

IN THE COURT OF APPEALS OF MARYLAND

R U L E S   O R D E R

This Court's Standing Committee on Rules of Practice and Procedure having submitted its One Hundred Sixty-First Report and Supplement to the One Hundred Sixty-First Report to the Court recommending adoption, on an emergency basis, of amendments to Rules 2-501, 2-613, 4-251, 4-252, 4-342, 4-349, 4-631, 4-641, 4-643, 5-804, 14-102, 14-202 (i), 14-209, 14-210 (b), 16-723, 16-1006, and 16-1008 of the Maryland Rules of Procedure; and

This Court having considered at an open meeting, notice of which was posted as prescribed by law, and finding that an emergency does in fact exist with reference to the proposed rules changes, it is this 16<sup>th</sup> day of June, 2009,

ORDERED, by the Court of Appeals of Maryland, that amendments to the above referenced Rules be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that the rules changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after June 17, 2009 , and insofar as practicable to all actions then pending; and it is further

ORDERED that a copy of this Order be published in the next issue of the *Maryland Register*.

/s/ Robert M. Bell

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Robert M. Bell

/s/ Glenn T. Harrell, Jr.

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Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia

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Lynne A. Battaglia

/s/ Clayton Greene, Jr.

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Clayton Greene, Jr.

/s/ Joseph F. Murphy, Jr.

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Joseph F. Murphy, Jr.

/s/ Sally D. Adkins

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Sally D. Adkins

/s/ Mary Ellen Barbera

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Mary Ellen Barbera

Filed: June 16, 2009

Bessie M. Decker

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Clerk  
Bessie M. Decker

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-501 to correct a reference to federal law, as follows:

Rule 2-501. MOTION FOR SUMMARY JUDGMENT

. . .

(f) Entry of Judgment

. . .

Cross reference: ~~Section 200 of the Soldiers' and Sailors' Relief Act of 1940~~ Section 521 of the Servicemembers Civil Relief Act, 50 U.S.C. Appendix, § 521, app. §§501 et seq., imposes specific requirements that must be fulfilled before a default judgment may be entered.

. . .

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE--CIRCUIT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 2-613 to correct a reference to federal law, as follows:

Rule 2-613. DEFAULT JUDGMENT

. . .

(g) Finality

. . .

Cross reference: ~~Section 200 of the Soldiers' and Sailors' Relief Act of 1940~~, Section 521 of the Servicemembers Civil Relief Act, 50 U.S.C. Appendix, §521, app. §§501 et seq., imposes specific requirements that must be fulfilled before a default judgment may be entered.

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MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-251 (c)(2) to correct a statutory reference, as follows:

Rule 4-251. MOTIONS IN DISTRICT COURT

(c) Effect of Determination Before Trial

. . .

(2) Transfer of Jurisdiction to Juvenile Court

If the court grants a motion to transfer jurisdiction of an action to the juvenile court, the court shall enter a written order waiving its jurisdiction and ordering that the defendant be subject to the jurisdiction and procedures of the juvenile court. In its order the court shall (A) release or continue the pretrial release of the defendant, subject to appropriate conditions reasonably necessary to ensure the appearance of the defendant in the juvenile court or (B) place the defendant in detention or shelter care pursuant to Code, Courts Article, ~~§3-815~~ §3-8A-15. Until a juvenile petition is filed, the charging document shall be considered a juvenile petition for the purpose of imposition and enforcement of conditions of release or placement of the defendant in detention or shelter care.

. . .

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-252 (h)(3) to correct a statutory reference, as follows:

Rule 4-252. MOTIONS IN CIRCUIT COURT

. . .

(h) Effect of Determination of Certain Motions

. . .

(3) Transfer of Jurisdiction to Juvenile Court

If the court grants a motion to transfer jurisdiction of an action to the juvenile court, the court shall enter a written order waiving its jurisdiction and ordering that the defendant be subject to the jurisdiction and procedures of the juvenile court. In its order the court shall (A) release or continue the pretrial release of the defendant, subject to appropriate conditions reasonably necessary to ensure the appearance of the defendant in the juvenile court or (B) place the defendant in detention or shelter care pursuant to Code, Courts Article, ~~§3-815~~ §3-8A-15. Until a juvenile petition is filed, the charging document shall have the effect of a juvenile petition for the purpose of imposition and enforcement of conditions of release or placement of the defendant in detention or shelter care.

. . .

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 by adding a statutory reference to section (1), as follows:

Rule 4-342. SENTENCING - PROCEDURE IN NON-CAPITAL CASES

. . .

(1) Recordation of Restitution

(1) Circuit Court

Recordation of a judgment of restitution in the circuit court is governed by Code, Criminal Procedure Article, §§11-608 and 11-609 and Rule 2-601.

(2) District Court

Upon the entry of a judgment of restitution in the District Court, the Clerk of the Court shall send the written notice required under Code, Criminal Procedure Article, §11-610 (e). Recordation of a judgment of restitution in the District Court is governed by Code, Criminal Procedure Article, §§11-610 and 11-612 and Rule 3-621.

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MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-349 to correct a reference to a section of Rule 4-216, as follows:

Rule 4-349. RELEASE AFTER CONVICTION

. . .

(b) Factors Relevant to Conditions of Release

In determining whether a defendant should be released under this Rule, the court may consider the factors set forth in Rule 4-216 ~~(e)~~ (d) and, in addition, whether any appellate review sought appears to be frivolous or taken for delay. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

. . .



MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 600 - CRIMINAL INVESTIGATIONS AND  
MISCELLANEOUS PROVISIONS

AMEND Rule 4-631 to update a statutory reference, as follows:

Rule 4-631. COMPELLING TESTIMONY OR DOCUMENTS ON THE CONDITION OF IMMUNITY

(a) Requested by State

In any proceeding under this Title, before a grand jury, or pursuant to Code, ~~Article 10, § 39A~~ Criminal Procedure Article, §14-110 or §15-108, if a witness lawfully refuses to answer or to provide other information on the basis of the privilege against self incrimination, the court, when authorized by law, shall compel the witness to answer or otherwise provide information if:

(1) The State's Attorney requests in writing or on the record that the court order the witness to answer or otherwise provide information, notwithstanding the witness' claim of privilege; and

(2) The court informs the witness of the scope of the immunity the witness will receive as provided by the appropriate statute.

(b) Order of Court

The court shall enter its order compelling testimony in

writing or on the record.

Cross reference: For examples of statutes that allow the court to issue an order compelling a witness to testify or provide other information on condition of immunity, see Code, Courts Article, §9-123 and Code, Criminal Law Article, §§9-201 and 9-204.

Source: This Rule is derived from former Rule 785 and M.D.R. 785.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 600 - CRIMINAL INVESTIGATIONS AND  
MISCELLANEOUS PROVISIONS

AMEND Rule 4-641 to add a reference to "the State Prosecutor" and to correct a statutory reference, as follows:

Rule 4-641. CRIMINAL INVESTIGATION - APPLICABILITY

Rules 4-641 through 4-644 apply to circuit court procedures relating to criminal investigations. "Criminal investigation" means inquiries into alleged criminal activities conducted by (a) a grand jury, or by (b) a State's Attorney pursuant to Article 10A, §39A Code, Criminal Procedure Article, §15-108, or (c) the State Prosecutor pursuant to Code, Criminal Procedure Article, §14-110. Title 5 of these rules does not apply to circuit court procedures relating to criminal investigations.

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 600 - CRIMINAL INVESTIGATIONS AND  
MISCELLANEOUS PROVISIONS

AMEND Rule 4-643 to update a statutory reference, as follows:

Rule 4-643. SUBPOENA

(a) To Appear Before the Grand Jury

Any subpoena to appear before the grand jury shall be issued: (1) by the clerk of a circuit court on request of the State's Attorney or the grand jury; or (2) by the grand jury through its foreperson or deputy foreperson. The subpoena shall contain the information required by Rule 4-266 (a).

(b) Enforcement - Protective Order

A subpoena to appear before the grand jury or pursuant to ~~Article 10, §39A~~ Code, Criminal Procedure Article, §14-110 or §15-108 is enforceable only in circuit court in the manner set forth in Rule 4-266 (d) and the witness or a person asserting a privilege to prevent disclosure by the witness may apply for a protective order pursuant to Rule 4-266 (c).

Source: This Rule is new.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 800 - HEARSAY

AMEND Rule 5-804 to correct a citation in a certain

Committee note, as follows:

Rule 5-804. HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE

. . .

Committee note: Subsection (b)(5) of this Rule does not affect the law of spoliation, "guilty knowledge," or unexplained failure to produce a witness to whom one has superior access. See *Washington v. State*, 293 Md. 465, 468 n. 1 (1982); *Breeding v. State*, 220 Md. 193, 197 (1959); *Shpak v. Schertle*, 97 Md. App. 207, 222-27 (1993); *Meyer v. McDonnell*, 40 Md. App. 524, 533, (1978), rev'd on other grounds, 301 Md. 426 (1984); *Larsen v. Romeo*, 254 Md. 220, 228 (1969); *Hoverter v. Director of Patuxent Inst.*, 231 Md. 608, 609 (1963); and *DiLeo v. Nugent*, 88 Md. App. 59, 69-72 (1991). The hearsay exception set forth in subsection (b)(5)(B) is not available in criminal causes other than those listed in Code, ~~Criminal Procedure~~ Courts Article, §10-901 (a).

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MARYLAND RULES OF PROCEDURE  
TITLE 14 - SALES OF PROPERTY  
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 14-102 to add a certain notice to "All Occupants" and affidavit requirement pertaining to a judgment awarding possession of residential property and to add provisions relating to the Federal Protecting Tenants at Foreclosure Act of 2009, as follows:

Rule 14-102. JUDGMENT AWARDING POSSESSION

(a) Motion

If the purchaser of an interest in real property at a sale conducted pursuant to the Rules in this Title is entitled to possession and the person in actual possession fails or refuses to deliver possession, the purchaser or a successor in interest who claims the right of immediate possession may file a motion for judgment awarding possession of the property. ~~if the purchaser has not paid the full purchase price and received a deed to the property, the~~ The motion shall state the legal and factual basis for the purchaser's movant's claim of entitlement to possession. Except as otherwise provided in this Rule, Rule 2-311 applies. If the movant's right to possession arises from a foreclosure sale of a dwelling or residential property, the motion shall include averments, made to the best of the movant's knowledge, information, and belief, establishing either that the

person in possession is not a bona fide tenant having rights under the Federal Protecting Tenants at Foreclosure Act of 2009 (P.L. 111-22) or, if the person in possession is such a bona fide tenant, that the notice required under that Act has been given and that the tenant has no further right to possession. If a notice pursuant to the Federal Act is required, the movant shall state the date the notice was given and attach a copy of the notice as an exhibit to the motion.

Committee note: Unless the purchaser is a foreclosing lender or there is waste or other circumstance that requires prompt remediation, the purchaser ordinarily is not entitled to possession until the sale has been ratified and the purchaser has paid the full purchase price and received a deed to the property. See *Legacy Funding v. Cohn*, 396 Md. 511 (2007) and *Empire v. Hardy*, 386 Md. 628 (2005).

The Federal Protecting Tenants at Foreclosure Act of 2009 (P.L. 111-22) requires that a purchaser at a foreclosure sale of a dwelling or residential property give a 90-day notice to a "bona fide tenant" before any eviction and precludes the eviction if the tenant has a "bona fide lease or tenancy," unless the new owner of the property will occupy the property as a primary residence.

(b) Affidavit and Notice

The motion shall be accompanied by:

(1) an affidavit that states:

(A) the name of the person in actual possession, if known;

(B) whether the person in actual possession was a party to the action that resulted in the sale or to the instrument that authorized the sale;

(C) if the purchaser paid the full purchase price and received a deed to the property, the date the payment was made

and the deed was received; and

(D) if the purchaser has not paid the full purchase price or has not received a deed to the property, the factual basis for the purchaser's claim of entitlement to possession; and

(2) if the person in actual possession was not a party to the action or instrument, a notice advising the person that any response to the motion must be filed within 30 days after being served or within any applicable longer time prescribed by Rule 2-321 (b) for answering a complaint. A copy of Rule 2-321 (b) shall be attached to the notice.

(c) No Show Cause Order, Summons, or Other Process

The court shall not issue a show cause order, summons, or other process by reason of the filing of a motion pursuant to this Rule.

(d) Service and Response

(1) On Whom

The motion and all accompanying documents shall be served on the person in actual possession and on any other person affected by the motion.

(2) Party to Action or Instrument

(A) If the person to be served was a party to the action that resulted in the sale or to the instrument that authorized the sale, the motion shall be served in accordance with Rule 1-321.

(B) Any response shall be filed within the time set forth in Rule 2-311.



(3) Not a Party to Action or Instrument

(A) If the person to be served was not a party to the action that resulted in the sale or a party to the instrument that authorized the sale, the motion shall be served:

(i) by personal delivery to the person or to a resident of suitable age and discretion at the dwelling house or usual place of abode of the person, or

(ii) if on at least two different days a good faith effort was made to serve the person under subsection (d)(3)(A)(i) of this Rule but the service was not successful, by (a) mailing a copy of the motion by certified and first-class mail to the person at the address of the property and (b) posting in a conspicuous place on the property a copy of the motion, with the date of posting conspicuously written on the copy.

(B) Any response shall be filed within the time prescribed by sections (a) and (b) of Rule 2-321 for answering a complaint. If the person asserts that the motion should be denied because the person is a bona fide tenant having a right of possession under the Federal Protecting Tenants at Foreclosure Act of 2009 (P.L. 111-22), the response shall (i) state the legal and factual basis for the assertion and (ii) be accompanied by a copy of any bona fide lease or documents establishing the existence of such a lease or state why the lease or documents are not attached.

(4) Judgment of Possession

If a timely response to the motion is not filed and the court finds that the motion complies with the requirements of

sections (a) and (b) of this Rule, the court may enter a judgment awarding possession.

(e) Residential Property; Notice and Affidavit

After entry of a judgment awarding possession of residential property as defined in Rule 14-202 (i), but before executing on the judgment, the purchaser shall:

(1) send by first-class mail the notice required by Code, Real Property Article, §7-105.9 (d) addressed to "All Occupants" at the address of the property; and

(2) file an affidavit that the notice was sent.

Cross reference: Rule 2-647 (Enforcement of Judgment Awarding Possession).

Source: This Rule is derived in part from the 2008 version of former Rule 14-102 and is in part new.

MARYLAND RULES OF PROCEDURE  
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-202 to revise the definition of "residential property," as follows:

Rule 14-202. DEFINITIONS

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

. . .

(i) Residential Property

"Residential property" means real property with four or fewer single family dwelling units that are designed principally and are intended for human habitation. ~~and~~ It includes an individual residential condominium unit within a larger structure or complex, regardless of the total number of individual units in that structure or complex. "Residential property" does not include a time share unit.

. . .

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-209 to delete the form of notice to an occupant of residential property, to add a certain notice requirement to "All Occupants," to add a new section (d) pertaining to certain notice to a county or municipal corporation, to add a reference to that notice to subsection (e)(1), to add a new subsection (e)(5) pertaining to the contents of an affidavit of that notice, and to make stylistic changes, as follows:

Rule 14-209. SERVICE IN ACTIONS TO FORECLOSE ON RESIDENTIAL PROPERTY; NOTICE

(a) Service on Borrower and Record Owner by Personal Delivery

When an action to foreclose a lien on residential property is filed, the plaintiff shall serve on the borrower and the record owner a copy of all papers filed to commence the action. Service shall be accomplished by personal delivery of the papers or by leaving the papers with a resident of suitable age and discretion at the borrower's or record owner's dwelling house or usual place of abode.

(b) Service on Borrower and Record Owner by Mailing and Posting

If on at least two different days a good faith effort was

made to serve a borrower or record owner under section (a) of this Rule and service was not successful, the plaintiff shall effect service by (1) mailing, by certified and first-class mail, a copy of all papers filed to commence the action, to the last known address of each borrower and record owner and, if the person's last known address is not the address of the residential property, also to that person at the address of the property; and (2) posting a copy of the papers in a conspicuous place on the residential property. Service is complete when the property has been posted and the mailings have been made in accordance with this section.

(c) Notice to All Occupants by First-Class Mail

When an action to foreclose on residential property is filed, the plaintiff shall send by first-class mail addressed to ~~"Occupant"~~ "All Occupants" at the address of the property ~~a the~~ notice ~~in substantially the following form:~~ required by Code, Real Property Article, §7-105.9 (b).

NOTICE

~~An action to foreclose a  Mortgage  Deed of Trust  Land Installment Contract  Contract or Statutory Lien on the property located at (Insert Address) has been filed in the Circuit Court for (County).~~

~~A foreclosure sale of the property may occur at any time after 45 days from the date of this notice. You may want to consult with an attorney because you could be evicted, even if you are a tenant and have paid the rent due and complied with~~

~~your lease. For further information, you may review the file in the office of the Clerk of the Circuit Court.~~

(d) If Notice Required by Local Law

When an action to foreclose on residential property is filed with respect to a property located within a county or a municipal corporation that, under the authority of Code, Real Property Article, §14-126 (c), has enacted a local law requiring notice of the commencement of a foreclosure action, the plaintiff shall give the notice in the form and manner required by the local law. If the local law does not provide for the manner of giving notice, the notice shall be sent by first-class mail.

~~(d)~~ (e) Affidavit of Service, and Mailing, and Notice

(1) Time for Filing

An affidavit of service under section (a) or (b) of this Rule, ~~and~~ mailing under section (c) of this Rule, and notice under section (d) of this Rule shall be filed promptly and in any event before the date of the sale.

(2) Service by an Individual Other than a Sheriff

In addition to other requirements contained in this section, if service is made by an individual other than a sheriff, the affidavit shall include the name, address, and telephone number of the affiant and a statement that the affiant is 18 years of age or older.

(3) Contents of Affidavit of Service by Personal Delivery

An affidavit of service by personal delivery shall set forth the name of the person served and the date and particular

place of service. If service was effected on a person other than the borrower or record owner, the affidavit also shall include a description of the individual served (including the individual's name and address, if known) and the facts upon which the individual making service concluded that the individual served is of suitable age and discretion.

(4) Contents of Affidavit of Service by Mailing and Posting

An affidavit of service by mailing and posting shall (A) describe with particularity the good faith efforts to serve the borrower or record owner by personal delivery; (B) state the date on which the required papers were mailed by certified and first-class mail and the name and address of the addressee; and (C) include the date of the posting and a description of the location of the posting on the property.

(5) Contents of Affidavit of Notice Required by Local Law

An affidavit of the sending of a notice required by local law shall (A) state (i) the date the notice was given, (ii) the name and business address of the person to whom the notice was given, (iii) the manner of delivery of the notice, and (iv) a reference to the specific local law of the county or municipal corporation, or both, requiring the notice and (B) be accompanied by a copy of the notice that was given.

Cross reference: See the Servicemembers Civil Relief Act, 50 U.S.C. app. §§501 *et seq.*

Source: This Rule is derived in part from the 2008 version of former Rule 14-204 (b) and is in part new.

MARYLAND RULES OF PROCEDURE  
TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-210 to add a certain notice requirement to  
"All Occupants," as follows:

Rule 14-210. NOTICE PRIOR TO SALE

. . .

(b) By Certified and First-Class Mail

Before selling the property subject to the lien, the individual authorized to make the sale shall also send notice of the time, place, and terms of sale (1) by certified mail and by first-class mail to ~~(1)~~ (A) the borrower, ~~(2)~~ (B) the record owner of the property, and ~~(3)~~ (C) the holder of any subordinate interest in the property subject to the lien, and ~~(4)~~ (2) ~~"Occupant"~~ by first-class mail to "All Occupants" at the address of the property. The notice to "All occupants" shall be in the form and contain the information required by Code, Real Property Article, §7-105.9 (c). Except for the notice to ~~"Occupant,"~~ "All Occupants," the mailings shall be sent to the last known address of all such persons, including to the last address reasonably ascertainable from a document recorded, indexed, and available for public inspection 30 days before the date of the sale. The mailings shall be sent not more than 30 days and not less than



ten days before the date of the sale.

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MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-723 to change the words "Bar Counsel" to "the Commission," as follows:

Rule 16-723. CONFIDENTIALITY

. . .

(b) Other Confidential Matters

Except as otherwise provided in these Rules, the following records and proceedings are confidential and not open to public inspection and their contents may not be revealed by the Commission, the staff of the Commission, Bar Counsel, the staff and investigators of the Office of Bar Counsel, members of the Peer Review Committee, or any attorney involved in the proceeding:

(1) the records of an investigation by Bar Counsel, including the existence and content of any complaint;

(2) the records and proceedings of a Peer Review Panel;

(3) information that is the subject of a protective order;

(4) the contents of a warning issued by ~~Bar Counsel~~ the Commission pursuant to Rule 16-735 (b), but the fact that a warning was issued shall be disclosed to the complainant;

(5) the contents of a prior private reprimand or Bar Counsel reprimand pursuant to the Attorney Disciplinary Rules in effect

prior to July 1, 2001, but the fact that a private or Bar Counsel reprimand was issued and the facts underlying the reprimand may be disclosed to a peer review panel in a proceeding against the attorney alleging similar misconduct;

Committee note: The peer review panel is not required to find that information disclosed under subsection (b)(5) is relevant under Rule 16-743 (c)(1).

(6) the contents of a Conditional Diversion Agreement entered into pursuant to Rule 16-736, but the fact that an attorney has signed such an agreement shall be public;

(7) the records and proceedings of the Commission on matters that are confidential under this Rule;

(8) a Petition for Disciplinary or Remedial Action based solely on the alleged incapacity of an attorney and records and proceedings other than proceedings in the Court of Appeals on that petition; and

(9) a petition for an audit of an attorney's accounts filed pursuant to Rule 16-722 and records and proceedings other than proceedings in the Court of Appeals on that petition.

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

AMEND Rule 16-1006 (e) to update a statutory reference and add a reference to the State Prosecutor, 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:

. . .

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

. . .

(6) A case record pertaining to a criminal investigation by (A) a grand jury, or by (B) a State's Attorney pursuant to Code, Article 10A, §39A Criminal Procedure Article, 15-108, or (C) the State Prosecutor pursuant to Code, Criminal Procedure Article, §14-110.

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.

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MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1008 to conform to the renaming of the "Court Information Office" to the "Office of Communications and Public Affairs," 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~~ Office of Communications and Public Affairs 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~~ Office of Communications and Public Affairs 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~~ Office of Communications and Public Affairs shall take one of the following actions:

(A) The ~~Court Information Office~~ Office of Communications

and Public Affairs shall approve the application if it determines that the application does not request access to court records not subject to inspection under the Rules in this Chapter and will not impose a significant fiscal, personnel, or operational burden on any court or judicial agency. 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 application.

(B) If the ~~Court Information Office~~ Office of Communications and Public Affairs 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~~ Office of Communications and Public Affairs;

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 approval of the application would be likely to permit access to court records or information 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:

(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 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 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 any safeguards to prevent misuse of disseminated information 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 subsection (c)(2)(C) of this Rule, 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~~ Office of Communications and Public Affairs and the applicant in writing of its conclusions. The ~~Court Information Office~~ Office of Communications and Public Affairs 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.