

The  
Journalist's  
Guide to  
Maryland's  
Legal System

2<sup>nd</sup> edition

**Editors:**

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## **Bench - Bar - Media Advisory Group Mission Statement**

The Bench – Bar – Media Advisory Group is composed of representatives of the Maryland Judiciary, the Maryland State Bar Association and the Maryland Pro Chapter, Society of Professional Journalists. Its purpose is to foster and facilitate dialogue and education among judges, attorneys and journalists on issues related to the news reporting of the Maryland courts. The group is not an adjudicatory body. It does not express opinions or pass judgment on the content of news articles or broadcasts regarding judicial or legal processes. Nor does it express opinions or pass judgment on judicial or legal processes that affect news coverage of the courts. The group offers itself as a forum for the frank discussion of these issues by representatives of the professions involved. It is also prepared to provide its good offices for assistance in the resolution of disagreements on these issues by the invitation of all of the parties involved.

Adopted January 23, 2003

*The Bar – Bench – Media Advisory Group was formed after publication of the first edition of "The Journalist's Guide to Maryland's Legal System." You may reach the Group through the Maryland Judiciary's Court Information Office at 410-260-1488 or through e-mail at [cio@courts.state.md.us](mailto:cio@courts.state.md.us).*

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## Foreword to the Second Edition

We are again pleased to provide this Guide for journalists whether or not they regularly cover the Maryland legal system. It remains a mere sketch of how our system works and is but an overview of your rights as a journalist under it. We have done our best to provide a resource that may help you with your work.

There remains nothing like this volume in Maryland. Its preparation required the patient participation and cooperation of lawyers, journalists, judges and sponsors, to whom we owe a debt of gratitude. Please note our editorial and financial contributors and, if you see them or a representative of their organization, thank them for making this project possible.

Also, thanks to the Philip Merrill College of Journalism at the University of Maryland in College Park for making "The Journalist's Guide to Maryland's Legal System" available on the Internet.

Whether you are new to reporting on Maryland's legal system or you are more experienced, we hope this Guide enhances the quality of your work and furthers the understanding of the public you serve. Accomplishing that goal will, once more, be well worth the effort we have all put forth.

Comments, suggestions, corrections and criticisms concerning the Guide are encouraged, and may be addressed to the Editors:

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The pronouns used at various points in this Guide are not intended to convey only one gender but for the purposes of simplicity are intended in a generic sense to represent both genders.

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**A Message from  
the Honorable  
Robert M. Bell,  
Chief Judge of Maryland's  
Court of Appeals**

I applaud the Journalist's Guide and the work of all those who put it together. It is the product of the cooperative effort of two well-established professions, the legal profession and the press. The importance to this Republic of both of these professions has been recognized in so venerable a document as the United States Constitution. Such cooperative efforts, sadly, have been rare, at least in this state. This is unfortunate because lawyers, judges and journalists have much in common. All seek truth--lawyers and judges in resolving disputes and pursuing justice--and journalists in fulfilling their mission to inform the public. All, to be effective, must earn the respect and trust of the public they serve.

Every day, media coverage of the legal system helps better educate Maryland citizens. It is, of course, a fact that most of our citizens do not see court proceedings firsthand. They get most of their information about their courts and the justice system from the media. This Guide is a valuable resource for the journalists who play such a vital role in the public education process.

I am delighted that the first edition of the Guide received such well-deserved acclaim from journalists, judges, court staff, and my colleagues in other states.

The Maryland Judiciary recognizes the need to improve the public's awareness of court functions. To that end, it has established a Court Information Office to facilitate the development of programs and activities to educate the public about the courts. The Court Information Office is also a resource for journalists, all of whom I encourage to make full and appropriate use of it.

Finally, I want personally to thank everyone who has contributed to the development of this Guide. In addition to the much-deserved credit due our own Court Information Officer, Sally Rankin, special recognition must be paid to the efforts of Sue Kopen Katcef and Bob Anbinder. Without their dedication, this project could not have been completed.



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## **A Message from the Society of Professional Journalists**

Steve Geimann, President, Society of Professional Journalists 1996-1997;  
Member, American Bar Association Conference of Lawyers and Representatives of the Media

Understanding the law has never been more important, and a journalist's job in explaining the legal process for readers, listeners and viewers has never been more crucial to maintaining our democracy. This Guide must become an indispensable companion for reporters covering the courts, the police and their communities.

The Guide is a major undertaking by SPJ's Maryland Professional Chapter, working with the Maryland Judiciary, the Maryland State Bar Association and knowledgeable lawyers, and is intended to help reporters find their way around the courthouse and the courtroom.

Events of September 11, 2001, have brought sweeping changes in American life, and the life of Marylanders. The federal government, many states and numerous communities passed laws to give police greater authority to investigate cases related to terrorism. Courts will become the place where important and long-lasting decisions will be made.

This Guide can't take the place of responsible, professional journalists doing their homework and being prepared when they cover the legal system, either when police arrest a suspect or a jury returns its verdict. We shouldn't think of a trial or court case as "just another story." Someone's life or reputation may be at stake in the process, and careless reporting will certainly have unintended consequences.

SPJ has been an advocate for journalists to be present in courtrooms to cover developments of any legal case. We continue to fight to give radio and television broadcasters the same access to courts enjoyed by print reporters. SPJ serves on the American Bar Association Conference of Lawyers and Representatives of the Media, a group that meets frequently during the year to discuss coverage of legal issues, the courts and other matters.



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**A Message from  
Harry S. Johnson,  
President of the Maryland  
State Bar Association**

The Maryland State Bar Association (MSBA) has always encouraged good legal reporting. Accurate and informative legal reporting promotes a better public understanding and appreciation of our legal system. MSBA is committed to educating the public about the law and recognizes the media's vital role in this process.

Much of the public's perception and understanding of our legal system comes from the media. Thus, journalists need a basic understanding and knowledge of the justice system to convey the message to the public. As our legal system grows in complexity, it is increasingly difficult to understand and explain the basic functions and operations of the contemporary justice system.

To assist journalists in their quest to be informed and understand today's justice system, the Maryland State Bar Association is co-sponsoring this legal Guide for journalists. The Guide will supplement reporters' knowledge of the justice system, acquaint them with legal terms, provide them with background information and assist them as they address legal issues.

In the interest of good legal reporting, MSBA is proud to co-sponsor the "Journalist's Guide to Maryland's Legal System." An informed reporter will better understand the legal system and, therefore, help the public understand it. We all benefit from good legal reporting, because we all develop a better understanding and appreciation of our democracy at work.

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Material and updates from this Guide can be found on  
the Internet at the following address:

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## **Covering the Courts**

Your local courthouse is a treasure trove of public records and public happenings. You can walk right in and listen to virtually any proceeding and examine the documents in virtually every court file. Unfortunately, there are a lot of people in your courthouse who don't know what reporters, as members of the public, are entitled to see.

It is, with a few exceptions including some juvenile proceedings, your right to be present and to take notes during court proceedings, including trials and hearings. In fact, many Circuit Courts reserve rows close to the front for attorneys, families of litigants and the media. Ask. You have no obligation to explain to a questioning sheriff's deputy why you are in a particular courtroom, unless the hearing is restricted or closed. However, the law does not allow you to record the sound or photograph or videotape the images without special permission of a judge.

[Maryland law prohibits the use of cameras in courtrooms in all criminal cases; in civil cases, it provides for a judge to permit one pool television camera, and one still camera, at the judge's discretion. See the chapter on Cameras and Microphones in the Courtroom on page 22.] Courtroom sketch artists are also permitted in court.

You also have the right to be present during jury selection. Some deputies are not aware of this and, because of courtroom space constraints or the practices of some judges, will occasionally order out all but potential jurors. If you want to cover jury selection, tell the deputy and judge it is your right to be there, and you should be allowed in. If they still refuse to allow your presence, immediately contact the administrative judge of the Circuit Court in which the trial is being held.

### **Juvenile Cases**

The rules on juvenile cases have significantly changed. See the chapter on Juvenile Court on page 49.

### **Court Records**

Every court has a clerk's office where new cases are filed, court papers are brought and court files are kept. If you're going to cover a particular court, familiarize yourself with its clerical and docketing practices. All cases are assigned case numbers; keep handy the numbers of the cases you are following.

Become familiar with the public access computers that are available in many courthouses. They tell you what kinds of documents you'll find in the file, give you a quick chronology of the case, and provide the names and addresses of parties and attorneys. These data banks may also be

accessible in your office for a fee. Contact the Clerk of the Court for more information. Most courts are computerized, but verify all information you get from any computer search of any court. The information in the computer may be incomplete or incorrect.

Court files are public—except for the envelopes that are sealed, generally in criminal cases, which contain psychiatric, juvenile and related information. The files can be viewed at the criminal or civil clerk's office, depending on the type of case. Civil files are kept separate from criminal files. If you are interested in a case, you should physically review the file periodically to read new documents, or at the very least check the computerized docket entries.

Court clerks' offices routinely charge for photocopies of desired material. It is not always inexpensive. As a courtesy, clerks will often copy reasonable amounts of material but don't abuse this kindness. You can also contact a party's attorney who might provide a copy of what you need. In any event, never remove anything from a court file.

You generally have options for obtaining a record of what went on in court: ordering a transcript from the court reporter who was present, watching a videotape if the courtroom is equipped with fixed cameras which are used as a substitute for human court reporters, or listening to an audiotape. The first option takes time and is expensive; the second is faster, but you may not be able to see the video that day because of a delay in obtaining the court's permission and/or limited screening facilities in the court and, in any event, the video and audio quality may be poor. Making copies of the video can be done in some limited cases. Sooner or later, you should be able to get access to a record of what happened in court. But, the best and quickest way, of course, is to be there.

Don't just use the court records for court stories. The courthouse is an excellent source of public background material on virtually any subject.

### **Criminal Files**

In criminal cases set for the Circuit Court, you'll typically find a copy of the indictment that lists the formal charges, the victim, the defendant, and witnesses expected to testify. In District Court, you'll find the statement of charges, which is essentially the police narrative of what happened. As the case progresses, you will find bail information, the person's date of birth and address, subpoenas for witnesses, evidentiary challenges, etc. You may also see letters from experts hired by the defense, information from the defendant's relatives, etc. Victim notification forms go into the file, too, and they have addresses and phone numbers. If a case starts in District Court and is then indicted as a felony (and so moved up to Circuit Court), you should find

the statement of charges in the Circuit Court file. But if the case started as a grand jury investigation, you won't find any account of the facts in the file, and will have to go to the investigators—and to the witnesses listed on the indictment—to piece together what happened. Grand jury proceedings and transcripts are secret in Maryland, though occasionally transcripts later become part of the public record at an attorney's request.

### **Civil Files**

In civil cases, the key document is usually the lawsuit, called "the Complaint" or "Petition." In essence, the Complaint lays out the heart of the plaintiff's case. But remember, these are allegations, not proven facts. The Complaint will include the names and addresses of the parties in the case. Most people hire lawyers, so the plaintiff's lawyer's name and telephone number will be in there, too. From the "Answer" to the Complaint or any motions, you will get the name of the defendant's attorney and, possibly, the theory of the defense.

The file may also contain cross-claims, counter-claims or third-party claims in which some of the parties to the original case sue other parties already in the case or others who are not yet in it. Divorce files, located in Circuit Courts, often contain vast amounts of financial and personal information. The file will also contain notices of service that various documents were mailed from one party to the other. It should also include a notice stating the date, time and location of any pending hearings, a Court Order relating to any hearings already held, and a scheduling order setting forth various deadlines and the date of the settlement conference and trial, if the case doesn't settle.

Motions filed in the case can normally be found in the court file. Often, these are technical in nature but are important, so they should be reviewed carefully. Be sure to see if the motion has been ruled upon. If so, a copy of the ruling should be in the file.

### **Exhibits**

Once entered into evidence, exhibits normally become public. However, sensitive information may require a hearing before a trial judge before it can be copied. These may include autopsy reports, photos, tapes of wiretapped conversations, and anything else a jury is allowed to review in making its decision.

Lists of the jurors selected to hear a trial also are public and included in the court file as part of the court proceeding, though the amount of information they contain is varied (in accordance with the jury plan on file). They may include only basic information, such as the juror's name and occupation, spouse's name and occupation, marital status, and zip code. The juror's phone number is not included.

Judges can exclude the jury lists from public scrutiny for “good cause.” If you don’t feel it was done for good reason, you may appeal to the local administrative judge for the Circuit Court in which the trial is or was held.

### **Sealed Records/Files**

A final word of caution: be aware of sealed records within the court file. Opening taped envelopes without the judge’s permission can be hazardous to your reputation and career.

### **Practical Tips for Covering the Courts**

- Watch what you say around jurors and witnesses. It is natural to talk about what just went on in court but during courtroom breaks, reporters, jurors and witnesses sometimes share the same hallway, elevators, restrooms and cafeterias. If jurors or witnesses overhear your conversations, a mistrial could result.
- While court is in session you must abide by the judge’s rules. Some will prohibit anyone from leaving the courtroom until and unless there is a recess. Others will allow reporters and the public in and out of the courtroom as needed. Whatever the guidelines—and this includes where reporters/artists sit—you must abide by them. Any significant problems can be directed to the court’s administrative judge.
- Don’t let your beeper or cell phone ring in court. Set your equipment to vibrate. Similarly, if you have a laptop computer, ask a deputy or the courtroom clerk if the judge will allow you to type in court—you may be relegated to the back row where you do not annoy others.
- Do not conduct interviews in any part of the courtroom while court is in session.
- The courthouse is a public building and the hallways are public areas. You have the right to request interviews, and participants in a trial have a right to refuse them.
- Some judges and staff allow reporters to use phones in their offices; others don’t. There are usually pay phones in the courthouse.
- You are permitted to read public documents relating to the case you are covering and may request them from the court clerk during a break in the trial.
- Introduce yourself to the attorneys and check with them periodically on the status of any motions and the trial itself (e.g., the number of witnesses

they plan to present, length of their presentations, the trial and hearing schedules).

- There is no substitute for personal contact with the attorneys and parties prior to, during or even after the trial.
- Many judges are quite interested in developing relationships with the media and helping you do your job. Find out who they are and stop by their chambers to make their acquaintance. But remember, often they are prohibited from commenting. See the chapter on a judge's "View from the Bench" on page 30.
- Dates, times and locations of proceedings constantly change. Be sure to update your "teaser" files and stories with the latest information. Confirm the proceedings with the attorneys, the court clerk or the judge before you head to the courthouse.
- Courtroom personnel can help you do your job and will appreciate your courtesy.
- Remember that for all the lawyers in the state, the legal profession is still a close one. For better or worse, your name and reputation will get around.
- Trying to get in touch with an attorney? Keep in mind that many attorneys are often in court. Place your call, but don't expect the lawyer to be in the office. Leave a message that says what case you're interested in and what your deadline is.
- You will have to clear security in most courthouses. If you will regularly cover the court, ask if they issue passes that allow you quicker access.
- If you don't understand a particular term, procedure or proceeding, lawyers, clerks and judges should be willing and able to help. You can also refer to the Glossary in the back of this Guide or type "legal dictionary" in your Internet search engine and you will find many helpful sites.
- An annual "State of the Judiciary" report is issued by the Chief Judge of the Court of Appeals and may have the latest facts, figures and changes involving Maryland courts.
- Need to find a particular lawyer? The Maryland Lawyers' Manual issued by the Maryland State Bar Association lists online many lawyers in the state, a phone number and street address, and sometimes an e-mail address. Maryland's Client

Protection Fund maintains all attorney addresses and phone numbers, which are available online.

- Looking for a lawyer-expert? Try the law schools, the Maryland State Bar Association, or the specialty/minority bar associations, reachable through the MSBA.
- Looking for a Maryland appellate opinion, or other judiciary info? You can get it immediately upon release at the Maryland judiciary's website [www.courts.state.md.us](http://www.courts.state.md.us)
- An excellent pocket summary of the state's criminal laws is contained in the "Digest of Criminal Laws" published and distributed by the Maryland Police and Correctional Training Commissions. There's a nominal fee for the book that can be obtained by calling (410) 750-6500.

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## Knowing Your Limits

Even if the content of news reports is fair and accurate, a journalist's newsgathering methods can land them in legal trouble. Obviously, a journalist, like every citizen, must not violate criminal laws to obtain information, but the line between criminal and non-criminal behavior is not always distinct. Even the total avoidance of criminal behavior in newsgathering might not immunize a journalist from legal challenge.

While the law does not set clear boundaries between permissible and impermissible newsgathering practices, it does provide general guidelines to help you steer clear of most legal problems without sacrificing the assertiveness necessary for strong reporting. This brief section examines access to non-governmental places, both public and private, and discusses some problem areas of newsgathering, including impersonation, misrepresentation, and receipt of confidential documents.

### Access to non-governmental places

The extent to which a journalist may permissibly engage in reporting or surveillance largely depends on the location. Generally, restrictions on newsgathering in private homes and private places are stricter than those for public lands or traditionally public areas. One of the first things you should do if you are denied access by government officials or owners of private property is assess your forum.

### Public Places

A journalist is essentially free to gather news on public streets and in public parks, and anything that can be seen (and photographed) or heard on or from a public street is fair game. For example, a Maryland court has found that taking a woman's photograph from the street as she stood in plain view at her bedroom window does not constitute an invasion of privacy. However, the paparazzi-esque pursuit of particular subjects, even on public streets, has landed a few journalists in legal trouble, especially where the newsgathering implicates the privacy of children.

The right to engage in newsgathering on public streets has usually been extended to other places where the public is traditionally welcome — such as airport terminals, flea market booths, and professional sporting events — but this right sometimes has not applied to private parties held in otherwise “public” places.



## **Crime and Disaster Scenes**

The freedom to gather news in public places has extended to crime and disaster scenes in most cases. For example, a journalist may permissibly record an arrest on a public street, or in a courthouse or police station. This freedom may be limited if a law enforcement investigation or other official activity is still in progress.

Where the crime or disaster scene is not a public place, the law is much less clear. A community's custom or common practice, to the extent that it can be determined, can be relevant to the analysis of whether a journalist may incur liability for a particular newsgathering practice. Maryland law is sparse on the subject of "implied consent by custom and usage;" probably the best source of information on the accepted newsgathering practices in the state will be experienced journalists.

As with public places, newsgathering activities in private places may be limited if a law enforcement investigation or other official activity is underway, especially if the media's activities could realistically compromise the safety of the law enforcement officers and the success of their mission. For example, one federal court has held that the media has a duty not to interfere with a law enforcement officer's official activities and may be found liable for breach of that duty, even if the interference comes in the course of newsgathering.

Sometimes law enforcement officials permit journalists to accompany them on "ride-alongs" as they conduct searches, investigate crimes, or execute arrests. However, the express consent of law enforcement officials to newsgathering is no guarantee that a journalist will escape legal trouble. A few courts have found that journalists may be held liable for damages when they enter a private home without the consent of the owners, even if they are on a police-approved "ride-along." Also, law enforcement agencies may limit media ride-alongs in the wake of a U.S. Supreme Court decision that they violate the Fourth Amendment protection for criminal suspects against unreasonable searches.

### **Private homes**

Gathering news in a private home without consent of the owner is an extremely risky proposition. Courts have found the media liable for invasion of privacy, trespass, and intentional infliction of emotional distress both where the journalist used surreptitious means and where he gathered news in plain view but without the consent of the homeowner. When the home is a crime or disaster scene, a journalist may have a greater right to gather news, particularly if the custom of the community dictates or a government official has provided consent. But generally, a journalist can face serious liability if he engages in

newsgathering in a private home without the owner's consent or, even worse, after the owner has expressed a desire for the journalist to leave.

### **Public institutions**

Journalists are not entirely free to gather news in public and private mental health facilities, drug treatment centers, schools, etc., without consent. Though the subject of a report will rarely succeed on an invasion of privacy claim, successful trespass claims by the owner or protector of the institution are more common.

### **Restaurants and bars**

Bars and restaurants are, of course, open to the public, and journalists are traditionally granted the same freedom as ordinary citizens to enter the public areas of such businesses. However, this freedom does not mean journalists may do as they please in the name of newsgathering. If a journalist ignores a patron's objection to the newsgathering, that journalist may be subjected to liability just as if he had entered a private home. In addition, reporters have not been immune when gathering news in the private parts of otherwise public businesses. In other words, a restaurant kitchen is likely off-limits without the owner's consent.

### **Other private businesses**

The public areas of other private businesses are generally considered open to the media as well, although journalists might not be able to avoid invasion of privacy claims if they gather and publish private facts about individuals or recount private activities. In private parts of private businesses, the media's liability for newsgathering may vary depending on the means by which the journalist gained access, the methods used to gather news, the sensitivity of the material obtained, or countless other factors. Generally, journalists using either hidden cameras or ambush tactics risk trespass and possibly fraud lawsuits, and if the material obtained and published is highly personal or offensive, the journalist flirts with liability for invasion of privacy. Such tactics should be used only if more traditional newsgathering techniques are unavailable or impractical.

### **Misrepresentation and Impersonation**

For journalists, whose livelihood depends on gaining access to places they are not welcome and information not meant for their eyes, a little bit of trickery is a useful tool of the trade. Fortunately, the legal system recognizes this and gives journalists some leeway in the name of the First Amendment.

### **Misrepresentation**

Misrepresentation is the act of making a false representation for the purpose of deceiving, or causing another to rely on it detrimentally. A misrepresentation can be made in words, by conduct, and even by concealment or failure to disclose a relevant fact. Examples might range from telling a potential interviewee that you have already interviewed his friend when you have not, to using a fictitious name to obtain credit information about a subject. Typically, those who feel they have been damaged by a misrepresentation will allege fraud and/or intrusion, one type of invasion of privacy.

In practice, though, these misrepresentation claims do not often succeed. To establish a claim for fraud in connection with newsgathering, a plaintiff must typically show that the reporter's behavior was beyond what a person with a reasonable degree of skepticism toward journalistic methods might anticipate, and that the reporter had an ulterior purpose beyond uncovering the story. In addition, the plaintiff must establish an injury as a result of reliance on the alleged misrepresentation. Plaintiffs have been similarly unsuccessful in maintaining claims for intrusion, because intrusion usually requires a violation of someone's physical solitude or seclusion. Essentially, you will likely avoid liability if you steer clear of particularly egregious behavior or a pattern of misrepresentations. Of course, you can prevent lawsuits in general by keeping the white lies to a minimum.

Maryland has statutes designed to prevent unauthorized access to medical and certain government records. One statute provides that persons who obtain certain government records by false pretenses, bribery, or theft are guilty of a misdemeanor and subject to a fine. Another states that persons who obtain another's medical records under false pretenses are guilty of a misdemeanor and subject to a fine and possible civil damages.

### **Impersonation**

Impersonation is the assumption of a false identity for the purpose of gaining access to sources and information. Though it often involves a grander scheme than misrepresentation, impersonation also rarely leads to liability for the journalist. Courts typically find in favor of journalists on trespass claims that arise out of impersonation because the journalist is not interfering with the ownership or possession of land. Fraud and intrusion claims are difficult to maintain for all of the reasons mentioned in the above section. Once again, impersonation may land you in a lawsuit and should be avoided, but it is unlikely your employer will be forced to pay damages unless the impersonation is especially outrageous (e.g., brandishing a knife while posing as an alcohol rehabilitation patient).

## Receipt of documents

Asking for and receiving documents is an everyday task for journalists, as essential a part of newsgathering as interviewing sources. It probably goes without saying that you have a good chance of being sued for invasion of privacy or “conversion” — the assertion of ownership by one person over the personal property of another — if you steal or otherwise unlawfully obtain a document. Conversely, if a journalist lawfully obtains truthful information about a matter of public significance, state officials may not punish the publication of the information absent a state interest of the highest order. This rule has been extended to shield journalists from civil liability, such as damages owed to the subject of the publication.

But what about the middle ground — when you receive documents lawfully but they were unlawfully obtained by your source? Does it make a difference whether you knew? You are probably in the clear when receiving unlawfully obtained documents — even if you know how your source obtained them — as long as you did not participate in or authorize their theft. For instance, in one Maryland case the judge found that a newspaper could not be punished for receiving and publishing confidential University records of student-athletes that had been provided to it gratuitously.

Maryland law criminalizes the receipt of stolen property, and a similar statute has been applied in at least one other state to a newspaper’s receipt of a stolen document. However, such an application seems highly unlikely after a decision by the Supreme Court in which the Court held that a journalist could not be held liable for broadcasting the contents of an illegally intercepted telephone conversation that was given anonymously to the journalist, even though the journalist had reason to believe the tape was obtained illegally.

## Some Practical Newsgathering Tips

**Obtain consent.** When you are seeking access to private places or documents, the only way to shield yourself totally from newsgathering liability is to present yourself truthfully and obtain consent from the owner or another person authorized to give consent. If the owner is unavailable, consent from a government official usually will suffice where there is an established custom of press access. At the very least, governmental consent will strengthen a defense against lawsuits. Of course, strict adherence to these rules is not possible in the real world, and would limit your ability to gather news effectively. But to the greatest extent possible, consent is the best course.

**Seek legal advice.** If you are planning to carry out a course of newsgathering that you sense is less than kosher, get the advice of your publication’s or station’s lawyer. Newsgathering law is varied and fact-specific. Different

states have reached different results on very similar issues, and Maryland courts have issued very few decisions to guide you. A good First Amendment lawyer should be able to assess the hazards of your intended course of action and offer particularized suggestions to minimize the risk of liability for fraud, trespass, or invasion of privacy.

**Develop a plan.** It is hard to deal with access problems in the middle of breaking news, so your news organization should set the groundwork for addressing such situations before they come up. Develop a strong working relationship with police and other officials on your beat. If law enforcement officials in your jurisdiction permit access only to those who hold press passes, obtain one; if your area does not have such a system, keep handy a list of government contacts who may facilitate access when news occurs. Meet with your editors and legal advisers to formulate a general plan in the event you are denied access by police or property owners – whether you should leave, or stay and risk arrest or a lawsuit, and upon what factors your decision will depend.

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## **The Maryland Shield Law**

The Maryland Shield Law states that anyone employed by the news media in any newsgathering or disseminating capacity cannot be forced to disclose the source of news or information obtained in the course of their work. This privilege may be asserted whether or not the source has been promised confidentiality. The law protects journalists from waiving its protections, such as by previously reporting or sharing the name of the source or the name of one source but not others. However, Maryland's Court of Appeals has ruled that the Shield Law does not apply to a reporter (or other person otherwise covered) actually witnessing an event or hearing a party make a statement about an issue relevant to a proceeding, if the journalist reports what he saw or heard. In that case, the individual can be compelled to testify. Also, when a reporter is being questioned about his reporting, particularly by someone else's attorney, he should stop the conversation until he has had the chance to consult his own attorney, lest he end up waiving the privilege.

The law's reach is broad, covering those employed by newspapers, magazines, journals, press associations, news agencies, wire services, radio and television and any other printed, photographic, mechanical or electronic means of reporting news.

The Shield Law provides some, but more limited protection for news or information such as notes, video or audio outtakes and unpublished photographs or photographic negatives. A journalist may be compelled to produce these items if the party seeking them proves by clear and convincing evidence that: 1) the news or information is relevant to a significant legal issue before a body that has the power to issue a subpoena; 2) the news or information could not, with due diligence, be obtained by any alternative means; and 3) there is an overriding public interest in disclosure. The more limited protection afforded to unpublished information and items may be waived if the journalist discloses unpublished information outside the performance of professional responsibilities, e.g., in social conversation.

The privilege applies in any state or local judicial, legislative, or administrative forum in Maryland, but does not protect a journalist subpoenaed to testify before a federal court in Maryland. In federal court, the First Amendment to the U.S. Constitution may protect the journalist.

Is there protection for Internet journalists? Although the question has not been directly presented, one case suggests that a reporter writing for the Internet whose work

is conducted in Maryland may claim the protection of the Maryland Shield law.

*The Maryland Shield Law ("Privileged Communications-News Media") can be found in the Annotated Code of Maryland, Courts and Judicial Proceedings Article, Section 9-112.*

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## Cameras in Maryland Courtrooms

By law, neither cameras (still or video) nor microphones are permitted in criminal trials in Maryland. There is more flexibility in civil cases and at the appellate level.

Maryland court rules require requests for permission to use cameras and microphones be made to the Clerk of the Court in writing, at least five days before the proceeding is scheduled to begin. A court may honor a request that gives fewer than five days notice if "good cause" exists; this good cause should be identified in your request. You must specifically identify the case that you wish to cover. The court is under no obligation to grant your request and consent of all parties is normally needed. However, consent of a party is not needed if the party is the federal, state or local government, any of their agencies or an individual sued or suing in an official governmental capacity. Consent of a party is also not needed in the appeals courts. Once consent has been given, it may not be withdrawn although any party, at any time, may ask the judge to limit or terminate coverage.

Coverage is not permitted if the proceeding is closed to the public by law or may be closed by law and has been closed by the judge. Audio coverage is prohibited of private conferences, bench conferences and conferences at counsel tables.

Even when allowed, recording or broadcasting must be limited or terminated during the testimony of a crime victim at the request of the victim. Coverage may also be prohibited, terminated or limited at the request of a party, witness, judge or juror where the judge finds a "reasonable probability" of unfairness, danger to a person, undue embarrassment or hindrance of proper law enforcement. A request to prohibit, limit or terminate coverage is presumed valid in cases involving police informants, undercover agents, relocated witnesses, minors, trade secrets and so forth. A presiding judge is given broad discretion in his decisions.

State law also calls for pooling arrangements when permission is given for video, still photos and microphones. It is not the responsibility of the court to coordinate pool arrangements. Stations and publications must work out among themselves the logistics of this coverage. Where proceedings are continued other than for normal or routine recesses, weekends, or holidays, it is the media's responsibility to make a brand new request for additional coverage. Generally, cameras and broadcast equipment are permitted in the courthouse for investiture or other ceremonial proceedings, with the advance permission of the court.



An increasing number of Maryland courtrooms no longer use court reporters, but videotape all of the proceedings using the tape as the official court record. This practice has implications for the media's access to that record. While the Rules provide that a party to the case or his attorney may obtain a taped copy of the proceedings, it is forbidden for that party or attorney to make a copy for others (including reporters) without court permission. Others, such as media representatives, may directly request a copy of the tape from the court, which then has obligations to fulfill before providing it. This may include waiting until all appeals are first concluded. It should be noted that the quality of the tape is generally poor.

Hearings before Administrative Law Judges are also open to the public including, of course, the media. The ability of the media to tape these proceedings is much broader than in the District and Circuit Courts. Audio and video recording equipment and cameras are allowed in the hearing room unless prohibited by law, or unless, in the determination of the judge, their use "may impede the orderly progress of the hearing or otherwise interfere with the hearing process."

*Maryland Rule 16-109 governs cameras and taping in Maryland courtrooms.*

*Title 28 Subtitle 02 of the Code of Maryland Regulations governs cameras and taping in Administrative Law hearing rooms.*

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# **The Maryland State Court System and its Agencies**

## **Overview**

As Robert Bell, Chief Judge of the Court of Appeals says, there is no justice in Maryland: his subtle reminder that there is no member of the state's judiciary with the title "Justice." They are all called judges.

Maryland has a four-tiered court system made up of trial courts and appellate, or appeals, courts.

The trial courts are the District Court of Maryland and the Circuit Courts. The appellate courts are the Court of Special Appeals, from which a panel of three judges reviews a case, and the Court of Appeals, the highest court in the state.

Judges wear black and dark blue robes, except for the judges of the Court of Appeals, who wear scarlet robes.

## **District Court**

The District Court was created in 1970 to replace a jumble of municipal and people's courts. It opened in July 1971. Each county and the City of Baltimore has at least one District Court location.

Generally, it has jurisdiction over all misdemeanors and some felonies

In the civil area, it has exclusive jurisdiction over landlord-tenant cases and "small claims" cases, which involve amounts of \$5,000 and below. It shares jurisdiction with Circuit Court for domestic violence and civil claims for between \$5,000 and \$25,000.

A District Court case is argued before a judge only, and an entire trial rarely goes more than 2 hours.

Since there are no jury trials in District Court, a person who is entitled to a jury trial for a criminal or civil case must request one in a timely fashion. The case is then moved to Circuit Court.

Commissioners, who issue arrest warrants and set bail around-the-clock, are part of the District Court.

## **Orphans' Court**

The Register of Wills, an elected official, is the clerk of the Orphans' Court. This specialized court has jurisdiction over probate and the administration of estates of the deceased.

## **Circuit Court**

Each county and the City of Baltimore has a Circuit Court. These courts have broad jurisdiction. Generally, they handle larger civil cases and cases in which a jury trial is properly requested, divorces, and the more serious criminal (felony) cases, such as murder. They also hear appeals from District Court, from most Orphans' Courts and from certain administrative agencies.

If all cases went to trial, the judicial system would be crushed by their weight. However, most civil cases are settled before trial, and most criminal felonies end with a defendant's plea. Not all Circuit Court trials involve juries. Some are heard by a judge alone.

## **Family Division (Circuit Court)**

A family division is located in the five largest jurisdictions in the state: Anne Arundel, Baltimore, Montgomery and Prince George's counties, and Baltimore City. Family division judges hear juvenile cases and cases of divorce, child custody, alimony, termination of parental rights, desertion, involuntary admission to state psychiatric hospitals, and withholding or withdrawal of life-sustaining medical procedures.

The family division is intended to make it easier to manage the state's civil docket. Family law cases make up about half of all civil lawsuits filed in Maryland each year.

## **Juvenile Court**

Anyone under the age of 18 is a juvenile. These courts hear some delinquency matters (many are taken care of within the Department of Juvenile Services) and some abuse/neglect matters (those in which the Department of Social Services has been unable to work with families).

Juvenile proceedings in Maryland are open, unless there is a request to close the hearing. However, the Juvenile Court file is not open. There, if you are covering a juvenile hearing, listen closely and write fast. See the chapter on Juvenile Court on page 49.

## **Court of Special Appeals**

The Court of Special Appeals, located in Annapolis, is the state's second highest court and is normally where an appeal from Circuit Court goes before it can go to the state's highest court, the Court of Appeals. It has 13 judges. Appellants, who are appealing a decision, file briefs detailing their reasons for the appeal. Appellees file briefs explaining why the lower court decision should stand. Sometimes both parties "cross appeal" different parts of a judge's decision. Oral arguments are quick here, turn on

points of law, include instant responses to questions from the judges, involve no witnesses and usually lack the emotional pitch of the trial courts. Rarely does the three-judge panel hearing the case issue a decision from the bench. It takes at least several weeks, usually longer, to receive an opinion. On very rare occasions a hearing may be "in banc," meaning it is heard by all 13 judges of the court.

Both sides must submit briefs and significant parts of the trial court record well in advance of the hearing. To enhance your understanding of the hearing it is best to skim the briefs before attending arguments or talking to the lawyers. The clerk's office can provide the name and telephone number of the attorneys involved.

### **Court of Appeals**

This is the highest court in Maryland, the state's supreme court. Like the Court of Special Appeals, it sits in Annapolis. Unlike the lower court, it chooses the cases it wishes to hear, plucking some from the Court of Special Appeals before they are heard there and others from petitions for review, called "writs of certiorari," from rulings made by the Court of Special Appeals or in other ways allowed by law.

All seven judges hear each case, quizzing the lawyers on the salient issues. It operates in a manner similar to the U.S. Supreme Court.

The cases it hears have broad public significance and legal importance in both criminal and civil matters – but just because the top court turns down a case doesn't mean the issues raised are meaningless. Look for this court to interpret the law, refine policies and uphold or overturn statutes or, at times, defer to the legislature for a change in the law. Its decisions very often create interesting and important stories. It should be noted that the Court of Special Appeals and the Court of Appeals do not re-litigate the facts of a case. Generally, they hear arguments about how to properly apply the law to the facts of the case as they were determined to be by the judge or jury in the lower court.

Death penalty appeals come directly to the Court of Appeals.

Twice a year, the Court of Appeals admits lawyers to practice in Maryland. This is also the court that disbars lawyers and can conduct disciplinary proceedings against judges. This court also adopts rules governing practice and administration for all courts in the state.

Here too, there are briefs you can read for all cases that will be heard. Contact the clerk's office for the attorneys' name and telephone numbers.

Both appellate courts issue their published opinions online at [www.courts.state.md.us](http://www.courts.state.md.us)

### **Judges' Qualifications and Terms in Office**

For all judges other than Orphans' Court judges, the qualifications are: Maryland citizenship; Maryland residency for five years and in the appropriate circuit, district, or county for six months; registration as a qualified voter, admission to practice law in Maryland, and 30 years of age at the time of appointment.

#### **District Court**

Appointed by the Governor upon recommendation of a local judicial nominating commission comprised of lawyers and non-lawyers, and confirmed by Senate. No election. Confirmation by Senate every 10 years (on the presumption the judge is re-appointed by the Governor.) A District Court judge who is not confirmed is removed from office. The Chief Judge of the Court of Appeals appoints the Chief Judge of the District Court.

#### **Orphans' Court**

Judge is elected to four-year term. (Except in Harford and Montgomery counties, where Circuit Court judges sit as Orphans' Court judges). The Governor fills vacancy, with Senate consent.

#### **Circuit Court**

Generally appointed by the Governor upon recommendation of a local judicial nominating commission, and runs in what may become a contested election against others not appointed by the Governor. Stands for election to a 15-year term.

#### **Court of Special Appeals/Court of Appeals**

Appointed by the Governor, confirmed by Senate. Runs for 10-year term (running on their records, no one is permitted to file against them). If the incumbent is rejected by voters in the "retention election," the post goes vacant and the Governor makes a new appointment. The Governor chooses the chief judge, who serves as the administrative head of the state's judicial system.

### **Commission on Judicial Disabilities**

The Maryland Commission on Judicial Disabilities is a constitutionally mandated body of the Maryland State Government. Its primary mission is to investigate allegations of misconduct or disability against Maryland judges. It is the primary disciplinary body for the Maryland judiciary. Under certain circumstances, judges may also be subject to disciplinary action by the Governor and the Maryland legislature. The Commission has no authority to change a decision made by a Maryland judge nor can it direct a judge as to how to decide a case. Parties who

disagree with the judge's ruling must seek redress either with the original court or through the appellate process.

The Commission conducts hearings, which are public, and takes informal action, as it deems necessary, provided that the judge has been properly notified. If, as a result of the hearing, the Commission by a majority vote, decides that a judge should be retired, removed, censured, or publicly reprimanded, it recommends that course of action to the Court of Appeals, which may order a more severe sanction than the Commission recommends.

To file a complaint with the Commission on Judicial Disabilities, a complainant must make a sworn written statement to the Commission. Complaints and investigations are confidential unless the Commission votes to take a public action. The Commission may, under certain circumstances, issue an explanatory statement regarding matters before it. The Commission is comprised of eleven members who are appointed by the Governor. Three members are judges, three members are lawyers, and five members are "public" members who are neither judges nor lawyers. Members are appointed by the Governor, subject to approval by the Maryland Senate, for a period of four years.

### **Attorney Grievance Commission**

The Attorney Grievance Commission supervises and administers the discipline and conduct of Maryland lawyers and has jurisdiction over anyone practicing law in Maryland without a license. Unlike the Commission on Judicial Disabilities, the Attorney Grievance Commission has no public proceedings. However, its Internet site lists attorneys who have been sanctioned by the Court of Appeals.

### **Maryland Tax Court**

Although the Maryland Tax Court is called a "court," it is not. It is an administrative agency. The Maryland Tax Court has jurisdiction to hear appeals taken from the state Comptroller's office, the state Department of Assessments and Taxation and other final assessing or taxing authorities with respect to the valuation, assessment or classification of property, the levy of a tax abatement, reduction or revision, or any assessment, or tax or exemption from tax.

The Court consists of five judges appointed by the Governor. No more than three may be of the same political party. All must be qualified voters of Maryland. At least two, including the Chief Judge, must be members of the Maryland Bar.

### **Office of Administrative Hearings**

Created in 1990, the Office of Administrative Hearings hears challenges to actions of some 20 state agencies, such as appeals of teacher firings by local school boards. It is under the state's Executive Department.

An administrative law judge hears the facts and makes a determination. Depending on the agency and law involved, there may be a recommendation to the board of that agency or a final decision. Depending on the law and issue, disgruntled parties may be able to appeal to the Circuit Court.

### **Court Information Office**

The Court Information Office develops and administers programs to increase the public's awareness of the court's functions, including media relations and community outreach programs. Its web site includes press releases, appellate opinions, statistical reports and other publications and reports that journalists may find useful. Court Information Office staff can provide background information on a variety of issues and can assist journalists in getting access to useful sources of information.

*The Maryland Judiciary's Court Information Office can be reached by phone at 410-260-1488 or through e-mail at [cio@courts.state.md.us](mailto:cio@courts.state.md.us). Its website is [www.courts.state.md.us](http://www.courts.state.md.us)*

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## A View from the Bench

A judge's interaction with the media is governed by many different factors of which a reporter should be aware.

Most important are the serious ethical restrictions imposed on judges by court rules. These prevent the judge from engaging in "ex parte" (i.e. one-sided) or certain other communications concerning a proceeding to which the judge is assigned. The Maryland Code of Judicial Conduct requires a judge to abstain from "public comment" about a pending or impending proceeding in any court. The judge is, however, permitted to make public statements in the course of his official duties, and may explain court procedures.

Like everything else in the law, ethics rules are subject to interpretation. Some judges take a strict view and engage in no discussions about a case. These judge's remarks are confined to open court in formal "on-the-record" proceedings or by written order filed with the clerk's office. Less strict judges are willing to informally discuss the case or explain court procedures.

Regardless of his approach, nearly all judges will be conscious of the need to not only be impartial but to appear impartial. A judge's first duty is to the case he is adjudicating. The judge does not want some ill-chosen word or phrase shared with a reporter to compromise the case. At times, the judge will ignore a reporter's needs and, to some degree, the public's right to know, in favor of reaching a fair result for the parties before him.

A reporter may have little difficulty getting answers to procedural questions, like "What motions will you be taking up at the hearing?" On the other hand, the reporter shouldn't be surprised if the judge has no interest in answering substantive questions like "How will you rule on the motion to suppress?" In some cases, the judge's explanation of trial issues will have to wait until post-trial matters are resolved and the dust has settled, even though that might well be long after the public's interest in the case has died down.

A reporter will need to feel his way with each judge and see how receptive the judge is to discussions about legal issues in pending or upcoming cases since judges are aware that jurors may not obey the order to refrain from reading about the case during the trial. In some cases, the judge might be willing to talk if his comments are "embargoed" until after the trial. The judge might even be willing to suggest, for background and educational purposes only, and without a hint of how they might be resolved, what serious issues might develop in the trial, so that the reporter can be better prepared. (Of course, the lawyers in the case might be better sources for much of this information). If a judge



does not want to discuss a matter, he may allow his law clerk or administrative assistant to provide limited information, or he may designate a court administrator to speak for the court. In a few high profile cases, courts have even designated a media advisor or liaison to handle media issues.

Judges vary widely in how they respond to media inquiries. No single approach is right or wrong. Often, judges who were used to dealing with the media before going on the bench will be more comfortable with reporters and more open to discussion, while judges whose former law practice did not involve the public eye may be more close-lipped and guarded.

While individual judges are given wide discretion in how to deal with media inquiries, it may be useful to explore the subject with the Maryland Judiciary's "Court Information Office." That office may suggest ways to meet the reporter's needs without compromising the judge's obligations to the case or his ethical code.

Finally, a reporter should develop contacts among the Bench and Bar who might be willing to translate or clarify the "legalese" the reporter will encounter as he covers court proceedings, and help him enter the courthouse with at least a rudimentary knowledge of the law and procedure.

*For more information about the Maryland Code of Judicial Conduct, consult Maryland Rule 16-813.*

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## The Criminal Process

### Overview

When it comes to criminal trials in Maryland, nearly all felonies are tried in Circuit Court and misdemeanors in District Court. However, there are some charges that provide for jurisdiction in both courts (“concurrent jurisdiction”) and it is up to the State’s Attorney’s office to decide, at least initially, in which court a case will be heard.

In the District Court, a defendant has the option to “pray” a jury trial—a legal term for requesting a jury trial in the Circuit Court. Cases that are eligible are those for which the penalties call for more than 90 days in jail and/or fines of \$2,500 or more. In some jurisdictions a defendant’s jury trial request in the District Court results in a nearly immediate jury trial in the Circuit Court.

There is one overriding concern in Circuit Court criminal trials; the case be held within a 180-day period which begins at the earlier of one of two events: the defendant’s initial appearance in Circuit Court or the entry of appearance by the defendant’s attorney. However, upon a finding of “good cause” by the court, the case can be scheduled beyond a 180-day period.

### The Process

Defendants are charged and tried on charging documents. The type of charging documents include indictment, information, citation and statement of charges.

Less serious criminal cases are charged in the District Court by either “citation” or “statement of charges.” The most common District Court charging mechanism is filing of a statement of charges, either caused by a police officer’s arrest or by a citizen’s complaint taken to a District Court Commissioner. The filing of a statement of charges in District Court requires an accompanying affidavit stating a factual basis of the probable cause for criminal charges. The affidavit serves as one of the earliest summaries of the factual underpinnings of the state’s case. It is at this time that the District Court Commissioner must determine whether or not to issue a summons or an arrest warrant. If a summons is issued, no arrest is made. Instead, the person charged is simply given a copy of the charge and ordered to appear in court.

Statements of charges for crimes such as murder, rape and robbery can be filed in the District Court. While the District Court does not have jurisdiction to try such crimes, it does allow for someone to be held temporarily pending charges being filed in the Circuit Court.

Citations are issued directly by law enforcement officers and don't necessarily involve the arrest of the defendant. The citation commands the defendant's appearance in court when notified of the date. Citations are only available for petty misdemeanors and when specifically authorized by statute. The most common citation is a traffic ticket. Many of the "zero tolerance" proposals currently advocated involve the expansion of offenses that may be charged by citation.

"Indictments" require grand jury proceedings and are issued by the grand jury which determines if probable cause for a criminal charge exists. They apply only to Circuit Court cases. However, Circuit Court felonies may also be charged by what is called a "criminal information" which instead of a grand jury requires a District Court "preliminary hearing" that results in a finding of probable cause or a waiver of a preliminary hearing. It is authored solely by the State's Attorney. A grand jury is required for the issuance of an indictment and a preliminary hearing is required prior to charging by criminal information under the theory that some review other than that of the prosecutor is needed before a person is put on trial for a serious offense. It is not uncommon for indictments to be filed on the eve of the preliminary hearing date when a statement of charges has been filed in the District Court—thus avoiding the need for a preliminary hearing to determine probable cause.

Within 24 hours of arrest, a defendant should be presented before a District Court judicial officer, usually a commissioner, where he is advised of the charges and rights to counsel and when the charge is a felony under exclusive Circuit Court jurisdiction, to a preliminary hearing at which probable cause against him may be shown.

At this "initial appearance," the first pretrial release or bail determination is made. While the primary consideration for bail or release is whether conditions can be fashioned which will reasonably ensure the appearance of the defendant at trial, the defendant's potential danger to the community if he were released is also a factor.

Trials in the District Court are generally simpler than those in the Circuit Court. The first trial date is usually scheduled much sooner. Postponements are far less frequent. There is less discovery and usually less preparation by the defense and prosecution. While the rules of evidence do apply, examination of witnesses is less extensive at the District Court level. Of course, there are no jury trials in District Court and the charges are less serious. As mentioned earlier, defendants who qualify and want jury trials must pray a jury trial to have the case moved to the Circuit Court.

At the Circuit Court level, the first public event in the trial of a serious felony case is usually the "initial appearance" (formerly referred to as arraignment) which typically occurs within a month of a grand jury indictment. While an initial

appearance may often be little more than a reading of the charges to the defendant by a court clerk, followed by the defendant's perfunctory plea and request for either a jury or bench trial, it may provide an opportunity for the beginning of plea negotiations. Also, at or near the time of the initial appearance, some amount of discovery is disclosed by each side and various motions are exchanged covering the waterfront of potential issues which may arise.

Discovery and motions practice are significant and are often overlooked by the media. Through discovery and motions, both sides learn more about the other's presentation of its case. Motions to suppress statements and seized evidence are typical and usually give an opportunity for the police to show the strength of their testimony and the defense to probe for weakness. The court's rulings on motions often determine whether critical evidence will be admitted or excluded at trial.

### **Pleas and Verdicts**

While extensive preparation is required for a criminal trial, it is negotiation rather than trial that is the more common method of resolving serious criminal cases. As many as 90% of felony cases end in some type of plea agreement or state action. That may entail a plea to a less serious charge or an agreement with respect to sentencing. In some cases, the plea agreement may be "binding," meaning that the judge agrees to be bound by the agreement if he accepts it. If he rejects it, the plea is void.

It is important to note that when a verdict is rendered—either by a jury or judge—the actual decision is either "guilty" or "not guilty." There is no finding of "innocent." However, a defendant, if found not guilty, can be described as having been acquitted. If there is a finding of not guilty, it simply reflects the fact that the prosecution failed to prove guilt beyond a reasonable doubt.

Resolutions of criminal cases other than by findings of not guilty and guilty include:

**Alford plea.** This is a guilty plea in which the defendant maintains his innocence, but acknowledges the prosecution has sufficient evidence to convict.

**Nolo contendere.** Used rarely and made famous by former Maryland Governor and Vice President Spiro Agnew. It means "no contest." In this case, a defendant does not dispute the charges but also does not admit to guilt.

**Nolle pros.** The state opts to end the prosecution and dismisses the charge.

**Stet.** A suspension of the prosecution with the State given the opportunity to reopen the case without the need for the defendant to be recharged. The majority of stets result in no further prosecution. However, a significant number are reopened because of the defendant's arrest on additional

charges or his failure to live up to some agreed-to-condition within a reasonable time after the entry of the stet.

**PBJ-Probation before judgment.** This is a common resolution in many District and Circuit Court trials. The defendant is found guilty or pleads guilty. However, the final entry of judgment is technically suspended. This gives the defendant an opportunity to request expungement of his record upon successful completion of the conditions or probation.

**Insanity Pleas.** The correct full name of the result of a successful imposition of an insanity plea is a finding of guilty and the special verdict of "not criminally responsible by reason of insanity." The point is that insanity is not a "not guilty" verdict. Maryland law makes it very clear that the State must first prove all elements of guilt or the defendant must plead guilty before the special verdict of insanity should be considered. The Rules provide the option for a "bifurcated," or split, trial of guilt first, and then litigation of the insanity issue. If found not criminally responsible, the defendant is not sent to prison, but committed to a mental hospital unit until it is proved that he is no longer dangerous as a result of his mental disorder. Release from the hospital can only be accomplished by order of the court and almost always is a conditional release with detailed outpatient requirements imposed on the defendant.

Insanity relates to the defendant's state at the time of the alleged offense—whether when he committed the crime, he was, as a result of a mental disorder or retardation, unable to substantially appreciate the criminality of his conduct or conform his conduct to the requirements of law. Insanity is not the same as incompetency. A defendant who at the time of trial is presently unable to assist in his defense or understand the proceedings is incompetent to stand trial and, if dangerous, is committed to a mental hospital until he regains competency. Incompetency can be raised by the State, the court on its own, as well as by defense counsel or defendant. Insanity, however, requires a written plea by the defense. A finding of not criminally responsible by reason of insanity is not always desirable for even a fairly mentally ill client. The indefinite commitment possibilities may be less attractive than a fixed jail term. Thus, there is a requirement that a special written plea of insanity be filed by the defendant to show a clear desire to pursue this course. Comparatively few defendants are found insane while many have special health conditions of probation or parole.

Orders for evaluation of mental condition by the Health Department or other doctors is one of many pretrial orders issued in the period from bail review to trial. Orders for preservation and further scientific testing of evidence are not infrequent as is the collection of medical records and the like. Postponements are inevitable. Discovery and evaluations are often not complete; witnesses are often unavailable and court and counsel calendars are jammed.

However, postponements often serve as part of the negotiation process. Victims as well as defendants often need time to sort out the situation and to reassess their own expectations of the criminal justice system.

### **Jury Selection**

With the exception of death penalty cases, jury selection in Maryland is less elaborate than in many states. The judge usually asks most of the questions and in a close-ended fashion. Much of the questioning is done of the group with jurors approaching the bench usually only for the more "personal" questions. Jurors with clear bias are struck "for cause." How many "peremptory challenges," strikes for any reason (besides race and gender, which are prohibited reasons,) depends on the seriousness of the case. In most serious cases the defense gets 10 strikes while the state gets five. For cases where the defendant could get 20 years or more, the defense gets 20 strikes and the state gets 10 preemptory challenges. In the less serious cases, both sides get four strikes.

### **The Trial Process**

The trial begins with opening statements from both sides.

The defense may wait until the beginning of its case but usually doesn't. The State goes first since it has the burden to prove beyond a reasonable doubt all elements of the offenses with which the defendant is charged.

In the presentation of its case, the State must put on evidence either in the form of witnesses, documents, scientific tests or stipulations (agreements between the parties as to facts) which are sufficient on their face to satisfy each requirement of each specific crime charged. At the end of the State's case, if sufficient evidence is not put on, the judge should grant the defense motion not to proceed further at least as to that particular charge. Similarly, at the close of trial, charges for which there is insufficient proof beyond a reasonable doubt are not to be submitted to the jury.

Frequently during trial, the lawyers approach the bench to argue objections out of the presence of the jury. The jury shouldn't hear discussion of arguably prejudicial or irrelevant witness statements. These delays, however, do lead to tedium for jurors and spectators. Making proper objections is critical. Appellate courts do not retry cases. They only review the record for alleged errors of the trial court in admitting evidence, instructing the jury and similar errors of law. The record must clearly reflect the alleged error and the party's objection to it. The lawyers have to be careful in preserving these errors for review by making timely objections for the record.

Made-for-TV movies often distort direct and cross-examination. The television lawyers often assume many

facts not in evidence, use argumentative questions and elicit bombshell responses within one or two questions. The real world is different. Pretty mundane material often has to be brought out on direct. For example, time-consuming foundations for the admissibility of documentary and other tangible evidence must be laid before the evidence can be admitted. While there is less strictness in the form of questions than once existed, there are still requirements that direct examination questions be essentially non-leading (not suggesting the answer) and far more focused than the typical television movie argument-speech-question.

The general rule is that judges, for the most part, should leave the tough questioning to the lawyers. Most judges do not jump into the fray and only sparingly ask some housekeeping questions of the witnesses. In addition to making evidentiary rulings and managing the courtroom, a key judicial responsibility in criminal jury trials is instructing the jury. While the jurors are the sole judges of the facts, the weight of the evidence and credibility of the witnesses, it is the judge's job to explain the relevant law to be applied to the case. Instructions are subject to review by the appellate courts and frequently become a vehicle for new case law.

The last event before the jury retires to deliberate is the closing argument. The State with its burden of persuasion argues first with the defense going second. The State, however, is afforded time to rebut the defense.

Jury verdicts must be unanimous in criminal cases. All 12 jurors need to agree on a verdict of guilty or not guilty. When a jury reports that it is hung and has not deliberated for an inordinate period of time, judges often give a so-called "Allen Charge" admonishing the jurors to work out their disagreements. However, if the jury remains deadlocked, eventually the judge will discharge the jury and the State may elect to retry the defendant at a new trial before a new jury.

When there is a guilty verdict, new trial motions are usually filed immediately by the defense but they are rarely granted. The standard is very high for the trial court to set aside a jury verdict.

### **Sentencing**

Sentencing practice in Maryland courts grant much discretion to the trial judge. Sentencing in District Court usually occurs immediately after the trial is concluded. In the Circuit Courts it is often held later. In serious cases, the judge usually first orders a pre-sentence report for criminal record and social-medical-psychiatric history. Except in death penalty and insanity cases, sentencing is the sole province of the judge. While, within the last fifteen years the General Assembly has enacted some mandatory minimum sentences, most crimes require relatively high maximum sentences but no rigid minimums. Unlike the federal

system, Maryland courts' sentencing guidelines are advisory only. While plea bargains can specify a particular sentence, absent such a binding plea, the sentencing judge usually has much latitude in imposing the sentence—from life without parole in first-degree murder to probation before judgment for many charges. If a motion is filed within 90 days of the sentence, a judge may also exercise revisory power over a sentence already imposed and change it.

### **Death Penalty**

For a murder to be considered to have met the threshold for the possibility of the imposition of the death penalty, the defendant must be:

1. 18 years of age or older;
2. Not mentally retarded (IQ over 70);
3. A "principal in the first degree," i.e., the actual killer/shooter, except in cases of contract killings.
4. Convicted of first degree murder for this killing, or;
5. Present at the murder, a major participant and intended the death of a law enforcement officer

Further, in order for the murder to be "death eligible," it must not only be first degree murder but also meet one of the aggravating circumstances listed in the law—the most common of which are murder during a robbery or rape, murder of a law enforcement officer or multiple murder. In order to proceed with the capital sentencing proceeding, the State must serve written notice of its intention on the defendant at least 30 days before the trial.

Death penalty cases are tried in two phases: The regular guilt/innocence trial phase in which the State must prove the defendant guilty of first degree murder and, if applicable, the accompanying rape, robbery, etc., charge beyond a reasonable doubt. Then, there follows a second "penalty" phase where the state must also prove beyond a reasonable doubt that the defendant was the principal in the first degree and the existence of at least one of the statutorily listed "aggravating factors." In death penalty cases, the defendant may elect to be tried by either a judge or jury in either the guilt/innocence phase or the penalty phase. If a jury is selected by the defendant for the penalty phase, the State must also obtain unanimous findings of principalship and the existence of at least one aggravating circumstance in order for the death penalty deliberations to continue.

If the State also proves an aggravating circumstance, the defense must show by a preponderance of the evidence to at least one juror, the existence of a "mitigating circumstance" to avoid the imposition of the death penalty at this point. Maryland law lists seven statutorily recognized mitigators including: lack of criminal record, mental impairment, youthful age and lack of future danger. Also,



the Constitution clearly requires that the statute allows for each juror to consider virtually anything as mitigation related to the circumstances of the murder or the defendant's history or make up that may call for a sentence of less than death. In many capital cases, the defense presentation focuses on the defendant's troubled history and problematic mental state.

In most cases, the jury finds some mitigation and the balancing of aggravation versus mitigation is determinative. The State must prove by a preponderance of the evidence that the aggravating circumstances outweigh the mitigating. Obviously, comparing a robbery-murder with aspects of a defendant's abusive childhood is not a mathematical or scientific process. The jurors' values, emotions and preconceptions can all play a role in the process. And, after a decade of Supreme Court litigation, it is also now clear that testimony from the victim's family on the effects of the crime on their lives is admissible in capital sentencing proceedings, adding another emotional element to this life and death decision.

### **Appeals**

Of course, defendants who are convicted have a lengthy appeals process open to them. In District Court, cases which are appealed go to the Circuit Court "de novo," that is, the case is re-tried as if it had never been heard; if that case is appealed from the Circuit Court, it would be within the discretion of the Court of Appeals to decide whether it will hear the appeal.

For cases originating in the Circuit Court, appeals begin in the Court of Special Appeals. The next level of appeals would be the Court of Appeals, the state's highest court, which has the discretion to determine which cases it will or won't hear. Once the Court of Appeals decides or declines to review a case, there is no further review within the state court system. Review by a federal court may be available, either directly or by appeal to the U.S. Supreme Court, or collaterally by action such as a "habeas corpus" petition in the U.S. District Court, if for example, a violation of federal constitutional law is alleged.

*For more information about criminal procedure, consult Title 4 of the Maryland Rules.*

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## **Offices of the Maryland State's Attorneys**

### **Overview**

In the area of criminal law, the responsibility of prosecuting all criminal cases generally rests with the State's Attorney for the jurisdiction in which the offense occurred. In Maryland, each political jurisdiction (the counties and Baltimore City) are served by an elected State's Attorney, who serves a four-year term. Aiding the State's Attorney in the performance of his duties are a number of Assistant State's Attorneys who are appointed by, and serve at the pleasure of, the State's Attorney. The number of Assistant State's Attorneys varies from county to county, depending on the population, caseload, and the appropriation of funds by the local government.

The size of the various State's Attorneys' offices in Maryland range from three prosecutors to 150. Most offices have at least one deputy State's Attorney, who serves as second in command. Many offices have local law enforcement officers assigned to the State's Attorney to assist in conducting investigations, and several offices have civilian investigators hired by the State's Attorney.

Many larger offices have specialized units handling specific crimes—some are exclusive units and handle only specific types of cases. These units are typically narcotics, white-collar crime or fraud, and violent crime/homicide units. Additionally, larger offices are divided into divisions, based on where the case will be heard. In those offices you will find District Court, Circuit Court and Juvenile Court divisions.

**Purpose.** The two major functions of the Office of the State's Attorney are (1) to prosecute at trial all violations of Maryland law that have a criminal sanction, and (2) to investigate criminal activity within its jurisdiction. Prosecutors have several tools available to fulfill this function. The State's Attorney has the power to issue subpoenas to compel the release of records held within its jurisdiction. Further, the State's Attorney may request the issuance of a grand jury subpoena for records anywhere in Maryland. Additionally, the grand jury may summons an individual to appear before it and answer questions regarding matters under investigation by the State's Attorney.

All proceedings, summonses, subpoenas, and testimony before the grand jury are strictly confidential and may not be revealed by the prosecutor. This protects the target of the investigation from what may be unfounded allegations. Most

prosecutors will answer any questions dealing with a matter before the grand jury with “no comment.”

Powers. The office of the State’s Attorney is prescribed by the Maryland Constitution and Maryland statutes. The powers of the State’s Attorneys themselves are nowhere specifically enumerated and defined with the result that the State’s Attorneys are vested with the broadest discretion.

What has been described by Maryland’s highest court as “the State’s Attorney’s most awesome discretionary power” is the power to determine whether to prosecute a particular case. Many factors are considered in exercising this power.

Probably the most important factor is whether there is sufficient evidence to prove the accused “guilty beyond a reasonable doubt.” There may be cases where the State’s Attorney believes personally that a person is guilty, but the evidence is not legally sufficient to meet this standard of guilt. A simple example of this type of case is that of a person who is found with illegal drugs in their possession, but those drugs were found as a result of an illegal search. Because the drugs were found illegally, the evidence cannot be used in court and the case must be dismissed.

***Other factors used to decide whether to prosecute include:***

**Seriousness of the offense**—There are times when not every case can be prosecuted because of a lack of prosecutors, judges, courtroom space, etc. For example, a murder case must be brought to trial today or it will be dismissed for lack of a speedy trial. On this same day, a minor assault, no-injury-to-victim case is also due to come to trial. Which case do you prosecute?

**Interest of justice**—For example, a parent is charged with violating the law concerning access to firearms by minors. In this case, a small child found the firearm and accidentally killed himself. Should the State’s Attorney’s office proceed with the prosecution of the parent who, if found guilty, receives only a fine and no jail time as the penalty?

**Request of the victim**—In some cases, the victim of a crime does not want to proceed with the case. It should be noted that in any criminal case, the State of Maryland and the defendant are the parties in the case. The victim is only a witness. Therefore, a victim cannot actually decide to “drop” a case. The decision to prosecute or not is the State’s Attorney’s alone. It cannot be overruled by anyone—the Attorney General, the courts or the Governor.

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## Office of the Maryland Public Defender

### Overview

The Maryland Public Defender's Office is responsible for handling the criminal defense of many low-income Marylanders charged with crimes carrying a possible jail sentence or fine greater than \$500. It handles no "civil" matters. The Office of the Public Defender was created by the legislature in 1971 and became fully operational the next year. Under the provisions of the law, the Public Defender is to provide legal representation, including any necessary related services, for anyone meeting required income levels. Representation by the Public Defender covers criminal trials, appeals, juvenile cases, and post-conviction proceedings, as well as matters of probation and parole revocations, dispositions of detainees, and involuntary commitments to mental institutions.

All of the Assistant Public Defenders serve at the pleasure of the Public Defender, who oversees the entire system. The Public Defender Districts conform to the geographical boundaries of the District Court. In some cases, the Public Defender's office will "panel out" the matter to private attorneys who will be paid by the state to handle the case.

The office has five statewide divisions.

In the area of "**appellate review**" concerning criminal cases on appeal, the Public Defender's office is responsible for the following:

- Administration of all work in the appellate courts in conjunction with the District Public Defenders.

- Qualification of applicants for appellate services.

- Representation of clients in the Court of Special Appeals, Court of Appeals and the U.S. Supreme Court.

- Establishment of approved panel attorney lists; assignment of cases to panel attorneys; authorization of fees to panel attorneys.

In the area of "**collateral review**," the Public Defender's office is responsible for the following:

- Advice and assistance to indigent inmates in Maryland correctional facilities regarding their criminal convictions.

- Representation of indigent inmates in post-conviction, habeas corpus proceedings, parole violations and detainer matters.

In the area of **mental health**, the Public Defender's office is responsible for the following:

Provides assistance of counsel to every indigent person involuntarily confined to a facility under the jurisdiction of or licensed by the Maryland Department of Health and Mental Hygiene.

Representation of indigent admittees to mental institutions.

Six month and annual reviews of individuals committed to mental institutions.

Representation of indigents seeking individual judicial release from mental institutions.

In **death penalty** cases, the Public Defender's office:

Monitors capital defense litigation.

Coordinates the appointment of counsel, experts and investigators in capital cases.

Consults with the appointed attorneys.

Provides appointed attorneys with legal research, updated pleadings, instructions and memoranda.

Keeps the public defense bar abreast of developments in capital punishment law and tactics through regular publications and seminars.

In **CINA (Child In Need of Assistance)** cases, the Public Defender's Office:

Provides representation for parents and legal guardians in cases where allegations of abuse or neglect threaten the removal of their children by the state.

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## **Office of the Maryland Attorney General**

### **Overview**

The Office of the Attorney General operates under the provisions of the State Government Article of the Maryland Code. Its main functions are to:

Have general charge, supervision and direction of the legal business of the state and be legal advisor and representative of and perform all legal work for the major departments, various boards, commissions, officials and institutions.

Study existing and proposed federal legislation and cooperate with the attorneys general in other states in such studies to determine the effect of such legislation upon the normal field of state functions and powers.

Prosecute all civil litigation, in both the lower and appellate courts, and all criminal appeals to the appellate courts, both state and federal, in which the state is interested.

Give legal opinions as to the construction or interpretation of the law as it affects various agencies of the state and give legal opinions to local subdivisions on questions of substantial statewide interest.

Approve as to form and legal sufficiency all performance bonds to which the state is a party, all deeds, leases and other legal documents involving the state's interest and supervise generally the acquisition of any property of the state.

Approve as to form and legal sufficiency all legislation passed by the General Assembly after its presentation to the Governor prior to his signature.

Provide legal services for the General Assembly.

Enforce the antitrust, consumer protection and securities laws.

Detect and prosecute provider fraud in Medicaid services.

### **Divisions of the Office of the Attorney General**

#### **Legal Counsel and Advice**

The Attorney General is the legal advisor to virtually every agency in each of the three branches of state government. The Attorney General advises, and where appropriate represents in litigation, the Registers of Wills and Clerks of the Circuit Courts of the 23 counties and Baltimore City, the Clerks and Commissioners of the District Courts throughout the state and the State's Attorneys and Sheriffs of the

counties and Baltimore City. Additionally, the Attorney General provides legal representation to the judiciary and the legislature.

**Division of Securities**

This Division is responsible for review and registration of offerings of securities required to be registered in the state; licensing, discipline and oversight of the standards of practice of securities broker-dealers and their agents and of investment advisors and financial planners and their representatives; review and registration of franchise offers and sales made in the state and registration of business opportunities.

**Division of Consumer Protection**

This Division is concerned with protecting consumers from fraud in the marketplace. The Division has the authority to issue rules and regulations, hold "cease and desist" hearings, and develop a Consumer Arbitration Program. The work of the Consumer Protection Division includes mediation of consumer complaints, action against unfair or deceptive trade practices, education, and legislation.

**Antitrust Division**

This Division enforces the Maryland Antitrust Act in such a manner as to foster fair and honest competition in the state. In addition, the Maryland Antitrust Act provides that the Division may represent the state and all Maryland political subdivisions in damage actions brought under federal and state antitrust statutes.

**Medicaid Fraud Control Unit**

This program investigates and prosecutes provider fraud in statewide Medicare programs. The Unit must be separate and distinct from the state Medicaid Agency according to federal statute and regulation.

**Civil Litigation Division**

This Division handles major litigation in which the state, its agencies, or officers, is a party. This includes defending the state and its employees in state and federal trial and appellate courts as well as filing suits on behalf of the state.

**Criminal Appeals Division**

This Division represents the state in all criminal matters in the appellate courts of Maryland and in the federal courts at all levels. These include cases accepted on "writs of certiorari," death penalty, and federal "habeas corpus" petitions. The Division also offers advice and counsel to all local State's Attorneys' offices in Maryland as well as other state agencies, and reviews legislation relating to criminal law for constitutionality and legal sufficiency.

**Criminal Investigations Division**

This Division investigates and prosecutes a broad range of criminal activity occurring against and within state

government, including but not limited to, cases involving theft, fraudulent misappropriation by a fiduciary, misconduct in office, bribery, perjury, falsification of public records, and criminal violations of the state's tax laws. Additionally, the Division responds to inquiries from law enforcement, and to requests for assistance from State's Attorneys Offices.

#### **Educational Affairs Division**

This Division is the legal advisor to all state educational institutions, boards and commissions. Its clientele includes the University System of Maryland; the state Board and Department of Education; the Maryland Higher Education Commission; Morgan State University; St. Mary's College, the State Scholarship Administration; the Maryland Institute for Emergency Medical Services Systems; the Maryland School for the Deaf; the Inter-Agency School Construction Committee; Maryland Public Television; and the Baltimore City Community College

#### **Correctional Litigation Division**

This Division provides legal representation for state officials and correctional employees acting in good faith and without malice or gross negligence who are sued by prisoners in federal and state courts for acts arising within the scope of the performance of their governmental duties and responsibilities. Similarly, the Division provides legal representation for the 24 Maryland State's Attorneys and their assistants who are sued by any party challenging their actions within the scope of their employment. The majority of the lawsuits are civil rights actions filed in the United States District Court for the District of Maryland. The remainder of the cases involve lawsuits raising tort, contractual and medical malpractice claims in the District and Circuit Courts.

#### **Contract Litigation Division**

This Division represents state agencies in litigation relating to state contracts and the awarding of state contracts under the state general procurement law. It also provides advice regarding a variety of procurement issues, including structuring of procurement solicitations, drafting of contract provisions and procurement regulations, and the proper formulation of state claims and response to contractor claims.

*The Office of the Maryland Attorney General offers formal written opinions and advice on a variety of issues which can be obtained at [www.oag.state.md.us](http://www.oag.state.md.us)*



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## Office of the Maryland State Prosecutor

The office of the Maryland State Prosecutor was established by Constitutional Amendment in 1976. An independent unit within the Office of the Attorney General, the State Prosecutor's office began operation January 1977. Nominated by the State Prosecutor Selection and Disabilities Commission, the State Prosecutor is appointed to a six-year term by the Governor with the advice and consent of the Senate.

The State Prosecutor may investigate certain criminal offenses on his own initiative or at the request of the Governor, the Attorney General, the General Assembly, the State Ethics Commission, or a State's Attorney. These include:

- Violations of state elections law
- Public ethics
- Bribery involving public officials or employees
- Misconduct in office by public officials or employees
- Extortion, perjury, or obstruction of justice related to any of the above

At the request of the Governor, Attorney General, General Assembly, or a State's Attorney, the State Prosecutor also may investigate alleged crimes conducted partly in Maryland and partly in another jurisdiction, or in more than one political subdivision in the state. In investigating and prosecuting cases in which he is authorized to act, the State Prosecutor has all the powers and duties of a State's Attorney.

If a violation of the criminal law has occurred, the State Prosecutor makes a confidential report of these findings, with recommendations for prosecution, to the Attorney General and the State's Attorney having jurisdiction to prosecute the matter. Such a report need not be made to the State's Attorney, however, if the State Prosecutor's findings and recommendations contain allegations of offenses committed by the State's Attorney. If the State's Attorney to whom the report is given fails to file charges within 45 days in accordance with the State Prosecutor's recommendations, the State Prosecutor may proceed with the prosecution. The State Prosecutor may proceed immediately with the prosecution of offenses presented in a report if they are alleged to have been committed by a State's Attorney.

Where no violation of the criminal law has occurred, or prosecution is not recommended, the State Prosecutor reports his findings to the person requesting the

investigation. This only occurs when the Governor, Attorney General, General Assembly, State Ethics Commission, or a State's Attorney requests the investigation. In all other cases, investigations by the State Prosecutor are considered to be conducted on the State Prosecutor's initiative and no reports are required if there is no violation of law or no recommendation for prosecution. Only the person who is the subject of a State Prosecutor investigation may request that a report required by statute be made public.

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## Juvenile Court

The juvenile court handles cases involving youths who are under age 18. The court has jurisdiction even if the youth turns 18 before the case is adjudicated, and jurisdiction continues until the age of 21. Cases fall within these categories:

Child in Need of Assistance (CINA), involving a juvenile who has been physically, sexually, or emotionally abused or neglected by someone responsible for his care;

Child in Need of Supervision (CINS), involving a juvenile who has committed such an offense as truancy, violation of curfew laws, running away, habitual disobedience or ungovernable behavior; citations which violate the alcoholic beverages laws, such as possessing liquor or misrepresenting one's age to obtain it, or drinking on school grounds; children who run away across state lines, either into or out of Maryland; violations of compulsory public school attendance; emergency medical treatment; termination of parental rights; and Department of Social Services adoptions.

Maryland's counties and Baltimore City have juvenile courts, which are part of each Circuit Court. The juvenile court also has jurisdiction over adults charged with contributing to conditions that cause a child to be delinquent or CINA.

The goal of juvenile court is to give children and parents the treatment and resources they need to stop cycles of delinquent behavior, end abuse and neglect and provide medical care so that the children have the opportunity to become productive citizens, rather than graduate to adult criminal court or suffer chronic, life-threatening abuse and neglect. To shield juveniles from the "taint of criminality," delinquency proceedings are civil, not criminal; and special terms are used for the parties and phases of the proceeding:

<b>Criminal Court</b>	<b>Juvenile Court</b>
defendant	respondent
indictment	petition
trial	adjudicatory hearing
the defendant pleads guilty/not guilty	the juvenile may admit/deny involvement in offense
sentencing	disposition
a judge presides over the trial	A judge or master may preside over the hearing, depending on the county where the case is heard

A "master" is a family law expert who conducts juvenile hearings. Masters make recommendations to a judge as to how the case should be decided. The judge may accept or reject those recommendations.

## **Steps to Resolving a Case in Juvenile Court**

### **Delinquency Cases**

Delinquency cases usually start with the filing of a petition, which is the charging document, followed by an adjudicatory hearing. If the child is considered dangerous or is a runaway, proceedings in juvenile court begin with a detention hearing. The judge or master may detain the juvenile in a secure facility pending the adjudicatory hearing.

If the juvenile is not detained, the adjudicatory hearing must take place within 60 days after the petition was served. Some counties, however, may require a hearing on counsel before adjudication to advise the child and his parents about their rights and about the charges as well as to make decisions about attorney representation. If it is found that the child committed the alleged acts, a disposition hearing is held. This hearing determines two key issues: whether the child is in need of guidance, treatment or rehabilitation and, if so, whether the child is delinquent.

If the child is determined to be delinquent, the court determines the care, rehabilitation or treatment that the child needs. The court may order that the services of the Department of Juvenile Services, Department of Social Services, the Board of Education, and other care providers be combined to rehabilitate the child.

For delinquency proceedings, adjudication and disposition are two separate hearings, with five days notice given after adjudication, before moving on disposition. Finally, a restitution hearing may be held to determine the amount and awarding of up to \$10,000 to victims who suffered damage directly resulting from a delinquent act. This stage is a separate, two-part proceeding against the child and his parents.

The state must prove that the victim's personal property was stolen, damaged or destroyed as a result of the delinquent act and/or that the victim had medical, dental, hospital or funeral expenses. The Judgment Restitution Program enforces periodic payments to the victim from the juvenile and/or parents and collects court costs. Making restitution for their acts may also be a condition of the juvenile's probation.

### **Child in Need of Assistance**

CINA cases generally begin with a shelter care hearing. A child may be placed in shelter care if the judge or master determines that it would be contrary to the welfare of the child to remain at home. After the shelter care hearing, the

next phase is adjudication. The purpose of the adjudication hearing is to determine whether the allegations set forth in the CINA petition are true. If the judge or master finds that the allegations of abuse and/or neglect are true, the case moves into the disposition phase. At disposition, the court first determines if the child needs the court's assistance, and if so, finds the child to be CINA.

The court may return the child to a parent under a specific order, place the child in foster care, or award custody and guardianship to someone who can provide appropriate care. In CINA cases, adjudication and disposition hearings are held separately but usually on the same day.

If a child is in an out-of-home placement for a year or longer, the court must conduct a permanency planning hearing. At this hearing, the court can order that the child be returned to a parent or guardian, placed for adoption or emancipated, or it can order any other course of action that will be in the child's best interest.

After the initial permanency planning hearing, a similar hearing must be conducted every six months until the child is returned home, placed permanently, or parental rights are terminated.

### **Special Rules for Juvenile Court**

The juvenile and his parents have a right to legal counsel at each stage of a juvenile court proceeding. Hearings are informal; there is no jury. However, the rules of evidence do apply. Delinquency cases must be proven "beyond a reasonable doubt," as in criminal cases. In CINA or CINS cases, the "preponderance of the evidence" standard is used. "Clear and convincing evidence" is the standard for termination of parental rights. Once a child is under the authority of juvenile court, the court keeps that authority until it is terminated, or until the child turns 21, whichever occurs first.

Cases involving certain offenses by juveniles go directly to criminal court, although a judge may waive (transfer) the case to juvenile court. Among the offenses:

- Children 14 or older who are charged with crimes which, if committed by an adult, are punishable by death or life in prison;
- Children 16 or older charged with robbery or attempted robbery with a dangerous or deadly weapon;
- Children 16 or older charged with non-jailable traffic/boating offenses.

## **Media Guidelines for Covering Juvenile Cases**

The 1995 case, Baltimore Sun Co. v. State, has influenced how the media reports on juvenile cases. New guidelines include the following:

- Court records of juveniles are confidential, and may only be opened by a court order, or for “limited educational purposes.”
- To protect the privacy of the children involved, juvenile proceedings may be closed to the public.

While a court can reasonably restrict the media’s use of information obtained from confidential juvenile proceedings, it cannot control the media’s use of materials obtained from other sources. It also cannot condition the media’s access to juvenile hearings on the newspaper, magazine, etc., publishing only the information specified by the court. While a juvenile court may decide to exclude the media from a proceeding, there are constitutional limitations to that power.

### **Juvenile Cases Open to the Public**

If a juvenile is alleged to have committed an act that would be a felony if committed by an adult, then that case is open to the public. However, the court may choose to exclude the general public from a hearing if there are good reasons to keep the proceedings confidential. Adjudications and dispositions are normally announced in open court.

*For more about juvenile justice, look in Title 11 of the Maryland Rules, and in the Annotated Code of Maryland, Family Law and Courts and Judicial Proceedings Articles.*

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## The Civil Process

### Overview

Civil cases will be filed either in the District or Circuit Court, usually depending on the type of case and/or the amount of money at issue. Which county the case is filed in (the "venue") depends on various things such as the type of case, where the Plaintiff lives, where the Defendant lives or does business, strategic concerns of the attorneys and the like.

### The Complaint

The civil litigation process begins when the Plaintiff, who is suing one or more Defendants, files a "Complaint" with the Clerk of a Court. The Complaint is an excellent starting place in which to determine the nature of the Plaintiff's claims and the amount of money or other relief sought. The Complaint generally includes all theories of recovery, some of which appear to contradict each other and may make the Complaint very confusing. Often, the money sought is far in excess of what the Plaintiff actually hopes to recover and may be simply for shock value. It is worth remembering that at this point, the statements in the Complaint are only considered allegations. The Complaint also lists the name and address of the Plaintiff and Defendant and the name, address and telephone number of the Plaintiff's attorney. From time to time the allegations, claims and type of relief sought in the Complaint may change, so look in the file for an "Amended Complaint." The Complaint will be in the case file held by the Clerk of the Court where the case was filed and is available for public viewing. Note the case number, which is assigned to every Complaint, for ease in pulling the file in the future.

The Maryland courts have implemented an automated case management system, which tracks cases according to their complexity. To assist in this process, the Plaintiff in Circuit Court must file a Case Information Report with the Complaint, which sets forth some basic information as to the nature of the Plaintiff's claim and requests a case management "track" (such as short, medium or complex). The court may then issue a "Scheduling Order" setting the deadlines in which the case proceeds including discovery and motions deadlines, deadlines to name expert witnesses, a date for a pre-trial settlement conference and, sometimes, a trial date. These dates can, and often do, change.

## **The Response**

Once the Complaint is filed, the court issues a "Writ of Summons," also referred to as "process," and typically returns it to the Plaintiff or the Plaintiff's attorney, if there is one, for "service" of the Complaint on the Defendant. Service of the writ formally brings the Defendant within the jurisdiction of the court. There are time limits and exacting procedures as to how the summons and complaint are to be served. In the Circuit Court, once served, the Defendant usually has 30 days to file an "Answer." In the District Court, once served, the Defendant usually has 15 days to file a "Notice of Intention to Defend." Defendants who do not file these documents in time risk losing the case by default.

In the Circuit Court, the Answer does not provide much useful information to the public because it is often a fairly standard document which can, under certain circumstances, generally deny all liability, and often includes a wide range of defenses that might have little relevance to the particular case. This is done to ensure all possible defenses are mentioned and not waived, so that the Defendant's interests are protected. In Circuit Court, the Defendant must also file a Case Information Report with the Answer, stating whether the Defendant disagrees with the case management track selected by the plaintiff. These documents can also be viewed in the Clerk's office of the court in which the Complaint is filed.

In the District Court, the Notice of Intention to Defend is similarly standard. It states only that the Defendant intends to be present in trial and may, but does not always, set forth some type of defense.

## **Discovery (Learning about the other side's case)**

The point of "discovery" is that in a civil trial neither side is supposed to be surprised in court by the claims, defenses or evidence put on by the other side. Therefore, parties are entitled to a broad exchange of information in which they can inquire about anything, so long as it is relevant or may lead to relevant information about some issue or defense in the case, and so long as it is not "privileged" by law, such as information concerning discussions between attorney and client.

### **Written Discovery**

Where a Plaintiff serves a Complaint upon a Defendant, often the attorney will serve written requests for discovery upon the Defendant at the same time or soon after. Similarly, when the Defendant answers the Complaint, the response is often accompanied by written discovery upon the Plaintiff. Written discovery primarily includes documents known as "Interrogatories" and "Request for Production of Documents." Interrogatories are written



questions directed to the other parties regarding that party's contentions and knowledge of facts relevant to the case. The answers are to be made under oath. Interrogatories are available in both Circuit and District Court cases. The Request for Production of Documents is, as its name suggests, a request that the party to which the Request is directed produce documents relevant to the case such as medical records, records maintained in the course of business, insurance information, photographs and logs. Document production exists in both courts but is much broader in a Circuit Court case.

Another valuable form of written discovery, in the Circuit Court only, is called a "Request for Admissions," in which a party will ask the opposing party to admit to certain facts or legal issues in a case. The opposing party must respond within 30 days or all requests are deemed admitted.

A party not receiving responses or believing the responses received to be incomplete may file a Motion to Compel, seeking an order of Court to get the information. Likewise, a party seeking protection from another party's request, such as a request for privileged information, may file a motion for a "protective order."

Unfortunately for today's inquiring reporters, written discovery requests and responses are not filed with the Clerk of the Court as in the old days, so they cannot be found in the court file. The only paper filed is a Notice of Service, which certifies that the various documents were served, that is, mailed or hand-delivered to the opposing party. To get the information they seek, reporters will need to contact the parties or their attorneys and request copies.

#### **Non-Written Discovery**

The primary form of formal non-written discovery, usually available only in the Circuit Court, is the "deposition." After the Complaint is filed and answered by the Defendant, the scheduling of depositions can begin. This allows the attorney to question a party, expert or other witness face-to-face in order to gather all information needed for the party to effectively present his case. The deposition is under oath and a court reporter is present to transcribe all testimony. It is usually conducted in a lawyer's office and is not public. A deposition transcript is not filed with the Clerk. Under certain circumstances, the deposition can be taken by videotape or via telephone and sometimes in response to written questions submitted in advance.

Throughout the preparation of a case, less formal modes of discovery also take place, such as talking to witnesses, photographing the scene, consulting experts on important issues in the case, researching the claim history of a particular company or individual, or conducting surveillance.

## **Motions**

A "motion" is a written paper submitted by a party to the Court for a ruling on a particular request. Motions can take many forms. Before a Complaint is even answered by a Defendant, the Defendant must raise some issues via a Motion to Dismiss, if they are to be raised at all. Otherwise they are considered waived. Other issues may be raised by motion at any time. Often, the issues are technical in nature and relate to whether the lawsuit was served in the proper court or county, was properly served upon the Defendant, or was served upon the proper Defendant.

In Circuit Court, issues normally raised by pre-trial motion include the "statute of limitations," "lack of jurisdiction over the subject matter," "failure to state a claim upon which relief can be granted," "failure to join a party," and "governmental immunity." One of the most valuable tools available to any party is the Motion for Summary Judgment which often uses the facts and materials gathered during the investigation of the case and the sworn answers taken in discovery with Interrogatories or depositions. Any party can file such a motion, asking the court to rule in its favor on the case or an issue "as a matter of law," that is, that the evidence is so clear a judge or jury hearing the case could only find for the party filing the motion. The public often expresses outrage at "frivolous" lawsuits, and the Motion for Summary Judgment is an effective tool to end such litigation.

All motions must be filed with the Clerk of the Court, and they are available for viewing in the case file in the Clerk's office. At the request of either party, a hearing may be held on the motion, including discovery motions, such as a Motion to Compel or Motion for Protective Order.

Occasionally, when the motions are pending, the court file will be sent to the judge for a ruling on the motion, so the file may be temporarily removed from the Clerk's office. The decision or "Order" by the judge will also be in the file, sometimes accompanied by a written decision setting forth the basis for the court's decision.

## **Alternative Dispute Resolution/Settlement**

The courts have begun to follow the trend of the legal community by sometimes mandating an alternative dispute resolution (ADR) procedure.

While parties can agree among themselves to ADR, such as binding arbitration, one type of ADR used in court cases is a settlement conference, which is a meeting between counsel and parties, before a judge or lawyer, to discuss the strengths and weaknesses of the case with an eye towards resolving it before trial. Settlement, however, need not occur at the courthouse and can occur at any time. If a case is settled, the Plaintiff will sign a Release and dismiss

the claims against the Defendant. Some Releases contain confidentiality clauses, which vary, but often include a provision that the party is not to disclose the amount of money for which the case was settled. Some governments do not enter into confidential settlements as a matter of policy, so their settlement terms may be available under the Maryland Public Information Act.

## **Trial**

The trials of District and Circuit Court cases are somewhat similar procedurally, if not stylistically, although District Court judges, who never have a jury, usually dispense with opening arguments and go right to the witnesses. Judges hearing a case without a jury normally have neither the time nor interest to sit through the normal courtroom dramatics present in jury cases, nor would such dramatics likely sway a judge. Non-jury cases are also much faster to try, since there is no need for all the extra procedures such as bench conferences to avoid contamination of a jury. All but small-claims cases follow the rules of evidence.

Prior to the commencement of a Circuit Court trial, the attorneys will meet with the judge to discuss preliminary matters, such as any outstanding "Motions in Limine," which are pre-trial motions to exclude evidence; to propose jury instructions; to make stipulations, and similar actions. Often at this point the judge will attempt one last time to settle the matter prior to trial.

In a jury trial, the attorneys then begin the process of jury selection. The civil jury consists of six individuals, unlike the 12 required in criminal trials, often with at least one alternate juror in the event that a juror becomes unable to serve or is disqualified. In a process called "voir dire," questions are posed to potential jurors to inquire into such matters as their knowledge of the parties and the facts of the case, and their background and attitude toward relevant issues. The parties may propose additional questions directed to the particular facts of the case, but unlike other states, Maryland judges have much more control over what the potential jurors can be asked and what role the attorneys play in the questioning. The attorneys have a list of potential jurors, from which they may make four strikes, called "peremptory challenges." A party may also challenge any juror "for cause," such as if he would not be able to disregard feelings about a certain issue and render a fair and impartial verdict.

After opening statements, each side presents witnesses, exhibits and other evidence. At the close of the Plaintiff's case, the Defendant may make a "Motion for Judgment" contending that the Plaintiff did not put on enough evidence to require the Defendant to put on a case. If this is denied, the Defendant puts on a case. After all the evidence is in, the judge, in a jury trial, instructs the jury as to the law of the case that the jury is expected to follow when reaching its

verdict. The parties then present their closing arguments, and the jury retires to the jury room to begin deliberations. The jury's verdict and decisions on monetary awards must be unanimous. A party on the losing side may, if he made a motion for judgment, make a motion for "Judgment Notwithstanding the Verdict" asking the judge to set aside the jury's verdict and find for the side making the motion. The parties may also make motions asking the court to add to or reduce the size of the award.

Any dissatisfied party may, within certain time periods, file other motions such as a motion asking the court for a new trial. The parties also have a right to appeal the court's decision, normally within 30 days of the verdict.

#### **Burden of Proof**

In the usual civil trial, the Plaintiff is required to prove the Defendant liable by a "preponderance of the evidence." That is, the Plaintiff must prove that it is "more likely than not" the case that the Defendant is liable. If the fact finder (the jury or the judge) believes the evidence is evenly balanced (50-50), then the verdict must be against the Plaintiff, who did not meet his burden of proof. If the balance tilts even slightly, such as 51 percent in favor of liability, then the Plaintiff has met his burden.

In some cases, like fraud, the Plaintiff must prove a case by "clear and convincing evidence." This is a much tougher standard than a preponderance of the evidence. It is not as tough a standard as "beyond a reasonable doubt" which is the standard to convict a defendant on a criminal charge.

*For more information about civil procedure in a Circuit Court trial, consult Title 2 of the Maryland Rules. District Court civil procedure can be found in Title 3 of the Maryland Rules.*

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## A Word about Trial Objections

Objections by attorneys, and discussions about those objections, can consume a significant amount of time during trial, and slow down and confuse the narrative quality of a witness' testimony and the introduction of exhibits. Objections are critical, however, if a party is to keep out evidence, have an error immediately corrected or, if it is not corrected, to preserve the issue for appeal. Of course, sometimes attorneys may object just to look in control and to shake-up the opposition. (This strategy can backfire if the jury believes the attorney is trying to hide something from them.)

The Maryland Rules require that objections to evidence be made when the evidence is offered or as soon as possible afterward, or the objection is waived. Normally, the grounds for the objection need not be stated, so reporters may find the reasons for them to be quite fuzzy.

Here are some of the objections commonly encountered at trial.

**Objections to questions:** Irrelevant; immaterial; privileged information; calls for a conclusion; hearsay; impermissibly leading; speculative; argumentative; beyond the scope of permissible questioning; calls for an impermissible opinion; compound question; calls for a conclusion.

**Objections to answers** (often followed by a Motion to Strike): Irrelevant; immaterial; privileged; conclusion; opinion; hearsay; unresponsive.

**Objections to exhibits:** Irrelevant; immaterial; no foundation or improper foundation (showing that the exhibit is what it is purported to be), contains inadmissible material.

The judge normally rules on each objection as it comes, and will either "sustain" and uphold it, or "overrule" and reject it.

*For more information regarding trial evidence, consult Title 5 of the Maryland Rules.*

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## Federal Court System

### United States District Court

The United States District Court for the District of Maryland, not to be confused with the District Court of Maryland, is Maryland's "federal court." Generally, it is the forum for a variety of federal criminal matters arising out of violations of the laws of the United States and a wide range of civil disputes including cases raising federal issues under the Constitution or laws of the United States, or civil actions between residents of different states, including corporations, in which at least \$75,000 is in controversy. The court also includes the United States Bankruptcy Court, which maintains a separate Clerk's Office and docket.

The U.S. District Court in Maryland has two divisions: the Northern Division sits in Baltimore City, and the Southern Division sits in Greenbelt, in Prince George's County. In accordance with the U.S. Constitution, judges of the Court are appointed by the President and must be confirmed by the United States Senate. They are appointed for life, but can be removed through impeachment proceedings. These full-time federal District Court judges in Maryland preside over trials and hearings.

Assisting these "Article III" judges, named for the section of the Constitution authorizing their appointment, are "Magistrate Judges," who are permitted to handle a wide variety of criminal and civil matters and, with the consent of the parties, may preside over civil trials.

Decisions of the U.S. District Court for Maryland may be appealed to the U.S. Court of Appeals for the Fourth Circuit, which is based in Richmond but often hears cases while sitting in the various federal courthouses in its jurisdiction. Fourth Circuit decisions may be appealed to the U.S. Supreme Court, though it is the rare appeal which is taken up by the nine Justices of the Supreme Court. The federal courts follow their own set of rules for civil, criminal and appellate courts.

*Maryland federal district court decisions are available at [www.mdd.uscourts.gov](http://www.mdd.uscourts.gov) (click on "Policies and Publications").*

*Decisions of the U.S. Court of Appeals for the Fourth Circuit are available at [www.ca4.uscourts.gov](http://www.ca4.uscourts.gov)*

### Office of the United States Attorney

The United States Attorney for the District of Maryland serves as the federal government's lawyer in Maryland. U.S. Attorneys prosecute violations of the nation's criminal and civil laws, including violent crime and narcotics, bank

robberies, mail and wire fraud, tax fraud, firearms violations, environmental crime, white-collar crime, public corruption and health care fraud, as well as civil and financial litigation. They also defend the federal government and its agencies in civil actions. The U.S. Attorney is appointed by the President and confirmed by the U.S. Senate.

### **Office of the Federal Public Defender**

The Office of the Federal Public Defender was established in Maryland in 1974 as an agency within the judicial branch. The Office is supervised by a Federal Public Defender appointed by the United States Court of Appeals for the Fourth Circuit. In addition to the Federal Public Defender, the office is staffed by many attorneys, an investigative staff and a support staff.

The Federal Public Defender is responsible for furnishing legal defense services to indigent persons charged with federal criminal offenses. Representation is also provided for indigent defendants charged with committing certain misdemeanors on federal facilities such as Andrews Air Force Base, Fort Meade, the National Institutes of Health, and the U.S. Naval Academy. Defendants' financial eligibility for representation and the appointment of counsel itself are made by the Court. About 65 percent of defendants deemed financially eligible for appointed counsel are represented by the Federal Public Defender; the remaining 35 percent are represented by private attorneys selected from a panel which is appointed by the federal court.

The Office of the Federal Public Defender is divided into two branches, serving each of the two federal court divisions in Maryland. Cases in Montgomery, Prince George's, Calvert, Charles and St. Mary's counties are generally tried at the Southern Division Courthouse in Greenbelt. Cases in other counties generally are tried at the Northern Division Courthouse in Baltimore.

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# Maryland Open Meetings Act

## Overview

The Open Meetings Act (OMA), Maryland's first "sunshine law," is the primary means by which journalists and other citizens may observe the decision-making process of government. The OMA applies at every level of government—state, county and local—and permits recording and photography. The OMA applies when a meeting of a "public body" takes place, defined as a quorum of a multi-member public body gathered to conduct public business. The OMA only applies to some of the public body's functions, excluding most "executive functions." If you cover a municipal or county jurisdiction, check whether there is a local ordinance controlling open meetings; the local ordinance may supersede the OMA if the local ordinance provides greater access.

## Scope

"Public Body." The OMA applies to multi-member public bodies meeting to conduct public business. A "public body" must be created by constitutional or charter provision, statute, ordinance, rule, resolution, bylaw, executive order or other action by the Governor or a local chief executive. A gathering of employees or a caucus of legislators, for example, is not covered by the OMA if not mandated by such a legal instrument. Excluded from "public body" are judicial nominating commissions, grand and petit (trial) juries, courts (except when rulemaking), the cabinets of the Governor and local chief executives, the governing bodies of hospitals, and certain self-insurance pools. A quorum of a public body is not subject to the OMA if it is merely present at the closed meeting of another body and does not conduct public business itself.

"Meeting." A quorum is a majority of a multi-member body unless otherwise specified by law. "Serial communication," when a member of a public body lobbies fellow members individually, is not subject to the OMA, and neither is the circulation of documents or e-mail between individuals. A meeting may occur by telephone or videoconference if public access, such as via speakerphone, is available at an announced location. OMA obligations may not be avoided by so-called "work sessions" or "pre-meetings;" the OMA makes no such distinction. A chance encounter, a social gathering, and a retreat are not subject to the OMA, as long as the subjects of discussion do not include the agenda of or merits of a discussion at a future meeting.

"Public Business." The OMA applies to public bodies when they are conducting (1) "advisory functions," (2) "legislative functions," or (3) "quasi-legislative functions." An advisory



function is "the study of a matter of public concern or the making of recommendations on the matter, under a delegation of responsibility" by law, gubernatorial, or other chief executive designation, or formal action by a public body. A legislative function is "the process or act of . . . approving, disapproving, enacting, amending, or repealing a law or other measure to set public policy," or "approving or disapproving an appointment." An "appointment" refers to an appointment proposed by an executive official or subordinate of the public body, not the making of an appointment by the public body itself. A quasi-legislative function includes rulemaking, "approving, disapproving, or amending" a budget or contract.

The OMA does not apply to public business that consists of a (1) "judicial function," (2) "quasi-judicial function," or (3) "executive function." A judicial function is any function of the judicial branch of government except rulemaking. A quasi-judicial function is the determination of a contested case in an administrative proceeding. An executive function is more complex to define. First, any function described by another definition in the OMA is not an executive function. Second, the executive function applies if the subject to be discussed involves the application of existing law or policy, not the development of new policy. For example, the issuance of an advisory opinion by the State Ethics Commission is an executive function.

Although a quasi-judicial or executive function, the OMA does apply to public bodies meeting to consider "(1) granting a license or permit; or (2) a special exception, variance, conditional use, zoning classification, enforcement of any zoning law or regulation, or any other zoning matter."

### **Closed Meetings**

A public body may (not "must") conduct a closed meeting that is otherwise required to be open under any of 14 OMA exceptions. The exceptions are strictly construed to favor open meetings. Meetings may be closed:

- (1) For a "personnel matter" affecting one or more specific individuals (not classes of persons), including personnel actions, compensation issues, and "performance evaluation of appointees, employees, or officials over whom [the public body] has "jurisdiction."
- (2) To "protect the privacy or reputation of individuals with respect to a matter that is not related to public business."
- (3) To discuss the acquisition of real property.
- (4) To discuss proposals for a business or industrial organization to locate, expand, or remain in the state.

- (5) To discuss the investment of public funds.
- (6) To discuss the marketing of public securities.
- (7) To consult with counsel and obtain legal advice. The lawyer must be a genuine participant in the discussion, not merely present.
- (8) To consult with any individual “about pending or potential litigation.” The discussion must “directly relate[ ] to the pending or potential litigation; it may not [be invoked to] close a portion of the discussion that deals separately with the underlying [policy] issue.” The potential for litigation must be concrete, not merely speculative.
- (9) To “conduct collective bargaining negotiations or consider matters that relate to the negotiations.”
- (10) To discuss “public security” if “public discussion would constitute a risk to the public or public security.”
- (11) To discuss the preparation, administration, or grading of “a scholastic, licensing, or qualifying examination.”
- (12) To conduct or discuss “an investigative proceeding on actual or possible criminal conduct.”
- (13) To comply with another law. Federal law, for example, sometimes requires a closed meeting in particular circumstances.
- (14) To “discuss a matter directly related to a negotiating strategy or the contents of a bid or proposal” “before a contract is awarded or bids are opened,” “if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding proposal process.” This exception is intended to protect against the premature disclosure of sensitive information such as the public body’s negotiating strategy, not to permit the secret discussion by a public body of open bids submitted by various bidders.

**Procedure**

Notice. A public body must give “reasonable advance notice” of a meeting subject to the Act, whether open or closed. Unless impracticable, notice should include date, time, and place of the meeting and whether it will be closed in part or entirely. Although the OMA does not require that an agenda be part of the notice, doing so is good practice. Notice may be published in the Maryland Register, delivered to news media that regularly cover the meetings,

posted at a convenient public place at or near the meeting site, or otherwise reasonably made public.

Place and Decorum. The meeting place should be large enough to accommodate members of the public and media, and the location should be as convenient as possible for public attendance. The OMA permits observation of, but not participation in meetings, although other laws may give people a right to be heard. Appropriate restrictions may be imposed on bright lights and recording equipment to maintain decorum or avert a concrete harm.

#### **Closure**

To close a meeting, a public body must vote—a majority of those present in favor—on the record and state the reason for the closure. The decision to close a session must occur prior to the closure; closure may not be justified after the fact. The presiding officer is responsible for preparing a written statement of the reason for the closure, the applicable provision of the OMA, and the topics discussed in closed session. The statement need not disclose sensitive information, such as the identity of a property considered for acquisition, but ought to be more than “uninformative boilerplate,” such as “personnel matter,” that merely repeats the language of the OMA.

Minutes. Public bodies must keep written minutes of their meetings, open or closed. (Minutes of closed meetings generally are not publicly available.) The minutes must set out “each item” considered, any action taken, and each recorded vote with sufficient detail that a member of the public body can understand what the issue was. When a public body has a closed meeting to discuss the investment of public funds or the marketing of public securities (but not real estate transactions,) the minutes and any tape recording of that part of the closed session must be made available to the public after the transaction has occurred. At any open meeting subsequent to a closed meeting, the minutes of the open meeting must include “a statement of the time, place, and purpose of the closed session,” a record of how members voted on the motion to close a session, a citation of the applicable OMA provision, and “a listing of the topics of discussion, persons present, and each action taken during the session.”

#### **Enforcement**

A person who believes the OMA has been violated may sue in Circuit Court within 45 days of the alleged violation. The OMA allows a successful party—plaintiff or defendant—to seek attorney fees.

Alternatively, the OMA allows a person to file a complaint with the OMA Compliance Board, a three-member board appointed by the Governor. The Board receives complaints and issues responsive opinions, but it has no power to enforce its decisions or impose penalties. The Board also may not decide issues of fact; if there is a factual dispute, it

will decline to resolve the complaint. The Board may, however, attempt to resolve disputes prospectively if a complainant believes an improperly closed meeting is going to take place. The Board is also charged with studying "ongoing compliance" with the OMA and recommending changes to the Governor and General Assembly.

The Open Meetings Act Compliance Board can be reached through the Office of the Maryland Attorney General, 200 Saint Paul Place, Baltimore, Maryland 21202 (410) 576-6300.

The OMA authorizes a civil penalty of up to \$100 for members of public bodies who knowingly and willfully violate the law.

*The Open Meetings Act appears in Title 10, Subtitle 5 of the State Government Article of the Annotated Code of Maryland.*

*A manual containing an analysis of the OMA, its text, and related materials, including opinions from the OMA Compliance Board, is available from the Attorney General's website at [www.oag.state.md.us/opengov/index.htm](http://www.oag.state.md.us/opengov/index.htm)*

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# Maryland Public Information Act

## Overview

The Maryland Public Information Act (PIA) is a very important tool by which journalists and the public can obtain information in government files. The PIA applies at every level of government; state, county and local. The PIA applies to all records created or received by a government agency in the course of official business. Because the PIA is very similar to the federal Freedom of Information Act, federal FOIA case law can be persuasive in understanding the scope and application of the PIA.

## Scope

**Public Bodies.** The PIA covers almost all public agencies, legislative, judicial and executive, including counties, cities, towns, and school districts. Even an agency that receives no public funds but is created by statute or local ordinance, or even by private incorporation, can be subject to the PIA if it serves a public purpose and is subject to a significant degree of control by the government.

**Public Records.** "Records" include photographs, films, microfilms, maps, drawings, recordings such as 911 tapes, and computerized data such as e-mail. Public records must be made or received by a public body in the course of transacting public business and include the salaries of public employees. A private contractor's records are not made public merely by a public body's contractual right to obtain the records, if that right goes unexercised.

**Custodians.** The "custodian" and "official custodian" of public records are the public officials bound to act under the PIA. A custodian is the person charged with determining whether inspection should be permitted and facilitating inspection of records. An official custodian is the officer or employee of a public agency who has overall responsibility for the agency records, usually the agency head. The official custodian decides whether to go to court to secure records against disclosure and establishes procedures and fee schedules for PIA compliance.

## Application

The PIA requires that "[e]xcept as otherwise provided by law, a custodian shall permit a person or governmental unit to inspect any public record at any reasonable time." An agency need not create a public record where one does not already exist, such as by programming a computer inquiry. However, an agency should respond to a request with a search of existing records reasonably calculated to uncover the responsive material. Where a record consists of

material with some parts subject to disclosure and some excepted material, the custodian must permit inspection of any "reasonably severable" non-excepted part of the record.

The PIA requires that an agency permit copying of requested records or provide copies for a reasonable fee. A fee is "reasonable" only if it bears a clear relationship to agency costs. Reasonableness is for the agency to determine in the first instance but may be subject to judicial review.

An official custodian also may impose fees for an employee's time to search for records and prepare them for inspection and copying, if more than two hours. This time can include time spent deciding whether the record ought be disclosed or time severing those portions of a record containing some information not subject to disclosure.

A requester may ask for partial or total waiver of fees if in the public interest. The official custodian determines whether fee waiver is in the public interest by considering factors including the requester's ability to pay, the public benefit in making the information available, and the risk of a chilling effect the fee might have on the exercise of First Amendment rights.

### **Exceptions**

The PIA enumerates exceptions to the general right of access. Exceptions come in the general categories: (1) exceptions mandated by law other than the PIA; (2) exceptions specifically listed in the PIA; and (3) situations listed in the PIA that allow the custodian to exercise discretion as to disclosure. The PIA also provides a "last resort" provision under which the custodian may deny inspection temporarily and, within 10 days, seek Circuit Court approval to prevent disclosure, if the custodian determines that disclosure would do "substantial injury to the public interest."

Other laws: A custodian may deny inspection or disclosure if it would violate a state statute, a federal statute or regulation, or a court rule or order, or where records are "privileged or confidential by law." Many statutes can limit disclosure, such as the federal Drivers Privacy Protection Act. The privilege or confidentiality exception refers to the traditional attorney-client privilege, the attorney work product doctrine, the executive privilege for confidential executive communications of an advisory or deliberative nature, and the speech and debate privilege afforded legislators by the state constitution.

Required exceptions. Records expressly excepted from the PIA include:

Adoption records or welfare records of an individual person;

Personnel files of an individual, except that such files are available to the person who is the subject of the file and to the officials who supervise the person;

Letters of reference, solicited or unsolicited, concerning a person's fitness for public office or employment;

Library, archives, and museum material contributed by a private person to the extent that any limitation of disclosure is a condition of the contribution;

Hospital records relating to medical administration, medical staff, medical care and other medical information;

Police reports of traffic accidents, criminal charging documents, and traffic citations, inspection of which is to be denied to an attorney or employee of an attorney who requests the inspection of the records for the purpose of soliciting or marketing legal services;

Public library circulation records that identify the transaction of a borrower;

Retirement files or records;

School district records pertaining to individual students;

Data obtained by or submitted to the Maryland Transportation Authority in connection with any electronic toll collection system;

Records that relate to Risk Based Capital reports or plans.

An exception may be superseded by a law allowing or denying access.

A custodian must deny access to any part of a record that contains:

Medical, psychological, and sociological data on individual persons, except autopsy reports of a medical examiner. The "sociological" exception may only be invoked if the official custodian has adopted rules or regulations that define the meaning and scope of the term;

Trade secrets and confidential commercial, financial, geological or geophysical data furnished by, or obtained from, any person or governmental unit. Financial or commercial information that persons are required to give the government should be considered confidential if disclosure would likely impair the government's ability to obtain the necessary information in the future or cause substantial competitive harm to the person from whom the information was obtained. Financial or commercial information that is given to the government voluntarily should be considered confidential if it is the kind that the provider would not customarily release to the public;

The home address or telephone number of a public employee;

Records describing an individual's finances;

Information about system security manuals;

Certain occupational and professional licensing records on individuals;

Information generated by the bid analysis management system concerning an investigation based upon a transportation contractor's suspected collusive or anticompetitive activity submitted to the Department of Transportation;

Information about the application and commission of a notary public.

Discretionary exceptions. A custodian may deny access to these categories of records:

Records of investigation, intelligence information, security procedures, or investigatory files, unless requested by a "person in interest," such as police officers subject to an internal investigation. For records of any sheriff or police department, any county or city attorney, a local correctional facility, State's Attorney, or the Attorney General's office, there need be no showing that the records were compiled for law enforcement or prosecution purposes;

Testing records for academic or employment examinations;

Specific details of a research project conducted by an institution of the state or a political subdivision of the state. However, the project name, title, expenditure, and the time when the final project summary will be available must be disclosed;

Contents of a real estate appraisal made for a public agency about pending acquisition (except from the property owner);

Interagency or intra-agency memoranda or letters. For this exception to apply, the agency must have a reasonable basis for concluding that disclosure would inhibit creative debate and discussion within or among agencies or would impair the integrity of the agency's decision-making process. Generally, the exception protects pre-decisional, not post-decisional, material. The exception should not apply to non-deliberative parts of a communication, i.e., parts that are purely factual or scientific data.

Site-specific location of endangered or threatened plants or animals, or historic property;

Inventions owned by state colleges and universities;

Certain information held by the Maryland Technology Development Corporation.

Agency emergency response plans, to the extent that particular elements would jeopardize security if disclosed.



## **Procedure**

A written request triggers PIA application, though an agency should not require a written request for access to records that are clearly subject to disclosure. A requester may but need not give a reason for seeking access; reasons might be pertinent to a request for fee waiver. A request must sufficiently identify the records sought. A requester would be wise to carefully tailor a request to avoid receiving far more material than actually applies to the request or that can be reasonably handled or examined.

The PIA requires immediate disclosure of a responsive record. However, a "reasonable period" not to exceed 30 days is permitted if needed to find records and determine their status under the PIA. The period may be extended an additional 30 days with the consent of the requester. A court might permit an agency extra time to comply with a request if the agency can show that it is diligently trying to comply.

If a written request is made to a person who is not the custodian of the desired records, that person must within 10 working days of receiving the request notify the requester and tell the requester, if known, the actual custodian of the record and its possible location.

A custodian denying a record must provide within 10 working days a written explanation of the denial and a notice of remedies.

## **Enforcement**

An agency may establish an administrative review process for request denials, and in some cases, the requester is entitled to an administrative hearing. But exhaustion of administrative remedies is not required before the requester can seek review in the courts. The requester must file an action, technically to enjoin withholding of the desired records, within a two-year limitations period.

In addition to injunctive relief, a court may award actual damages for a knowing and willful failure to disclose records if the defendant knew or should have known that the requester was entitled to inspection. A prevailing requester may seek attorney fees and litigation costs; the agency's "good faith" may be a factor in that determination. The PIA also provides for a civil action to be brought by someone whose personal information is improperly disclosed.

The PIA also provides for criminal penalties for violations. A person who knowingly and willfully violates the PIA may be subject to a fine of \$1,000. This fine may be imposed on a requester as well as a custodian if the requester receives records exempt from disclosure.

*The Maryland Public Information Act appears in Title 10, Subtitle 6 of the State Government Article of the Annotated Code of Maryland.*

*Sample Public Information Act Request Letter*

Mr. Ira Information  
Executive Director  
License Commission  
110 First Street, Baltimore, Md. 21200

Dear Mr. Information:

This is a request under the Maryland Public Information Act, State Government Article §§ 10-611 to 628. I am making this request as an employee of The Maryland Moon. In this capacity, I wish to inspect all records in your custody and control pertaining to the following:

Any studies, statistics, reports, recommendations, or other records that treat in any fashion the Commission's actions, practices, or procedures concerning the granting or denial of licenses or permits during the last three fiscal years.

If all or any part of this request is denied, I request that I be provided with a written statement of the grounds for the denial. If you determine that some portions of the requested records are exempt from disclosure, please provide me with the portions that can be disclosed.

I also anticipate that I will want copies of some or all of the records sought. Therefore, please advise me as to the cost, if any, for obtaining a copy of the records and the total cost, if any, for all the records described above. If you have adopted a fee schedule for obtaining copies of records and other rules or regulations implementing the Act, please send me a copy.

I look forward to receiving disclosable records promptly and, in any event, to a decision about all of the requested records within 30 days. Thank you for your cooperation. If you have any questions regarding this request, please telephone me at the above number.

Sincerely,

Ricki Requester  
The Maryland Moon

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## **Wiretapping and Electronic Surveillance**

Maryland law prohibits listening to or recording certain conversations over the telephone, conversations across other electronic media, and certain face-to-face communications. It is permissible to listen to a telephone conversation with a speakerphone or an extension, both of which are excluded from the definition of an electronic device.

The law prohibits the use of a mechanical device, such as a tape recorder or wiretap, to intercept or divulge the contents of a wire or electronic communication, or a mere private, oral conversation. Law enforcement agencies may bypass the law under certain statutory circumstances or with a court order. However, a journalist wishing to tape a telephone conversation must obtain the consent of all parties to the conversation. For legal protection later, obtain consent in writing in advance if possible, or if you record routinely, at least confirm consent orally once recording has begun. Federal Communications Commission regulations require any broadcaster to obtain consent before taping or broadcasting a person. However, under Maryland law and FCC regulations, consent to taping or broadcasting may be implied, such as speaking in the presence of a microphone or calling into a live talk show.

The law's prohibition applies to any electronic communication, such as a telephone conversation, but not to every face-to-face communication. Recording a live oral conversation is prohibited only if any party to the conversation enjoys a reasonable expectation of privacy. Courts decide on a case-by-case basis whether a reasonable expectation of privacy exists. Two persons speaking in their home probably have a reasonable expectation that their conversation will not be overheard. But the same pair having a normal conversation in a public subway car are not protected against eavesdroppers. In a case of police surveillance, a Maryland court found no expectation of privacy by a prison inmate speaking to an acquaintance wearing a wire.

The civil consequence of violating the surveillance statute is the greater of the complainant's actual damages, \$100 per day of violation, or \$1,000, and may also include punitive damages and attorney's fees and costs. Criminal penalties range from a \$500 fine to \$10,000 and five years' imprisonment.

A separate Maryland statute prohibits, in the absence of consent of an adult resident, the use of a hidden camera on private property for the purpose of observing a person inside a private residence. Cameras not hidden from view are permissible. Maryland also prohibits the use of visual surveillance in bathrooms in retail stores under most

circumstances, as well as surveillance with “prurient intent” of persons in most other private arenas and places of public accommodation. A violator of these statutes is guilty of a misdemeanor and subject to a \$1,000 fine or up to six months’ imprisonment.

Federal law also provides statutory protections against electronic surveillance and eavesdropping. Generally, those protections are no more than the state law, but they can result in additional liability for a violation.

*The Maryland law on Wiretapping and Electronic Surveillance appears at Title 10 Subtitle 4 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland.*

*Criminal laws regarding camera and visual surveillance appear in the Criminal Law Article, Title 3 Subtitle 9.*

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## The Law of Libel and Invasion of Privacy

In reporting the news, all journalists (we hope) strive for one goal above and beyond all others; accuracy. And yet, getting the facts right does not insulate journalists from facing the typically unpleasant experience of being sued. Indeed, libel and invasion of privacy lawsuits often are brought not because a newspaper or television or radio station misstated the facts, but because the subjects of those reports feel they were not treated fairly.

The law does not purport to serve as a useful guide on fairness—that's better left to the ethics experts. But, the law does provide an extensive guide to determine whether you can be held liable for reporting false statements of fact or invading someone's privacy. This brief synopsis describes the fundamental elements of a libel or invasion of privacy lawsuit, the defense to such claims, and some practical suggestions to avoid trouble altogether.

### Elements of Libel

What is libel? What is slander? Is there a difference? Generally speaking, libel is based on the printed word, slander on the spoken word. In Maryland, libel and slander are treated the same. So whether you're a print reporter or a broadcast journalist, the law is the same. To simplify matters, then, only the term libel will be used.

So, what is libel? The general definition of libel is: a false statement of fact about another that tends to harm his reputation in the eyes of the community. An inquiry into any libel lawsuit starts with the "elements," that is, what a plaintiff must prove to a judge or jury to make out a legal claim for libel. Those elements are as follows:

**Publication:** A plaintiff must show that a statement was "published" to a third person. In the media context, this typically is easy to prove, because the plaintiff can wave a copy of a newspaper article or tape of a TV or radio broadcast to show that others have read, watched or heard what was being said about them. But publication is not limited to just these forms of expression. For instance, a letter that you send to a third person, a scribbled note to a news source, even verbal statements or questions that you ask a source over a telephone can all constitute "publication" even though the statements were not disseminated to a wide audience.

**False Statement of Fact.** The readers or viewers of the publication, radio and/or TV station must reasonably believe that the statement made by one person about another person falsely stated a fact as opposed to expressing an

opinion about the second person. A more detailed explanation of the fact/opinion dichotomy is described later.

**Of and Concerning Another.** The statement must reasonably be read or viewed as pertaining to a specific individual or company, not an observation about an unidentifiable person or large group of individuals. In other words, your statement must reasonably identify another person or company, though it is not necessary that you actually identify them by name.

**Defamatory Meaning.** The statement must diminish an individual's (or company's) reputation in the community, for example, by exposing that individual (or company) to public scorn, ridicule, hatred or contempt. Thus, if you misstate the color of the mayor's eyes (calling them blue when they are brown) this will not support a libel claim because, even though the statement is false, it would not tend to diminish the mayor's reputation in the mind of a reasonable person.

**Fault.** The maker of the statement (whether it be the reporter, the newspaper, the magazine, or the radio or television station) must have been at fault in making the statement, either by being negligent or acting with "actual malice." These standards are discussed in more detail later.

**Damage.** The statement must cause a provable "injury" in the form of specific monetary harm, such as lost wages, or more nebulous harm, such as impairment of reputation and standing in the community, personal humiliation, or mental anguish.

### **Defenses to a Claim for Libel**

So, how do you respond to a charge of libel? As in all tort actions, there are certain defenses which shield you from liability. Those defenses are as follows:

**Substantial truth.** Libel lawsuits often begin and end with the concept of falsity. A libel plaintiff must prove that a challenged statement is false. Look at your own work. Is any given statement undeniably true, as far as you know? Maybe yes, maybe no. The law of libel, consistent with the freedoms that our founding fathers envisioned, provides protection so long as the statement you published or broadcast is "substantially true," that is, if the gist or sting of what you wrote or broadcast is true, then you cannot be held liable. If the error in a given statement is immaterial and the publication or broadcast would have the same effect on a reader or viewer, regardless of the error, then you cannot be held liable.

**Opinion.** Recall that a plaintiff must prove that the defendant published or broadcast a statement of fact about him. A common refrain to an allegation of libel is: "but that was just my opinion!" But, it's not that easy. It is true that pure statements of opinion cannot form the basis for libel

liability. So, for instance, a statement that “the City of Baltimore has confusing street signs” is just too nebulous to subject the speaker of the statement to liability. Statements that amount to rhetorical hyperbole (for example: “Candidate Alfred Jordan is full of malarkey,” or “the architect of Camden Yards must have blinders on”) likewise do not reasonably assert a statement of fact. Instead, they amount to subjective evaluations and, thus, are not actionable.

But, many statements fall into the gray zone. The test to determine whether a statement is one of fact or opinion is: (1) whether the challenged statement can reasonably be verified as being true or false; (2) whether the context in which the statement is published suggests that it is a subjective evaluation.

Thus, saying in a sports column that Cal Ripken was a “sloppy” fielder at third base is the writer’s subjective assessment of Cal’s abilities and would not be actionable. Such a statement is not subject to objective verification, and the context in which it is published—a sports column—alerts the reader to expect the writer’s opinion. But, saying in a news article that a businessman is a “corrupt” lawyer who “has illegally shielded millions of dollars in assets to avoid tax liability” could be proved true or false, and thus could subject the maker of the statement to liability.

Anytime you do express an opinion, it is advisable to state the facts upon which you base that opinion. And keep in mind that the context in which a statement is published or broadcast does not necessarily insulate you from liability. Even in areas where a reader or viewer is expecting a speaker’s opinion—such as in an editorial, op-ed piece, book review or, yes, even a sports column—a false statement of fact can subject you to liability.

### **Fair Report Privilege**

A “privileged” communication is one that would be libelous, under normal circumstances, but the occasion on which it is made allows the statement to be made without liability. The privilege is granted on the theory that the interest of the individual being libeled is outweighed by the public interest in the proceeding or report in which the statement is made.

The privilege to report about government activities may be the strongest defense to any libel action, because it can shield you from liability even if a statement is false and even if the false statement injured someone’s reputation. This privilege, commonly known as the “fair report privilege,” provides that a newspaper or radio/TV station (or a private person, for that matter) cannot be held liable for the publication of defamatory statements if the published statements are a fair and accurate account of what occurred during an official proceeding or were made in an official report. The privilege applies to reports about

judicial, legislative and other official government proceedings. And the privilege applies even if the underlying statements being reported upon are not true.

With that the case, you may report the content of police logs and city council minutes without fear of liability, provided that your account is fair, accurate and impartial. This same principal applies to reports about judicial proceedings and meetings of various legislative and other governmental bodies. Accounts of such reports and proceedings do not need to be verbatim accounts, but should represent the various views expressed (assuming the views are contradictory). Take care to provide a balanced account of what you've read in a report or heard at a government meeting; avoid taking sides. For instance, if a council proceeding includes accusations of embezzlement against the mayor, but the mayor directly refutes the charges, a "fair and accurate" account of that meeting would reflect all the various views given and not just the as-of-yet unproved allegations.

Under current Maryland law, the fair report privilege also can be lost by a print reporter or broadcaster who (1) knows that the statement made in a government report or proceeding is false or (2) entertains serious doubts as to its truth.

### **The Fault Standards: Negligence or Actual Malice**

We all know that the President of the United States, the Governor of Maryland, and even a member of the County Council must prove something extra in order to prevail in a libel lawsuit. But, what is that "something extra" and what is the higher standard of proof?

There are three categories of plaintiffs: public officials, public figures and private figures. Both public officials and public figures must prove that a media defendant published a false statement of fact with "actual malice," that is, with knowledge that a statement was false or with reckless disregard as to the statement's truth or falsity. This can be a difficult standard for a plaintiff to meet. Unfortunately, the term "actual malice" is confusing and often misunderstood. The term does not mean that a reporter acted against a news subject with spite or ill will. Rather, in the land of libel law, the term "actual malice" means that a publisher or broadcaster entertained serious doubts as to a statement's truth or falsity, or consciously disregarded the truth, for instance, by ignoring a reliable source's statement that what was about to be published was false.

Private individuals, on the other hand, merely have to prove "negligence," that is, proving that the print or broadcast media failed to exercise ordinary care expected of competent journalists prior to publishing or broadcasting a false and defamatory statement about the individual. This is a lower, much easier standard for a plaintiff to meet than



the “actual malice” required of public officials and public figures. It’s hard to say how much “negligence” is too much. This decision typically is made on a case-by-case basis by a jury. And, in today’s world, nearly any mistake by a journalist—however honest—could be determined by a jury as having been made negligently.

So, who then is “public” and who is “private”?

Public officials include all of your elected officials, from the governor to the local county supervisor, but it extends beyond that. City managers, judges, school superintendents and other “high level” government workers typically will be considered public officials for the purposes of libel action, provided that the newspaper article or broadcast report relates in some way to their official duties.

Other government officials—such as public high school teachers and mid-level “bureaucrats”—may similarly be treated as public officials if the stories relate to their official duties. But low-level government workers, in most cases, will be considered private individuals for libel purposes.

Public figures—as opposed to public officials—are a separate category that is further broken up into two parts. First are “general purpose” public figures; they are famous people who are constantly in the public eye, such as David Letterman, Michael Jordan, Jimmy Buffett, John Grisham, Paul McCartney and Julia Roberts. On a more local level, general purpose public figures would include Cal Ripken, former Maryland governor William Donald Schaefer, Orioles owner Peter Angelos and former U.S. congressman and now head of the NAACP Kweisi Mfume.

The more common public figure in libel cases is the “limited purpose” public figure, an individual who otherwise may be fairly private—or unknown to the community at large—except for the limited purpose of getting deeply involved in some type of community controversy that becomes worthy of media attention. If, for instance, the County Council is considering a proposal to build a new highway extension through a neighborhood, and one Patti Peters leads the opposition among local activists, then Ms. Peters probably would be considered a limited purpose public figure in a lawsuit challenging the accuracy of statements made about her in a newspaper account about the highway controversy. (Ms. Peters, however, would not be a public figure regarding a newspaper article that pertains to her private life; only when the news account concerns the particular controversy in question would Ms. Peters be considered a public figure.)

Typically, reporters should not worry about who is a public official, public figure or private individual. Presumably, the goal is the same at all times: Get the story right, regardless of who the story is about. Nevertheless, there is a simple test to help determine whether the subject is a limited purpose public figure: (1) Does the person have access to the media to rebut accusations made about him? (2) Has

the person become voluntarily associated with the controversy? (3) Did the “controversy” exist before the media began reporting it? If the answers are yes, the individual is more likely to be a public figure. This stands in contrast to gossip-mongering in a more private neighborly dispute, where speculative accusations should be treated gingerly unless corroborated by additional sources or the police.

### **Invasion of Privacy**

Generally speaking, the phrase “invasion of privacy” has been defined as the “right to be left alone.” Legally speaking, this tort is broken up into four separate and distinct claims:

**False Light.** This type of invasion of privacy is closely akin to libel, in that it constitutes a cause of action for depicting a person in a false manner. It commonly occurs where a reporter seeks to illustrate a particular event—say, a story about taxicab drivers who charge excessive fees—by showing an innocent driver legally plying his trade. The photo of the driver itself may not falsely state any facts about him, but when coupled with a story about passengers getting ripped off, it falsely links him to the scoundrels in the cab world.

**Publication of Embarrassing Private Facts.** This is a more common—though often more difficult to prove—type of invasion of privacy. It involves publicizing private facts about an individual which would offend an ordinary reader, viewer or listener’s sensibilities. A press report or photograph about an event that occurs in public almost never can form the basis of a successful tort claim, yet many people still sue for it. The press cannot be held liable, for instance, for publishing a photograph of two people kissing (unmarried or married, but not to each other) engaging in a rapturous embrace at a public event. On the other hand, people do have a right not to be photographed (without consent) inside their hospital rooms or other places where they expect privacy. And, people do have a right not to have intimate details about their private life—such as their health, family or financial problems—made known to the community at large unless there is a reasonable basis to make such information public (such as for political candidates).

**Intrusion.** In simple terms, this type of invasion of privacy is akin to trespass. It occurs where one intrudes, physically or otherwise, upon the seclusion of another, such as by illegally entering private property or wrongfully using tape recording or eavesdropping devices to record a person’s private activities or conversations. It is most common where a reporter misrepresents his identity in order to gain access to a place where a member of the general public typically is not invited to go.

Misappropriation. In the media field, this is the least prevalent type of invasion of privacy. Generally, the law of misappropriation provides that one may not use the name or picture of a person without his consent for advertising or trade purposes. For instance, you cannot sell a new pair of newfangled athletic shoes by showing a picture of Baltimore Raven Ray Lewis endorsing such shoes unless Lewis has given you permission. In the news context, pictures of Lewis or other professional athletes or public figures and the like are not published or broadcast for “advertising” or “trade” purposes, and thus the media is rarely called to task for publishing their likenesses. Provided the use of these photos is even remotely related to some type of news report, liability cannot result.

#### **Defenses to Invasion of Privacy**

Consent. When planning to publish or broadcast private facts about a private individual, such as an individual’s contraction of a hideous medical disease or details of an individual’s personal financial woes, you will be free from liability if that person consents to the publication of your story. However, keep in mind that such consent can be withdrawn, revoked, or made subject to certain conditions, such as that person not be photographed or mentioned by name. In most circumstances, however, explicit consent from a news subject is not feasible, and thus is not legally required. It would be difficult, and highly impractical, for instance, to obtain consent from news subjects who are involved in accidents, riots and other public events. In these circumstances, consent is implied by virtue of the event taking place.

Newsworthiness. The names, faces and activities of public officials and public figures almost always will be newsworthy, and thus a publisher or broadcaster cannot be held liable for sharing these images and activities with the general public. Where private individuals are involved, the law of privacy recognizes a defense whenever a publication concerns a matter of “public interest.” Thus, even an unwilling participant in a newsworthy event—such as a surviving victim of a plane crash—cannot hold you liable for publishing his image or a story about the harrowing ordeal. Even family members grieving in public over some tragedy cannot successfully maintain an invasion of privacy lawsuit. And if otherwise private information was legally gathered from a public record—for instance, publishing the identity of a rape victim gleaned from a police report—then no liability can ensue.

#### **Some Practical Tips**

Pre-publication review. Having a lawyer pore over your copy prior to publication or broadcast will not make your story libel-proof. But, it can help. Good First Amendment lawyers are trained to spot discrepancies in a reporter’s news gathering efforts and can refine language to present

the intended meaning of a phrase or sentence without running a risk of liability for libel.

Nevertheless, most libel lawsuits do not stem from the lengthy, investigative pieces, the types of stories that are most often shared with lawyers prior to publication. Rather, they stem from the everyday, routine stories—stories about crime, children, professionals (such as teachers, doctors and lawyers who trade on their reputation). And they often stem from just plain sloppiness, such as when a headline or outline does not match a story, or when re-writes or summaries are prepared by those who are removed from the fact-gathering process. The best pre-publication review comes from the reporter first (check your facts) and the editor second. On sensitive stories, having a lawyer review your copy can often save you from time-consuming, expensive litigation later. Accuracy and responsibility will always help journalists stay clear of the libel and privacy swamp.

Handling retractions. Most media outlets have a straightforward rule: if you publish or broadcast an error and subsequently learn of your mistake, you correct it. This is a sound journalistic policy, though it is not a complete defense to a libel claim. If you called Charlie Clayson a thief yesterday, apologizing today will not undo all the harm it has caused to his reputation.

In Maryland, there is no statute regarding retractions, though the courts have held that a retraction can be considered in determining the damages that a plaintiff has suffered. Further, such retractions should be drafted carefully, especially where the original false report has hurt someone's reputation. To the extent possible, a publisher or broadcaster should try to avoid repeating the libelous statement and just set the record straight. A well-meaning correction may inadvertently compound the damage to a plaintiff or, worse, admit that the publisher or broadcaster was negligent in making the statement at issue, when in fact, a reporter had sound justification for the original story. It is advisable to consult with an attorney when preparing such corrections.

Record retention. There is great disagreement among journalists and First Amendment attorneys about whether a reporter should save his notes. Reporters are often shocked when they learn that, after being sued, their notes (and tape recordings and unused video) in most cases will have to be turned over to the plaintiff's lawyer. (The most common exception is where a confidential source would be revealed.) A policy on record retention is best left to each individual publisher or broadcaster. But, whatever your policy (keep all notes, throw them all away, or keep them under certain circumstances), it is best to adhere to that policy. A plaintiff's lawyer will have a field day in court if your company's policy is to retain all notes and you just happened to throw away the only pieces of paper

containing an interview with a critical news source who supports your story.

**Promises of Confidentiality.** Reporters and editors must be careful what they promise sources. The First Amendment does not prevent a source from suing when a newspaper or radio/TV station breaks its reporter's promise of confidentiality to that source. And absolute confidentiality is just one example of the types of promises that could spark a legal fire. If a reporter agrees that a source's statements are "off the record," publishing those statements and the identity of the source who made them could provoke a lawsuit. Promising a favorable article or promising to let the source review his quotes prior to publication and failing to follow through, may lead a disgruntled source to sue.

If a source does insist on conditions before granting an interview, be precise as to what those conditions are. Get them in writing, if possible, or have the consent to be interviewed or any other conditions on tape. At the very least, such precautions can help avoid the inevitable dispute between the reporter and the source as to what was said. Also be aware of who is granting consent to be interviewed, and photographed. For example, a nurse or doctor generally does not have the authority to permit you to take pictures of patients in their hospital rooms. And a child may not have the authority to let you into his home to photograph his parents' cache of weapons and drugs.

Media outlets are well advised to form a coherent policy detailing the appropriate procedures to follow in permitting confidentiality or other promises to sources. The policy should state who may make promises and under what circumstances. Finally, the print and broadcast managers should define, and reporters should reveal to sources, precisely what they mean when using the terms such as "confidentiality", "not for attribution," and "off the record." A source may define these terms differently than a reporter. This is when trouble results.

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## A Brief Look at Copyright Law

Copyright, like freedom of speech, derives from the Constitution, which affords Congress the power to protect the writings of authors against piracy. Copyrights are generally recognized internationally, pursuant to treaty and foreign laws.

Copyright protects "original works of authorship fixed in any tangible medium of expression," which includes literature, music, drama, choreography, motion pictures, audio recordings, and even software and architectural works. "Copyright" which protects fixed expressions, should be distinguished from "trademark," which protects the good faith between a company and its customers, and "patent," which protects invented processes. However, like trademarks and patents, copyrights are property, so they may be bought, sold, assigned, or licensed.

Copyright protects expressions of information, not mere ideas, and not mere facts; some element of original composition is required. Thus, a sportscaster who gives the score of a big game being carried on another station does not infringe on the other station's broadcast copyright. But using excerpts from the other station's coverage could infringe a copyright.

As a general rule, the creator of a work owns the copyright. An outright transfer must be in writing. But there is an important exception for "works for hire," when the creator's employer owns the copyright. A long list of factors determines what is a "work for hire," including the hiring party's business, control over the project, relationship with the hired party, how the hired party is compensated, and how the work is created.

For works not for hire that secured copyright protection on or after Jan. 1, 1978, protection lasts for the life of the creator plus 50 years. For works for hire copyrighted in that time, protection lasts 75 years from first publication or 100 years from time of creation, whichever comes first, then through the end of the calendar year. Different statutory durations pertain to works copyrighted prior to 1978, and other changes may be legislated, so consult an attorney if duration is an issue.

There are two important ways copyrighted materials may be used lawfully. One way is with the consent of the copyright holder. Consent, a license, must be clear, and obtaining it in writing can help avoid legal problems. Merely giving credit to the copyright holder is not consent. The second way is to rely on your use being a "fair use" for which consent is not required. "Fair use," which actually is a defense, can occur, for example, in news reporting, commentary, and scholarship. The answers to four questions help define "fair use" under the law.

- (1) What is the purpose and character of the use?  
Pure political commentary is more likely to contain fair use than commercial expression.
- (2) What is the nature of the copyrighted work?  
The copyright of highly factual material, such as a phone book, is less easily infringed on than the more creative work.
- (3) How much of the copyrighted work is used?  
No more of the original may be used than is reasonably necessary.
- (4) What is the potential effect of the use on the market for the original? A use may make money, but it is probably not fair if consumers are willing to accept the use in lieu of the original.

In cases of a "parody," a modified fair use analysis applies. Besides questions (2) and (4), the court asks whether a parodic character reasonably can be perceived and whether the use exceeded that which was necessary to "conjure up" recognition of the original.

Since March 1, 1989, it is not necessary for a creator to label works with a copyright symbol (e.g., ©), year, and name, nor to formally register work with the U.S. Copyright Office to obtain the copyright protections of federal and international law. Copyright exists simply upon creation. Copyright is easier to prove and protect, though, if notice is given and registration made.

*Copyright law is contained in Title 17 of the United States Code.*

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## Sources of Law

In most cases, you can call your local friendly lawyer or law librarian (if you don't already have one, consult the phone list in the Appendix) and ask for information on Maryland law. Otherwise, you can look up the law itself. Teaching how to research Maryland law is a long, complex process, beyond the scope of this Guide. For the basics of finding what you need, we refer you to the following volumes which are available in well-stocked public libraries and all courthouse libraries, law schools and on the Internet.

### Annotated Code of Maryland

The corpus delicti of Maryland law, the "Maryland Code" contains the statutes of Maryland as passed by the General Assembly. The statutes are packaged in red volumes arranged by single subjects (known as "Articles") from Agriculture to Transportation, and black volumes (which are being phased out) with Articles categorized by number. Both the red and black volumes are regularly brought to date by supplements which may be found in the rear of each book and in other updates usually found on the library shelf near the Code. The Code contains a multi-volume index.

This is called the "annotated" code because these books contain brief citations, or annotations, of cases applying in some fashion to the statute. The cases can then be further researched in the corresponding yellow Court of Appeals reporter or green Maryland Appellate Reports volumes containing decisions of the Court of Special Appeals.

### Maryland Rules

This resource is of particular interest to those wondering how the criminal and civil judicial processes work. It also contains rules on the handling of juvenile matters, how appeals are processed, family law, evidence and the Rules of Professional Responsibility regulating Maryland lawyers and the Code of Judicial Conduct regulating Maryland judges. Title 2 of the Maryland Rules contains Circuit Court civil rules. Title 3 contains District Court civil rules. Title 4 contains criminal rules. Title 5 contains the Maryland Rules of Evidence.

### Maryland Reports/Maryland Appellate Reports

These are volumes containing cases decided by the Court of Appeals and Court of Special Appeals. The cases are arranged chronologically, so these books will not be helpful unless you know the title of the case you are seeking and its corresponding volume and pages, which you can get from the citations included in the Annotated Code or the



Maryland Law Encyclopedia annotations. For example, the case of State v. McKay in which the Court of Appeals allowed criminal defendants to waive the right to a unanimous jury verdict can be found at 280 Md. 558 (1977). That's Volume 280 of the Maryland Reports at page 558. The case was decided in 1977.

Opinions issued by the Court of Appeals and Court of Special Appeals are often newsworthy for the legal developments they announce so it may be a good practice to daily check the Court's web site for new opinions. The address is [www.courts.state.md.us](http://www.courts.state.md.us)

### **Code of Maryland Regulations (COMAR)**

These red binders collect the regulations of Maryland agencies, except emergency regulations which are published only in the Maryland Register. Each regulation is identified by its own number. Each department and many agencies have persons who are particularly knowledgeable about current and future regulations. COMAR is arranged by department and agency and has a table of contents and index for each title.

### **Maryland Law Encyclopedia (MLE)**

As you would have guessed, this is an encyclopedia containing summaries on a broad range of Maryland law with citations to various cases supporting the propositions stated. Once you get a case citation, you can look it up.

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## Appendix

### INTERNET ADDRESSES

Maryland Judiciary (and Court Information Office)  
[www.courts.state.md.us](http://www.courts.state.md.us)

Maryland State Bar Association  
[www.msba.org](http://www.msba.org)

Maryland Attorney General's Office  
[www.oag.state.md.us](http://www.oag.state.md.us)

Maryland State's Attorneys' Association  
[www.mdsaa.org](http://www.mdsaa.org)

Maryland Office of the State Prosecutor  
[www.ospmd.org](http://www.ospmd.org)

Maryland Office of Administrative Hearings  
[www.oah.state.md.us](http://www.oah.state.md.us)

Maryland Public Defender's Office  
[www.opd.state.md.us](http://www.opd.state.md.us)

Maryland Attorney Grievance Commission  
[www.courts.state.md.us/attygrievance](http://www.courts.state.md.us/attygrievance)

Maryland Client Protection Fund [www.courts.state.md.us/cpf](http://www.courts.state.md.us/cpf)

Maryland Department of Public Safety and Correctional Services [www.dpscs.state.md.us](http://www.dpscs.state.md.us)

U.S. Attorney for the District of Maryland  
[www.usdoj.gov/usao/md](http://www.usdoj.gov/usao/md)

U.S. District Court for the District of Maryland  
[www.mdd.uscourts.gov](http://www.mdd.uscourts.gov)

U.S. Bankruptcy Court for the District of Maryland  
[www.mdb.uscourts.gov](http://www.mdb.uscourts.gov)

U.S. Fourth Circuit Court of Appeals [www.ca4.uscourts.gov](http://www.ca4.uscourts.gov)

Federal Public Defender for the District of Maryland [www.md-fd.org](http://www.md-fd.org)

U.S. Supreme Court  
[www.supct.law.cornell.edu/supct](http://www.supct.law.cornell.edu/supct)  
[www.supremecourtus.gov](http://www.supremecourtus.gov)

U.S. Circuit Courts of Appeal [www.law.emory.edu/FEDCTS](http://www.law.emory.edu/FEDCTS)

U.S. District Courts & Bankruptcy Courts  
[www.uscourts.gov/allinks.html](http://www.uscourts.gov/allinks.html)

General Sites

[www.findlaw.com](http://www.findlaw.com)

[www.law.cornell.edu](http://www.law.cornell.edu)

Federal Laws and Regulations

[www.access.gpo.gov/nara/index.html](http://www.access.gpo.gov/nara/index.html)

U.S. Attorney's Manual

[www.usdoj.gov/usao/eousa/foia\\_reading\\_room/usam](http://www.usdoj.gov/usao/eousa/foia_reading_room/usam)

U.S. Attorneys List

[www.whitehousedrugpolicy.gov/statelocal/appndx8.html](http://www.whitehousedrugpolicy.gov/statelocal/appndx8.html)

Federal Bureau of Investigation

[www.fbi.gov](http://www.fbi.gov)

FBI Crime Reports

[www.fbi.gov/ucr/ucr.htm](http://www.fbi.gov/ucr/ucr.htm)

Bureau of Justice Statistics

[www.ojp.usdoj.gov/bjs](http://www.ojp.usdoj.gov/bjs)

Electronic access to federal courts (paid site)

[www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov)

Congress

[www.thomas.loc.gov](http://www.thomas.loc.gov)

Prosecuting Attorneys, District Attorneys, Attorneys General &

U.S. Attorneys [www.co.eaton.mi.us/ecpa/proslist.htm](http://www.co.eaton.mi.us/ecpa/proslist.htm)

Sourcebook of Criminal Justice Statistics

[www.albany.edu/sourcebook](http://www.albany.edu/sourcebook)

Reporters Committee for Freedom of the Press [www.rcfp.org](http://www.rcfp.org)

National Attorney Listings

[www.martindale.com](http://www.martindale.com)

American Bar Association (ABA)

[www.abanet.org](http://www.abanet.org)

**TELEPHONE NUMBERS/ADDRESSES**

**Maryland Judiciary/Court Information Office**

361 Rowe Blvd.  
Annapolis, Maryland 21401  
410-260-1488

**Maryland State Bar Association\***

Maryland Bar Center  
520 W. Fayette Street  
Baltimore, Maryland 21201  
410-685-7878  
800-492-1964

\*For numbers of county, minority and other specialty attorney organizations, contact the Maryland State Bar Association

**Office of the Maryland Public Defender**

Administration  
6 Saint Paul St., Suite 1400  
Baltimore, MD 21202  
(410) 767-8460  
(877) 430-5187

**Office of the Maryland Attorney General**

General Information  
200 St. Paul Place  
St. Paul Plaza  
Baltimore, MD 21202  
(410) 576-6300  
888-743-0023  
Office of Public Information: (410) 576-6357

Office of the State Prosecutor

Hampton Plaza  
Suite 410  
Towson, MD 21286  
(410) 321-4076  
(800) 695-4058

Office of the United States Attorney

6625 U.S. Court House  
101 West Lombard Street  
Baltimore, MD 21201-2692  
(410) 209-4800

United States Attorney Southern Division  
6500 Cherrywood Lane  
U.S. Courthouse, Suite 400  
Greenbelt, MD 20770  
(301) 344-4433

Office of the Federal Public Defender

Tower II, Suite 1100  
100 S. Charles St.  
Baltimore, MD 21201-2705  
(410) 962-3962

6411 Ivy Lane  
Suite 710  
Greenbelt, MD 20770-4510  
(301) 344-0600

**Supreme Court of the United States**

Washington, D.C. 20543  
(202) 479-3011

**United States Court of Appeals for the Fourth Circuit**

1100 East Main Street  
5<sup>th</sup> Floor  
Richmond, VA 23219  
(804) 916-2700

**United States District Court for the District of Maryland**

U.S. Court House  
101 West Lombard Street  
Baltimore, MD 21201  
(410) 962-2600

**United States Bankruptcy Court for the District of Maryland - Northern Division**

U.S. Court House  
101 West Lombard Street, Suite 8515  
Baltimore, MD 2101  
(410) 962-2688

**United States Bankruptcy Court for the District of Maryland- Southern Division**

U.S. Courthouse  
6500 Cherrywood Lane, Suite 300  
Greenbelt, MD 20770  
(301) 344-8018

**United States Marshals Service**

6<sup>th</sup> floor U.S. Courthouse  
101 West Lombard Street  
Baltimore, MD 21201  
(410) 962-2220

**Federal Bureau of Investigation**

Baltimore Field Office  
7142 Ambassador Road  
Baltimore, MD 21244  
(410) 265-8080

**Maryland Commission on Judicial Disabilities**

100 Community Place  
Crownsville, MD 21032  
(410) 514-7044

**Attorney Grievance Commission of Maryland**

100 Community Place  
Crownsville, MD 21032  
(410) 514-7051

**Maryland Department of Legislative Reference**

Maryland General Assembly  
Legislative Services Building  
90 State Circle  
Annapolis, MD 21401  
(410) 841-3810

## LAW LIBRARIES

**University of Baltimore School of Law Library**  
1420 North Charles Street, Baltimore, MD 21201  
[www.law.ubalt.edu/lawlib](http://www.law.ubalt.edu/lawlib)  
(410) 837-4584

**University of Maryland Thurgood Marshall Law Library**  
University of Maryland School of Law  
500 West Baltimore Street, Baltimore, MD 21201  
[www.law.umaryland.edu/marshall](http://www.law.umaryland.edu/marshall)  
(410) 706-6502

**Maryland State Law Library**  
Robert C. Murphy Courts of Appeal Building  
361 Rowe Boulevard  
Annapolis, MD 21401-1697  
(410) 260-1430  
Toll Free from MD  
1-888-216-8156  
Fax: (410) 974-2063  
Voice/TT MD Relay Service: 1-800-735-2258  
[www.lawlib.state.md.us](http://www.lawlib.state.md.us)

**People's Law Library**  
[www.peoples-law.com](http://www.peoples-law.com)

Selected Maryland Circuit Court Law Libraries

Anne Arundel  
(410) 222-1387

Baltimore County  
(410) 887-3086

Calvert County  
(410) 535-1600, x308

Charles County  
(301) 932-3322

Dorchester County  
(410) 228-9840

Garrett County  
(301) 334-1934

Harford County  
(410) 638-3467

Howard County  
(410) 313-2135

Montgomery County  
(240) 777-9120

Prince George's County  
(301) 952-3438

St. Mary's County  
(301) 475-4656

Talbot County  
(410) 822-444

Washington County  
(301) 791-3115

Worcester County  
(410) 632-0600

### **Maryland Courts**

Court of Special Appeals  
Robert C. Murphy Courts of Appeal Bldg.  
361 Rowe Boulevard, 2<sup>nd</sup> Floor  
Annapolis, MD 21401-1699  
(410) 260-1450

Court of Appeals  
361 Rowe Boulevard, 4<sup>th</sup> Floor  
Annapolis, MD 21401-1699  
(410) 260-1699  
(410) 260-1500

### **Circuit Courts of Maryland**

Allegany County Circuit Court  
Court House  
20 Washington Street  
Cumberland, MD 21502  
(301) 777-5923

Anne Arundel County Circuit Court  
Church Circle  
Annapolis, MD 21401  
(410) 222-1397

Baltimore City Circuit Court  
100 N. Calvert Street  
and 111 N. Calvert Street  
Baltimore, MD 21202  
(410) 333-3733

Baltimore County Circuit Court  
401 Bosley Avenue  
Towson, MD 21204  
(410) 887-2601

Calvert County Circuit Court  
175 Main Street  
Prince Frederick, MD 20678  
(410) 535-1660

Caroline County Circuit Court  
Court House  
P.O. Box 458  
Denton, MD 21269  
(410) 479-1811

Carroll County Circuit Court  
55 N. Court Street, Room G-8  
P.O. Box 190  
Westminster, MD 21158-0190  
(410) 386-2026

Cecil County Circuit Court  
129 E. Main Street  
Elkton, MD 21921  
(410) 996-5370

Charles County Circuit Court  
200 N. Charles Street  
P.O. Box 970  
La Plata, MD 20646  
(301) 932-3202

Dorchester County Circuit Court  
206 High Street  
P.O. Box 150  
Cambridge, MD 21613  
(410) 228-0481

Frederick County Circuit Court  
100 West Patrick Street  
Frederick, MD 21701  
(301) 694-1976

Garrett County Circuit Court  
203 S. 4<sup>th</sup> Street, Room 209  
P.O. Box 447  
Oakland, MD 21550  
(301) 334-1937

Harford County Circuit Court  
20 W. Courtland Street  
Bel Air, MD 21014  
(410) 638-3426  
(410) 879-2000

Howard County Circuit Court  
Court House  
Ellicott City, MD 21043  
(410) 313-2111

Kent County Circuit Court  
103 N. Cross Street  
Chestertown, MD 21620  
(410) 778-7460

Montgomery County Circuit Court  
50 Maryland Avenue  
Rockville, MD 20850  
(240) 777-9466



Prince George's County Circuit Court  
Court House  
14735 Main Street  
Upper Marlboro, MD 20772  
(301) 952-3318

Queen Anne's County Circuit Court  
Court House  
100 Court House Square  
Centreville, MD 21617  
(410) 758-1773

St. Mary's County Circuit Court  
Court House  
Leonardtown, MD 20650  
(301) 475-4567

Somerset County Circuit Court  
Court House  
30512 Prince William Street  
Princess Anne, MD 21853  
(410) 651-1555

Talbot County Circuit Court  
Court House  
Washington and Federal Streets  
Easton, MD 21601  
(410) 822-2611

Washington County Circuit Court  
95 West Washington Street  
Hagerstown, MD 21740  
(301) 733-8660

Wicomico County Circuit Court  
101 North Division Street  
Courthouse, Room 105  
Salisbury, MD 21803  
(410) 543-6551

Worcester County Circuit Court  
Court House, Room 104  
P.O. Box 40  
Snow Hill, MD 21863  
(410) 632-1221

**District Courts of Maryland**

District 1-Baltimore City

Baltimore City  
Borgerding District Court Bldg.  
5800 Wabash Avenue  
Baltimore, MD 21215-3330  
(410) 878-8000

Civil Division  
501 E. Fayette Street  
Baltimore, MD 21202-4092  
(410) 878-8900

Eastside District Court Bldg.  
1400 East North Avenue  
Baltimore, MD 21213-1400  
(410) 878-8500

Southern District  
10 Cherry Hill Road  
Baltimore, MD 21225-1261  
(410) 355-4288

District 2-Dorchester, Somerset, Wicomico & Worcester  
Counties

Dorchester County  
310 Gay Street, P.O. Box 547  
Cambridge, MD 21613-1813  
(410) 901-1420

Somerset County  
11774 Somerset Avenue  
Princess Anne, MD 21853  
(410) 651-2713

Wicomico County  
District Court/Multi-Services Center  
201 Baptist Street  
Salisbury, MD 21801-4971  
(410) 543-6600

Worcester County-Snow Hill  
301 Commerce Street  
Snow Hill, MD 21863-1007  
(410) 219-7830

Worcester County-Ocean City  
6505 Coastal Highway  
Ocean City, MD 21842-3041  
(410) 723-6935/6936

District 3-Caroline, Cecil, Ken, Queen Anne's, Talbot Counties

Caroline County  
State Multi-Service Center  
207 S. Third Street  
Denton, MD 21629-1229  
(410) 479-5800

Cecil County  
170 East Main Street  
Elkton, MD 21921-5943  
(410) 996-0700

Kent County  
103 N. Cross Street  
Chestertown, MD 21620-1511  
(410) 810-3362

Queen Anne's County  
120 Broadway  
Centreville, MD 21617-1092

Talbot County  
108 W. Dover Street  
Easton, MD 21601  
(410) 819-5850

District 4-Calvert, Charles, St. Mary's Counties

Calvert County  
Louis Goldstein Multi-Service Center  
200 Duke Street-3<sup>rd</sup> Floor  
Prince Frederick, MD 20678-4136  
(410) 535-8800

Charles County  
200 Charles Street  
P.O. Box 3070  
La Plata, MD 20646-3070  
(301) 932-3300

St. Mary's County  
c/o Carter State Office Building  
23110 Leonard Hall Drive  
Leonardtown, MD 20650  
(301) 475-4530

District 5-Prince George's County

Upper Marlboro District Court  
14735 Main Street, Room 173B  
Upper Marlboro, MD 20772-3042  
(301) 952-4080

Hyattsville District Court  
County Service Building  
4990 Rhode Island Avenue, Room 200  
Hyattsville, MD 20781-2008  
(301) 699-2766

District 6-Montgomery County

Rockville District Court  
27 Courthouse Square  
Rockville, MD 20850-2325  
(301) 279-1500

Silver Spring  
8665 Georgia Avenue  
Silver Spring, MD 20910-3405  
(301) 608-0660

District 7-Anne Arundel County

Annapolis  
580 Taylor Avenue, Building A-2  
Annapolis, MD 21401-2395  
(410) 260-1370

Glen Burnie  
7500 Ritchie Highway

Glen Burnie, MD 21061-3756  
(410) 260-1370

District 8-Baltimore County

Catonsville  
900 Walker Avenue  
Catonsville, MD 21228-5380  
(410) 512-2500

Dundalk  
100 W. Center Place  
Dundalk, MD 21222-4343  
(410) 282-1100

Essex  
8914 Kelso Drive  
Baltimore, MD 21221-3135  
(410) 512-2300

Owings Mills  
#4 Park Center Court  
Owings Mills, MD 21117-5611  
(410) 363-3850

Towson  
120 E. Chesapeake Avenue  
Towson, MD 21286-5307  
(410) 512-2000

District 9-Harford County

Bel Air District Court  
2 South Bond Street  
Bel Air, MD 21014-3737  
(410) 836-4545

District 10-Carroll, Howard Counties

Howard County  
3451 Courthouse Drive  
Ellicott City, MD 21043-4377  
(410) 480-7700

Carroll County  
55 N. Court Street  
Westminster, MD 21157-5156  
(410) 871-3500

District 11-Frederick, Washington Counties

Frederick County  
100 W. Patrick Street  
Frederick, MD 21701-5548  
(301) 694-2000

Washington County  
35 West Washington Street  
Hagerstown, MD 21740-4867  
(240) 420-4600

District 12-Allegany, Garrett Counties

Allegany County  
3 Pershing Street, 2<sup>nd</sup> Floor  
Cumberland, MD 21502-3045  
(301) 777-5962

Garrett County  
205 S. Third Street  
Oakland, MD 21550-1526  
(301) 334-8020

**Maryland State's Attorneys' Offices**

Allegany County  
30 Rear Washington Street  
Cumberland, MD 21502  
(301) 777-5962

Anne Arundel County  
44 Calvert Street  
Annapolis, MD 21401  
(410) 222-1740

Baltimore City  
204 Clarence Mitchell Courthouse  
Baltimore, MD 21202  
(410) 396-4986

Baltimore County  
County Courts Building  
Towson, MD 21204  
(410) 887-6600

Calvert County  
Courthouse  
Prince Frederick, MD 20678  
(410) 535-1600 ext 369

Caroline County  
P.O. Box 59  
Denton, MD 21629  
(410) 479-0255

Carroll County  
P.O. Box 530  
Westminster, MD 21157-0530  
(410) 386-2671

Cecil County  
Courthouse  
Elkton, MD 21921  
(410) 996-5335

Charles County  
Courthouse  
La Plata, MD 20646  
(301) 932-3350

Dorchester County  
403 High Street  
Cambridge, MD 21613  
(410) 228-3611

Frederick County  
Courthouse  
Frederick, MD 21701  
(301) 694-1523

Garrett County  
Courthouse  
Oakland, MD 21550  
(301) 334-1974

Harford County  
Courthouse  
Bel Air, MD 21014  
(410) 879-3204

Howard County  
8350 Court Avenue  
Ellicott City, MD 21043  
(410) 313-2108

Kent County  
Courthouse Annex  
Chestertown, MD 21620  
(410) 778-7450

Montgomery County  
50 Courthouse Square  
Rockville, MD 20850  
(240) 777-7333

Prince George's County  
Courthouse – Room 349M  
Upper Marlboro, MD 20772  
(301) 952-3500

Queen Anne's County  
The Liberty Building  
107 N. Liberty Street  
Centreville, MD 21617  
(410) 758-2264

St. Mary's County  
Courthouse  
P.O. Box 328  
Leonardtown, MD 20650  
(301) 475-4590

Somerset County  
Prince William Street  
Princess Anne, MD 21853  
(410) 651-3333

Talbot County  
Courthouse  
Easton, MD 21601  
(410) 770-8060

Washington County  
33 W. Washington Street, 3<sup>rd</sup> Floor  
Hagerstown, MD 21740  
(301) 791-3120

Wicomico County  
P.O. Box 1006  
Courthouse  
Salisbury, MD 21801  
(410) 548-4880

Worcester County  
Suite 208  
Courthouse  
Snow Hill, MD 21863  
(410) 632-2166

**Additional Numbers:**



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## Glossary

The following is an abbreviated glossary intended to assist with some of the most frequent and basic legal terms. There are many other useful resources such as Black's Law Dictionary or the Internet. Type in "legal dictionary" and you'll come up with a variety of sites. Some of the best that we've checked out include:

[www.dictionary.law.com](http://www.dictionary.law.com)

[www.nolo.com/index.cfm](http://www.nolo.com/index.cfm)

**Acquittal:** The finding of a judge or jury that the evidence is insufficient to support a conviction, or a verdict that the accused is not guilty.

**Adjudication:** A judgment or decision of a court or jury regarding a case.

**Admission:** Statements acknowledging the existence of a fact relevant to the cause of the opposing party. In the criminal arena, an admission is short of a confession of guilt if not acknowledging all facts or elements of a charge (compare "Confession").

**Affidavit:** A written statement the contents of which are affirmed under the penalties of perjury to be true.

**Affirmed (Judgment):** A decision by an appellate court finding that the judgment of a lower court is correct and should stand.

**Agreed statement of facts:** A statement of all important facts, which all the parties agree is true and correct, which is submitted to a court for ruling.

**Alford Plea:** A special type of guilty plea by which a defendant does not admit guilt but concedes that the State has sufficient evidence to convict, normally made to avoid the threat of greater punishment. This is a guilty plea in which the defendant maintains his innocence, but acknowledges the prosecution has sufficient evidence to convict.

**Allocution:** A defendant's statement in mitigation of punishment.

**Annotation:** A case summary or commentary on the law cases, statutes, and the rules illustrating its interpretation.

**Appearance:** A coming into the court in person or by filing a paper, as plaintiff, defendant or legal representative.

**Appellant:** A party who appeals a judgment of a court.

**Appellate Court:** A court having jurisdiction to review the judgment or order of a lower court.

**Appellee:** A party against whom an appeal is taken.

**Attorney of Record:** An attorney who represents a party and has entered an appearance in an action (see "Counsel").

**Bail Bond:** A written obligation of a defendant, with or without a surety or collateral security, conditioned on the appearance of a defendant as required and providing for the payment of a penalty sum according to its terms; includes a surety bond posted by a surety insurer or bail bondsman and backed by the insurer's pledge; a cash bond secured by deposited cash; a property bond secured by pledged personal property or a lien on real property; and an unsecured bond.

**Battery:** An unlawful application of physical force to, or offensive touching of, another without his consent.

**Bench conference:** A meeting either on or off the record at the judge's bench between the judge, counsel and sometimes the defendant, out of the hearing of the jury.

**Bench Warrant:** A warrant issued by a judge for the arrest of a defendant for failure to appear in court as required.

**Bifurcate:** To try issues separately, such as guilt and criminal responsibility in a criminal proceeding or liability and damages in a civil action.

**Bill of Particulars:** A demand by a defendant in writing, unless otherwise ordered by the court, seeking specific factual details about a civil complaint or criminal charge. In a criminal case, the purpose of the bill of particulars is to guard against the taking of an accused by surprise, by limiting the scope of the proof.

**Body Attachment:** A written order issued by a court directing a sheriff or peace officer to take custody of and bring before the court:

1. A witness who fails to comply with a subpoena.
2. A party who fails to comply with a court order in a civil action.
3. A material witness in a criminal case.

**Burden of Proof:** The necessity of proving facts at issue; in Maryland, the criminal burden of proof is "beyond a reasonable doubt"; the civil burden of proof is "by a preponderance of the evidence" or, sometimes, "by clear and convincing evidence."

**Capital Case:** A criminal case in which the allowable punishment includes death.

**Case Law:** Decisions of federal and state courts interpreting and applying laws in specific fact situations. Opinions are reported in various volumes.

**Certiorari (Writ of):** The discretionary process (order) by which a higher court calls for review of the records of a lower court; in Maryland, the process used by the Court of Appeals to review decisions of, or to take cases pending in, the Court of Special Appeals or Circuit Court.

**Chain of Custody:** An accounting for the continuous possession of evidence, such as narcotics in a drug trial, to ensure no substitution, tampering, or improper handling affects the credibility of the evidence.

**Change of Venue:** A transfer or removal of a civil or criminal case from one judicial district to another (compare "Removal").

**Charging Document:** A written accusation alleging a defendant has committed an offense includes a citation, an indictment, information, and statement of charges.

**Citation:** A charging document, other than an indictment, information, or statement of charges, that is issued to a defendant by a peace officer or other person authorized by law to do so.

**Collateral Attack:** An attack on a judgment other than a direct appeal to a higher court.

**Common Law:** The case law developed by the Courts of England as it existed on July 4, 1776, except to the extent inconsistent with the Maryland Constitution and subject to being changed by statute. Also called "case law."

**Commitment Order:** A court order directing that an individual be kept in custody, usually in a penal or mental facility.

**Complaint:** A civil lawsuit, filed in the District or Circuit Courts.

**Concurrent Jurisdiction:** Jurisdiction held by two courts over the same type of case (compare "Exclusive Jurisdiction").

**Concurrent Sentences:** Sentences served at the same time (compare "Consecutive Sentences").

**Confession:** A statement by an individual, either oral or written, admitting that he committed a certain offense (compare "Admission").

**Consecutive Sentences:** Two or more sentences served continuously, one right after the other (compare “Concurrent Sentences”).

**Contempt (Civil):** Noncompliance with a court order or rule that affects another person and that is punished to compel compliance.

**Contempt (Criminal):** An act or omission that obstructs the orderly administration of justice or impairs the dignity, respect, or authority of the court and that is punished to vindicate the honor of the court.

**Continuance:** A postponement or delay in a court proceeding granted by a court on either oral or written motion.

**Costs:** Fees and charges required by law to be paid to the court, the amount of which is set by statute or court rule or by an administrator authorized by law to do so.

**Count:** A separate charge in a charging document or separate cause of action in a civil complaint.

**Court of Appeals:** Maryland’s highest appellate court, where it is the Court’s discretion whether to hear the case on appeal.

**Court of Special Appeals:** Maryland’s intermediate appellate court wherein review is ordinarily a matter of right and is not up to the Court’s discretion.

**Declaratory judgment:** One which declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done.

**Default:** Occurs when a defendant fails to file a response to a lawsuit within the time allowed, or fails to appear at the trial.

**De Novo:** Translated from Latin “for new,” trying a matter anew as if it had not been heard before. In Maryland, most criminal charges are heard de novo when appealed from the District Court to a Circuit Court. Retrial of a case.

**Defendant:** A person against whom a civil suit is filed or, in a criminal action, a person who has been charged with a violation of the law or criminal wrongdoing.

**Deposition:** Pretrial examination of a witness on written or oral questions answered under oath, used to discover the witness’ testimony in preparation for trial, and admissible at trial in lieu of live testimony if the witness is unavailable or refuses to testify.

**Detainer:** A notice, usually a warrant, that an inmate is wanted to face charges in another jurisdiction.

**Directed Verdict:** See "Motion for Judgment."

**Discovery:** Procedures used to obtain disclosure of evidence before trial, such as: depositions, by oral examination or written questions; written Interrogatories; requests for production or inspection of documents; orders for mental or physical examinations; and requests for admissions of fact and genuineness of documents.

**District Court:** Maryland's lowest trial court, a court of limited jurisdiction.

**Docket Number:** The designation assigned to each case filed in a (a.k.a. Case Number) particular court.

**Docket:** A list of cases to be heard in court (trial docket); a list of pleadings, papers, orders, etc., filed in a particular case (docket entries).

**Double Jeopardy:** Constitutional prohibition against trying a person twice for the same crime. Does not normally prohibit individual from being tried in a state court and a federal court for the same or similar crime since they are considered different "sovereigns."

**En banc Review:** See "In Banc Review."

**Enjoin:** To require a person to perform or to abstain or desist from some act.

**Evanescent evidence:** Evidence which can disappear relatively quickly, such as the amount of alcohol in a person's blood.

**Exculpatory evidence:** Evidence which tends to indicate that a defendant did not commit the crime alleged.

**Ex Parte:** On or from one side or party only, commonly used in civil proceedings to refer to proof of damages by a plaintiff after default judgment has been entered against a defendant for failure to answer or to refer to communications by one party with a court without notice to the other party.

**Exception:** A formal objection to an action of a court during trial, evidencing an objecting party's disagreement with the court's ruling and preserving the matter for review on appeal.

**Exclusive Jurisdiction:** Jurisdiction held by only one court over the type of case (compare "Concurrent Jurisdiction").

**Expungement:** The effective removal from public inspection of police and court records.

**Extradition:** The formal process of delivering an individual apprehended in one jurisdiction (e.g., a state or country) to the authorities of another jurisdiction in which that individual has been accused or convicted of a crime.

**Felony:** The more serious of two categories to which criminal offenses are assigned (compare "Misdemeanor").

**Felony-murder:** A murder committed during the commission of a felony such as robbery, burglary, or kidnapping.

**Forfeiture:** The loss of money or property resulting from failure to meet a legal obligation or from the illegal nature or use of the money or property.

**Grand Jury:** A jury composed of 23 individuals who receive and hear evidence to determine whether probable cause exists that a crime has been committed and to determine whether an indictment should be re-turned (compare "Petit Jury").

**Habeas Corpus:** Translated: "you have the body", a writ to bring a prisoner before a court for its determination whether the prisoner is being held lawfully.

**Hearsay:** Evidence offered by a witness based on what others have said.

**Hicks Waiver:** A waiver of a defendant's right to a speedy trial, which under Maryland law is 180 days from the defendant's initial appearance in person or by attorney.

**Home monitoring:** An alternative to incarceration where an individual is confined to his home and monitored electronically.

**Hospital Warrant:** A warrant that a court issues under Health-General Article § 12-120 after a probable cause determination that the named defendant has violated a conditional release under Title 12 of the Health-General Article.

**Hung Jury:** A jury that is unable to agree on a verdict after a suitable period of deliberation.

**Immunity from Prosecution:** Protection from prosecution in exchange for testimony that might not otherwise be forthcoming.

**Impeach:** To discredit a person or thing, especially by showing that a witness is not telling the truth.

**In Banc Review:** A review of a trial court's rulings or judgment by a panel of three Circuit Court judges, sometimes referred to as a "poor man's appeal."

**In Camera:** In chambers; in private.

**In Forma Pauperis:** A term used in federal courts relative to permission given to a poor person to proceed without liability for court costs or fees and frequently used by inmates filing papers in State courts for which they are seeking waiver of prepayment of filing fees.

**In Propria Persona:** "Pro se" Translated from Latin, "in one's own proper person;" self-representation, generally without benefit of an attorney although a court may appoint standby counsel.

**Incarcerate:** To confine to a jail or correctional institution.

**Incompetency:** Lack of capacity to understand the nature and object of the proceedings, to consult with counsel, and to assist in preparing a defense.

**Indictment:** A charging document returned by a grand jury and filed in a Circuit Court.

**Indigent:** Unable by reason of poverty or insufficient financial means to pay.

**Information:** A charging document presented by a State's attorney, instead of a grand jury, and filed in a Circuit Court.

**Initial Appearance:** The first appearance of a defendant before a judicial officer by reason of execution of a warrant or before the court, in person or by an attorney, in response to a summons.

**Insanity Plea:** A claim by a defendant that he is not criminally responsible (NCR) for a criminal act due to insanity.

**Interstate Detainer:** An arrest warrant issued on a charging document in another state and lodged with a Maryland correctional institution where a defendant is detained, to ensure continued detention until delivery to the custody of the other state for prosecution on the pending charges.

**Intrastate Detainer:** An arrest warrant issued on a Maryland charging document and lodged with a Maryland correctional institution where a defendant is in custody for the same or another offense, to ensure continued detention until processing on the charges underlying the warrant.

**Jointly and Severally:** Acting together or separately; anyone so liable can sue or be sued with or without others joining in the action.

**Judgment:** The final order of a court; in a criminal case, the conviction and sentence constitute the judgment, so there is no judgment until sentence is imposed.

**Judgment of Acquittal:** A judgment entered by a court on a determination that the State's evidence is insufficient to support a conviction and, thus, insufficient to go to the jury.

**Judicial notice:** A court's recognition of the truth of basic facts without formal evidence.

**Jurisdiction:** The authority by which courts receive and decide cases.

Appellate Jurisdiction: the authority that a higher court has to review cases decided or pending in a lower court; in Maryland, the Court of Appeals, the Court of Special Appeals, and the Circuit Courts.

General Jurisdiction: the unlimited authority over cases brought before the court to decide rights and grant remedies available under the law in Maryland, the Circuit Courts.

Limited Jurisdiction: the authority over only particular types of cases or cases under a prescribed amount in controversy or seeking only certain types of relief, in Maryland the District Court and Orphans' Courts.

**Juvenile Waiver:** A procedure by which a charge(s) against a minor is transferred from a juvenile to adult court (compare "Reverse Waiver").

**Lesser Included Offense:** A crime composed of some, but not all of the elements of a greater crime; commission of the greater crime automatically includes commission of the lesser included offense.

**Mandamus:** A court order compelling an individual to fulfill an official ministerial duty.

**Mandate:** A judgment issued on the decision of an appellate court.

**Master:** An attorney who is appointed by the judges of a Circuit Court with the approval of the Chief Judge of the Court of Appeals, to conduct hearings and to make finding of facts, conclusions of law, and recommendations as to an appropriate order.

**Mens rea:** Criminal intent.

**Merger:** Incorporation of a lesser crime into a greater crime.



**Merits:** Strict legal rights of the parties; a decision “on the merits” is one that reaches the right(s) of a party, as distinguished from disposition of a case on a ground not reaching the right(s) raised in an action; for example, entry of nolle prosequi before a criminal trial begins is a disposition other than on the merits, allowing trial on those charges at a later time without double jeopardy attaching; similarly, dismissal of a civil action on a preliminary motion raising a technicality, such as improper service of process, does not result in res judicata of an issue.

**Misdemeanor:** The less serious of two categories to which criminal offenses assigned (compare “Felony”).

**Mistrial:** A trial that has been terminated and declared void due to prejudicial error in the proceedings or other extraordinary circumstances.

**Mitigation:** Circumstances suggesting that a lesser sentence is appropriate.

**Moot:** Adjective: No longer presenting controversy capable of adjudication because the issue has ceased to exist and is unlikely to recur; debatable.

**Motion for Judgment:** A judge’s decision to enter judgment on a claim or claims in favor of defendant, before defendant puts on a case. Granted if the judge decides there is insufficient evidence to allow a plaintiff to win, such as if plaintiff puts on no evidence legally sufficient to prove defendant caused his injuries.

**Negligence:** The omission to do something, which a reasonable person, guided by ordinary consideration, would do; or the doing of something which a reasonable and prudent person would not do.

**Nolle Prosequi or “Nol pros”:** Translated: “will not further prosecute”; termination of prosecution and dismissal of a charge by a State’s attorney on the record in open court. A defendant need not be present in court when a nol pros is entered, but, in that event, the clerk of court must send notice to the defendant, if the defendant’s whereabouts are known, and to the defendant’s attorney of record.

**Nolo Contendere:** Translated: “I will not contest;” a plea that has the effect of a guilty plea, although guilt is neither admitted nor denied, which plea may be used as an admission of guilt in a civil suit for the same offense. A defendant may plead nolo contendere only with the consent of the court.

**Non Est (inventus):** Translated: “not to be found,” a sheriff’s return of process when service is not made because the person to be served was not found.

**Non-Capital Case:** A criminal case in which the allowable penalty does not include death.

**Nunc Pro Tunc:** Translated from Latin: “now for then;” the phrase used when an order is issued on one date but is effective as if issued on an earlier date when it ought to have been issued.

**Original Jurisdiction:** The jurisdiction of the first court to hear a case.

**Parole:** A conditional release from imprisonment that is made by a parole board and entitles a defendant to serve the remainder of a sentence outside of prison as long as all of the conditions of release are met (compare “Probation”).

**Peremptory Challenge:** The mechanism by which either the defense or prosecution (or either party in a civil case) strikes a potential juror from the jury list without cause; cannot be used for an unconstitutional reason such as race or gender.

**Personal Recognizance:** A guarantee of a defendant’s appearance in court (a.k.a. Own Recognizance) based solely on his signed promise (no bail bond required).

**Petit Jury:** An ordinary jury for the trial of an action in Maryland, generally 12 for criminal trials and 6 for civil trials, not including alternates (Compare “Grand Jury”).

**Petty Offense:** An offense for which the authorized penalty does not exceed imprisonment for 3 months or a fine of \$500.

**Plea:** An answer to a criminal charge including: not guilty, guilty, nolo contendere, not criminally responsible by reason of insanity.

**Post Conviction:** A procedure by which a convicted defendant challenges the conviction and/or sentence on the basis of some alleged violation or error.

**Pre-sentence Investigation:** A confidential report ordered by the Report (PSI) judge and produced by the Division of Parole and Probation, prior to sentencing, to provide background information (job, finances, family status, community ties, etc.) and prior criminal record of a defendant and, in certain cases, a victim impact statement.

**Preliminary Hearing:** A hearing held in the District Court, unless waived by defendant, to determine whether there is probable cause to believe the defendant committed an offense(s); available when the offense(s) charged is not within the exclusive jurisdiction of the District Court.

**Presumption:** An inference of the truth or falsity of a proposition or fact, that stands until rebutted by evidence to the contrary.

**Prima Facie:** Translated: “on the first appearance;” sufficient on its face to prevail until contradicted and overcome by other evidence.

**Privilege:** A person’s right not to testify on a matter or communication protected by law.

**Probable Cause:** Reasonable grounds for belief in the existence of facts that support a charge; the basis for issuing a charging document or search warrant.

**Probation:** A conditional avoidance of some or all imprisonment granted by a judge after conviction of a defendant and before or as part of imposition of sentence.

**Probation Before Judgment (PBJ):** A conditional avoidance of imposition of sentence after conviction; failure to satisfy the conditions may cause imposition of sentence after a finding of violation of probation.

**Procedural Law:** The method, established normally by rules, to be followed in a case; the formal steps in a judicial proceeding.

**Proffer:** An offer of proof as to what the evidence would be if a witness were called to testify or answer a question.

**Purge:** To clean or clear, such as eliminating inactive records from court files; with respect to civil contempt, to cure the noncompliance that caused the contempt finding.

**Quash:** To set aside or to make void; with respect to process, such as a summons or subpoena, to void on motion of the person served.

**Rebuttal:** The act of contradicting or overcoming the effect of a presumption of evidence.

**Recall:** Cancellation by a court of a warrant before its execution by the arrest of a defendant; also, a process by which a retired judge may be asked to sit on a particular case.

**Remand:** The return of a case by an Appellate Court to the trial court or agency for further proceedings.

**Removal:** The change of location (venue) of a case on the grounds that a party cannot receive a fair and impartial trial in the jurisdiction where the action is pending.

**Res Judicata:** The matter already has been finally decided; a rule against relitigation of issues.

**Sequester:** To separate or isolate; for example, to separate witnesses from each other, to isolate jurors from the public, to separate property from a party and place it in the custody of the court or a third person.

**Service of Process:** The act of delivering an order, subpoena, summons, or other writ to person named.

**Show Cause:** An order requiring a person to appear in court and present reasons why a certain order; judgment or decree should not be issued.

**Speedy Trial:** The right of an accused to a speedy trial as guaranteed by the 6th Amendment of the United States Constitution; in Maryland, the right to be tried within 180 days after initial appearance, unless waived.

**Stare Decisis:** Translated: "to stand by a decision;" the practice in which decisions of lower courts are guided and bound by the rulings made by the higher, appellate courts. For example, Maryland Court of Appeals decisions bind the state's lower courts in cases of identical or similar circumstances.

**Statement of Charges:** A charging document, other than a citation, filed in the District Court by a peace officer or a judicial officer.

**Stet:** Translated: "to stand;" a conditional, indefinite stay of all further proceedings on a charge, allowed by a court on motion of a State's Attorney and marked "stet" on the docket, Md. Rule 4-248 requires that, when a charge is stетted and unless the court orders otherwise, the Clerk of Court must act to recall or revoke any outstanding warrant or detainer that could lead to arrest or detention of the defendant because of the charge.

**Stipulation:** An agreement between counsel on certain facts so those facts need not be proven, or on an issue so that the issue need not be litigated.

**Sua Sponte:** Translated from Latin: "of its own will;" commonly used when a judge does something in a case without being asked to do so by a party.

**Sub Curia:** Translated: "under the law;" the holding of a case by a court under consideration, sometimes to await the filing of a document, such as a pre-sentence investigation report or memorandum of law, or to write an opinion.

**Subpoena:** A writ issued by a governmental entity to compel a person to appear and to give testimony at a specified time and place.

**Subpoena Duces Tecum:** Translated: “an order to bring it with him”; a writ issued by a governmental entity to compel a person to appear at a specified time and place with documents, records or paper.

**Summons:** A writ notifying the person named that an action has been filed against the person and in a criminal action, failure to appear may result in a bench warrant being issued for the person’s arrest; in a civil action, failure to answer may result in entry of a judgment against that person.

**Suppress:** To stop, prohibit, prevent, subdue; with respect to evidence, to prevent its use by showing it was obtained illegally or is irrelevant.

**Tracking Number:** A 12-digit number assigned to allow a defendant and incident to be followed throughout criminal proceedings, by identification of the year (first 2 digits), the origin of the charging document (next 4 digits) and the place of the charge(s) within the sequence of charges issued that year (last 6 digits).

**Trial De Novo:** See “De Novo.”

**True Test Copy:** A copy of a court document given under the clerk’s seal, but not certified.

**Venue:** The County or other geographical area in which an action may be filed

**Victim impact statement:** A statement during sentencing which informs the sentencer of the impact of the crime on the victim or the victim’s family.

**Voir Dire:** Translated: “to speak the truth;” the preliminary examination of a prospective juror or witness (including an interpreter) to determine whether the person is competent, impartial, and unprejudiced.

**Waive:** Relinquish; in Maryland, used commonly to refer to the giving up of a legal right voluntarily, intentionally and with full knowledge of the consequences.

**Without Prejudice:** A dismissal “without prejudice” allows a new suit to be brought on the same cause of action.

**Writ:** An order of court commanding performance of a specified act or granting authority to have the act done; for example, see “Certiorari,” Habeas Corpus,” Mandamus,” Subpoena,” Summons,” and “Warrant.”

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## **Society of Professional Journalists Code of Ethics**

### **Preamble**

Members of the Society of Professional Journalists believe that public enlightenment is the forerunner of justice and the foundation of democracy. The duty of the journalist is to further those ends by seeking truth and providing a fair and comprehensive account of events and issues.

Conscientious journalists from all media and specialties strive to serve the public with thoroughness and honesty. Professional integrity is the cornerstone of a journalist's credibility. Members of the Society share a dedication to ethical behavior and adopt this code to declare the Society's principles and standards of practice.

### **Seek Truth and Report It**

Journalists should be honest, fair and courageous in gathering, reporting and interpreting information.

#### **Journalists should:**

Test the accuracy of information from all sources and exercise care to avoid inadvertent error. Deliberate distortion is never permissible.

Diligently seek out subjects of news stories to give them the opportunity to respond to allegations of wrongdoing.

Identify sources whenever feasible. The public is entitled to as much information as possible on sources' reliability.

Always question sources' motives before promising anonymity. Clarify conditions attached to any promise made in exchange for information. Keep promises.

Make certain that headlines, news teases and promotional material, photos, video, audio, graphics, sound bites and quotations do not misrepresent. They should not oversimplify or highlight incidents out of context.

Never distort the content of news photos or video. Image enhancement for technical clarity is always permissible. Label montages and photo illustrations.

Avoid misleading re-enactments or staged news events. If re-enactment is necessary to tell a story, label it.

Avoid undercover or other surreptitious methods of gathering information except when traditional open methods will not yield information vital to the public. Use of such methods should be explained as part of the story.

Never plagiarize.

Tell the story of the diversity and magnitude of the human experience boldly, even when it is unpopular to do so.

Examine their own cultural values and avoid imposing those values on others.

Avoid stereotyping by race, gender, age, religion, ethnicity, geography, sexual orientation, disability, physical appearance or social status.

Support the open exchange of views, even views they find repugnant.

Give voice to the voiceless; official and unofficial sources of information can be equally valid.

Distinguish between advocacy and news reporting. Analysis and commentary should be labeled and not misrepresent fact or context.

Distinguish news from advertising and shun hybrids that blur the lines between the two.

Recognize a special obligation to ensure that the public's business is conducted in the open and that government records are open to inspection.

Minimize Harm

Ethical journalists treat sources, subjects and colleagues as human beings deserving of respect.

**Journalists should:**

Show compassion for those who may be affected adversely by news coverage. Use special sensitivity when dealing with children and inexperienced sources or subjects.

Be sensitive when seeking or using interviews or photographs of those affected by tragedy or grief.

Recognize that gathering and reporting information may cause harm or discomfort.

Pursuit of the news is not a license for arrogance.

Recognize that private people have a greater right to control information about themselves than do public officials and others who seek power, influence or attention.

Only an overriding public need can justify intrusion into anyone's privacy.

Show good taste. Avoid pandering to lurid curiosity.

Be cautious about identifying juvenile suspects or victims of sex crimes.

Be judicious about naming criminal suspects before the formal filing of charges.

Balance a criminal suspect's fair trial rights with the public's right to be informed.

Act Independently

Journalists should be free of obligation to any interest other than the public's right to know.

**Journalists should:**

Avoid conflicts of interest, real or perceived.

Remain free of associations and activities that may compromise integrity or damage credibility.

Refuse gifts, favors, fees, free travel and special treatment, and shun secondary employment, political involvement, public office and service in community organizations if they compromise journalistic integrity.

Disclose unavoidable conflicts.

Be vigilant and courageous about holding those with power accountable.

Deny favored treatment to advertisers and special interests and resist their pressure to influence news coverage.

Be wary of sources offering information for favors or money; avoid bidding for news.

Be Accountable

Journalists are accountable to their readers, listeners, viewers and each other.

**Journalists should:**

Clarify and explain news coverage and invite dialogue with the public over journalistic conduct.

Encourage the public to voice grievances against the news media.

Admit mistakes and correct them promptly.

Expose unethical practices of journalists and the news media.

Abide by the same high standards to which they hold others.







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