

August 27, 2019

Standing Committee on Rules of
Practice and Procedure
Maryland Court of Appeals
2011-D Commerce Park Drive
Annapolis, MD 21401

Re: Rules Governing Public Access to Judicial Records (Title 16, Chapter
900 of the Maryland Rules)

Dear Members of the Rules Committee:

We write to urge you to adopt crucial amendments to Chapter 900 of Title 16 of the Maryland Rules, which governs public access to judicial records.¹ Although Chapter 900 purports to guarantee a robust right to access and inspect judicial records, the right is extremely difficult to enforce in practice. As a result, people who request judicial records are often left with no recourse when their requests are ignored or unlawfully denied—an all-too-common occurrence in Maryland. We therefore respectfully ask the Committee to consider amending Chapter 900 to remedy this deficiency.

Rule 16-903(b) establishes that “[j]udicial records are presumed to be open to the public for inspection.” *See also id.* (providing that the custodian of any judicial record must, absent an exception, “permit an individual appearing in person . . . to inspect the record”). And Rule 16-904(a) entitles a requester to “a copy or printout of the record” as an alternative to appearing in person. But these explicit guarantees are not backed by any formal or informal enforcement mechanism. For instance, the Rules prescribe no timeline for compliance and they provide no avenue for resolving a requester’s grievances—even when a request has been unlawfully ignored or denied. Most notably, the Rules establish no procedure for seeking administrative or judicial review when a request remains unfulfilled. Instead, requesters are left with only one option: to seek a writ of mandamus, which the Court of Appeals has described as an “extraordinary” form of relief that must be “exercised with great caution.” *Baltimore Cty. v. Baltimore Cty. Fraternal Order of Police Lodge No. 4*, 439 Md. 547, 570 (2014).

¹ The Rules define “judicial record” to include not only documents filed in civil and criminal proceedings, but also other types of records maintained by the judiciary, including administrative records, business license records, notice records, and special judicial unit records. *See* Rule 16-902(h).

This regime stands in stark contrast to the procedures set forth in the Maryland Public Information Act (MPIA). Under the MPIA—which does not apply to the judiciary—custodians have “no[] more than 30 days” to grant or deny a request for records. Md. Code, Gen. Provisions § 4-203(a). The MPIA also affords requesters two means of protecting their statutory “right” to information. *Id.* § 4-103(b). First, they may seek to resolve disputes over access to records through informal mediation with the Public Access Ombudsman. *See id.* § 4-301(b). That process provides a straightforward mechanism for addressing disagreements between requesters and records custodians without resorting to litigation. And, if that mechanism fails, the MPIA contains another provision that enables requesters to seek judicial review to compel the production of requested documents. *See id.* § 4-362. That provision requires the relevant custodian of records to justify—in court—any decision to withhold a record, *id.* § 4-362(b)(2)(i), thereby ensuring that requests for records cannot be denied without articulable reasons.

No such safeguards currently exist to ensure the public’s right to access judicial records—even though public access to many judicial records is guaranteed not just under Chapter 900 but also under the First Amendment. *See, e.g., Doe v. Public Citizen*, 749 F.3d 246, 265 (4th Cir. 2014) (“It is well settled that the public and press have a qualified right of access to judicial documents and records filed in civil and criminal proceedings.”). This critical omission in the Rules could be redressed most easily by amending Chapter 900 to include some of the protections contained in the MPIA. At a minimum, we recommend that the Committee propose three essential changes to the Rules: (1) clarifying that a custodian must act immediately on requests for documents filed in civil and criminal proceedings, and must act on requests for other types of judicial records within a specified timeline (ideally 30 days); (2) permitting persons whose requests are denied to pursue mediation with the Public Access Ombudsman, as a means of averting unnecessary litigation; and (3) establishing a mechanism for administrative or judicial review (other than a writ of mandamus) to ensure timely compliance with Rules 16-903 and 16-904.

We are confident that these amendments will help make the Rules’ existing guarantees a reality, thereby fulfilling the Court of Appeals’ original design and ensuring the Judiciary’s compliance with the First Amendment’s guarantee of access. Please do not hesitate to contact us if we can be of any assistance to the Committee in addressing these issues. Thank you for your consideration.

Sincerely,

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