

## Chapter 10: Judicial Records

As noted in Chapter 1, the Supreme Court of Maryland has adopted its own rules to govern access to judicial records. *See* Md. Rules Title 16, Chapter 9 (the “Judicial Records Rules”). Although these rules often rely on procedures borrowed from the PIA and have some exemptions from disclosure similar to those in the PIA, the rules state that they are the exclusive method for obtaining access to judicial records and for challenging any denial of access to such records. *See* Rule 16-901(a) (“Except as expressly provided or limited by other Rules, the Rules in this Chapter govern public access to judicial records . . . that are in the custody of a judicial agency, judicial personnel, or a special judicial unit”); Rule 16-902(b) (explaining the intent of the judicial access rules to “adopt comprehensive principles and procedures that will maintain the traditional openness of judicial records, subject only to such shielding or sealing that is necessary to protect supervening rights of privacy, safety, and security”); Rule 16-921 (providing that the judicial access rules generally “constitute the exclusive procedures for requesting inspection of judicial records”); Rule 16-931 (providing that the judicial access rules “constitute the exclusive methods of resolving disputes regarding access to judicial records”).

It is not the goal of this Chapter to provide a comprehensive overview of the rules governing access to judicial records. The rules themselves are the best place to look for a detailed overview. To provide a general overview, however, the rules apply to “judicial records” in the custody of a judicial agency, judicial personnel, or a special judicial unit, and they define “judicial record” as “a record that is the original or copy of any documentary material that: (1) is made or received by, and is in the possession of, a judicial agency, judicial personnel, or a special judicial unit, in connection with the transaction of judicial business” and “(2) is in any form, including the forms listed in Code, General Provisions Article, § 4-101(k)(1)(ii).” Rule 16-903(j). That definition includes five specific categories of judicial records: notice records, administrative records, license records, case records, and special judicial unit records. *Id.*; *see also* Rule 16-902(c).

Much like the PIA, Rule 16-911(a) prohibits inspection of a judicial record if inspection would be contrary to federal law; the Maryland Constitution; a provision of the PIA made applicable to judicial records by the Rules; a rule adopted by the Supreme Court of Maryland; or an order entered by the court having custody of the judicial record (e.g., sealing or shielding order) or by any higher court having jurisdiction over the record, the custodian, or the person seeking inspection. That same rule also prohibits inspection “if inspection would be contrary to a statute enacted by the Maryland General Assembly, other than the PIA,” Rule 16-911(b), as well as if the judicial record is confidential or subject to an unwaived lawful privilege, Rule 16-911(c), contains judicial or other professional work product, Rule 16-911(d), has been ordered expunged, Rule 16-911(e), is a continuity of operations plan, Rule 16-911(f)(1), or “consist[s] of or describe[s] policies, procedures, directives, or designs pertaining to the security or safety of judicial facilities, equipment, operations, or personnel,” Rule 16-911(f)(2).

Inspection of notice records (e.g., records filed among the land records by the clerk of a circuit court) may not be denied once the record is recorded and indexed. Rule 16-912(a).

Generally, business licensing records are governed by the applicable provisions of the PIA itself. Rule 16-912(c)(1).

Access to administrative records is governed by Rule 16-913. Some exemptions from disclosure for administrative records are similar to exemptions in the PIA such as the exemption for personnel records, retirement records and interagency and intra-agency memoranda. Md. Rule 16-913(b), (c) and (g). Other exemptions are unique to judicial records, such as the exemption for records concerning jurors, the exemption for certain administrative records prepared by judicial personnel, and the exemption for Judiciary educational and training materials. Md. Rule 16-913(a), (d) and (e).

Access to case records is addressed in Rules 16-914 through 16-916. Under those provisions, a person who files a case record is to inform the record custodian (e.g., a court clerk) in writing whether, in the person’s judgment, any part of the case record or information in the case record is confidential under the rules. The custodian is not bound by the person’s determination. However, the custodian is entitled to rely on a person’s failure to identify information in a case record as confidential under the rules. Rule 16-916(a). A person who filed a case record before July 1, 2016 may advise the

custodian whether any part of the record is not subject to inspection. Rule 16-916(b)(2). The Judicial Records Rules also exempt from disclosure certain categories or kinds of case records—for example, adoption and guardianship records, juvenile records, expunged records, certain arrest and search warrant records in a criminal case, and certain case records containing medical or other health information—with certain exceptions, including as provided by court order or other court rules. Rule 16-914 (listing 16 categories of case record exemptions). The rules also exempt certain kinds of information from disclosure such as certain home addresses and telephone numbers and social security numbers. Rule 16-915.

Finally, special judicial unit records are the records of one of the following units within the Judicial Branch: “(1) the State Board of Law Examiners, the Accommodations Review Committee, and character committees; (2) the Attorney Grievance Commission and Bar Counsel; (3) the Commission on Judicial Disabilities, the Judicial Inquiry Board, and Investigative Counsel; and (4) the Client Protection Fund.” Rule 16-903(p). Generally, “[s]ubject to unwaived lawful privileges,” when a requested record “falls within the confidential[ity] rules applicable to a special judicial unit, access to the record [will be] governed by the confidential[ity] [r]ules applicable to that unit.” Rule 16-912(b)(1). However, “[a]ccess to administrative records of special judicial units that are not subject to a confidentiality provision in the Rules governing the unit shall be governed by Rule 16-913,” i.e., the provision of the rules that governs other administrative records. Rule 16-912(b)(2).

The Judicial Records Rules also state that they set forth the exclusive procedures to request access to judicial records. *See* Md. Rules 16-921 through 16-924. In many ways, however, those procedures mirror the request and response procedures codified in the PIA itself. *See id.* For information as to the copying of judicial records and fees for judicial records, see in particular Rules 16-904 and 16-905.

The rules also provide that they constitute the exclusive method to resolve disputes over access to and fees charged for judicial records. Rules 16-931 through 16-934. In fact, the rules expressly state that the PIA’s dispute resolution provisions—including those governing judicial review, the Public Access Ombudsman, and the PIA Compliance Board—do not apply to judicial records. Rule 16-931. Generally, the rules allow for administrative review of a custodian’s decision before the relevant administrative judge, Rule 16-932, or an action for declaratory and injunctive relief

under the Declaratory Judgment Act, Rule 16-933. See the rules themselves for more detail about these procedures.