

IN THE COURT OF APPEALS OF MARYLAND

SUPPLEMENTAL

R U L E S   O R D E R

On September 8, 2011, this Court signed a Rules Order adopting certain amendments to Rules proposed in the One Hundred Seventy-First Report of the Court's Standing Committee on Rules of Practice and Procedure, with such amendments as made by the Court on its own initiative. Included in the Rules Order were amendments to Rules 3-306, 3-308, and 3-509, which the Court ordered would take effect on January 1, 2012 and apply to all actions commenced on or after January 1, 2012 and, insofar as practicable, to all actions then pending. On reconsideration, the Court concludes that the amendment to Rules 3-306, 3-308, and 3-509 should not apply to cases pending on January 1, 2012, but only to cases commenced on or after that date. It is therefore, this 15<sup>th</sup> day of September, 2011,

ORDERED, by the Court of Appeals of Maryland, that the amendments to Rules 3-306, 3-308, and 3-509 adopted by the Court on September 8, 2011 shall take effect and apply only to actions commenced on or after January 1, 2012.

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

/s/ Robert M. Bell

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Robert M. Bell

/s/ Glenn T. Harrell, Jr.

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Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia

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Lynne A. Battaglia

/s/ Clayton Greene, Jr.

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Clayton Greene, Jr.

/s/ Joseph F. Murphy, Jr.

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Joseph F. Murphy, Jr.

/s/ Sally D. Adkins

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Sally D. Adkins

/s/ Mary Ellen Barbera

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Mary Ellen Barbera

Filed: September 15, 2011

/s/ Bessie M. Decker

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Clerk  
Court of Appeals of Maryland

IN THE COURT OF APPEALS OF MARYLAND

R U L E S   O R D E R

This Court's Standing Committee on Rules of Practice and Procedure having submitted its One Hundred Seventy-First Report to the Court recommending adoption of proposed amendments to Rules 3-306, 3-308, 3-509, 4-353, 4-354, 7-208, 8-204, 8-421, 8-502, 8-503, 8-504, 8-521, 16-101, 16-110, 16-204, 16-309, 16-714, and 16-902; Rules 3.8, 5.5, and 6.5 of the Maryland Lawyers' Rules of Professional Conduct; Rule 14 of the Rules Governing Admission to the Bar of Maryland; and Appendix: Forms for Special Admission of Out-of-State Attorneys, Forms RGAB-14/M and RGAB-14/O, all as set forth in that Report published in the *Maryland Register*, Vol. 38, Issue 15, pages 884 - 897 (July 15, 2011); and

This Court having considered at an open meeting, notice of which was posted as prescribed by law, all those proposed rules changes, together with the comments received, and making certain amendments to the proposed rules changes on its own motion, it is this 8<sup>th</sup> day of September, 2011,

ORDERED, by the Court of Appeals of Maryland, that amendments to Rules 3-306, 3-308, 3-509, 4-353, 4-354, 7-208, 8-204, 8-421, 8-502, 8-503, 8-504, 8-521, 16-101, 16-110, 16-204, 16-309, 16-714, and 16-902; Rules 3.8, 5.5, and 6.5 of the Maryland Lawyers' Rules of Professional Conduct; Rule 14 of the Rules Governing Admission to the Bar of Maryland; and Appendix: Forms for Special Admission of Out-of-State Attorneys, Forms RGAB-14/M and RGAB-14/O be, and they are hereby, adopted in the form previously published; and it is further

ORDERED that the amendments to Rules 16-101 and 16-714 hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after October 1, 2011 and, insofar as practicable, to all actions then pending; and it is further

ORDERED that all other rules changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after January 1, 2012 and, insofar as practicable, to all actions then pending; and it is further

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

/s/ Robert M. Bell  
Robert M. Bell

/s/ Glenn T. Harrell, Jr.  
Glenn T. Harrell, Jr.

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/s/ Lynne A. Battaglia  
Lynne A. Battaglia

/s/ Clayton Greene, Jr.  
Clayton Greene, Jr.

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/s/ Joseph F. Murphy, Jr.  
Joseph F. Murphy, Jr.

/s/ Sally D. Adkins  
Sally D. Adkins

/s/ Mary Ellen Barbera  
Mary Ellen Barbera

\* Judge Battaglia declined to approve for adoption the amendments to Rules 4-353 and 4-354.

\*\* Judge Murphy declined to approve for adoption the amendments to Rules 3-306, 3-308, and 3-509.

Filed: September 8, 2011

/s/ Bessie M. Decker

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Clerk  
Court of Appeals of Maryland

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-306 to add a new section (a) containing definitions, to divide current section (a) into sections (b) and (c), to change the tagline of new section (b), to add the words "in the amount claimed" to new section (b), to add a new tagline to new section (c), to require that an interest worksheet in a certain form accompany the affidavit if interest is claimed, to add a new subsection (c)(4)(C) pertaining to attorneys' fees, to add a new section (d) pertaining to claims arising from assigned consumer debt, to delete from new subsection (e)(2)(A) the words "section (a) of," to add the words "or other credit" to new section (f), to add the word "latest" to new section (g), and to make stylistic changes, as follows:

Rule 3-306. JUDGMENT ON AFFIDAVIT

(a) Definitions

In this Rule the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(1) Charge-off

"Charge-off" means the act of a creditor that treats an account receivable or other debt as a loss or expense because payment is unlikely.

(2) Charge-off Balance

"Charge-off balance" means the amount due on the account or debt at the time of charge-off.

(3) Consumer Debt

"Consumer debt" means a secured or unsecured debt that is for money owed or alleged to be owed and arises from a consumer transaction.

(4) Consumer Transaction

"Consumer transaction" means a transaction involving an individual seeking or acquiring real or personal property, services, future services, money, or credit for personal, family, or household purposes.

(5) Original Creditor

"Original creditor" means the lender, provider, or other person to whom a consumer originally was alleged to owe money pursuant to a consumer transaction. "Original creditor" includes the Central Collection Unit, a unit within the State Department of Budget and Management.

(6) Original Consumer Debt

"Original consumer debt" means the total of the consumer debt alleged to be owed to the original creditor, consisting of principal, interest, fees, and any other charges.

Committee note: If there has been a charge-off, the amount of the "original consumer debt" is the same as the "charge-off balance."

(7) Principal

"Principal" means the unpaid balance of the funds

borrowed, the credit utilized, the sales price of goods or services obtained, or the capital sum of any other debt or obligation arising from a consumer transaction, alleged to be owed to the original creditor. It does not include interest, fees, or charges added to the debt or obligation by the original creditor or any subsequent assignees of the consumer debt.

(8) Future Services

"Future services" means one or more services that will be delivered at a future time.

(9) Future Services Contract

"Future services contract" means an agreement that obligates a consumer to purchase a future service from a provider.

(10) Provider

"Provider" means any person who sells a service or future service to a consumer.

~~(a) (b) Time for Demand - Affidavit and Supporting Documents~~  
Demand for Judgment by Affidavit

In an action for money damages a plaintiff may file a demand for judgment on affidavit at the time of filing the complaint commencing the action. The complaint shall be supported by an affidavit showing that the plaintiff is entitled to judgment as a matter of law in the amount claimed.

(c) Affidavit and Attachments - General Requirements

The affidavit shall:



(1) be made on personal knowledge;~~;~~

(2) ~~shall~~ set forth such facts as would be admissible in evidence;~~;~~ ~~and shall~~

(3) show affirmatively that the affiant is competent to testify to the matters stated in the affidavit; ~~and;~~ ~~The affidavit shall~~

(4) include or be accompanied (1) by:

(A) supporting documents or statements containing sufficient detail as to liability and damages, including the precise amount of the claim and any interest claimed; ~~and (2);~~

(B) if interest is claimed, an interest worksheet substantially in the form prescribed by the Chief Judge of the District Court;

(C) if attorneys' fees are claimed, sufficient proof evidencing that the plaintiff is entitled to an award of attorneys' fees and that the fees are reasonable; and

(D) ~~if~~ if the claim is founded upon a note, security agreement, or other instrument, by the original or a photocopy of the executed instrument, or a sworn or certified copy, unless the absence thereof is explained in the affidavit. ~~If interest is claimed, the plaintiff shall file with the complaint an interest worksheet.~~

(d) If Claim Arises from Assigned Consumer Debt

If the claim arises from consumer debt and the plaintiff is not the original creditor, the affidavit also shall include or be accompanied by (i) the items listed in this section, and (ii)

an Assigned Consumer Debt Checklist, substantially in the form prescribed by the Chief Judge of the District Court, listing the items and information supplied in or with the affidavit in conformance with this Rule. Each document that accompanies the affidavit shall be clearly numbered as an exhibit and referenced by number in the Checklist.

(1) Proof of the Existence of the Debt or Account

Proof of the existence of the debt or account shall be made by a certified or otherwise properly authenticated photocopy or original of at least one of the following:

(A) a document signed by the defendant evidencing the debt or the opening of the account;

(B) a bill or other record reflecting purchases, payments, or other actual use of a credit card or account by the defendant;  
or

(C) an electronic printout or other documentation from the original creditor establishing the existence of the account and showing purchases, payments, or other actual use of a credit card or account by the defendant.

(2) Proof of Terms and Conditions

(A) Except as provided in subsection (d)(2)(B) of this Rule, if there was a document evidencing the terms and conditions to which the consumer debt was subject, a certified or otherwise properly authenticated photocopy or original of the document actually applicable to the consumer debt at issue shall accompany the affidavit.

(B) Subsection (d)(2)(A) of this Rule does not apply if (i) the consumer debt is an unpaid balance due on a credit card; (ii) the original creditor is or was a financial institution subject to regulation by the Federal Financial Institutions Examination Council or a constituent federal agency of that Council; and (iii) the claim does not include a demand or request for attorneys' fees or interest on the charge-off balance in excess of the Maryland Constitutional rate of six percent per annum.

Committee note: This Rule is procedural only, and subsection (d)(2)(B)(iii) is not intended to address the substantive issue of whether interest in any amount may be charged on a part of the charge-off balance that, under applicable and enforceable Maryland law, may be regarded as interest.

Cross reference: See Federal Financial Institutions Examination Council Uniform Retail Credit Classification and Account Management Policy, 65 Fed. Reg. 36903 - 36906 (June 12, 2000).

### (3) Proof of Plaintiff's Ownership

The affidavit shall contain a statement that the plaintiff owns the consumer debt. It shall include or be accompanied by:

(A) a chronological listing of the names of all prior owners of the debt and the date of each transfer of ownership of the debt, beginning with the name of the original creditor; and

(B) a certified or other properly authenticated copy of the bill of sale or other document that transferred ownership of the debt to each successive owner, including the plaintiff.

Committee note: If a bill of sale or other document transferred debts in addition to the consumer debt upon which the action is based, the documentation required by subsection (d)(3)(B) of this Rule may be in the form of a redacted document that provides the general terms of the bill of sale or other document and the

document's specific reference to the debt sued upon.

(4) Identification and Nature of Debt or Account

The affidavit shall include the following information:

(A) the name of the original creditor;

(B) the full name of the defendant as it appears on the original account;

(C) the last four digits of the social security number for the defendant appearing on the original account, if known;

(D) the last four digits of the original account number;

and

(E) the nature of the consumer transaction, such as utility, credit card, consumer loan, retail installment sales agreement, service, or future services.

(5) Future Services Contract Information

If the claim is based on a future services contract, the affidavit shall contain facts evidencing that the plaintiff currently is entitled to an award of damages under that contract.

(6) Account Charge-off Information

If there has been a charge-off of the account, the affidavit shall contain the following information:

(A) the date of the charge-off;

(B) the charge-off balance;

(C) an itemization of any fees or charges claimed by the plaintiff in addition to the charge-off balance;

(D) an itemization of all post-charge-off payments received and other credits to which the defendant is entitled; and

(E) the date of the last payment on the consumer debt or of the last transaction giving rise to the consumer debt.

(7) Information for Debts and Accounts not Charged Off

If there has been no charge-off, the affidavit shall contain:

(A) an itemization of all money claimed by the plaintiff, (i) including principal, interest, finance charges, service charges, late fees, and any other fees or charges added to the principal by the original creditor and, if applicable, by subsequent assignees of the consumer debt and (ii) accounting for any reduction in the amount of the claim by virtue of any payment made or other credit to which the defendant is entitled;

(B) a statement of the amount and date of the consumer transaction giving rise to the consumer debt, or in instances of multiple transactions, the amount and date of the last transaction; and

(C) a statement of the amount and date of the last payment on the consumer debt.

(8) Licensing Information

The affidavit shall include a list of all Maryland collection agency licenses that the plaintiff currently holds and provide the following information as to each:

(A) license number,

(B) name appearing on the license, and

(C) date of issue.

~~(b)~~ (e) Subsequent Proceedings

(1) When Notice of Intention to Defend Filed

If the defendant files a timely notice of intention to defend pursuant to Rule 3-307, the plaintiff shall appear in court on the trial date prepared for a trial on the merits. If the defendant fails to appear in court on the trial date, the court may proceed as if the defendant failed to file a timely notice of intention to defend.

(2) When No Notice of Intention to Defend Filed

(A) If the defendant fails to file a timely notice of intention to defend, the plaintiff need not appear in court on the trial date and the court may determine liability and damages on the basis of the complaint, affidavit, and supporting documents filed pursuant to ~~section (a)~~ of this Rule. If the defendant fails to appear in court on the trial date and the court determines that the pleading and documentary evidence are sufficient to entitle the plaintiff to judgment, the court shall grant the demand for judgment on affidavit.

(B) If the court determines that the pleading and documentary evidence are insufficient to entitle the plaintiff to judgment on affidavit, the court may deny the demand for judgment on affidavit or may grant a continuance to permit the plaintiff to supplement the documentary evidence filed with the demand. If the defendant appears in court at the time set for trial and it is established to the court's satisfaction that the defendant may have a meritorious defense, the court shall deny the demand for judgment on affidavit. If the demand for judgment on affidavit

is denied or the court grants a continuance pursuant to this section, the clerk shall set a new trial date and mail notice of the reassignment to the parties, unless the plaintiff is in court and requests the court to proceed with trial.

Cross reference: Rule 3-509.

~~(c)~~ (f) Reduction in Amount of Damages

Before entry of judgment, the plaintiff shall inform the court of any reduction in the amount of the claim by virtue of any payment or other credit.

~~(d)~~ (g) Notice of Judgment on Affidavit

When a demand for judgment on affidavit is granted, the clerk shall mail notice of the judgment promptly after its entry to each party at the latest address stated in the pleadings. The notice shall inform (1) the plaintiff of the right to obtain a lien on real property pursuant to Rule 3-621, and (2) the defendant of the right to file a motion to vacate the judgment within 30 days after its entry pursuant to Rule 3-535 (a). The clerk shall ensure that the docket or file reflects compliance with this section.

Source: This Rule is derived as follows:

Section (a) is new.

Section ~~(a)~~ (b) is derived from former M.D.R. 610 a.

Section (c) is derived from former M.D.R. 610 a.

Section (d) is new.

Section ~~(b)~~ (e) is derived from former M.D.R. 610 b, c and d.

Section ~~(c)~~ (f) is derived from former M.D.R. 610 e.

Section ~~(d)~~ (g) is derived from former M.D.R. 610 d.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 300 - PLEADINGS AND MOTIONS

AMEND Rule 3-308 by adding a Committee note, as follows:

Rule 3-308. DEMAND FOR PROOF

When the defendant desires to raise an issue as to (1) the legal existence of a party, including a partnership or a corporation, (2) the capacity of a party to sue or be sued, (3) the authority of a party to sue or be sued in a representative capacity, (4) the averment of the execution of a written instrument, or (5) the averment of the ownership of a motor vehicle, the defendant shall do so by specific demand for proof. The demand may be made at any time before the trial is concluded. If not raised by specific demand for proof, these matters are admitted for the purpose of the pending action. Upon motion of a party upon whom a specific demand for proof is made, the court may continue the trial for a reasonable time to enable the party to obtain the demanded proof.

Committee note: This Rule does not affect the proof requirements set forth in Rules 3-306 (d) and 3-509 (a) that are applicable to claims arising from consumer debt when the plaintiff is not the original creditor.

Source: This Rule is derived from former M.D.R. 302 a.



MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 3-509 to add provisions concerning assigned consumer debt, as follows:

Rule 3-509. TRIAL UPON DEFAULT

(a) Requirements of Proof

When a motion for judgment on affidavit has not been filed by the plaintiff, or has been denied by the court, and the defendant has failed to appear in court at the time set for trial:

(1) if the defendant did not file a timely notice of intention to defend, the plaintiff shall not be required to prove the liability of the defendant, but shall be required to prove damages; except that for claims arising from consumer debt, as defined in Rule 3-306 (a)(3), when the plaintiff is not the original creditor, as defined in Rule 3-306 (a)(5), the court (A) may require proof of liability, (B) shall consider the requirements set forth in Rule 3-306 (d), and (C) may also consider other competent evidence;

(2) if the defendant filed a timely notice of intention to defend, the plaintiff shall be required to introduce prima facie evidence of the defendant's liability and to prove damages. For claims arising from consumer debt, as defined in Rule 3-306

(a) (3), when the plaintiff is not the original creditor, as defined in Rule 3-306 (a) (5), the court shall consider the requirements set forth in Rule 3-306 (d) and may also consider other competent evidence.

(b) Property Damage - Affidavit

When the defendant has failed to appear for trial in an action for property damage, prima facie proof of the damage may be made by filing an affidavit to which is attached an itemized repair bill, or an itemized estimate of the costs of repairing the damaged property, or an estimate of the fair market value of the property. The affidavit shall be made on personal knowledge of the person making such repairs or estimate, or under whose supervision such repairs or estimate were made, and shall include the name and address of the affiant, a statement showing the affiant's qualification, and a statement that the bill or estimate is fair and reasonable.

(c) Notice of Judgment

Upon entry of a judgment against a defendant in default, the clerk shall mail notice of the judgment to the defendant at the address stated in the pleadings and shall ensure that the docket or file reflects compliance with this requirement.

Cross reference: For default judgments relating to citations issued for certain record-keeping violations, see Code, Transportation Article, §15-115.

Source: This Rule is derived from former M.D.R. 648.