, or other tangible things, not privileged, which may constitute or contain evidence relevant to the action. Any response to the motion shall be filed within five days.

Cross reference: As to additional requirements for certain subpoenas, see Code, Health - General Article, §§4-302 and 4-306 (b)(6), 45 C.F.R. §164.512 regarding medical records; Code, Health - General Article, §4-307 regarding mental health records; and Code, Financial Institutions Article, §1-304.

Source: This Rule is derived from former Rule 742 a.

REPORTER'S NOTE

See the Reporter's note to Rule 2-510.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-265 to add Code references to the cross reference at the end of the Rule, as follows:

Rule 4-265. SUBPOENA FOR HEARING OR TRIAL

. . .

(d) Filing and Service

Unless the court waives the time requirements of this section, a request for subpoena shall be filed at least nine days before trial in the circuit court, or seven days before trial in the District Court, not including the date of trial and intervening Saturdays, Sundays, and holidays. At least five days before trial, not including the date of the trial and intervening Saturdays, Sundays, or holidays, the clerk shall deliver the subpoena for service pursuant to Rule 4-266 (b). Unless impracticable, there must be a good faith effort to cause a trial subpoena to be served at least five days before the trial.

Cross reference: As to additional requirements for certain subpoenas, see Code, Health - General Article, §§4-302 and 4-306 (b)(6), 45 C.F.R. §164.512 regarding medical records; Code, Health - General Article, §4-307 regarding mental health records; and Code, Financial Institutions Article, §1-304.

Source: This Rule is in part derived from former Rule 742 b and M.D.R. 742 a and in part new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-510.

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 14-102 by deleting references to a certain statute, by adding a sentence to subsection (d)(4) pertaining to a hearing after the filing of a timely response to a motion for judgment awarding possession, and by adding a cross reference, as follows:

Rule 14-102. JUDGMENT AWARDING POSSESSION

(a) Motion

(1) If the purchaser of an interest in real property at a sale conducted pursuant to the Rules in this Title is entitled to possession and the person in actual possession fails or refuses to deliver possession, the purchaser or a successor in interest who claims the right of immediate possession may file a motion for judgment awarding possession of the property.

(2) The motion shall state the legal and factual basis for the movant's claim of entitlement to possession.

(3) If the movant's right to possession arises from a foreclosure sale of a dwelling or residential property, the motion shall include averments, based on a reasonable inquiry into the occupancy status of the property and made to the best of the movant's knowledge, information, and belief, establishing

either that the person in actual possession is not a bona fide tenant having rights under ~~the Federal Protecting Tenants at Foreclosure Act of 2009 (P.L. 111-22)~~ or Code, Real Property Article, §7-105.6 or, if the person in possession is such a bona fide tenant, that the notice required under these laws has been given and that the tenant has no further right to possession. If a notice pursuant to ~~the Federal Act~~ or Code, Real Property Article, §7-105.6 is required, the movant shall state the date the notice was given and attach a copy of the notice as an exhibit to the motion.

Committee note: Unless the purchaser is a foreclosing lender or there is waste or other circumstance that requires prompt remediation, the purchaser ordinarily is not entitled to possession until the sale has been ratified and the purchaser has paid the full purchase price and received a deed to the property. See *Legacy Funding v. Cohn*, 396 Md. 511 (2007) and *Empire v. Hardy*, 386 Md. 628 (2005).

~~The Federal Protecting Tenants at Foreclosure Act of 2009 (P.L. 111-22) requires that a purchaser at a foreclosure sale of a dwelling or residential property give a 90 day notice to a "bona fide tenant" before any eviction and precludes the eviction if the tenant has a "bona fide lease or tenancy," unless the new owner of the property will occupy the property as a primary residence.~~

. . .

(d) Service and Response

(1) On Whom

The motion and all accompanying documents shall be served on the person in actual possession and on any other person affected by the motion.

(2) Party to Action or Instrument

(A) If the person to be served was a party to the action that resulted in the sale or to the instrument that authorized the sale, the motion shall be served in accordance with Rule 1-321.

(B) Any response shall be filed within the time set forth in Rule 2-311.

(3) Not a Party to Action or Instrument

(A) If the person to be served was not a party to the action that resulted in the sale or a party to the instrument that authorized the sale, the motion shall be served:

(i) by personal delivery to the person or to a resident of suitable age and discretion at the dwelling house or usual place of abode of the person, or

(ii) if on at least two different days a good faith effort was made to serve the person under subsection (d)(3)(A)(i) of this Rule but the service was not successful, by (a) mailing a copy of the motion by certified and first-class mail to the person at the address of the property and (b) posting in a conspicuous place on the property a copy of the motion, with the date of posting conspicuously written on the copy.

(B) Any response shall be filed within the time prescribed by sections (a) and (b) of Rule 2-321 for answering a complaint. If the person asserts that the motion should be denied because the person is a bona fide tenant having a right of possession

~~under the Federal Protecting Tenants at Foreclosure Act of 2009 (P.L. 111-22), or Code, Real Property Article, §7-105.6, the response shall (i) state the legal and factual basis for the assertion and (ii) be accompanied by a copy of any bona fide lease or documents establishing the existence of such a lease or state why the lease or documents are not attached.~~

(4) Judgment of Possession

If a timely response to the motion is not filed and the court finds that the motion complies with the requirements of sections (a) and (b) of this Rule, the court may enter a judgment awarding possession. If a timely response to the motion is filed, and the response asserts sufficient grounds for denial of a judgment awarding possession, the court shall hold a hearing, if requested.

Cross reference: See Rule 2-311 (f), providing that the court may not render a decision that is dispositive of a claim or defense without a hearing if a hearing was requested as provided in that section.

. . .

REPORTER'S NOTE

Subsection (d)(4) of Rule 14-102 currently does not address the situation where a timely response to a motion for judgment awarding possession of the property is filed. The Rules Committee recommends the addition of a sentence to subsection (d)(4) to expressly permit a hearing if a timely response to the motion is filed, and the response asserts sufficient grounds for denial of a judgment awarding possession. A cross reference to Rule 2-311 (f) also has been added.

References to the Federal Protecting Tenants at Foreclosure Act of 2009 have been deleted, because the law is no longer in effect.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-210 by adding another category of recipients of notice prior to sale, by adding a cross reference at the end of the Rule, and by making stylistic changes, as follows:

Rule 14-210. NOTICE PRIOR TO SALE

(a) By Publication

Before selling property in an action to foreclose a lien, the individual authorized to make the sale shall publish notice of the time, place, and terms of the sale in a newspaper of general circulation in the county in which the action is pending. Notice of the sale of an interest in real property shall be published at least once a week for three successive weeks, the first publication to be not less than 15 days before the sale and the last publication to be not more than one week before the sale. Notice of the sale of personal property shall be published not less than five days nor more than 12 days before the sale.

(b) By Certified and First-class Mail

Before selling the property subject to the lien, the individual authorized to make the sale shall also send notice of the time, place, and terms of sale (1) by certified mail and by

first-class mail to (A) the borrower, (B) the record owner of the property, ~~and~~ (C) the holder of any subordinate interest in the property subject to the lien, and (D) a condominium or homeowners association that, at least 30 days before the date of the proposed sale, has recorded a statement of lien against the property under the Maryland Contract Lien Act and (2) by first-class mail to "All Occupants" at the address of the property. The notice to "All occupants" shall be in the form and contain the information required by Code, Real Property Article, §7-105.9 (c). Except for the notice to "All Occupants," the mailings shall be sent to the last known address of all such persons, including to the last address reasonably ascertainable from a document recorded, indexed, and available for public inspection 30 days before the date of the sale. The mailings shall be sent not more than 30 days and not less than ten days before the date of the sale.

(c) To Counties or Municipal Corporations

In addition to any other required notice, not less than 15 days before the sale, the individual authorized to make the sale shall send written notice to the county or municipal corporation where the property subject to the lien is located. The notice shall include the name, address, and telephone number of the individual authorized to make the sale and the time, place, and terms of sale.

(d) Holders of a Subordinate Interest

If the individual authorized to make the sale receives actual notice at any time before the sale that there is a person holding a subordinate interest in the property and if the interest holder's identity and address are reasonably ascertainable, the individual authorized to make the sale shall give notice of the time, place, and terms of sale to the interest holder as promptly as reasonably practicable. The notice may be given in any manner reasonably calculated to apprise the interest holder of the sale, including by telephone or electronic transmission. This notice need not be given to anyone to whom notice was sent pursuant to section (b) of this Rule.

(e) Affidavit of Notice by Mail

An individual who is required by this Rule to give notice by mail shall file an affidavit stating that (1) the individual has complied with the mailing provisions of this Rule or (2) the identity or address of the borrower, record owner, or holder of a subordinate interest is not reasonably ascertainable. If the affidavit states that an identity or address is not reasonably ascertainable, the affidavit shall state in detail the reasonable, good faith efforts that were made to ascertain the identity or address. If notice was given to the holder of a subordinate interest in the property, the affidavit shall state the date, manner, and content of the notice.

Cross reference: For notice following a postponement or cancellation of a sale, see Rule 14-214.

Source: This Rule is derived in part from the 2008 version of former Rule 14-206 (b) and is in part new.

REPORTER'S NOTE

The legislature enacted Chapter 347, Laws of 2017 (SB 24), which requires a person authorized to make a foreclosure sale to give written notice of the proposed sale to a condominium or homeowners association that, at least 30 days before the date of the proposed sale, has recorded a statement of lien against the property under the Maryland Contract Lien Act. The Property Subcommittee recommends adding language to section (b) of Rule 14-210 to conform to the new statute. The Subcommittee noted the lack of a rule providing for who is to be sent notice of the postponement or cancellation of a sale, and it has suggested that a new Rule be added to fill in this gap. Current Rule 14-214 has been renumbered as Rule 14-214.1, and new Rule 14-214 addresses notice in the event of postponement or cancellation of a sale of property subject to a lien. A cross reference to new Rule 14-214 has been added at the end of Rule 14-210. A conforming amendment has been made to Rule 14-208.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

ADD new Rule 14-214, as follows:

Rule 14-214. POSTPONEMENT OR CANCELLATION OF THE SALE

In the event of postponement or cancellation of the sale, which may be done in the discretion of the trustee, the trustee shall, within 14 days after the postponement or cancellation, send a notice that the sale was postponed or cancelled to the borrower; the record owner of the property; if applicable, to a condominium or homeowners association to which notice of the proposed sale was sent pursuant to Rule 14-210 (b)(1)(D); and to the holder of any subordinate interest in the property subject to the lien by first-class mail, postage prepaid.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 14-210.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-214 by renumbering the Rule as Rule 14-214.1,
as follows:

Rule ~~14-214~~ 14-214.1. SALE

(a) Only by Individual

Only an individual may sell property pursuant to the
Rules in this Chapter.

(b) Under Power of Sale

(1) Individual Authorized to Conduct a Sale other than Under
a Deed of Trust

Except as provided in subsection (b)(2) of this Rule, a
secured party authorized by the lien instrument to make the sale
or any other individual designated by name in the lien
instrument to exercise the power of sale shall conduct the sale.

(2) Individual Authorized to Conduct a Sale under a Deed of
Trust

An individual appointed as trustee in a deed of trust or
as a substitute trustee shall conduct the sale of property
subject to a deed of trust.

(3) Payment Terms

A sale of property under a power of sale shall be made upon the payment terms specified in the lien instrument. If no payment terms are specified in the lien instrument, the sale shall be made upon payment terms that are reasonable under the circumstances.

(c) Under Assent to a Decree

(1) Individual Authorized to Sell

An individual appointed as a trustee in a lien instrument or as a substitute trustee shall conduct the sale of property pursuant to an assent to a decree.

(2) Payment Terms

A sale of property under an order of court entered pursuant to an assent to a decree shall be made upon the payment terms provided in the order.

(d) No Power of Sale or Assent to Decree

(1) Individual Authorized to Sell

If there is no power or sale or assent to a decree in the lien instrument, or if the lien is a statutory lien, the sale shall be made by an individual trustee appointed by the court.

(2) Payment Terms

The sale shall be made upon payment terms that are reasonable under the circumstances.

Cross reference: For requirements concerning the timing of the sale of residential property, see Code, Real Property Article, §7-105.1 (n).

Source: This Rule is derived in part from the 2008 version of former Rule 14-207 (b) and (c) and is in part new.

REPORTER'S NOTE

See the Reporter's note to Rule 14-210.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-208 to conform an internal reference to the renumbering of current Rule 14-214, as follows:

Rule 14-208. SUBSEQUENT PROCEEDINGS IF NO POWER OF SALE OR ASSENT TO A DECREE

(a) Process and Service

When a complaint is filed to foreclose a lien that has neither a power of sale nor an assent to a decree, process shall issue and be served in accordance with Title 2, Chapter 100 of these Rules, except that in an action to foreclose a lien on residential property, service shall be in accordance with Rule 14-209. Except as provided in section (b) of this Rule, the action shall proceed in the same manner as any other civil action.

(b) Order Directing Immediate Sale

If after a hearing, the court finds that the interests of justice require an immediate sale of the property that is subject to the lien and that a sale would likely be ordered as a result of a judgment entered in the action, the court may order a sale of the property before judgment and shall appoint an individual to make the sale pursuant to Rule ~~14-214~~ 14-214.1,

provided any applicable requirements of Code, Real Property Article, §7-105.1 have been satisfied. The court shall order that the proceeds be deposited or invested pending distribution pursuant to judgment.

Source: This Rule is derived from the 2008 version of former Rule 14-205 (a) and (b)(2).

REPORTER'S NOTE

See the Reporter's note to Rule 14-210.

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY
CHAPTER 500 - TAX SALES

AMEND Rule 14-502 to conform the language of an item in the contents of the complaint to the statutory language, as follows:

Rule 14-502. FORECLOSURE OF RIGHT OF REDEMPTION - COMPLAINT

(a) Notices to be Sent

The holder of a certificate of sale may not file a complaint to foreclose the right of redemption until at least two months after sending the first notice and at least 30 days after sending the second notice required by Code, Tax - Property Article, §14-833 (a-1) (1).

(b) Contents

In an action to foreclose the right of redemption in property sold at a tax sale, the complaint, in addition to complying with Rules 2-303 through 2-305, shall set forth:

- (1) the fact of the issuance of the certificate of sale;
- (2) a description of the property in substantially the same form as the description appearing on the certificate of tax sale;
- (3) the fact that the property has not been redeemed by any party in interest; and

(4) a ~~statement~~ description of the amount necessary for redemption, including the amount paid out at the tax sale.

(c) Documents

The complaint shall be accompanied by:

(1) the original certificate of sale, or a photocopy of the certificate;

(2) a copy of a title report supported by an affidavit by the person making the search that a complete search of the records has been performed in accordance with generally accepted standards of title examination for the period of at least 40 years immediately before the filing of the complaint;

(3) a notice setting forth (A) the substance of the complaint and the relief sought, (B) a description of the property in substantially the same form as the description appearing on the collector's tax records, (C) the time within which a defendant must file an answer to the complaint or redeem the property, and (D) a statement that failure to answer or redeem the property within the time allowed may result in a judgment foreclosing the right of redemption; and

(4) an affidavit (A) stating the date that the notices required by Code, Tax - Property Article, §14-833 (a-1)(1) were given, the name and address of the persons to whom the notices were given, and the manner of the delivery of the notice and (B) verifying that the amount that shall be paid to redeem the

property complies with the requirements of Code, Tax - Property Article, §14-833 (a-1)(3).

Cross reference: See Code, Tax - Property Article, §14-833 for provisions governing limitations on the time for bringing an action to foreclose the right of redemption and Code, Tax - Property Article, §14-841 for the limitation on the number of certificates that may be joined in one action. See also Code, Tax - Property Article, §§14-836 and 14-837 governing parties to the action. For purchaser's obligations once a complaint has been filed, see *Scheve v. Shudder, Inc.*, 328 Md. 363 (1992). See Code, Real Property Article, §7-113 (c)(1) for an alternate method to take possession of residential real property when the person claiming a right to possession of the property by the terms of a foreclosure sale or court order does not have a court-ordered writ of possession executed by a sheriff or constable.

Source: This Rule is new but is consistent with Code, Tax - Property Article, §§14-835 and 14-838 and is derived in part from Code, Tax - Property Article, §§14-840 and 14-836.

REPORTER'S NOTE

Rule 14-502 (b)(4) requires that a complaint to foreclose the right of redemption in property sold at a tax sale contain "a statement of the amount necessary for redemption."

A circuit court judge pointed out that some complaints are filed that do not set forth dollar amounts. Instead, the complaint contains only a "description" of the amount necessary - i.e., taxes, expenses, etc., and the plaintiffs assert that this "description" is sufficient to comply with Code, Tax-Property Article, §14-835 (a)(7).

To address this issue, the Property Subcommittee suggests changing the language of subsection (b)(4) by deleting the word "statement" and substituting the word "description" and by adding the language "including the amount paid out at the tax sale." This tracks the language of Code, Tax-Property Article, §14-835 (b)(7).

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 800 - REMOTE ELECTRONIC PARTICIPATION IN
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MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 800 - REMOTE ELECTRONIC PARTICIPATION IN
JUDICIAL PROCEEDINGS

ADD new Rule 2-801, as follows:

Rule 2-801. DEFINITIONS

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

(a) Non-evidentiary Proceeding

"Non-evidentiary proceeding" means a judicial proceeding, including a conference, presided over by a judge, magistrate, auditor, or examiner, where neither testimony nor documentary or physical evidence will be presented, other than by stipulation by all parties.

(b) Participant

"Participant" includes a party, witness, attorney for a party or witness, judge, magistrate, auditor, or examiner, and any other individual entitled to speak or make a presentation at the proceeding.

(c) Remote Electronic Participation

"Remote electronic participation" means simultaneous participation in a judicial proceeding or conference from a remote location by means of telephone, video conferencing, or

other electronic means approved by the court pursuant to the Rules in this Chapter.

(d) Remote Location

"Remote location" means a place other than the courtroom or other physical location where a judicial proceeding or conference is to be conducted.

(e) Video Conferencing

"Video conferencing" means a proceeding conducted by the use of an interactive technology that sends video, voice, and data signals over a transmission circuit so that two or more individuals or groups can communicate with each other simultaneously using video monitors and related audio equipment.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Title 2, Chapter 800 would establish procedural and substantive requirements for the use of remote electronic participation in civil proceedings in the circuit courts under Title 2. Proposed Rule 2-801 contains definitions of terms that are used throughout the Chapter.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 800 B REMOTE ELECTRONIC PARTICIPATION IN
JUDICIAL PROCEEDINGS

ADD new Rule 2-802, as follows:

Rule 2-802. NON-EVIDENTIARY PROCEEDINGS

(a) In General

Subject to Rule 2-804, a court, on motion or on its own initiative, may permit or require one or more participants or all participants to participate in a non-evidentiary proceeding by means of remote electronic participation, unless, upon objection by a party, the court finds, with respect to that proceeding, that remote electronic participation would be likely to cause substantial prejudice to a party or adversely affect the fairness of the proceeding.

Committee note: The intent of this Rule is to allow a court to permit or require remote electronic participation in non-evidentiary proceedings, including (1) status and scheduling conferences, (2) discussion of other administrative matters in which the physical presence of one or more participants is not essential; (3) proceedings limited to the argument of motions, petitions, requests, or applications involving only questions of law or procedure; and (4) judicial review actions to be decided on the record made before an administrative agency.

(b) If on Court's Own Initiative

(1) In General

The county administrative judge, by administrative order

entered as part of the court's case management plan, may direct that specific categories of non-evidentiary proceedings routinely be conducted, in whole or in part, by remote electronic participation unless otherwise ordered, for good cause, by the presiding judge in a particular case.

(2) In Particular Proceeding

If the court intends to permit or require remote electronic participation on its own initiative in a proceeding not subject to an administrative order entered pursuant to subsection (b)(1) of this Rule, the court shall notify the parties of its intention to do so and afford them a reasonable opportunity to object. An objection shall state specific grounds and may be ruled upon without a hearing.

Source: This Rule is new.

REPORTER'S NOTE

Chief Judge Barbera, in the ADMINISTRATIVE ORDER ON CONCLUSION OF VIDEO CONFERENCING PILOT PROGRAMS, dated December 18, 2013, concluded on the basis of a report from the State Court Administrator, that "that each of the Pilot Programs ha[d] delivered justice fairly and effectively. Accordingly, [she] approve[d] the use of video conferencing."

While video conferencing is occurring in courts throughout the State, there are no legal criteria guiding the courts and participants on the conditions that must exist in order for it to be used. Proposed Rule 2-802 would establish those criteria for non-evidentiary hearings. It is expected that remote

electronic participation in non-evidentiary proceedings, as discussed in Rule 2-802 (a), will be used more frequently when the technology is in place.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 800 - REMOTE ELECTRONIC PARTICIPATION IN
JUDICIAL PROCEEDINGS

ADD new Rule 2-803, as follows:

Rule 2-803. EVIDENTIARY PROCEEDINGS; IN GENERAL

(a) In General

Subject to sections (c) and (d) of this Rule and Rule 2-804, a court, on motion or on its own initiative, may permit one or more participants or all participants to participate in an evidentiary proceeding by means of remote electronic participation (1) with the consent of all parties, or (2) in conformance with section (b) of this Rule.

(b) If No Consent

In the absence of consent by all parties, a court may exercise the authority under section (a) only upon findings that:

(1) participation by remote electronic means is authorized by statute; or

(2) the participant is an essential participant in the proceeding or conference; and

(A) by reason of illness, disability, risk to the participant or to others, or other good cause, the participant

is unable, without significant hardship to a party or the participant, to be physically present at the place where the proceeding is to be conducted; and

(B) permitting the participant to participate by remote electronic means will not cause substantial prejudice to any party or adversely affect the fairness of the proceeding.

Committee note: It is not the intent of this section that mere absence from the county or State constitute good cause, although the court may consider the distance involved and whether there are any significant impediments to the ability of the participant to appear personally.

(c) If On Court's Own Initiative

If the court intends to permit remote electronic participation pursuant to this Rule on its own initiative, it shall notify the parties of its intention to do so and afford them a reasonable opportunity to object. An objection shall state specific grounds. The court may rule on the objection without a hearing.

Source: This Rule is new.

REPORTER'S NOTE

Remote electronic participation where evidence is being presented, in contrast to non-evidentiary hearings, raises concerns about the ability of a factfinder to assess credibility and demeanor. Accordingly, proposed Rule 2-803 sets forth findings that a court must make in order for a court to permit the use of remote electronic participation when evidence is being taken if all of the parties do not consent.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 800 - REMOTE ELECTRONIC PARTICIPATION IN
JUDICIAL PROCEEDINGS

ADD new Rule 2-804, as follows:

Rule 2-804. CONDITIONS ON REMOTE ELECTRONIC PARTICIPATION

(a) Personal Appearance

If, at any time during a proceeding or conference in which a participant is participating by remote electronic participation under the Rules in this Chapter, the court determines that the personal appearance of the participant is necessary in order to avoid substantial prejudice to a party or unfairness of the proceeding, the court shall continue the matter and require the personal appearance.

(b) Standards; Process, Connections, Software, and Equipment

(1) Generally

Except as otherwise provided by law or by subsection (b)(2) of this Rule, remote electronic participation shall not be permitted unless the process, including connections, software, and equipment, to be used comply with standards developed by the State Court Administrator and approved by the Chief Judge of the Court of Appeals pursuant to Rule 2-805.

(2) Exception

The court may excuse non-compliance with subsection (b)(1) of this Rule (A) if it finds that the non-compliance will not cause substantial prejudice to the parties or adversely affect the fairness of the proceeding, or (B) with the consent of the parties.

(c) Participation of Interpreters; Attorney-Client Communications

The process, including connections, software, and equipment, shall permit interpreters to perform their function and permit confidential communication between attorneys and their clients during the proceeding.

(d) Method of Remote Electronic Participation

If remote electronic participation is to be permitted in an evidentiary proceeding, the court, whenever feasible, shall give preference to requiring that the participation be by video conferencing rather than mere audio.

(e) Record

A full record of proceedings conducted, in whole or in part, by remote electronic means shall be made in accordance with Rule 16-503 (a).

(f) Public Access

If remote electronic participation will result in a proceeding that otherwise would be conducted in open court and be accessible to the public being conducted entirely by electronic means, the court shall ensure that members of the

public who wish to do so have the ability to observe or listen to the proceeding through monitors or other equipment at the courthouse during the course of the proceeding.

Committee note: Each court shall develop a process in its case management plan to provide the public access to proceedings conducted through remote electronic participation whenever feasible.

Source: This Rule is new.

REPORTER'S NOTE

Section (a) allows the court to terminate a proceeding or conference in which a participant is participating by remote electronic participation under the Rules in this Chapter if the court determines the personal appearance of the participant is necessary to avoid substantial prejudice to a party or unfairness of the proceeding.

Section (b) provides that remote electronic participation will not be permitted unless the process, including connections, software, and equipment, to be used comply with standards developed by the State Court Administrator and approved by the Chief Judge of the Court of Appeals pursuant to Rule 2-805.

Section (c) requires that the process, including software, and equipment, permit confidential communications between attorneys and their clients. Section (c) also permits interpreters to perform their function. The latter requirement reflects a growing awareness of the use of remote interpretation. See T. Clarke, Trends in State Courts 2014, "Video Remote Interpretation as a Business Solution," National Center for State Courts. See also 28 CFR 35.160(d) (Video remote interpreting (VRI) services - Department of Justice ADA Title 2 regulation).

Section (d) provides that the court should give preference to participation by video conferencing rather than audio conferencing.

Section (e) requires that a record of proceedings conducted by remote electronic means be made.

Section (f) provides that the public has access to proceedings conducted by remote electronic participation if the proceeding would otherwise be conducted in open court.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 800 - REMOTE ELECTRONIC PARTICIPATION IN
JUDICIAL PROCEEDINGS

ADD new Rule 2-805, as follows:

Rule 2-805. STANDARDS AND REQUIREMENTS

(a) Existing Remote Electronic Participation Programs

Remote electronic participation programs in existence on _____, 2017 may continue in effect, subject to review by the State Court Administrator for consistency with the standards and requirements established under the Rules in this Chapter. After review, the Chief Judge of the Court of Appeals, upon a recommendation by the State Court Administrator, may direct changes necessary to make those programs consistent with the standards and requirements established under the Rules in this Chapter.

(b) Standards and Requirements for Remote Video Conferencing Participation

The State Court Administrator shall develop and present to the Chief Judge of the Court of Appeals standards and requirements for the process, connections, software, and equipment for remote electronic participation in judicial proceedings.

(c) Minimum Requirements

In addition to complying with the requirements set forth in Rule 2-802, the standards shall include the following requirements:

(1) All participants shall be able to communicate with each other by sight, hearing, or both as relevant.

(2) Unless waived by the participants, all participants shall be able to observe all physical evidence and exhibits presented during the proceeding, and the program shall permit participants to transmit documents as necessary.

(3) Video quality shall be adequate to allow participants and the fact-finder to observe the demeanor and non-verbal communications of other participants. Sound quality shall be adequate to allow participants to hear clearly what is occurring where each of the participants is located.

(4) Absent express consent from the court pursuant to the Rules in Title 16, Chapter 600 or Rule 16-208, participants are precluded from recording and downloading the proceeding.

Committee note: Any remote location shall be considered to be governed by Rule 16-208.

Source: This Rule is new.

REPORTER'S NOTE

Proposed Rule 2-805 would require the State Court Administrator, subject to the approval of the Chief Judge of the Court of Appeals, to develop "standards and requirements for the process, connections, software, and equipment for remote video conferencing participation." Now, pursuant to the December 19, 2013, ADMINISTRATIVE ORDER ON CONCLUSION OF VIDEO CONFERENCING PILOT PROGRAMS, the State Court Administrator is responsible for establishing "criteria." Proposed Rule 2-804 (b), would also require the review of existing programs to determine whether existing programs are consistent with the new standards and requirements. The proposal is based on and similar to former Rule 16-1008 (b), as adopted by the Court of Appeals in its Rules Order of March 4, 2004, concerning existing programs providing electronic access to a database of court records. Placing responsibility on the State Court Administrator over the technical requirements of video conferencing is a common requirement in the rules of other States. See, e.g., Mich.R.Civ.P 2.407 and Michigan Administrative Order 2014-25; 20 Okl.St. Ann. §3006; Arizona Rule 1.6 of Criminal Procedure; Washington General Rules, GR 19.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 800 - REMOTE ELECTRONIC PARTICIPATION IN
JUDICIAL PROCEEDINGS

ADD new Rule 2-806, as follows:

Rule 2-806. REMOTE ELECTRONIC PARTICIPATION AUTHORIZED BY OTHER
SPECIFIC LAW

Nothing in this Chapter is intended to preclude a court
from permitting:

(a) remote electronic participation in public or catastrophic
emergency hearings to be conducted pursuant to Rule 15-1104 (d);

(b) testimony of out-of-State witnesses to be taken in another
State in a case under the Interstate Custody Compact pursuant to
Code, Family Law Article, §9.5-110 or in an action under the
Uniform Interstate Family Support Act pursuant to Code, Family
Law Article, §10-328;

(c) consultation by the court with a child in a guardianship
review hearing pursuant to Code, Family Law Article, §5-326 (c);
or

(d) remote electronic participation in other proceedings to
the extent and in the manner authorized by other law.

Source: This Rule is new.

REPORTER'S NOTE

Rule 2-806 clarifies that Title 2, Chapter 800 is not intended to permit a court to preclude remote electronic participation authorized by certain laws or by any other laws that would authorize it.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 500 - TRIAL

DELETE Rule 2-513, as follows:

~~Rule 2-513. TESTIMONY TAKEN BY TELEPHONE~~

~~(a) Definition~~

~~In this Rule, "telephone" means a landline telephone and does not include a cellular phone.~~

~~(b) When Testimony Taken by Telephone Allowed; Applicability~~

~~A court may allow the testimony of a witness to be taken by telephone (1) upon stipulation by the parties or (2) subject to sections (e) and (f) of this Rule, on motion of a party to the action and for good cause shown. This Rule applies only to testimony by telephone and does not preclude testimony by other remote means allowed by law or, with the approval of the court, agreed to by the parties.~~

~~Cross reference: For an example of testimony by other means allowed by law, see Code, Family Law Article, §9.5-110.~~

~~(c) Time for Filing Motion~~

~~Unless for good cause shown the court allows the motion to be filed later, a motion to take the testimony of a witness by telephone shall be filed at least 30 days before the trial or hearing at which the testimony is to be offered.~~

~~(d) Contents of Motion~~

~~The motion shall state the witness's name and, unless excused by the court:~~

~~(1) the address and telephone number of the witness;~~
~~(2) the subject matter of the witness's expected testimony;~~
~~(3) the reasons why testimony taken by telephone should be allowed, including any circumstances listed in section (c) of this Rule;~~

~~(4) the location from which the witness will testify;~~
~~(5) whether there will be any other individual present in the room with the witness while the witness is testifying and, if so, the reason for the individual's presence and the individual's name, if known; and~~

~~(6) whether transmission of the witness's testimony will be from a wired handset, a wireless handset connected to the landline, or a speaker phone.~~

~~(c) Good Cause~~

~~A court may find that there is good cause to allow the testimony of a witness to be taken by telephone if:~~

~~(1) the witness is otherwise unavailable to appear because of age, infirmity, or illness;~~

~~(2) personal appearance of the witness cannot be secured by subpoena or other reasonable means;~~

~~(3) a personal appearance would be an undue hardship to the witness; or~~

~~(4) there are any other circumstances that constitute good cause for allowing the testimony of the witness to be taken by telephone.~~

~~Committee note: This section applies to the witness's unavailability to appear personally in court, not to the witness's unavailability to testify.~~

~~(f) When Testimony Taken by Telephone is Prohibited~~

~~If a party objects, a court shall not allow the testimony of a witness to be taken by telephone unless the court finds that:~~

~~(1) the witness is not a party and will not be testifying as an expert;~~

~~(2) the testimony is not to be offered in a jury trial;~~

~~(3) the demeanor and credibility of the witness are not likely to be critical to the outcome of the proceeding;~~

~~(4) the issue or issues about which the witness is to testify are not likely to be so determinative of the outcome of the proceeding that the opportunity for face to face cross-examination is needed;~~

~~(5) a deposition taken under these Rules is not a fairer way to present the testimony;~~

~~(6) the exhibits or documents about which the witness is to testify are not so voluminous that testimony by telephone is impractical;~~

~~(7) adequate facilities for taking the testimony by telephone are available;~~

~~(8) failure of the witness to appear in person is not likely to cause substantial prejudice to a party; and~~

~~(9) no other circumstance requires the personal appearance of the witness.~~

~~(g) Use of Deposition~~

~~A deposition of a witness whose testimony is received by telephone may be used by any party for any purpose for which the deposition could have been used had the witness appeared in person.~~

~~(h) Costs~~

~~Unless the court orders otherwise for good cause, all costs of testimony taken by telephone shall be paid by the movant and may not be charged to any other party.~~

~~Source: This Rule is new.~~

REPORTER'S NOTE

Rule 2-513 and section (c) of Rule 7-208 are no longer necessary in light of the Rules in Title 2, Chapter 800. The reference to "testimony by telephone" has been changed to "testimony by remote electronic participation" in the Committee note after subsection (b)(4) of Rule 15-1305 in light of the new Rules.

MARYLAND RULES OF PROCEDURE
TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW
IN CIRCUIT COURT
CHAPTER 200 - JUDICIAL REVIEW OF ADMINISTRATIVE
AGENCY DECISIONS

AMEND Rule 7-208 by deleting section (c), as follows:

Rule 7-208. HEARING

(a) Generally

Unless a hearing is waived in writing by the parties, the court shall hold a hearing.

(b) Scheduling

Upon the filing of the record pursuant to Rule 7-206, a date shall be set for the hearing on the merits. Unless otherwise ordered by the court or required by law, the hearing shall be no earlier than 90 days from the date the record was filed.

~~(c) Hearing Conducted by Video Conferencing or Other
Electronic Means~~

~~(1) Generally~~

~~Except as provided in subsection (c)(2) of this Rule,
the court, on motion or on its own initiative, may allow one or
more parties or attorneys to participate in a hearing by video~~

~~conferencing or other electronic means. In determining whether to proceed under this section, the court shall consider:~~

~~(A) the availability of equipment at the court facility and at the relevant remote location necessary to permit the parties to participate meaningfully and to make an accurate and complete record of the proceeding;~~

~~(B) whether, in light of the issues before the court, the physical presence of a party or counsel is particularly important;~~

~~(C) whether the physical presence of a party is not possible or may be accomplished only at significant cost or inconvenience;~~

~~(D) whether the physical presence of fewer than all parties or counsel would make the proceeding unfair; and~~

~~(E) any other factors the court finds relevant.~~

~~(2) Exceptions and Conditions~~

~~(A) The court may not allow participation in the hearing by video conferencing or other electronic means if (i) additional evidence will be taken at the hearing and the parties do not agree to video conferencing or other electronic means, or (ii) such a procedure is prohibited by law.~~

~~(B) The court may not allow participation in the hearing by video conferencing or other electronic means on its own initiative unless it has given notice to the parties of its intention to do so and has afforded them a reasonable~~

~~opportunity to object. An objection shall state specific grounds, and the court may rule on the objection without a hearing.~~

~~(d)~~ (c) Additional Evidence

Additional evidence in support of or against the agency's decision is not allowed unless permitted by law.

Cross reference: Where a right to a jury trial exists, see Rule 2-325 (d). See *Montgomery County v. Stevens*, 337 Md. 471 (1995) concerning the availability of prehearing discovery.

Source: This Rule is in part derived from former Rules B10 and B11 and in part new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-513.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1300 - STRUCTURED SETTLEMENT TRANSFERS

AMEND Rule 15-1305 by modifying the Committee note after subsection (b)(4) to refer to "testimony by remote participation" instead of "testimony by telephone," as follows:

Rule 15-1305. HEARING

(a) Generally

(1) The court may not act on a petition under this Chapter without holding a hearing.

(2) The petitioner shall have the burden of producing sufficient credible evidence to permit the court to make the findings required under Rule 15-1307.

(3) The payee or the payee's guardian shall testify at the hearing.

(b) Personal Attendance

Personal attendance at the hearing is required by:

(1) the payee, unless, for good cause, the court excuses the payee's personal attendance;

(2) if a person serves as a (A) guardian of the person of the payee, (B) guardian of the property of the payee, or (C) representative payee of the payee, each such person;

(3) the independent professional advisor; and

(4) the petitioner or an officer or employee of the petitioner authorized to testify on behalf of the petitioner in the proceeding.

Committee note: Section (b) of this Rule is not intended to preclude the court from exercising its discretion under ~~Rule 2-513~~ Title 2, Chapter 800 to permit testimony of a witness by ~~telephone~~ remote electronic participation. The court should be mindful, however, that the petitioner bears the burden of providing sufficient evidence to permit the court to make the findings required under Rule 15-1307 and consider whether taking the testimony of a witness for the petitioner by ~~telephone~~ remote electronic participation may adversely affect the credibility of that testimony. Except under extraordinary circumstances, the court should not permit testimony of the payee or a guardian of the payee by ~~telephone~~ remote electronic participation.

(c) Examination

The court may examine under oath the payee, any guardian of the payee, the independent professional advisor, and the petitioner or representative of the petitioner, and any other witness.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to Rule 2-513.