

December 16, 2005

The Honorable Robert M. Bell,
Chief Judge

The Honorable Irma S. Raker
The Honorable Alan M. Wilner
The Honorable Dale R. Cathell
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.,
Judges

The Court of Appeals of Maryland
Robert C. Murphy Courts of
Appeal Building
Annapolis, Maryland 21401

Re: Supplement to the One
Hundred Fifty-Sixth Report
of the Rules Committee

Your Honors:

By its One Hundred Fifty-Sixth Report, the Rules Committee transmitted to the Court certain proposed amendments to the Rules in Title 16, Chapter 1000. The Committee submits herewith a Supplement to that Report and recommends adoption of the additional changes to the Rules in Title 16, Chapter 1000 set forth below.

Subsequent to its submission of the One Hundred Fifty-Sixth Report, the Committee considered the matter of apparent disparities in the interpretation and implementation of Rule 16-1006 (c) by judges and clerks in various jurisdictions. To provide for greater uniformity of interpretation and implementation, consistent with the overarching policy of openness of court records, the Committee recommends that the Court adopt, on an emergency basis, a proposed amendment to Rule 16-1006 (c) that limits the applicability of the section to a record that is created or maintained by an agency concerning

child abuse or neglect that is required by statute to be kept confidential.

Also included in this Supplement and recommended for adoption are proposed amendments to Rule 16-1008 (c) that correct a grammatical error and make certain stylistic changes.

For the guidance of the Court and the public, following each proposed Rules change is a Reporter's Note describing the reasons for the proposal and any changes that would be effected in current law or practice. We caution that these Reporter's Notes were prepared initially for the benefit of the Rules Committee; they are not part of the Rules and have not been debated or approved by the Committee; and they are not to be regarded as any kind of official comment or interpretation. They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,

Joseph F. Murphy, Jr.
Chairperson

Linda M. Schuett
Vice Chairperson

JFM/LMS:cdc

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1006 (c) to limit the applicability of the section to a record that is created or maintained by an agency and is required by statute to be kept confidential, as follows:

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

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

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

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

(A) Adoption;

(B) Guardianship; or

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

(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.

(b) The following case records pertaining to a marriage license:

(1) A physician's certificate filed pursuant to 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.

(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.

(c) In any action or proceeding, a ~~case~~ record created or maintained by an agency concerning child abuse or neglect that is required by statute to be kept confidential.

Committee note: Statutes that require child abuse or neglect records to be kept confidential include Code, Article 88A, §§6 (b) and 6A and Code, Family Law Article, §5-707.

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

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

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

(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.

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

(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 Rule 16-806.

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

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

(2) The following case records pertaining to search warrants:

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

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

(3) The following case records pertaining to an arrest warrant:

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

(B) Except as otherwise provided in Code, State Government Article, §10-616 (q), a case 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.

(4) A case record maintained under Code, Courts Article, §9-106, of the refusal of a person to testify in a criminal action against the person's spouse.

(5) A presentence investigation report prepared pursuant to

Code, Correctional Services Article, §6-112.

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

Committee note: Although this Rule shields only case records pertaining to a criminal investigation, there may be other laws that shield other kinds of court records pertaining to such investigations. This Rule is not intended to affect the operation or effectiveness of any such other law.

(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.

(g) Backup audio recordings made by any means, computer disks, and notes disk of a court reporter that are in the possession of the court reporter and have not been filed with the clerk.

(h) The following case records containing medical information:

(1) A case record, other than an autopsy report of a medical examiner, that (A) consists of a medical or psychological report or record from a hospital, physician, psychologist, or other professional health care provider, and (B) contains medical or psychological information about an individual.

(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.

(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.

(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.

(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.

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

(j) A case record that:

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

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

Source: This Rule is new.

REPORTER'S NOTE

An amendment to Rule 16-1006 (c) is proposed to limit the applicability of the section to a record that is created or maintained by an agency and is required by statute to be kept confidential. When an agency record concerning child abuse or neglect is filed in an action, such as a criminal case or domestic violence or other family law action, that otherwise is open to public inspection, the Rules Committee believes that the action should remain open, with only the agency record shielded from public inspection. Different interpretations of the Rule are being implemented throughout the State, and the proposed amendment would provide for greater uniformity.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1008 (c) to correct a grammatical error and to make certain stylistic changes, as follows:

Rule 16-1008. ELECTRONIC RECORDS AND RETRIEVAL

. . .

(c) New Requests for Electronic Access to or Information from Databases

(1) A person who desires to obtain electronic access to or information from 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 the Judicial Information Systems. Without undue delay and, unless impracticable, within 30 days after receipt of the application, the Court Information Office shall take one of the following actions:

(A) The Court Information Office shall approve the application if it determines that the ~~proposal will not permit~~ application does not request access to court records ~~that are~~ not subject to inspection under the Rules in this Chapter and will

not ~~involve~~ impose a significant fiscal, personnel, or operational burden on any court or judicial agency, ~~it shall approve the application.~~ The approval may be conditioned on the applicant's paying or reimbursing the court or agency for any additional expense that may be incurred in implementing the ~~proposal~~ application.

(B) If the Court Information Office is unable to make the findings provided for in subsection (c) (2) (A), it shall inform the applicant and:

(i) deny the application;

(ii) offer to confer with the applicant about 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 approval of the application would be~~ likely to permit access to court records or information ~~that are~~ not subject to inspection under 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:

. . .

REPORTER'S NOTE

The proposed changes to section (c) are grammatical and stylistic, only.