



Hon. Mary Ellen Barbera, Chair
Chief Judge
Court of Appeals

Matthew T. Barrett, Vice-Chair
Conference of Circuit Court Administrators

Hon. Pamela J. Brown
Howard County District Court

Tamera Chester, Administrative Clerk
District Court

Hon. Kathleen Gallogly Cox, Chair
Conference of Circuit Judges

Hon. Amy J. Craig, Chair
Conference of Circuit Court Clerks

Pamela Harris
State Court Administrator

Doug Hofstedt, Chair
Conference of Court Administrators

Hon. James A. Kenney III, Chair
Senior Judges Committee

Hon. Laura S. Kiessling, Vice-Chair
Conference of Circuit Judges

Hon. Karen H. Mason
Circuit Court for Prince George's County

Hon. Timothy W. Miller Vice-Chair
Conference of Circuit Court Clerks

Hon. Patricia L. Mitchell
Montgomery County District Court

Hon. John P. Morrissey, Chief Judge
District Court

Hon. W. Michel Pierson
Circuit Court for Baltimore City

Cheryl Miller, Administrative Clerk
District Court

Hon. Gerald V. Purnell
Worcester County District Court

Hon. Dorothy J. Wilson
Baltimore County District Court

Roberta Warnken, Chief Clerk
District Court

Hon. Alan M. Wilner, Chair
Standing Committee on Rules of
Practice and Procedure

Hon. Brett W. Wilson
Circuit Court for Dorchester County

Hon. Patrick L. Woodward, Chief Judge
Court of Special Appeals

Faye Gaskin, Secretary
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MARYLAND JUDICIAL COUNCIL

Meeting Location:

Judicial College Education and Conference Center

Upper Level 4 & 5

MARYLAND JUDICIAL COUNCIL

Minutes

January 24, 2018

Judicial Council Members Present:

Hon. Mary Ellen Barbera, Chair	Hon. Gerald V. Purnell
Hon. Pamela J. Brown	Hon. Dorothy J. Wilson
Hon. Kathleen Gallogly Cox	Hon. Patrick L. Woodward
Hon. James A. Kenney, III	Tamera Chester
Hon. Laura S. Kiessling	Pamela Harris
Hon. Karen H. Mason	Douglas Hofstedt
Hon. Patricia L. Mitchell	Hon. Timothy W. Miller
Hon. John P. Morrissey	Roberta L. Warnken
Hon. W. Michel Pierson	

Others Present:

Hon. James Eyler	Carol Burkhart
Hon. Gary Evergam	Melinda Jensen
Hon. Lawrence Fletcher-Hill	Sarah Kaplan
Hon. Nicholas Rattal	Nadine Maeser
Hon. Margaret Schweitzer	Eliana Pangelinan
Hon. E. Gregory Wells	Rick Parker
Faye Gaskin	Erica Peters
Gray Barton	Suzanne Schneider
Robert Bruchalski	Jamie Walter
Lou Gieszl	Thomas Wenz

A meeting of the Judicial Council was held Wednesday, January 24, 2018, at the Judicial College Education and Conference Center, beginning 9:48 a.m. Chief Judge Barbera welcomed the new members – Judge Dorothy Wilson, Timothy Miller, and Matthew Barrett. She also acknowledged Cheryl Miller, who was not in attendance, as a new member. Chief Judge Barbera then acknowledged Robert Bruchalski, the newly-appointed CIO, and Thomas Wenz and Nadine Maeser, the newly-appointed PIO and Deputy PIO. She then called for approval of the minutes of the previous meeting, which were approved by common consent.

1. Committee Updates

Court Technology Committee.

- a. *Text Messaging Workgroup.* Rick Parker and Erica Peters briefed the Council on the technical foundational work they are doing to facilitate implementation of the pilot on text messaging, and demonstrated the prototype. Mr. Parker explained the four component parts, which include the message broker (JIS), the subscribing application (the Public Defender Eligibility application used by the commissioners), the publishing application (MDEC), and the aggregator (the vendor that sends the message). Text messages will be sent when court appearances are scheduled, cancelled, and rescheduled. In addition, reminder notices will be sent. When the first text is sent, the individual will be asked to confirm that he or she actually subscribed. If the answer is no, then text messaging will stop. With each subsequent text message, the subscriber will be given the option to unsubscribe if he or she chooses to do so.

Judge Wilson inquired as to whether or not a defendant who declines representation by the Office of the Public Defender would still be eligible to subscribe to which Mr. Parker responded that the PDE application is a vehicle through which individuals can subscribe, but representation is not a requirement. Judge Everngam stated that additional subscribing applications are planned for the future, including the Attorney Information System, Traffic Processing Center, and DV Office.

Judge Pierson asked how text notification comports with the rules related to noticing and whether the pilot would be able to go forward without rules changes. Judge Everngam responded that the official notification via the U.S. Postal Services will continue during the pilot. Judge Cox suggested referring to the message as a reminder rather than a notification to bring about clarity. Chief Judge Barbera will ask Judge Wilner to determine if any rules need to be changed.

Judge Everngam noted the establishment of a workgroup to develop the protocol and to help evaluate the pilot. He added that the workgroup will determine the content of the text messages, as well as the time frame in which the messages are sent.

- b. *Secure CaseSearch.* Judge Everngam and Judge Schweitzer briefed the Council on the work of the Secure CaseSearch Subcommittee and presented to the Council for its approval recommended changes to the access levels in Secure CaseSearch, which includes the creation of four security groups.

Judge Everngam stated that the Secure CaseSearch Subcommittee, chaired by Judge Schweitzer, was tasked with reviewing Secure CaseSearch to determine if any modifications were needed to ensure compliance with Maryland rules and statutes, adding that the application was last modified in 2000. The subcommittee members conducted a comprehensive review of Secure CaseSearch, as well as rules or statutes that govern access to secure court data. In addition, the subcommittee surveyed

Secure CaseSearch users to ascertain their level of access and the corresponding authority for the same. Upon reviewing the research and the survey responses, the subcommittee determined that different security levels should be created in Secure CaseSearch to ensure that users only had access to information to which they are entitled. As currently constructed, Secure CaseSearch does not allow for different security levels. The subcommittee recommended adoption of the following security groups, along with the level of information to which each would be entitled:

- Court (all)
- Law Enforcement (all)
- State's Attorney's Office, Attorney General's Office, Probation, Supervising Agencies, and Corrections (all but Emergency Evaluation Petitions)
- Public Defender's Office (all but Emergency Evaluation Petitions, Protective Orders, and Peace Orders)

Pamela Harris moved that the Council approve the four security groups listed above. Following a second by Chief Judge Morrissey, the motion passed.

Prior to implementation of the approved security groups, the affected agencies will be contacted and advised of the changes.

- c. *Technology Policies, Procedures, and Projects Subcommittee.* Judge Everngam sought the Council's approval to establish the Technology Policies, Procedures, and Projects Subcommittee. If approved, the subcommittee would ensure that the MDEC Policies and Procedures Manual remains current, and would monitor pilot projects and programs to ensure fiscal and operational efficacy. In addition, the subcommittee would assist the State Court Administrator to establish new projects and programs.

Mr. Hofstedt expressed the importance of including a Circuit Court Clerk and Court Administrator on the subcommittee. Judge Wells recommended that the subcommittee be a joint subcommittee of the Court Technology and Court Operations committees, or that there be a liaison member from the Court Operations Committee. He will provide a name to Judge Everngam to represent the Court Operations Committee. Judge Brown suggested using the MSBA as a resource to provide input.

Following the discussion, Judge Brown moved for approval of the Technology Policies, Procedures, and Projects Subcommittee of the Court Technology Committee. Judge Purnell seconded the motion, which passed.

Court Operations Committee.

- a. *Manual for Maryland Jury Commissioners and Jury Offices.* Judge Wells noted that the Council asked for additional time to review the manual before recommending its approval. Judge Fletcher-Hill, who chairs the Jury Management Subcommittee, asked

the Council to approve the manual and to include in the approval that the subcommittee can make minor changes, as deemed necessary, without having to seek the Council's approval.

Judge Mitchell moved for approval of the Manual for Maryland Jury Commissioners and Jury Office, as well as approval for the Jury Subcommittee to make minor changes as deemed necessary. Judge Brown seconded the motion. Judge Pierson asked for a friendly amendment to approve the manual as a resource. The motion, as amended, passed.

Judge Fletcher-Hill acknowledged Sarah Kaplan for shepherding the project.

- b. *Judiciary Records Retention Schedule.* Judge Eyler and Melinda Jensen presented the revised schedule to the Council for its approval. They noted that the proposed schedule is a comprehensive schedule, comprising eight parts – Court of Appeals; Court of Special Appeals; Maryland State Law Library; Circuit Court; District Court; State Board of Law Examiners; and Administrative Office of the Courts, and Judiciary Administrative and Fiscal Records. The proposed schedule is limited to paper records. Judge Eyler commented that one of the workgroup's goals was to standardize the retention process across the courts, where possible. He also stated that most of the administrative and fiscal records were removed from the individual schedules and combined into one of the eight parts. Additionally, the proposed schedule, once approved, provides that records can be destroyed in accordance with the established retention period without further approval. Also, once a record is scanned, the scanned copy becomes the official record except as noted in the proposed schedule, which enables destruction of the paper copy.

Discussion ensued regarding the authority to make the scanned copy the official record, leading to the destruction of the paper record. Judge Eyler commented that one of the first issues addressed by the workgroup was scanned records, primarily due to the high volume of back-scanning in MDEC courts. He noted that the Rules Committee adopted a rule providing that the schedule has the force of law so that the Rules Committee does not have to amend the rules whenever the schedule is amended. He added the proposed schedule goes beyond court records and that Title 20 does not apply to all records covered by the schedule. Judge Pierson asked if the proposed schedule is over-ruling Title 20 to which Judge Everngam responded that the analysis was based on MDEC, but the schedule is broader than MDEC. Further, Title 16 provides that courts may convert paper records to electronic records. Tamera Chester asked if scanning old civil judgments that don't lapse for 12 years and thus creating an electronic record satisfies the schedule. Judge Eyler responded that it does unless there is a requirement to retain the paper.

Judge Brown moved for approval of the retention schedule, which was seconded by Chief Judge Morrissey. Judge Cox offered a friendly amendment to the introductory language under 2) Mandatory Minimum Retention Periods so that it reads, part,

“Once records are scanned into a system approved by the State Court Administrator, the scanned images become the official record, unless otherwise noted.” The amendment was accepted and the motion passed.

The proposed schedule will be forwarded to the State Archives for approval. Once approved, procedures will be developed and the schedule will be published internally and externally.

Specialty Courts and Dockets Committee. Judge Rattal and Gray Barton briefed the Council on the work of the Specialty Courts and Dockets Committee. With the recently-approved Veteran’s Court in Dorchester County, there are now 53 problem-solving courts in Maryland. The DUI Court in Harford County was discontinued and there may be some juvenile drug courts closing as well. The closures were attributed to a decrease in participants related to changes in the marijuana laws, as well as the impact of JRA.

The Business and Technology Case Management Subcommittee has developed a number of recommendations regarding the future direction in the area of business and technology cases. The subcommittee invited a couple of circuit administrative judges to get their perspective before voting on the recommendations that were discussed in the larger committee and will be presented to the Conference of Circuit Judges before coming before the Council for final approval. The MSBA has expressed concern regarding the lack of uniformity across the state with respect to how cases are designated as business and technology. The number of cases admitted to the business and technology track has fluctuated over the last several years, decreasing more than 50 percent from Fiscal Year 2016 to Fiscal Year 2017. The majority of the cases are in Montgomery County. The subcommittee is reviewing the variation in the number of cases admitted, as well as in how they are interpreted. Judge Pierson noted that there has been a decrease in merger and acquisition activity, which may explain the decrease in Baltimore City.

Chief Judge Barbera asked for clarification regarding legislation introduced to create a Business and Technology Court. Is the intent to create a Business and Technology Problem-Solving Court or an independent court? Judge Rattal responded that judges would handle cases multi-jurisdictional in a separate court, which would create a number of issues. The Specialty Courts and Dockets Committee is not in favor of the legislation. The business community, however, is excited about the legislation. Medical malpractice cases are excluded from the legislation.

The Mental Health, Alcoholism, and Addictions Subcommittee has focused its attention on delays in competency hospital admissions, residential treatment, and education. During the last year, there were 1,239 8-505 orders. Judge Rattal noted that there has been a lot of activity and delays continue to be an issue. He added that more activity is expected as a result of JRA, but there is uncertainty in how the process will work. While the number of beds is increasing, the length of stay is decreasing, which is causing other problems.

The Problem-Solving Courts Subcommittee received a number of requests for new treatment court programs, including a regional Veteran’s Court in Dorchester County, which was

approved by the Court of Appeals; an application for an Adult Drug Court in Allegany County Circuit Court, which was reviewed by the subcommittee; and a draft application for an Opioid Court in Howard County Circuit Court, which is being reviewed by the Office of Problem-Solving Courts for assistance prior to submitting to the subcommittee for approval to move to the next phase.

The 2017 Problem-Solving Court Symposium, which received positive feedback, provided a variety of plenary and breakout sessions for nearly 300 attendees. The topics ranged from *Veterans Suicide Risk throughout the Lifespan* to *Trauma Informed Care* to *Bringing Problem-Solving Courts to Scale*. A number of analyses are expected to be completed by the end of 2018, including a DUI cost-benefit analysis, a mental health court cost-benefit analysis and performance measures, and performance measures for adult drug courts.

Mr. Barton noted that opioid usage is increasing (Opioids surpassed marijuana in drug court testing) and drug courts are seeing issues that had not been expected. The increase is prompting the need for increased beds. Under the Affordable Care Act, insurance companies dictate where individuals are placed, which can be problematic because it may not be the most appropriate placement. Other issues being encountered include some insurance companies requiring co-pays and refusing to approve treatment if the co-pay is not paid after three times; insurance companies not paying for some of the recommended treatment; and doctors not reviewing what other doctors are prescribing for treatment.

Chief Judge Barbera commended the committees on the work that they are doing to move the Judiciary's mission forward.

Action Item

- Chief Judge Barbera will ask Judge Wilner if any rules changes are necessary in order to implement the pilot for text messaging.

There being no further business, the meeting adjourned at 12:06 p.m. The next meeting is scheduled for March 28, 2018, beginning 9:30 a.m.

Respectfully submitted,



Faye Gaskin