NOTICE

IN THE COURT OF APPEALS OF MARYLAND

Annapolis, Maryland

The Court will hold an open meeting, on an emergency basis, on Tuesday, March 6, 2018 at 2:00 p.m. in the Court of Appeals' Conference Room, 4th Floor, Robert C. Murphy Courts of Appeal Building, to consider amendments to MD Rule 16-910.

For further information or if any interested persons wish to speak on this Rule at the meeting, please contact Bessie M. Decker, Clerk.

Phones: 410-260-1500
800-926-2583 (Wash.)

THE COURT OF APPEALS OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

Hon. ALAN M. WILNER, Chair
SANDRA F. HAINES, Reporter
SUSAN L. MACEK, Assistant Reporter
SHERIE B. LIBBER, Assistant Reporter

March 5, 2018

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Annapolis, Maryland 21401
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The Honorable Mary Ellen Barbera
Chief Judge
The Honorable Clayton Greene, Jr.
The Honorable Sally D. Adkins
The Honorable Robert N. McDonald
The Honorable Shirley M. Watts
The Honorable Michele D. Hotten
The Honorable Joseph M. Getty
Judges

Your Honors:

In light of the recent expressions of concern over the Rules Committee's recommendation in its 193rd Report that the language then in Rule 16-910(b)(2)(B) be deleted, I thought it may be helpful to set forth an explanation of what occurred, as best I can reconstruct it. That recommendation was adopted by the Court in June 2017, effective August 1, 2017, and has led to the exclusion from CaseSearch of the names of law enforcement officers and certain other categories of individuals.

I have not been able, in the short time since those concerns were made public, to reconstruct everything that occurred a year ago, but it is clear from what I have discovered that the Committee's recommendation was a mistake. It was an honest mistake, not for any improper motive, but a mistake that never should have occurred, and for which I humbly apologize. I have appended to this letter what I have discovered so far.

The language that was deleted can be restored on an emergency basis, if that is what the Court desires to do.

Respectfully submitted,

Alan M. Wilner

Chair

BACKGROUND OF RULE 16-910

What is now Rule 16-910 (Access to Electronic Records) was adopted as Rule 16-1008 in 2004, as part of the initial "access to court records" rules. It was captioned "Electronic records and retrieval." CaseSearch did not exist at that time, and most of the judicial records that were in electronic form were administrative or operational records. With rare exception, case records maintained by the clerks were all in paper form, to which there was no remote access.

CaseSearch, developed by JIS, was created in 2006 without the benefit of any governing Rule. Apparently in implementation of that program; however, the Court adopted amendments to Rule 16-1008 recommended in the Committee's 156th Report and in supplements to that Report that committed the Judiciary to create new electronic records, provide computer terminals or other equipment for use by the public, and create the ability to inspect or copy court records through remote access. That is when the language recently deleted was added as Section (a)(3)(B) of the Rule.

In Part I of the Committee's 178th Report and supplements thereto, which proposed a reorganization and revision of all of the court administration Rules, Rule 16-1008 became Rule 16-909, and what had been Rule 16-1008(a)(3)(B) became Rule 16-909(b)(3). It read:

> "Unless shielded by a protective order, the name, office address, office telephone number, and office e-mail address, if any, relating to law

> enforcement officers, other public officials or employees acting in their official capacity, and expert witnesses, may be remotely accessible."

That was cast as an exception to §(b)(2)(A) of the Rule, which precluded remote access to that information regarding a victim or nonparty witness.

During the 2016 session of the General Assembly, concerns were expressed that some of the kinds of information that appeared on CaseSearch were inhibiting people from obtaining employment, housing, credit, and insurance. Concern also was expressed regarding the names of nonparty witnesses and of victims who had requested a warrant that, notwithstanding the prohibition in the Rule, occasionally appeared on CaseSearch. After consultation with some members of the General Assembly, the Committee agreed to consider a self-contained CaseSearch Rule that could address those concerns. Several meetings were held by the General Court Administration Subcommittee with JIS representatives and stakeholders who agreed to act as consultants, including a representative from the news media.

The end result of that process was a proposed new Rule 16-911 that would deal specifically with the CaseSearch program. The main thrust of the proposed Rule was to put a "sunset" on information appearing on CaseSearch, but the issue of including identifying information regarding law enforcement officers also was addressed. The Committee had received communications from police organizations objecting to disclosure of the full names of officers who were merely nonparty witnesses. The subcommittee found merit in that concern and proposed, with respect to criminal and incarcerable traffic cases, that only "the last names, badge numbers, and employing

agency of the arresting officers" be disclosed. As the result of other changes, what had been Rule 16-909 became proposed Rule 16-910.

I have been unable, so far, to locate specific background material regarding the deletion of the language in Rule 16-910(b)(3) other than the fact that it was considered at the same Rules Committee meeting on March 10, 2017 as the proposed new Rule on CaseSearch. If the CaseSearch Rule were to be adopted, some modification of the language in Rule 16-910(b)(3) would be required. The failure to merely conform the language in Rule 16-910(b)(3) to what was proposed in Rule 16-911 was a mistake in the subcommittee. It should have been caught, and, had it been, the current problem would not have arisen.

Compounding that, the full Committee, after much discussion, rejected Rule 16-911 and recommitted it to the General Court Administration Subcommittee to reconsider the sunset provisions. Having done that, the proposed amendment to Rule 16-910 also should have been rejected and sent back to the Committee. That also was not done, possibly because the two Rules were considered as separate items and the connection was simply overlooked. *That*, ultimately, is what has caused the problem.