

JOHN W. DEBELIUS III
CIRCUIT ADMINISTRATIVE JUDGE
SIXTH JUDICIAL CIRCUIT
CHAIR
(240) 777-9180



FAYE D. MATTHEWS
SECRETARY
P: (410) 260-1257
F: (410) 974-2066

KATHLEEN GALLOGLY COX
CIRCUIT ADMINISTRATIVE JUDGE
THIRD JUDICIAL CIRCUIT
VICE-CHAIR
(410) 887-6510

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 November 21, 2016, at the Judicial College Education and Conference Center in Annapolis, Maryland, beginning at 9:30 a.m.

Members Present

Hon. John W. Debelius, Chair

Hon. Paul M. Bowman
Hon. William O. Carr
Hon. Kathleen Gallogly Cox
Hon. Jeffrey S. Getty
Hon. Laura S. Kiessling
Hon. Theresa M. Adams
Hon. Sheila R. Tillerson Adams

Hon. Marjorie L. Clagett
Hon. Audrey J.S. Carrion
Hon. W. Michel Pierson
Pamela Harris
Jennifer Keiser
Hon. Wayne Robey

Also, Present Were:

Hon. W. Timothy Finan
Hon. Paul J. Hanley
Hon. John P. Morrissey
Hon. Erik H. Nyce
Hon. Viki M. Pauler
Hon. Nicholas E. Rattal
Hon. Michael J. Stamm
Hon. Brett W. Wilson
Faye Matthews
Gray Barton

Lou Gieszl
Abigail Hill
Sarah Kaplan
Michele McDonald
Kelley O'Connor
Pamela Ortiz
Eliana Pangelinan
Suzanne Pelz
Dionne Smith
Tracy Watkins

Judge Debelius welcomed Judge Getty to the Conference as the elected representative for the Fourth Judicial Circuit. Judge Getty replaced Judge Beachley.

1. Approval of Minutes

Judge Carr moved for approval of the minutes of the September 19, 2016, meeting. Following a second by Judge T. Adams, the motion passed.

2. Use of Email and Texts by Judges

Michele McDonald appeared before the Conference at the request of Judge Debelius to discuss best practices, as well as any vulnerabilities with respect to judges' use of email and texts in light of concerns regarding privacy of the same. Ms. McDonald began her discussion by stating that there is nothing that categorically protects a judge's email from disclosure via the Public Information Act (PIA) because they are public documents created and retained in the course of performing the judge's job as a public official. She advised that the best practice is for judges to use their Judiciary email for official business purposes only.

Ms. McDonald then discussed the process involved when a PIA request for email is received, noting that the requests require the same level of analysis as other requests, including reviewing the emails to determine if there is any information that can and should be redacted, i.e., personal identifying information, medical information, information that are prohibited from disclosure under the court access rules or General Provisions, etc. She emphasized the importance of implementing and enforcing security and use policies, noting that Judicial Information Systems has security policies and is drafting an acceptable use policy. Ms. McDonald added that in those counties where the court is on the county's email system, there should be security and use policies to govern their usage. Ms. McDonald also commented that judges who use Judiciary-issued Smart phones should follow the security use policies regarding email, as well as text messages, which are subject to the PIA as well. She noted that best practices in this area include standardizing the email retention policy, implementing a standard email and text usage policy, and routinely and immediately deleting personal emails and text messages that are not public records.

Ms. McDonald stated that she will draft a best practices/use policy for judges, but asked that in the interim the Conference remind judges to be judicious in their use of email and text and that both are subject to the PIA.

3. Attorney Information System

Pamela Ortiz and Dionne Smith provided an overview and demonstration of the Attorney Information System. The database is a central repository that will integrate attorney information maintained by the entities within the Judiciary that have a role in administering the profession of law in Maryland, including the Court of Appeals, Attorney Grievance Commission, State Board of Law Examiners, Client Protection Fund, and the Administrative Office of the Courts. When completely implemented, the database will contain information such as attorney status,

administrative and disciplinary actions, Client Protection Fund assessments, and Court of Appeals fees. Attorneys will be able to access the attorney portal to make changes to their contact information, satisfy *pro bono* and IOLTA reporting requirements, and request documents. In addition, an interface to MDEC is being explored to centralize attorneys' electronic access to the Judiciary.

Ms. Ortiz noted that proposed changes to rules that will help to facilitate the system's functionality have been prepared for consideration by the Rules Committee. One such area is email notification.

4. Problem Solving Court Application Process

Judge Rattal briefed the Conference on the application process for obtaining approval to begin a problem-solving court. He emphasized that the formal process is recognized by the Court of Appeals and is aligned with Maryland Rule 16-206 and the *Administrative Order on the Approval of Problem Solving Court Programs in the Circuit and District Courts*. Judge Rattal noted that within the last 18 months, two courts started problem-solving courts without approval. The approval process ensures the court complies with the rules and also attaches technical assistance from the Office of Problem Solving Courts (OPSC) within the Administrative Office of the Courts. While not guaranteed, there also is grant funding available from the OPSC.

Judge Rattal explained the approval process, which includes submission of an application to the State Court Administrator with a copy to the Specialty Courts and Dockets Committee, technical assistance from the OPSC, and a conference call with the Problem-Solving Courts Subcommittee. The application is submitted to the Court of Appeals with a recommendation regarding approval.

Over the last year, three problem-solving courts were approved, including the Baltimore City District Court Veteran's Docket, the Prince George's County Circuit Court Back-On-Track Program, and the Montgomery County District and Circuit Court Mental Health Court. Nearly 4,000 people were served by problem-solving court programs during Fiscal Year 2016 and the Judiciary provided approximately \$4.5 million in grant funding to the programs.

Judge Rattal also commented on the work of the Specialty Courts and Dockets Committee in the area of business and technology. He noted that the Business and Technology Subcommittee surveyed the bar to ascertain their feedback regarding what is expected from the courts in that area. The responses will be used to help the subcommittee formulate recommendations for submission to the Committee and the Judicial Council. The Conference will be briefed on the recommendations before they are submitted to the Judicial Council. Judge Rattal anticipates this to take place by March 2017.

5. Final Report of the Juvenile Expungement Workgroup and Juvenile Expungement Manual

Judge Stamm presented the Juvenile Expungement Workgroup's final report and recommendations. He noted that the workgroup was formed by the Juvenile Law Committee in October 2015 and charged with developing procedures for courts to use when handling petitions for juvenile expungements. Preliminarily, the workgroup was tasked with identifying and prioritizing issues related to juvenile expungements. The workgroup was chaired by Judge Paul Hanley and its membership comprised representatives from the courts and Judicial Information Systems, as well as justice partners, including the Maryland State's Attorneys' Association, the Office of the Public Defender, the Department of Public Safety and Correctional Services, the Department of Juvenile Services, and the Maryland State Bar Association.

Judge Hanley discussed the Juvenile Expungement Manual produced by the workgroup, which is divided into six parts – laws that establish juvenile expungement, eligibility grounds for expungement, petition for juvenile expungement that address how clerks should process petitions for expungement, orders that address procedures for processing expungements, procedures that address how to process appeals, and procedures regarding the clerk's duties with respect to certificates of compliance from other custodians.

The workgroup proposed thirteen recommendations covering a number of areas from filing fees to service to methods of expungement and procedures when certificates of compliance are not returned to the courts. In addition, the workgroup recommended a number of forms that would ensure consistency in practice across the Judiciary. Finally, the workgroup proposed amendments to CJP § 3-8A-27.1 to include a definition for *Victim's Representative* and to replace *family member of the victim* with *victim's representative* throughout. The latter would alleviate the need for the court to identify and serve a copy of the petition to all family members present at the adjudication. Also, the amendment would allow only the victim's representative to file an objection rather than any family member in attendance.

Judge Carr moved to forward the report and manual to the Judicial Council for consideration and approval. Following a second by Judge Theresa Adams, the motion passed.

6. Consideration of Proposed Resolution Regarding Imposition of Court Costs and Fines on Juveniles in Juvenile Justice Proceedings

Judge Stamm presented to the Conference a *Resolution Regarding Imposition of Court Costs and Fines on Juveniles in Juvenile Justice Proceedings* drafted by the Juvenile Law Committee. He noted that in many instances the imposition of these costs have kept children, once they become adults, from getting off of probation. Judge Stamm commented that the Committee is not opposed to court costs, but rather is opposed to not using them for rehabilitative purposes, adding that the costs should be assessed on the individual child. Further, the process should be rehabilitative, not punitive.

A survey of the courts revealed that 15 jurisdictions do not assess juvenile court costs, while in six jurisdictions, assessing costs is dependent on who represents the juvenile. If the juvenile is represented by the Office of the Public Defender, then costs are not assessed, but they are assessed if there is private representation. Also, if the juvenile is 16 or 17 years old and has a

job, costs may be assessed. Judge Stamm noted that the problem is that it is the policy of the Office of the Public Defender to represent all juveniles, regardless of the family's ability to pay. The survey also revealed that three jurisdictions always order court costs, with two sending unpaid costs to the Central Collection Unit.

The resolution provides that before a judge or magistrate imposes or recommends court costs or fines that a number of factors be considered, including, but not limited to the offense, the child or family's financial circumstances, the child's developmental level, and services required by the Court in the disposition order.

Judge Theresa Adams moved that the *Resolution Regarding the Imposition of Court Costs and Fines on Juveniles in Juvenile Justice Proceedings* be forwarded to the Judicial Council for consideration and adoption. Following a second by Judge Carr, the motion passed.

7. Election Law Legislative Proposal

Judge Erik Nyce appeared before the Conference to discuss a possible amendment to Election Law § 5-706 that would remove the possibility of a candidate for judgeship of a principal political party from appearing on the general election ballot if he or she loses in the primary. As currently construed, the provision in the law that does not permit a candidate who is defeated for the nomination to appear on the ballot in the general election does not apply to candidates for circuit court judgeship. Judge Nyce proposed adding the following to § 5-706 (a) This section does not apply to: (1) – “a candidate *who was nominated by a principal political party* for the office of judge of the circuit court.”

Discussion ensued regarding how best to address the issue and close the loophole that permits someone to be defeated in a primary election and still get on the general election ballot. The Conference also discussed whether the matter should be forwarded to the Judicial Council or the Legislative Committee. Kelley O'Connor agreed to work with Judge Nyce to firm up the proposal. Judge Debelius moved that the matter be forwarded to the Judicial Council with a recommendation that the loophole be closed, without detailing how it should be done. Following a second by Judge Cox, the motion passed.

8. Judicial Qualification Proposal

Judge S.R.T. Adams discussed the proposed minimum qualifications for applicants for circuit court judgeships, whether appointed or elected, drafted by the Conference's workgroup (Judge Adams, Judge Kiessling, and Judge Clagett). In addition to the current required qualifications for appointed judges, the workgroup proposed that the applicant be a member of the Maryland State Bar for a minimum of five years and actively practiced law for a minimum of ten years. The workgroup defined active practice of law to include representation/consultation with a minimum of 100 clients and/or at least 50 trials, hearings, or oral arguments before appellate courts. Further, the practice can be state or federal and can include prior judicial experience. In addition, the workgroup proposed that a certificate from the Maryland State Bar Association be filed with the Board of Elections indicating the applicant is a member in good

standing and is distinguished for integrity, wisdom, and sound knowledge. In lieu of the certificate, the applicant can obtain the signatures of 50 members of the local bar association certifying to the same.

Judge Cox commented that the requirement should at least be the same as for the Attorney General, which is 10 years. She noted her concern with having a group over which there is no control certifying who is qualified. Judge Debelius expressed his discontentment with someone who is never vetted being able to get on the ballot to serve as a circuit court judge. He added that his concern with the proposal is that it might be regarded as a substitute for getting rid of contested elections.

After further discussion, Judge S.R.T. Adams moved that the Conference recommend to the Judicial Council that it support a constitutional amendment to change the qualifications for circuit court judges to be a minimum of 10 years in the active practice of law. Judge Cox seconded the motion. Discussion then ensued with Judge Debelius reiterating his concern that moving forward with the recommendation might foreclose the ability to move for the end of contested elections. Other members commented that the Judiciary has to pursue something because the environment doesn't appear to be conducive to ending contested elections. The motion passed with one member opposing.

9. Goals and Objectives of the Conference

Judge S.R.T. Adams proposed changes to the Conference's guidelines document, including that the Chair appoint a nominating committee to present a slate to the Conference for officers. She commented that the Vice Chair should not be a member of a committee where there is a high likelihood that he or she will be nominated. In addition, Judge S.R.T. Adams proposed that the document indicate when elections are to be held. Judge Pierson suggested including language indicating that elections are held in the even years and that the terms begin the following January. Finally, it was suggested that language be added to the effect that no member of the nominating committee may be nominated.

Judge S.R.T. Adams moved the Nominating Committee section read as follow: The Nominating Committee shall be appointed by the Chair from amongst the members of the Conference and consist of three members of the Conference who are not running for office. No member of the Nominating Committee may be nominated. The motion also included addition of language to indicate that elections for the Chair and Vice Chair shall be held the last meeting of the term. Further, all elections, including those for circuit representatives, shall be held in even years with terms beginning the following January. Following a second by Judge Cox, the motion passed.

10. Social Media Guidelines for Judges

Judge Debelius briefed the Conference on the *Guidelines Concerning the Use of Social Media by Judges and Judicial Appointees of the Maryland Judiciary* adopted by the Judicial Council. He noted that he and Chief Judge Morrissey chaired a workgroup formed by Chief

Judge Barbera to develop guidelines for social media usage to safeguard ethical standards and to address security concerns. The guidelines are applicable to judges, magistrates, commissioners, and examiners.

11. Issues Concerning Bail

Judge Debelius briefed the Conference on a recent meeting held by the Rules Committee to discuss proposed Rule 4-216.1, which is intended to provide guidance to judicial officers in their decision-making regarding the pretrial release of individuals. He stated that the majority of the discussion centered on the need for pretrial services around the State. There also was discussion about the use of a risk assessment tool. Judge Debelius stated that the advice of the Attorney General is that things are being done unconstitutionally, which cannot be ignored. Chief Judge Morrissey added that his perspective is whether the Judiciary can do things better and whether the Judiciary is subjected to liability if it continues to operate in a manner deemed unconstitutional by the Attorney General. The challenge is how to get pretrial services across the State. Chief Judge Morrissey noted that Delegate Dumais plans to introduce legislation to address that concern.

Judge Debelius noted that Chief Judge Barbera requested input from the Conference regarding bail issues. Conference members commented on the need to have resources to implement risk assessment tools. In addition, the tool has to have been validated that it will provide information that will assist the judicial officer and that is statistically valid. Judge Cox commented that the legislature will look to the counties to generate ideas around the establishment of pretrial services.

12. Records Retention

Judge Cox noted that the Records Retention Workgroup of the Court Operations Committee has been working on the records retention schedule and its chair, Judge Eyler, expressed concern over the lack of a circuit court judge member. He asked the Conference to designate a few judges to review the draft schedule and advise if there are any concerns. Judge Cox asked anyone who is interested in reviewing the schedule to contact her.

13. Subject Matter for Half-Day Circuit Court Focused Programming for the Judicial Conference

Judge Kiessler discussed the 2017 Judicial Conference, noting that Chief Judge Barbera has allotted ½-day breakout sessions for each court level on June 13, from 1:30 p.m. – 5:00 p.m. The workgroup is seeking input from the Conference for circuit court topics.

Among the suggestions were an update from the Chair of the Conference regarding circuit court issues, discussion from Michele McDonald about discrimination and sexual harassment from the judge's position as supervisor, the interplay between domestic violence orders and family orders, and the impact of appellate decisions. Other suggestions included covering each major area – civil, juvenile, criminal, and family, as well as complex cases,

email/text, and *voir dire*.

The District Court plans to discuss District Court-specific issues, as well as personal injury cases, landlord and tenant cases, and domestic violence and peace order cases.

Judge Kiessling will take the suggestions back to the workgroup. She asked that any other suggestions be sent to her.

14. Election of New Officers

The Nominating Committee nominated Judge Cox to serve as the Chair and Judge Kiessling to serve as the Vice Chair of the Conference. No other nominations were put forth and the Conference approved the nominees to serve in the respective positions.

15. Resolutions

Judge Debelius acknowledged the services of Judge Groton, Judge Bowman, Judge Carr, Judge Getty, Judge Beachley, Jennifer Keiser, and Wayne Robey to the Conference. He thanked them for their contributions and presented them with a resolution of appreciation.

16. For the Good of the Order

Judge S.R.T. Adams commented on the need to establish minimum assistance for blind jurors. She noted that Judge Pierson and Michele McDonald are planning to meet with representatives from the American Federation of the Blind to discuss the matter. Judge S.R.T. Adams will circulate the research she has gathered and will discuss further at the next meeting.

Action Items

- Conference members should send suggestions for the circuit courts ½-day session at the Judicial Conference to Judge Kiessling.
- Judge S.R.T. Adams will circulate research materials regarding providing assistance to blind jurors for discussion at the next meeting.

There being no further business, the meeting was adjourned at 1:05 p.m. The next meeting will be held on Monday, January 23, 2017, at the Judicial College Education and Conference Center in Annapolis, Maryland. The meeting will begin at 9:30 a.m.

Respectfully submitted,



Faye Matthews
Conference Secretary