

Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis, Maryland 21401-1699



August 18, 2017

MARY ELLEN BARBERA
Chief Judge

The Honorable Larry Hogan
Governor
State House
100 State Circle
Annapolis, Maryland 21401

Dear Governor Hogan:

I would have preferred to speak with you in person about the limitations imposed by ethical constraints on members of the judiciary, hence my telephone call to you last Friday. As we have not had the opportunity to speak and in light of the rapid pace of developments in Baltimore City, I must respond to your invitation on behalf of the members of the judiciary who sit on the Baltimore City Criminal Justice Coordinating Council (Council).

Like you and the other esteemed members of the Council, we are deeply concerned about the violence that is threatening families and neighborhoods in Baltimore City. The underlying reasons for the violence are complex and the solutions are not simple. Each branch of government has an important role to play. For the judiciary, that role is to uphold the rule of law through due process and fairness.

The Maryland Code of Judicial Conduct, as it must, prohibits judges from making statements about how they might sentence. The Code demands that judges evaluate and consider the specific circumstances in each case. In fact, Maryland Rule 18-102.10, in part, requires that:

- (a) A judge shall abstain from public comment that relates to a proceeding pending or impending in any court and that might reasonably be expected to affect the outcome or impair the fairness of that proceeding and shall require similar abstention on the part of court personnel subject to the judge's direction and control. This Rule does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court.
- (b) With respect to a case, controversy, or issue that is likely to come before the court, a judge shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office.

Further, Rule 18-102.4 requires that “[a] judge shall not be swayed by public clamor or fear of criticism.” Given such limitations, participation by members of the judicial branch in the meeting you are hosting on August 29 would be inappropriate.

I trust you will understand. I am happy to meet with you to discuss further this issue of importance. And, as always, I look forward to continuing to work with you on other matters of mutual concern.

Sincerely,

/s/ Mary Ellen Barbera
Mary Ellen Barbera
Chief Judge
Court of Appeals of Maryland

cc: The Hon. W. Michel Pierson
The Hon. Charles J. Peters
The Hon. Barbara Baer Waxman
Ms. Marilyn F. Bentley
Ms. Mary Abrams