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RULE 4-216. PRETRIAL RELEASE--AUTHORITY OF JUDICIAL OFFICER; PROCEDURE[Currentness](#)

(a) Arrest Without Warrant. If a defendant was arrested without a warrant, upon the completion of the requirements of Rules 4-213(a) and 4-213.1, the judicial officer shall determine whether there was probable cause for each charge and for the arrest and, as to each determination, make a written record. If there was probable cause for at least one charge and the arrest, the judicial officer shall implement the remaining sections of this Rule. If there was no probable cause for any of the charges or for the arrest, the judicial officer shall release the defendant on personal recognizance, with no other conditions of release, and the remaining sections of this Rule are inapplicable.

Cross reference: See Rule 4-213(a)(5).

(b) Communications With Judicial Officer. Except as permitted by Rule 18-202.9 (a)(1) and (2) of the Maryland Code of Conduct for Judicial Appointees or Rule 18-102.9 (a)(1) and (2) of the Maryland Code of Judicial Conduct, all communications with a judicial officer regarding any matter required to be considered by the judicial officer under this Rule shall be (1) in writing, with a copy provided, if feasible, but at least shown or communicated by the judicial officer to each party who participates in the proceeding before the judicial officer, and made part of the record, or (2) made orally at the proceeding before the judicial officer. Each party who participates in the proceeding shall be given an opportunity to respond to the communication.

Cross reference: See also Rule 19-303.5 (a) of the Maryland Attorneys' Rules of Professional Conduct.

(c) Defendants Eligible for Release by Commissioner or Judge. In accordance with this Rule, Rule 4-216.1, and Code, Criminal Procedure Article, §§ 5-101 and 5-201 and except as otherwise provided in section (d) of this Rule, by Code, Criminal Procedure Article, §§ 5-201 and 5-202, or by other applicable law, a defendant is entitled to be considered for release before verdict by a judicial officer.

Committee note: An individual arrested on a warrant issued pursuant to the Interstate Compact for Adult Offender Supervision is ineligible for release by a judge or commissioner. The individual is required to be detained in accordance with Rules promulgated by the Interstate Commission for Adult Offender Supervision (ICAOS). See 4 U.S.C. 112; Code, Correctional Services Article, Title 6, Chapter 200; and ICAOS Rules (available on the Internet).

(d) Defendants Eligible for Release Only by a Judge.

(1) A defendant charged with an offense for which the maximum penalty is life imprisonment or with an offense listed under Code, Criminal Procedure Article, § 5-202(a), (b), (c), (d), (e), (f) or (g) may not be released by a District Court Commissioner, but may be released before verdict or pending a new trial, if a new trial has been ordered, only by a judge.

(2) An individual arrested in this State who is subject to extradition under the Uniform Criminal Extradition Act (Code, Criminal Procedure Article, Title 9) may not be released by a Commissioner, but may be released only by a judge in accordance with that Act.

(e) Duties of Judicial Officer. In deciding upon release and any conditions of release, the judicial officer shall apply the standards and comply with the requirements set forth in Rule 4-216.1.

(f) Temporary Commitment Order. If an initial appearance before a commissioner cannot proceed or be completed as scheduled, the commissioner may enter a temporary commitment order, but in that event the defendant shall be presented at the earliest opportunity to the next available judicial officer for an initial appearance. If the judicial officer is a judge, there shall be no review of the judge's order pursuant to Rule 4-216.2.

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

(g) Record. The judicial officer shall make a brief written record of the proceeding, including:

- (1) whether notice of the time and place of the proceeding was given to the State's Attorney and the Public Defender or any other defense attorney and, if so, the time and method of notification;
- (2) if a State's Attorney has entered an appearance, the name of the State's Attorney and whether the State's Attorney was physically present at the proceeding or appeared remotely;
- (3) if an attorney has entered an appearance for the defendant, the name of the attorney and whether the attorney was physically present at the proceeding or appeared remotely;
- (4) if the defendant waived an attorney, a confirmation that the advice required by Rule 4-213.1(e) was given and the defendant's waiver was knowing and voluntary;
- (5) confirmation that the judicial officer complied with each applicable requirement specified in section (g) of this Rule and in Rule 4-213(a);
- (6) whether the defendant was ordered held without bail;
- (7) whether the defendant was released on personal recognizance; and
- (8) if the defendant was ordered released on conditions pursuant to Rule 4-216.1 the conditions of the release.

(h) Title 5 Not Applicable. Title 5 of these rules does not apply to proceedings conducted under this Rule.

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

Credits

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