

IN THE COURT OF APPEALS OF MARYLAND

R U L E S O R D E R

This Court's Standing Committee on Rules of Practice and Procedure having submitted its One Hundred Fifty-Second Report to the Court recommending thereby certain proposed new rules and proposed amendments to certain existing rules and forms, all as set forth in that Report published in the *Maryland Register*, Vol. 30, Issue 17, pages 1118 - 1199 (August 22, 2003); and

This Court by Rules Order filed November 12, 2003, having adopted, with certain amendments made on the Court's own motion, rejected, or remanded to the Rules Committee the rules changes proposed in the One Hundred Fifty-Second Report, except the proposed amendments to Rules 2-415, 2-419, 2-501, and 4-261, consideration of which was deferred pending further study; and

This Court having considered at an open meeting, notice of which was posted as prescribed by law, the deferred proposed rules changes, together with the comments received, and making certain amendments and additions to the proposed rules changes on its own motion, it is this 8th day of December, 2003,

ORDERED, by the Court of Appeals of Maryland, that the amendments to Rules 1-324, 2-411, 2-415, 2-419, and 2-501 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that the amendment to Rule 4-261 be, and it is hereby, adopted in the form previously published; and it is further

ORDERED that the rules changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after the 1st day of July, 2004, and insofar as practicable, to all actions then pending; and it is further

ORDERED that a copy of this Order be published in the next issue of the *Maryland Register*.

/s/ Robert M. Bell

Robert M. Bell

/s/ Irma S. Raker

Irma S. Raker

/s/ Alan M. Wilner

Alan M. Wilner

/s/ Dale R. Cathell

Dale R. Cathell

/s/ Glenn T. Harrell, Jr.

Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia

Lynne A. Battaglia

Filed: December 8, 2003

/s/ Alexander L. Cummings

Clerk
Court of Appeals of Maryland

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-324 to conform an internal reference to an amendment to Rule 2-501, as follows:

Rule 1-324. NOTICE OF ORDERS

Upon entry on the docket of any order or ruling of the court not made in the course of a hearing or trial, the clerk shall send a copy of the order or ruling to all parties entitled to service under Rule 1-321, unless the record discloses that such service has already been made. This Rule does not apply to show cause orders and does not abrogate the requirement for notice of a summary judgment set forth in Rule 2-501 ~~(e)~~ (f).

Source: This Rule is derived from former Rule 1219.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT
CHAPTER 400 - DISCOVERY

AMEND Rule 2-411 to add language referring to section (i) of Rule 2-415, as follows:

Rule 2-411. DEPOSITION – RIGHT TO TAKE

Any party to an action may cause the testimony of a person, whether or not a party, to be taken by deposition for the purpose of discovery or for use as evidence in the action or for both purposes. Leave of court must be obtained to take a deposition (a) before the earliest day on which any defendant's initial pleading or motion is required; (b) that is longer than one seven-hour day; (c) of an individual confined in prison; or (d) of an individual who has previously been deposed in the same action unless further deposition is permitted under Rule 2-415 (i) because substantive changes have been made to the deposition transcript. Leave of court may be granted on such terms as the court prescribes.

Source: This Rule is derived from former Rule 401 and the 2000 version of Fed. R. Civ. P. 30 (d)(2).

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE -- CIRCUIT COURT
CHAPTER 400 - DISCOVERY

AMEND Rule 2-415 to allow for changes in form and substance of testimony contained in deposition transcripts and to add a new section (i) providing a procedure for further deposition following substantive change to a transcript, as follows:

Rule 2-415. DEPOSITION -- PROCEDURE

. . .

(d) ~~Correction and Signature~~ and Changes

~~The officer shall submit the transcript to the deponent for correction and signing, unless~~ Unless changes and signing are waived by the deponent and the parties, the officer shall submit the transcript to the deponent, accompanied by a notice in substantially the following form:

[Caption of case]

NOTICE TO [name of deponent]

The enclosed transcript of your deposition in the above-captioned case is submitted to you on [date of submission of the transcript to the deponent] for your signature and any corrections or other changes you wish to make. All corrections and other changes will become part of your sworn testimony.

After you have read the transcript, sign it and, if you are making changes, attach to the transcript a separate correction sheet

stating the changes and the reason why each change is being made. Return the signed transcript and any correction sheet to [name and address of officer before whom the deposition was taken] no later than 30 days after the date stated above.

If you fail to return the signed transcript and any correction sheet within the time allowed, the transcript may be used as if signed by you. See Rules 2-415 and 2-501 of the Maryland Rules of Procedure.

~~Any corrections desired by the deponent to conform the transcript to the testimony shall be made on a separate sheet and attached by the officer to the transcript. Corrections made by the deponent become part of the transcript unless the court orders otherwise on a motion to suppress under section (i) of this Rule. If the transcript is not signed by the deponent within 30 days after its submission, the officer shall sign it and state why the deponent has not signed. Within 30 days after the date the officer mails or otherwise submits the transcript to the deponent, the deponent shall (1) sign the transcript and (2) note any changes to the form or substance of the testimony in the transcript on a separate correction sheet, stating the reason why each change is being made. The officer promptly shall serve a copy of the correction sheet on the parties and attach the correction sheet to the transcript. The changes contained on the correction sheet become part of the transcript. If the deponent does not timely sign the transcript, the officer shall sign the transcript, certifying the date that the transcript was submitted to the deponent with the notice required by this section and that~~

the transcript was not signed and returned within the time allowed. The transcript may then be used as if signed by the deponent, unless the court finds, on a motion to suppress under section ~~(i)~~ (j) of this Rule, that the reason for ~~refusal~~ the failure to sign requires rejection of all or part of the transcript.

Cross reference: See Rule 2-501 (e) for the consequences of filing an affidavit or other written statement under oath that contradicts deposition testimony that was not changed within the time allowed by this section.

. . .

(i) Further Deposition Upon Substantive Changes to Transcript

If a correction sheet contains substantive changes, any party may serve notice of a further deposition of the deponent limited to the subject matter of the substantive changes made by the deponent unless the court, on motion of a party pursuant to Rule 2-403, enters a protective order precluding the further deposition.

~~(i)~~ (j) Motions to Suppress

An objection to the manner in which testimony is transcribed, videotaped, or audiotaped, or to the manner in which a transcript is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer is waived unless a motion to suppress all or part of the deposition is made promptly after the defect is or with due diligence might have been ascertained. ~~An objection to corrections made to the transcript by the deponent is waived unless a motion to suppress~~

~~all or part of the corrections is filed within sufficient time before trial to allow for a ruling by the court and, if appropriate, further deposition.~~ In ruling on a motion to suppress, the court may grant leave to any party to depose the deponent further on terms and conditions the court deems appropriate.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 409 c.

Section (b) is derived from former Rule 409 a.

Section (c) is derived from former Rule 411 b 3.

Section (d) is derived in part from former Rules 411 a and 412 e and in part from the 1993 version of Fed. R. Civ. P. 30 (e).

Section (e) is derived from former Rule 411 b 1, 2 and 5.

Section (f) is derived from former Rule 411 b 4.

Section (g) is derived from former Rules 409 c 2, and 412 c 1 and 2.

Section (h) is derived from former Rule 422 a 2.

Section (i) is new.

Section (i) (j) is derived from former Rule 412 d and e.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT
CHAPTER 400 - DISCOVERY

AMEND Rule 2-419 to allow a deposition transcript and any correction sheets to be used to contradict or impeach the testimony of a deponent and to conform the Rule to amendments to Rule 2-415, as follows:

Rule 2-419. DEPOSITION -- USE

(a) When May be Used

(1) Contradiction and Impeachment

A party may use a deposition transcript and any correction sheets to ~~may be used by any party for the purpose of contradicting or impeaching~~ contradict or impeach the testimony of the deponent as a witness.

(2) By Adverse Party

The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, managing agent, or a person designated under Rule 2-412 (d) to testify on behalf of a public or private corporation, partnership, association, or governmental agency which is a party may be used by an adverse party for any purpose.

(3) Witness Not Available or Exceptional Circumstances

The deposition of a witness, whether or not a party, may be used by any party for any purpose against any other party who

was present or represented at the taking of the deposition or who had due notice thereof, if the court finds:

(A) that the witness is dead; or

(B) that the witness is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(C) that the witness is unable to attend or testify because of age, mental incapacity, sickness, infirmity, or imprisonment; or

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon motion and reasonable notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) Videotape Deposition of Expert

A videotape deposition of a treating or consulting physician or of any expert witness may be used for any purpose even though the witness is available to testify if the notice of that deposition specified that it was to be taken for use at trial.

. . .

(d) Objection to Admissibility

Subject to Rules 2-412 (e), 2-415 (g) and ~~(i)~~ (j), 2-416

(g), and 2-417 (c), an objection may be made at a hearing or trial to receiving in evidence all or part of a deposition for any reason that would require the exclusion of the evidence if the witness were then present and testifying.

. . .

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 500 - TRIAL

AMEND Rule 2-501 to change the phrase "file at any time" in section (a) to the word "make," to revise the requirements of a response to a motion for summary judgment, to require the court to strike a certain statement under oath under certain circumstances, to delete certain language from section (g), and to make certain stylistic changes, as follows:

Rule 2-501. MOTION FOR SUMMARY JUDGMENT

(a) Motion

Any party may ~~file at any time~~ make a motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. The motion shall be supported by affidavit if it is (1) filed before the day on which the adverse party's initial pleading or motion is filed or (2) based on facts not contained in the record.

Committee note: For an example of a summary judgment granted at trial, see *Beyer v. Morgan State*, 369 Md. 335 (2002).

(b) Response

~~The A response to a written motion for summary judgment shall identify with particularity the material facts that are disputed. When a motion for summary judgment is supported by an~~

~~affidavit or other statement under oath, be in writing and shall~~
(1) identify with particularity each material fact as to which it
is contended that there is a genuine dispute and (2) as to each
such fact, identify and attach the relevant portion of the
specific document, discovery response, transcript of testimony
(by page and line), or other statement under oath that
demonstrates the dispute. A response asserting the existence of
a material fact or controverting any fact contained in the record
shall be supported by an opposing party who desires to controvert
any fact contained in it may not rest solely upon allegations
contained in the pleadings, but shall support the response by an
affidavit or other written statement under oath.

(c) Form of Affidavit

An affidavit supporting or opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

(d) Affidavit of Defense Not Available

If the court is satisfied from the affidavit of a party opposing a motion for summary judgment that the facts essential to justify the opposition cannot be set forth for reasons stated in the affidavit, the court may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be conducted or may enter any other order that justice requires.

(e) Contradictory Affidavit or Statement

(1) A party may file a motion to strike an affidavit or other statement under oath to the extent that it contradicts any prior sworn statement of the person making the affidavit or statement. Prior sworn statements include (A) testimony at a prior hearing, (B) an answer to an interrogatory, and (C) deposition testimony that has not been corrected by changes made within the time allowed by Rule 2-415.

(2) If the court finds that the affidavit or other statement under oath materially contradicts the prior sworn statement, the court shall strike the contradictory part unless the court determines that (A) the person reasonably believed the prior statement to be true based on facts known to the person at the time the prior statement was made, and (B) the statement in the affidavit or other statement under oath is based on facts that were not known to the person and could not reasonably have been known to the person at the time the prior statement was made or, if the prior statement was made in a deposition, within the time allowed by Rule 2-415 (d) for correcting the deposition.

~~(e)~~ (f) Entry of Judgment

The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law. By order pursuant to Rule 2-602 (b), the court

may direct entry of judgment (1) for or against one or more but less than all of the parties to the action, (2) upon one or more but less than all of the claims presented by a party to the action, or (3) for some but less than all of the amount requested when the claim for relief is for money only and the court reserves disposition of the balance of the amount requested. If the judgment is entered against a party in default for failure to appear in the action, the clerk promptly shall send a copy of the judgment to that party at the party's last known address appearing in the court file.

Cross reference: Section 200 of the Soldiers' and Sailors' Relief Act of 1940, 50 U.S.C. Appendix, §520, imposes specific requirements that must be fulfilled before a default judgment may be entered.

~~(f)~~ (g) Order Specifying Issues or Facts Not in Dispute

When a ruling ~~upon~~ on a motion for summary judgment does not dispose of the entire action and a trial is necessary, the court, ~~on the basis of the pleadings, depositions, answers to interrogatories, admissions, and affidavits and, if necessary, after interrogating counsel on the record,~~ may enter an order specifying the issues or facts that are not in genuine dispute. The order controls the subsequent course of the action but may be modified by the court to prevent manifest injustice.

Source: This Rule is derived as follows:

- Section (a) is derived from former Rule 610 a 1 and 3.
- Section (b) is new.
- Section (c) is derived from former Rule 610 b.
- Section (d) is derived from former Rule 610 d 2.

Section (e) is new.

Section ~~(e)~~ (f) is derived in part from former Rules 610 d 1 and 611 and is ~~in part~~ new.

Section ~~(f)~~ (g) is derived from former Rule 610 d 4.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 600 - JUDGMENT

AMEND Rule 2-602 to conform an internal reference to an amendment to Rule 2-501, as follows:

Rule 2-602. JUDGMENTS NOT DISPOSING OF ENTIRE ACTION

. . .

(b) When Allowed

If the court expressly determines in a written order that there is no just reason for delay, it may direct in the order the entry of a final judgment:

(1) as to one or more but fewer than all of the claims or parties; or

(2) pursuant to Rule 2-501 ~~(e)(3)~~ (f)(3), for some but less than all of the amount requested in a claim seeking money relief only.

. . .

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

AMEND Rule 4-261 (h)(4) for conformity with amendments to Rule 2-415, as follows:

Rule 4-261. DEPOSITIONS

. . .

(h) Use

(1) Substantive Evidence

At a hearing or trial, all or part of a deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence if the court finds that the witness: (A) is dead, or (B) is unable to attend or testify because of age, mental incapacity, sickness, or infirmity, or (C) is present but refuses to testify and cannot be compelled to testify, or (D) is absent from the hearing or trial and that the party offering the deposition has been unable to procure the witness' attendance by subpoena or other reasonable means, unless the absence was procured by the party offering the deposition.

(2) Impeachment

At a hearing or trial, a deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness to the extent permitted by the rules of evidence.

(3) Partial Use

If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce at that time any other part that in fairness ought to be considered with the part offered, so far as otherwise admissible under the rules of evidence, and any party may introduce any other part in accordance with this Rule.

(4) Objection to Admissibility

Subject to Rules 2-412 (e), 2-415 (g) and ~~(h)~~ (j), 2-416 (g), and 2-417 (c), an objection may be made at the hearing or trial to receiving in evidence all or part of a deposition for any reason that would require the exclusion of the evidence if the witness were then present and testifying.

. . .