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Conference of Circuit Judges
COURTS OF APPEAL BUILDING
ANNAPOLIS, MD 21401

**MINUTES OF THE MEETING OF THE
CONFERENCE OF CIRCUIT JUDGES**

A meeting of the Conference of Circuit Judges was held Monday, September 18, 2017, at the Judicial College Education and Conference Center in Annapolis, Maryland, beginning at 9:35 a.m.

Members Present

Hon. Kathleen Gallogly Cox, Chair

Hon. Brian D. Shockley
Hon. Keith A. Baynes
Hon. Mickey J. Norman
Hon. W. Timothy Finan
Hon. J. Barry Hughes
Hon. Laura S. Kiessling, Vice Chair
Hon. Theresa M. Adams

Hon. Robert A. Greenberg
Hon. Marjorie L. Clagett
Hon. Audrey J.S. Carrion
Hon. W. Michel Pierson
Hon. Susan Braniecki
Pamela Harris
Timothy Sheridan

Also, Present Were:

Hon. Alan M. Wilner
Hon. Cynthia Callahan
Hon. John P. Morrissey
Faye Gaskin
Heather Akehurst-Krause
Timothy Haven
Kelley O'Connor

Pamela Ortiz
Eliana Pangelinan
Suzanne Pelz
Stacy Reid Swain
Nisa Subasinghe
Lonni Summers

1. Approval of Minutes

Judge Cox called for approval of the minutes of the May 15, 2017 meeting, which were approved by common consent. It also was stated that a discussion regarding magistrate leave will be placed on the November agenda rather than in the spring as noted in the minutes.

2. Expansion of Video Conferencing to Mental Health Facilities

Judge Wilner appeared before the Conference to discuss the comprehensive rules on remote video participation recently approved by the Rules Committee and whether they should apply to patients involuntarily committed to a hospital. He stated that Judge Gelfman expressed concern about safety when transporting patients to and from the court, as well as the potential danger in the courtroom. Judge Wilner noted that the proposed rules will be included in the 195th Report to the Court of Appeals and, as such, he wanted to alert the Conference to what has been done and to get feedback on the proposed rules.

Judge Adams remarked that juveniles were excluded and pointed out that the CINA statute was amended to allow remote child consults. Judge Wilner stated that the proposed rules are not trumping, with the exception of the rule on telephone participation which is not intended for involuntarily-committed people seeking release, but for those in hospitals who cannot get to court for whatever reason. The telephone rule is limited to land lines, so there is no way to know with certainty if anyone is in the hospital room with the victim or witness. The proposed rules seek to repeal the telephone rule and fold it into the new rules, which include language indicating a preference for video testimony, when practical. Judge Wilner added that the parties will be responsible for providing the equipment needed on their end for remote participation and that the rules charge the Administrative Office of the Courts with developing protocols for minimally acceptable equipment. In addition, the proposed rules provide that the judge may terminate the telephonic participation and require in-person or video participation if there is any appearance of unfairness or prejudice. Judge Wilner noted that there is no intended presumption of telephonic participation.

Judge Pierson commented that the proposed rules do not address patients in hospital release situations and that there are no express exceptions noted. Judge Wilner stated that the proposed rules speak to risk to the patient or others. He added that there are four different circumstances in which the civil rule can be in play: 1) a review hearing under Criminal Procedure 3-106 to determine whether a criminal defendant who has been committed upon a finding of incompetence to stand trial should be released or civilly committed; 2) a release hearing under Criminal Procedure 3-117 to determine whether a criminal defendant who has been found not criminally responsible is safe to be released; 3) a hearing under Health-General 10-805 to determine whether an individual civilly but involuntarily committed under 10-613 *et seq.* should be released; and 4) an appeal under Health-General 10-708(1) from the decision of OAH regarding forced medication of patients.

Judge Wilner asked the Conference, and individual judges, to forward comments or concerns to him.

3. OPD Eligibility Determinations by Commissioners

Chief Judge Morrissey and Timothy Haven, Director of Commissioners, briefed the Conference on new legislation, effective October 1, requiring commissioners to make indigency determinations for public defender representation for incarcerable cases in the District and Circuit Courts. The OPD will handle non-jailable matters, including CINA, juvenile, and appellate cases. Amongst the considerations when determining indigency are federal poverty guidelines, current ability to pay, and undue hardships. The commissioners will use pay stubs and utility bills, as well as information from the Department of Labor and Licensing Regulation and the Comptroller to help verify income.

Mr. Haven then explained the process that has been developed, which includes placing the certificate of eligibility in the defendant's court file and maintaining all documents used to make the determination in a separate database. Judges will have read-only access to the database. Once eligibility has been determined, the defendant will be directed to go to the Public Defender's Office with a copy of the certificate. The public defenders also will reach out to the defendants.

Chief Judge Morrissey noted that if a defendant is in the Circuit Court and has not been screened for eligibility, the defendant should be directed to go to the commissioner's office. He added that if the defendant is incarcerated, the commissioners will not go the jails to determine indigency because of safety concerns. They will work with pretrial services to take the application and forward it to the commissioner for processing. When there is a direct deposit, the jail will be asked to get the application. Chief Judge Morrissey stated that some commissioner stations are located within the courthouse. Where that is not the case, commissioners will come to the courthouse for a number of hours per day or week, depending on availability and volume. In addition, commissioners have a twenty-four/seven operation and defendants can go to them at any time.

Judge Cox noted that there will have to be local discussions regarding getting applications to the jails for those defendants who are incarcerated. Additionally, there will have to be instructions regarding which case types warrant going to the commissioner as opposed to the Public Defender's Office.

Chief Judge Morrissey stated judges will handle the appeals process in those instances where it is believed the commissioner incorrectly found the defendant ineligible.

Judge Cox commended Chief Judge Morrissey and Mr. Haven on the work they have done preparing for implementation of the legislation.

4. Domestic Violence – CourtWatch Montgomery Report and Recommendations

Judge Callahan briefed the Conference on a report from CourtWatch Montgomery in which concerns were expressed regarding how infrequent emergency family maintenance is awarded in domestic violence cases. Laurie Duker, one of the authors of the report, expressed a number of concerns with the data, as well as including who has access and relating cases that transfer from the District Court to the Circuit Court. In response to her concerns, the Domestic

Violence Subcommittee invited Ms. Duker and other domestic violence advocates to attend a meeting to begin a dialogue about their concerns around emergency family maintenance, to provide information regarding court processes, and to explain why it is not possible to fulfill some of the requests made by the advocates.

5. Domestic Law Committee – Proposed Parenting Plan Rule

Judge Callahan provided an overview of the proposed parenting plan rule. She stated that the Court Process Workgroup of the Domestic Law Committee was charged with exploring the use of parenting plans in custody cases as an outgrowth of the recommendations of the Commission on Child Custody Decision Making. The workgroup researched what other states are doing and determined that Maryland is one of ten states without a parenting plan statute, rule, or resource for parents.

Judge Callahan noted some of the benefits of a parenting plan, including empowering parents to decide what is the best for their family, promoting and ensuring children's continued relationships with both parents, and providing the court with information about the parents' position about the family dynamic. She added that parenting plans are child-focused, rather than parent-focused. Judge Callahan also discussed the factors considered when developing a parenting plan. Amongst them are stability and long-term health and welfare of the children, the children's physical and emotional security and protection from conflict and violence, and the children's preference if age appropriate.

The Domestic Law Committee sought the Conference's approval to move the recommendation on to the Judicial Council for consideration and approval. The recommendations are:

- The Maryland Parenting Plan Instructions and Form should be available on the Judiciary's website as a resource for parents to develop a parenting plan that works best for their family.
- The Maryland Parenting Plan Instructions and Form, and 9.207.1 Form should be given to both parents at the initial or scheduling conference.
- Amend Title 9 of the Maryland Rules of Procedure to include a new parenting plan rule.
- The Maryland Judiciary should provide training and resources on the Maryland Parenting Plan.

Judge Pierson commended the workgroup on its efforts and asked if the rule will address what the court is expected to do once it receives the parenting plan, adding that some statutes discuss the court's authority to require certain things to happen. Judge Callahan noted that the plan is a source of information for the court regarding the parents' position. The court does not have to follow the plan.

Judge Shockley inquired about the anticipated time frame for parents to submit a parenting plan. Judge Callahan stated that there may be a pretrial process, but the details have to be discussed and may be included in the rule. Judge Carrion inquired about evidentiary considerations to which Judge Callahan responded that the structure will help parties and the court make decisions based on expanded information.

Judge Hughes moved that the Conference approve the Domestic Law Committee moving forward to the Judicial Council with its recommendations for consideration and approval to go to the Rules Committee. The motion, which was seconded by Judge Carrion, passed.

6. Resources for Self-Help Litigants

Pamela Ortiz and Lonni Summers briefed the Conference on available resources for self-represented litigants and provided laminated cards for use in the courts. There is a plethora of resources, including the Maryland Law Help App; the Maryland Courts Self-Help Center (live chat, email, and telephone for both trial courts in civil matters); District Court Self-Help Centers (walk-in); Family Law Self-Help Centers (walk-in); webinars for divorce and landlord/tenant cases, as well as filing a case in the District Court presented by Legal Aid; videos to help self-represented litigants navigate the court system that include tip sheets, transcripts, forms and other resources about the topic that can be printed; Form Finder, which helps self-represented litigants select and print the forms they need in plain language through a web questionnaire; the People's Law Library, a legal content website that links to other resources; and law libraries.

Ms. Ortiz commented that the above are small investments that serve large numbers of people. She added that the demand for services is increasing and that the courts should consider adding links to the Maryland Courts Self-Help Center to their local court websites. Ms. Ortiz also encouraged the Conference to utilize the Center by directing court users to the website. Finally, Ms. Ortiz asked the Conference to consider their law libraries as resources.

7. JRA Implementation Update

Judge Cox updated the Conference on implementation efforts for JRA. She noted that a Train the Trainer seminar was held at the Judicial College Education and Conference Center with members of the Judiciary and Parole and Probation serving as the facilitators. In addition, bench cards were developed and distributed to the courts, as well as an electronic notebook and other materials from the seminar. The Judiciary is required to report on technical violations. To assist in capturing the information, JIS developed a database for non-MDEC courts to input required information and fields were added to Odyssey for those courts using MDEC. Judge Cox commented that it would be beneficial if the clerks had a form that captures all of the required information from the court proceeding. The District Court agreed to amend its probation docket form to create a joint form. The form will be sent to Clerks of Court and court administrators to use or to amend, as necessary, for their respective courts.

8. Pretrial Reform Summit with Local Correctional Officials

Pamela Harris informed the Conference that the Judiciary received State Justice Institute funding, which will be supplemented by Judiciary funds, to bring together six-member teams from each jurisdiction comprising the District and Circuit Court Administrative Judges, the State's Attorney, the Public Defender, the Warden, and one other local member, for a one-day summit to discuss pretrial services.

Judge Hughes expressed the importance of getting ahead of the budget process when determining when to hold the summit. Judge Shockley commented that help is needed on how to make it work locally, strategizing on how to convince commissioners and county councils that

having pretrial services make sense. Judge Hughes suggested including a local decision-maker on the team.

9. Courthouse Security

Judge Kiessling inquired as to what other courts do relative to screening for entry into the courthouse as her Courthouse Security Team explores ways to improve access protocols. She stated that the best practice is for everyone to go through the magnetometer; however, attorneys do not want to be screened, but would prefer to be issued bar badges to permit entry. The responses varied with Carroll and Calvert counties stating that everyone, including employees but excluding judges, is required to go through the magnetometer. Most of the other counties indicated that only the public is required to go through the magnetometer. A number of counties issue bar cards to attorneys. Judge Kiessling commented that there are security concerns with bar cards because the Sheriff isn't always notified if an attorney's status changes and the cards are not always returned.

10. Dissemination of Information from Conference Meetings

Judge Kiessling asked if the Conference members share information from the Conference meetings with their benches. The Second and Seventh Circuits disseminate the information to their benches and report on the Conference actions during their circuit meetings. It was suggested that there should be coordination between the circuit administrative judge and the elected member to ensure the information is disseminated. In addition, it was agreed that the Conference minutes and associated materials will be sent to all Circuit Court judges.

11. Circuit Meetings

Judge Kiessling asked which circuits hold circuit-wide meetings. The Second and Seventh Circuits hold meetings quarterly and the Eighth Circuit (Baltimore City) holds regular bench meetings. The Fifth Circuit hosts programs a couple times a year and meets on an ad hoc basis once a year.

12. Use of AV Equipment in the Various Courts

Judge Adams queried the Conference to determine which courts permit litigants to use AV equipment. She serves on the litigation section of the Maryland State Bar Association and was told that not all courts allow the usage of the equipment. Prince George's County has a system that can be used by litigants and can be accessed through various media. Baltimore County has a system through its bar library; attorneys can reserve the equipment or bring their own, but they have to advise the Sheriff in advance. Anne Arundel County has equipment for use, but also permits litigants to bring their own equipment. Carroll County also has equipment that can be used by litigants.

13. Final Approval of the Firearms Form

Judge Adams presented the revised Notice of Post-Trial Rights form that included changes suggested at the last meeting of the Conference, including lines for the name of the county and contact information for the Office of the Attorney General and the Maryland State

Police Licensing Division. After further discussion, it was agreed that "...for _____ City/County" would be substituted with "Clerk of this Court" within the body of the form. Also, the Conference agreed to delete the checkboxes to alleviate the potential for errors. Judge Adams will forward the revised form to the Forms Subcommittee for further action.

14. Chief Judge Designation in the Circuit Courts

Ms. Harris informed the Conference that she had received inquiries from a number of judges regarding the designation of Chief Judge in the Circuit Court. The Legal Affairs department researched the designation and determined that the only reference is in the Constitution of Maryland and it is given to the longest serving judge on the bench. There are no specific duties outlined in the Constitution, or in any statute or rule. The designation is symbolic.

Action Item

- Judge Theresa Adams will forward the revised Notice of Post-Trial Rights form to the Forms Subcommittee.

There being no further business, the meeting was adjourned at 12:53 p.m. The next meeting will be held on Monday, November 20, 2017, at the Judicial College Education and Conference Center in Annapolis, Maryland. The meeting will begin at 9:30 a.m.

Respectfully submitted,



Faye D. Gaskin
Conference Secretary