

THE SUPREME COURT STANDING COMMITTEE  
ON RULES OF PRACTICE AND PROCEDURE

Minutes of a meeting of the Rules Committee held in Rooms  
132-133 of the Maryland Judicial Center, 187 Harry S. Truman  
Parkway, Annapolis, Maryland on Friday, April 14, 2023.

Members present:

Hon. Alan M. Wilner, Chair  
Hon. Douglas R.M. Nazarian, Vice  
Chair

Hon. Tiffany Anderson	Bruce L. Marcus, Esq.
Hon. Vicki Ballou-Watts	Donna Ellen McBride, Esq.
Julia Doyle Bernhardt, Esq.	Stephen S. McCloskey, Esq.
Hon. Pamela J. Brown	Hon. Paula A. Price
Hon. Yvette Bryant	Scott D. Shellenberger, Esq.
Mary Anne Day, Esq.	Gregory K. Wells, Esq.
Alvin I. Frederick, Esq.	Hon. Dorothy J. Wilson
Arthur J. Horne, Esq.	Thurman W. Zollicoffer, Esq.
Dawne D. Lindsey, Clerk	

In attendance:

Sandra F. Haines, Esq., Reporter  
Colby L. Schmidt, Esq., Deputy Reporter  
Meredith A. Drummond, Esq., Assistant Reporter  
Heather Cobun, Esq., Assistant Reporter

Tanya Bernstein, Esq., Commission on Judicial Disabilities  
Kendra Jolivet, Esq., Commission on Judicial Disabilities  
Steven Kendall  
Lisa Mannisi, Circuit Court for Anne Arundel County  
Maxwell Mishkin, Esq.  
Hon. John Morrissey, Chief Judge, District Court  
Hon. Michael Reed, Appellate Court of Maryland  
Rebecca Snyder, MDDC Press Association  
Nisa Subasinghe, Esq., Domestic and Guardianship Program Manager  
Gillian Tonkin, Esq., Staff Attorney to Chief Judge, District  
Court  
Nena Villamar, Esq., Office of the Public Defender

Brian Zavin, Esq., Office of the Public Defender

The Chair convened the meeting. He informed the Committee that the Supreme Court approved the Two Hundred and Fourteenth and Two Hundred and Fifteenth Reports after an open meeting on March 23. The 214<sup>th</sup> Report was approved subject to amendments requested by the Court and a dissent by Justice Steven B. Gould regarding new Title 21 (Remote Electronic Participation in Judicial Proceedings). The effective date of the Rules in the 214<sup>th</sup> Report is July 1, 2023. The 215<sup>th</sup> Report, which contained Rules changes necessitated by the Constitutional amendment changing the names of the appellate courts, was approved with an effective date of April 1.

The Chair also informed the Committee that several comments were received and distributed prior to the meeting concerning Agenda Item 1. He said that, at his direction, staff drafted two handouts to address concerns raised in those comments.

The Reporter advised that the meeting was being recorded and speaking will be treated as consent to being recorded.

Agenda Item 1. Reconsideration of remanded Rules changes proposed by the Special Subcommittee on Broadcasting of Criminal Proceedings.

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Mr. Marcus, Chair of the Special Subcommittee on Broadcasting of Criminal Proceedings, informed the Committee that the Special Subcommittee met in February and March to discuss the remand of the recommendations in the Two Hundred and Thirteenth Report. That Report contained proposed amendments to address the impact of *Soderberg v. Carrion*, \_\_\_ F.Supp.3d \_\_\_, 2022 WL 17552556 (D. Md.). He noted that the Subcommittee invited attorneys, members of the press, and other stakeholders to the February meeting to discuss concerns raised in response to the 213<sup>th</sup> Report and possible solutions. He said that the Subcommittee's recommendations to the full Committee include two major Rules for consideration and conforming or clarifying amendments to three related Rules.

Mr. Marcus presented Rule 16-504, Electronic Recording of Circuit Court Proceedings, and Rule 16-504.1, Public Access to Electronic Recording of Circuit Court Proceedings, for consideration.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURT ADMINISTRATION  
CHAPTER 500 - RECORDING OF PROCEEDINGS

AMEND Rule 16-504 by adding a provision relating to shielding and redaction in subsection (f)(1)(C), by adding "or on its own initiative" to section (g), by adding new section (h) governing access to

recordings by authorized persons, by deleting section (h) through (j), and by making stylistic changes, as follows:

Rule 16-504. ELECTRONIC RECORDING OF  
CIRCUIT COURT PROCEEDINGS

(a) Control of and Direct Access to  
Electronic Recordings

(1) Under Control of Court

Electronic recordings made pursuant to Rule 16-503 and this Rule are under the control of the court.

(2) Restricted Access or Possession

No person other than a duly authorized official or employee of the circuit court shall have direct access to or possession of an official electronic recording.

(b) Filing of Recordings

Audio and audio-video recordings shall be maintained by the court in accordance with standards specified in an administrative order of the Chief Justice of the Supreme Court.

(c) Court Reporters

Regulations and standards adopted by the Chief Justice of the Supreme Court under Rule 16-505 (a) apply with respect to court reporters employed in or designated by a circuit court.

(d) Presence of Court Reporters Not  
Necessary

Unless otherwise ordered by the court with the approval of the administrative judge, if circuit court proceedings are recorded by audio or audio-video recording, ~~which~~ that is otherwise effectively

monitored, a court reporter need not be present in the courtroom.

(e) Identification Label

Whenever proceedings are recorded by electronic audio or audio-video means, the clerk or other designee of the court shall affix to each electronic audio or audio-video recording a label containing the following information:

- (1) the name of the court;
- (2) the docket reference of each proceeding included on the recording;
- (3) the date on which each proceeding was recorded; and
- (4) any other identifying letters, marks, or numbers necessary to identify each proceeding recorded.

(f) Information Required to be Kept

(1) Duty to Keep

The clerk or other designee of the court shall keep the following items:

(A) a proceeding log identifying (i) each proceeding recorded on an audio or audio-video recording, (ii) the time the proceeding commenced, (iii) the time of each recess, and (iv) the time the proceeding concluded;

(B) an exhibit list;

(C) a testimonial log listing (i) the recording references for the beginning and end of each witness's testimony and (ii) each portion of the audio or audio-video recording that has been safeguarded pursuant to section (g) of this Rule or redacted pursuant to Rule 16-504.1. The log shall specify whether the safeguarding is a shielding pursuant to section (g) of this Rule or a redaction from a disseminated copy pursuant to Rule 16-504.1.

(2) Location of Exhibit List and Logs

The exhibit list shall be kept in the court file. The proceeding and testimonial logs shall be kept with the audio or audio-video recording.

(g) Safeguarding Confidential Portions of Proceeding

If a portion of a proceeding involves placing on the record matters that, on motion or on its own initiative, the court finds should and lawfully may be shielded from public access and inspection, the court shall direct that appropriate safeguards be placed on that portion of the recording. For audio and audio-video recordings, the clerk or other designee of the court shall create a log listing the recording references for the beginning and end of the safeguarded portions of the recording.

(h) Access to Recordings by Authorized Persons

(1) Permitted Access

Upon written request by any of the following persons and subject to the conditions in this Rule, the custodian shall make available to the requesting person a copy of the audio or, if available, the audio-video recording of a proceeding, including a recording of a proceeding as to which Rule 16-914 (g) applies and including each portion of the recording as to which public access is limited pursuant to section (g) of this Rule or Rule 16-504.1 (b):

(A) the Chief Justice of the Supreme Court;

(B) the County Administrative Judge;

(C) the Circuit Administrative Judge having supervisory authority over the court;

(D) the presiding judge in the case;

(E) the Commission on Judicial Disabilities or, at its direction, Investigative Counsel;

(F) Bar Counsel;

(G) with respect to audio recordings, unless otherwise ordered by the court, a party to the proceeding or the attorney for a party;

(H) with respect to audio-video recordings, with leave of court and for good cause shown, a party to the proceeding or the attorney for a party;

(I) a stenographer or transcription service designated by the court for the purpose of preparing an official transcript of the proceeding, provided that (i) the transcript of unredacted safeguarded portions of a proceeding, when filed with the court, shall be placed under seal or otherwise shielded by order of court, and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted safeguarded portions shall be prepared for or delivered to any person not listed in subsection (h) (1) of this Rule;

(J) any other person authorized by the County Administrative Judge; and

(K) with respect to audio-video recordings, the Supreme Court or the Appellate Court pursuant to Rule 8-415 (c).

(2) Notice of Restricted Access

The custodian who provides a copy of a recording pursuant to subsection (h) (1) of this Rule shall mark or otherwise indicate whether the recording contains, in whole or in part, a proceeding as to which Rule 16-914 (g) applies or a proceeding as to which public access is limited pursuant to section (g) of this Rule or Rule 16-504.1 (b). If the copy of the recording contains any such proceedings, the custodian shall specify each section of the recording as to which

the restrictions set forth in subsection (h) (3) of this Rule are applicable.

Committee note: Rule 16-914 (g) prohibits public access to transcripts and recordings of closed proceedings and proceedings in actions as to which all documentary case records are required to be shielded.

(3) Restrictions on Use by Authorized Persons

(A) Generally

Except as provided in subsection (h) (3) (B) of this Rule, unless authorized by an order of court, a person who, under section (h) of this Rule, receives a copy of an electronic recording as to which all or a portion is subject to Rule 16-914 (g) or as to which public access is limited pursuant to section (g) of this Rule or Rule 16-504.1 (b), shall not (i) make or cause to be made any additional copy of the shielded or redacted portion of the recording or (ii) play the shielded or redacted portion of the recording for or give or electronically transmit the shielded or redacted portion of the recording to any person not entitled to it under subsection (h) (1) of this Rule.

**DRAFTER'S NOTE: As drafted, this subsection would permit a person listed in subsection (h) (1) to obtain and share an unshielded and unredacted video recording (or the unshielded and unredacted portion of one). The public is still not permitted to obtain such a recording, but it could be publicly disseminated, subject to shielding orders, by a party who obtains a copy with leave of court for good cause shown.**

(B) Exceptions

A person who receives a copy of an electronic recording under section (h) of this Rule may play the recording for or give or electronically transmit the recording, including any shielded or redacted portions, to (i) a non-sequestered witness; (ii) an



agent, employee, or consultant of the authorized person; (iii) in connection with subsequent litigation; or (iv), with respect to the Commission on Judicial Disabilities, Investigative Counsel, or Bar Counsel, in connection with the duties of that office. A person permitted to listen to or electronically receive the shielded or redaction portions of the recording is subject to the restrictions on use in subsection (h) (3) (A) of this Rule.

(4) Violation of Restriction on Use

A willful violation of any restriction on use of an electronic recording set forth in section (h) of this Rule may be punished as a contempt.

~~(h) Right to Obtain Copy of Audio Recording~~

~~(1) Generally~~

~~Except (A) for proceedings closed pursuant to law, (B) as provided in Rule 16-914 (g), (C) as otherwise provided in this Rule, or (D) as ordered by the court, the authorized custodian of an audio recording shall make a copy of the audio recording or, if practicable, the audio portion of an audio-video recording, available to any person upon written request and, unless waived by the court, upon payment of the reasonable costs of making the copy.~~

~~(2) Redacted Portions of Recording~~

~~Unless otherwise ordered by the County Administrative Judge, the custodian of the recording shall assure that all portions of the recording that the court has directed be safeguarded pursuant to section (g) of this Rule are redacted from any copy of a recording made for a person under subsection (h) (1) of this Rule. Delivery of the copy may be delayed for a period reasonably required to accomplish the redaction.~~

~~(3) Exceptions~~

~~Upon written request and subject to the conditions in section (h) of this Rule, the custodian shall make available to the following persons a copy of the audio recording or, if practicable, the audio portion of an audio-video recording of proceedings that were closed pursuant to law, proceedings that were subject to Rule 16-914 (g), or proceedings from which safeguarded portions have not been redacted:~~

~~(A) the Chief Judge of the Court of Appeals;~~

~~(B) the County Administrative Judge;~~

~~(C) the Circuit Administrative Judge having supervisory authority over the court;~~

~~(D) the presiding judge in the case;~~

~~(E) the Commission on Judicial Disabilities or, at its direction, Investigative Counsel;~~

~~(F) Bar Counsel;~~

~~(G) unless otherwise ordered by the court, a party to the proceeding or the attorney for a party;~~

~~(H) a stenographer or transcription service designated by the court for the purpose of preparing an official transcript of the proceeding, provided that (i) the transcript of unredacted safeguarded portions of a proceeding, when filed with the court, shall be placed under seal or otherwise shielded by order of court, and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted safeguarded portions shall be prepared for or delivered to any person not listed in subsection (h) (3) of this Rule; and~~

~~(I) any other person authorized by the County Administrative Judge.~~

~~(3) Violation of Restriction on Use~~

~~A willful violation of subsection (j) (2) of this Rule may be punished as a contempt.~~

~~(i) Right to Listen to and View Audio-Video Recording~~

~~(1) Generally~~

~~Except for (A) proceedings closed pursuant to law, (B) proceedings that were subject to Rule 16-914 (g), (C) as otherwise provided in this Rule, or (D) as ordered by the Court, the authorized custodian of an audio-video recording, upon written request from any person, shall permit the person to listen to and view the recording at a time and place designated by the court, under the supervision of the custodian or other designated court official or employee.~~

~~Committee note: If space is limited and there are multiple requests, the custodian may require several persons to listen to and view the recording at the same time or accommodate the requests in the order they were received.~~

~~(2) Safeguarded Portions of Recording~~

~~Unless otherwise ordered by the County Administrative Judge, the custodian of the recording shall assure that all portions of the recording that the court directed to be safeguarded pursuant to section (g) of this Rule are not available for listening or viewing. Access to the recording may be delayed for a period reasonably necessary to accomplish the safeguarding.~~

~~(3) Copying Prohibited~~

~~A person listening to and viewing the recording may not make a copy of it or have in his or her possession any device that, by itself or in combination with any other device, can make a copy. The custodian or other designated court official or employee shall take reasonable steps to~~

~~enforce this prohibition, and any willful violation of the prohibition may be punished as a contempt.~~

~~(j) Right to Obtain Copy of Audio-Video Recording~~

~~(1) Who May Obtain Copy~~

~~Upon written request and subject to the conditions in this section, the custodian shall make available to the following persons a copy of the audio-video recording, including a recording of (A) proceedings that were closed pursuant to law, (B) proceedings that were subject to Rule 16-914 (g), (C) or proceedings or from which safeguarded portions have not been redacted:~~

~~(A) the Chief Judge of the Court of Appeals;~~

~~(B) the County Administrative Judge;~~

~~(C) the Circuit Administrative Judge having supervisory authority over the court;~~

~~(D) the presiding judge in the case;~~

~~(E) the Commission on Judicial Disabilities or, at its direction, Investigative Counsel;~~

~~(F) Bar Counsel;~~

~~(G) unless otherwise ordered by the court, a party to the proceeding or the attorney for a party;~~

~~(H) a stenographer or transcription service designated by the court for the purpose of preparing an official transcript of the proceeding, provided that, (i) if the recording is of a proceeding closed pursuant to law or from which safeguarded portions have not been redacted, the transcript, when filed with the court, shall be placed under seal or otherwise shielded by order of the court, and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted safeguarded portions~~

~~shall be prepared for or delivered to any person not listed in subsection (j) (1) of this Rule;~~

~~(I) the Court of Appeals or the Court of Special Appeals pursuant to Rule 8-415 (c); and~~

~~(J) any other person authorized by the County Administrative Judge.~~

~~(2) Restrictions on Use~~

~~Unless authorized by an order of court, a person who receives a copy of an electronic recording under this section shall not:~~

~~(A) make or cause to be made any additional copy of the recording; or~~

~~(B) except for a non-sequestered witness or an agent, employee, or consultant of the party or attorney, give or electronically transmit the recording to any person not entitled to it under subsection (j) (1) of this Rule.~~

~~(3) Violation of Restriction on Use~~

~~A willful violation of subsection (j) (2) of this Rule may be punished as a contempt.~~

~~Cross reference: See Rule 16-505 (a) concerning regulations and standards applicable to court reporting in all courts of the State.~~

~~Source: This Rule is derived from former Rules 16-404, 16-405, and 16-406 (2016) and is in part new.~~

Rule 16-504 was accompanied by the following Reporter's note:

By Rules Order dated January 9, 2023, the Supreme Court of Maryland remanded to the Rules Committee proposed new Rule 16-

504.1 and a series of conforming amendments submitted to the Court as a part of the Two Hundred and Thirteenth Report. The Rules in that Report proposed restricting access to copies of recordings of criminal proceedings except by certain authorized persons in light of the holding in *Soderberg v. Carrion*, \_\_\_ F.Supp.3d \_\_\_, 2022 WL 17552556 (D. Md.). The *Soderberg* opinion invalidated the portion of Code, Criminal Procedure Article, § 1-201 which prohibited broadcasting any portion of a criminal proceeding, including a lawfully obtained copy of the recording of a proceeding. Rules Committee members expressed concern about the ability of an individual to obtain and broadcast potentially sensitive portions of a criminal proceeding, such as testimony of a victim of sexual assault, as well as the possibility of witness intimidation.

At its open meeting on the 213th Report, the Supreme Court considered written and oral comments from attorneys, media representatives, and concerned citizens opposed to the proposed amendments. In its discussion of the remand of the Report, the Court noted that witness intimidation and victim safety are important concerns and instructed the Rules Committee to consider alternative solutions to address those concerns.

Following the remand, the Special Subcommittee on Broadcasting of Recordings of Criminal Proceedings held a virtual meeting and invited attorneys, members of the media, and other stakeholders to discuss potential amendments to the Rules which would address the stated concerns but serve as a narrowly-tailored solution that preserves access where those concerns are not present.

Proposed amendments to Rule 16-504 and new Rule 16-504.1 retain the current provision for safeguarding certain information (Rule 16-504 (g)) from public

access and establish a procedure for an interested person in a criminal proceeding to ask the court to order a portion of that proceeding to be redacted from a copy of recording provided to a member of the public (Rule 16-504.1 (b)).

Proposed amendments to subsection (f)(1)(C) require the log created by the clerk or other designee to indicate when a portion of a recording should be shielded pursuant to Rule 16-504 (g) or redacted from a copy disseminated pursuant to Rule 16-504.1.

Section (g) is amended to permit the court to order information to be shielded from public access on its own initiative.

Current sections (h) through (j) are proposed for deletion. New section (h) combines and clarifies the provisions in current sections (h) and (j), which govern the right of certain authorized Judiciary personnel and litigants to obtain a copy of an audio or audio-video recording of a proceeding, even if all or part of the recording would not be available to the public. Current section (i) is addressed in new Rule 16-504.1.

Proposed new subsection (h)(1) in Rule 16-504 is derived from current subsections (h)(3) and (j)(1). Current subsection (h)(3) sets forth the persons permitted to obtain a copy of the audio recording of a proceeding, including closed proceedings and redacted portions of proceedings. Current subsection (j)(1) does the same for persons permitted to obtain a copy of the audio-video recording of a proceeding. The lists of authorized individuals are nearly identical except that subsection (j)(1)(I) is unique to copies of audio-video recordings. New subsection (h)(1)(K) carries forward this provision "with respect to audio-video recordings" and requires leave of court and good cause shown to

provide a copy of the audio-video recording to a party or attorney.

New subsection (h) (2) requires the custodian of a recording to indicate to the requester whether a recording contains proceedings subject to Rule 16-914 (g) or if portions have been shielded or redacted. If public access to any portion of the recording is restricted, the custodian must indicate what those portions are so that the person receiving the recording is aware. A Committee note following subsection (h) (2) explains the provisions of Rule 16-914 (g), which prohibits public access to transcripts and recordings of closed proceedings and proceedings in actions where all papers are shielded.

New subsection (h) (3) is derived from current subsection (j) (2). The goals of the subsection are to permit authorized persons in possession of a copy of a recording to make reasonable use of the recording and to ensure that no person who is authorized to view a copy of a recording with shielded or redacted portions disseminates those portions of the recording further. Subsection (h) (3) (A) states that, generally, a person who receives a copy of a recording containing shielded or redacted portions under subsection (h) (1) may not make a copy or play or transmit the shielded or redacted portions of recording to an unauthorized person. Subsection (h) (3) (B) makes certain exceptions to the general prohibition in subsection (h) (3) (A) for non-sequestered witnesses or agents, employees, or consultants of the authorized individuals. The second sentence of subsection (h) (3) (B) prohibits further dissemination of the shielded or redacted portions of the recording by a person who listens to or receives it from an authorized person.

New subsection (h) (4) is derived from current subsection (j) (3) which punishes a



willful violation of the restrictions on use as a contempt.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURT ADMINISTRATION  
CHAPTER 500 - RECORDING OF PROCEEDINGS

ADD New Rule 16-504.1, as follows:

RULE 16-504.1. PUBLIC ACCESS TO ELECTRONIC  
RECORDING OF CIRCUIT COURT PROCEEDINGS

(a) Generally

Except for proceedings as to which Rule 16-914 (g) applies, portions of proceedings safeguarded pursuant to Rule 16-504 (g), and portions of proceedings as to which the court has entered an order under section (b) of this Rule, the authorized custodian of an audio recording or audio-video recording made pursuant to Rule 16-504, shall:

(1) make a copy of the audio recording or, if practicable, the audio portion of an audio-video recording, available to any person upon written request and, unless waived by the court, upon payment of the reasonable costs of making the copy; and

Committee note: Portions of a criminal proceeding redacted from a disseminated copy pursuant to section (b) of this Rule may be listened to pursuant to subsection (a)(2) of this Rule.

(2) upon written request from person, permit the person to listen to the audio recording or, if available, listen to and

view the audio-video recording at a time and place designated by the court, under the supervision of the custodian or other designated court official or employee. A person listening to or listening to and viewing the recording may not make a copy of it or have in his or her possession any device that, by itself or in combination with any other device, can make a copy. The custodian or other designated court official or employee shall take reasonable steps to enforce this prohibition.

Committee note: If space is limited and there are multiple requests, the custodian may require several persons to listen to or listen to and view the recording at the same time or accommodate the requests in the order they were received.

Cross reference: See Rule 16-914 (g) pertaining to public access to transcripts and recordings of closed proceedings or proceedings in an action as to which all documentary case records are required to be shielded.

(b) Criminal Proceedings - Redaction from Disseminated Copy of Audio Recording

(1) Motion; Findings; Order

On motion of a party or other interested person or on its own initiative, the court may order that a specified portion of a criminal proceeding be redacted from a copy of an audio recording disseminated pursuant to subsection (a)(1) of this Rule if, by written order or on the record, the court makes a finding **[by clear and convincing evidence]** that good cause exists for the redaction. The court shall specify the portion of the proceeding that is to be redacted, when the redaction requirement will expire, if ever, and the reason for the redaction, which may include:

**DRAFTER'S NOTE: The bold, bracketed language in subsection (b)(1) was considered and rejected by the Broadcast Subcommittee.**

(A) the impact of the dissemination of the audio recording on the right of the defendant or the State to a fair trial if the redaction is not made;

(B) the age, mental condition, or medical condition of a witness whose testimony is sought to be redacted;

(C) the intimate nature of the testimony sought to be redacted;

(D) the likelihood of harm to a party, victim, or witness if the redaction is not made; or

(E) other good cause.

### (2) Least Restrictive Means

An order to redact a portion of a criminal proceeding from copies of the audio proceeding issued pursuant to subsection (b)(1) of this Rule shall be as narrow as practicable in scope and duration to effectuate the interest sought to be protected.

Committee note: The duration of the redaction requirement may be for a specified time, such as until entry of judgment or other disposition in the case, or for an indefinite period.

### (3) Procedure

The clerk or other designee of the court shall create a log listing the recording references for the beginning and end of the portions of the recording as to which an order of redaction has been entered pursuant to subsection (b)(1) of this Rule. Unless the court orders otherwise, the testimony shall be redacted from all copies of the audio recording of the proceeding disseminated pursuant to subsection (a)(1) of this Rule, but shall not be redacted from the recording that a person may listen to or listen to and view pursuant to subsection (a)(2) of this Rule.

(4) Reconsideration

If, on motion of a party or other interested person, the court makes a finding that there has been a material change in circumstances and finds that there no longer is good cause to redact information from a copy of a recording of a criminal proceeding, the court shall modify or rescind an order issued under subsection (b)(1) of this Rule.

(c) Duty of Custodian

The custodian of a recording shall assure that (1) the copy of a recording disseminated pursuant to subsection (a)(1) of this Rule and (2) a recording listened to or listened to and viewed pursuant to subsection (a)(2) of this Rule comply with Rule 16-504 (g) and section (b) of this Rule, as applicable. Delivery of a copy of a recording or the ability to listen to or listen to and view the recording may be delayed for a period reasonably necessary to accomplish the required safeguarding or redaction.

Source: This Rule is derived in part from former sections (h) and (i) of Rule 16-504 (2023) and is in part new.

Rule 16-504.1 was accompanied by the following Reporter's note:

Proposed new Rule 16-504.1 is derived in part from current Rule 16-504 sections (h) and (i) and is in part new. See the Reporter's note to Rule 16-504 for more information.

Rule 16-504.1 (a)(1) is derived from current Rule 16-504 (h) and (i) which provide that, except for proceedings as to which Rule 16-914 (g) applies - closed proceedings or proceedings in actions where all documents are shielded - or proceedings

safeguarded or redacted by the court, a custodian of an audio or audio-video recording shall make the recording available as provided.

Current Rule 16-504 (h)(1) provides that the custodian shall make a copy of the audio recording available to any person on written request and payment of reasonable costs. This provision is now contained in new Rule 16-504.1 (a)(1). A Committee note following the subsection explains that portions of a criminal proceeding ordered for redaction pursuant to section (b) may still be listened to at the court pursuant to Rule 16-504.1 (a)(2).

Current Rule 16-504 (i)(1) requires the custodian to permit any person to listen to and view the audio-video recording of a proceeding, if available, on written request. This provision is captured by new Rule 16-504.1 (a)(2). The new subsection is expanded to apply to requests to listen to audio of a proceeding or listen to and view the audio-video recording of a proceeding, if available. The prohibition against copying any part of the proceeding while a person listens to or listens to and views a recording under the supervision of the custodian is derived from current Rule 16-504 (i)(3). The Committee note following subsection (a)(2) is derived from the Committee note following current Rule 16-504 (i)(1). A cross reference to Rule 16-914 (g) identifies provisions prohibiting public access to certain closed proceedings or shielded actions.

Section (b) establishes a procedure for an interested person to move to have a portion of a criminal proceeding redacted from a copy of the recording of that proceeding disseminated pursuant to subsection (a)(1) of the Rule.

Subsection (b)(1) permits the court to find good cause, in writing or on the record, to redact a portion of the

proceeding from a disseminated recording. The court must specify the portion of the proceeding to be redacted, when the redaction requirement expires, and the reasons. Bolded language in subsection (b)(1), which would require the court to find good cause by clear and convincing evidence, was considered and rejected by the Subcommittee. The clear and convincing standard was suggested by the press coalition and is included for the Committee's discussion. A list of considerations that could lead the court to find good cause for redaction is included in subsection (b)(1). The considerations were derived from discussions with media representatives at a Subcommittee meeting and similar Rules in other states.

Subsection (b)(2) requires the court make an order of redaction as narrow as possible to accomplish the stated goal. A Committee note suggests that the redaction requirement may be limited in duration or indefinite.

Subsection (b)(3) requires the clerk or other court designee to log the portions of the proceeding to be redacted and to make the redaction in a copy of a recording disseminated pursuant to subsection (a)(1), but not from the recording that may be listened to pursuant to subsection (a)(2). The Subcommittee determined that listening to or listening to and viewing the recording at the courthouse retains the level of access that the public would have in-person at the court proceeding.

Subsection (b)(4) permits a party or other interested person to ask the court to reconsider an order of redaction.

Section (c) is derived from current Rule 16-504 (h)(2) and (i)(2). It requires the custodian to assure that a copy of a recording disseminated or a recording listened to or listened to and viewed at the courthouse comply with any shielding or

redaction ordered by the court pursuant to Rule 16-504 (g) or Rule 16-504.1 (b).

Mr. Marcus explained that current Rule 16-504 is proposed to be divided into two Rules. Rule 16-504 addresses the process of recording circuit court proceedings, securing those recordings, and providing access to those recordings to judiciary personnel as well as parties and their attorneys. New Rule 16-504.1 governs public access to recordings and requests to redact portions of those recordings under certain circumstances.

Mr. Marcus said that subsection (f) (1) (C) of Rule 16-504 is amended to require the clerk or other court designee in charge of maintaining the log of the recording to note when a portion has been shielded pursuant to current Rule 16-504 (g) or redacted pursuant to new Rule 16-504.1. Rule 16-504 (g) is amended to permit the court on its own initiative to order a portion of the recording shielded. He noted that this provision was subject to debate at the Subcommittee meeting and is the subject of some of the comments submitted to the Committee.

Mr. Marcus informed the Committee that new section (h) in Rule 16-504, which lists the persons entitled to a copy of a recording including shielded and redacted portions, is derived from the existing Rule and includes people in the court system, court-related agencies, and parties. He said that the Committee

may notice references to Rule 16-914 (g), which was amended in the 214<sup>th</sup> Report. The Rule prohibited public access to transcripts and recordings of closed proceedings. As amended, the Rule also applies in proceedings where all documentary case records are required to be shielded. Mr. Marcus said that current sections (h) through (j) of Rule 16-504 are marked for deletion. He noted that those sections are not truly deleted from the Rules but are consolidated in new section (h) of Rule 16-504 or moved to new Rule 16-504.1.

Mr. Marcus explained that Rule 16-504.1 governs public access to recordings. He acknowledged that provisions in this new Rule generated the most interest among commenters. Section (a) sets forth the general right of access to recordings of court proceedings, subject to Rule 16-914 (g) and any order of shielding pursuant to Rule 16-504 (g) or redaction pursuant to Rule 16-504.1 (b). If none of those exceptions apply, Mr. Marcus stated that the Rule requires the custodian of a recording to provide a copy of an audio recording or the audio portion of an audio-video recording upon request and payment of fees. Section (a) also provides a right to listen to or, if applicable, listen to and view the recording at the courthouse. He said that there are foreseeable logistical issues to this provision, but the Rule provides the court flexibility to facilitate access.



Mr. Marcus then explained section (b) of Rule 16-504.1, a new provision that creates a mechanism for a party or other interested person in a criminal proceeding to ask the court to redact a portion of the proceeding from a copy of a recording disseminated to the public. He noted that the court can also make the redaction on its own initiative. Mr. Marcus said that the Committee has previously discussed concerns about protecting witnesses, child victims, and other vulnerable individuals from intimidation or abuse as a result of the audio of their testimony being shared and potentially broadcast. He said that section (b) gives the court a framework to determine if redaction is justified. He drew the Committee's attention to the bolded language in brackets in subsection (b) (1) which would require the court to find good cause to make the redaction by clear and convincing evidence.

Mr. Marcus said that the rest of subsection (b) (1) provides factors for the court to consider in making its determination. The first factor, the right to a fair trial, may require the court to conduct a balancing test between that right and the First Amendment. The second factor, the age, mental condition, or medical condition of a witness, is part of what led to the Subcommittee's decision to permit the court to order redaction on its own initiative. Mr. Marcus explained that the judge sometimes is the only person in the courtroom to recognize that

an unrepresented witness could require protection and not know to ask for it. The third and fourth factors deal with the intimate nature of the testimony and the likelihood of harm to a party, victim, or witness. The fifth factor, other good cause, is a catch-all. Mr. Marcus said that after the motion is made and the court makes its determination, the court makes a record of what portions of the recording are subject to redaction. Subsection (b)(4) permits a party or other interested person to ask the court to reconsider the redaction later.

The Chair announced that the Committee received comments from several individuals and groups regarding various pieces of the proposed amendments. The Reporter noted that the Committee was provided those comments and all comments that the Subcommittee had before it while considering these Rules. See Appendix 1.

The Chair presented handouts to Rule 16-504, Electronic Recording of Circuit Court Proceedings, and Rule 16-504.1, Public Access to Electronic Recording of Circuit Court Proceedings, for consideration.

**HANDOUT**

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURT ADMINISTRATION  
CHAPTER 500 - RECORDING OF PROCEEDINGS

AMEND Rule 16-504 as follows:

Rule 16-504. ELECTRONIC RECORDING OF  
CIRCUIT COURT PROCEEDINGS

(a) Control of and Direct Access to  
Electronic Recordings

(1) Under Control of Court

Electronic recordings made pursuant  
to Rule 16-503 and this Rule are under the  
control of the court.

(2) Restricted Access or Possession

No person other than a duly  
authorized official or employee of the  
circuit court shall have direct access to or  
possession of an official electronic  
recording.

(b) Filing of Recordings

Audio and audio-video recordings  
shall be maintained by the court in  
accordance with standards specified in an  
administrative order of the Chief Justice of  
the Supreme Court.

(c) Court Reporters

Regulations and standards adopted by  
the Chief Justice of the Supreme Court under  
Rule 16-505 (a) apply with respect to court  
reporters employed in or designated by a  
circuit court.

(d) Presence of Court Reporters Not  
Necessary

Unless otherwise ordered by the court  
with the approval of the administrative  
judge, if circuit court proceedings are  
recorded by audio or audio-video recording,  
~~which~~ that is otherwise effectively  
monitored, a court reporter need not be  
present in the courtroom.

(e) Identification Label

Whenever proceedings are recorded by electronic audio or audio-video means, the clerk or other designee of the court shall affix to each electronic audio or audio-video recording a label containing the following information:

- (1) the name of the court;
- (2) the docket reference of each proceeding included on the recording;
- (3) the date on which each proceeding was recorded; and
- (4) any other identifying letters, marks, or numbers necessary to identify each proceeding recorded.

(f) Information Required to be Kept

(1) Duty to Keep

The clerk or other designee of the court shall keep the following items:

(A) a proceeding log identifying (i) each proceeding recorded on an audio or audio-video recording, (ii) the time the proceeding commenced, (iii) the time of each recess, and (iv) the time the proceeding concluded;

(B) an exhibit list;

(C) a testimonial log listing (i) the recording references for the beginning and end of each witness's testimony and (ii) each portion of the audio or audio-video recording that has been safeguarded pursuant to section (g) of this Rule or redacted pursuant to Rule 16-504.1. The log shall specify whether the safeguarding is a shielding pursuant to section (g) of this Rule or a redaction from a disseminated copy pursuant to Rule 16-504.1.

(2) Location of Exhibit List and Logs

The exhibit list shall be kept in the court file. The proceeding and

testimonial logs shall be kept with the audio or audio-video recording.

(g) Safeguarding Confidential Portions of Proceeding

If a portion of a proceeding involves placing on the record matters that, on motion ~~or on its own initiative~~, the court finds by clear and convincing evidence (1) that a compelling reason exists under the particular circumstances to shield the information should and lawfully may be shielded from public access and inspection and (2) that no substantial harm will result from the shielding, the court shall direct that appropriate safeguards be placed on that portion of the recording. For audio and audio-video recordings, the clerk or other designee of the court shall create a log listing the recording references for the beginning and end of the safeguarded portions of the recording.

(h) Access to Recordings by Authorized Persons

(1) Permitted Access

Upon written request by any of the following persons and subject to the conditions in this Rule, the custodian shall make available to the requesting person a copy of the audio or, if available, the audio-video recording of a proceeding, including a recording of a proceeding as to which Rule 16-914 (g) applies and including each portion of the recording as to which public access is limited pursuant to section (g) of this Rule or Rule 16-504.1 (b):

(A) the Chief Justice of the Supreme Court;

(B) the County Administrative Judge;

(C) the Circuit Administrative Judge having supervisory authority over the court;

(D) the presiding judge in the case;

(E) the Commission on Judicial Disabilities or, at its direction, Investigative Counsel;

(F) Bar Counsel;

(G) with respect to audio recordings **or the audio portion of an audio-video recording**, unless otherwise ordered by the court, a party to the proceeding or the attorney for a party;

(H) with respect to audio-video recordings, with leave of court and for good cause shown, a party to the proceeding or the attorney for a party;

(I) a stenographer or transcription service designated by the court for the purpose of preparing an official transcript of the proceeding, provided that (i) the transcript of unredacted safeguarded portions of a proceeding, when filed with the court, shall be placed under seal or otherwise shielded by order of court, and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted safeguarded portions shall be prepared for or delivered to any person not listed in subsection (h) (1) of this Rule;

(J) any other person authorized by the County Administrative Judge; and

(K) with respect to audio-video recordings, the Supreme Court or the Appellate Court pursuant to Rule 8-415 (c).

(2) Notice of Restricted Access

The custodian who provides a copy of a recording pursuant to subsection (h) (1) of this Rule shall mark or otherwise indicate whether the recording contains, in whole or in part, a proceeding as to which Rule 16-914 (g) applies or a proceeding as to which public access is limited pursuant to section (g) of this Rule or Rule 16-504.1 (b). If the copy of the recording contains any such proceedings, the custodian shall specify

each section of the recording as to which the restrictions set forth in subsection (h) (3) of this Rule are applicable.

Committee note: Rule 16-914 (g) prohibits public access to transcripts and recordings of closed proceedings and proceedings in actions as to which all documentary case records are required to be shielded.

(3) Restrictions on Use by Authorized Persons

(A) Generally

Except as provided in subsection (h) (3) (B) of this Rule, unless authorized by an order of court, a person who, under section (h) of this Rule, receives a copy of an electronic recording as to which all or a portion is subject to Rule 16-914 (g) or as to which public access is limited pursuant to section (g) of this Rule or Rule 16-504.1 (b), shall not (i) make or cause to be made any additional copy of the shielded or redacted portion of the recording or (ii) play the shielded or redacted portion of the recording for or give or electronically transmit the shielded or redacted portion of the recording to any person not entitled to it under subsection (h) (1) of this Rule.

**DRAFTER'S NOTE: As drafted, this subsection would permit a person listed in subsection (h) (1) to obtain and share an unshielded and unredacted video recording (or the unshielded and unredacted portion of one). The public is still not permitted to obtain such a recording, but it could be publicly disseminated, subject to shielding orders, by a party who obtains a copy with leave of court for good cause shown.**

(B) Exceptions

A person who receives a copy of an electronic recording under section (h) of this Rule may play the recording for or give or electronically transmit the recording, including any shielded or redacted portions,

to (i) a non-sequestered witness; (ii) an agent, employee, or consultant of the authorized person; (iii) in connection with subsequent litigation; or (iv), with respect to the Commission on Judicial Disabilities, Investigative Counsel, or Bar Counsel, in connection with the duties of that office. A person permitted to listen to or electronically receive the shielded or redaction portions of the recording is subject to the restrictions on use in subsection (h) (3) (A) of this Rule.

(4) Violation of Restriction on Use

A willful violation of any restriction on use of an electronic recording set forth in section (h) of this Rule may be punished as a contempt.

. . .

Source: This Rule is derived from former Rules 16-404, 16-405, and 16-406 (2016) and is in part new.

**HANDOUT**

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 500 - RECORDING OF PROCEEDINGS

ADD New Rule 16-504.1, as follows:

RULE 16-504.1. PUBLIC ACCESS TO ELECTRONIC RECORDING OF CIRCUIT COURT PROCEEDINGS

(a) Generally



Except for proceedings as to which Rule 16-914 (g) applies, portions of proceedings safeguarded pursuant to Rule 16-504 (g), and portions of proceedings as to which the court has entered an order under section (b) of this Rule, the authorized custodian of an audio recording or audio-video recording made pursuant to Rule 16-504, shall:

(1) make a copy of the audio recording or, if practicable, the audio portion of an audio-video recording, available to any person upon written request and, unless waived by the court, upon payment of the reasonable costs of making the copy; and

Committee note: Portions of a criminal proceeding redacted from a disseminated copy pursuant to section (b) of this Rule may be listened to pursuant to subsection (a)(2) of this Rule.

(2) upon written request from person, permit the person to listen to the audio recording or, if available, listen to and view the audio-video recording at a time and place designated by the court, under the supervision of the custodian or other designated court official or employee. A person listening to or listening to and viewing the recording may not make a copy of it or have in his or her possession any device that, by itself or in combination with any other device, can make a copy. The custodian or other designated court official or employee shall take reasonable steps to enforce this prohibition.

Committee note: If space is limited and there are multiple requests, the custodian may require several persons to listen to or listen to and view the recording at the same time or accommodate the requests in the order they were received.

Cross reference: See Rule 16-914 (g) pertaining to public access to transcripts and recordings of closed proceedings or

proceedings in an action as to which all documentary case records are required to be shielded.

(b) Criminal Proceedings - Redaction from Disseminated Copy of Audio Recording

(1) Motion; Findings; Order

On motion of a party or other interested person ~~or on its own initiative~~, the court may order that a specified portion of a criminal proceeding be redacted from a copy of an audio recording disseminated pursuant to subsection (a)(1) of this Rule if, by written order or on the record, the court makes a finding, **by clear and convincing evidence**, that ~~good cause~~ **(A) a compelling reason under the particular circumstances** exists for the redaction **and (B) no substantial harm will result from the redaction**. The court shall specify the portion of the proceeding that is to be redacted, when the redaction requirement will expire, if ever, and the reason for the redaction, which may include:

~~(A)(i)~~ **(i)** the impact of the dissemination of the audio recording on the right of the defendant or the State to a fair trial if the redaction is not made;

~~(B)(ii)~~ **(ii)** the age, mental condition, or medical condition of a witness whose testimony is sought to be redacted;

~~(C)(iii)~~ **(iii)** the intimate nature of the testimony sought to be redacted;

~~(D)(iv)~~ **(iv)** the likelihood of harm to a party, victim, or witness if the redaction is not made; or

~~(E)(v)~~ **(v)** other good cause.

(2) Least Restrictive Means

An order to redact a portion of a criminal proceeding from copies of the audio proceeding issued pursuant to subsection (b)(1) of this Rule shall be as narrow as

practicable in scope and duration to effectuate the interest sought to be protected.

Committee note: The duration of the redaction requirement may be for a specified time, such as until entry of judgment or other disposition in the case, or for an indefinite period.

### (3) Procedure

The clerk or other designee of the court shall create a log listing the recording references for the beginning and end of the portions of the recording as to which an order of redaction has been entered pursuant to subsection (b)(1) of this Rule. Unless the court orders otherwise, the testimony shall be redacted from all copies of the audio recording of the proceeding disseminated pursuant to subsection (a)(1) of this Rule, but shall not be redacted from the recording that a person may listen to or listen to and view pursuant to subsection (a)(2) of this Rule.

### (4) Reconsideration

If, on motion of a party or other interested person, the court makes a finding that there has been a material change in circumstances and finds that there no longer is good cause to redact information from a copy of a recording of a criminal proceeding, the court shall modify or rescind an order issued under subsection (b)(1) of this Rule.

### (c) Duty of Custodian

The custodian of a recording shall assure that (1) the copy of a recording disseminated pursuant to subsection (a)(1) of this Rule and (2) a recording listened to or listened to and viewed pursuant to subsection (a)(2) of this Rule comply with Rule 16-504 (g) and section (b) of this Rule, as applicable. Delivery of a copy of a recording or the ability to listen to or

listen to and view the recording may be delayed for a period reasonably necessary to accomplish the required safeguarding or redaction.

Source: This Rule is derived in part from former sections (h) and (i) of Rule 16-504 (2023) and is in part new.

The Chair invited comments on the handout drafts.

Rebecca Snyder, Executive Director of the Maryland, Delaware, D.C. Press Association ("the MDCC"), addressed the Committee. She said that she appreciates the Committee's consideration and she supports the alternate draft, which raises the burden of proof to clear and convincing evidence and also requires a finding that there is a special and compelling reason for the redaction and that no substantial harm will result. She also informed the Committee that the news organizations in the MDCC oppose the court being able to order redaction on its own initiative. She explained that she is concerned that individual judges or courts could develop standards for redaction as a matter of course even when no one has asked for it. She also commented on the suggestion by the Maryland Office of the Public Defender ("the OPD") in its written comment that the parties receive notice of a request for a recording and the opportunity to request redaction. She said that the ability of journalists to do their jobs is hampered when there are delays.

Judge Nazarian responded that he had difficulty understanding the MDDC's reluctance to allow the court to order redaction on its own initiative. He said that if the standard for redaction is the clear and convincing standard proposed in the handout, it is a very high bar for the court to clear to protect someone like an unrepresented witness. Judge Bryant commented that she was opposed to adding "on its own initiative" at the Subcommittee meeting but has since decided that she believes it is necessary. She gave the example of a plea hearing in a child sex abuse case she presided over the day before where the State and the defense attorney kept repeatedly using the child's name despite repeated admonishments. She said that as the presiding judge, she ordered those portions of the record shielded. Ms. Snyder responded that she understands situations such as the one described by Judge Bryant and would have no issue with a shielding or redaction order in those instances.

Maxwell Mishkin, an attorney representing the MDDC and a number of other media outlets, said that there is concern about the court being able to act without a motion and the standard being "good cause." He said that judges have different understandings of what constitutes good cause. Judge Nazarian responded that every standard has the problem of judicial interpretation, but pointed to the higher standard proposed in

the handout as a way to assuage some of the concerns. Mr. Mishkin said that access is generally adversarial and litigated, not dependent on a judge making the determination instead of relying on the parties to make a motion. Judge Nazarian stated that judges are guardians of the process, not representing a party.

Mr. Shellenberger remarked that he disagrees that access is an adversarial process. He said that as a prosecutor, he is responsible for protecting the defendant's right to a fair trial in order to ensure the integrity of his own case. He added that he agrees with the letter from the OPD that suggests the parties be given notice of a request for a recording. Mr. Mishkin responded that the court should be adjudicating the request for shielding or redaction only on motion by a party or other interested person. Judge Nazarian said that a decision by the court that does not go to the merits of the case should not be controversial.

Ms. Snyder said that she is more comfortable with the court using its own initiative to shield or redact portions of proceedings if the higher standard is adopted. Judge Brown commented that judges appreciate discretion, especially in cases with unrepresented parties. Judge Wilson agreed with Judge Brown. Mr. Mishkin suggested that if the court believes an unrepresented individual would be well served to request

shielding or redaction, the court can remind the individual of the right to make that request. Judge Nazarian responded that the court cannot tell someone to make a motion and questioned what information Mr. Mishkin is concerned will be improperly redacted from the recording by the court that would be newsworthy and of public interest. Ms. Snyder reiterated that she would not oppose moving forward with permitting the court to enter an order on its own initiative with the higher standard in the handout drafts.

Judge Nazarian moved to retain the language "or on its own initiative" in Rule 16-504 (g) on the assumption that the Committee will also adopt the standard of "clear and convincing evidence that a compelling reason under the particular circumstances exists for the redaction and no substantial harm will result from the shielding." Mr. Shellenberger seconded the motion.

The Chair called for further comment on the motion. Mr. Zollicoffer said that he agrees that the court should be able to intercede on its own initiative, but would prefer to see the motion to adopt this language come from a non-judge member of the Committee. Mr. Marcus said that he will make Judge Nazarian's motion to include "on its own initiative." He said that his assumption is that the court has a duty to follow the law and judges take an oath to do so. Mr. Zollicoffer seconded

the motion. Mr. Shellenberger reminded the Committee that the public is free to attend a court proceeding in person or listen to or watch back the testimony in his office or the courthouse and take notes. He said that the provision of the Rules being discussed applies to shielding information that should not be public or redacting portions of a recording that is disseminated. The Committee approved the motion by a majority vote.

Assistant Reporter Cobun asked the Committee if the motion encompassed the identical provisions in Rules 16-504.1 and Rule 16-502. Judge Nazarian responded that his motion did not include those Rules. By consensus, the Committee agreed that the same amendments should be made to the provisions in Rule 16-504.1 and Rule 16-502.

The Chair called for a motion on the second issue of the standard proposed in the handouts. Judge Bryant said that having heard the arguments and given the matter consideration, she believes that the heightened standard proposed in the handouts is warranted to alleviate concerns. She moved to adopt the standard of "clear and convincing evidence that a compelling reason under the particular circumstances exists for the redaction and no substantial harm will result" in Rules 16-504, 16-504.1, and 16-502. The motion was seconded.



The Chair called for comment on the motion. Judge Anderson asked what "no substantial harm" means in the standard. Judge Bryant responded that she sees it as a way to ask the court to stop and do a balancing test of the right of the public to access the information and the interests asserted by the party or witness making the motion. Mr. Mishkin commented that he likes the factors in Rule 16-504.1 (b) and appreciates the Committee's efforts. He asked the Committee about the intention of Rule 16-504.1 (b) (1) (B) (v), "other good cause." Judge Nazarian said that the list is not exhaustive and that factor could be relevant. The motion passed by majority vote.

The Chair said that the next issue raised by the comments is the OPD's request that Rule 16-504 (h) (1) (G) clarify that it applies to audio recordings and the audio portion of an audio-video recording. He informed the Committee that the issue is likely style, but that the amendment was made in the handout version. The Reporter commented that the handout is missing a similar change to subsection (h) (1) (H), which should include "the video portion of audio-video recordings." By consensus, the Committee approved the amendments to Rule 16-504 (h) (1) (G) and (H).

Brian Zavín, Chief Attorney of the Office of the Public Defender Appellate Division, addressed the Committee. He said that he supports the right of a party to file a motion to have a

portion of the proceeding redacted, but requests that the parties receive notice when a person requests a copy of a recording to give the parties time to exercise the right to request a redaction. He noted that if there is an immediate need to know what was said, a journalist or other member of the public can attend the proceeding in person or listen to the proceeding at the courthouse later. He said that he recognizes the problems with crafting the process, particularly for getting notice to people like witnesses, victims, and others who are not set up to receive notices through electronic filing.

Ms. Lindsey said that the clerk does not have contact information for victims and witnesses. Mr. Shellenberger suggested limiting the notice to the parties. He said that the press may take interest in a case months after the fact and his office needs to have the opportunity to review the recording for possible points of redaction. Ms. Snyder commented that one of the most common uses of court recordings by journalists is to verify quotes and information they took down while attending the proceeding in person. She said that the potential for delays would seriously harm those efforts. Mr. Mishkin said that the OPD's proposal would flip the presumption of the recording being a public record if the parties have a chance to ask for redaction after the request is made. Judge Nazarian commented that the circumstances that would justify shielding or redaction

are likely known to the parties and others at the time of the proceeding. He suggested that in the moment at court is the most appropriate time to make the request to shield or redact. Mr. Shellenberger asked if the Rule contemplates the prosecutor or defense attorney making a motion under the new Rule at the time of the proceeding before knowing if any member of the public will ever ask for it. The Committee generally agreed that this would have to be the practice.

Chief Judge Morrissey noted that the District Court sends out thousands of recordings via link and to have to stop and find a way to give notice would severely bog down that process. He said that he agrees with the press's position that recordings should be transparent and disseminated quickly and efficiently. Mr. Zollicoffer said that an open proceeding does not cease to be open just because the public did not attend in person. If the public does not have to ask for a right to be in the courtroom or put any party on notice, there should not be notice when a recording is requested later. The Chair called for a motion. No motion was made.

Mr. Zollicoffer moved to adopt Rules 16-504 and 16-504.1 as amended. By consensus, the Committee approved the Rules as amended.

Mr. Marcus presented Rule 16-502, In District Court, for consideration.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURT ADMINISTRATION  
CHAPTER 500 - RECORDING OF PROCEEDINGS

AMEND Rule 16-502 by requiring in section (a) that recordings be made "by a person authorized by the court to do so," by adding Rule 16-504.1 to the Rules listed in subsection (b) (2), by adding new subsection (b) (3) pertaining to official recordings, by adding "or on its own initiative" to section (f), by clarifying references to closed proceedings and Rule 16-914 (g) in subsections (g) (1) and (g) (3), by adding a Committee note following subsection (g) (1) pertaining to Rule 16-914 (g), by adding new subsection (g) (4) pertaining to notice of restricted access to a recording, by adding new subsection (g) (5) pertaining to restrictions on use of copies of a recording obtained pursuant to subsection (g) (3), by adding new subsection (g) (6) establishing the penalty for violation of a restriction on use, and by making stylistic changes, as follows:

Rule 16-502. IN DISTRICT COURT

(a) Proceedings to be Recorded

All trials, hearings, testimony, and other judicial proceedings before a District Court Judge held either in a courtroom or by remote electronic means shall be recorded verbatim in their entirety by a person authorized by the court to do so, except that, unless otherwise ordered by the court, the person responsible for recording need not report or separately record an audio or audio-video recording offered as evidence at a hearing or trial.

Committee note: Section (a) of this Rule does not apply to ADR proceedings conducted pursuant to Title 17, Chapter 300 of these Rules.

(b) Method of Recording

(1) Generally

Proceedings shall be recorded by an audio recording device provided by the court.

(2) As Authorized By Chief Judge

The Chief Judge of the District Court may authorize recording by additional means, including audio-video recording. Audio-video recording of a proceeding and access to an audio-video recording shall be in accordance with this Rule and Rules 16-503, ~~and 16-504,~~ and 16-504.1.

(3) Official Recordings

Except for extended coverage of court proceedings permitted under Title 16, Chapter 600 of these Rules, only official recordings of judicial proceedings made in accordance with this Rule are permitted.

(c) Control of and Direct Access to Electronic Recordings

(1) Under Control of District Court

Electronic recordings made pursuant to this Rule shall be under the control of the District Court.

(2) Restricted Access or Possession

No person other than an authorized Court official or employee of the District Court may have direct access to or possession of an official electronic recording.

(d) Filing of Recordings

Subject to section (c) of this Rule, audio recordings and any other recording authorized by the Chief Judge of the

District Court shall be maintained by the court in accordance with the standards specified in an administrative order of the Chief Justice of the Supreme Court.

Cross reference: See Rule 16-505 (a) providing for an administrative order of the Chief Justice of the Supreme Court.

(e) Court Reporters and Persons Responsible for Recording Court Proceedings

Regulations and standards adopted by the Chief Justice of the Supreme Court pursuant to Rule 16-505 (a) apply with respect to court reporters and persons responsible for recording court proceedings employed in or designated by the District Court.

(f) Safeguarding Confidential Portions of Proceedings

If a portion of a proceeding involves placing on the record matters that, on motion or on its own initiative, the court finds ~~should~~ and lawfully may be shielded from public access and inspection, the court shall direct that appropriate safeguards be placed on that portion of the recording. The clerk shall create a log listing the recording references for the beginning and end of the safeguarded portions of the recording. The log shall be kept in the court file, and a copy of the log shall be kept with the recording.

(g) Right to Obtain Copy of Audio Recording

(1) Generally

Except (A) ~~for proceedings closed pursuant to law,~~ for proceedings as to which Rule 16-914 (g) applies, ~~(B) as provided in Rule 16-914 (g),~~ (C) (B) as otherwise provided in this Rule, or ~~(D)~~ (C) as ordered by the court, the authorized custodian of an official audio recording shall make a copy of the audio recording available to any

person upon written request and, unless waived by the court, upon payment of the reasonable costs of making the copy.

Committee note: Rule 16-914 (g) prohibits public access to transcripts and recordings of closed proceedings and proceedings in actions as to which all documentary case records are required to be shielded.

(2) Redacted Portions of Recording

Unless otherwise ordered by the District Administrative Judge, the custodian of the recording shall assure that all portions of the recording that the court directed be safeguarded pursuant to section (f) of this Rule are redacted from any copy of a recording made for a person under subsection (g)(1) of this Rule. Delivery of the copy may be delayed for a period reasonably required to accomplish the redaction.

(3) Exceptions

Upon written request by any of the following persons and subject to the conditions in this Rule, the custodian shall make available to the ~~following persons~~ requesting person a copy of the audio recording of ~~proceedings that were closed pursuant to law, that are subject to Rule 16-914 (g),~~ a proceeding as to which Rule 16-914 (g) applies or a proceeding from which safeguarded portions have not been redacted:

(A) the Chief Justice of the Supreme Court;

(B) the Chief Judge of the District Court;

(C) the District Administrative Judge having supervisory authority over the court;

(D) the presiding judge in the case;

(E) the Commission on Judicial Disabilities or, at its direction, Investigative Counsel;

(F) Bar Counsel;

(G) unless otherwise ordered by the court, a party to the proceeding or the attorney for a party;

(H) a stenographer or transcription service designated by the court for the purpose of preparing an official transcript of the proceeding, provided that (i) the transcript of unredacted safeguarded portions of a proceeding, when filed with the court, shall be placed under seal or otherwise shielded by order of court and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted safeguarded portions shall be prepared for or delivered to any person not listed in subsection (g) (3) of this Rule; and

(I) any other person authorized by the District Administrative Judge.

#### (4) Notice of Restricted Access

The custodian who provides a copy of a recording pursuant to subsection (g) (3) of this Rule shall mark or otherwise indicate whether the recording contains, in whole or in part, a proceeding as to which Rule 16-914 (g) applies or public access is limited pursuant to section (f) of this Rule. If the copy of the recording contains any such proceedings, the custodian shall specify each section of the recording as to which the restrictions set forth in subsection (g) (4) of this Rule are applicable.

#### (5) Restrictions on Use by Authorized Persons

##### (A) Generally

Except as provided in subsection (g) (5) (B) of this Rule, unless authorized by an order of court, a person who, under subsection (g) (3) of this Rule, receives a



copy of an electronic recording as to which all or a portion is subject to Rule 16-914 (g) or as to which public access is limited pursuant to subsection (f) of this Rule, shall not (i) make or cause to be made any additional copy of the shielded portion of the recording or (ii) play the shielded portion of the recording for or give or electronically transmit the shielded portion of the recording to any person not entitled to it under subsection (g) (3) of this Rule.

(B) Exceptions

A person who receives a copy of an electronic recording under subsection (g) (3) of this Rule may play the recording for or give or electronically transmit the recording, including any shielded portions, to (i) a non-sequestered witness; (ii) an agent, employee, or consultant of the authorized person; (iii) in connection with subsequent litigation; or (iv), with respect to the Commission on Judicial Disabilities, Investigative Counsel, or Bar Counsel, in connection with the duties of that office. A person permitted to listen to or electronically receive the recording is subject to the restrictions on use in subsection (g) (5) of this Rule.

(6) Violation of Restrictions on Use

A willful violation of subsection (g) (5) of this Rule may be punished as a contempt.

Source: This Rule is derived from former Rule 16-504 (2016).

Rule 16-502 was accompanied by the following Reporter's note:

Proposed amendments to Rule 16-502 conform it to proposed amendments to Rule 16-503 and incorporate provisions from Rule 16-504.

Section (a) is amended to clarify that a recording pursuant to the Rule can only be made by a person authorized by the court to do so.

A conforming amendment in Rule 16-502 (b) (2) adds Rule 16-504.1 to the list of Rules applicable to audio-video recording and access to audio-video recording in District Court.

New subsection (b) (3) states that only official recordings of proceedings are permitted, unless extended coverage of proceedings is permitted pursuant to Title 16, Chapter 600.

Section (f) is amended to permit the court to order a portion of a proceeding to be shielded from public access on its own initiative.

Subsection (g) (1) is amended to clarify a reference to Rule 16-914 (g) and access to proceedings that are closed or are part of actions as to which all documentary records are shielded. A Committee note after subsection (g) (1) explains the provision of Rule 16-914 (g). Subsection (h) (3) is also amended for clarity.

Provisions in Rule 16-504 (h) and (j) permit certain authorized persons to obtain a copy of a recording or a portion of a recording not otherwise available to the public. Those provisions have been updated and clarified in proposed new section (h) in Rule 16-504. Rule 16-502 does not contain the restriction on subsequent use of a copy of a recording as to which public access is restricted. Proposed amendments to Rule 16-502 (g) add new subsections (g) (4) through (g) (6), which are modeled after proposed new subsections (h) (2) through (h) (4) in Rule 16-504. See the Reporter's note to Rule 16-504 for more information.

Mr. Marcus said that Rule 16-502, other than the amendments already approved, contains conforming and clarifying amendments. He said that section (a) clarifies that the court's recording must be made by an authorized person; subsection (b)(3) adds a provision pertaining to official recordings, which is also added to Rule 16-503; and new subsections (g)(4), (g)(5), and (g)(6) contain the restricted access provisions added to Rule 16-504. He noted that the Committee has already voted earlier today to conform section (f) to Rule 16-504 (g) regarding shielding on the court's own initiative and the heightened standard. By consensus, the Committee approved the Rule as amended.

Mr. Marcus presented Rule 16-503, In Circuit Court, for consideration.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURT ADMINISTRATION  
CHAPTER 500 - RECORDING OF PROCEEDINGS

AMEND Rule 16-503 by stating that recordings pursuant to subsection (a)(1) shall be made "by a person authorized by the court to do so," by adding new section (c) pertaining to official recordings, and by making stylistic changes, as follows:

Rule 16-503. IN CIRCUIT COURT

(a) Proceedings to be Recorded

(1) Proceedings in the Presence of Judge

All trials, hearings, testimony, and other judicial proceedings before a circuit court judge held either in a courtroom or by remote electronic means shall be recorded verbatim in their entirety by a person authorized by the court to do so, except that, unless otherwise ordered by the court, the person responsible for recording need not report or separately record an audio or audio-video recording offered as evidence at a hearing or trial.

. . .

(c) Official Recordings

Except for extended coverage of court proceedings permitted under Title 16, Chapter 600 of these Rules, only official recordings of judicial proceedings made in accordance with this Rule are permitted.

Source: This Rule is derived in part from former Rule 16-404 (2016). Section (c) is new.

Rule 16-503 was accompanied by the following Reporter's note:

Proposed amendments to Rule 16-503 clarify information pertaining to official recordings of court proceedings in circuit court.

Subsection (a) (1) is amended to clarify that a recording pursuant to the Rule can only be made by a person authorized by the court to do so.

New section (c) states that only official recordings of proceedings are permitted, unless extended coverage of proceedings is permitted pursuant to Title 16, Chapter 600.

Mr. Marcus explained that Rule 16-503 is amended to add "by a person authorized to do so" to subsection (a)(1) and a new section pertaining to official recordings. These amendments were also made in Rule 16-502. There being no motion to amend or reject the proposed Rule, it was approved as amended.

Mr. Marcus presented Rule 16-901, Scope of Chapter, for consideration.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURT ADMINISTRATION  
CHAPTER 900 - ACCESS TO JUDICIAL RECORDS  
DIVISION 1 - GENERAL PROVISIONS

AMEND Rule 16-901 by adding references to Rules 16-502 and 16-504.1 in the cross reference following section (b), as follows:

Rule 16-901. SCOPE OF CHAPTER

. . . .

(b) Access by Judicial Employees, Parties, Attorneys of Record, and Certain Government Agencies

The Rules in this Chapter do not limit access to (1) judicial records by authorized judicial officials or employees in the performance of their official duties or to government agencies or officials to whom access is permitted by law, or (2) a case record by a party or attorney of record in the action.

Cross reference: For other Rules that affect access to judicial records, see Rule 16-502 (In District Court), Rule 16-504 (Electronic Recording of Circuit Court Proceedings), Rule 16-504.1 (Access to Electronic Recording of Circuit Court Proceedings), and Rule 20-109 (Access to Electronic Records in MDEC Actions).

Source: This Rule is new.

Rule 16-901 was accompanied by the following Reporter's note:

Proposed amendments to Rule 16-901 add references to Rule 16-502 and Rule 16-504.1 to the cross reference identifying Rules affecting access to judicial records.

Mr. Marcus explained that Rule 16-901 contains an updated cross reference to the various Rules governing access to court records. There being no motion to amend or reject the proposed Rule, it was approved as amended.

Agenda Item 2. Consideration of proposed amendments to Rule 9-112 (Court Records) and Rule 11-319 (Court Records).

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Judge Bryant presented Rule 9-112, Court Records, and Rule 11-319, Court Records, for consideration.

MARYLAND RULES OF PROCEDURE  
TITLE 9 - FAMILY LAW ACTIONS

CHAPTER 100 - ADOPTION; PRIVATE AGENCY  
GUARDIANSHIP

AMEND Rule 9-112 by altering a provision in section (a) pertaining to confidentiality of dockets, by adding to section (b) the requirement that case records in adoption and guardianship proceedings be shielded when they are filed and sealed at a proscribed time, by adding new subsection (b)(1) pertaining to shielding of records in adoption and guardianship proceedings, by adding a cross reference following subsection (b)(1) to Rules governing inspection of case records and remote access to case records, by adding new subsection (b)(2)(A) pertaining to sealing of records in guardianship proceedings, by adding new subsection (b)(2)(B) pertaining to sealing of records in adoption proceedings, by relocating a provision pertaining to adoption records prior to June 1, 1947 to new subsection (b)(3), by adding new subsection (b)(4) pertaining to inspection of sealed records, by adding a cross reference following subsection (b)(4) to statutes governing access to records relating to an adoptee, and by making stylistic changes, as follows:

Rule 9-112. COURT RECORDS

(a) Dockets

The clerk shall keep separate dockets for (1) adoption and guardianship proceedings and (2) revocations of consent to adoption or guardianship for which there are no pending adoption or guardianship proceedings in that county. These dockets ~~are not open to inspection by any person, including the parents, except upon order of court~~ shall be confidential and shielded from public inspection. If the index to a

docket is kept apart from the docket itself, the index is open to inspection.

(b) Shielding and Sealing of Records

(1) Shielding of Records

All pleadings and other papers in adoption and guardianship proceedings shall be sealed confidential and shielded from public inspection when they are filed.

Cross reference: See Rule 16-914 (a) requiring denial of inspection of case records in actions for adoption, guardianship, or revocation of consent to adoption or guardianship filed under this Chapter. See Rule 20-109 concerning remote access.

(2) Sealing of Records

(A) Guardianship Records

All pleadings and other papers in a guardianship proceeding shall be sealed and not open to inspection by any person, including a parent, upon the later of (i) 30 days after termination of the proceeding pursuant to Code, Family Law Article, § 5-3A-25 or, (ii) if an appeal is taken, dismissal of the appeal or exhaustion of appellate review.

(B) Adoption Records

Except as otherwise provided in subsection (b)(3) of this Rule, all pleadings and other papers in an adoption proceeding shall be sealed and are not open to inspection by any person, including the parents, except upon an order of court upon the later of (i) 30 days after entry of a judgment of adoption, or (ii) if an appeal is taken, dismissal of the appeal or exhaustion of appellate review. If a final decree of adoption was entered before June 1, 1947 and the record is not already sealed, the record may be sealed only on motion of a party. When an adoption is finalized, The the clerk shall notify send



notice of the finalization to each person entitled to notice that the adoption has been finalized.

Cross reference: See Code, Health - General Article, § 4-211, concerning the amendment and replacement of birth certificates following adoption and the requirement that the clerk transmit to the Maryland Department of Health a report of adoption or revocation of adoption.

(3) Adoption Records Prior to June 1, 1947

If a final decree of adoption was entered before June 1, 1947 and the record is not already sealed, the record may be sealed only on motion of a party.

(4) Inspection of Sealed Records

Sealed records of guardianship and adoption proceedings shall remain sealed and not be opened for inspection except upon order of court.

Cross reference: See Code, Family Law Article, Title V, Subtitle 3, Part IV; Subtitle 3A, Part IV; and Subtitle 3B, Part III concerning access to records relating to an adoptee.

Source: This Rule is derived from former Rule D80 a and c and is in part new.

Rule 9-112 was accompanied by the following Reporter's note:

Proposed amendments to Rule 9-112 and 11-319 address concerns raised by the Major Projects Committee ("the MPC") about the operation of the Rules with respect to remote access by parties and attorneys to adoption and guardianship terminating parental rights ("TPR") proceedings in the MDEC system. The MPC stated that the Rules

as written prohibit remote MDEC access to these cases by any person, including access by a party or attorney in a pending case. Effective February 23, the Office of Information Technology in the Administrative Office of the Courts established new case types for adoption and TPR matters which are sealed except to judges and courthouse personnel.

Discussions with clerks and practitioners, including the Office of the Attorney General and Office of the Public Defender, confirmed that attorneys have generally had access to their own case files while the case is ongoing or on appeal, including in MDEC. The Juvenile Law Committee within the Judicial Council was consulted and recommended an amendment to the Rules to maintain the status quo prior to the programming change.

Proposed amendments to section (a) clarify that dockets for adoption and guardianship proceedings and revocations of consent for which there are no pending proceedings are confidential and not subject to public inspection.

Proposed amendments to section (b) generally require that pleadings and papers in adoption and guardianship proceedings be shielded when filed and then sealed when the case is concluded. A cross reference following subsection (b)(1) directs the reader to Rule 16-914 (a), which prohibits public inspection of these records, and Rule 20-109, which governs remote access to records.

New subsection (b)(2) dictates when the pleadings and papers must be sealed in each type of proceeding. Subsection (b)(2)(A) requires guardianship records to be sealed 30 days after termination of the proceeding or, if an appeal is taken, dismissal of the appeal or exhaustion of appellate review. Subsection (b)(2)(B) contains similar provisions pertaining to sealing adoption

records. The existing language governing adoption records for final decrees entered before June 1, 1947 is relocated to new subsection (b) (3).

New subsection (b) (4) requires sealed records to remain sealed unless opened for inspection by the court. A cross reference following subsection (b) (4) cites to statutes governing access to records.

## MARYLAND RULES OF PROCEDURE

### TITLE 11 - JUVENILE CAUSES

#### CHAPTER 300 - GUARDIANSHIP TERMINATING PARENTAL RIGHTS

AMEND Rule 11-319 by adding new section (a) pertaining to dockets for guardianship proceedings, by adding to section (a) a provision that dockets are confidential and shielded from public inspection, by adding new section (b) pertaining to shielding and sealing of records, by adding new subsection (b) (1) pertaining to shielding of records in guardianship proceedings, by adding a cross reference following subsection (b) (1) to Rules governing inspection of case records and remote access to case records, by adding new subsection (b) (2) pertaining to sealing of records in guardianship proceedings, by adding a cross reference following subsection (b) (2) to a statute and Rule governing closure of guardianship cases, by adding new subsection (b) (3) pertaining to inspection of sealed records, by adding a cross reference following subsection (b) (3) to statutes governing access to records relating to an adoptee, and by making stylistic changes, as follows:

Rule 11-319. COURT RECORDS

(a) Dockets

The court shall keep a separate docket for guardianship proceedings, which shall be confidential and shielded from public inspection.

(b) Shielding and Sealing of Records

(1) Shielding of Records

All pleadings and other papers in guardianship proceedings shall be ~~sealed~~ confidential and shielded from public inspection when they are filed.

Cross reference: See Rule 16-914 (a) requiring denial of inspection of case records in actions for guardianship filed under this Chapter and Rule 20-109 concerning remote access.

(2) Sealing of Records

All pleadings and other papers shall be sealed and are not open to inspection by any person, including a parent, ~~except upon an order of court~~ upon the later of (A) 30 days after the guardianship action is closed, or (B) if an appeal is taken, dismissal of the appeal or exhaustion of appellate review.

Cross reference: See Code, Family Law Article, § 5-328 and Rule 11-318 concerning termination of guardianship proceedings and a court order closing the guardianship action.

(3) Inspection of Sealed Records

Sealed records of guardianship proceedings shall remain sealed and not be opened for inspection except upon order of court.

Cross reference: See Code, Family Law Article, Title 5, Subtitle 3, Part V

concerning access to records relating to an adoptee.

Source: This Rule is derived from Rule 9-112 and is in part new.

Rule 11-319 was accompanied by the following Reporter's note:

Proposed amendments to Rule 9-112 and 11-319 address concerns raised by the Major Projects Committee ("the MPC") about the operation of the Rules with respect to remote access by parties and attorneys to adoption and guardianship terminating parental rights ("TPR") proceedings in the MDEC system. See the Reporter's note to Rule 9-112 for more information.

Proposed amendments to section (a) clarify that dockets for guardianship proceedings are confidential and not subject to public inspection.

Proposed amendments to section (b) generally require that pleadings and papers in guardianship proceedings be shielded when filed and then sealed when the case is concluded. A cross reference following subsection (b)(1) directs the reader to Rule 16-914 (a), which prohibits public inspection of these records, and Rule 20-109, which governs remote access to records.

New subsection (b)(2) requires guardianship records to be sealed 30 days after termination of the proceeding or, if an appeal is taken, dismissal of the appeal or exhaustion of appellate review. A cross reference following subsection (b)(2) identifies the statute and Rule governing termination of guardianship proceedings and closure of the action.

New subsection (b)(4) requires sealed records to remain sealed unless opened for inspection by the court. A cross reference

following subsection (b) (4) cites to statutes governing access to guardianship records.

Judge Bryant informed the Committee that after the Supreme Court approved the new Title 11 Rules governing juvenile proceedings, Judicial Information Systems made changes to MDEC that prohibit parties and their attorneys from accessing adoption and guardianship filings under Title 9 and Title 11. She said that filings attorneys were generally able to view in the past are now sealed to them. The proposed amendments to Rules 9-112 and 11-319 are intended to restore the previous level of access. The proposed amendments require pleadings and papers to be shielded from the public on filing and then sealed when the proceeding is concluded, including any appeals. She said that the change is relatively straightforward, and parties need access to these case records while the case is pending. There being no motion to amend or reject the proposed Rules, they were approved as amended.

The Reporter asked the Committee if the proposed amendments are sufficiently important to justify submitting them to the court on an emergency basis. Judge Bryant responded in the affirmative. By consensus, the Committee recommended the transmittal of Rules 9-112 and 11-319 to the Supreme Court promptly.

Agenda Item 3. Consideration of proposed amendments to Rule 10-105 (Waiver of Notice) and Rule 16-914 (Case Records - Required Denial of Inspection - Certain Categories).

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Judge Bryant presented Rule 10-105, Interested Persons - Waiver of Notice and Access to Court Records, for consideration.

MARYLAND RULES OF PROCEDURE  
TITLE 10 - GUARDIANS AND OTHER FIDUCIARIES  
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 10-105 by adding language to the name of the Rule, by creating new subsections (a)(1) and (a)(2) with the language of current sections (a) and (b), by making stylistic changes in subsection (a)(1), and by adding new section (b) and a subsequent cross reference related to access to case records, as follows:

Rule 10-105. INTERESTED PERSONS - WAIVER OF NOTICE AND ACCESS TO CASE RECORDS

(a) Waiver of Notice

(1) Method of Waiver

An interested person other than a minor or disabled person may waive the right to any or all notices other than original notice by filing a signed waiver. A minor or disabled person may waive the right to any or all notices other than original notice by a waiver signed and filed by ~~his~~ or her the attorney for the minor or

disabled person, which shall not be effective until approved by the court.

~~(b)~~ (2) Revocation

A waiver of notice may be revoked at any time by the filing of a revocation, which shall be effective from the date filed.

(b) Access to Case Records

(1) Party Access

Subject to subsection (b) (2) of this Rule, an interested person is a party to the action and has access to case records in the action.

(2) Restriction on Access

The court may restrict an interested person's access to case records for good cause, after notice and an opportunity for a hearing.

Cross reference: See Rule 16-914 (e).

Source: This Rule is derived from former Rule R70 f and Rule 6-126.

Rule 10-105 was accompanied by the following Reporter's

note:

Proposed amendments to Rule 10-105 clarify that an "interested person" as defined in Rule 10-103 is a "party" to the action. The Committee was informed that interested persons in guardianship cases are not always provided the same remote access to case records as the petitioner or the respondent, despite having standing in the action.

In guardianship actions, an interested person has standing to participate in the proceeding, including by opposing the petition, by obtaining discovery, and by requesting the testimony of the certifying



physician or psychologist. See *In re Lee*, 132 Md. App. 696 (2000). Other case types that involve "interested persons" do not always have similar participation in the action. Due to the unique nature of guardianship proceedings, proposed amendments seek to clarify that interested persons are parties, ensuring that interested persons can appropriately access the file otherwise shielded from the public by Rule 16-914 (e).

The name of Rule 10-105 is updated to reflect its broader application. Stylistic amendments add a new tagline to section (a) and create new subsections (a)(1) and (a)(2) with the current language of the Rule. A stylistic change is made in subsection (a)(1) also.

Proposed amendments to Rule 10-105 add new section (b) to address an interested person's access to case records. New subsection (b)(1) states clearly that an interested person is a party to the action. New subsection (b)(2) sets forth appropriate court action to limit an interested person's access to case records. The language requires good cause, as well as notice and an opportunity for a hearing, before access is restricted. For example, a guardianship proceeding may reveal that an adult child of an alleged disabled person has been misusing or stealing the funds of the alleged disabled person. Because the adult child is an interested person in the case by statute, the interested person cannot be removed from the case. However, future access to the financial records and accounts by the adult child may prove detrimental to the interests of the alleged disabled person. Accordingly, proposed amendments to Rule 10-105 enable a court to restrict an interested person's access to the file to protect against the possible misuse of sensitive information in case records.

Judge Bryant explained that the proposed amendments to Rule 10-105 permit the attorney for a minor or disabled person to waive subsequent notices and permit interested persons to access case records. She said that interested persons have had trouble accessing guardianship case records. The amendments permit the court to restrict that access for good cause if the court finds that the interested person is taking advantage of the individual who is subject to the guardianship. There being no motion to amend or reject the proposed Rule, it was approved as amended.

Judge Bryant presented Rule 16-914, Case Records - Required Denial of Inspection - Certain Categories, for consideration.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURT ADMINISTRATION  
CHAPTER 900 - ACCESS TO JUDICIAL RECORDS  
DIVISION 2 - LIMITATIONS ON ACCESS

AMEND Rule 16-914 by deleting and adding language to the Committee note following section (e), as follows:

Rule 16-914. CASE RECORDS - REQUIRED DENIAL OF INSPECTION - CERTAIN CATEGORIES

Except as otherwise provided by law, court order, or the Rules in this Chapter, the custodian shall deny inspection of:

...

(e) Except for docket entries and orders entered under Rule 10-108, papers and submissions filed in guardianship actions or proceedings under Title 10, Chapter 200, 300, 400, or 700 of the Maryland Rules.

Committee note: Most filings in guardianship actions are likely to be permeated with financial, medical, or psychological information regarding the minor or disabled person that ordinarily would be sealed or shielded under other Rules. Rather than require custodians to pore through those documents to redact that kind of information, this Rule shields the documents themselves subject to Rule 16-934, which permits the court, on a motion and for good cause, to permit inspection of case records that otherwise are not subject to inspection. There may be circumstances in which that should be allowed. Parties to the action have access to the case records unless the court orders otherwise. See Rule 10-105 (b). ~~The guardian, of course, will have as a party, has~~ has access to the case records and may need to share some of them with third persons in order to perform ~~his or her~~ the duties, and this ~~of the guardian.~~ This Rule is not intended to impede the guardian from doing so. Public access to the docket entries and to orders entered under Rule 10-108 will allow others to be informed of the guardianship and to seek additional access pursuant to Rule 16-934.

...

Rule 16-914 was accompanied by the following Reporter's note:

Rule 16-914 sets forth certain categories of case records as to which the custodian must deny public access. Section (e) provides for the shielding of case

records in guardianship actions, except for docket entries and orders entered under Rule 10-108. A Committee note after the section states, *inter alia*, that the guardian has access to the case records and, in the performance of the guardian's duties, may need to share records with third parties.

Proposed amendments to the Committee note after section (e) add a sentence clarifying that, unless the court orders otherwise, parties have access to the case records. A citation to Rule 10-105 (b) also is added. Additionally, stylistic changes are made to the Committee note.

Judge Bryant said that Rule 16-914 updates a Committee note to refer to Rule 10-105 to make it clear that an interested person generally has access to case records in a guardianship proceeding, subject to a court order restricting that access. There being no motion to amend or reject the proposed Rule, it was approved as amended.

Agenda Item 4. Consideration of a "housekeeping" amendment to Rule 1-202 (Definitions).

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The Reporter presented Rule 1-202, Definitions, for consideration.

MARYLAND RULES OF PROCEDURE  
TITLE 1 - GENERAL PROVISIONS  
CHAPTER 200 - CONSTRUCTION, INTERPRETATION,  
AND DEFINITIONS

AMEND Rule 1-202 by replacing "Justice" with "justice" in section (n), as follows:

Rule 1-202. DEFINITIONS

In these rules the following definitions apply except as expressly otherwise provided or as necessary implication requires:

. . .

(n) Judge

"Judge" means a judge of a court of this State and refers, as applicable under the circumstances, to a judge of the court (1) to which the title, chapter, or rule applies or (2) in which the particular action or proceeding has been filed or properly could be filed. Subject to those conditions, "judge" includes a Justice justice of the Supreme Court of Maryland.

. . .

Rule 1-202 was accompanied by the following Reporter's note:

Rule 1-202 (n) has been updated in accordance with the Supreme Court's decision at the March 24, 2023 open meeting on the 214th and 215th Reports of the Rules Committee that "justice" rather than "Justice" be used when generally referring to one or more members of the Supreme Court of Maryland. The title, "Chief Justice," remains capitalized.

The Reporter informed the Committee that a definition was added to Rule 1-202 last year in response to the constitutional amendment that changed the "judges" of the Court of Appeals to "Justices" of the Supreme Court. She said that the amendment approved in 2022 capitalized "Justice," but the Supreme Court at the open meeting on the 215<sup>th</sup> Report stated a preference for a lowercase "j" when referencing justices in general. A title such as "Chief Justice" would remain capitalized as well as "Justice" before a name. She explained that in reviewing the existing Rules, Rule 1-202 still had the capital "J." By consensus, the Committee approved the Rule as presented.

There being no further business before the Committee, the Chair adjourned the meeting.