

INTRODUCTION

1. For years, the Maryland Court of Appeals has sought to ensure the openness of the judiciary by making audio recordings of all trial-court proceedings available to the public. In 2016, the Court reaffirmed its commitment to that goal by re-codifying the public’s longstanding “Right to Obtain [a] Copy” of trial-court recordings in Maryland Rule 16-504(h). That Rule now expressly provides that the custodian of such recordings in every circuit “shall make a copy of [an] audio recording . . . available to any person upon written request.”

2. This case arises from the Baltimore City Court Reporter’s refusal to follow that Rule. Last week, the Court Reporter’s office—which houses all local-court recordings—abruptly stopped processing requests for recordings from members of the public. The office sought to justify its new policy by relying on a recent “order” of Baltimore City’s Chief Administrative Judge. But a *local* administrative order cannot override a *State* Rule. Moreover, the “order” that the Court Reporter’s office cited remains shrouded in mystery: the Court has not identified its reasons or authority for issuing the “order,” nor has it posted the order publicly.

3. These events paint a disturbing picture—that of local court officials seeking to stymie the State’s goal of shining a light on the judiciary and, worse

yet, seeking to do so in the dark. Mandamus is therefore necessary to compel these officials to comply with Rule 16-504(h) and to restore the transparency that the Rule is meant to foster.

JURISDICTION

4. The Circuit Court for Baltimore City has jurisdiction over this action under Maryland Rule 15-701 and § 1-501 of Maryland’s Code of Courts & Judicial Proceedings. *See also Town of La Plata v. Faison-Rosewick*, 434 Md. 496, 510-11 (2013) (“[I]his Court has held that mandamus and/or injunctive relief are also appropriate avenues for reviewing and correcting an arbitrary or unreasonable agency decision where no statute or local ordinance provides the right to seek judicial review.”).

FACTUAL BACKGROUND

A. Maryland Rule 16-504

5. Maryland Rule 16-503(a) provides that all circuit-court “proceedings before a judge in a courtroom shall be recorded verbatim in their entirety.” Many circuit courts in Maryland, including the Baltimore City Circuit Court, comply with Rule 16-503(a) by recording all judicial proceedings electronically.¹

¹ The full text of Rule 16-503 is available at <https://perma.cc/Y6CN-LMWE>.

6. The public’s right of access to those electronic recordings is governed by Rule 16-504. The Rule contains several subsections delineating the varying tiers of access to audio and video recordings and the limited restrictions that courts may place on that access.

7. This case concerns subsection (h) of Rule 16-504, which is entitled “Right to Obtain Copy of Audio Recording.” That subsection provides, in relevant part:

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.

Md. Rule 16-504(h)(1).²

8. For the past several years, the Baltimore City Court Reporter’s office has complied with Rule 16-504(h) by providing copies of audio recordings to any member of the public who requested them. Last week, however, the office abandoned that practice without explanation.

² The full text of Rule 16-504 is available at <https://perma.cc/A2HB-Q8A5>.

B. Petitioner's Request for an Audio Recording

9. Petitioner is a Baltimore-based journalist and writer. On April 17, 2019, she submitted a written request for an audio recording of a hearing that took place in open court in the fall of 2015. *See* Exhibit A (Email from Justine Barron to Patricia Trikeriotis). The Court Reporter's office responded to her request the following morning with an email stating: "Please fax a check/money order for the amount of \$40 and we will prepare your audio." Exhibit B (Email from Christopher Metcalf to Justine Barron). Petitioner, in turn, responded by emailing the office an image of the money order she planned to use to purchase the recording.

10. On April 22, the office confirmed that Petitioner's money order would be accepted and notified her that her requested recording would "be ready tomorrow." Exhibit C (Email from Christopher Metcalf to Justine Barron). On April 23, after Petitioner indicated that she would prefer to pick up the recording the following day, the office confirmed again that her recording would be waiting for her when she arrived.

11. On April 24, however—the same day Petitioner was scheduled to retrieve the recording—the Court Reporter's office notified Petitioner that it no longer intended to provide her with a copy of the recording. A representative of the office emailed Petitioner to apologize for the sudden change, writing, "I'm

sorry to say that the Circuit Court for Baltimore City just changed our policy regarding the purchase of [court recordings].” Exhibit D (Email from Christopher Metcalf to Justine Barron). The email noted that members of the public were still permitted to “review” court recordings at the courthouse (by appointment), but that copies of such recordings would be provided only to the parties in each case. *See id.* The email made no reference to Rule 16-504.

C. Administrative Order 2019-02

12. Petitioner sought clarification regarding the basis for the new policy. In response, the Court Reporter, Patricia Trikeriotis, emailed Petitioner on April 25 to say that “the court has ordered that only parties, or counsel representing a party, are permitted to receive a copy of [court] recording[s].” Exhibit E. Ms. Trikeriotis cited Rule 16-504(h)(1), highlighting the Rule’s prefatory clause, which permits the custodian of circuit-court recordings to withhold a recording when “ordered by the court.” *Id.* In a follow-up email, Ms. Trikeriotis explained that the order was “not specific to [any] particular case, but rather a general order that only parties may receive copies of recordings.” Exhibit F.

13. Petitioner asked Ms. Trikeriotis for a copy of the order later that day but did not receive a response. When Petitioner followed up on her request the following day, April 26, Ms. Trikeriotis responded by instructing her to reach

out again for the order the following week. Finally, on April 29, Ms. Trikeriotis sent Petitioner a copy of the order.

14. The order, which is entitled “Administrative Order 2019-02,” consists of a single sentence that reads as follows:

Pursuant to the terms of Maryland Rule 16-504(h)(1)(C), it is, this 24th day of April, 2019, ORDERED, that no copies of audio recordings maintained by the Office of the Court Reporter shall be made available to persons other than parties to the relevant proceeding or counsel to the relevant proceeding.

Exhibit G. The order was issued and signed by Baltimore City’s Administrative Judge, W. Michel Pierson.

15. In the week since issuing the order, Judge Pierson has not offered any public explanation for the abrupt change in the Court’s policy regarding the public’s access to court recordings. Nor has he identified his authority for issuing the order or described what procedures, if any, he followed in issuing it. The order has yet to be published, announced, or disseminated to the public or the media. Indeed, the Court’s “Administrative Orders” webpage is currently under construction (as it has been for over three years) and includes no reference whatsoever to the April 24 order (or any other administrative order, for that matter). Instead, the page simply says, “COMING SOON.”³

³ See <https://perma.cc/TLX3-MWQC>.

16. The Court Reporter’s office has compounded this confusion by continuing to invite members of the public to purchase court recordings. The Court Reporter’s website currently states, “[a]udio CDs are available for purchase,” and “instructions regarding payment are located on [the] bottom of the Audio Request Form below.”⁴ That very form identifies the source of the Court’s obligation to furnish audio recordings to the public: “Maryland Rule 16-504 provides in part that upon written request and the payment of reasonable costs, the authorized custodian of an official recording shall make a copy of the audio portion of an audio-video recording, available to any person upon request.”⁵

CLAIMS

17. All of the preceding paragraphs are incorporated herein, as if re-alleged in this section.

COUNT I: MANDAMUS (against Baltimore City Court Reporter Patricia Trikeriotis)

18. “A court of competent jurisdiction may issue a writ of mandamus in order to compel the performance of a non-discretionary duty.” *Wilson v. Simms*, 380 Md. 206, 217 (2004). In general, “a common law mandamus action is

⁴ See <https://perma.cc/M47U-9Z2Q>.

⁵ See <https://perma.cc/5RSS-J52A>.

appropriate where ‘the relief sought involves the traditional enforcement of a ministerial act (a legal duty) by recalcitrant public officials.’” *Town of La Plata v. Faison-Rosewick LLC*, 434 Md. 496, 511 (2013) (citation omitted).

19. The plain language of Rule 16-504(h) imposes a non-discretionary duty on the Baltimore City Court Reporter—as custodian of the Court’s electronic recordings—to provide Petitioner with a copy of her requested recording. As noted above, the Rule states that “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.” Md. Rule 16-504(h)(1) (emphasis added). The Rule’s use of the word “shall” demonstrates the Court of Appeals’ intent for this duty to be mandatory, rather than discretionary. *See Murphy v. Smith*, 138 S. Ct. 784, 787 (2018) (“[T]he word ‘shall’ usually creates a mandate, not a liberty, so the verb phrase ‘shall be applied’ tells us that the district court has some nondiscretionary duty to perform.”); *Motor Vehicle Admin. v. Dove*, 413 Md. 70, 87 (2010) (“Under settled principles of statutory construction, the word ‘shall’ is ordinarily presumed to have a mandatory meaning.” (citations omitted)).

20. Maryland Rule 1-201, which governs the construction of all other Rules, confirms that the word “shall” must be read to impose a mandatory duty here. Indeed, Rule 1-201 expressly states that “[w]hen a rule, by the word ‘shall’

or otherwise, mandates or prohibits conduct, the consequences of noncompliance are those prescribed by these rules” and “[i]f no consequences are prescribed, the court may compel compliance with the rule.” Md. Rule 1-201(a).⁶

21. The legislative history of Rule 16-504(h) further illustrates that the Court of Appeals sought to impose a mandatory duty on the custodians of court recordings. In 2013, the Rules Committee briefly considered amending the Rules to restrict the public’s ability to obtain such recordings. *See Standing Comm. on Rules of Practice & Procedure, 178th Report: Part I* (2013), at 7-8.⁷ The Committee even presented the Court of Appeals with two alternative versions of the proposed Rule: one that would preserve the public’s right to obtain copies of recordings and one that would eliminate that right. *See id.* at 110, 122-30. The current version of the Rule—which the Court of Appeals adopted in 2016—reflects a deliberate choice to protect the public’s “Right to Obtain Cop[ies] of Audio Recording[s].” Md. Rule 16-504(h).

22. The Court Reporter’s office purports to rely on Rule 16-504(h)(1)(C) as a basis for denying Petitioner’s request. As noted, that sub-provision creates a narrow exception to a circuit-court custodian’s general duty

⁶ The full text of Rule 1-201 is available at <https://perma.cc/XZ7V-EUEQ>.

⁷ A copy of the report is available at <https://perma.cc/6C7R-G8B3>.

to “make a copy of [an] audio recording . . . available to any person upon written request.” Under that exception, the custodian may restrict the public’s access to an audio recording when the restriction on access was “ordered by the court” in that particular case.

23. Here, the Court Reporter seeks to rely on Administrative Order 2019-02 as a basis for invoking the “as ordered by the court” exception in Rule 16-504(h)(1)(C). But an administrative order cannot trigger that exception, both as a matter of common sense and as a matter of basic statutory interpretation.

24. First, as a matter of common sense, Rule 16-504(h) would serve little purpose if every judicial circuit could simply circumvent the Rule’s core requirement via an unpublished, one-sentence administrative order. The entire objective of the Maryland Rules is to establish consistent practices across the State. *See* 7 Md. Law Encyclopedia, Courts § 31 (“The Maryland Rules are not mere guides to the practice of law, but precise rubrics established to promote the orderly and efficient administration of justice, and are to be read and followed.”). Allowing a local court—let alone an individual local judge—to override a requirement set forth in the Rules would contravene that objective. *See, e.g., Owen v. Freeman*, 279 Md. 241, 248 (1977) (“[T]he courts in Baltimore City cannot ‘relinquish’ or ‘waive’ the mandate expressed in Maryland Rule 625a since it has

long been recognized that the courts of this State cannot dispense with validly established rules.”).

25. The Court Reporter’s reliance on an administrative order also fails as a matter of statutory interpretation. As noted above, the exception in Rule 16-504(h)(1)(C) applies to circumstances in which access to an audio recording has been restricted “as ordered by the court.” But the surrounding provisions make clear that this clause must refer to orders issued in specific cases, and not to administrative orders of general application. Indeed, the Rule’s very next sentence begins with the phrase, “[u]nless otherwise ordered by the County Administrative Judge,” demonstrating that when the drafters of the Rule meant to refer to an administrative order (rather than a specific order in an individual case), they were careful to specify as much. Md. Rule 16-504(h)(2); *see also Johnson v. State*, 360 Md. 250, 265 (2000) (“To prevent illogical or nonsensical interpretations of a rule, we analyze the rule in its entirety, rather than independently construing its subparts.”). The text and context of the Rule thus clarify that the phrase “ordered by the court” refers to an order issued in a specific case—not a generally applicable order issued by an administrative judge. *See also, e.g.*, Md. Rule 16-504(d) (“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.” (emphases added)).

26. Even if an administrative order could trigger the “as ordered by the court” exception, the administrative order at issue here still would not justify the Court Reporter’s denial of Petitioner’s request. Administrative Order 2019-02 was signed on April 24—a full week after Petitioner submitted her request and more than two days after the Court Reporter’s office confirmed that her recording was ready for pick-up. *See* Exhibit G (“... it is, this *24th day of April*, 2019, ORDERED, that . . .”). The Court Reporter therefore cannot rely on the order to deny Petitioner’s request unless the order can somehow overcome the “long-standing presumption against [the] retroactivity” of new enactments. *State Ethics Comm’n v. Evans*, 382 Md. 370, 383 (2004). And there is nothing in Administrative Order 2019-02’s brief text to suggest that it can do so.

27. In sum, Administrative Order 2019-02 cannot cure the Court Reporter’s failure to comply with Rule 16-504(h). Thus, because there is no adequate remedy at law to cure the Court Reporter’s failure to comply with Rule 16-504(h), mandamus is warranted here.

COUNT II: INJUNCTIVE RELIEF
(against Baltimore City Court Reporter Patricia Trikeriotis)

28. For all of the reasons set forth in Count I, Petitioner is entitled to an injunction directing Defendant Patricia Trikeriotis to provide her with a copy of the audio recording she requested.

29. Petitioner is also entitled to an injunction prohibiting Ms. Trikeriotis from relying on Administrative Order 2019-02 as a basis for denying Petitioner's future requests for audio recordings of court proceedings. To the extent that Administrative Order 2019-02 purports to prohibit members of the public from obtaining copies of audio recordings of Baltimore City Circuit Court proceedings, the order is both ultra vires and contrary to Rule 16-504(h).

COUNT III: DECLARATORY RELIEF
(against Baltimore City Court Reporter Patricia Trikeriotis and
Baltimore City Administrative Judge W. Michel Pierson)

30. For all of the reasons set forth in Count I, Petitioner is entitled to a declaratory judgment that Administrative Order 2019-02 is invalid.

31. To the extent that Administrative Order 2019-02 purports to prohibit members of the public from obtaining copies of audio recordings of Baltimore City Circuit Court proceedings, the order is both ultra vires and contrary to Rule 16-504(h).

RELIEF

WHEREFORE, Petitioner respectfully asks this Court to grant the following relief:

(A) Issuance of a writ of mandamus directing Respondent Patricia Trikeriotis to immediately provide Petitioner with a copy of the audio recording she requested (upon payment) pursuant to Maryland Rule 16-504(h);

(B) In the alternative, issuance of an injunction directing Defendant Patricia Trikeriotis to immediately provide Petitioner with a copy of the audio recording she requested (upon payment) pursuant to Maryland Rule 16-504(h);

(C) A declaratory judgment that Administrative Order 2019-02 is invalid;
and

(D) Any other relief that this Court deems just and proper.

May 2, 2019

Respectfully submitted,

/s/ Daniel B. Rice

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Index of Exhibits

- Exhibit A:** April 17, 2019 Email from Justine Barron to Patricia Trikeriotis
- Exhibit B:** April 18, 2019 Email from Christopher Metcalf to Justine Barron
- Exhibit C:** April 22, 2019 Email from Christopher Metcalf to Justine Barron
- Exhibit D:** April 24, 2019 Email from Christopher Metcalf to Justine Barron
- Exhibit E:** April 25, 2019 Email from Patricia Trikeriotis to Justine Barron
- Exhibit F:** April 25, 2019 Email from Patricia Trikeriotis to Justine Barron
- Exhibit G:** Administrative Order 2019-02 (Apr. 24, 2019)