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

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

MOTION TO DISMISS OR,
IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

Defendants Patricia Trikeriotis and the Honorable W. Michel Pierson move pursuant to Maryland Rule 15-701(c) and Rules 2-322(a) and (b) to dismiss the "Petition for Writ of Mandamus or, in the Alternative, Complaint for Injunctive Relief" [Doc. 1/0] for failure to state a claim upon which this Court may grant relief.[1]

INTRODUCTION

At its core, this case 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 the parties to the relevant court proceeding or their counsel. The Order does not displace the public's right to listen to the audio, attend proceedings, view any video

[1] Maryland Rule 15-501 specifies that mandamus relief may be obtained by filing a complaint. The parties have been identified consistent with that naming requirement, despite the filing of a petition for writ of mandamus by Ms. Barron.

or—after a decision, verdict, or judgment—order transcripts; it affects only audio copies of proceedings.

Ms. Barron seeks copies of these audio recordings in multiple criminal proceedings on the theory that an administrative judge cannot issue a Rule 16-504(h)(1)(C) order. Pet. 11. But the plain language of the Rule, the context and purpose of the Rule, and its rulemaking history show that an order issued by an administrative judge is an order "by the court."

Indeed, a contrary reading limiting the authority to issue an order to a presiding judge would render this provision nugatory, because most cases are not assigned to a single judge throughout the litigation. The presiding judge changes often, and these rotating presiding judges might not know when copies of audio recordings becomes important or even if a request for copies has been made. Moreover, a case that has been tried and concluded has no current presiding judge. That is why the capacious phrase "ordered by the court," which appears in the "Court *Administration*" title of the Rules, may be invoked by the *Administrative* Judge.

With limited exceptions, the work of this Court occurs in public. Members of the public can observe that work by attending hearings, trials, or other proceedings. If a member of the public is interested in something that already happened, she can come to the courthouse and listen to audio recordings of the proceedings, view the video of the proceeding or order transcripts of proceedings. When journalists want to inform the public about the business of this Court through their reporting, they have all the same rights. But this Court has the authority to limit the distribution of copies of audio. This arrangement

complies with the Maryland Rules and adequately protects the public's interest in court proceedings. It also empowers this Court to balance the interests of staff, litigants, witnesses, and jurors who appear in this Court, in this City, at this moment.

Because Judge Pierson's order was "ordered by the court," Ms. Barron lacks a clear legal right that would entitle her to mandamus relief and her alternative complaint for injunctive and declaratory relief fails for the same reasons. Because, on the face of the complaint it is clear that Ms. Barron's claims are without legal merit, they should be dismissed. Alternatively, declaratory judgment should issue in favor of Defendants.

FACTUAL BACKGROUND

On April 17, 2019, Justine Barron, Plaintiff, "submitted a written request for an audio recording of a [2015] hearing" in *State v. Goodson, et al.*, case nos. 115141032 through 11514037. Pet. ¶ 9, Exhibit A. *See* Def. Exhibit 1, Attachment A (request form seeking audio for September 10, 2015 motions hearing.) "The Court Reporter's office" responded by email stating "[p]lease fax a check/money order for the amount of $40 and we will prepare your audio." *Id.* Ms. Barron emailed back an image of a $40 money order. *Id.* Five days later, the "office" notified her that the recording "would 'be ready tomorrow.'" Pet. ¶ 10. The next day, Ms. Barron "indicated that she would prefer to pick up the recording the following day." *Id.*

On the "following day," April 24, Administrative Judge W. Michel Pierson issued Administrative Order 2019-09, which states 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.

Pet. ¶ 14. "[T]he Court Reporters office notified Petitioner that it no longer intended to provide her with a copy of the recording." Pet. ¶ 11. The Circuit Court website had not, at the time of the filing of the complaint, been updated to reflect the new policy. Pet. ¶¶ 15, 16.

LEGAL STANDARD

When confronted with a complaint and a motion to dismiss, the court should "accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party." *Sprenger v. Public Serv. Comm'n of Md.*, 400 Md. 1, 21 (2007). The court should "order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff." *RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 643 (2010). If the complaint fails this test, it should be dismissed with prejudice. *Mohiuddin v. Doctors Billing & Mgmt. Sols., Inc.*, 196 Md. App. 439, 452 (2010) ("a dismissal with prejudice is ordered in cases where the dismissal is based on an appraisal of the legal sufficiency of the claim").

ARGUMENT

I. MANDAMUS RELIEF IS NOT AVAILABLE TO COMPEL THE CHIEF COURT REPORTER TO PROVIDE MS. BARRON WITH AN AUDIO COPY OF A COURT PROCEEDING.

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.

"The 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 County v. Baltimore County Fraternal Order of Police Lodge No. 4*, 439 Md. 547, 569-70 (2014) (quoting *Goodwich v. Nolan,* 343 Md. 130, 145 (1996) (citation omitted)). Because the grant of a writ of mandamus is an extraordinary remedy, "the power to issue an extraordinary writ of mandamus is one which ought to be exercised with great caution." *Doering v. Fader,* 316 Md. 351, 361 (1989) (citing *In Re Petition for Writ of Prohibition,* 312 Md. 280, 305 (1988)).

A writ of mandamus 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).

B. 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.

1. The Plain Language of the Rule Demonstrates That an Order Issued by an Administrative Judge is "Ordered by the Court" Within the Meaning of Rule 16-504(h)(1).

On April 24, 2019, Judge Pierson, acting in his official capacity as Administrative Judge,[2] issued Administrative Order 2019-02. By its express terms, the Order directs "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." *See* Pet. Ex. G. The Order is issued "[p]ursuant to the terms of Maryland Rule 16-504(h)(1)(C)." *Id.*

Rule 16-504 governs copies of electronic recordings of circuit court proceedings. Paragraph (h)(1) provides:

> 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 . . . available to any person upon written request and, unless waived by the court, upon payment of the reasonable costs of making the copy.

Clause (h)(1)(C) contemplates an order of this Court preventing the custodian from making copies of an audio recording available on written request.

By its express terms, Administrative Order 2019-02 is a clause (h)(1)(C) order: it is captioned as an administrative order in the Circuit Court for Baltimore City; it

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[2] Because Baltimore City is its own judicial circuit, Judge Pierson is both the Circuit Administrative Judge and the County Administrative Judge of the Eighth Judicial Circuit and the Circuit Court for Baltimore City. Md. Const. art. IV, § 19.

specifically invokes clause (h)(1)(C) in its first sentence; it directs the Office of the Court Reporter to take certain actions; and it is signed by Judge Pierson in his capacity as Administrative Judge. *See* Pet. Ex. G. In sum, the Order has all the ordinary indicia of an order of this Court, and was, therefore, "ordered by the court" within the meaning of clause (h)(1)(C).

Construing the Order as "ordered by the court" fits with Maryland's canons of statutory interpretation. Because "the principles applied to statutory interpretation are also used to interpret the Maryland Rules," the court first looks "to the normal, plain meaning of the language" in ascertaining the meaning of a Rule. *Davis v. Slater*, 383 Md. 599, 604 (2004) (citations omitted). Judge Pierson is a judge of the circuit court and this construction of his Order gives the phrase "ordered by the court" its "natural and ordinary meaning." *See Bottini v. Department of Fin.*, 450 Md. 177, 187 (2016). Where, as here, the words are "clear and unambiguous, according to their commonly understood meaning, [the court ends its] inquiry there also." *W.R. Grace & Co. v. Swedo*, 439 Md. 441, 453 (2014) (citation omitted) (internal quotation marks omitted).

To the extent that the plain language of the text being construed "must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute," that analysis likewise confirms that an order issued by the Administrative Judge is "ordered by the court." *Williams v. Peninsula Reg'l Med. Ctr.*, 440 Md. 573, 580-81 (2014) (quoting *Lockshin v. Semsker*, 412 Md. 257, 275–76 (2010)). Construing the Order this way accords with the purpose of

clause (h)(1)(C)—to provide the circuit court with a mechanism to control access to and otherwise limit or restrict obtaining copies of court audio.

The authority to control this access is limited to the "court," which acts through its judges—either a judge presiding in a case or the Administrative Judge. Md. Rule 16-504(h)(1). *See e.g.*, Md. Rule 16-601(e)(1) (""Presiding judge" means a judge designated to preside over a proceeding. . ."), and (2) ("Where action by a presiding judge is required by the Rules in this Chapter [governing extended access], and no judge has been designated to preside over the proceeding, "presiding judge" means the Local Administrative Judge.")

If administrative orders are not "ordered by the court," then clause (h)(1)(C) would be superfluous—a construction which courts seek to avoid. *See Gillespie v. State*, 370 Md. 219, 222 (2002) (courts "interpret statutes to give every word effect, avoiding constructions that render any portion of the language superfluous or redundant"). In Baltimore City, most civil and criminal cases are not specially assigned to a single judge for all purposes; they move from judge to judge through the course of litigation. *See* http://www.baltimorecitycourt.org/court-divisions/civil/civil-procedures (last checked June 30, 2019) (showing assignment of chambers judges to civil motions, two judges assigned to discovery and special assignment to a specific judge by the Administrative Judge); http://www.baltimorecitycourt.org/wp-content/uploads/2016/12/Balt-City-CCt-Criminal-Division-DCM-Plan.-August-23-2016.pdf at p. 7 ("Due to the fact that cases are not assigned to a specific judge, the Court has designated a [criminal] "Discovery Judge" to resolve all discovery related motions and pleadings.) When each judge considers and resolves an issue, that judge is the "presiding judge" for a short time—often just during a

motion, discovery, hearing or trial. The rest of the time, no one judge is assigned to the case and there is no presiding judge.

And for all cases that have reached final judgment, or where the judge is retired or deceased, there is likewise no current presiding judge. The case for which Ms. Barron sought audio recordings is just such a case—because the case was tried to a verdict in June 2016, no judge was presiding in the case when Ms. Barron filed her request for audio in 2019.[3] Thus, clause (C) is only meaningful if the Administrative Judge can act. As Administrative Judge, Judge Pierson is "responsible for the administration of the [Circuit Court for Baltimore City]," and tasked with "performance of any . . . administrative duties necessary to the effective administration of the internal management of the court." Rule 16-105(b)(12). And the Rules expressly recognize in the context of providing access to court proceedings through extended coverage that whenever a presiding-judge action is required in a case that lacks a presiding judge, the Administrative Judge may act. Md. Rule 16-601(e)(2).

Based on the text and context of Rule 16-504(h)(1)(C), Ms. Barron cannot use the mandamus procedures to bypass the Administrative Order and force the Court Reporter's office to provide copies of audio recordings.

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[3]*See* http://www.baltimorecitycourt.org/wpcontent/uploads/2016/05/goodsonruling062316.pdf (June 30, 2019).

2. The Rulemaking History Confirms That an Order Issued by an Administrative Judge is "Ordered by the Court" Within the Meaning of Rule 16-504.

Although the language of the Rule is clear and unambiguous, a review of the rulemaking history confirms the intent expressed in the text—that copies of court audio recordings be provided to requestors *except* where (A) the proceedings are closed pursuant to law, (B) as otherwise provided in the Rule, or (C) as ordered by the court. This confirmatory process provides no basis for failing to accord the exceptions their plain meaning or disturbing the Order. *Williams*, 440 Md. at 580-81 ("We may refer to the statute's legislative history to confirm conclusions or resolve questions from our examination of the text.")

The cover letter from the Chair of the Rules Committee and the proposed rules reflect both a stated intent to "allow the public to purchase and possess a redacted copy of an audio recording" and an express limitation—"proceedings closed pursuant to law or as otherwise provided in this Rule or ordered by the court."[4] *Standing Comm. on Rules of*

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[4] "The Rules Committee was unanimous in the view that, notwithstanding that audio or audio-video recordings do not constitute the official record of court proceedings, members of the public should have a right of access to a properly redacted copy of them, at least for the purpose of listening or viewing and making notes from the redacted copy.

The debate was over whether members of the public should have a right to purchase a copy and use it as they wish. Some members of the Committee were concerned about persons who are able to purchase the disk then broadcasting or putting on-line selected or even altered parts of it, which may present a misleading impression of what occurred and subject parties, witnesses, attorneys, and judges to unfair public humiliation and possibly to physical or other harm. A majority of the Committee, however, voted to allow the public to purchase and possess a redacted copy of an audio recording but agreed that both policies

Practice & Procedure, 178th Report: Part I (2013), at 8, 124, 126 (available at https://perma.cc/6C7R-G8B3).

While the Court of Appeals declined an alternative formulation of the Rule that would restrict viewing or listening to an audio or audio-video recording to the courthouse, the Court retained a clear exception permitting the withholding of courtroom audio copies when "ordered by the court." The 2013 prior version of the Rules (the version the *Report* was revising) said "*unless otherwise 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 the payment of reasonable costs." Rule 16-406 (LexisNexis 2013) (emphasis added). The 2016 amendments (the version ultimately adopted by the Court) said "*unless otherwise 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 the payment of reasonable costs." Rule 16-504 (LexisNexis 2016) (emphasis added). At least from 2013 to present, courts have had the explicit authority to deny access to copies of courtroom audio by court order. That

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should be presented to the Court for its consideration. That is done through alternative versions of Rules 16-501 (g) and 16-503(h)." *Id.* at 8.

This view of the limited use of audio recordings comports with the statutory provision prohibiting the broadcasting of criminal proceedings. Md. Code Ann., Crim. Proc. § 1-201. A challenge to the constitutionality of this statute has been brought in federal court against both Defendants in this matter, as well as the Administrative Judge and court reporter for the Circuit Court for Prince George's County. *Soderberg, et al. v. Pierson, et al.*, United States District Court for the District of Maryland, Case No. 1:19-cv-01559-RDB. Plaintiff's counsel in this case also represents the plaintiffs in the federal suit. *See* Exhibit 2 (docket report).

means that the Court of Appeals has consistently and repeatedly promulgated rules that authorize local court control over the making of copies of audio recordings.

That the textual exceptions vest a "local court", including a local administrative judge, with authority to issue orders restricting the actions of the court reporter's office neither offends common sense nor undermines the whole system of rules—"precise rubrics established to promote the orderly and efficient administration of justice." Pet. ¶ 24. Such a reading gives effect to the exceptions because if the Rules are "precise rubrics," then their clear textual exceptions should be read literally. *Gonzales v. Boas*, 162 Md. App. 344, 363 (2005) ("Generally, the Maryland Rules will be applied literally"). The "precise rubric" contains a clear exception to disclosure, and Judge Pierson is authorized to invoke that exception.

3. Interpreting "Ordered by the Court" to Include a Presiding Judge and the Administrative Judge Avoids Rendering the Exceptions to the Rule Surplusage.

Interpreting "ordered by the court" to mean ordered by the presiding judge or the administrative judge not only advances the purpose of the exceptions in the Rule—to provide a mechanism for limiting dissemination of courtroom audio—it avoids inserting limiting words into the Rule that the Court did not codify. Because "a court may not insert or omit words to make a statute express an intention not evidenced in its original form," this Court must refrain from reading into the phrase "ordered by the court" the unstated language "ordered by the presiding judge." *Parry v. Allstate Ins. Co.*, 408 Md. 130, 141 (2009) (citation omitted).

The Rules Committee and the Court of Appeals have drafted and enacted Rules specifically tailored to presiding judge action and administrative judge action. For example, eight rules explicitly require that the "presiding judge" act. *See e.g.*, Rules 2-521(d)(2), 2-802(b)(1), 4-326(d), 16-208(b)(2)(E)(i), 16-602(c), 16-605(b), 16-607(a)(5), and 16-608. Thus, it is apparent that when the drafters meant to refer to an order of a presiding judge they were careful to specify that designation. *Cf.* Pet. ¶ 12.

In Rule 16-504(h)(1), neither "presiding judge" nor "administrative judge" were specified. Yet, that cannot mean that no judge acting for the court can invoke the exception, thereby rendering the clause superfluous. This Court should not construe (h)(1)(C) as creating an exception that cannot be invoked. Instead, the general phrase "ordered by the court" should be given its "ordinary and common meaning." *Waters v. Pleasant Manor Nursing Home*, 361 Md. 82, 103 (2000). Orders by any judge of this Court, including Judge Pierson, are "ordered by the court."

A contrary interpretation ignores the day-to-day operation of this Court on which the Rules are premised. Rule 16-504(h)(2), which calls for an order from the County Administrative Judge, and Rule 16-504(d), which calls for collaboration between a presiding judge and the administrative judge, provides no support for any claim that only explicit references to an administrative judge permit administrative orders. In paragraph (h)(2), only an order from the administrative judge will do, because that paragraph contemplates audio that another judge has already safeguarded on the motion of a party ("portions of the recording that the court has directed be safeguarded"). That is, paragraph (h)(2) is an internal appeal procedure. In subsection (d), having a court reporter in a

courtroom that already has adequately monitored audio consumes resources from the circuit court's budget, so the presiding judge and the administrative judge must coordinate. But paragraph (h)(1), the paragraph at issue, does not have to navigate the relationship between a presiding judge and an administrative judge; any order—from a presiding judge or an administrative judge—is sufficient. This functional reading of the parts of Rule 16-504 is not an "illogical or nonsensical interpretation[]," Pet. ¶ 25, it is an interpretation that takes seriously the day-to-day operation of this Court.

4. The Court Reporter Was Subject to the Administrative Order When It Was Issued.

On its face, the Administrative Order applies to all actions taken by the Office of the Court Reporter concerning requests for court audio. Pet. ¶ 26. "The terms 'retroactive' and 'retrospective' . . . describe acts which operate on transactions which have occurred or rights and obligations which existed before." *Langston v. Riffe*, 359 Md. 396, 406. In an analogous statutory context, "retroactive" is defined as "purport[ing] to determine the legal significance of acts or events that have occurred prior to the statute's effective date." *State Ethics Comm'n v. Evans*, 382 Md. 370, 387 (2004). The Administrative Order does not change the legal effect of some historical fact; it directs the custodian's conduct in the future. Rule 16-504(h)(1) directs the custodian to "make a copy of the audio recording . . . available to any person." The Administrative Order directs the custodian *prospectively* to stop making audio available ("no copies of audio recordings maintained by the Office of the Court Reporter shall be made available"). The Complaint concedes that Ms. Barron did not come get her copy before entry of the order. Pet. ¶ 11 ("the Court Reporter's office

notified Petitioner" on "the same day Petitioner was scheduled to retrieve the recording"). After the order, the custodian was prohibited from giving her a copy. That is a *prospective* order directing *future* conduct of the custodian.

The only source of law that could give Ms. Barron a legal right to the copies she seeks, Rule 16-504(h), explicitly permits Ms. Trikeriotis to withhold copies when "ordered by the court." Rule 16-504(h)(1)(C). The Order validly invokes this withholding exception, so Ms. Barron has no legal right to vindicate here. The petition for writ of mandamus must, therefore, be denied and dismissed.

II. MS. BARRON CANNOT ESTABLISH THAT SHE IS ENTITLED TO DECLARATORY AND INJUNCTIVE RELIEF SHE HAS NO LEGAL RIGHT TO THE REQUESTED AUDIO AND A VALIDLY ENACTED COURT ORDER DIRECTED THE OFFICE TO PROVIDE SUCH AUDIO ONLY TO PARTIES OR THEIR COUNSEL.

The Declaratory Judgment Act provides a mechanism to "settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations."[5] Md. Code Ann., Cts & Jud. Proc. § 3-402 (LexisNexis 2013). The Court of Appeals has interpreted the phrase "may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the uncertainty or controversy giving rise to the proceeding" to mean that "declaratory judgment generally is a discretionary type of relief." Cts & Jud. Proc. § 3-409(a); *Converge Servs. Group, LLC v. Curran,* 383 Md. 462, 477 (2004). "[T]he decision to issue a declaratory judgment is [therefore] within the sound discretion of the

[5] Ms. Barron did not reference the Declaratory Judgment Act but titled her filing as "Petition for Writ of Mandamus or, in the Alternative, Complaint for Injunctive Relief" and sought an injunction, declaration and writ of mandamus. Pet. 1.

trial court." *Dabbs v. Anne Arundel County*, 458 Md. 331, 347, *cert. denied sub nom. Dabbs v. Anne Arundel County, Md.*, 139 S. Ct. 230 (2018) (citing *Sprenger*, 400 Md. at 20).

If this Court decides to exercise its discretion to provide declaratory relief, it must issue a declaratory judgment "'defining the rights and obligations of the parties or the status of the thing in controversy, and that judgment must be in writing and in a separate document. That requirement is applicable even if the action is not decided in favor of the party seeking the declaratory judgment.'" *Bontempo v. Lare*, 444 Md. 344, 378-79 (2015) (quoting *Lovell Land, Inc. v. State Highway Admin.*, 408 Md. 242, 256 (2009) (quotation marks and citations omitted)).

Here, Ms. Barron requests that this Court enjoin reliance on Administrative Order 2019-02 and grant declaratory relief, but only to an extent: "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)." Pet. ¶¶ 29, 31. By its express terms, Administrative Order 2019-02 does not "prohibit members of the public" from doing anything; it prohibits the Court Reporter from providing copies. Pet. ¶ 14. The order directs the conduct of court staff, managing the Court's own technology, security concerns, and record policies; it is an internal order. Because Ms. Barron has pled no facts showing that Administrative Order 2019-02 imposes restrictions or obligations on members of the public, Counts II and III should be dismissed for failure to state a claim. If Ms. Barron had sought declaratory relief or to enjoin Ms. Trikeriotis based on the legal effect of Administrative Order 2019-02 on her, that claim would likewise fail for the reasons set out

in Section II, *supra*. The Order was ordered by this Court, so it validly binds Ms. Trikeriotis's official conduct.

If this Court elects to issue a declaratory judgement it should, for the reasons stated in section II, *supra*, declare that Administrative Judge Pierson was authorized to issue an order under Rule 16-504(h) and that Administrative Order 2019-02 is valid.

III. MS. BARRON FAILED TO PROPERLY SERVE DEFENDANT PIERSON, A STATE OFFICER FOR WHOM SERVICE MUST BE MADE ON THE ATTORNEY GENERAL.

Ms. Barron personally served both Defendants through a process server. [Docs. 4/0, 5/0]. Administrative Judge Pierson is a constitutional state officer, *see* Md. Const. art. IV, pt. III (creating circuit court judges), and service on an "officer. . . of the State of Maryland," must be made on the Attorney General or his designee. Rule 2-124(k). The complaint is, therefore, subject to dismissal for insufficient service of process. *See* Rule 15-701(c); Rule 2-322(a)(4).

Absent adequate service of process, this Court lacks personal jurisdiction over Defendant Pierson. "A party's failure to comply with the Maryland Rules governing service of process 'constitutes a jurisdictional defect that prevents a court from exercising personal jurisdiction over the defendant.'" *Conwell Law LLC v. Tung*, 221 Md. App. 481, 498 (2015) (quoting *Flanagan v. Department of Human Res.*, 412 Md. 616, 623-24 (2010)).

CONCLUSION

For these reasons, this Court should dismiss the Complaint in its entirety or dismiss the mandamus count and grant declaratory relief in Defendants' favor.

Respectfully submitted,

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Date: July 1, 2019

CERTIFICATE OF SERVICE

I certify that on July 1, 2019, a copy of this Motion, its exhibit, and a proposed order were served by first class mail, postage prepaid, to all persons entitled to service:

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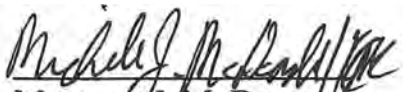

MICHELE J. MCDONALD