

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



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

LAURA KIESSLING
CIRCUIT ADMINISTRATIVE JUDGE
FIFTH JUDICIAL CIRCUIT
VICE-CHAIR
(410) 222-1290

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 March 20, 2017, 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. Theresa M. Adams

Hon. Keith A. Baynes

Hon. John W. Debelius, III

Hon. Thomas G. Ross

Hon. Sheila R. Tillerson Adams

Hon. Mickey J. Norman

Hon. Marjorie L. Clagett

Hon. W. Timothy Finan

Hon. W. Michel Pierson

Hon. Viki M. Pauler

Hon. Susan Braniecki

Hon. J. Barry Hughes

Pamela Harris

Hon. Laura S. Kiessling, Vice Chair

Timothy Sheridan

Also, Present Were:

Hon. Mary Ellen Barbera

Kelley O'Connor

Hon. John P. Morrissey

Eliana Pangelinan

Hon. Alan M. Wilner

Suzanne Pelz

Hon. William O. Carr

Marti Robinson

Faye Matthews

Suzanne Schneider

Gray Barton

Andrew Beck

Melinda Jensen

Michael Baxter

Theresa Nudell

Scott Kurlander

1. Approval of Minutes

Judge Ross moved for approval of the minutes of the January 23, 2017, meeting. Following a second by Judge Debelius, the motion passed.

2. Medical Malpractice Workgroup Recommendations

Judge Carr presented the final report and recommendations of the Medical Malpractice Workgroup to the Conference. The Workgroup was formed in the spring of 2015 and was charged with studying the challenges and issues of managing medical malpractice cases in the circuit courts. The Workgroup was tasked with formulating recommendations that will improve the effectiveness and efficiency of the management of medical malpractice cases. The preliminary report was presented to the Conference in November 2015. After considering the Conference's feedback, the Workgroup finalized its recommendations, which were categorized as follows:

- *Scheduling of Medical Malpractice Cases.* The Workgroup recommended that the Chief Judge of the Court of Appeals consider recommending a model Scheduling Order for medical malpractice cases to all Circuit Court Administrative Judges. The recommendation is not intended to change the time standard for completion of the cases, which is 18 months from filing. The Workgroup also recommended that the Circuit Courts seek input from counsel, on the record, before issuing Scheduling Orders in these cases to obtain an agreement on major deadlines.
- *Assignment of Cases.* The Workgroup recommended that medical malpractice cases be specially assigned, allowing the judge to more fully understand the issues and provide consistency in rulings, which is hoped to result in increased compliance with the rulings.
- *Alternative Dispute Resolution.* The Workgroup recommended that the Circuit Court Administrative Judges utilize a list of mediators it prepared for use in medical malpractice cases. The list was compiled from the names of mediators the plaintiff and defense bars accepted as experienced and effective.
- *Judicial Education.* The Workgroup recommended that the curriculum for the course on issues related to medical malpractice cases currently offered through the Judicial College be reviewed and updated and that it be offered annually. In addition, the Workgroup recommended that the Chief Judge of the Court of Appeals direct that every court have judges trained in this area. Further, it was recommended that the medical malpractice course be separated from the general judicial education program and instead be offered in addition to the required two days of judicial education.

In addition to the aforementioned recommendations, the Workgroup recommended that the Judiciary seek legislative review of the Health Claims Arbitration process to determine its effectiveness and future direction.

Judge Cox thanked the Workgroup for its efforts. The Conference then discussed the recommendations. With respect to the Scheduling Order, the sentiment of the Conference was that because of differences in case management practices across jurisdictions, the use of a uniform Scheduling Order is not feasible. Regarding the suggestion that medical malpractice cases be specially assigned, the Conference determined that decisions about management of the cases be determined at the local level. The Conference agreed that the two aforementioned recommendations be forwarded to the County Administrative Judges for consideration as they work on modifications to their Civil Differentiated Case Management (DCM) plans.

With respect to the recommendation to utilize the Workgroup's list of mediators, the Conference noted that a process already exists, pursuant to Maryland Rules 17-202 et. seq., to refer such actions to ADR practitioners who are screened to ensure they have the requisite experience within that field. As such, no action was taken in regard to this recommendation.

Regarding the recommendation to expand the medical malpractice course offered by the Judicial College, Judge Kiessling, who is a member of the Education Committee, agreed to work with the Committee and members of the Workgroup concerning an expanded curriculum and the frequency at which the course is offered. With respect to requiring that a certain number of judges be trained, the Conference agreed to request that each County Administrative Judge encourage one or more members of his or her bench to participate in the course.

The Conference did not support the Workgroup's recommendation regarding legislative review of and changes to the Health Claims Arbitration process, noting that based on prior discussions within the legislature around this issue, there does not appear to be significant support for legislative action.

3. Special Costs in Criminal Matters

Chief Judge Barbera and Judge Wilner briefed the Conference on an apparent problem concerning the assessment and collection of costs mandated by statute to be imposed upon a defendant convicted of criminal offenses. The \$45 cost, which is in addition to any other costs or fees, cannot be waived unless it is determined that the defendant will not be able to pay a significant part of the cost within 12 years. The cost is distributed amongst three funds – the Victims of Crime Fund, the Victims and Witness Protection and Reallocation Fund, and the Criminal Injuries Compensation Board (CICB). Since 2006, collections into the CICB have decreased by approximately \$1 million a year.

Judge Wilner noted that all judges need to be made aware of the Rules (4-353 and 4-354), as well as the statutes (Courts and Judicial Proceedings, §7-405, §7-409, and §7-505) that mandate the additional cost. He added that there appears to be disparity within the various clerks' offices regarding the process for collection of the costs.

Chief Judge Barbera reiterated the need for County Administrative Judges to reassert efforts to ensure judges understand the importance of complying with the Rules and statutes and to ensure that processes are established to collect the monies prior to forwarding the matter to the Central Collection Unit.

Judge Debelius commented that he made a change in his court so that the monies are now payable to the Clerk of Court rather than Parole and Probation, noting that the court is not always aware of whether or not the monies have been collected.

Judge Cox inquired about the availability of data on what is assessed, in addition to what is collected, noting that there may be another reason for the decline other than judges not assessing. The Administrative Office of the Courts will work to compile the data.

4. Mentoring Program

Chief Judge Barbera and Chief Judge Morrissey discussed the Mentoring Program, which partners new judges with experienced judges who work with the new judges for at least one year primarily on the art and style of judging. Chief Judge Morrissey stated that the program was not intended to take away the administrative judge's discretion, but rather to serve as an additional tool. He added that the mentors go through a training program to ensure they are effective. There appears to have been a number of issues with implementation of the program, including the desire of administrative judges to pair new judges with judges from their home bench, as well as administrative judges wanting to work within programs already established within their courts.

Chief Judge Barbera noted that she respects local culture and how county on-boarding is handled; however, she wants the program to have a chance and emphasized that it is geared toward the art of judging and not the nuts and bolts that might be the focus of county-specific programs. She added that she recognizes the challenges of judges having to travel outside of their county to work with other judges, but asked everyone give the program a chance to work for 18 months to two years and then tweak it as necessary.

5. Leave and Approvals in CONNECT

Marti Robinson provided a refresher on how to navigate CONNECT, including how to enter leave and how to approve leave requests and timesheets. She stressed the importance of judges reviewing and reconciling leave to ensure accurate balances. Ms. Robinson also discussed the custom workflows that were created for administrative judges, along with the multiple approval levels. She stressed the importance of ensuring that magistrates and senior judges' timesheets are approved.

6. Circuit Court Coordination with Forms Subcommittee

Judge Cox advised the Conference of a request from Judge Norman Stone for Circuit Court representation on the Forms Subcommittee of the Court Operations Committee. She stated that currently there is no focused input from the Circuit Courts. Judge Stone suggested the creation of a workgroup through which relevant forms can be vetted. The Conference agreed. Judge Cox will contact Judge Stone to get the process started.

Judge Cox then stated that she has received a lot of feedback regarding the removal of orders from domestic forms. She noted that some filings are being returned because there is no draft order provided. Judge Pierson stated that there was a concern about forged orders, which is why the forms were modified for public access. The forms on CourtNet still contain the order. Judge Cox suggested that a memorandum be sent to the Clerks of the Court as a reminder that they should not refuse filings because a draft order is not attached.

7. Service of Warrants in Courthouses

As a point of information, Judge Cox stated that HB 1362 was introduced to, among other things, address ICE detainers and to ensure civil and criminal immunity to state and local government officials who refuse to provide certain information to the federal government or

other states that will assist them in creating a registry containing information including the immigration status of individuals who are involved in some way with the courts. She inquired as to the existence of policies regarding the service of warrants within their courts.

8. Court Closure – Communication Between Circuits

Judge Kiessling commented that it would be beneficial to know what surrounding jurisdictions are doing with respect to court closures. She noted that it would be helpful if administrative judges had each other's cellphone numbers. She volunteered to compile a contact list for distribution.

9. Firearms – Notice of Disqualification Language

In response to legislation regarding the surrender of firearms and the courts' responsibility, Chief Judge Morrissey drafted notice language to include on the trial summaries provided to defendants in criminal cases before the District Court. Judge Adams and Judge Clagett agreed to incorporate similar language in a draft post-trial rights advisement form for the circuit courts, which they presented to the Conference for its consideration. Judge Debelius expressed concern with putting the onus on the defendant to determine if he or she is prohibited from possessing firearms, adding that it is incumbent on the court to determine who is prohibited and then advise the individual accordingly. Other comments included possibly reducing the form to one page and including PBJs on the notice. Judge Adams agreed to work on the form to reduce it to one page and to include the PBJ notice. Judge Cox noted that once approved, the form will be sent to the administrative judges as a best practice suggestion.

10. Potential Legislation to Increase Penalties for Use of Cameras in Courthouses

Judge Pierson discussed incidents in his courthouse involving individuals taking pictures and posting them on social media sites. Currently, the only penalty is contempt. He inquired about the possibility of developing a proposal for legislative action that would provide a clearer path for sanctions as the contempt remedy does not appear to adequately address the problem. Judge Finan noted that he has had two instances in his court in the last month. He suggested a possible amendment to the witness intimidation statute.

11. Local Pro Bono Committee Survey

Judge Cox informed the Conference that Judge Jensen intends to do a follow-up survey to determine the status of local pro bono committees. Once the results are compiled, Judge Jensen will come before the Conference with recommendations.

Action Items

- Judge Theresa Adams will review the possession of firearms language for possible modification and provide it to the Conference.
- Judge Cox will send correspondence to Clerks of the Court to note that filings should not be rejected because draft orders are not attached.

There being no further business, the meeting was adjourned at 12:35 p.m. The next meeting will be held on Monday, May 15, 2017, at the Judicial College Education and Conference Center in Annapolis, Maryland. The meeting will begin at 9:30 a.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Faye Matthews', with a long horizontal flourish extending to the right.

Faye Matthews
Conference Secretary