

May 26, 2009

The Honorable Robert M. Bell,
Chief Judge
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.
The Honorable Joseph F. Murphy, Jr.
The Honorable Sally D. Adkins
The Honorable Mary Ellen Barbera,
Judges
The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its One Hundred Sixty-First Report, and recommends that the Court adopt, on an emergency basis, the amendments to existing Rules transmitted with this Report.

The proposed Rules changes in this Report fall into three categories:

Category 1 consists of amendments to Rules 14-102, 14-202 (i), 14-209, and 14-210 (b). Those amendments are necessary to conform those Rules to legislation enacted in the 2009 session of the General Assembly that is either now in effect, having been enacted as emergency bills, or that will take effect on June 1, 2009.

(1) The amendment to Rule 14-102 conforms the Rule to the requirements of Chapter 615, which enacted a new §7-105.9 to the Real Property Article. The amendment requires the purchaser of residential property at a sale subject to the Title 14 Rules, after obtaining a judgment awarding possession of the property but before executing on that judgment, to send a notice in the

form required by the statute to "All Occupants" at the address of the property and to file an affidavit of compliance. The notice is intended to alert the occupants of the prospect of eviction.

(2) The amendment to Rule 14-202 (i) conforms the definition of "residential property" to the change made to that definition by Chapter 692. It adds the requirement that the dwelling units "are designed principally and are intended for human habitation."

(3) Rule 14-209 is proposed to be amended in two respects. Chapter 615 altered the form of notice required to be sent to "All Occupants" of the filing of a foreclosure action against residential property. The proposed amendment to section (c) conforms the Rule to the new requirement. Chapter 149 authorizes the counties and municipal corporations to enact local laws requiring that they be given notice of foreclosure actions against residential property. Proposed new section (d) requires compliance with any such requirement that may be imposed by a local government pursuant to that statutory authorization. The proposed amendment to section (e) requires the foreclosing party to file an affidavit of compliance.

(4) The proposed amendment to Rule 14-210 (b) conforms the Rule to the requirement of Chapter 615 that "All Occupants" be given notice of the time and place of the proposed sale of residential property.

Category 2 consists of essentially "housekeeping" amendments to Rules 2-501, 2-613, 4-251, 4-252, 4-342, 4-349, 4-641, 4-631, 4-643, 16-1006, 5-804, and 16-723. The amendments either add or correct cross-references.

Category 3 consists of a proposed amendment to Rule 16-1008 to reflect the change in the name of the Court Information Office to the Office of Communications and Public Affairs.

For the further guidance of the Court and the public, following each proposed amendments to each Rule is a Reporter's Note describing in further detail the reasons for the proposal and any changes that would be effected in current law or practice. We caution that the Reporter's Notes are not part of the Rules, have not been debated or approved by the Committee, and are not to be regarded as any kind of official comment or

interpretation. They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,

Alan M. Wilner
Chair

Linda M. Schuett
Vice Chair

AMW/LMS:cdc

MARYLAND RULES OF PROCEDURE
TITLE 14 - SALES OF PROPERTY
CHAPTER 100 - GENERAL PROVISIONS

AMEND Rule 14-102 to add a certain notice to "All Occupants" and affidavit requirement pertaining to a judgment awarding possession of residential property, as follows:

Rule 14-102. JUDGMENT AWARDING POSSESSION

(a) Motion

If the purchaser of an interest in real property at a sale conducted pursuant to the Rules in this Title is entitled to possession and the person in actual possession fails or refuses to deliver possession, the purchaser may file a motion for judgment awarding possession of the property. If the purchaser has not paid the full purchase price and received a deed to the property, the motion shall state the legal basis for the purchaser's claim of entitlement to possession. Except as otherwise provided in this Rule, Rule 2-311 applies.

Committee note: Unless the purchaser is a foreclosing lender or there is waste or other circumstance that requires prompt remediation, the purchaser ordinarily is not entitled to possession until the sale has been ratified and the purchaser has paid the full purchase price and received a deed to the property. See *Legacy Funding v. Cohn*, 396 Md. 511 (2007) and *Empire v. Hardy*, 386 Md. 628 (2005).

(b) Affidavit and Notice

The motion shall be accompanied by:

- (1) an affidavit that states:

(A) the name of the person in actual possession, if known;

(B) whether the person in actual possession was a party to the action that resulted in the sale or to the instrument that authorized the sale;

(C) if the purchaser paid the full purchase price and received a deed to the property, the date the payment was made and the deed was received; and

(D) if the purchaser has not paid the full purchase price or has not received a deed to the property, the factual basis for the purchaser's claim of entitlement to possession; and

(2) if the person in actual possession was not a party to the action or instrument, a notice advising the person that any response to the motion must be filed within 30 days after being served or within any applicable longer time prescribed by Rule 2-321 (b) for answering a complaint. A copy of Rule 2-321 (b) shall be attached to the notice.

(c) No Show Cause Order, Summons, or Other Process

The court shall not issue a show cause order, summons, or other process by reason of the filing of a motion pursuant to this Rule.

(d) Service and Response

(1) On Whom

The motion and all accompanying documents shall be served on the person in actual possession and on any other person affected by the motion.

(2) Party to Action or Instrument

(A) If the person to be served was a party to the action that resulted in the sale or to the instrument that authorized the sale, the motion shall be served in accordance with Rule 1-321.

(B) Any response shall be filed within the time set forth in Rule 2-311.

(3) Not a Party to Action or Instrument

(A) If the person to be served was not a party to the action that resulted in the sale or a party to the instrument that authorized the sale, the motion shall be served:

(i) by personal delivery to the person or to a resident of suitable age and discretion at the dwelling house or usual place of abode of the person, or

(ii) if on at least two different days a good faith effort was made to serve the person under subsection (d)(3)(A)(i) of this Rule but the service was not successful, by (a) mailing a copy of the motion by certified and first-class mail to the person at the address of the property and (b) posting in a conspicuous place on the property a copy of the motion, with the date of posting conspicuously written on the copy.

(B) Any response shall be filed within the time prescribed by sections (a) and (b) of Rule 2-321 for answering a complaint.

(4) Judgment of Possession

If a timely response to the motion is not filed, the court may enter a judgment awarding possession.

(e) Residential Property; Notice and Affidavit

After entry of a judgment awarding possession of residential property as defined in Rule 14-202 (i), but before executing on the judgment, the purchaser shall:

(1) send by first-class mail the notice required by Code, Real Property Article, §7-105.9 (d) addressed to "All Occupants" at the address of the property; and

(2) file an affidavit that the notice was sent.

Cross reference: Rule 2-647 (Enforcement of Judgment Awarding Possession).

Source: This Rule is derived in part from the 2008 version of former Rule 14-102 and is in part new.

REPORTER'S NOTE

Proposed new section (e) conforms Rule 14-102 to new requirements of Code, Real Property Article, §7-105.9 (d), added by Chapter 615, Laws of 2009 (HB 776).

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-202 to revise the definition of "residential property," as follows:

Rule 14-202. DEFINITIONS

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

. . .

(i) Residential Property

"Residential property" means real property with four or fewer single family dwelling units that are designed principally and are intended for human habitation. ~~and~~ It includes an individual residential condominium unit within a larger structure or complex, regardless of the total number of individual units in that structure or complex. "Residential property" does not include a time share unit.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 14-202 (i) adds to the definition of "residential property" the requirement that the units be designed principally and intended for human habitation. This requirement is added to Code, Real Property Article, §7-105.1 by Chapter 692, Laws of 2009 (SB 807).

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-209 to delete the form of notice to an occupant of residential property, to add a certain notice requirement to "All Occupants," to add a new section (d) pertaining to certain notice to a county or municipal corporation, to add a reference to that notice to subsection (e) (1), to add a new subsection (e) (5) pertaining to the contents of an affidavit of that notice, and to make stylistic changes, as follows:

Rule 14-209. SERVICE IN ACTIONS TO FORECLOSE ON RESIDENTIAL PROPERTY; NOTICE

(a) Service on Borrower and Record Owner by Personal Delivery

When an action to foreclose a lien on residential property is filed, the plaintiff shall serve on the borrower and the record owner a copy of all papers filed to commence the action. Service shall be accomplished by personal delivery of the papers or by leaving the papers with a resident of suitable age and discretion at the borrower's or record owner's dwelling house or usual place of abode.

(b) Service on Borrower and Record Owner by Mailing and Posting

If on at least two different days a good faith effort was

made to serve a borrower or record owner under section (a) of this Rule and service was not successful, the plaintiff shall effect service by (1) mailing, by certified and first-class mail, a copy of all papers filed to commence the action, to the last known address of each borrower and record owner and, if the person's last known address is not the address of the residential property, also to that person at the address of the property; and (2) posting a copy of the papers in a conspicuous place on the residential property. Service is complete when the property has been posted and the mailings have been made in accordance with this section.

(c) Notice to All Occupants by First-Class Mail

When an action to foreclose on residential property is filed, the plaintiff shall send by first-class mail addressed to ~~"Occupant"~~ "All Occupants" at the address of the property ~~a the~~ notice ~~in substantially the following form:~~ required by Code, Real Property Article, §7-105.9 (b).

NOTICE

~~An action to foreclose a Mortgage Deed of Trust Land Installment Contract Contract or Statutory Lien on the property located at (Insert Address) has been filed in the Circuit Court for (County).~~

~~A foreclosure sale of the property may occur at any time after 45 days from the date of this notice. You may want to consult with an attorney because you could be evicted, even if you are a tenant and have paid the rent due and complied with~~

~~your lease. For further information, you may review the file in the office of the Clerk of the Circuit Court.~~

(d) If Notice Required by Local Law

When an action to foreclose on residential property is filed with respect to a property located within a county or a municipal corporation that, under the authority of Code, Real Property Article, §14-126 (c), has enacted a local law requiring notice of the commencement of a foreclosure action, the plaintiff shall give the notice in the form and manner required by the local law. If the local law does not provide for the manner of giving notice, the notice shall be sent by first-class mail.

~~(d)~~ (e) Affidavit of Service, and Mailing, and Notice

(1) Time for Filing

An affidavit of service under section (a) or (b) of this Rule, ~~and~~ mailing under section (c) of this Rule, and notice under section (d) of this Rule shall be filed promptly and in any event before the date of the sale.

(2) Service by an Individual Other than a Sheriff

In addition to other requirements contained in this section, if service is made by an individual other than a sheriff, the affidavit shall include the name, address, and telephone number of the affiant and a statement that the affiant is 18 years of age or older.

(3) Contents of Affidavit of Service by Personal Delivery

An affidavit of service by personal delivery shall set forth the name of the person served and the date and particular

place of service. If service was effected on a person other than the borrower or record owner, the affidavit also shall include a description of the individual served (including the individual's name and address, if known) and the facts upon which the individual making service concluded that the individual served is of suitable age and discretion.

(4) Contents of Affidavit of Service by Mailing and Posting

An affidavit of service by mailing and posting shall (A) describe with particularity the good faith efforts to serve the borrower or record owner by personal delivery; (B) state the date on which the required papers were mailed by certified and first-class mail and the name and address of the addressee; and (C) include the date of the posting and a description of the location of the posting on the property.

(5) Contents of Affidavit of Notice Required by Local Law

An affidavit of the sending of a notice required by local law shall (A) state (i) the date the notice was given, (ii) the name and business address of the person to whom the notice was given, (iii) the manner of delivery of the notice, and (iv) a reference to the specific local law of the county or municipal corporation, or both, requiring the notice and (B) be accompanied by a copy of the notice that was given.

Cross reference: See the Servicemembers Civil Relief Act, 50 U.S.C. app. §§501 *et seq.*

Source: This Rule is derived in part from the 2008 version of former Rule 14-204 (b) and is in part new.

REPORTER'S NOTE

The proposed amendments to section (c) of Rule 14-209 conform the section to the requirements of Code, Real Property Article, §7-105.9 (b), added by Chapter 615, Laws of 2009 (HB 776).

New section (d) adds to the Rule the notice to a local government that may be required when an action to foreclose on residential property is filed. This notice is in addition to other notice requirements that are set forth in the Rule. The authority of local governments to enact such a law is granted by Chapter 149, Laws of 2009, (HB 640).

Existing section (d) is relettered (e). Subsection (e)(1) is amended to require an affidavit as to the notice provided under section (d). New subsection (e)(5) specifies the contents of the affidavit.

MARYLAND RULES OF PROCEDURE

TITLE 14 - SALES OF PROPERTY

CHAPTER 200 - FORECLOSURE OF LIEN INSTRUMENTS

AMEND Rule 14-210 to add a certain notice requirement to "All Occupants," as follows:

Rule 14-210. NOTICE PRIOR TO SALE

. . . .

(b) By Certified and First-Class Mail

Before selling the property subject to the lien, the individual authorized to make the sale shall also send notice of the time, place, and terms of sale (1) by certified mail and by first-class mail to ~~(1)~~ (A) the borrower, ~~(2)~~ (B) the record owner of the property, and ~~(3)~~ (C) the holder of any subordinate interest in the property subject to the lien, ~~and~~ ~~(4)~~ (2) ~~"Occupant"~~ by first-class mail to "All Occupants" at the address of the property. The notice to "All occupants" shall be in the form and contain the information required by Code, Real Property Article, §7-105.9 (c). Except for the notice to ~~"Occupant,"~~ "All Occupants," the mailings shall be sent to the last known address of all such persons, including to the last address reasonably ascertainable from a document recorded, indexed, and available for public inspection 30 days before the date of the sale. The mailings shall be sent not more than 30 days and not less than

ten days before the date of the sale.

. . .

REPORTER'S NOTE

The proposed amendment to section (b) of Rule 14-210 conforms the section to the requirements of Code, Real Property Article, §7-105.9 (c), added by Chapter 615, Laws of 2009 (HB 776).

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 500 - TRIAL

AMEND Rule 2-501 to correct a reference to federal law, as follows:

Rule 2-501. MOTION FOR SUMMARY JUDGMENT

. . .

(f) Entry of Judgment

. . .

Cross reference: ~~Section 200 of the Soldiers' and Sailors' Relief Act of 1940~~ Section 521 of the Servicemembers Civil Relief Act, 50 U.S.C. Appendix, § 521, app. §§501 et seq., imposes specific requirements that must be fulfilled before a default judgment may be entered.

. . .

REPORTER'S NOTE

Cross references in Rules 2-501 and 2-613 are proposed to be amended to replace references to the Soldiers' and Sailors' Civil Relief Act with references to the Servicemembers Civil Relief Act, which replaced the former law.

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

AMEND Rule 2-613 to correct a reference to federal law, as follows:

Rule 2-613. DEFAULT JUDGMENT

. . .

(g) Finality

. . .

Cross reference: ~~Section 200 of the Soldiers' and Sailors' Relief Act of 1940, Section 521 of the Servicemembers Civil Relief Act, 50 U.S.C. Appendix, §521, app. §§501 et seq.~~, imposes specific requirements that must be fulfilled before a default judgment may be entered.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 2-501.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-251 (c) (2) to correct a statutory reference, as follows:

Rule 4-251. MOTIONS IN DISTRICT COURT

(c) Effect of Determination Before Trial

. . . .

(2) Transfer of Jurisdiction to Juvenile Court

If the court grants a motion to transfer jurisdiction of an action to the juvenile court, the court shall enter a written order waiving its jurisdiction and ordering that the defendant be subject to the jurisdiction and procedures of the juvenile court. In its order the court shall (A) release or continue the pretrial release of the defendant, subject to appropriate conditions reasonably necessary to ensure the appearance of the defendant in the juvenile court or (B) place the defendant in detention or shelter care pursuant to Code, Courts Article, ~~§3-815~~ §3-8A-15. Until a juvenile petition is filed, the charging document shall be considered a juvenile petition for the purpose of imposition and enforcement of conditions of release or placement of the defendant in detention or shelter care.

. . . .

REPORTER'S NOTE

The proposed amendment to Rules 4-251 and 4-252 corrects a reference to Code, Courts Article, §3-815, the pertinent provisions of which are now in Code, Courts Article, §3-8A-15.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-252 (h) (3) to correct a statutory reference, as follows:

Rule 4-252. MOTIONS IN CIRCUIT COURT

. . .

(h) Effect of Determination of Certain Motions

. . .

(3) Transfer of Jurisdiction to Juvenile Court

If the court grants a motion to transfer jurisdiction of an action to the juvenile court, the court shall enter a written order waiving its jurisdiction and ordering that the defendant be subject to the jurisdiction and procedures of the juvenile court. In its order the court shall (A) release or continue the pretrial release of the defendant, subject to appropriate conditions reasonably necessary to ensure the appearance of the defendant in the juvenile court or (B) place the defendant in detention or shelter care pursuant to Code, Courts Article, ~~§3-815~~ §3-8A-15. Until a juvenile petition is filed, the charging document shall have the effect of a juvenile petition for the purpose of imposition and enforcement of conditions of release or placement of the defendant in detention or shelter care.

. . .

REPORTER'S NOTE

See the Reporter's note to Rule 4-251.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 by adding a statutory reference to section (1), as follows:

Rule 4-342. SENTENCING - PROCEDURE IN NON-CAPITAL CASES

. . .

(1) Recordation of Restitution

(1) Circuit Court

Recordation of a judgment of restitution in the circuit court is governed by Code, Criminal Procedure Article, §§11-608 and 11-609 and Rule 2-601.

(2) District Court

Upon the entry of a judgment of restitution in the District Court, the Clerk of the Court shall send the written notice required under Code, Criminal Procedure Article, §11-610 (e). Recordation of a judgment of restitution in the District Court is governed by Code, Criminal Procedure Article, §§11-610 and 11-612 and Rule 3-621.

. . .

REPORTER'S NOTE

Code, Criminal Procedure Article, §§11-608 and 11-609 pertain to recordation of judgments of restitution in the circuit court. The proposed amendment to Rule 4-342 (1) adds a reference to §11-609.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-349 to correct a reference to a section of Rule 4-216, as follows:

Rule 4-349. RELEASE AFTER CONVICTION

. . .

(b) Factors Relevant to Conditions of Release

In determining whether a defendant should be released under this Rule, the court may consider the factors set forth in Rule 4-216 ~~(e)~~ (d) and, in addition, whether any appellate review sought appears to be frivolous or taken for delay. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

. . .

REPORTER'S NOTE

The proposed "housekeeping" amendment to Rule 4-349 corrects a reference to section (e) of Rule 4-216, which should be a reference to section (d) of that Rule.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 600 - CRIMINAL INVESTIGATIONS AND
MISCELLANEOUS PROVISIONS

AMEND Rule 4-641 to add a reference to "the State Prosecutor" and to correct a statutory reference, as follows:

Rule 4-641. CRIMINAL INVESTIGATION - APPLICABILITY

Rules 4-641 through 4-644 apply to circuit court procedures relating to criminal investigations. "Criminal investigation" means inquiries into alleged criminal activities conducted by (a) a grand jury, or by (b) a State's Attorney pursuant to Article 10A, §39A Code, Criminal Procedure Article, §15-108, or (c) the State Prosecutor pursuant to Code, Criminal Procedure Article, §14-110. Title 5 of these rules does not apply to circuit court procedures relating to criminal investigations.

Source: This Rule is new.

REPORTER'S NOTE

The proposed amendment to Rule 4-641 adds a reference to a State Prosecutor conducting a criminal investigation pursuant to Code, Criminal Procedure Article, §14-110. Also, statutory references in this Rule and in Rules 4-631, 4-643, and 16-1006 are updated.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 600 - CRIMINAL INVESTIGATIONS AND
MISCELLANEOUS PROVISIONS

AMEND Rule 4-631 to update a statutory reference, as follows:

Rule 4-631. COMPELLING TESTIMONY OR DOCUMENTS ON THE CONDITION OF IMMUNITY

(a) Requested by State

In any proceeding under this Title, before a grand jury, or pursuant to Code, ~~Article 10, § 39A~~ Criminal Procedure Article, §14-110 or §15-108, if a witness lawfully refuses to answer or to provide other information on the basis of the privilege against self incrimination, the court, when authorized by law, shall compel the witness to answer or otherwise provide information if:

(1) The State's Attorney requests in writing or on the record that the court order the witness to answer or otherwise provide information, notwithstanding the witness' claim of privilege; and

(2) The court informs the witness of the scope of the immunity the witness will receive as provided by the appropriate statute.

(b) Order of Court

The court shall enter its order compelling testimony in

writing or on the record.

Cross reference: For examples of statutes that allow the court to issue an order compelling a witness to testify or provide other information on condition of immunity, see Code, Courts Article, §9-123 and Code, Criminal Law Article, §§9-201 and 9-204.

Source: This Rule is derived from former Rule 785 and M.D.R. 785.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 4-641.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 600 - CRIMINAL INVESTIGATIONS AND
MISCELLANEOUS PROVISIONS

AMEND Rule 4-643 to update a statutory reference, as follows:

Rule 4-643. SUBPOENA

(a) To Appear Before the Grand Jury

Any subpoena to appear before the grand jury shall be issued: (1) by the clerk of a circuit court on request of the State's Attorney or the grand jury; or (2) by the grand jury through its foreperson or deputy foreperson. The subpoena shall contain the information required by Rule 4-266 (a).

(b) Enforcement - Protective Order

A subpoena to appear before the grand jury or pursuant to ~~Article 10, §39A~~ Code, Criminal Procedure Article, §14-110 or §15-108 is enforceable only in circuit court in the manner set forth in Rule 4-266 (d) and the witness or a person asserting a privilege to prevent disclosure by the witness may apply for a protective order pursuant to Rule 4-266 (c).

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 4-641.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1006 (e) to update a statutory reference and add a reference to the State Prosecutor, as follows:

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

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

. . . .

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

. . . .

(6) A case record pertaining to a criminal investigation by (A) a grand jury, or by (B) a State's Attorney pursuant to Code, Article 10A, §39A Criminal Procedure Article, 15-108, or (C) the State Prosecutor pursuant to Code, Criminal Procedure Article, §14-110.

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

. . . .

REPORTER'S NOTE

See the Reporter's note to the proposed amendment to Rule 4-641.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 800 - HEARSAY

AMEND Rule 5-804 to correct a citation in a certain
Committee note, as follows:

Rule 5-804. HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE

. . .

Committee note: Subsection (b)(5) of this Rule does not affect the law of spoliation, "guilty knowledge," or unexplained failure to produce a witness to whom one has superior access. See *Washington v. State*, 293 Md. 465, 468 n. 1 (1982); *Breeding v. State*, 220 Md. 193, 197 (1959); *Shpak v. Schertle*, 97 Md. App. 207, 222-27 (1993); *Meyer v. McDonnell*, 40 Md. App. 524, 533, (1978), rev'd on other grounds, 301 Md. 426 (1984); *Larsen v. Romeo*, 254 Md. 220, 228 (1969); *Hoverter v. Director of Patuxent Inst.*, 231 Md. 608, 609 (1963); and *DiLeo v. Nugent*, 88 Md. App. 59, 69-72 (1991). The hearsay exception set forth in subsection (b)(5)(B) is not available in criminal causes other than those listed in Code, ~~Criminal Procedure~~ Courts Article, §10-901 (a).

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REPORTER'S NOTE

The proposed amendment to Rule 5-804 corrects a reference to "Code, Criminal Procedure Article," to read "Code, Courts Article."

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 700 - DISCIPLINE AND INACTIVE STATUS OF ATTORNEYS

AMEND Rule 16-723 to change the words "Bar Counsel" to "the Commission," as follows:

Rule 16-723. CONFIDENTIALITY

. . .

(b) Other Confidential Matters

Except as otherwise provided in these Rules, the following records and proceedings are confidential and not open to public inspection and their contents may not be revealed by the Commission, the staff of the Commission, Bar Counsel, the staff and investigators of the Office of Bar Counsel, members of the Peer Review Committee, or any attorney involved in the proceeding:

(1) the records of an investigation by Bar Counsel, including the existence and content of any complaint;

(2) the records and proceedings of a Peer Review Panel;

(3) information that is the subject of a protective order;

(4) the contents of a warning issued by ~~Bar Counsel~~ the Commission pursuant to Rule 16-735 (b), but the fact that a warning was issued shall be disclosed to the complainant;

(5) the contents of a prior private reprimand or Bar Counsel reprimand pursuant to the Attorney Disciplinary Rules in effect

prior to July 1, 2001, but the fact that a private or Bar Counsel reprimand was issued and the facts underlying the reprimand may be disclosed to a peer review panel in a proceeding against the attorney alleging similar misconduct;

Committee note: The peer review panel is not required to find that information disclosed under subsection (b) (5) is relevant under Rule 16-743 (c) (1).

(6) the contents of a Conditional Diversion Agreement entered into pursuant to Rule 16-736, but the fact that an attorney has signed such an agreement shall be public;

(7) the records and proceedings of the Commission on matters that are confidential under this Rule;

(8) a Petition for Disciplinary or Remedial Action based solely on the alleged incapacity of an attorney and records and proceedings other than proceedings in the Court of Appeals on that petition; and

(9) a petition for an audit of an attorney's accounts filed pursuant to Rule 16-722 and records and proceedings other than proceedings in the Court of Appeals on that petition.

. . . .

REPORTER'S NOTE

Pursuant to Rule 16-735 (b) Bar Counsel "recommends," but the Commission "issues," the warning. The proposed amendment to Rule 16-723 corrects the terminology in subsection (b) (4).

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

AMEND Rule 16-1008 to conform to the renaming of the "Court Information Office" to the "Office of Communications and Public Affairs," as follows:

Rule 16-1008. ELECTRONIC RECORDS AND RETRIEVAL

. . . .

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

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

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

(A) The ~~Court Information Office~~ Office of Communications

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

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

(i) deny the application;

(ii) offer to confer with the applicant about amendments to the application that would meet the concerns of the ~~Court Information Office~~ Office of Communications and Public Affairs;

or

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

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

provide equivalent access to court records. In making those determinations, the Board shall consider, to the extent relevant:

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

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

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

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

misleading information; and

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

(D) If, upon consideration of the factors set forth in subsection (c)(2)(C) of this Rule, the Technology Oversight Board concludes that the proposal would create (i) an undue fiscal, personnel, or operational burden on a court, other judicial agency, or the judicial system as a whole, or (ii) an undue disparity in the ability of other courts or judicial agencies to provide equivalent access to judicial records, the Board shall inform the ~~Court Information Office~~ Office of Communications and Public Affairs and the applicant in writing of its conclusions. The ~~Court Information Office~~ Office of Communications and Public Affairs and the applicant may then discuss amendments to the application to meet the concerns of the Board, including changes in the scope or method of the requested access and arrangements to bear directly or reimburse the appropriate agency for any expense that may be incurred in providing the requested access and meeting other conditions that may be attached to approval of the application. The applicant may amend the application to reflect any agreed changes. The application, as amended, shall be submitted to the Technology Oversight Board for further consideration.

Source: This Rule is new.

REPORTER'S NOTE

The name of the Court Information Office has been changed to the Office of Communications and Public Affairs, and the amendments to Rule 16-1008 conform the Rule to that change.