

IN THE COURT OF APPEALS OF MARYLAND

R U L E S O R D E R

This Court, by Rules Order filed December 4, 2007, having adopted, with certain additions and deletions made on the Court's own motion, the Rules changes proposed in the One Hundred Fifty-Eighth Report of the Rules Committee, except the proposed amendments to Rules 4-262, 4-263, 4-301, 15-207, 16-701, 16-731, 16-751, and 16-771 and Rule 8.1 of the Maryland Lawyers' Rules of Professional Conduct, all of which were deferred for further consideration by the Court, and the Rules Committee having submitted a Supplement to the One Hundred Fifty-Eighth Report, dated March 25, 2008, recommending rescission of current Rules 4-262 and 4-263, adoption of proposed new Rules 4-262 and 4-263 as revised by the Committee, and adoption of the amendments to Rule 4-301 as previously proposed; and

This Court having considered at open meetings, notices of which were posted as prescribed by law, those proposed rules changes, together with the comments received, and making certain amendments to the proposed rules changes on its own motion, it is this 8th day of April, 2008,

ORDERED, by the Court of Appeals of Maryland, that current Rules 4-262 and 4-263 be, and they are hereby, rescinded; and it is further

ORDERED that new Rules 4-262 and 4-263 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that amendments to Rule 4-301 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that consideration of proposed amendments to Rules 15-207, 16-701, 16-731, 16-751, and 16-771 and Rule 8.1 of the Maryland Lawyers' Rules of Professional Conduct be, and they are hereby, deferred pending further study by this Court; 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 and apply to all actions commenced on or after July 1, 2008, 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/ Robert M. Bell

Robert M. Bell

/s/ Irma S. Raker

Irma S. Raker

/s/ Glenn T. Harrell, Jr.

Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia

Lynne A. Battaglia

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Clayton Greene, Jr.

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Joseph F. Murphy, Jr.

* Judges Greene and Murphy declined to sign the Rules Order.

Filed: April 8, 2008

/s/ Bessie M. Decker

Clerk
Court of Appeals of Maryland

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

RESCIND current Rule 4-262 and ADD new Rule 4-262, as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

(a) Applicability

This Rule governs discovery and inspection in the District Court. Discovery is available in the District Court in actions that are punishable by imprisonment.

(b) Definitions

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

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

(c) Obligations of the Parties

(1) Due Diligence

The State's Attorney and defense shall exercise due diligence to identify all of the material and information that must be disclosed under this Rule.

(2) Scope of Obligations

The obligations of the State's Attorney and the defense extend to material and information that must be disclosed under this Rule and that are in the possession or control of the

attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office or has reported to the attorney's office in regard to the particular case.

Cross reference: For the obligations of the State's Attorney, see *State v. Williams*, 392 Md. 194 (2006).

(d) Disclosure by the State's Attorney

(1) Without Request

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

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

(2) On Request

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

(A) Statements of Defendant and Co-defendant

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

(B) Written Statements of State's Witnesses

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

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

All relevant material or information regarding:

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

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

(D) Reports or Statements of Experts

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

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

(ii) the opportunity to inspect and copy all written

reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

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

(E) Evidence for Use at Trial

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

(F) Property of the Defendant

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

(e) Disclosure by Defense

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

(1) Reports or Statements of Experts

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

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

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

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

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

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

(f) Person of the Defendant

(1) On Request

On request of the State's Attorney that includes reasonable notice of the time and place, the defendant shall appear for the purpose of:

(A) providing fingerprints, photographs, handwriting exemplars, or voice exemplars;

(B) appearing, moving, or speaking for identification in a lineup; or

(C) trying on clothing or other articles.

(2) On Motion

On motion filed by the State's Attorney, with reasonable notice to the defense, the court, for good cause shown, shall order the defendant to appear and (A) permit the taking of buccal samples, samples of other materials of the body, or specimens of

blood, urine, saliva, breath, hair, nails, or material under the nails or (B) submit to a reasonable physical or mental examination.

(g) Matters Not Discoverable

(1) By any Party

Notwithstanding any other provision of this Rule, neither the State's Attorney nor the defense is required to disclose (A) the mental impressions, trial strategy, personal beliefs, or other privileged attorney work product or (B) any other material or information if the court finds that its disclosure is not constitutionally required and would entail a substantial risk of harm to any person that outweighs the interest in disclosure.

(2) By the Defense

The State's Attorney is not required to disclose the identity of a confidential informant unless the State's Attorney intends to call the informant as a State's witness or unless the failure to disclose the informant's identity would infringe a constitutional right of the defendant.

(h) Continuing Duty to Disclose

Each party is under a continuing obligation to produce discoverable material and information to the other side. A party who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly.

(i) Procedure

The discovery and inspection required or permitted by this Rule shall be completed before the hearing or trial. A request for discovery and inspection and response need not be in writing and need not be filed with the court. If a request was made before the date of the hearing or trial and the request was refused or denied, the court may grant a delay or continuance in the hearing or trial to permit the inspection or discovery.

(j) Material Not to be Filed with the Court

Except as otherwise provided in these Rules or by order of court, discovery material shall not be filed with the court. This section does not preclude the use of discovery material at trial or as an exhibit to support or oppose a motion.

(k) Retention; Inspection of Original

The party generating discovery material shall retain the original until the expiration of any sentence imposed on the defendant and, on request, shall make the original available for inspection and copying by the other party.

(l) Protective Orders

On motion of a party or a person from whom discovery is sought, the court, for good cause shown, may order that specified disclosures be denied or restricted in any manner that justice requires.

(m) Failure to Comply with Discovery Obligation

The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the

witness's testimony, disqualification is within the discretion of

the court.

Source: This Rule is new.

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

RESCIND current Rule 4-263 and ADD new Rule 4-263, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

(a) Applicability

This Rule governs discovery and inspection in a circuit court.

(b) Definitions

In this Rule, the following definitions apply:

(1) Defense

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

(2) Defense Witness

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

(3) Oral Statement

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

(4) State's Witness

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

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

(5) Written Statement

"Written statement" of a person:

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

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

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

(D) does not include attorney work product.

(c) Obligations of the Parties

(1) Due Diligence

The State's Attorney and defense shall exercise due diligence to identify all of the material and information that must be disclosed under this Rule.

(2) Scope of Obligations

The obligations of the State's Attorney and the defense extend to material and information that must be disclosed under this Rule and that are in the possession or control of the attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office or has reported to the attorney's office in regard to the particular case.

Cross reference: For the obligations of the State's Attorney, see *State v. Williams*, 392 Md. 194 (2006).

(d) Disclosure by the State's Attorney

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

(1) Statements

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

(2) Criminal Record

Prior criminal convictions, pending charges, and probationary status of the defendant and of any co-defendant;

(3) State's Witnesses

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

(4) Prior Conduct

All evidence of other crimes, wrongs, or acts committed by the defendant that the State's Attorney intends to offer at a hearing or at trial pursuant to Rule 5-404 (b);

(5) Exculpatory Information

All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or

mitigate the defendant's guilt or punishment as to the offense charged;

(6) Impeachment Information

All material or information in any form, whether or not admissible, that tends to impeach a State's witness, including:

(A) evidence of prior conduct to show the character of the witness for untruthfulness pursuant to Rule 5-608 (b);

(B) a relationship between the State's Attorney and the witness, including the nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness;

(C) prior criminal convictions, pending charges, or probationary status that may be used to impeach the witness, but the State's Attorney is not required to investigate the criminal record of the witness unless the State's Attorney knows or has reason to believe that the witness has a criminal record;

(D) an oral statement of the witness, not otherwise memorialized, that is materially inconsistent with another statement made by the witness or with a statement made by another witness;

(E) a medical or psychiatric condition or addiction of the witness that may impair the witness's ability to testify truthfully or accurately, but the State's Attorney is not required to inquire into a witness's medical, psychiatric, or addiction history or status unless the State's Attorney has information that reasonably would lead to a belief that an

inquiry would result in discovering a condition that may impair the witness's ability to testify truthfully or accurately;

(F) the fact that the witness has taken but did not pass a polygraph examination; and

(G) the failure of the witness to identify the defendant or a co-defendant;

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

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

All relevant material or information regarding:

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

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

(8) Reports or Statements of Experts

As to each expert consulted by the State's Attorney in connection with the action:

(A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

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

scientific test, experiment, or comparison; and

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

(9) Evidence for Use at Trial

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

(10) Property of the Defendant

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

(e) Disclosure by Defense

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

(1) Defense Witness

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

(2) Reports or Statements of Experts

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

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

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

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

(3) Character Witnesses

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

(4) Alibi Witnesses

If the State's Attorney has designated the time, place, and date of the alleged offense, the name and, except when the witness declines permission, the address of each person other than the defendant whom the defense intends to call as a witness to show that the defendant was not present at the time, place, or date designated by the State's Attorney;

(5) Insanity Defense

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

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

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

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

(f) Person of the Defendant

(1) On Request

On request of the State's Attorney that includes reasonable notice of the time and place, the defendant shall appear for the purpose of:

(A) providing fingerprints, photographs, handwriting exemplars, or voice exemplars;

(B) appearing, moving, or speaking for identification in a lineup; or

(C) trying on clothing or other articles.

(2) On Motion

On motion filed by the State's Attorney, with reasonable notice to the defense, the court, for good cause shown, shall order the defendant to appear and (A) permit the taking of buccal

samples, samples of other materials of the body, or specimens of blood, urine, saliva, breath, hair, nails, or material under the nails or (B) submit to a reasonable physical or mental examination.

(g) Matters Not Discoverable

(1) By any Party

Notwithstanding any other provision of this Rule, neither the State's Attorney nor the defense is required to disclose (A) the mental impressions, trial strategy, personal beliefs, or other privileged attorney work product or (B) any other material or information if the court finds that its disclosure is not constitutionally required and would entail a substantial risk of harm to any person that outweighs the interest in disclosure.

(2) By the Defense

The State's Attorney is not required to disclose the identity of a confidential informant unless the State's Attorney intends to call the informant as a State's witness or unless the failure to disclose the informant's identity would infringe a constitutional right of the defendant.

(h) Time for Discovery

Unless the court orders otherwise:

(1) the State's Attorney shall make disclosure pursuant to section (d) of this Rule within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213, and

(2) the defense shall make disclosure pursuant to section (e) of this Rule no later than 30 days before the first scheduled trial date.

(i) Motion to Compel Discovery

(1) Time

A motion to compel discovery based on the failure to provide discovery within the time required by section (h) of this Rule shall be filed within ten days after the date the discovery was due. A motion to compel based on inadequate discovery shall be filed within ten days after the date the discovery was received.

(2) Content

A motion shall specifically describe the information or material that has not been provided.

(3) Response

A response may be filed within five days after service of the motion.

(4) Certificate

The court need not consider any motion to compel discovery unless the moving party has filed a certificate describing good faith attempts to discuss with the opposing party the resolution of the dispute and certifying that they are unable to reach agreement on the disputed issues. The certificate shall include the date, time, and circumstances of each discussion or attempted discussion.

(j) Continuing Duty to Disclose

Each party is under a continuing obligation to produce discoverable material and information to the other side. A party who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly.

(k) Manner of Providing Discovery; Material Not to be Filed with Court

(1) By Agreement

Discovery may be accomplished in any manner mutually agreeable to the parties. The parties shall file with the court a statement of their agreement.

(2) If No Agreement

In the absence of an agreement, the party generating the discovery material shall (A) serve on the other party copies of all written discovery material, together with a list of discovery materials in other forms and a statement of the time and place when these materials may be inspected, copied, and photographed, and (B) promptly file with the court a notice that (i) reasonably identifies the information provided and (ii) states the date and manner of service. On request, the party generating the discovery material shall make the original available for inspection and copying by the other party.

(3) Not to be Filed with the Court

Except as otherwise provided in these Rules or by order of court, discovery material shall not be filed with the court. This section does not preclude the use of discovery material at

trial or as an exhibit to support or oppose a motion.

(l) Retention

The party generating discovery material shall retain the original until the earlier of the expiration of (i) any sentence imposed on the defendant or (ii) the retention period that the material would have been retained under the applicable records retention and disposal schedule had the material been filed with the court.

(m) Protective Orders

(1) Generally

On motion of a party or a person from whom discovery is sought, the court, for good cause shown, may order that specified disclosures be denied or restricted in any manner that justice requires.

(2) In Camera Proceedings

On request of a party or a person from whom discovery is sought, the court may permit any showing of cause for denial or restriction of disclosures to be made in camera. A record shall be made of both in court and in camera proceedings. Upon the entry of an order granting relief in an in camera proceeding, all confidential portions of the in camera portion of the proceeding shall be sealed, preserved in the records of the court, and made available to the appellate court in the event of an appeal.

(n) Sanctions

If at any time during the proceedings the court finds that a party has failed to comply with this Rule or an order issued

pursuant to this Rule, the court may order that party to permit the discovery of the matters not previously disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances. The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

Source: This Rule is new and is derived in part from former Rule 741 and the 1998 version of former Rule 4-263.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-301 to provide for discovery under Rule 4-263 under certain circumstances and for discovery under Rule 4-262 in all other actions transferred to a circuit court upon a jury trial demand under this Rule, 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; and (5) 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.