JUSTINE BARRON,	*	IN THE
Plaintiff,	*	CIRCUIT COURT
v.	*	FOR BALTIMORE CITY
PATRICIA TRIKERIOTIS, *et al.*,	*	(Raker, J.)
Defendants.	*	No. 24-C-19-002626

* * * * * * * * * * * * *

OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Contrary to Ms. Barron's assertions, this case does not concern the "Court Reporter's refusal to follow" Rule 16-504. Pl. Mot. for Sum. J. at 1. Instead, it involves an Administrative Judge's exercise of authority under Rule 16-504(h)(1) to issue an Order directing court staff to provide copies of courtroom audio only to parties to the relevant court proceeding or their counsel.

Defendants filed a Motion to Dismiss [Doc. 7/0], seeking summary judgment in the alternative.[1] *See* Rule 2-322(c). The Motion to Dismiss explains that Ms. Barron does not have a clear legal right to copies of certain audio recordings, because a validly issued administrative order directs the Circuit Court's court reporter to give recordings only to parties and counsel. The plain text of Rule 16-504, its rulemaking history, and its proper construction using ordinary tools of statutory interpretation all lead to the same

[1] In the interest of brevity, Defendants adopt herein the arguments advanced in their Motion to Dismiss.

conclusion—an "order of the court," including an administrative order, may bar access to audio recordings.

Before Defendants' time to file their Motion to Dismiss had run, Ms. Barron moved for summary judgment. [Doc. 6/0]. Her motion raises several arguments already raised in the Complaint (and addressed in Defendants' Motion to Dismiss) and one new argument in a footnote. The new argument cites a 1985 Court of Special Appeals footnote and contends that Judge Pierson's administrative order is an impermissible "local rule" under Rule 1-102. [Doc. 6/1] at 17 n.8 (citing *Walker v. Haywood*, 65 Md. App. 1, 12 n.4 (1985)). That argument also fails. Read in historical context, Rule 1-102 prohibits local rules of procedure, not local efforts to administer the courthouse and its personnel. Courthouse administration governs "matters essentially internal to the courts, as opposed to rules of procedure." *Walker*, 65 Md. App. at 13 n.4. Ms. Barron's contrary reading here would endanger an Administrative Judge's authority to issue administrative orders addressing courthouse security and any other administrative efforts necessary to operate a courthouse of this size and activity level.[2]

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[2] Baltimore City is one of the busiest courthouse in the State. In Fiscal Year 2018, 34,608 cases were filed and 34,882 were terminated. Baltimore City handled more cases than any other jurisdiction, except Montgomery County (35,227 filings). In FY2016 and FY2017, Baltimore City had more filings than any other jurisdiction. Maryland Judiciary, Statistical Abstract 2018 14 (2019), available at https://www.mdcourts.gov/sites/default/files/import/publications/annualreport/reports/2018/fy2018statisticalabstract.pdf (last checked August 2, 2019).

Ms. Barron retreats to policy arguments, chiding Defendants for not engaging her in a policy discussion. Pl. Mot. for Sum Jud. at 1, 12. She doubtlessly would have made a different policy choice than Judge Pierson, because her policy interests as "a Baltimore-based journalist and writer," Compl. ¶ 9, are different from Judge Pierson's interests as Administrative Judge and former member of the Rules Committee.[3] But that difference does not show a clear legal right or corresponding legal duty upon which to base mandamus relief. Because Ms. Barron's local-rule argument fails, and because her other arguments do not justify the issuance of a writ of mandamus, this Court should deny and dismiss her complaint.

ARGUMENT

I. MS. BARRON CANNOT DEMONSTRATE A CLEAR LEGAL RIGHT TO COURT AUDIO RECORDINGS WHERE AN ORDER OF THE COURT EXPRESSLY LIMITS RECORDINGS TO PARTIES AND THEIR COUNSEL.

A. A Party Seeking a Writ of Mandamus Must Demonstrate a Clear Legal Right to Have a Non-Discretionary Duty Performed and a Corresponding Legal Duty to Perform that Function.

As explained in Defendants' Motion to Dismiss, or in the alternative, for Summary Judgement, "[t]he fundamental purpose of a writ of mandamus is 'to compel inferior tribunals, public officials, or administrative agencies' to perform their function, or perform some particular duty imposed upon them which in its nature is imperative and to the performance of which duty the party applying for the writ has a clear right." *Baltimore Cty. v. Baltimore Cty. Fraternal Order of Police Lodge No. 4*, 439 Md. 547, 569-70 (2014)

[3] *See* Court of Appeals Standing Committee on Rules of Practice and Procedure, Md. Rules, Vol. 1, at 5 (LexisNexis).

(quoting *Goodwich v. Nolan*, 343 Md. 130, 145 (1996)). The writ will not issue where the right of the party seeking the writ is unclear, *Wilson v. Simms*, 380 Md. 206, 223 (2004), or doubtful, *Brack v. Bar Ass'n of Baltimore City*, 185 Md. 468, 474 (1945).

Here, Ms. Barron cannot prevail on a motion for summary judgment, because she cannot demonstrate a clear legal right to court audio recordings for which a valid order of the Court limits distribution of copies to parties and their counsel. The claim that "Rule 16-504(h) imposes a non-discretionary duty on the Baltimore City Court Reporter" to provide Ms. Barron with a copy of the requested recording is belied by the plain language of subsection (h)(1), which exempts: "(A) . . .proceedings closed pursuant to law, (B) as otherwise provided in this Rule, or (C) as ordered by the court." Md. Rule 16-504(h)(1). Pl. Mot. Sum. J. at 8. Clause (h)(1)(C) contemplates an order of this Court preventing the custodian from making copies of an audio recording available on written request.

B. Administrative Order 2019-02 Is Neither a Local Rule of Procedure nor Ultra Vires.

Ms. Barron's contention that Judge Pierson's Order is an invalid or ultra vires local rule, Pl. Mot. Sum. J. at 15-17, n. 8, misunderstands the rules of procedure and the authority of administrative judges to manage the circuit court and issue local administrative orders. Judge Pierson's Order is neither a local rule, nor ultra vires.

1. Rule 1-102 Prohibits Circuit Courts from Enacting Local Rules of Procedure.

Acting under its constitutional authority, the Court of Appeals enacted rules governing practice and procedure in Maryland courts. Md. Const. art. IV, § 18(a); *see, e.g.*, Md. Rule 1-101 (b) (Title 2 of the Rules applies to civil matters in the circuit courts),

(d) (Title 4 applies to criminal matters in the circuit courts and related matters), (e) (Title 5 (evidence) applies to all actions in the courts of this State, except as otherwise provided).

In adopting statewide rules of procedure, the Court limited the authority of the local circuit courts to adopt contrary rules. *Walker v. Haywood*, 65 Md. App. 1, 8–9 (1985). For example, in 1957, the Court adopted Maryland Rule 1.f which permitted the judges of the several circuit courts and the Supreme Bench of Baltimore City to adopt rules of practice and procedure "not inconsistent with any general rules adopted by the Court of Appeals or with any statute then in force." *Id.* (quoting Md. Code Ann. (1957 Cum. Supp.)). In 1969, the rule was amended to abolish local (county) rules but to permit circuit-wide rules adopted "by action of a majority of the judges of the judicial circuit concerned." *Id.* In 1981, a revision to Rule 1.f rescinded all circuit and local rules, except for those dealing with six enumerated subject areas. The revised rule permitted the adoption of local or county rules as well as circuit rules, limited to these designated areas. *Id.* In 1984, the rule was re-codified as Md. Rule 1–102 without substantive change, "except that the permitted subject areas for local or circuit rule-making were reduced from six to five." *Id.* *See* Md. Rule 1-102.[4]

The local rules abolished by the Court of Appeals were largely rules of procedure. For example, the April 1, 1961 Rules adopted by the Supreme Bench of Baltimore City

[4] Maryland Rule 1-102 provides: Unless inconsistent with these rules, circuit and local rules regulating (1) court libraries, (2) memorial proceedings, (3) auditors, (4) compensation of trustees in judicial sales, and (5) appointment of bail bond commissioners and licensing and regulation of bail bondsmen, are not repealed. No circuit and local rules, other than ones regulating the matters and subjects listed in this Rule, shall be adopted.

contain chapters titled "Commencement of Action and Process," "Pleading," and "Criminal Causes" and dealt exclusively with how actions were litigated in court. *See* Ex. 1. Rule 2 expressly provided that "Rules in Chapters 1, 100-600 . . . apply to *procedure* generally, both at law and in equity." Ex. 1 (emphasis added).

A chapter not dealing with procedures, entitled "General Provisions," contains rules that are the proper subject of local administrative regulation such as the "Rotation of Judges" rule or the rule managing "Moneys and Securities Paid or Brought into Court." *See* Md. Rule 16-105(b)(2) (expressly authorizing County Administrative Judge to assign judges); Pl.'s Memo, [Doc. 6/1], at 17 (listing "assignment of judges" and "financial administration" as proper subjects of administrative management). The history of the Rules confirms, therefore, that traditional administrative responsibilities and policies (such as those specified in Title 16) are not the type of local rules prohibited by Rule 1-102. *See e.g.*, Md. Rule 16-105(b) (delineating responsibilities of county administrative judge). Against this backdrop, it is clear that Rule 1-102 prohibits local procedural rules—rules directing the conduct of litigating parties or court procedures—it does not reach courthouse administration.

2. Administrative Order 2019-02 Is A Court Administration Order, Not A Local Rule of Procedure.

On its face, Administrative Order 2019-02 is not a local rule. It does not concern any of the five subjects enumerated in Rule 1-102. It is not titled as a rule but as an order enacted pursuant to Rule 16-504. And form matters. To the extent that certain local rules were not abolished—such as rules concerning the five enumerated categories—they are

codified expressly as Rules. For example, Rule BR7 (Commissions on Sales) provides certain allowances to trustees and falls within the exception to Rule 1-102 for "compensation of trustees in judicial sales." Ex. 1, at 65. Thus, where a local rule exists, it is identified as a rule and enacted by the bench, not a single judge.

Administrative policies, administrative orders and court orders are not rules. "In the field of court administration, there is a tendency to speak of 'administrative policy' as relating to such matters as 'court calendars, assignment of judges, responsibilities of court auxiliary personnel, administrative procedures, and financial administration.' These are viewed as matters essentially internal to the courts, *as opposed to rules of procedure* that have a broader reach." *Walker*, 65 Md. App. at 13 n.4 (quoting *ABA Standards Relating to Court Organization,* § 1.32, pp. 77–78 (1974)) (emphasis added); *see* Pl.'s Memo, [Doc. 6/1], at 17 n.4 (citing *Walker*). Indeed, more modern guidance encourages the administrative judge to be directly involved in "[g]eneral administration of all staff services, including those traditionally performed by the . . . court reporters" and "records administration . . . pursuant to statewide standards and any special local needs." ABA, *Standards Relating to Trial Courts*, § 2.41 (1992).[5]

The Maryland Rules likewise reflect the broad authority and responsibility for the "administration of the circuit court" placed on the Administrative Judge. Rule 16-105 vests the County Administrative Judge with responsibility for, among other things, the

[5] Available online at: https://www.americanbar.org/content/dam/aba/migrated/divisions/Judicial/MO/MemberDocuments/trialcourtstandards.authcheckdam.pdf (last visited July 23, 2019).

supervision of judges and court personnel, assignment, budget, the purchase of all supplies and equipment for the court and ancillary services, implementation and enforcement of all "administrative policies, rules, orders and directives" of the Court of Appeals, Chief Judge, State Court Administrator, and Circuit Administrative Judge, and the performance of any other "administrative duties necessary to the effective administration of the internal management of the court." *Strickland v. State*, 407 Md. 344, 361 (2009) (reaffirming that "the authority of the Administrative Judge encompasses all facets of the internal management of our courts." (quoting *Whitaker v. Prince George's Cty.*, 307 Md. 368, 376 (1986))).

Here, Administrative Order 2019-02 is an administrative policy, not a local rule. The Administrative Order was "necessary to the effective administration of the internal management of the court." Md. Rule 16-105(b)(12). Because it regulates court staff—the court reporter—it concerns "internal management." *St. Joseph Md. Ctr. v. Turnbull*, 432 Md. 259, 276 (2013); *see* Pl.'s Memo, [Doc. 6/1], at 16 (quoting *Turnbull*); Md. Rule 16-505(c) ("the County Administrative Judge shall have the supervisory responsibility for the court reporters and persons responsible for recording court proceedings in that county."); Md. Rule 16-105(b)(1) ("the County Administrative Judge is responsible for the administration of the circuit court including" "supervision of the judges, officials, and employees of the court").

The Administrative Order does not regulate the litigation practice of parties before the court. It directs the operation of the courthouse personnel, not the conduct of litigating parties, so it is much more "like human resources, security protocols, [and] record

retention" than it is like a local rule of procedure. Pl.'s Memo, [Doc. 6/1], at 17 (conceding that these tasks are administrative matters and the proper subject of regulation by the administrative judge).

That the Administrative Order affects the rights of individuals does not transform it from an administrative policy to a local rule. Ms. Barron's contrary argument, that Rule 16-504's effect on the public makes it not a purely "internal" or administrative matter, does not withstand scrutiny. *Id.* at 17. Courthouse security measures also affect the rights of the public to enter the courthouse, attend trials, and witness public proceedings, but Ms. Barron concedes, as she must, that "security protocols" are administrative matters within the administrative judge's authority. *Id.*; *See* 78 Md. Op. Att'y Gen. 103 (1993) (Administrative Judge has authority to institute reasonable courthouse security procedures).

Even the court's "information technology" efforts might affect how easily and directly the public can access certain court functions. *Id.* When administrative policies affect the rights of the public, they remain administrative policies, not local rules. To hold otherwise would prevent Judge Pierson from properly issuing administrative orders concerning courthouse security—matters necessary to the safe and efficient operation of the court.[6]

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[6] *See* Security/Media Protocol Order http://www.baltimorecitycourt.org/wp-content/uploads/2016/05/nerosecuritymediaprotocolordertrialproceedings05111.pdf (last checked August 2, 2019).

Administrative Order 2019-02 is an administrative policy, because it commands court personnel to protect court records. It is not an impermissible local rule, because it does not create a local litigation procedure, and is authorized by Rule.

C. Administrative Order 2019-02 Was Ordered by the Court as Reflected in the Text and Context of Rule 16-504.

To win any of her claims, Ms. Barron must show Administrative Order 2019-02 was not "ordered by the court" as that phrase is used in Rule 16-504. If the Administrative Order was "ordered by the court," then Rule 16-504(h)(1)(C) requires the court reporter to obey the Administrative Order and withhold the recordings. Ms. Barron cannot make this showing, though, because the plain text of the Rule and its context relative to other Rules clearly demonstrate that Administrative Order 2019-02 was "ordered by the court." That ends this case.

Rule 16-504 requires dissemination of copies of audio recordings of court proceedings to members of the public "except . . . as ordered by the court."[7] It does not designate what type of judge (presiding or administrative) must enter the order. Where the Court intends to limit action to a specific kind of judge, it does so expressly. Paragraphs (b), (d), (h), (i), and (j) task certain responsibilities only to "administrative judge"; paragraphs (h) and (j) permit certain action by the "presiding judge." The unmodified phrase "ordered by the court" is properly read here to authorize an order by a judge of the court.

[7] Court audio recordings "are under the control of the court." Rule 16-504(a)(1).

Ms. Barron makes a "plain language" argument that Rule 16-504(h) provides her an entitlement to audio recordings. Pl.'s Memo. in Supp. of Mot. S.J., [Doc. 6/1], at 8–10. On her view, the *rest* of Rule 16-504 gives her an entitlement to the recordings she seeks. Her argument ignores the language in Rule 16(h)(1)(C) that enables court orders restricting distribution. But the exception *does* exist, and the plain text of the exception permits the entry of orders like Administrative Order 2019-02.

Ms. Barron's inability to confront the plain language of the court-order exception means she cannot show a "clear legal right" that would justify the extraordinary writ of mandamus. *See W.R. Grace & Co. v. Swedo*, 439 Md. 441, 453 (2014) ("we begin our inquiry with the words of the statute and, ordinarily, when the words of the statute are clear and unambiguous, according to their commonly understood meaning, we end our inquiry there also") (citation omitted) (internal quotation marks omitted).

At bottom, Ms. Barron's various arguments about how a local judge should not upset a statewide policy do not state a "clear legal right" upon which to base a mandamus claim, because the text of Rule 16-504(h)(1)(C) enables orders like Administrative Order 2019-02. Ms. Barron's policy arguments are best presented to the Rules Committee or to the legislature. *See* Md. Const. art. IV, § 18(a).

II. MS. BARRON CANNOT SHOW IRREPARABLE HARM JUSTIFYING INJUNCTIVE RELIEF.

As an alternative to her mandamus petition, Ms. Barron seeks an injunction that would function just like a writ of mandamus—it would direct the Clerk to disobey the

Administrative Order. This claim fails for the same reason as the mandamus claim. Ms. Barron cannot obtain injunctive relief when the law supports Defendants' conduct.

"Injunctive relief normally will not be granted unless the petitioner demonstrates that it will sustain substantial and irreparable injury as a result of the alleged wrongful conduct." *El Bey v. Moorish Sci. Temple of Am., Inc.*, 362 Md. 339, 355 (2001). "[T]he mere allegation of a complainant that [s]he will suffer irreparable damage is not of itself a sufficient foundation upon which to base injunctive relief, but facts must be stated which will satisfy the Court that the complainant's apprehension is well founded." *Smith v. Shiebeck*, 180 Md. 412, 421 (1942).

Here, irreparable harm exists only if Ms. Barron is being deprived of a legal right to copies of certain audio recordings (and that deprivation is not compensable). *See Maryland-Nat'l Capital Park and Planning Comm'n v. Washington Nat'l Arena*, 282 Md. 588, 615 (1978). She is not being deprived of a legal right; the proper application of the applicable law prevents the court reporter from distributing these copies to Ms. Barron.

To bolster her claim of irreparable harm, Ms. Barron testifies in an affidavit that she cannot access courtroom audio because (1) she is too busy, (2) she is disabled, and (3) transcripts are often wrong. Barron Aff. ¶ 18–21. None of these create irreparable harm that would justify compelling the court reporter to violate an Administrative Order. First, the fact that Ms. Barron has better things to do than come listen to court audio does not prove irreparable harm; it merely reflects her priorities. Second, her inability to sit at a court computer "for an extended period, especially by appointment" does not preclude her from accessing the audio. She can sit in small intervals, or she can limit the time spent

analyzing the audio itself by relying on transcripts or other reporting. Third, Ms. Barron can get past potential inaccuracies or incompleteness in transcripts by listening to the portions of audio about which she is most concerned or by attending trials.

None of these theories of irreparable harm matter, because there is no legal right to vindicate. But if they did, they would not qualify as irreparable harm justifying the imposition of a permanent injunction. Her injunctive claim should be dismissed.

CONCLUSION

For these reasons, and for the reasons set out in Defendants' Motion to Dismiss [Doc. 7/0], this Court should deny Plaintiff's Motion for Summary Judgment, decline to issue declaratory judgment or injunctive relief, and dismiss the Complaint.

Respectfully submitted,

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August 2, 2019

CERTIFICATE OF SERVICE

I certify that on August 2, 2019, I served a copy of this Opposition and its exhibit by first class mail, postage prepaid, to:

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