

*The agenda for a meeting of the Rules Committee generally will be posted 7-10 days before the date of the meeting. At the discretion of the Chair, items may be deleted from or added to the agenda.*

**AGENDA FOR**  
**RULES COMMITTEE MEETING**

**May 18, 2012**

**Judiciary Education and Conference Center**  
**Training Rooms 9 & 10**  
**2011-D Commerce Park Drive**  
**Annapolis, Maryland**  
**9:30 a.m.**

- |         |   |              |
|---------|---|--------------|
| Item 1. | Consideration of proposed amendments to Rules 2-633 (Discovery in Aid of Enforcement) and 3-633 (Discovery in Aid of Enforcement)   | Mr. Sullivan |
| Item 2. | Consideration of proposed amendments to Rule 5-803 (Hearsay Exceptions: Unavailability of Declarant Not Required)   | Ms. Ogletree |
| Item 3. | Consideration of a proposed amendment to Rule 2-214 (Intervention)  | Mr. Brault   |
| Item 4. | Consideration of a Memorandum from the Discovery Subcommittee regarding Rules 2-421 (Interrogatories to Parties), 2-422 (Discovery of Documents, Electronically Stored Information and Property), and 2-424 (Admission of Facts and Genuineness of Documents) | Mr. Klein    |
| Item 5. | Consideration of a proposed revised Title 16 (Court Administration)<br><br>Chapter 500 - (Recording of Proceedings)<br>Chapter 600 - (Extended Coverage of Court Proceedings)   | Judge Wilner |

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

AMEND Rule 2-633 to make section (b) subject to section (c), to replace the word "may" with the word "shall" in section (b), and to add new section (c) concerning subsequent examinations, as follows:

Rule 2-633. DISCOVERY IN AID OF ENFORCEMENT

(a) Methods

A judgment creditor may obtain discovery to aid enforcement of a money judgment (1) by use of depositions, interrogatories, and requests for documents, and (2) by examination before a judge or an examiner as provided in section (b) of this Rule.

Committee note: The discovery permitted by this Rule is in addition to the discovery permitted before the entry of judgment, and the limitations set forth in Rules 2-411 (d) and 2-421 (a) apply separately to each. Thus, a second deposition of an individual previously deposed before the entry of judgment may be taken after the entry of judgment without leave of court. A second post-judgment deposition of that individual, however, would require leave of court. *Melnick v. New Plan Realty*, 89 Md. App. 435 (1991). Furthermore, leave of court is not required under Rule 2-421 to serve interrogatories on a judgment debtor solely because 30 interrogatories were served upon that party before the entry of judgment.

(b) Examination Before a Judge or an Examiner

Subject to section (c) of this Rule, on request of a judgment creditor, filed no earlier than 30 days after entry of a money judgment, the court where the judgment was entered or

recorded ~~may~~ shall issue an order requiring the appearance for examination under oath before a judge or examiner of (1) the judgment debtor, or (2) any other person if the court is satisfied by affidavit or other proof that it is probable that the person has property of the judgment debtor, is indebted for a sum certain to the judgment debtor, or has knowledge of any concealment, fraudulent transfer, or withholding of any assets belonging to the judgment debtor.

The order shall specify when, where, and before whom the examination will be held and that failure to appear may result in the person served being held in contempt. The order shall be served upon the judgment debtor or other person in the manner provided by Rule 2-121. The judge or examiner may sequester persons to be examined, with the exception of the judgment debtor.

Cross reference: Code, Courts Article, §9-119.

(c) Subsequent Examinations

After an examination of a person has been held pursuant to section (b) of this Rule, a judgment creditor may obtain additional examinations of the person in accordance with this section. On request of the judgment creditor, if more than one year has elapsed since the most recent examination of the person, the court shall order a subsequent appearance for examination of the person. If less than one year has elapsed since the most recent examination of the person, the court may require a showing of good cause.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 627.

Section (b) is in part new and in part derived from former Rule 628 b.

Section (c) is new.

#### REPORTER'S NOTE

The proposed amendments to Rules 2-633 and 3-633 stem from correspondence from several delegates regarding House Bill 483 (2011) entitled, "Courts - Discovery - Examination in Aid of Enforcement of Money Judgment," which failed in the House Judiciary Committee.

The lead sponsor of HB 483 advises that its intended purpose was to permit a judgment creditor to conduct one oral examination of the judgment debtor or other person each year without the judgment creditor having to show good cause. If the judgment creditor wishes to conduct an oral examination of the person before one year has elapsed, the court may require a showing of good cause.

In the 2012 session of the General Assembly, House Bill 337 passed by a vote of 133-0 in the House, but received an unfavorable report from the Senate Judicial Proceedings Committee.

Currently, Rule 2-633 is silent regarding subsequent examinations by the judgment creditor. Rule 3-633 currently provides that, upon request of the judgment creditor, the court may order a subsequent appearance for examination only for good cause shown. The proposed amendments resolve this discrepancy by adding section (c) to Rule 2-633 and amending Rule 3-633 (c), thereby making the sections regarding subsequent examinations identical.

MARYLAND RULES OF PROCEDURE

TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT

CHAPTER 600 - JUDGMENT

AMEND Rule 3-633 to make section (b) subject to section (c), to replace the word "may" with the word "shall" in section (b), to delete language from section (c) concerning subsequent examinations, and to add language to section (c) concerning subsequent examinations, as follows:

Rule 3-633. DISCOVERY IN AID OF ENFORCEMENT

(a) Methods

A judgment creditor may obtain discovery to aid enforcement of a money judgment (1) by use of interrogatories pursuant to Rule 3-421, and (2) by examination before a judge or an examiner as provided in section (b) of this Rule.

Committee note: The discovery permitted by this Rule is in addition to the discovery permitted before the entry of judgment, and the limitations set forth in Rule 3-421 (b) apply separately to each. Thus, leave of court is not required under Rule 3-421 to serve one set of not more than 15 interrogatories on a judgment debtor solely because interrogatories were served upon that party before the entry of judgment.

(b) Examination Before a Judge or an Examiner

Subject to section (c) of this Rule, on request of a judgment creditor, filed no earlier than 30 days after entry of a money judgment, the court where the judgment was entered or recorded ~~may~~ shall issue an order requiring the appearance for examination under oath before a judge or person authorized by the Chief Judge of the Court to serve as an examiner of (1) the

judgment debtor, or (2) any other person if the court is satisfied by affidavit or other proof that it is probable that the person has property of the judgment debtor, is indebted for a sum certain to the judgment debtor, or has knowledge of any concealment, fraudulent transfer, or withholding of any assets belonging to the judgment debtor. The order shall specify when, where, and before whom the examination will be held and that failure to appear may result in the person served being held in contempt. The order shall be served upon the judgment debtor or other person in the manner provided by Rule 3-121. The judge or examiner may sequester persons to be examined, with the exception of the judgment debtor.

Cross reference: Code, Courts Article, §9-119.

(c) Subsequent Examinations

After an examination of a ~~defendant or other~~ person has been held pursuant to section (b) of this Rule, ~~the court may order a subsequent appearance for examination of that defendant or other person on request of the same judgment creditor only for good cause shown.~~ a judgment creditor may obtain additional examinations of the person in accordance with this section. On request of the judgment creditor, if more than one year has elapsed since the most recent examination of the person, the court shall order a subsequent appearance for examination of the person. If less than one year has elapsed since the most recent examination of the person, the court may require a showing of good cause.

Source: This Rule is derived as follows:

Section (a) is derived from former M.D.R. 627.

Section (b) is in part new and in part derived from former M.D.R. 628 b.

Section (c) is new.

REPORTER'S NOTE

See the Reporter's note to the proposed amendments to Rule 2-633.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 800 - HEARSAY

AMEND Rule 5-803 to add a new subsection (b)(8)(D) regarding the admissibility of reports made pursuant to a certain statute regarding abuse of a child or vulnerable adult and to make stylistic changes, as follows:

Rule 5-803. HEARSAY EXCEPTIONS: UNAVAILABILITY OF DECLARANT NOT REQUIRED

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

. . .

(b) Other Exceptions

(1) Present Sense Impression

A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited Utterance

A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.

(3) Then Existing Mental, Emotional, or Physical Condition

A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health),

offered to prove the declarant's then existing condition or the declarant's future action, but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements for Purposes of Medical Diagnosis or Treatment

Statements made for purposes of medical treatment or medical diagnosis in contemplation of treatment and describing medical history, or past or present symptoms, pain, or sensation, or the inception or general character of the cause or external sources thereof insofar as reasonably pertinent to treatment or diagnosis in contemplation of treatment.

(5) Recorded Recollection

See Rule 5-802.1 (e) for recorded recollection.

(6) Records of Regularly Conducted Business Activity

A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses if (A) it was made at or near the time of the act, event, or condition, or the rendition of the diagnosis, (B) it was made by a person with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course of a regularly conducted business activity, and (D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation. A record of this kind may be excluded if the source of information or the method or circumstances of the preparation of the record indicate that the information in the

record lacks trustworthiness. In this paragraph, "business" includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

Cross reference: Rule 5-902 (b).

Committee note: Public records specifically excluded from the public records exceptions in subsection (b)(8) of this Rule may not be admitted pursuant to this exception.

(7) Absence of Entry in Records Kept in Accordance with Subsection (b)(6)

Unless the circumstances indicate a lack of trustworthiness, evidence that a diligent search disclosed that a matter is not included in the memoranda, reports, records, or data compilations kept in accordance with subsection (b)(6), when offered to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind about which a memorandum, report, record, or data compilation was regularly made and preserved.

(8) Public Records and Reports

(A) Except as otherwise provided in this paragraph, a memorandum, report, record, statement, or data compilation made by a public agency setting forth

(i) the activities of the agency;

(ii) matters observed pursuant to a duty imposed by law, as to which matters there was a duty to report; or

(iii) in civil actions and when offered against the State in criminal actions, factual findings resulting from an investigation made pursuant to authority granted by law.

(B) A record offered pursuant to paragraph (A) may be excluded if the source of information or the method or circumstance of the preparation of the record indicate that the record or the information in the record lacks trustworthiness.

(C) A record of matters observed by a law enforcement person is not admissible under this paragraph when offered against an accused in a criminal action.

(D) Facts or opinions contained in a report made pursuant to Code, Family Law Article, §4-505 (e) may be admitted at a final protective order hearing conducted pursuant to Code, Family Law Article, §4-506 if (i) that evidence would otherwise be admissible under applicable [rules of evidence] [evidence law], or (ii) the parties, after having a fair opportunity to review the report, consent to the admission.

Committee note: If necessary, continuances should be liberally granted in order to provide the parties a fair opportunity to review the report and to prepare for the hearing.

~~(D)~~ (E) This paragraph does not supersede specific statutory provisions regarding the admissibility of particular public records.

Committee note: This section does not mandate following the interpretation of the term "factual findings" set forth in *Beech Aircraft Corp. v. Rainey*, 488 U.S. 153 (1988). See *Ellsworth v. Sherne Lingerie, Inc.*, 303 Md. 581 (1985).

#### (9) Records of Vital Statistics

Except as otherwise provided by statute, records or data compilations of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

Cross reference: See Code, Health General Article, §4-223 (inadmissibility of certain information when paternity is contested) and §5-311 (admissibility of medical examiner's reports).

(10) Absence of Public Record or Entry

Unless the circumstances indicate a lack of trustworthiness, evidence in the form of testimony or a certification in accordance with Rule 5-902 that a diligent search has failed to disclose a record, report, statement, or data compilation made by a public agency, or an entry therein, when offered to prove the absence of such a record or entry or the nonoccurrence or nonexistence of a matter about which a record was regularly made and preserved by the public agency.

(11) Records of Religious Organizations

Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, Baptismal, and Similar Certificates

Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a member of the clergy, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family Records

Statements of fact concerning personal or family history

contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones or the like.

(14) Records of Documents Affecting an Interest in Property

The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and a statute authorizes the recording of documents of that kind in that office.

(15) Statements in Documents Affecting an Interest in Property

A statement contained in a document purporting to establish or affect an interest in property if the matter stated was relevant to the purpose of the document, unless dealings with the property since the document was made have been inconsistent with the truth of the statement or the purport of the document or the circumstances otherwise indicate lack of trustworthiness.

(16) Statements in Ancient Documents

Statements in a document in existence twenty years or more, the authenticity of which is established, unless the circumstances indicate lack of trustworthiness.

(17) Market Reports and Published Compilations

Market quotations, tabulations, lists, directories, and other published compilations, generally used and reasonably relied upon by the public or by persons in particular

occupations.

(18) Learned Treatises

To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in a published treatise, periodical, or pamphlet on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness, by other expert testimony, or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(19) Reputation Concerning Personal or Family History

Reputation, prior to the controversy before the court, among members of a person's family by blood, adoption, or marriage, or among a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, or other similar fact of personal or family history.

(20) Reputation Concerning Boundaries or General History

(A) Reputation in a community, prior to the controversy before the court, as to boundaries of, interests in, or customs affecting lands in the community.

(B) Reputation as to events of general history important to the community, state, or nation where the historical events occurred.

(21) Reputation as to Character

Reputation of a person's character among associates or

in the community.

(22) [Vacant].- There is no subsection 22.

(23) Judgment as to Personal, Family, or General History, or Boundaries

Judgments as proof of matters of personal, family, or general history, or boundaries, essential to the judgment, if the matter would be provable by evidence of reputation under subsections (19) or (20).

(24) Other Exceptions

Under exceptional circumstances, the following are not excluded by the hearsay rule: A statement not specifically covered by any of the hearsay exceptions listed in this Rule or in Rule 5-804, but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the intention to offer the statement and the particulars of it, including the name and address of the declarant.

Committee note: The residual exception provided by Rule 5-803

(b) (24) does not contemplate an unfettered exercise of judicial discretion, but it does provide for treating new and presently unanticipated situations which demonstrate a trustworthiness within the spirit of the specifically stated exceptions. Within this framework, room is left for growth and development of the law of evidence in the hearsay area, consistently with the broad purposes expressed in Rule 5-102.

It is intended that the residual hearsay exception will be used very rarely, and only in exceptional circumstances. The Committee does not intend to establish a broad license for trial judges to admit hearsay statements that do not fall within one of the other exceptions contained in Rules 5-803 and 5-804 (b). The residual exception is not meant to authorize major judicial revisions of the hearsay rule, including its present exceptions. Such major revisions are best accomplished by amendments to the Rule itself. It is intended that in any case in which evidence is sought to be admitted under this subsection, the trial judge will exercise no less care, reflection, and caution than the courts did under the common law in establishing the now-recognized exceptions to the hearsay rule.

Source: This Rule is derived as follows:

Section (a) is derived from F.R.Ev. 801 (d) (2).

Section (b) is derived from F.R.Ev. 803.

#### REPORTER'S NOTE

Code, Family Law Article, §4-505 (e) requires the court and the local department to take certain actions if, during a temporary protective order hearing, the court finds reasonable grounds to believe that a child or a vulnerable adult has been abused. Specifically, the court must forward to the local department a copy of the petition and temporary protective order and the local department must investigate the alleged abuse and send to the court a copy of the report of its investigation by the date of the final protective order hearing. The statute is silent regarding the admissibility of the report and its contents.

The Civil Law and Procedure Committee of the Maryland Judicial Conference has been studying the admissibility of these reports in trial courts across the State. The Committee conducted a survey of trial judges at the 2011 Maryland Judicial Conference. The survey disclosed that the reports are admitted under widely different standards of admissibility. For example, at least one court admits the reports based on the assumption that the statutory authority calling for referral to the local department necessarily implies that the report should be admitted, while in other courts admissibility may depend upon whether the parties object or whether the author of the report is

present for cross-examination.

A group consisting of the Family/Domestic Subcommittee, a member of the Evidence Subcommittee, and consultants reviewed the results of the survey and a research memorandum prepared by the Executive Director of Legal Affairs and Special Assistant to the Director of Legal Affairs. The memorandum analyzes the evidentiary rules and case law and concludes that the rules of evidence should apply to the reports and a party should therefore be able to object to their admission on this basis. By way of example, a party may wish to object because the report contains hearsay or multiple levels of hearsay, or contains an expert opinion without a proper foundation. A court should also consider, when appropriate, a party's objection based upon the trustworthiness of the report.

The group agreed with this analysis and decided to recommend a Rule to the Rules Committee that makes clear that the reports do not enjoy any special or relaxed evidentiary standards, but should be treated just like any other evidence presented at a hearing. The amendment to Rule 5-803 (b) (8) (D) provides that otherwise inadmissible facts and opinions in the report are admissible only with the consent of the parties after having an opportunity to review the report. The group decided in favor of requiring the parties to provide affirmative, informed consent, rather than authorizing the court to automatically admit the report unless there is an objection, because the majority of the parties in protective order cases are self-represented and may not know that there is a right to withhold consent or may be confused about the process of objecting. The group discussed the concept of informed consent and its meaning in the context of the proposed amendment, but decided that it would not be appropriate to include in the Rule a definition or a mandatory litany regarding consent.

The group also recommends adding a Committee note explaining that continuances should be liberally granted. This is because the parties often see the report for the first time at the hearing and may need time to refute any factual inaccuracies and to otherwise prepare for the hearing in light of the report.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 200 - PARTIES

AMEND Rule 2-214 to authorize the filing of a response that is not a pleading with a motion to intervene, as follows:

Rule 2-214. INTERVENTION

(a) Of Right

Upon timely motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law; or (2) when the person claims an interest relating to the property or transaction that is the subject of the action, and the person is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless it is adequately represented by existing parties.

(b) Permissive

(1) Generally

Upon timely motion a person may be permitted to intervene in an action when the person's claim or defense has a question of law or fact in common with the action.

(2) Governmental Interest

Upon timely motion the federal government, the State, a political subdivision of the State, or any officer or agency of any of them may be permitted to intervene in an action when the validity of a constitutional provision, charter provision,

statute, ordinance, regulation, executive order, requirement, or agreement affecting the moving party is drawn in question in the action, or when a party to an action relies for ground of claim or defense on such constitutional provision, charter provision, statute, ordinance, regulation, executive order, requirement, or agreement.

(3) Considerations

In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure

A person desiring to intervene shall file and serve a motion to intervene. The motion shall state the grounds therefor and shall be accompanied by a copy of the proposed pleading or motion setting forth the claim or defense for which intervention is sought. An order granting intervention shall designate the intervenor as a plaintiff or a defendant. Thereupon, the intervenor shall promptly file the pleading or motion and serve it upon all parties.

Source: This Rule is derived as follows:

Section (a) is derived from the 1966 version of Fed. R. Civ. P. 24 (a).

Section (b)

Subsection (b) (1) is derived from former Rule 208 b 1.

Subsection (b) (2) is derived from former Rule 208 b 2.

Subsection (b) (3) is derived from the last sentence of the 1966 version of Fed. R. Civ. P. 24 (b).

Section (c) is derived from the 1966 version of Fed. R. Civ. P. 24 (c) and former Rule 208 c.

REPORTER'S NOTE

Rule 2-214 currently directs a person to file a proposed *pleading* with a motion to intervene.

Rule 1-202 (u) defines pleading as a complaint, counterclaim, cross-claim, third-party complaint, answer, answer to a counterclaim, answer to a cross-claim, answer to a third party complaint, a reply to an answer, or a charging document as used in Title 4.

An amendment is proposed because a person may wish to intervene for the purpose of filing a response that is not a pleading. For example, an intervenor may wish to file a motion to dismiss based on lack of standing.

**MEMORANDUM**

TO : Members of the Rules Committee  
FROM : Discovery Subcommittee  
DATE : May 8, 2012  
SUBJECT : Clarification of Rules 2-421, 2-422, and  
2-424

At its September 27, 2011 meeting, the Discovery Subcommittee discussed whether to recommend amendments to Rules 2-421, 2-422, and 2-424, in order to clarify language that may be considered to be ambiguous. See Memoranda dated September 20, 2011 and April 19, 2011.

The Subcommittee decided not to recommend amendments, but to nevertheless refer the matter to the full Committee for its consideration.

If the Committee determines that amendments are necessary, the Subcommittee would recommend proposing the enclosed amendments to Rules 2-421, 2-422, and 2-424.

KKL:cdc  
Enclosures

**MEMORANDUM**

TO : Members of the Discovery Subcommittee  
FROM : Sandra F. Haines, Esq., Reporter  
DATE : September 20, 2011  
SUBJECT : Clarification of Rule 2-421

Several months ago, Linda Schuett sent to the Rules Committee Office the following inquiry concerning Rule 2-421:

Rule 2-421 (b) requires a person to respond to interrogatories within 30 days after service or within 15 days after the date on which that party's initial pleading or motion is required, whichever is later. I read this to mean that if you're served with interrogatories along with the Complaint, you have to answer the interrogatories on the 15<sup>th</sup> day after your Answer or Motion to Dismiss is required to be filed and that you can't delay responding until the Motion to Dismiss is decided.

Maryland Rules Commentary (page 325) says responses to interrogatories must be filed within 30 days "or within 15 days after the time for responding **under Rule 2-321**, whichever is later." As you know, Rule 2-321 is the time for filing the Answer, and it provides that the time for filing is extended to 15 days after the court's ruling on a Motion to Dismiss. This would mean that you don't need to respond to interrogatories

until after the court rules on the Motion to Dismiss.

Am I missing something obvious?

Attached is research from Assistant Reporter Kara Lynch regarding the history and interpretation of Rule 2-421.

Consideration of a clarification of Rule 2-421 will be on the agenda of the September 27, 2011 meeting of the Discovery Subcommittee.

SFH:cdc  
Enclosure

**MEMORANDUM**

TO : Sandra F. Haines, Esq., Reporter  
FROM : Kara M. Kiminsky, Esq., Assistant Reporter  
DATE : April 19, 2011  
SUBJECT : Rule 2-421

You have asked me to research the history and interpretation of Rule 2-421 (b) to determine whether its language is ambiguous. Rule 2-421 (b) states, in part: "The party to whom the interrogatories are directed shall serve a response within 30 days after service of the interrogatories or within 15 days after the date on which that party's initial pleading or motion is required."

The Rules Committee minutes for the 82nd Report (1983) indicate that the Committee's main objective in adopting Rule 2-421 (b) was to ensure that when a complaint and interrogatories are served near or at the same time, the responding party will have an additional 15 days to respond to the interrogatories. Attorneys were concerned that, without the addition of section (b), a defendant might have to answer both the complaint and interrogatories within 30 days (or 60 or 90 days, depending on the status of the defendant). Mr. Niemeyer indicated that section (b) was designed to afford a defendant an additional 15 days to file responses to interrogatories that were served with the complaint, so that the answer and responses are not due at the same time.

Additionally, when Rule 2-421(b) was adopted, FRCP 33 (a) provided that answers to interrogatories must be served within 30 days after service "except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow for a longer or shorter time."

Rule 2-322 requires that certain defenses be made by motion to dismiss filed before the answer. If a party files a motion to dismiss under Rule 2-322, the answer is not due until 15 days after the court has ruled upon the motion to dismiss. See Rule

2-321 (c) ("Automatic extension. When a motion is filed pursuant to Rule 2-322, the time for filing an answer is extended without special order to 15 days after the court's order on the motion . . ."). There is no discussion in the Rules Committee minutes, 82nd Report file, or Comment Review Subcommittee materials regarding whether filing a preliminary motion to dismiss will affect the time in which a party is required to respond to interrogatories.

It seems that the Rules Committee did not intend for the automatic extension of time for filing an answer in 2-321 (c) to apply to the time in which a party must respond to interrogatories pursuant to Rule 2-421 (b). If the Committee had intended to treat preliminary motions differently, it likely would have limited Rule 2-421 (b) to the "initial pleadings" and would not have included the phrase "or motion." According to the Rule, when interrogatories are served near or at the same time as the complaint, the responses to interrogatories are due 15 days after the defendant files a response to the complaint (regardless of whether it takes the form of an answer or a motion to dismiss).

It may be problematic that a defendant could be required to answer interrogatories while a motion to dismiss is pending. This could be resolved by omitting the phrase "or motion" from Rule 2-421 (b), as follows: "The party to whom the interrogatories are directed shall serve a response within 30 days after service of the interrogatories or within 15 days after the date on which that party's initial pleading is required."

This omission would have the effect of changing the Rule to mean that the defendant is not required to respond to interrogatories until 15 days after the required time for filing the initial pleading/answer. For example, if the defendant is served with a complaint and interrogatories on Day 1, and the defendant decides to file an answer, the responses would be due on Day 45 (unless the defendant is a corporation or out of state, etc.)

If, however, the defendant decides to file a preliminary motion instead of an answer, the defendant would refer to Rule 2-321 to determine when the answer is due. Rule 2-321 (c) directs that the answer is not due until 15 days after the court rules on the motion. For example, if the defendant files a motion to dismiss on Day 30, and the court denies the motion on Day 50, the defendant has until Day 65 to file an answer. The responses to interrogatories would be due 15 days after the filing of the answer -Day 80- pursuant to Rule 2-322 (c).

The Committee could include a note pointing out that, in situations where the benefit of some discovery is necessary in order for the court to rule on the motion, a party may file a motion to shorten time requirements pursuant to Rule 1-204.

In conclusion, the Rule may need some clarification to avoid confusion over whether the automatic extension in Rule 2-321 (c) applies to Rule 2-421 (b). This could be achieved by amending Rule 2-421 (b) as follows:

(b) Response

The party to whom the interrogatories are directed shall serve a response within the later of:

(1) 30 days after service of the interrogatories; or

(2) ~~or within 15 days after the date on which that party's initial pleading or preliminary motion pursuant to Rule 2-322 or answer pursuant to Rule 2-321 (a) or (b) is required, whichever is later.~~

. . .

KMK:cdc

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND Rule 2-421 to clarify the time within which a party must serve a response to interrogatories, to add a Committee note following section (b), and to make stylistic changes, as follows:

Rule 2-421. INTERROGATORIES TO PARTIES

(a) Availability; Number

Any party may serve written interrogatories directed to any other party. Unless the court orders otherwise, a party may serve one or more sets having a cumulative total of not more than 30 interrogatories to be answered by the same party. Interrogatories, however grouped, combined, or arranged and even though subsidiary or incidental to or dependent upon other interrogatories, shall be counted separately. Each form interrogatory contained in the Appendix to these Rules shall count as a single interrogatory.

(b) Response

The party to whom the interrogatories are directed shall serve a response within the later of:

(1) 30 days after service of the interrogatories;

(2) ~~or within~~ 15 days after the date on which that party's initial pleading or motion pursuant to Rule 2-322 or answer pursuant to Rule 2-321 (a) or (b) is required, whichever is

later.

The response shall answer each interrogatory separately and fully in writing under oath, or shall state fully the grounds for refusal to answer any interrogatory. The response shall set forth each interrogatory followed by its answer. An answer shall include all information available to the party directly or through agents, representatives, or attorneys. The response shall be signed by the party making it.

Committee note: The automatic time extension provided by Rule 2-321 (c) for filing an answer when a preliminary motion was filed pursuant to Rule 2-322 does not affect the time for serving a response under this Rule.

(c) Option to Produce Business Records

When (1) the answer to an interrogatory may be derived or ascertained from the business records, including electronically stored information, of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of those business records or a compilation, abstract, or summary of them, and (2) the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, and (3) the party upon whom the interrogatory has been served has not already derived or ascertained the information requested, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts,

or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(d) Use

Answers to interrogatories may be used at the trial or a hearing to the extent permitted by the rules of evidence.

Source: This Rule is derived as follows:

Section (a) is derived in part from former Rule 417 a 1 and 2 and is in part new.

Section (b) is derived from former Rule 417 b 1 and 2.

Section (c) is derived from former Rule 417 f and the 1980 version of Fed. R. Civ. P. 33 (c).

Section (d) is derived from former Rule 417 d.

REPORTER'S NOTE

The proposed amendment to Rule 2-421 clarifies that the time within which answers to interrogatories must be served is not affected by the automatic time extension provided by Rule 2-321 (c).

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND Rule 2-422 to clarify the time within which a party must serve a response to a request, to add a Committee note following section (c), and to make stylistic changes, as follows:

Rule 2-422. DISCOVERY OF DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND PROPERTY

(a) Scope

Any party may serve one or more requests to any other party (1) as to items that are in the possession, custody, or control of the party upon whom the request is served, to produce and permit the party making the request, or someone acting on the party's behalf, to inspect, copy, test or sample designated documents or electronically stored information (including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form) or to inspect and copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 2-402 (a); or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the

purpose of inspection, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation on the property, within the scope of Rule 2-402 (a).

(b) Request

A request shall set forth the items to be inspected, either by individual item or by category; describe each item and category with reasonable particularity; and specify a reasonable time, place, and manner of making the inspection and performing the related acts. The request may specify the form in which electronically stored information is to be produced.

(c) Response

The party to whom a request is directed shall serve a written response within the later of:

(1) 30 days after service of the request;

(2) ~~or within~~ 15 days after the date on which that party's ~~initial pleading or~~ preliminary motion pursuant to Rule 2-322 or answer pursuant to Rule 2-321 (a) or (b) is required, whichever is later.

The response shall state, with respect to each item or category, that (1) inspection and related activities will be permitted as requested, (2) the request is refused, or (3) the request for production in a particular form is refused. The grounds for each refusal shall be fully stated. If the refusal relates to part of an item or category, the part shall be specified. If a refusal relates to the form in which electronically stored information is requested to be produced (or

if no form was specified in the request) the responding party shall state the form in which it would produce the information.

Cross reference: See Rule 2-402 (b) (1) for a list of factors used by the court to determine the reasonableness of discovery requests and (b) (2) concerning the assessment of the costs of discovery.

Committee note: The automatic time extension provided by Rule 2-321 (c) or filing an answer when a preliminary motion was filed pursuant to Rule 2-322 does not affect the time for serving a response under this Rule.

(d) Production

(1) A party who produces documents or electronically stored information for inspection shall (A) produce the documents or information as they are kept in the usual course of business or organize and label them to correspond with the categories in the request, and (B) produce electronically stored information in the form specified in the request or, if the request does not specify a form, in the form in which it is ordinarily maintained or in a form that is reasonably usable.

(2) A party need not produce the same electronically stored information in more than one form.

Committee note: Onsite inspection of electronically stored information should be the exception, not the rule, because litigation usually relates to the informational content of the data held on a computer system, not to the operation of the system itself. In most cases, there is no justification for direct inspection of an opposing party's computer system. See *In re Ford Motor Co.*, 345 F.3d 1315 (11th Cir. 2003) (vacating order allowing plaintiff direct access to defendant's databases).

To justify onsite inspection of a computer system and the programs used, a party should demonstrate a substantial need to discover the information and the lack of a reasonable alternative. The inspection procedure should be documented by agreement or in a court order and should be narrowly restricted to protect confidential information and system integrity and to

avoid giving the discovering party access to data unrelated to the litigation. The data subject to inspection should be dealt with in a way that preserves the producing party's rights, as, for example, through the use of neutral court-appointed consultants. *See, generally, The Sedona Conference, The Sedona Principles: Best Practices Recommendations and Principles for Addressing Electronic Document Production* (2d ed. 2007), Comment 6. c.

Source: This Rule is derived from former Rule 419 and the 1980 and 2006 versions of Fed. R. Civ. P. 34.

REPORTER'S NOTE

See the Reporter's note to Rule 2-421.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 400 - DISCOVERY

AMEND Rule 2-424 to clarify the time within which a party must serve a response to requests for admission, to add a Committee note following section (b), and to make stylistic changes, as follows:

Rule 2-424. ADMISSION OF FACTS AND GENUINENESS OF DOCUMENTS

(a) Request for Admission

A party may serve one or more written requests to any other party for the admission of (1) the genuineness of any relevant documents or electronically stored information described in or exhibited with the request, or (2) the truth of any relevant matters of fact set forth in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Each matter of which an admission is requested shall be separately set forth.

(b) Response

Each matter of which an admission is requested shall be deemed admitted unless the party to whom the request is directed serves a response signed by the party or the party's attorney within the later of:

- (1) 30 days after service of the request;

(2) ~~or within~~ 15 days after the date on which that party's ~~initial pleading or preliminary motion pursuant to Rule 2-322 or answer pursuant to Rule 2-321 (a) or (b) is required, whichever is later, the party to whom the request is directed serves a response signed by the party or the party's attorney.~~ As to each matter of which an admission is requested, the response shall set forth each request for admission and shall specify an objection, or shall admit or deny the matter, or shall set forth in detail the reason why the respondent cannot truthfully admit or deny it. The reasons for any objection shall be stated. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and deny or qualify the remainder. A respondent may not give lack of information or knowledge as a reason for failure to admit or deny unless the respondent states that after reasonable inquiry the information known or readily obtainable by the respondent is insufficient to enable the respondent to admit or deny. A party who considers that a matter of which an admission is requested presents a genuine issue for trial may not, on that ground alone, object to the request but the party may, subject to the provisions of section (e) of this Rule, deny the matter or set forth reasons for not being able to admit or deny it.

Committee note: The automatic time extension provided by Rule 2-321 (c) for filing an answer when a preliminary motion was filed pursuant to Rule 2-322 does not affect the time for serving a

response under this Rule.

(c) Determination of Sufficiency of Response

The party who has requested the admission may file a motion challenging the timeliness of the response or the sufficiency of any answer or objection. A motion challenging the sufficiency of an answer or objection shall set forth (1) the request, (2) the answer or objection, and (3) the reasons why the answer or objection is insufficient. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. If the court determines that the response was served late, it may order the response stricken. The court may, in place of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial.

(d) Effect of Admission

Any matter admitted under this Rule is conclusively established unless the court on motion permits withdrawal or amendment. The court may permit withdrawal or amendment if the court finds that it would assist the presentation of the merits of the action and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission for any other

purpose, nor may it be used against that party in any other proceeding.

(e) Expenses of Failure to Admit

If a party fails to admit the genuineness of any document or the truth of any matter as requested under this Rule and if the party requesting the admissions later proves the genuineness of the document or the truth of the matter, the party may move for an order requiring the other party to pay the reasonable expenses incurred in making the proof, including reasonable attorney's fees. The court shall enter the order unless it finds that (1) an objection to the request was sustained pursuant to section (c) of this Rule, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to expect to prevail on the matter, or (4) there was other good reason for the failure to admit.

Source: This Rule is derived as follows:

Section (a) is derived from former Rule 421 a and the 1970 version of Fed. R. Civ. P. 36 (a).

Section (b) is derived from former Rule 421 b 1 and 2 and the 1970 version of Fed. R. Civ. P. 36 (a).

Section (c) is derived from former Rule 421 d.

Section (d) is derived from the 1970 version of Fed. R. Civ. P. 36 (b) and former Rule 421 c and f.

Section (e) is derived from former Rule 421 e.

REPORTER'S NOTE

See the Reporter's note to Rule 2-421.

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

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**ALTERNATIVE A**

- (h) Right to Copy of Audio Recording
  - (1) Generally
  - (2) Redacted Portions of Recording
  - (3) Exceptions

**ALTERNATIVE B**

- (h) Right to Listen to or View Copy of Recording
  - (1) Generally
  - (2) Redacted Portions of Recording
  - (3) Restrictions on Additional Copies
- (i) Right to Copy of Recording
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MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURT ADMINISTRATION  
CHAPTER 500 - RECORDING OF PROCEEDINGS

Rule 16-501. ~~RECORDING OF PROCEEDINGS~~ IN DISTRICT COURT

(a) ~~Audio Recording Required~~ Proceedings to be Recorded

In the District Court, all trials, hearings, and other judicial proceedings ~~before a judge in open court held in a courtroom in the presence of a judge~~ shall be recorded verbatim ~~by an audio recording device provided by the Court. The Chief Judge of the District Court may authorize recording by additional means, including audio-video recording. The recording shall be filed among the court records. Audio-video recording of a proceeding and access to the audio-video recording shall be in accordance with Rules 16-405 and 16-406. in their entirety.~~ Conferences in chambers that involve only routine administrative matters or settlement discussions in civil actions need not be recorded.

Committee note: To the extent that chambers do not have recording equipment, the purpose of this section is to require that no proceedings that must be recorded are to be conducted in chambers.

b. ~~Safeguarding Confidential or Non-Public Portions of Proceedings~~

~~If a portion of a proceeding involves placing on the record matters that would not be heard in open court or open to public inspection, the Court shall direct that appropriate safeguards be~~

~~placed on that portion of the audio recording. The clerk shall create a written log listing the recording references for the beginning and end of the safeguarded portions of the recording. The log shall be kept with the original papers in the Court and a copy of the log shall be kept with the audio recording.~~

(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 16-502 and 16-503.

~~(c) Access, Right to Obtain Copy of Audio recording~~ 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 a duly authorized Court official or employee of the District Court shall have direct access to or possession of an official ~~audio~~ electronic recording.

(d) Filing of Recordings

Subject to section ~~b~~ (c) of this Rule, ~~and unless~~

~~otherwise ordered by the Court, the authorized custodian of an official audio recording shall make a copy of the audio recording, or any portion thereof, available to any person upon written request and the payment of reasonable costs, unless payment is waived by the Court. audio recordings and any other recording authorized by the Chief Judge shall be maintained by the court in accordance with the standards specified in an administrative order of the Chief Judge of the Court of Appeals.~~

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

Regulations and standards adopted by the Chief Judge of the Court of Appeals under Rule 16-504 (a) apply with respect to court reporters and persons responsible for recording court proceedings employed in or designated by the District Court.

~~(b)~~ (f) Safeguarding Confidential or Non-Public Portions of Proceedings

If a portion of a proceeding involves placing on the record matters that, ~~would not be heard in open court or open to public inspection, the Court shall direct that appropriate safeguards be placed on that portion of the audio recording. The clerk shall create a written log listing the recording references for the beginning and end of the safeguarded portions of the recording. The log shall be kept with the original papers in the Court and a copy of the log shall be kept with the audio recording.~~ on motion of a party, the court finds should and lawfully may be shielded from public access and inspection, 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.

**ALTERNATIVE A**

(g) Right to Copy of Audio Recording

(1) Generally

Except for proceedings that were closed pursuant to law or as otherwise provided in this Rule or ordered by the court, 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.

(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 has directed be safeguarded pursuant to section (f) of this Rule have been redacted before making a copy of a recording for a person under subsection (g) (1) of this Rule. If necessary to accomplish that task, the copying may be delayed for a reasonable period.

(3) Exceptions

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 recording of proceedings that were closed pursuant to law or from which safeguarded portions have not been redacted:

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

(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 or unredacted safeguarded portions of a proceeding, when filed with the court, shall be placed under seal or otherwise shielded by order of court ~~(ii) one copy of a transcript of a proceeding closed pursuant to law shall be filed and marked as under seal, or unredacted, safeguarded portions of a proceeding shall be marked as under seal, and (iii)~~ (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 entitled to a copy of the recording itself under this section; and

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

**ALTERNATIVE B**

(g) Right to Listen to or View Copy of Recording

(1) Generally

Except for proceedings that were closed pursuant to law or as otherwise provided in this Rule or ordered by the court, the authorized custodian of an official audio or audio-video recording, upon written request from any person, shall make a copy of the recording and permit the person to listen to the copy if it is an audio recording or to listen to and view the copy if it is an audio-video recording at a time and place designated by the court.

Committee note: It is intended that the custodian need make only one copy of the electronic recording and have that copy available for any person who makes a request to listen to or listen to and view it. If space is limited and there are multiple requests, the custodian may require several persons to listen to or to listen to and view the recording at the same time or accommodate the requests in the order they were received.

(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 to be safeguarded pursuant to section (f) of this Rule have been redacted before making a copy of a recording available for listening or listening and viewing. If necessary to accomplish this purpose, the copy may be delayed for a reasonable period.

(3) Restrictions on Additional Copies

A person listening to or listening to and viewing a copy of an electronic recording may not make a copy of that copy or have in his or her possession any device that, by itself or in combination with any other device, is capable of making a copy. The custodian or other designated court official or employee shall take reasonable steps to enforce this prohibition, and any willful violation of it may be punished as a contempt.

(h) Right to Copy of 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 or audio-video recording, including a recording of proceedings that were closed pursuant to law or from which safeguarded portions have not been redacted:

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

(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, if the recording is of a proceeding that was closed pursuant to law or from which safeguarded portions have not been redacted, (i) the transcript or the portions of the transcript containing unredacted safeguarded portions of a proceeding, when filed with the court, shall be placed under seal or otherwise shielded by order of the court ~~(ii) one copy of a transcript of a proceeding closed pursuant to law shall be filed and marked as under seal, or unredacted, safeguarded portions of a proceeding shall be marked as under seal,~~ and ~~(iii)~~ (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 entitled to a copy of the recording itself under this section; and

(I) Any other person authorized by the District 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 this section.

(3) Violation of Restriction on Use

A willful violation of subsection (h) (2) of this Rule may be punished by contempt.

Cross reference: See Rule 16-504 (a) [16-404 b - current Rule reference] concerning regulations and standards applicable to court reporting in all courts of the State.

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

REPORTER'S NOTE

Rule 16-501 is derived from former Rules 16-404, 16-405, 16-406, and 16-504. Section (a) is derived from Rule 16-404 e. In section (a), the Subcommittee added language to clarify that chambers conferences involving only routine administrative matters or civil settlement actions need not be recorded. A Committee note was added to indicate that no proceedings that must be recorded are to be conducted in chambers.

Section (b) is derived from former Rule 16-504 a.

Section (c) is derived from former Rule 16-406 a and b.

Section (d) is new and was added to make clear that recordings authorized by the Chief Judge of the District Court are to be maintained by the court in accordance with standards found in an administrative order of the Chief Judge of the Court of Appeals.

Section (e) is derived from former Rule 16-404 b.

Section (f) is derived from former Rule 16-405 c and d.

Alternative A

Subsection (g) (1) is derived from former Rule 16-406 (c).

Subsection (g) (2) is new and was added to reinforce that the redacting of confidential portions of the recording takes place before a copy is given to someone.

Subsection (g) (3) is derived from former Rule 16-406 d. The Subcommittee proposed to add some people to the list of those who have a right to a copy of the recording, including the Chief judge of the court of Appeals, the chief judge of the District court, the District Administrative Judge having supervisory authority over the court, the presiding judge, and Bar Counsel. The Subcommittee proposed to add some conditions for a stenographer or transcription service designated by the court to prepare an official transcript if the recording is of a proceeding closed pursuant to law or from which safeguarded portions have not been redacted, including that the transcript be sealed or shielded and that the transcript may not be prepared for or delivered to any person not entitled to a copy of the recording.

#### Alternative B

Subsection (g) (1) is derived from former Rule 16-406 e. A Committee note has been added to provide a procedure for the custodian to make copies of recordings available to the public.

Subsection (g) (2) is new and was added to reinforce that the redacting of confidential portions of the recording takes place before a copy is given to someone to listen to or view.

Subsection (g) (3) is new and provides that someone listening to or viewing a recording may not have a device with him or her that is capable of copying the recording.

Subsection (h) (1) is derived from former Rule 16-406 d. See the note to subsection (g) (3) in Alternative A.

Subsection (h) (2) is new and was added to provide limitations on the use of a recording when someone views or listens to it.

Subsection (h) (3) is new and provides a penalty for misuse of a recording.

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

Rule 16-502. IN CIRCUIT COURT

(a) Proceedings to be Recorded

(1) Proceedings in the Presence of Judge

In a circuit court, all trials, hearings, and other proceedings before a judge in a courtroom shall be recorded verbatim in their entirety, except that, unless otherwise ordered by the court, a court reporter need not report or separately record an audio or audio-video recording offered as evidence at a hearing or trial. Conferences in chambers that involve only routine administrative matters or settlement discussions in civil actions need not be recorded.

Committee note: To the extent that chambers do not have recording equipment, the purpose of this section is to require that no proceedings that must be recorded are to be conducted in chambers.

An audio or audio-video recording offered at a hearing or trial must be marked for identification and made part of the record, so that it is available for future transcription. See Rules 2-516 (b) (1) (A) and 4-322 (c) (1) (A).

(2) Proceedings Before Master, Examiner, or Auditor

Proceedings before a master, examiner, or auditor shall be recorded verbatim in their entirety, except that:

(A) the recording of proceedings before a master may be waived in accordance with Rules 2-541 (d) (3) or 9-208 (c) (3);

(B) the recording of proceedings before an examiner may be waived in accordance with Rule 2-542 (d) (4); and

(C) the recording of proceedings before an auditor may be waived in accordance with Rule 2-543 (d) (3).

(b) Method of Recording

Proceedings may be recorded by any reliable method or a combination of those methods approved by the County Administrative Judge. If proceedings are recorded by a combination of methods, the County Administrative Judge shall determine which method shall be used to prepare a transcript. Source: This Rule is derived in part from former Rule 16-404.

REPORTER'S NOTE

Rule 16-502 is derived from former Rule 16-404.

Subsection (a) (1) is derived from former Rule 16-404 e. The Subcommittee added language to clarify that chambers conferences involving only routine administrative matter or civil settlement actions need not be recorded. A Committee note was added to indicate that, unless the chambers has recording capability, no proceedings that must be recorded are to be conducted in chambers and that a recording offered at a hearing or trial shall be marked for identification and made part of the record.

Subsection (a) (2) is new and was added to draw attention to the fact that rules allowing for the recordings before a master, examiner, or auditor may be waived.

Section (b) is derived from former Rule 16-404 (e), but it has been changed to eliminate the specific methods of recording and updated to provide that if proceedings are recorded by a combination of methods, the County Administrative Judge shall determine the method used to prepare the transcript.

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

Rule 16-503. 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 16-502 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

Subject to section (a) of this Rule, audio and audio-video recordings shall be maintained by the court in accordance with standards specified in an administrative order of the Chief Judge of the Court of Appeals.

(c) Court Reporters

Regulations and standards adopted by the Chief Judge of the Court of Appeals under Rule 16-504 (a) apply with respect to court reporters employed in or designated by a circuit court.

(d) Presence of Court Reporters Not Necessary

If circuit court proceedings are recorded by audio or audio-video recording, which is otherwise effectively monitored, 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.

**Query: Should there be a cross reference to Rule 16-1009 (b) (2)?**

(2) Location of Exhibit List and Logs

The exhibit list ~~and a copy of the proceeding and testimonial logs~~ shall be kept in the court file. ~~A copy of the~~ The proceeding and testimonial logs shall ~~also~~ 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 of a party, the court finds should and lawfully may be shielded from public access and inspection, the court shall direct that appropriate safeguards be placed on that portion of the recording. For audio and audio-video recordings, ~~or, if practicable, the audio portion of audio-video recordings,~~ the clerk or other designee shall create a log listing the recording references for the beginning and end of the safeguarded portions of the recording.

**ALTERNATIVE A**

(h) Right to Copy of Audio Recording

(1) Generally

Except for proceedings that were closed pursuant to law or as otherwise provided in this Rule or ordered by the court, the authorized custodian of an ~~official~~ 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 have been redacted before making a copy of a recording for a person under subsection (h) (1) of this Rule. If necessary to accomplish that task, the copying may be delayed for a reasonable period.

(3) Exceptions

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 recording or audio-video recording of proceedings that were closed pursuant to law 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) the transcript, 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 entitled to a copy of the recording itself under this section;

(I) If the recording is an audio-video recording, 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.

#### **ALTERNATIVE B**

(h) Right to Listen to or View Copy of Recording

(1) Generally

Except for proceedings that were closed pursuant to law or as otherwise provided in this Rule or ordered by the Court, the authorized custodian of an ~~official~~ audio or audio-video recording, upon written request from any person, shall make a copy of the recording and permit the person to listen to the copy if it is an audio recording or to listen to and view the copy if it is an audio-video recording at a time and place designated by the court.

Committee note: It is intended that the custodian need make only one copy of the electronic recording and have that copy available for any person who makes a request to listen to or to listen to and view it. If space is limited and there are multiple requests, the custodian may require several persons to listen to or to listen to and view the recording at the same time or accommodate the requests in the order they were received.

(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 directed to be safeguarded pursuant to section (g) of this Rule have been redacted before making a copy of a recording available for listening or listening and viewing. If necessary to accomplish this purpose, the copy may be delayed for a reasonable period.

(3) Restrictions on Additional Copies

A person listening to or listening to and viewing a copy of an electronic recording may not make a copy of that copy or have in his or her possession any device that, by itself or in combination with any other device, is capable of making a copy. The custodian or other designated court official or employee shall take reasonable steps to enforce this prohibition, and any willful violation of it may be punished as a contempt.

(i) Right to Copy of 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 or audio-video recording, including a recording of proceedings that were closed pursuant to law 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 that was 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 entitled to a copy of the recording itself under this section.

(I) 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 (i)(1) of this Rule.

(3) Violation of Restriction on Use

A willful violation of subsection (i)(2) of this Rule may be punished by contempt.

Cross reference: See Rule 16-504 (a) [16-404 b - current Rule reference] 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.

REPORTER'S NOTE

Rule 16-503 is derived from former Rules 16-404, 16-405, and 16-406. Subsection (a)(1) is derived from former Rule 16-406 a. Subsection (a)(2) is derived from former Rule 16-406 b.

Section (b) is new and was added to clarify that recordings shall be maintained by the court in accordance with standards specified in an administrative order of the Chief Judge of the Court of Appeals.

Section (c) is derived from former Rule 16-404 b.

Section (d) is derived from former Rule 16-405 e.

Section (e) is derived from former Rule 16-405 b.

Section (f) is derived from former Rule 16-405 c.

Section (g) is derived from former Rule 16-405 d. The second sentence is new and was added to provide a means for locating the safeguarded portions of the recording. As with 16-501, the Subcommittee has presented the Rules Committee with two alternatives. Alternative A permits someone to have a copy of

the recording. Alternative B permits only listening to or viewing a copy.

#### Alternative A

Subsection (h) (1) is derived from former Rule 16-406 c.

Subsection (h) (2) is new and was added to reinforce that the redacting of confidential portions of the recording takes place before a copy is given to someone.

Subsection (h) (3) is derived from former Rule 16-406 d. The Subcommittee has added some people to the list of those who have a right to a copy of the recording, including the Chief Judge of the Court of appeals, the County Administrative Judge, the Circuit Administrative Judge having supervisory authority over the court, the presiding judge, and Bar Counsel. As with Rule 16-501, the Subcommittee added some conditions for a stenographer or transcription service designated by the court or prepare an official transcript if the recording is of a proceeding closed pursuant to law or from which safeguarded portions have not been redacted, including that the transcript be sealed or shielded and that the transcript may not be prepared for or delivered to any person not entitled to a copy of the recording.'

#### Alternative B

Subsection (h) (1) is derived from former Rule 16-406 c, except that the right to obtain a copy of a recording has been changed to the right to listen or view a copy. A Committee note has been added to provide a procedure for the custodian to make copies of recordings available to the public.

Subsection (h) (2) is new and was added to reinforce that the redacting of confidential portions of the recording takes place before a copy is given to anyone for listening or listening and viewing.

Subsection (h) (3) is new and provides that someone listening to or viewing a recording may not have a device with him or her that is capable or copying the recording.

Subsection (i) (1) is derived from former Rule 16-406 d. The Subcommittee has added some people to the list of those who have a right to a copy of the recording, including the Chief Judge of the court of Appeals, the County Administrative Judge, the Circuit Administrative Judge having supervisory authority over the court, the presiding judge in the case, and Bar Counsel. The Subcommittee has added some conditions for a stenographer or transcription service designated by the court to prepare an official transcript if the recording is of a proceeding closed

pursuant to law or from which safeguarded portions have not been redacted, including that the transcript may not be prepared for or delivered to any person not entitled to a copy of the recording.

Subsection (i) (2) is new and was added to provide limitations on the use of a recording when someone views or listens to it.

Subsection (i) (3) is new and provides a penalty for misuse of a recording.

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

Rule 16-504. ~~IN CIRCUIT COURT~~ ADMINISTRATION OF CIRCUIT COURT  
RECORDING PROCESS

(a) Regulations and Standards

The Chief Judge of the Court of Appeals, by administrative order, shall prescribe regulations and standards regarding the court recording process and the person responsible for recording proceedings in the courts of the State. The regulations and standards may include:

- (1) the selection, qualifications, and responsibilities of persons recording court proceedings;
- (2) preparation, typing, and format of transcripts;
- (3) charges for transcripts and copies;
- (4) preservation and maintenance of reporting notes and records, however recorded;
- (5) equipment and supplies utilized in reporting; and
- (6) procedures for filing and maintaining administrative records and reports.

Cross reference: Rules 16-501, 16-502, and 16-503.

(b) Number of Court Reporters or Persons Responsible for Recording Court Proceedings - Supervision

Each circuit court shall have the number of court reporters and persons responsible for recording court proceedings recommended by the County Administrative Judge ~~and approved by the Chief Judge of the Court of Appeals~~. In a county with more than one court reporter, the County Administrative Judge shall designate one as supervisory court reporter, who shall serve at the pleasure of the County Administrative Judge. The Chief Judge of the Court of Appeals shall prescribe the duties of the supervisory court reporter.

(c) Supervision of Court Reporters

Subject to the general supervision of the Chief Judge of the Court of Appeals, the County Administrative Judge shall have the supervisory responsibility for the court reporters or the persons responsible for recording court proceedings in that county. The County Administrative Judge may delegate supervisory responsibility to the supervisory court reporter or a person responsible for recording court proceedings, including the assignment of court reporters or other persons responsible for recording court proceedings.

Cross reference: Rule 16-1006 (g) [current Rule reference] provides that backup audio recordings made by any means, computer disks, and notes of a court reporter that have not been filed with the clerk or are not part of the official court record are not ordinarily subject to public inspection.

Source: This Rule is derived from former Rule 16-404.

REPORTER'S NOTE

Rule 16-504 is derived from former Rule 16-404. Section (a) is derived from former Rule 16-404 b. Section (b) is derived from former Rule 16-404 c. Section (c) is derived from former Rule 16-404 d. The Subcommittee has added a cross reference to current Rule 16-1006 (g).

MARYLAND RULES OF PROCEDURE  
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TITLE 16 - COURT ADMINISTRATION

CHAPTER 600 - EXTENDED COVERAGE OF COURT PROCEEDINGS

Rule 16-601. DEFINITIONS

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

(a) Extended Coverage

"Extended coverage" means the recording or broadcasting of court proceedings by the use of recording, photographic, television, radio, or other broadcasting equipment operated by:

(1) an authorized employee of a newspaper of general circulation ~~in any county of the State~~ or a television or radio station operating under a license from the Federal Communications Commission; or

(2) a person engaged in the preparation of an educational film or recording relating to the Maryland legal or judicial system and intended for instructional use in an educational program offered by a public or accredited educational institution.

**DRAFTER'S NOTE:** When the current Rule was adopted, the term "news media" had a fairly well-understood meaning - a newspaper or radio or TV station. In light of current (and future) means of widely (or selectively) disseminating information by individual computers, that may no longer be the case. Extended coverage was never anticipated to be available to anyone from the public who had a camera or tape recorder. Unless the court wants to permit bloggers, etc. to have the same access as newspapers and radio and TV stations, the Rule may need to be more specific.

The access afforded to persons preparing educational films also may need some tightening. The current language is troublesome in that it seems to give a judge unbridled discretion to allow A to film court proceedings but not B and thus base a decision on personal biases. If the basis for this access is an educational purpose, it might be best to tie it to an intended use in an educational program offered by a bona fide educational institution.

(b) Local Administrative Judge

"Local Administrative Judge" means the County Administrative Judge of a circuit court and the District Administrative Judge of the District Court.

(c) Party

"Party" means a named litigant of record who has appeared in the proceeding.

(d) Proceeding

"Proceeding" means any trial, hearing, ~~motion~~, oral argument on appeal, or other matter held in open court which the public is entitled to attend.

(e) Presiding Judge

(1) "Presiding judge" means a ~~trial~~ judge designated to preside over a proceeding which is, or is intended to be, the subject of extended coverage.

(2) Where action by a presiding judge is required by this Rule and no ~~trial~~ judge has been designated to preside over the proceeding, "presiding judge" means the Local Administrative Judge.

(3) In an appellate court, "presiding judge" means the Chief Judge of that court or the senior judge of a panel of which the Chief Judge is not a member.

Source: This Rule is derived from former Rule 16-109 (a).

#### REPORTER'S NOTE

Rule 16-601 is derived from former Rule 16-109. Section (a) is derived from former Rule 16-109 a. 1. The Subcommittee has expanded the term "news media" to include an authorized employee of a newspaper of general circulation or licensed television or radio station.

Section (b) is substantially the same as former Rule 16-109 a. 2.

Section (c) is the same as former Rule 16-109 a. 3.

Section (d) is substantially the same as former Rule 16-109 a. 4.

Section (e) is derived from former Rule 16-109 a. 5.

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TITLE 16 - COURT ADMINISTRATION

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Rule 16-602. SCOPE

~~This Rule does~~ The Rules in this Chapter do not apply to:

(1) The recording or broadcasting of court proceedings by the court or by court personnel acting within the scope of their official duties;

(2) The electronic recording of court proceedings by an official court reporter as a backup for the stenographic recording of the proceeding;

(3) Investiture or ceremonial proceedings, provided that the presiding judge may regulate the presence and use of cameras and recording and broadcasting equipment at the proceeding; or

(4) The use of electronic, photographic, or recording equipment approved by the court to take the testimony of a child victim under Code, Criminal Procedure Article, §11-303.

Source: This Rule is derived from former Rule 16-109 b. 7.

REPORTER'S NOTE

Rule 16-602 is derived from former Rule 16-109 b. 7. The meaning of the exception in the former Rule for equipment used for "perpetuation of a court record" is not clear. The Rule was intended to cover the use of audio or video equipment to record court proceedings in lieu of the stenographic recording by court reporters, but this is not really perpetuation of the evidence. Subsection (1) is intended to include this, as well as the webcasting of court proceedings by the court itself, which the Court of Appeals does with its own equipment. Subsection (2) is new and covers the situation in which an official court reporter

uses an electronic recording as a backup to the reporter's stenographic notes.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURT ADMINISTRATION  
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Rule 16-603. EXTENDED COVERAGE PERMISSIBLE

Except as otherwise prohibited by law and subject to the exceptions, limitations, and conditions set forth in the Rules in this Chapter, extended coverage of proceedings in the trial and appellate courts of Maryland is permitted. Nothing in this Chapter is intended to restrict the general right of the news media to observe and report judicial proceedings.

Source: This Rule is derived from former Rule 16-109 b.

REPORTER'S NOTE

Rule 16-603 is derived from former Rule 16-109 b. 1. and b. 4.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURT ADMINISTRATION  
CHAPTER 600 - EXTENDED COVERAGE OF COURT PROCEEDINGS

Rule 16-604. REQUEST TO ALLOW EXTENDED COVERAGE

(a) When and Where Filed

A request to allow extended coverage of a proceeding shall be made in writing to the clerk of the court in which the proceeding is to be held at least five days before the proceeding is scheduled to begin. For good cause, the court may consider an untimely request.

(b) Content

(1) A request shall identify with particularity:

(A) the person or entity making the request;

(B) the proceeding for which extended coverage is sought, including the case name and number and the date when the proceeding is scheduled; and

(C) if the request is for the purpose of preparing an educational film or recording, the intended instructional use of the film or recording.

(2) A request shall also identify the equipment to be used and contain a sufficient assurance that the equipment will satisfy the sound and light requirements of Rule 16-607.

(c) Notice

The clerk shall promptly give notice of a request to:

(1) the Local Administrative Judge;

(2) the judge designated to preside at the proceeding, if a judge has been designated; and

(3) all parties to the proceeding.

(d) When Proceeding Postponed or Continued

If the proceeding is postponed or continued, other than for normal recesses, weekends, or holidays, a separate request is required for later extended coverage.

Cross reference: For definition of "holiday," see Rule 1-202.

Source: This Rule is derived from former Rule 16-109 c.

#### REPORTER'S NOTE

Rule 16-604 is derived from former Rule 16-109 c.

Section (a) is derived from former Rule 16-109 c. 1.

Section (b) is new. The Subcommittee felt that it would be helpful to set out the content of a request to allow extended coverage.

Section (c) is derived from former Rule 16-109 c. 1. The Subcommittee added the Local Administrative Judge and the judge designated to preside at the proceeding, if one had been designated as persons who are to receive notice of the request for extended coverage.

Section (d) is derived from former Rule 16-109 c. 2.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURT ADMINISTRATION  
CHAPTER 600 - EXTENDED COVERAGE OF COURT PROCEEDINGS

Rule 16-605. ACTION ON REQUEST

(a) When Permission Prohibited

(1) Extended coverage may not be permitted of any proceeding:

(A) for which extended coverage is prohibited by Code, Criminal Procedure Article, §1-201;

(B) which by law is closed to the public; or

(C) which by law may be closed to the public and has been closed by the presiding judge.

(2) Extended coverage may not be permitted in a proceeding in a trial court unless all parties to the proceeding have filed a written consent or consent on the record in open court, except that consent is not required from a party which is:

(A) a Federal, State, or local government;

(B) a unit of a Federal, State, or local government; or

(C) an official of a Federal, State, or local government sued or suing in an official governmental capacity.

(3) Consent once given under subsection (a)(2) of this Rule may not be withdrawn, but any party may, at any time, move to terminate or limit extended coverage.

(4) Consent of the parties is not required for extended coverage of a proceeding in the Court of Appeals or Court of

Special Appeals, but any party may, at any time, move to terminate or limit extended coverage.

(b) Grant or Denial of Request

(1) Before commencement of the proceeding, the presiding judge shall ~~grant or~~ deny a request for extended coverage or grant it, with such conditions or limitations as the judge finds appropriate, ~~before commencement of the proceeding.~~

(2) If the request is granted, the presiding judge shall promptly notify the Local Administrative Judge, who shall make arrangements to accommodate entry into and presence in the court facility of the necessary equipment and the persons designated to operate the equipment.

Source: This Rule is derived from former Rule 16-109 d., e., and f.

REPORTER'S NOTE

Rule 16-605 is derived from former Rule 16-109 d., e., and f. Subsection (a) (1) is derived from former Rule 16-109 f. 2. The Subcommittee added a reference to Code, Criminal Procedure Article, §1-201.

Subsection (a) (2) is derived from former Rule 16-109 e. 1.

Subsection (a) (3) is substantially the same as former Rule 16-109 e. 2.

Subsection (a) (4) is substantially the same as former Rule 16-109 c. 3.

Subsection (b) (1) is derived from former Rule 16-109 d.

Subsection (b) (2) is derived from former Rule 16-109 d.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 600 - EXTENDED COVERAGE OF COURT PROCEEDINGS

Rule 16-606. GENERAL LIMITATIONS ON EXTENDED COVERAGE

(a) Where Equipment Prohibited

Except as expressly permitted by court order, no device or equipment capable, by itself or in combination with any other device, of photographing, recording, or transmitting sound or visual images may be brought into any jury assembly or deliberation room or, except when and to the extent required for extended coverage permitted by the court.

(b) Where Extended Coverage Prohibited

(1) Extended coverage in a court facility, as defined in Rule 16-208 is limited to proceedings in the courtroom in the presence of the presiding judge.

(2) Outside a courtroom but within a court facility, as defined in Rule 16-208, extended coverage is prohibited:

(A) of persons present for a judicial or grand jury proceeding; and

(B) where extended coverage is so close to a judicial or grand jury proceeding as likely to identify persons present for a ~~judicial or grand jury~~ the proceeding or interfere with the proceeding or its dignity or decorum.

**DRAFTER'S NOTE: Subsection (b) (1) is taken from Rule 16-109 f.3. Subsection (b) (2) is taken from Rule 16-109 b.2. If extended coverage is not permitted outside the courtroom, do we need (b) (2)? The two provisions seem inconsistent, especially in light of Rule 16-109 b.3 (subsection (a) (2)), which prohibits even the possession of the equipment in the hallways except when required for permitted extended coverage.**

Source: This is Rule is derived from former Rule 16-109.

REPORTER'S NOTE

Rule 16-606 is derived from former Rule 16-109. Section (a) is new and was added to clarify that electronic devices capable of photographing, recording, or transmitting sound or visual images may not be brought into the jury assembly or deliberation room. This takes into account the myriad of such devices that are available to the public.

Subsection (b) (1) is substantially the same as former rule 16-109 f. 3.

Subsection (b) (2) is substantially the same as former Rule 16-109 b. 2.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURT ADMINISTRATION  
CHAPTER 600 - EXTENDED COVERAGE OF COURT PROCEEDINGS

Rule 16-607. OPERATIONAL REQUIREMENTS

(a) In General

(1) Extended coverage shall be conducted so as not to interfere with the right of any person to a fair and impartial trial or with the dignity and decorum of the proceeding.

(2) No proceeding shall be delayed or continued in order to allow for extended coverage, nor shall extended coverage influence any ruling on a motion for continuance.

(3) There shall be no audio coverage of private conferences, bench conferences, or conferences at counsel table.

(4) Only equipment that does not produce light or distracting sound may be employed.

(5) No artificial lighting device may be employed. With the approval of the presiding judge, modifications may be made to light sources existing in the courtroom, provided:

(A) they are made before commencement of the proceeding or during a recess;

(B) they are installed and maintained without public expense; and

(C) unless the court orders otherwise, upon completion of the extended coverage the person conducting the extended

coverage, at that person's expense, restores the light sources to their prior condition.

(6) Equipment may not be placed in or removed from a courtroom except before commencement or following adjournment of the proceeding each day or during a recess in the proceeding. Film magazines and still camera film and lenses may be changed in a courtroom only during a recess in the proceeding.

(7) Broadcast media representatives may not move about the courtroom while proceedings are in session, and microphones and recording equipment, once positioned, may not be moved during the pendency of the proceeding.

Committee note: Nothing in this Rule prohibits the granting of a reasonable request to use court-controlled electronic or photographic equipment or materials.

(b) Television or Movie Cameras

(1) Only one television camera, ~~operated by not more than one person,~~ shall be permitted in a trial court proceeding. Not more than two stationary television cameras, ~~operated by not more than one person each,~~ shall be permitted in an appellate court proceeding.

(2) Television or movie camera equipment shall be positioned outside the rail of the courtroom or, if there is no rail, in the area reserved for spectators, at a location approved in advance by the presiding judge.

(3) Whenever possible, recording and broadcasting equipment which is not a component part of a television camera shall be

located outside the courtroom in an area approved in advance by the presiding judge.

(c) Still Cameras

(1) Only one still photographer, using not more than two still cameras with not more than two lenses for each camera, and related equipment approved in advance by the presiding judge shall be permitted in any proceeding.

(2) A still camera photographer shall remain outside the rail of the courtroom or, if there is no rail, in the area reserved for spectators, at a location approved in advance by the presiding judge. The photographer may not photograph from any other place and may not engage in any movement or assume any body position that would be likely to attract attention or be disturbing. Unless positioned in or beyond the last row of spectators' seats or in an aisle to the outside of the spectators' seating area, the photographer shall remain seated while photographing.

(d) Audio Equipment

(1) Only one audio system for broadcast purposes shall be permitted in a proceeding.

(2) Audio feed shall be accomplished from existing audio systems, except that, if no technically suitable audio system exists, unobtrusive microphones and related wiring may be located in places designated in advance by the presiding judge.

(3) Microphones located at the judge's bench and at counsel tables shall be equipped with mute switches.

(4) A directional microphone maybe mounted on a television or film camera, but no parabolic, lavalier, or similar microphone may be used.

(e) Pooling Arrangements

Any pooling arrangement required by the limitations in this Rule on equipment and personnel is the sole responsibility of the persons interested in the extended coverage, without calling upon the presiding judge to mediate or resolve a dispute as to the appropriate representative or equipment authorized to provide extended coverage of a proceeding. If any such dispute is not resolved in advance, the presiding judge shall deny or terminate extended coverage.

Source: This Rule is derived from former Rule 16-109.

REPORTER'S NOTE

Rule 16-607 is derived from former Rule 16-109.

Subsection (a) (1) is the same as former Rule 16-109 b. 2.

Subsection (a) (2) is substantially the same as former Rule 16-109 b. 6.

Subsection (a) (3) is the same as former Rule 16-109 f. 4.

Subsection (a) (4) is derived from former Rule 16-109 g. 9.

Subsection (a) (5) is derived from former Rule 16-109 g. 8., g. 9., and g. 12. The Subcommittee added a condition for modifying light sources - that the person conducting the extended coverage must, at his or her own expense, restore the light sources to their prior condition.

Subsection (a) (6) is substantially the same as former Rule 16-109 g. 11.

Subsection (a) (7) is the same as former Rule 16-109 g. 3.

Subsection (b) (1) is substantially the same as former Rule 16-109 g. 4.

Subsection (b) (2) is substantially the same as former Rule 16-109 g. 1.

Subsection (b) (3) is substantially the same as former Rule 16-109 g. 1.

Subsection (c) (1) is substantially the same as former Rule 16-109 g. 5.

Subsection (c) (2) is substantially the same as former Rule 16-109 g. 2.

Subsection (d) (1) is substantially the same as former Rule 16-109 g. 6.

Subsection (d) (2) is substantially the same as former Rule 16-109 g. 6.

Subsection (d) (3) is substantially the same as former Rule 16-109 g. 6.

Subsection (d) (4) is substantially the same as former Rule 16-109 g. 6.

Section (e) is derived from former Rule 16-109 g. 7.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 600 - EXTENDED COVERAGE OF COURT PROCEEDINGS

Rule 16-608. LIMITATION OR TERMINATION OF APPROVAL

The presiding judge, on the judge's own initiative or on the request of a party, witness, or juror, upon a finding of good cause, may limit or terminate extended coverage of all or any portion of a proceeding. When considering the request of a party, good cause shall be presumed in cases involving domestic violence, custody of or visitation with a child, divorce, annulment, minors, relocated witnesses, and trade secrets.

Committee note: Examples of good cause include unfairness, danger to a person, undue embarrassment, or hindrance of proper law enforcement.

Source: This Rule is derived from former Rule 16-109 f. 1.

REPORTER'S NOTE

Rule 16-608 is derived from former Rule 16-109 f. 1.