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Joint Meeting of the
Conference of Circuit Judges and
District Court Chief Judge's Committee

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MINUTES OF THE JOINT MEETING OF THE
CONFERENCE OF CIRCUIT JUDGES AND
DISTRICT ADMINISTRATIVE JUDGES

A joint meeting of the Conference of Circuit Judges and the District Administrative Judges was held Monday, September 21, 2020, via Zoom for Government, beginning at 9:30 a.m.

Members Present

Hon. Laura S. Ripken, Chair, Conference of Circuit Judges
Hon. John P. Morrissey, Chief Judge, District Court

Hon. Sheila R. Tillerson Adams
Hon. Keith A. Baynes
Hon. Pamela J. Brown
Hon. Donine Carrington Martin
Hon. Audrey J.S. Carrión
Hon. Christy Holt Chesser
Hon. Kathleen Gallogly Cox
Hon. Yolanda L. Curtin
Hon. Jeffrey S. Getty
Hon. Robert A. Greenberg
Hon. Susan H. Hazlett
Hon. Lisa Hall Johnson
Hon. Stephen H. Kehoe
Hon. John P. McKenna
Hon. Patricia L. Mitchell

Hon. Viki M. Pauler
Hon. H. Jack Price, Jr.
Hon. Gerald V. Purnell
Hon. Eric W. Schaffer
Hon. Bonnie G. Schneider
Hon. Brian D. Shockley
Hon. Julie S. Solt
Hon. William V. Tucker
Hon. Barbara Baer Waxman
Hon. Barry G. Williams
Hon. Brett W. Wilson
Hon. Dorothy J. Wilson
Melissa Batie
Pamela Harris
Hon. Charlene Notarcola

Also, Present Were:

Hon. Fred Hecker
Hon. Robert Heffron
Hon. Lynn Knight
Hon. Nancy Shuger
Hon. Alan M. Wilner
Faye Gaskin
Renee Abbott
Keith Bageant
Amy Bosley
Jeff Huddleston
Melinda Jensen

Olya Jerschkowsky
Kelley O'Connor
Eliana Pangelinan
Lisa Preston
Dan Smith
Jason Thomas
Gillian Tonkin
Roberta Warnken
Clifford Mitchell, MDH
Secretary Robert Neall, MDH
Webster Ye, MDH

Judge Ripken and Chief Judge Morrissey welcomed everyone to the meeting, after which Judge Ripken read a message from Chief Justice John Roberts on the occasion of the passing of Justice Ruth Bader Ginsburg. The meeting attendees then observed a moment of silence in remembrance of Justice Ginsburg.

Judge Ripken and Chief Judge Morrissey acknowledged the work of the administrative judges and others for their tireless efforts to guide Maryland's courts through these troubling times. They noted that the administrative judges from both courts have met regularly during the pandemic to discuss issues/concerns and to help to implement the various phases of Chief Judge Barbera's resumption of operations plan.

The circuit court administrative judges established two work groups, one to focus on reopening generally that was chaired by Judge Baynes, and the other to focus on the resumption of jury trials which was chaired by Judge Adams. Judge Ripken thanked both work groups for their hard work and the reports produced by each work group. She then recognized her colleagues in the both the District and Circuit Courts who have carried the water during these difficult times. The District Court judges received regular updates regarding how the circuit courts were preparing to resume full operations, how they were reimaging courthouses, the technology they were considering to assist in safely reopening the courthouses, and their efforts in securing external sites to conduct jury selection and/or hold trials when possible and appropriate. Judge Ripken thanked the judges who availed themselves to interview with the media regarding the way forward.

Chief Judge Morrissey echoed Judge Ripken's sentiments regarding the efforts of all those involved to move the courts toward resumption of full operations in a safe and secure manner. He added that they all worked hard to see the implementation through, which is a tribute to their tenacity and innovation. The District Court resumed failure to pay rent proceedings at the end of August. Chief Judge Morrissey discussed the guidance he provided to the judges regarding the CDC moratorium on evictions, noting that it does not preclude individuals from filing landlord/tenant matters and that the filings are subject to judicial determination on how to proceed. Chief Judge Morrissey stated that he sent letters to the county executives and other appropriate individuals regarding the availability of resources such as self-help centers and mediation for landlord/tenant matters. Filing activity in those matters is approximately ¼ to ½ of what it was pre-Covid-19.

Chief Judge Morrissey then provided a legislative update, commenting that many bills never were acted on because of the pandemic and an early end to the 2020 session. One bill in particular that was passed was Senate Bill 234, which basically states that individuals can no longer have their drivers' licenses suspended for failing to pay traffic fines. The bill is retroactive and involves approximately 450,000 people. He explained the process that has been put in place for both the courts and the Motor Vehicle Administration. This is expected to be a major undertaking and it will take some time to address the cases in which the licenses have to be "unsuspended." The legislation also lowered the amount eligible for a payment plan from \$300 to \$150. Chief Judge Morrissey commended JIS, Commissioner Robert Hogan, and other staff who have worked to ensure successful implementation.

1. Updates

COVID-19 – Secretary Robert Neall and Dr. Clifford Mitchell, Maryland Department of Health (MDH), briefed the group on the measures put in place to address the pandemic, noting that they began meeting with a team of individuals in early March to discuss, develop, and implement a plan. Thus far, 2.2 million Marylanders have been tested, with more than 20,000 tests performed daily. More than 78 million pieces of personal protective equipment have been distributed, with requests being fulfilled for schools and in preparation for the upcoming election. To date, 6,700 surge beds have been identified and Maryland continues to make advanced medical tents, ICU modulars, and alternative care sites available

for coronavirus patients.

MDH has worked with labs to ensure results are returned in a reasonable time, but some labs are still challenged to return results within 24 – 48 hours. There has been increased access to testing, through the private sector and pharmacies, as well as mechanisms created by the State to provide testing with no requirement for a co-pay. Every part of the State has access to testing with more than 220 active testing sites. In addition, the Department is exploring more testing availability in rural areas. MDH is working to secure 250,000 rapid antigen tests which make it possible to get the results in real or near real time. MDH also is exploring other rapid test platforms in an effort to secure more tests.

Dr. Mitchell stated that early on the focus was on individuals 35 years or older and those with risk factors; however, since May, there has been an increase in the positivity rate for individuals younger than 35 years old. The concern is the challenge in messaging to that group about the importance of social distancing and wearing masks. A media campaign was created, focusing on the benefits of wearing masks. Toolkits, in English and Spanish, have been created and shared with community partners and local health departments.

MDH established protocols for identifying individuals who may have been in contact with people who test positive for COVID-19. Interviews are conducted by local health departments or the State's contact tracing teams. Dr. Mitchell noted that they have been able to reach people rather quickly and asked the group to be sure to answer calls they may get from a COVID link. Efforts are underway in DoIT to implement Apple-Google exposure notification technology.

Dr. Mitchell discussed Operation Warp Speed, which is the federal government's effort to accelerate the delivery of COVID-19 vaccines to the states. Currently, there are a significant number of vaccines in the testing phase. The priority for receiving the vaccine, once available, will include high risk populations and health care workers. Efforts underway include developing plans to track vaccines, developing messaging and outreach regarding the vaccines, and developing plans around the logistics of vaccinating a large group of individuals. Dr. Mitchell remarked that there will be a lot of questions regarding the efficacy of the vaccines

Chief Judge Morrissey asked if MDH would consider the Judiciary when prioritizing delivery of the vaccinations, noting that the Judiciary has a great deal of contact with the public and is thought to be service essential.

Judge Curtin stated that the courts are getting ready to resume jury trials and expressed the need for a better explanation with respect to the steps to take should jurors or others come into contact with someone who has tested positive. Dr. Mitchell gave an overview of the virus to put everything in perspective. He stated that it is admitted through respiratory droplets and the highest probability of contracting the virus still appears to be from being close to an infected individual; the farther away and the less time spent, the less likely to be infected. He suggested providing barriers, following the CDC's guidance with respect to social distancing and time spent in close proximity to others, and increasing ventilation. Dr. Mitchell added that courts should give careful consideration to sequestering people for long periods of time with no air circulation, especially if someone has high risk factors, immune issues, diseases, etc.

Judge Ripken thank Secretary Neall and Dr. Mitchell for their presentation.

Department of Public Safety and Correctional Services – Secretary Robert Green briefed the group

on the Department of Public Safety and Correctional Services' (Department) response to the pandemic. He noted that several justice partners, including the Judiciary, have participated in regular meetings over the last several months to ensure the lines of communication remained open and that there was a collaborative approach to addressing the impacts of the pandemic. Since working with the Judiciary to implement remote proceedings, more than 800 virtual court appearances have been conducted. Secretary Green stressed the importance of virtual court, especially with over 17,000 staff and inmates in the Division and Corrections and Pretrial Service to keep safe. He acknowledged the efforts of Secretary Neall and Dr. Mitchell, stating that since mid-March, they have been involved in daily meetings seven days a week in an attempt to stay in front of the pandemic.

Secretary Green noted that the Department shut down on March 13 and anyone not directly involved in the care of those in the system have not been allowed to enter. Everyone in the system who has direct contact with others is required to wear masks, face shields, and gloves the entire day. The Department has the 34th lowest positive rate of prison systems in the country. The Department is in regular contact with the local detention facilities. Prior to the pandemic, there were six intake centers; there is now one central point of contact. Every inmate who comes into the intake center is tested and quarantined for 14 days regardless of the outcome of the test. Staff are tested weekly. Rapid testing is being deployed in Baltimore City. The Department worked with Dr. Mitchell to develop a process.

Whenever there is an in-person hearing, every individual is tested before going to court, including inmates and transport staff. Secretary Green stressed the critical importance of decreasing the number of people required to go to the courthouses and continuing the use of virtual courts. To that end, Secretary Green stated that the Department made a significant investment to ensure there are virtual courtroom areas in each of its facilities, adding that he would like to concentrate on individuals who absolutely have to appear in person. Secretary Green noted that the Department will continue to work with Judiciary leadership to make sure the virtual experience is effective and is used to its maximum capacity.

Secretary Green clarified that writs should be sent to the central writ department and not to the individual facilities. The central unit will ensure the writs are properly routed. Judges Mitchell and Carrión both thanked Secretary Green for his efforts in ensuring efficient processes for virtual court. They spoke to the safety benefits of virtual court and expressed interest in continuing to hold remote hearings. Judge Cox added that it has gone well and that judges who once were reluctant slowly are coming around and acknowledging the benefits. She asked if the Department can once again send administrative judges reports on writs for transporting. The reports are helpful in discerning what is a good writ and what should be cancelled.

Judge Ripken thanked Secretary Green and noted that the feedback from the courts has been positive.

Rules – Judge Wilner updated the group on the recently adopted Rules, as well as the proposed changes to the current Rules. He noted that 2020 has been a challenging year for the Rules Committee and the Court of Appeals. Since March, the Rules Committee has submitted to the Court four major reports, two dealt with the new world of emergencies, presenting issues never dealt with before. The 205th Report had three categories of changes – 1) clarifying the authority of the trial courts to conduct civil proceedings remotely; 2) addressing juveniles seeking findings to immigration status; and 3) changes related to signatures (/s/) of judges in non-MDEC jurisdictions. A related Rules change that would make the signature change applicable to attorneys is pending as the Committee addresses special issues. The Report also addressed filings from non-MDEC jurisdictions conforming to Rules applicable to MDEC jurisdictions. The record would still be in paper form, but the briefs, motions, and record extracts would

be electronic. The attorneys would be required to file eight paper copies of the record.

Judge Wilner stated that the Rules Committee received proposals/requests from the Major Projects Committee regarding whether some or all the proceedings conducted remotely should continue after the pandemic. He noted that the Committee is aware of the problems of some courts in implementing procedures. Additionally, he has read the procedures drafted by the Remote Hearings Workgroup and did not find any inconsistencies. He noted that there may need to be adjustments made to several Rules in Titles 2 and 16. Concerns include the public's constitutional right to observe proceedings. Judge Wilner noted that the Major Projects Committee had developed a suggested approach which is to have the next day's docket posted electronically and have the public contact the clerk's office to obtain dial-in information for access to the audio portion of the proceeding. Judge Wilner stated that the information was not put in the Rule as the results could be achieved in other ways. The Rule states that the court must ensure the public has the ability to observe the public portion of any proceeding.

Judge Wilner commented that the Rules Committee is concerned about whether to permit video access, which could lead to inappropriate recording of the proceeding. The Court of Appeals is limited to audio access only. The Rules Committee did not address how to deal with exhibits in remote hearings as it is more of a technology matter. The aforementioned topics are covered in the remote hearing procedures.

Rules 16-502 and 16-503 require all remote proceedings to be recorded verbatim. There was a major change in Rule 3-513 which authorizes the Chief Judge of the District Court, in consultation with the State Court Administrator, to develop guidelines to govern remote proceedings. It is up to the Chief Judge of the District Court to ensure members of the public have the ability to listen to non-redactable portions of proceedings. Telephone access was expanded from just land lines to cell phones as well. Administrative judges will not have to modify their case management plans as a result of these changes.

The Rules Committee approved changes to Title 4, putting more guidance on consideration of eyewitness testimony. The state will be required to disclose discovery regarding eyewitness identification involving law enforcement – more detail in compliance with statutory requirements. Judge Wilner also discussed requirements to instruct the jury on statutory factors or other considerations relevant to reliability of eyewitness testimony. The Rules Committee worked closely with Judge Sweeney who is shepherding Pattern Jury Instructions on this subject. Draft instructions have been tentatively approved by the Criminal Pattern Jury Committee. Judge Wilner noted that the MSBA has not reached total agreement on cross-racial identification.

There were amendments to the probate Rules regarding spousal shares, as well as revisions to the Attorney Grievance Commission Rules. The Rules Committee is working with Bar Counsel and interested attorneys on the latter. The Criminal Subcommittee is looking at the electronic application for court orders. The subcommittee approved an amendment to Rule 4-353 regarding bifurcated trials.

The Rules Committee also is addressing open meetings and whether meeting minutes are subject to the Rules regarding the same. Judge Wilner noted that there are policy considerations to address. In 1976, the Court adopted the view that it wouldn't decide whether the Open Meetings Law applied but would follow it. The law requires public bodies to keep minutes that are accessible to the public. The question under consideration is whether committees that are not subject to the Open Meetings Law, but that keep minutes, are required to make the minutes publicly accessible. Judge Wilner noted that there is no clear provision, but it will be subject to adoption. The Rule would not be intended to preclude any committee, subcommittee, or workgroup from making public anything it wants to make public.

There is a new Rule dealing with correction of clerical errors in court records. The question is who is the “court” intended to be with respect to the language that the “court can correct clerical errors” – the judge, clerk? The Rule will provide clarity to determine when a clerk can correct his or her own errors. The corrections have to be transparent, with a record of what was corrected and by whom. The record has to be consistent with what’s in Case Search.

The Rules Committee is working on a complete rewrite of the juvenile rules with the assistance of the Juvenile Law Committee. Another project that has to be in place when Baltimore City goes live on MDEC is folding MDEC into all the Rules and repealing/removing Title 20.

Judge Ripken thanked Judge Wilner for his update.

2. Judges Security

Keith Bageant talked to the group about judges’ security and recommended that all judges have a home security assessment conducted. Judges should contact him, if interested, so that an assessment can be scheduled. They are conducted by the Security Administration Department of the Administrative Office of the Courts. Mr. Bageant stated that at a minimum all judges should have an alarm system. He noted that he previously emailed the Judicial Security Handbook to all judges. He added that it is written from the perspective of *I don’t know, you don’t know* and asked that everyone read through it as it contains lots of tips and ideas around personal security.

Mr. Bageant advised the judges to notify the deputies and bailiffs if they feel insecure in the courthouse. His office is copied on all reports, as well as any follow-up and will work with courthouse security to ensure everything is addressed. If the courts need funding for COVID-19 security-related or other security equipment, Lisa Ritter should be contacted for the District Court and Mr. Bageant should be contacted for the circuit courts.

Judge Ripken stated that she has heard other judges comment that the home security system/programs recommended following home assessments sometimes are cost prohibitive. She asked if there is a list of affordable alternatives that can be shared with the judges. Mr. Bageant responded that his office does not recommend vendors or equipment per se. He noted that alarms often tie into other systems already in place. He suggested that judges always get competitive bids and negotiate for lower monthly fees, adding that the fees are tied to a person’s zip code.

Judge Ripken asked if there were any recommendations considering what happened with the federal judge’s family. Mr. Bageant stated that he personally uses a monitoring company used by celebrities that searches the various sources for his address and removes it. If someone googles his name, they will not be able to find his address. The company puts people/entities on notice that the information cannot be sold or published in some states. Mr. Bageant suggested that the judges explore using a similar service. The fees vary. He sometime googles himself and advises the company if he finds something. There are packages where the company does the actual monitoring as well. Mr. Bageant advised judges not to put identifying information in their social media profiles and to go to the permissions setting and limit what’s published. He posts false information in his profile, as well as pictures of other houses, yards, etc.

Judge Ripken asked if there is a way for Security Administration to monitor the Internet for that type of information given that the AOC currently monitor the press for references to judges. Mr. Bageant will explore the possibility with other departments within the AOC.

3. DocuSign Update

Dan Smith, JIS, provided an update on DocuSign and eWarrants, noting that DocuSign went live on June 15 and there are now 340 users. The Court Technology Committee worked with several judges to pilot DocuSign and make the necessary changes to improve the tool for use in Maryland. One of the features that judges find most helpful about the tool is that electronic warrants can be completely processed in Outlook. In addition to processing electronic warrants using DocuSign through a Judiciary email on a laptop or computer, judges also can use a mobile app to accomplish the task. Mr. Smith demonstrated the process, from opening the email and PDF attachment to signing the warrant using DocuSign. The date and title fields are automatically populated once the signature is affixed and the judge is then able to send the signed document back to the law enforcement officer without leaving Outlook.

The Department of Technology Education has conducted several training webinars and, thus far, more than 180 judges have participated. DocuSign also has been implemented for use in other areas within the Judiciary, such as the District Court ADR Office and the Department of Procurement, Contract & Grant Administration.

Chief Judge Morrissey stated that the mobile app can be downloaded from the app store free of charge. Mr. Smith noted that he had proactively downloaded the app to Judiciary-issued phones. He added that WiFi is not needed to use the app. For other devices, the tool can be used wherever there is a data connection.

Judge Ripken thanked Mr. Smith for his presentation.

4. Zoom for Government Update

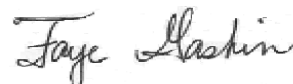
Olya Jerschowsky and Jason Thomas updated the group on Zoom for Government. They provided some statistical data, including that approximately 10,000 remote hearings had been conducted since June and 653 licensed users have signed on and used their licenses. Just in the last week leading up to the meeting, more than 1,300 meetings have been held with approximately 6,700 participants for a total of 350,000 minutes. Most users are connecting via Windows devices, although there has been a great deal of Polycom usage. The Department of Technology Education conducted several training sessions via webinars, which were widely attended. Among the topics for which future webinars are being developed are scheduling and noticing, jury selection, and best practices for non-MDEC jurisdictions.

Judge Ripken thanked Judge Hecker, the Court Technology Committee, and the Remote Hearings Workgroup for their work in this regard.

Chief Judge Morrissey remarked that he thinks the annual joint meetings are valuable and that they provide an opportunity to discuss topics that transcend both trial courts. Judge Ripken stated that if any of the judges have any thoughts/ideas/suggestions for areas to cover to please let her or Chief Judge Morrissey know.

There being no further business, the meeting adjourned at 12:14 p.m.

Respectfully submitted,



Faye Gaskin
Conference Secretary