

**Notice of**  
**Standing Committee on Rules of Practice and Procedure**  
**June 16, 2022 Open Meeting, 9:30 a.m.**  
**Instructions for Members of the Public**

The June 16, 2022, 9:30 a.m. open meeting of the Standing Committee on Rules of Practice and Procedure will be held virtually using the platform Zoom for Government. Members of the public may attend the meeting by emailing [Rules@mdcourts.gov](mailto:Rules@mdcourts.gov) to receive a link to the meeting. Please email [Rules@mdcourts.gov](mailto:Rules@mdcourts.gov) before June 15, 2022 at 3:30 p.m. to ensure that you receive the Zoom link prior to the meeting time.

If you have a comment related to a posted agenda item, you may e-mail it to [rules@mdcourts.gov](mailto:rules@mdcourts.gov) at least 24 hours prior to the beginning of the meeting. Your comment will be distributed to the members of the Rules Committee prior to the meeting.

Members of the public must observe the following protocols during the Zoom for Government virtual meeting:

- Upon joining the meeting, please note that your microphone will be muted. If you would like to request permission to speak, you may send a chat message in the Zoom platform to Colby Schmidt (the Zoom for Government meeting host). If there is an opportunity for you to speak, you will be recognized and your microphone will be unmuted by the host for the duration of your comment.
- You are advised that for the purpose of assisting staff with the preparation of minutes of the meeting, a back-up audio recording will be made. By speaking, you are consenting to the recording of your remarks.
- If there are any concerns regarding these procedures during the meeting, questions may be submitted via the chat tab during the meeting.

**Agenda and Proposed Rules Changes**

- The meeting agenda and proposed Rules changes are attached to this Notice. During the meeting, any updated materials will be available in the chat feature of the Zoom meeting.

*The agenda for a meeting of the Rules Committee generally will be posted 7-10 days before the date of the meeting. At the discretion of the Chair, items may be deleted from or added to the agenda.*

**AGENDA FOR**  
**RULES COMMITTEE MEETING**

**June 16, 2022**  
**(Thursday)**

**To Be Held via Zoom for Government**

- |        |  |              |
|--------|--|--------------|
| Item 1 | Consideration of proposed amendments to:                         | Judge Wilner |
|        | Rule 16-503 (In Circuit Court)                                   |              |
|        | Rule 16-504 (Electronic Recording of Circuit Court Proceedings)  |              |
|        | Rule 16-502 (In District Court)                                  |              |
| Item 2 | Consideration of proposed amendments to Rule 1-202 (Definitions) | Mr. Wells    |

# **AGENDA ITEM 1**

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 500 - RECORDING OF PROCEEDINGS

AMEND Rule 16-503, as follows:

RULE 16-503. IN CIRCUIT COURT

(a) Proceedings to be Recorded

(1) Proceedings in the Presence of Judge

All trials, hearings, testimony, and other judicial proceedings before a circuit court judge held either in a courtroom or by remote electronic means shall be recorded verbatim in their entirety, except that, unless otherwise ordered by the court, the person responsible for recording need not report or separately record an audio or audio-video recording offered as evidence at a hearing or trial.

Committee note: An audio or audio-video recording offered at a hearing or trial must be marked for identification and made part of the record, so that it is available for future transcription. See Rules 2-516 (b) (1) (A) and 4-322 (c) (1) (A). Section (a) does not apply to ADR proceedings conducted pursuant to Rule 9-205 or Title 17 of these Rules.

(2) Proceedings Before Magistrate, Examiner, or Auditor

Proceedings before a magistrate, examiner, or auditor shall be recorded verbatim in their entirety, except that:

(A) the recording of proceedings before a magistrate may be waived in accordance with Rules 2-541 (d) (3) or 9-208 (c) (3);

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(B) the recording of proceedings before an examiner may be waived in accordance with Rule 2-542 (d) (4); and

(C) the recording of proceedings before an auditor may be waived in accordance with Rule 2-543 (d) (3).

(b) Method of Recording

Proceedings may be recorded by any reliable method or combination of methods approved by the County Administrative Judge. If proceedings are recorded by a combination of methods, the County Administrative Judge shall determine which method shall be used to prepare a transcript.

(c) Only Official Recordings Permitted

Only official recordings of judicial proceedings taken in accordance with this Rule are permitted. All other recordings of judicial proceedings are strictly prohibited.

Cross reference: See Rule 2-804 (e) requiring proceedings held remotely to be recorded in accordance with this Rule.

Source: This Rule is derived in part from former Rule 16-404 (2016).

REPORTER'S NOTE

In light of *Soderberg v. Carrion*, 999 F.3d 962 (4th Cir. 2021), concerns have been raised about the operation of Rules 16-503 and 16-504, including (1) the interaction between Rule 16-504 (h) and Code, Criminal Procedure Article, § 1-201, and (2) what it means to "broadcast" a "criminal matter" for purposes of § 1-201 (a) (1).

**RULE 16-503**

The Rules Committee is asked to address whether the playing of an unaltered official recording of a criminal proceeding, made pursuant to Rule 16-503, and obtained by a person pursuant to Rule 16-504, falls within the definition of a "broadcast" as that term is used in Code, Criminal Procedure § 1-201(a)(1).

For the Committee's discussion and consideration, amendments to Rules 16-503 and 16-504 have been drafted. The Committee also may wish to consider whether amendments to other Rules, such as Rule 16-502, should be proposed.

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURT ADMINISTRATION  
CHAPTER 500 - RECORDING OF PROCEEDINGS

AMEND Rule 16-504, as follows:

RULE 16-504. ELECTRONIC RECORDING OF CIRCUIT COURT PROCEEDINGS

(a) Control of and Direct Access to Electronic Recordings

(1) Under Control of Court

Electronic recordings made pursuant to Rule 16-503 and this Rule are under the control of the court.

(2) Restricted Access or Possession

No person other than a duly authorized official or employee of the circuit court shall have direct access to or possession of an official electronic recording.

(b) Filing of Recordings

Audio and audio-video recordings shall be maintained by the court in accordance with standards specified in an administrative order of the Chief Judge of the Court of Appeals.

(c) Court Reporters

Regulations and standards adopted by the Chief Judge of the Court of Appeals under Rule 16-505 (a) apply with respect to court reporters employed in or designated by a circuit court.

(d) Presence of Court Reporters Not Necessary

Rule 16-504  
for 06/16/22 R.C.

Unless otherwise ordered by the court with the approval of the administrative judge if circuit court proceedings are recorded by audio or audio-video recording, which is otherwise effectively monitored, a court reporter need not be present in the courtroom.

(e) Identification Label

Whenever proceedings are recorded by electronic audio or audio-video means, the clerk or other designee of the court shall affix to each electronic audio or audio-video recording a label containing the following information:

- (1) the name of the court;
- (2) the docket reference of each proceeding included on the recording;
- (3) the date on which each proceeding was recorded; and
- (4) any other identifying letters, marks, or numbers necessary to identify each proceeding recorded.

(f) Information Required to Be Kept

(1) Duty to Keep

The clerk or other designee of the court shall keep the following items:

- (A) a proceeding log identifying (i) each proceeding recorded on an audio or audio-video recording, (ii) the time the



proceeding commenced, (iii) the time of each recess, and (iv) the time the proceeding concluded;

(B) an exhibit list;

(C) a testimonial log listing (i) the recording references for the beginning and end of each witness's testimony and (ii) each portion of the audio or audio-video recording that has been safeguarded pursuant to section (g) of this Rule.

(2) Location of Exhibit List and Logs

The exhibit list shall be kept in the court file. The proceeding and testimonial logs shall be kept with the audio or audio-video recording.

(g) Safeguarding Confidential Portions of Proceeding

If a portion of a proceeding involves placing on the record matters that, on motion, the court finds should and lawfully may be shielded from public access and inspection, the court shall direct that appropriate safeguards be placed on that portion of the recording. For audio and audio-video recordings, the clerk or other designee shall create a log listing the recording references for the beginning and end of the safeguarded portions of the recording.

(h) Right to Obtain Copy of Audio Recording

(1) Generally

Except (A) for proceedings closed pursuant to law, (B) as otherwise provided in this Rule, or (C) as ordered by the court, the authorized custodian of an audio recording shall make a copy of the audio recording or, if practicable, the audio portion of an audio-video recording, available to any person upon written request and, unless waived by the court, upon payment of the reasonable costs of making the copy.

(2) Redacted Portions of Recording

Unless otherwise ordered by the County Administrative Judge, the custodian of the recording shall assure that all portions of the recording that the court has directed be safeguarded pursuant to section (g) of this Rule are redacted from any copy of a recording made for a person under subsection (h) (1) of this Rule. Delivery of the copy may be delayed for a period reasonably required to accomplish the redaction.

(3) Exceptions

Upon written request and subject to the conditions in section (h) of this Rule, the custodian shall make available to the following persons a copy of the audio recording or, if practicable, the audio portion of an audio-video recording of proceedings that were closed pursuant to law or from which safeguarded portions have not been redacted:

(A) the Chief Judge of the Court of Appeals;

(B) the County Administrative Judge;

(C) the Circuit Administrative Judge having supervisory authority over the court;

(D) the presiding judge in the case;

(E) the Commission on Judicial Disabilities or, at its direction, Investigative Counsel;

(F) Bar Counsel;

(G) unless otherwise ordered by the court, a party to the proceeding or the attorney for a party;

(H) a stenographer or transcription service designated by the court for the purpose of preparing an official transcript of the proceeding, provided that (i) the transcript of unredacted safeguarded portions of a proceeding, when filed with the court, shall be placed under seal or otherwise shielded by order of court, and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted safeguarded portions shall be prepared for or delivered to any person not listed in subsection (h) (3) of this Rule; and

(I) any other person authorized by the County Administrative Judge.

(i) Broadcasting Audio Recordings of Criminal Trial Proceedings Prohibited

Pursuant to Code, Criminal Procedure Article § 1-201, broadcasting of audio recordings of criminal trial proceedings is prohibited. With respect to recordings of criminal trial proceedings obtained under section (h) of this Rule, "broadcasting" means, during the pendency of the criminal trial proceeding that is the subject of the recording, electronic transmission of the recording by radio, television, the internet, or any telecommunications carrier network; posting or sharing the recording to any social media platform; duplicating the recording or playing the recording for the general public. Any person who violates this subsection may be subject to contempt.

~~(i)~~(j) Right to Listen to and View Audio-Video Recording

(1) Generally

Except for proceedings closed pursuant to law or as otherwise provided in this Rule or ordered by the Court, the authorized custodian of an audio-video recording, upon written request from any person, shall permit the person to listen to and view the recording at a time and place designated by the court, under the supervision of the custodian or other designated court official or employee.

Committee note: If space is limited and there are multiple requests, the custodian may require several persons to listen to and view the recording at the same time or accommodate the requests in the order they were received.

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(2) Safeguarded Portions of Recording

Unless otherwise ordered by the County Administrative Judge, the custodian of the recording shall assure that all portions of the recording that the court directed to be safeguarded pursuant to section (g) of this Rule are not available for listening or viewing. Access to the recording may be delayed for a period reasonably necessary to accomplish the safeguarding.

(3) Copying Prohibited

A person listening to and viewing the recording may not make a copy of it or have in his or her possession any device that, by itself or in combination with any other device, can make a copy. The custodian or other designated court official or employee shall take reasonable steps to enforce this prohibition, and any willful violation of the prohibition may be punished as a contempt.

~~(j)~~ (k) Right to Obtain Copy of Audio-Video Recording

(1) Who May Obtain Copy

Upon written request and subject to the conditions in this section, the custodian shall make available to the following persons a copy of the audio-video recording, including a recording of proceedings that were closed pursuant to law or from which safeguarded portions have not been redacted:

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(A) the Chief Judge of the Court of Appeals;

(B) the County Administrative Judge;

(C) the Circuit Administrative Judge having supervisory authority over the court;

(D) the presiding judge in the case;

(E) the Commission on Judicial Disabilities or, at its direction, Investigative Counsel;

(F) Bar Counsel;

~~(G) unless otherwise ordered by the court, a party to the proceeding or the attorney for a party;~~

~~(H)~~ (G) a stenographer or transcription service designated by the court for the purpose of preparing an official transcript of the proceeding, provided that, (i) if the recording is of a proceeding closed pursuant to law or from which safeguarded portions have not been redacted, the transcript, when filed with the court, shall be placed under seal or otherwise shielded by order of the court, and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted safeguarded portions shall be prepared for or delivered to any person not listed in subsection (j) (1) of this Rule;

~~(I)~~ (H) the Court of Appeals or the Court of Special Appeals pursuant to Rule 8-415 (c); and

~~(J)~~ (I) any other person authorized by the County Administrative Judge.

(2) Restrictions on Use

Unless authorized by an order of court, a person who receives a copy of an electronic recording under this section shall not:

(A) make or cause to be made any additional copy of the recording; or

(B) except for a non-sequestered witness or an agent, employee, or consultant of the party or attorney, give or electronically transmit the recording to any person not entitled to it under subsection (j) (1) of this Rule.

(3) Violation of Restriction on Use

A willful violation of subsection (j) (2) of this Rule may be punished as a contempt.

(1) Broadcasting Video Recordings of Criminal Trial Proceedings Prohibited

Pursuant to Criminal Procedure Article § 1-201, broadcasting of video recordings of criminal trial proceedings is prohibited. With respect to recordings of criminal trial proceedings obtained under section (k) of this Rule, "broadcasting" means at any time the electronic transmission of the recording by television, the internet, or any

telecommunications carrier network; posting or sharing the recording to any social media platform; duplicating the recording or playing the recording for the general public. Any person who violates this subsection may be subject to contempt.

Cross reference: See Rule 16-505 (a) concerning regulations and standards applicable to court reporting in all courts of the State.

Source: This Rule is derived ~~form~~ from former Rules 16-404, 16-405, and 16-406 (2016).

REPORTER'S NOTE

See the Reporter's note to Rule 16-503.



MARYLAND RULES OF PROCEDURE

TITLE 16 - COURT ADMINISTRATION

CHAPTER 500 - RECORDING OF PROCEEDINGS

AMEND Rule 16-502, as follows:

RULE 16-502. IN DISTRICT COURT

(a) Proceedings to be Recorded

All trials, hearings, testimony, and other judicial proceedings before a District Court Judge held either in a courtroom or by remote electronic means shall be recorded verbatim in their entirety, except that, unless otherwise ordered by the court, the person responsible for recording need not report or separately record an audio or audio-video recording offered as evidence at a hearing or trial.

Committee note: Section (a) of this Rule does not apply to ADR proceedings conducted pursuant to Title 17, Chapter 300 of these Rules.

(b) Method of Recording

(1) Generally

Proceedings shall be recorded by an audio recording device provided by the court.

(2) As Authorized By Chief Judge

The Chief Judge of the District Court may authorize recording by additional means, including audio-video recording.

Audio-video recording of a proceeding and access to an audio-video recording shall be in accordance with this Rule and Rules 16-503 and 16-504.

(c) Control of and Direct Access to Electronic Recordings

(1) Under Control of District Court

Electronic recordings made pursuant to this Rule shall be under the control of the District Court.

(2) Restricted Access or Possession

No person other than an authorized Court official or employee of the District Court may have direct access to or possession of an official electronic recording.

(d) Filing of Recordings

Subject to section (c) of this Rule, audio recordings and any other recording authorized by the Chief Judge of the District Court shall be maintained by the court in accordance with the standards specified in an administrative order of the Chief Judge of the Court of Appeals.

Cross reference: See Rule 16-505 (a) providing for an administrative order of the Chief Judge of the Court of Appeals.

(e) Court Reporters and Persons Responsible for Recording Court Proceedings

Regulations and standards adopted by the Chief Judge of the Court of Appeals pursuant to Rule 16-505 (a) apply with respect to court reporters and persons responsible for recording

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court proceedings employed in or designated by the District Court.

(f) Safeguarding Confidential Portions of Proceedings

If a portion of a proceeding involves placing on the record matters that, on motion, the court finds should and lawfully may be shielded from public access and inspection, the court shall direct that appropriate safeguards be placed on that portion of the recording. The clerk shall create a log listing the recording references for the beginning and end of the safeguarded portions of the recording. The log shall be kept in the court file, and a copy of the log shall be kept with the recording.

(g) Right to Obtain Copy of Audio Recording

(1) Generally

Except (A) for proceedings closed pursuant to law, (B) as otherwise provided in this Rule, or (C) as ordered by the court, the authorized custodian of an official audio recording shall make a copy of the audio recording available to any person upon written request and, unless waived by the court, upon payment of the reasonable costs of making the copy.

(2) Redacted Portions of Recording

Unless otherwise ordered by the District Administrative Judge, the custodian of the recording shall assure that all

portions of the recording that the court directed be safeguarded pursuant to section (f) of this Rule are redacted from any copy of a recording made for a person under subsection (g)(1) of this Rule. Delivery of the copy may be delayed for a period reasonably required to accomplish the redaction.

(3) Exceptions

Upon written request and subject to the conditions in section (g) of this Rule, the custodian shall make available to the following persons a copy of the audio recording of proceedings that were closed pursuant to law or from which safeguarded portions have not been redacted:

- (A) the Chief Judge of the Court of Appeals;
- (B) the Chief Judge of the District Court;
- (C) the District Administrative Judge having supervisory authority over the court;
- (D) the presiding judge in the case;
- (E) the Commission on Judicial Disabilities or, at its direction, Investigative Counsel;
- (F) Bar Counsel;
- (G) unless otherwise ordered by the court, a party to the proceeding or the attorney for a party;
- (H) a stenographer or transcription service designated by the court for the purpose of preparing an official transcript of

the proceeding, provided that (i) the transcript of unredacted safeguarded portions of a proceeding, when filed with the court, shall be placed under seal or otherwise shielded by order of court and (ii) no transcript of a proceeding closed pursuant to law or containing unredacted safeguarded portions shall be prepared for or delivered to any person not listed in subsection (g) (3) of this Rule; and

(I) any other person authorized by the District Administrative Judge.

Source: This Rule is derived from former Rule 16-504 (2016).

REPORTER'S NOTE

No amendments to Rule 16-502 have been drafted. As to whether amendments to Rule 16-502 should be proposed, see the Reporter's note to Rule 16-503.

# **AGENDA ITEM 2**

MARYLAND RULES

TITLE 1 - GENERAL PROVISIONS

CHAPTER 100 - CONSTRUCTION, INTERPRETATION, AND DEFINITIONS

AMEND Rule 1-202 by updating a cross reference following section (k), as follows:

Rule 1-202. DEFINITIONS

. . .

(k) Holiday

"Holiday" means an "employee holiday" set forth in Code, State Personnel and Pensions Article, § 9-201.

Committee note: The "employee holidays" listed in Code, State Personnel and Pensions Article are:

- (1) January 1, for New Year's Day;
- (2) January 15, for Dr. Martin Luther King, Jr.'s Birthday, unless the United States Congress designates another day for observance of that legal holiday, in which case, the day designated by the United States Congress;
- (3) the third Monday in February, for Presidents' Day;
- (4) May 30, for Memorial Day, unless the United States Congress designates another day for observance of that legal holiday, in which case, the day designated by the United States Congress;
- (5) June 19, for Juneteenth National Independence Day;
- ~~(5)~~ (6) July 4, for Independence Day;
- ~~(6)~~ (7) the first Monday in September, for Labor Day;
- ~~(7)~~ (8) October 12, for Columbus Day, unless the United States Congress designates another day for observance of that legal holiday, in which case, the day designated by the United States Congress;
- ~~(8)~~ (9) November 11, for Veterans' Day;
- ~~(9)~~ (10) the fourth Thursday in November, for Thanksgiving Day;
- ~~(10)~~ (11) the Friday after Thanksgiving Day, for American Indian Heritage Day;
- ~~(11)~~ (12) December 25, for Christmas Day;

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~~(12)~~ (13) each statewide general election day in this State; and  
~~(13)~~ (14) each other day that the President of the United States  
or the Governor designates for general cessation of business.

. . .

REPORTER'S NOTE

Proposed amendments to Rule 1-202 implement Chapter 64 (HB 227), 2022 Laws of Maryland. The statute adds Juneteenth National Independence Day to the State employee holidays in Maryland. The Committee note following section (k), which defines "holiday" in the Rules, is amended to include Juneteenth.