



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
(410) 260-1257

MARYLAND JUDICIAL COUNCIL

Meeting Location:

Judicial College Education and Conference Center

Upper Level 4 & 5

MARYLAND JUDICIAL COUNCIL

Minutes

September 26, 2018

Judicial Council Members Present:

Hon. Mary Ellen Barbera, Chair

Hon. Pamela J. Brown

Hon. Kathleen Gallogly Cox

Hon. James A. Kenney, III

Hon. Laura S. Kiessling

Hon. Karen H. Mason

Hon. Patricia L. Mitchell

Hon. John P. Morrissey

Hon. W. Michel Pierson

Hon. Gerald V. Purnell

Hon. Alan M. Wilner

Hon. Dorothy J. Wilson

Hon. Patrick L. Woodward

Matthew Barrett

Tamera Chester

Pamela Harris

Douglas Hofstedt

Cheryl Miller

Hon. Timothy Miller

Roberta L. Warnken

Others Present:

Hon. Cynthia Callahan

Hon. Susan H. Hazlett

Hon. Thomas G. Ross

Hon. Margaret M. Schweitzer

Hon. Michael J. Stamm

Hon. E. Gregory Wells

Faye Gaskin

Robert Bruchalski

Renée Abbott

Richard Abbott

Carole Burkhardt

Terri Charles

Maureen Denihan

Hope Gary

Lou Gieszl

Melinda Jensen

Carla Jones

Dominique Johnigan

Sarah Kaplan

Kelley O'Connor

Eliana Pangelinan

Bradley Powers

Jonathan Rosenthal

Stacey Saunders

Suzanne Schneider

Nisa Subasinghe

Jamie Walter

A meeting of the Judicial Council was held Wednesday, September 26, 2018, at the Judicial College Education and Conference Center, beginning at 9:35 a.m. Chief Judge Barbera called for approval of the minutes of the May 30, 2018 meeting, which were approved by common consent.

1. Mediator Standards of Conduct

Judge Ross and Jonathan Rosenthal provided an overview of the revised *Standards of Conduct for Maryland Mediators* approved by the Alternative Dispute Resolution Committee. The revised standards, if approved, will replace the *Standards of Conduct for Mediators, Arbitrators and other ADR Practitioners* approved by the Court of Appeals in 2001 and the *Maryland Program for Mediator Excellence Maryland Standards of Conduct for Mediators* approved by the Mediator Excellence Council in 2006. The Work Group on Standards of Conduct for Mediators, chaired by Judge Ross and comprising both Judiciary and ADR stakeholder representatives, dedicated approximately a year and a half to this effort. The diverse membership provided for varying perspectives, resulting in a comprehensive set of standards. If approved, the practitioner organizations represented on the work group have agreed to adopt the standards.

The standards, as revised, provide a historical context and contain language to clearly indicate that they are intended to be widely available. An introductory statement stressing that mediators are expected to adhere to the standards, as well as a definitions section to provide clarity have been included. The work group added more detail regarding the role of the mediator and the parties, while deleting language that spoke to the mediator's primary responsibility being that of resolution facilitator. The latter was done in acknowledgement of the myriad reasons for which mediators are used. Other changes include shifting information to more appropriate sections, adding the concepts of direct and indirect conflicts of interest, deleting references to specific Rules that may change from time-to-time, and emphasizing the skills and considerations necessary to withdraw from or terminate a mediation.

Chief Judge Barbera asked if other states have adopted or are working on developing standards. Judge Ross responded that several states have adopted the ABA standards. Mr. Rosenthal added that he is not aware of any states that have developed their own standards and that the ABA is waiting to see what Maryland does with the revised standards. Chief Judge Barbera noted that the Council needs more time to thoroughly digest the revisions and, as such, asked that a decision on their approval be taken up at the next meeting of the Council. She asked the members to review the revised standards and to send all questions and comments to the ADR Committee.

2. Case Assessment Report

Judge Wells, Jamie Walter, and Dominique Johnigan presented the results of the Fiscal Year 2017 Case Assessment. Judge Wells stated that the Case Management Subcommittee was not recommending any changes to the time standards although 28 requested modifications were considered. He added that the subcommittee discussed under which standard TPRs that are related to the Rape Survivors Act should be placed. The subcommittee determined it best to get a sense of the number of cases and any process implications before deciding.

Ms. Johnigan reported that, in the District Court, performance against the standards fluctuated over the last two fiscal years, with the only improvement occurring in traffic must

appear cases (two percent), while decreases were reported in civil small cases (4 percent), civil large cases (3 percent), and traffic 21-902 cases (one percent). During the same period, criminal cases remained consistent at 90 percent of the cases disposed within the established time standard, as did traffic payable at 93 percent.

Ms. Walter then discussed the assessment results from the Circuit Courts, noting that performance against the time standards improved in several case types over the last two fiscal years, with the greatest improvement (9 percent) occurring in CINA non-shelter cases. A one percent improvement was noted in both family law and TPR cases during the same period. Decreases were noted in CINA shelter cases (three percent), foreclosure cases (three percent), and civil general cases (one percent). Performance against the time standards remained consistent in criminal cases (87 percent), limited divorce cases (94 percent), and juvenile cases (95 percent).

In presenting the results for the Court of Appeals, Ms. Johnigan stated that the Court reached its goal of disposing 100 percent of the cases argued during the term. She added that the time to dispose of extraordinary writs averaged 18 days, while it took an average of 50 days to dispose of bar admissions matters. With respect to the Court of Special Appeals, the Court met the standard of disposing 80 percent of its cases within 90 days for civil and criminal cases, as well as reported and unreported opinions. The Court also met the standard for state appeals from the pretrial suppression of evidence cases, as well as for elective appeals. In the child access/guardianship/CINA/TPR standard 1, which is filing of the record to argument, the Court met the standard in 20 percent of the cases, a slight decrease from the 22 percent reported the previous year. In the child access/guardianship/CINA/TPR standard 2, which is argument or submission on brief to disposition, the Court disposed 96 percent of its cases within standard, an increase of two percent over the previous year.

Chief Judge Barbera inquired as to why there is a reduction in the number of cases meeting the time standard when case filings are decreasing. Chief Judge Morrissey, speaking only to civil cases in the District Court, stated that the way the standard is applied for civil cases with multiple defendants adversely impacts the Court's ability to meet the standard. The time includes the totality of service of the first defendant to disposition of the last defendant. Chief Judge Morrissey stated that he is reluctant to seek a Rule change to dismiss the case for lack of service to comport with the Circuit Court's Rule because individuals should have an opportunity to have their day in court. Judge Mitchell noted that 21-902 cases (DWI) often are delayed, in part, because the dates are provided by law enforcement. Collective bargaining agreements impact the extent to which officers can work overtime.

Judge Cox commented that two groups have appeared before the Conference of Circuit Judges to discuss the time standards with respect to medical malpractice and complex civil litigation. The sentiment was that the standards are too rigid, particularly when there is a good reason for departure from the standards. Judge Cox further stated that in addition to the standards, courts need to look more liberally at their postponement policies, as well as the increasing number of family law cases that have self-represented litigants. She stated that it is challenging to dispose those cases within the prescribed time standard. Judge Kiessling added

that the criminal time standard of 180 days to conclusion is contrary to the law, which requires the case to start within 180 days. She urged that consideration be given to consistency with the law.

Chief Judge Barbera stated that delivering justice should be the primary objective. She added that judges should do their level best, within reason, and that it is important to have goals, such as the time standards.

Chief Judge Woodward expressed that there is a tension between the time standards and achieving justice. He stated further that it is always important to have the time standards as goals, adding that managers have to take an active role in improving in relationship to the standards.

3. Access to Secure CaseSearch

Judge Schweitzer discussed access to Secure CaseSearch, explaining that it primarily is open only to criminal justice partners because of the confidential information it contains, while CaseSearch is open to the public. She stated that the Council previously adopted the Court Technology Committee's recommendations regarding access, but that she was back before the Council regarding access for judicial personnel and the Office of the State Prosecutor. Judge Schweitzer noted that the committee wants to provide levels of privilege that are consistent with the user's rights and roles, citing several Rules that address access.

With respect to Judiciary employees, Judge Schweitzer noted that commissioners need access to Secure CaseSearch because of the nature of their job responsibilities; the issue is the level of access needed by other Judiciary personnel. She stated that the categories of personnel with access range from appellate judges to senior judges to judiciary clerks

Judge Schweitzer stated that the committee wants to terminate access to all Judiciary personnel, except commissioners, unless the user can identify a legitimate reason for the access. She added that not having access is not preventing any other Judiciary personnel from performing their jobs.

With respect to the Office of the State Prosecutor, the Office previously did not have access to Secure CaseSearch and, as such, was not grandfathered in. Judge Schweitzer noted that users from the Office would have the same level of access as staff in the Office of the Attorney General and the State's Attorneys.

Judge Cox moved for approval of the committee's recommendation that access to Secure CaseSearch for all Judiciary personnel, except commissioners, be terminated and that personnel be required to provide justification to reinstate access. Further, the Office of the State Prosecutor will be given the same level of access to Secure CaseSearch provided to the Office of the Attorney General and the State's Attorneys. Following a second by Pamela Harris, the motion passed. Chief Judge Barbera adopted the policy decision recommended by the Council.

4. Committee Updates

a. *Domestic Law Committee*

Judge Callahan briefed the Council on the work of the Domestic Law Committee. She noted that the committee has several subcommittees and work groups that have been actively engaged in several initiatives. The Domestic Violence/Peace Order Subcommittee's Best Practices Work Group has stayed apprised of changes to the law and has communicated those changes to practitioners.

The DVCR Data Work Group is working on the quality and accuracy of data so that it can be made available to the public. In addition, the work group has been busy with the Maryland Judge's Domestic Violence Resource Manual and bench cards, which will be provided to every judge in the spring.

The Court Process Work Group is developing the parenting plan process, which requires the participation of both parties. The parties will be required to develop plans that address problems and issues, forcing them to think through each issue. The process is expected to be finalized in the fall. The work group's goal is to have the process incorporated in the Rules.

The 2018 Family Law Bench Book Work Group expects to have the bench book ready by the end of October. The judges and attorneys on the work group have been tasked with maintaining the various sections.

The Hospitalized Adults Work Group has concentrated its attention on developing a process by which persons deemed incapable of speaking for themselves can have a hearing before the hospital has the authority to move the individual to another facility. Judge Callahan commented that she is aware of hospitals feeling abused by the process and engaging in discussions with other stakeholders to discuss their concerns and to possibly develop an alternative approach. She added that there are not enough resources and that there has been an effort to ensure the issues are addressed – not enough resources to help people that may not need to be hospitalized, but don't need to be home either. Judge Wilner stated that the Rules Committee has been working with Judge Jensen and Nisa Subasinghe on the matter. He added that the proposed Rules will be sent to the Court. Judge Wilner commented that the Rules Committee is aware that the hospitals are coming from a difficult place with insurance concerns, while still trying to resolve medical issues. He believes that a consensus has been reached, thanks to the work group. The proposed Rules provide for expedited proceedings and for the hospital to do the ground work, such as indicating what they have done to explore resources and other options, so that the courts have the necessary information to render decisions. The courts will also be able to appoint someone to do an independent investigation on behalf of the patient.

The Guardianship/Vulnerable Adults Work Group continues work on implementing the recommendations approved by the Council. The work group is addressing amendments to the Rules, its video series, forms revisions, and training. In addition, the work group holds quarterly meetings with stakeholders. Among the emerging issues being considered are standby guardianship, guardianship of veterans, and additional amendments to Title 10. Plans for 2019 include addressing financial exploitation, incorporating the Social Security Administration's

Representative Payee Program, and holding a statewide guardianship symposium where best practices will be shared.

Judge Callahan introduced Richard Abbott, the new Director of the Department of Juvenile and Family Services. She commended the department on the quality and quantity of work being produced.

Mr. Abbott discussed some of the upcoming initiatives from the Department of Juvenile and Family Services, including the Self-Help Conference for court staff and providers where best practices will be shared; the CANDO Conference, which will be the Conference's Emerald Edition; and assisting in the planning of child counsel training in 2019. Other initiatives include the Guardianship Symposium where a team from each court will come together to focus on a variety of topics to improve services to those in guardianship care with attendees developing an action plan for standard policies, procedures, and best practices for handling guardianship cases. The Department will work with the committees, subcommittees, and work groups to assist in planning judicial education for new guardianship judges, training on human trafficking, family law courses for Judiciary employees, and trends in family cases for judges and magistrates. Department staff will work with the committees, subcommittees, and work groups on myriad projects and initiatives. Mr. Abbott discussed the various grant programs funded through the Department and staff's ongoing effort to monitor and evaluate the grant programs.

b. Juvenile Law Committee

Judge Stamm briefed the Council on the work of the Juvenile Law Committee, noting that the committee has been surveying juvenile judges and magistrates to solicit topics of interest as they try to focus their work on the needs of judges, magistrates, and other stakeholders. One topic that was raised in the surveys is home passes and how they are handled differently from jurisdiction-to-jurisdiction. The committee is working on greater uniformity. The two subcommittees – Foster Care Court Improvement Program Subcommittee and Juvenile Justice Subcommittee – are working together to advance the issue of crossover youth. Judge Stamm has spoken with the heads of the Department of Juvenile Services and the Social Services Administration regarding the two agencies working together to address how best to serve the needs of crossover youth. The format of the 2018 CANDO Conference also attempts to shed light on those efforts with one day focusing on child welfare and one day focusing on delinquency.

The Child Welfare Education Work Group planned and coordinated the Judicial Education course on neuroscience and adolescent development and is preparing for the CANDO Conference where topics such as the stages of CINA cases and vicarious trauma and compassion fatigue will be discussed. The work group also completed the revisions to the Child Welfare Bench Book.

The Kinship Work Group collaborated with the Department of Human Services regarding proposed policy changes that would impact placements with relatives. The work group is working with the Department to plan a symposium on kinship care for spring 2019.

The Juvenile Standards and Training Work Group, which was formed to consider current standards and training requirements for attorneys who represent respondents in juvenile delinquency and CINS proceedings, as well as whether formal standards and training requirements should be established and the form and substance of the requirements if established, submitted its report and recommendations to Judge Wilner for review and comment. The work group is reviewing the comments and will present its report to the Juvenile Justice Subcommittee, the Juvenile Law Committee, the Conference of Circuit Judges, and finally to the Council for approval.

The Juvenile Rules Work Group is continuing its work to revise the Title 11 Rules, Juvenile Causes. Judge Stamm noted that the Rules have not been changed in at least 30 years.

The MDEC Work Group is formulating recommendations for modifications to MDEC practices, screens, and forms to support the juvenile bench.

The committee is working to gain a better understanding of the practices around CINS matters. The starting point of that work will be a survey of juvenile judges and magistrates to identify the counties that hear CINS petitions, learn about the factual basis for the cases, and explore the types of services ordered.

Judge Stamm thanked Hope Gary, Abigail Hill, and Sarah Kaplan for their hard work and Judge Hazlett for the support of the Education Committee. He concluded his presentation by stating that if it is not known what is needed with respect to rehabilitation in the juvenile justice system, the stakeholders need only to delve into the adult criminal system.

c. Education Committee

Judge Hazlett updated the Council on the work of the Education Committee, highlighting some of its accomplishments and ongoing efforts. The committee is collaborating with the Access to Justice Department on an annual judicial ethics refresher course for judges and magistrates. The committee is considering requesting approval for the course to become an annual mandatory training. Working to improve systems and processes, the committee and the Judicial College are creating a standard set of education-related templates for course materials to be used across the Judiciary, providing a Training of Trainers course to all faculty volunteers, rolling out proficiency-based education and training, and expanding offsite judicial education offerings to include field trips and course work.

The committee is attempting to hold meetings with other committees to learn about their needs so that they can be better served. The College is conducting focus groups on how to enhance educational opportunities.

The 2018 accomplishments include developing the first webinar program pilot for judges and magistrates, which will go live in 2019; kicking off the online course development of proficiency-based education and training for commissioners, managers and supervisors, and

judicial assistants; and creating and implementing technology education training for all new employees.

Among the 2019 goals are researching and recommending cost-neutral educational resources that support continuing education; piloting a judicial webinar series for CLE credit; increasing judicial education and professional development field training offerings; expanding volunteer programming to include resources that will assist with faculty development; and establishing a Certificate Program Alumni Day so that the graduates can talk to program participants about how they implemented what they learned.

Judge Hazlett commended Ms. Saunders and the staff of the Judicial College for their hard work and dedication.

Chief Judge Barbera thanked the committees for their impressive work, adding that she is astounded by the amount of work accomplished.

5. For the Good of the Order

Chief Judge Barbera advised the Council that, going forward, meetings will not be held in July. The Council will meet every other month from September through May.

Action Items

- Members should review the revised Mediators Standards of Conduct and forward all comments to the ADR Committee through Jonathan Rosenthal.

There being no further business, the meeting adjourned at 11:30 a.m. The next meeting is scheduled for November 28, 2018, beginning 9:30 a.m.

Respectfully submitted,



Faye Gaskin