IN THE COURT OF APPEALS OF MARYLAND

R U L E S O R D E R

This Court's Standing Committee on Rules of Practice and Procedure having submitted its One Hundred Seventy-Fourth Report to the Court recommending adoption of the proposed deletion of existing Rules in Title 17 of the Maryland Rules and a proposed new Title 17, the proposed deletion of Rule 9-205 and a proposed new Rule 9-205, the proposed deletion of Rule 11-601, and proposed amendments to Rules 2-214, 2-303, 2-305, 2-311, 2-401, 2-403, 2-504.1, 2-510, 2-521, 2-643, 3-305, 3-510, 3-722, 4-212, 4-214, 4-216, 4-216.1, 4-217, 4-242, 4-243, 4-262 (a) and (m), 4-263 (a) and (m), 4-266, 4-326, 4-331, 4-345, 4-501, 4-504, 4-711, 5-404, 6-416, 7-112, 9-105, 14-212, 15-1001, and 15-1201, Form 4-504.1, and Rules 4 and 19 of the Rules Governing Admission to the Bar of Maryland, all as set forth in that Report published in the *Maryland Register*, Vol. 39, Issue 16, pages 1036 - 1075 (August 10, 2012); and

The Rules Committee having withdrawn the proposed amendments to Rules 2-521 and 4-326; and

This Court, by Rules Order dated October 4, 2012, having adopted certain proposed rules changes contained in the One Hundred Seventy-Fourth Report and having deferred action on the remaining proposed changes contained in that Report; and

This Court having considered at open meetings, notices of which were posted as prescribed by law, all those remaining proposed rules changes, together with the comments received, it is this 1st day of November, 2012,

ORDERED, by the Court of Appeals of Maryland, that the Rules in current Title 17 and current Rule 9-205 be, and they are hereby, rescinded, effective January 1, 2013; and it is further

ORDERED that new Title 17 and new Rule 9-205 be, and they are hereby, adopted in the form attached hereto; and it is further

ORDERED that amendments to Rules 2-214, 2-305, 2-504.1, 3-305, 3-722, 4-212, 4-217, 4-242, 4-243, 4-262, 4-263, 4-342, 4-345, 4-504, 4-711, 5-404, 9-105, 14-212, and 15-1201 be, and they are hereby, adopted in the form previously published; and it is further

ORDERED that amendments to Rule 4-216 be, and they are hereby, adopted in the form attached hereto; and it is further

ORDERED that the proposed amendments to Rules 2-303, 2-311, 2-401, 2-643, 4-214, and 4-216.1 be, and they are hereby, rejected; and it is further

ORDERED that the rules changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after January 1, 2013 and, insofar as practicable, to all actions then pending; and it is further

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

/s/ Robert M. Bell
Robert M. Bell

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

/s/ Lynne A. Battaglia
*****Lynne A. Battaglia

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

/s/ Sally D. Adkins
Sally D. Adkins

/s/ Mary Ellen Barbera
Mary Ellen Barbera

/s/ Robert N. McDonald
******Robert N. McDonald

***** Judge Battaglia declined to approve for adoption revised Title 17, revised Rule 9-205, and amendments to Rules 2-504.1 and 14-212.

****** Judge McDonald abstained from voting on revised Title 17, revised Rule 9-205, and amendments to Rules 2-504.1 and 14-212.

Filed: November 1, 2012

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

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 200 - PARTIES

AMEND Rule 2-214 to authorize the filing of a motion or response that is not a pleading with a motion to intervene, as follows:

Rule 2-214. INTERVENTION

(a) Of Right

Upon timely motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law; or (2) when the person claims an interest relating to the property or transaction that is the subject of the action, and the person is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless it is adequately represented by existing parties.

(b) Permissive

(1) Generally

Upon timely motion a person may be permitted to intervene in an action when the person's claim or defense has a question of law or fact in common with the action.

(2) Governmental Interest

Upon timely motion the federal government, the State, a political subdivision of the State, or any officer or agency of

any of them may be permitted to intervene in an action when the validity of a constitutional provision, charter provision, statute, ordinance, regulation, executive order, requirement, or agreement affecting the moving party is drawn in question in the action, or when a party to an action relies for ground of claim or defense on such constitutional provision, charter provision, statute, ordinance, regulation, executive order, requirement, or agreement.

(3) Considerations

In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure

A person desiring to intervene shall file and serve a motion to intervene. The motion shall state the grounds therefor and shall be accompanied by a copy of the proposed pleading, motion, or response setting forth the claim or defense for which intervention is sought. An order granting intervention shall designate the intervenor as a plaintiff or a defendant. Thereupon, the intervenor shall promptly file the pleading, motion, or response and serve it upon all parties.

Source: This Rule is derived as follows:
Section (a) is derived from the 1966 version of Fed. R. Civ. P. 24 (a).
Section (b)
Subsection (b)(1) is derived from former Rule 208 b 1.
Subsection (b)(2) is derived from former Rule 208 b 2.
Subsection (b)(3) is derived from the last sentence of the 1966 version of Fed. R. Civ. P. 24 (b).

Section (c) is derived from the 1966 version of Fed. R. Civ. P. 24 (c) and former Rule 208 c.

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 2-305 to change the circumstances under which a party is required to include the amount of damages sought in a demand for a money judgment, to add a Committee note, and to make a stylistic change, as follows:

Rule 2-305. CLAIMS FOR RELIEF

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

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

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

MARYLAND RULES OF PROCEDURE

TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT

CHAPTER 500 - TRIAL

AMEND Rule 2-504.1 to conform terminology and internal references to the revision of the Rules in Title 17, as follows:

Rule 2-504.1. SCHEDULING CONFERENCE

. . .

(c) Order for Scheduling Conference

An order setting a scheduling conference may require that the parties, at least ten days before the conference:

(1) complete sufficient initial discovery to enable them to participate in the conference meaningfully and in good faith and to make decisions regarding (A) settlement, (B) consideration of available and appropriate forms of alternative dispute resolution, (C) limitation of issues, (D) stipulations, (E) any issues relating to preserving discoverable information, (F) any issues relating to discovery of electronically stored information, including the form in which it is to be produced, (G) any issues relating to claims of privilege or of protection, and (H) other matters that may be considered at the conference; and

(2) confer in person or by telephone and attempt to reach agreement or narrow the areas of disagreement regarding the matters that may be considered at the conference and determine whether the action or any issues in the action are suitable for

referral to ~~an~~ alternative dispute resolution ~~process~~ in accordance with Title 17, Chapter<u>s</u> 100 <u>and 200</u> of these Rules.

Committee note: Examples of matters that may be considered at a scheduling conference when discovery of electronically stored information is expected, include:

(1) its identification and retention;
(2) the form of production, such as PDF, TIFF, or JPEG files, or native form, for example, Microsoft Word, Excel, etc.;
(3) the manner of production, such as CD-ROM;
(4) any production of indices;
(5) any electronic numbering of documents and information;
(6) apportionment of costs for production of electronically stored information not reasonably accessible because of undue burden or cost;
(7) a process by which the parties may assert claims of privilege or of protection after production; and
(8) whether the parties agree to refer discovery disputes to a master or Special Master.

The parties may also need to address any request for metadata, for example, information embedded in an electronic data file that describes how, when, and by whom it was created, received, accessed, or modified or how it is formatted. For a discussion of metadata and factors to consider in determining the extent to which metadata should be preserved and produced in a particular case, see, The Sedona Conference, The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production, (2d ed. 2007), Principle 12 and related Comment.

. . .

(e) Scheduling Order

Case management decisions made by the court at or as a result of a scheduling conference shall be included in a scheduling order entered pursuant to Rule 2-504. A court may not order a party or counsel for a party to participate in ~~an~~ alternative dispute resolution ~~process~~ under Rule 2-504 except in accordance with Rule 9-205 or Rule ~~17-103~~ <u>17-201</u>.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE -- DISTRICT COURT

CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-305 to make a stylistic change, as follows:

Rule 3-305. CLAIMS FOR RELIEF

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

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

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 700 - SPECIAL PROCEEDINGS

AMEND Rule 3-722 to correct obsolete citations in the cross reference following section (a), as follows:

Rule 3-722. RECEIVERS

(a) Applicability

This Rule applies to a receiver appointed to take charge of property for the enforcement of a local or state code or to abate a nuisance.

Cross reference: For the power of the District Court to appoint a receiver, see Code, Courts Article, §§4-401 ~~(7)(i)~~ (8) and 4-402 (b); Code, Real Property Article, §14-120; and Baltimore City Building Code, ~~1997~~ 2011 Edition, §~~123.9~~ 121.

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MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-212 to add a cross reference after section (e), as follows:

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

. . .

(e) Execution of Warrant - Defendant Not in Custody

Unless the defendant is in custody, a warrant shall be executed by the arrest of the defendant. Unless the warrant and charging document are served at the time of the arrest, the officer shall inform the defendant of the nature of the offense charged and of the fact that a warrant has been issued. A copy of the warrant and charging document shall be served on the defendant promptly after the arrest. The defendant shall be taken before a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after arrest or, if the warrant so specifies, before a judicial officer of the circuit court without unnecessary delay and in no event later than the next session of court after the date of arrest. The court shall process the defendant pursuant to Rule 4-216 and may make provision for the appearance or waiver of counsel pursuant to Rule 4-215.

Committee note: The amendments made in this section are not intended to supersede Code, Courts Article §10-912.

Cross reference: See Code, Criminal Procedure Article, §4-109 concerning invalidation and destruction of unserved warrants, summonses, or other criminal process for misdemeanor offenses.

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MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216 correct an internal reference in subsection (f)(3), as follows:

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

. . .

(f) Duties of Judicial Officer

. . .

(3) Imposition of Conditions of Release

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

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

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

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

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-217 by adding a cross reference after section (c), by deleting language from and adding language to subsection (i)(5) to include a condition to striking out the forfeiture of bail, by adding language to subsection (i)(6)(B) to include conditions to striking out the forfeiture of bail where the defendant is incarcerated outside the State, and by adding a new subsection (i)(6)(C) to provide for an exception to subsection (i)(6)(B), as follows:

Rule 4-217. BAIL BONDS

. . .

(c) Authorization to Take Bail Bond

Any clerk, District Court commissioner, or other person authorized by law may take a bail bond. The person who takes a bail bond shall deliver it to the court in which the charges are pending, together with all money or other collateral security deposited or pledged and all documents pertaining to the bail bond.

Cross reference: Code, Criminal Procedure Article, §§5-204 and 5-205. See Code, Insurance Article, §10-309, which requires a signed affidavit of surety by the defendant or the insurer that shall be provided to the court if payment of premiums charged for bail bonds is in installments.

. . .

(i) Forfeiture of Bond

(1) On Defendant's Failure to Appear - Issuance of Warrant

If a defendant fails to appear as required, the court shall order forfeiture of the bail bond and issuance of a warrant for the defendant's arrest. The clerk shall promptly notify any surety on the defendant's bond, and the State's Attorney, of the forfeiture of the bond and the issuance of the warrant.

Cross reference: Code, Criminal Procedure Article, §5-211.

(2) Striking Out Forfeiture for Cause

If the defendant or surety can show reasonable grounds for the defendant's failure to appear, notwithstanding Rule 2-535, the court shall (A) strike out the forfeiture in whole or in part; and (B) set aside any judgment entered thereon pursuant to subsection (4)(A) of this section, and (C) order the remission in whole or in part of the penalty sum paid pursuant to subsection (3) of this section.

Cross reference: Code, Criminal Procedure Article, §5-208(b)(1) and (2) and *Allegany Mut. Cas. Co. v. State*, 234 Md. 278, 199 A.2d 201 (1964).

(3) Satisfaction of Forfeiture

Within 90 days from the date the defendant fails to appear, which time the court may extend to 180 days upon good cause shown, a surety shall satisfy any order of forfeiture, either by producing the defendant in court or by paying the penalty sum of the bond. If the defendant is produced within such time by the State, the court shall require the surety to pay the expenses of the State in producing the defendant and shall treat

the order of forfeiture satisfied with respect to the remainder of the penalty sum.

(4) Enforcement of Forfeiture

If an order of forfeiture has not been stricken or satisfied within 90 days after the defendant's failure to appear, or within 180 days if the time has been extended, the clerk shall forthwith:

(A) enter the order of forfeiture as a judgment in favor of the governmental entity that is entitled by statute to receive the forfeiture and against the defendant and surety, if any, for the amount of the penalty sum of the bail bond, with interest from the date of forfeiture and costs including any costs of recording, less any amount that may have been deposited as collateral security; and

(B) cause the judgment to be recorded and indexed among the civil judgment records of the circuit court of the county; and

(C) prepare, attest, and deliver or forward to any bail bond commissioner appointed pursuant to Rule 16-817, to the State's Attorney, to the Chief Clerk of the District Court, and to the surety, if any, a true copy of the docket entries in the cause, showing the entry and recording of the judgment against the defendant and surety, if any.

Enforcement of the judgment shall be by the State's Attorney in accordance with those provisions of the rules relating to the enforcement of judgments.

(5) Subsequent Appearance of Defendant

When the defendant is produced in court after the period allowed under subsection (3) of this section, the surety may apply for the refund of any penalty sum paid in satisfaction of the forfeiture less any expenses permitted by law. ~~If the penalty sum has not been paid, the court, on application of the surety and payment of any expenses permitted by law, shall strike the judgment against the surety entered as a result of the forfeiture.~~ The court shall strike out a forfeiture of bail or collateral and deduct only the actual expense incurred for the defendant's arrest, apprehension, or surrender provided that the surety paid the forfeiture of bail or collateral during the period allowed for the return of the defendant under subsection (3) of this section.

(6) Where Defendant Incarcerated Outside this State

(A) If, within the period allowed under subsection (3) of this section, the surety produces evidence and the court finds that the defendant is incarcerated in a penal institution outside this State and that the State's Attorney is unwilling to issue a detainer and subsequently extradite the defendant, the court shall strike out the forfeiture and shall return the bond or collateral security to the surety.

(B) If, after the expiration of the period allowed under subsection (3) of this section, but within 10 years from the date the bond or collateral was posted, the surety produces evidence and the court finds that the defendant is incarcerated in a penal institution outside this State, ~~and~~ that the State's Attorney is

unwilling to issue a detainer and subsequently extradite the defendant, and that the surety agrees in writing to defray the expense of returning the defendant to the jurisdiction in accordance with Code, Criminal Procedure Article, §5-208 (c), subject to subsection (C) of this section, the court shall ~~(i)~~ strike out the forfeiture~~; (ii) set aside any judgment thereon; and (iii) order the return of the forfeited bond or collateral or the remission of any penalty sum paid pursuant to subsection (3) of this section~~ and refund the forfeited bail bond or collateral to the surety provided that the surety paid the forfeiture of bail or collateral within the time limits established under subsection (3) of this section.

(C) On motion of the surety, the court may refund a forfeited bail bond or collateral that was not paid within the time limits established under subsection (3) of this section if the surety produces evidence that the defendant was incarcerated when the judgment of forfeiture was entered, and the court strikes out the judgment for fraud, mistake, or irregularity.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-242 to add a Committee note after section (a); to clarify that section (c) applies to all pleas of guilty, including a conditional plea of guilty; to add a new section (d) pertaining to conditional pleas of guilty; to add to section (h) references to conditional pleas of guilty; and to make stylistic changes, as follows:

Rule 4-242. PLEAS

(a) Permitted Pleas

A defendant may plead not guilty, guilty, or, with the consent of the court, nolo contendere. In addition to any of these pleas, the defendant may enter a plea of not criminally responsible by reason of insanity.

Committee note: It has become common in some courts for defendants to enter a plea of not guilty but, in lieu of a normal trial, to proceed on an agreed statement of ultimate fact to be read into the record or on a statement of proffered evidence to which the defendant stipulates, the purpose being to avoid the need for the formal presentation of evidence but to allow the defendant to argue the sufficiency of the agreed facts or evidence and to appeal from a judgment of conviction. That kind of procedure is permissible only if there is no material dispute in the statement of facts or evidence. *See Bishop v. State*, 417 Md. 1 (2010); *Harrison v. State*, 382 Md. 477 (2004); *Morris v. State*, 418 Md. 194 (2011). Parties to a criminal action in a circuit court who seek to avoid a formal trial but to allow the defendant to appeal from specific adverse rulings are encouraged to proceed by way of a conditional plea of guilty pursuant to section (d) of this Rule, to the extent that section is applicable.

(b) Method of Pleading

(1) Manner

A defendant may plead not guilty personally or by counsel on the record in open court or in writing. A defendant may plead guilty or nolo contendere personally on the record in open court, except that a corporate defendant may plead guilty or nolo contendere by counsel or a corporate officer. A defendant may enter a plea of not criminally responsible by reason of insanity personally or by counsel and the plea shall be in writing.

(2) Time in the District Court

In District Court the defendant shall initially plead at or before the time the action is called for trial.

(3) Time in Circuit Court

In circuit court the defendant shall initially plead within 15 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213 (c). If a motion, demand for particulars, or other paper is filed that requires a ruling by the court or compliance by a party before the defendant pleads, the time for pleading shall be extended, without special order, to 15 days after the ruling by the court or the compliance by a party. A plea of not criminally responsible by reason of insanity shall be entered at the time the defendant initially pleads, unless good cause is shown.

(4) Failure or Refusal to Plead

If the defendant fails or refuses to plead as required by

this section, the clerk or the court shall enter a plea of not guilty.

Cross reference: See *Treece v. State*, 313 Md. 665 (1988), concerning the right of a defendant to decide whether to interpose the defense of insanity.

(c) Plea of Guilty

The court may not accept a plea of guilty, including a conditional plea of guilty, until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section ~~(e)~~ (f) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

(d) Conditional Plea of Guilty

(1) Scope of Section

This section applies only to an offense charged by indictment or criminal information and set for trial in a circuit court or that is scheduled for trial in a circuit court pursuant to a prayer for jury trial entered in the District Court.

Committee note: Section (d) of this Rule does not apply to appeals from the District Court.

(2) Entry of Plea; Requirements

With the consent of the court and the State, a defendant may enter a conditional plea of guilty. The plea shall be in writing and, as part of it, the defendant may reserve the right to appeal one or more issues specified in the plea that (A) were raised by and determined adversely to the defendant, and, (B) if determined in the defendant's favor would have been dispositive of the case. The right to appeal under this subsection is limited to those pretrial issues litigated in the circuit court and set forth in writing in the plea.

Committee note: This Rule does not affect any right to file an application for leave to appeal under Code, Courts Article, §12-302 (e)(2).

(3) Withdrawal of Plea

A defendant who prevails on appeal with respect to an issue reserved in the plea may withdraw the plea.

Cross reference: Code, Courts Article, §12-302.

~~(d)~~ (e) Plea of Nolo Contendere

A defendant may plead nolo contendere only with the consent of court. The court may require the defendant or counsel to provide information it deems necessary to enable it to determine whether or not it will consent. The court may not accept the plea until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that the defendant is pleading voluntarily with understanding of the

nature of the charge and the consequences of the plea. In addition, before accepting the plea, the court shall comply with section ~~(e)~~ (f) of this Rule. Following the acceptance of a plea of nolo contendere, the court shall proceed to disposition as on a plea of guilty, but without finding a verdict of guilty. If the court refuses to accept a plea of nolo contendere, it shall call upon the defendant to plead anew.

~~(e)~~ (f) Collateral Consequences of a Plea of Guilty, Conditional Plea of Guilty, or Plea of Nolo Contendere

Before the court accepts a plea of guilty, a conditional plea of guilty, or a plea of ~~or~~ nolo contendere, the court, the State's Attorney, the attorney for the defendant, or any combination thereof shall advise the defendant (1) that by entering the plea, if the defendant is not a United States citizen, the defendant may face additional consequences of deportation, detention, or ineligibility for citizenship, (2) that by entering a plea to the offenses set out in Code, Criminal Procedure Article, §11-701, the defendant shall have to register with the defendant's supervising authority as defined in Code, Criminal Procedure Article, §11-701 (p), and (3) that the defendant should consult with defense counsel if the defendant is represented and needs additional information concerning the potential consequences of the plea. The omission of advice concerning the collateral consequences of a plea does not itself mandate that the plea be declared invalid.

Committee note: In determining whether to accept the plea, the court should not question defendants about their citizenship or immigration status. Rather, the court should ensure that all defendants are advised in accordance with this section. This Rule does not overrule *Yoswick v. State*, 347 Md. 228 (1997) and *Daley v. State*, 61 Md. App. 486 (1985).

~~(f)~~ (g) Plea to a Degree

A defendant may plead not guilty to one degree and plead guilty to another degree of an offense which, by law, may be divided into degrees.

~~(g)~~ (h) Withdrawal of Plea

At any time before sentencing, the court may permit a defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere when the withdrawal serves the interest of justice. After the imposition of sentence, on motion of a defendant filed within ten days, the court may set aside the judgment and permit the defendant to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere if the defendant establishes that the provisions of section (c) or ~~(d)~~ (e) of this Rule were not complied with or there was a violation of a plea agreement entered into pursuant to Rule 4-243. The court shall hold a hearing on any timely motion to withdraw a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere.

Committee note: The entry of a plea may waive technical defects in the charging document and waives objections to venue. See, e.g., Rule 4-202 (b) and *Kisner v. State*, 209 Md. 524, 122 A.2d 102 (1956).

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 731 a and M.D.R. 731 a.
Section (b)

Subsection (1) is derived from former Rule 731 b 1 and M.D.R. 731 b 1.

Subsection (2) is new.

Subsection (3) is derived from former Rule 731 b 2.

Subsection (4) is derived from former Rule 731 b 3 and M.D.R. 731 b 2.

Section (c) is derived from former Rule 731 c and M.D.R. 731 c.

Section (d) is new.

Section ~~(d)~~ (e) is derived from former Rule 731 d and M.D.R. 731 d.

Section ~~(e)~~ (f) is new.

Section ~~(f)~~ (g) is derived from former Rule 731 e.

Section ~~(g)~~ (h) is derived from former Rule 731 f and M.D.R. 731 e.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-243 (c)(4) to conform an internal reference to a proposed amendment to Rule 4-242, as follows:

Rule 4-243. PLEA AGREEMENTS

. . .

(c) Agreements of Sentence, Disposition, or Other Judicial Action

. . .

(4) Rejection of Plea Agreement

If the plea agreement is rejected, the judge shall inform the parties of this fact and advise the defendant (A) that the court is not bound by the plea agreement; (B) that the defendant may withdraw the plea; and (C) that if the defendant persists in the plea of guilty, conditional plea of guilty, or a plea of nolo contendere, the sentence or other disposition of the action may be less favorable than the plea agreement. If the defendant persists in the plea, the court may accept the plea of guilty only pursuant to Rule 4-242 (c) and the plea of nolo contendere only pursuant to Rule 4-242 ~~(d)~~ (e).

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-262 to add a Committee note after section (a), as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

(a) Applicability

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

Committee note: This Rule also governs discovery in actions transferred from District Court to circuit court upon a jury trial demand made in accordance with Rule 4-301 (b)(1)(B). See Rule 4-301 (c).

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-263 to add a Committee note after section (a), as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

(a) Applicability

This Rule governs discovery and inspection in a circuit court.

Committee note: This Rule also governs discovery in actions transferred from District Court to circuit court upon a jury trial demand made in accordance with Rule 4-301 (b)(1)(A). See Rule 4-301 (c).

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 to add a cross reference at the end of section (e) to a certain statute, as follows:

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

. . .

(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. See Code, Criminal Procedure Article, §11-103 (e) for the right of a victim to file a motion requesting restitution.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-345 to add a cross reference at the end of the Rule to a certain statute, as follows:

Rule 4-345. SENTENCING - REVISORY POWER OF COURT

(a) Illegal Sentence

The court may correct an illegal sentence at any time.

(b) Fraud, Mistake, or Irregularity

The court has revisory power over a sentence in case of fraud, mistake, or irregularity.

(c) Correction of Mistake in Announcement

The court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

(d) Desertion and Non-support Cases

At any time before expiration of the sentence in a case involving desertion and non-support of spouse, children, or destitute parents, the court may modify, reduce, or vacate the sentence or place the defendant on probation under the terms and conditions the court imposes.

(e) Modification Upon Motion

(1) Generally

Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

Cross reference: Rule 7-112 (b).

Committee note: The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Department of Health and Mental Hygiene if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied. See Code, Health General Article, §8-507.

(2) Notice to Victims

The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, §11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, §11-503 that states (A) that a motion to modify or reduce a sentence has been filed; (B) that the motion has been denied without a hearing or the date, time, and location of the hearing; and (C) if a hearing is to be held, that each victim or victim's representative may attend and testify.

(3) Inquiry by Court

Before considering a motion under this Rule, the court shall inquire if a victim or victim's representative is present. If one is present, the court shall allow the victim or victim's representative to be heard as allowed by law. If a victim or victim's representative is not present and the case is one in which there was a victim, the court shall inquire of the State's Attorney on the record regarding any justification for the victim or victim's representative not being present, as set forth in Code, Criminal Procedure Article, §11-403 (e). If no justification is asserted or the court is not satisfied by an asserted justification, the court may postpone the hearing.

(f) Open Court Hearing

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

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

Code, Criminal Law Article, §11-303, the prohibition against human trafficking.

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

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-504 to add a cross reference after section (a), as follows:

Rule 4-504. PETITION FOR EXPUNGEMENT WHEN CHARGES FILED

(a) Scope and Venue

A petition for expungement of records may be filed by any defendant who has been charged with the commission of a crime and is eligible under Code, Criminal Procedure Article, §10-105 to request expungement. The petition shall be filed in the original action. If that action was commenced in one court and transferred to another, the petition shall be filed in the court to which the action was transferred. If an appeal was taken, the petition shall be filed in the circuit court that had jurisdiction over the action.

Cross reference: See Code, Criminal Procedure Article, §10-104, which permits the District Court on its own initiative to order expungement when the State has entered a nolle prosequi as to all charges in a case in which the defendant has not been served. See Code, Criminal Procedure Article, §10-105, which allows an individual's attorney or personal representative to file a petition for expungement if the individual died before disposition of the charge by nolle prosequi or dismissal.

(b) Contents - Time for Filing

The petition shall be substantially in the form set forth at the end of this Title as Form 4-504.1. The petition shall be filed within the times prescribed in Code, Criminal Procedure

Article, §10-105. When required by law, the petitioner shall file with the petition a duly executed General Waiver and Release in the form set forth at the end of this Title as Form 4-503.2.

(c) Copies for Service

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

(d) Procedure Upon Filing

Upon filing of a petition, the clerk shall serve copies on the State's Attorney and each law enforcement agency named in the petition.

(e) Retrieval or Reconstruction of Case File

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

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

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 700 - POST CONVICTION DNA TESTING

AMEND Rule 4-711 to correct internal references in section (b), as follows:

Rule 4-711. FURTHER PROCEEDINGS FOLLOWING TESTING

(a) If Test Results Unfavorable to Petitioner

If the test results fail to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing, the court shall dismiss the petition and assess the cost of DNA testing against the petitioner.

(b) If Test Results Favorable to Petitioner

(1) If the test results produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing, the court shall order the State to pay the costs of the testing and:

(A) if no post conviction proceeding was previously filed by the petitioner under Code, ~~Criminal Law~~ Criminal Procedure Article, §7-102, open such a proceeding;

(B) if a post conviction proceeding is currently pending, permit the petitioner to amend the petition in that proceeding; or

(C) if a post conviction proceeding was previously filed by the petitioner under Code, ~~Criminal Law~~ Criminal Procedure

Article, §7-102, reopen the proceeding under Code, ~~Criminal Law~~ Criminal Procedure Article, §7-104; or

(D) if the court finds that a substantial possibility exists that the petitioner would not have been convicted if the DNA testing results had been known or introduced at trial, order a new trial.

(2) If the court finds that (A) the test results produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing but (B) a substantial possibility does not exist that the petitioner would not have been so convicted or sentenced if the test results had been known or introduced at trial, the court may order a new trial if it also finds that such action is in the interest of justice.

(3) If the court grants a new trial under subsection (b)(1)(D) or (b)(2) of this Rule, the court may order the release of the petitioner on bond or on conditions that the court finds will reasonably assure the presence of the petitioner at trial.
Cross reference: Code, Criminal Procedure Article, §8-201 (i).
Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 400 - RELEVANCY AND ITS LIMITS

AMEND Rule 5-404 (b) to correct a certain term and an obsolete statutory reference, as follows:

Rule 5-404. CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES

. . .

(b) Other Crimes, Wrongs, or Acts

Evidence of other crimes, wrongs, or acts including delinquent acts as defined by Code, Courts Article, ~~§3-801~~ §3-8A-01 is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 100 - ADOPTION; GUARDIANSHIP TERMINATING PARENTAL RIGHTS

AMEND Rule 9-105 to delete the obsolete citation to Code, Article 27A, §4 in the cross reference following section (b), and to replace it with the updated citation to Code, Criminal Procedure Article, §16-204.

Rule 9-105. SHOW CAUSE ORDER; DISABILITY OF A PARTY; OTHER NOTICE

. . .

(b) Appointment of Attorney for Disabled Party

(1) If the parties agree that a party who is not represented has a disability that makes the party incapable of consenting or participating effectively in the proceeding, the court shall appoint an attorney who shall represent the disabled party throughout the proceeding.

(2) If there is a dispute as to whether a party who is not represented has a disability that makes the party incapable of consenting or participating effectively in the proceeding, the court shall:

(A) hold a hearing promptly to resolve the dispute;

(B) appoint an attorney to represent the alleged disabled party at that hearing;

(C) provide notice of that hearing to all parties; and

(D) if the court finds at the hearing that the party has such a disability, appoint an attorney who shall represent the

disabled party throughout the proceeding.

Cross reference: See Code, Family Law Article, §§5-307 as to a Public Agency Guardianship; 5-307 as to a Public Agency Adoption without Prior TPR; 5-3A-07 as to a Private Agency Guardianship; and 5-3B-06 as to an Independent Adoption. For eligibility of an individual for representation by the Office of the Public Defender, see Code, Family Law Article §5-307 and ~~Code, Article 27A, §4~~ Code, Criminal Procedure Article, §16-204.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 200 - DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT, AND CHILD CUSTODY

DELETE current Rule 9-205 and ADD new Rule 9-205, as follows:

Rule 9-205. MEDIATION OF CHILD CUSTODY AND VISITATION DISPUTES

(a) Scope of Rule

This Rule applies to any action or proceeding under this Chapter in which the custody of or visitation with a minor child is an issue, including:

(1) an initial action to determine custody or visitation;

(2) an action to modify an existing order or judgment as to custody or visitation; and

(3) a petition for contempt by reason of non-compliance with an order or judgment governing custody or visitation.

(b) Duty of Court

(1) Promptly after an action subject to this Rule is at issue, the court shall determine whether:

(A) mediation of the dispute as to custody or visitation is appropriate and likely would be beneficial to the parties or the child; and

(B) a mediator possessing the qualifications set forth in section (c) of this Rule is available to mediate the dispute.

(2) If a party or a child represents to the court in good faith that there is a genuine issue of abuse, as defined in Code,

Family Law Article, §4-501, of the party or child, and that, as a result, mediation would be inappropriate, the court may not order mediation.

(3) If the court concludes that mediation is appropriate and likely to be beneficial to the parties or the child and that a qualified mediator is available, it shall enter an order requiring the parties to mediate the custody or visitation dispute. The order may stay some or all further proceedings in the action pending the mediation on terms and conditions set forth in the order.

Cross reference: With respect to subsection (b)(2) of this Rule, see Rule 1-341 and Rules 3.1 and 3.3 of the Maryland Lawyers' Rules of Professional Conduct.

(c) Qualifications of Court-Designated Mediator

To be eligible for designation as a mediator by the court, an individual shall:

(1) have the basic qualifications set forth in Rule 17-205 (a);

(2) have completed at least 20 hours of training in a family mediation training program that includes:

(A) Maryland law relating to separation, divorce, annulment, child custody and visitation, and child and spousal support;

(B) the emotional aspects of separation and divorce on adults and children;

(C) an introduction to family systems and child development theory;

(D) the interrelationship of custody, visitation, and child support; and

(E) if the training program is given after January 1, 2013, strategies to (i) identify and respond to power imbalances, intimidation, and the presence and effects of domestic violence, and (ii) safely terminate a mediation when termination is warranted; and

(3) have co-mediated at least eight hours of child access mediation sessions with an individual approved by the county administrative judge, or, in addition to any observations during the training program, have observed at least eight hours of such mediation sessions.

(d) Court Designation of Mediator

(1) In an order referring a matter to mediation, the court shall:

(A) designate a mediator from a list of qualified mediators approved by the court;

(B) if the court has a unit of court mediators that provides child access mediation services, direct that unit to select a qualified mediator; or

(C) direct an ADR organization, as defined in Rule 17-102, to select a qualified mediator.

(2) If the referral is to a fee-for-service mediation, the order shall specify the hourly rate that the mediator may charge for mediation in the action, which may not exceed the maximum stated in the applicable fee schedule.

(3) A mediator selected pursuant to subsection (d)(1)(B) or (d)(1)(C) of this Rule has the status of a court-designated mediator.

(4) In designating a mediator, the court is not required to

choose at random or in any particular order. The court should endeavor to use the services of as many qualified mediators as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective designees.

(5) The parties may request to substitute for the court-designated mediator another mediator who has the qualifications set forth in Rule 17-205 (a)(1), (2), (3), and (6) and subsection (c)(2) of this Rule, whether or not the mediator's name is on the court's list, by filing with the court no later than 15 days after service of the order of referral to mediation a Request to Substitute Mediator.

(A) The Request to Substitute Mediator shall be substantially in the following form:

[Caption of Case]

Request to Substitute Mediator and

Selection of Mediator by Stipulation

We agree to attend mediation proceedings pursuant to Rule 9-205 conducted by _____

_____,
(Name, address, and telephone number of mediator)

and we have made payment arrangements with the mediator. We request that the court substitute this mediator for the mediator designated by the court.

_____ _____
(Signature of Plaintiff) (Signature of Defendant)

_____ _____
(Signature of Plaintiff's Attorney, if any) (Signature of Defendant's Attorney, if any)

I, _____,
(Name of Mediator)

agree to conduct mediation proceedings in the above-captioned case in accordance with Rule 9-205 (e), (f), (g), (h), (i) and (j).

I solemnly affirm under the penalties of perjury that I have the qualifications prescribed by Rule 9-205 (d)(5).

_____
Signature of Mediator

(B) If the Request to Substitute Mediator is timely filed, the court shall enter an order striking the original designation and substituting the individual selected by the parties to conduct the mediation, unless the court determines after notice

and opportunity to be heard that the individual does not have the qualifications prescribed by subsection (d)(5) of this Rule. If no Request to Substitute Mediator is timely filed, the mediator shall be the court-designated mediator.

(C) A mediator selected by stipulation of the parties and substituted by the court pursuant to subsection (d)(5)(B) of this Rule is not subject to the fee schedule provided for in section (j) of this Rule and Rule 17-208 while conducting mediation proceedings pursuant to the stipulation and designation, but shall comply with all other obligations of a court-designated mediator.

Committee note: Nothing in this Rule or the Rules in Title 17 prohibits the parties from selecting any individual, regardless of qualifications, to assist them in the resolution of issues by participating in ADR that is not court-ordered.

(e) Role of Mediator

The role of a mediator designated by the court or agreed upon by the parties is as set forth in Rule 17-103.

(f) Confidentiality

Confidentiality of mediation communications under this Rule is governed by Rule 17-105.

Cross reference: For the definition of "mediation communication," see Rule 17-102 (h).

Committee note: By the incorporation of Rule 17-105 by reference in this Rule, the intent is that the provisions of the Maryland Mediation Confidentiality Act are inapplicable to mediations under Rule 9-205. See Code, Courts Article, §3-1802 (b)(1).

(g) Scope of Mediation; Restriction on Fee Increase

(1) The court's initial order may require the parties to attend a maximum of four hours in not more than two mediation sessions. For good cause and upon the recommendation of the

mediator, the court may order up to four additional hours. The parties, by agreement, may extend the mediation beyond the number of hours stated in the initial or any subsequent order.

Committee note: Although the parties, without further order of court, may extend the mediation, an amendment to the time requirements contained in a scheduling order may be made only by order of the court.

Cross reference: See Rule 2-504.

(2) Mediation under this Rule shall be limited to the issues of custody and visitation unless the parties agree otherwise in writing.

(3) During any extension of the mediation pursuant to subsection (g)(1) of this Rule or expansion of the issues that are the subject of the mediation pursuant to subsection (g)(2) of this Rule, the mediator may not increase the mediator's hourly rate for providing services relating to the action.

Cross reference: See Rule 17-208, concerning fee schedules and sanctions for noncompliance with an applicable schedule.

(h) If Agreement

If the parties agree on some or all of the disputed issues, the mediator shall provide copies of any document embodying the points of agreement to the parties and their attorneys for review and signature. If the document is signed by the parties as submitted or as modified by the parties, a copy of the signed document shall be sent to the mediator, who shall submit it to the court.

Committee note: Mediators often will record points of agreement expressed and adopted by the parties to provide documentation of the results of the mediation. Because a mediator who is not a Maryland lawyer is not authorized to practice law in Maryland, and a mediator who is a Maryland lawyer ordinarily would not be authorized to provide legal advice or services to parties in conflict, a mediator should not be authoring agreements regarding

matters in litigation for the parties to sign. If the parties are represented by counsel, the mediator should advise them not to sign the document embodying the points of agreement until they have consulted their attorneys. If the parties, whether represented or not, choose to sign the document, a statement should be added that the points of agreement as recorded by the mediator constitute the points of agreement expressed and adopted by the parties.

(i) If No Agreement

If no agreement is reached or the mediator determines that mediation is inappropriate, the mediator shall so advise the court but shall not state the reasons. If the court does not order mediation or the case is returned to the court after mediation without an agreement as to all issues in the case, the court promptly shall schedule the case for hearing on any pendente lite or other appropriate relief not covered by a mediation agreement.

(j) Evaluation Forms

At the conclusion of the mediation, the mediator shall give to the parties any evaluation forms and instructions provided by the court.

(k) Costs

(1) Fee Schedule

Fee schedules adopted pursuant to Rule 17-208 shall include maximum fees for mediators designated pursuant to this Rule, and a court-designated mediator appointed under this Rule may not charge or accept a fee for a mediation proceeding conducted pursuant to that designation in excess of that allowed by that schedule.

(2) Payment of Compensation and Expenses

Payment of the compensation and reasonable expenses of a mediator may be compelled by order of court and assessed among the

parties as the court may direct. In the order for mediation, the court may waive payment of the compensation and reasonable expenses.

Source: This Rule is derived in part from the 2012 version of former Rule 9-205 and is in part new.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-212 to conform internal references to the revision of the Rules in Title 17, as follows:

Rule 14-212. ALTERNATIVE DISPUTE RESOLUTION

(a) Applicability

This Rule applies to actions that are ineligible for foreclosure mediation under Code, Real Property Article, §7-105.1.

(b) Referral to Alternative Dispute Resolution

In an action in which a motion to stay the sale and dismiss the action has been filed, and was not denied pursuant to Rule 14-211 (b)(1), the court at any time before a sale of the property subject to the lien may refer a matter to mediation or another appropriate form of alternative dispute resolution, subject to the provisions of Rule ~~17-103~~ 17-201, and may require that individuals with authority to settle the matter be present or readily available for consultation.

Cross reference: For qualifications of a mediator other than one selected by agreement of the parties, see Rule ~~17-104 (f)~~ 17-205 (e).

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 15 - OTHER SPECIAL PROCEEDINGS

CHAPTER 1200 - CORAM NOBIS

AMEND Rule 15-1201 to add a Committee note at the end of the Rule, as follows:

Rule 15-1201. APPLICABILITY

The Rules in this Chapter govern proceedings for a writ of coram nobis as to a prior judgment in a criminal action.

Committee note: The Rules in this Chapter are not intended to apply to proceedings for a writ of coram nobis as to judgments in civil actions. The failure to seek an appeal in a criminal case does not constitute a waiver of the right to file a petition for writ of error coram nobis. See Code, Criminal Procedure Article, §8-401.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

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MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 100 – GENERAL PROVISIONS

Rule 17-101. APPLICABILITY

(a) General Applicability of Title

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

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

(b) Exceptions

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

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

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

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

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

(c) Applicability of Chapter 200

The Rules in Chapter 200 apply to actions and proceedings

pending in a circuit court.

(d) Applicability of Chapter 300

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

Source: This Rule is derived from former Rule 17-101 (2012).

Rule 17-102. DEFINITIONS

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

(a) ADR

"ADR" means "alternative dispute resolution."

(b) ADR Organization

"ADR organization" means an entity, including an ADR unit of a court, that is designated by the court to select individuals with the applicable qualifications required by Rule 9-205 or the Rules in this Title to conduct a non-fee-for-service ADR ordered by the court.

(c) ADR Practitioner

"ADR practitioner" means an individual who conducts ADR under the Rules in this Title.

(d) Alternative Dispute Resolution

"Alternative dispute resolution" means the process of resolving matters in pending litigation through arbitration, mediation, neutral case evaluation, neutral fact-finding, settlement conference, or a combination of those processes.

(e) Arbitration

"Arbitration" means a process in which (1) the parties appear before one or more impartial arbitrators and present evidence and argument to support their respective positions, and (2) the arbitrators render an award that is not binding unless the

parties agree otherwise in writing.

Committee note: Under the Federal Arbitration Act, the Maryland Uniform Arbitration Act, the International Commercial Arbitration Act, and at common law, arbitration awards are binding unless the parties agree otherwise.

(f) Fee-for-service

"Fee-for-service" means that a party will be charged a fee by an ADR practitioner designated by a court to conduct ADR.

(g) Mediation

"Mediation" means a process in which the parties work with one or more impartial mediators who, without providing legal advice, assist the parties in reaching their own voluntary agreement for the resolution of all or part of a dispute.

Cross reference: For the role of the mediator, see Rule 17-103.

(h) Mediation Communication

"Mediation communication" means a communication, whether spoken, written, or nonverbal, made as part of a mediation, including a communication made for the purpose of considering, initiating, continuing, reconvening, or evaluating a mediation or a mediator.

(i) Neutral Case Evaluation

"Neutral case evaluation" means a process in which (1) the parties, their attorneys, or both appear before an impartial evaluator and present in summary fashion the evidence and arguments to support their respective positions, and (2) the evaluator renders an evaluation of their positions and an opinion as to the likely outcome of the litigation.

(j) Neutral Expert

"Neutral expert" means an individual with special expertise

to provide impartial technical background information, an impartial opinion, or both in a specific area.

(k) Neutral Fact-finding

"Neutral fact-finding" means a process in which (1) the parties, their attorneys, or both appear before an impartial individual and present the evidence and arguments to support their respective positions as to disputed factual issues, and (2) the individual makes findings of fact as to those issues that are not binding unless the parties agree otherwise in writing.

(l) Settlement Conference

"Settlement conference" means a conference at which the parties, their attorneys, or both appear before an impartial individual to discuss the issues and positions of the parties in an attempt to agree on a resolution of all or part of the dispute by means other than trial. A settlement conference may include neutral case evaluation and neutral fact-finding, and the impartial individual may recommend the terms of an agreement.

Source: This Rule is derived as follows:
Section (a) is new.
Section (b) is new.
Section (c) is new.
Section (d) is derived from former Rule 17-102 (a) (2012).
Section (e) is derived from former Rule 17-102 (b) (2012).
Section (f) is derived from former Rule 17-102 (c) (2012).
Section (g) is derived from former Rule 17-102 (d) (2012).
Section (h) is derived from former Rule 17-102 (e) (2012).
Section (i) is derived from former Rule 17-102 (f) (2012).
Section (j) is new.
Section (k) is derived from former Rule 17-102 (g) (2012).
Section (l) is derived from former Rule 17-102 (h) (2012).

Rule 17-103. ROLE OF MEDIATOR

A mediator may help identify issues and options, assist the parties and their attorneys in exploring the needs underlying their respective positions, and, upon request, record points of agreement expressed and adopted by the parties. While acting as a mediator, the mediator does not engage in any other ADR process and does not recommend the terms of an agreement.

Committee note: Mediators often record points of agreement expressed and adopted by the parties to provide documentation of the results of the mediation. Because a mediator who is not a Maryland lawyer is not authorized to practice law in Maryland and a mediator who is a Maryland lawyer ordinarily would not be authorized to provide legal advice or services to parties in conflict, a mediator should not be authoring agreements regarding matters in litigation for the parties to sign. If the parties are represented by counsel, the mediator should advise them not to sign the document embodying the points of agreement until they have consulted their attorneys. If the parties, whether represented or not, choose to sign the document, a statement should be added that the points of agreement as recorded by the mediator constitute the points of agreement expressed and adopted by the parties.

Source: This Rule is derived from the last two sentences of former Rule 17-102 (d) (2012).

Rule 17-104. BASIC MEDIATION TRAINING PROGRAMS

To qualify under Rule 17-205 or 17-304, a basic mediation training program shall include the following:

(a) conflict resolution and mediation theory, including causes of conflict, interest-based versus positional bargaining, and models of conflict resolution;

(b) mediation skills and techniques, including information-gathering skills; communication skills; problem-solving skills; interaction skills; conflict management skills; negotiation techniques; caucusing; cultural, ethnic, and gender issues; and strategies to (1) identify and respond to power imbalances, intimidation, and the presence and effects of domestic violence, and (2) safely terminate a mediation when such action is warranted;

(c) mediator conduct, including conflicts of interest, confidentiality, neutrality, ethics, and standards of practice; and

(d) simulations and role-playing, monitored and critiqued by experienced mediator trainers.

Source: This Rule is derived from former Rule 17-106 (a) (2012).

Rule 17-105. MEDIATION CONFIDENTIALITY

(a) Mediator

Except as provided in sections (c) and (d) of this Rule, a mediator and any person present or otherwise participating in the mediation at the request of the mediator shall maintain the confidentiality of all mediation communications and may not disclose or be compelled to disclose mediation communications in any judicial, administrative, or other proceeding.

(b) Parties

Except as provided in sections (c) and (d) of this Rule:

(1) a party to a mediation and any person present or who otherwise participates in a mediation at the request of a party may not disclose or be compelled to disclose a mediation communication in any judicial, administrative, or other proceeding; and

(2) the parties may enter into a written agreement to maintain the confidentiality of mediation communications and to require all persons who are present or who otherwise participate in a mediation to join in that agreement.

Cross reference: See Rule 5-408 (a)(3).

(c) Signed Document

A document signed by the parties that records points of agreement expressed and adopted by the parties or that constitutes an agreement reached by the parties as a result of mediation is

not confidential, unless the parties agree otherwise in writing.

Cross reference: See Rule 9-205 (h) concerning the submission of a document embodying the points of agreement to the court in a child access case.

(d) Permitted Disclosures

In addition to any disclosures required by law, a mediator, a party, and a person who was present or who otherwise participated in a mediation may disclose or report mediation communications:

(1) to a potential victim or to the appropriate authorities to the extent they reasonably believe necessary to help prevent serious bodily harm or death to the potential victim;

(2) when relevant to the assertion of or defense against allegations of mediator misconduct or negligence; or

(3) when relevant to a claim or defense that an agreement arising out of a mediation should be rescinded because of fraud, duress, or misrepresentation.

Cross reference: For the legal requirement to report suspected acts of child abuse, see Code, Family Law Article, §5-705.

(e) Discovery; Admissibility of Information

Mediation communications that are confidential under this Rule are not subject to discovery, but information that is otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use in mediation.

Cross reference: See Rule 5-408 (b). See also Code, Courts Article, Title 3, Subtitle 18, which does not apply to mediations to which the Rules in Title 17 apply.

Source: This Rule is derived from former Rule 17-109 (2012).

MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

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MARYLAND RULES OF PROCEDURE

TITLE 17 – ALTERNATIVE DISPUTE RESOLUTION

CHAPTER 200 – PROCEEDINGS IN CIRCUIT COURT

Rule 17-201. AUTHORITY TO ORDER ADR

(a) Generally

A circuit court may order a party and the party's attorney to participate in ADR but only in accordance with the Rules in this Chapter and in Chapter 100 of this Title.

(b) Referral Prohibited

The court may not enter an order of referral to ADR in a protective order action under Code, Family Law Article, Title 4, Subtitle 5, Domestic Violence.

(c) Mediation of Child Custody or Visitation Disputes

Rule 9-205 governs the authority of a circuit court to order mediation of a dispute as to child custody or visitation, and the Rules in Title 17 do not apply to proceedings under that Rule except as otherwise provided in that Rule.

Source: This Rule is derived as follows:
Section (a) is derived from former Rule 17-103 (a) (2012).
Section (b) is new.
Section (c) is derived from former Rule 17-103 (c)(1) (2012).

Rule 17-202. GENERAL PROCEDURE

(a) Scope

This Rule does not apply to health care malpractice actions under Code, Courts Article, Title 3, Subtitle 2A, which are governed by Rule 17-203.

(b) Participation Requirements

(1) Non-fee-for-service Settlement Conference

The court may require the parties and their attorneys to participate in a non-fee-for-service settlement conference.

Committee note: If a settlement conference is required, it should be conducted subsequent to any other court-referred ADR.

(2) Other ADR

The court may refer all or part of an action to one ADR process in accordance with sections (c), (d), and (e) of this Rule, but the court may not require participation in that ADR if a timely objection is filed in accordance with section (f) of this Rule.

(c) Designation of ADR Practitioner

(1) Direct Designation

In an order referring all or part of an action to ADR, the court may designate, from a list of approved ADR practitioners maintained by the court pursuant to Rule 17-207, an ADR practitioner to conduct the ADR.

(2) Indirect Designation if ADR is Non-fee-for-service

If the ADR is non-fee-for-service, the court may delegate authority to an ADR organization selected from a list maintained by the court pursuant to Rule 17-207 or to an ADR unit of the court to designate an ADR practitioner qualified under Rules 17-205 or 17-206, as applicable, to conduct the ADR. An individual designated by the ADR organization pursuant to the court order has the status of a court-designated ADR practitioner.

Committee note: Examples of the use of indirect designation are referrals of indigent litigants to publicly funded community mediation centers and referrals of one or more types of cases to a mediation unit of the court.

(d) Discretion in Designation

In designating an ADR practitioner, the court is not required to choose at random or in any particular order from among the qualified ADR practitioners or organizations on its lists. The court should endeavor to use the services of as many qualified persons as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective designees.

(e) Contents of Order of Referral; Termination or Extension of ADR; Restriction on Fee Increase

An order of referral to ADR shall specify a maximum number of hours of required participation by the parties. An order to a fee-for-service ADR shall also specify the hourly rate that may be charged for ADR services in the action, which may not exceed the maximum stated in the applicable fee schedule. The parties may participate for less than the number of hours stated in the order if they and the ADR practitioner agree that no further progress is

likely. The parties, by agreement, may extend the ADR beyond the number of hours stated in the order. During any extension of the ADR, the ADR practitioner may not increase the practitioner's hourly rate for providing services relating to the action.

Committee note: Having a maximum number of hours in the court's order of referral encourages participation in ADR by assuring the parties that the ADR does not require an open-ended commitment of their time and money. Although the parties, without further order of court, may extend the ADR beyond the maximum, an amendment to the time requirements contained in a scheduling order may be made only by order of the court.

Cross reference: See Rule 2-504, concerning scheduling orders, and Rule 17-208, concerning fee schedules and sanctions for noncompliance with an applicable schedule.

(f) Objection; Alternatives

(1) Applicability

This section applies to a referral to ADR other than a non-fee-for-service settlement conference.

(2) Time for Filing

If the court issues an order referring all or part of an action to ADR, a party, within 30 days after entry of the order, may file (A) an objection to the referral, (B) an alternative proposal, or (C) a "Request to Substitute ADR Practitioner" substantially in the form set forth in section (g) of this Rule. If the order delegates authority to an ADR organization to designate an ADR practitioner, the objection, alternative proposal, or "Request to Substitute ADR Practitioner" shall be filed no later than 30 days after the party is notified by the ADR organization of the designation.

(3) Notification of Rights

An order referring all or part of an action to ADR, an order delegating authority to an ADR organization to designate an

ADR practitioner, and an announcement of a determination to enter an order referring all or part of an action to ADR shall include the information set forth in subsection (f)(2) of this Rule.

(4) If No Objection or Alternative Filed

If an objection, alternative proposal, or "Request to Substitute ADR Practitioner" is not filed within the time allowed by this section, the order shall stand, subject to modification by the court.

(5) Ruling

If a party timely objects to a referral, the court shall revoke its order. If the parties offer an alternative proposal or agree on a different ADR practitioner, whether or not the ADR practitioner's name is on the court's list, the court shall revoke or modify its order, as appropriate.

(g) Form of Request to Substitute ADR Practitioner

A Request to Substitute ADR Practitioner shall be substantially in the following form:

[Caption of Case]

Request to Substitute ADR Practitioner and

Selection of ADR Practitioner by Stipulation

We agree to attend ADR conducted by _____

_____.

(Name, address, and telephone number of ADR Practitioner)

We have made payment arrangements with the ADR Practitioner and we understand that the court's fee schedules do not apply to this ADR. We request that the court substitute this ADR Practitioner for the ADR Practitioner designated by the court.

_____	_____
(Signature of Plaintiff)	(Signature of Defendant)
_____	_____
(Signature of Plaintiff's Attorney, if any)	(Signature of Defendant's Attorney, if any)

[Add additional signature lines for any additional parties and attorneys.]

I, _____,
(Name of ADR Practitioner)

agree to conduct the following ADR in the above-captioned case [check one]:

- ❑ mediation in accordance with Rules 17-103 and 17-105.
- ❑ ADR other than mediation:_____[specify type of ADR].

At the conclusion of the ADR, I agree to comply with the provisions of Rule 17-202 (h).

I solemnly affirm under the penalties of perjury that I have the qualifications prescribed by the following Rules [check all that are true]:

- ❑ Rule 17-205 (a) [Basic mediation]
- ❑ Rule 17-205 (b) [Business and Technology]
- ❑ Rule 17-205 (c) [Economic Issues - Divorce and Annulment]
- ❑ Rule 17-205 (d) [Health Care Malpractice]
- ❑ Rule 17-205 (e) [Foreclosure]
- ❑ Rule 17-206 [ADR other than mediation]
- ❑ None of the above.

_____

Signature of ADR Practitioner

(h) Evaluation Forms; Notification to Court

At the conclusion of an ADR, the ADR practitioner shall give to the parties any ADR evaluation forms and instructions provided by the court and promptly advise the court whether all, some, or none of the issues in the action has been resolved.

Source: This Rule is derived in part from former Rule 17-103 (b) and (c)(2)-(4) (2012) and is in part new.

Rule 17-203. HEALTH CARE MALPRACTICE ACTIONS

(a) Applicability

This Rule applies to health care malpractice actions under Code, Courts Article, Title 3, Subtitle 2A.

(b) Mandatory Referral to ADR; Timing

Within 30 days after a defendant has filed an answer to the complaint or within 30 days after a defendant has filed a certificate of a qualified expert pursuant to Code, Courts Article, Title 3, Subtitle 2A-04, whichever is later, the court shall issue a scheduling order requiring the parties to engage in ADR at the earliest practicable date, unless all parties file with the court an agreement not to engage in ADR and the court finds that ADR would not be productive.

Cross reference: See Rule 2-504 (b)(2)(C) and Code, Courts Article, §3-2A-06C (b).

(c) Designation

(1) By the Parties

Within 30 days after the defendant has answered the complaint or filed a certificate of a qualified expert pursuant to Code, Courts Article, Title 3, Subtitle 2A-04, whichever is later, the parties may agree on an ADR practitioner and shall promptly notify the court of their agreement and the name of the ADR practitioner. A Notice of Selection of ADR Practitioner shall be substantially in the following form:

[Caption of Case]

Notice of Selection of ADR Practitioner by Stipulation

We agree to attend ADR conducted by _____

_____.
(Name, address, and telephone number of ADR Practitioner)

We have made payment arrangements with the ADR Practitioner and we understand that the court's fee schedules do not apply to this ADR. We request that the court designate this ADR Practitioner in lieu of any court-appointed ADR Practitioner.

_____	_____
(Signature of Plaintiff)	(Signature of Defendant)
_____	_____
(Signature of Plaintiff's Attorney, if any)	(Signature of Defendant's Attorney, if any)

[Add additional signature lines for any additional parties and attorneys.]

I, _____,
(Name of ADR Practitioner)

agree to conduct the following ADR in the above-captioned case [check one]:

- ❑ mediation in accordance with Rules 17-103 and 17-105.
- ❑ ADR other than mediation:_____[specify type of ADR].

At the conclusion of the ADR, I agree to comply with the provisions of Rule 17-203 (f).

I solemnly affirm under the penalties of perjury that I have the qualifications prescribed by the following Rules [check all

that are true]:

- ❑ Rule 17-205 (a) [Basic mediation]
- ❑ Rule 17-205 (b) [Business and Technology]
- ❑ Rule 17-205 (c) [Economic Issues - Divorce and Annulment]
- ❑ Rule 17-205 (d) [Health Care Malpractice]
- ❑ Rule 17-205 (e) [Foreclosure]
- ❑ Rule 17-206 [ADR other than mediation]
- ❑ None of the above.

_____
Signature of ADR Practitioner

(2) By the Court

If the parties do not timely notify the court that they have agreed upon an ADR practitioner, the court promptly shall appoint a mediator who meets the qualifications prescribed by Rule 17-205 (d) and notify the parties. Within 15 days after the court notifies the parties of the name of the mediator, a party may object in writing, stating the reason for the objection. If the court sustains the objection, the court shall appoint a different mediator.

(d) Initial Conference; Outline of Case

The ADR practitioner shall schedule an initial conference with the parties as soon as practicable. At least 15 days prior to the initial conference, each party shall provide to the ADR practitioner a brief written outline of the strengths and weaknesses of the party's case. A party is not required to provide the outline to any other party, and the ADR practitioner shall not provide the outline or disclose its contents to anyone

unless authorized by the party who submitted the outline.

Cross reference: See Code, Courts Article, §3-2A-06C (h)(2) and (k).

(e) Discovery

If the ADR practitioner determines that discovery is necessary to facilitate the ADR, the ADR practitioner, consistent with the scheduling order, may mediate the scope and schedule of that discovery, adjourn the initial conference, and reschedule an additional conference for a later date.

(f) Evaluation Forms

At the conclusion of the ADR, the ADR practitioner shall give to the parties any ADR evaluation forms and instructions provided by the court.

(g) Notification to the Court

The parties shall notify the court if the case is settled. If the parties agree to settle some but not all of the issues in dispute, the ADR practitioner shall file a notice of partial settlement with the court. If the parties have not agreed to a settlement, the ADR practitioner shall file a notice with the court that the case was not settled.

(h) Costs

Unless otherwise agreed by the parties, the costs of the ADR shall be divided equally between the parties.

Source: This Rule is new.

Rule 17-204. NEUTRAL EXPERTS

(a) Appointment

With the consent of all parties participating in the ADR, a court-designated ADR practitioner may select a neutral expert to participate in the ADR. The expense of the neutral expert shall be allocated among the parties in accordance with their agreement.

(b) Confidentiality

(1) Mediation Proceedings

In a mediation, the provisions of Rule 17-105 apply to the neutral expert.

(2) Other ADR

In all ADR other than mediation, the parties and the ADR practitioner may require the neutral expert to enter into a written agreement binding the neutral expert to confidentiality. The written agreement may include provisions stating that the expert may not disclose or be compelled to disclose any communications related to the ADR in any judicial, administrative, or other proceedings. Communications related to the ADR that are confidential under an agreement allowed by this subsection are not subject to discovery, but information otherwise admissible or subject to discovery does not become inadmissible or protected from disclosure solely by reason of its use related to the ADR.

Source: This Rule is derived from former Rule 17-105.1 (2012).

Rule 17-205. QUALIFICATIONS OF COURT-DESIGNATED MEDIATORS

(a) Basic Qualifications

A mediator designated by the court shall:

(1) unless waived by the parties, be at least 21 years old;

(2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of Rule 17-104 or, for individuals trained prior to January 1, 2013, former Rule 17-106;

(3) be familiar with the rules, statutes, and practices governing mediation in the circuit courts;

(4) have mediated or co-mediated at least two civil cases;

(5) complete in each calendar year four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104;

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

(7) submit to periodic monitoring of court-ordered mediations by a qualified mediator designated by the county administrative judge; and

(8) comply with procedures and requirements prescribed in the court's case management plan filed under Rule 16-202 b. relating to diligence, quality assurance, and a willingness to accept, upon request by the court, a reasonable number of referrals at a reduced-fee or pro bono.

(b) Business and Technology Cases

A mediator designated by the court for a Business and Technology Program case shall, unless the parties agree otherwise:

(1) have the qualifications prescribed in section (a) of this Rule; and

(2) within the two-year period preceding an application for approval pursuant to Rule 17-207, have served as a mediator in at least five non-domestic civil mediations, at least two of which involved types of conflicts assigned to the Business and Technology Case Management Program.

(c) Economic Issues in Divorce and Annulment Cases

A mediator designated by the court for issues in divorce or annulment cases other than those subject to Rule 9-205 shall:

(1) have the qualifications prescribed in section (a) of this Rule;

(2) have completed at least 20 hours of skill-based training in mediation of economic issues in divorce and annulment cases; and

(3) have served as a mediator or co-mediator in at least two mediations involving marital economic issues.

(d) Health Care Malpractice Claims

A mediator designated by the court for a health care malpractice claim shall, unless the parties agree otherwise:

(1) have the qualifications prescribed in section (a) of this Rule;

(2) within the two-year period preceding an application for approval pursuant to Rule 17-207, have served as a mediator in at

least five non-domestic civil mediations, at least two of which involved types of conflicts assigned to the Health Care Malpractice Claims ADR Program;

(3) be knowledgeable about health care malpractice claims through experience, training, or education; and

(4) agree to complete any continuing education training required by the court.

Cross reference: See Code, Courts Article, §3-2A-06C.

(e) Foreclosure Cases

(1) This section does not apply to an ADR practitioner selected by the Office of Administrative Hearings to conduct a "foreclosure mediation" pursuant to Code, Real Property Article, §7-105.1 and Rule 14-209.1.

(2) A mediator designated by the court in a proceeding to foreclose a lien instrument shall, unless the parties agree otherwise:

(A) have the qualifications prescribed in section (a) of this Rule; and

(B) through experience, training, or education, be knowledgeable about lien instruments and federal and Maryland laws, rules, and regulations governing foreclosure proceedings.

(f) Experience Requirement

The experience requirements in this Rule may be met by mediating in the District Court or the Court of Special Appeals.

Source: This Rule is derived in part from former Rule 17-104 (a),(c),(d),(e), and (f) (2012) and is in part new.

Rule 17-206. QUALIFICATIONS OF COURT-DESIGNATED ADR PRACTITIONERS OTHER THAN MEDIATORS

(a) Generally

Except as provided in section (b) of this Rule, an ADR practitioner designated by the court to conduct ADR other than mediation shall, unless the parties agree otherwise:

(1) abide by any applicable standards adopted by the Court of Appeals;

(2) submit to periodic monitoring of court-ordered ADR proceedings by a qualified person designated by the county administrative judge;

(3) comply with procedures and requirements prescribed in the court's case management plan filed under Rule 16-202 b. relating to diligence, quality assurance, and a willingness, upon request by the court, to accept a reasonable number of referrals at a reduced-fee or pro bono;

(4) either (A) be a member in good standing of the Maryland bar and have at least five years experience as (i) a judge, (ii) a practitioner in the active practice of law, (iii) a full-time teacher of law at a law school accredited by the American Bar Association, or (iv) a Federal or Maryland administrative law judge, or (B) have equivalent or specialized knowledge and experience in dealing with the issues in dispute; and

(5) have completed any training program required by the

court.

(b) Judges and Masters

An active or retired judge or a master of the court may chair a non-fee-for-service settlement conference.

Cross reference: Rule 16-813, Maryland Code of Judicial Conduct, Canon 4F and Rule 16-814, Maryland Code of Conduct for Judicial Appointees, Canon 4F.

Source: This Rule is derived from former Rule 17-105 (2012).

Rule 17-207. PROCEDURE FOR APPROVAL

(a) Generally

(1) Scope

This section applies to individuals who seek eligibility for designation by a court to conduct ADR pursuant to Rule 9-205, Rule 14-212, or Rule 17-201 other than in actions assigned to the Business and Technology Case Management Program or the Health Care Malpractice Claims ADR Program.

(2) Application

An individual seeking designation to conduct ADR shall file an application with the clerk of the circuit court from which the individual is willing to accept referrals. The application shall be substantially in the form approved by the State Court Administrator and shall be available from the clerk of each circuit court. The clerk shall transmit each completed application, together with all accompanying documentation, to the county administrative judge or the judge's designee.

(3) Documentation

(A) An application for designation as a mediator shall be accompanied by documentation demonstrating that the applicant meets the requirements of Rule 17-205 (a) and, if applicable, Rule 9-205 (c)(2) and Rule 17-205 (c) and (e).

(B) An application for designation to conduct ADR other than mediation shall be accompanied by documentation

demonstrating that the applicant is qualified as required by Rule 17-206 (a).

(C) The State Court Administrator may require the application and documentation to be provided in a word processing file or other electronic format.

(4) Action on Application

After such investigation as the county administrative judge deems appropriate, the county administrative judge or designee shall notify the applicant of the approval or disapproval of the application and the reasons for a disapproval.

(5) Court-Approved ADR Practitioner and Organization Lists

The county administrative judge or designee of each circuit court shall maintain a list:

(A) of mediators who meet the qualifications set forth in Rule 17-205 (a), (c), and (e);

(B) of mediators who meet the qualifications of Rule 9-205 (c);

(C) of other ADR practitioners who meet the applicable qualifications set forth in Rule 17-206 (a); and

(D) of ADR organizations approved by the county administrative judge.

(6) Public Access to Lists

The county administrative judge or designee shall provide to the clerk of the court a copy of each list, together with a copy of the application filed by each individual on the lists. The clerk shall make these items available to the public.

(7) Removal from List

After notice and a reasonable opportunity to respond, the

county administrative judge may remove a person from a court-approved list for failure to maintain the qualifications required by Rule 17-205, Rule 9-205 (c), or Rule 17-206 (a) or for other good cause.

(b) Business and Technology and Health Care Malpractice Programs

(1) Scope

This section applies to individuals who seek eligibility for designation by a court to conduct ADR pursuant to Rule 17-201 in an action assigned to the Business and Technology Case Management Program or pursuant to Rule 17-203 in an action assigned to the Health Care Malpractice Claims ADR Program.

(2) Application

An individual seeking designation to conduct ADR shall file an application with the Administrative Office of the Courts, which shall transmit the application to the Committee of Program Judges appointed pursuant to Rule 16-108 b. 4. The application shall be substantially in the form approved by the State Court Administrator and shall be available from the clerk of each circuit court.

(3) Documentation

(A) An application for designation as a mediator, shall be accompanied by documentation demonstrating that the applicant meets the applicable requirements of Rule 17-205.

(B) An application for designation to conduct ADR other than mediation shall be accompanied by documentation demonstrating that the applicant is qualified as required by Rule

17-206 (a).

(C) The State Court Administrator may require the application and documentation to be provided in a word processing file or other electronic format.

(4) Action on Application

After such investigation as the Committee of Program Judges deems appropriate, the Committee shall notify the Administrative Office of the Courts that the application has been approved or disapproved and the reasons for a disapproval. The Administrative Office of the Courts shall notify the applicant of the action of the Committee and the reasons for a disapproval.

(5) Court-Approved ADR Practitioner Lists

The Administrative Office of the Courts shall maintain a list:

(A) of mediators who meet the qualifications of Rule 17-205 (b);

(B) of mediators who meet the qualifications of Rule 17-205 (d); and

(C) of other ADR practitioners who meet the qualifications of Rule 17-206 (a).

(6) Public Access to Lists

The Administrative Office of the Courts shall attach to the lists such additional information as the State Court Administrator specifies, keep the lists current, and transmit a copy of each current list and attachments to the clerk of each circuit court, who shall make these items available to the public.

Committee note: Examples of information that the State Court Administrator may specify as attachments to the lists include information about the individual's qualifications, experience, and background and any other information that would be helpful to litigants selecting an individual best qualified to conduct ADR in a specific case.

(7) Removal from List

After notice and a reasonable opportunity to respond, the Committee of Program Judges may remove an individual from a court-approved practitioner list for failure to maintain the qualifications required by Rule 17-205 or Rule 17-206 (a) or for other good cause.

Source: This Rule is derived in part from former Rule 17-107 (2012) and is in part new.

Rule 17-208. FEE SCHEDULES

(a) Authority to Adopt

Subject to the approval of the Chief Judge of the Court of Appeals, the county administrative judge of each circuit court shall develop and adopt maximum hourly rate fee schedules for court-designated individuals conducting each type of fee-for-service ADR. In developing the fee schedules, the county administrative judge shall take into account the availability of qualified individuals willing to provide those services and the ability of litigants to pay for them.

Committee note: The maximum hourly rates in a fee schedule may vary based on the type the alternative dispute resolution proceeding, the complexity of the action, and the qualifications of the ADR practitioner.

(b) Applicability of Fee Schedules

The court's fee schedules apply only to ADR practitioners who are initially designated by the court, and not to an individual selected by the parties as a substitute mediator or to an ADR practitioner selected by the parties at the outset, even if the selection is subsequently memorialized by the court in an order of referral or consent order.

(c) Compliance

A court-designated ADR practitioner subject to a fee schedule may not charge or accept a fee for the ADR in excess of that allowed by court order, and the amount stated in the court

order may not exceed the fee stated in the applicable schedule. Violation of this Rule shall be cause for removal from court-approved ADR practitioner lists.

Source: This Rule is derived from former Rule 17-108 (2012).

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CHAPTER 300 – PROCEEDINGS IN THE DISTRICT COURT

Rule 17-301. ADR OFFICE

(a) Definition

"ADR Office" means the District Court Alternative Dispute Resolution Office, a unit within the Office of the Chief Judge of the District Court.

(b) Duties

The ADR Office is responsible for administering the ADR programs of the District Court. Its duties include processing applications for approval as ADR practitioners, conducting orientation for approved ADR practitioners and applicants for approval as such practitioners, arranging the scheduling of ADR practitioners at each District Court location, collecting and maintaining statistical information about the District Court ADR programs, and performing such other duties involving ADR programs as are required by the Rules in this Chapter or are assigned by the Chief Judge of the District Court.

Source: This Rule is new.

Rule 17-302. GENERAL PROCEDURES AND REQUIREMENTS

(a) Authority to Order ADR

Except as provided in sections (b) and (c) of this Rule and Rule 17-303, the court, on or before the day of a scheduled trial, may order a party and the party's attorney to participate in one non-fee-for-service mediation or one non-fee-for-service settlement conference.

Committee note: Under this Rule, an order of referral to ADR may be entered regardless of whether a party is represented by an attorney. This Rule does not preclude the court from offering an additional ADR upon request of the parties.

(b) When Referral Prohibited

The court may not enter an order of referral to ADR in an action for a protective order under Code, Family Law Article, Title 4, Subtitle 5, Domestic Violence.

(c) Objection by Party

(1) Notice of Right to Object

If, on the day of a scheduled trial, an order of referral is contemplated or entered by the court, the court shall inform the parties that they have a right to object to the referral at that time. If a written order of referral is entered and served on the parties prior to the date of the scheduled trial, the order shall inform the parties that they have a right to object to a referral and state a reasonable time and method by which the objection may be made.

(2) Consideration of Objection

(A) If a party objects to a referral, the court shall give the party a reasonable opportunity to explain the basis of the objection and give fair and prompt consideration to it.

(B) If the basis of the objection is that the parties previously engaged in good faith in an ADR process that did not succeed and the court finds that to be true, the court may offer the opportunity for, but may not require, participation in a new court-referred mediation or settlement conference.

Source: This Rule is new.

Rule 17-303. DESIGNATION OF MEDIATORS AND SETTLEMENT CONFERENCE CHAIRS

(a) Limited to Qualified Individuals

(1) Court-Designated Mediator

A mediator designated by the court or pursuant to court order shall possess the qualifications prescribed in Rule 17-304 (a).

(2) Court-Designated Settlement Conference Chair

A settlement conference chair designated by the court or pursuant to court order shall possess the qualifications prescribed in Rule 17-304 (b).

(b) Designation Procedure

(1) Court Order

The court by order may designate an individual to conduct the ADR or may direct the ADR Office, on behalf of the court, to select a qualified individual for that purpose.

(2) Duty of ADR Office

If the court directs the ADR Office to select the individual, the ADR Office may select the individual or may arrange for an ADR organization to do so. An individual selected by the ADR Office or by the ADR organization has the status of a court-designated mediator or settlement conference chair.

(3) Discretion in Designation or Selection

Neither the court nor the ADR Office is required to choose at random or in any particular order from among the qualified individuals. They should endeavor to use the services of as many qualified individuals as practicable, but the court or ADR Office may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective designees.

(4) ADR Practitioner Selected by Agreement of Parties

If the parties agree on the record to participate in ADR but inform the court of their desire to select an individual of their own choosing to conduct the ADR, the court may (A) grant the request and postpone further proceedings for a reasonable time, or (B) deny any request for postponement and proceed with a scheduled trial.

Source: This Rule is new.

Rule 17-304. QUALIFICATIONS AND SELECTION OF MEDIATORS AND SETTLEMENT CONFERENCE CHAIRS

(a) Qualifications of Court-Designated Mediator

To be designated by the court as a mediator, an individual shall:

(1) unless waived by the parties, be at least 21 years old;

(2) have completed at least 40 hours of basic mediation training in a program meeting the requirements of (A) Rule 17-104 or (B) for individuals trained prior to January 1, 2013, former Rule 17-106;

(3) be familiar with the Rules in Title 17 of the Maryland Rules;

(4) submit a completed application in the form required by the ADR Office;

(5) attend an orientation session provided by the ADR Office;

(6) unless waived by the ADR Office, observe, on separate dates, at least two District Court mediation sessions and participate in a debriefing with the mediator after each mediation;

(7) unless waived by the ADR Office, mediate on separate dates, at least two District Court cases while being reviewed by

an experienced mediator or other individual designated by the ADR Office and participate in a debriefing with the observer after each mediation;

(8) agree to volunteer at least six days in each calendar year as a court-designated mediator in the District Court day-of-trial mediation program;

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

(10) submit to periodic monitoring by the ADR Office;

(11) in each calendar year complete four hours of continuing mediation-related education in one or more of the topics set forth in Rule 17-104; and

(12) comply with the procedures and requirements posted on the ADR Office's website relating to diligence and quality assurance.

(b) Qualifications of Court-Designated Settlement Conference Chair

To be designated by the court as a settlement conference chair, an individual shall be:

(1) a judge of the District Court;

(2) a retired judge approved for recall for service under Maryland Constitution, Article IV, §3A; or

(3) an individual who, unless the parties agree otherwise, shall:

(A) abide by any applicable standards adopted by the Court of Appeals;

(B) submit to periodic monitoring of court-ordered ADR by a

qualified person designated by the ADR Office;

(C) be a member in good standing of the Maryland Bar and have at least three years experience in the active practice of law;

(D) unless waived by the court, have completed a training program of at least six hours that has been approved by the ADR Office; and

(E) comply with the procedures and requirements posted on the ADR Office's website relating to diligence and quality assurance.

(c) Procedure for Approval

(1) Filing Application

An individual seeking designation to mediate or conduct settlement conferences in the District Court shall submit to the ADR Office a completed application substantially in the form required by that Office. The application shall be accompanied by documentation demonstrating that the applicant has met the applicable qualifications required by this Rule.

Committee note: Application forms are available from the ADR Office and on the Maryland Judiciary's website, www.mdcourts.gov/district/forms/general/adr001.pdf.

(2) Action on Application

After such investigation as the ADR Office deems appropriate, the ADR Office shall notify the applicant of the approval or disapproval of the application and the reasons for a disapproval.

(3) Court-Approved ADR Practitioner and Organization Lists

The ADR Office shall maintain a list:

(A) of mediators who meet the qualifications of section (a) of this Rule;

(B) of settlement conference chairs who meet the qualifications set forth in subsection (b)(3) of this Rule; and

(C) of ADR organizations approved by the ADR Office.

(4) Public Access to Lists

The ADR Office shall provide to the Administrative Clerk of each District a copy of each list for that District maintained pursuant to subsection (c)(3) of this Rule. The clerk shall make a copy of the list available to the public at each District Court location. A copy of the completed application of an individual on a list shall be made available by the ADR Office upon request.

(5) Removal from List

After notice and a reasonable opportunity to respond, the ADR Office may remove a person as a mediator or settlement conference chair for failure to maintain the applicable qualifications of this Rule or for other good cause.

Source: This Rule is new.

Rule 17-305. NO FEE FOR COURT-ORDERED ADR

District Court litigants and their attorneys shall not be required to pay a fee or additional court costs for participating in a mediation or settlement conference before a court-designated ADR practitioner in the District Court.

Source: This Rule is new.