

STATE LAW DEPARTMENT
Munsey Building, 2nd Floor
Seven North Calvert Street
Baltimore, Maryland 21202

Dated
July 27, 1983

MEMORANDUM:

TO: Clerks of the Circuit Courts

FROM: Catherine M. Shultz

SUBJECT: House Bill 1316 -- Public Records -- 1983
Maryland Laws, Chapter 269

In my June 29, 1983 memorandum on 1983 legislative enactments, I included a short discussion on House Bill 1316. House Bill 1316 provides that copies of judgments may not be provided until the time for appeal has expired or, where an appeal has been noted, until such time as the appeal has been adjudicated or dismissed. I have since received numerous calls from clerks explaining the difficulties this bill presents them in light of their responsibilities under the various provisions of the Maryland Rules of Procedures. For reasons explained below, I have concluded that this amendment to the Public Information Act should be interpreted as applying only to non-litigants and, further, that litigants should be provided copies of judgments, including certified copies, notwithstanding the provisions of the Act as amended.

First, this bill and its companion bill, Senate Bill 493, were Judicial Conference bills. As I stated in my earlier memo the purpose of this bill was to protect consumers. Chief Judge Robert F. Sweeney supported the bill and explained its purpose in his March 3, 1983 letter of support to the Senate Constitutional and Public Law Committee:

The purpose of the bill is to prohibit the existing practice whereby credit agencies immediately obtain copies of District Court judgments and have those records noted on an individual's credit file before the defendant has had an opportunity to pay the judgment and have an order of satisfaction recorded.

The language of the bill, however, would appear to absolutely prohibit the Clerk from making any copies of any judgments.

Specifically, the amendment to section 4(a) provides as follows:

In all cases in which a person has the right to inspect any public records such person shall have the right to be furnished copies, printouts, or photographs for a reasonable fee to be set by the official custodian, except that copies of judgments may not be provided until the time for appeal has expired or, where an appeal has been noted, until such time as the appeal has been adjudicated or dismissed.

Unlike other sections of the Public Information Act, §4 does not include any "unless otherwise provided by law or rule" language. Consequently, this provision would appear to contradict several Maryland Rules of Procedure which effect the Clerk's Office, specifically, Maryland Rule 1219 requiring Clerks to send copies of orders to parties, Maryland Rule 621 concerning judgments affecting land in more than one county, and Maryland Rule 622 pertaining to executions. In addition, it is arguable that a strict reading of this new amendment as absolutely prohibiting any copy of a judgment would mean that the Clerk could not provide a defendant notice of judgment by default as provided by Maryland Rule 611. It is highly improbable that the General Assembly intended this amendment to the Public Information Act to alter the rights of successful litigants, which have been provided by law and rule.

While the premise of the Public Information Act is that information should be made available to the public at large, this amendment precludes the public at large from getting copies of judgments during a limited time period. As such, it is a general provision concerning copies of judgments. The rules requiring that copies of judgments be provided to litigants are more specific than this general prohibition provided in the Public Information Act. Thus, because one principle of statutory construction is that the specific shall override the general, the Maryland Rules should still be followed as they pertain to providing copies of judgments to litigants. Moreover, this conclusion is further supported by another principle of statutory construction which provides that repeals by implication are disfavored.

The legislative history of this bill and its companion bill lend further support to this conclusion. While the report from the Senate Judicial Proceedings Committee on House Bill 1316 does not shed light on the intent of the legislature in enacting this bill, the report does state that "[this] bill is identical to Senate Bill 493, which was given a favorable report by the Constitutional and Public Law Committee, and passed by the Senate." See Summary of Committee Report of Senate Judicial

Proceedings Committee, on House Bill 1316, 1983 General Assenbly Session. The Constitutional and Public Law Committee Report on the Senate Bill states in part as follows:

This bill does not preclude a right of inspection by non-litigants, it only states that copies may not be provided.

Although not explicitly stated in the bill, a litigant will still be able to obtain a copy of a judgment in a case in which that litigant was involved regardless of the pendency of an appeal. (Emphasis in the original.)

See Summary of the Committee Report of the Senate Constitutional and Public Law Committee on Senate Bill 493, 1983 General Assembly Session.

In summary, you should continue to provide copies of judgments to litigants and to comply with all Maryland Rules of Procedure relating to copies of judgments. No copies, however, should be provided to non-litigants until thirty days has run or until an appeal has been adjudicated or dismissed pursuant to the Public Information Act, as amended. In addition, the Clerks' Association may wish to propose corrective legislation which would clarify this amendment's impact on the Clerks' responsibilities.....

As usual, I will be more than happy to discuss this issue with any of you at any time.

CMS/pt

cc: The Honorable Robert F. Sweeney
Chief Clerk Margaret Kostritsky
Robert W. McKeever