

November 13, 2013

The Honorable Mary Ellen Barbera,
Chief Judge
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.
The Honorable Sally D. Adkins
The Honorable Robert N. McDonald
The Honorable Shirley M. Watts,
Judges

The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this Supplement to its 177th Report and recommends that the Court adopt the amendments to Rules 4-102, 4-202, 4-213, 4-215, and 4-301 transmitted with this Supplement. Those amendments, which would implement a request from the District Court that provision be made in the Rules for preliminary inquiries and clarify some ambiguities regarding charging documents, were submitted to the Court in Category 3 of the Committee's 177th Report and, after a public hearing, were approved by the Court on August 13, 2013.

Those amendments were included also in the Committee's 181st Report, which contained other amendments to some of those Rules needed to implement the Court's decision in *DeWolfe v. Richmond*. That was done so that all of the amendments to those Rules could be included in one Rules Order. In order to achieve that objective and anticipating that the proposals in the 181st Report, submitted as emergency measures, would, if approved, take effect sooner than the proposals in the 177th Report, the Committee withdrew the 177th Report Category 3 proposals.

As Your Honors are aware, at its November 4, 2013 public hearing on the 181st Report, the Court approved all of the proposed amendments to those Rules but deferred setting an effective date on the Rules in the 181st Report pending further action in the *DeWolfe* case by the Circuit Court for Baltimore City. The Rules Committee, at the urging of the District Court and the State's Attorney for Baltimore City, had recommended that the amendments proposed in the 177th Report take effect January 1, 2014.

Due to the current uncertainty as to when the proposals in the 181st Report might take effect and to make the independent amendments proposed in the 177th Report effective as initially proposed, the Committee resubmits them in this Supplement to the 177th Report and recommends that the Court, having already twice approved them after public hearings, make them effective January 1, 2014. A proposed Rules Order is attached to this Supplement.

Respectfully submitted,

Alan M. Wilner
Chair

AMW:cdc
Enclosures

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 100 - GENERAL

AMEND Rule 4-102 by adding a new section (j) pertaining to a preliminary inquiry, by adding a Committee note after section (l), and by making stylistic changes, 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.

(b) Citation

"Citation" means a charging document, other than an indictment, information, or statement of charges, issued to a defendant by a peace officer.

(c) Defendant

"Defendant" means a person who has been arrested for an offense or charged with an offense in a charging document.

(d) Indictment

"Indictment" means a charging document returned by a grand jury and filed in a circuit court.

(e) Information

"Information" means a charging document filed in a court by a State's Attorney.

(f) Judicial Officer

"Judicial Officer" means a judge or District Court commissioner.

(g) Offense

"Offense" means a violation of the criminal laws of this State or political subdivision thereof.

(h) Peace Officer

"Peace officer" means (1) a "law enforcement officer" as defined in Code, Public Safety Article, §3-101 (e), (2) a "police officer" as defined in Code, Criminal Procedure Article, §2-101 (c), and (3) any other person authorized by State or local law to issue citations.

(i) Petty Offense

"Petty offense" means an offense for which the penalty may not exceed imprisonment for a period of three months or a fine of five hundred dollars.

(j) Preliminary Inquiry

"Preliminary inquiry" means a pretrial proceeding conducted by a judicial officer when a defendant, who has been served with a citation or summons, appears as directed before the judicial officer for advise of rights in accordance with Rules 4-213 and 4-215.

(j) (k) Statement of Charges

"Statement of charges" means a charging document, other

than a citation, filed in District Court by a peace officer or by a judicial officer.

~~(k)~~ (l) State's Attorney

"State's Attorney" means a person authorized to prosecute an offense.

Committee note: The definition of "State's Attorney" in Rule 4-102 (l) includes the elected or appointed State's Attorney for a county, the State Prosecutor, the Attorney General when conducting a criminal investigation or prosecution pursuant to Article V, §3 of the Maryland Constitution or other law, and assistants in those offices authorized to conduct a criminal prosecution. See *State v. Romulus*, 315 Md. 526 (1989).

~~(l)~~ (m) Verdict

"Verdict" means the finding of the jury or the decision of the court pertaining to the merits of the offense charged.

~~(m)~~ (n) Warrant

"Warrant" means a written order by a judicial officer commanding a peace officer to arrest the person named in it or to search for and seize property as described in it.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 702 a and M.D.R. 702 a.

Section (b) is derived from former M.D.R. 702 c.

Section (c) is derived from former Rule 702 b and M.D.R. 702 d.

Section (d) is derived from former Rule 702 c.

Section (e) is derived from former Rule 702 d and M.D.R. 702 e.

Section (f) is derived from former M.D.R. 702 f.

Section (g) is derived from former Rule 702 e and M.D.R. 702 g.

Section (h) is new.

Section (i) is derived from former M.D.R. 702 h.

Section (j) is new.

Section ~~(j)~~ (k) is derived from former M.D.R. 702 i.

Section ~~(k)~~ (l) is derived from former Rule 702 f and M.D.R. 702 j.

Section ~~(l)~~ (m) is derived from former Rule 702 g and M.D.R. 702 l.

Section ~~(m)~~ (n) is derived from former Rule 702 h and M.D.R. 702 m.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-202 by adding to the form in section (a) the phrase "and remain in custody" and language pertaining to a preliminary inquiry; by changing subsection (b) (1) (A) to refer to a "peace officer"; by adding a cross reference after subsection (b) (1) (A) (i); by specifying who must sign each type of charging document; by adding subsection (b) (2) pertaining to the method of signing a charging document; by adding subsection (c) (1) pertaining to certain specific requirements of citations; by modifying subsection (c) (1) (B) to delete language pertaining to the defendant's signed promise to appear and clarifying the defendant's duty to appear when required; by adding subsection (c) (2) pertaining to a statement of charges; by adding subsection (c) (4) pertaining to a summons in District Court; and by making stylistic changes, as follows:

Rule 4-202. CHARGING DOCUMENT - CONTENT

(a) General Requirements

A charging document shall contain the name of the defendant or any name or description by which the defendant can be identified with reasonable certainty, except that the defendant need not be named or described in a citation for a parking violation. It shall contain a concise and definite

statement of the essential facts of the offense with which the defendant is charged and, with reasonable particularity, the time and place the offense occurred. An allegation made in one count may be incorporated by reference in another count. The statute or other authority for each count shall be cited at the end of the count, but error in or omission of the citation of authority is not grounds for dismissal of the charging document or for reversal of a conviction.

A charging document also shall contain a notice to the defendant in the following form:

TO THE PERSON CHARGED:

1. This paper charges you with committing a crime.
2. If you have been arrested and remain in custody, you have the right to have a judicial officer decide whether you should be released from jail until your trial.
3. If you have been served with a citation or summons
directing you to appear before a judicial officer for a
preliminary inquiry at a date and time designated or within five
days of service if no time is designated, a judicial officer will
advise you of your rights, the charges against you, and
penalties. The preliminary inquiry will be cancelled if a lawyer
has entered an appearance to represent you.
3. 4. You have the right to have a lawyer.
4. 5. A lawyer can be helpful to you by:
 - (A) explaining the charges in this paper;
 - (B) telling you the possible penalties;

- (C) helping you at trial;
- (D) helping you protect your constitutional rights; and
- (E) helping you to get a fair penalty if convicted.

5. 6. Even if you plan to plead guilty, a lawyer can be helpful.

6. 7. If you want a lawyer but do not have the money to hire one, the Public Defender may provide a lawyer for you. The court clerk will tell you how to contact the Public Defender.

7. 8. If you want a lawyer but you cannot get one and the Public Defender will not provide one for you, contact the court clerk as soon as possible.

8. 9. DO NOT WAIT UNTIL THE DATE OF YOUR TRIAL TO GET A LAWYER. If you do not have a lawyer before the trial date, you may have to go to trial without one.

(b) Signature on Charging Documents

(1) Requirement - Who Must Sign

(A) Before a citation is issued, A citation it shall be signed by a person authorized by law to do so before it is issued the peace officer who issues it.

Cross reference: See Rule 4-102 (h) for definition of "peace officer."

(B) A Statement of Charges shall be signed by a the peace officer or by a judicial officer who issues it.

(C) An indictment or information shall be signed by the foreperson or acting foreperson of the grand jury and also may be signed by a the State's Attorney of a county or by any other

~~person authorized by law to do so.~~

(D) A criminal information shall be signed by a State's Attorney.

(2) Method of Signing

(A) A charging document filed in paper form shall contain either the handwritten signature of the individual who signed the document or a facsimile signature of that individual affixed in a manner that assures the genuineness of the signature.

(B) Subject to the Rules in Title 20, a charging document filed electronically shall contain a facsimile or digital signature of the individual purporting to be the signer, which shall be affixed in a manner that assures the genuineness of the signature.

(C) If an indictment or criminal information is not signed personally by the elected or appointed State's Attorney for the county but is properly signed by another individual authorized to sign the document, the typed name of the elected or appointed State's Attorney may also appear on the document.

(3) Waiver of Objection

A plea to the merits waives any objection that the charging document is not signed.

(c) Specific Requirements

(1) Citation

(A) A citation shall be (i) under oath of the peace officer who signs it, or (ii) accompanied by a Statement of Probable Cause signed under oath by the same or another peace officer.

(B) A citation shall contain a command to the defendant to appear in District Court when ~~notified~~, and shall contain the signed promise of the defendant to appear when required, except in a citation for a parking violation required. Failure of the defendant to sign the promise does not invalidate the citation.

(2) Statement of Charges

A Statement of Charges shall include or be accompanied by
(A) a Statement of Probable Cause signed under oath, or (B) an
Application for Statement of Charges signed under oath, which is
sufficient to establish probable cause.

(2) (3) Indictment

An indictment shall conclude with the words "against the peace, government, and dignity of the State."

(4) Summons in District Court

A District Court summons shall contain a command to the defendant to appear in District Court as directed.

Cross reference: See Section 13 of Article IV of the Constitution of Maryland and *State v. Dycer*, 85 Md. 246, 36 A. 763 (1897).

(d) Matters Not Required

A charging document need not negate an exception, excuse, or proviso contained in a statute or other authority creating or defining the offense charged. It is not necessary to use the word "feloniously" or "unlawfully" to charge a felony or misdemeanor in a charging document. In describing money in a charging document, it is sufficient to refer to the amount in current money, without specifying the particular notes,

denominations, coins, or certificates circulating as money of which the amount is composed.

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 711 a and Rule 711 a.

Section (b) is derived from former M.D.R. 711 b 2 and Rule 711 c.

Section (c) is derived from former M.D.R. 711 b 1 and Rule 711 b.

Section (d) is derived from former Rule 711 d and e and M.D.R. 711 c and d.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-213 to add the language "or citation" to subsection (b) (1), to add a new subsection (b) (2) pertaining to preliminary inquiries, and to make stylistic changes, as follows:

Rule 4-213. INITIAL APPEARANCE OF DEFENDANT

(a) In District Court Following Arrest

When a defendant appears before a judicial officer of the District Court pursuant to an arrest, the judicial officer shall proceed as follows:

(1) Advice of Charges

The judicial officer shall inform the defendant of each offense with which the defendant is charged and of the allowable penalties, including mandatory penalties, if any, and shall provide the defendant with a copy of the charging document if the defendant does not already have one and one is then available. If one is not then available, the defendant shall be furnished with a copy as soon as possible.

(2) Advice of Right to Counsel

The judicial officer shall require the defendant to read the notice to defendant required to be printed on charging documents in accordance with Rule 4-202 (a), or shall read the

notice to a defendant who is unable for any reason to do so. A copy of the notice shall be furnished to a defendant who has not received a copy of the charging document. The judicial officer shall advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.

Cross reference: See Rule 4-216 (e) with respect to counsel at an initial appearance before a judge and Rule 4-216.1 (a) with respect to counsel at a hearing to review a pretrial release decision of a commissioner.

(3) Advice of Preliminary Hearing

When a defendant has been charged with a felony that is not within the jurisdiction of the District Court and has not been indicted, the judicial officer shall advise the defendant of the right to have a preliminary hearing by a request made then or within ten days thereafter and that failure to make a timely request will result in the waiver of a preliminary hearing. If the defendant then requests a preliminary hearing, the judicial officer may either set its date and time or notify the defendant that the clerk will do so.

(4) Pretrial Release

The judicial officer shall comply with the applicable provisions of Rules 4-216 and 4-216.1 governing pretrial release.

(5) Certification by Judicial Officer

The judicial officer shall certify compliance with this section in writing.

(6) Transfer of Papers by Clerk

As soon as practicable after the initial appearance by the defendant, the judicial officer shall file all papers with the clerk of the District Court or shall direct that they be forwarded to the clerk of the circuit court if the charging document is filed there.

Cross reference: Code, Courts Article, §10-912. See Rule 4-231 (d) concerning the appearance of a defendant by video conferencing.

(b) In District Court ~~Following Summons~~

(1) Following Summons or Citation

When a defendant appears before the District Court pursuant to a summons or citation, the court shall proceed in accordance with Rule 4-301.

(2) Preliminary Inquiry

When a defendant has (A) been charged by a citation or served with a summons and charging document for an offense that carries a penalty of incarceration and (B) has not previously been advised by a judicial officer of the defendant's rights, the defendant may be brought before a judicial officer for a preliminary inquiry advisement if no attorney has entered an appearance on behalf of the defendant. The judicial officer shall inform the defendant of each offense with which the defendant is charged and advise the defendant of the right to counsel and the matters set forth in subsection (a)(1), (2), and (3) of this Rule. The judicial officer shall certify in writing the judicial officer's compliance with this subsection.

(c) In Circuit Court Following Arrest or Summons

The initial appearance of the defendant in circuit court occurs when the defendant (1) is brought before the court by reason of execution of a warrant pursuant to Rule 4-212 (e) or (f) (2), or (2) appears in person or by written notice of counsel in response to a summons. In either case, if the defendant appears without counsel the court shall proceed in accordance with Rule 4-215. If the appearance is by reason of execution of a warrant, the court shall (1) inform the defendant of each offense with which the defendant is charged, (2) ensure that the defendant has a copy of the charging document, and (3) determine eligibility for pretrial release pursuant to Rule 4-216.

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 723.

Section (b) is new.

Section (c) is derived from former Rule 723 a.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-215 by adding a new subsection (a) (6) pertaining to a defendant charged with an offense that carries a penalty of incarceration and by adding to section (c) a reference to Rule 4-213 (b), as follows:

Rule 4-215. WAIVER OF COUNSEL

(a) First Appearance in Court Without Counsel

At the defendant's first appearance in court without counsel, or when the defendant appears in the District Court without counsel, demands a jury trial, and the record does not disclose prior compliance with this section by a judge, the court shall:

(1) Make certain that the defendant has received a copy of the charging document containing notice as to the right to counsel.

(2) Inform the defendant of the right to counsel and of the importance of assistance of counsel.

(3) Advise the defendant of the nature of the charges in the charging document, and the allowable penalties, including mandatory penalties, if any.

(4) Conduct a waiver inquiry pursuant to section (b) of this Rule if the defendant indicates a desire to waive counsel.

(5) If trial is to be conducted on a subsequent date, advise the defendant that if the defendant appears for trial without counsel, the court could determine that the defendant waived counsel and proceed to trial with the defendant unrepresented by counsel.

(6) If the defendant is charged with an offense that carries a penalty of incarceration, determine whether the defendant had appeared before a judicial officer for an initial appearance pursuant to Rule 4-213 or a hearing pursuant to Rule 4-216 and, if so, that the record of such proceeding shows that the defendant was advised of the right to counsel.

The clerk shall note compliance with this section in the file or on the docket.

(b) Express Waiver of Counsel

If a defendant who is not represented by counsel indicates a desire to waive counsel, the court may not accept the waiver until after an examination of the defendant on the record conducted by the court, the State's Attorney, or both, the court determines and announces on the record that the defendant is knowingly and voluntarily waiving the right to counsel. If the file or docket does not reflect compliance with section (a) of this Rule, the court shall comply with that section as part of the waiver inquiry. The court shall ensure that compliance with this section is noted in the file or on the docket. At any subsequent appearance of the defendant before the court, the docket or file notation of compliance shall be prima facie proof

of the defendant's express waiver of counsel. After there has been an express waiver, no postponement of a scheduled trial or hearing date will be granted to obtain counsel unless the court finds it is in the interest of justice to do so.

(c) Waiver by Inaction - District Court

In the District Court, if the defendant appears on the date set for trial without counsel and indicates a desire to have counsel, the court shall permit the defendant to explain the appearance without counsel. If the court finds that there is a meritorious reason for the defendant's appearance without counsel, the court shall continue the action to a later time, comply with section (a) of this Rule, if the record does not show prior compliance, and advise the defendant that if counsel does not enter an appearance by that time, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds that there is no meritorious reason for the defendant's appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the trial only if (1) the defendant received a copy of the charging document containing the notice as to the right to counsel and (2) the defendant either (A) is charged with an offense that is not punishable by a fine exceeding five hundred dollars or by imprisonment, or (B) appeared before a judicial officer of the District Court pursuant to Rule 4-213 (a) or (b) or before the court pursuant to section (a) of this Rule and was given the required advice.

(d) Waiver by Inaction - Circuit Court

If a defendant appears in circuit court without counsel on the date set for hearing or trial, indicates a desire to have counsel, and the record shows compliance with section (a) of this Rule, either in a previous appearance in the circuit court or in an appearance in the District Court in a case in which the defendant demanded a jury trial, the court shall permit the defendant to explain the appearance without counsel. If the court finds that there is a meritorious reason for the defendant's appearance without counsel, the court shall continue the action to a later time and advise the defendant that if counsel does not enter an appearance by that time, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds that there is no meritorious reason for the defendant's appearance without counsel, the court may determine that the defendant has waived counsel by failing or refusing to obtain counsel and may proceed with the hearing or trial.

(e) Discharge of Counsel - Waiver

If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the

next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits the defendant to discharge counsel, it shall comply with subsections (a) (1)-(4) of this Rule if the docket or file does not reflect prior compliance. Cross reference: See Rule 4-216 (e) with respect to waiver of counsel at an initial appearance before a judge and Rule 4-216.1 (a) with respect to waiver of counsel at a hearing to review a pretrial release decision of a commissioner.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 723 b 1, 2, 3 and 7 and c 1.

Section (b) is derived from former Rule 723.

Section (c) is in part derived from former M.D.R. 726 and in part new.

Section (d) is derived from the first sentence of former M.D.R. 726 d.

Section (e) is new.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-301 to add a new subsection (a) (5) pertaining to a defendant charged with an offense that carries a penalty of incarceration, as follows:

Rule 4-301. BEGINNING OF TRIAL IN DISTRICT COURT

(a) Initial Procedures

Immediately before beginning a trial in District Court, the court shall (1) make certain the defendant has been furnished a copy of the charging document; (2) inform the defendant of each offense charged; (3) inform the defendant, when applicable, of the right to trial by jury; (4) comply with Rule 4-215, if necessary; (5) if the defendant is charged with an offense that carries a penalty of incarceration, determine whether the defendant had appeared before a judicial officer for an initial appearance pursuant to Rule 4-213 or a hearing pursuant to Rule 4-216 and, if so, that the record of such proceeding shows that the defendant was advised of the right to counsel; and ~~(5)~~ (6) thereafter, call upon the defendant to plead to each charge.

(b) Demand for Jury Trial

(1) Form and Time of Demand

A demand in the District Court for a jury trial shall be made either

(A) in writing and, unless otherwise ordered by the court or agreed by the parties, filed no later than 15 days before the scheduled trial date, or

(B) in open court on the trial date by the defendant and the defendant's counsel, if any.

(2) Procedure Following Demand

Upon a demand by the defendant for jury trial that deprives the District Court of jurisdiction pursuant to law, the clerk may serve a circuit court summons on the defendant requiring an appearance in the circuit court at a specified date and time. The clerk shall promptly transmit the case file to the clerk of the circuit court, who shall then file the charging document and, if the defendant was not served a circuit court summons by the clerk of the District Court, notify the defendant to appear before the circuit court. The circuit court shall proceed in accordance with Rule 4-213 (c) as if the appearance were by reason of execution of a warrant. Thereafter, except for the requirements of Code, Criminal Procedure Article, §6-103 and Rule 4-271 (a), or unless the circuit court orders otherwise, pretrial procedures shall be governed by the rules in this Title applicable in the District Court.

(c) Discovery

Discovery in an action transferred to a circuit court upon a jury trial demand made in accordance with subsection (b) (1) (A) of this Rule is governed by Rule 4-263. In all other actions transferred to a circuit court upon a jury trial demand,

discovery is governed by Rule 4-262.

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 751.

Section (b) is new.

Section (c) is new.