

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Fifty-Fourth Report to the Court of Appeals, transmitting thereby proposed new Rule 4-329 (Advice of Expungement) and proposed new Title 15, Chapter 1100 (Catastrophic Health Emergency) and proposed amendments to Rules 1-101, 1-202, 1-311, 1-332, 2-241, 2-401, 2-521, 2-602, 3-241, 3-401, 4-247, 4-248, 4-252, 4-326, 4-342, 4-343, 4-346, 4-347, 4-401, 5-101, 6-208, 6-412, 6-455, 6-456, 7-102, 8-131, 8-204, 8-207, 8-501, 8-502, 8-602, 9-202, 12-207, 13-503, 15-901, 16-404, 16-405, 16-406, 16-504, 16-723, 16-819, 16-821, 16-1006, and Form 4-504.1

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

Interested persons are asked to consider the Committee's Report and proposed rules changes and to forward on or before March 7, 2005 any written comments they may wish to make to:

Sandra F. Haines, Esq.
Reporter, Rules Committee
Room 1517
100 Community Place
Crownsville, Maryland 21032-2030

ALEXANDER L. CUMMINGS

Clerk

Court of Appeals of Maryland

January 10, 2005

ONE HUNDRED FIFTY-FOURTH REPORT
OF THE
STANDING COMMITTEE ON RULES
OF PRACTICE AND PROCEDURE

The Honorable Robert M. Bell,
Chief Judge
The Honorable Irma S. Raker
The Honorable Alan M. Wilner
The Honorable Dale R. Cathell
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.,
Judges
The Court of Appeals of Maryland
Robert C. Murphy Courts of
Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its One Hundred Fifty-Fourth Report, and recommends that the Court adopt the proposed Rules changes transmitted with this Report. The proposed changes fall into eight categories. Following is a brief description of the principal proposals in each category.

In **Category One** are proposed amendments to three Rules in Title 1 and a related amendment to Rule 16-819. The proposed amendments to Rules 1-332 and 16-819 address the form and timing of a request for an accommodation under the Americans With Disabilities Act, 42 U.S.C. §12101, et seq., and an application for the appointment of an interpreter, respectively. The amendments encourage the use of court forms for the request or application and submission of the form not less than five days before the proceeding for which the accommodation or interpreter is requested. Additionally, the amendment to Rule 1-332 makes

the Rule applicable not only to actions in which parties are represented by attorneys but also to actions in which parties appear *pro se*. The amendments to Rules 1-202 and 1-311 are proposed for the reasons stated in the Reporter's note to those Rules.

Category Two comprises proposed amendments to three Rules in Title 2 and related amendments to Rules in Titles 3 and 4. Amendments to Rules 2-241 and 3-341 expressly provide for a substitution of parties if a guardian, personal representative, receiver, or trustee resigns, is removed, or dies. To address a problem identified in footnote 3 of *Attorney Grievance v. Hermina*, 379 Md. 503, 514 (2004), amendments to Rules 2-401 and 3-401 require the prompt filing of a notice of service of discovery materials. Amendments to Rules 2-521 and 4-326 require the clerk to note on a written communication from the jury the date and time it was received.

Category Three contains proposed Rules changes relating to criminal causes. Conforming amendments to Rules 4-252 and the addition of a cross reference at the end of Rule 8-204 are proposed in light of Chapter 462, (HB 80) Acts of 2004, which added a provision to Code, Courts Article, §12-302 that states that when the State appeals a decision of the trial court granting a motion to suppress evidence in a case in which the defendant has been charged with a crime of violence, the court may release the defendant on appropriate terms and conditions or may order the defendant remanded to custody pending the outcome of the appeal. New Rule 4-329 and the addition of cross references to Rules 4-247 and 4-248 implement and make reference to the provisions of Chapters 362 (HB 624) and 238 (HB 295), Acts of 2004, concerning, respectively, the advice of expungement that must be given to certain defendants and the availability of a nolle prosequi or stet with the requirement of drug or alcohol abuse treatment. The addition of new section (b) to Rule 4-401 provides for the opening or reopening of a post conviction proceeding in accordance with Code, Criminal Procedure Article, §8-201 based upon DNA test results favorable to the petitioner. The amendments to Rules 4-342, 4-343, 4-346, and 4-347 and Form 4-504.1 are proposed for the reasons stated in the Reporter's note that follows each Rule or Form.

Proposed amendments to four Rules in Title 6, Rules 6-208, 6-412, 6-455, and 6-456, comprise **Category Four**. The reason for each amendment, generally to conform the Rule to the applicable law or to make stylistic changes, is set forth in the Reporter's note to each Rule.

Category Five consists of proposed amendments to three Rules in Title 8. The amendment to Rule 8-501 adds child in need of

assistance, permanency planning, and termination of parental rights proceedings to the list of exemptions from the requirement that a record extract be filed. The amendment to Rule 8-502 reduces from 15 to seven the number of copies of a record extract that must be filed in the Court of Special Appeals, unless otherwise ordered. The amendments to Rule 8-602 allow an individual judge to dismiss an appeal for any of the reasons set forth in section (a) of the Rule, provide for reconsideration of a dismissal on motion of a party filed no later than 10 days after the entry of the order dismissing the appeal, and require that an order denying reinstatement of an appeal be entered by the number of judges required by law to decide an appeal.

In **Category Six** are seven Rules in new Title 15, Chapter 1100, Catastrophic Health Emergency, which is proposed to facilitate the efficient adjudication of any proceedings brought pursuant to Code, Health-General Article, §18-906 and Code, Public Safety Article, §14-3A-05. Also in this Category are proposed conforming amendments to Rules 1-101 and 5-101.

Category Seven consists of proposed amendments to seven Rules in Title 16. Amendments to Rules 16-405, 16-406, and 16-504 implement the Committee's policy recommendation that in the circuit courts and District Court electronic audio recordings of proceedings and the audio portion of audio-video recordings of proceedings should, to the extent feasible, be treated the same for purposes of public access. Also added to the Rules are provisions requiring the safeguarding of confidential or non-public parts of the record and provisions concerning the purchase of copies of audio recordings. Amendments to Rule 16-723 specify which persons involved in the attorney disciplinary system may not disclose confidential matters and make clear that the records of an investigation by Bar Counsel that are confidential include the existence and content of any complaint. An amendment to Rule 16-821 adds to the list of judges who may perform marriage ceremonies retired judges approved for recall under Maryland Constitution, Article IV, §3A and Code, Courts Article, §1-302. An amendment to section (g) of Rule 16-1006 states that a court reporter's backup audio recordings are not subject to public inspection unless otherwise provided by law or court order, and an amendment to Rule 16-404 adds a cross reference to that section.

The final category, **Category Eight**, contains miscellaneous, mostly "housekeeping," amendments to eight Rules. Most of the proposed changes conform the Rule to a statute, a case, or another Rule or clarify, correct, or restyle it. In this Category are Rules 2-602, 7-102, 8-131, 8-207, 9-202, and 12-207. Two of the proposals go beyond mere "housekeeping." The amendment to Rule 13-503 sets \$5.00 as the minimum amount of a dividend distributed by an assignee or receiver, unless the court

orders otherwise. The amendments to Rule 15-901, in addition to adding a cross reference to Code, Criminal Procedure Article, §11-705 which requires a registered sexual offender whose name has been changed by order of court to notify the Department of Public Safety and Correctional Services, add to the required contents of a petition for change of name a statement as to whether the person whose name is sought to be changed has ever registered as a sexual offender.

For the guidance of the Court and the public, following each proposed Rules change is a Reporter's Note describing the reasons for the proposal and any changes that would be effected in current law or practice. We caution that these Reporter's Notes were prepared initially for the benefit of the Rules Committee; they are not part of the Rules and have not been debated or approved by the Committee; and they are not to be regarded as any kind of official comment or interpretation. They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,

Joseph F. Murphy, Jr.
Chairperson

Linda M. Schuett
Vice Chairperson

JFM/LMS:cdc

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-202 (g) to conform it to a statutory change, as follows:

Rule 1-202. DEFINITIONS

. . .

(g) Code[, Reference to]

[Reference] "Code," in a reference to an article and section of the Code, means [the article and section of the Annotated Code of Public General Laws of Maryland as from time to time amended] any Code of the Public General Laws of the State that has been adopted and made evidence of the Public General Laws of the State under Code, Courts Article, §10-201.

. . .

REPORTER'S NOTE

The Rules Committee recommends amending the definition of "Code" in Rule 1-202 (g) to conform to Chapter 416, Acts of 2003 (HB 287) which sets out the meaning of "the Annotated Code of Maryland" and other references to the Code.

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-311 (a) to require inclusion of any business facsimile number and allow inclusion of any business electronic mail address in the contents of a pleading or paper filed, as follows:

Rule 1-311. SIGNING OF PLEADINGS AND OTHER PAPERS

(a) Requirement

Every pleading and paper of a party represented by an attorney shall be signed by at least one attorney who has been admitted to practice law in this State and who complies with Rule 1-312. Every pleading and paper of a party who is not represented by an attorney shall be signed by the party. Every pleading or paper filed shall contain the address, [and] telephone number, and any business facsimile number of the person by whom it is signed. It also may contain that person's business electronic mail address.

Committee note: The requirement that a pleading contain any business facsimile number does not alter the service rules or time periods triggered by the entry of a judgment or receipt of a document. See *Blundon v. Taylor*, 364 Md. 1 (2001).

(b) Effect of Signature

The signature of an attorney on a pleading or paper constitutes a certification that the attorney has read the pleading or paper; that to the best of the attorney's knowledge,

information, and belief there is good ground to support it; and that it is not interposed for improper purpose or delay.

(c) Sanctions

If a pleading or paper is not signed as required (except inadvertent omission to sign, if promptly corrected) or is signed with intent to defeat the purpose of this Rule, it may be stricken and the action may proceed as though the pleading had not been filed. For a wilful violation of this Rule, an attorney is subject to appropriate disciplinary action.

Source: This Rule is derived as follows:

Section (a) is derived from former Rules 302 a, 301 f, and the 1937 version of Fed. R. Civ. P. 11.

Section (b) is derived from former Rule 302 b and the 1937 version of Fed. R. Civ. P. 11.

Section (c) is derived from the 1937 version of Fed. R. Civ. P. 11.

REPORTER'S NOTE

The Honorable Thomas P. Smith, Circuit Court for Prince George's County, suggested that any facsimile number of a person filing a pleading or other paper should be added to the pleading or paper filed. He noted that this would save the court time in sending an order to counsel and enable counsel to receive the order sooner than counsel would have received the order had it been mailed. The Rules Committee agrees and further recommends that the optional inclusion of any business electronic mail address also be added to the Rule.

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-332 to make it applicable to *pro se* litigants, to add certain language concerning the form and timing of a request for an accommodation, and to delete the Committee note following the Rule, as follows:

Rule 1-332. NOTIFICATION OF NEED FOR ACCOMMODATION

[If an attorney, a party represented by an attorney, or a witness to be called on behalf of that party will need the court to provide an accommodation] A person requesting an accommodation under the Americans With Disabilities Act, 42 U.S.C. §12101, et seq., [in order to participate in a court proceeding, the attorney] for an attorney, a party, or a witness shall notify the court promptly [by providing the information contained on the form in the appendix to these Rules]. As far as practicable, a request for an accommodation shall be (1) presented on a form available from the clerk of the court or in the form set forth in an appendix to these Rules and (2) submitted not less than five days before the proceeding for which the accommodation is requested.

Cross reference: See Form 1-332.

[Committee note: Rule 1-332 places a duty of providing notice on the attorney. Any person entitled to an accommodation under the Americans With Disabilities Act may use Form 1-332 to notify the

court of the need for accommodation.]

Source: This Rule is new.

REPORTER'S NOTE

At the request of the Honorable Glenn T. Harrell, Jr., the Rules Committee has considered Rule 1-332 and recommends amendments to the Rule to better facilitate compliance with the Americans with Disabilities Act (ADA). The Rule currently requires only an attorney to notify a court if an attorney, a party represented by an attorney, or a witness to be called on behalf of the party needs an ADA accommodation in a court proceeding. The recent increase in *pro se* litigants has resulted in a lack of notice, or very late notice, as to the need for accommodation.

The proposed amendments include deleting the language in Rule 1-332 that reads "represented by an attorney" so that the Rule is applicable to all persons who need an accommodation under the ADA, regardless of whether the person has an attorney.

Additionally, the proposed amendments require that, as far as practicable, a request for an accommodation be submitted not less than five days before the proceeding for which the accommodation is needed, so that the court will have sufficient time within which to make the accommodation.

The Administrative Office of the Courts is developing forms to be used by litigants, witnesses, and attorneys to request accommodations under the ADA. Until a uniform form is promulgated and in use in the District Court, the circuit courts, and both appellate courts of the State, the Rules Committee recommends retention of current Form 1-332 as a readily available option for anyone who wishes to use it. Alternatively, a person requesting an accommodation may use the form that is available from the clerk of the court in which the accommodation is requested. Rule 1-332 is proposed to be amended to reflect both options.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-819 (b) to add certain language concerning the time for filing and form of an application for the appointment of an interpreter, and to add a certain cross reference, as follows:

Rule 16-819. COURT INTERPRETERS

. . .

(b) Application for the Appointment of an Interpreter

A person who needs an interpreter may apply to the court for the appointment of an interpreter. [The application shall be made by providing the information required by Form 1-332 in the Appendix to these Rules.] As far as practicable, an application for the appointment of an interpreter shall be (1) presented on a form available from the clerk of the court or in the form set forth in an appendix to these Rules and (2) submitted not less than five days before the proceeding for which the interpreter is requested.

Cross reference: See Form 1-332.

. . .

REPORTER'S NOTE

Amendments to Rule 16-819 are proposed for consistency with proposed amendments to Rule 1-332. A cross reference to Form 1-

332 is proposed in light of the proposed deletion of the internal reference to the Form.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 200 - PARTIES

AMEND Rule 2-241 to provide for the substitution of a party following a certain resignation, removal, or death, as follows:

Rule 2-241. SUBSTITUTION OF PARTIES

(a) Substitution

The proper person may be substituted for a party who:

- (1) dies, if the action survives,
- (2) becomes incompetent,
- (3) transfers an interest in the action, whether voluntarily or involuntarily,
- (4) if a corporation, dissolves, forfeits its charter, merges, or consolidates, [or]
- (5) if a public officer, ceases to hold office, or
- (6) if a guardian, personal representative, receiver, or trustee, resigns, is removed, or dies.

(b) Procedure

Any party to the action, any other person affected by the action, the successors or representatives of the party, or the court may file a notice in the action substituting the proper person as a party. The notice shall set forth the reasons for the substitution and, in the case of death, the decedent's representatives, domicile, and date and place of death if known.

The notice shall be served on all parties in accordance with Rule 1-321 and on the substituted party in the manner provided by Rule 2-121, unless the substituted party has previously submitted to the jurisdiction of the court.

(c) Objection

Within 15 days after the service of the notice of substitution, a motion to strike the substitution may be filed.

(d) Failure to Substitute

If substitution is not made as provided in this Rule, the court may dismiss the action, continue the trial or hearing, or take such other action as justice may require.

Source: This Rule is derived as follows:

Section (a) is derived in part from former Rules 220, 222, and 240 and the 1963 version of Fed. R. Civ. P. 25 (a), (b), (c), and (d) and is in part new.

Section (b) is derived from former Rule 220 c, d and e.

Section (c) is new.

Section (d) is derived from former Rule 220 f.

REPORTER'S NOTE

In response to a question by the Honorable John F. Fader, II asking why Rule 2-241 does not specify that a successor personal representative can be substituted in a case in which the predecessor personal representative, who has resigned, was a party, the Rules Committee recommends the addition of new subsection (a)(6) to Rules 2-241 and 3-241.

MARYLAND RULES OF PROCEDURE
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT
CHAPTER 200 - PARTIES

AMEND Rule 3-241 to provide for the substitution of a party following a certain resignation, removal, or death, as follows:

Rule 3-241. SUBSTITUTION OF PARTIES

(a) Substitution

The proper person may be substituted for a party who:

- (1) dies, if the action survives,
- (2) becomes incompetent,
- (3) transfers an interest in the action, whether voluntarily or involuntarily,
- (4) if a corporation, dissolves, forfeits its charter, merges, or consolidates, [or]
- (5) if a public officer, ceases to hold office, or
- (6) if a guardian, personal representative, receiver, or trustee, resigns, is removed, or dies.

(b) Procedure

Any party to the action, any other person affected by the action, the successors or representatives of the party, or the court may file a notice in the action substituting the proper person as a party. The notice shall set forth the reasons for the substitution and, in the case of death, the decedent's representatives, domicile, and date and place of death if known. The notice shall be served on all parties in accordance with Rule

1-321 and on the substituted party in the manner provided by Rule 3-121, unless the substituted party has previously submitted to the jurisdiction of the court.

(c) Objection

Within 15 days after the service of the notice of substitution, a motion to strike the substitution may be filed.

(d) Failure to Substitute

If substitution is not made as provided in this Rule, the court may dismiss the action, continue the trial or hearing, or take such other action as justice may require.

Source: This Rule is derived as follows:

Section (a) is derived in part from former M.D.R. 220 and 240, former Rule 222, and the 1963 version of Fed. R. Civ. P. 25 (a), (b), (c), and (d) and is in part new.

Section (b) is derived from former M.D.R. 220 b, c, and d.

Section (c) is new.

Section (d) is derived from former M.D.R. 220 e.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 2-241.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT
CHAPTER 400 - DISCOVERY

AMEND Rule 2-401 to require the prompt filing of a certain notice, as follows:

Rule 2-401. GENERAL PROVISIONS GOVERNING DISCOVERY

. . .

(d) Discovery Material

(1) Defined

For purposes of this section, the term "discovery material" means a notice of deposition, an objection to the form of a notice of deposition, the questions for a deposition upon written questions, an objection to the form of the questions for a deposition upon written questions, a deposition transcript, interrogatories, a response to interrogatories, a request for discovery of documents and property, a response to a request for discovery of documents and property, a request for admission of facts and genuineness of documents, and a response to a request for admission of facts and genuineness of documents.

(2) Not to be Filed with Court

Except as otherwise provided in these rules or by order of court, discovery material shall not be filed with the court. Instead, the party generating the discovery material shall serve the discovery material on all other parties and promptly shall

file with the court a notice stating (A) the type of discovery material served, (B) the date and manner of service, and (C) the party or person served. The party generating the discovery material shall retain the original and shall make it available for inspection by any other party. This section does not preclude the use of discovery material at trial or as exhibits to support or oppose motions.

Cross reference: Rule 2-311 (c).

Committee note: Rule 1-321 requires that the notice be served on all parties. Rule 1-323 requires that it contain a certificate of service. Parties exchanging discovery material are encouraged to comply with requests that the material be provided in a word processing file or other electronic format.

. . .

REPORTER'S NOTE

In *Attorney Grievance v. Hermina*, 379 Md. 503 (2004), a party claimed that it had served "discovery material" (as defined in Rule 2-401 (d)(1)) on the opposing party a year earlier than the date on which the serving party actually filed the "notice of service of discovery materials." The Court observed that Rule 2-401 (d)(2) is silent as to when such a certificate of service must be filed, but the Court stated that "the Court certainly anticipated that the notice would be filed contemporaneously with service of the material, not a year later. The purpose of the notice filed with the court is to document both the fact that the discovery was served and when it was served. An *ex post facto* filing of the notice hardly serves either purpose and, indeed, can lead to considerable mischief, if not outright fraud." *Attorney Grievance v. Hermina*, 379 Md. 503 (2004) (at p. 514, footnote 3).

The Rules Committee considered an amendment to Rule 2-401 that would have added the word "contemporaneously" to subsection (d)(2). The Committee reviewed the results of a search of the Maryland Rules for the use of the word "contemporaneously." There are eight uses of the word, all but one of which deal with witnesses statements that are "contemporaneously recorded" and the other (Rule 5-106) deals with contemporaneous consideration of related writings or witnesses statements.

The Committee instead recommends that Rule 2-401 (d)(2) be amended by adding the word "promptly" to it. The Committee believes the proposed addition is consistent with the 196 other instances in which the word "promptly" is used in the Maryland Rules and addresses the concerns that the Court expressed in footnote 3 of *Hermina*.

The Committee also had considered amendments to Rule 2-401 that would conform State court practice to the current federal practice that neither discovery material nor any notice concerning the discovery material is filed with the court. See Fed. R. Civ. P. 5 (d) and United States District Court (MD) Local Rule 104 (5). Because no notice would be filed with the court, the provisions of Rule 1-323 (Proof of Service) would not apply. Therefore, to conform State court practice to federal practice, a "certificate of service" requirement could be added to section (d) of Rule 2-401, and the portion of the Committee note following section (d) that refers to Rule 1-323 could be deleted.

If the Court were to adopt the federal approach instead of adding "promptly" to the Rule, amendments to Rule 2-401 could be made as follows:

(d) Discovery Material

. . .

(2) Not to be Filed with Court

Except as otherwise provided in these rules or by order of court, discovery material shall not be filed with the court. Instead, the party generating the discovery material shall serve the discovery material on all other parties and shall [file with the court a notice] sign, date, and attach to the discovery material a certificate of service stating (A) the type of discovery material served, (B) the date and manner of service, and (C) the party or person served. The party generating the discovery material shall retain the original discovery material (including the certificate of service) and shall make it available for inspection by any other party. This section does not preclude the use of discovery material at trial or as exhibits to support or oppose motions.

Cross reference: Rule 2-311 (c).

Committee note: [Rule 1-321 requires that the notice be served on all parties. Rule 1-323 requires that it contain a certificate of service.] Parties exchanging discovery material are encouraged to comply with requests that the material be provided in a word processing file or other electronic format.

MARYLAND RULES OF PROCEDURE
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT
CHAPTER 400 - DISCOVERY

AMEND Rule 3-401 to require the prompt filing of a certain notice, as follows:

Rule 3-401. GENERAL PROVISIONS GOVERNING DISCOVERY

. . .

(b) Discovery Materials

(1) Defined

For purposes of this section, the term "discovery material" means a notice of deposition, an objection to the form of a notice of deposition, the questions for a deposition upon written questions, an objection to the form of the questions for a deposition upon written questions, a deposition transcript, interrogatories, and a response to interrogatories.

(2) Not to be Filed with Court

Except as otherwise provided in these rules or by order of court, discovery material shall not be filed with the court. Instead, the party generating the discovery material promptly shall file with the court a notice stating (A) the type of discovery material served, (B) the date and manner of service, and (C) the party or person served. The party generating the discovery material shall retain the original and shall make it available for inspection by any other party. This section does

not preclude the use of discovery material at trial or as exhibits to support or oppose motions.

Cross reference: Rule 3-311 (c).

Committee note: Rule 1-321 requires that the notice be served on all parties. Rule 1-323 requires that it contain a certificate of service.

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 401 b and 405.

Section (b) is new.

REPORTER'S NOTE

The proposed amendment to Rule 3-401 adds the word "promptly" to subsection (b)(2), conforming the Rule to a proposed amendment to Rule 2-401 (d)(2).

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-521 to add language to section (d) requiring the clerk or the court to note on a written communication from the jury the date and time it was received, as follows:

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

. . .

(d) Communications With Jury

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

Source: This Rule is derived as follows:

Section (a) is new.

Section (b) is derived from former Rules 558 a, b and d and 758 b.

Section (c) is derived from former Rule 758 c.

Section (d) is derived from former Rule 758 d.

REPORTER'S NOTE

At the Court of Appeals conference on the 152nd Report, the Court added the following language to section (d) of Rules 2-521 and 4-326: "as promptly as practicable and in any event." The Court then suggested that a provision requiring the clerk to note

the date and time of any communication from the jury should be added to section (d) of the two Rules. See also *Denicolis v. State*, 378 Md. 646, 658, n. 2 (2003). The Rules Committee recommends that section (d) of Rules 2-521 and 4-326 be amended accordingly.

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

AMEND Rule 4-326 to add language to section (d) requiring the clerk or the court to note on a written communication from the jury the date and time it was received, as follows:

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

. . .

(d) Communications With Jury

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

Source: This Rule is derived as follows:

Section (a) is new.

Section (b) is derived from former Rules 758 a and b and 757 e.

Section (c) is derived from former Rule 758 c.

Section (d) is derived from former Rule 758 d.

REPORTER'S NOTE

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

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

AMEND Rule 4-252 to conform the Rule to Chapter 462, Acts of 2004, by adding a new subsection (h)(2)(B), as follows:

Rule 4-252. MOTIONS IN CIRCUIT COURT

(a) Mandatory Motions

In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise:

- (1) A defect in the institution of the prosecution;
- (2) A defect in the charging document other than its failure to show jurisdiction in the court or its failure to charge an offense;
- (3) An unlawful search, seizure, interception of wire or oral communication, or pretrial identification;
- (4) An unlawfully obtained admission, statement, or confession; and
- (5) A request for joint or separate trial of defendants or offenses.

(b) Time for Filing Mandatory Motions

A motion under section (a) of this Rule shall be filed within 30 days after the earlier of the appearance of counsel or

the first appearance of the defendant before the court pursuant to Rule 4-213 (c), except when discovery discloses the basis for a motion, the motion may be filed within five days after the discovery is furnished.

(c) Motion to Transfer to Juvenile Court

A request to transfer an action to juvenile court pursuant to Code, Criminal Procedure Article, §4-202 shall be made by separate motion entitled "Motion to Transfer to Juvenile Court." The motion shall be filed within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213 (c) and, if not so made, is waived unless the court, for good cause shown, orders otherwise.

(d) Other Motions

A motion asserting failure of the charging document to show jurisdiction in the court or to charge an offense may be raised and determined at any time. Any other defense, objection, or request capable of determination before trial without trial of the general issue, shall be raised by motion filed at any time before trial.

(e) Content

A motion filed pursuant to this Rule shall be in writing unless the court otherwise directs, shall state the grounds upon which it is made, and shall set forth the relief sought. A motion alleging an illegal source of information as the basis for probable cause must be supported by precise and specific factual

averments. Every motion shall contain or be accompanied by a statement of points and citation of authorities.

(f) Response

A response, if made, shall be filed within 15 days after service of the motion and contain or be accompanied by a statement of points and citation of authorities.

(g) Determination

(1) Generally

Motions filed pursuant to this Rule shall be determined before trial and, to the extent practicable, before the day of trial, except that the court may defer until after trial its determination of a motion to dismiss for failure to obtain a speedy trial. If factual issues are involved in determining the motion, the court shall state its findings on the record.

(2) (A) Motions Concerning Transfer of Jurisdiction to the Juvenile Court

A motion requesting that a child be held in a juvenile facility pending a transfer determination shall be heard and determined not later than the next court day after it is filed unless the court sets a later date for good cause shown.

(B) A motion to transfer jurisdiction of an action to the juvenile court shall be determined within 10 days after the hearing on the motion.

(h) Effect of Determination of Certain Motions

(1) Defect in Prosecution or Charging Document

If the court granted a motion based on a defect in the

institution of the prosecution or in the charging document, it may order that the defendant be held in custody or that the conditions of pretrial release continue for a specified time, not to exceed ten days, pending the filing of a new charging document.

(2) Suppression of Evidence

(A) If the court grants a motion to suppress evidence, the evidence shall not be offered by the State at trial, except that suppressed evidence may be used in accordance with law for impeachment purposes. The court may not reconsider its grant of a motion to suppress evidence unless before trial the State files a motion for reconsideration based on (i) newly discovered evidence that could not have been discovered by due diligence in time to present it to the court before the court's ruling on the motion to suppress evidence, (ii) an error of law made by the court in granting the motion to suppress evidence, or (iii) a change in law. The court may hold a hearing on the motion to reconsider. Hearings held before trial shall, whenever practicable, be held before the judge who granted the motion to suppress. If the court reverses or modifies its grant of a motion to suppress, the judge shall prepare and file or dictate into the record a statement of the reasons for the action taken.

(B) If the State appeals a decision of the trial court granting a motion to suppress evidence in a case in which the defendant is charged with a crime of violence as defined in Code, Criminal Law Article, §14-101, the court may release the

defendant on any terms and conditions that the court considers appropriate or may order the defendant remanded to custody pending the outcome of the appeal.

[(B)] (C) If the court denies a motion to suppress evidence, the ruling is binding at the trial unless the court, on the motion of a defendant and in the exercise of its discretion, grants a supplemental hearing or a hearing de novo and rules otherwise. A pretrial ruling denying the motion to suppress is reviewable on a motion for a new trial or on appeal of a conviction.

(3) Transfer of Jurisdiction to Juvenile Court

If the court grants a motion to transfer jurisdiction of an action to the juvenile court, the court shall enter a written order waiving its jurisdiction and ordering that the defendant be subject to the jurisdiction and procedures of the juvenile court. In its order the court shall (A) release or continue the pretrial release of the defendant, subject to appropriate conditions reasonably necessary to ensure the appearance of the defendant in the juvenile court or (B) place the defendant in detention or shelter care pursuant to Code, Courts Article, §3-815. Until a juvenile petition is filed, the charging document shall have the effect of a juvenile petition for the purpose of imposition and enforcement of conditions of release or placement of the defendant in detention or shelter care.

Cross reference: Code, Criminal Procedure Article, §4-202.

Committee note: Subsections (a)(1) and (2) include, but are not limited to allegations of improper selection and organization of the grand jury, disqualification of an individual grand juror, unauthorized presence of persons in the grand jury room, and other irregularities in the grand jury proceedings. Section (a) does not include such matters as former jeopardy, former conviction, acquittal, statute of limitations, immunity, and the failure of the charging document to state an offense.

Source: This Rule is derived from former Rule 736.

REPORTER'S NOTE

Chapter 462, (HB 80) Acts of 2004 added a provision to Code, Courts and Judicial Proceedings Article, §12-302 that states that when the State appeals a decision of the trial court granting a motion to suppress evidence in a case in which the defendant has been charged with a crime of violence, the court may release the defendant on appropriate terms and conditions or may order the defendant remanded to custody pending the outcome of the appeal. The Rules Committee recommends adding this language to subsection (h)(2) of Rule 4-252 and adding a cross reference to this new provision in Rule 8-204.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-204 by adding a certain cross reference at the end of the Rule, as follows:

Rule 8-204. APPLICATION FOR LEAVE TO APPEAL TO COURT OF SPECIAL APPEALS

. . .

Cross reference: See Rule 4-252 (h)(2)(B) for cases involving appeals taken by the State from a decision of a trial court granting a motion to suppress evidence in crimes of violence.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-252.

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

ADD new Rule 4-329, as follows:

Rule 4-329. ADVICE OF EXPUNGEMENT

When all of the charges in a criminal case against a defendant are disposed of by acquittal, dismissal, probation before judgment, nolle prosequi, or stet, the court shall advise the defendant that the defendant may be entitled to expunge the records relating to the charge or charges against the defendant in accordance with Code, Criminal Procedure Article, Title 10, Subtitle 1 and Title 4, Chapter 500 of these Rules. If the defendant is not present, and the case has been disposed of by dismissal, nolle prosequi, or stet, the advice of expungement shall be included in the notice to the defendant required by Rules 4-247 and 4-248.

Cross reference: For expungement of charges in cases that include a minor traffic violation, see Code, Criminal Procedure Article, §10-107.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 362 (HB 624), Acts of 2004 added a provision requiring a court to advise a defendant that he or she may be entitled to expungement of records relating to charges against the defendant if the charges have been disposed of by acquittal, dismissal, probation before judgment, nolle prosequi, or stet. The Rules Committee recommends adding Rule 4-329 to conform to the statute and adding a cross reference to the new Rule to Rule

4-247, Nolle Prosequi and Rule 4-248, Stet. The Rules Committee has also suggests a cross reference to Code, Criminal Procedure Article, §10-107 because it pertains to expungement when charges include a lesser traffic violation, a concept related to Rule 4-329.

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

AMEND Rule 4-247 by adding a cross reference to proposed new Rule 4-329 and to Code, Criminal Procedure Article, §6-229, as follows:

Rule 4-247. NOLLE PROSEQUI

(a) Disposition by Nolle Prosequi

The State's Attorney may terminate a prosecution on a charge and dismiss the charge by entering a nolle prosequi on the record in open court. The defendant need not be present in court when the nolle prosequi is entered, but in that event the clerk shall send notice to the defendant, if the defendant's whereabouts are known, and to the defendant's attorney of record.

(b) Effect of Nolle Prosequi

When a nolle prosequi has been entered on a charge, any conditions of pretrial release on that charge are terminated, and any bail bond posted for the defendant on that charge shall be released. The clerk shall take the action necessary to recall or revoke any outstanding warrant or detainer that could lead to the arrest or detention of the defendant because of that charge.

Cross reference: For provisions relating to expungement of the records after a case has been dismissed by entering a nolle prosequi, see Rule 4-329. For provisions relating to a nolle prosequi with the requirement of drug or alcohol treatment in non-violent crimes, see Code, Criminal Procedure Article, §6-229.

Source: This Rule is derived from former Rule 782 a and b and M.D.R. 782 a and b.

REPORTER'S NOTE

See the Reporter's note to Rule 4-329 for an explanation of the first sentence of the proposed new cross reference.

The second sentence of the proposed new cross reference refers to Code, Criminal Procedure Article, §6-229, which was added by Chapter 238 (HB 295), Acts of 2004 and provides for the availability of a nolle prosequi or a stet with the requirement of drug or alcohol abuse treatment for defendants who are charged with non-violent crimes or have not been convicted of crimes of violence for the past five years.

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

AMEND Rule 4-248 by adding a cross reference to proposed new Rule 4-329 and to Code, Criminal Procedure Article, §6-229, as follows:

Rule 4-248. STET

(a) Disposition by Stet

On motion of the State's Attorney, the court may indefinitely postpone trial of a charge by marking the charge "stet" on the docket. The defendant need not be present when a charge is statted but in that event the clerk shall send notice of the stet to the defendant, if the defendant's whereabouts are known, and to the defendant's attorney of record. A charge may not be statted over the objection of the defendant. A statted charge may be rescheduled for trial at the request of either party within one year and thereafter only by order of court for good cause shown.

(b) Effect of Stet

When a charge is statted, the clerk shall take the action necessary to recall or revoke any outstanding warrant or detainer that could lead to the arrest or detention of the defendant because of the charge, unless the court orders that any warrant or detainer shall remain outstanding.

Committee note: For provisions relating to bail or recognizance when criminal charges are setted see Code, Criminal Procedure Article, §5-208.

Cross reference: For provisions relating to expungement of the records after a case has been dismissed by entering a stet, see Rule 4-329. For provisions relating to a stet with the requirement of drug or alcohol treatment in non-violent crimes, see Code, Criminal Procedure Article, §6-229.

Source: This Rule is derived from former Rule 782 c and d and M.D.R. 782 c and d.

REPORTER'S NOTE

See the Reporter's note to Rule 4-247.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 400 - POST CONVICTION PROCEDURE

AMEND Rule 4-401 by adding a new section (b) pertaining to opening post conviction proceedings after DNA testing, as follows:

Rule 4-401. HOW COMMENCED - VENUE

(a) Generally

A proceeding under the Uniform Post Conviction Procedure Act is commenced by the filing of a petition in the circuit court of the county where the conviction took place.

(b) Following DNA Testing

If a petition for DNA testing was filed pursuant to Code, Criminal Procedure Article, §8-201, and the test results were favorable to the petitioner, the court shall (1) reopen a post conviction proceeding previously commenced under section (a) of this Rule or (2) if no post conviction proceeding has been initiated, treat the petition for DNA testing as a petition under section (a) of this Rule.

Source: This Rule is derived from former Rule BK40.

REPORTER'S NOTE

Recent legislation added Code, Criminal Procedure Article, §8-201, providing for persons convicted of certain crimes, including murder in the first and second degree, manslaughter, rape in the first and second degree, and sexual offenses in the first, second, and third degree, to be able to file a petition

for DNA testing of scientific and identification evidence that the State possesses and that is related to the judgment of conviction. The statute provides a procedure for the court to open or reopen a post conviction proceeding based on test results favorable to the petitioner. The Rules Committee recommends that Rule 4-401 be modified to add language directing attention to §8-201 of the Criminal Procedure Article.

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

AMEND Rule 4-342 by adding a certain cross reference following section (g), as follows:

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

(a) Applicability

This Rule applies to all cases except those governed by Rule 4-343.

(b) Statutory Sentencing Procedure

When a defendant has been found guilty of murder in the first degree and the State has given timely notice of intention to seek a sentence of imprisonment for life without the possibility of parole, but has not given notice of intention to seek the death penalty, the court shall conduct a sentencing proceeding, separate from the proceeding at which the defendant's guilt was adjudicated, as soon as practicable after the trial to determine whether to impose a sentence of imprisonment for life or imprisonment for life without parole.

Cross reference: Code, Criminal Law Article, §§2-201, 2-202 (b) (3), 2-203, and 2-304.

(c) Judge

If the defendant's guilt is established after a trial has commenced, the judge who presided shall sentence the defendant. If a defendant enters a plea of guilty or nolo contendere before trial, any judge may sentence the defendant except that, the

judge who directed entry of the plea shall sentence the defendant if that judge has received any matter, other than a statement of the mere facts of the offense, which would be relevant to determining the proper sentence. This section is subject to the provisions of Rule 4-361.

(d) Presentence Disclosures by the State's Attorney

Sufficiently in advance of sentencing to afford the defendant a reasonable opportunity to investigate, the State's Attorney shall disclose to the defendant or counsel any information that the State expects to present to the court for consideration in sentencing. If the court finds that the information was not timely provided, the court shall postpone sentencing.

(e) Notice and Right of Victim to Address the Court

(1) Notice and Determination

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

(2) Right to Address the Court

The right of a victim or a victim's representative to address the court during a sentencing hearing under this Rule is governed by Code, Criminal Procedure Article, §11-403.

Cross reference: See Code, Criminal Procedure Article, §§11-103 (b) and 11-403 (e) concerning the right of a victim or victim's

representative to file an application for leave to appeal under certain circumstances.

(f) Allocution and Information in Mitigation

Before imposing sentence, the court shall afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment.

(g) Reasons

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

Cross reference: For factors related to drug and alcohol abuse treatment to be considered by the court in determining an appropriate sentence, see Code, Criminal Procedure Article, §6-231.

(h) Credit for Time Spent in Custody

Time spent in custody shall be credited against a sentence pursuant to Code, Criminal Procedure Article, §6-218.

(i) Advice to the Defendant

At the time of imposing sentence, the court shall cause the defendant to be advised of any right of appeal, any right of review of the sentence under the Review of Criminal Sentences Act, any right to move for modification or reduction of the sentence, and the time allowed for the exercise of these rights. At the time of imposing a sentence of incarceration for a violent crime as defined in Code, Correctional Services Article, §7-101 and for which a defendant will be eligible for parole as provided in §7-301(c) or (d) of the Correctional Services Article, the court shall state in open court the minimum time the defendant must serve for the violent crime before becoming eligible for

parole. The circuit court shall cause the defendant who was sentenced in circuit court to be advised that within ten days after filing an appeal, the defendant must order in writing a transcript from the court stenographer.

Cross reference: Code, Criminal Procedure Article, §§8-102 - 8-109.

Committee note: Code, Criminal Procedure Article, §6-217 provides that the court's statement of the minimum time the defendant must serve for the violent crime before becoming eligible for parole is for informational purposes only and may not be considered a part of the sentence, and the failure of a court to comply with this requirement does not affect the legality or efficacy of the sentence imposed.

(j) Terms for Release

On request of the defendant, the court shall determine the defendant's eligibility for release under Rule 4-349 and the terms for any release.

(k) Restitution from a Parent

If restitution from a parent of the defendant is sought pursuant to Code, Criminal Procedure Article, §11-604, the State shall serve the parent with notice of intention to seek restitution and file a copy of the notice with the court. The court may not enter a judgment of restitution against the parent unless the parent has been afforded a reasonable opportunity to be heard and to present evidence. The hearing on parental restitution may be part of the defendant's sentencing hearing.

(l) Recordation of Restitution

(1) Circuit Court

Recordation of a judgment of restitution in the circuit court is governed by Code, Criminal Procedure Article, §11-608 and Rule 2-601.

(2) District Court

Upon the entry of a judgment of restitution in the District Court, the Clerk of the Court shall send the written notice required under Code, Criminal Procedure Article, §11-610 (e). Recordation of a judgment of restitution in the District Court is governed by Code, Criminal Procedure Article, §§11-610 and 11-612 and Rule 3-621.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 772 a.

Section (b) is new.

Section (c) is derived from former Rule 772 b and M.D.R. 772 a.

Section (d) is derived from former Rule 772 c and M.D.R. 772 b.

Section (e) is new.

Section (f) is derived from former Rule 772 d and M.D.R. 772 c.

Section (g) is derived from former Rule 772 e and M.D.R. 772 d.

Section (h) is derived from former Rule 772 f and M.D.R. 772 e.

Section (i) is in part derived from former Rule 772 h and M.D.R. 772 g and in part new.

Section (j) is new.

Section (k) is new.

Section (l) is new.

REPORTER'S NOTE

Chapter 238 (HB 295), Acts of 2004 added §6-231 to the Criminal Procedure Article. The new provision lists factors related to drug and alcohol abuse treatment that the court must consider in connection with the determination of an appropriate sentence. The Rules Committee recommends adding a cross reference to the new provision in Rules 4-342 and 4-347.

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

AMEND Section IV of Rule 4-343 (h) to delete certain phrases from the form and to make a certain stylistic change, as follows:

Rule 4-343. SENTENCING - PROCEDURE IN CAPITAL CASES

. . .

(h) Form of Written Findings and Determinations

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

(CAPTION)

FINDINGS AND SENTENCING DETERMINATION

VICTIM: [Name of murder victim]

Section I

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

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

<u>[proven]</u> <u>proved</u>	<u>not</u> <u>[proven]</u> <u>proved</u>
----------------------------------	--

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

<u>[proven]</u> <u>proved</u>	<u>not</u> <u>[proven]</u> <u>proved</u>
----------------------------------	--

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

<u>[proven]</u> <u>proved</u>	<u>not</u> <u>[proven]</u> <u>proved</u>
----------------------------------	--

(If one or more of the above are marked "[proven] proved," proceed to Section II. If all are marked "not [proven] proved," proceed to Section VI and enter "Imprisonment for Life.")

Section II

Based upon the evidence, we unanimously find that the

2. The defendant committed the murder at a time when confined in a correctional facility.

<u> </u> [proven] <u>proved</u>	<u> </u> not [proven] <u>proved</u>
--	---

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

<u> </u> [proven] <u>proved</u>	<u> </u> not [proven] <u>proved</u>
--	---

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

<u> </u> [proven] <u>proved</u>	<u> </u> not [proven] <u>proved</u>
--	---

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

<u> </u> [proven] <u>proved</u>	<u> </u> not [proven] <u>proved</u>
--	---

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

<u> </u> [proven] <u>proved</u>	<u> </u> not [proven] <u>proved</u>
--	---

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

<u> </u> [proven] <u>proved</u>	<u> </u> not [proven] <u>proved</u>
--	---

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

<u> </u> [proven] <u>proved</u>	<u> </u> not [proven] <u>proved</u>
--	---

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

<u> </u> [proven] <u>proved</u>	<u> </u> not [proven] <u>proved</u>
--	---

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

<u> </u> [proven] <u>proved</u>	<u> </u> not [proven] <u>proved</u>
--	---

(If one or more of the above are marked "[proven] proved," complete Section IV. If all of the above are marked "not [proven] proved," do not complete Sections IV and V and proceed

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

Section IV

[Based upon the evidence, we] We make the following determinations as to mitigating circumstances:

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

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

(Mark only one.)

[] (a) We unanimously find [by a preponderance of the evidence] that the above circumstance exists.

[] (b) We unanimously find [by a preponderance of the evidence] that the above circumstance does not exist.

[] (c) After a reasonable period of deliberation, one or

more of us, but fewer than all 12, find [by a preponderance of the evidence] that the above circumstance exists.

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

(Mark only one.)

- (a) We unanimously find [by a preponderance of the evidence] that the above circumstance exists.
- (b) We unanimously find [by a preponderance of the evidence] that the above circumstance does not exist.
- (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find [by a preponderance of the evidence] that the above circumstance exists.

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

(Mark only one.)

- (a) We unanimously find [by a preponderance of the evidence] that the above circumstance exists.
- (b) We unanimously find [by a preponderance of the evidence] that the above circumstance does not exist.
- (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find [by a preponderance of

the evidence] that the above circumstance exists.

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

(Mark only one.)

- [] (a) We unanimously find [by a preponderance of the evidence] that the above circumstance exists.
- [] (b) We unanimously find [by a preponderance of the evidence] that the above circumstance does not exist.
- [] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find [by a preponderance of the evidence] that the above circumstance exists.

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

(Mark only one.)

- [] (a) We unanimously find [by a preponderance of the evidence] that the above circumstance exists.
- [] (b) We unanimously find [by a preponderance of the evidence] that the above circumstance does not exist.
- [] (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find [by a preponderance of the evidence] that the above circumstance exists.

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

(Mark only one.)

- (a) We unanimously find [by a preponderance of the evidence] that the above circumstance exists.
- (b) We unanimously find [by a preponderance of the evidence] that the above circumstance does not exist.
- (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find [by a preponderance of the evidence] that the above circumstance exists.

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

(Mark only one.)

- (a) We unanimously find [by a preponderance of the evidence] that the above circumstance exists.
- (b) We unanimously find [by a preponderance of the evidence] that the above circumstance does not exist.
- (c) After a reasonable period of deliberation, one or more of us, but fewer than all 12, find [by a preponderance of the evidence] that the above circumstance exists.

8. (a) We unanimously find [by a preponderance of the evidence] that the following additional mitigating circumstances exist:

(Use reverse side if necessary)

(b) One or more of us, but fewer than all 12, find [by a preponderance of the evidence] that the following additional mitigating circumstances exist:

(Use reverse side if necessary)

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

Section V

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

We unanimously find that the State has [proven] proved BY A PREPONDERANCE OF THE EVIDENCE that the aggravating circumstances

marked "[proven] proved" in Section III outweigh the mitigating circumstances in Section IV.

_____ _____
yes no

Section VI

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

1. If all of the answers in Section I are marked "not [proven] proved," enter "Imprisonment for Life."
2. If the answer in Section II is marked "[proven] proved," enter "Imprisonment for Life."
3. If all of the answers in Section III are marked "not [proven] proved," enter "Imprisonment for Life."
4. If Section IV was completed and the jury unanimously determined that no mitigating circumstance exists, enter "Death."
5. If Section V was completed and marked "no," enter "Imprisonment for Life."
6. If Section V was completed and marked "yes," enter "Death."

We unanimously determine the sentence to be _____.

Section VII

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

Based upon the evidence, does the jury unanimously determine

that the sentence of imprisonment for life previously entered shall be without the possibility of parole?

yes no

Foreman

Juror 7

Juror 2

Juror 8

Juror 3

Juror 9

Juror 4

Juror 10

Juror 5

Juror 11

Juror 6

Juror 12

or,

JUDGE

. . .

REPORTER'S NOTE

A footnote in *Conyers v. State*, 354 Md. 132 (1999) pointed out that the trial judge in the case at bar had observed that evidence is more than just the testimony and physical exhibits, particularly in reference to the determination of mitigating circumstances, and stated that the Rules Committee should consider whether a broader phrase, such as "facts or circumstances" might be more appropriate than the term "evidence." In light of this, and based on the recommendation of

the Pattern Jury Instructions Committee, the Rules Committee recommends simply deleting the references in Section IV to the language "based upon the evidence" and "by a preponderance of the evidence."

The Rules Committee also recommends that the word "proven" be changed to "proved" throughout the form. This change is stylistic, only.

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

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

Rule 4-346. PROBATION

(a) Manner of Imposing

When placing a defendant on probation, the court shall advise the defendant of the conditions and duration of probation and the possible consequences of a violation of any of the conditions. The court also shall file and furnish to the defendant a written order stating the conditions and duration of probation.

(b) Modification of Probation Order

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

Cross reference: For orders of probation or parole [requiring or permitting] recommending that a defendant [to] reside in or travel to another state as a condition of probation or parole, see the [Uniform Act for Out-of-State Parole Supervision] Interstate Compact for Adult Offender Supervision, Code, Correctional Services Article, §6-201 et seq. For evaluation as to the need for drug or alcohol treatment before probation is ordered in cases involving operating a motor vehicle or vessel while under the influence of or impaired by drugs or alcohol, see Code, Criminal Procedure Article, §6-220.

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

REPORTER'S NOTE

The General Assembly repealed the Uniform Act for Out-of-State Parolee Supervision and replaced it with the Interstate Compact for Adult Offender Supervision. The latter no longer has a provision allowing judges to require or permit a defendant to reside in or travel to another state as a condition of parole or probation. The Rules Committee recommends conforming the first sentence of the cross reference to the new statute.

Chapter 335 (HB 376), Acts of 2004 added a provision to Code, Criminal Procedure Article, §6-220, which states that before imposing a period of probation, a court may order the Department of Health and Mental Hygiene to evaluate a defendant convicted of a charge involving operating a motor vehicle or vessel while under the influence of or impaired by drugs or alcohol. The Rules Committee recommends that a cross reference to the statute be added to Rule 4-346.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-347 by adding language to the cross reference at the end of the Rule, as follows:

Rule 4-347. PROCEEDINGS FOR REVOCATION OF PROBATION

(a) How Initiated

Proceedings for revocation of probation shall be initiated by an order directing the issuance of a summons or warrant. The order may be issued by the court on its own initiative or on a verified petition of the State's Attorney or the Division of Parole and Probation. The petition, or order if issued on the court's initiative, shall state each condition of probation that the defendant is charged with having violated and the nature of the violation.

(b) Notice

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

(c) Release Pending Revocation Hearing

Unless the judge who issues the warrant sets conditions of release or expressly denies bail, a defendant arrested upon a warrant shall be taken before a judicial officer of the District Court without unnecessary delay or, if the warrant so specifies, before a judge of the District Court or circuit court for the

purpose of determining the defendant's eligibility for release.

(d) Waiver of Counsel

The provisions of Rule 4-215 apply to proceedings for revocation of probation.

(e) Hearing

(1) Generally

The court shall hold a hearing to determine whether a violation has occurred and, if so, whether the probation should be revoked. The hearing shall be scheduled so as to afford the defendant a reasonable opportunity to prepare a defense to the charges. Whenever practicable, the hearing shall be held before the sentencing judge or, if the sentence was imposed by a Review Panel pursuant to Rule 4-344, before one of the judges who was on the panel. With the consent of the parties and the sentencing judge, the hearing may be held before any other judge. The provisions of Rule 4-242 do not apply to an admission of violation of conditions of probation.

Cross reference: See *State v. Peterson*, 315 Md. 73 (1989), construing the third sentence of this subsection.

(2) Conduct of Hearing

The court may conduct the revocation hearing in an informal manner and, in the interest of justice, may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses. The defendant shall be given the opportunity to admit or deny the alleged violations, to testify, to present witnesses, and to cross-examine the witnesses

testifying against the defendant. If the defendant is found to be in violation of any condition of probation, the court shall (A) specify the condition violated and (B) afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment.

Cross reference: See *Hersch and Cleary v. State*, 317 Md. 200 (1989), setting forth certain requirements with respect to admissions of probation violations, and *State v. Fuller*, 308 Md. 547 (1987), regarding the application of the right to confrontation in probation revocation proceedings. For factors related to drug and alcohol abuse treatment to be considered by the court in determining an appropriate sentence, see Code, Criminal Procedure Article, §6-231.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 4-342.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
FORMS FOR EXPUNGEMENT OF RECORDS

AMEND Form 4-504.1 by changing the term "compromised" to "dismissed" in section 3, as follows:

Form 4-504.1. PETITION FOR EXPUNGEMENT OF RECORDS

(Caption)

PETITION FOR EXPUNGEMENT OF RECORDS

1. (Check one of the following boxes) On or about _____,
(Date)
I was [] arrested, [] served with a summons, or [] served
with a citation by an officer of the _____
(Law Enforcement Agency)
at _____, Maryland, as
a result of the following incident _____

_____.

2. I was charged with the offense of _____
_____.

3. On or about _____,
(Date)
the charge was disposed of as follows (check one of the following
boxes):

[] I was acquitted and either three years have passed since

disposition or a General Waiver and Release is attached.

[] The charge was dismissed or quashed and either three years have passed since disposition or a General Waiver and Release is attached.

[] A judgment of probation before judgment was entered on a charge that is not a violation of Code*, Transportation Article, §21-902 or Code*, Criminal Law Article, §§2-503, 2-504, 2-505, or 2-506, or former Code*, Article 27, §388A or §388B, and either (a) at least three years have passed since the disposition, or (b) I have been discharged from probation, whichever is later. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

[] A Nolle Prosequi was entered and either three years have passed since disposition or a General Waiver and Release is attached. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or

regulations not carrying a possible sentence of imprisonment.

[] The proceeding was placed on the Stet docket and three years have passed since disposition. Since the date of disposition, I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

[] The case was compromised or dismissed pursuant to Code*, Criminal Law Article, §3-207, former Code*, Article 27, §12A-5, or former Code*, Article 10, §37 and three years have passed since disposition.

[] On or about _____ , I was granted
(Date)

a full and unconditional pardon by the Governor for the one criminal act, not a crime of violence as defined in Code*, Criminal Law Article, §14-101 (a), of which I was convicted. Not more than ten years have passed since the Governor signed the pardon, and since the date the Governor signed the pardon I have not been convicted of any crime, other than violations of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment; and I am not now a defendant in

any pending criminal action other than for violation of vehicle or traffic laws, ordinances, or regulations not carrying a possible sentence of imprisonment.

WHEREFORE, I request the Court to enter an Order for Expungement of all police and court records pertaining to the above arrest, detention, confinement, and charges.

I solemnly affirm under the penalties of perjury that the contents of this Petition are true to the best of my knowledge, information and belief, and that the charge to which this Petition relates was not made for any nonincarcerable violation of the Vehicle Laws of the State of Maryland, or any traffic law, ordinance, or regulation, nor is it part of a unit the expungement of which is precluded under Code, Criminal Procedure Article, §10-107.

_____	_____
(Date)	Signature

	(Address)

	(Telephone No.)

* References to "Code" in this Petition are to the Annotated Code of Maryland.

REPORTER'S NOTE

The Rules Committee recommends the addition of the phrase "or dismissed" to the sixth statement in section 3 of Form 4-501.1. The current statute, Code, Criminal Law Article, §3-207 uses the term "dismissal of assault charge" in place of the former term "compromise of the case."

MARYLAND RULES OF PROCEDURE
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES
CHAPTER 200 - SMALL ESTATE

AMEND Rule 6-208 to delete subsection 6. (d), as follows:

Rule 6-208. FORM OF REGISTER'S ORDER

The order entered by the register shall be in the following form:

[CAPTION]

ORDER FOR SMALL ESTATE

Upon the foregoing Petition, it is this _____ day of
_____, _____, by the Register of Wills ordered
(month) (year)

that:

1. The estate of _____ shall be administered as a small estate.

2. _____ shall serve as personal representative.

3. The personal representative shall pay fees due the register, expenses of administration, allowable funeral expenses, and statutory family allowances, and, if necessary, sell property of the decedent in order to pay them.

4. The will dated _____ (including codicils, if any, dated _____) accompanying the petition is:

[] admitted to probate; or

[] retained on file only.

5. Publication is:

[] not required; or

[] required and Notice of Appointment shall be published once in a newspaper of general circulation in the county.

6. When publication is required, the personal representative shall, subject to the statutory order of priorities and the resolution of disputed claims by the parties or by the court:

(a) pay all proper claims, expenses, and allowances not previously paid; (b) if necessary, sell property of the estate in order to do so; and (c) distribute the remaining property of the estate in accordance with the will or, if none, with the intestacy laws of this State[; and (d) file a certificate of compliance with the register pursuant to Rule 6-211 within 60 days after the expiration of the time for filing claims].

Register of Wills

THIS ORDER DOES NOT CONSTITUTE LETTERS OF ADMINISTRATION AND DOES NOT AUTHORIZE THE TRANSFER OF ASSETS.

Certificate of Service

I hereby certify that on this _____ day of _____, (month)
_____, I delivered or mailed, postage prepaid, a copy of the (year)

foregoing Order to _____,
(name and address)

Personal Representative.

Register of Wills

REPORTER'S NOTE

Recent amendments to Rule 6-211 eliminated the certificate of compliance. This had been requested by the Association of Register of Wills because in a majority of small estate proceedings, the certificate was not filed, and consequently the estate could not be closed without a show cause proceeding. Accordingly, the Rules Committee recommends that the reference to the certificate of compliance in Rule 6-208 be deleted.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-412 by deleting sections (a) and (c), and conforming it to certain statutory changes, as follows:

Rule 6-412. DISCLAIMER

[(a) Time for Filing with Register

A disclaimer of a legacy, intestate share, survivorship interest, or other interest in a decedent's property required to be filed with the register pursuant to Code, Estates and Trusts Article, §9-202 shall be filed within nine months after the decedent's death or in the case of a future interest, within nine months after the date specified in that section.]

[Committee note: For disclaimers not required to be filed with the register, see Code, Estates and Trusts Article, §9-202 (b) and (c). Disclaimers that are timely under this Rule are not necessarily effective for federal gift tax purposes.]

[(b)] (a) Content of Disclaimer

[The] A disclaimer of a legacy, intestate share, survivorship interest, or other interest in or a power over a decedent's property shall be in writing or other record and shall (1) describe the [property or] interest or power disclaimed, (2) declare the disclaimer [and its extent], (3) be signed by the [disclaimant] person making the disclaimer, and (4) be acknowledged if an interest in real property is disclaimed.

Cross reference: For form of acknowledgment, see Code, Real Property Article, §4-204.

[(c) Notice

In addition to filing the disclaimer with the register pursuant to section (a) of this Rule, the disclaimant shall deliver or mail by certified mail a copy of the disclaimer to any personal representative or other fiduciary of the deceased owner or deceased donee of a power of appointment and to the trustee or other person who has legal title to the property or interest disclaimed. The disclaimant shall cause an executed copy to be recorded among the land records of the county in which any real property or interest in real property that is disclaimed is located.]

(b) Delivery or Filing of Disclaimer

The delivery or filing of a disclaimer is governed by Code, Estates and Trusts Article, §9-209.

REPORTER'S NOTE

By Chapter 465, Acts of 2004 (SB 541), the General Assembly extensively revised the Maryland Uniform Disclaimer of Property Interests Act. Proposed changes to Rule 6-412 conform the Rule to the new law.

The requirement of filing disclaimers with the register has been eliminated, so section (a) no longer is necessary. The content of disclaimers has been modified, so the Rules Committee proposes conforming amendments to section (b), which becomes section (a).

The notice provisions in the statute have been reorganized into a new section, requiring either the delivery or the filing of a disclaimer, depending on the circumstances. The Committee recommends a reference to the new statute in new section (b).

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-455 by changing the language pertaining to

trustees in paragraph 1 of the form of election in section (b), by adding the category of "trustee of a trust that is a residuary legatee" to the consent to Election for Modified Administration form, and by adding signature lines for the trustees at the end of the form in section (c), as follows:

Rule 6-455. MODIFIED ADMINISTRATION

(a) Generally

When authorized by law, an election for modified administration may be filed by a personal representative within three (3) months after the appointment of the personal representative.

(b) Form of Election

An election for modified administration shall be in the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND
ESTATE OF _____ Estate No. _____

ELECTION OF PERSONAL REPRESENTATIVE FOR
MODIFIED ADMINISTRATION

1. I elect Modified Administration. This estate qualifies for Modified Administration for the following reasons:

(a) The decedent died on _____ [] with a will or [] without a will.

(b) This Election is filed within 3 months from the date of

my appointment which was on _____.

(c) Each of the residuary legatees named in the will or each of the heirs of the intestate decedent is either:

The decedent's personal representative or an individual or an entity exempt from inheritance tax in the decedent's estate under §7-203 (b), (e), and (f) of the Tax-General Article.

(d) Each trustee of every trust [created in the decedent's will] that is a residuary legatee is one or more of the following: the decedent's personal representative, surviving spouse, child.

(e) Consents of the persons referenced in 1 (c) are filed herewith or were filed previously.

(f) The estate is solvent and the assets are sufficient to satisfy all specific legacies.

(g) Final distribution of the estate can be made within 12 months after the date of my appointment.

2. Property of the estate is briefly described as follows:

Description	Estimated Value
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

3. I acknowledge that I must file a Final Report Under Modified Administration no later than 10 months after the date of appointment and that, upon request of any interested person, I must provide a full and accurate Inventory and Account to all interested persons.

4. I acknowledge the requirement under Modified Administration to make full distribution within 12 months after the date of appointment and I understand that the Register of Wills and Orphans' Court are prohibited from granting extensions under Modified Administration.

5. I acknowledge and understand that Modified Administration shall continue as long as all the requirements are met.

I solemnly affirm under the penalties of perjury that the contents of the foregoing are true to the best of my knowledge, information and belief.

Attorney

Personal Representative

Address

Personal Representative

Address

Telephone

(c) Consent

An election for modified administration may be filed if

all the residuary legatees of a testate decedent and the heirs at law of an intestate decedent consent in the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND
ESTATE OF _____ Estate No. _____

CONSENT TO ELECTION FOR
MODIFIED ADMINISTRATION

I am a [] residuary legatee, [] trustee of a trust that is a residuary legatee, or [] heir of the decedent who died intestate. I consent to Modified Administration and acknowledge that under Modified Administration:

1. Instead of filing a formal Inventory and Account, the personal representative will file a verified Final Report Under Modified Administration no later than 10 months after the date of appointment.

2. Upon written request to the personal representative by any legatee not paid in full or any heir-at-law of a decedent who died without a will, a formal Inventory and Account shall be provided by the personal representative to the legatees or heirs of the estate.

3. At any time during administration of the estate, I may revoke Modified Administration by filing a written objection with the Register of Wills. Once filed, the objection is binding on the estate and cannot be withdrawn.

4. If Modified Administration is revoked, the estate will

proceed under Administrative Probate and the personal representative shall file a formal Inventory and Account, as required, until the estate is closed.

5. Unless I waive notice of the verified Final Report Under Modified Administration, the personal representative will provide a copy of the Final Report to me upon its filing, which shall be no later than 10 months after the date of appointment.

6. Final Distribution of the estate will occur not later than 12 months after the date of appointment of the personal representative.

Signature of Residuary Legatee
or Heir

Type or Print Name

 Surviving Spouse Child
 Residuary Legatee or Heir
serving as Personal
Representative

Signature of Residuary Legatee
or Heir

Type or Print Name

 Surviving Spouse Child
 Residuary Legatee or Heir
serving as Personal
Representative

Signature of Trustee

Signature of Trustee

Type or Print Name

Type or Print Name

. . .

REPORTER'S NOTE

In Code, Estates and Trusts Article, §5-702, the term "trustee of each trust created in the decedent's will" has been changed by Chapter 477, Acts of 2004 (SB 686) to "trustee of each trust that is a residuary legatee." To conform Rule 6-455 to the new law, changes are proposed to the form of election in section (b) and the consent form in section (c).

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-456 to remove signature lines of interested persons from the consent form, as follows:

Rule 6-456. MODIFIED ADMINISTRATION - EXTENSION OF TIME TO FILE A FINAL REPORT AND TO MAKE DISTRIBUTION

(a) Generally

The initial time periods for filing a final report and for making distribution to each legatee and heir may be extended for 90 days if the personal representative and each interested person sign the form set out in section (b) of this Rule and file the form within 10 months of the date of appointment of the personal representative.

(b) Form

A consent to an extension of time to file a final report and to make distribution in a modified administration shall be in substantially the following form:

BEFORE THE REGISTER OF WILLS FOR _____, MARYLAND
IN THE ESTATE OF _____ Estate No. _____
Date of Death _____ Date of Appointment
Of Personal Representative _____

CONSENT TO EXTEND TIME TO FILE FINAL REPORT
AND TO MAKE DISTRIBUTION IN A MODIFIED ADMINISTRATION

We, the Personal Representative and Interested Persons in the above-captioned estate, consent to extend for 90 days the time to file a final report and to make distribution in the modified administration of the estate. We acknowledge that this consent must be filed within 10 months of the date of appointment of the personal representative.

Personal Representatives
(Type or Print Names)

_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature

Interested Persons
(Type or Print Names)

_____	_____
Name	Signature
_____	_____
Name	Signature
_____	_____
Name	Signature
[_____]	[_____]
[Name]	[Signature]
[_____]	[_____]
[Name]	[Signature]

MARYLAND RULES OF PROCEDURE
TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS
AND COURT OF SPECIAL APPEALS
CHAPTER 500 - RECORD EXTRACT, BRIEFS, AND ARGUMENT

AMEND Rule 8-501 (b) to add child in need of assistance, permanency planning proceedings, and termination of parental rights to the list of exceptions and to make certain stylistic changes, as follows:

Rule 8-501. RECORD EXTRACT

. . .

(b) Exceptions

Unless otherwise ordered by the court, a record extract shall not be filed (1) when an agreed statement of the case is filed pursuant to Rule 8-207 or 8-413 (b) or (2) in an appeal in the Court of Special Appeals from [juvenile delinquency proceedings, inmate grievance proceedings, extradition proceedings or a criminal case] a criminal case or from child in need of assistance proceedings, extradition proceedings, inmate grievance proceedings, juvenile delinquency proceedings, permanency planning proceedings, or termination of parental rights proceedings.

Cross reference: See Rule 8-504 (b) for the contents of a required appendix to appellant's brief in criminal cases in the Court of Special Appeals.

. . .

REPORTER'S NOTE

Based on a request from the Office of the Public Defender, the Rules Committee recommends adding to subsection (b)(2) of Rule 8-501 more exceptions to the requirement that a record extract be filed. The Office of the Public Defender handles the majority of child in need of assistance, termination of parental rights, and permanency planning cases in the Court of Special Appeals, and not being required to file record extracts in these cases would save money and storage space.

MARYLAND RULES OF PROCEDURE
TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS
AND COURT OF SPECIAL APPEALS
CHAPTER 500 - RECORD EXTRACTS, BRIEFS, AND ARGUMENT

AMEND Rule 8-502 (c) to decrease the number of copies of the record extract to be filed from 15 to seven and to add language allowing the court by order to require a different number of copies, as follows:

Rule 8-502. FILING OF BRIEFS

. . .

(c) Filing and Service

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

. . .

REPORTER'S NOTE

Leslie Gradet, Esq., Clerk of the Court of Special Appeals, has requested that the number of copies of the record extract that must be filed be lowered from 15 to seven and that the court be allowed to order additional copies if it is necessary. She explained that the record extracts take up a great deal of space, and the change would help the situation and would cause no hardship. The Rules Committee recommends this change.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 600 - DISPOSITION

AMEND Rule 8-602 to allow an individual judge to dismiss an appeal for any of the reasons listed in section (a) of the Rule, to provide generally for reconsideration of an order dismissing an appeal, to provide that a motion for reconsideration of an order dismissing an appeal may be denied only by the number of judges required by law to decide an appeal, to require reinstatement of an appeal under certain circumstances, to provide for reinstatement of an appeal upon terms and conditions prescribed by the appellate court, to prohibit further reconsideration of an order dismissing an appeal under certain circumstances, and to make certain stylistic changes, as follows:

Rule 8-602. DISMISSAL BY COURT

(a) Grounds

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

- (1) the appeal is not allowed by these rules or other law;
- (2) the appeal was not properly taken pursuant to Rule 8-201;
- (3) the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202;
- (4) the appellant has failed to comply with the requirements of Rule 8-205;
- (5) the record was not transmitted within the time prescribed

by Rule 8-412, unless the court finds that the failure to transmit the record was caused by the act or omission of a judge, a clerk of court, the court stenographer, or the appellee;

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

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

(8) the style, contents, size, format, legibility, or method of reproduction of a brief, appendix, or record extract does not comply with Rules 8-112, 8-501, 8-503, or 8-504;

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

(10) the case has become moot.

Cross reference: Rule 8-501 (m).

(b) Determination by Court

[Except as otherwise permitted in this section, a motion to dismiss shall be ruled on by the number of judges of the Court required by law to decide an appeal. The Chief Judge or a judge of the Court designated by the Chief Judge may rule on a motion to dismiss that is based on any reason set forth in subsections (2), (3), (5), (7), or (8) of section (a) of this Rule or on a motion to dismiss based on subsection (a) (4) of this Rule challenging the timeliness of the information report.] An order of the Court dismissing an appeal or denying a motion to dismiss an appeal may be entered by the Chief Judge, an individual judge of the Court designated by the Chief Judge, or the number of

judges required by law to decide an appeal.

Cross reference: For the number of judges required by law to decide an appeal, see Maryland Constitution, Article IV, §14 and Code, Courts Article, §1-403.

(c) Reconsideration of Dismissal

(1) [When Order was Entered by Individual Judge] Motion for Reconsideration

[If an appeal was dismissed by the ruling of an individual judge pursuant to section (b) of this Rule, the order dismissing the appeal, on motion filed within ten days after entry of the order, shall be reviewed by the number of judges of the Court required by law to decide an appeal. The order dismissing the appeal (A) shall be rescinded if a majority of those judges decides that the motion to dismiss should not have been granted, (B) may be rescinded if the appeal was dismissed pursuant to subsection (4), (5), or (7) of section (a) of this Rule, and the Court is satisfied that the failure to file a report, transmit the record, or file a brief or record extract within the time prescribed by these Rules was unavoidable because of sickness or other sufficient cause, and (C) may be rescinded if the appeal was dismissed pursuant to subsection (a) (8) of this Rule and the Court is satisfied that a brief, appendix, or record extract complying with the Rules will be filed within a time prescribed by the Court.] No later than 10 days after the entry of an order dismissing an appeal, a party may file a motion for reconsideration of the dismissal.

(2) [When Order was Entered by Court] Number of Judges;
Exception

[If an appeal has been dismissed by the ruling of the Court or a panel pursuant to subsection (4), (6), (8), or (9) of section (a) of this Rule, the order dismissing the appeal, on motion filed within ten days after entry of the order, may be rescinded if the Court is satisfied that a report, record, brief, appendix, or record extract complying with the Rules will be filed or the proper party will be substituted within a time to be prescribed by the Court.] A motion for reconsideration shall be determined by the number of judges required by law to decide an appeal, except that an individual judge who entered an order of dismissal may rescind the order and reinstate the appeal. The judges who determine the motion for reconsideration may include one or more of the judges who entered the order of dismissal.

Committee note: Although an individual judge who entered an order of dismissal may rescind the order and reinstate the appeal upon a timely filed motion for reconsideration, a motion for reconsideration of the dismissal may be denied only by the number of judges required by law to decide an appeal.

(3) [Reinstatement on Docket] Determination of Motion for
Reconsideration

[If the order of dismissal is rescinded, the case shall be reinstated on the docket on the terms prescribed by the Court.]

The Court shall rescind an order of dismissal if:

(A) the Court determines that the appeal should not have

been dismissed;

(B) the appeal was dismissed pursuant to subsection (a)(4), (a)(5), or (a)(7) of this Rule and the Court finds that there was good cause for the failure to comply with the applicable subsection of the Rule; or

(C) the appeal was dismissed pursuant to subsection (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(9) of this Rule and the Court finds that the interests of justice require reinstatement of the appeal.

(4) [No Further Reconsideration by the Court] Reinstatement

[When an order dismissing an appeal is reviewed by the Court on motion filed pursuant to this section, the moving party may not obtain further reconsideration of the dismissal pursuant to Rule 8-605.] If an order of dismissal is rescinded, the case shall be reinstated on the docket on the terms and conditions prescribed by the Court.

(5) No Further Reconsideration by the Court

If an order dismissing an appeal is reconsidered under this section, the party who filed the motion for reconsideration may not obtain further reconsideration of the motion.

(d) Judgment Entered After Notice Filed

A notice of appeal filed after the announcement or signing by the trial court of a ruling, decision, order, or judgment but before entry of the ruling, decision, order, or judgment on the docket shall be treated as filed on the same day as, but after,

the entry on the docket.

(e) Entry of Judgment Not Directed Under Rule 2-602

(1) If the appellate court determines that the order from which the appeal is taken was not a final judgment when the notice of appeal was filed but that the lower court had discretion to direct the entry of a final judgment pursuant to Rule 2-602 (b), the appellate court may, as it finds appropriate, (A) dismiss the appeal, (B) remand the case for the lower court to decide whether to direct the entry of a final judgment, (C) enter a final judgment on its own initiative or (D) if a final judgment was entered by the lower court after the notice of appeal was filed, treat the notice of appeal as if filed on the same day as, but after, the entry of the judgment.

(2) If, upon remand, the lower court decides not to direct entry of a final judgment pursuant to Rule 2-602 (b), the lower court shall promptly notify the appellate court of its decision and the appellate court shall dismiss the appeal. If, upon remand, the lower court determines that there is no just reason for delay and directs the entry of a final judgment pursuant to Rule 2-602 (b), the case shall be returned to the appellate court after entry of the judgment. The appellate court shall treat the notice of appeal as if filed on the date of entry of the judgment.

(3) If the appellate court enters a final judgment on its own initiative, it shall treat the notice of appeal as if filed on the date of the entry of the judgment and proceed with the

appeal.

Cross reference: Rule 8-206.

Source: This Rule is in part derived from former Rules 1035 and 835 and in part new.

REPORTER'S NOTE

The amendments to Rule 8-602 are proposed at the request of the Chief Judge of the Court of Special Appeals.

As section (b) is proposed to be amended, the authority of the Chief Judge or a judge designated by the Chief Judge to enter an order dismissing an appeal is no longer limited to the entry of orders based only on certain subsections of section (a) of the Rule.

Subsection (c)(1) provides that a party may file a motion for reconsideration of a dismissal no later than 10 days after the entry of an order dismissing the appeal. The distinction in current section (c) between cases in which the order was entered by an individual judge and cases in which the order was entered by the court has been eliminated.

Under subsection (c)(2), an individual judge who entered an order of dismissal may rescind the order and reinstate the appeal, but a decision not to reinstate may be made only by the number of judges required by law to decide an appeal. See Maryland Constitution, Article IV, §14 and Code, Courts Article, §1-403, cited in a proposed new cross reference following section (b) of the Rule. The panel of judges who rules upon a motion for reconsideration of the dismissal may include the judge(s) who entered the order of dismissal.

Subsection (c)(3) lists the three circumstances that require rescission of the order of dismissal: (1) if the appeal should not have been dismissed, (2) if the appeal was dismissed pursuant to subsection (a)(4), (a)(5), or (a)(7) and there was good cause for the failure to timely file certain papers or transmit the record; or (3) if the interests of justice require reinstatement of an appeal that was dismissed pursuant to any of subsections (a)(4) - (a)(9) of the Rule. Subsections (a)(1), (a)(2), (a)(3), and (a)(10) are not included in the third category because an appeal that was correctly dismissed on any of these grounds cannot be reinstated.

Subsection (c)(4) carries forward the substance of current subsection (c)(3), with the phrase "and conditions" added for clarity.

Subsection (c)(5) carries forward the substance of current subsection (c)(4). The specific reference to reconsideration of the dismissal pursuant to Rule 8-605 is proposed to be eliminated as too narrow.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 - CATASTROPHIC HEALTH EMERGENCY

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MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 - CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1101, as follows:

Rule 15-1101. CONSTRUCTION

The Rules in this Chapter shall be construed to facilitate the efficient adjudication of any proceedings brought pursuant to Code, Health-General Article, §18-906 and Code, Public Safety Article, §14-3A-05. These Rules do not prohibit an individual from seeking habeas corpus relief.

Source: This Rule is new.

REPORTER'S NOTE

The first sentence of the Rule provides a reference to the underlying statutes upon which the Chapter is based. The second sentence was added by the Rules Committee to make clear that an individual seeking relief pursuant to the Catastrophic Health Emergency statutes and rules is not prohibited from also seeking habeas corpus relief.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 - CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1102, as follows:

Rule 15-1102. DEFINITIONS

The definitions set forth in Code, Health-General Article, §§1-101 and 18-901 and Code, Public Safety Article, §§1-101 and 14-3A-01, are incorporated in this Chapter by reference.

Source: This Rule is new.

REPORTER'S NOTE

In lieu of repeating the definitions in the Code that are applicable to the Rules, the Committee recommends incorporating them by reference.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 - CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1103, as follows:

Rule 15-1103. INITIATION OF PROCEEDING TO CONTEST ISOLATION OR QUARANTINE

(a) Petition for Relief

An individual or group of individuals required to go to or remain in a place of isolation or quarantine by a directive of the Secretary issued pursuant to Code, Health-General Article, §18-906 or Code, Public Safety Article, §14-3A-05, may contest the isolation or quarantine by filing a petition for relief with the Clerk of the Court of Appeals.

(b) Provisional Sealing

If the petitioner requests, the Clerk shall seal the record on a provisional basis, subject to further order of court.

Cross reference: See Rules 16-1001 through 16-1011 concerning access to court records.

(c) Order Assigning Judge and Setting Hearing

The Chief Judge of the Court of Appeals or that judge's designee shall enter an order (1) assigning the matter to a judge of any circuit court to hear the action and (2) setting the date, time, and location of a hearing on the petition or directing that the clerk of the circuit court to which the action has been assigned promptly set the hearing and notify the parties. The

Clerk of the Court of Appeals shall provide a copy of the order to all parties.

Cross reference: See Code, Health-General Article, §18-906 (b), Code, Public Safety Article, §14-3A-05 (c), and Rule 15-1104 (c) concerning the time within which a hearing is to be conducted.

(d) Notice

No later than the day after the petition was filed, the Clerk of the Court of Appeals shall provide a copy of the petition and a notice of the date that it was filed to the Secretary or other official designated by the Secretary and to counsel to the Department of Health and Mental Hygiene.

(e) Answer to Petition

The Secretary or other official designated by the Secretary may file an answer to the petition. If an answer is not filed, the allegations of the petition shall be deemed denied.

Source: This Rule is new.

REPORTER'S NOTE

Section (a) is derived from Code, Health General Article, §18-906 (b) and Code, Public Safety Article, §14-3A-05 (c). The statutes are silent as to where the petition for relief is to be filed. To avoid the involvement of numerous courts and possibly conflicting orders, the Rules Committee recommends that the petition be filed with the Clerk of the Court of Appeals. The Committee debated including in the Rule an alternate filing venue, such as "any circuit court" or "the circuit court nearest to the challenged isolation or quarantine that is not itself under quarantine," in the event that Annapolis is under quarantine. The Committee declined to include such a provision in the proposed Rule in light of Rule 1-322 (a) (allowing pleadings and papers to be filed with a judge of a court), the availability of *habeas corpus*, and the ability of the Court of Appeals to craft emergency measures, as needed.

To avoid unnecessary intrusion into the privacy of individuals, section (b) provides that if the petitioner requests, the record is provisionally sealed by the Clerk, subject to further order of court. A proposed cross reference to Rules 16-1001 through 16-1011 follows section (b).

Section (c) is new and is adapted from Rule 16-752, Order Designating Judge (in attorney disciplinary proceedings). The Committee recognizes that the Court of Appeals has original jurisdiction over attorney disciplinary proceedings but not over proceedings contesting isolation or quarantine, but it believes that the mechanism set forth in Rule 16-752 provides an appropriate model for the efficient handling of proceedings under proposed new Title 15, Chapter 1100.

To ensure that the Department of Health and Mental Hygiene is made aware that a petition has been filed, section (d) requires that the Clerk of the Court of Appeals provide to the Secretary or other official designated by the Secretary and to Counsel to the Department of Health and Mental Hygiene a copy of the petition and notice of the date of the filing of the petition.

Under section (e), if a petition is not answered, its allegations are deemed denied. In case of a widespread epidemic, this gives the Department of Health and Mental Hygiene some leeway if it is difficult for the Department to file an answer.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 - CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1104, as follows:

Rule 15-1104. PROCEEDINGS IN THE CIRCUIT COURT

(a) Appointment of Counsel

If a petition has been filed pursuant to Rule 15-1103 by an individual or group not represented by counsel and the petitioner does not decline court-appointed counsel, the circuit court shall appoint counsel in accordance with Code, Health-General Article, §18-906 (c), or the Court of Appeals shall appoint counsel in accordance with Code, Public Safety Article, §14-3A-05 (f)(2). The court making the appointment may order the Secretary to pay reasonable fees and costs of the court-appointed counsel.

(b) Consolidation of Actions, Claims, and Issues

Consolidation of actions, claims, and issues is governed by Rules 2-327 and 2-503 and by Code, Health General Article, §18-906 (b)(7) or Code, Public Safety Article, §14-3A-05 (f)(1).

(c) Time for Hearing

The circuit court shall conduct a hearing within three days after the date that the petition was filed, except that the court may extend the time for the hearing:

(1) upon a request by the Secretary or other designated official in accordance with Code, Health-General Article, §18-906

(b)(4) or Code, Public Safety Article, §14-3A-05 (c)(4);

(2) upon a request by a petitioner for good cause; or

(3) to effectuate the consolidation of proceedings.

(d) Appearance at and Conduct of the Hearing

If one or more of the parties, their counsel, or witnesses are unable to appear personally at the hearing, and the fair and effective adjudication of the proceedings permits, the court may:

(1) accept pleadings and admit documentary evidence submitted or proffered by courier, facsimile, or electronic mail;

(2) if feasible, conduct the proceedings by means of a telephonic conference call, live closed circuit television, live internet or satellite video conference transmission, or other available means of communication that reasonably permits the parties or their authorized representatives to participate fully in the proceedings; and

(3) decline to require strict application of the rules of evidence other than those relating to the competency of witnesses and lawful privileges.

Source: This Rule is new.

REPORTER'S NOTE

Section (a) is derived from Code, Health General Article, §18-906 (c) and Code, Public Safety Article, §14-3A-05 (f)(2), which provide for the appointment of counsel to represent a petitioner filing pursuant to Rule 15-1103. The statutes are silent as to whether a petitioner may decline court-appointed counsel and as to who pays the costs of counsel. Section (a) fills in the gaps on these issues.

Section (b) is derived from Code, Health General Article,

§18-906 (b)(7) and Code, Public Safety Article, §14-3A-05 (f)(1), but also refers to Rules 2-327 and 2-503, which are applicable to consolidation of actions, claims, and issues.

Section (c) is derived from the provisions of Code, Health General Article, §18-906 (b)(3) and Code, Public Safety Article, §14-3A-05 (c)(3), which provide for a hearing within three days after a request for a hearing is received. The provision allowing the court to extend the time for the hearing is derived from Code, Health General Article, §18-906 (b)(4) and Code, Public Safety Article, §14-3A-05 (c)(4), with the addition of provisions allowing an extension upon a request by a petitioner for good cause or to effectuate the consolidation of proceedings.

Section (d) is new. It gives the court flexibility in conducting the hearing, because a catastrophic health emergency could prevent participants in the hearing from personally attending. The flexibility includes allowing the court to decline to require strict application of the rules of evidence, except as to the competency of witnesses and lawful privileges.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 - CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1105, as follows:

Rule 15-1105. DECISION AND ORDER

(a) Factors to be Considered

In making its determination on the petition, the court shall consider the following factors:

(1) the means of transmission of the disease or outbreak that is believed to be caused by exposure to a deadly agent;

(2) the degree of contagion that is associated with exposure to a deadly agent;

(3) the degree of public exposure to the disease or outbreak;

(4) the risk and severity of the possible results from infection, injury, or death of an individual or group of individuals by a deadly agent;

(5) whether the petitioner or the group of individuals similarly situated to the petitioner may have been exposed to a deadly agent;

(6) the potential risk to the public health of an order enjoining the Secretary's directive or otherwise requiring the immediate release from isolation or quarantine of the petitioner or of an individual or group of individuals similarly situated;
and

(7) any other material facts.

(b) Decision

The court shall order the release of the petitioner unless the court finds by a preponderance of the evidence that the Secretary's directive to isolate or quarantine is necessary and reasonable under the circumstances to prevent or reduce the spread of the disease or outbreak believed to have been caused by exposure to a deadly agent. Otherwise, the court shall deny the petition and issue an order authorizing the continued isolation or quarantine of the petitioners.

(c) Statement of Reasons

The court shall prepare and file or dictate into the record a brief statement of the reasons for its decision and enter an order in accordance with section (d) of this Rule. If dictated into the record, the statement shall be transcribed promptly.

(d) Order

(1) Generally

The order shall:

(A) be in writing;

(B) be filed no later than the next business day after the hearing concludes; and

(C) be given to the parties or their counsel of record, except as otherwise provided in subsection (d)(2)(A) of this Rule.

(2) Orders Authorizing Continued Isolation or Quarantine

An order authorizing continued isolation or quarantine of the individual or group of individuals shall:

(A) be served by the Secretary or the Secretary's designee on the individual or group of individuals specified in the order, unless service is impractical due to the number or geographical dispersion of the affected individuals, in which case the court shall provide for notice to the affected individuals by personal service or by any means available;

(B) be effective for a specific period of time not to exceed 30 days; and

(C) reasonably identify the isolated or quarantined individual or group of individuals by name or by shared characteristics; and

(D) specify all material findings of fact and conclusions of law and may incorporate by reference a transcript of the proceedings.

Committee note: An order entered under section (d) of this Rule must either order the release of the petitioner (with or without a stay of that order) or authorize the continued isolation or quarantine imposed by the Secretary. Except as provided by Rule 15-1104 (a), the Rules in this Chapter do not authorize the court to grant any other relief.

(e) Stay

Upon request of the Secretary, the court may stay an order releasing the petitioner pending appellate review [**Optional additional language: upon such terms and conditions that the court may impose**] if the request is accompanied by an undertaking in writing or on the record that the Secretary will seek

immediate appellate review of the order and the petitioner has been afforded an opportunity to be heard.

Source: This Rule is new.

REPORTER'S NOTE

Subsections (a)(1), (2), and (3) are derived from Code, Health General Article, §18-906 (b)(5)(i) 2 and Code, Public Safety Article, §14-3A-05 (c)(5)(ii). The Committee proposes additional factors for the circuit court to consider, including the risk and severity of the possible results of the deadly agent, whether the petitioner has been exposed to the deadly agent, and the potential risk to the public health if a petitioner or group similarly situated to the petitioner is released from isolation or quarantine.

Section (b) is derived from Code, Health General Article, §18-906 (b)(5)(i)1 and Code, Public Safety Article, §14-3A-05 (c)(5)(i), to which the Rules Committee has added the preponderance of the evidence standard, the same burden in cases involving petitions for a writ of habeas corpus.

Section (c) is new and is based on the language of section (a) of Rule 2-522, Court Decision - Jury Verdict, which provides that at the time judgment is entered, the judge shall prepare and file or dictate into the record a brief statement of the reasons for the decision.

Section (d) is in part based on Code, Health General Article, §18-906 (b)(5)(ii) and (iii) and Code, Public Safety Article, §14-3A-05 (c)(6) and (d)(1), which pertain only to orders authorizing continued isolation or quarantine. The Rule covers all orders, generally, in addition to orders authorizing continued isolation or quarantine. Subsection (d)(1) of the Rule requires that the order be filed no later than the next business day after the hearing concludes. This is to avoid the possibility of a court holding the matter *sub curia* indefinitely. Subsection (d)(2) of the Rule provides for notice of an order authorizing continued isolation or quarantine "by personal service or by any means available."

The Committee believes that an order entered under section (d) of the Rule must either order the release of the petitioner (with or without a stay of that order) or authorize the continued isolation or quarantine imposed by the Secretary. The circuit court may not by that order fashion a different remedy, and a proposed Committee note following the section states that the Rules in the Chapter do not authorize the court to grant other

relief, except as provided by Rule 15-1104 (a).

Section (e) allows the court to enter a stay of an order releasing the petitioner, provided that the Secretary's request for a stay is accompanied by an undertaking that the Secretary will seek immediate appellate review and the petitioner is afforded an opportunity to be heard. The optional language, "upon such terms and conditions that the court may impose" pertains to a policy issue as to whether the circuit court should be able to impose additional conditions on the Secretary, such as a requirement to provide periodic reports to the circuit court as to the status of the appeal and as to the Secretary's determination that isolation or quarantine continues to be necessary.

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 1100 - CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1106, as follows:

Rule 15-1106. MOTION TO CONTINUE ORDER

Before the expiration of a court order authorizing or continuing isolation or quarantine, the Secretary may move for a continuation of the order for another period not to exceed 30 days. The motion shall be filed in the court that entered the order. Unless the petitioner consents, the motion shall not be granted without a hearing.

Source: This Rule is new.

REPORTER'S NOTE

Rule 15-1106 is derived from Code, Health General Article, §18-906 (b) (5) (iv) 1 and Code, Public Safety Article, §14-3A-05 (d) (2), which provide that the Secretary may move to continue isolation or quarantine for subsequent 30-day periods. The last sentence of the Rule reflects the Committee's belief that a motion to continue an isolation or quarantine should not be granted without a hearing unless the petitioner consents.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1100 - CATASTROPHIC HEALTH EMERGENCY

ADD new Rule 15-1107, as follows:

Rule 15-1107. APPELLATE REVIEW

A party adversely affected by the court's ruling on a petition for relief or on a subsequent motion to continue an order authorizing isolation or quarantine shall have the right of appellate review. The appellate court shall decide the appeal as soon as is reasonably practicable.

Source: This Rule is new.

REPORTER'S NOTE

Rule 15-1107 is new. Although the statutes do not provide a specific mechanism concerning appellate review, the Committee proposes the addition of this provision pursuant to the language in Code, Health General Article, §18-906 (d) and Code, Public Safety Article, §14-3A-05 (f)(3), stating that the Court of Appeals shall adopt emergency rules of procedure to facilitate the efficient adjudication of catastrophic health emergency proceedings.

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 100 - APPLICABILITY AND CITATION

AMEND Rule 1-101 (o) to add a reference to catastrophic health emergencies, as follows:

Rule 1-101. APPLICABILITY

. . .

(o) Title 15

Title 15 applies to special proceedings relating to arbitration, catastrophic health emergencies, contempt, habeas corpus, health claims arbitration, injunctions, judicial releases of individuals confined for mental disorders, mandamus, the Maryland Automobile Insurance Fund, name changes, and wrongful death.

. . .

REPORTER'S NOTE

Rule 1-101 is proposed to be amended to include proceedings relating to catastrophic health emergencies pursuant to Code, Health-General Article, §18-906 and Code, Public Safety Article, §14-3A-05.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 5-101 for conformity with proposed new Rule 15-1104, as follows:

Rule 5-101. SCOPE

. . .

(c) Discretionary Application

In the following proceedings, the court may, in the interest of justice, decline to require strict application of the rules in this Title other than those relating to the competency of witnesses:

(1) The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 5-104 (a);

(2) Proceedings for revocation of probation under Rule 4-347;

(3) Hearings on petitions for post-conviction relief under Rule 4-406;

(4) Plenary proceedings in the Orphans' Court under Rule 6-462;

(5) Waiver hearings under Rule 11-113;

(6) Disposition hearings under Rule 11-115;

(7) Modification hearings under Rule 11-116; [and]

(8) Catastrophic health emergency proceedings under Title 15,

Chapter 1100; and

[(8)] (9) Any other proceeding in which, prior to the adoption of the rules in this Title, the court was authorized to decline to apply the common-law rules of evidence.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 5-101 conforms the Rule to the provisions of proposed new Rule 15-1104 (d)(3).

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT AND OTHER PERSONS

AMEND Rule 16-405 to delete the word "videotape" from the title, to add references to audio and audio-video recording throughout the Rule, to add to section b the phrase "or other designee of the court," and to add certain provisions concerning the shielding of certain portions of electronic recordings of proceedings, as follows:

Rule 16-405. ~~[VIDEOTAPE]~~ ELECTRONIC AUDIO AND AUDIO-VIDEO
RECORDING OF CIRCUIT COURT PROCEEDINGS

a. Authorization.

The Circuit Administrative Judge for a judicial circuit, after consultation with the County Administrative Judge for a county, may authorize the electronic audio or audio-video recording ~~[by videotape]~~ in courtrooms or hearing rooms in that county of proceedings required or permitted to be recorded by Rule 16-404 e [in courtrooms or hearing rooms in that county].

b. Identification.

The clerk or other designee of the court shall affix to the ~~[videotape]~~ electronic audio or audio-video recording a label containing the following information:

1. the name of the court;

[3.] 2. the docket reference of each proceeding included on the [tape] recording; [and]

[2.] 3. the date on which the [videotape] proceeding was recorded; and

4. any other identifying letters, marks, or numbers.

c. Trial Log; Exhibit List.

The clerk or other designee of the court shall keep a written log identifying each proceeding recorded on [a videotape] an audio or audio-video recording and, for each proceeding recorded [on the tape], a log listing the [tape] recording references for the beginning and end of each witness's testimony, [and] an exhibit list, and any portion of the audio or audio-video recording that has been safeguarded pursuant to section d of this Rule. The original logs and exhibit list shall remain with the original papers in the circuit court. A copy of the logs and the exhibit list shall be kept with the [videotape] audio or audio-video recording.

d. Safeguarding Confidential or Non-Public Portions of Proceedings

If a portion of a proceeding that is recorded by audio or audio-video recording involves placing on the record matters that would not be heard in open court or open to public inspection, the court shall direct that appropriate safeguards be placed on that portion of the recording.

[d.] e. Presence of Court Reporter Not Necessary; Conflicts

With Other Rules.

1. If circuit court proceedings are recorded by [videotape] audio or audio-video recording, it is not necessary for a court reporter to be present in the courtroom.

2. In the event of a conflict between this Rule and another Rule, this Rule shall prevail.

Source: This Rule is derived in part from former Rule 1224A and is in part new.

REPORTER'S NOTE

The Rules Committee proposes amendments to sections a through c of Rule 16-405, in conjunction with amendments to Rule 16-406, to facilitate the Committee's policy recommendation that electronic audio recordings of proceedings and the audio portion of audio-video recordings of proceedings should, to the extent feasible, be treated the same for purposes of public access.

Proposed new section d of Rule 16-405 requires the shielding of recorded matters that would not be heard in open court, such as bench conferences, attorney-client conversations, or material the parties agree or the court orders be kept confidential, such as trade secrets or sensitive personal financial or medical information.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT AND OTHER PERSONS

AMEND Rule 16-406 to add references to audio recording in the title and throughout the Rule, to expand the access provision in section b, to add a new section c pertaining to obtaining a copy of an audio recording or the audio portion of an audio-video recording, to make sections d and e applicable only to audio-video recordings, and to make certain stylistic changes, as follows:

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

a. Control - In General.

[Videotape] Electronic audio and audio-video recordings made pursuant to Rules 16-404 and 16-405 are under the control of the court having custody of them. Access to and copying of those recordings are subject to the provisions of this Rule and Rule 16-405 d.

Cross reference: Code, State Government Article, §10-615.

b. [Direct] Access - In General.

No person other than a duly authorized court official or employee shall have direct access to or possession of an official [videotape] audio or audio-video recording. Subject to Rule 16-405 d and unless otherwise ordered by the court, any person may

view an official audio-video recording at the times and places determined by the court having custody of the recording. Copies of audio recordings and, where practicable, the audio portion of audio-video recordings, may be purchased as provided in this Rule.

c. Right to Obtain Copy of Audio Recording or Audio Portion of Audio-Video Recording

Subject to Rule 16-405 d and unless otherwise ordered by the court, the authorized custodian of an official audio recording or the audio portion of an audio-video recording shall make a copy of the audio recording or, if practicable, the audio portion of the audio-video recording, or any portion thereof, available to any person upon written request and the payment of reasonable costs, unless payment is waived by the court.

[c.] d. Right to Copy of Audio-Video Recording; Restrictions.

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

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

(B) a stenographer or transcription service designated by the court for the purpose of preparing an official transcript from the recording; and

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

2. Unless authorized by an order of court, a person who receives a copy of [a videotape] an audio-video recording pursuant to this section shall not (A) make or cause to be made any additional copy of the recording or (B) except for a non-sequestered witness or an agent, employee, or consultant of the attorney, make the recording available to any person not entitled to it pursuant to this section.

[d.] e. Other Persons.

1. This section does not apply to the [videotape] audio-video recording of (A) a criminal proceeding, (B) a revocation of probation proceeding, or (C) any proceeding that is confidential by law. The right to obtain a copy of [a videotape] an audio-video recording in those proceedings is governed solely by section c d of this Rule.

2. A person not entitled to a copy of [a videotape] an audio-video recording pursuant to section [c] d of this Rule may file a request to obtain a copy pursuant to this section. The person shall file the request with the clerk of the circuit court in which the proceeding was conducted and shall serve a copy of the request pursuant to Rule 1-321 on each party to the action.

3. A party may file a written response to the request within five days after being served with the request. Any other interested person may file a response within 5 days after service of the request on the last party to be served.

4. The clerk shall refer the request and all responses to the judge who conducted the proceeding. If the action has been transferred to another circuit court, the clerk shall transfer the matter to that court.

5. If the action is still pending in the court, the court shall deny the request unless (A) all parties have affirmatively consented and no interested person has filed a timely objection or (B) the court finds good cause to grant the request. [If the action has been transferred to another circuit court, the court shall transfer the matter to that court.] If judgment has been entered in the action, the court shall grant the request unless it finds good cause to the contrary, but the court may delay permission to obtain the copy until either all appellate proceedings are completed or the right to further appellate review has lapsed.

Source: This Rule is derived in part from former Rule 1224B and is in part new.

REPORTER'S NOTE

Rule 16-406 is proposed to be amended so that it governs both audio and audio-video recordings and effectuates several policy recommendations of the Rules Committee.

The Committee recommends that copies of audio recordings, and, if practicable, the audio portion of audio-video recordings, be available for purchase. This conforms the circuit court Rule to the current practice in the District Court. The Committee does not intend to require that circuit courts buy expensive equipment to extract audio from an audio-video recording. However, if the audio portion of an audio-video recording can be made available without undue effort, it should be treated the same as an audio recording.

As to electronic recordings that include both audio and video components, the Committee recommends that any person should be entitled to view an audio-video recording as though the person had been present in open court, but that copies should be available only as provided in the current Rule.

The Committee believes that the proposed amended Rule strikes a balance between the dangers inherent in the public distribution and broadcast of audio-video recordings of court proceedings, including the possible chilling effect on the willingness of witnesses to testify and jurors to serve, and countervailing First Amendment concerns.

The amendment to the second sentence of subsection e 5 and transfer of that sentence to subsection e 4 are stylistic only.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 500 - COURT ADMINISTRATION - DISTRICT COURT

AMEND Rule 16-504 to provide that Rules 16-405 and 16-406 apply to any audio-video recording authorized by the Chief Judge of the District Court, to add a new section b providing for the shielding of certain portions of electronic recordings of proceedings, to add a new section c pertaining to access to and the right to obtain a copy of an audio recording, and to add a Committee note pertaining to de novo appeals, as follows:

Rule 16-504. RECORDING OF PROCEEDINGS

a. Audio Recording Required.

All trials, hearings, and other proceedings before a judge in open court shall be recorded verbatim by an audio recording device provided by the [court] Court. The Chief Judge of the District Court may authorize recording by additional means, including audio-video recording. The recording shall be filed among the court records. Audio-video recording of a proceeding and access to the audio-video recording shall be in accordance with Rules 16-405 and 16-406.

b. Safeguarding Confidential or Non-Public Portions of Proceedings.

If a portion of a proceeding involves placing on the record matters that would not be heard in open court or open to public

inspection, the Court shall direct that appropriate safeguards be placed on that portion of the audio recording. The clerk shall create a written log listing the recording references for the beginning and end of the safeguarded portions of the recording. The log shall be kept with the original papers in the Court and a copy of the log shall be kept with the audio recording.

c. Access; Right to Obtain Copy of Audio Recording

No person other than a duly authorized Court official or employee shall have direct access to or possession of an official audio recording. Subject to section b of this Rule and unless otherwise ordered by the Court, the authorized custodian of an official audio recording shall make a copy of the audio recording, or any portion thereof, available to any person upon written request and the payment of reasonable costs, unless payment is waived by the Court.

Committee note: In a proceeding from which, by law, an appeal is de novo, no transcript is provided by the Court. A copy of the audio recording of the proceeding may be obtained in accordance with section c of this Rule.

Cross reference: See Rule 16-404 b concerning regulations and standards applicable to court reporting in all courts of the State.

Source: This Rule is derived in part from former M.D.R. 1224 and is in part new.

REPORTER'S NOTE

The amendments to Rule 16-504 incorporate into the Rule certain District Court Administrative Regulations and in conjunction with proposed amendments to Rules 16-405 and 16-406, to the extent feasible, establish a uniform approach to access to audio and audio-video recordings of court proceedings and the

shielding of certain portions of audio and audio-video recordings of court proceedings.

Under the current Rule and practice, the record of proceedings in the District Court is made by audio recording. The current Rule allows the Chief Judge of the District Court to authorize recording by additional means. A proposed new sentence provides that if audio-video recording is authorized, the circuit court procedures set forth in Rules 16-405 and 16-406 apply.

Proposed new section b tracks the provisions of proposed amendments to Rule 16-405 c and d that are applicable to audio recordings.

Proposed new section c and the Committee note that follows it are derived from District Court Administrative Regulations VI and VII B, which allow any person, whether or not a party, to order and receive a copy of the audio recording. Payment may be waived by the Court, if, for example, a party who is indigent requests a copy of the recording. The first sentence of section c is new. It restricts access to the official audio recording to court officials and employees to protect the original recording.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-723 to prohibit certain disclosures by certain individuals and to add language to subsection (b)(1) clarifying the confidentiality of complaints, as follows:

Rule 16-723. CONFIDENTIALITY

. . .

(b) Other Confidential [Proceedings and Records] Matters

Except as otherwise provided in these Rules, the following records and proceedings are confidential and not open to public inspection and their contents may not be revealed by the Commission, the staff of the Commission, Bar Counsel, the staff and investigators of the Office of Bar Counsel, members of the Peer Review Committee, or any attorney involved in the proceeding:

- (1) the records of an investigation by Bar Counsel, including the existence and content of any complaint;
- (2) the records and proceedings of a Peer Review Panel;
- (3) information that is the subject of a protective order;
- (4) the contents of a warning issued by Bar Counsel pursuant to Rule 16-735 (b), but the fact that a warning was issued shall be disclosed to the complainant;

(5) the contents of a prior private reprimand or Bar Counsel reprimand pursuant to the Attorney Disciplinary Rules in effect prior to July 1, 2001, but the fact that a private or Bar Counsel reprimand was issued and the facts underlying the reprimand may be disclosed to a peer review panel in a proceeding against the attorney alleging similar misconduct;

Committee note: The peer review panel is not required to find that information disclosed under subsection (b)(5) is relevant under Rule 16-743 (c)(1).

(6) the contents of a Conditional Diversion Agreement entered into pursuant to Rule 16-736, but the fact that an attorney has signed such an agreement shall be public;

(7) the records and proceedings of the Commission on matters that are confidential under this Rule;

(8) a Petition for Disciplinary or Remedial Action based solely on the alleged incapacity of an attorney and records and proceedings other than proceedings in the Court of Appeals on that petition; and

(9) a petition for an audit of an attorney's accounts filed pursuant to Rule 16-722 and records and proceedings other than proceedings in the Court of Appeals on that petition.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 16-723 were transmitted to the Court of Appeals by the 152nd Report of the Rules Committee. The Court remanded section (b) of the Rule to the Committee for reconsideration of the confidentiality issue, including whether the proposals would have (1) imposed an unconstitutional restriction on the speech of persons, particularly non-lawyer complainants and lawyer-complainants, who are not appointees to

or employees of the attorney discipline system and (2) precluded the Court of Appeals from making reference in an order to the existence of a complaint when no public charges have been filed unless the Court had given to the attorney against whom the complaint was filed notice and an opportunity to object or move for a protective order.

The Rules Committee has reviewed section (b) and recommends further changes to clarify the matters that are confidential and to specify which persons involved in the attorney disciplinary system and proceedings in the system may not disclose confidential matters.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-821 to add language pertaining to judges approved for recall, as follows:

Rule 16-821. PERFORMANCE OF MARRIAGE CEREMONIES BY JUDGES -
APPLICABILITY OF RULES

Rules 16-821 through 16-824 apply to all Maryland judges of the District Court, a circuit court, the Court of Special Appeals, and the Court of Appeals, including retired judges approved for recall pursuant to Maryland Constitution, Article IV, §3A and Code, Courts Article, §1-302, who wish to perform marriage ceremonies.

Cross reference: Code, Family Law Article, §2-406.

Source: This Rule is new.

REPORTER'S NOTE

Chapter 199 (HB 746), Acts of 2004 provides that judges approved for recall under Maryland Constitution, Article IV, §3A and Code, Courts Article, §1-302 are included as judges allowed to perform marriages. The Rules Committee recommends adding conforming language to Rule 16-821.

The legislation also provides that a Maryland judge's fee for performing a marriage ceremony is a non-refundable fee payable to the clerk before a marriage license is issued. The Committee and its General Court Administration Subcommittee considered, but rejected, a change to Rule 16-823 that would have incorporated the fee requirement into that Rule. The reasons for the rejection include (1) a judge should be able to perform a ceremony without charge if the judge chooses to do so, such as in a last-minute situation of a person called up to serve overseas

in the military, (2) the judge may not be able to easily ascertain whether the fee has been paid if, for example, the couple has the licence but misplaced the receipt, and (3) section (c) of Rule 16-823 allows the judge to refuse to perform the ceremony, which is sufficient to address any problem with the fee arrangement.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1006 to add court reporters' backup audio recordings to section (g), as follows:

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

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

. . .

(g) [Notes or a computer disk] Backup audio recordings made by any means, computer disks, and notes of a court reporter that are in the possession of the court reporter and have not been filed with the clerk.

. . .

REPORTER'S NOTE

Rule 16-1006 (g) provides that a court reporter's notes and computer disks are not subject to inspection unless otherwise provided by law or court order. The Rules Committee recommends an amendment to expressly include a court reporter's backup audio recordings made by any means. The Committee also recommends that a cross reference to Rule 16-1006 (g) be added to Rule 16-404.

The amendment to the introductory clause of the Rule is stylistic only.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 400 - ATTORNEYS, OFFICERS OF COURT AND OTHER PERSONS

AMEND Rule 16-404 to add a certain cross reference after section e and to make a certain stylistic change, as follows:

Rule 16-404. ADMINISTRATION OF COURT REPORTERS

. . .

e. Methods of Reporting - Proceedings to be Recorded.

Each court reporter assigned to record a proceeding shall record verbatim by shorthand, stenotype, mechanical, or electronic [sound] audio recording methods, electronic word or text processing methods, or any combination of these methods, and shall maintain that record subject to regulations and standards prescribed by the Chief Judge of the Court of Appeals. Unless the court and the parties agree otherwise, all proceedings held in open court, including opening statements, closing arguments, and hearings on motions, shall be recorded in their entirety.

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

Source: This Rule is derived from former Rule 1224.

REPORTER'S NOTE

The proposed substitution of the word "audio" for "sound" in section e of this Rule is stylistic only.

As to the proposed new cross reference, see the Reporter's note to the proposed amendment to Rule 16-1006.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 600 - JUDGMENT

AMEND Rule 2-602 (b) to correct an internal reference, as follows:

Rule 2-602. JUDGMENTS NOT DISPOSING OF ENTIRE ACTION

. . .

(b) When Allowed

If the court expressly determines in a written order that there is no just reason for delay, it may direct in the order the entry of a final judgment:

(1) as to one or more but fewer than all of the claims or parties; or

(2) pursuant to Rule 2-501 [(e)(3)] (f)(3), for some but less than all of the amount requested in a claim seeking money relief only.

. . .

REPORTER'S NOTE

The amendment to Rule 2-602 (b) conforms an internal reference to a recent amendment to Rule 2-501.

MARYLAND RULES OF PROCEDURE

TITLE 7 - APPELLATE AND OTHER JUDICIAL REVIEW IN CIRCUIT COURT

CHAPTER 100 - APPEALS FROM THE DISTRICT COURT TO

THE CIRCUIT COURT

AMEND Rule 7-102 (b) (1) to change the amount in controversy from \$2,500 to \$5,000, as follows:

Rule 7-102. MODES OF APPEAL

(a) De Novo

Except as provided in section (b) of this Rule, an appeal shall be tried de novo in all civil and criminal actions.

Cross reference: For examples of appeals to the circuit court that are tried de novo, see Code, Courts Article, §12-401 (f), concerning a criminal action in which sentence has been imposed or suspended following a plea of guilty or nolo contendere and an appeal in a municipal infraction or Code violation case; Code, Courts Article, §3-1506, concerning an appeal from the grant or denial of a petition seeking a peace order; and Code, Family Law Article, §4-507, concerning an appeal from the grant or denial of a petition seeking relief from abuse.

(b) On the Record

An appeal shall be heard on the record made in the District Court in the following cases:

(1) a civil action in which the amount in controversy exceeds ~~[\$2,500]~~ \$5,000 exclusive of interest, costs, and attorney's fees if attorney's fees are recoverable by law or contract;

(2) any matter arising under §4-401 (7) (ii) of the Courts Article;

(3) any civil or criminal action in which the parties so agree;

(4) an appeal from an order or judgment of direct criminal contempt if the sentence imposed by the District Court was less than 90 days' imprisonment; and

(5) an appeal by the State from a judgment quashing or dismissing a charging document or granting a motion to dismiss in a criminal case.

Source: This Rule is new but is derived in part from Code, Courts Article, §12-401 (b), (c), and (f).

REPORTER'S NOTE

Chapter 54, Acts of 2003 (SB 4) changed the amount in controversy that determines whether an appeal is de novo or on the record from \$2,500 to \$5,000. The Rules Committee recommends a conforming amendment to subsection (b)(1) of Rule 7-102.

MARYLAND RULES OF PROCEDURE
TITLE 8 - APPELLATE REVIEW IN THE COURT OF APPEALS AND
COURT OF SPECIAL APPEALS
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 8-131 to delete a certain obsolete cross reference, as follows:

Rule 8-131. SCOPE OF REVIEW

(a) Generally

The issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by the appellate court whether or not raised in and decided by the trial court. Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

[Cross reference: Code, Courts Article, §3-832.]

. . .

REPORTER'S NOTE

The cross reference that follows section (a) of Rule 8-131 is proposed to be deleted in light of the repeal of Code, Courts Article, §3-832 by Chapter 414, Acts of 2001, effective March 1, 2002.

MARYLAND RULES OF PROCEDURE

TITLE 8 - APPELLATE REVIEW IN COURT OF APPEALS

AND COURT OF SPECIAL APPEALS

CHAPTER 200 - OBTAINING REVIEW IN COURT OF SPECIAL APPEALS

AMEND Rule 8-207 (b) to correct certain internal references,
as follows:

Rule 8-207. EXPEDITED APPEAL

. . .

(b) By Election of Parties

(1) Election

Within 20 days after the first notice of appeal is filed or within the time specified in an order entered pursuant to Rule 8-206 (d), the parties may file with the Clerk of the Court of Special Appeals a joint election to proceed pursuant to this Rule.

(2) Statement of Case and Facts

Within 15 days after the filing of the joint election, the parties shall file with the Clerk four copies of an agreed statement of the case, including the essential facts, as prescribed by Rule 8-413 (b). By stipulation of counsel filed with the clerk, the time for filing the agreed statement of the case may be extended for no more than an additional 30 days.

Committee note: Rule 8-413 (b) requires that an agreed statement of the case be approved by the lower court.

(3) Withdrawal

The election is withdrawn if (1) within 15 days after its filing the parties file a joint stipulation to that effect or (2) the parties fail to file the agreed statement of the case within the time prescribed by subsection [(a)(2)] (b)(2) of this Rule. The case shall then proceed as if the first notice of appeal had been filed on the date of the withdrawal.

(4) Appellant's Brief

The appellant shall file a brief within 15 days after the filing of the agreed statement required by subsection [(a)(2)] (b)(2) of this Rule. The brief need not include statement of facts, shall be limited to two issues, and shall not exceed ten pages in length. Otherwise, the brief shall conform to the requirements of Rule 8-504. The appellant shall attach the agreed statement of the case as an appendix to the brief.

(5) Appellee's Brief

The appellee shall file a brief within 15 days after the filing of the appellant's brief. The brief shall not exceed ten pages in length and shall otherwise conform to the requirements of Rule 8-504.

(6) Reply Brief

A reply brief may be filed only with permission of the Court.

(7) Briefs in Cross-appeals

An appellee who is also a cross-appellant shall include in the brief filed under subsection [(a)(5)] (b)(5) of this Rule

the issue and argument on the cross-appeal as well as the response to the brief of the appellant. The combined brief shall not exceed 15 pages in length. Within ten days after the filing of an appellee/cross-appellant's brief, the appellant/cross-appellee shall file a brief, not exceeding ten pages in length, in response to the issues and argument raised on the cross-appeal.

(8) Oral Argument

Except in extraordinary circumstances, any oral argument shall be held within 45 days after the filing of the appellee's brief or, if the Court is not in session at that time, within 45 days after commencement of the next term of the Court. The oral argument shall be limited to 15 minutes for each side.

(9) Decision

Except in extraordinary circumstances or when a panel of the Court recommends that the opinion be reported, the decision shall be rendered within 20 days after oral argument or, if all parties submitted on brief, within 30 days after the last submission.

(10) Applicability of Other Rules

The Rules of this Title governing appeals to the Court of Special Appeals shall be applicable to expedited appeals except to the extent inconsistent with this Rule.

. . .

REPORTER'S NOTE

The proposed amendments to Rule 8-207 (b) conform three internal references to a recent reorganization of the Rule.

MARYLAND RULES OF PROCEDURE
TITLE 9 - FAMILY LAW ACTIONS
CHAPTER 200 - DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT,
AND CHILD CUSTODY

AMEND Rule 9-202 (b) to conform to a recent statutory
change, as follows:

Rule 9-202. PLEADING

. . .

(b) Child Custody

When child custody is an issue, each party shall provide
in the party's first pleading the information required by Code,
Family Law Article, [§9-209] §9.5-209 (a).

. . .

REPORTER'S NOTE

The proposed amendment to Rule 9-202 conforms the Rule to
Chapter 502, Acts of 2004 (HB 400), which repealed the Uniform
Child Custody Jurisdiction Act and enacted the Uniform Child
Custody Jurisdiction and Enforcement Act.

MARYLAND RULES OF PROCEDURE
TITLE 12 - PROPERTY ACTIONS
CHAPTER 200 - CONDEMNATION

AMEND Rule 12-207 by adding language to sections (b) and (c) referring to the exclusion of "quick take" condemnation proceedings and by adding a certain cross reference following section (b), as follows:

Rule 12-207. TRIAL

(a) Trial by Jury Unless Otherwise Elected

An action for condemnation shall be tried by a jury unless all parties file a written election submitting the case to the court for determination. All parties may file a written election submitting an issue of fact to the court for determination without submitting the whole action.

Committee note: The issue of the plaintiff 's right to condemn is a question of law for the court. *Bouton v. Potomac Edison Co.*, 288 Md. 305 (1980).

(b) Opening Statement

Each party to the action may make an opening statement to the trier of fact. If the action for condemnation is not a "quick-take" pursuant to Maryland Constitution, Art. III, §§40A-40C, the opening statement may be made before the trier of fact views the property sought to be condemned. A plaintiff may reserve the opening statement until after [the] a view. A defendant may reserve the opening statement until after [the] a

view or until the conclusion of the evidence offered by the plaintiff.

Cross reference: See *Bern-Shaw Limited Partnership v. Mayor and City Council of Baltimore*, 377 Md. 277 (2003), which held that section (c) of this Rule does not apply to a "quick-take" condemnation proceeding.

(c) View

Before the production of other evidence, the trier of fact shall view the property sought to be condemned unless the court accepts a written waiver filed by all parties or the condemnation is a "quick-take" proceeding. In a jury trial, each party shall inform the court, before the jury leaves for the view, of the name of the person to speak for that party at the view. Only one person shall represent all of the plaintiffs and only one person shall represent all of the defendants, unless the court orders otherwise for good cause. Only those persons shall be permitted to make any statement to the jury during the view, and the court shall so instruct the jury. These persons shall point out to the jury the property sought to be condemned, its boundaries, and any adjacent property of the owner claimed to be affected by the taking. They may also point out the physical features, before and after the taking, of the property taken and of any adjacent property of the owner claimed to be affected by the taking. The judge shall be present at and shall supervise the view unless the court accepts a written waiver filed by all parties.

The parties, their attorneys, and other representatives may be present during a view. A jury shall be transported to and

attend a view as a body under the charge of an officer of the court, and the expense of transporting the jury shall be assessed as costs.

Source: This Rule is derived from former Rules U15, U17, and U18.

REPORTER'S NOTE

In *Bern-Shaw Limited Partnership v. Mayor and City Council of Baltimore*, 377 Md. 277 (2003), the Court held that views of property in condemnation actions pursuant to Rule 12-207 are not appropriate for "quick-take" proceedings because the property is taken immediately for public use, and the Rule refers to property "sought to be condemned." The purpose of a "quick-take" condemnation is to permit the condemning authority to immediately alter or demolish the premises, leaving little time for a viewing at the time of the trial. The Rules Committee recommends the addition of language to sections (b) and (c) referring to the exclusion of "quick take" proceedings and a cross reference following section (b), in light of the holding in the case.

MARYLAND RULES OF PROCEDURE
TITLE 13 - RECEIVERS AND ASSIGNEES
CHAPTER 500 - REPORTS AND DISTRIBUTIONS

AMEND Rule 13-503 to add a new section (c) providing for a minimum dividend for distribution, as follows:

Rule 13-503. DISTRIBUTION

(a) Final Ratification Required

Until the final account has been audited pursuant to Rule 13-502 and finally ratified by the court, a final distribution shall not be made to creditors, the estate shall not be closed, and any bond of the receiver or assignee shall not be released.

(b) Payment

Promptly after final ratification of an auditor's account in which a distribution to creditors has been stated, the receiver or assignee shall make distribution as stated in the account.

(c) Minimum Dividend

Unless the court orders otherwise, the assignee or receiver shall not distribute to a creditor a dividend in an amount less than \$5.00, but shall treat the dividend as unclaimed funds under section (d) of this Rule.

[(c)] (d) Disposition of Unclaimed Distributions

The receiver or assignee shall pay into court any distributions that remain unclaimed for ninety days after final ratification of the auditor's final distribution account. The receiver or assignee shall file a list of the names and last

known addresses of persons who have not claimed distributions, showing the amount of each person's distribution. The clerk shall issue a receipt for the payment, and the receipt shall release and discharge the receiver or assignee making the payment. Thereafter, the unclaimed distributions shall be subject to escheat as provided by law.

Source: This Rule is derived from former Rules BP9 b 2 and BP10.

REPORTER'S NOTE

In its One Hundred Forty-Fifth Report to the Court, the Rules Committee proposed an amendment to Rule 13-503 that sets \$5.00 as the minimum amount of a dividend distributed by an assignee or receiver, unless the court orders otherwise. The Court deferred consideration of the proposed amendment, and the Rules Committee has reconsidered the proposal. The Committee resubmits its recommendation, which is consistent with Federal Bankruptcy Rule 3010 (a).

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 900 - NAME - CHANGE OF

AMEND Rule 15-901 by adding to the required contents of the petition listed in subsection (c)(1) a provision stating whether the person whose name is sought to be changed has ever registered as a sexual offender and the full name(s) under which the person was registered and by adding a certain cross reference following subsection (c)(1), as follows:

Rule 15-901. ACTION FOR CHANGE OF NAME

(a) Applicability

This Rule applies to actions for change of name other than in connection with an adoption or divorce.

(b) Venue

An action for change of name shall be brought in the county where the person whose name is sought to be changed resides.

(c) Petition

(1) Contents

The action for change of name shall be commenced by filing a petition captioned "In the Matter of . . ." [stating the name of the person whose name is sought to be changed] "for change of name to . . ." [stating the change of name desired].

The petition shall be under oath and shall contain at least the following information:

(A) the name, address, and date and place of birth of the person whose name is sought to be changed;

(B) whether the person whose name is sought to be changed has ever been known by any other name and, if so, the name or names and the circumstances under which they were used;

(C) the change of name desired;

(D) all reasons for the requested change;

(E) a certification that the petitioner is not requesting the name change for any illegal or fraudulent purpose; [and]

(F) if the person whose name is sought to be changed is a minor, the names and addresses of that person's parents and any guardian or custodian[.]; and

(G) whether the person whose name is sought to be changed has ever registered as a sexual offender and, if so, the full name(s) (including suffixes) under which the person was registered.

Cross reference: See Code, Criminal Procedure Article, §11-705, which requires a registered sexual offender whose name has been changed by order of court to send written notice of the change to the Department of Public Safety and Correctional Services within seven days after the order is entered.

(2) Documents to be Attached to Petition

The petitioner shall attach to the petition a copy of a birth certificate or other documentary evidence from which the

court can find that the current name of the person whose name is sought to be changed is as alleged.

(d) Service of Petition - When Required

If the person whose name is sought to be changed is a minor, a copy of the petition, any attachments, and the notice issued pursuant to section (e) of this Rule shall be served upon that person's parents and any guardian or custodian in the manner provided by Rule 2-121. When proof is made by affidavit that good faith efforts to serve a parent, guardian, or custodian pursuant to Rule 2-121 (a) have not succeeded and that Rule 2-121 (b) is inapplicable or that service pursuant to that Rule is impracticable, the court may order that service may be made by (1) the publication required by subsection (e)(2) of this Rule and (2) mailing a copy of the petition, any attachments, and notice by first class mail to the last known address of the parent, guardian, or custodian to be served.

(e) Notice

(1) Issued by Clerk

Upon the filing of the petition, the clerk shall sign and issue a notice that (A) includes the caption of the action, (B) describes the substance of the petition and the relief sought, and (C) states the latest date by which an objection to the petition may be filed.

(2) Publication

Unless the court on motion of the petitioner orders otherwise, the notice shall be published one time in a newspaper

of general circulation in the county at least fifteen days before the date specified in the notice for filing an objection to the petition. The petitioner shall thereafter file a certificate of publication.

(f) Objection to Petition

Any person may file an objection to the petition. The objection shall be filed within the time specified in the notice and shall be supported by an affidavit which sets forth the reasons for the objection. The affidavit shall be made on personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. The objection and affidavit shall be served upon the petitioner in accordance with Rule 1-321. The petitioner may file a response within 15 days after being served with the objection and affidavit. A person desiring a hearing shall so request in the objection or response under the heading "Request for Hearing."

(g) Action by Court

After the time for filing objections and responses has expired, the court may hold a hearing or may rule on the petition without a hearing and shall enter an appropriate order, except that the court shall not deny the petition without a hearing if one was requested by the petitioner.

Source: This Rule is derived in part from former Rules BH70 through BH75 and is in part new.

REPORTER'S NOTE

Chapter 405, Acts of 2003 (HB 12) added a requirement to Code, Criminal Procedure Article, §11-705 that a registered sexual offender must notify the Department of Public Safety and Correctional Services within seven days after a court has granted a change of name to the registrant. In light of this legislation, the Rules Committee recommends that Rule 15-901 be amended to (1) add to the contents of the petition a requirement that the petitioner indicate whether the petitioner has ever registered as a sexual offender and the full name(s) under which the petitioner was registered, and (2) add a cross reference to Code, Criminal Procedure Article, §11-705 following subsection (c)(1) of the Rule.