

"The Court Refuses to Honor my Notice of Appeal! What do I do now!?!"¹

Paul J. Notarianni²

DISCLAIMER: *This article is the property of its author, unless otherwise noted. It is made available on the Western Maryland Advocate free of charge. You are free to view and download it on the following conditions: 1) You do not republish or distribute it for profit; 2) you understand that this article is for informational purposes only; 3) you understand that this is not an advertisement, that no legal services of any kind are being offered; 4) you acknowledge that no attorney-client relationship is created by viewing or downloading this article; 5) you understand that nothing in this article should be used as a replacement or substitute for discussing a case with a competent licensed attorney in your particular jurisdiction; 6) you understand that The Western Maryland Advocate is a privately operated website that is in no way, whatsoever, affiliated with any government agency or law firm. 7) You understand that no warranty or guarantee is made that the information in this article is accurate, up to date, or current.*

¹ Version 1.0 5/13/2017

² Licensed to practice law in Maryland. Author may be contacted at paulnotarianni@gmail.com

This Document is for informational purposes only.

Not to be distributed for profit

Overview: Court Refusing to Honor Appeal

This is a collection of forms that could be used in the event a judge of the District Court of Maryland illegally strikes a criminal defendant's notice of appeal.

For this scenario, assume a defendant has been convicted and sentenced. Next a timely notice of appeal, along with either the appropriate appeal fee or waiver has been provided to the clerk. Despite this, the judge or clerk refuses to honor the notice and does not forward the case to the appropriate circuit court.

If this happens, first, counsel should file, in the District Court, a response to the court's attempt to strike appeal, under Maryland Rule 7-105 (*See infra* page 3). If the appeal is still not honored, counsel should file, in the appropriate circuit court, a petition for writ of certiorari. (*See infra* page 6).

Practitioner Note One: The District Court is permitted to strike an appeal in four limited circumstances: 1) an appeal is not filed within the time frame of Maryland Rule 7-104; 2) if the appellant fails to pay for or have a valid waiver for a copy of the record; 3) if the appellant fails to pay or have a valid waiver for a deposit with the clerk for transcript costs or filing fees pursuant to Maryland Rule 7-103 (b); and 4) by reason of other neglect on the part of the appellant.

Practitioner Note Two: A responsive pleading under Maryland Rule 7-105 must be filed within 15 days of service of the court's denial of appeal. To not file within this time frame might be interpreted as "other neglect on the part of the appellant." To put it in other words, if a court wrongly denies an appeal and counsel does not file the proper response pursuant to Maryland Rule 7-105, the right to an appeal may be lost.

Practitioner Note Three: If it comes to filing a petition of writ of certiorari, counsel should send a copy of the petition, along with a letter declaring intention to file the petition to the clerk of the court, the Office of the Attorney General, and any other interested party. If the petition is filed, there may be associated filing fees with the circuit court.

This Document is for informational purposes only.

Not to be distributed for profit

IN THE DISTRICT COURT OF MARYLAND, _____ COUNTY

STATE OF MARYLAND,
PLAINTIFF,

v. CRIMINAL CASE NO.

DEFENDANT.

Defendant’s Response to the Court’s Attempt to Strike Notice of Appeal

COMES NOW: The above captioned Defendant, by and through counsel, _____ pursuant to Maryland Rule 7-105, and all other applicable law, in response to this Honorable Court’s attempt to strike the Defendant's notice of Appeal and answers by the following:

ONE: That the Defendant was found guilty in the above captioned matter on _____, 20____, and received _____.

TWO: That the Defendant filed a timely notice of appeal, pursuant to Maryland Rules 7-103 and 7-104; and Courts and Judicial Proceedings Sections 12-401(b)(2) and 12-403, on _____, 20_____.

THREE: The Defendant filed a timely motion for waiver of fees, on _____, 20____, pursuant to Maryland Rule 7-103(c); and that waiver of such fees is required by law as the Defendant is represented by a member of the [redacted firm] and is presumed indigent.

FOUR: That on _____, 20____, this Honorable Court ruled, according to clerk entry that the “Motion to Waive Costs and Fees and Fines is Denied-- Just because [redacted firm] represents the Def does not mean they are indigent.”

FIVE: Pursuant to Maryland Rule 7-105(b), the Defendant offers the following argument for good cause as why the notice of appeal should not be stricken and this matter must be forwarded to the proper appellant court.

This Document is for informational purposes only.

Not to be distributed for profit

Argument

The District Court has no authority to summarily deny a Defendant, represented by [redacted firm], their right to seek a trial de novo in the proper Circuit Court on the grounds of outstanding court costs and fines. Maryland Rule 7-105 permits a District Court to strike a notice of appeal in four limited circumstances.

1) An appeal may be stricken if notice of appeal was not filed within the time established by Maryland Rule 7-104, which, at minimum, is thirty days from entry of judgment. (Maryland Rule 7-104 and 7-105).

2) An appeal may be stricken if the clerk of the District Court has prepared the record pursuant to Rule 7-109 and the appellant has failed to pay for the record, as identified in Maryland Rule 7-103(b) and Courts and Judicial Proceedings Article Section 7-202. However, an appellant is exempt from these fees if the appellant is represented by a member of the [redacted firm]. (Maryland Rule 7-103(c)).

3) An appeal may be stricken if the appellant has failed to deposit with the clerk of the District Court the transcript costs or filing fee required by Maryland Rule 7-103(c). Again, however, an appellant is exempt from these fees if the appellant is represented by a member of the [redacted firm]. (Maryland Rule 7-103(c)).

4) An appeal may be stricken if by reason of other neglect on the part of the appellant the record has not been transmitted to the circuit court within the time prescribed in Rule 7-108. (Maryland Rule 7-105(a)).

Maryland Rule 4-348 lays out the District Court's ability to stay sentences pending appeal, including court costs and fines not related to the appeal. However, nothing in Maryland Rule 4-348, or other law, then those indicated above, authorizes the court to strike an appellant's notice of appeal.

In the case at hand, none of the four causes to strike a notice of appeal are applicable. The appellant filed a timely notice of appeal.. Neither cause Number Two or Three are applicable, because the appellant is represented by a member of [redacted firm]. Cause Number Four is not applicable, as the appellant has done nothing to frustrate the transmission of the record to the Circuit Court.

This Document is for informational purposes only.

Not to be distributed for profit

WHEREFORE: The Defendant respectfully demands that the appeal be processed and record transmitted to the proper appellant court.

Respectfully Submitted,

Certificate of Service (State's Attorney)

END FORM

IN THE CIRCUIT COURT OF MARYLAND, _____ COUNTY

[CLIENT NAME],
[ADDRESS]

PETITIONER,

v. CASE NO.

DISTRICT COURT OF MARYLAND
(District _____, _____ County);
COURT ADDRESS.

RESPONDENT.

[Name of Clerk], Administrative Clerk.
COURT ADDRESS

INTERESTED PARTY.

[State's Attorney], Esq.
State's Attorney for _____ County
COURT ADDRESS

INTERESTED PARTY.

**PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF _____ COUNTY;
REQUEST FOR A HEARING AND MEMORANDUM IN SUPPORT**

COMES NOW: The Petitioner, _____, by and through counsel,
_____, pursuant to Maryland Rule 7-301, and any other
applicable law, and makes a petition for a writ of certiorari, and offers:

ONE: That the Petitioner makes the following offerings of fact:

Pursuant to Maryland Rule 7-301(b)(1), the name of the Respondent is the
District Court of Maryland for _____ County, District _____, and
_____, Administrative Clerk of said court is an interested party.
Furthermore, as this matter involves a criminal case prosecuted in _____
County, _____, Esq., State's Attorney for _____ County, is an
interested party.

This Document is for informational purposes only.

Not to be distributed for profit

Pursuant to Maryland Rule 7-301(b)(2) the matter sought to be reviewed by this Honorable Court by a writ of certiorari is whether the respondent committed an unconstitutional act by denying the Petitioner's Notice of Appeal and refusing to transfer the matter to the Circuit Court of _____ County.

Pursuant to Maryland Rule 7-301(b)(3) the Petitioner in this matter is the Defendant for a District Court matter whose Notice of Appeal was wrongly denied.

That pursuant to Maryland Rule 7-301(b)(4), the Petitioner relies on the following set of facts set forth in the Statement of Facts in the Petitioner's memorandum in support to demonstrate that the respondent lacked jurisdiction or committed an unconstitutional act reviewable by writ of certiorari.

MEMORANDUM IN SUPPORT

Issues Presented

ONE: Does the Circuit Court of _____ County have jurisdiction to issue a writ of certiorari regarding a criminal matter in the District Court of Maryland for _____ County for an allegation of wrongful denial of appeal?

TWO: Does the District Court of Maryland for _____ County have the authority to deny a criminal defendant, represented by a member of the [redacted firm], the right to appeal?

This Document is for informational purposes only.

Not to be distributed for profit

Statement of Facts

The Petitioner was charged in the District Court of Maryland for _____ County in case identified as *State of Maryland v*_____. The Petitioner was represented in that case by _____, Esq., of [redacted firm]..

On _____, 20____, the Petitioner was found guilty of a single count of _____ and two counts of _____ in the case *State of Maryland v*. _____ On _____, 20____, the Petitioner filed in the District Court of Maryland for _____ County a Notice of Appeal and Request for Waiver of Fees (Pursuant to Maryland Rules 7-103; 7-104; and Maryland Courts and Judicial Proceedings Sections 12-401(b)(2) and 12-403.).

To date, the Petitioner's Notice of Appeal and Waiver for Fees has not been honored by the District Court of Maryland for _____County, and the file has yet to be transferred to the Circuit Court of _____ County. The Petitioner has also filed an application of writ of habeas corpus in this matter seeking relief for an illegal period of incarceration and for denial of setting of appeal bond.

Argument to Issue One

The Circuit Court for _____ County has jurisdiction to issue a writ of certiorari regarding an accusation of wrongful denial of appeal from a decision in the District Court of Maryland for _____ County.

This Document is for informational purposes only.

Not to be distributed for profit

Maryland Law is clear as to a criminal defendant's right to appeal from a finding of guilt in the District Court of Maryland. In a criminal case "in which sentence has been imposed or suspended following a plea of nolo contendere or guilty . . . an appeal shall be tried de novo." (Maryland Courts and Judicial Proceedings Section 12-401(f)). "An appeal [from the District Court] shall be tried de novo in all . . . criminal actions." (Maryland Rule 7-102). "An appeal from the District Court sitting in one of the counties shall be taken to the circuit court for the county in which judgment was entered." (Maryland Courts and Judicial Proceedings Section 12-403(a)). The only instances in which an appeal in a criminal case may be taken from the District Court to a circuit court on the record made in the District Court are where an appeal is permitted under limited circumstances to the State, or "in any case in which the parties so agree." (*Divver v. State*, 356 Md. 379, 739 A.2d 71 (1999)). A trial judge has no authority to determine whether appeal should be taken. (*Farrell v. State*, 213 Md. 348, (1957)). The lower court has no power to grant or deny an appeal. (*Harris v. State*, 6 Md. App. 7 (1969)).

The only method of securing appellate review in the circuit court is by the filing of a notice of appeal with the clerk of the District Court within the time prescribed in Rule 7-104. (Maryland Rule 7-103). All filing fees associated with an appeal from the District Court to the Circuit Court are waived if the appellant is represented by [redacted firm]. (Maryland Rule 7-103(c)). The clerk of the District Court is required to transmit

This Document is for informational purposes only.

Not to be distributed for profit

the record, pursuant upon notice of appeal and satisfaction or waiver of filing fees. (Maryland Rule 7-102(d)).

The Circuit Court for _____ County has jurisdiction to issue a writ of certiorari from a decision in the District Court of Maryland for _____ County. The purpose of a writ of certiorari is to empower a proper appellant court to determine whether trial court has proceeded in a summary manner or in a course contrary to the law or in excess of its jurisdiction. (*Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486 (1975)). "An application for a writ of certiorari shall be by petition filed in the circuit court for the county where the acts sought to be reviewed take, have taken, or would take effect." (Maryland Rule 7-301).

In the case at hand, the matter originated in the District Court of Maryland for _____ County as a criminal matter. The Circuit Court of _____ County is the proper appellant court as the case originated in the District Court of Maryland for _____ County. The Petitioner sought an appeal to the Circuit Court of _____ after making appropriate notice. The District Court refuse to transmit the record pursuant to Maryland Rules 7-102 and 7-103. The District Court of Maryland for _____ County, as a trial court, has acted in a manner contrary to the law of appellant review by refusing to transmit the record in question. Therefore, the Circuit Court of _____ County has jurisdiction to issue a writ in this matter.

This Document is for informational purposes only.

Not to be distributed for profit

Argument to Issue Two

The District Court of Maryland for _____ County wrongfully denied the Petitioner's Notice of Appeal on the grounds of fees and costs. Maryland Rule 7-105 permits a District Court to strike a notice of appeal in four limited circumstances.

1) An appeal may be stricken if notice of appeal was not filed within the time established by Maryland Rule 7-104, which, at minimum, is thirty days from entry of judgment. (Maryland Rule 7-104 and 7-105).

2) An appeal may be stricken if the clerk of the District Court has prepared the record pursuant to Rule 7-109 and the appellant has failed to pay for the record, as identified in Maryland Rule 7-103(b) and Courts and Judicial Proceedings Article Section 7-202. However, an appellant is exempt from these fees if the appellant is represented by a member of the [redacted firm]. (Maryland Rule 7-103(c)).

3) An appeal may be stricken if the appellant has failed to deposit with the clerk of the District Court the transcript costs or filing fee required by Maryland Rule 7-103(c). Again, however, an appellant is exempt from these fees if the appellant is represented by a member of the [redacted firm]. (Maryland Rule 7-103(c)).

This Document is for informational purposes only.

Not to be distributed for profit

4) An appeal may be stricken if by reason of other neglect on the part of the appellant the record has not been transmitted to the circuit court within the time prescribed in Rule 7-108. (Maryland Rule 7-105(a)).

Maryland Rule 4-348 lays out the District Court's ability to stay sentences pending appeal, including court costs and fines not related to the appeal. However, nothing in Maryland Rule 4-348, or other law, than those indicated above, authorizes the court to strike an appellant's notice of appeal.

In the case at hand, none of the four causes to strike a notice of appeal are applicable. The Petitioner filed a timely notice of appeal. Neither cause Number Two or Three are applicable, because the Petitioner is represented by a member of [redacted firm]. Cause Number Four is not applicable, as the Petitioner has done nothing to frustrate the transmission of the record to the Circuit Court.

WHEREFORE: The Petitioner respectfully requests that this Honorable Court grant the following relief:

ONE: Pursuant to Maryland Rule 7-301 (C)(1), grant an order commanding the Respondent; the District Court of Maryland for District _____; to file a response to show cause why a writ should not be issued; alternatively

TWO: Pursuant to Maryland Rule 7-301 (C)(2), issue a writ of certiorari commanding the Respondent, the District Court of Maryland for District _____; to produce to the Circuit Court for _____ County all records in the matter known as *State of Maryland* v. _____;

THREE: To grant an order, commanding the District Court of Maryland for District _____; to process the appeal in the matter of *State of Maryland* v. _____;

FOUR: For any other relief which this Honorable Court finds appropriate.

Respectfully Submitted,

Affidavit

I hereby swear under the penalty of perjury that the facts set forth above in this petition, to the best of my knowledge, belief, and information, are true and correct.

[Signature]

Request for a Hearing

The Petitioner requests that a hearing be scheduled in this matter.

[Signature]

Maryland Rule 1-351(B) Certification

I hereby certify that on this _____ day of _____, 20_____, a true and accurate copy of this petition, along with a letter indicating the Petitioner's intent to file said petition with the Circuit Court of _____ County on the _____ day of _____, 20_____, was mailed, postage prepaid, to the following parties:

[State's Attorney for jurisdiction in question]

This Document is for informational purposes only.

Not to be distributed for profit

[Administrative Clerk for the jurisdiction in question]

[Office of the Attorney General: Attention Courts and Judicial Affairs Division]

[Signature]

END FORM

IN THE CIRCUIT COURT OF MARYLAND, _____ COUNTY

[CLIENT NAME],
[ADDRESS]

PETITIONER,

v. CASE NO.

DISTRICT COURT OF MARYLAND, *et. al.*
(District _____, _____ County);
RESPONDENT.

ORDER

UPON CONSIDERATION: Of the Petitioner's application for a writ of certiorari, any response given and good cause being shown, it is hereby:

ORDERED: This _____ day of _____, 20____, that the relief sought is hereby:

(____) GRANTED: and pursuant to Maryland Rule 7-301 (C)(1), the Respondent; the District Court of Maryland for District _____; shall file a response no later than the _____, day or _____, 20____, to show cause why a writ should not be issued.

(____) GRANTED: and pursuant to Maryland Rule 7-301 (C)(2), a writ of certiorari is hereby issued, commanding the District Court of Maryland for District _____, to produce to the Circuit Court of _____ County all records in the matter known as *State of Maryland v. _____* no later than the _____, day of _____, 20____.

(____) DENIED: the petition is hereby dismissed upon determination that the Circuit Court of _____ County lacks jurisdiction in this matter.

Judge