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

A meeting of the Conference of Circuit Judges was held Monday, November 19, 2018, at the Judicial College Education and Conference Center in Annapolis, Maryland, beginning at 9:30 a.m.

Members Present

Hon. Kathleen Gallogly Cox, Chair

Hon. Brian D. Shockley
Hon. Brett W. Wilson
Hon. Keith A. Baynes
Hon. Stephen H. Kehoe
Hon. Mickey J. Norman
Hon. W. Timothy Finan
Hon. Viki M. Pauler
Hon. J. Barry Hughes
Hon. Laura S. Ripken, Vice Chair

Hon. Theresa M. Adams
Hon. Robert A. Greenberg
Hon. Sheila R. Tillerson Adams
Hon. Marjorie L. Clagett
Hon. Audrey J. S. Carrion
Hon. W. Michel Pierson
Hon. Amy Craig
Pamela Harris

Also, Present Were:

Hon. John P. Morrissey
Faye Gaskin
Nicholas Iliff
Magistrate Julie Minner
Kelley O'Connor

Eliana Pangelinan
Suzanne Pelz
Magistrate Lisa Segel
Nisa Subasinghe
Magistrate Erica Wolfe

1. Approval of Minutes

Judge Cox called for approval of the minutes of the September 17, 2018, meeting. Judge Theresa Adams moved for approval of the minutes, which was seconded by Judge Clagett. The motion passed.

2. Proposal for a Conference of Maryland Magistrates and Magistrates' Education Program

Magistrates Minner, Segel, and Wolfe appeared before the Conference to discuss several items, including a proposal to form a Conference of Maryland Magistrates and an administrative order to develop an orientation and mentoring program for magistrates and to establish an annual conference and education program for magistrates. Magistrate Wolfe stated that the creation of a conference for magistrates will help to improve performance and open the lines of communication among magistrates. She discussed the history of the magistrate position and commented that many of the activities outlined in the proposal have been undertaken by the magistrates in an informal manner. The proposal would formalize those activities and provide a standing body designated specifically to address items of importance to and issues concerning magistrates. The framework for the proposal was adopted from what currently exists for the conferences of Circuit Court Clerks and Court Administrators.

Magistrate Segel then discussed the proposed administrative order regarding an annual conference and education program for magistrates, as well as the creation of a mentoring program for new magistrates. She noted that prior to the development of courses designed specifically to address the needs of magistrates, they were permitted to choose courses offered to the judges, many of which were not applicable to their areas of responsibility. Magistrate Segel added that this is the second full year of coursework designed specifically for magistrates and that the Education Committee has received positive feedback. She stated that Chief Judge Barbera's most recent administrative order provides that magistrates must take twelve hours of coursework each year, the same as judges, but it doesn't specifically set out other things magistrates would like to have, such as mentoring and a formalized orientation. She added that information relevant to magistrates is not contained in any one place and the administrative order would serve as that one reference point for information concerning magistrates. Magistrate Segel noted that the mentoring program could help new magistrates avoid mistakes and provide the support needed during the transition from attorney (advocate) to magistrate (fact finder).

Judge Hughes commented that while much of what was proposed would be helpful, one area of concern with the proposed administrative order is that it would establish a forum for magistrates to discuss policy, particularly since they report directly to the administrative judge. Further, the functions of magistrates should not be standardized statewide, but rather remain the administrative judge's discretion. Magistrate Segel commented that the intent is to implement, not set policy, adding that magistrates want to better perform their jobs and have a connection with one another across jurisdictions. Magistrate Wolfe added that there already is an administrative order that covers judges and magistrates in the juvenile area, but everything else happens informally.

Judge Ripken noted that magistrates function very well and acknowledged appreciation for the effort that went into preparing the proposal. She expressed concerns that some of the items addressed in the proposal are covered by other administrative orders, adding that there should not be a one-size fits all approach because the work of the magistrates vary across courts. The Conference is responsible for representing the magistrates and adding a separate conference is contrary to why the committee structure was overhauled by the Judicial Council. Magistrate

Segal commented that the proposed administrative order allows for flexibility. She added that existing administrative orders on orientation and mentoring for judges do not include magistrates. Magistrate Segel stated that magistrates represent a big piece of the judicial population and that it is important for them to have an opportunity to come together to exchange ideas and to discuss how better to serve judges and the people who come before them.

Judge Clagett suggested that, as an act of professional deference to the magistrates, the Administrative Office of the Courts separate magistrates from law clerks in the Annual Report chart posted on the Judiciary's website. She acknowledged the hard work of the workgroup in drafting the proposal.

Following additional discussion, the Conference agreed that the annual educational conference will provide a forum for magistrates to come together and exchange ideas, but that a separate Conference of Circuit Court Magistrates is not necessary. Several alternatives were discussed, including a Magistrates Subcommittee of the Conference and having a magistrate serve as an ex-officio member of the Conference. The overall sentiment was that a separate administrative order is not necessary, but it would be prudent to thoroughly review the proposal to determine if the issues are covered elsewhere as well as to determine if there are any outstanding issues that require further discussion and possible inclusion in existing administrative orders. Judge Sheila Adams and Judge Wilson agreed to serve on a work group to review the proposal and bring any recommendations back to the Conference at its next meeting.

Ms. Harris asked that Chief Judge Barbera's signature be stricken from the proposed administrative order.

3. Requests for Expedited Hearings from Hospitals and Care Facilities

Nisa Subasinghe briefed the Conference on the work being done around the issue of expedited hearings for guardianship petitions filed by hospitals and care facilities. She noted that when a patient is ready for discharge, possibly to another facility, but lacks the capacity to participate in the discussion and there is no surrogate able to participate, the hospitals file for guardianship and want expedited hearings to move the process along. They asked the Rules Committee to consider a Rule to address the same. The Hospitalized Adults Work Group of the Domestic Law Committee suggested exploring less restrictive alternatives to guardianship. The Rules Committee asked the Domestic Law Committee to tackle the issue. Judge Cox stated that another issue is the variation in practice across the State, such as whether counsel is required to file a report and, if so, what should be included.

The work group worked on the issue for approximately 1½ years. Several concerns surfaced, including some hospitals being better than others in doing the legwork, agencies suspicious of the petitions because of the lack of information, courts not having sufficient information to make informed decisions, and Medicare regulations making guardianship an attractive option.

The work group proposed Rules for the 198th Report that would provide structure for expedited hearings, including more information regarding medical needs, efforts to locate interested persons to serve as guardians, and inclusion of a process for expedited hearings in the court's DCM plans. It was noted that hospitals are not fond of the proposed rules because their

goal is to get patients released. Ms. Subasinghe noted that facilities are asking for guardianship of the patient's property as well, listing the facility as the guardian. The work group is concerned with the facility taking control of the patient's assets with no oversight. Rule 10-106.1 provides for the court to appoint an independent investigator when there is a petition to establish a guardianship.

Judge Cox thanked Ms. Subasinghe for the presentation and her efforts in this regard. She encouraged everyone to reach out to Ms. Subasinghe with any questions or concerns.

4. Senior Judge Report

Judge Rasin briefed the Conference on a survey sent to senior judges by the Senior Judges Committee to assess their experiences in a variety of areas, such as court operations and parking. The responses indicated that senior judges would like to know what the docket is going to be the day before court so that they can be better prepared; they would like to be invited to bench meetings, when possible; and they want expectations of their service to be clearly articulated. Judge Rasin asked if there was anything the Conference wanted her to take back to the committee. Judge Ripken asked that senior judges advise the administrative judge in the court in which they are sitting of any issues or concerns.

Discussion then ensued regarding what senior judges do when the case settles ahead of time or when their dockets end early. If the case settles ahead of time, some administrative judges will reach out to the senior judge to give him or her the option of coming in to perform other duties, such as chambers work, bail reviews, and domestic violence cases. If the docket ends early, per administrative order, the senior judge should check with the administrative judge to determine if there are other tasks to be completed. Judge Wilson stated that some senior judges won't agree to do certain things and he will try to accommodate them to the extent possible; however, the senior judges should understand that if they limit what they will do, they limit their opportunities to sit. He added that serving as a senior judge is a privilege. It was noted that senior judges should not avail themselves to sit in an MDEC court if they have not been trained and that senior judges should follow-up with administrative judges to ensure the sentencing guidelines sheets are completed.

5. MDH Liaison and Periodic Meetings with Secretary Neall

Chief Judge Morrissey informed the Conference that he and Secretary Neall (Maryland Department of Health) meet periodically to discuss matters of mutual concern. When possible, a Circuit Court judge and/or a judge from a mental health court are invited to attend. The MDH overwhelmingly has met the 10-day requirement to assess the individual for competency. Chief Judge Morrissey reminded the Conference of the requirement imposed on the courts to set in a hearing within 10 days if there is a determination of competency made by the MDH.

Judge Cox stated that the MDH is maintaining a list of cases the Department finds to be problematic. She forwards the list to the affected counties. Judge Cox stressed the importance of maintaining the open lines of communication and commented that she is hopeful that the discussions with the Department will move from her and Chief Judge Morrissey to direct communication between the courts and the Department. She noted that the timelines have

improved dramatically. Judge Cox asked the Conference to let her know if anyone wants to change the designated MDH liaison judge.

Judge Wilson commented that the Office of the Public Defender (OPD), increasingly, has been requesting its own evaluations. Nick Iliff noted that the OPD and the State's Attorneys have gotten conflicting reports from the Department's doctors regarding competency, which is why they have been requesting independent evaluations. Some of the defendants have complained about the providers and the level of care provided. Chief Judge Morrissey stated that he has made the Department aware of the concerns.

6. Maryland Pattern Jury Instructions

Judge Cox made the Conference aware of several proposed corrections to the Maryland Pattern Jury Instructions, noting that the committee has completed several revisions with more to come for other crimes. The edited instructions will be circulated electronically.

7. New Law Clerk Orientation

Judge Cox presented a proposal from the Judicial College to revamp the New Law Clerk Orientation. The vast majority of law clerks are in the Circuit Courts. The Judicial College proposed to continue to conduct the orientation once a year, but to have the face-to-face sessions targeted only to Circuit Court law clerks, and to develop an online orientation for appellate and District Court law clerks. In addition, the Judicial College proposed to create a quick reference card for new law clerks with the caveat that it would be generic because of the variations in court practices.

Judge Shockley stated that law clerks sometimes leave midstream and there is no mechanism in place to train them. He suggested videotaping the annual orientation.

Judge Shockley moved to approve the proposal to revamp the law clerk orientation. Following a second by Judge Greenberg, the motion passed.

8. Forms Subcommittee Update

Judge Cox asked the Conference to consider individuals to serve on the Forms Subcommittee to review Circuit Court and joint forms. She noted that they should be detailed-oriented and have a good grasp of the rules and statutes. Judge Stone, who chairs the subcommittee, has put into place a process to review the forms, which can get busy after session when the forms are reviewed to incorporate any legislative changes, and to determine if new forms have to be created. The names of persons interested in serving should be sent to Judge Cox.

9. Nominating Committee Report

Judge Cox, Judge Clagett, and Judge Hughes comprised the Conference's Nominating Committee. They put forth Judge Ripken to serve as the next Chair of the Conference and Judge Baynes to serve as the next Vice Chair. There were no additional nominations. Judge Sheila

Adams moved for approval of the slate. Following a second by Judge Clagett, the motion passed. Their two-year terms will begin on January 1, 2019.

10. Resolutions

Judge Cox acknowledged the services of Judge Theresa Adams, Judge Clagett, Judge Hughes, Judge Norman, Amy Craig, and Doug Hofstedt to the Conference. She thanked them for their contributions and presented each with a resolution of appreciation.

11. For the Good of the Order

Judge Cox briefly discussed the feedback from the VOP bail review process survey, noting that she will attach the response from Baltimore City and resend the chart to everyone. Judge Pierson submitted a lengthy response that had not been integrated in the chart.

Judge Cox noted that in three of the large jurisdictions, VOPs are returned to the issuing judge and those courts want to continue their existing practice. A rule requiring a certain time would affect practice. The proposed rule was pulled to allow for additional input regarding practices in the various Circuit Courts.

Action Items

- Judge Sheila Adams and Judge Wilson will review the proposal submitted by the Magistrates Work Group and make recommendations regarding the way forward.
- Judge Cox will attach Judge Pierson's VOP bail process survey responses to the spreadsheet and resend it to the Conference.
- Conference members should send names of persons interested in serving on the Forms Subcommittee to Judge Cox.

There being no further business, the meeting was adjourned at 12:00 p.m. The next meeting will be held on Monday, January 14, 2019, 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