

The agenda for a meeting of the Rules Committee generally will be posted 7-10 days before the date of the meeting. At the discretion of the Chair, items may be deleted from or added to the agenda.

AGENDA FOR
RULES COMMITTEE MEETING

June 17, 2010
(Thursday)

Judiciary Education and Conference Center
Training Rooms 5 & 6
2011-D Commerce Park Drive
Annapolis, Maryland
9:30 a.m.

- | | | |
|---------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|
| Item 1. | Continued reconsideration of a State-wide Rule on cell phones applicable to all Maryland courts

New Rule 16-110 (Cell Phones and other Electronic Devices)
Amendments to Rule 16-109 (Photographing, Recording, Broadcasting or Televising In Courthouses) | Judge Wilner |
| Item 2. | Reconsideration of a proposed amendment to Rule 1-202 (Definitions), adding a definition of "newspaper of general circulation" | Ms. Schuett |
| Item 3. | Continued consideration of proposed amendments to Rule 5-804 (Hearsay Exceptions; Declarant Unavailable) | Mr. Michael
Mr. Karceski |
| Item 4. | Consideration of proposed Rules changes recommended by the Criminal Subcommittee

Amendments to Rule 4-312 (Jury Selection)

Amendments to Rule 4-263 (Discovery in Circuit Court)
New Rule 4-281 (Striking of Death Penalty Notice) | Mr. Karceski |

Amendments to:

Rule 4-102 (Definitions)

Rule 4-216 (Pretrial Release)

Rule 4-242 (Pleas)

CELL PHONE AND ELECTRONIC DEVICE POLICY
PROPOSAL FOR CONSIDERATION

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE, JUDICIAL
DUTIES, ETC.

ADD new Rule 16-110, as follows:

Rule 16-110. CELL PHONES AND OTHER ELECTRONIC DEVICES

(a) Definition

In this Rule:

(1) Electronic Device

"Electronic device" includes a cell phone, computer, camera, and any other device that is capable of transmitting or receiving messages, images, sounds, data, or other information by electronic means or that, in appearance, purports to be a cell phone, computer, camera, or such other device.

Committee note: Cameras that operate mechanically and record images using film, rather than digital technology, are included in the definition of "electronic device."

(2) Local Administrative Judge

"Local administrative judge" means the county administrative judge in a circuit court and the district administrative judge in the District Court.

(3) Court Facility

"Court facility" means (1) the building in which a

circuit court or the District Court is located, or (2) if the court is in a building that is also occupied by county or State executive agencies having no substantial connection with the court, that part of the building occupied by the court.

(b) Generally

(1) Subject to inspection by court security personnel and the restrictions set forth in this section and sections (c), (d), and (e) of this Rule, a person may bring an electronic device into a court facility.

(2) Upon a finding that the circumstances of a particular case raise special security or privacy issues that warrant a restriction on the possession of electronic devices, the local administrative judge or the presiding judge may enter an order limiting or prohibiting the possession of electronic devices by members of the general public in a courtroom or other designated areas of the court facility. The order shall provide for the collection of the devices and for their return when the individual who possessed the device leaves the courtroom or other area. No liability shall accrue to the security personnel or any other court official or employee for any loss or misplacement or damage to the device.

(c) Use of Electronic Devices; Restrictions

(1) Rule 5-615 Order

An electronic device may not be used to facilitate or achieve a violation of an order entered pursuant to Rule 5-615

(d).

(2) Photographs and Video

Except as permitted in accordance with Rule 16-109, recording or transmitting a visual image in or from a court facility is prohibited.

Committee note: The prohibition set forth in subsection (c)(2) of this Rule includes still photography and moving visual images.

(3) Phone Calls; Text Messages; Other Uses

Except in a courtroom, a jury deliberation room, or an area which, by order of the local administrative judge, the use of electronic devices is limited or prohibited, an electronic device may be used in a court facility for the purpose of sending and receiving phone calls and text messages and for any other lawful purpose not otherwise prohibited. The device shall be used in a manner that does not interfere with court proceedings or the work of court personnel.

Committee note: An example of a use prohibited by subsection (c)(3) is a loud conversation on a cell phone in a hallway near the door to a courtroom or in the Clerk's office.

(d) In Courtroom

(1) Except with the express permission of the presiding judge or as otherwise permitted by this Rule or Rule 16-109, all electronic devices inside a courtroom shall remain off and no electronic device may be used to receive, transmit, or record sound, visual images, data, or other information.

(2) Subject to subsection (b)(2), the Court shall liberally allow the attorneys in a proceeding currently being heard and

persons associated with the attorney to make reasonable and lawful use of an electronic device in connection with the proceeding.

(e) Jury Deliberation Room

Except with permission from a judge of the court, an electronic device may not be brought into any room designated as a jury deliberation room.

Committee note: Because electronic devices may not be brought into any jury deliberation room, the administrative judge may require that jurors leave such devices in a place designated by the administrative judge, either in or outside the courtroom.

(f) Notice

(1) Notice of the provisions of sections (b), (c), (d), (e), and (g) of this Rule shall be:

(A) posted prominently outside each entrance to the court facility and each security checkpoint within the court facility;

(B) included on the main judiciary website and the website of each court; and

(C) disseminated to the public by any other means approved in an administrative order of the Chief Judge of the Court of Appeals.

(2) Notice that the possession and use of cell phones and other electronic devices may be limited or prohibited in designated areas of the court facility shall be included prominently on all summonses and notices of court proceedings.

(g) Violation of Rule

An electronic device that is used in violation of this

Rule may be confiscated and retained by security personnel or other court personnel subject to further order of the court or until the owner leaves the building. No liability shall accrue to the security personnel or any other court official or employee for any loss or misplacement of or damage to the device. An individual who willfully violates this Rule or any reasonable limitation imposed by the local administrative judge or the presiding judge may be found in contempt of court and sanctioned in accordance with the Rules in Title 15, Chapter 200.

Source: This Rule is new.

REPORTER'S NOTE

The Chief Judge of the Court of Appeals has requested that the Rules Committee transmit to the Court for its consideration a State-wide Rule on cell phones. The Committee considered draft proposals at its March 2010 and April 2010 meetings. Those proposals generally prohibited cell phones and other electronic devices from being brought into a court facility, with certain exceptions.

At the April meeting, the Committee voted to request a proposal that generally allows cell phones and other electronic devices to be brought into a court facility, with certain restrictions on the use of the devices once they are inside the facility. Proposed new Rule 16-110 has been drafted in accordance with the directive.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 100 - COURT ADMINISTRATIVE STRUCTURE, JUDICIAL
DUTIES, ETC.

AMEND Rule 16-109 to provide that possession of an electronic device in a court facility is governed by Rule 16-110, as follows:

Rule 16-109. PHOTOGRAPHING, RECORDING, BROADCASTING OR
TELEVISIONING IN COURTHOUSES

. . .

b. General Provisions.

1. Unless prohibited by law or this Rule, extended coverage of proceedings in the trial and appellate courts of this State is permitted in accordance with this Rule.

Committee note: Code, Criminal Procedure Article, §1-201 prohibits extended coverage of criminal proceedings in a trial court or before a grand jury.

2. Outside a courtroom but within a courthouse or other facility extended coverage is prohibited of persons present for a judicial or grand jury proceeding, or where extended coverage is so close to a judicial or grand jury proceeding that it is likely to interfere with the proceeding or its dignity and decorum.

3. Possession of ~~cameras and recording[s] or transmitting equipment, including camera-equipped cellular phones or similar handheld devices capable of capturing images, is prohibited in~~

~~all courtrooms, jury rooms, and adjacent hallways except when required for extended coverage permitted by this rule or for media coverage not prohibited by this rule~~ an "electronic device" in a "court facility" as those terms are defined in Rule 16-110 is governed by that Rule.

4. Nothing in this Rule is intended to restrict in any way the present rights of the media to report proceedings.

5. Extended coverage shall be conducted so as not to interfere with the right of any person to a fair and impartial trial, and so as not to interfere with the dignity and decorum which must attend the proceedings.

6. No proceeding shall be delayed or continued to allow for extended coverage, nor shall the requirements of extended coverage in any way affect legitimate motions for continuance or challenges to the judge.

7. This Rule does not apply to:

(i) The use of electronic or photographic equipment approved by the court for the perpetuation of a court record;

(ii) Investiture or ceremonial proceedings, provided, however, that the local administrative judge of a trial court and the Chief Judge of an appellate court shall have complete discretion to regulate the presence and use of cameras, recorders, and broadcasting equipment at the proceedings.

(iii) The use of electronic or photographic equipment approved by the court to take the testimony of a child victim

under Code, Criminal Procedure Article, §11-303.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 16-109 coordinates the Rule with proposed new Rule 16-110, so that Rule 16-109 does not appear to prohibit a possession that Rule 16-110 otherwise permits.

MEMORANDUM

TO : Members of the Rules Committee

FROM : Sandra F. Haines, Esq., Reporter

DATE : June 7, 2010

SUBJECT : "Newspaper of general circulation"

At the April 2010 meeting, the Rules Committee approved the attached amendment to Rule 1-202, which adds to the Maryland Rules a definition of "newspaper of general circulation" that tracks the statutory definition set forth in Code, Article 1, §28. In conjunction with this decision, conforming or clarifying amendments to Rules 2-131, 2-221, 3-131, 3-221, 6-208, 9-107, 9-202, 14-210, 15-901, and 16-401 also were approved by the Committee. No changes were deemed necessary to the sixteen other Rules in which "newspaper" appears.

The Committee is being asked to reconsider its decision, so that newspapers that are distributed free of charge are included in the definition, provided that they possess the other attributes of a newspaper of general circulation.

Enclosed for the Committee's reference are materials from Alice Neff Luken, Counsel, Washington Newspaper Publishing Company; George Wilbanks, Publisher/Owner, East County Times; and Jim Haigh, Government Relations Consultant, Mid-Atlantic Community Papers Association. Also enclosed are memoranda from Ashelee Morrow, Rules Committee Intern, and Erin Day, former Rules Committee Intern.

SFH:cdc
Enclosures

MARYLAND RULES OF PROCEDURE

TITLE 1 - GENERAL PROVISIONS

CHAPTER 200 - CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-202 to add a definition of "newspaper of general circulation" and to make stylistic changes, as follows:

Rule 1-202. DEFINITIONS

. . .

(r) Newspaper of General Circulation

"Newspaper of general circulation" means a newspaper as defined in Code, Article 1, §28.

~~(r)~~ (s) Original Pleading

"Original pleading" means the first pleading filed in an action against a defendant and includes a third-party complaint.

~~(s)~~ (t) Person

"Person" includes any individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated associations, limited liability partnership, limited liability company, the State, its agencies or political subdivisions, any court, or any other governmental entity.

~~(t)~~ (u) Pleading

"Pleading" means a complaint, a counterclaim, a cross-claim, a third-party complaint, an answer, an answer to a counterclaim, cross-claim, or third-party complaint, a reply to

an answer, or a charging document as used in Title 4.

~~(u)~~ (v) Proceeding

"Proceeding" means any part of an action.

~~(v)~~ (w) Process

"Process" means any written order issued by a court to secure compliance with its commands or to require action by any person and includes a summons, subpoena, an order of publication, a commission or other writ.

~~(w)~~ (x) Property

"Property" includes real, personal, mixed, tangible or intangible property of every kind.

~~(x)~~ (y) Return

"Return" means a report of action taken to serve or effectuate process.

~~(y)~~ (z) Sheriff

"Sheriff " means the sheriff or a deputy sheriff of the county in which the proceedings are taken, any elisor appointed to perform the duties of the sheriff, and, with respect to the District Court, any court constable.

~~(z)~~ (aa) Subpoena

"Subpoena" means a written order or writ directed to a person and requiring attendance at a particular time and place to take the action specified therein.

~~(aa)~~ (bb) Summons

"Summons" means a writ notifying the person named in the

summons that (1) an action against that person has been commenced in the court from which the summons is issued and (2) in a civil action, failure to answer the complaint may result in entry of judgment against that person and, in a criminal action, failure to attend may result in issuance of a warrant for that person's arrest.

~~(bb)~~ (cc) Writ

"Writ" means a written order issued by a court and addressed to a sheriff or other person whose action the court desires to command to require performance of a specified act or to give authority to have the act done.

Source: This Rule is derived as follows:

. . .

Section (r) is new.

Section ~~(r)~~ (s) is derived from the last sentence of former Rule 5 v.

Section ~~(s)~~ (t) is derived from former Rule 5 q.

Section ~~(t)~~ (u) is new and adopts the concept of federal practice set forth in the 1963 version of Fed. R. Civ. P. 7 (a).

Section ~~(u)~~ (v) is derived from former Rule 5 w.

Section ~~(v)~~ (w) is derived from former Rule 5 y.

Section ~~(w)~~ (x) is derived from former Rule 5 z.

Section ~~(x)~~ (y) is new.

Section ~~(y)~~ (z) is derived from former Rule 5 cc.

Section ~~(z)~~ (aa) is derived from former Rule 5 ee.

Section ~~(aa)~~ (bb) is new.

Section ~~(bb)~~ (cc) is derived from former Rule 5 ff.

REPORTER'S NOTE

The issue of defining the term "newspaper of general circulation" arose in the context of Rule 14-210, Notice Prior to Sale, addressing publication of a notice in a foreclosure action. In order to clarify the meaning of the term, the General Provisions Subcommittee recommends (1) adding to Rule 1-202 a definition of the term "newspaper of general circulation," which

refers to the definition in Code, Article 1, §28, and (2) amending Rules 6-208, 9-107, and 15-901 to either conform to this term or to clarify the location of circulation of the newspaper that is referred to in the Rule. With the addition of the definition, the Committee note in Rule 14-210 after section (a) is no longer necessary and is proposed to be deleted. Amendments to Rules 2-131, 2-221, 3-131, 3-221, 9-202, and 16-401 conform cross references in those Rules to the re-lettering of Rule 1-202.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 800 - HEARSAY

AMEND Rule 5-804 (b)(3) by deleting the language "to exculpate the accused" and adding the language "in a criminal case," as follows:

Rule 5-804. HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE

(a) Definition of Unavailability

"Unavailability as a witness" includes situations in which the declarant:

(1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;

(2) refuses to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;

(3) testifies to a lack of memory of the subject matter of the declarant's statement;

(4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or

(5) is absent from the hearing and the proponent of the statement has been unable to procure the declarant's attendance (or in the case of a hearsay exception under subsection (b)(2), (3), or (4) of this Rule, the declarant's attendance or

testimony) by process or other reasonable means.

A statement will not qualify under section (b) of this Rule if the unavailability is due to the procurement or wrongdoing of the proponent of the statement for the purpose of preventing the witness from attending or testifying.

(b) Hearsay Exceptions

The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former Testimony

Testimony given as a witness in any action or proceeding or in a deposition taken in compliance with law in the course of any action or proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement Under Belief of Impending Death

In a prosecution for an offense based upon an unlawful homicide, attempted homicide, or assault with intent to commit a homicide or in any civil action, a statement made by a declarant, while believing that the declarant's death was imminent, concerning the cause or circumstances of what the declarant believed to be his or her impending death.

(3) Statement Against Interest

A statement which was at the time of its making so contrary to the declarant's pecuniary or proprietary interest, so

tended to subject the declarant to civil or criminal liability, or so tended to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true. A statement tending to expose the declarant to criminal liability and offered ~~to exculpate the accused~~ in a criminal case is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

Cross reference: See Code, Courts Article, §10-920, distinguishing expressions of regret or apology by health care providers from admissions of liability or fault.

(4) Statement of Personal or Family History

(A) A statement concerning the declarant's own birth; adoption; marriage; divorce; legitimacy; ancestry; relationship by blood, adoption, or marriage; or other similar fact of personal or family history, even though the declarant had no means of acquiring personal knowledge of the matter stated.

(B) A statement concerning the death of, or any of the facts listed in subsection (4)(A) about another person, if the declarant was related to the other person by blood, adoption, or marriage or was so intimately associated with the other person's family as to be likely to have accurate information concerning the matter declared.

(5) Witness Unavailable Because of Party's Wrongdoing

(A) Civil Actions

In civil actions in which a witness is unavailable because of a party's wrongdoing, a statement that (i) was (a) given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition; (b) reduced to writing and was signed by the declarant; or (c) recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement, and (ii) is offered against a party who has engaged in, directed, or conspired to commit wrongdoing that was intended to, and did, procure the unavailability of the declarant as a witness, provided however the statement may not be admitted unless, as soon as practicable after the proponent of the statement learns that the declarant will be unavailable, the proponent makes known to the adverse party the intention to offer the statement and the particulars of it.

Committee note: A "party" referred to in subsection (b)(5)(A) also includes an agent of the government.

(B) Criminal Causes

In criminal causes in which a witness is unavailable because of a party's wrongdoing, admission of the witness's statement under this exception is governed by Code, Courts Article, §10-901.

Committee note: Subsection (b)(5) of this Rule does not affect the law of spoliation, "guilty knowledge," or unexplained failure to produce a witness to whom one has superior access. See *Washington v. State*, 293 Md. 465, 468 n. 1 (1982); *Breeding v. State*, 220 Md. 193, 197 (1959); *Shpak v. Schertle*, 97 Md. App. 207, 222-27 (1993); *Meyer v. McDonnell*, 40 Md. App. 524, 533, (1978), rev'dd on other grounds, 301 Md. 426 (1984); *Larsen v.*

Romeo, 254 Md. 220, 228 (1969); *Hoverter v. Director of Patuxent Inst.*, 231 Md. 608, 609 (1963); and *DiLeo v. Nugent*, 88 Md. App. 59, 69-72 (1991). The hearsay exception set forth in subsection (b)(5)(B) is not available in criminal causes other than those listed in Code, Courts Article, §10-901 (a).

Cross reference: For the residual hearsay exception applicable regardless of the availability of the declarant, see Rule 5-803 (b)(24).

Source: This Rule is derived from F.R.Ev. 804.

REPORTER'S NOTE

The Criminal Subcommittee recommends a change to Rule 5-804 (b)(3). This was requested by the Office of the Public Defender, and it is based on an amendment to Fed.R.Ev. 804 (b)(3) that will go into effect December, 2010. The proposed amendment would require both sides in a criminal case to show corroborating circumstances as a condition for admission of an unavailable declarant's statement against pecuniary or proprietary interest. Currently, the Rule requires only the defendant to make this showing. The Office of the Public Defender points out that under the current Rule, there is a risk of wrongful convictions based on unreliable statements against interest by unavailable witnesses who cannot be cross-examined. Unavailable State's witnesses' testimony should be subject to the same requirement of corroboration as that of defense witnesses.

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

AMEND Rule 4-312 to add a new subsection (c)(2) requiring that jurors be addressed by number, to add a new subsection (c)(3) pertaining to an anonymous jury, to add a new Committee note, and to make stylistic changes, as follows:

Rule 4-312. JURY SELECTION

. . .

(c) Jury List

(1) Contents

Subject to subsection (c)(3) of this Rule, Before before the examination of qualified jurors, each party shall be provided with a list that includes each juror's name, ~~address~~ city or town of residence, zip code, age, ~~sex~~ gender, education, occupation, and spouse's occupation, ~~and any other information required by Rule.~~ Unless the trial judge orders otherwise, ~~the address shall be limited to the city or town and zip code and shall not include the juror's street address or box number shall not be provided.~~

(2) Jurors Not to be Addressed by Name

Throughout a case, jurors are to be referred to by their juror number and not by their name.

(3) Anonymous Jury

(A) Not Applicable in Death Penalty Cases

Subsections (c)(3)(B), (C), and (D) do not apply in an action where the State has given notice under Code, Criminal Law Article, §2-202 (a) of its intention to seek a sentence of death.

(The Criminal Subcommittee has asked the Rules Committee to determine whether an anonymous jury should not be permitted in a death penalty case.)

(B) For Safety and Security of Jurors

On its own motion or on written motion of a party and after notice and a reasonable opportunity for the parties to be heard, the court may order that the name and

ALTERNATIVE #1

, unless the action is in the Circuit Court for Baltimore City,

ALTERNATIVE #2

, unless the action is in the Circuit Court for Baltimore City,

the city or town of residence of prospective jurors not be disclosed in voir dire, and subject to further order of the court, that information regarding impaneled jurors not be disclosed at any time or disclosed only to the defendant and counsel. The order may not be entered unless the court finds from the evidence or information presented that there is strong reason to believe that disclosure of the name and the city or town of residence of the jurors is likely to imperil the safety and security of the jurors.

(C) To Prevent Jurors Being Influenced

If the court finds only that there is a likelihood that disclosure of the jurors' information would allow access to

jurors for the purpose of influencing them during the pendency of the case, the court may order that the information be disclosed only to the defendant and counsel.

(D) Modification of Order to Restrict Disclosure of Juror Information

The court may modify the order to restrict disclosure of juror information at any time.

Committee note: In rare cases, a court may determine that a jury should be impaneled anonymously because of concerns of jury safety or tampering. See *United States v. Deitz*, 577 F.2d 672 (6th Cir. 2009); *United States v. Quinones*, 511 F.3d 289 (2nd Cir. 2007). Courts have considered five factors in deciding whether the jury should be anonymous: (1) the defendant's involvement in organized crime, (2) the defendant's participation in a group with the capacity to harm jurors, (3) the defendant's past attempts to interfere with the judicial process, (4) the potential that, if convicted, the defendant will suffer a lengthy incarceration, and (5) extensive publicity that could enhance the possibility that jurors' names would become public and expose them to intimidation or harassment. See *United States v. Ochoa-Vasquez*, 428 F.3d 1015 (11th Cir. 2005); *United States v. Ross*, 33 F.3d 1507 (11th Cir. 1994). Although the possibility of a lengthy incarceration is a factor for the court to consider, on that basis alone, the court should not impanel an anonymous jury.

In order to minimize any prejudicial effects on the defendant and ensure that fundamental rights to an impartial jury and fair trial are not infringed, the court should allow expanded voir dire as necessary to compensate for the lack of information about jurors' names and addresses. Notwithstanding the provisions of this Rule, the court has the inherent power to protect prospective jurors, jurors, and the trial process when needed.

. . .

REPORTER'S NOTE

The Criminal Subcommittee suggests referring to jurors only by number throughout all jury trials. This will help protect jurors' identities and avoid the need to explain to jurors why, in certain cases, they are being referred to by number only.

The Maryland Circuit Judges Association suggests that the Maryland Rules of Procedure be amended to provide for anonymous jurors in cases where the trial court determines that there are strong reasons to believe that juror safety, juror fear, or jury tampering will be a problem during the trial.

The Subcommittee also suggests adding language to Rule 4-312 to provide for an anonymous jury and adding a Committee note that (1) references several federal cases that set out factors for courts to consider in deciding whether the jury should be anonymous and (2) suggests that expanded voir dire be allowed if the jury is anonymous. The Subcommittee has proposed two different sets of alternatives for the Committee to decide upon. The first one is in subsection (c)(2)(A), which provides an exclusion for anonymous juries in death penalty cases. The second choice is whether the language in subsection (c)(2)(B) "unless the action is in the Circuit Court for Baltimore City" should be added to the Rule. This language had been proposed by the Chair because Baltimore City is an entire jurisdiction, and there are no other addresses with places other than Baltimore within the city.

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

AMEND Rule 4-263 (d) by adding a new paragraph (11), as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

. . .

(d) Disclosure by the State's Attorney

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

(1) Statements

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

(2) Criminal Record

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

(3) State's Witnesses

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

the offense charged;

(4) Prior Conduct

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

(5) Exculpatory Information

All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged;

(6) Impeachment Information

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

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

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

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

(D) an oral statement of the witness, not otherwise

memorialized, that is materially inconsistent with another statement made by the witness or with a statement made by another witness;

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

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

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

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

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

All relevant material or information regarding:

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

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

(8) Reports or Statements of Experts

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

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

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

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

(9) Evidence for Use at Trial

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

(10) Property of the Defendant

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

(11) Evidentiary Statement in Capital Cases

If the defendant is charged with a first degree murder that is eligible for a sentence of death and the State filed a

notice of intention to seek a death sentence pursuant to Code, Criminal Law Article, §2-202 (a), a statement of whether the material disclosed constitutes (A) biological evidence or DNA evidence that links the defendant to the act of murder, (B) a videotaped, voluntary interrogation and confession of the defendant to the murder, or (C) a video recording that conclusively links the defendant to the murder, and, if so, identification of the material that constitutes such evidence.

. . .

REPORTER'S NOTE

Chapter 186, Acts of 2009 (SB 279), limits the ability to sentence a defendant to the death penalty unless the State presents the court or jury with (1) biological evidence or DNA evidence that links the defendant to the act of murder, (2) a videotaped, voluntary interrogation and confession of the defendant to the murder, or (3) a video recording that conclusively links the defendant to the murder. Code, Criminal Law Article, §2-202 (a) requires that the State give notice of its intention to seek the death penalty at least 30 days before trial. Under Rule 4-263 (d), the State must disclose to the defendant before trial certain material including (1) all written reports of experts and the substance of all oral reports of experts regarding the results of scientific tests, as well as relevant material regarding searches and seizures, (2) all relevant material regarding electronic surveillance, and (3) all recordings that relate to the acquisition of statements from the defendant. If the State has any of the specific material required by the new statute, that material would have to be disclosed before trial in accordance with Rule 4-263. Proposed new subsection (d)(11) adds to Rule 4-263 a provision that requires the State to (1) provide a statement as to whether any of the material disclosed makes the defendant eligible for a sentence of death and (2) identify any such material.

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

ADD new Rule 4-281, as follows:

Rule 4-281. STRIKING OF DEATH PENALTY NOTICE

(a) Motion

Upon completion of discovery, a defendant may move to preclude the State from filing a notice of intention to seek a sentence of death or to strike such a notice already filed pursuant to Code, Criminal Law Article, §2-301 on the ground that the State has failed to produce in discovery evidence of an aggravating circumstance listed in Code, Criminal Law Article, §2-303 (g), or one of the following:

- (1) biological evidence or DNA evidence that links the defendant to the act of murder;
- (2) a video taped voluntary interrogation and confession of the defendant to the murder; or
- (3) a video recording that conclusively links the defendant to the murder.

(b) Order

After an opportunity for a hearing, the court shall promptly rule on the motion and enter an order. An order granting the motion shall be regarded as a final order in the matter. Any order denying the motion shall be regarded as

interlocutory.

(c) Appeal by State

A final order granting the motion may be appealed by the State under the collateral order doctrine. Any appeal shall be to the Court of Appeals and shall be filed within 30 days after entry of the order. Trial and all other proceedings in the case that may be affected by the appeal shall be stayed until the appeal is finally concluded. An order denying the motion is not immediately appealable under the collateral order doctrine.

Source: This Rule is new.

REPORTER'S NOTE

In *State v. Manck*, 385 Md. 581 (2005), the Court of Appeals held in a 4-3 decision that the State has no right to appeal from a court's decision to grant a motion to strike a notice of intention to seek the death penalty. There was some ambiguity as to whether a court can strike the notice at all. To clarify these issues, the Subcommittee recommends the addition of proposed new Rule 4-281, which provides that (1) a defendant may move to strike the notice of intention to seek the death penalty if the State has failed to produce in discovery evidence of an aggravating factor as listed in Code, Criminal Law Article, §2-303 (g) or one of the three factors listed in Code, Criminal Law Article, §2-202, (2) the court shall rule on the motion, and (3) the State may appeal an order granting the motion.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 100 - GENERAL

AMEND Rule 4-102 (a) to add the word "warrant," as follows:

Rule 4-102. DEFINITIONS

The following definitions apply in this Title:

. . .

(a) Charging Document

"Charging document" means a written accusation alleging that a defendant has committed an offense. It includes a citation, an indictment, an information, ~~and~~ a statement of charges, and a warrant.

. . .

REPORTER'S NOTE

In a footnote, the Court of Appeals in *Briggs v. State*, ___ Md. ___ (No. 56, September Term, 2009, filed April 12, 2010), pointed out that the definition of "charging document" in Rule 4-102 (a) differs from the definition in Code, Criminal Procedure Article, §1-101 (b) in that the Rule does not include a "warrant" in the definition of "charging document" while the Code definition does. The Criminal Subcommittee recommends adding the word "warrant" to Rule 4-102 (a) to make the Rule consistent with the statute.

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

AMEND Rule 4-216 by adding Code references to section (c),
as follows:

Rule 4-216. PRETRIAL RELEASE

. . .

(c) Defendants Eligible for Release Only by a Judge

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

. . .

REPORTER'S NOTE

The General Assembly enacted Chapter 184, Laws of 2010 (HB 1046), which prohibits a District Court commissioner from authorizing the pretrial release of a defendant who is a registered sex offender. The Subcommittee recommends adding to section (c) a reference to this new provision, Code, Criminal

Procedure Article, §5-202 (g), and also a reference to §5-202 (f) that lists other crimes with which a defendant has been charged and for which a District Court commissioner cannot authorize pretrial release.

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

AMEND Rule 4-242 to change a Code reference in section (e),
as follows:

Rule 4-242. PLEAS

. . .

(e) Collateral Consequences of a Plea of Guilty or Nolo
Contendere

Before the court accepts a plea of guilty 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 ~~(i)~~ (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.

. . .

REPORTER'S NOTE

The General Assembly passed Chapter 175, Laws of 2010 (HB 936), which amended Code, Criminal Procedure Article, §11-701 pertaining to registration of sex offenders. The Criminal Subcommittee recommends changing the Code reference in section (e) to conform to the new statute.