

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its Two Hundred and Seventeenth Report to the Supreme Court, recommending proposed new Rule 16-504.1 and amendments to current Rules 16-502, 16-503, 16-504, and 16-901.

The Committee's Two Hundred and Seventeenth Report and the proposed Rules changes are set forth below.

Interested persons are asked to consider the Committee's Report and proposed Rules changes and to forward on or before July 31, 2023 any written comments they may wish to make to rules@mdcourts.gov or:

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**THE SUPREME COURT OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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June 29, 2023

The Honorable Matthew J. Fader,
Chief Justice

The Honorable Shirley M. Watts
The Honorable Michele D. Hotten
The Honorable Brynja M. Booth
The Honorable Jonathan Biran
The Honorable Steven B. Gould
The Honorable Angela M. Eaves,
Justices

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

Your Honors:

The Rules Committee submits this, its Two Hundred and Seventeenth Report, and recommends that the Court adopt new Rule 16-504.1 and amendments to existing Rules 16-502, 16-503, 16-504, and 16-901 transmitted with this Report.

Those changes constitute the Committee's second attempt to respond to the judgment of the United States Court of Appeals for the Fourth Circuit and, on a remand from that Court, the judgment of the United States District Court for the District of Maryland, in the case of *Soderberg v. Carrión*, ___ F.Supp.3d ___ (D.Md. 2022, No. RDB 19-1559).

BACKGROUND

In 1981, the General Assembly enacted a statute (Code, Criminal Procedure Article (CP), § 1-201) that, on pain of contempt, precluded any person, other than as approved by the court, from recording or broadcasting any Maryland criminal court proceeding.

That statute was intended to supersede a Rule (Rule 1209) adopted by the Court of Appeals that permitted the recording and broadcasting by the news media of proceedings in the State trial

and appellate courts on an experimental basis. See 66 Op. Atty. Gen. 80 (1981).

The Attorney General, in an Opinion addressed to the Governor, concluded that the General Assembly had the Constitutional authority to enact such a statute under Art. IV, § 18(a) of the Maryland Constitution. The Attorney General noted in the Opinion that, although the First Amendment to the Federal Constitution included the right of access by the news media to court proceedings, there was "no State or federal constitutional right of the news media to televise or electronically record and disseminate court proceedings." *Id.* at 84. The statute is often referred to as a "Broadcast Ban," although its reach is limited to the broadcasting of criminal proceedings.

That changed in June of 2021. An action had been filed in the United States District Court for the District of Maryland by representatives of the news media challenging the statute on First Amendment grounds. The Court initially rejected that challenge on the ground that the "Broadcast Ban" constituted a content-neutral regulation of the time, place, and manner of speech that survived **intermediate scrutiny**. In June 2021, however, the U.S. Court of Appeals for the Fourth Circuit reversed that ruling on the ground that the District Court had applied the wrong standard. It remanded the case for that court to determine whether the "Broadcast Ban" could survive as "narrowly tailored to a state interest of the highest order," as required under **the strict scrutiny** standard. See *Soderberg v. Carrión*, 999 F.3d 962, 969 (2021), citing *Smith v. Daily Mail Pub. Co.*, 443 U.S. 97, 103 (1979).

On May 25, 2022, Chief Justice Fader, aware that the remand of the *Soderberg* case was still pending before the District Court, asked the Rules Committee to review Rules 16-503 and 16-504 at its next scheduled meeting on June 16, 2022 and consider whether to propose any changes to those Rules and anything else the Committee believed appropriate, to address whether the playing of an unaltered official recording of a criminal proceeding made pursuant to Rule 16-503 and obtained by a person pursuant to Rule 16-504 falls within the definition of "broadcast" as that term is used in CP § 1-201(a)(1).

In response to that request, the matter was placed on the agenda for the June 16, 2022 meeting. That was a public meeting, and, in conformance with the State Open Meetings Law (Code, General Provisions Article, Title 3), notice of the meeting, together with a link to the agenda, was posted on the Judiciary's website. Due to the COVID pandemic, the meeting was conducted remotely, but it was a public meeting. In addition to

the statutory public notice that was given, in conformance with the Rules Committee's general practice, separate additional notice of the meeting and agenda was e-mailed to the *Baltimore Banner*, the *Daily Record*, the *Washington Post*, and the Maryland-Delaware-District of Columbia Press Association.¹

No one from any of those organizations appeared at the June 16 meeting or sent any written material. At the meeting, the Committee considered (1) a new section (c) to Rule 16-503 that would limit the recording of judicial proceedings to official recordings in conformance with that Rule and strictly prohibit any other recording; and (2) adding a new section (i) to Rule 16-504 strictly prohibiting the broadcasting of criminal proceedings and defining what was meant by "broadcasting." After considerable discussion, the Committee was unable to reach any final conclusions and referred the matter to the appropriate subcommittee.

A Special Subcommittee on Broadcast of Recordings was promptly appointed, and it met on August 1, 2022. In addition to the draft minutes of the June 16 meeting, that subcommittee had available a survey of what other States had done with respect to broadcasting judicial proceedings, either directly by having their own cameras in the courtroom or obtaining recordings made by the court.

After considerable debate, the subcommittee recommended, first, a prohibition against the recording of any judicial proceeding except official recordings made by the court or as allowed under the extended coverage Rules in Title 16, Chapter 600. That dealt with the issue of private "cameras in the courtroom."

With respect to access to the official recordings made by authorized court personnel, the subcommittee proposed several structural changes and several options that were transmitted to and considered by the full Committee on September 8, 2022. The structural changes proposed by the subcommittee deleted sections (h), (i), and (j) of Rule 16-504 and transferred those provisions, with amendments, to a new Rule 16-504.1. The intent was to retain the recording process in Rule 16-504 and move access to the official recordings to the new Rule.

¹ Over the years, the Committee has identified various organizations and individuals who have a special interest or expertise in given areas and have been helpful to the Committee in the past. As a matter of course, the Committee sends additional e-mail notice of public meetings to them and to others who have requested such additional notice when matters that may be of interest to them and on which they could be helpful to the Committee are on the agenda.

Access by selected judicial officials and the parties would continue to be allowed. Three options regarding **public** access were presented to the full Committee. All would have allowed members of the public to listen to recordings at a time and place and under the supervision of a designated court official.

Option A permitted the public to purchase a copy of a recording of a criminal proceeding but prohibited the **broadcasting** of the recording until one of two alternative times presented to the Committee: (1) entry of judgment or (2) expiration of the time to appeal or, if an appeal was noted, exhaustion of the appeal.

Option B limited **access** to copies of the recordings in criminal cases. It would have precluded the ability to **obtain** a copy of the recording of a criminal case until one of the two alternative times.

Option C, which was not discussed by the subcommittee, would have prohibited providing a copy of the recording in a criminal case to members of the public.

The Committee approved most of the subcommittee's recommendations. In summary, it recommended:

- (1) amendments to Rule 16-503 requiring that Circuit Court proceedings be recorded by a person authorized by the court and, except as allowed under Title 16, Chapter 600, that only official recordings of judicial proceedings be permitted;
- (2) significant changes to Rule 16-504, deleting sections (h), (i), and (j) and moving those provisions, with amendments, to new Rule 16-504.1; and
- (3) the adoption of new Rule 16-504.1 providing for access to recordings by judicial personnel, parties, and attorneys and access by the public with a prohibition against public access to recordings of criminal proceedings (Option C).

The next critical event occurred on December 9, 2022, when the U.S. District Court entered its judgment applying the strict scrutiny standard required by the Fourth Circuit and declaring the statute unconstitutional under the First Amendment to the U.S. Constitution. In its judgment, the Court expressly declared that its judgment did not require that the plaintiffs be given copies of electronic recordings but only if they were given copies, they could do with them as they wished - that it

was the prohibition against broadcasting what they got that was impermissible.

In light of that judgment, the Committee, on December 14, 2022, promptly filed its Two Hundred and Thirteenth Report recommending that the Court adopt, on an emergency and interim basis, the new Rule 16-504.1 and amendments to Rules 2-804, 16-502, 16-503, 16-504, 16-901, and 16-914. Those were the changes the Committee approved on September 8.

Given the concern that had been raised about the prospect of endangering vulnerable witnesses and jurors from an unlimited broadcasting during the trial of criminal cases, the Committee determined that the best solution was to permit anyone to watch or listen to the official recording of the proceeding at the courthouse, make notes from it, and order a transcript if they chose to do so, but not to have a copy of the recording that they could then broadcast publicly.

Late in the day before the scheduled hearing on the Report, the Committee received a massive negative response to its recommendations, including 70 short-paragraph copycat letters from persons not known to the Committee. Given that response and after some discussion at the hearing, the Committee asked the Court to send the matter back to the Committee so that it could engage with the news media and other truly interested persons and track legislation likely to be introduced into the 2023 Session of the General Assembly. The media representatives agreed to that approach, and that is what the Court did.

SUBSEQUENT PROCEEDINGS

On February 7, 2023, the Special Subcommittee on Broadcast of Recordings met again, remotely, this time with invited representatives of the news media and others who had filed objections to the first set of proposals, and a victims' organization. Several of them, including counsel to the *Soderberg* group and other media organizations, the Public Defender's Office, and the Maryland-Delaware-District of Columbia Press Association, filed written comments, which were helpful, and they, and other interested persons attended the meeting and made presentations. That meeting produced a partial consensus on some issues but no clear agreement on language.

After further staff review, the subcommittee met again on March 17, 2023 and proposed additional changes designed to accommodate some of the recommendations made by the participants at the February 7 meeting. The recommendations of the

subcommittee were presented to and approved by the full Committee at its April 14, 2023 meeting.²

SUMMARY OF PROPOSED CHANGES

Rule 16-504

Rule 16-504 provides for the recording of Circuit Court proceedings. The current Rule provides that electronic recordings are under the control of the court and that no one other than an authorized official or employee of the court may have direct access to or possession of an official recording. Section (f) is amended to require that the testimonial log required to be kept by the clerk specify whether any required safeguarding constitutes a shielding under section (g) of the Rule or a redaction from a disseminated copy pursuant to Rule 16-504.1.

The principal amendments are in sections (g) and (h). The amendment to section (g) adds a clearer standard for shielding portions of the proceeding, substituting for "lawfully may be shielded" a finding by clear and convincing evidence that a compelling reason exists under the particular circumstances to

² The Committee has made an earnest effort to address and resolve the complaints made with respect to the initial Report and recommendations. The Rules proposed in this Report permit members of the public both to listen to and make notes from official recordings of criminal proceedings and, for a nominal cost, to purchase those recordings and do what they want with them. The Committee remains concerned, however, about the risk to witnesses and jurors and has chosen to address that concern by allowing, during a criminal trial, for the shielding of parts of the proceeding that could endanger vulnerable witnesses and jurors, mostly just for the duration of the trial but in some instances for longer periods.

During the hearing on the initial Report, the argument was made that there was no evidence that any witnesses or jurors had yet been killed in Maryland as a result of dissemination of audio recordings, and that may be so. The Committee was convinced, however, that this is a recognized danger, especially when there is gang involvement, and that it is not appropriate to wait until witnesses or jurors are actually killed before affording them some protection. Judge Bennett recognized that in his December 9, 2022 Opinion. *See also Maryland Gang Threat Assessment 2022*, a product of the Maryland Coordination and Analysis Center, a unit of the Anti-Terrorism Advisory Council of Maryland, noting in the Executive Summary that "[c]ommon amongst gangs, the felonies presenting the greatest threats to Maryland communities include murder, attempted murder, assault, firearm violations . . . [and] witness intimidation." That Assessment is attached as **Exhibit A** to this Report. The ability to carry out those threats is clear from the homicide statistics in the five major subdivisions. In each of the years from 2018 to 2022, between 309 and 348 murders were committed in Baltimore City, between 28 and 56 murders were committed in Baltimore County, between 14 and 32 murders were committed in Montgomery County, between 61 and 116 murders were committed in Prince George's County, and between 16 and 26 murders were committed in Anne Arundel County. Source: Maryland Open Data Portal, Violent Crime and Property Crime by County 1975 to Present.

shield the information and that no substantial harm will result from the shielding. Additional limitations are placed on the judicial personnel and parties who are entitled to a copy of the recording, as explained in the Reporter's note to the Rule.

New section (h) of the Rule combines and clarifies provisions in current sections (h) and (j), which govern the right of certain authorized Judiciary personnel as well as parties and attorneys to a proceeding to obtain a copy of a recording of the proceeding, including portions that are not available to the public.

Rule 16-504.1

As noted, Rule 16-504.1 is a new Rule dealing just with public access to recordings. Section (a) provides two methods of access. In both instances, the recording may contain redactions that the court has ordered on a finding by clear and convincing evidence that a compelling reason under the particular circumstances exists for the redaction and that no substantial harm will result from the redaction.

With certain exceptions, subsection (a)(1) requires the custodian, upon written request, to make available an audio recording or, if practicable, the audio portion of an audio-video recording for purchase by any person. **That provides the opportunity for the media and any member of the public to obtain possession of a copy of the recording.**

As an **additional** mode of access, subsection (a)(2) requires the court, upon a written request and subject to certain conditions, to permit a person to listen to an audio recording or, if available, listen to and view an audio-video recording at a time and place designated by the court under the supervision of the custodian or other designated court employee. Further detail is provided in the Reporter's note to the Rule.

Rule 16-504.1 (b) creates a mechanism for redaction of certain information from a recording of a criminal proceeding disseminated pursuant to subsection (a)(1) of the Rule. The standard for ordering redaction is a finding by clear and convincing evidence that (1) a compelling reason exists under the particular circumstances of the case to make the redaction and (2) no substantial harm will result. Requirements for the court order follow, including a list of possible reasons that could exist for a redaction. Subsection (b)(3) sets forth the procedure for making the redaction. Subsection (b)(4) provides for reconsideration of the redaction order if circumstances change and the redaction no longer is justified.

Rule 16-502

Rule 16-502 is a District Court Rule. Section (a) is amended to clarify that a recording of a judicial proceeding must be made by a person authorized by the court to do so. Subsection (b) (3) requires that, except for extended coverage permitted by Title 16, Chapter 600, only official recordings of District Court proceedings made in accordance with the Rule are permitted. Similar amendments are proposed to analogous sections of Rule 16-503.

Rule 16-503

Rule 16-503 deals with the recording of Circuit Court proceedings. Proposed amendments contain clarifications discussed above related to official recordings.

Rule 16-901

In Rule 16-901, a cross reference is amended to call attention to Rules 16-502, 16-504, and 16-504.1.

For the further guidance of the Court and the public, following the proposed new Rule and the proposed amendments to each of the existing Rules is a Reporter's note describing in further detail the reasons for the proposals. We caution that the Reporter's notes are not part of the Rules, have not been debated or approved by the Committee, and 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,

/ s /

Alan M. Wilner
Chair

AMW:sdm

cc: Gregory Hilton, Clerk

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 500 - RECORDING OF PROCEEDINGS

AMEND Rule 16-504 by adding a provision relating to shielding and redaction in subsection (f)(1)(C), by adding "or on its own initiative" to section (g), by adding an evidentiary standard for entering an order to shield information to section (g), by adding new section (h) governing access to recordings by authorized persons, by deleting current sections (h) through (j), and by making stylistic changes, as follows:

Rule 16-504. ELECTRONIC RECORDING OF CIRCUIT COURT PROCEEDINGS

(a) Control of and Direct Access to Electronic Recordings

(1) Under Control of Court

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

(2) Restricted Access or Possession

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

(b) Filing of Recordings

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

(c) Court Reporters

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

(d) Presence of Court Reporters Not Necessary

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

(e) Identification Label

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

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

(f) Information Required to be Kept

(1) Duty to Keep

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

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

(B) an exhibit list;

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

(2) Location of Exhibit List and Logs

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

(g) Safeguarding Confidential Portions of Proceeding

If a portion of a proceeding involves placing on the record matters that, on motion or on its own initiative, the

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

(h) Access to Recordings by Authorized Persons

(1) Permitted Access

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

(A) the Chief Justice of the Supreme Court;

(B) the County Administrative Judge;

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

(D) the presiding judge in the case;

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

(F) Bar Counsel;

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

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

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

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

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

(2) Notice of Restricted Access

The custodian who provides a copy of a recording pursuant to subsection (h) (1) of this Rule shall mark or otherwise indicate whether the recording contains, in whole or in part, a proceeding as to which Rule 16-914 (g) applies or a proceeding as to which public access is limited pursuant to section (g) of this Rule or Rule 16-504.1 (b). If the copy of the recording contains any such proceedings, the custodian shall specify each section of the recording as to which the restrictions set forth in subsection (h) (3) of this Rule are applicable.

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

(3) Restrictions on Use by Authorized Persons

(A) Generally

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

the shielded or redacted portion of the recording to any person not entitled to it under subsection (h) (1) of this Rule.

(B) Exceptions

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

(4) Violation of Restriction on Use

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

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

~~(1) Generally~~

~~Except (A) for proceedings closed pursuant to law, (B) as provided in Rule 16-914 (g), (C) as otherwise provided in this Rule, or (D) as ordered by the court, the authorized~~

~~custodian of an audio recording shall make a copy of the audio recording or, if practicable, the audio portion of an audio-video recording, available to any person upon written request and, unless waived by the court, upon payment of the reasonable costs of making the copy.~~

~~(2) Redacted Portions of Recording~~

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

~~(3) Exceptions~~

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

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

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

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

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

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

~~(F) Bar Counsel;~~

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

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

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

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

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

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

~~(1) Generally~~

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

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

~~(2) Safeguarded Portions of Recording~~

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

~~(3) Copying Prohibited~~

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

~~or employee shall take reasonable steps to enforce this prohibition, and any willful violation of the prohibition may be punished as a contempt.~~

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

~~(1) Who May Obtain Copy~~

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

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

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

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

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

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

~~(F) Bar Counsel;~~

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

~~(H) a stenographer or transcription service designated by the court for the purpose of preparing an official transcript of~~

~~the proceeding, provided that, (i) if the recording is of a proceeding closed pursuant to law or from which safeguarded portions have not been redacted, the transcript, when filed with the court, shall be placed under seal or otherwise shielded by order of the court, and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted safeguarded portions shall be prepared for or delivered to any person not listed in subsection (j) (1) of this Rule;~~

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

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

~~(2) Restrictions on Use~~

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

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

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

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

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

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

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

REPORTER'S NOTE

By Rules Order dated January 9, 2023, the Supreme Court of Maryland remanded to the Rules Committee proposed new Rule 16-504.1 and a series of conforming amendments submitted to the Court as a part of the Two Hundred and Thirteenth Report. The Rules in that Report proposed restricting access to copies of recordings of criminal proceedings except by certain authorized persons in light of the holding in *Soderberg v. Carrion*, ___ F.Supp.3d ___, 2022 WL 17552556 (D. Md.). The *Soderberg* opinion invalidated the portion of Code, Criminal Procedure Article, § 1-201 which prohibited broadcasting any portion of a criminal proceeding, including a lawfully obtained copy of the recording of a proceeding. Rules Committee members expressed concern about the ability of an individual to obtain and broadcast potentially sensitive portions of a criminal proceeding, such as testimony of a victim of sexual assault, as well as the possibility of witness intimidation.

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

Following the remand, the Special Subcommittee on Broadcasting of Recordings of Criminal Proceedings held a virtual meeting and invited attorneys, members of the media, and other stakeholders to discuss potential amendments to the Rules which would address the stated concerns but serve as a narrowly-

tailored solution that preserves access where those concerns are not present. The invitees to that meeting were also sent copies of the amendments ultimately recommended by the Subcommittee and several submitted comments in writing, in person, or both to the Rules Committee.

Proposed amendments to Rule 16-504 and proposed new Rule 16-504.1 retain the current provision for safeguarding certain information from public access (Rule 16-504 (g)) and establish a procedure for an interested person in a criminal proceeding to ask the court to order a portion of that proceeding to be redacted from a copy of recording provided to a member of the public (Rule 16-504.1 (b)).

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

Section (g) is amended to permit the court to order information to be shielded from public access on its own initiative and to adopt a clear and convincing evidence standard for entering such an order. The standard, which includes a finding of a compelling reason for the shielding and no substantial harm, is derived from Rule 16-934, which governs requests for shielding of paper filings.

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

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

and good cause shown to provide a copy of the audio-video recording to a party or attorney.

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

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

New subsection (h) (4) is derived from current subsection (j) (3) which punishes a willful violation of the restrictions on use as a contempt.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 500 - RECORDING OF PROCEEDINGS

ADD new Rule 16-504.1, as follows:

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

(a) Generally

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

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

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

(2) upon written request from a person, permit the person to listen to the audio recording or, if available, listen to and view the audio-video recording at a time and place designated by

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

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

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

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

(1) Motion; Findings; Order

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

proceeding that is to be redacted, when the redaction requirement will expire, if ever, and the reason for the redaction, which may include:

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

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

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

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

(v) other good cause.

(2) Least Restrictive Means

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

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

(3) Procedure

The clerk or other designee of the court shall create a log listing the recording references for the beginning and end

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

(4) Reconsideration

If, on motion of a party or other interested person, the court makes a finding that there has been a material change in circumstances and finds that the requirements of subsection (b)(1) of this Rule no longer are satisfied, the court shall modify or rescind an order issued under that subsection.

(c) Duty of Custodian

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

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

REPORTER'S NOTE

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

Rule 16-504.1 (a)(1) is derived from current Rule 16-504 (h) and (i) which provide that, except for proceedings as to which Rule 16-914 (g) applies (i.e., closed proceedings or proceedings in actions where all documents are shielded) and portions of proceedings safeguarded or redacted by the court, a custodian of an audio or audio-video recording shall make the recording available as provided in the subsection.

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

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

Section (b) establishes a procedure for an interested person to move to have a portion of a criminal proceeding

redacted from a copy of the recording of that proceeding disseminated pursuant to subsection (a)(1) of the Rule.

Subsection (b)(1) permits the court to redact a portion of the proceeding from a disseminated recording. The court must specify the portion of the proceeding to be redacted, when the redaction requirement expires, and the reasons for the redaction. The court must find by clear and convincing evidence a compelling reason to make the redaction and that no substantial harm will result. The standard is derived from Rule 16-934, which governs requests to shield paper filings. A list of considerations that may support an order for redaction is included in subsection (b)(1). The considerations were derived from discussions with media representatives at a Subcommittee meeting and similar Rules in other states.

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

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

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

Section (c) is derived from current Rule 16-504 (h)(2) and (i)(2). It requires the custodian to assure that a copy of a recording disseminated or a recording listened to or listened to and viewed at the courthouse complies with any shielding or redaction ordered by the court pursuant to Rule 16-504 (g) or Rule 16-504.1 (b).

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 500 - RECORDING OF PROCEEDINGS

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

Rule 16-502. IN DISTRICT COURT

(a) Proceedings to be Recorded

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

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

(b) Method of Recording

(1) Generally

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

(2) As Authorized By Chief Judge

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

(3) Official Recordings

Except for extended coverage of court proceedings permitted under Title 16, Chapter 600 of these Rules, only

official recordings of judicial proceedings in the District Court made in accordance with this Rule are permitted.

(c) Control of and Direct Access to Electronic Recordings

(1) Under Control of District Court

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

(2) Restricted Access or Possession

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

(d) Filing of Recordings

Subject to section (c) of this Rule, audio recordings and any other recording authorized by the Chief Judge of the District Court shall be maintained by the court in accordance with the standards specified in an administrative order of the Chief Justice of the Supreme Court.

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

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

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

(f) Safeguarding Confidential Portions of Proceedings

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

(g) Right to Obtain Copy of Audio Recording

(1) Generally

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

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

(2) Redacted Portions of Recording

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

(3) Exceptions

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

- (A) the Chief Justice of the Supreme Court;
- (B) the Chief Judge of the District Court;
- (C) the District Administrative Judge having supervisory authority over the court;
- (D) the presiding judge in the case;

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

(F) Bar Counsel;

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

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

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

(4) Notice of Restricted Access

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

which the restrictions set forth in subsection (g) (5) of this Rule are applicable.

(5) Restrictions on Use by Authorized Persons

(A) Generally

Except as provided in subsection (g) (5) (B) of this Rule or authorized by an order of court, a person who, under subsection (g) (3) of this Rule, receives a copy of an electronic recording as to which all or a portion is subject to Rule 16-914 (g) or as to which public access is limited pursuant to section (f) of this Rule, shall not (i) make or cause to be made any additional copy of the shielded portion of the recording or (ii) play the shielded portion of the recording for or give or electronically transmit the shielded portion of the recording to any person not entitled to it under subsection (g) (3) of this Rule.

(B) Exceptions

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

connection with the duties of that office. A person permitted to listen to or electronically receive the recording is subject to the restrictions on use in subsection (g) (5) of this Rule.

(6) Violation of Restrictions on Use

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

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

REPORTER'S NOTE

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

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

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

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

Section (f) is amended to permit the court to order a portion of a proceeding to be shielded from public access on its own initiative and to add an evidentiary standard and findings to be made by the court prior to entering an order to shield.

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

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

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

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

Rule 16-503. IN CIRCUIT COURT

(a) Proceedings to be Recorded

(1) Proceedings in the Presence of Judge

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

. . .

(c) Official Recordings

Except for extended coverage of court proceedings permitted under Title 16, Chapter 600 of these Rules, only

official recordings of judicial proceedings in a circuit court
made in accordance with this Rule are permitted.

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

REPORTER'S NOTE

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

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

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

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

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

Rule 16-901. SCOPE OF CHAPTER

. . .

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

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

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

Source: This Rule is new.

REPORTER'S NOTE

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