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A Study - Conflicts Between Statutes and Rules as to Time for Appeal

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Comment and Casenotes

A STUDY — CONFLICTS BETWEEN STATUTES AND RULES AS TO TIME FOR APPEAL

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The Court of Appeals has had occasion to hold Rule 2[1] of its Rules and Regulations Respecting Appeals inapplicable in three recent cases, *Grant v. Curtin*,[2] *Robertson v. Dorsey*[3] and *State Roads Commission v. Lassiter*,[4] because of conflicting statutes as to the time within which an appeal must be taken. As a result of the decision in *Grant v. Curtin*,[5] Rule 2 was amended, effective March 1, 1950.[6] In its latest decision dealing with the problem, the Court of Appeals said:

> "Whether it is desirable, . . . that the time of appeal should be made uniform in all cases, or whether to

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[1] Rules and Regulations Respecting Appeals, Md. Code Supp. (1947) 1991. However, Rule 2 was amended on February 17, 1950 (effective March 1, 1950) and in its amended form is to be found in *The Baltimore Daily Record*, February 23, 1950.

[2] 71 A. 2d 304 (Md. 1950).

[3] 73 A. 2d 503 (Md. 1950).

[4] 77 A. 2d 16 (Md. 1950).

[5] *Supra*, n. 2.

[6] The order amending the rule, reads as follows:

> "*Ordered by the Court of Appeals of Maryland*, this 17th day of February, 1950, that Rule 2 of the Rules and Regulations Respecting Appeals be and it hereby is amended to supersede section 7 of Article 5 of the Code of 1939, to become effective as to all judgments or determinations of a court of law entered on or after March 1, 1950, so as to read as follows:
>
> All appeals, or Writs of Error, allowed from any judgment or determination of a Court of Law, to the Court of Appeals of this State, other than from decisions on questions arising under the Insolvent Law, shall be taken within thirty days from the date of such judgment or determination, and not afterwards, except that all appeals from any decisions or determinations or rulings of a court of law in cases of issues sent from the Orphans' Court to be tried, shall be taken within thirty days from the date the verdict is rendered, unless a motion for a new trial is duly filed, in which case the appeal shall be taken within thirty days from the date upon which such motion for a new trial is denied, overruled or dismissed; and the transcript of the record shall be transmitted to the Court of Appeals within sixty days from the time of the appeal taken, or Writ of Error Allowed."

avoid confusion any exceptions deemed necessary or advisable should be incorporated in the rule itself, are matters that cannot affect the result in the instant case. We may say that the Rules Committee has been requested to study the matter and make recommendations for the future."[7]

The present treatment of the matter was originally prepared to aid the Court of Appeals Standing Committee on Rules of Practice and Procedure in its consideration of the conflicts that exist between the statutes and Rule 2 relating to time for appeal.[8] It is now published with the permission of the Committee's Chairman for the general information of the bench and bar of the State. The original study was made to determine all statutes with which Rule 2 is in conflict. However, since other rules[9] relating to appeals also contain provisions as to the time for appeal and for filing of transcripts, the investigation has been extended to include statutes conflicting with all these rules. In addition, statutes conferring a right of appeal, most of them in connection with judicial review of administrative action, a subject not covered by rule, have likewise been included. The study is believed to be complete and accurate to the extent that the Maryland Code indices,[10] the indices of the Session Laws of 1949 and 1950, and other sources, permit. It should be noted, however, that no examination has been made of existing Public Local Laws.

I. APPEALS FROM COURTS OF LAW

A. *Rule 2*

The provisions of Rule 2[11] here considered provide that an appeal must be taken within thirty days from the date of a judgment at law, or within thirty days from the date of verdict or ruling upon motion for new trial in cases of issues sent from the Orphans' Court. Further, it is provided

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[7] *Supra*, n. 4, 17.

[8] This study was prepared by the authors, who are, respectively, Reporter and Assistant Reporter for the Maryland Court of Appeals' Standing Committee on Rules of Practice and Procedure. The study is published, with the permission of the Committee's Chairman, Judge Levin C. Bailey, for the general information of the Bench and Bar.

[9] Rules 3, 5, 6, 7, 8, 15, 24, 49 and 50 of the Rules and Regulations Respecting Appeals, Md. Code Supp. (1947) 1991, 1992, 1993, 1995, 1997, 2004. Rule 50 was added November 19, 1948, and is published in the pamphlet containing Rules of the Court of Appeals adopted June 10, 1949, p. 20.

[10] Md. Code (1939) and Md. Code Supp. (1947).

[11] *Supra*, n. 6.

that the transcript of the record shall be transmitted to the Court of Appeals within sixty days from the time of the appeal taken in such cases.

The following statutes[12] relate to the same subjects:

Article 5, Section 6 of the Code[12a] provides that an appeal from a judgment of a court of law shall be taken within two months from the date of such judgment and the transcript of the record shall be transmitted within three months from the time of appeal taken. This statute has been superseded by Rule 2, but this fact is neither stated in the Code, nor in the published Rules.

Article 5, Section 7 of the Code provides that in cases of issues sent from the Orphans' Court to a court of law, the date of verdict or the date of a ruling on a motion for new trial is to be used as the starting date in measuring the time for appeal. The time for appeal is two months. The time for transmitting the transcript is three months from the time of the appeal. *Grant v. Curtin*,[13] held this statute remains in force and was not superseded, in whole or in part, by Rule 2. Since that decision, Rule 2 has been amended, and the intention to supersede the statute is stated in the order of the Court of Appeals announcing the amendment.[14]

Article 5, Section 49 of the Code provides that from every final judgment granting or refusing a peremptory mandamus in any case involving the title or right to a public office either party shall have a right of appeal within twenty days. The original papers are to be transmitted forthwith. *Robertson v. Dorsey*[15] held this statute was not repealed by Rule 2, even though the words of the rule, standing alone, were broad enough to include an appeal in mandamus cases involving the right or title to a public office. The result of the decision amounts to a recognition of a statutory exception to the generality of Rule 2.

Article 9, Section 22 of the Code provides that either party may appeal from the decision of the judge upon a petition to quash a non-resident attachment (filed before the return day) within two months thereafter. No provision is made for transmitting the transcript. This statute is in conflict with Rule 2.

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[12] All reference herein to Code Articles and Sections are to the Md. Code (1939) and Md. Code Supp. (1947).

[12a] Before January 30, 1945, Rule 2 as such had been in force at least since 1909, and, as Article 5, Section 6, of the Code, without change in wording since 1888.

[13] *Supra*, n. 2.

[14] *Supra*, n. 6.

[15] *Supra*, n. 3.

Article 26, Section 23 of the Code (as repealed and reenacted by the Laws of 1949, Chapter 621) provides that upon all judgments rendered at the second term after the defendant has been summoned, the defendant shall be entitled to a stay of execution until the first Thursday of the ensuing term, with the privilege of superseding the same in the manner allowed by law at any time within two months after the expiration of the stay, and with the power of prosecuting an appeal or suing forth a writ of error as authorized by law. This statute does not apply to Baltimore City, Montgomery, Prince George's and Wicomico Counties. This statute may be in conflict with Rule 2 to the extent that it allows superseding within two months.

Article 31A, Section 7 of the Code Supplement provides that declaratory judgments may be reviewed as other judgments. There would seem to be no apparent conflict with Rule 2, as this statutory provision relates to the right of review and not the manner.

Article 33, Section 104 of the Code Supplement relates to writs of mandamus to compel the Board of Canvassers to correct errors in their determination. It provides for the same right of appeal as in other mandamus cases, but such appeal shall be taken within five days from the date of the decision complained of. Testimony taken is to be sent up as part of the record. The statute contains no time requirement for the filing of the transcript, but it seems to be in conflict with the time requirement provided for in Rule 2.

Article 33, Section 109 of the Code Supplement relates to cases of contested elections of officers not provided for in the Constitution. The statute provides that either party shall have the right to appeal as in other cases, said appeal to be taken within five days from the date of the decision complained of. Testimony taken is to be sent up as part of the record. The statute makes no provision as to time for filing the transcript, and it would seem that the statute is in conflict with the time requirement provided in Rule 2.

Article 33A, Section 12 of the Code relates to appeals from judgments in condemnation cases. The statute provides that such appeals shall be taken within ten days of the date of the judgment. Bills of exception are to be presented on or before the expiration of twenty days from the date of the judgment. The record is to be filed within thirty days of the entry of such appeal. *State Roads Commission v. Lassiter*[16] held that Rule 2 did not supersede

[16] *Supra*, n. 4.

special statutory exceptions, such as those involved in *Grant v. Curtin*[17] and *Robertson v. Dorsey*,[18] dealing with the time for appeal. *Article 33A, Section 18C of the Code Supplement* incorporates by reference the provisions of Section 12 to cases of condemnation by the State Roads Commission.

Article 72, Section 12(j) of the Code Supplement relating to Oysters and Clams provides for a protest in the nature of a suit at law against an application for lease of oyster grounds. It also provides for an appeal to the Court of Appeals from a judgment of the Circuit Court within thirty days thereafter. The statute contains no provision as to the time for filing the transcript of record. There is no apparent conflict between this statute and Rule 2 as to time for appeal.

B. *Rule 3*

Rule 3 of the Rules and Regulations Respecting Appeals relates to appeals from decisions of questions arising under the Insolvent Law.[19] It provides that the appeal is to be taken within thirty days from the time of the decision and the transcript is to be transmitted within sixty days from the date of the decision appealed from.

The following statutes cover the same subjects:

Article 5, Section 8 of the Code is identical with the wording of Rule 3.

Article 47, Section 33 of the Code relates to Insolvents and is practically identical with Rule 3.

II. Appeals from Courts of Equity

A. *Rules 5 and 6*

Rule 5 of the Rules and Regulations Respecting Appeals provides that appeals from decrees or orders of Courts of Equity shall be taken within thirty days from the date of the decree.[20] Rule 6 provides that on such appeals the transcript is to be transmitted to the Court of Appeals within sixty days from the time of the appeal.[21] However, "on appeals taken as provided by Section 31 of Article 5 of the Code of Public General Laws",[22] the transcript shall be made and transmitted forthwith after appeal prayed.

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[17] *Supra*, n. 2.

[18] *Supra*, n. 3.

[19] Rules and Regulations Respecting Appeals. Md. Code Supp. (1947) 1991.

[20] *Ibid.* 1992.

[21] *Ibid.*

[22] *Quaere:* Should the reference to Section 31 of Article 5 of the Md. Code (1939) in Rule 6 read Section "35" as in its statutory predecessor — Article 5, Section 37. Prior to 1945, Rule 6 and Article 5, Section 37 were the same in wording.

The following statutes relate to the same subject:

Article 5, Section 36 of the Code provides that appeals shall be taken within two months from the date of the decree. This statute has been superseded by Rule 5, but this fact is not stated in the Code, nor in the published Rules.

Article 5, Section 37 of the Code provides that transcripts of records on appeals from Courts of Equity shall be transmitted within three months from the time of the appeal prayed, but contains an exception as to appeals taken as provided by "Section 35".[23] This statute has been superseded by Rule 6 but this fact is not stated in the Code, nor in the published Rules.

Article 16, Section 85-Q of the Code Supplement provides that any party to an adoption proceeding may appeal from any interlocutory or final decree of the trial court within the period specified generally for appeals in equity cases. No time for the filing of the transcript is stated.

Article 26, Section 48-O of the Code Supplement provides that any interested party may appeal from an order or decree of the judge in a juvenile cause within thirty days after the entry of such order or decree, and that all procedure is to be as prescribed by rule of the Court of Appeals.

Article 31A, Section 7 of the Code Supplement provides that declaratory decrees may be reviewed as other decrees. There would seem to be no apparent conflict with Rules 5 and 6 as this statutory provision relates to the right of review and not the manner.

Article 100, Section 72 of the Code provides that in a case involving or growing out of a labor dispute, whenever any court or judge issues or denies any temporary injunction the Court, upon request of any party and on his filing the usual bond for costs, shall forthwith certify the entire record of the case to the appropriate Appellate Court for review. This statutory provision seems to contemplate a speedier appeal and a hearing on the original papers instead of a transcript of the record. To this extent it would appear to be in conflict with Rules 5 and 6.

III. APPEALS FROM THE ORPHANS' COURTS

A. *Rule 7*

Rule 7 relates to appeals from orders or decrees of the Orphans' Courts which shall be taken and entered within thirty days after such order or decree. The Register of Wills

[23] *Ibid.*

shall make out and transmit a transcript of the record within thirty days after the appeal prayed.[24]

The following statutes relate to the same subject:

Article 5, Section 66 of the Code is identical with the wording of Rule 7.

Article 81, Sections 124 and 125, relating to valuation of life estates, interests for years, contingent interests, remainders and reversions, provide for appeals to be taken in the same time and manner as from other orders of the Orphans' Courts.

IV. Appeals from the Commissioner of the Land Office

A. *Rule 8*

Rule 8, relating to appeals from the Commissioner of the Land Office, fixes the time for appeal as within thirty days from the date of judgment and the time for transmitting the transcript as within sixty days from the time of appeal.[25]

The following statute relates to the same subject:

Article 5, Section 90 of the Code provides that such appeals shall be taken within two months and the transcript of the record shall be transmitted within sixty days. The only difference between the wording of the rule and the language of the statute is the change in the period specified for the time for appeal, and to this extent Rule 8 supersedes the statute, but this fact is not stated in the Code nor in the published Rules.

V. Relating to Appeals Generally

A. *Rule 15*

Rule 15[26] relates to appeals from a decision involving the forfeiture of a corporate charter.[27]

The following statute relates to the same subject:

Article 5, Section 73 of the Code is identical with the wording of Rule 15.

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[24] *Supra*, n. 19, 1993.
[25] *Ibid.*
[26] *Ibid.*
[27] Such an appeal is provided for in Article 23, Section 108 of the Md. Code.

VI. APPEALS IN CRIMINAL CASES

A. *Rule 24*

Rule 24, Section 1 provides that the time for appeal in criminal cases shall be within ten days from the date of judgment or sentence, except where a sentence of death is imposed, in which case the appeal shall be taken within thirty days from the date of judgment or sentence. Section 2 provides that, where no bills of exceptions were formerly necessary, the transcript shall be transmitted to the Court of Appeals within thirty days after the entry of the appeal. In all other cases, the transcript shall be transmitted within fifty days.[28]

The following statutes relate to the same subjects:

Article 5, Section 86 of the Code was construed in the case of *State v. Hardesty*,[29] to refer to the manner and not to the time of taking appeals and is therefore not inconsistent with Rule 24 as to time for appeal.

Article 27, Section 680 of the Code confers a right of appeal, where sentence is suspended, in the same manner as if sentence had been entered.

Article 52, Section 13A of the Code Supplement confers a right of appeal to the Court of Appeals in cases heard by the Circuit Court, except those heard on appeal from a Trial Magistrate.

VII. HABEAS CORPUS APPEALS

A. *Rules 49 and 50*

Rule 49 of the Rules and Regulations Respecting Appeals provide that applications for leave to appeal under *Article 42, Section 3C of the Code Supplement* may be filed within ten days after the passage of the order in a habeas corpus case, either with the clerk of the Court of Appeals or with the clerk of the lower court.[30] Rule 50 imposes the duty on the clerk of the court wherein the order was passed to transmit forthwith all the original papers in the case.[31]

The following statutes relate to the same subjects:

Article 42, Section 3C of the Code Supplement confers the right of appeal in habeas corpus cases and is not incon-

[28] *Supra*, n. 19, 1997.
[29] 132 Md. 172, 177, 103 A. 461 (1918).
[30] *Supra*, n. 19, 2004.
[31] Rules and Regulations Respecting Appeals, etc. (pamphlet dated June 10, 1949) pages 20-21. This rule was added by an order dated November 19, 1948.

sistent with Rules 49 and 50 which were adopted pursuant to the authority given in the statute.

Article 42, Section 16 of the Code provides that where a person is released or discharged on a writ of habeas corpus due to the unconstitutionality of a statute which he was charged with violating, the judge ordering such release shall reduce his opinion to writing within five days after ordering said release, and transmit the original papers with his opinion to the Court of Appeals. This statute seems to be in conflict with Rule 49.

VIII. MISCELLANEOUS

The following statutes[32] provide for appeals to the Court of Appeals. For the most part, these statutes relate to judicial review of decisions of administrative or quasi judicial tribunals. There is no special rule of the Court of Appeals covering such appeals:

STATUTE[33]	NATURE OF PROCEEDING	TIME FOR APPEAL AND FILING TRANSCRIPT
Art. 5, Sec. 107 (Supp.)	Direct Contempt Constructive Contempt	5 days ———
Art. 33, Sec. 32 (Supp.)	Decision of Board of Registry	5 days
Art. 33, Sec. 144 (Supp.)	Decision of Board re: Absentee Residents	5 days. Original papers to be transmitted within 10 days.
Art. 33, Sec. 222 (Supp.)	Same — Municipal Primaries	5 days. Original papers to be transmitted within 10 days.
Art. 11, Sec. 174 (Supp.)	Decision of Bank Commissioner	10 days
Art. 48A, Sec. 146A(8) (Supp.)	Decision of Insurance Commissioner— re Title Insurance	10 days and as in Equity cases.
Art. 48A, Sec. 221	Decision of Insurance Commissioner— re Licenses	10 days
Art. 48A, Sec. 251 (Supp.)	Decision of Insurance Commissioner— re Explosives	10 days and as in Equity cases.
Art. 58A, Sec. 6A (Supp.)	Decision of Administrators of Loan Laws	10 days
Art. 23, Sec. 418	Decision of Public Service Commission	20 days

[32] *Supra*, n. 12.

[33] The times specified are those for the ultimate appeal to the Court of Appeals, inasmuch as in many of the statutes, intermediate appeals are provided for.

STATUTE	NATURE OF PROCEEDING	TIME FOR APPEAL AND FILING TRANSCRIPT
Art. 43, Sec. 389	Decision of State Board of Health	20 days
Art. 43, Sec. 502 (Supp.)	Decision of State Board of Health	No time. Procedure same as in cases from P.S.C. (Art. 23, Sec. 418)
Art. 43, Sec. 521 (Supp.)	Decision of University of Maryland — re Milk permits and licenses	No time. Procedure same as in appeals from P.S.C. (Art. 23, Sec. 418)
Art. 1A, Sec. 16(f)(8), (Ch. 422, Laws of 1949)	Airport Zoning	No time specified
Art. 1A, Sec. 32, (Ch. 422, Laws of 1949)	Airport Licensing	30 days
Art. 2B, Sec. 149(e) (Supp.)	Board of License Commissioners	30 days
Art. 81, Sec. 194 (Ch. 413, Laws of 1949)	Decision of State Tax Commission	30 days
Art. 81, Sec. 247	Decision of Comptroller and State Tax Commission	Provisions of Sec. 194 applicable.
Art. 81, Sec. 288 (Ch. 465, Laws of 1949)	Assessment by Comptroller	30 days
Art. 83, Sec. 147 (Supp.)	Decision of Administrator of Loan Laws	30 days
Art. 96½, Sec. 18 (Supp.)	Re-employment of World War II Veterans	30 days, on original papers.
Art. 10, Secs. 17 & 18	Disbarment or suspension of attorney	Within time prescribed in civil cases.
Art. 12, Sec. 6	Bastardy proceedings—Contempt	Right of appeal as now provided or hereafter regulated.
Art. 19A, Sec. 34 (Supp.)	Water Pollution Control Commission	Same as in civil cases.
Art. 23, Sec. 231	Complaint re: Transportation of persons or property	No time specified
Art. 32A, Sec. 16	Blue Sky Law	As in other cases or suits at law.
Art. 43, Sec. 468	Board of Examiners and Registration of architects	No time specified
Art. 43, Sec. 496(h) (Supp.)	Decision of State Board of Health	Same as appeals from equity.
Art. 48A, Sec. 11 (Supp.)	Decision of Insurance Commissioner	No time specified
Art. 48A, Sec. 268 (Supp.)	Decision of Insurance Commissioner	No time. In same manner as other appeals.

STATUTE	NATURE OF PROCEEDING	TIME FOR APPEAL AND FILING TRANSCRIPT
Art. 66B, Sec. 7	Decision of Board of Zoning Appeals	No time specified
Art. 77, Sec. 14A(b) (Supp.)	State Board of Education	No time specified
Art. 87, Sec. 16	Ratification of Sheriff's Return	No time. Same as from Court of Equity.
Art. 88A, Sec. 16(G) (Supp.)	State Department of Public Welfare	During time allowed for appeals in equity.
Art. 89, Sec. 187 (Supp.)	Bureau of Mines	No time. As in other cases.
Art. 95A, Sec. 6, 14(c) (Supp.)	Unemployment Compensation Board	No time. In the same manner as provided in civil cases.
Art. 96B, Sec. 12	Water Resources Commission	See Art. 23, Sec. 415. Re: Appeals from Public Service Commission.
Art. 101, Sec. 57, 58 (Supp.)	State Industrial Accident Commission	As in other civil cases.

IX. CONCLUSION

As stated in the introduction to this study, the matter has been referred to the Court of Appeals' Standing Committee on Rules of Practice and Procedure for investigation and recommendation as to whether Rule 2, relating to the time for appeals from courts of law, should be made all embracing or subject to stated exceptions. The Committee's Reporters' preliminary study indicates the need for like consideration being given to the other rules of the Court of Appeals relative to the time for appeals and also the time for the filing of transcripts. It would seem desirable, therefore, to redraft all the rules relating to the time for taking appeals and the time for forwarding the transcript of the record and thereby harmonize the rules and statutes and eliminate the apparent existing inconsistencies. Until such a project is completed the practicing bar must be alerted to the extent of realizing that Rule 2, and other rules[34] relating to time for appeal and for filing transcripts, as presently contained in the Rules and Regulations Respecting Appeals, are not all embracing.

[34] *Supra*, n. 9.