

Access Rules Implementation Committee
Interim Report – Child Abuse and Neglect
July 11, 2005

Background

Court of Appeals Chief Judge Robert M. Bell appointed a representative group of judges, court staff, and data managers to prepare the Judiciary for the implementation of the new court rules on access to court records effective October 1, 2004. The committee held its first meeting on June 9, 2004. The full committee has convened 11 times over the past 12 months.

The committee invited Judge Alan M. Wilner to a recent meeting to assist the committee in its deliberations. His insight helped clarify issues that had been the subject of lengthy discussion.

This committee has provided guidance to judges and court personnel through educational materials such as charts on access to the four types of records as defined by the new rules, and a list of frequently asked questions.

Issue

The application of Rule 16-1006(c) about the exemption from disclosure of records “concerning child abuse or neglect” has prompted questions from court clerks about what records are covered. Subsequently, there is a lack of uniformity in interpretation that has been reported by the media (articles are attached) and clerks have been placed in a difficult position.

The committee recognized that cases originating from social service or law enforcement agencies are clearly covered by this Rule. Questions arose about how to treat records containing allegations of child abuse and neglect in civil cases, e.g., divorce/custody actions. Also, cases involving sexual offense of a minor were not being shielded. The co-chairs asked David Durfee, the committee’s legal consultant, to prepare an analysis of the construction of Rule 16-1006(c). This analysis (attached) did not deal with criminal matters, though.

The committee considered that if the exemption was applied broadly, it would cover any domestic case where an allegation of child abuse and/or neglect was entered, including custody disputes. It would likely exempt from disclosure cases involving domestic violence (allegations of mental abuse of a child are not uncommon). Also, peace orders and almost any pleading could be exempt from disclosure. At the same time, the committee recognized that defendants could be charged with multiple offenses, placing a burden on the clerks to sort out the charges to determine whether the case should be exempt from disclosure.

After much discussion, committee members were not certain what the Court intended in Rule 16-1006(c) so have been unable to provide guidance to clerks in its application. The committee recognizes that its function is not to interpret the rules but to provide guidance to court personnel in the implementation of the rules. Although there is no longer commentary on

Rule 16-1006 (c), the committee considered that commentary in deciding what interpretation to apply.

All committee members agreed that it would be beneficial to have clarity regarding the intent, meaning and scope of this rule. The committee considered two different interpretations. In a vote of 6 to 3, the committee decided to adopt Mr. Durfee's analysis (attached) and to ask that the comment from the "Wilner report" be restored, or that clarifying language be added to the effect that exempt from disclosure are records concerning child abuse and neglect "originating from social service or law enforcement agencies." Consequently, crimes under Criminal Law §3-601 would be covered but not offenses such as sexual offense in the second degree where the victim is a minor. The other interpretation the committee considered was that the Court did intend to broaden the scope of the exemption so that minor victims of sex crimes and other forms of abuse and neglect would be protected from further embarrassment or stigma, regardless of forum or relationship of the perpetrator to the victim. The minority view is enclosed.

Recommendations:

Inspection of civil and criminal case records in paper and electronic form in accordance with Rule 16-1006(c) should be governed by the statutory definition of child abuse and neglect. Cases not meeting that definition are open to inspection, except when a motion or order to shield has been filed pursuant to Rule 16-1009.

It would be helpful to restore the comment from the Wilner report, or to add clarifying language to the effect that exempt from disclosure are records concerning child abuse and neglect "originating from social service or law enforcement agencies."

In the meantime, the committee will advise the clerks to apply the statutory definitions of child abuse and neglect in civil and criminal cases to determine whether inspection of the record should be denied. Access to electronic records follows this interpretation as well.

Attachments

Minority View

A reading of Rule 16-1006 (c)¹ does not expressly set forth the basis for the Committee's interpretation of the rule; nor is there any comment applicable to Rule 16-1006 (c) that explains, provides the basis for, or supports the Committee's interpretation of the Rule. There is no guidance for judges, attorneys, clerks of the various courts and members of the public specified anywhere in the rule or the comments thereto, all of whom should be provided clarity regarding the intent, meaning and scope of this important rule—if the intent, meaning and scope is to be something other than the plain meaning of the current wording of the rule. It is respectfully submitted that the Committee is not implementing the rule as written, but rather appears to be rewriting the rule of the Court.

Child abuse and neglect are words and phrases used extensively in Maryland law. See COMAR (MD ADC) 07.02.07.02 (2005)²; MD Code, Family Law, § 5-701³; MD Code,

¹ In pertinent part, Rule 16-1006, merely provides, "...Except as otherwise provided by law, the Rules in this Chapter, or court order, the custodian shall deny inspection of...(c) In any action or proceeding, a **case record** concerning child abuse or neglect...

See also Rule 16-1001. Definitions, (c) "**Case Record**"

(1) Except as otherwise provided in this Rule, "case record" means:

- (A) a document, information, or other thing that is collected, received, or maintained by a court in connection with one or more specific judicial actions or proceedings;
- (B) a copy of a marriage license issued and maintained by the court, including, after the license is issued, the application for the license;
- (C) a miscellaneous record filed with the clerk of the court pursuant to law that is not a notice record.

(2) "Case record" does not include a document or information described in subsection (a)(3) of this Rule [(a)(3) defines "**Administrative record**").

² COMAR (MD ADC) 07.02.07.02 (2005) (Definitions) provides...

(7) "Child abuse" means one or more of the following by a parent, caretaker, or household or family member: (a) Physical injury, not necessarily visible, or mental injury of a child, under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed; or (b) Sexual abuse of a child, regardless of whether the child has physical injuries.

(8) "Child neglect" means one or more of the following by a parent or caretaker: (a) A failure to provide proper care and attention to a child, including leaving a child unattended, under circumstances that indicate that the child's health or welfare is harmed or placed at substantial risk of harm; or (b) Mental injury or a substantial risk of mental injury of a child that is caused by the failure to provide proper care and attention to a child...

³ MD Code, Family Law, § 5-701, provides...

(b) "Abuse" means:

- (1) the physical or mental injury of a child by any parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member, under circumstances that indicate that the child's health or welfare is harmed or at substantial risk of being harmed; or

(2) sexual abuse of a child, whether physical injuries are sustained or not...

(q) "Mental injury" means the observable, identifiable, and substantial impairment of a child's mental or psychological ability to function...

(r) "Neglect" means the leaving of a child unattended or other failure to give proper care and attention to a child by

Criminal Law, §3-602⁴; and, see also MD Code, Criminal Procedure, § 11-303 that applies to the testimony of minors in cases of “abuse of a child” under Title 5, Subtitle 7 of the Family Law Article or § 3-601 or § 3-602 of the Criminal Law Article.

In the case of *Wildermuth v. State*, 310 Md. 496, 516-520, 530 A.2d. 275 (1987), the court concluded that compelling government interests, in both protecting minor victims of sex crimes from further embarrassment and obtaining reliable testimony from a child in sexual abuse trials, is sufficient to justify denial of defendant's ordinary right to have the witness see him during trial, so long as statutory requirement of specific finding by trial court, that testimony by a child in open court would result in "serious emotional distress such that the child cannot reasonably communicate" is met, and other elements of reliability exist.

It is a frequent, if not daily, occurrence in District Court practice that a parent or guardian will file either type of petition “on behalf of” (obo) a minor child alleging child neglect or child abuse—be it physical, sexual, or mental.⁵ While such petitions do not originate from action taken by local social services agencies, law enforcement agencies that investigate suspected child abuse or neglect, or, from other agencies that are responsible for maintaining the confidentiality of records or reports of child abuse or neglect, such agencies frequently, and many times improperly, refer such litigants to the District Court rather than pursue such matters in the

any parent or other person who has permanent or temporary care or custody or responsibility for supervision of the child under circumstances that indicate:

- (1) that the child's health or welfare is harmed or placed at substantial risk of harm; or
- (2) mental injury to the child or a substantial risk of mental injury...

(w) (1) "Sexual abuse" means any act that involves sexual molestation or exploitation of a child by a parent or other person who has permanent or temporary care or custody or responsibility for supervision of a child, or by any household or family member.

- (2) "Sexual abuse" includes:
- (i) incest, rape, or sexual offense in any degree;
 - (ii) sodomy; and
 - (iii) unnatural or perverted sexual practices...

⁴ MD Code, Criminal Law, § 3-602, provides...

(4)(i) "Sexual abuse" means an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not.

(ii) "Sexual abuse" includes:

1. incest;
2. rape;
3. sexual offense in any degree;
4. sodomy; and
5. unnatural or perverted sexual practices...

⁵ Visit the following websites to view the Petition for Protection from Domestic Violence, Child Abuse, Vulnerable Adult Abuse and Petition for Peace Order forms respectively:

<http://www.courts.state.md.us/courtforms/joint/ccdcdv01.pdf>

<http://www.courts.state.md.us/district/forms/peace/dcpo01.pdf>

Circuit [Juvenile] Courts as CINA cases. As CINA cases, such matters would not be subject to public disclosure. More importantly, such petitions clearly represent case records “concerning child abuse or neglect”. In fact many, if not most, such petitions exclusively concern “...child abuse or neglect...”

It is of interest to note that the National Center for State Courts Model Guidelines for Public Access to Court Records, by Section 4.60 at page 45, provided for the protection of such information as follows:⁶

Section 4.60 – Court Records Excluded From Public Access

The following information in a court record is not accessible to the public:

- 1(a) Information that is not to be accessible to the public pursuant to federal law;*
- 2(b) Information that is not to be accessible to the public pursuant to state law, court rule [in the context of this matter, MD 16-1000 (c)] or case law as follows:*

A member of the public may request the court to allow access to information excluded under this provision as provided for in section 4.70(b) [See the current MD 16-1009].

In the comments to the above section of the Model Access Policy, the following categories or types of information to which public access could be considered for restriction:

Information that may not be accessible to the public pursuant to state law, whether in a statute or rule of court, generally falls into two categories. First are case types where the entire court record is generally not publicly accessible. Examples include:

- *Juvenile dependency (abuse and neglect) proceedings...*

Second are documents, parts of the court record, or pieces of information (as opposed to the whole case file) for which there may be a sufficient interest to prohibit public access. Examples include:

- *Name, address, telephone number, e-mail, or places of employment of a victim, particularly in a sexual assault case, stalking or domestic violence case;*

⁶ Visit the following website: <http://www.courtaccess.org/modelpolicy/18Oct2002FinalReport.pdf> for the final report on model Guidelines for Public Access to Court Records.

- *Name, address or telephone number of witnesses (other than law enforcement personnel) in criminal or domestic violence protective order cases...*
- *Child custody evaluations in family law or juvenile dependency (abuse and neglect) actions...*

Additional categories of information to which a state or individual court might also consider restricting general public access include:

- *Names and addresses of children in a juvenile dependency proceeding;*
- *Names and addresses of children in a dissolution, guardianship, domestic violence, sexual assault, harassment, or protective order proceeding...*
- *Photographs depicting violence, death, or children subjected to abuse;*
- *Certain exhibits in trials such as photographs depicting violence, death, children subjected to abuse or depictions of medical information...*

Given the present reading of the rule, it is difficult to understand how an action, be it civil or criminal in nature, involving a sexual act with a minor would not be protected from disclosure under Rule 16-1006 (c). The Court is urged not to narrowly interpret the scope of Rule 16-1006 (c). The Court has been offered yet another opportunity to protect minor victims of sex crimes and other forms of abuse and neglect, regardless of forum or relationship of the perpetrator to the victim, from further embarrassment and stigma associated with the current strain of salacious voyeurism clearly evident in our society. If a “compelling government interest” is found sufficient to alter a criminal defendant’s constitutional trial rights, surely an equally compelling interest can be found to support the broadened intent, meaning and scope expressed by the plain meaning of the current wording of Rule 16-1006 (c). The Court is respectfully urged not to adopt the narrow interpretation of the Rule approved by the majority vote of the Access Rules Implementation Committee.

Administrative Office of the Courts
Legal Affairs Department

Memorandum

To: Sally Rankin

From: David Durfee

Subject: Rule 16-1006(c): case records of child abuse or neglect

Date: April 20, 2005

You have asked me for my construction of Rule 16-1006(c) of the new Court Access rules. That provision makes confidential, except as otherwise provided by law, court rule, or court order, the following category of documents:

(c) In any action or proceeding, a case record concerning child abuse or neglect.⁷

It is my view that despite the broadness of the language, it is only meant to cover case records concerning child abuse or neglect that originate from local social services agencies or law enforcement agencies which investigate suspected child abuse or neglect, which are then filed in court. This would also include any other agency that has the responsibility to maintain the confidentiality of a record or report of child abuse or neglect. *See 76 Opinions of the Attorney General 220 (1991)*(school system's internal investigation into child abuse or neglect also subject to confidentiality); *82 Opinions of the Attorney General 72 (1997)*(law enforcement records). *See also 89 Opinions of the Attorney General 31 (2004)*(independent juvenile justice monitor must maintain privacy of information in its reports by not identifying or disclosing information that invades the privacy of a child, the child's family, the individual who reported the abuse, or the individual who reported the suspected abuse to the authorities).

In the final Attorney General's opinion, one issue was whether the disclosure restrictions imposed by Article 88A, § 6(b), depend upon which agency is the source of particular information. DJS's independent monitor, in assessing a DJS response to allegations of child abuse and neglect, The Independent Monitor relies on information and reports from a variety of agencies and other sources, in addition to its own staff. The Attorney General concluded:

The applicability of Article 88A, § 6(b), to the investigative findings of agencies other than a department of social services has been discussed in several prior opinions of the Attorney General. Those opinions indicate that the statute must be construed to protect the privacy of the persons involved in an abuse or neglect

⁷Unfortunately, at the committee's last meeting, we did not have a chance to ask Judge Wilner for his construction of the subsection.

incident, regardless of whether information about the incident was reported by personnel of the local department of social services or other agency investigators. 76 Opinions of the Attorney General 220, 231- 32 (1991) (information gathered by school systems, in response to allegations of child abuse by school personnel, is subject to confidentiality requirements of Article 88A, § 6(b)); 82 Opinions of the Attorney General 72 (1997) (Article 88A, § 6(b), proscriptions are applicable to law enforcement records). The Independent Monitor has the same obligation to maintain the confidentiality of protected information under Article 88A, § 6(b), as does DJS, a local department of social services, or a law enforcement agency that provided information to the Independent Monitor.

The confidentiality requirements associated with child abuse investigations are based on the nature of the information, not the agency that conducted the investigation. The same guidelines set out above apply to all information arising from a child abuse or neglect investigation, regardless of the original source of the information.

In order for the confidentiality restrictions to apply, then, the information must stem from (1) agency and (2) be from an investigation that the agency is responsible by law for performing of suspected child abuse or neglect.

To extend the confidentiality provisions beyond those boundaries would be to place requirements on parties in divorce actions or petitioners in domestic violence actions where no such requirements exist. Thus, Rule 16-1006(c) does not apply to domestic actions where the allegation of child abuse or neglect originates from the pleadings, or attachments of the parties. Child abuse or neglect may be an issue in several types of proceedings where the evidence would not necessarily originate from a social services agency or other unit of government governed by the confidentiality requirements in the law: **e.g.**, custody or visitation proceedings, *see* Family Law (“FL”) §§9-101 and 9-101.1, domestic violence cases, *see* FL §§ 4-504 **et seq.**, and child abuse (and child sexual abuse), *see* Criminal Law (“CL”) §§ 3-601 **et seq.** To the extent that the allegations have not gone through the investigative process by an agency responsible for performing such an investigation, the restrictions would not apply.

The best source for the intent of the new access rules is the parenthetical commentary of the “Wilner Committee Report.”⁸ Regarding the meaning of Rule 16-1004(c), the Report stated:

SOURCE: Md. Code, Art. 88A, § 6 (b), 6A; Fam. Law Art. , §5-707. Art. 88A, §6 (b) provides that, except as otherwise provided in that section, §6A, or Title 5, Subtitle 7 of the Family Law Article, all records and reports concerning child

⁸In this memorandum I refer to the “Wilner Committee Report” which is shorthand for the “Recommendations to the Court of Appeals Court Committee Designated to Develop Rules Regarding Public Access to Court Records.” The recommendations were submitted on November 17, 2003, and contained invaluable guidance on the meaning of and the reasons for each of the access rules. Sometimes the text of those recommendations did not make it into the new rules, but they nonetheless bear close attention because that text was before the Court of Appeals when it considered the rules.

abuse or neglect are confidential, and their unauthorized disclosure is a criminal offense. The balance of §6 (b) provides for authorized disclosures by court order, order of administrative agency, or on request to certain persons and agencies. Section 6A permits disclosures by the Secretary of Human Resources or the local director of social services. FL §5-707 requires the Social Services Administration to protect the confidentiality of records and reports of child abuse or neglect.

Whether these statutes were intended to apply to case records in court is not entirely clear. A fair argument can be made that they were intended to apply only to records in the possession of social service agencies and not to court records. These kinds of records, when filed with a court, will probably be found most often either in CINA, adoption, or guardianship proceedings or in criminal actions. If filed in a CINA, adoption, or guardianship action, they will be shielded by the exceptions pertaining to those kinds of proceedings (until admitted into evidence). If filed in other kinds of actions, the question arises whether the statutory shield should continue to apply. This is a policy issue for the Court. If the court concludes that there should be no blanket exception for these records once they become case records, it should, in some way, make clear that the statutes do not apply, in order to protect custodians from the criminal sanctions in Art. 88A for disclosing the records.

_____The leap taken by the Court in Rule 16-1004(c) was in stating that the confidentiality protections of Article 88A and the Family Law Article applied to *court* records as well as agency records. However, in discussing “these kinds of records,” the Wilner report was only referring to records originally in the custody and control of a social services agency, or a like agency, that have confidentiality requirements with respect to the records. The Court was not also carving out a new exception from disclosure for material in cases, such as divorce cases, that have been open to the public traditionally where there has not been a backdrop of confidentiality.

Finally, I have to admit ignorance on the procedures that are followed with respect to the filing of case records by social services agencies, etc., that contain protected information on child abuse and neglect. It does seem to me, however, that an agency with information that it believes should be shielded should be familiar with the provisions of Rule 16-1010 and inform the custodian whenever it believes that the records are protected under Rule 16-1006(c). This is one more area where there may need to be some education on the new access rules.

Public is denied access to some court records

by Rebecca McClay
Staff Writer

May 26, 2005

The District Court of Maryland in Frederick County and the Frederick County State's Attorney's Office have refused to release charging documents of one of two men who were arrested recently in Brunswick for allegedly sexually abusing a minor.

Charging documents, which provide facts to support the criminal charges, were available to the public before new state court access rules took effect Oct. 1, 2004. Now records of certain cases, such as those that involve sexually abusing a child, are off limits.

The Gazette last week several times asked the District Court for access to charging documents of one of two men charged with a sex offense against a child in Brunswick.

Wilber Stone, 58, of K Street, was arrested May 11 in his home and charged with third-degree sex offense, sex abuse of a minor and child pornography of filming and a sex act, according to Brunswick Chief of Police Don Rough.

George Lee Harris, 42, who was living at the Green Country Inn, was arrested at the hotel and charged with second-degree sex offense, sex abuse of a minor and perverted practice.

Harris' charging documents were available to the public and The Gazette wrote about that crime on May 19, but because of the new rules, Stone's documents are blocked. Officials who would not provide the documents said they were labeled as "confidential" in their computer files; they said they could not access the material.

Access rules adopted last fall by the Court of Appeals, Maryland's highest court, require the District Court to keep some records as off-limits to the public for a variety of reasons.

According to a section of the 36-page rules titled "Required Denial of Inspection," a court commissioner shall deny inspection of "a case record concerning child abuse or neglect."

"It's difficult to say whether [the rules] are constitutional," said attorney Alice Neff Lucan of the Maryland-Delaware-D.C. Press Association, of which The Gazette is a member. "The tradition in criminal courts is that records in courts and proceedings are open."

Lucan said other newspapers in Maryland, such as The Star Democrat on the Eastern Shore, have encountered similar resistance from courts refusing to provide documents. She said the court's distribution of charging documents has been inconsistent since the rules took effect.

Frederick County District Court clerks are still uncertain exactly why the court closed the documents, but Frederick County Clerk Carrie Dillard said the decisions are based on the offense, which in Stone's case is child sex abuse.

Dillard said that Harris' case likely also should have been blocked because it, too, involves the abuse of a child. "Unfortunately, you should not have gotten the charging statement on Harris," Dillard told The Gazette.

The District Court Monday was reviewing the case to determine whether Harris' charging documents had been issued by mistake.

Dillard said all legal parties, including the State's Attorney's Office, are required to block from public inspection documents that are classified as "confidential" by the District Court, which determines the classification on a case-by-case basis.

But the Frederick County State's Attorney's Office is not certain it must follow the court's lead.

When The Gazette turned to the prosecutor's office last week to obtain Stone's documents, State's Attorney Scott Rolle said he reviewed the new rules and suspects the State's Attorney's office is not bound by them.

Rolle was originally willing to provide the documents. "In my mind, it's a public document," Rolle said Friday.

But when he learned Monday that Judge W. Milnor Roberts denied The Gazette's request to release the documents, he too declined to provide the statements.

It is unclear whether the State's Attorney's Office is bound by the Roberts' denial of The Gazette's request or whether his decisions equated to an order to seal the case, which would prevent any legal party from providing the documents to the public.

Rolle reviewed the case, and could not identify a reason why Stone's charging documents were off limits while other similar cases, such as Harris' documents, were open to outside inspection.

"[Stone's case] looked like a routine sex offense," said Rolle, who "believes in the public's right to know" and was baffled by Robert's ruling. "They're charging documents, not investigative documents."

He said it is the first time the State's Attorney's office has encountered the dilemma of whether or not it is permitted to provide the "confidential" documents to the public.

Stone's case was the first Rolle denied to the media because of the new rules.

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Clerks restrict access to records

by C. Benjamin Ford and Rebecca McClay
Staff Writers

May 27, 2005

Say rules shield juvenile cases

The Maryland Court of Appeals' new rules on public access to court records are causing confusion in several counties as to what documents court clerks should keep secret.

The rules were intended to shield only those cases involving child abuse or neglect, said Sally Rankin, court information officer for the state judicial system in Annapolis and a member of the public access rules implementation committee.

But court officials cited the new rules as justification to block public access to charging documents in Montgomery and Frederick counties in cases where other crimes besides child abuse were charged.

The new rules went into effect on Oct. 1, 2004 after four years of study, committee meetings and public hearings.

They require court officials to block access to "any action or proceeding [or] case record concerning child abuse or neglect."

The implementation committee has determined that clerks should follow a strict definition of child abuse, which means a case record should be blocked automatically only if it involves abuse committed by a guardian of the child, Rankin said. The committee made the decision May 18 in a 6-3 vote.

The committee is expected to review its final report on June 7 and present it to Court of Appeals Chief Judge Robert M. Bell for approval.

However, clerks in Frederick and Montgomery counties have interpreted the rules broadly to block access to charging documents of any suspect accused of a sex crime involving a child.

On Wednesday, Montgomery County clerks blocked Gazette reporters from reviewing charging documents on a Rockville attorney arrested last Friday on charges of third-degree sexual assault, two counts of second-degree assault, malicious destruction of property, indecent exposure and disorderly conduct. The man is accused of attempted sexual assault of a 10-year-old crossing guard on the street outside Fallsmead Elementary School in Rockville.

Montgomery County District Court Clerk Jeffrey Ward said a court commissioner blocked access to that case. But he said he intends to block such cases under his own interpretation of the rules.

"If it's a rape and a child is 8 years old, I'm going to block it," Ward said. "We consider it child abuse. Sally can come down here and yell at me."

"That's not going to happen," Rankin said.

In Frederick County, court clerks refused to release charging documents on one man charged with sexually abusing a minor in Brunswick but released the charging documents on a second man.

Frederick County Clerk Carrie Dillard later said that was a mistake.

"Unfortunately, you should not have gotten the charging statement on [him]," Dillard told The Gazette.

Rankin declined to discuss the specific cases but said she hoped the implementation committee's work would clear up the confusion.

"I'm sorry that happened, but that's a good real-life example of what is occurring in the field," she said, adding that The Gazette's article about the Frederick County cases prompted much e-mail discussion among the committee.

"The sooner we do [finish the report], the better, because of the situations that have occurred," she said.

Most court documents are open to the public.

"There's so many arguments from the perspective of making court proceedings public," she said. "... The judiciary relies on the public's trust and confidence. That's maintained through transparency."

Attorney Alice Neff Lucan of the Maryland-Delaware-D.C. Press Association, of which The Gazette is a member, said other court clerks have denied access as well.

"It's difficult to say whether [the rules] are constitutional," she said.

John C. Griep, news editor of the The Star Democrat in Easton, said his reporters tried to find out about two separate child abuse cases this spring only to be stymied by the new rules.

"The state and the general public have a strong interest in the protection of children from abuse," Griep said. "... For the court to restrict public knowledge of what happens in these cases is a detriment to the efforts to prevent child abuse."

Staff Writer Noelle Barton contributed to this story.

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Judge opens records for alleged child abuse case

By *PATRICK RUCKER*

Examiner Staff Writer

A Montgomery County District Court judge agreed Thursday to grant The Examiner previously sealed court records of an alleged child abuse case at a local private school.

The county had denied the paper's multiple requests to see the records as part of its reporting of the allegations. The records will be made available today following a ruling by District Court Administrative Judge Cornelius J. Vaughey.

Welcoming the decision, Examiner Editor in Chief John Wilpers said the paper "is a strong proponent of keeping as many records open as possible so our readers can make informed decisions on governmental actions."

Calling the county's attempt to withhold the records "a slippery slope," Wilpers said he hoped the decision "sends a message that court records must be available to the public."

On June 13, Montgomery County police arrested Shedrick Adrian Young, a physical education teacher at the Chelsea School in Silver Spring, on charges he assaulted a 17-year-old student in March.

Police were unable to explain whether the school promptly reported the alleged incident and The Examiner looked for answers in court documents.

Court officials withheld the documents, claiming the records were sealed under a state privacy ruling. Officials did not comment on the ruling Thursday.

The Examiner filed a suit late Wednesday challenging the rule and the paper prevailed Thursday.

Attorneys for the case welcomed the decision but expressed regret that the state rule remains in place.

"I don't think that we should have to apply to see the record in a criminal case," said Alice Lucan, who represented The Examiner in the case. "What if someone in the school community wanted to see this record?"

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New Court Rule Bars Public From Reviewing Files

WBAL-TV Seeks Clarification Of Rule's Intent

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BALTIMORE -- Confusion within Maryland courts over a new rule concerning cases involving children has led to legal challenges.

- Jayne Miller Reports: WBAL-TV Asks Court For Rule Clarification

WBAL-TV 11 News I-Team lead investigative reporter Jayne Miller reported the new rule took effect last October, but the real effect has surfaced more recently as court clerks realize the rule's full definition.

Legal counsel for WBAL-TV took the first step Thursday to challenging the rule following court refusal to 11 News I-Team inquiries to review two criminal files.

Miller reported the case against Denise Lechner in Baltimore County has remained a very public matter. Authorities accused her in March in the child abuse death of her 3-year-old son, Roy Jr. (Full Story).

In the weeks following official investigations, social services authorities publicly disclosed their handling of the case, resulting in a grand jury indictment against Lechner.

Under former court rules, the county courthouse would maintain Lechner's court file as public record because the defendant is an adult.

However, court officials refused Wednesday 11 News' requests to review the file, citing the new court rule. Miller said reporters in other parts of the state have encountered similar problems.

The rule, in part, reads: "... the custodian shall deny inspection of, in any action or proceeding, a case record concerning child abuse or neglect."

Miller said the strict interpretation of the rule can bar the public from accessing criminal court files about any defendant charged or convicted of crimes that include child abuse, whether physical or sexual.

While the state's sex offender registry remains open to the public, the court files of individual sex offenders, if the victim is under 18, may be sealed.

In Annapolis, officials with the state's highest court acknowledged the new rule has caused confusion among court clerks, and a review of the rule is now under way.

The lawyer representing WBAL-TV is first seeking to clarify the intent of the new rule. On Thursday, she sent a letter to the administrative judge in Baltimore County.

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