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## Conference of Circuit Judges

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### MINUTES OF THE MEETING OF THE CONFERENCE OF CIRCUIT JUDGES

A meeting of the Conference of Circuit Judges was held Monday, May 17, 2021, via Zoom for Government, beginning at 9:30 a.m.

#### Members Present

Hon. Keith A. Baynes, Chair

Hon. Brian D. Shockley  
Hon. Brett W. Wilson  
Hon. Stephen H. Kehoe  
Hon. Angela M. Eaves  
Hon. Ruth A. Jakubowski  
Hon. Jeffrey S. Getty  
Hon. Viki M. Pauler  
Hon. Fred S. Hecker  
Hon. William C. Mulford

Hon. Robert A. Greenberg  
Hon. Richard Sandy  
Hon. Sheila R. Tillerson Adams  
Hon. Donine Carrington Martin  
Hon. Audrey J. S. Carrión, Vice Chair  
Hon. Barry G. Williams  
Marina Fevola  
Hon. Katherine Hager  
Pamela Harris

#### Also, Present Were:

Hon Alan Wilner  
Hon. John P. Morrissey  
Hon. Sean D. Wallace  
Hon. Susan Hazlett  
Magistrate Wendy Schenker  
Sandra Haines  
Lou Gieszl  
Melinda Jensen

Kelley O'Connor  
Stacey Saunders  
Linda Fallowfield  
Hope Gary  
Joanne Kerr  
Suzanne Pelz  
Eliana Pangelinan

#### **1. Welcome and Approval of Minutes**

Judge Baynes offered words of welcome and informed everyone that the meeting would be live streamed as the Conference is subject to the Open Meetings Act. He then called for a

motion to approve the minutes of the March 15, 2021, meeting. Judge Eaves moved for approval of the minutes. Following a second by Judge Getty, the motion passed.

## **2. Presentment and Filing of Indictments**

Judge Alan Wilner and Sandy Haines appeared before the Conference to discuss a matter the Rules Committee received from the Major Projects Committee (MPC) on the presentment of indictments. The Rules Committee requested comment from the Conference on whether a Rule change is needed on the current practice of handling indictments. Both the Maryland Constitution and the Rules require indictments to contain certain language, and the Rule also requires the jury foreman to sign the indictment. The state's attorney is not required to sign the indictment. The Court of Appeals has determined that the indictment is not valid if it does not follow the format as set in the Maryland Constitution. Judge Wilner suggested possibly having the original indictment that is signed by the foreman under seal and a redacted copy available for public inspection.

Judge Eaves commented that in Harford County, the foreman and the state's attorney present the indictment to the Court for review and it is then filed with the clerk's office by the judge. Judge Mulford commented that in Anne Arundel County, the foreman is sworn under oath then the indictment is presented to the judge by the foreman and the state's attorney. The judge then reviews it for signature, signs the warrant, if any, and then gives it to the clerk to be filed. Judge Carrion commented that in Baltimore City, the judge, foreman, and a court reporter meet in chambers where the indictment is taken under oath. Judge Jakubowski noted that in Baltimore County, the foreman and state's attorney go before the chambers judge and the judge signs off on the indictment and any warrants and gives it to the clerk's office for filing. No oaths are taken, Judge Getty commented that the practice in Allegany County changed 15 years ago and now the indictment is filed, then it is reviewed by a judge. With respect to Dorchester County, Judge Wilson commented that he receives the indictment from the foreperson and state's attorney for review, after which he files it with the clerk's office. He allows the use of the foreperson's badge number in lieu of his/her signature since the jurors want anonymity. Judge Hecker commented that not every jurisdiction gives juror badges, but instead assigns them juror numbers.

Judge Wilner stated that an issue is that the Rule provides that any deficit in the indictment is waived if the defendant pleads guilty. The matter at hand is that the indictment needs to be reviewed for the required language and signature by the foreman, and not for substance or technical deficiencies. The Rules Committee does not want to impose additional work on the judges, but the Rule now states that the court files the indictment. Judge Wilner recommended the grand jury foreman file the indictment with the clerk's office. Also, that the state's attorney draft two copies of the indictment: one to be signed by the foreman and placed under seal in the court file, and the other a redacted copy with either a blank signature line or "/s/" for the signature, or a legend where the state's attorney can attest that the original was signed by the foreman. The redacted copy can be placed in the court file for the public to view and served upon the defendant. Ms. Hager stated that the clerk's office does not want to be involved with redacting information in documents. Another concern is that there may be an

increase in motions to unseal indictments. Judge Wilner recommended another option of having the jury foreman go before a judge to present the indictment under oath instead of signing it.

It was suggested that the Rule change is not necessary, but it would provide for a manner in which to deny the inspection of the sealed indictment. Judge Wilner recommended that if there is not a Rule change, the judge involved in the process must make sure that the indictment includes the required language and is signed by the foreman. After additional discussion, the Conference decided against a Rule change. Judge Wilner will inform the MPC that the Rules Committee will not submit a Rule change.

### **3. Complex Litigation Committee**

Judge Wallace and Linda Fallowfield reported on the activities of the Committee on Complex Litigation. Since its last presentation to the Conference, the Committee developed the work groups' charges, formed the Business and Technology Opinions Subcommittee, and drafted a proposal to revise Rule 16-308.

The proposed Rule change was part of recommendations to the former Business and Technology Subcommittee from a work group of the Maryland State Bar Association (MSBA). This proposed Rules change specifies criteria entry into the business and technology program. The proposal calls for a demand threshold, includes a list of case types, and the primary claim – there are several that are presumed to be involved – that would give more criteria and guidance. The current Rule has a list of factors that are broad. Judge Sandy moved to support the Rules change proposal. Judge Wilson seconded it, and there being no opposition, the motion passed. Judge Wilner will take the proposal to the Rules Committee.

### **4. Education Stability Measures**

Hope Gary and JoAnne Kerr presented the education stability measures for CINA/TPR matters. In 2014, the Education Stability Act was adopted by Maryland, which established the education stability measures for children in foster care and proposed what outcomes and factors to observe that could affect their educational goals. The court must look at education stability at four stages – shelter, adjudication, disposition, and change in placement. The measures, or checklist, developed by FCCIP was disseminated that same year, and, in 2016, a survey was prepared and it was discovered that the checklist was being used 50-90 percent of the time at hearings. Since then, the checklist has been revised and, more recently, JIS and the FCCIP have been working collaboratively to look at the data in Odyssey. The MPC suggested that Ms. Gary and Ms. Kerr encourage the judges to use the checklist in order to capture the information that has to be entered in Odyssey by the clerks in order to comply with the law. The checklist highlights the information included in the statute regarding educational needs. Ms. Hager commented that the clerks will enter the data in Odyssey; however, assistance will be needed in the courtroom to complete the form, possibly by the magistrate. The checklist will be an additional document to the permanency planning hearing order, but not required. Ms. Gary stated that they plan to have training on the checklist. Judge Carrion moved to adopt the checklist. Judge Sandy seconded the motion, and it carried.

## **5. Magistrate Onboarding and Training**

Magistrate Schenker and Judge Hazlett provided an update to the Conference on support for magistrates. The Education Committee's Magistrate Subcommittee established ways for magistrates to communicate and network: created an Outlook email group, a directory, a Magistrates Corner in the digital library, and a phone a friend list. The magistrate onboarding continues to be a concern since there is no formal orientation and training. In most jurisdictions, new magistrates shadow veteran magistrates for a few weeks and then they are on their own. The subcommittee drafted a new magistrate orientation self-assessment that will assist the administrative judge with tailoring the orientation plan to the magistrate's needs. The goal of the orientation is that for two weeks, the new magistrate will shadow a veteran magistrate in the morning, then in the afternoon there will be an introduction to the community: tour the child access center and local facilities, visit the sheriff's office and various court departments, etc. The assessment was presented to the Education Committee and was approved. Judge Hazlett asked the Conference for feedback on the self-assessment. Judge Baynes asked the Conference to submit feedback to Judge Hazlett and Magistrate Schenker within a week.

## **6. Transportation of Inmates for Paternity Testing During COVID**

Judge Carrion was interested in knowing if other jurisdictions are transporting inmates to other jurisdictions for paternity tests. There was no discussion on this issue as it had been resolved.

## **7. Audio or Video Recordings and Transcripts**

The Rules Committee met with court reporters and judges to discuss transcribing the audio portion of video evidence. Court reporters and judges are not in favor of this; however, the Office of the Public Defender is interested as the cost of having an outside vendor perform this task is high. Currently, there is a Rule that requires the appellant to order a transcript of audio or audiovisual recordings introduced during the court proceeding. Judge Carrion commented that it might be best for the Rules Committee to get input from the litigation and criminal sections of the MSBA on the impact this will have before the Conference provides input. She moved to table this discussion until the Rules Committee can obtain the input of the litigation and criminal sections of the State Bar; Judge Jakubowski seconded the motion. There being no opposition, the motion passed.

The meeting ended at 11:13 a.m. The next meeting will be the joint meeting with the District Court Chief Judge's Committee and is scheduled for Monday, September 20, 2021, beginning 9:30 a.m.