

## **MARYLAND POST-CONVICTION RULES 2014**

### **Rule 4-401. How commenced -- Venue**

(a) Generally. A proceeding under the Uniform Post Conviction Procedure Act is commenced by the filing of a petition in the circuit court of the county where the conviction took place.

(b) Following DNA Testing. If a petition for DNA testing was filed pursuant to Code, [Criminal Procedure Article, § 8-201](#), and the test results were favorable to the petitioner, the court shall (1) reopen a post conviction proceeding previously commenced under section (a) of this Rule or (2) if no post conviction proceeding has been initiated, treat the petition for DNA testing as a petition under section (a) of this Rule.

### **Rule 4-402. Petition**

(a) Content. The petition shall state whether or not petitioner is able to pay costs of the proceeding or to employ counsel and shall include:

- (1) The petitioner's name, place of confinement, and inmate identification number.
- (2) The place and date of trial, the offense for which the petitioner was convicted, and the sentence imposed.
- (3) The allegations of error upon which the petition is based.
- (4) A concise statement of facts supporting the allegations of error.
- (5) The relief sought.
- (6) A statement of all previous proceedings, including appeals, motions for new trial and previous post conviction petitions, and the determinations made thereon.
- (7) A statement of the facts or special circumstances which show that the allegations of error have not been waived.

### **Rule 4-403. Notice of petition**

Upon receipt of a post conviction petition, the clerk shall promptly notify the county administrative judge and the State's Attorney. When the petition relates to an action tried in that court, it shall be filed in the action. If the petition alleges that the petitioner is indigent, the clerk shall promptly notify the Collateral Review Division of the Office of the Public Defender by forwarding a copy of the petition.

#### **Rule 4-404. Response**

The State's Attorney shall file a response to the petition within 15 days after notice of its filing, or within such further time as the court may order. No other paper shall be filed except as ordered by the court.

#### **Rule 4-405. Withdrawal**

The court may grant permission to withdraw the petition without prejudice at any time before the date of the hearing, and thereafter only for good cause.

#### **Rule 4-406. Hearing**

(a) When required. A hearing shall be held promptly on a petition under the Uniform Post Conviction Procedure Act unless the parties stipulate that the facts stated in the petition are true and that the facts and applicable law justify the granting of relief. If a defendant requests that the court reopen a post conviction proceeding that was previously concluded, the court shall determine whether a hearing will be held, but it may not reopen the proceeding or grant the relief requested without a hearing unless the parties stipulate that the facts stated in the petition are true and that the facts and applicable law justify the granting of relief.

*Cross references. -- For time requirements applicable to hearings in death penalty cases, see Code, Criminal Procedure Article, § 7-204.*

(b) Judge. The hearing shall not be held by the judge who presided at trial except with the consent of the petitioner.

(c) Evidence. Evidence may be presented by affidavit, deposition, oral testimony, or in any other form as the court finds convenient and just. In the interest of justice, the court may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses.

*Cross references. -- For procedures concerning DNA testing and preservation of DNA evidence in post conviction cases, see Code, Criminal Procedure Article, § 8-201.*

(d) Presence of petitioner. The petitioner has the right to be present at any hearing on the petition.

#### **Rule 4-407. Statement and order of court**

(a) Statement. The judge shall prepare and file or dictate into the record a statement setting forth separately each ground upon which the petition is based, the federal and state rights involved, the court's ruling with respect to each ground, and the reasons for the action taken thereon. If dictated into the record, the statement shall be promptly transcribed.

(b) Order of court. The statement shall include or be accompanied by an order either granting or denying relief. If the order is in favor of the petitioner, the court may provide for arraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper.

(c) Copy to the parties. A copy of the statement and the order shall be filed promptly with the clerk and sent to the petitioner, petitioner's counsel, and the State's Attorney.

(d) Finality. The statement and order constitute a final judgment when entered by the clerk.

#### **Rule 4-408. Application for leave to appeal**

An application for leave to appeal to the Court of Special Appeals shall be governed by Rule 8-204.