

IN THE COURT OF APPEALS OF MARYLAND

R U L E S O R D E R

This Court's Standing Committee on Rules of Practice and Procedure having submitted its One Hundred Fifty-Sixth Report to the Court recommending adoption of proposed amendments to Rules 16-1002 and 16-1008, all as set forth in that Report published in the *Maryland Register*, Vol.32, Issue 23, pages 1819 - 1822 (November 14, 2005);

The Rules Committee having submitted a Supplement to the One Hundred Fifty-Sixth Report to the Court dated December 16, 2005 recommending adoption on an emergency basis of proposed amendments to Rule 16-1006 and recommending additional amendments to Rule 16-1008;

This Court, by Rules Orders dated January 10, 2006 and March 7, 2006, having adopted amendments to Rules 16-1002, 16-1006, and 16-1008; and

This Court on its own motion having considered at an open meeting, notice of which was posted as prescribed by law, additional amendments to Rule 16-1008, it is this 10th day of April, 2006,

ORDERED, by the Court of Appeals of Maryland, that amendments to Rule 16-1008 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that the rules changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after July 1, 2006, and insofar as practicable to all actions then pending; and it is further

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

/s/ Robert M. Bell
Robert M. Bell

/s/ Irma S. Raker
Irma S. Raker

/s/ Alan M. Wilner
Alan M. Wilner

/s/ Dale R. Cathell
Dale R. Cathell

/s/ Glenn T. Harrell, Jr.
Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia
Lynne A. Battaglia

/s/ Clayton Greene, Jr.
Clayton Greene, Jr.

Filed: April 10, 2006

/s/ Alexander L. Cummings
Clerk
Alexander L. Cummings

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1008 to allow remote access to the identifying information of public employees under certain circumstances, to prohibit remote access to the names of certain individuals, to require that the person who places in a court record or files with the clerk certain identifying information inform the clerk whether the identifying information is not subject to remote access, and to allow the clerk to rely on that determination as to whether the information is subject to remote access, as follows:

Rule 16-1008. ELECTRONIC RECORDS AND RETRIEVAL

(a) In General

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

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

(A) to convert paper court records into electronic court

records;

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

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

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

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

(3) (A) Subject to the other provisions of this Rule, a custodian may limit access to court records in electronic form to the manner, form, and program that the electronic system used by the custodian, without modification, is capable of providing. If a custodian, court, or other judicial agency converts paper court records into electronic court records or otherwise creates new electronic records, databases, or computer systems, it shall, to the extent practicable, design those records, databases, or systems to facilitate access to court records that are open to inspection under the Rules in this Chapter.

(B) (i) Subject to subsection (a)(3)(B)(ii) of this Rule and Except except for identifying information relating to law enforcement officers, other public officials or employees acting in their official capacity, and expert witnesses, a custodian shall prevent remote access to the name, address, telephone number, date of birth, e-mail address, and place of employment of a victim or nonparty witness in (1) a criminal action, (2) a

juvenile delinquency action under Title 3, Subtitle 8A of the Courts Article, (3) an action under Title 4, Subtitle 5 of the Family Law Article (domestic violence), or (4) an action under Title 3, Subtitle 15 of the Courts Article (peace order).

(ii) A person who files or otherwise causes to be placed in a court record identifying information relating to a witness shall give the custodian written notice whether the identifying information is not subject to remote access under subsection(a)(3)(B)(i) of this Rule. In the absence of written notice, a custodian is not liable for allowing remote access to the information.

(4) Subject to subsection (a)(3)(B) of this Rule and procedures and conditions established by administrative order of the Chief Judge of the Court of Appeals, a person may view and copy electronic court records that are open to inspection under the Rules in this Chapter:

- (A) at computer terminals that a court or other judicial agency makes available for public use at the court or other judicial agency; or
- (B) by remote access that the court or other judicial agency makes available through dial-up modem, web site access, or other technology.

(b) Current Programs Providing Electronic Access to Databases
Any electronic access to a database of court records that is provided by a court or other judicial agency and is in effect on October 1, 2004 may continue in effect, subject to review by

the Technology Oversight Board for consistency with the Rules in this Chapter. After review, the Board may make or direct any changes that it concludes are necessary to make the electronic access consistent with the Rules in this Chapter.

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

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

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

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

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

(i) deny the application;

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

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

(C) If the application is referred to the Technology Oversight Board, the Board shall determine whether approval of the application would be likely to permit access to court records or information not subject to inspection under the Rules in this Chapter, create any undue burden on a court, other judicial agency, or the judicial system as a whole, or create undue disparity in the ability of other courts or judicial agencies to provide equivalent access to court records. In making those determinations, the Board shall consider, to the extent relevant:

(i) whether the data processing system, operational system, electronic filing system, or manual or electronic storage and retrieval system used by or planned for the court or judicial agency that maintains the records can currently provide the access requested in the manner requested and in conformance with Rules 16-1001 through 16-1007, and, if not, what changes or effort would be required to make those systems capable of providing that access;

(ii) any changes to the data processing, operational electronic filing, or storage or retrieval systems used by or planned for other courts or judicial agencies in the State that would be required in order to avoid undue disparity in the ability of those courts or agencies to provide equivalent access to court records maintained by them;

(iii) any other fiscal, personnel, or operational impact of the proposed program on the court or judicial agency or on the State judicial system as a whole;

(iv) whether there is a substantial possibility that information retrieved through the program may be used for any fraudulent or other unlawful purpose or may result in the dissemination of inaccurate or misleading information concerning court records or individuals who are the subject of court records and, if so, whether there are any safeguards to prevent misuse of disseminated information and the dissemination of inaccurate or misleading information; and

(v) any other consideration that the Technology Oversight Board finds relevant.

(D) If, upon consideration of the factors set forth in subsection (c)(2)(C) of this Rule, the Technology Oversight Board concludes that the proposal would create (i) an undue fiscal, personnel, or operational burden on a court, other judicial agency, or the judicial system as a whole, or (ii) an undue disparity in the ability of other courts or judicial agencies to provide equivalent access to judicial records, the Board shall

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

Source: This Rule is new.