

IN THE COURT OF APPEALS OF MARYLAND

R U L E S O R D E R

This Court's Committee Designated to Develop Rules Regarding Public Access to Court Records having submitted to the Court its Report recommending adoption of proposed new Title 16, Chapter 1000 of the Maryland Rules of Procedure, all as set forth in that Report published in the *Maryland Register*, Vol. 30, Issue 25, pages 1822 - 1838 (December 12, 2003); and

This Court having considered at an open meeting, notice of which was posted as prescribed by law, all those proposed rules changes, together with the comments received, and making certain amendments to the proposed rules changes on its own motion, it is this 4th day of March, 2004

ORDERED, by the Court of Appeals of Maryland, that Title 16, Chapter 1000 of the Maryland Rules, Access to Court Records, be, and it is hereby adopted in the form attached hereto; 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 October 1, 2004, and insofar as practicable, to all actions and matters 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

/s/

Irma S. Raker

/s/

Alan M. Wilner

*

Dale R. Cathell

/s/

Glenn T. Harrell, Jr.

/s/

Lynne A. Battaglia

/s/

Clayton Greene, Jr.

* Judge Cathell has declined to sign the Rules Order.

Filed: March 4, 2004

/s/ Alexander L. Cummings

Clerk
Court of Appeals of Maryland

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

TABLE OF CONTENTS

Rule 16-1001. DEFINITIONS

- (a) Administrative Record
- (b) Business License Record
- (c) Case Record
- (d) Court
- (e) Court Record
- (f) Custodian
- (g) Individual
- (h) Judicial Agency
- (i) Notice Record
- (j) Person
- (k) Remote Access

Rule 16-1002. GENERAL POLICY

- (a) Presumption of Openness
- (b) Protection of Records
- (c) Records Admitted or Considered as Evidence
- (d) Fees
- (e) New Court Records
- (f) Access by Judicial Employees

Rule 16-1003. COPIES

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

- (a) Notice Records
- (b) Administrative and Business License Records
- (c) Personnel Records - Generally
- (d) Personnel Records - Retirement
- (e) Certain Administrative Records

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

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

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

Rule 16-1008. ELECTRONIC RECORDS AND RETRIEVAL

- (a) In General
- (b) Current Programs Providing Electronic Access to or Information from Databases
- (c) New Requests for Electronic Access to Databases

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

- (a) Motion
- (b) Preliminary Shielding
- (c) Temporary Order Precluding or Limiting Inspection
- (d) Final Order
- (e) Filing of Order
- (f) Non-Exclusive Remedy

Rule 16-1010. PROCEDURES FOR COMPLIANCE

- (a) Duty of Person Filing Record
- (b) Duty of Clerk

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

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

Rule 16-1001. DEFINITIONS

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

(a) Administrative Record

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

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

(B) is not otherwise a case record.

(2) "Administrative record" includes:

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

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

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

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

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

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

(D) a jury plan adopted by a court;

(E) a case management plan adopted by a court;
(F) an electronic filing plan adopted by a court; and
(G) an administrative order issued by the Chief Judge of the Court of Appeals pursuant to Rule 16-1002.

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

(b) Business License Record

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

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

(c) Case Record

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

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

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

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

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

(d) Court

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

(e) Court Record

"Court record" means a record that is:

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

(f) Custodian

"Custodian" means:

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

(g) Individual

"Individual" means a human being.

(h) Judicial Agency

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

(i) Notice Record

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

(j) Person

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

(k) Remote Access

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

Committee note: The Rules in this Chapter recognize that court records can be of four types: (1) those, like land records, that are filed with the court, not in connection with any litigation, but for the sole purpose of providing public notice of them; (2) those that are essentially administrative in nature -- that are created by the court or judicial agency itself and relate to the internal operation of a court or other judicial agency as an agency of Government; (3) those that are filed or created in connection with business licenses (excluding marriage licenses) issued by the clerk; and (4) those that are filed with the court in connection with a judicial action or the issuance of a marriage license. The premise of the Rules in this Chapter is that, although the presumption of openness applies to all four kinds of records, they need to be treated differently in some respects.

Land records and other similar kinds of records that are filed with the clerk for the sole purpose of giving public notice of them are court records, but, because the court's only function with respect to those records is to preserve them and make and keep them available for public inspection, there is no justification for shielding them, or any part of them, from public inspection. Those kinds of records are defined as "notice records," and it is the intent of the Rules in this Chapter that there be no substantive (content) restrictions on public access to them.

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

A different approach is taken with respect to case records -

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

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

Source: This Rule is new.

Rule 16-1002. GENERAL POLICY

(a) Presumption of Openness

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

(b) Protection of Records

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

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

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

Committee note: It is anticipated that, by Administrative Order, entered pursuant to section (b) of this Rule, the Chief Judge of the Court of Appeals will direct that, if the clerk does not permit inspection of a notice record prior to recording and indexing of the record, (1) persons filing a notice record for recording and indexing include a separate legible copy of those pages of the document necessary to identify the parties to the transaction and the property that is the subject of the transaction and (2) the clerk date stamp that copy and maintain it in a separate book that is subject to inspection by the

public.

(c) Records Admitted or Considered as Evidence

Unless the court expressly orders otherwise, a court record that has been admitted into evidence in a judicial action or that a court has considered as evidence or relied upon for purposes of deciding a motion is subject to inspection, notwithstanding that the record otherwise would not have been subject to inspection under the Rules in this Chapter.

(d) Fees

(1) In this Rule, "reasonable fee" means a fee that bears a reasonable relationship to the actual or estimated costs incurred or likely to be incurred in providing the requested access.

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

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

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

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

(e) New Court Records

(1) Except as expressly required by other law and subject to

Rule 16-1008, neither a custodian nor a court or other judicial agency is required by the Rules in this Chapter to index, compile, re-format, program, or reorganize existing court records or other documents or information to create a new court record not necessary to be maintained in the ordinary course of business. The removal, deletion, or redaction from a court record of information not subject to inspection under the Rules in this Chapter in order to make the court record subject to inspection does not create a new record within the meaning of this Rule.

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

(f) Access by Judicial Employees

The Rules in this Chapter address access to court records by the public at large and do not limit access to court records by judicial officials or employees in the performance of their official duties.

Source: This Rule is new.

Rule 16-1003. COPIES

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

(b) To the extent practicable, a copy or printout in paper form shall be made where the court record is kept and while the court record is in the custody of the custodian.

Source: This Rule is new.

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

(a) Notice Records

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

(b) Administrative and Business License Records

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

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

(c) Personnel Records - Generally

Except as otherwise permitted by the Maryland Public Information Act or by this Rule, a custodian shall deny to a person other than the person who is the subject of the record inspection of the personnel records of an employee of the court or other judicial agency or of an individual who has applied for employment with the court or other judicial agency. The following records or information are not subject to this exclusion and shall be open to inspection:

- (1) The full name of the individual;

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

(d) Personnel Records - Retirement

Unless inspection is permitted under the Maryland Public Information Act or the record has become a case record, a custodian shall deny inspection of a retirement record of an employee of the court or other judicial agency.

(e) Certain Administrative Records

A custodian shall deny inspection of the following administrative records:

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

(2) An administrative record that is:

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

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

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

Source: This Rule is new.

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

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

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

(2) The Maryland Constitution;

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

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

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

(A) the case record, or

(B) the person seeking inspection of the case record.

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

Committee note: Subsection (a)(5) allows a court to seal a record or otherwise preclude its disclosure. So long as a court record is under seal or subject to an order precluding or limiting disclosure, it may not be disclosed except in conformance with the order. The authority to seal a court record must be exercised in conformance with the general policy of these Rules and with supervening standards enunciated in decisions of

the United States Supreme Court and the Maryland Court of Appeals.

Source: This Rule is new.

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

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

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

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

(A) Adoption;

(B) Guardianship; or

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

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

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

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

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

(c) In any action or proceeding, a case record concerning child

abuse or neglect.

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

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

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

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

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

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

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

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

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

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

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

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

(A) A case record pertaining to an arrest warrant issued

under Rule 4-212 (d) and the charging document upon which the warrant was issued until the conditions set forth in Rule 4-212 (d) (3) are satisfied.

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

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

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

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

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

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

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

(h) The following case records containing medical information:

(1) A case record, other than an autopsy report of a medical examiner, that (A) consists of a medical or psychological report

or record from a hospital, physician, psychologist, or other professional health care provider, and (B) contains medical or psychological information about an individual.

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

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

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

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

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

(j) A case record that:

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

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

Source: This Rule is new.

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

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

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

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

(c) Any part of the social security or Federal Identification Number of an individual, other than the last four digits.

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

Source: This Rule is new.

Rule 16-1008. ELECTRONIC RECORDS AND RETRIEVAL

(a) In General

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

(2) Subject to the other provisions of this Rule and any other law or any administrative order of the Chief Judge of the Court of Appeals, a custodian, court, or other judicial agency, for the purpose of providing public access to court records in electronic form, is authorized but not required:

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

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

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

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

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

(3) Subject to the other provisions of this Rule, a custodian may limit access to court records in electronic form to the manner, form, and program that the electronic system used by the custodian, without modification, is capable of providing. If a custodian, court, or other judicial agency converts paper court records into electronic court records or otherwise creates new

electronic records, databases, or computer systems, it shall, to the extent practicable, design those records, databases, or systems to facilitate access to court records that are open to inspection under the Rules in this Chapter.

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

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

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

(b) Current Programs Providing Electronic Access to Databases

Any electronic access to a database of court records that is provided by a court or other judicial agency and is in effect on October 1, 2004 may continue in effect, subject to review by the Technology Oversight Board for consistency with the Rules in this Chapter. After review, the Board may make or direct any changes that it concludes are necessary to make the electronic access consistent with the Rules in this Chapter.

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

(1) A person who desires to obtain electronic access to or information from a database of court records to which electronic access is not then immediately and automatically available shall submit to the Court Information Office a written application that

describes the court records to which access is desired and the proposed method of achieving that access.

(2) The Court Information Office shall review the application and may consult the Judicial Information Systems. Without undue delay and, unless impracticable, within 30 days after receipt of the application, the Court Information Office shall take one of the following actions:

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

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

(i) deny the application;

(ii) offer to confer with the applicant about amendments to the application that would meet the concerns of the Court Information Office; or

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

(C) If the application is referred to the Technology Oversight Board, the Board shall determine whether the proposal is likely to permit access to court records or information that

are not subject to inspection under the Rules in this Chapter, create any undue burden on a court, other judicial agency, or the judicial system as a whole, or create undue disparity in the ability of other courts or judicial agencies to provide equivalent access to court records. In making those determinations, the Board shall consider, to the extent relevant:

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

Source: This Rule is new.

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

(a) Motion

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

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

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

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

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

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

(b) Preliminary Shielding

Upon the filing of a motion to seal or otherwise limit inspection of a case record pursuant to section (a) of this Rule, the custodian shall deny inspection of the case record for a period not to exceed five business days, including the day the motion is filed, in order to allow the court an opportunity to determine whether a temporary order should issue.

(c) Temporary Order Precluding or Limiting Inspection

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

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

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

(d) Final Order

(1) After an opportunity for a full adversary hearing, the court shall enter a final order:

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

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

(C) denying the motion.

(2) A final order shall include findings regarding the interest sought to be protected by the order.

(3) A final order that precludes or limits inspection of a case record shall be as narrow as practicable in scope and duration to effectuate the interest sought to be protected by the order.

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

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

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

(C) if the motion seeks to permit inspection of a case record that has been previously sealed by court order under subsection (d) (1) (A) of this Rule and the movant was not a party to the case when the order was entered, whether the order satisfies the standards set forth in subsections (d) (2), (3), and (4) (A) of this Rule.

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

(e) Filing of Order

A copy of any preliminary or final order shall be filed in

the action in which the case record in question was filed and shall be subject to public inspection.

(f) Non-Exclusive Remedy

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

Source: This Rule is new.

Rule 16-1010. PROCEDURES FOR COMPLIANCE

(a) Duty of Person Filing Record

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

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

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

(b) Duty of Clerk

(1) In conformance with procedures established by administrative order of the Chief Judge of the Court of Appeals, the clerk shall make a reasonable effort, promptly upon the filing or creation of a case record, to shield any information

that is not subject to inspection under the Rules in this Chapter and that has been called to the attention of the custodian by the person filing or authorizing the filing of the case record, in order that the case record, as shielded, may be subject to inspection.

(2) Persons who filed or authorized the filing of a case record filed prior to October 1, 2004 may advise the custodian in writing whether any part of the case record is not subject to inspection. The custodian is not bound by that determination. The custodian shall make a reasonable effort, as time and circumstances allow, to shield from those case records any information that is not subject to inspection under the Rules in this Chapter and that has been called to the attention of the custodian, in order that those case records, as shielded, may be subject to inspection. The duty under this subsection is subordinate to all other official duties of the custodian.

Source: This Rule is new.

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

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

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

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

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

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

(b) After hearing from or making a reasonable effort to communicate with the person seeking inspection and each person to whom the court record pertains, the court shall make a preliminary determination of whether the record is subject to inspection. Unless the court extends the time for good cause, the preliminary determination shall be made within 10 days after the court receives the written request.

(c) If the court determines that the record is subject to

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

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

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

Source: This Rule is new.