



**Hon. Mary Ellen Barbera, Chair**  
Chief Judge  
Court of Appeals

**Hon. Susan Braniecki, Chair**  
Conference of Circuit Court Clerks

**Tamera Chester, Administrative Clerk**  
District Court

**Hon. Kathleen Gallogly Cox, Chair**  
Conference of Circuit Judges

**Hon. Amy J. Craig, Vice- Chair**  
Conference of Circuit Court Clerks

**Hon. JoAnn M. Ellinghaus-Jones**  
Carroll County District Court

**Pamela Harris**  
State Court Administrator

**Hon. Susan H. Hazlett**  
Harford County District Court

**Doug Hofstedt, Vice- Chair**  
Conference of Court Administrators

**Hon. James A. Kenney III, Chair**  
Retired and Recalled Judges  
Committee

**Hon. Laura S. Kiessling, Vice-Chair**  
Conference of Circuit Judges

**Hon. Karen H. Mason**  
Circuit Court for Prince George's County

**Hon. John P. Morrissey, Chief Judge**  
District Court

**Robert Prender, Administrative Clerk**  
District Court

**Hon. W. Michel Pierson**  
Circuit Court for Baltimore City

**Hon. Gerald V. Purnell**  
Worcester County District Court

**Timothy H. Sheridan, Chair**  
Conference of Circuit Court Administrators

**Roberta Warnken, Chief Clerk**  
District Court

**Hon. Alan M. Wilner, Chair**  
Standing Committee on Rules of  
Practice and Procedure

**Hon. Brett Wilson**  
Circuit Court for Dorchester County

**Hon. Eugene Wolfe**  
Montgomery County District Court

**Hon. Patrick L. Woodward, Chief Judge**  
Court of Special Appeals

**Faye Matthews, Secretary**  
(410) 260-1257

# MARYLAND JUDICIAL COUNCIL

Meeting Location:

**Judiciary College Education and Conference Center**

Upper Level 4 & 5

## MARYLAND JUDICIAL COUNCIL

Minutes

May 31, 2017

### Judicial Council Members Present:

Hon. Mary Ellen Barbera, Chair

Hon. Kathleen Gallogly Cox

Hon. JoAnn Ellinghaus-Jones

Hon. Susan H. Hazlett

Hon. James A. Kenney, III

Hon. Laura S. Kiessling

Hon. Karen H. Mason

Hon. John P. Morrissey

Hon. W. Michel Pierson

Hon. Gerald V. Purnell

Hon. Patrick L. Woodward

Hon. Alan M. Wilner

Hon. Brett W. Wilson

Hon. Eugene Wolfe

Tamera Chester

Hon. Amy J. Craig

Pamela Harris

Douglas Hofstedt

Robert Prender

Timothy Sheridan

Roberta L. Warnken

### Others Present:

Hon. W. Timothy Finan

Hon. Larnzell Martin, Jr.

Hon. Michael J. Stamm

Hon. E. Gregory Wells

Mark Bittner

Jennifer Boswell

Lou Gieszl

Tony Hatzigeorgalis

Warren Hedges

Abigail Hill

Melinda Jensen

Debra Kaminski

Kevin Kane

Sarah Kaplan

Kelley O'Connor

Eliana Pangelinan

Suzanne Pelz

Arthur Pham

Jonathan Rosenthal

Andrew Tress

Jamie Walter

Connie Winkel

A meeting of the Judicial Council was held Wednesday, May 31, 2017, at the Judiciary College Education and Conference Center, beginning at 9:31 a.m. Chief Judge Barbera began the meeting by welcoming everyone and then called for approval of the minutes of the previous meeting, which were deemed approved as drafted.

**1. Resolution Regarding Imposition of Court Fines and Fees on Juveniles in Juvenile Justice Proceedings**

Judge Michael Stamm briefed the Council on juvenile court costs being assessed across the Judiciary noting that of the 24 jurisdictions, 15 never assess court costs, six jurisdictions were circumstantial, and three jurisdictions assessed costs in all juvenile cases. Pursuant to Section 3-8A-19(g) of Courts and Judicial Proceedings, when there is a finding of delinquency, reasonable court costs are permitted to be imposed by the juvenile court. Generally, court costs are assessed in cases where the juvenile respondent is represented by a private attorney, but not in those cases where the respondent is represented by the Office of the Public Defender (OPD). In Maryland, the OPD represents all juvenile matters regardless of the parent's financial situation; however, courts costs are assessed to the respondent, and not the OPD. The proposed resolution notes that the "Department of Justice has issued an advisory for recipients of federal funds addressing constitutional and federal statutory responsibilities related to collecting fines and fees..."

The proposed resolution seeks to establish a policy for each judge and magistrate to look at each case individually when assessing court costs, using the following factors:

- the particular offense committed by the child;
- the child's and family's financial circumstance;
- the child's developmental level;
- the child's progress in school and/or involvement in other activities;
- other conditions imposed by the Court;
- any costs or fees associated with treatment, programs, or services required by the Court in the disposition order; and
- any other factor deemed appropriate by the Court.

Judge Cox moved for approval of the resolution, which was seconded by Judge Wolfe. There being no opposition, the motion passed.

**2. Final Report of the Juvenile Expungement Workgroup and the Juvenile Record Expungement Manual**

Judge Stamm briefed the Council on the work of the Juvenile Expungement Workgroup. The workgroup drafted a report and manual, working diligently to ensure they are in compliance with all relevant rules and statutes. The workgroup also worked with the Forms Subcommittee to draft new and revised juvenile forms that will be compatible with MDEC. The manual proposes procedures for the courts' handling of petitions for juvenile record expungement and any other recommended actions. The proposed manual is divided into six parts: Laws, Eligibility, Petition for Expungement of Juvenile Records (Expungement Petition), Orders, Appeals, and Compliance. The workgroup proposed multiple recommendations in the following areas:

- Filing fees;
- State's Attorney review of petition;
- Service of the petition, including identification of victims/family members;
- Format and service of the victim/family member objection;

- Show cause hearing;
- Covered “juvenile records”;
- Three possible methods of expungement;
- Cases transferred to a new jurisdiction;
- Specific procedures for expunging court records (paper and electronic);
- Appeals;
- Notification in current juvenile proceedings;
- Procedure to be followed by clerks following receipt of a petition for expungement; and
- Procedure to be followed if a Certificate of Compliance is not returned.

The workgroup eventually plans to work with Government Relations to propose an amendment to CJP § 3-8A-27, to delete “family member” and replace with “victim’s representative.” Judge Stamm noted that if the statute is changed, Maryland Rule 11-601 would be amended accordingly.

Judge Hazlett moved that the Final Report and the Juvenile Expungement Manual be approved. Following a second by Judge Kenney, the motion carried.

Chief Judge Barbera thanked the workgroup for its work, making mention of Judge Tucker, who took the lead in the workgroup.

### **3. Judicial Branch Policies of General Application**

Warren Hedges and Jennifer Boswell briefed the Council on the State Court Administrator’s personnel policies as authorized by Rule 16-806. There are five policies of general application - *Prohibiting Discrimination, Harassment, and Retaliation; Accommodation of Disabilities; Religious Accommodation; Employment of Relatives; and Confidentiality* – that apply to all Judicial Branch employees – county and State-funded – that will become effective July 1, 2017. The policies were drafted with input from Michele McDonald, Office of the Attorney General. An EEO and ADA Coordinator will be appointed for each of the Circuit Courts at the discretion of the County Administrative Judge and training will be provided for those individuals. It was suggested the selected coordinators have a background in human resources or management and that they are able to investigate claims.

The *Prohibiting Discrimination, Harassment and Retaliation* policy provides examples of discrimination. Judge Wilner recommended removing the examples of prohibited discrimination outlined on page five under section (c), Prohibited Conduct. Also, on page nine under subsection 4(a), Reporting Violations, in section D; page 10 under subsection five; and page 11 under subsection six. In the aforementioned sections, employees are directed to report violations of the policy, but additional information is needed as to what to do, as well. Mr. Hedges stated that anyone who witnesses another employee being harassed, discriminated, or retaliated against should report such behavior. He added that the investigation will determine if the employee felt that he or she was subjected to such misconduct. It was recommended that if this is the intent of the reporting sections, then “must” should remain in place instead of

replacing it with “strongly encourage,” and to also add a paragraph containing affirmative language. Moreover, on page 11 under subsection 6(c), it was recommended that the language be consistent with the Rules regarding judicial ethics. The recommendations will be taken under advisement and discussed with Michele McDonald. It was suggested that an acknowledgment form be included with the policies for employees to sign upon receipt.

#### **4. Financial Disclosures**

Debra Kaminski and Connie Winkel provided an overview of the financial disclosure requirements. Senior judges, judicial candidates for elective office as a judge, and judicial appointees are required to file financial disclosure statements with the State Court Administrator. In 2016, there were 919 required filers. There is a Financial Disclosure Subcommittee that reviews proposed changes to the previous year’s statements and instructions with final approval made by the Court of Appeals.

Since May 2015, the Administrative Office of the Courts has forwarded all filed statements to the State Ethics Commission electronically per the Commission’s requirement. Judges have the option of filing their financial disclosures electronically online or in paper format. Ms. Kaminski noted that one benefit of filing the disclosure online is that the information automatically populates the form from year to year. She stated that once filed, the statements become public record. Any member of the public requesting to view a financial disclosure statement is required to appear in person in the AOC Human Resources Department and provide photo identification. If a copy of the financial disclosure is requested, there is a fee of 25 cents per page. A log book is kept of each request. The filer’s signature, account numbers, and Social Security number are redacted, and all real property addresses are replaced with the county and state, or country. Ms. Kaminski stated that an inquiry has been submitted to the State Ethics Commission and the State Archives to determine if those agencies redact sensitive information. In response to concerns expressed regarding the requirement for and accessibility to family information, Ms. Kaminski commented that the form does not require family members’ full names, and that the county of residence in lieu of a full real property address is acceptable. In regards to the retention period, AOC has a record of filed statements dating back to 1991, and State Archives has records prior to 1991.

#### **5. Law Clerks**

Ms. Kaminski briefed the Council on the current law clerk hiring and separation process, noting the following:

- The law clerk’s first day of work should be the first day of a pay period in order to avoid a delay in receiving the first paycheck. Once the background check is completed and the start date is known, the law clerk is entered into CONNECT by the Human Resources Department staff.
- Background check forms should be submitted no earlier than 60 days and no later than 10 days prior to the law clerk’s start date.
- The new law clerk’s name should be sent to the Law Clerk Coordinator as soon as it

is known.

- Once the law clerk receives an offer, he or she must complete the pre-employment forms, which can be found at [www.mdcourts.gov/hr/lawclerks](http://www.mdcourts.gov/hr/lawclerks). Additional forms will be collected during the group onboarding sessions held in June.
- The law clerk's separation should be submitted through CONNECT by completing the separation form and uploading it to the separation entry. This should be done at least 10 business days and no more than three months prior to the law clerk's last day.

The Law Clerk Onboarding session will be held on June 6 and 7, 2017, at the University of Maryland. This session is different than the Law Clerk Orientation that will be held on September 8, 2017. Topics of discussion include policies, payroll, and benefits.

## **6. SharePoint 2013**

Tony Hatzigeorgalis updated the Council on SharePoint 2013, noting that it is part of Microsoft Office 365 where users can store, modify, and share files from any Internet-enabled device. The document libraries located within the SharePoint site can be organized using folders. Adding and modifying documents is dependent upon a user's security setting; contributors can post and edit documents. He then demonstrated how to locate and use the library in the Judicial Council's SharePoint site.

## **7. Annual Magistrate Conference**

Judge Hazlett proposed the approval of a one-day Magistrates' Conference. With the support of the Conference of Circuit Judges, the conference will allow for open exchange of ideas and for discussion of common issues faced by magistrates in the performance of their duties. This will be achieved by a plenary session and workshops centered on a common theme. Judge Hazlett stated that the program will be coordinated and staffed by the Judicial College and, if possible, will be an annual event if funds are available. Judge Wolfe moved that the conference be approved and it was seconded by Judge Kenney. With no opposition, the motion carried.

## **8. Committee Updates**

*Court Access and Community Relations Committee.* Judge Martin briefed the Council on the work of the Court Access and Community Relations Committee, acknowledging the hard work and support of the staff, and highlighted a few of the committee's initiatives.

- The use of video remote interpreting for short proceedings, which allows for the interpreter and respondent to be at different sites. New language portals have been released in Spanish, Russian, French, Chinese, and Korean.
- The Judges' Gazette releases quarterly issues.
- Improved forms process by collaborating with the Domestic Law Committee in order to simplify domestic forms into plain language.
- Interpreters are now reporting their continuing education units online.

***Court Operations Committee.*** Judge Wells briefed the Council on the work of the Court Operations Committee.

- The subcommittee is finalizing the Jury Use Manual and expects that it soon will be available for review on SharePoint.
- The Courthouse Equity Subcommittee developed a two-tier system for determining baseline and aspirational goals for each circuit court. The subcommittee continues to review the baseline goals to determine if they are being achieved.
- The 2017 Legislative Mark-Up Day is scheduled for June 9, 2017. The Forms Subcommittee will work with subject matter experts to modify forms as a result of legislative action. The first phase of the Data Dashboard was implemented in March 2017.
- The Legislative Workgroup worked with Judge Wilner to make several recommendations regarding legislation that had a potential impact on court operations.
- The Records Retention Workgroup is continuing its work on a new, comprehensive retention schedule.
- The Grants Advisory Workgroup developed a grants webpage that is accessible to all grantees.

***Court Technology Committee.*** Mark Bittner updated the Council on the work of the Court Technology Committee.

- The MDEC Executive Steering Committee continues to oversee the statewide implementation of MDEC. MDEC will be implemented in Calvert, Charles, and St. Mary's counties on June 12, 2017 with Garrett, Allegany, Washington, and Frederick counties scheduled for October 2017. A JIS Attorney Support unit was formed to focus on e-filing and Attorney Information System (AIS) support.
- Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, and Washington counties have implemented Land Records e-recording. Planning is underway to continue statewide implementation.
- In June 2017, ServiceNow will implement asset management, which will enable JIS to more readily identify the location of Judiciary technology assets. In addition, employees will be able to request electronic devices using ServiceNow.
- A virtual desktop infrastructure (VDI) is in a pre-pilot mode. This will allow employees to log in from anywhere to access his or her desktop. Testing will begin in the summer.

***District Court Chief Judge's Committee.*** Chief Judge Morrissey briefed the Council on the work of the District Court Chief Judge's Committee.

- The committee met four times in 2016, during which its members updated Chief Judge Morrissey on the activities in each district.
- Judge Pastore Klein developed the Baltimore City District Court Re-Entry Project where she worked with local businesses to provide jobs and transportation in lieu of incarceration for ex-offenders.
- Commissioners are now recording all proceedings in CourtSmart.

- NCSC recommends 100 percent screening upon entry in courthouses. The District Court began random 100 percent screenings with great success.
- The last meeting of the committee was held at Anne Arundel County District Court during the Schools in the Court program. The program consists of groups of 20 to 30 high school students. The meeting was attended by Chief Judge Barbera and Ms. Harris.
- The annual meeting of the bailiffs was held, and in addition to issues being discussed, five bailiffs received merit awards.
- The post-trial summary form was updated to include language regarding the requirement to surrender firearms.
- Legislation, effective October 2017, permits commissioners to reside in counties contiguous to their place of employment, with the exception of commissioners assigned to Baltimore City.

**Legislative Committee.** Judge Finan updated the Council on the 2017 legislative session, noting that unless otherwise stated, the bills that passed will not have a negative impact on the Judiciary. Judge Finan thanked the staff for their hard work and highlighted the following bills that passed:

- SB 746 – *District Court Commissioners – Residency in Contiguous County*. This bill was included in the Judiciary’s package. They would authorize District Court commissioners to serve in counties contiguous to the counties in which they reside.
- HB 1219/SB 912 – *Children in Need of Assistance – Sex Trafficking – Chapters 156 and 157*. These bills were included in the Judiciary’s package. They would alter the definition of sexual abuse in various provisions of law that relate to a child in need of assistance, to include sex trafficking of a child regardless of the victim’s relationship with the alleged abuser. This bill takes effect June 1, 2017.
- SB 714 – *Criminal Procedure – Indigent Individual – Bail Review and Indigency Determination – Chapter 606*. This bill would require a District Court commissioner to determine whether an individual qualifies as indigent for purposes of eligibility for representation by the Office of the Public Defender.
- HB 1382/SB 912 – *Election Law – Candidate for Circuit Court Judge Defeated in Primary Election – Chapters 439 and 440*. These bills prohibit the name of a candidate for the office of judge of the circuit court who is defeated in the primary election in each contest for the office of circuit court judge in which the candidate appears on the ballot from appearing on the ballot at the succeeding general election as a candidate for any office.
- SB 182 – *Baltimore City, Charles, Prince George’s and Harford Counties – Recall of Former Judges for Temporary Assignment – Eligibility – Chapter 10*. This bill alters the minimum number of years that a former judge in Baltimore City, Charles, Harford, and Prince George’s counties must have served in order to be eligible to be recalled for temporary service. This bill became effective April 4, 2017.
- HB 1329/DB 967 – *Heroin and Opioid Prevention Effort (HOPE) and Treatment Act*

- of 2017 – Chapters 571 and 572. These bills enact several provisions to combat the opioid crisis, including requiring the State Court Administrator to assess drug court programs in circuit court, including juvenile courts, and the District Court to determine how to increase these programs in a manner sufficient to meet each county’s needs. Also, it is the intent of the General Assembly that the AOC request an appropriation of two million dollars of additional funding in the state budget for fiscal year 2019 in order to award grants to expand the scope of the drug court programs. These bills become effective when signed by the Governor.
- SB 949 – *Criminal Procedure – Expungement – Possession of Marijuana*. This bill expands eligibility for expungements under § 10-105 of the Criminal Procedure Article. Included are convictions under § 5-601 of the Criminal Law Article. Based on these convictions, a petition for expungement may not be filed within four years after the conviction or satisfactory completion of the sentence, including probation that was imposed, whichever is later. The bill also clarifies that expungement provisions under Chapter 515 of 2016 (the Justice Reinvestment Act) apply to a conviction of a misdemeanor violation of § 5-601 of the Criminal Law Article that does not involve the use or possession of marijuana.
  - HB 429/SB 217 – *Criminal Law – Sexual Offenses – Physical Resistance – Chapters 160 and 163*. These bills specify that evidence of physical resistance by the victim is not required to prove that a crime under Title 3, Subtitle 3 of the Criminal Law Article was committed. However, this may not be construed to affect the admissibility of evidence of actual physical resistance by the victim.
  - HB 1163 – *Criminal Procedure – Conditional Release – Electronic Monitoring (Amber’s Law) – Chapter 643*. This bill requires a judicial officer, on a finding of probable cause and before the issuance of an arrest warrant or summons, to provide to an individual filing an application for a statement of charges under Maryland Rule 4-211(b) an opportunity to request reasonable protections for the safety of an alleged victim or the victim’s family. A victim impact statement under Criminal Procedure § 11-402(e) for a crime or delinquent act shall include if there was a request for electronic monitoring or electronic monitoring with victim stay-away alert technology.
  - HB 1375/SB 781 – *Criminal Procedure – Testing – HIV and Hepatitis C – Chapters 485 and 486*. These bills add hepatitis C to § 11-107 of the Criminal Procedure Article as a disease for which a person charged with causing a prohibited exposure to a victim may be tested. A circuit court or District Court judge is authorized to issue an emergency court order to obtain an oral swab from a person to be tested for the presence of HIV whenever it is made to appear to a judge, via an application for an emergency court order, that there is probable cause to believe that the person has caused prohibited exposure to a victim.
  - SB 539 – *Criminal Law – Distribution of Controlled Dangerous Substances – Fentanyl – Chapter 569*. This bill prohibits a person from knowingly distributing or possessing with the intent to distribute fentanyl or any analogue of fentanyl, and a mixture of a controlled dangerous substances that contains heroin and a detectable amount of fentanyl or any analogue of fentanyl. This bill becomes effective when signed by the Governor.

- HB 293 – *Family Law – Divorce – Domestic Violence Order – Chapter 490*. This bill repeals provisions of law that prohibit an order or decision in a domestic violence protective order proceeding from being admissible as evidence in a divorce proceeding. It also repeals a provision that prohibits a court from considering compliance with a domestic violence protective order as grounds for granting a decree of limited or absolute divorce.

Chief Judge Barbera thanked the committee for its work and Judge Finan for taking on the responsibility as chair of the committee.

## 9. **For the Good of the Order**

Chief Judge Barbera informed the Council of the MDEC Security Summit scheduled for July 18, 2017. She asked that if an administrative judge is unable to attend, to please send someone from his or her bench.

Chief Judge Barbera also reminded everyone of the upcoming Judicial Conference being held June 14 – 15 at the Hunt Valley Inn.

## 10. **Resolutions**

Chief Judge Barbera welcomed Judge Woodward to the Council. She then acknowledged the outgoing members for their service and commitment. Judges Ellinghaus-Jones and Judge Wolfe were presented with plaques as a token of appreciation, on the occasion of their impending retirement.

There being no further business, the meeting adjourned at 12:26 pm. The next meeting is scheduled for July 26, 2017, beginning 9:30 a.m.

Respectfully submitted,

Eliana Pangelinan