

Circuit Court for Anne Arundel County  
Case No. C-02-CV-19-000195

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 600

September Term, 2019

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ANDREW N. UCHEOMUMU

v.

ATTORNEY GRIEVANCE COMMISSION  
OF MARYLAND

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Nazarian,  
Beachley,  
Shaw Geter,

JJ.

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Opinion by Nazarian, J.

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Filed: June 15, 2020

\* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The Court of Appeals opened its opinion disbaring Andrew Ucheomumu by describing him as “a lawyer who, among other things, caused an appeal in his client’s case to be dismissed and lied to his client, Bar Counsel, and the Court of Special Appeals in an attempt to deflect the blame for the appeal’s dismissal.” *Attorney Grievance Commission of Maryland v. Ucheomumu*, 462 Md. 280, 290 (2018). Three days after this opinion issued, Mr. Ucheomumu sent a Maryland Public Information Act request to the Attorney Grievance Commission seeking documents he had sought repeatedly (and, obviously, unsuccessfully) during the discipline proceedings. The Commission responded that the records he sought weren’t subject to disclosure under the Act or the Maryland Rules and denied his request.

Mr. Ucheomumu challenged the Commission’s decision in the Circuit Court of Anne Arundel County. After some motions practice and follow-up motions practice that we’ll detail below, the court granted summary judgment in favor of the Commission. Mr. Ucheomumu appeals and we affirm.

## I. BACKGROUND

Because this appeal is about Mr. Ucheomumu’s efforts to obtain records underlying his (second)<sup>1</sup> attorney discipline proceeding, we need not recount the allegations or the Court of Appeals’s reasons for disbaring him. For present purposes, what matters is that a

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<sup>1</sup> This was not his first disciplinary proceeding. He previously had been suspended indefinitely with leave to reapply. *See Attorney Grievance Commission of Maryland v. Ucheomumu*, 450 Md. 675 (2016). He had not yet been suspended at the time of the representation at issue in this complaint.

former client filed a complaint with the Commission about his representation of her and that in the course of the Commission’s investigation, the client provided the Commission with documents that included emails between the client and the lawyer she hired after she discharged Mr. Ucheomumu. These documents, which are part of the Commission’s investigatory file, are the only documents at issue in this appeal.

During the disciplinary proceedings, Mr. Ucheomumu sought multiple times to obtain these documents in discovery and compel them during the hearing. We won’t catalogue all of his efforts, but they all failed for the same reason: as the Circuit Court for Prince George’s County found after reviewing them *in camera*,<sup>2</sup> the documents were not discoverable—they were privileged communications between the client and her new counsel, and they were never offered or admitted as evidence against him in the grievance case.

Three days after the Court of Appeals issued its decision disbaring him, Mr. Ucheomumu sent a Maryland Public Information Act request to the Commission. The request sought “[a]ny and all communications between [the client] and any employee or former employee of your agency including, but not limited to, a copy of the email sent by [the client] to former Bar Counsel Glen M. Grossman on June 28, 2016 at 8:13am in electronic form together with all 27 of the email’s attachments.” The Commission responded by letter dated December 17, 2018 and, after reciting the legal backdrop, denied

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<sup>2</sup> The Court of Appeals overruled his exception to the circuit court’s finding on this point. *See Ucheomumu*, 462 Md. at 299.

the request on the grounds that “[t]he documents you seek were not admitted into evidence at the hearing on the Petition for Disciplinary or Remedial Action in the above captioned matter,” and that his “request for those same documents under the [Act] does not make [them] subject to disclosure.”

Mr. Ucheomumu filed his complaint in this case on January 23, 2019. The complaint alleges that the Commission violated the Public Information Act when it denied him access to the records he sought, and he sought declaratory and injunctive relief, damages, costs, and attorneys’ fees. The Commission responded with a motion to dismiss or for summary judgment in which it argued that the circuit court lacked subject matter jurisdiction to consider the claim. Mr. Ucheomumu opposed the Commission’s motion and countered with a summary judgment motion of his own.

The circuit court held a hearing on the dueling motions on June 3, 2019. At the conclusion of the hearing, the court ruled from the bench that it had subject matter jurisdiction and, on the merits, found that the documents were protected from public inspection under Maryland Rule 19-707(c). For that reason, the court granted the Commission’s motion to dismiss and denied Mr. Ucheomumu’s motion for summary judgment. Mr. Ucheomumu filed a notice of appeal on June 5, 2019.

On June 11, 2019, the Commission filed a motion to alter or amend the judgment. The motion asked the court to clarify that it had not granted the motion to dismiss for lack of jurisdiction, but instead had granted summary judgment in the Commission’s favor. Mr. Ucheomumu opposed the motion, and the court granted it, and entered an order stating

that the Commission’s motion to dismiss was denied, Mr. Ucheomumu’s motion for summary judgment was denied, and that summary judgment was entered in favor of the Commission. Because the Commission’s motion to alter or amend had been filed within ten days of the original judgment, Mr. Ucheomumu’s notice of appeal carried forward to include both orders. *See* Md. Rule 2-534.

## II. DISCUSSION

This case turns on the authority governing Mr. Ucheomumu’s right to request, and the Commission’s obligation to produce, documents in its possession, custody, and control, which these indisputably are. Mr. Ucheomumu views this as a garden variety Public Information Act case and the documents as government agency records subject to the Act’s presumption of production.<sup>3</sup> The Commission responds that this is not really a Public Information Act case, that access to records of the Commission, a “special judicial unit” within the Maryland Judiciary, is determined by the Access Rules adopted by the Court of Appeals, and that under the governing Rule he is not entitled to these documents. The Commission argues as well that Mr. Ucheomumu is barred from relitigating access to these documents because he tried to get them during his disciplinary proceedings and lost. The

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<sup>3</sup> He listed the Questions Presented in his brief as follows:

1. Did the lower court misapply the law, err and improperly raised Affirmative Defense that was waived by the Appellee in order to aid the Appellee?
2. Did the lower court err in holding that Rule 19-707(c)(1) limits production of documents pursuant to MPIA to only documents admitted at the trial?

issues underlying this summary judgment decision are purely legal, Md. Rule 2-501, we review them *de novo*, see *ACLU v. Leopold*, 223 Md. App. 97, 110 (citing *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434, 443 (2002)), and the Commission has them right.

We start with the Public Information Act itself. Although the Act opens by recognizing that “[a]ll persons are entitled to have access to information about the affairs of government and the official acts of public officials and employees,” Md. Code (2014, 2019 Repl. Vol.), § 4-103(a) of the General Provision Article (“GP”), it requires custodians of records to “deny inspection of a public record or any part of a public record” if allowing inspection would be contrary to “the rules adopted by the Court of Appeals.” GP § 4-301(a)(2)(iii). Because the Commission is one of the three “special judicial units” within the Maryland Judiciary, Md. Rule 16-902(*l*),<sup>4</sup> records in its possession, custody, or control are considered “judicial records.” Md. Rule 16-902(h)(5).<sup>5</sup> Access to Special Judicial Unit records generally is governed by Rule 16-905(b), which, for records held by the Commission, in turn points to the confidentiality provisions of Rule 19-707.

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<sup>4</sup> In addition to the Commission and Bar Counsel, the other Special Judicial Units are the State Board of Law Examiners (which includes the Accommodations Review Committee and the Character and Fitness Committees) and the Commission on Judicial Disabilities (which includes the Judicial Inquiry Board and Investigative Counsel). Md. Rule 16-902(*l*).

<sup>5</sup> On February 21, 2020, the Standing Committee on Rules of Practice and Procedure submitted its 2020 Report to the Court of Appeals, and recommended that the Court rescind Title 16, Chapter 900 of the Maryland Rules and replace it with a revised Title (and approve conforming changes to a number of other Rules). The Comment period on these proposed revisions expired on March 30, 2020, but the Court hasn’t yet scheduled an open meeting to consider them, and we analyze Mr. Ucheomumu’s claims entirely under the Rules in their current form.

Mr. Ucheomumu’s right to obtain these records from the Commission, then, depends on whether Rule 19-707 allows the Commission to produce them to him.

It doesn’t. Because Mr. Ucheomumu’s case proceeded to a public proceeding, access to records relating to this case is governed by Rule 19-707(c). Once the Commission takes a complaint public, a broader range of records becomes public and is open to inspection: “a Petition for Disciplinary or Remedial Action, all proceedings on that petition, and all documents or other items admitted into evidence at any hearing on the petition.” Rule 19-707(c)(1). The scope of production corresponds to the scope of the proceeding—the Rule does not open the Commission’s investigative files to inspection, or anything else that wasn’t admitted into evidence. And this makes sense considering that these Rules (and the Public Information Act as well) are designed to afford access to the broader public, not so much the parties to the proceeding itself. It is one thing for the press, for example, or other interested parties to seek access through these channels to government documents they otherwise would have no way to get. But Mr. Ucheomumu stands on an altogether different posture—he was the subject of this proceeding and had the opportunities available to him as a litigant, both before the Commission and in the courts, to obtain those documents. He was denied access in those fora, and for appropriate reasons that he doesn’t (and can’t) challenge anew here. And the fact that the documents he seeks now weren’t admitted in evidence in his discipline case means that they’re protected from disclosure, and that ends the inquiry.

The Commission points to the prior denials and argues that Mr. Ucheomumu is

attempting improperly to relitigate the discovery decisions of the Commission and the circuit court that heard his discipline case, and therefore that his access claim should be barred by collateral estoppel. We disagree. It's true that he tried and failed, repeatedly, to obtain these documents during those earlier proceedings, and that he's trying yet again here to obtain those same documents. But he is trying a new way this time—the legal (really procedural) issues he litigated previously are not identical to the issue presented here, the first element of the classic collateral estoppel analysis. *See Shader v. Hampton Improvement Ass'n, Inc.*, 217 Md. App. 581, 605 (2014). He was denied access to the documents previously because they were privileged and, the circuit court decided, that privilege had not been waived by the client's production of the documents to the Commission in connection with the Commission's investigation. His complaint here invokes a different potential right of access, a set of Rules that relate specifically to public access to judicial records, not the Rules governing discovery and litigation in proceedings before the Commission. *Compare* Md. Rule 19-727 (ordinary civil discovery rules apply to discovery in attorney grievance proceedings unless a court orders otherwise). If anything, he had a stronger claim to the documents as a party to his discipline case than he had as a member of the general public seeking judicial records from the Commission's investigative file underlying that case. But that difference proves the point.

And in the end, the result is the same. Mr. Ucheomumu is trying to get internal investigative documents that parties normally, and for good reason, aren't entitled to have. The Commission wasn't compelled to produce them during the discipline case, and it never

admitted them into evidence as part of its case against Mr. Ucheomumu. As such, neither the Public Information Act nor the Maryland Rules compels the Commission to produce them now, and the circuit court entered summary judgment in the Commission's favor correctly.

**JUDGMENT OF THE CIRCUIT COURT  
FOR ANNE ARUNDEL COUNTY  
AFFIRMED. APPELLANT TO PAY  
COSTS.**