

July 29, 2009

The Honorable Robert M. Bell,
 Chief Judge
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.
The Honorable Joseph F. Murphy, Jr.
The Honorable Sally D. Adkins
The Honorable Mary Ellen Barbera,
 Judges
 The Court of Appeals of Maryland
 Robert C. Murphy Courts of Appeal Building
 Annapolis, Maryland 21401

Re: Supplement to the One Hundred
 Sixty-Second Report of the
 Rules Committee

Your Honors:

 Omitted inadvertently from the One Hundred Sixty-Second
Report of the Rules Committee are amendments to Rule 15-303
(Procedure on Petition) that should have been included in
Category 15 of the Report.

 Please replace the "Category 15" version of Rule 15-303 with
the correct version of that Rule by removing page 185 from your
notebooks and replacing it with pages 185 a through h, enclosed.

Respectfully submitted,

Sandra F. Haines
Reporter

SFH:cdc

MARYLAND RULES OF PROCEDURE
TITLE 15 - OTHER SPECIAL PROCEEDINGS
CHAPTER 300 - HABEAS CORPUS

AMEND Rule 15-303 by deleting the words "or could have been" from subsection (b)(1) and by prohibiting a circuit court judge from transmitting or referring a petition to a District Court judge under certain circumstances, as follows:

Rule 15-303. PROCEDURE ON PETITION

(a) Generally

Upon receiving a petition for a writ of habeas corpus, the judge immediately shall refer it as provided in section (c) of this Rule or act on the petition as provided in section (d) or (e) of this Rule, except that if the petition seeks a writ of habeas corpus for the purpose of determining admission to bail or the appropriateness of any bail set, the judge may proceed in accordance with section (b) of this Rule.

(b) Bail

(1) Pretrial

If a petition by or on behalf of an individual who is confined prior to or during trial seeks a writ of habeas corpus for the purpose of determining admission to bail or the appropriateness of any bail set, the judge to whom the petition is directed may deny the petition without a hearing if a judge has previously determined the individual's eligibility for pretrial release or the conditions for such release pursuant to Rule 4-216 and the petition raises no grounds sufficient to

warrant issuance of the writ other than grounds that were ~~or~~
~~could have been~~ raised when the earlier pretrial release
determination was made.

Cross reference: Rule 4-213 (c).

(2) After Conviction

(A) Except as otherwise provided in subsection (2)(B) of
this section, if a petition by or on behalf of an individual
confined as a result of a conviction pending sentencing or
exhaustion of appellate review seeks a writ of habeas corpus for
the purpose of determining admission to bail or the
appropriateness of any bail set, the judge to whom the petition
is directed may deny the writ and order that the petition be
treated as a motion for release or for amendment of an order of
release pursuant to Rule 4-349. Upon entry of the order, the
judge shall transmit the petition, a certified copy of the order,
and any other pertinent papers to the trial judge who presided at
the proceeding as a result of which the individual was confined.
Upon receiving of the transmittal, the trial judge shall proceed
in accordance with Rule 4-349.

(B) ~~A~~ If a petition directed to a circuit court judge to
~~whom a petition for a writ of habeas corpus is directed shall not~~
~~enter an order under subsection (2)(A) of this section if the~~
~~petition is by~~ is filed by or on behalf of an individual confined
as a result of a conviction in the District Court that has been
appealed to a circuit court, the circuit court judge shall act on
the petition and may not transmit or refer the petition to a
District Court judge.

(c) Referral

If the petition is made by or on behalf of an individual confined or restrained as the result of a prior judicial proceeding, a judge to whom the petition has been made may refer the petition, without taking other action, to the administrative judge of the court in which the prior proceeding was held. In exercising the discretion to refer the petition, the judge to whom the petition has been directed shall consider the interests and convenience of the parties and the State. Upon receiving the referral, the administrative judge shall assign the petition to a judge in accordance with the assignment procedures of that court, except that, without the written consent of the individual confined or restrained, the petition shall not be assigned to any judge who sat at the proceeding as a result of which the individual was confined or restrained. The judge to whom the petition has been assigned may not further refer the petition and shall act on it immediately pursuant to section (d) or (e) of this Rule.

(d) Show Cause Order

(1) Entry; Contents

If the individual is confined as a result of a sentence in a criminal case, including a proceeding for criminal contempt other than a direct criminal contempt summarily punished, or as a result of a disposition or post-dispositional order following an adjudication of delinquency in a juvenile proceeding, the judge, prior to taking any further action, may enter an order directed to the person having custody of the individual to show cause why the writ should not issue. The show cause order may be entered regardless of whether the petition complies with Rule 15-302. The

show cause order shall:

(A) state a date by which the order must be served upon the person having custody of the individual;

(B) state a date by which the person having custody may file a response and a date by which a copy of any response must be served on the petitioner in accordance with subsection (4) of this section;

(C) state that the petitioner may file a reply to the response within 30 days after service of the response; and

(D) require the petitioner to serve a copy of any reply on the person having custody by first-class mail, postage prepaid.

(2) Service of Show Cause Order

The show cause order, together with a copy of the petition, shall be served by certified mail on the person having custody of the individual confined. The show cause order shall be served by first-class mail, postage prepaid, on the petitioner.

(3) Notice in Response

A response to the show cause order shall include notice to the petitioner in substantially the following form:

NOTICE TO _____, PETITIONER
(Name of Petitioner)

This response alleges your petition for a writ of habeas corpus should be denied because (check all that apply):

[] There is no good reason why new grounds now raised by the petition were not raised in previous proceedings.

[] There has been unjustified delay in filing the petition and that delay has prejudiced the ability of _____

(Name of person having custody of the individual confined) to respond to the petition.

[] Other reasons for denial (specify):

You may file a reply to this response. Any reply must be filed with the court by _____ [Calendar Date] and you must mail a copy of your reply to _____

(Name of person having custody)

If you do not file a reply by that date or if your reply does not show the court a good reason why the allegations in this response are wrong, the court may deny your petition.

Committee note: The calendar date for a reply shall be 30 days after personal service is made or 33 days after service by mail is mailed.

(4) Service of Response

The person having custody shall serve a copy of the response on the petitioner or the petitioner's attorney by first-class mail, postage prepaid, or by hand-delivery. The response shall be accompanied by a certificate of service showing the date and manner of making service and, if service is by hand-delivery, the name of the individual making service.

(5) If Show Cause Order or Response Not Timely Served

If (A) the show cause order was not timely served upon the person having custody and the person having custody has not filed a response or (B) the response was not timely served upon the petitioner and the petitioner has not filed a reply, the judge shall either reissue the show cause order or set the matter in for a hearing.

(e) Action on Petition

(1) Preliminary Determination

Unless the judge refers the petition pursuant to section (c) of this Rule, the judge shall first determine whether the petition complies with the provisions of Rule 15-302, except that if a show cause order was entered in accordance with section (d) of this Rule, the judge may defer making this determination until the time for a reply has expired. In determining whether the writ should be granted or denied, a judge shall consider any response or reply filed pursuant to a show cause order entered under section (d) of this Rule and may examine public records.

(2) Noncompliance with Rule 15-302

If the petition fails to comply with the provisions of Rule 15-302, the judge may (A) deny the petition; (B) permit the petition to be amended or supplemented; or (C) grant the writ if there is a sufficient showing of probable illegal confinement or restraint.

(3) Compliance with Rule 15-302

If the petition complies with the provisions of Rule 15-302, the judge shall grant the writ unless:

(A) the judge finds from the petition, any response, reply, document filed with the petition or with a response or reply, or

public record that the individual confined or restrained is not entitled to any relief;

(B) the petition is made by or on behalf of an individual confined as a result of a sentence for a criminal offense, of an order in a juvenile proceeding, or of a judgment of contempt of court, the legality of the confinement was determined in a prior habeas corpus or other post conviction proceeding, and no new ground is shown sufficient to warrant issuance of the writ;

(C) there is no good reason why new grounds now raised by the petitioner were not raised in previous proceedings; or

(D) there has been an unjustified delay in filing the petition that has prejudiced the ability of the person having custody of the individual confined or restrained to respond to the petition.

(4) Exception; Notice, Reply

The judge may not deny the writ on a ground set forth in subsection (e)(3)(C) or (e)(3)(D) of this Rule unless the petitioner has been given notice of that ground and has had an opportunity to reply, either in accordance with section (d) of this Rule or as otherwise directed by the court.

Source: This Rule is derived in part from former Rules Z54, Z43, Z44, and Z52 and is in part new.

REPORTER'S NOTE

The Rules Committee recommends two amendments to Rule 15-303 (b).

The Committee recommends deletion of the phrase, "or could have been," from subsection (b)(1), Pretrial, concerning petitions for a writ of habeas corpus filed for the purpose of determining admission to bail or the appropriateness of any bail set. The concern is that often a defendant is not represented at a bail hearing, or if the defendant is represented, the lawyer had very little time to prepare for the hearing.

A former judge wrote a letter to the Committee expressing his concern that the language in subsection (b)(2)(B) that reads "A circuit court judge to whom a petition for a writ of habeas corpus is directed shall not enter an order ..." is being misinterpreted to mean an order granting the petition for a writ of habeas corpus, when the word "order" actually refers to an order to treat the petition as a motion pursuant to Rule 4-349. To clarify the intended meaning of subsection (b)(2)(B), the Committee recommends revising the subsection to require the circuit court judge to act on the petition and to prohibit the judge from transmitting or referring the petition to a District Court judge. The requirement that the circuit court judge "act on" the petition encompasses the range of options available under the Rule, except for the prohibited referral back to the District Court.