

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

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MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

Rule 16-1001. DEFINITIONS

In this Chapter, the following definitions apply except as expressly otherwise provided or as necessary implication requires.

(a) Administrative Record

(1) Except as provided in ~~¶(3)~~ **subsection (a) (3)** of this section **Rule**, "administrative record" means a record that:

(A) pertains to the administration of a court, a **another** judicial agency, or the judicial system of the State; and

(B) is not otherwise a case record.

(2) "Administrative record" includes:

(A) a rule adopted by a court pursuant to Rule 1-102;

(B) an administrative order, policy, or directive that governs the operation of a court, including an order, policy, or directive that determines the assignment of one or more judges to particular divisions of the court or particular kinds of cases;

(C) an analysis or report, even if derived from court records, that is:

(i) prepared by or for a court or other judicial agency;

(ii) used by the court or other judicial agency for purposes of judicial administration; and

(iii) not filed, and not required to be filed, with the clerk of a court.

(D) a jury plan adopted by a court;

(E) a case management plan adopted by a court;

(F) an electronic filing plan adopted by a court; and

(G) an administrative order issued by the Chief Judge of the Court of Appeals pursuant to Rule 16-1002.

(3) "Administrative record" does not include a document or information gathered, maintained, or stored by a person or entity other than a court or **other** judicial agency, to which a court or **other** judicial agency has access but which is not a case record.

(b) Business License Record

(1) "Business license record" means a court record pertaining to an application for a business license issued by the clerk of a court, and includes the application for the license and a copy of the license.

(2) "Business license record" does not include a court record pertaining to a marriage license.

(c) Case Record

(1) Except as otherwise provided in this Rule, "case record" means:

(A) a document, information, or other thing that is collected, received, or maintained by a court in connection with one or more specific judicial actions or proceedings;

(B) a copy of a marriage license issued and maintained by the court, including, after the license is issued, the application for the license;

(C) a miscellaneous record filed with the clerk of the court pursuant to law that is not a notice record.

(2) "Case record" does not include a document or information described in ¶ subsection (a) (3) of this Rule.

(d) Court-

"Court" means the Court of Appeals of Maryland, the Court of Special Appeals, a circuit court, the District Court of Maryland, and an orphans' court of Maryland.

(e) Court Record

"Court record" means a record that is:

- (1) an administrative record;
- (2) a business license record;
- (3) a case record; or
- (4) a notice record.

(f) Custodian

"Custodian" means:

- (1) the clerk of a court; and
- (2) any other authorized individual who has physical custody and control of a court record.

(g) Individual

"Individual" means a human being.

(h) Judicial Agency

"Judicial agency" means a unit within the Judicial Branch of the Maryland Government.

(i) Notice Record

"Notice record" means a record that is filed with a court pursuant to statute for the principal purpose of giving public notice of the record. It includes deeds, mortgages, and other documents filed among the land records; financing statements filed pursuant to Title 9 of the Code, Commercial Law Article, Title 9; and tax and other liens filed pursuant to statute.

(j) Person

"Person" means an individual, sole proprietorship, partnership, firm, association, corporation, or other entity.

(k) Remote Access

"Remote access" means the ability to inspect, search, or copy a court record by electronic means from a location other than the location where the record is stored.

**Source: This Rule is new.**

NOTE: Part of the problem in fashioning a fair and sensible policy is the failure to take account of the different kinds of records that courts and other judicial agencies keep. These Rules recognize that court records can be of four types: (1) those, like land records, that are filed with the court, not in connection with any litigation, but for the sole purpose of providing public notice of them; (2) those that are essentially administrative in nature -- that are created by the court or judicial agency itself and relate to the internal operation of a court or other judicial agency as an agency of Government; (3) those that are filed or created in connection with business

licenses (excluding marriage licenses) issued by the clerk; and (4) those that are filed with the court in connection with a judicial action or the issuance of a marriage license. The premise of these Rules is that, although the presumption of openness applies to all four kinds of records, they need to be treated differently in some respects.

The easiest group are records, such as land records, that are filed with the clerk for the sole purpose of giving public notice to them. Because the court has custody of those records, they are court records, but, because the court's only function with respect to those records is to preserve them and make and keep them available for public inspection, there is no justification for shielding them, or any part of them, from public inspection. Indeed, shielding those records would destroy, or at least seriously impair, the doctrine of constructive notice that is applied to those records. Those kinds of records are defined as "notice records," and it is the intent of these Rules that there be no substantive (content) restrictions on public access to them. People who routinely draft these kinds of documents should be educated about privacy issues and encouraged not to include unnecessary personal information in them.

The Rules assume that the kinds of internal administrative records maintained by a court or other Judicial Branch agency, mostly involving personnel, budgetary, and operational management, are similar in nature and purpose to the kinds of administrative records maintained by Executive Branch agencies and that records pertaining to business licenses issued by a court clerk are similar in nature to records kept by Executive Branch agencies that issue licenses of one kind or another. The Rules thus treat those kinds of records more or less the same as comparable Executive Branch records. The PIA provides the most relevant statement of public policy regarding those kinds of records, and, as a general matter, these Rules apply the PIA to those kinds of records.

A different approach is taken with respect to case records - those that come into the court's possession as the result of their having been filed by litigants in judicial actions. As to them, the Rules carve out only those exceptions to public access that are felt particularly applicable. The exceptions, for the most part, are much narrower. Categorical exceptions are limited to those that (1) have an existing basis, either by statute other than the PIA, or by specific Rule, or (2) present some compelling need for non-access. In an attempt to remove discretion from clerical personnel to deny public access and require that closure be examined by a judge on a case-by-case basis, the Rules require that all other exclusions be by court order, and they provide a

procedure for obtaining such orders. Under this approach, some records that may be mandatorily or discretionarily non-accessible in the hands of Executive Branch agencies would be accessible when filed in court, unless closed by court order in individual cases. Those kinds of orders will be subject to fairly well-defined standards enunciated by the United States Supreme Court and the Maryland Court of Appeals that limit the ability of courts to close either court proceedings or court records. Because the Rules propose to treat marriage licenses in the same manner as case records rather than as business licenses (and thus provide greater access to them), they are included in the definition of "case record."

To achieve the differentiation between these various kinds of court records, four categories are specifically defined in this Rule - "administrative records," "business license records," "case records," and "notice records." Some principles enunciated in the Rules apply to all four categories, and, for that purpose, the term "court records," which include all four categories, is used.

Rule 16-1002. GENERAL POLICY

(a) Presumption of Openness

Court records maintained by a court or by another judicial agency are presumed to be open to the public for inspection. Except as otherwise provided by or pursuant to these **the** Rules **in this Chapter**, the custodian of a court record shall permit a person, upon personal appearance in the office of the custodian during normal business hours, to inspect such a **the** record.

(b) Protection of Records

To protect court records and prevent unnecessary interference with the official business and duties of the custodian and other court personnel,

~~(i)~~ **(1)** a clerk is not required to permit inspection of a case record filed with the clerk for docketing in a judicial action or a notice record filed for recording and indexing until the document has been docketed or recorded and indexed; and

~~(ii)~~ **(2)** the Chief Judge of the Court of Appeals, by administrative order, **a copy of which shall be filed with and maintained by the clerk of each court,** may adopt procedures and conditions, not inconsistent with these **the** Rules **in this Chapter**, governing the timely production, inspection, and copying of court records, ~~in both hard copy and electronic form. A copy of each such administrative order shall be filed with and maintained by the clerk of each court.~~

(c) Records Admitted or Accepted as Evidence

Unless ~~otherwise specifically ordered by the court~~ **expressly orders otherwise**, a court record that has been formally admitted into evidence in a judicial action or that a court has accepted as evidence for purposes of deciding a motion is subject to inspection, notwithstanding that the record otherwise would not have been subject to inspection under these **the** Rules **in this Chapter**.

(d) Fees

(1) Unless otherwise expressly permitted by these **the** Rules **in this Chapter**, a custodian may not charge a fee for providing access to a court record that can be made available for inspection, in paper form or by electronic access, with the expenditure of less than two hours of effort by the custodian or other judicial employee.

(2) A custodian may charge a reasonable fee if two hours or more of effort is required to provide the requested access.

(3) The custodian may charge a reasonable fee for making or supervising the making of a copy or printout of a court record.

(4) The custodian may waive a fee if, after consideration of the ability of the person requesting access to pay the fee and other factors the custodian finds relevant, the custodian determines that the waiver is in the public interest.

(e) New Court Records

(1) Except as expressly required by other law and subject to Rule 16-1008, neither a custodian nor any a court or other judicial agency is required by these the Rules in this Chapter to index, compile, re-format, program, or reorganize existing court records or other documents or information to create a new court record that is not necessary for the court to be maintained in the ordinary course of its business. The removal, deletion, or redaction from a court record of information that is not subject to inspection under these the Rules in this Chapter in order to make the court record subject to inspection shall not be deemed to does not create a new record for purposes of within the meaning of this Rule.

(2) If a custodian, court, or other judicial agency (A) indexes, compiles, re-formats, programs, or reorganizes existing court records or other documents or information to create a new court record, or (B) comes into possession of a new court record created by another from the indexing, compilation, re-formatting, programming, or reorganization of other court records, documents, or information, and there is no basis under these the Rules in this Chapter to deny inspection of that new court record or some part of that court record, the new court record or that a part for which there is no basis to deny inspection shall be subject to inspection. If the court or other judicial agency has expended any of its own resources in creating a new court record

in response to a request under these **the Rules in this Chapter**, it may charge ~~a reasonable fee~~ to any person seeking inspection of the new court record ~~in order to recover its costs~~ **a reasonable fee to recover its costs.**

(f) Access by Judicial Employees

The Rules in this title **Chapter** concern **address** access to court records by the public at large. ~~They are not intended to~~ **and do not** limit access to court records by judicial officials or employees, ~~when and to the extent that~~ **in the performance of** their official duties ~~require such access.~~

**Source: This Rule is new.**

NOTE: Section (a) follows the long-standing common law right of public access to judicial records and the presumption of accessibility. Section (b) recognizes the common law right, articulated as well in the PIA, of agencies to place reasonable procedural limitations on access to and copying of their records - limitations that take into account the need to protect the records from theft, alteration, or destruction as well as the operational efficiency of the agency and the fact that employees have other duties to perform.

Two issues are raised with respect to **§ section** (b). Occasionally, clerks' offices fall behind in docketing papers filed in judicial actions and in recording and indexing documents qualifying as notice records. Sometimes, this results from either chronic or short-term understaffing - vacancies that cannot be filled, lag times in replacing employees who leave and training the replacements, vacations, or illnesses - or from a temporary deluge in filings. Many of the land record offices are currently experiencing serious backlogs due to the refinancing of mortgages and increased sales of real property. Delays, with respect to both docketing papers filed in judicial actions and recording and indexing notice records can vary from a few days to weeks to months.

When this occurs, a true dilemma is presented. On the one hand, a document becomes a court record immediately upon its

filing and is presumptively open to inspection at that time. Delaying public access for more than a brief period because of operational problems in the clerk's office is inconsistent with the public policy of openness. On the other hand, unlimited immediate access to documents prior to their being docketed or, in the case of notice records, prior to their being recorded and indexed, can create some serious operational and security problems. These documents are usually in stacks awaiting processing, and clerks are legitimately concerned about removing them from those stacks for public inspection. They can get lost, stolen, altered, or misplaced before any official record is made of them. Most clerks do not now permit access to documents until the docketing or recording and indexing is complete. This is an important policy issue for the Court. Section (b) of this Rule adopts the current practice and permits a clerk to deny inspection of a case record until it has been docketed or, in the case of notice records, recorded and indexed.

Section (b) also recognizes that the Rules cannot deal with all of the details pertaining to how access and copying is to be achieved. The Rule therefore permits the Chief Judge, by administrative order, to provide guidelines to the custodians. The order itself is a court record that must be filed with the clerks so it is immediately accessible to the public.

Section (c) recognizes that once a record, or information in a record, becomes evidence in a case, the presumption of accessibility becomes much stronger and that categorical shielding of the record or information, which may previously have been appropriate, is no longer so. If such a record or information is to be shielded, it must be done by court order applicable to that specific record or information. With respect to section (d), Md. Code, § **State Government Article**, §10-621 permits a custodian to charge, or waive, a fee for any time exceeding two hours needed to search for a public record. ~~Section (d) does not allow a fee if the record is immediately available and leaves open whether a fee can be charged if the record is in archival storage or not otherwise immediately available. Perhaps that can be dealt with by administrative order of the Chief Judge under §(b) of the Rule.~~

Section (e) is derived, in part, from Arizona Rule 123. It makes clear that there is no obligation on the part of any judicial agency or official to create new court records not required for the agency's own purposes for the benefit of persons desiring the restructured information. If the custodian, court, or agency does create such a new record, however, or comes into possession of one created by another, that new record will be subject to inspection unless there is some basis under these Rules to deny inspection. If the court or agency has expended

its own resources to create the new record in response to a request under these Rules, it may charge a reasonable fee for access to the record in order to recover its costs. The Rule does not authorize a fee if the new record was created by the court or agency for its own purposes.

Section (f) makes clear that the Rules in this ~~title~~ **Chapter** concern public access to court records. They do not limit the necessary right of access to court records, even those declared confidential and non-accessible to the public, by judicial officials and employees, when and to the extent that their official duties require such access.

Rule 16-1003. COPIES

(a) Except as provided in ~~§ (b) of this Rule~~ **otherwise expressly provided by law**, a person who is entitled to inspect a court record ~~may have~~ **is entitled to have** a copy or printout of the court record. The copy or printout may be in paper form or, subject to Rule 16-1008 (a) (3), in electronic form.

(b) To the extent practicable, a copy or printout in paper form shall be made: **where the court record is kept and**

~~(1) while the court record is in the custody of the custodian; and.~~

~~(2) where the court record is kept.~~

**Source: This Rule is new.**

SOURCE: ~~Md.~~ Code, ~~§~~ **State Government Article**, §10-620 permits an applicant to have a photograph of a public record and provides that, if the custodian does not have the facility to make a copy, printout, or photograph, he/she must allow access to the record so that the applicant can make a copy, printout, or photograph. That has not been included in the Rule. Court custodians have facilities to make copies or printouts, and there may be a justifiable reluctance to permit members of the public to take possession of court records for the purpose of making their own copies. ~~§~~ **Code, State Government Article**, §10-620 (a) (2) provides that a person may not have a copy of a judgment until the time for appeal expires or, if an appeal is noted, the appeal is dismissed or adjudicated. That provision, as worded, makes very little sense and is inconsistent with ~~Md.~~ Rule 2-601, which requires a circuit court clerk, promptly after entering a judgment, to send copies of it to the parties. The statutory provision has not been included in these Rules. It may be useful for the Court to adopt a separate Rule precluding the clerk from *certifying* a judgment until it has become enrolled.

The Rule provides for copies to be in electronic form, which, increasingly, will be the desired form. In that regard, the Rule references Rule 16-1008 (a) (3), which makes clear that,

in allowing electronic access, a court is not required to modify its electronic storage or retrieval system, and the recipient gets the information in the form that the court's system is equipped to provide it.

Rule 16-1004. ACCESS TO NOTICE, ADMINISTRATIVE, AND BUSINESS  
LICENSE RECORDS

(a) Notice Records

A custodian may not deny inspection of a notice record that has been recorded and indexed by the clerk.

(b) Administrative and Business License Records

(1) Except as otherwise provided by these **the** Rules **in this Chapter**, the right to inspect administrative and business license records ~~shall be~~ **is** governed by Code, State Government Article, §§10-611 through 10-626.

(2) Except as provided by ~~Maryland Code, Courts and Judicial Proceedings~~ Article, §8-212 (b) or (c), a custodian shall deny inspection of a court record used by the jury commissioner or clerk in connection with the jury selection process. Except as otherwise provided by court order, a custodian may not deny inspection of a jury list sent to the court pursuant to ~~Maryland~~ Rules 2-512 or 4-312 after the jury has been empaneled and sworn.

NOTE: Section (a) makes clear that, subject only to procedural conditions adopted by the Chief Judge pursuant to Rule 16-1002, notice records are open to inspection without any categorical limitation, once they have been recorded and indexed. Section (b) treats administrative and business license records as normal public records under the PIA. See Note to Rule 16-1001.

The law relating to juror information is not altogether clear. ~~Md. Code, Cts. & Jud. Proc. Art.~~ **Courts Article**, §8-212 (b) provides that, until the master jury wheel has been emptied and refilled in accordance with **Code, Courts Article**, §8-202 (2) and every person who is selected to serve as a juror before the

master wheel was emptied has completed the person's service, "the contents of any records or papers used by the jury commissioner or clerk in connection with the jury selection process may not be disclosed, except as provided in [Code, Courts Article, §8-212 (c)]." That section allows disclosure as necessary to support a motion challenging compliance with the selection process and, for certain purposes, to the State Board of Elections. Section Code, Courts Article, §8-212 presumably shields the "juror qualification form" provided for in § Code, Courts Article, §8-202 (5) and any correspondence between prospective jurors and the jury commissioner.

Section Code, Courts Article, §8-202 sets forth certain requirements for juror selection plans. Section Code, Courts Article, §8-202 (3) requires the plan to specify "the time when the names drawn from the qualified jury wheel are disclosed to the public." The section provides further, however, that "[n]otwithstanding any other provision of law, the name, address, age, sex, education, occupation of spouse, of each person whose name is drawn from the qualified jury wheel shall be made public, unless the jury judge determines in any case that the interest of justice requires that this information remain confidential."

How all of this works at present is unclear. Section Code, Courts Article, §8-212 clearly shields the records used by the jury commissioner and clerk in the juror selection process until the master wheel has been emptied and all jurors selected from it have completed their service. In Baltimore and Montgomery Counties, the wheel is emptied annually, thus shielding those records until at least January 1 of the following year but then making them legally available for inspection. Whether that is true in the other subdivisions is unclear. In the larger subdivisions, where thousands, or tens of thousands, of questionnaires are sent and returned each year, the practical ability of anyone to access any particular records in any efficient manner may be non-existent. This is one example of when there may be legal accessibility but no practical accessibility, even of particular records.

The first sentence of Code, Courts Article, §8-202 (3) appears to allow the individual juror selection plans to determine when the *names* of jurors selected from the wheel may be disclosed. The second sentence of Code, Courts Article, §8-202 (3) requires that the enumerated identifying information be made public, but it does not specify *when* that information must be disclosed. The home address of jurors is no longer routinely included on the jury lists sent to the court for jury selection in particular cases. ~~Md.~~ Rule 2-512 (c), which applies in civil cases, provides that, before the examination of jurors, each party shall be provided with a list of jurors that includes the

name, age, sex, education, occupation, and spouse's occupation of each juror and any other information required by the county jury plan, but that, if the county jury plan requires the address, that address "need not" include the house or box number. The comparable criminal rule, Rule 4-312 (c), is similar, except that it specifies that, if the jury plan requires an address, the address "shall be limited to the city or town and zip code and shall not include the juror's street address or box number, unless otherwise ordered by the court."

Rule 16-1004 (c) adopts **Code, Courts Article, §8-412 (b)** with respect to records used by the jury commissioner. Except to support a motion challenging the array, they will be non-accessible until the master wheel is emptied and all jurors selected from the wheel have completed their jury service, after which they will be subject to inspection. The jury lists prepared by the jury commissioner or clerk for purposes of jury selection in particular cases will not be subject to inspection (other than pursuant to ~~Md.~~ Rules 2-512 (c) and 4-412 (c)) until after the jury has been empaneled and sworn in the case. At that point, unless a court orders otherwise in the particular case, those lists will be subject to inspection. The rationale for the limited blanket exclusion is that the lists, to the extent they exist, should not be available for public inspection before the court and the litigants have access to them.

The net effect of proposed Rule 16-1004 (c) is that the records maintained by the jury commissioner (or the person performing that role) will be shielded until the names of the persons to whom the records pertain have been removed from the master wheel and those persons have completed their jury service, after which those records will be open to inspection, subject to the procedural conditions established by the Chief Judge. Actual jury lists will become available for inspection once the jury in the particular case has been empaneled, unless the court orders otherwise.

**(c) Personnel Records - Generally**

**Except as otherwise permitted by the Maryland Public Information Act or by this Rule, a custodian shall deny to a person other than the person who is the subject of the record inspection of the personnel records of (i) an employee of the court or other judicial agency, or (ii) an individual who has**

applied for employment by **with** the court or **other** judicial agency, ~~other than to the person who is the subject of the record.~~ The following records or information are not subject to this exclusion and shall be open to inspection:

- (1) The full name of the individual;
- (2) The date of the application for employment and the position for which application was made;
- (3) The date employment commenced;
- (4) The name, location, and telephone number of the court or **other** judicial agency to which the individual has been assigned;
- (5) The current and previous job titles and salaries of the individual during employment by the court or **other** judicial agency;
- (6) The name of the individual's current supervisor;
- (7) The amount of monetary compensation paid to the individual by the court or **other** judicial agency and a description of any health, insurance, or other fringe benefit which **that** the individual is entitled to receive from the court or **other** judicial agency;
- (8) Unless disclosure is prohibited by law, other information authorized by the individual to be released; and
- (9) A record that has become a case record.

SOURCE: This is taken, in part, from Arizona Rule 123. This exception is more narrow than the comparable exemption in the PIA. Md. Code, §§ **State Government Article**, §10-616 (i) states

that a custodian shall deny inspection of a personnel record of an individual, including an application, performance rating, or scholastic achievement information, other than to the person in interest or an official who supervises the work of the individual. **Section Code, State Government Article, §10-616** (d) also requires a custodian to deny inspection of a letter of reference. **Sections Code, State Government Article, §§10-611** (f) (2) and 10-617 (f) (1) make clear that the salary of a public employee is subject to disclosure. The proposal here is to permit disclosure of information allowed by the PIA as well as certain additional information concerning the employee's employment that would not seem to be too personal but that might be of some public interest.

This exception covers only personnel records of court or judicial agency employees. Personnel records of other public employees and personnel records of judicial employees are not shielded from inspection if and when they become case records unless sealed by court order.

**(d) Personnel Records - Retirement**

~~Except to the extent that~~ **Unless** inspection would be **is** permitted under the Maryland Public Information Act **or the record has become a case record**, a custodian shall deny inspection of a retirement record of an employee of the court or other judicial agency. ~~This section does not apply to a record that has become a case record.~~

SOURCE: ~~Md.~~ Code, **§ State Government Article,** §10-616 (g) provides, with certain exceptions, that a custodian shall deny inspection of a retirement record for an individual. This Rule adopts that provision with respect to court and judicial agency employees but not as to any other employees. A retirement record of any employee that has become a case record is not subject to this exception.

**(e) Certain Administrative Records**

**A custodian shall deny inspection of the following**

administrative records:

(1) Judicial work product, including drafts of documents, notes, and memoranda prepared by a judge or other court personnel at the direction of a judge and intended for use in the preparation of a decision, order, or opinion;

SOURCE: This is derived from Arizona Rule 123. It generally follows, but does not track, Md. Code, § State Government Article, §10-618 (b), which permits, but does not require, a custodian to deny inspection of "any part of an interagency or intra-agency letter or memorandum that would not be available by law to a private party in litigation with the unit."

(2) An administrative record that is:

(A) prepared by or for a judge or other judicial personnel;

(B) either (i) purely administrative in nature but does not constitute a local rule, or a policy, or directive that governs the operation of the court or is (ii) a draft of a document intended for consideration by the author or others and not intended to be final in its existing form; and

(C) not filed with the clerk and not required to be filed with the clerk.

**Source: This Rule is new.**

SOURCE: There is no direct source for this exception. It follows, in a general way, the exception in Md. Code, § State Government Article, §10-618 (b) for interagency and intra-agency memoranda and is also intended to shield non-final drafts of memoranda.

Rule 16-1005. CASE RECORDS - REQUIRED DENIAL OF INSPECTION - IN  
GENERAL

(a) A custodian shall deny inspection of a case record or any part of a case record if inspection would be contrary to:

(1) The Constitution of the United States, a Federal statute, or a Federal regulation adopted under a Federal statute and having the force of law;

(2) The Maryland Constitution;

(3) A provision of the Maryland Public Information Act that is expressly adopted in these **the** Rules **in this Chapter**;

(4) A rule adopted by the Court of Appeals; or

(5) An order entered by the court having custody of the case record or by any higher court having jurisdiction over

~~(i)~~ **(A)** the case record, or

~~(ii)~~ **(B)** the person seeking inspection of the case record.

(b) Unless inspection is otherwise permitted by these **the** Rules **in this Chapter**, **a** custodian shall deny inspection of a case record or any part of a case record if inspection would be contrary to a statute enacted by the Maryland General Assembly, other than the Maryland Public Information Act (Code, State Government Article, Sections **§§**10-611 through 10-626), that expressly or by necessary implication applies to a court record~~.~~**.**

**Source: This Rule is new.**

NOTE: The exception in § **section** (b) is to account for the facts

that (1) these rules will permit the inspection of certain documents that would not be subject to inspection under the PIA, and (2) some records, shielded under other statutes also might be subject to inspection under these Rules. An example is a record that has been formally admitted into evidence or that is regarded as evidence for purpose of deciding a motion. See Rule 16-1002 (c).

~~Section~~ **Subsection** (a)(5) allows a court to seal a record or otherwise preclude its disclosure. So long as a court record is under seal or subject to an order precluding or limiting disclosure, it may not be disclosed except in conformance with the order. That authority must be exercised in conformance with the general policy of these Rules and with supervening standards enunciated in decisions of the United States Supreme Court and the Maryland Court of Appeals.

Rule 16-1006. REQUIRED DENIAL OF INSPECTION - CERTAIN CATEGORIES  
OF CASE RECORDS

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

~~(1)~~ **(a)** All case records filed in the following actions  
involving children:

~~(a)~~ **(1)** Actions filed under Title 9, Chapter 100 of the  
Maryland Rules for:

~~(i)~~ **(A)** Adoption;

~~(ii)~~ **(B)** Guardianship; or

~~(iii)~~ **(C)** To revoke a consent to adoption or guardianship  
for which there is no pending adoption or guardianship proceeding  
in that county.

SOURCE: ~~Md.~~ Rule 9-112 requires that the clerk keep separate  
dockets for these proceedings. Those dockets are not open to  
inspection by any person, including the parents, except upon  
court order. If an index to a docket is kept apart from the  
docket itself, the index is open to inspection. All pleadings  
and other papers in adoption and guardianship proceedings shall  
be sealed when they are filed and are not open to inspection by  
any person, including the parents, except upon an order of court.  
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. See also ~~Md. Code, State Govt. Art.~~  
**Government Article**, §10-616 (b): A custodian shall deny  
inspection of public records that relate to the adoption of an  
individual.

~~(b)~~ **(2)** Delinquency, child in need of assistance, and child  
in need of supervision actions in Juvenile Court, except that, if  
a hearing is open to the public pursuant to Code, Courts Article,  
§3-8A-13 (f), the name of the respondent and the date, time, and

**location of the hearing are open to inspection.**

SOURCE: ~~Md. Rule 11-121; Md. Code, Cts. & Jud. Proc. Art. Courts Article, §§3-827, 3-8A-13 (f), and 3-8A-27.~~ Md. Rule 11-121 provides that files and records of the court in juvenile proceedings, including the docket entries and indices, are confidential and shall not be open to inspection except by order of court or as expressly provided by law. On termination of the court's jurisdiction, the files and records shall be marked sealed. If a hearing is open to the public, the name of the respondent and the date, time, and location of the hearing are not confidential. ~~Md. Code, Cts. & Jud. Proc. Art. Courts Article, §3-827~~ provides that all court records under this [Child in Need of Assistance] subtitle *pertaining to a child* shall be confidential and their contents may not be divulged except by order of court, subject to exceptions stated in section. ~~Md. Code, Cts. & Jud. Proc. Art. Courts Article, §3-8A-27~~ provides that a court record [in a delinquency or child in need of supervision action] *pertaining to a child* is confidential and its contents may not be divulged except by order of court, subject to exceptions in the section. The Rule, which applies to all files and records of the court, is broader than the statutes, which refer only to records pertaining to a child. ~~Section Code, Courts Article, §3-8A-13 (f)~~ permits, but does not mandate, a juvenile court to close hearings involving allegations of child in need of supervision or delinquency based on a misdemeanor. If a hearing is open to the public, the respondent's name and the information as to the time, place, and date of the hearing should be open.

~~(2)~~ **(b)** The following case records pertaining to a marriage

license:

~~(a)~~ **(1)** A physician's certificate filed pursuant to ~~Md. Code, Family Law Article, §2-301~~, attesting to the pregnancy of a child under 18 years of age who has applied for a marriage license.

SOURCE: ~~Md. Code, Fam. Law Art. Family Law Article, §§2-301 (a) and 2-405 (c) (3).~~ Under ~~Code, Family Law Article, §2-301 (a)~~, a person under 18 may not marry unless (1) the person is at least 16 and has parental consent, or (2), if there is no parental consent, the clerk is given a physician's certificate attesting that the physician has examined the female applicant and found

that she is pregnant or has given birth to a child. ~~Section Code, Family Law Article, §2-405 (c) (3)~~ requires the clerk, after a license has been issued, to seal the physician's certificate and keep it under seal absent a court order.

~~(b)~~ **(2)** **Until a license is issued, the fact that an application for a license has been made, except to the parent or guardian of a party to be married.**

SOURCE: ~~Md. Code, Fam. Law Art. §2-402 (f)~~. ~~Until a license is issued, a clerk may not disclose the fact that an application for a license has been made except to the parent or guardian of a party to be married. This exclusion goes beyond the record itself; it precludes any information regarding the existence of an application. Md. Code, Family Law Art. §2-405~~ **Family Law Article, §2-402 (f)**. ~~Article, §2-405~~ **Article, §2-405** authorizes the clerk to issue and deliver the license immediately upon application unless the clerk finds that there is some legal reason why the applicants should not be married, in which event the clerk may not issue the license.

~~(3)~~ **(c)** **In any action or proceeding, a case record concerning child abuse or neglect.**

SOURCE: ~~Md. Code, Art. §6 (b), 6A; Fam. Law Art. §5-707. Art. §6 (b)~~ **Article 88A, §6 (b), 6A; Fam. Law Art. Family Law Article, §5-707. Art. Article 88A, §6 (b)** provides that, except as otherwise provided in that section, **Code, Article 88A, §6A, or Title 5, Subtitle 7** of the Family Law Article, all records and reports concerning child abuse or neglect are confidential, and their unauthorized disclosure is a criminal offense. The balance of **Code, Article 88A, §6 (b)** provides for authorized disclosures by court order, order of administrative agency, or on request to certain persons and agencies. ~~Section Code, Article 88A, §6A~~ **Code, Article 88A, §6A** permits disclosures by the Secretary of Human Resources or the local director of social services. ~~Ft Code, Family Law Article, §5-707~~ **Code, Family Law Article, §5-707** requires the Social Services Administration to protect the confidentiality of records and reports of child abuse or neglect.

Whether these statutes were intended to apply to case records in court is not entirely clear. A fair argument can be made that they were intended to apply only to records in the possession of social service agencies and not to court records.

These kinds of records, when filed with a court, will probably be found most often either in CINA, adoption, or guardianship proceedings or in criminal actions. If filed in a CINA, adoption, or guardianship action, they will be shielded by the exceptions pertaining to those kinds of proceedings (until admitted into evidence). If filed in other kinds of actions, the question arises whether the statutory shield should continue to apply. This is a policy issue for the Court. If the court concludes that there should be no blanket exception for these records once they become case records, it should, in some way, make clear that the statutes do not apply, in order to protect custodians from the criminal sanctions in ~~Art.~~ **Code, Article** 88A for disclosing the records.

~~(4)~~ **(d)** The following case records in actions or proceedings involving attorneys or judges:

~~(a)~~ **(1)** Records and proceedings in attorney grievance matters declared confidential by ~~Md.~~ Rule 16-723 (b).

SOURCE: ~~Md.~~ Rule 16-723 (b) provides that the following records and proceedings are confidential and not open to inspection: (1) records of an investigation by Bar Counsel; (2) records and proceedings of a peer review panel; (3) information that is subject to a protective order; (4) contents of a warning issued by Bar Counsel; (5) contents of a private reprimand; (6) contents of a conditional diversion agreement; (7) records and proceedings of the Attorney Grievance Commission that are confidential under the Rule; (8) petition for disciplinary or remedial action based solely on the incapacity of an attorney; and (9) petition for audit of an attorney's accounts. ~~Md.~~ Rule 16-722 (h) also requires the clerk to maintain a separate docket of proceedings requesting an audit of an attorney's accounts and provides that pleadings and other papers filed in the proceeding shall be sealed and that the docket, index, and papers in the proceeding shall not be open to inspection except by court order.

~~(b)~~ **(2)** Case records with respect to an investigative subpoena issued by Bar Counsel pursuant to ~~Md.~~ Rule 16-732;

SOURCE: ~~Md.~~ Rule 16-732 (f) provides that any paper filed in court with respect to a subpoena shall be sealed upon filing and

shall be open to inspection only by order of the court.

~~(c)~~ **(3)** Subject to the provisions of Rule 19 (b) and (c) of the Rules Governing Admission to the Bar, case records relating to proceedings before a Character Committee.

SOURCE: Rule 19 (a) of the Rules Governing Admission to the Bar provides that, except as provided in §§ sections (b) and (c), papers, evidence, and information relating to proceedings before a Character Committee are confidential and shall not be open to public inspection.

~~(d)~~ **(4)** Case records consisting of Pro Bono Legal Service Reports filed by an attorney pursuant to Md. Rule 19-903 **16-903**.

SOURCE: Md. Rule 16-903 (g) provides that Pro Bono Legal Service Reports are confidential and not subject to inspection or disclosure under Code, §§ State Government Article, §10-615 (2) (iii).

~~(e)~~ **(5)** Case records relating to a motion filed with respect to a subpoena issued by Investigative Counsel for the Commission on Judicial Disabilities pursuant to Md. Rule 16-806.

SOURCE: Md. Rule 16-806 (b) (3) provides that files and records of the court pertaining to any motion with respect to a subpoena shall be sealed and shall be open to inspection only upon order of the Court of Appeals.

~~(5)~~ **(e)** The following case records in criminal actions or proceedings:

~~(a)~~ **(1)** A case record that has been ordered expunged pursuant to Md. Rule 4-508.

SOURCE: ~~Md.~~ Rule 4-512 provides that all court records ordered expunged shall be removed from their filing or storage location and sealed until destroyed.

~~(b)~~ **(2)** The following court records pertaining to search warrants:

~~(i)~~ **(A)** The warrant, application, and supporting affidavit, prior to execution of the warrant and the filing of the records with the clerk.

SOURCE: ~~Md.~~ Rule 4-601 (b) provides that a search warrant shall be issued with all practicable secrecy. The warrant, application, affidavit, or other papers on which the warrant is based shall not be filed with the clerk until the search warrant is returned executed.

~~(ii)~~ **(B)** Executed search warrants and all papers attached thereto filed pursuant to ~~Md.~~ Rule 4-601.

SOURCE: ~~Md.~~ Rule 4-601 (e) provides that executed search warrants, along with copy of the return, inventory, and all papers in connection with the issuance, execution, and return, shall be filed by the judge with the clerk. The papers shall be sealed and opened for inspection only upon court order.

~~(c)~~ **(3)** The following court records pertaining to an arrest warrant:

~~(i)~~ **(A)** A court record pertaining to an arrest warrant issued under ~~Md.~~ Rule 4-212 (d) and the charging document upon which the warrant was issued until the conditions set forth in ~~Md.~~ Rule 4-212 (d) (3) are satisfied.

SOURCE: ~~Md.~~ Rule 4-212 (d) (3) provides that, unless otherwise ordered by the court, files and records of the court pertaining to an arrest warrant issued pursuant to Rule 4-212 (d) (1) or (2) and the charging document upon which the warrant was issued shall not be open to inspection until the warrant has been served and a return made or 90 days have elapsed since the warrant was issued. See also ~~§~~ **Code, State Government Article,** §10-616 (q).

~~(ii)~~ **(B)** Except as otherwise provided in ~~Md.~~ Code, State Government Article, §10-616 (q), a court record pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was issued.

SOURCE: ~~Md.~~ Code, ~~§~~ **State Government Article,** §10-616 (q) (2) provides that, except as otherwise provided in **Code, State Government Article,** §10-616 (q) or unless otherwise ordered by the court, files and records of the court pertaining to an arrest warrant issued pursuant to a grand jury indictment or conspiracy investigation and the charging document upon which the arrest warrant was based may not be open to inspection until all arrest warrants for any co-conspirators have been served and all returns have been made. Although this is a PIA provision, it is clearly intended to apply to case records.

~~(d)~~ **(4)** A court record maintained under ~~Md.~~ Code, Courts & ~~Judicial Proceedings~~ Article, §9-106, of the refusal of a person to testify in a criminal action against the person's spouse.

SOURCE: ~~Md.~~ Code, ~~Cts. & Jud. Proc. Art.~~ **Courts Article,** §9-106 requires clerk to keep a separate record of the refusal of a person to testify against the person's spouse. The record is to contain the refusal, the defendant's name, the spouse's name, the case file number, a copy of the charging document, and the date of trial. ~~Section~~ **Code, Courts Article,** §9-106 (b) (4) provides that the record is available only to the court, a State's Attorney's office, and an attorney for the defendant.

~~(e)~~ **(5)** A presentence investigation report prepared pursuant to ~~Md.~~ Code, Correctional Services Article, §6-112.

SOURCE: ~~Md. Code, Correct. Serv. Art.~~ **Correctional Services Article**, §6-112 (a) (2) provides that, except on court order, a pre-sentence investigation report is confidential and not available for public inspection. See also ~~Md.~~ Rule 4-341: Except for any portion admitted into evidence, a pre-sentence investigation report, including any recommendation to the court, is not a public record and shall be kept confidential.

~~(f)~~ **(6)** A court record pertaining to a criminal investigation by a grand jury or by a State's Attorney pursuant to ~~Md.~~ Code, Article 10A, §39A.

SOURCE: ~~Md.~~ Rules 4-641 and 4-642 provide that files and records of the court pertaining to criminal investigations by a grand jury or State's Attorney shall be sealed and shall be open to inspection only by court order.

NOTE: ~~Md.~~ Code, §~~6~~ **State Government Article**, §10-616 (h) provides that a custodian shall deny inspection of police reports of a traffic accident, certain traffic citations, and criminal charging documents to attorneys who request inspection for purposes of marketing their services. That provision is of doubtful validity and is not included in these Rules.

~~(6)~~ **(f)** A transcript, tape recording, audio, video, or digital recording of any court proceeding that was closed to the public pursuant to rule or order of court.

~~(7)~~ **(g)** Notes or a computer disk of a court reporter that are in the possession of the court reporter and have not been filed with the clerk.

NOTE: In the District Court, the appellate courts, and several of the Circuit Courts, proceedings are recorded electronically -

either by an audio or video system. Although those tapes do not constitute the official record of the proceeding, they are court records and, unless shielded by court order, would be subject to inspection. Apparently, inspection is provided by making a copy of the tape and not by allowing anyone access to the original. ~~Md.~~ Rule 16-406 prohibits direct access to a video tape, although there seems to be no comparable rule regarding audio tapes. That is a matter that can be handled through administrative order of the Chief Judge pursuant to Rule 16-1002 (b).

In the circuit courts that use court reporters, a different issue arises. Unlike electronic recording, which is done by the court through machinery purchased and controlled by the court, a court reporter purchases, at his/her own expense, the equipment and supplies necessary to make the recording. The court reporters keep the disk or notes they create; they are not filed with the clerk. Although the court may require transcription of the reporter's notes without charge, anyone else desiring a transcript must pay the reporter the rate established by administrative order of the Chief Judge of the Court of Appeals. See ~~Md.~~ Rule 16-404 b. To permit public access to their notes and computer disks would certainly be unfair to them if it could lead to other persons preparing transcripts from their notes. It could, and likely would, lead as well to inaccurate transcripts. The court reporter's skill lies not just in accurately recording what is said and what occurs in court but as well in editing the shorthand notes to produce an accurate transcript.

There are two options: either regard the disks or other notes as the personal property of the court reporter and not as a court record at all, or treat them as court records, on the theory that they are made and maintained by a court employee in the performance of his/her public duties, but shield them from public inspection unless they otherwise are filed with the clerk and thus become a case record. This Rule follows the second approach.

- ~~(8)~~ **(h)** The following case records containing medical information:
  - ~~(a)~~ **(1)** A case record, other than an autopsy report of a medical examiner, that ~~(i)~~ **(A)** consists of a medical or psychological report or record from a hospital, physician, psychologist, or other professional health care provider, and

(ii) (B) contains medical or psychological information about an individual.

SOURCE: ~~Md.~~ Code, ~~§§~~ State Government Article, §§10-616 (j) and 10-617 (b). The sole statutory basis for the exceptions in ~~§§~~ (a) and (b) subsection (h) (1) and (2) is the PIA. Section Code, State Government Article, §10-617 (b) requires a custodian to deny inspection, other than by the person in interest, of any part of a public record "that contains medical or psychological information about an individual," other than an autopsy report. Section Code, State Government Article, §10-616 (j) requires a custodian to deny inspection of a hospital record that relates to medical administration, staff, medical care, or other medical information and contains information about one or more individuals.

This Rule is not so broad. The statutes, if read literally, might shield such things as a pleading in a medical malpractice action that contains allegations regarding the plaintiff's medical condition and treatment. There is no reasonable basis for excluding access to that kind of record. Nonetheless, it has been traditional for specific medical, hospital, or psychological records and reports regarding an individual to be shielded. The issue is whether there should be a blanket exception for those kinds of records or the person in interest should be required to obtain a court order to seal the record.

This is a policy issue for the Court. The proposed Rule creates a blanket shield but narrows its scope to specific medical, hospital, or psychological records. Although this Rule does not adopt all of the exclusions in the PIA, the justification for this exception is that medical and psychological records contain highly personal information which, unless and until placed into evidence, should not be available for public access. If there is not a blanket exception, courts will likely be requested in virtually every case in which such a report or record appears to enter an order shielding it, and there is no need to flood the courts with that additional paperwork. In addition to the PIA provisions, there are a number of specific provisions in the Health-General Article and the Health-Occupations Article making certain kinds of medical records confidential. Some of those provisions would appear to apply specifically to court records and seem to constitute a clear expression by the Legislature that such records not be open to public inspection. Exclusions for those records have been included *infra.* in §§ sections (b) through (f). Other exclusions in the Health Code are more limited and are not specifically included in the Rules.

~~(b)~~ **(2)** A case record pertaining to the testing of an individual for HIV that is declared confidential under Code, Health-General Article, §18-338.1 or §18-338.2.

SOURCE: ~~Md.~~ Code, Health-General Article, §18-338.1 deals with HIV testing. Subsection Code, Health-General Article, §18-338.1 (h) prohibits records of such testing from being documented in the person's medical record, but requires that they be kept as a separate confidential record. It further provides that, except as stated in subsection Code, Health-General Article, §18-338.1 (h) (5), that record is confidential and is "not discoverable or admissible in any criminal, civil, or administrative action." Section Code, Health-General Article, §18-331.2 provides for the testing of pregnant women for HIV and contains a similar confidentiality provision.

~~(c)~~ **(3)** A case record that consists of information, documents, or records of a child fatality review team, to the extent they are declared confidential by Code, Health-General Article, §5-709.

SOURCE: ~~Md.~~ Code, Health-General Art. Article, §§5-701 through 5-709 provide for child fatality review teams with authority to coordinate investigations into child deaths. Section Code, Health-General Article, §5-709 (a) makes all information and records acquired by a review team confidential and not subject to disclosure under the PIA. Section Code, Health-General Article, §5-709 (f) declares further that such information and records, unless obtained from sources other than a review team, are not subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding.

~~(d)~~ **(4)** A case record that contains a report by a physician or institution concerning whether an individual has an infectious disease, declared confidential under Code, Health-General Article, §18-201 or §18-202.

SOURCE: ~~Md. Code, Health-General Art.~~ **Article**, §§18-201 and 18-202 require physicians and institutions having reason to believe that an individual has an infectious or contagious disease to make a report to the county health officer. Both sections declare that those reports are confidential, not open to public inspection, and not subject to subpoena or discovery in any criminal or civil proceeding except pursuant to court order.

~~(e)~~ **(5)** A case record that contains information concerning the consultation, examination, or treatment of a developmentally disabled person, declared confidential by Code, Health-General Article, §7-1003.

SOURCE: Title 7 of the Health-General Article provides for programs for developmentally disabled persons. **Section Code, Health-General Article, §7-1003** (e) declares that any case discussion, consultation, examination, or medical treatment of an individual who receives services under the title is confidential, not open to any person not directly involved in the treatment of the individual and, except as necessary to transfer the individual to another health care institution or to obtain third-party payment, may not be released without the consent of the individual or his/her guardian. It is not clear whether the confidentiality provision in **Code, Health-General Article, §7-1003** (e) was intended to apply to court records. There is no reference in the statute to courts or court records. This is an interpretive and policy issue for the Court.

~~(9)~~ **(i)** A case record that consists of the **federal or Maryland** income tax return of an individual.

SOURCE: There does not appear to be any statutory source for this exception. Federal law prohibits the disclosure of federal tax returns by federal officials but does not appear to preclude disclosure by State Government custodians. The only State statute seems to be ~~Md. Code, Tax-Gen. Art.~~ **Tax-General Article, §10-818**, allowing public inspection of tax returns filed by exempt organizations. The Guidelines adopted by the Conference of Chief Justices and the Conference of State Court Administrators list State income or business tax returns as information "for which there may be a sufficient interest to prohibit public access." This is a policy issue for the Court.

It can be dealt with either by a blanket exclusion or by allowing access unless the return is sealed by court order. The Rule provides a blanket exception but limits it to individual returns, which (1) usually come into the court's possession as a case record under some compulsion (required by some Rule or obtained by another party through discovery), (2) may be joint returns, thereby disclosing assets and income of spouses who are not involved in any litigation, and (3) may contain information wholly irrelevant to the litigation.

~~(10)~~ **(j)** A case record that:

~~(a)~~ **(1)** a court has ordered sealed or not subject to inspection, except in conformance with the order; or

~~(b)~~ **(2)** in accordance with Rule 16-1009 (b), is the subject of a motion to preclude or limit inspection.

**Source: This Rule is new.**

Rule 16-1007. REQUIRED DENIAL OF INSPECTION - SPECIFIC  
INFORMATION IN CASE RECORDS

Except as otherwise provided by law, these **the Rules in this Chapter**, or court order, a custodian shall deny inspection of a case record or a part of a case record that would reveal:

(1) **(a)** The name, address, telephone number, e-mail address, or place of employment of a person who reports the abuse of a vulnerable adult pursuant to ~~Md. Code, Family Law Article~~, §14-302.

SOURCE: ~~Md. Code, Fam. Law Art.~~ **Family Law Article**, §14-308 provides that, absent consent or court order, the identity of a person reporting abuse of a vulnerable adult is confidential. It is not clear whether the statute was intended to apply to court records. This is an interpretive and policy issue for the Court.

NOTE: Some of the exceptions in this Rule, beginning with this one, present conflicting issues of public policy - the desire for openness vs. the need to protect privacy and ameliorate the opportunity for identity theft and other fraudulent schemes. In some instances, the Court will simply have to make the hard decision as to which policy should prevail. As pointed out in the General Note under Rule 16-1001 and the General Note following this Rule, the Court may also want to look at some of the Rules (or practices) that cause information of this type to be included in case records and determine whether it is really necessary for that information to be included in those records.

(2) **(b)** Except as provided in ~~Md. Code, State Government Article~~, §10-617 (e), the home address or telephone number of an employee of the State or a political subdivision of the State.

SOURCE: ~~Md. Code, §~~ **State Government Article**, §10-617 (e) provides that, subject to **Code**, State Personnel ~~Art. Article~~, §21-504, a custodian shall deny inspection of the part of a

public record that contains the home address or telephone number of a State or local government employee unless the employee consents or the employing unit determines that inspection is needed to protect the public interest.

**(3) (c) Any part of the social security or Federal**

**Identification Number of an individual, other than the last four digits.**

SOURCE: Whether there is a statutory basis for excluding or limiting disclosure of social security or federal identification numbers is not clear, although the exclusion of this kind of identifying information is not unusual. See Arizona Rule 123 (c) (2) (3). There is a prohibition against the disclosure of social security numbers by federal officials, but that prohibition may not extend to State courts. See *Developing CCJ/COSCA Guidelines for Public Access: A National Project to Assist State Courts*, at 46 (SJI, 10/18/02). Social Security numbers often appear in court records, sometimes by legal requirement. Whether, along with other identifying information, they should be subject to disclosure is a policy issue for the Court. Some argue against disclosure because of the possible misuse of that information for identity theft or other fraudulent schemes. Some favor disclosure because it helps to assure accuracy in identifying the subject of credit and criminal history reports legitimately provided to prospective employers, landlords, and others. In resolving this matter, the Court may wish to read the testimony of the Deputy Commissioner of the Social Security Administration before the Subcommittee on Social Security of the House of Representatives Committee on Ways and Means on 9/19/02, a copy of which is attached. The federal approach is to disclose only the last four digits of the number. This would seem to be a fair compromise, and the Rule is drafted accordingly.

**(4) (d) Information about a person who has received a copy of a sex offender's or sexual predator's registration statement.**

**Source: This Rule is new.**

SOURCE: Md. Code, ~~Crim. Proc. Art.~~ **Criminal Procedure Article,** §11-715 (b) provides that information about a person who receives

a copy of a registration statement under that section is confidential and may not be disclosed to the registrant or any other person. It is not clear whether the statute applies to case records. This is an interpretive and policy issue for the Court.

GENERAL NOTE: Three of the exceptions in this Rule concern personal identifying information contained in court records. Technology has created new kinds of such information that are beginning to find their way into court records, among them being DNA and biometric information. That kind of information has medical overtones but may not fit exactly within the proposed exception for medical, hospital, or psychological reports. The public may have a legitimate interest in accessing that information for some purposes but not for others. DNA and biometric information may, on the one hand, tend to prove or disprove criminal agency or familial relationship, but it may also reveal genetic or other biological characteristics that are intensely personal and of no legitimate concern to the public at large. This is an area that should be separately studied, so that a fair and balanced rule may be promulgated. Under these proposed Rules, that information would not be categorically shielded but could be shielded by specific court order.

Rule 16-1008. ELECTRONIC RECORDS AND RETRIEVAL

(a) In General

(1) Subject to the conditions stated in this Rule, a court record that is kept in electronic form is open to inspection to the same extent that the record would be open to inspection in paper form.

(2) Subject to the other provisions of this Rule, a custodian, court, or other judicial agency, for the purpose of providing public access to court records in electronic form, is authorized but not required:

(A) to convert paper court records into electronic court records;

(B) to create new electronic records, databases, programs, or computer systems;

(C) to provide computer terminals or other equipment for use by the public;

(D) to create the ability to inspect or copy court records through remote access; or

(E) to convert, supplement, or modify an existing electronic storage or retrieval system.

(3) Subject to the other provisions of this Rule, a custodian may limit access to court records in electronic form to the manner, form, and program that the electronic system used by the

custodian, without modification, is capable of providing. If a custodian, court, or other judicial agency converts paper court records into electronic court records or otherwise creates new electronic records, databases, or computer systems, it shall, to the extent practicable, design those records, databases, or systems to facilitate access to court records that are open to inspection under these **the Rules in this Chapter**.

(4) Subject to procedures and conditions established by administrative order of the Chief Judge of the Court of Appeals, a person may view and copy electronic court records that are open to inspection under these **the Rules in this Chapter**:

(A) at computer terminals that a court or other judicial agency makes available for public use at the court or other judicial agency; or

(B) by remote access that the court or other judicial agency makes available through dial-up modem, web site access, or other technology.

(b) Current Programs Providing Electronic Access to Databases

Any electronic access to a database of court records that is provided by a court or other judicial agency and is in effect on [effective date of **the Rules in this Chapter**] may continue in effect, subject to review by the Technology Oversight Board for consistency with these **the Rules in this Chapter**. After review, the Board may make or direct any changes that it concludes are

necessary to make the electronic access consistent with these **the**  
Rules **in this Chapter**.

(c) New Requests for Electronic Access to Databases

(1) A person who desires to obtain electronic access to a database of court records to which electronic access is not then immediately and automatically available shall submit to the Court Information Office a written application that describes the court records to which access is desired and the proposed method of achieving that access.

(2) The Court Information Office shall review the application and may consult with the Judicial Information Systems. Without undue delay, the Court Information Office shall take one of the following actions:

(A) ~~If the~~ **The** Court Information Office **shall approve the application if it** determines that the proposal will not permit access to court records that are not subject to inspection under these **the** Rules **in this Chapter** and will not involve more than minimal fiscal, personnel, or operational burden on any court or judicial agency, it shall approve the application. The approval may be conditioned on the applicant **applicant's** paying or reimbursing the court or agency for any additional expense that may be incurred in implementing the proposal.

(B) If the Court Information Office is unable to make the findings provided for in ~~paragraph (A)~~ **subsection (c) (2) (A)**, it

shall inform the applicant and:

(i) deny the application;

(ii) offer to consider amendments to the application that would meet the concerns of the Court Information Office; or

(iii) if the applicant requests, refer the application to the Technology Oversight Board for its review.

(C) If the application is referred to the Technology Oversight Board, the Board shall determine whether the proposal is likely to permit access to court records or information that are not subject to inspection under these **the** Rules **in this Chapter**, create any undue burden on a court, other judicial agency, or the judicial system as a whole, or create undue disparity in the ability of other courts or judicial agencies to provide equivalent access to court records. In making those determinations, the Board shall consider, to the extent relevant:

(i) whether the data processing system, operational system, electronic filing system, or manual or electronic storage and retrieval system used by or planned for the court or **other** judicial agency that maintains the records can currently provide the access requested in the manner requested and in conformance with Rules 16-1001 through 16-1007, and, if not, what changes or effort would be required to make those systems capable of providing that access;

(ii) any changes to the data processing, operational

electronic filing, or storage or retrieval systems used by or planned for other courts or judicial agencies in the State that would be required in order to avoid undue disparity in the ability of those courts or agencies to provide equivalent access to court records maintained by them;

(iii) any other fiscal, personnel, or operational impact of the proposed program on the court or **other** judicial agency or on the State judicial system as a whole;

(iv) whether there is a substantial possibility that information retrieved through the program may be used for any fraudulent or other unlawful purpose or may result in the dissemination of inaccurate or misleading information concerning court records or individuals who are the subject of court records and, if so, whether there are procedures that may be implemented to prevent misuse and the dissemination of inaccurate or misleading information; and

(v) any other consideration that the Technology Oversight Board finds relevant.

(D) If, upon consideration of the factors set forth in ~~paragraph (C)~~ **subsection (c) (2) (C)**, the Technology Oversight Board concludes that the proposal would create (i) an undue fiscal, personnel, or operational burden on a court, other judicial agency, or the judicial system as a whole, or (ii) an undue disparity in the ability of other courts or judicial

agencies to provide equivalent access to judicial records, the Board shall inform the Court Information Office and the applicant of its conclusions. The Court Information Office and the applicant may then discuss amendments to the application to meet the concerns of the Board, including changes in the scope or method of the requested access and arrangements to bear directly or reimburse the appropriate agency for any expense that may be incurred in providing the requested access and meeting other conditions that may be attached to approval of the application. The applicant may amend the application to reflect any agreed changes. The application, as amended, shall be submitted to the Technology Oversight Board for further consideration.

**Source: This Rule is new.**

NOTE: The Judiciary currently offers two programs that, in one way or another, provide access to a comprehensive database of court records - the Dial-Up program that allows electronic access to certain individual case records through a search of court databases, and a project, through a vendor, Superior Online, which allows access to judgments in civil cases. Some courts may have other electronic access programs in place as well. As those programs are already in operation and are being used, the Rule proposes to "grandfather" them, at least for the time being, and allow them to continue. It is not clear whether the access afforded through those programs will be entirely consistent with these Rules, so this Rule provides for a review by the Technology Oversight Board to assure consistency.

Clerks and court administrators have expressed concern over new proposals for electronic access to court databases. The concern seems to be that: (1) such wholesale retrieval will sweep in information that, under these Rules, is not subject to inspection; (2) some court records may, themselves, be incorrect and that the incorrect information will then be spread over the Internet or otherwise be made widely available, and (3) even correct information can be reworked into a misleading form or,

for the first time, lose its practical obscurity and be made readily available not only outside the courthouse, but worldwide. As pointed out in the Note to Rule 16-1001, attention must be paid in this regard to **Code, State Govt. Art. Government Article,** §10-624 which, among other things, requires that personal information collected for personal records "shall be accurate and current to the extent practicable." Because both the technology for retrieving and reworking this information and the economics bearing on how it may be used to commercial profit are still evolving, there are a lot of unknowns that frighten the guardians of this information.

The Rule proposes that any new programs for access to databases go through a review process, where these issues can be explored in some detail in the context of the particular program. It allows for an expedited review procedure by the Court Information Office -- the agency that currently deals with access issues on a statewide basis. If that Office concludes that the proposal would not permit access to shielded records or information and would not create any undue burden on judicial agencies or create any undue disparity in the ability of other courts to provide equivalent access, it will promptly approve the proposal, as it does now. The Rule provides for discussion and negotiation if the Office is unable to grant the application as submitted and, if a compromise is not possible, for referral to the Technology Oversight Board. That Board would give the proposal a more comprehensive review. This will allow some focus on the reality of the various issues actually presented by the proposal and on the desire for statewide uniformity in providing access.

Rule 16-1009. COURT ORDER DENYING OR PERMITTING INSPECTION OF  
CASE RECORD

(a) Motion

(1) Any **A** party to an action in which a case record is filed, including any **a** person who has been permitted to intervene as a party, and any **a** person who is the subject of or is specifically identified in a case record may file a motion:

(A) to seal or otherwise limit inspection of a case record filed in that action that is not otherwise shielded from inspection under **these the Rules in this Chapter**; or

(B) to permit inspection of a case record filed in that action that is not otherwise subject to inspection under **these the Rules in this Chapter**.

(2) The motion shall be filed with the court in which the case record is filed and shall be served on:

(A) all parties to the action in which the case record is filed; and

(B) each identifiable person who is the subject of the case record.

(b) Preliminary Shielding

Upon the filing of a motion to seal or otherwise limit inspection of a case record pursuant to **§ section** (a) of this Rule, the custodian shall deny inspection of the case record for

a period not to exceed five business days, commencing with **including** the day the motion is filed, in order to allow the court an opportunity to determine whether a temporary order should issue.

(c) Temporary Order Precluding or Limiting Inspection

(1) The court shall consider a motion filed under this Rule on an expedited basis.

(2) In conformance with the provisions of Rule 15-504 (Temporary **R**estraining **O**rders), the court may enter a temporary order precluding or limiting inspection of a case record if it clearly appears from specific facts shown by affidavit or other statement under oath that ~~(i)~~ **(A)** there is a substantial basis for believing that the case record is properly subject to an order precluding or limiting inspection, and ~~(ii)~~ **(B)** immediate, substantial, and irreparable harm will result to the person seeking the relief if temporary relief is not granted before a full adversary hearing can be held on the propriety of a final order precluding or limiting inspection.

(3) A court may not enter a temporary order permitting inspection of a case record that is not otherwise subject to inspection under these **the** Rules **in this Chapter** in the absence of an opportunity for a full adversary hearing.

(d) Final Order

(1) After an opportunity for a full adversary hearing, the

court shall enter a final order:

(A) precluding or limiting inspection of a case record that is not otherwise shielded from inspection under these **the** Rules **in this Chapter**;

(B) permitting inspection, under such conditions and limitations as the court finds necessary, of a case record that is not otherwise subject to inspection under these **the** Rules **in this Chapter**; or

(C) denying the motion.

(2) In determining whether to permit or deny inspection, the court shall consider:

(A) if the motion seeks to preclude or limit inspection of a case record that is otherwise subject to inspection under these **the** Rules **in this Chapter**, whether a special and compelling reason exists to preclude or limit inspection of the particular case record; and

(B) if the petition or motion seeks to permit inspection of a case record that is otherwise not subject to inspection under these **the** Rules **in this Chapter**, whether a special and compelling reason exists to permit inspection.

(3) Unless the time is extended by the court on motion of a party and for good cause, the court shall enter a final order within 30 days after a hearing was held or waived.

(e) Filing of Order

A copy of any preliminary or final order shall be filed in the action in which the case record in question was filed and shall be subject to public inspection.

(f) Non-Exclusive Remedy

This Rule does not preclude a court from exercising its authority at any time to enter an order that seals or limits inspection of a case record or that makes a case record subject to inspection.

**Source: This Rule is new.**

NOTE: There are a number of PIA and other statutory exceptions that have not been specifically included in these Rules, largely because of the desire to have a judge determine whether those exceptions should apply to specific case records, rather than to create a blanket exception that may be too broad or to leave the matter to the discretion of a clerk. Some of those exceptions may well be the proper basis for a protective order; e.g., records that "relate to welfare for an individual" (Code, State Government Article, §10-616 (c)), certain student records (Code, State Government Article, §10-616 (k)), sociological information (Code, State Government Article, §10-617 (c)), confidential commercial information (Code, State Government Article, §10-617 (d)), financial information (Code, State Government Article, §10-617 (f)), inter-agency and intra-agency memoranda (Code, State Government Article, §10-618 (b)), examination information relating to the issuance of licenses (Code, State Government Article, §10-618 (c)), State research projects (Code, State Government Article, §10-618 (d)), certain real property appraisals (Code, State Government Article, §10-618 (e)), certain investigative files (Code, State Government Article, §10-618 (f)).

Apart from statutory exceptions, there are other kinds of information that, in particular cases, may be the proper subject of a protective order. Identifying information regarding empaneled jurors or victims of or witnesses to violent crimes or acts of domestic violence is an example. Although prosecutors or other interested persons may be able to demonstrate a need for having that information shielded in certain cases, there is no statutory basis for a blanket exclusion. See NOTE to Rule 16-

1004 regarding jurors. ~~Md. Code, Crim. Proc. Art.~~ **Criminal Procedure Article**, §11-205 provides that, on request of the State, a victim, a witness, or a victim's representative, a judge, the State's Attorney, a District Court Commissioner, a juvenile intake officer, or a law enforcement officer may withhold the address or telephone number of a victim of or witness to a felony or delinquent act that would be a felony if committed by an adult, *prior to trial*, unless a judge determines that good cause has been shown for release of the information. The statute does not permit a clerk to withhold the information, other than pursuant to a court order. ~~Crim. Proc. Art.~~ **Code, Criminal Procedure Article**, §11-301 permits a court to prohibit release of the address or telephone number of any victim or witness *during trial*. That statute also does not permit the clerk to withhold that information, other than pursuant to a court order.

Because that kind of information is not specifically shielded under these Rules, records containing it would be open for inspection immediately upon filing. When the issue of confidentiality arises in discovery, there is a reasonable opportunity for a party to seek a protective order before having to release the information. This Rule is intended to provide a similar opportunity. Procedurally, it borrows from the temporary restraining order Rule. It allows the party seeking to bar inspection to file a motion to preclude or limit inspection of the record and permits the court to enter a temporary order pending a full hearing. To give the court a fair opportunity to consider even a temporary order, the Rule precludes inspection for five business days. ~~Section~~ **Subsection** (d)(3) requires that a final order be entered within 30 days after a hearing was held or waived, unless the time is extended by the court on motion of a party and for good cause. The intent is that the court act quickly on these motions.

Although Rule 16-1009 could conceivably be invoked at any time, even after the underlying action is concluded, it is not intended to be the sole basis of the court's authority to seal or open a case record. That issue can surface in discovery, at trial, or at any time in between, and the intent is that the courts be free to deal with it, in those contexts, as they do now. Naturally, the sealing of a court record must be in accord with applicable substantive and procedural standards established by the Supreme Court and the Court of Appeals.

Rule 16-1010. PROCEDURES FOR COMPLIANCE

(a) Duty of Person Filing Record

(1) A person who files or authorizes the filing of a case record shall inform the custodian, in writing, whether, in the person's judgment, the case record, any part of the case record, or any information contained in the case record is confidential and not subject to inspection under these **the Rules in this Chapter**.

(2) The custodian is not bound by the person's determination that a case record, any part of a case record, or information contained in a case record is not subject to inspection and shall permit inspection of a case record unless, in the custodian's independent judgment, subject to review as provided in Rule 16-1011, the case record is not subject to inspection.

(3) Notwithstanding § **subsection** (b) (2) of this Rule, a custodian may rely on a person's failure to advise that a case record, part of a case record, or information contained in a case record is not subject to inspection, and, in default of such advice, the custodian is not liable for permitting inspection of the case record, part of the case record, or information, even if the case record, part of the case record, or information in the case record is not subject to inspection under these **the Rules in this Chapter**.

NOTE: ~~Md.~~ Code, §§ **State Government Article**, §§10-626 and 10-627

subject persons who willfully and knowingly violate the PIA to civil and criminal liability. This paragraph subsection is intended to allow custodians of case records, who maintain thousands of documents prepared and filed by others and who usually have no independent knowledge of what is in them, to rely on the person filing the document to inform the custodian of whether any part of the record is shielded and thus to preclude a finding of knowing and willful conduct if the person filing the document fails to inform the clerk and the clerk allows inspection of material that, under the Rules, is not subject to inspection. The Court may wish to consider Rules, to be placed either in Title 1 or in Titles 2, 3, 4, 6, and 8, admonishing parties not to include confidential and non-accessible information in papers filed with the clerk unless that information has some special relevance and must be included.

**(b) Duty of Clerk**

(1) In conformance with procedures established by administrative order of the Chief Judge of the Court of Appeals, the clerk shall make a reasonable effort, promptly upon the filing or creation of a case record, to shield any information that is not subject to inspection under these the Rules in this Chapter and that has been called to the attention of the custodian by the person filing or authorizing the filing of the case record, in order that the case record, as shielded, may be subject to inspection.

(2) Persons who filed or authorized the filing of a case record filed prior to [effective date of these the Rules in this Chapter] may advise the custodian in writing whether any part of the case record is not subject to inspection. The custodian is not bound by that determination. The custodian shall make a reasonable effort, as time and circumstances allow, to shield

from those case records any information that is not subject to inspection under these **the** Rules **in this Chapter** and that has been called to the attention of the custodian, in order that those case records, as shielded, may be subject to inspection. The duty under this subsection is subordinate to all other official duties of the custodian.

**Source: This Rule is new.**

NOTE: The Rules governing public access to court records are intended to be prospective. That does not mean that court records created or filed prior to the effective date of the Rules are not open to public inspection or that there are no exceptions to public access. ~~Section~~ **Subsection** (b) (2) is an attempt to deal with that problem. There is no practical way that clerks will be able to conform all existing case records to the requirements in these Rules. Something needs to be said about existing records, however. If the approach of § **subsection** (b) (2) is rejected, some alternative should be considered.

Rule 16-1011. RESOLUTION OF DISPUTES BY ADMINISTRATIVE OR CHIEF JUDGE

(a) If, upon a request for inspection of a court record, a custodian is in doubt whether the record is subject to inspection under these **the** Rules **in this Chapter**, the custodian, after making a reasonable effort to notify the person seeking inspection and each person to whom the court record pertains, may apply for a preliminary judicial determination whether the court record is subject to inspection.

(1) If the record is in an appellate court or an orphans' court, the application shall be to the chief judge of the court.

(2) If the record is in a circuit court, the application shall be to the county administrative judge.

(3) If the record is in the District Court, the application shall be to the district administrative judge.

(4) If the record is in a judicial agency other than a court, the application shall be to the Chief Judge of the Court of Appeals, who may refer it to the county administrative judge of a circuit court.

(b) After hearing from or making a reasonable effort to communicate with the person seeking inspection and each person to whom the court record pertains, the court shall make a preliminary determination of whether the record is subject to

inspection.

(c) If the court determines that the record is subject to inspection, the court shall file an order to that effect. If a person to whom the court record pertains objects, the judge may stay the order to permit inspection for not more than five working days in order to allow the person an opportunity to file an appropriate action to enjoin the inspection. An action under this section shall be filed within 30 days after the order is filed. If such an action is timely filed, it shall proceed in accordance with Maryland Rules 15-501 through 15-505.

(d) If the court determines that the court record is not subject to inspection, the court shall file an order to that effect and the person seeking inspection may file an action under the Public Information Act or on the basis of these **the Rules in this Chapter** to compel the inspection. An action under this section shall be filed within thirty days after the order is filed.

(e) If a timely action is filed under section (c) or (d) of this Rule, the preliminary determination by the court shall not ~~be regarded as having~~ **have a** preclusive effect under any theory of direct or collateral estoppel or law of the case. If a timely action is not filed, the order shall be final and conclusive.

**Source: This Rule is new.**

NOTE: This Rule is new. It will complement Rule 16-1009, which

deals with the different issue of whether a particular case record should be treated differently (shielded or not shielded) than the Rules otherwise would require. This Rule is intended to create a quick preliminary judicial procedure for quickly resolving disputes over whether a court record is subject to inspection under the Rules. The Conference of Circuit Judges requested that the application be made to the county administrative judge. Chief Judge Vaughn requested that the application with respect to District Court records be made to the District Administrative Judge. The proposed Rule honors those requests. The Rule assumes that custodians will act in good faith, that, when in initial doubt they will consult the Attorney General's office or other legal counsel, and that the number of disputes reaching the administrative or chief judge will be minimal. A somewhat analogous procedure is provided for in the PIA. See Code, §§ **State Government Article**, §10-622.