

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Eighty-Fourth Report to the Court of Appeals, transmitting thereby proposed amendments to Rule 1-322.1 and the proposed repeal of Rule 1-322.2.

The Committee's One Hundred Eighty-Fourth Report and the proposed rules changes are set forth below.

Interested persons are asked to consider the Committee's Report and proposed rules changes and to forward on or before August 11, 2014 any written comments they may wish to make to:

Sandra F. Haines, Esq.
Reporter, Rules Committee
2011-D Commerce Park Drive
Annapolis, Maryland 21401

BESSIE M. DECKER
Clerk
Court of Appeals of Maryland

June 25, 2014

The Honorable Mary Ellen Barbera,
Chief Judge

The Honorable Glenn T. Harrell, Jr.

The Honorable Lynne A. Battaglia

The Honorable Clayton Greene, Jr.

The Honorable Sally D. Adkins

The Honorable Robert N. McDonald,

The Honorable Shirley M. Watts

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 Eighty-Fourth Report and recommends that the Court repeal Rule 1-322.2 and adopt an amendment to Rule 1-322.1 transmitted with this Report.

As explained in a letter to the Court on June 12, 2014, both of those Rules were adopted by the Court in July 2013. Rule 1-322.1, which precludes pleadings and papers filed in court from containing certain personal identifiers, took effect on July 9, 2013. Implementation of Rule 1-322.2, which requires such pleadings and papers to contain a certificate of compliance with Rule 1-322.1, was delayed for a year, to give filers and the clerks an opportunity to become familiar with the requirement, and to make the effective date more consistent with that of a comparable Rule (Rule 20-201(f)(1)(B)) applicable to filings under MDEC.¹ See One

¹ Rule 20-201(f)(1)(B) was made technically effective as of July 1, 2013, but because it applies only to filings under MDEC, its actual application commences only when and as MDEC takes effect in the various counties. Its earliest scheduled application was anticipated to be in Anne Arundel County on July 1, 2014. That date has been extended to October 1, 2014.

Hundred Seventy-Ninth Report of the Rules Committee.

Beginning in late May and early June 2014, the Rules Committee began receiving questions and expressions of concern from the clerks of the Circuit and District Courts regarding the scope of Rule 1-322.2 - whether it applied to transcripts, trial exhibits, charging documents in criminal cases, landlord-tenant complaints, subpoenas and requests therefor, requests for postponements, changes of address, QDROs, requests for copies, and the like. Every few days, we received a new list of questions and concerns. No concerns were expressed with regard to Rule 1-322.1, which had been in effect for a year, or with regard to Rule 20-201(f)(1)(B). The questions and concerns focused solely on Rule 1-322.2.

Because none of those issues had been raised when Rules 1-322.1 and 1-322.2 were under consideration by the Rules Committee or the Court, neither the Committee nor the Court had an opportunity to consider them. Accordingly, we put the matter of the agenda for the June 19, 2014 meeting of the Committee and asked the Court to defer the effective date of Rule 1-322.2 in order to give the Committee an opportunity to hear directly from the clerks and other interested persons. By Order issued June 17, 2014, the Court deferred the effective date of Rule 1-322.2 until September 1, 2014.

As a result of the presentations and discussion at the June 19 meeting, the Committee concluded that Rule 1-322.2 should be repealed and that a clarifying amendment should be made to Rule 1-322.1. Those conclusions were based on the following facts and perceptions:

FIRST: Although Rule 1-322.1 was derived from comparable Rules adopted by the Federal Judiciary and in many other States, Rule 1-322.2 was our own invention. The purpose was to place the burden of assuring compliance on the filer, through the device of a certificate of compliance, and avoid any suggestion or inference that the clerks would be responsible for reviewing documents submitted for filing to assure that the documents did not contain impermissible personal identifiers. The Rule was intended for the benefit of the clerks, who then supported it.

SECOND: There is another way of making that burden on the filer clear -- by amending Rule 1-322.1 to state that burden more clearly.

THIRD: A somewhat informal survey of the clerks indicated that, in the year that Rule 1-322.1 has been in effect, there have been very few instances in which a violation of Rule 1-322.1 has been observed by the clerks or brought to the clerks' attention, the implication being that the Rule was being observed without the need of the certificate.

FOURTH: In the District Court, the great bulk of the papers being filed are on pre-printed District Court forms that do not seek the prohibited information, which may account for the fact that it is not supplied, yet, to comply with Rule 1-322.2, all, or nearly all, of those forms would have to be revised and reprinted.

In short, there is now considerable doubt whether Rule 1-322.2 really is necessary to assure compliance with Rule 1-322.1.

As noted, the proposed amendment to Rule 1-322.1 is essentially a clarifying one. Putting the prohibition in the active voice will make more clear that the duty of assuring compliance is on the filer, not the clerk.

For the further guidance of the Court and the public, following the proposed amendments to each of the existing Rules is a Reporter's note describing in further detail the reasons for the proposals. *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

AMW:cdc

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-322.1 to clarify that compliance with the Rule is the duty of the filer of a paper or electronic filing, as follows:

Rule 1-322.1. EXCLUSION OF PERSONAL IDENTIFIER INFORMATION IN COURT FILINGS

(a) Applicability

This Rule applies only to pleadings and other papers filed in an action on or after July 9, 2013 by a person other than a judge or judicial appointee. The Rule does not apply to administrative records, business license records, or notice records, as those terms are defined in 16-1001 (a).

Committee note: Although not subject to this Rule, judges and judicial appointees should be aware of the purpose of the Rule and refrain from including personal identifier information in their filings, unless necessary.

Cross reference: For the definition of "action," see Rule 1-202. For the prohibition against including certain personal information on recordable instruments, see Code, Real Property Article, §3-111. For the prohibition against publicly posting or displaying on an Internet Website certain personal information contained in court records, including notice records, see Code, Courts Article, §1-205.

(b) Generally

Except as otherwise provided in this Rule, required by law, permitted by court order, or required to implement a court order, ~~the following personal identifier information shall not be~~

~~included in any electronic or paper filing with a court~~ the filer of any paper or electronic filing with a court shall not include in the filing the following personal identifier information:

(1) an individual's Social Security number or taxpayer identification number; or

(2) the numeric or alphabetic characters of a financial or medical account identifier.

(c) Exceptions

Unless otherwise provided by law or court order, section (b) of this Rule does not apply to the following:

(1) a financial account identifier that identifies the property allegedly subject to forfeiture in a forfeiture proceeding; or

(2) the record of an administrative agency proceeding.

(d) Alternatives

If, by reason of the nature of the action, it is necessary to include in a filing personal identifier information described in section (b) of this Rule, the filer may:

(1) include in the filing only the last four digits of the Social Security or taxpayer identification number or the last four characters of the financial or medical account identifier, unless that identifier consists of fewer than eight characters, in which event all characters shall be redacted;

Committee note: Financial accounts include credit and debit card accounts, bank accounts, brokerage accounts, insurance policies, and annuity contracts. PIN numbers or other account passwords also may need to be redacted, as well as health information identifiers.

(2) file the unredacted document under seal, if permitted by order of court;

(3) if the full information is required to be provided only to another party or to a court official, other than a judge or judicial appointee, provide the information separately to that party or official and file only a certificate that the information has been so provided;

Committee note: It may be necessary to provide personal identifier information to a court official, including a clerk, sheriff, or constable, in order for that official to send or serve notices, summonses, or other documents. Subsection (d) (3) of this Rule is not intended to permit ex parte communications with a judge.

(4) if the full information is required to be in the filing and the filing is a paper filing, file the paper in duplicate, one copy with the information redacted as required by section (b) of this Rule and one copy without redaction, together with instructions to the clerk to shield the unredacted copy in conformance with the Rules in Title 16, Chapter 1000; or

(5) if the full information is required to be in the filing and the filing is electronic, designate, in conformance with the applicable electronic filing requirements, the information to be redacted or shielded for purposes of public access.

Cross reference: See Rule 20-201.

(e) Protective Orders

For good cause, the court may, by order, in a case:

- (1) require redaction of additional information; and
- (2) limit or prohibit a nonparty's remote electronic access

to a document filed with the court.

Committee note: Other than remote access to docket entries, nonparties currently do not have remote access to documents filed with the court, except under certain limited circumstances, such as in asbestos-related litigation.

(f) Non-conforming Documents

(1) Waiver

A person waives the protection of section (b) of this Rule as to the person's own information by filing it without redaction and not under seal.

(2) Sanctions

If a person fails to comply with this Rule, the court on motion of a party or on its own initiative, may enter any appropriate order.

Committee note: This Rule does not affect the discoverability of personal information.

Source: This Rule is in part derived from Fed. R. Civ. P. 5.2 (2007) and is in part new.

REPORTER'S NOTE

Rule 1-322.1 is proposed to be amended to clarify that compliance with the Rule is the duty of the filer of a paper or electronic filing and is not the duty of the clerk. The clarification is effected by restating section (b) in the active voice, rather than in the passive voice.

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 300 - GENERAL PROVISIONS

DELETE Rule 1-322.2, as follows:

~~Rule 1-322.2. CERTIFICATE OF EXCLUSION OF PERSONAL IDENTIFIER
INFORMATION~~

~~(a) Certificate Required~~

~~Every pleading or paper filed an action on or after July
1, 2014 shall contain either:~~

~~(1) a certificate of compliance with Rule 1-322.1 that is
signed by an individual who is (A) the party filing it or an
attorney for the party, or (B) if the paper is filed by a
nonparty, the person filing it or the person's attorney,
employee, or agent; or~~

~~(2) in an affected action under Title 20 of these Rules, a
certificate that complies with Rule 20-201 (f) (1) (B).~~

~~Cross reference: For the definition of "affected action," see
Rule 20-101.~~

~~(b) Action by Clerk~~

~~The clerk shall not accept for filing any pleading or
other paper requiring a certificate under section (a) of this
Rule unless the pleading or paper contains the certificate.~~

~~Source: This Rule is new.~~

REPORTER'S NOTE

In conjunction with a proposed amendment to Rule 1-322.1, Rule 1-322.2 is proposed to be repealed prior to its September 1, 2014 effective date.