

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 January 23, 2017, at the Judicial College Education and Conference Center in Annapolis, Maryland, beginning at 9:50 a.m.

Members Present

Hon. Kathleen Gallogly Cox, Chair	Hon. John W. Debelius, III
Hon. Brett W. Wilson	Hon. Sheila R. Tillerson Adams
Hon. Keith A. Baynes	Hon. Marjorie L. Clagett
Hon. Thomas G. Ross	Hon. Audrey J.S. Carrion
Hon. Mickey J. Norman	Hon. W. Michel Pierson
Hon. W. Timothy Finan	Hon. Susan Braniecki
Hon. Viki M. Pauler	Pamela Harris
Hon. J. Barry Hughes	Timothy Sheridan
Hon. Laura S. Kiessling, Vice Chair	
Hon. Theresa M. Adams	

Also, Present Were:

Hon. John P. Morrissey	Shina' Castain
Suzanne Pelz	Eliana Pangelinan
Hon. Karen Murphy Jensen	Joseph Clocker
David Shultie	Andrew Tress
Hon. Alexandra Williams	Faye Matthews
Nisa Subasinghe	Michele McDonald
Hon. Dorothy J. Wilson	
Kelley O'Connor	

1. Approval of Minutes

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

2. Graduated Sanctions Matrix

Joseph Clocker and Shina' Castain, Department of Parole and Probation (the Department), appeared before the Conference to discuss the graduated sanctions drafted in response to the Justice Reinvestment Act (the Act) requirements. Mr. Clocker stated that the Department developed four teams to help with the implementation of the Act. Ms. Castain chairs the workgroup on the graduated sanctions. Ms. Castain noted that the Department is required to establish a program to implement the use of graduated sanctions for technical violations; is required to adopt policies and procedures to implement the law and to ensure due process protections are in place; is required to develop a matrix containing the technical violations, along with possible noncustodial sanctions; and is required to notify the court of all technical violations and sanctions imposed, as well as refer the probationer to the court if all available graduated sanctions have been exhausted. The workgroup to address the aforementioned requirements was formed in June 2016. It is gathering best practices from other states that have implemented similar initiatives. Ms. Castain noted that the workgroup deferred the development of the matrix while it worked on the policies and procedures. She noted that training will take place during the summer, with implementation on schedule for October 1, 2017.

Ms. Castain discussed the difference between infractions, which involves behavior the Department can address without court intervention, and technical violations, which are more substantial, requiring the imposition of the graduated sanctions, leading to court intervention. She noted that the Department developed a problem-solving worksheet and that the goal is to work with the individual hopefully to alleviate the need to go back before the court on multiple occasions. Ms. Castain highlighted some of the infractions and technical violations, along with the corresponding actions.

Ms. Castain stated that the technical violations have to be reported to the court and should include all interventions that were imposed. She noted that there are certain situations where the matrix does not apply, including individuals participating in problem-solving courts programs, arrests or summons issued by a commissioner, violations of a criminal prohibition other than a minor traffic offense, violations of no-contact or stay-away orders, and when the probationer absconds supervision.

Ms. Castain noted that supervised probationers have to be notified of interventions and incentives at the onset of supervision, and that they have a right to agree to a proposed intervention. Also, supervised probationers will be able to dispute the intervention through procedures developed by the Department.

In response to a question regarding the court's ability to take any action it chooses, Chief Judge Morrissey commented that the court is limited to the 15, 30, 45-day sanction under the law unless there is determined to be a public safety risk. With respect to how to address participants in problem-solving court programs, Judge Cox suggested that it would be a jurisdiction-by-jurisdiction decision.

Ms. Castain stated that the Department is taking the position that the law applies to everyone already on supervision on October 1, 2017. With respect to VPI, Mr. Clocker stated

that it needs its own set of sanctions and that the Department is working on retooling VPI. He added that the plan is to staff cases before requesting court action.

Judge Cox expressed her appreciation for the dialogue and thanked Ms. Castain and Mr. Clocker for the presentation.

3. Training Parameters for Qualification of Disabled Jurors

Judge Pierson led a discussion on whether or not training should be held for judges on how to appropriately address qualifications for disabled jurors. He noted that the issue rose to the forefront for Baltimore City because a blind juror reportedly felt incorrectly excluded from serving because of the disability. Since that time, there have been meetings with the American Federation of the Blind. Judge Pierson stated that the American with Disabilities Act precludes the exclusion of individuals based on disability if the individual otherwise is qualified to serve. If qualified, and selected, the court is required to provide the accommodations to enable the disabled, qualified individuals to serve. After discussing the matter, it was concluded that it would be helpful for judges to have training on how legal issues apply and on *voir dire*. Judge Pierson proposed possibly creating an hour long video focusing on legal parameters and skills, i.e., conducting *voir dire* to ascertain whether a disabled individual can serve on a jury and whether there are accommodations to assist.

Ms. McDonald stated that the National Federation of the Blind would like to have content on why it's important for blind individuals to serve; however, neither she nor Judge Pierson think that it's necessary for the training video. She commented that one way the organization can get involved is providing guidance on ways in which blind persons are able to make credibility assessments and how they handle documents. She added that there is case law out of the Court of Special Appeals that goes to the issue of whether blind individuals can serve.

Judge Carrion noted that there is a group headed by Judge Sherrie Krauser working on *voir dire*. She asked if any effort had been made to contact the group to determine if it has, or plans to, include anything regarding this issue.

Judge Hughes inquired as to whether or not other disabilities will be addressed in the training/guidance or if it will be limited to sight-impaired jurors. Judge Pierson suggested that it would be appropriate to include others, particularly the hearing-impaired, but the challenge is to keep the video under an hour. Judge Sheila R.T. Adams commented that, in Prince George's County, a courthouse committee recommended that jurors be provided instructions in braille and that braille embossers be used throughout the courthouse for forms. Additionally, the committee recommended that bailiffs assist sight-impaired individuals in navigating the courthouse and that magnifiers be used for blind jurors. The recommendations have not yet been implemented.

Judge Debelius suggested providing some practical information at the Judicial Conference, such as what's appropriate. Judge Kiessling commented that there may be some time during the circuit court session to provide a 10 to 15-minute overview. Judge Cox suggested that jurors with disabilities be included as a special topic on jury use and management by the Judicial College.

Judge Pierson will work with the necessary individuals to plan a one-hour video. Judge

Kiessling will work on something with the workgroup for the Judicial Conference.

4. Firearms – Notice of Disqualification

Chief Judge Morrissey and Judge Alexandra Williams discussed an issue first raised by Court Watch in Montgomery County and then by the Governor's Family Violence Council, regarding how defendants are informed of their disqualification to possess a firearm. One complicating factor is the myriad of gun laws and other related statutes to ensure that every eventuality is covered. In response to this issue, Chief Judge Morrissey asked the Domestic Violence Subcommittee to discuss the matter and to forward recommendations. He noted that in the District Court, trial summary sheets are given to everyone and that the Court has the ability to provide additional information on the form. That same practice isn't consistent across the circuit courts. Chief Judge Morrissey asked the Conference to consider providing the same information, regardless of the forms used by the individual courts.

Judge Williams stated that within the Family Violence Council, there is a Gun Removal Implementation Group. She stressed that the goal is for the Judiciary to be proactive and to develop uniform language across all trial courts. The Domestic Violence Subcommittee recommended language similar to that proposed by the Family Violence Council's workgroup, which removes the responsibility from judges. Every defendant would be given the same advisory information. The language proposed by the workgroup is as follows:

If you have been convicted of or received probation before judgment for a crime, it may be unlawful for you to possess or purchase a firearm, including a rifle, shotgun, pistol, revolver, or ammunition, pursuant to state and/or federal law. If you have any questions about whether it is now illegal for you to possess or purchase a firearm, you should immediately consult an attorney. For additional information about these prohibitions or the surrender of firearms (even if you are currently incarcerated), please consult (OAG website, if they agree to do this) or contact MSP phone #.

Montgomery County developed a form that is provided to defendants. The language on its form is as follows:

You have now been convicted of an offense which disqualifies you from possessing any firearm. Possessing any firearm from now on is a crime and subjects you to a term of imprisonment. Anyone possessing a regulated firearm after being convicted of a crime of violence is subject to a mandatory minimum sentence of 5 years in prison.

If you own or possess any firearms, they must immediately be surrendered to a law enforcement agency. To arrange for surrender of a firearm, please contact Montgomery County Police, Firearms Investigation Unit.

Judge Debelius inquired as to the purpose – to cover judges or to get people to turn in their firearms. He stated that he formed a group of justice partners to develop the language used in his court. He commented that it is unlikely that defendants will go to a website to determine if they have to turn in their firearms. Judge Williams noted that the primary concern with the language is what happens if the court misses something, resulting in the defendant not being informed to turn in his or her firearm.

After additional discussion regarding the practicality of developing one standard form used by all courts, Judge Kiessling moved to adopt the language suggested by the Family Violence Council for use by the circuit courts as written advisement to be given to defendants at the end of each criminal proceeding in the manner in which the court sees fit to implement. Following a second by Judge Theresa Adams, the motion passed. Chief Judge Morrissey will mock up the District Court form and share it with the Conference.

Judge Theresa Adams and Judge Clagett will review the post trial rights forms from the circuit courts and bring back to the Conference a recommendation for moving forward.

5. Standing Committee on Pro Bono

Judge Jensen appeared before the Conference to remind the courts of the requirement pursuant to Maryland Rule 19-503 to have a local *pro bono* committee. She noted that the Rule defines the requirement, but does not police the committees. It is contemplated that judicial leadership in each jurisdiction will take the lead. She distributed the list of local committees and asked the Conference to review the information for accuracy. Judge Jensen also distributed the most recent report on *pro bono* services, noting that only 20-21 percent of the lawyers are achieving the established goal. She added that it is the responsibility of the local committee to determine ways to improve and that this is an access to justice issue.

6. Court-Ordered Fingerprinting

Faye Matthews reminded the Conference of the statutory requirement, pursuant to Criminal Procedure, § 10-216 (b) (1), for the court to order defendants who are not fingerprinted at the time of arrest for the sentenced crime to be fingerprinted. She stressed that if defendants are not fingerprinted, the criminal record is incomplete.

7. Annual Magistrates Conference

Judge Kiessling briefed the Conference on the proposal for an Annual Magistrate Conference recommended by the Education Committee. She asked for the Conference's support before presenting the proposal to the Judicial Council. The conference, as proposed, will be a one-day educational program with a meet and greet social the preceding evening. It will take the place of one of the required judicial education days and is expected to foster greater working relationships and exchanges of ideas. The dates will be finalized after the administrative judges are polled to determine which timeframe works best.

Judge Debelius moved to support the proposal. Following a second by Judge Theresa Adams, the motion passed.

8. New Trial Judge Mentoring Program

Judge Dorothy Wilson provided an overview of the New Trial Judge Mentoring Program which was approved by the Judicial Council. A subcommittee of the Education Committee, comprising District and Circuit judges and magistrates, was tasked with developing, implementing, and monitoring the program. Chief Judge Barbera signed an administrative order

officially establishing the program on August 25, 2016.

The program is designed to help new trial judges to transition to the bench, ensure access to justice by being prepared, handle their dockets in a timely manner, and demonstrate the highest standard of ethics on and off the bench. The program is not intended to replace or duplicate any local orientation program in place for new trial judges, or the New Trial Judges Orientation done under the Judicial Education Subcommittee that addresses nuts and bolts. Rather, the program addresses the art of judging, those challenges for which there is no rule book. It is intended to work in tandem with the local orientation programs and the New Trial Judges Orientation program.

Mentors can be sitting District or Circuit Court judges, as well as senior judges. The program is a year-long program. When a judge is appointed, elected, or elevated, he or she is assigned a mentor who is required to contact the mentee at least once a month. In addition, the mentor is required to participate in mentor to mentee structured activities such as observing a docket, providing encouragement, and giving tips and advice. While the commitment is intended to be for one year, it could develop into an ongoing relationship. There are some reporting and evaluating requirements that will help the subcommittee further develop and maintain the program. Currently, there are approximately 33 mentors assigned to new trial judges. Administrative judges are asked to recommend judges to serve as mentors. Mentor and mentee manuals have been prepared for use by both.

Judge Ross asked if a similar program is being considered for magistrates. Judge Wilson responded that the original plan was to develop one program, but the decision was made to develop separate programs. The magistrates will develop their own mentor program.

9. Judicial Qualifications Proposal

Judge Kiessling briefed the Conference on the feedback received from the Judicial Council regarding the proposal. She noted that the Council strongly supported changes to the election law and directed that the Legislative Committee work with Judge Nyce to finalize and determine the way forward.

With respect to the judicial qualifications proposal, the Council raised questions concerning what is meant by *active practice of law* and asked if the legislature would perceive the proposal as not having to address contested judicial elections. Judge Debelius added that it is his sense that because constitutional amendments don't occur often, if the qualifications are changed, then the chances of doing away with contested elections lessen. There was sentiment in the Conference that the two were not intended to be linked, but that would not preclude the legislature from linking them.

The Council also wanted the language regarding being a member of the Maryland State Bar clarified to indicate barred in Maryland.

Finally, the Council did not think there were enough specifics in the language. After additional discussion, Judge Carrion moved that the Conference table the proposal until the end of the session to see what, if anything, happens with contested judicial elections. Following a second by Judge Cox, the motion passed.

10. Requests to Extend Domestic Violence Orders

Judge Cox briefed the Conference on concerns expressed by domestic violence groups regarding possible gaps between the end of a final order and the extension of the same. The statute provides that the court shall schedule a hearing within 30 days of the motion to extend being filed. If the hearing is scheduled after the original expiration date, then the court shall extend the order until the hearing is held. Apparently, this is not happening and being reported in the DVCR consistently. There is concern regarding how the notice is sent and how the respondent knows that the order is still in effect. Judge Cox noted that while there has been interest expressed in introducing legislation to address this concern, she views it more as a business process issue that can be addressed internally..

Judge Hughes suggested adding language to the order indicating that it can be extended until a hearing on a motion to extend is held. Judge Cox will ask Judge Green, Chair of the Domestic Violence Subcommittee, to review the form to determine how to move forward.

Action Items

- Judge Theresa Adams and Judge Clagett will review the post trial rights forms from the circuit courts and bring back to the Conference a recommendation for moving forward.
- Judge Pierson will work with the necessary individuals to plan a one-hour video. Judge Kiessling will work with the workgroup to provide information during the Judicial Conference.
- Judge Cox will ask Judge Green to review the domestic violence order form to determine if there is a way to add language to help address the concern with the gap between the expiration of the final order to the hearing on the motion to extend.

There being no further business, the meeting was adjourned at 12:10 p.m. The next meeting will be held on Monday, March 20, 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