

IN THE COURT OF APPEALS OF MARYLAND

R U L E S O R D E R

This Court's Standing Committee on Rules of Practice and Procedure having submitted its One Hundred Eighty-First Report to the Court recommending adoption, on an emergency basis, of new Rule 4-216.2 and amendments to Rule 4-102, 4-202, 4-212, 4-213, 4-214, 4-215, 4-216, 4-216.1, 4-217, 4-231, 4-301, 4-349, 5-101, and 15-303 of the Maryland Rules of Procedure; and

This Court having considered at an open meeting, notice of which was posted as prescribed by law, all those proposed rules changes, making on its own motion certain amendments to the proposed rules changes, and finding that an emergency does in fact exist with reference to the proposed rules changes, it is this 6th day of November, 2013,

ORDERED by the Court of Appeals of Maryland that new Rule 4-216.2 and amendments to Rule 4-102, 4-202, 4-212, 4-213, 4-214, 4-215, 4-216, 4-216.1, 4-217, 4-231, 4-301, 4-349, 5-101, and 15-303 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that the rules changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect upon further Order of the Court and apply to all actions commenced on or after the date specified in such Order and, insofar as practicable, to all actions then pending; and it is

further

ORDERED that a copy of this Order be published in the next issue of the *Maryland Register*.

/s/ Mary Ellen Barbera
Mary Ellen Barbera

/s/ Glenn T. Harrell, Jr.
Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia
Lynne A. Battaglia

/s/ Clayton Greene, Jr.
Clayton Greene, Jr.

*

/s/ Sally D. Adkins
Sally D. Adkins

/s/ Robert N. McDonald
Robert N. McDonald

/s/ Shirley M. Watts
Shirley M. Watts

* Judge Adkins voting in favor of deferring effective date, but against adoption at this time.

Filed: November 6, 2013

/s/ Bessie M. Decker
Clerk
Court of Appeals of Maryland

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 advice 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 requiring the form of notice in a charging document set forth in section (a) to include a notification regarding representation of eligible defendants by the Office of the Public Defender or a court-appointed attorney for purposes of the initial appearance and subsequent review hearing; 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 are eligible, the Public Defender or a court-appointed attorney will represent you at any initial appearance before a judicial officer and at any proceeding under Rule 4-216.1 to review an order of a District Court commissioner regarding pretrial release. If you want a lawyer for any further proceeding, including trial, 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 4-212 (f) (1) to add a reference to new Rule 4-216.2, as follows:

Rule 4-212. ISSUANCE, SERVICE, AND EXECUTION OF SUMMONS OR
WARRANT

. . .

(f) Procedure - When Defendant in Custody

(1) Same Offense

When a defendant is arrested without a warrant, the defendant shall be taken before a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after arrest. When a charging document is filed in the District Court for the offense for which the defendant is already in custody a warrant or summons need not issue. A copy of the charging document shall be served on the defendant promptly after it is filed, and a return shall be made as for a warrant. When a charging document is filed in the circuit court for an offense for which the defendant is already in custody, a warrant issued pursuant to subsection (d) (2) of this Rule may be lodged as a detainer for the continued detention of the defendant under the jurisdiction of the court in which the charging document is filed. Unless otherwise ordered pursuant to Rule 4-216, ~~or 4-216.1, or 4-216.2,~~ the defendant remains subject to

conditions of pretrial release imposed by the District Court.

. . .

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, to revise a cross reference following subsection (a) (2), to delete a cross reference to Rule 4-231 (d), 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 Rules 4-216 (e) with respect to ~~counsel the right to an attorney~~ at an initial appearance before a ~~judge~~ judicial officer and 4-216.1 ~~(a)~~ (b) with respect to ~~counsel the right to an attorney~~ 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 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~~ Following Summons or Citation

(1) Generally

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 4-214 to add cross references following sections (a) and (d), as follows:

Rule 4-214. DEFENSE COUNSEL

(a) Appearance

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

Cross reference: See Rules 4-216 (e) and 4-216.1 (b) with respect to the automatic termination of the appearance of the Public Defender or court-appointed attorney upon the conclusion of an initial appearance before a judicial officer and upon the conclusion of a hearing to review a pretrial release decision of a commissioner if no general appearance under this Rule is entered.

(b) Extent of Duty of Appointed Counsel

When counsel is appointed by the Public Defender or by the court, representation extends to all stages in the proceedings,

including but not limited to custody, interrogations, preliminary hearing, pretrial motions and hearings, trial, motions for modification or review of sentence or new trial, and appeal. The Public Defender may relieve appointed counsel and substitute new counsel for the defendant without order of court by giving notice of the substitution to the clerk of the court. Representation by the Public Defender's office may not be withdrawn until the appearance of that office has been stricken pursuant to section (d) of this Rule. The representation of appointed counsel does not extend to the filing of subsequent discretionary proceedings including petition for writ of certiorari, petition to expunge records, and petition for post conviction relief.

(c) Inquiry into Joint Representation

(1) Joint Representation

Joint representation occurs when:

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

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

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

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

If a joint representation occurs, the court, on the record, promptly and personally shall (A) advise each defendant of the right to effective assistance of counsel, including separate representation and (B) advise counsel to consider

carefully any potential areas of impermissible conflict of interest arising from the joint representation. Unless there is good cause to believe that no impermissible conflict of interest is likely to arise, the court shall take appropriate measures to protect each defendant's right to counsel.

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

(d) Striking Appearance

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

Cross reference: Code, Courts Article, §6-407 (Automatic Termination of Appearance of Attorney). See Rules 4-216 (e) and 4-216.1 (b) providing for a limited appearance by the Public Defender or court-appointed attorney in initial appearance proceedings before a judicial officer and hearings to review a pretrial release decision by a commissioner if no general appearance under this Rule is entered.

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

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, by adding to section (c) a reference to Rule 4-213 (b), and by revising a cross reference following section (e), 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~~ an attorney at an initial appearance before a judge and Rule 4-216.1 ~~(a)~~ (b) with respect to waiver of ~~counsel~~ an attorney 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 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216 to delete a reference to the death penalty; to delete current section (e) and the cross reference following section (e); to add a new section (e) outlining the duties of the Public Defender, court-appointed attorneys, and judicial officers with respect to a defendant's right to counsel; to provide that the initial appearance is separate and distinct from any other stage of a criminal action; to permit an attorney to enter a limited appearance under certain circumstances; to provide that section (e) prevails over any inconsistent provision in Rule 4-214; to add provisions concerning waiver of counsel; to allow attorneys to appear remotely under certain circumstances; to add section (h) providing for a temporary commitment order under certain circumstances; to add section (i) requiring a judicial officer to make a written record of the proceeding; and to make stylistic changes, as follows:

Rule 4-216. PRETRIAL RELEASE - AUTHORITY OF JUDICIAL OFFICER;
PROCEDURE

(a) Arrest Without Warrant

If a defendant was arrested without a warrant, the judicial officer shall determine whether there was probable cause for each charge and for the arrest and, as to each determination,

make a written record. If there was probable cause for at least one charge and the arrest, the judicial officer shall implement the remaining sections of this Rule. If there was no probable cause for any of the charges or for the arrest, the judicial officer shall release the defendant on personal recognizance, with no other conditions of release, and the remaining sections of this Rule are inapplicable.

Cross reference: See Rule 4-213 (a) (4).

(b) Communications with Judicial Officer

Except as permitted by Rule 2.9 (a) (1) and (2) of the Maryland Code of Conduct for Judicial Appointees or Rule 2.9 (a) (1) and (2) of the Maryland Code of Judicial Conduct, all communications with a judicial officer regarding any matter required to be considered by the judicial officer under this Rule shall be (1) in writing, with a copy provided, if feasible, but at least shown or communicated by the judicial officer to each party who participates in the proceeding before the judicial officer, and made part of the record, or (2) made openly at the proceeding before the judicial officer. Each party who participates in the proceeding shall be given an opportunity to respond to the communication.

Cross reference: See also Rule 3.5 (a) of the Maryland Lawyers' Rules of Professional Conduct.

(c) Defendants Eligible for Release by Commissioner or Judge

In accordance with this Rule and Code, Criminal Procedure Article, §§5-101 and 5-201 and except as otherwise provided in

section (d) of this Rule or by Code, Criminal Procedure Article, §§5-201 and 5-202, a defendant is entitled to be released before verdict on personal recognizance or on bail, in either case with or without conditions imposed, unless the judicial officer determines that no condition of release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community.

(d) Defendants Eligible for Release only by a Judge

A defendant charged with an offense for which the maximum penalty is ~~death or~~ life imprisonment or with an offense listed under Code, Criminal Procedure Article, §5-202 (a), (b), (c), (d), (e), (f) or (g) may not be released by a District Court Commissioner, but may be released before verdict or pending a new trial, if a new trial has been ordered, if a judge determines that all requirements imposed by law have been satisfied and that one or more conditions of release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community.

~~(e) Initial Appearance Before a Judge~~

~~(1) Applicability~~

~~This section applies to an initial appearance before a judge. It does not apply to an initial appearance before a District Court commissioner.~~

~~(2) Duty of Public Defender~~

~~Unless another attorney has entered an appearance or the defendant has waived the right to counsel for purposes of an~~

~~initial appearance before a judge in accordance with this section, the Public Defender shall provide representation to an eligible defendant at the initial appearance.~~

~~(3) Waiver of Counsel for Initial Appearance~~

~~(A) Unless an attorney has entered an appearance, the court shall advise the defendant that:~~

~~(i) the defendant has a right to counsel at this proceeding;~~

~~(ii) an attorney can be helpful in advocating that the defendant should be released on recognizance or on bail with minimal conditions and restrictions; and~~

~~(iii) if the defendant is eligible, the Public Defender will represent the defendant at this proceeding.~~

~~(B) If the defendant indicates a desire to waive counsel and the court finds that the defendant knowingly and voluntarily waives the right to counsel for purposes of the initial appearance, the court shall announce on the record that finding and proceed pursuant to this Rule.~~

~~(C) Any waiver found under this section applies only to the initial appearance.~~

~~(4) Waiver of Counsel for Future Proceedings~~

~~For proceedings after the initial appearance, waiver of counsel is governed by Rule 4-215.~~

~~Cross reference: For the requirement that the court also advise the defendant of the right to counsel generally, see Rule 4-215 (a).~~

(e) Attorney

(1) Generally

(A) Right to Representation by Attorney

(i) A defendant has the right to be represented by an attorney at an initial appearance before a judicial officer.

(ii) Unless the defendant waives that right, if the defendant is indigent within the meaning of the Public Defender Act (Code, Criminal Procedure Article, §16-201) and no other attorney has entered an appearance for the defendant, the defendant shall be represented by the Public Defender or, at a proceeding before a District Court commissioner, by an attorney appointed for that purpose by the District Court pursuant to subsection (e) (1) (A) (iii) of this Rule if the Public Defender does not provide representation.

(iii) Unless the Public Defender has agreed to represent eligible defendants at initial appearance proceedings before a commissioner, the District Administrative Judges of the District Court shall appoint attorneys to represent such defendants at those proceedings in the various districts and charge the fees and expenses for such representation against the State of Maryland. Fees and expenses shall be governed by the schedule used by the Public Defender for panel attorneys.

(B) Entry of Appearance

The appearance of an attorney representing a defendant at an initial appearance may be entered in writing, electronically, or by telecommunication. If the entry is not in written form, the judicial officer shall note in the record of

the proceeding the appearance and the method by which it was received.

(C) Appearance Separate and Distinct

For purposes of section (e) of this Rule, an initial appearance before a judicial officer shall be separate and distinct from any other stage of a criminal action. This stage commences with the appearance of the defendant before the judicial officer and ends when (i) the defendant is released, or (ii) the judicial officer has complied with all applicable requirements of sections (f) and (g) of this Rule.

(2) Duty of Public Defender or Appointed Attorney

(A) Provisional Representation by Public Defender

Unless the Public Defender has entered a general appearance pursuant to Rule 4-214, any appearance entered by the Public Defender at an initial appearance of the defendant shall be provisional. For purposes of this Rule, eligibility for provisional representation shall be determined by the Office of the Public Defender as of the time of the proceeding.

Cross reference: See Code, Criminal Procedure Article, §16-210 (c) (4) concerning provisional representation by the Public Defender.

(B) Entry of Limited Appearance

Provisional representation by the Public Defender or representation by a court-appointed attorney shall be limited to the initial appearance before the judicial officer and shall terminate automatically upon the conclusion of that stage of the criminal action, unless representation by the Public Defender is

extended or renewed pursuant to Rule 4-216.1.

(C) Effect of Conflict with Rule 4-214

Section (e) of this Rule prevails over any inconsistent provision in Rule 4-214.

(3) Waiver

(A) Unless an attorney has entered an appearance, the judicial officer shall advise the defendant that:

(i) the defendant has a right to an attorney at the initial appearance and for any proceeding under Rule 4-216.1;

(ii) an attorney can be helpful in advocating that the defendant should be released immediately on recognizance or on bail with minimal conditions and restrictions;

(iii) if the defendant is eligible, the Public Defender or a court-appointed attorney will represent the defendant at the initial appearance;

(iv) if the defendant is represented by a court-appointed attorney, the representation is only for the purpose of the initial appearance, but the defendant will be represented by the Public Defender in any proceeding under Rule 4-216.1;

(v) unless the Public Defender determines otherwise, the Public Defender will not further represent the defendant unless the defendant timely applies for such representation and the Public Defender determines that the defendant is an indigent individual, as defined in Code, Criminal Procedure Article, §§16-101 (d) and 16-210;

(vi) if the defendant waives representation, the waiver

is effective only for the initial appearance and not for subsequent proceedings;

(vii) if it is impracticable for an attorney to be present in person, the attorney will be able to consult privately with the defendant and participate in the proceeding by electronic means or by telecommunication; and

(viii) if the defendant desires to be represented by a private attorney retained by the defendant and that attorney is not able to be present in person or able to participate by electronic means or telecommunication, the hearing may need to be postponed, in which event the defendant will be temporarily committed until the earliest opportunity that the defendant can be presented to the next available judicial officer.

Committee note: Rule 4-213 (a) (2) requires the judicial officer to advise the defendant of the right to an attorney generally. In providing that advice, the judicial officer should explain that it pertains to the right to an attorney for all proceedings after the initial appearance under this Rule and any review hearing under Rule 4-216.1.

(B) If, after receiving this advice, the defendant indicates a desire to waive the right to an attorney at the initial appearance and the judicial officer finds that the waiver is knowing and voluntary, the judicial officer shall announce and record that finding and proceed pursuant to sections (f) and (g) of this Rule.

(C) Any waiver found under this Rule is applicable only to the initial appearance under this Rule.

(4) Electronic or Telecommunication Appearance

(A) By State's Attorney

The State's Attorney may participate in the proceeding, but is not required to do so. When the physical presence of the State's Attorney is impracticable, the State's Attorney may participate in the proceeding electronically or by telecommunication if the equipment at the judicial officer's location and the State's Attorney's location provides adequate opportunity for the State's Attorney to participate meaningfully in the proceeding.

(B) By Defense Attorney

When the physical presence of a defense attorney is impracticable, the attorney may consult with the defendant and participate in the proceeding electronically or by telecommunication if the equipment at the judicial officer's location and the defense attorney's location provides adequate opportunity for the attorney to consult privately with the defendant and participate meaningfully in the proceeding.

(f) Duties of Judicial Officer

(1) Consideration of Factors

In determining whether a defendant should be released and the conditions of release, the judicial officer shall take into account the following information, to the extent available:

(A) the nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the potential sentence upon conviction;

(B) the defendant's prior record of appearance at court

proceedings or flight to avoid prosecution or failure to appear at court proceedings;

(C) the defendant's family ties, employment status and history, financial resources, reputation, character and mental condition, length of residence in the community, and length of residence in this State;

(D) any recommendation of an agency that conducts pretrial release investigations;

(E) any recommendation of the State's Attorney;

(F) any information presented by the defendant or defendant's ~~counsel~~ attorney;

(G) the danger of the defendant to the alleged victim, another person, or the community;

(H) the danger of the defendant to himself or herself; and

(I) any other factor bearing on the risk of a wilful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

(2) Statement of Reasons - When Required

Upon determining to release a defendant to whom section (c) of this Rule applies or to refuse to release a defendant to whom section (b) of this Rule applies, the judicial officer shall state the reasons in writing or on the record.

(3) Imposition of Conditions of Release

If the judicial officer determines that the defendant

should be released other than on personal recognizance without any additional conditions imposed, the judicial officer shall impose on the defendant the least onerous condition or combination of conditions of release set out in section (g) of this Rule that will reasonably:

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

(B) protect the safety of the alleged victim by ordering the defendant to have no contact with the alleged victim or the alleged victim's premises or place of employment or by other appropriate order, and

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

(4) Advice of Conditions; Consequences of Violation; Amount and Terms of Bail

The judicial officer shall advise the defendant in writing or on the record of the conditions of release imposed and of the consequences of a violation of any condition. When bail is required, the judicial officer shall state in writing or on the record the amount and any terms of the bail.

(g) Conditions of Release

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

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

(2) placing the defendant under the supervision of a

probation officer or other appropriate public official;

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

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

(A) without collateral security;

(B) with collateral security of the kind specified in Rule 4-217 (e) (1) (A) equal in value to the greater of \$100.00 or 10% of the full penalty amount, and if the judicial officer sets bail at \$2500 or less, the judicial officer shall advise the defendant that the defendant may post a bail bond secured by either a corporate surety or a cash deposit of 10% of the full penalty amount;

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

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

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

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

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

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

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

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

Cross reference: See Code, Criminal Procedure Article, §5-201 (a) (2) concerning protections for victims as a condition of release. See Code, Criminal Procedure Article, §5-201 (b), and Code, Business Occupations and Professions Article, Title 20, concerning private home detention monitoring as a condition of release.

(h) Temporary Commitment Order

If an initial appearance before a commissioner cannot proceed as scheduled, the commissioner may enter a temporary commitment order, but in that event the defendant shall be presented at the earliest opportunity to the next available judicial officer for an initial appearance. If the judicial officer is a judge, there shall be no review of the judge's order pursuant to Rule 4-216.1.

Committee note: Section (h) is intended to apply to a narrow set of compelling circumstances in which it would be inappropriate or impracticable to proceed with the initial appearance as scheduled, such as the illness, intoxication, or disability of the defendant or the inability of a private attorney selected by the defendant to appear within a reasonable time.

(i) Record

The judicial officer shall make a brief written record of the proceeding, including:

(1) whether notice of the time and place of the proceeding

was given to the State's Attorney and the Public Defender or any other defense attorney and, if so, the time and method of notification;

(2) if a State's Attorney has entered an appearance, the name of the State's Attorney and whether the State's Attorney was physically present at the proceeding or appeared remotely;

(3) if an attorney has entered an appearance for the defendant, the name of the attorney and whether the attorney was physically present at the proceeding or appeared remotely;

(4) if the defendant waived an attorney, a confirmation that the advice required by subsection (e) (3) of this Rule was given and that the defendant's waiver was knowing and voluntary;

(5) confirmation that the judicial officer complied with each requirement specified in section (f) of this Rule and in Rule 4-213 (a);

(6) whether the defendant was ordered held without bail;

(7) whether the defendant was released on personal recognizance; and

(8) if the defendant was ordered released on conditions pursuant to section (g) of this Rule, the conditions of the release.

~~(h)~~ (j) Title 5 Not Applicable

Title 5 of these rules does not apply to proceedings conducted under this Rule.

Source: This Rule is derived in part from former Rule 721, M.D.R. 723 b 4, and is in part new.

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

AMEND Rule 4-216.1 to change the title of the Rule; to delete sections (b), (c), (d), and (e); and to revise taglines, reletter the Rule, and make additional stylistic changes, as follows:

Rule 4-216.1. ~~FURTHER PROCEEDINGS REGARDING PRETRIAL RELEASE~~
REVIEW OF COMMISSIONER'S PRETRIAL RELEASE ORDER

(a) ~~Review of Pretrial Release Order Entered by Commissioner~~
Generally

~~(1) Generally~~

A defendant who is denied pretrial release by a commissioner or who for any reason remains in custody after a commissioner has determined conditions of release pursuant to Rule 4-216 shall be presented immediately to the District Court if the court is then in session, or if not, at the next session of the court.

Cross reference: See Rule 4-231 (d) concerning the presence of a defendant by video conferencing.

~~(2) (b) Counsel~~ Attorney for Defendant

~~(A) (1)~~ (1) Duty of Public Defender

Unless another attorney has entered an appearance or the defendant has waived the right to ~~counsel~~ an attorney for purposes of the review hearing in accordance with this section,

the Public Defender shall provide representation to an eligible defendant at the review hearing.

~~(B)~~ (2) Waiver

~~(i)~~ (A) Unless an attorney has entered an appearance, the court shall advise the defendant that:

~~(a)~~ (i) the defendant has a right to ~~counsel~~ an attorney at the review hearing;

~~(b)~~ (ii) an attorney can be helpful in advocating that the defendant should be released on recognizance or on bail with minimal conditions and restrictions; and

~~(c)~~ (iii) if the defendant is eligible, the Public Defender will represent the defendant at this proceeding.

Cross reference: For the requirement that the court also advise the defendant of the right to counsel generally, see Rule 4-215 (a).

~~(ii)~~ (B) If, after the giving of this advice, the defendant indicates a desire to waive ~~counsel~~ an attorney for purposes of the review hearing and the court finds that the ~~defendant knowingly and voluntarily waives the right to counsel for purposes of the review hearing~~ waiver is knowing and voluntary, the court shall announce on the record that finding and proceed pursuant to this Rule.

~~(iii)~~ (C) Any waiver found under this Rule is applicable only to the proceeding under this Rule.

~~(C)~~ (3) Waiver of ~~Counsel~~ Attorney for Future Proceedings

For proceedings after the review hearing, waiver of ~~counsel~~ an attorney is governed by Rule 4-215.

~~(3)~~ (c) Determination by Court

The District Court shall review the commissioner's pretrial release determination and take appropriate action in accordance with Rule 4-216 (f) and (g). If the court determines that the defendant will continue to be held in custody after the review, the court shall set forth in writing on the record the reasons for the continued detention.

~~(4)~~ (d) Juvenile Defendant

If the defendant is a child whose case is eligible for transfer to the juvenile court pursuant to Code, Criminal Procedure Article, §4-202 (b), the District Court, regardless of whether it has jurisdiction over the offense charged, may order that a study be made of the child, the child's family, or other appropriate matters. The court also may order that the child be held in a secure juvenile facility.

~~(b) Continuance of Previous Conditions~~

~~When conditions of pretrial release have been previously imposed in the District Court, the conditions continue in the circuit court unless amended or revoked pursuant to section (c) of this Rule.~~

~~(c) Amendment of Pretrial Release Order~~

~~After a charging document has been filed, the court, on motion of any party or on its own initiative and after notice and opportunity for hearing, may revoke an order of pretrial release or amend it to impose additional or different conditions of release. If its decision results in the detention of the~~

~~defendant, the court shall state the reasons for its action in writing or on the record. A judge may alter conditions set by a commissioner or another judge.~~

~~(d) Supervision of Detention Pending Trial~~

~~In order to eliminate unnecessary detention, the court shall exercise supervision over the detention of defendants pending trial. It shall require from the sheriff, warden, or other custodial officer a weekly report listing each defendant within its jurisdiction who has been held in custody in excess of seven days pending preliminary hearing, trial, sentencing, or appeal. The report shall give the reason for the detention of each defendant.~~

~~(e) Violation of Condition of Release~~

~~A court may issue a bench warrant for the arrest of a defendant charged with a criminal offense who is alleged to have violated a condition of pretrial release. After the defendant is presented before a court, the court may (1) revoke the defendant's pretrial release or (2) continue the defendant's pretrial release with or without conditions.~~

~~Cross reference: See Rule 1-361, Execution of Warrants and Body Attachments. See also, Rule 4-347, Proceedings for Revocation of Probation, which preserves the authority of a judge issuing a warrant to set the conditions of release on an alleged violation of probation.~~

~~(f) (e) Title 5 Not Applicable~~

~~Title 5 of these Rules does not apply to proceedings conducted under this Rule.~~

Source: This Rule ~~is new but~~ is derived, ~~in part,~~ from former sections ~~(f), (g), (h), (i), (j), and (k)~~ of Rule ~~4-216~~ section (a) of Rule 4-216.1 (2012).

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

ADD new Rule 4-216.2, as follows:

Rule 4-216.2. FURTHER PROCEEDINGS REGARDING PRETRIAL RELEASE

(a) Continuance of Previous Conditions

When conditions of pretrial release have been previously imposed in the District Court, the conditions continue in the circuit court unless amended or revoked pursuant to section (b) of this Rule.

(b) Amendment of Pretrial Release Order

After a charging document has been filed, the court, on motion of any party or on its own initiative and after notice and opportunity for hearing, may revoke an order of pretrial release or amend it to impose additional or different conditions of release. If its decision results in the detention of the defendant, the court shall state the reasons for its action in writing or on the record. A judge may alter conditions set by a commissioner or another judge.

(c) Supervision of Detention Pending Trial

In order to eliminate unnecessary detention, the court shall exercise supervision over the detention of defendants pending trial. It shall require from the sheriff, warden, or other custodial officer a weekly report listing each defendant

within its jurisdiction who has been held in custody in excess of seven days pending preliminary hearing, trial, sentencing, or appeal. The report shall give the reason for the detention of each defendant.

(d) Violation of Condition of Release

A court may issue a bench warrant for the arrest of a defendant charged with a criminal offense who is alleged to have violated a condition of pretrial release. After the defendant is presented before a court, the court may (1) revoke the defendant's pretrial release or (2) continue the defendant's pretrial release with or without conditions.

Cross reference: See Rule 1-361, Execution of Warrants and Body Attachments. See also, Rule 4-347, Proceedings for Revocation of Probation, which preserves the authority of a judge issuing a warrant to set the conditions of release on an alleged violation of probation.

(e) Title 5 Not Applicable

Title 5 of these rules does not apply to proceedings conducted under this Rule.

Source: This Rule is new but is derived, in part, from former ~~sections (f), (g), (h), (i), (j), and (k) of Rule 4-216~~ sections (b), (c), (d), (e), and (f) of Rule 4-216.1 (2012).

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

AMEND Rule 4-217 by deleting a certain reference to Rule 4-216.1 and adding references to new Rule 4-216.2, as follows:

Rule 4-217. BAIL BONDS

(a) Applicability of Rule

This Rule applies to all bail bonds taken pursuant to Rule 4-216, ~~or 4-216.1, or 4-216.2,~~ and to bonds taken pursuant to Rules 4-267, 4-348, and 4-349 to the extent consistent with those rules.

. . .

(j) Discharge of Bond - Refund of Collateral Security

(1) Discharge

The bail bond shall be discharged when:

(A) all charges to which the bail bond applies have been statted, unless the bond has been forfeited and 10 years have elapsed since the bond or other security was posted; or

(B) all charges to which the bail bond applies have been disposed of by a nolle prosequi, dismissal, acquittal, or probation before judgment; or

(C) the defendant has been sentenced in the District Court and no timely appeal has been taken, or in the circuit court exercising original jurisdiction, or on appeal or transfer from

the District Court; or

(D) the court has revoked the bail bond pursuant to Rule ~~4-216.1~~ 4-216.2 or the defendant has been convicted and denied bail pending sentencing; or

(E) the defendant has been surrendered by the surety pursuant to section (h) of this Rule.

Cross reference: See Code, Criminal Procedure Article, §5-208 (d) relating to discharge of a bail bond when the charges are stetted. See also Rule 4-349 pursuant to which the District Court judge may deny release on bond pending appeal or may impose different or greater conditions for release after conviction than were imposed for the pretrial release of the defendant pursuant to Rule 4-216, ~~or 4-216.1, or 4-216.2.~~

. . .

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

AMEND Rule 4-231 to conform internal references to amendments to Rule 4-216.1, to deletion section (d), and to delete a sentence from the Committee note at the end of the Rule, as follows:

Rule 4-231. PRESENCE OF DEFENDANT

(a) When Presence Required

A defendant shall be present at all times when required by the court. A corporation may be present by counsel.

(b) Right to be Present - Exceptions

A defendant is entitled to be physically present in person at a preliminary hearing and every stage of the trial, except (1) at a conference or argument on a question of law; (2) when a nolle prosequi or stet is entered pursuant to Rules 4-247 and 4-248.

Cross reference: Code, Criminal Procedure Article, §11-303.

(c) Waiver of Right to be Present

The right to be present under section (b) of this Rule is waived by a defendant:

(1) who is voluntarily absent after the proceeding has commenced, whether or not informed by the court of the right to remain; or

(2) who engages in conduct that justifies exclusion from the courtroom; or

(3) who, personally or through counsel, agrees to or acquiesces in being absent.

(d) Video Conferencing in District Court

In the District Court, if the Chief Judge of the District Court has approved the use of video conferencing in the county, a judicial officer may conduct an initial appearance under Rule 4-213 (a) or a review of the commissioner's pretrial release determination under Rule 4-216.1 ~~(a)~~ with the defendant and the judicial officer at different locations, provided that:

(1) the defendant's right to counsel under Rules 4-216 (e) and 4-216.1 ~~(a)~~ is not infringed;

(2) the video conferencing procedure and technology are approved by the Chief Judge of the District Court for use in the county; and

(3) immediately after the proceeding, all documents that are not a part of the District Court file and that would be a part of the file if the proceeding had been conducted face-to-face shall be electronically transmitted or hand-delivered to the District Court; and.

~~(4) if the initial appearance under Rule 4-213 is conducted by video conferencing, the review under Rule 4-216.1 (a) shall not be conducted by video conferencing.~~

Committee note: Except when specifically covered by this Rule, the matter of presence of the defendant during any stage of the proceedings is left to case law and the Rule is not intended to

exhaust all situations. ~~By the addition of section (d) to the Rule, the Committee intends no inference concerning the use of video conferencing in other contexts.~~

Source: Sections (a), (b), and (c) of this Rule are derived from former Rule 724 and M.D.R. 724. Section (d) 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 300 - TRIAL AND SENTENCING

AMEND Rule 4-349 (c) to add a reference to new Rule 4-216.2,
as follows:

Rule 4-349. RELEASE AFTER CONVICTION

. . .

(c) Conditions of Release

The court may impose different or greater conditions for release under this Rule than had been imposed upon the defendant before trial pursuant to Rule 4-216, ~~or~~ Rule 4-216.1, 4-216.2. When the defendant is released pending sentencing, the condition of any bond required by the court shall be that the defendant appear for further proceedings as directed and surrender to serve any sentence imposed. When the defendant is released pending any appellate review, the condition of any bond required by the court shall be that the defendant prosecute the appellate review according to law and, upon termination of the appeal, surrender to serve any sentence required to be served or appear for further proceedings as directed. The bond shall continue until discharged by order of the court or until surrender of the defendant, whichever is earlier.

. . .

MARYLAND RULES OF PROCEDURE
TITLE 5 - EVIDENCE
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 5-101 (b) to add a reference to new Rule 4-216.2,
as follows:

Rule 5-101. SCOPE

. . .

(b) Rules Inapplicable

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

- (1) Proceedings before grand juries;
- (2) Proceedings for extradition or rendition;
- (3) Direct contempt proceedings in which the court may act summarily;
- (4) Small claim actions under Rule 3-701 and appeals under Rule 7-112 (d) (2);
- (5) Issuance of a summons or warrant under Rule 4-212;
- (6) Pretrial release under Rule 4-216, ~~or~~ 4-216.1, or 4-216.2
or release after conviction under Rule 4-349;
- (7) Preliminary hearings under Rule 4-221;
- (8) Post-sentencing procedures under Rule 4-340;
- (9) Sentencing in non-capital cases under Rule 4-342;
- (10) Issuance of a search warrant under Rule 4-601;

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

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

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

. . .

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 300 - HABEAS CORPUS

AMEND Rule 15-303 (b) to add a reference to new Rule 4-216.2, as follows:

Rule 15-303. PROCEDURE ON PETITION

. . .

(b) Bail

(1) Pretrial

If a petition by or on behalf of an individual who is confined prior to or during trial seeks a writ of habeas corpus for the purpose of determining admission to bail or the appropriateness of any bail set, the judge to whom the petition is directed may deny the petition without a hearing if a judge has previously determined the individual's eligibility for pretrial release or the conditions for such release pursuant to Rule 4-216, ~~or 4-216.1, or 4-216.2~~ and the petition raises no grounds sufficient to warrant issuance of the writ other than grounds that were raised when the earlier pretrial release determination was made.

Cross reference: Rule 4-213 (c).

(2) After Conviction

(A) Except as otherwise provided in subsection (2)(B) of this section, if a petition by or on behalf of an individual

confined as a result of a conviction pending sentencing or exhaustion of appellate review seeks a writ of habeas corpus for the purpose of determining admission to bail or the appropriateness of any bail set, the judge to whom the petition is directed may deny the writ and order that the petition be treated as a motion for release or for amendment of an order of release pursuant to Rule 4-349. Upon entry of the order, the judge shall transmit the petition, a certified copy of the order, and any other pertinent papers to the trial judge who presided at the proceeding as a result of which the individual was confined. Upon receiving of the transmittal, the trial judge shall proceed in accordance with Rule 4-349.

(B) If a petition directed to a circuit court judge is filed by or on behalf of an individual confined as a result of a conviction in the District Court that has been appealed to a circuit court, the circuit court judge shall act on the petition and may not transmit or refer the petition to a District Court judge.

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