

May 12, 2014

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, its One Hundred Eighty-Third Report, and recommends that the Court adopt, on an emergency basis, new Rules 4-213.1 and 4-216.2 and amendments to Rules 4-202, 4-212, 4-213, 4-214, 4-215, 4-216, 4-216.1, 4-217, 4-231, 4-349, 5-101, and 15-303. These proposed changes constitute the latest chapter in the aftermath of the Court's decisions in *DeWolfe v. Richmond*, 434 Md. 403 and 434 Md. 444 (2013) and in contemplation of whatever decision the Court may make in *Clyburn v. Richmond* (S.T. 2013, No. 105), currently pending before the Court.

#### BACKGROUND

The history of *DeWolfe v. Richmond* through October 15, 2013, with respect to proposed Rules changes, is set forth in the Committee's One Hundred Eighty-First Report and need not be repeated in full here. With respect to the events covered in that Report and those that occurred afterward, it will suffice to note only that:

(1) The Court's initial decision in *Richmond* was filed on January 4, 2012 (*Richmond I*). The Court there held that, under the existing Public Defender Law (Code, Criminal Procedure Article,

§16-204 (b)), indigent defendants were entitled to representation by the Public Defender at the pre-trial release segment of initial appearances before a District Court commissioner and at bail review hearings before a judge. On February 3, 2012, in its 173<sup>rd</sup> Report, the Committee submitted amendments to Rule 4-216 in order to implement that decision.

(2) Before any action by the Court on those proposals, two external events occurred. First, motions for reconsideration were filed, which delayed the issuance of a mandate; second, the General Assembly, in its 2012 Session, amended Code, Criminal Procedure Article, §16-204 (b) to provide that representation by the Public Defender "is not required" at an initial appearance before a commissioner but was required for indigent defendants at bail review hearings before a judge. In a supplement to the 173<sup>rd</sup> Report, filed May 4, 2012, the Committee submitted a revised set of proposed Rules changes to implement the legislative action, which the Court adopted in June 2012.

(3) On September 25, 2013, the Court, acting on the motions for reconsideration, held that there was a right to the assistance of counsel at initial appearances before a commissioner under Article 24 of the Maryland Declaration of Rights (*Richmond II*). In footnote 15 of the Opinion, the Court indicated that representation of indigents by the Public Defender was not required "at this time" if "the other branches of government decide that compliance with this holding is to be accomplished by [other] means." Uncertain whether, in light of the 2012 legislation and footnote 15, the Public Defender would be providing representation at initial appearances before commissioners, the Committee, in its 181<sup>st</sup> Report, filed October 15, 2013, transmitted a new set of proposed Rules changes, also on an emergency basis. Two days later, the Court issued its mandate remanding the *Richmond* case to the Circuit Court for Baltimore City for the entry of a new declaratory judgment in conformance with the September 25 Opinion.

(4) On October 23, 2013, the State filed a motion to recall the mandate in order to permit it to file a motion for reconsideration. That same day, the Circuit Court entered a new declaratory judgment. On October 25, the State filed (i) a motion in the Circuit Court to vacate that judgment, which was denied on November 1, 2013, and (ii) a motion in the Court of Appeals to stay enforcement of the judgment.

(5) The Court held an open hearing on the 181<sup>st</sup> Report on November 4, 2013, and, with minor amendments, adopted those proposed Rules but delayed putting them into effect, pending further Order of the Court. The next day, the Court entered an

Order denying the pending motions by the State, without prejudice to the State presenting its arguments in favor of staying the effect of the new judgment to the Circuit Court. On November 26, 2013, Chief Judge Barbera entered an Administrative Order directing that the District Court Administrative Judges begin recruiting attorneys who would be willing to accept court appointment to represent indigent defendants at initial appearances before commissioners in the respective districts.

(6) On January 10, 2014, on the plaintiffs' motion, the Circuit Court entered a permanent injunction ordering the District Court defendants to appoint counsel for indigent defendants at all initial bail hearings and prohibiting the court from conducting initial bail hearings without appointing counsel and from incarcerating indigent defendants who had not been provided counsel. The State appealed, moved for a stay of the injunctive order, and petitioned the Court of Appeals to hear the appeal. The Court granted the writ and stayed the injunction until March 11, 2014. On that day, it heard argument in the appeal, ordered that it would not revisit the *Richmond II* decision, retained jurisdiction to revise the injunctive order, and set the matter for further argument on May 6, 2014. Argument was held that day.

(7) The General Assembly, in its 2014 Session, was unable to agree on any structural change to the current system of having initial appearances conducted by District Court commissioners, with a review hearing before a judge at the next session of court for those defendants who were not released by the commissioner.<sup>1</sup> The only legislative action in response to *Richmond II* was (i) the restoration of \$10 million that had been tentatively stricken from the FY 2015 Judicial Budget, with the express direction that those funds could be expended only for the purpose of providing attorneys for required representation at initial appearances before commissioners, and (ii) a provision added to the Budget Reconciliation and Financing Act that, if attorneys are appointed in a county to provide legal representation at an initial appearance before a commissioner in FY 2015, the costs of compensating the attorneys beyond the \$10 million provided in the State Budget must be billed by the appointing authority to the county in which the representation is provided and paid by that county. The Legislature made clear that the \$10 million appropriation was for FY 2015 only.

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<sup>1</sup> Release may be in the form of a direct order that the defendant be released on recognizance or unsecured bond or by the commissioner ordering release on conditions that the defendant is able to satisfy, usually by posting bail or other required security in the amount set by the commissioner.

From the perspective of the Rules Committee, the legislative response provides only half of the landscape. Still uncertain at this time is what the Court may choose to do in the matter still pending before it. Knowing, at this point, only the option provided by the General Assembly but aware that, if that option is to be implemented, additional Rules changes may need to be in place by July 1, 2014, when the \$10 million appropriation becomes available, the Committee has fashioned its recommended changes on the assumption that the only effective means of implementing the *Richmond II* judgment in FY 2015 is to provide a method for using the appropriation to fund the appointment of court-appointed attorneys for most of the expected 150,000 defendants who will be having an initial appearance before a District Court commissioner.<sup>2</sup>

Ordinarily, the Committee would show proposed changes as amendments to the Rules currently in effect, and that is done here as well. This situation is unique, however, because last November, the Court considered and adopted significant changes to those Rules, which are closer to what is needed now but which the Court has not yet made effective. Because what the Court approved last November provides a better and more recent platform upon which to consider the current proposals, the Committee has drafted the new proposals to those Rules as well and suggests that the Court primarily focus on that draft. The draft showing the changes to the Rules currently in effect will be submitted as an Appendix to this Report.

#### DISCUSSION OF PROPOSED CHANGES

Initial appearances before a commissioner are governed by Rules 4-213 and 4-216, which are in the nature of a continuum. Rule 4-213 actually sets forth the agenda and the sequence of what the commissioner does at an initial appearance, which covers more than just determining pre-trial release. The details of the pre-trial release aspect of the proceeding are dealt with in Rule 4-216, to which Rule 4-213 makes reference. In order to implement *Richmond II*, before any involvement of the commissioners, the District Administrative judges will need to recruit attorneys in their respective districts willing to accept court appointment, either for blocks of time or on an as-needed basis. Pursuant to the administrative order issued by Chief Judge Barbera, that process is already under way. There will

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<sup>2</sup> That number is an estimate. In 2011, commissioners conducted approximately 176,000 initial appearances. In 2012, that number dropped to 173,000, and in 2013, it dropped further to 153,000. It is not clear whether this decline constitutes a trend, what is causing it, or whether it will continue. The District Court and the Administrative Office of the Courts have used the 2013 data and preliminary data from the first quarter of 2014 in developing their projections.

also have to be in place a mechanism for paying the appointed attorneys. That also is being developed administratively.

Under current Rule 4-213, the first thing a commissioner now does at an initial appearance, other than some routine clerical functions, is to advise the defendant of the charges. Aside from some conforming cross-reference corrections, the only proposed change to Rule 4-213 is to insert, as the first order of business, advising the defendant of the right to an attorney, if he or she appears without one, and providing for an attorney if the defendant wants one. See new section (a).

The proposed Rules submitted in the 181<sup>st</sup> Report, approved by the Court in November, dealt with that aspect through a new, rather lengthy, section (e) added to Rule 4-216. That aspect is even more complicated when dealing with court-appointed attorneys, because the commissioner, rather than the Public Defender, will now have to determine whether the defendant is indigent and thus eligible for a court-appointed attorney. As a matter of style - to make Rule 4-216 more concise and easier to read - the Committee proposes removing the language dealing with the provision of attorneys from Rule 4-216 and placing it in a separate, self-contained and coherent Rule 4-213.1. A new section (a) added to Rule 4-213 references the procedure set forth in new Rule 4-213.1.

Rule 4-213.1 (a)(1) restates the right of a defendant to be represented by an attorney at an initial appearance before a judicial officer. Although the overwhelming majority of initial appearances are before a commissioner, they can take place before a judge, as both constitute judicial officers. Subsection (a)(2) restates the requirement that, if a defendant is indigent, does not have another attorney, and does not waive the right to an attorney, the defendant shall be represented by a court-appointed attorney if the proceeding is before a commissioner and by the Public Defender if the proceeding is before a judge. That is consistent with the Public Defender Law, *Richmond II*, and the language in the FY 2015 State Budget. The Rule leaves open the ability of the Public Defender to enter an appearance for the defendant in a proceeding before a commission.

Rule 4-213.1 (b) provides for the recruitment and appointment of attorneys willing to represent defendants at initial appearances before commissioners and for the processing of invoices submitted by the appointed attorneys. Section (c) requires the judicial officer, whether a judge or a commissioner, to explain to the defendant his or her right to an attorney for the initial appearance proceeding.

Section (d) deals with the mechanics of determining whether the defendant wants an attorney and, if so, for implementing that right. Under subsection (d)(1), if the defendant wants an attorney and claims indigence, the commissioner must determine whether the defendant qualifies for a court-appointed attorney. The commissioner will make that determination by using the same criteria used by the Public Defender - the criteria set forth in Code, Criminal Procedure Article, §16-210 (b) and (c) - based on an application and affidavit in substantially the form used by the Public Defender. If the defendant is found to be indigent, the court-appointed attorney on duty will represent the defendant. If the defendant is found not to be indigent, the commissioner will advise the defendant of the right to a privately retained attorney and provide a reasonable opportunity for the defendant to obtain one. Data collected by the commissioners reveal that privately retained attorneys are exceedingly rare at initial appearances before a commissioner - only a handful in a year. Whether that will change in light of *Richmond II* is unclear at this point.

Although every effort will be made to have court-appointed attorneys available immediately or on short notice and provision is made in section (f) of the Rule for attorneys to appear by electronic means or by telecommunication, there likely will be instances in which an attorney will not be immediately available. Because of security concerns and the inability of police officers or detention center personnel who transport the defendant to wait for an extended period at the commissioner's office, the initial proceeding may need to be continued until the attorney is available. In that event, the defendant will be temporarily committed until the earliest opportunity that the defendant can be presented, with an attorney, to the next available judicial officer.<sup>3</sup> That provision was included in the 181<sup>st</sup> Report and was approved by the Court.

**Two new features are added to subsection (d)(3).** Under current Rule 4-216 (a), if the defendant was arrested without a warrant, the commissioner must determine whether there was probable cause for each charge and the arrest and, if not, release the defendant on personal recognizance, without conditions. There is an open question whether, under *Richmond II*, a defendant is entitled to an attorney with respect to that determination. As a reasonable protection for the defendant, the Committee believes that, even if the initial appearance proceeding needs to be continued because of the unavailability of an attorney, the commissioner should nonetheless make a determination of probable

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<sup>3</sup> Initial appearances may need to be continued for other reasons as well, such as the inability of the defendant, due to intoxication or other impediment, to participate.

cause, subject to an unfavorable decision being revisited when the initial appearance is resumed. If, on the papers, the commissioner is prepared to find that there was no probable cause for the arrest, the defendant should be released and not held in further custody waiting for an attorney to appear.

A similar approach is recommended with respect to release based on the criteria set forth by statute or in Rule 4-216, even if the arrest was pursuant to a warrant or the commissioner finds probable cause. That may be somewhat more problematic under *Richmond II*, but the Committee believes that, as the Rule is structured, it can be legally justified and would serve a useful and beneficent purpose. Subsection (d)(3)(B) permits the commissioner, prior to recessing the initial appearance, to make a preliminary determination of whether (1) the commissioner has the authority to release the defendant, and (2) the defendant qualifies for release on personal recognizance, without conditions. If so, the commissioner, after complying with any applicable requirements in Rules 4-213 and 4-216 (h), may release the defendant, thereby making any resumption of the proceeding unnecessary. If the commissioner makes a preliminary decision not to release the defendant, the commissioner enters a temporary commitment order pursuant to Rule 4-216 (g).

The section makes clear that a decision not to release the defendant is a preliminary one, without prejudice to that decision being reconsidered when the proceeding resumes with an attorney present. The Committee sees no practical or legal disadvantage to the defendant from that approach, which, based on the actual experience under the current Rules, is likely to result in defendants being released earlier than otherwise would be the case.

Sections (e), (f), and (g), dealing, respectively, with waiver of the right to an attorney, participation of attorneys by electronic means or telecommunication, and provisional or limited appearances, were included in the 181<sup>st</sup> Report and were approved in that context by the Court.

The amendments proposed to the other Rules are largely conforming ones. New Rule 4-216.2 and the amendments to Rules 4-212, 4-217, 4-349, 5-101, and 15-303 were also included in the 181<sup>st</sup> Report and were approved by the Court but not put into effect. They are included in this Report, without change, so that all of the conforming amendments can be made effective in one Rules Order. The Committee will be proposing in the Rules Order that the approval of all proposed Rules changes included in the 181<sup>st</sup> Report that have not already taken effect be rescinded.

For the further guidance of the Court and the public, following the proposed new Rule and the proposed amendments to each of the existing Rules is a Reporter's Note describing in

further detail the reasons for the proposals. *We caution that the Reporter's Notes are not part of the Rules, have not been debated or approved by the Committee, and are not to be regarded as any kind of official comment or interpretation.* They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,

Alan M. Wilner  
Chair

AMW:cdc

cc: Hon. Robert A. Zarnoch, Vice-Chair  
Bessie M. Decker, Clerk



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

AMEND Rule 4-213 by adding a new subsection (a)(1) referring to the procedure in a certain Rule to be followed when the defendant appears without an attorney, by amending the cross reference after subsection (a)(3) to update an internal Rule reference, 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) Appointment, Appearance, or Waiver of Attorney for Initial Appearance

If the defendant appears without an attorney, the judicial officer shall first follow the procedure set forth in Rule 4-213.1 to assure that the defendant either is represented by an attorney or has knowingly and voluntarily waived the right to an attorney.

~~(1)~~ (2) 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)~~ (3) 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 (e)~~ 4-213.1 with respect to the right to an attorney at an initial appearance before a judicial officer and Rule 4-216.1 (b) with respect to the right to an attorney at a hearing to review a pretrial release decision of a commissioner.

~~(3)~~ (4) 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)~~ (5) Pretrial Release

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

~~(5)~~ (6) Certification by Judicial Officer

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

~~(6)~~ (7) 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

(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)~~ (a)(2), (3), and (4) 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.

REPORTER'S NOTE

See the Reporter's note to Rule 4-213.1.

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

ADD new Rule 4-213.1, as follows:

Rule 4-213.1 APPOINTMENT, APPEARANCE, OR WAIVER OF ATTORNEY AT  
INITIAL APPEARANCE

(a) Right to Representation by Attorney

(1) Generally

A defendant has the right to be represented by an attorney at an initial appearance before a judicial officer.

(2) Attorney

Unless the defendant waives that right in accordance with section (e) of this Rule or another attorney has entered an appearance, if the defendant is indigent within the meaning of Code, Criminal Procedure Article, §16-210 (b) and (c):

(A) the defendant shall be represented by the Public Defender if the initial appearance is before a judge; and

(B) the defendant shall be represented by an attorney appointed by the court in accordance with section (b) of this Rule if the initial appearance is before a District Court commissioner, unless the Public Defender enters an appearance for the defendant.

(b) Appointment of Attorneys for Initial Appearance Before Commissioner

(1) Appointment

After consultation with the State and local bar associations and the Public Defender, the District Administrative Judges shall develop lists of attorneys willing to accept appointment to represent indigent defendants at initial appearances before District Court commissioners in the district on a pro bono basis or at fees equivalent to those paid by the Public Defender to panel attorneys. Attorneys shall be appointed from the lists as needed for specific proceedings or to be available for blocks of time.

(2) Processing of Invoices

Invoices for fees due to court-appointed attorneys shall be processed in accordance with procedures adopted by the State Court Administrator.

(c) General Advice by Judicial Officer

If the defendant appears at an initial appearance without an attorney, the judicial officer shall advise the defendant that the defendant has a right to an attorney at the initial appearance and that, if the defendant is indigent, (1) the Public Defender will provide representation if the proceeding is before a judge, or (2) a court-appointed attorney will provide representation if the proceeding is before a commissioner.

(d) Proceeding Before Commissioner

(1) Determination of Indigence

(A) If the defendant claims indigence and desires a court-appointed attorney for the proceeding, the defendant shall

complete a request and affidavit substantially in the form used by the Public Defender and, from those documents and in accordance with the criteria set forth in Code, Criminal Procedure Article, §16-210 (b) and (c), the commissioner shall determine whether the defendant qualifies for an appointed attorney.

(B) If the commissioner determines that the defendant is indigent, the commissioner shall provide a reasonable opportunity for the defendant and a court-appointed attorney to consult in confidence.

(C) If the commissioner determines that the defendant is not indigent, the commissioner shall advise the defendant of the right to a privately retained attorney and provide a reasonable opportunity for the defendant to obtain the services of, and consult in confidence with, a private attorney.

(2) Inability of Attorney to Appear Promptly

The commissioner shall further advise the defendant that, unless the attorney, whether court appointed or privately retained, is able to participate, either in person or by electronic means or telecommunication, within a reasonable period of time, the initial appearance may need to be continued, in which event, subject to subsection (d)(3) of this Rule, the defendant will be temporarily committed until the earliest opportunity that the defendant can be presented to the next available judicial officer with an attorney present.

(3) If Initial Appearance Continued

If pursuant to subsection (d) (2) of this Rule, the initial appearance needs to be continued, the commissioner, before recessing the proceeding, shall proceed in accordance with this subsection.

(A) Arrest Without Warrant - Determination of Probable Cause

If the defendant was arrested without a warrant, the commissioner shall determine whether there was probable cause for the charges and the arrest pursuant to Rule 4-216 (a). If the commissioner finds no probable cause for the charges or for the arrest, the commissioner shall release the defendant on personal recognizance, with no other conditions of release. If the defendant is released pursuant to subsection (d) (3) (A) of this Rule, the Commissioner shall not make the determination otherwise required by subsection (d) (3) (B) of this Rule, but shall provide the advice required by subsection (d) (3) (C) of this Rule.

(B) Preliminary Determination Regarding Release on Personal Recognizance

Regardless of whether the defendant was arrested with or without a warrant, the commissioner shall make a preliminary determination regarding the commissioner's authority to release the defendant on personal recognizance and the appropriateness of such a release pursuant to Rule 4-216. If the commissioner's preliminary determination is that release on personal recognizance with no other conditions of release is authorized and appropriate, the commissioner shall release the defendant on



that basis.

(C) Required Compliance Before Release of Defendant

Before releasing the defendant pursuant to subsection (d) (3) (A) or (B) of this Rule, the commissioner shall comply with the applicable provisions of Rules 4-213 and 4-216 (h).

(D) Preliminary Determination Not to Release

Upon a preliminary determination by the commissioner not to release the defendant on personal recognizance, the commissioner shall comply with the applicable provisions of Rule 4-216 (g) and (h) and recess the proceeding. The commissioner's preliminary determination is without prejudice to the right of the defendant to seek release on personal recognizance when the proceeding resumes with the attorney present. If the proceeding resumes before the commissioner who made the preliminary determination not to release the defendant on personal recognizance, the commissioner, upon request of the defendant, shall recuse, and the proceeding shall be before another judicial officer.

(e) Waiver - Initial Appearance Before Judge or Commissioner

(1) If the defendant indicates a desire to waive the right to an attorney, the judicial officer shall advise the defendant (A) that an attorney can be helpful in explaining the procedure and in advocating that the defendant should be released immediately on recognizance or on bail with minimal conditions, (B) that it may be possible for the attorney to participate electronically or by telecommunication, and (C) that any waiver would be effective

only for the initial appearance and not for any subsequent proceedings.

(2) If, upon this advice, the defendant still wishes to waive the right to an attorney and the judicial officer finds that the waiver is knowing and voluntary, the judicial officer shall announce and record that finding.

(3) A waiver pursuant to section (e) of this Rule is effective only for the initial appearance and not for any subsequent proceeding.

(4) Notwithstanding an initial decision not to waive the right to an attorney, a defendant may waive that right at any time during the proceeding, provided that no attorney has already entered an appearance.

(f) Participation by Attorney by Electronic or Telecommunication Means

(1) 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, the State's Attorney may participate electronically or by telecommunication if the equipment at the judicial officer's location and the State's Attorney's location provides adequate opportunity for the State's Attorney to participate meaningfully in the proceeding.

(2) By Defense Attorney

When the physical presence of a defense attorney is impracticable, the attorney may consult with the defendant and

participate in the proceeding electronically or by telecommunication if the equipment is at the judicial officer's location and the defense attorney's location provides adequate opportunity for the attorney to consult privately with the defendant and participate meaningfully in the proceeding.

(g) Provisional and Limited Appearance

(1) Provisional Representation by Public Defender

Unless the Public Defender has entered a general appearance pursuant to Rule 4-214, any appearance entered by the Public Defender at an initial appearance shall be provisional. For purposes of this section, eligibility for provisional representation shall be determined by the Public Defender at the time of the proceeding.

(2) Limited Appearance

Unless a general appearance has been entered pursuant to Rule 4-214, an appearance by a court-appointed or privately retained attorney shall be limited to the initial appearance before the judicial officer and shall terminate automatically upon the conclusion of that stage of the criminal action.

(3) Inconsistency with Rule 4-214

Section (g) of this Rule prevails over any inconsistent provision in Rule 4-214.

Source: This Rule is new but is derived, in part, from amendments proposed to Rule 4-216 in the 181<sup>st</sup> Report of the Standing Committee on Rules of Practice and Procedure.

## REPORTER'S NOTE

In *DeWolfe v. Richmond*, 434 Md. 444 (2013), the Court held that under Article 24 of the Maryland Declaration of Rights, an indigent defendant is entitled to State-furnished counsel at the defendant's initial appearance before a District Court Commissioner.

An injunction to effectuate implementation of the holding in *Richmond* was issued by the Circuit Court for Baltimore City. A temporary stay of the injunction, issued by the Court of Appeals, currently is in effect. The temporary stay expires June 5, 2014.

Under Code, Criminal Procedure Article, §16-204 (b)(2)(ii), the Public Defender is not required to provide representation to an indigent individual before a District Court Commissioner. In the 2014 session of the General Assembly, no bills were passed that modified the pretrial release process or the obligations of the Public Defender to provide representation to indigent defendants. The legislature did, however, allocate \$10,000,000 of the Judiciary's FY2015 budget for the purpose of providing attorneys to indigent defendants at initial appearances before commissioners. Any costs in excess of that sum are to be paid by the county in which representation is provided.

Amendments to Rules 4-213, 4-216, 4-202, 4-214, 4-215, 4-216.1, and 4-231 and new Rule 4-213.1 are proposed to implement the holding in *Richmond* after the stay has been lifted. These amendments modify Rules changes that were adopted by the Court by Rules Order dated November 6, 2013, with an effective date to be specified by subsequent Order of the Court.

Proposed new Rule 4-213.1 consolidates into a single Rule provisions pertaining to the appointment, appearance, or waiver of an attorney at an initial appearance.

Section (a) states the general rule that a defendant has the right to be represented by an attorney at an initial appearance. If the initial appearance is before a judge, the Public Defender provides representation to an indigent defendant who wants an attorney. If the initial appearance is before a commissioner, a court-appointed attorney provides representation to an indigent defendant who wants an attorney, unless the Public Defender enters an appearance.

Section (b) requires the District Administrative Judges to develop lists of attorneys willing to accept appointments to represent indigent defendants at initial appearances before a commissioner. The section allows the court-appointed attorneys to be scheduled for specific proceedings or for blocks of time. Payment to the attorneys is made in accordance with procedures

developed by the State Court Administrator.

Section (c) requires the judge or commissioner to advise the defendant of the right to counsel at the initial appearance.

Section (d) applies only to an initial appearance before a commissioner. The commissioner determines indigency using the same statutory criteria that the Public Defender uses to make that determination. If the defendant is indigent and wants an attorney, a court-appointed attorney is provided. If the defendant is not indigent and wants an attorney, the defendant is given a reasonable opportunity to obtain privately retained counsel. Regardless of whether the attorney is court-appointed or privately retained, the attorney is given the opportunity to consult privately with the defendant. If an attorney cannot appear within a reasonable period of time, the initial appearance is continued until the attorney can participate, at which time the initial appearance resumes before the next available judicial officer.

If the initial appearance is continued, a temporary commitment is issued, except that there are two circumstances under which the commissioner releases the defendant on personal recognizance with no other conditions of release. If the defendant was arrested without a warrant and the commissioner finds no probable cause, the defendant is released on personal recognizance. If the defendant was arrested on a warrant or the commissioner finds probable cause for an arrest without a warrant, the commissioner makes a preliminary determination regarding the commissioner's authority to release the defendant on personal recognizance and the appropriateness of such a release. If such release is authorized and appropriate, the defendant is released.

A preliminary determination not to release the defendant on personal recognizance is without prejudice to the right of the defendant to seek release on personal recognizance when the proceeding resumes with an attorney present. If the proceeding resumes before the commissioner who made the preliminary determination not to release, the defendant may request recusal of that commissioner, and the request must be granted.

Section (e) of Rule 4-216 is proposed to be deleted in its entirety.

Section (e) of Rule 4-213.1 carries forward, with style changes, the waiver provisions of Rule 4-216 (e) (3).

Section (f) carries forward the provisions of Rule 4-216 (e) (4), permitting an attorney to participate in an initial appearance by electronic or telecommunication means.

Section (g), pertaining to provisional and limited appearances, carries forward the provisions of Rule 4-216 (e) (2).

Conforming amendments are made to Rules 4-213, 4-216, 4-202, 4-214, 4-215, 4-216.1, and 4-231.

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

AMEND Rule 4-216 by adding language to section (a) referring to completing the requirements in certain Rules, by making a stylistic change to the cross reference after section (a), by deleting section (e), by adding the phrase "or be completed" to section (g) and revising the Committee note following that section, by deleting a reference to part of section (e) in subsection (h) (4) and replacing it with a reference to a certain Rule, and by making 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, upon the completion of the requirements of Rules 4-213 (a) and 4-213.1, the judicial officer shall determine whether there was probable cause for each charge and for the arrest and, as to each determination, make a written record. If there was probable cause for at least one charge and the arrest, the judicial officer shall implement the remaining sections of this Rule. If there was no probable cause for any of the charges or for the arrest, 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)~~ (a)(5).

(b) Communications with Judicial Officer

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, all communications with a judicial officer regarding any matter required to be considered by the judicial officer under this Rule shall be (1) in writing, with a copy provided, if feasible, but at least shown or communicated by the judicial officer to each party who participates in the proceeding before the judicial officer, and made part of the record, or (2) made openly at the proceeding before the judicial officer. Each party who participates in the proceeding shall be given an opportunity to respond to the communication.

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

(c) 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 (d) 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.

(d) Defendants Eligible for Release only by a Judge

A defendant charged with an offense for which the maximum penalty is 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.

~~(e) Attorney~~

~~(1) Generally~~

~~(A) Right to Representation by Attorney~~

~~(i) A defendant has the right to be represented by an attorney at an initial appearance before a judicial officer.~~

~~(ii) Unless the defendant waives that right, if the defendant is indigent within the meaning of the Public Defender Act (Code, Criminal Procedure Article, §16-201) and no other attorney has entered an appearance for the defendant, the defendant shall be represented by the Public Defender or, at a proceeding before a District Court commissioner, by an attorney appointed for that purpose by the District Court pursuant to subsection (e) (1) (A) (iii) of this Rule if the Public Defender does not provide representation.~~

~~(iii) Unless the Public Defender has agreed to represent eligible defendants at initial appearance proceedings before a commissioner, the District Administrative Judges of the District Court shall appoint attorneys to represent such defendants at those proceedings in the various districts and charge the fees and expenses for such representation against the State of Maryland. Fees and expenses shall be governed by the schedule used by the Public Defender for panel attorneys.~~

~~(B) Entry of Appearance~~

~~The appearance of an attorney representing a defendant at an initial appearance may be entered in writing, electronically, or by telecommunication. If the entry is not in written form, the judicial officer shall note in the record of the proceeding the appearance and the method by which it was received.~~

~~(C) Appearance Separate and Distinct~~

~~For purposes of section (e) of this Rule, an initial appearance before a judicial officer shall be separate and distinct from any other stage of a criminal action. This stage commences with the appearance of the defendant before the judicial officer and ends when (i) the defendant is released, or (ii) the judicial officer has complied with all applicable requirements of sections (f) and (g) of this Rule.~~

~~(2) Duty of Public Defender or Appointed Attorney~~

~~(A) Provisional Representation by Public Defender~~

~~Unless the Public Defender has entered a general~~

~~appearance pursuant to Rule 4-214, any appearance entered by the Public Defender at an initial appearance of the defendant shall be provisional. For purposes of this Rule, eligibility for provisional representation shall be determined by the Office of the Public Defender as of the time of the proceeding.~~

~~Cross reference: See Code, Criminal Procedure Article, §16-210 (c) (4) concerning provisional representation by the Public Defender.~~

~~(B) Entry of Limited Appearance~~

~~Provisional representation by the Public Defender or representation by a court-appointed attorney shall be limited to the initial appearance before the judicial officer and shall terminate automatically upon the conclusion of that stage of the criminal action, unless representation by the Public Defender is extended or renewed pursuant to Rule 4-216.1.~~

~~(C) Effect of Conflict with Rule 4-214~~

~~Section (e) of this Rule prevails over any inconsistent provision in Rule 4-214.~~

~~(3) Waiver~~

~~(A) Unless an attorney has entered an appearance, the judicial officer shall advise the defendant that:~~

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

~~(ii) an attorney can be helpful in advocating that the defendant should be released immediately on recognizance or on bail with minimal conditions and restrictions;~~

~~(iii) if the defendant is eligible, the Public Defender~~

~~or a court-appointed attorney will represent the defendant at the initial appearance;~~

~~(iv) if the defendant is represented by a court-appointed attorney, the representation is only for the purpose of the initial appearance, but the defendant will be represented by the Public Defender in any proceeding under Rule 4-216.1;~~

~~(v) unless the Public Defender determines otherwise, the Public Defender will not further represent the defendant unless the defendant timely applies for such representation and the Public Defender determines that the defendant is an indigent individual, as defined in Code, Criminal Procedure Article, §§16-101 (d) and 16-210;~~

~~(vi) if the defendant waives representation, the waiver is effective only for the initial appearance and not for subsequent proceedings;~~

~~(vii) if it is impracticable for an attorney to be present in person, the attorney will be able to consult privately with the defendant and participate in the proceeding by electronic means or by telecommunication; and~~

~~(viii) if the defendant desires to be represented by a private attorney retained by the defendant and that attorney is not able to be present in person or able to participate by electronic means or telecommunication, the hearing may need to be postponed, in which event the defendant will be temporarily committed until the earliest opportunity that the defendant can be presented to the next available judicial officer.~~

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

~~(B) If, after receiving this advice, the defendant indicates a desire to waive the right to an attorney at the initial appearance and the judicial officer finds that the waiver is knowing and voluntary, the judicial officer shall announce and record that finding and proceed pursuant to sections (f) and (g) of this Rule.~~

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

~~(4) Electronic or Telecommunication 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, the State's Attorney may participate in the proceeding electronically or by telecommunication if the equipment at the judicial officer's location and the State's Attorney's location provides adequate opportunity for the State's Attorney to participate meaningfully in the proceeding.~~

~~(B) By Defense Attorney~~

~~When the physical presence of a defense attorney is impracticable, the attorney may consult with the defendant and participate in the proceeding electronically or by~~

~~telecommunication if the equipment at the judicial officer's location and the defense attorney's location provides adequate opportunity for the attorney to consult privately with the defendant and participate meaningfully in the proceeding.~~

~~(f)~~ (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 attorney;

(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 ~~(g)~~ (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.

### ~~(g)~~ (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;

(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.

~~(h)~~ (g) Temporary Commitment Order

If an initial appearance before a commissioner cannot

proceed or be completed as scheduled, the commissioner may enter a temporary commitment order, but in that event the defendant shall be presented at the earliest opportunity to the next available judicial officer for an initial appearance. If the judicial officer is a judge, there shall be no review of the judge's order pursuant to Rule 4-216.1.

Committee note: Section ~~(h)~~ (g) of this Rule is intended to apply to a narrow set of compelling circumstances in which it would be inappropriate or impracticable to proceed with or complete the initial appearance as scheduled, such as the illness, intoxication, or disability of the defendant or the inability of ~~a private~~ an attorney selected by for the defendant to appear within a reasonable time.

~~(i)~~ (h) Record

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

(1) whether notice of the time and place of the proceeding was given to the State's Attorney and the Public Defender or any other defense attorney and, if so, the time and method of notification;

(2) if a State's Attorney has entered an appearance, the name of the State's Attorney and whether the State's Attorney was physically present at the proceeding or appeared remotely;

(3) if an attorney has entered an appearance for the defendant, the name of the attorney and whether the attorney was physically present at the proceeding or appeared remotely;

(4) if the defendant waived an attorney, a confirmation that the advice required by ~~subsection (e)(3) of this Rule~~ 4-213.1 (e) was given and that the defendant's waiver was knowing and

voluntary;

(5) confirmation that the judicial officer complied with each requirement specified in section ~~(f)~~ (e) of this Rule and in Rule 4-213 (a);

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

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

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

~~(j)~~ (i) Title 5 Not Applicable

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

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

See the Reporter's note to Rule 4-213.1.

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

AMEND Rule 4-202 by adding to the notice in the charging document in section (a) new language providing that the defendant may be eligible for representation by the Public Defender or a court-appointed attorney at certain proceedings, 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.

4. You have the right to have a lawyer.

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.

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

7. If you are eligible, the Public Defender or a court-  
appointed attorney will represent you at any 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.

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.

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, it shall be signed by 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 the peace officer or judicial officer who issues it.

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

(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 required.

(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.

(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.

REPORTER'S NOTE

See the Reporter's note to Rule 4-213.1.



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

AMEND Rule 4-214 by deleting a reference to a certain Rule and adding a reference to a certain Rule in the cross references after section (a) and section (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 (e)~~ 4-213.1 and 4-216.1 (b) with respect to the automatic termination of the appearance of the Public Defender or court-appointed attorney 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 if no general appearance under this Rule is entered.

(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(e)~~ 4-213.1 and 4-216.1 (b) providing for a limited appearance by the Public Defender or court-appointed attorney in initial appearance proceedings before a judicial officer and hearings to review a pretrial release decision by a commissioner if no general appearance under this Rule is entered.

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 4-213.1.

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

AMEND Rule 4-215 by updating a Rule reference in the cross reference after 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.

(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)~~ 4-213.1 with respect to waiver of an attorney at an initial appearance before a judge and Rule 4-216.1 (b) with respect to waiver of an attorney 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 4-213.1.

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

AMEND Rule 4-216.1 by making a stylistic change in section (c), as follows:

Rule 4-216.1. REVIEW OF COMMISSIONER'S PRETRIAL RELEASE ORDER

(a) Generally

A defendant who is denied pretrial release by a commissioner or who for any reason remains in custody after a commissioner has determined conditions of release pursuant to 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.

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

(b) Attorney for Defendant

(1) Duty of Public Defender

Unless another attorney has entered an appearance or the defendant has waived the right to an attorney for purposes of the review hearing in accordance with this section, the Public Defender shall provide representation to an eligible defendant at the review hearing.

(2) Waiver

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

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

(ii) an attorney can be helpful in advocating that the defendant should be released on recognizance or on bail with minimal conditions and restrictions; and

(iii) if the defendant is eligible, the Public Defender will represent the defendant at this proceeding.

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, after the giving of this advice, the defendant indicates a desire to waive an attorney for purposes of the review hearing and the court finds that the waiver is knowing and voluntary, 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.

### (3) Waiver of Attorney for Future Proceedings

For proceedings after the review hearing, waiver of an attorney is governed by Rule 4-215.

#### (c) Determination by Court

The District Court shall review the commissioner's pretrial release determination and take appropriate action in accordance with Rule 4-216 ~~(f) and (g)~~ (e) and (f). If the court determines that the defendant will continue to be held in custody after the review, the court shall set forth in writing on the record the

reasons for the continued detention.

(d) 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.

(e) Title 5 Not Applicable

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

Source: This Rule is derived from former section (a) of Rule 4-216.1 (2012).

REPORTER'S NOTE

See the Reporter's note to Rule 4-213.1.

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

AMEND Rule 4-231 by deleting a reference to a certain Rule and adding a reference to a certain Rule in subsection (d)(1), 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 4-216.1 with the defendant and the judicial officer at different locations, provided that:

(1) the defendant's right to counsel under Rules ~~4-216 (e)~~ 4-213.1 and 4-216.1 is not infringed;

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

(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.

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.

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 4-213.1.

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

ADD new Rule 4-216.2, as follows:

Rule 4-216.2. FURTHER PROCEEDINGS REGARDING PRETRIAL RELEASE

(a) 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 (b) of this Rule.

(b) 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.

(c) 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.

(d) 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.

(e) 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~~ sections (b), (c), (d), (e), and (f) of Rule 4-216.1 (2012).

REPORTER'S NOTE

New Rule 4-216.2 was included in the 181<sup>st</sup> Report of the Rules Committee and adopted by Rules Order dated November 6, 2013, with an effective date to be specified by further Order of the Court. The Committee recommends that the effective date be the same as the other Rules changes proposed as part of the 183<sup>rd</sup> Report.



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

AMEND Rule 4-212 (f) (1) to add a reference to new Rule 4-216.2, as follows:

Rule 4-212. ISSUANCE, SERVICE, AND EXECUTION OF SUMMONS OR  
WARRANT

. . .

(f) Procedure - When Defendant in Custody

(1) Same Offense

When a defendant is arrested without a warrant, the defendant shall be taken before a judicial officer of the District Court without unnecessary delay and in no event later than 24 hours after arrest. When a charging document is filed in the District Court for the offense for which the defendant is already in custody a warrant or summons need not issue. A copy of the charging document shall be served on the defendant promptly after it is filed, and a return shall be made as for a warrant. When a charging document is filed in the circuit court for an offense for which the defendant is already in custody, a warrant issued pursuant to subsection (d) (2) of this Rule may be lodged as a detainer for the continued detention of the defendant under the jurisdiction of the court in which the charging document is filed. Unless otherwise ordered pursuant to Rule 4-216, ~~or 4-216.1, or 4-216.2,~~ the defendant remains subject to

conditions of pretrial release imposed by the District Court.

. . .

REPORTER'S NOTE

Amendments to Rule 4-212 were included in the 181<sup>st</sup> Report of the Rules Committee and adopted by Rules Order dated November 6, 2013, with an effective date to be specified by further Order of the Court. The Committee recommends that the effective date be the same as the other Rules changes proposed as part of the 183<sup>rd</sup> Report.

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

AMEND Rule 4-217 by deleting a certain reference to Rule 4-216.1 and adding references to new Rule 4-216.2, as follows:

Rule 4-217. BAIL BONDS

(a) Applicability of Rule

This Rule applies to all bail bonds taken pursuant to Rule 4-216, ~~or 4-216.1, or 4-216.2,~~ and to bonds taken pursuant to Rules 4-267, 4-348, and 4-349 to the extent consistent with those rules.

. . .

(j) Discharge of Bond - Refund of Collateral Security

(1) Discharge

The bail bond shall be discharged when:

(A) all charges to which the bail bond applies have been statted, unless the bond has been forfeited and 10 years have elapsed since the bond or other security was posted; or

(B) all charges to which the bail bond applies have been disposed of by a nolle prosequi, dismissal, acquittal, or probation before judgment; or

(C) the defendant has been sentenced in the District Court and no timely appeal has been taken, or in the circuit court exercising original jurisdiction, or on appeal or transfer from

the District Court; or

(D) the court has revoked the bail bond pursuant to Rule ~~4-216.1~~ 4-216.2 or the defendant has been convicted and denied bail pending sentencing; or

(E) the defendant has been surrendered by the surety pursuant to section (h) of this Rule.

Cross reference: See Code, Criminal Procedure Article, §5-208 (d) relating to discharge of a bail bond when the charges are stetted. See also Rule 4-349 pursuant to which the District Court judge may deny release on bond pending appeal or may impose different or greater conditions for release after conviction than were imposed for the pretrial release of the defendant pursuant to Rule 4-216, ~~or 4-216.1, or 4-216.2.~~

. . .

#### REPORTER'S NOTE

Amendments to Rule 4-217 were included in the 181<sup>st</sup> Report of the Rules Committee and adopted by Rules Order dated November 6, 2013, with an effective date to be specified by further Order of the Court. The Committee recommends that the effective date be the same as the other Rules changes proposed as part of the 183<sup>rd</sup> Report.

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

AMEND Rule 4-349 (c) to add a reference to new Rule 4-216.2,  
as follows:

Rule 4-349. RELEASE AFTER CONVICTION

. . .

(c) Conditions of Release

The court may impose different or greater conditions for release under this Rule than had been imposed upon the defendant before trial pursuant to Rule 4-216, ~~or~~ Rule 4-216.1, 4-216.2. 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.

. . .

REPORTER'S NOTE

Amendments to Rule 4-349 were included in the 181<sup>st</sup> Report of the Rules Committee and adopted by Rules Order dated November 6, 2013, with an effective date to be specified by further Order of the Court. The Committee recommends that the effective date be the same as the other Rules changes proposed as part of the 183<sup>rd</sup> Report.

MARYLAND RULES OF PROCEDURE  
TITLE 5 - EVIDENCE  
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 5-101 (b) to add a reference to new Rule 4-216.2,  
as follows:

Rule 5-101. SCOPE

. . .

(b) Rules Inapplicable

The rules in this Title other than those relating to the  
competency of witnesses do not apply to the following  
proceedings:

- (1) Proceedings before grand juries;
- (2) Proceedings for extradition or rendition;
- (3) Direct contempt proceedings in which the court may act  
summarily;
- (4) Small claim actions under Rule 3-701 and appeals under  
Rule 7-112 (d) (2);
- (5) Issuance of a summons or warrant under Rule 4-212;
- (6) Pretrial release under Rule 4-216, ~~or~~ 4-216.1, or 4-216.2  
or release after conviction under Rule 4-349;
- (7) Preliminary hearings under Rule 4-221;
- (8) Post-sentencing procedures under Rule 4-340;
- (9) Sentencing in non-capital cases under Rule 4-342;
- (10) Issuance of a search warrant under Rule 4-601;

(11) Detention and shelter care hearings under Rule 11-112;  
and

(12) Any other proceeding in which, prior to the adoption of the rules in this Title, the court was traditionally not bound by the common-law rules of evidence.

Committee note: The Rules in this Chapter are not intended to limit the Court of Appeals in defining the application of the rules of evidence in sentencing proceedings in capital cases or to override specific statutory provisions regarding the admissibility of evidence in those proceedings. See, for example, *Tichnell v. State*, 290 Md. 43 (1981); Code, Correctional Services Article, §6-112 (c).

. . .

#### REPORTER'S NOTE

Amendments to Rule 5-101 were included in the 181<sup>st</sup> Report of the Rules Committee and adopted by Rules Order dated November 6, 2013, with an effective date to be specified by further Order of the Court. The Committee recommends that the effective date be the same as the other Rules changes proposed as part of the 183<sup>rd</sup> Report.



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

AMEND Rule 15-303 (b) to add a reference to new Rule 4-216.2, as follows:

Rule 15-303. PROCEDURE ON PETITION

. . .

(b) Bail

(1) Pretrial

If a petition by or on behalf of an individual who is confined prior to or during trial seeks a writ of habeas corpus for the purpose of determining admission to bail or the appropriateness of any bail set, the judge to whom the petition is directed may deny the petition without a hearing if a judge has previously determined the individual's eligibility for pretrial release or the conditions for such release pursuant to Rule 4-216, ~~or 4-216.1, or 4-216.2~~ and the petition raises no grounds sufficient to warrant issuance of the writ other than grounds that were raised when the earlier pretrial release determination was made.

Cross reference: Rule 4-213 (c).

(2) After Conviction

(A) Except as otherwise provided in subsection (2)(B) of this section, if a petition by or on behalf of an individual

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

(B) If a petition directed to a circuit court judge is filed by or on behalf of an individual confined as a result of a conviction in the District Court that has been appealed to a circuit court, the circuit court judge shall act on the petition and may not transmit or refer the petition to a District Court judge.

. . .

#### REPORTER'S NOTE

Amendments to Rule 15-303 were included in the 181<sup>st</sup> Report of the Rules Committee and adopted by Rules Order dated November 6, 2013, with an effective date to be specified by further Order of the Court. The Committee recommends that the effective date be the same as the other Rules changes proposed as part of the 183<sup>rd</sup> Report.