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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 May 16, 2016, at the Judiciary Education and Conference Center in Annapolis, Maryland, beginning at 9:30 a.m.

Members Present

Hon. John W. Debelius, Chair

Hon. Thomas C. Groton, III
Hon. Daniel M. Long
Hon. Paul M. Bowman
Hon. Thomas G. Ross
Hon. William O. Carr
Hon. Kathleen Gallogly Cox
Hon. Donald E. Beachley
Hon. M. Kenneth Long, Jr.
Hon. J. Barry Hughes

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
Hon. Wayne Robey
Jennifer Keiser

Also, Present Were:

Hon. John P. Morrissey
Faye Matthews
Kelley O'Connor
Suzanne Pelz
Andrew Tress
Connie Kratovil Lavelle

Nisa Subasinghe
Eliana Pangelinan
Lori Keel
Joseph DiPrimio
Scott Kurlander
Michael Baxter

1. Approval of Minutes

Judge Carr moved for approval of the minutes of the March 21, 2016, meeting. Following a second by Judge Ross, the motion passed.

2. Child Support Enforcement Agency's Pay Near Me

Lori Keel and Joseph DiPrimio, Child Support Enforcement Agency, briefed the Conference on a new program the agency is planning to implement to assist with the collection of child support payments. The program, *Pay Near Me*, will enable payors to make payments at 7-Eleven and Family Dollar stores anywhere in the country. Other businesses, including Walmart and CVS, are being considered as payment locations as well. The payments will be automatically transmitted to the agency and the payor's account credited. Judges will have access to the system and be able to determine if payments have been made. The registration process was explained and it was noted that there will be a minimal convenience fee charged for each transaction.

Mr. DiPrimio stated that once the Treasurer approves the program, it will be piloted in Baltimore City. A number of states already have implemented the program with others planning to implement. Mr. DiPrimio noted data reveals that the *Pay Near Me* program has resulted in higher payments, primarily due to convenience. He added that the convenience, coupled with the ability to make cash payments will benefit those obligors who are unable to open bank accounts. Mr. DiPrimio stated that the court will benefit through decreased criminal non-support proceedings.

3. Report of the Workgroup on Medical Malpractice

Judge Carr led a discussion regarding the report and recommendations of the Workgroup on Medical Malpractice, which initially was presented to the Conference at its November 2015 meeting. Judge Carr restated the workgroup's recommendations:

- *Meaningful scheduling orders.* The courts should solicit the input of all counsel of record regarding major deadlines and events. The Chief Judge of the Court of Appeals should provide the courts with a model scheduling order that is specifically designed for malpractice cases and that includes deadlines for Frye-Reed motions and mandates some form of ADR prior to trial.
- *Judicial education.* The Chief Judge of the Court of Appeals should request the Judicial Education Subcommittee of the Education Committee to appoint a special committee to review the existing medical malpractice curriculum with the goal of expanding it to include topics such as HIPPA orders, the effect of statutory and other liens on the resolution of these cases, and a basic overview of anatomy and medical terms. The committee should include members of the plaintiff and defense bars who handle these cases, as well as other individuals the Committee deems appropriate. The workgroup recommended that the course be held every year and that the Chief Judge direct jurisdictions with more than five judges to require two judges to attend each year and for

jurisdictions with less than five judges, require one judge to attend each year until all sitting judges have taken the course.

- *Mediation.* The Conference and the Administrative Office of the Courts should seek a mechanism to develop qualified mediators, acceptable to the plaintiff and defense bars, and make the list available to each court.
- *Special Assignment.* Wherever possible, all jurisdictions should assign a medical malpractice case to a single judge and jurisdictions with more than five judges should assign medical malpractice cases to a specific judge after the scheduling order is finalized.
- *Health Claims Arbitration.* The Conference should consider requesting that the Judicial Council formally request the General Assembly to appoint a committee to study the feasibility of continuing the Health Claims Arbitration Office.

During the ensuing discussion, it was noted that the differentiated case management (DCM) initiative currently underway should address the issues that prompted the recommendation regarding scheduling orders. Judge Pierson noted that the initiative contemplates fewer DCM tracks with broader inclusion in each track. It also was noted that the rules require mediation in medical malpractice cases, although what happens is broader than mediation and is more akin to other forms of alternative dispute resolution. Several conference members commented that there are a number of complex cases, in addition to medical malpractice cases, that are not specially assigned, adding that doing so would hamper the court's ability to manage cases. The Conference also commented that mandatory medical malpractice training for all judges when those cases account for less than 2 percent of the civil cases is moving in the wrong direction.

After additional discussion, the Conference agreed to the following:

- Core elements should be established for inclusion in scheduling orders for complex civil cases. In addition, courts should adopt a process for including input from attorneys in fashioning the scheduling orders.
- The workgroup should submit a proposal to the Education Committee to expand and improve the existing medical malpractice course, but not make it mandatory.
- Refer to medical malpractice mediation more generally as alternative dispute resolution.
- Do not require medical malpractice cases to be specially assigned, but leave it to the discretion of the county administrative judge.
- Remove the recommendation regarding continuation of the Health Claims Arbitration Office from the report and simply indicate that the workgroup does not think it works.

Judge Debelius asked Judge Carr to work with the appropriate Judicial Council committees, namely the Education Committee and the Alternative Dispute Resolution (ADR) Committee, to address the issues and concerns raised in the recommendations. Judge Kiessling will make the Education Committee aware of the proposal regarding the medical malpractice course and Judge Ross indicated that the ADR Committee will review the list of mediators and

ensure the administrative judges are provided copies of the same. In addition, Judge Carr agreed to look at how the recommendation on mediation align with current statutes and rules.

4. Qualifications for Candidates Running for Circuit Court Judgeships

Judge Sheila Tillerson Adams expressed concern about contested circuit court judicial elections, noting that candidates who oppose sitting judges are not vetted in the same manner as judges who go through the judicial nominating process and that the qualifications are not stringent enough. She noted, in comparison, that candidates for Attorney General have to have ten years' experience, but candidates for judgeships are not required to have any trial experience. Judge Adams commented that people deserve the most qualified bench. She proposed the following additional qualifications for candidates for circuit court judgeships, with the understanding that a constitutional amendment would be required:

- Have practiced law before the Maryland courts for at least ten years.
- Have a minimum of 10 trials/hearings or oral arguments before the state or Maryland federal courts. (Judge Adams noted that the 10 years is an arbitrary number that can be changed.)
- Have a petition, signed by 20 to 25 lawyers in good standing and admitted to the Maryland Bar, attesting to the competency of the prospective candidate as a lawyer and to the competency of the prospective candidate's legal practice in the State of Maryland.

The consensus of the Conference was to move forward. Judge Kiessling and Judge Clagett volunteered to work with Judge Adams to tweak the proposal and to seek the appropriate support from the legislature.

5. Advice to Defendants Upon Disqualification from Possessing Gun

Judge Debelius noted that to assist his bench and to ensure consistency, he drafted generic advice to defendants regarding the surrender of guns. He stated that Chief Judge Morrissey has been addressing the issue in the District Court. Chief Judge Morrissey commented that the District Court does a pretty good job in this area with respect to domestic violence cases, but the Court is trying to improve in criminal cases. He noted that CourtWatch was critical of the benches in Montgomery County, indicating that the judges do not specifically state anything about surrendering guns, although the written advice is on court forms. He added that the issue is how to implement the statute that addresses this requirement. Judge Debelius added that judges do not tell defendants about other collateral items, but agreed judges have an obligation to inform them in some manner.

While the statute is broader than domestic violence cases, Chief Judge Morrissey referred the matter to the Domestic Violence Subcommittee for review and comment. Judge Cox stated that the Subcommittee presented its recommendations to the Domestic Law Committee, which included a recommendation that defendants be given an advisement in writing upon request of the State's Attorneys. The advisement should direct the defendant to additional resources. The

Subcommittee noted that the Governor's Office of Crime Control and Prevention (GOCCP) should be the entity responsible for creating a website and providing resources about the surrender of weapons. Judge Cox stated that the Subcommittee will revise its recommendations based on the Committee's feedback, after which the recommendations will be presented to the Conference and the District Court Chief Judge's Committee so that there is consistency with respect to implementation.

Judge Theresa Adams advised that courts should be mindful of the distinction between "not permitted to possess" and "forfeit" as they move forward. Judge Debelius asked that courts create some type of written advisement for their respective jurisdiction while awaiting a final recommendation.

6. Magistrate's Leave Policy

Judge Cox stated that a concern was raised during a meeting of the Domestic Law Committee about the minimal amount of leave afforded state-funded magistrates. During the first five years of state employment, magistrates earn two weeks of leave. The sentiment of the Committee was that the amount of leave is not commensurate with magistrates' scope of work or the level of leave they are accustomed to earning. It was suggested that the leave be expanded to be in line with the Judicial Leave Policy. Judge Debelius added that magistrates give up their law practice and it is insulting that they earn just two weeks of leave for five years.

Ms. Harris commented that the Masters' Governance Committee of the Conference, while discussing compensation and other matters related to magistrates, did not address leave. She stated that the Committee's recommendation that magistrates be paid a flat rate equal to 90 percent of a District Court judge's salary was adopted as a recommendation of the Courthouse Equity Subcommittee, the Court Operations Committee, and the State of the Court Reports Workgroup and will be presented to the Judicial Council for approval.

Judge Cox moved that the Conference ask the Judicial Council to look at expanding the amount of leave magistrates earn to be in concert with the recommended compensation at 90 percent of what judges earn. Following a second by Judge Kiessling, the motion passed. Judge Pierson inquired about the issue of compensatory leave for magistrates. Ms. Harris responded that the consensus of the Conference at a previous meeting was that magistrates should not earn compensatory leave.

7. Guardianship Workgroup Report and Recommendations

Judge Cox stated that the Guardianship Workgroup revisited its recommendation regarding training of attorneys in light of the Judicial Council's concern about the Judiciary training attorneys who appear before the court. Judge Cox noted that the Department of Family Administration surveyed the other states to determine their practices in this areas. The survey revealed three tiers into which states are categorized: Tier 1 – the Judiciary does everything from developing the curriculum to training the attorneys (four states); Tier 2 – the Judiciary develops

and approves the training curriculum, but do not deliver the training (20 states); and Tier 3 – the attorneys produce a certificate indicating completion of the training in this area to the court, but the Judiciary is not involved in the development or delivery of training (19 states). The remaining states do not have anything in place. Judge Cox stated that the recommendation is for Maryland to fall into the Tier 2 model, and that the Judiciary collaborate with state and local bar associations to develop the training. She also commented that a distinction was made between training for attorneys and training for those appointed by the court to serve as guardians who serve as the Judiciary's agent. Regarding the latter, the Workgroup determined that the Judiciary has a responsibility to provide the training.

The Council also asked the Workgroup to discuss whether the recommendations would apply to cases in the Orphans' Court, as well as the requirement of bonds for guardians. The Workgroup determined that the recommendations would apply to cases originating in the Orphans' Court, but not to standby guardians that are governed by different rules and procedures. With respect to bonds, the Workgroup determined that no recommendations would be made in this area because current law provides the courts latitude regarding bonds.

The recommendations were revised to reflect the above considerations.

Judge Cox moved for the Conference's adoption of the Workgroup's revised report and recommendations. Following a second by Judge Pierson, the motion passed. The revised report and recommendations will be presented to the Council for approval.

8. For the Good of the Order

Judge Debelius briefed the Conference on the State of the Court Reports Workgroup formed by Chief Judge Barbera to review the reports submitted for 2015. The Workgroup was charged with determining any discernible trends and common issues/concerns, and making recommendations regarding the same to be implemented over the next five years. In addition, the Workgroup was tasked with reviewing prior reports published on the future of Maryland's courts.

Judge Debelius noted that the reports highlighted gross inequities in terms of the physical plant, with especially deplorable conditions in the Baltimore City facilities. He added that the report and recommendations will discuss the disparities and move that the state create funding mechanisms to bring the courts up to standard. In addition, the report will contain a recommendation to permit the circuit courts to piggyback on state Judiciary contracts, [as to supplies only](#), when doing so will be a fiscal advantage. Finally, the report will contain recommendations regarding transitioning locally-funded Judiciary and grant-funded positions to state-funded positions, and making certain Judiciary Human Resources policies applicable to all Judiciary employees, regardless of funding source. Judge Debelius expressed his concern with transitioning locally-funded employees without any locality pay adjustment, adding that doing so would create problems in that jurisdictions that experience difficulty obtaining adequate funding from the local government would be advantaged, while the other jurisdictions would be

disadvantaged with potentially decreased state funding.

Action Items

- Judge Sheila Adams, Judge Kiessling, and Judge Clagett will work together to tweak the proposed additional qualifications for candidates in contested circuit court judgeship elections.

There being no further business, the meeting was adjourned at 11:55 a.m. The next meeting will be held on Monday, September 19, 2016, at the Judiciary Education and Conference Center in Annapolis, Maryland. The meeting will begin at 9:30 a.m.

Respectfully submitted,

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

Faye Matthews
Conference Secretary