

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

February 3, 2012

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

Item 1. Consideration of proposed amendments to Rule 4-216 (Pretrial Release - Authority of Judicial Officer; Procedure) and proposed new Rule 4-216.1 (Further Proceedings Regarding Pretrial Release) Judge Wilner

Conforming amendments to:

Rule 4-202 (Charging Document - Content)
Rule 4-213 (Initial Appearance of Defendant)
Rule 4-214 (Defense Counsel)
Rule 4-215 (Waiver of Counsel)
Rule 4-231 (Presence of Defendant)
Rule 4-263 (Discovery in Circuit Court)
Rule 4-349 (Release After Conviction)

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

AMEND Rule 4-216 to clarify section (a) regarding a finding of probable cause, to require a written record of certain determinations by the judicial officer, to add section (d) outlining the duties of the Office of the Public Defender and judicial officers with respect to a defendant's right to counsel, to add provisions concerning waiver of counsel, to allow attorneys to appear by remote electronic means under certain circumstances, to add section (g) requiring a judicial officer to make a written record of the proceeding, and to make stylistic changes, as follows:

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

(a) Arrest Without Warrant

If a defendant was arrested without a warrant, the judicial officer shall determine whether there was probable cause for the arrest and, as to each charge, make a written record of the determination. If there was probable cause for at least one charge, the judicial officer shall implement the remaining sections of this Rule. If there was no probable cause for any of the charges, 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) (4).

(b) Defendants Eligible for Release by Commissioner or Judge

In accordance with this Rule and Code, Criminal Procedure Article, §§5-101 and 5-201 and except as otherwise provided in section (c) of this Rule or by Code, Criminal Procedure Article, §§5-201 and 5-202, a defendant is entitled to be released before verdict on personal recognizance or on bail, in either case with or without conditions imposed, unless the judicial officer determines that no condition 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.

(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), (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.

(d) Counsel

(1) Generally

For purposes of this section, an initial appearance before a judicial officer shall be deemed to be a separate and distinct stage of a criminal action. It commences with the appearance of the defendant before the judicial officer and ends when a final order of the judicial officer is entered pursuant to sections (e) or (f) of this Rule.

(2) Duty of Public Defender

(A) Provisional Representation

Unless another attorney has entered an appearance or the defendant waives the right to counsel for purposes of the initial appearance in accordance with this section, an attorney designated by the Public Defender shall provisionally represent each eligible defendant at the initial appearance with respect to all issues relevant to the duties and determinations made by the judicial officer pursuant to sections (e) and (f) of this Rule. For purposes of this Rule, eligibility shall be determined at the time of the proceeding based on resources immediately available to the defendant at that time.

(B) Entry of Limited Appearance

If the Public Defender provides provisional representation, the attorney shall enter an appearance in writing, but if a written entry of appearance is impracticable under the circumstances, the judicial officer shall make a written record of the appearance and the name of the attorney. The appearance shall be deemed to be limited solely to the

initial appearance before the judicial officer and shall terminate automatically upon the conclusion of that proceeding.

(C) Effect of Conflict with Rule 4-214

This section prevails over any inconsistent provision in Rule 4-214.

(3) Waiver

(A) Unless an attorney other than the Public Defender has entered an appearance, the judicial officer shall advise the defendant that:

(i) the defendant has a right to counsel at the initial appearance and for any proceeding under Rule 4-216.1;

(ii) if the defendant is eligible, the Public Defender will represent the defendant at the initial appearance and in any proceeding under Rule 4-216.1, although a different attorney may be designated to represent the defendant in each proceeding; but

(iii) any further representation by the Public Defender will depend on a timely application for such representation by the defendant and a determination that the defendant is an indigent individual, as defined in Code, Criminal Procedure Article, §§16-101 (d) and 16-210 (b).

Committee note: Rule 4-213(a)(2) requires the judicial officer to advise the defendant of the right to counsel generally. In providing that advice, the judicial officer should explain that it pertains to the right to counsel for all proceedings after the initial appearance under this Rule and a review hearing under Rule 4-216.1.

(B) If the defendant indicates a desire to waive counsel, the judicial officer shall advise the defendant that the

defendant may be facing immediate detention pending a review hearing before a judge at the next session of the court and that an attorney can be helpful in arguing that the defendant should be released immediately on recognizance or on bail with minimal conditions and restrictions. If, after such advice, the judicial officer finds that the defendant knowingly and voluntarily waives the right to counsel for purposes of the initial appearance, the judicial officer shall announce and record that finding and proceed pursuant to sections (e) and (f) of this Rule.

(C) Any waiver found under this Rule is applicable only to the initial appearance under this Rule.

(4) Remote Appearance

(A) By State's Attorney

The State's Attorney may participate in the proceeding, but is not required to do so. When the physical presence of the State's Attorney is impracticable under the circumstances, the State's Attorney may participate in the proceeding by remote electronic means, provided that the equipment at the judicial officer's location and the State's Attorney's location is adequate to permit the State's Attorney to participate meaningfully in the proceeding.

(B) By Defense Attorney

When the physical presence of a defense attorney is impracticable under the circumstances, the attorney may consult with the defendant and participate in the proceeding by remote

electronic means, provided that the equipment at the judicial officer's location and the defense attorney's location is adequate to permit the attorney to consult privately with the defendant and participate meaningfully in the proceeding.

(5) Ex parte Communications

Except as permitted by Rule 2.9 (a) (1) and (2) of the Maryland Code of Conduct for Judicial Appointees or Rule 2.9 (a) (1) and (2) of the Maryland Code of Judicial Conduct, ex parte communications between (A) the State's Attorney, an attorney for the defendant, or a law enforcement officer and (B) the judicial officer are prohibited.

Cross reference: See also Rule 3.5 (a) of the Maryland Lawyers' Rules of Professional Conduct.

Committee note: Rule 2.9 (a) (1) of both the Code of Conduct for Judicial Appointees and the Code of Judicial Conduct permits ex parte communications for scheduling, administrative, and emergency purposes, so long as they do not address substantive matters, no party will gain a procedural, substantive, or tactical advantage as a result of the communication, and the judicial officer promptly notifies the other parties and gives them an opportunity to respond.

~~(d)~~ (e) Duties of Judicial Officer

(1) Consideration of Factors

In determining whether a defendant should be released and the conditions of release, the judicial officer shall take into account the following information, to the extent available:

(A) the nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the potential sentence upon conviction;

(B) the defendant's prior record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings;

(C) the defendant's family ties, employment status and history, financial resources, reputation, character and mental condition, length of residence in the community, and length of residence in this State;

(D) any recommendation of an agency that conducts pretrial release investigations;

(E) any recommendation of the State's Attorney;

(F) any information presented by the defendant or defendant's counsel;

(G) the danger of the defendant to the alleged victim, another person, or the community;

(H) the danger of the defendant to himself or herself; and

(I) any other factor bearing on the risk of a wilful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

(2) Statement of Reasons - When Required

Upon determining to release a defendant to whom section (c) of this Rule applies or to refuse to release a defendant to whom section (b) of this Rule applies, the judicial officer shall state the reasons in writing or on the record.

(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)~~ (f) 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.

(4) Advice of Conditions; Consequences of Violation; Amount and Terms of Bail

The judicial officer shall advise the defendant in writing or on the record of the conditions of release imposed and of the consequences of a violation of any condition. When bail is required, the judicial officer shall state in writing or on the record the amount and any terms of the bail.

~~(e)~~ (f) Conditions of Release

The conditions of release imposed by a judicial officer under this Rule may include:

(1) committing the defendant to the custody of a designated

person or organization that agrees to supervise the defendant and assist in ensuring the defendant's appearance in court;

(2) placing the defendant under the supervision of a probation officer or other appropriate public official;

(3) subjecting the defendant to reasonable restrictions with respect to travel, association, or residence during the period of release;

Drafter's note: At its January 2012 meeting, the Rules Committee approved amendments to current Rule 4-216 (e) (4) [relettered here as (f) (4)]. Revision of this subsection is unrelated to the emergency changes needed to implement *DeWolfe v. Richmond* and will be in a report submitted to the Court on a non-emergency basis.

(4) requiring the defendant to post a bail bond complying with Rule 4-217 in an amount and on conditions specified by the judicial officer, including any of the following:

(A) without collateral security;

(B) with collateral security of the kind specified in Rule 4-217 (e) (1) (A) equal in value to the greater of \$100.00 or 10% of the full penalty amount, and if the judicial officer sets bail at \$2500 or less, the judicial officer shall advise the defendant that the defendant may post a bail bond secured by either a corporate surety or a cash deposit of 10% of the full penalty amount;

(C) with collateral security of the kind specified in Rule 4-217 (e) (1) (A) equal in value to a percentage greater than 10% but less than the full penalty amount;

(D) with collateral security of the kind specified in Rule

4-217 (e) (1) equal in value to the full penalty amount; or

(E) with the obligation of a corporation that is an insurer or other surety in the full penalty amount;

(5) subjecting the defendant to any other condition reasonably necessary to:

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

(B) protect the safety of the alleged victim, and

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

(6) imposing upon the defendant, for good cause shown, one or more of the conditions authorized under Code, Criminal Law Article, §9-304 reasonably necessary to stop or prevent the intimidation of a victim or witness or a violation of Code, Criminal Law Article, §9-302, 9-303, or 9-305.

Cross reference: See Code, Criminal Procedure Article, §5-201 (a) (2) concerning protections for victims as a condition of release. See Code, Criminal Procedure Article, §5-201 (b), and Code, Business Occupations and Professions Article, Title 20, concerning private home detention monitoring as a condition of release.

(g) Record

The judicial officer shall make a brief written record of the proceeding, including:

(1) if a State's Attorney entered an appearance, the name of the State's Attorney and whether the State's Attorney was physically present at the proceeding or appeared by remote means;

(2) if an attorney entered an appearance for the defendant, the name of the attorney and whether the attorney was physically

present at the proceeding or appeared by remote means;

(3) if the defendant waived counsel, a confirmation that the advice required by subsection (d)(3) of this Rule was given and that the defendant made a knowing and voluntary waiver;

(4) confirmation that the judicial officer performed each duty specified in section (e) of this Rule and in Rule 4-213 (a);

(5) whether the defendant was ordered held without bail;

(6) whether the defendant was released on personal recognizance; and

(7) if the defendant was ordered released on conditions pursuant to section (f) of this Rule, the conditions attached to the release.

~~(*)~~ (h) Title 5 Not Applicable

Title 5 of these rules does not apply to proceedings conducted under this Rule.

[Sections (f), (g), (h), (i), and (j) of this Rule have been amended and transferred to proposed new Rule 4-216.1]

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

REPORTER'S NOTE

In *DeWolfe v. Richmond* ___ Md. ___ (2012), the Court of Appeals held that, under the Public Defender Statute, indigent defendants are entitled to counsel at the initial appearance before a Commissioner [judicial officer] making a 4-216 bail determination, and at any subsequent District Court bail review hearing. See also Code, Criminal Procedure Article, §§16-101 through 16-403. In order to implement the Court's decision, amendments are proposed to Rule 4-216, Pretrial Release, and new Rule 4-216.1, Further Proceedings Regarding Pretrial Release, is proposed for adoption.

Amendments to Rules 4-216 and 4-216.1 outline the duties of the Office of the Public Defender ("OPD") and judicial officers with respect to the right to counsel during initial appearances and subsequent bail review hearings. The amendments to the Rules treat eligibility for OPD representation during the initial appearance and subsequent bail review hearing as separate from each other and from all other stages of the prosecution. Because it is usually not practicable for the OPD to conduct a full eligibility inquiry prior to those proceedings, and because of the equal protection concerns noted by the Court (see *DeWolfe*, footnote 25), the Rule provides for eligibility based upon the resources immediately available at the time of each proceeding. Further representation by the OPD is contingent upon a determination that the defendant is indigent as defined in Code, Criminal Procedure Article, §§16-101 (d) and 16-210 (b). Thus, representation by the OPD during these proceedings is both provisional and limited.

The State's Attorney may participate in the initial appearance and any subsequent bail review hearing, but is not required to do so. Any attorney who wishes to participate may do so by electronic means if physical presence is not practicable. If the defendant wishes to waive the right to counsel, the judicial officer or court shall conduct a limited waiver hearing, and any waiver shall apply only to that proceeding.

Rule 4-216 makes clear that ex parte communications are not permitted between the judicial officer and either defense counsel or the State's Attorney, except as otherwise provided by Rule 2.9 of the Maryland Code of Conduct for Judicial Appointees and the Maryland Code of Judicial Conduct.

Section (g) of Rule 4-216 is entirely new. It requires the judicial officer to make a brief written record of the proceedings, which shall include whether any attorneys appeared (either physically or remotely), whether the defendant waived the right to counsel, and the outcome of the hearing.

Conforming amendments are made to Rules 4-202, 4-349, 4-231, and 4-263.

Cross references to Rules 4-216 and 4-216.1 are added to Rules 4-213, 4-214, and 4-215.

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

ADD new Rule 4-216.1, as follows:

Rule 4-216.1. FURTHER PROCEEDINGS REGARDING PRETRIAL RELEASE

**[showing changes from current Rule 4-216 (f), (g), (h),
(i), and (j)]**

~~(f)~~ (a) Review of ~~Commissioner's~~ Pretrial Release Order
Entered by Commissioner

(1) Generally

A defendant who is denied pretrial release by a commissioner or who for any reason remains in custody for 24 hours after a commissioner has determined conditions of release pursuant to ~~this~~ Rule 4-216 shall be presented immediately to the District Court if the court is then in session, or if not, at the next session of the court. The District Court shall review the commissioner's pretrial release determination and take appropriate action in accordance with Rule 4-216 (e) and (f). If the defendant will remain in custody after the review, the District Court shall set forth in writing or on the record the reasons for the continued detention.

(2) Duty of Public Defender

(A) Provisional Representation

Unless another attorney has entered an appearance or the defendant waives the right to counsel for purposes of the

review hearing in accordance with this section, an attorney designated by the Public Defender shall provisionally represent each eligible defendant at the review hearing. For purposes of this Rule, eligibility shall be determined at the time of the review hearing based on resources immediately available to the defendant at that time.

(B) Entry of Limited Appearance

If the Public Defender provides provisional representation, the attorney shall enter an appearance in writing, but if a written entry of appearance is impracticable under the circumstances, the court shall make a written record of the appearance and the name of the attorney. The attorney may, but need not be, the same attorney who represented the defendant at the initial appearance before a commissioner. The appearance shall be deemed to be a limited appearance solely for the purpose of the review hearing, and shall terminate automatically upon the conclusion of the proceeding.

(C) Effect of Conflict with Rule 4-214

This section prevails over any inconsistent provision in Rule 4-214.

(3) Waiver

(A) Unless an attorney other than the Public Defender has entered an appearance, the court shall advise the defendant that:

(i) the defendant has a right to counsel at the review hearing;

(ii) if the defendant is eligible, the Public Defender will represent the defendant for purposes of the review hearing; but

(iii) any further representation by the Public Defender will depend on a timely application for such representation by the defendant and a determination that the defendant is an indigent individual, as defined in Code, Criminal Procedure Article, §§16-101 (d) and 16-210 (b).

Cross reference: For the requirement that the court also advise the defendant of the right to counsel generally, see Rule 4-215 (a).

(B) If the defendant indicates a desire to waive counsel, the court shall advise the defendant that the defendant may be facing continued detention pending trial and that an attorney can be helpful in arguing why the defendant should be released on recognizance or on bail with minimal conditions and restrictions. If, after such advice, the court finds that the defendant knowingly and voluntarily waives the right to counsel for purposes of the review hearing, the court shall announce on the record that finding and proceed pursuant to this Rule.

(C) Any waiver found under this Rule is applicable only to the proceeding under this Rule.

(4) Remote Appearance

(A) By State's Attorney

The State's Attorney may participate in the review hearing, but is not required to do so. When the physical

presence of the State's Attorney is impracticable under the circumstances, the State's Attorney may participate in the proceeding by remote electronic means, provided that the equipment at the court facility and the State's Attorney's location is adequate to permit the State's Attorney to participate meaningfully in the proceeding.

(B) By Defense Attorney

When the physical presence of a defense attorney is impracticable under the circumstances, the attorney may consult with the defendant and participate in the proceeding by remote electronic means, provided that the equipment at the court facility and the attorney's location is adequate to permit the attorney to consult privately with the defendant and participate meaningfully in the proceeding.

Cross reference: See Rule 4-231 (d) concerning the presence of a defendant by video conferencing.

~~(2)~~ (5) Juvenile Defendant

If the defendant is a child whose case is eligible for transfer to the juvenile court pursuant to Code, Criminal Procedure Article, §4-202 (b), the District Court, regardless of whether it has jurisdiction over the offense charged, may order that a study be made of the child, the child's family, or other appropriate matters. The court also may order that the child be held in a secure juvenile facility.

~~(g)~~ (b) Continuance of Previous Conditions

When conditions of pretrial release have been previously

imposed in the District Court, the conditions continue in the circuit court unless amended or revoked pursuant to section ~~(h)~~ (c) of this Rule.

~~(h)~~ (c) Amendment of Pretrial Release Order

After a charging document has been filed, the court, on motion of any party or on its own initiative and after notice and opportunity for hearing, may revoke an order of pretrial release or amend it to impose additional or different conditions of release. If its decision results in the detention of the defendant, the court shall state the reasons for its action in writing or on the record. A judge may alter conditions set by a commissioner or another judge.

~~(i)~~ (d) Supervision of Detention Pending Trial

In order to eliminate unnecessary detention, the court shall exercise supervision over the detention of defendants pending trial. It shall require from the sheriff, warden, or other custodial officer a weekly report listing each defendant within its jurisdiction who has been held in custody in excess of seven days pending preliminary hearing, trial, sentencing, or appeal. The report shall give the reason for the detention of each defendant.

~~(j)~~ (e) Violation of Condition of Release

A court may issue a bench warrant for the arrest of a defendant charged with a criminal offense who is alleged to have violated a condition of pretrial release. After the defendant is

presented before a court, the court may (1) revoke the defendant's pretrial release or (2) continue the defendant's pretrial release with or without conditions.

Cross reference: See Rule 1-361, Execution of Warrants and Body Attachments. See also, Rule 4-347, Proceedings for Revocation of Probation, which preserves the authority of a judge issuing a warrant to set the conditions of release on an alleged violation of probation.

~~(k)~~ (f) Title 5 Not Applicable

Title 5 of these rules does not apply to proceedings conducted under this Rule.

Source: This Rule is new but is derived, in part, from former sections (f), (g), (h), (i), (j), and (k) of Rule 4-216.

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

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

AMEND Rule 4-202 (a) to require the notice in a charging document to include a notification regarding representation of eligible defendants by the Office of the Public Defender for purposes of the initial appearance and subsequent review hearing, 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, you have the right to have a judicial officer decide whether you should be released from jail until your trial.
3. You have the right to have a lawyer.
4. 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. Even if you plan to plead guilty, a lawyer can be helpful.
6. If you are eligible, the Public Defender will represent you at your initial appearance before a judicial officer and at any proceeding under Rule 4-216.1 to review an order of a District Court commissioner regarding pretrial release. If you want a lawyer for any further proceeding, including trial, 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. 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. 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

A citation shall be signed by a person authorized by law to do so before it is issued. An indictment or information shall be signed by the State's Attorney of a county or by any other person authorized by law to do so. A statement of charges shall be signed by a peace officer or by a judicial officer. A plea to the merits waives any objection that the charging document is not signed.

(c) Specific Requirements

(1) Citation

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. Failure of the defendant to sign the promise does not invalidate the citation.

(2) Indictment

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

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.

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

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

AMEND Rule 4-213 to add a cross reference following subsection (a) (2), 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 Rules 4-216 (d) and 4-216.1 (a) with respect to counsel at an initial appearance before a judicial officer and 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 Rule 4-216 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

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

(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 inform the defendant of each offense with which the defendant is charged, ensure that the defendant has a copy of the charging document, and 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.

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

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

AMEND Rule 4-214 to add cross references following sections (a) and (d), as follows:

Rule 4-214. DEFENSE COUNSEL

(a) Appearance

Counsel retained or appointed to represent a defendant shall enter an appearance in writing within five days after accepting employment, after appointment, or after the filing of the charging document in court, whichever occurs later. An appearance entered in the District Court will automatically be entered in the circuit court when a case is transferred to the circuit court because of a demand for jury trial. In any other circumstance, counsel who intends to continue representation in the circuit court after appearing in the District Court must re-enter an appearance in the circuit court.

Cross reference: See Rules 4-216 (d) and 4-216.1 (a) with respect to the automatic termination of the appearance of the Public Defender upon the conclusion of an initial appearance before a judicial officer and upon the conclusion of a hearing to review a pretrial release decision of a commissioner.

(b) Extent of Duty of Appointed Counsel

When counsel is appointed by the Public Defender or by the court, representation extends to all stages in the proceedings, including but not limited to custody, interrogations, preliminary

hearing, pretrial motions and hearings, trial, motions for modification or review of sentence or new trial, and appeal. The Public Defender may relieve appointed counsel and substitute new counsel for the defendant without order of court by giving notice of the substitution to the clerk of the court. Representation by the Public Defender's office may not be withdrawn until the appearance of that office has been stricken pursuant to section (d) of this Rule. The representation of appointed counsel does not extend to the filing of subsequent discretionary proceedings including petition for writ of certiorari, petition to expunge records, and petition for post conviction relief.

(c) Inquiry into Joint Representation

(1) Joint Representation

Joint representation occurs when:

(A) an offense is charged that carries a potential sentence of incarceration;

(B) two or more defendants have been charged jointly or joined for trial under Rule 4-253 (a); and

(C) the defendants are represented by the same counsel or by counsel who are associated in the practice of law.

(2) Court's Responsibilities in Cases of Joint Representation

If a joint representation occurs, the court, on the record, promptly and personally shall (A) advise each defendant of the right to effective assistance of counsel, including separate representation and (B) advise counsel to consider

carefully any potential areas of impermissible conflict of interest arising from the joint representation. Unless there is good cause to believe that no impermissible conflict of interest is likely to arise, the court shall take appropriate measures to protect each defendant's right to counsel.

Cross reference: See Rule 1.7 of the Maryland Lawyers' Rules of Professional Conduct.

(d) Striking Appearance

A motion to withdraw the appearance of counsel shall be made in writing or in the presence of the defendant in open court. If the motion is in writing, moving counsel shall certify that a written notice of intention to withdraw appearance was sent to the defendant at least ten days before the filing of the motion. If the defendant is represented by other counsel or if other counsel enters an appearance on behalf of the defendant, and if no objection is made within ten days after the motion is filed, the clerk shall strike the appearance of moving counsel. If no other counsel has entered an appearance for the defendant, leave to withdraw may be granted only by order of court. The court may refuse leave to withdraw an appearance if it would unduly delay the trial of the action, would be prejudicial to any of the parties, or otherwise would not be in the interest of justice. If leave is granted and the defendant is not represented, a subpoena or other writ shall be issued and served on the defendant for an appearance before the court for proceedings pursuant to Rule 4-215.

Cross reference: Code, Courts Article, §6-407 (Automatic Termination of Appearance of Attorney). See Rules 4-216 (d) and 4-216.1 (a) providing for limited appearance by the Public Defender in initial appearance proceedings before a judicial officer and hearings to review a pretrial release decision by a commissioner.

Source: This Rule is in part derived from former Rule 725 and M.D.R. 725 and in part from the 2009 version of Fed. R. Crim. P. 44.

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

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

AMEND Rule 4-215 to add a cross reference following section (e), 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.

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 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 Rules 4-216 (d) and 4-216.1 (a) with respect to waiver of counsel at an initial appearance before a judicial officer and 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.

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

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

AMEND Rule 4-231 to add subsection (d)(1) referencing a defendant's right to counsel under Rules 4-216 (d) and 4-216.1 (a) and to make stylistic changes, as follows:

Rule 4-231. PRESENCE OF DEFENDANT

(a) When Presence Required

A defendant shall be present at all times when required by the court. A corporation may be present by counsel.

(b) Right to be Present - Exceptions

A defendant is entitled to be physically present in person at a preliminary hearing and every stage of the trial, except (1) at a conference or argument on a question of law; (2) when a nolle prosequi or stet is entered pursuant to Rules 4-247 and 4-248.

Cross reference: Code, Criminal Procedure Article, §11-303.

(c) Waiver of Right to be Present

The right to be present under section (b) of this Rule is waived by a defendant:

(1) who is voluntarily absent after the proceeding has commenced, whether or not informed by the court of the right to remain; or

(2) who engages in conduct that justifies exclusion from the

courtroom; or

(3) who, personally or through counsel, agrees to or acquiesces in being absent.

(d) Video Conferencing in District Court

In the District Court, if the Chief Judge of the District Court has approved the use of video conferencing in the county, a judicial officer may conduct an initial appearance under Rule 4-213 (a) or a review of the commissioner's pretrial release determination under Rule ~~4-216 (f)~~ 4-216.1 (a) with the defendant and the judicial officer at different locations, provided that:

(1) the defendant's right to counsel under Rules 4-216 (d) and 4-216.1 (a) is not infringed;

~~(1)~~ (2) the video conferencing procedure and technology are approved by the Chief Judge of the District Court for use in the county;

~~(2)~~ (3) immediately after the proceeding, all documents that are not a part of the District Court file and that would be a part of the file if the proceeding had been conducted face-to-face shall be electronically transmitted or hand-delivered to the District Court; and

~~(3)~~ (4) if the initial appearance under Rule 4-213 is conducted by video conferencing, the review under Rule ~~4-216 (f)~~ 4-216.1 (a) shall not be conducted by video conferencing.

Committee note: Except when specifically covered by this Rule, the matter of presence of the defendant during any stage of the proceedings is left to case law and the Rule is not intended to exhaust all situations. By the addition of section (d) to the

Rule, the Committee intends no inference concerning the use of video conferencing in other contexts.

Source: Sections (a), (b), and (c) of this Rule are derived from former Rule 724 and M.D.R. 724. Section (d) is new.

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

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

AMEND Rule 4-263 (h) to add a section reference to a reference to Rule 4-213, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

. . .

(h) Time for Discovery

Unless the court orders otherwise:

(1) the State's Attorney shall make disclosure pursuant to section (d) of this Rule within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213 (c), and

(2) the defense shall make disclosure pursuant to section (e) of this Rule no later than 30 days before the first scheduled trial date.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.

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

AMEND Rule 4-349 to conform an internal reference to the relettering of Rule 4-216, as follows:

Rule 4-349. RELEASE AFTER CONVICTION

(a) General Authority

After conviction the trial judge may release the defendant pending sentencing or exhaustion of any appellate review subject to such conditions for further appearance as may be appropriate. Title 5 of these rules does not apply to proceedings conducted under this Rule.

(b) Factors Relevant to Conditions of Release

In determining whether a defendant should be released under this Rule, the court may consider the factors set forth in Rule 4-216 ~~(d)~~ (e) and, in addition, whether any appellate review sought appears to be frivolous or taken for delay. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

(c) Conditions of Release

The court may impose different or greater conditions for release under this Rule than had been imposed upon the defendant pursuant to Rule 4-216 before trial. When the defendant is released pending sentencing, the condition of any bond required

by the court shall be that the defendant appear for further proceedings as directed and surrender to serve any sentence imposed. When the defendant is released pending any appellate review, the condition of any bond required by the court shall be that the defendant prosecute the appellate review according to law and, upon termination of the appeal, surrender to serve any sentence required to be served or appear for further proceedings as directed. The bond shall continue until discharged by order of the court or until surrender of the defendant, whichever is earlier.

(d) Amendment of Order of Release

The court, on motion of any party or on its own initiative and after notice and opportunity for hearing, may revoke an order of release or amend it to impose additional or different conditions of release. If its decision results in the detention of the defendant, the court shall state the reasons for its action in writing or on the record.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 776 a and M.D.R. 776 a.

Section (b) is derived from former Rule 776 c and M.D.R. 776 c.

Section (c) is derived from former Rules 776 b and 778 b and M.D.R. 776 b and M.D.R. 778 b.

Section (d) is new.

REPORTER'S NOTE

See the Reporter's note to Rule 4-216.