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Joint Meeting of the
Conference of Circuit Judges
and
District Administrative Judges

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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 16, 2019, at the Judicial College Education and Conference Center in Annapolis, Maryland, 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. Theresa M. Adams
Hon. Keith A. Baynes
Hon. Pamela J. Brown
Hon. Donine M. Carrington Martin
Hon. Audrey J.S. Carrion
Hon. Christy Holt Chesser
Hon. Robert Cooper
Hon. Kathleen Gallogly Cox
Hon. Yolanda L. Curtin
Hon. W. Timothy Finan
Hon. Dino E. Flores, Jr.
Hon. James H. Green
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. W. Michel Pierson
Hon. H. Jack Price, Jr.
Hon. Paula A. Price
Hon. Gerald V. Purnell
Hon. Eileen A. Reilly
Hon. Bonnie G. Schneider
Hon. Brian D. Shockley
Hon. Julie S. Solt
Hon. Katina S. Steuart
Hon. William V. Tucker
Hon. Brett W. Wilson
Hon. Dorothy J. Wilson
Matthew Barrett
Hon. Charlene Notarcola

Also, Present Were:

Hon. Stephen Johnson
Hon. Jonathan G. Newell
Hon. Norman Stone
Hon. Philip N. Tirabassi

Jenny Henderson
Abigail Hill
Carla Jones
Nadine Maeser

Hon. Alan M. Wilner
Faye Gaskin
Ksenia Boitsova
Carole Burkhart
Rose Day
Lou Gieszl

Christian Noble
Pamela Ortiz
Eliana Pangelinan
Gillian Tonkin
Terri Vukovich
Jamie Walter

Judge Ripken and Chief Judge Morrissey welcomed everyone to the meeting, noting that the goal is to have at least one joint meeting each year.

1. Updates

Chief Judge Morrissey provided the following updates:

- a. **MDEC** – A new release of Odyssey (2018.1) recently was implemented, but not without problems. Chief Judge Morrissey commented that the upgrade represented four years of upgrades at one time from the version on which the MDEC courts had been operating. He asked for patience as the team works through the issues, adding that he and Pamela Harris met with executives from Tyler Technologies via teleconference to express the Judiciary’s concerns. The JIS MDEC team has daily calls with Tyler representatives. The MDEC team continues to triage the tickets; users should continue to report issues. Chief Judge Morrissey noted that fixes are slow coming, but everyone will be apprised whenever there is something new to report. Tyler’s development team will be on site, which will give them an opportunity to more fully assess the issues and, hopefully, expedite resolution of the same. Currently, Clerk’s Edition and batch scanning issues are being given the highest priority.
- b. **JRA** – Eight different reports are generated and submitted to the Commission quarterly. The reports provide statistics on the various bail and bond statuses, as well as the FTA rates and the length of time individuals are detained before release. The statistics indicate that releases on bail have increased approximately 8 percent statewide and the hold without bail continues to increase each month. Chief Judge Morrissey surmised that the issue with the FTAs and the hold without bail can be attributed to homeless defendants, adding that judges may be holding the homeless without bail to ensure their appearance. He asked that any thoughts on the matter be forwarded to him.
- c. **Absconding Definition** – Chief Judge Morrissey noted that in *Brendoff v. State of Maryland*, the Court of Special Appeals held that when a prisoner is placed on supervised probation and admitted into a drug and alcohol treatment facility, the Division of Parole and Probation is the supervising authority that determines if the probationer absconded. In *Brendoff’s* case, the probationer left the treatment facility and the trial court found that he had absconded and as such had committed a non-technical violation of probation. The appellate court also found that if there is an allegation of a non-technical violation, the initial determination should be whether the probationer willfully evaded the supervising authority. Chief Judge Morrissey commented that there is a loophole in the law that hopefully will be corrected with legislation.

2. Introduction to New Building at 187 Harry S. Truman Parkway

Terri Vukovich, Deputy Director of Facilities for the Administrative Office of the Courts, provided a briefing on the new home of the Administrative Office of the Courts and District Court Headquarters, which was precipitated by the need to consolidate the several offices into one location, moving from 15 leases to just one. Ms. Vukovich noted that she and Lisa Ritter, Director of Engineering and Central Services for District Court Headquarters, collaborated on the effort. The name of the new building is the Maryland Judicial Center.

Ms. Vukovich stated that moves to the new location, which began in September, will be staggered with the last office moving sometime in November. All the moves will happen over weekends to limit any disruption to operations. She noted that everyone should check their calendars to determine the location of meetings that normally are held at the Judicial College Education and Conference Center. All training and conference rooms have been updated with state-of-the-art audio-visual technology. Ms. Vukovich stated that parking will not be an issue as there are more than 600 parking spaces with full lighting and cameras for safety.

3. New Judicial Disability Rules

Judge Wilner gave an update of the new Judicial Disability Rules, noting that it was a major Rules Committee project, spanning seven years. The legislative history is contained in the 199th Report, filed January 2019 with a supplement filed May 2019. Both reports can be found on the Judiciary's website.

The new Rules became effective July 1, 2019. Two new, but related issues will be considered by the Attorney and Judges Subcommittee that will permit the Court of Appeals to place a judge on interim suspension while awaiting its decision, as well as to monitor compliance with the Court's order to undertake certain programs or to refrain from certain conduct. Judge Wilner stated that the goal is to get the matters on the full Rules Committee's agenda in October and sent to the Court for consideration in December.

The major policy changes include an acknowledgement of the stress trial judges deal with every day and the work that may lead them to say and do things they shouldn't that result in violation of ethics rules. The objective is to get the judge to appreciate what he or she has done wrong.

The new Rules include a preamble that makes it clear that not every transgression will result in the imposition of discipline and that the Judicial Disabilities Commission will have discretion to determine if the complaint warrants a letter.

The judge may consult with a peer review panel in a confidential setting for guidance. The new Rules expand the use of conditional disciplinary agreements where, if satisfied, the complaint will be dismissed. Judge Wilner noted that the process has been used by the Attorney Grievance Commission for decades.

Structural changes include appointment of an Inquiry Board, as well as the Chair and Co-Chair of the Commission by the Court of Appeals. The Investigative Counsel will be appointed by the Commission with the Court's approval. Judges will be able to write to the Commission

requesting to be notified if a complaint that, on the face, alleges sanctionable conduct or impairment is docketed. Investigative counsel will investigate to determine whether there is a factual basis to move forward.

Judge Wilner explained that some disabilities that can be treated and are not likely to become permanent (impairment) can be dealt with through diversionary programs. A disability must be permanent and results in retirement.

There was concern expressed regarding the difference between a public reprimand issued by the Commission and censure by the Court. A public reprimand could not be challenged because it never went before the Court. Private reprimands could become public if someone discovered they existed. Judge Wilner noted that the original intent of the Commission was for the reprimands to be private. A separate concern was raised regarding the Commission's inability to issue a private reprimand without the judge's consent (the Constitution permits, but the Rules require). The new Rules permits that, if after the investigation it is determined that a private reprimand is warranted, the judge has three options: 1) private reprimand, 2) agree not to contest the underlying violation, but ask the Commission to consider a remedy because the judge doesn't think the reprimand is appropriate, or 3) indicate that he or she did not commit the violation alleged in which case the complaint is not dismissed and charges are filed. With respect to the third option, the Commission can no longer issue a reprimand because it is now public; the Commission can recommend to the Court censure and the judge will have an opportunity to contest the allegation.

With respect to recusals and vacancies, a quorum previously required 11 members with at least one person from each group – judge, attorney, lay. With the new Rules, the Court may appoint a temporary substitute of someone from the same group, i.e., a judge to serve in place of judge who recused him or herself, with the approval of the judge against whom the complaint is lodged. The concern expressed during the Rules discussion was that, constitutionally, the Governor appoints the Commission and there is no provision for temporary appointments; however, the Constitution directs the Court, by Rule, to implement the Constitution. It was determined that the only way to do so is for the Court to temporarily appoint someone, with the judge's agreement.

Finally, the new Rules require the investigative counsel to disclose all exculpatory information and prohibit *ex parte* communications between the Commission and Board counsel and investigative counsel and the judge's attorney. The Commission meets with investigative counsel for administrative reasons only.

4. Removal of Non-Unit Charges

Carla Jones, Rose Day, and Jamie Walter discussed the removal of non-unit charges in mixed cases in light of the Court of Special Appeals' unreported opinion *In re Expungement Petition of Dione W.* In the opinion, the Court of Special Appeals held that charges resulting from the same incident, but not part of the same unit are eligible for expungement. In this case, there were minor traffic offenses for which the appellant was convicted, but there also were incarcerable traffic offenses for which the appellant was found not guilty. Pursuant to Section 10-107 of the Criminal Procedure Article, *a charge for a minor traffic violation that arises from the same incident, transaction, or set of facts as a charge in a unit is not part of the unit. As*

such, the trial court could not consider them to be part of the unit when determining eligibility for expungement.

The issue raised by the presenters is that the case management system is not capable of doing partial expungements. The “expunged” charge would be displayed in MDEC, CJIS, and Case Search as “charge removed.” The charges cannot be renumbered in any of those systems. It is virtually impossible for clerks to manually redact every instance of the “expunged” charge in the system and accompanying documents.

Judge Cox stated that in Baltimore County, she issued an administrative order to send any such requests to the expungement judge who orders the entire case to be sealed. She added that it is not possible for the clerks to redact the information. Judge Cox also noted that if there is an expungement and there is a civil-habeas for bail review, the civil case cannot be expunged. In those instances, the entire file is sealed. She suggested that a business process be explored to automatically seal civil habeas cases if there is an expungement.

Chief Judge Morrissey noted that there is no way to redact information on the audio record, so the entire recording that may include other cases as well would have to be sealed. He also stated that there isn’t functionality in the CJIS system, which contains the individual’s official criminal record, to perform partial expungements.

5. Media Management and Public Persona

Nadine Maeser, the Judiciary’s Public Information Officer, provided an overview of the role of the Public Affairs Office, which is part of the Government Relations and Public Affairs (GRPA) Division of the Administrative Office of the Courts. GRPA serves as the primary liaison between the courts and local and state governments, advocacy groups, the media, and the public. Ms. Maeser advised that any requests for interviews with court personnel, including judges, should be directed to GRPA. She also noted that the office can assist with high profile trials by serving as the point of contact, helping with logistics, building relationships with justice partners and the media in advance, and creating a communications plan.

In addition to high profile trials, GRPA assists with news releases, videos and still photography, graphic design, event planning, judicial records requests, and social media to name a few. GRPA also is working with the Rules Committee on its effort to revise the Access Rules. Ms. Maeser commented that the media and public don’t realize that the Judiciary’s Access Rules govern access to Judiciary records, not the Public Information Act. GRPA gets hundreds of requests for records, bulk data, and case records. The office reaches out to the clerks to ensure the information is accurate and also works with Michele McDonald of the Attorney General’s Office on certain requests. GRPA also works with JIS to generate levels of effort (LOEs) for fulfilling requests. Ms. Maeser commented that just because information may be available on CaseSearch doesn’t mean that it is easy to compile in the manner requested.

Ms. Maeser reiterated that if judges or their staff get inquiries from the media, they should contact GRPA who will field questions first and provide the necessary assistance. GRPA will prepare talking points, help to simplify responses, research the reporter and any previous articles, and offer alternative sources for the information to reporters. When such requests are received, GRPA requires the requestor to put the request in writing and to indicate deadlines.

Often, media are directed to the Judiciary's website as much of what is requested can be found there, either in annual reports or on the Judiciary's data dashboard.

Ms. Maeser discussed the importance of creating a positive public persona that will help to increase the public's trust and confidence in the Judiciary. She suggested that judges get out into the community at different events, create videos to post on the Judiciary's YouTube page that tells the story to the media and the public. Ms. Maeser shared examples of video storytelling, including the bookmark contest, the dog/courthouse and child witness program, and the truancy success story in Kent County where they met with the young woman and her parents at their home. She asked the judges to complete and email the video storytelling form to her office if there is anything going on in their courts that should be highlighted.

Finally, Ms. Maeser discussed the online articles created by GRPA as another storytelling approach. She noted that they can work with staff to get pictures and information from which to develop a story to post on the Judiciary's website.

6. Unsupervised Probation

Chief Judge Morrissey raised a concern with the variability in the assessment of supervision fees by the Division of Parole and Probation when a judge places an individual on unsupervised probation with conditions. The probationer has to report to Parole and Probation once, prompting some offices to assess the fee although there is no supervision. In some offices, no fee is assessed. Chief Judge Morrissey plans to meet with the director to determine if a statewide policy can be implemented. He stated that judges should be made aware that if the individual is placed on unsupervised probation, even with the conditions, no one is going to follow-up.

Judge Lisa Hall-Johnson commented that if the conditions run the entire length of the probationary period, the individual is required to report to Parole and Probation for monitoring although unsupervised. In those instances, a supervision fee is assessed. Judge Ripken noted that in the Circuit Court for Anne Arundel County, supervision is imposed for the record check as the only condition, but the judge waives the fee, if he or she chooses to do so. She added that the boxes on the form for unsupervised and to waive the fee must be checked. Judge McKenna stated that in the District Court in Anne Arundel County, the list sent to Parole and Probation only contains the names of those individuals for whom supervised probation has been ordered; it does not contain the names of unsupervised probationers.

Chief Judge Morrissey and Judge Ripken will compile a list of best practices and circulate them to everyone.

7. Medical Marijuana in the Courtroom

There was an open discussion on how courts are dealing with medical marijuana in probation, house arrest, problem-solving court, etc. With respect to problem-solving court participants, Judge Kehoe stated that the contract prohibits the use of medical marijuana. Discussion of that prohibition raised concerns about what happens if the individual needs medical marijuana to deal with the effects of chemotherapy. Judge Kehoe stated that the scenario had only come up once and he put the individual on unsupervised probation. Judge Mitchell

noted that the court cannot go against a medical prescription. Judge Flores noted that the amended legislation states that the individual cannot be penalized if he or she has a prescription; it is not a violation of probation. The sentiment was that the individuals sign a contract that must be honored, whether or not the provision is in the statute. Judge Curtin noted that if using the medical marijuana is the only thing the individual is doing and he or she is compliant with everything else, then nothing happens. However, if the individual is not compliant in other areas, then the judge could find a correlation between that and the use of the marijuana and then violate the individual.

It was noted that if the individual is under the supervision of the detention center and is on work release, he or she must follow the rules of the facility, if not, their privileges are removed.

8. Sealing and Shielding Update

Judge Norman Stone led a discussion on the often-confusing processes of sealing and shielding, noting that the issue was raised at a meeting of the Major Projects Committee because courts were sealing entire cases when the request was to shield certain information within the case. While researching the matter, Judge Stone determined that the issue is much broader and embarked upon a project to review all relevant Rules and statutes and to create an easy to use quick reference guide for clerks. He also is working on a quick reference guide for judges to assist them when ruling on motions or petitions for sealing and/or shielding records. Judge Stone noted that the terms are used interchangeably, adding that, with one exception, all shielding is statutory while sealing is mostly Rule-based. The one exception with respect to sealing is that the statute refers to sealing when it involves juvenile emergency evaluations. There has been some discussion with members of the legislature to standardize the language.

In addition to the quick reference guides, the Forms Subcommittee is reviewing all relevant forms to ensure the language is accurate and they are user-friendly. The MDEC forms, and how they are indexed for judges and clerks, also will be reviewed. Judge Stone distributed best practices for denial or granting of access to records pursuant to Maryland Rule 16-912, as well as a chart that provides the Rule or statutory reference and form number for sealing and shielding. He asked that the judges provide feedback on both.

Discussion then moved to when a hearing is required. Chief Judge Morrissey commented that the statute requires the opportunity for a full adversarial hearing; the form provides the opportunity for the requestor to request a hearing. Judge Cox added that domestic violence and peace order statutes require a full hearing.

9. Access to Justice Initiatives

Pamela Ortiz, Ksenia Boitsova, and Christian Noble, Access to Justice department, provided an update on several access to justice initiatives, including expansion of video remote interpreting (VRI), interpreter management software, and Court TV. VRI provides simultaneous interpretation and generally is used for brief court proceedings and emergency matters when scheduling an in-person interpreter is not feasible. It is Bluetooth-enabled and allows for private communications between the attorney and the party. VRI also is helpful for rare languages when an interpreter is not readily available. It has been piloted in the Circuit Court for Wicomico

County and the District Court in Worcester County. During the pilot, VRI was used for arraignments, motion hearings, pre-trial conferences, and in traffic cases. Spanish was the primary language used.

Some of the benefits of VRI have been reductions in cost and scheduling delays, as well as being able to more quickly schedule interpreting sessions. The pilot sites also have been able to respond to emergency needs and have been able to provide Spanish on demand interpretation. Ms. Ortiz noted that the plan is to expand to 40 courts and the VRI team will begin reaching out to individual courts. The requirements are for the courtroom to be Polycom-equipped and to have staff contacts for equipment and procedure issues. All VRI sessions will be scheduled and coordinated by the Access to Justice department.

The interpreter management software, which is used to schedule interpreters, broadcast information to interpreters, match interpreters to the court's needs, generate invoices, and send automatic emails regarding cancellations and schedule changes, will be piloted in the Circuit Court for Baltimore City and the District Court in Anne Arundel County. Interpreters will use an app on their computers or smart phones to respond with their availability, as well as to utilize other functionality. Coordinators will be able to view other courts' schedules to avoid scheduling an interpreter in multiple jurisdictions. Ms. Ortiz noted that next steps include training the pilot interpreter pool so that the pilot can be launched. It is hoped that the software will be available to everyone by the beginning of next year.

The last initiative discussed was Court TV where customized videos to assist court users are streamed on monitors in courthouses. The video content is streamed from a central server and the playlists are determined at the local level to support that court's needs. In addition, Court TV can be used to broadcast emergency communications. Access to Justice staff will reach out to individual courts to assist them in developing their court-specific playlists.

10. Human Trafficking

Lou Gieszl and Abigail Hill briefed the judges on the work of the Judicial Council's Human Trafficking Work Group. The work group was originally tasked with researching other states' practices and making recommendations to the Judicial Council. Mr. Gieszl highlighted several accomplishments, such as partnering with other organizations under the Maryland human trafficking initiative and receiving federal funding; coordinating presentations with subject matter experts; and creating a bench card for quick reference.

Ms. Hill reviewed the opinion of the Judicial Ethics Committee, which was written in response to the work group's question regarding the actions judges and magistrates can take when encountering someone who may be a victim of human trafficking. The following four questions were posed with the corresponding responses.

- 1) When the parties are each represented by counsel, may the judge bring the lawyers to the bench before or during trial and ask if anyone has explored the human trafficking issue with the victim/defendant?**

Yes, but if counsel is not interested in pursuing the issue, the judge should take no further action. If counsel is interested in pursuing the issue, the judge may consider a request for

continuance as he or she would consider any other request for a continuance. Attorney-client privilege prevents the judge from asking about anything that was discussed with a party by that party's counsel.

- 2) If a party is not represented by counsel, can the judge request that an Assistant State's Attorney (ASA) or Public Defender become involved as a friend of the court to facilitate exploring the human trafficking issue with the unrepresented litigant who may be a victim of human trafficking?**

No. There are three main concerns: 1) such an appointment would be outside the scope of the ASA or Public Defender's duties; 2) the appointment could be creating a de facto attorney-client relationship between the perceived victim and the appointed attorney; and 3) it would risk bringing the judge's impartiality into question.

- 3) In the litigation context, may a judge refer a person for services, programs, and support that is available for human trafficking victims and, if so, when may the judge do so and who can contact the service provider?**

Yes, but without the agreement of counsel and their client, such a referral should be made only after the legal proceeding is concluded. The judge should not contact the service provider directly but should request a responsible person or entity (e.g., DSS) to do so.

- 4) Can the judge order trauma counseling as a condition of probation in a case where human trafficking is suspected but not necessarily verbalized?**

Yes, subject to statutory limitations.

Ms. Hill commented that there are a lot of questions that human trafficking gives rise to that were not addressed. She noted that a previous ethics opinion stated that a human trafficking assessment could be ordered with respect to probation. The assessment is performed by service providers. It was stated that human trafficking victims are included in the address confidentiality statute.

Judge Mitchell noted that in parallel to what is planned for judges and magistrates, training is being provided to commissioners who see people alone in private settings. Commissioners are being trained to be aware of certain things that may point to trafficking and to understand the nature of the power dynamic between victims and traffickers. Brochures are made available to suspected victims.

An e-learning course in human trafficking will be available in 2020, in addition to a videos series on human trafficking specifically tailored to judges and magistrates. Ms. Hill also stated that resources will be compiled and sent to all judges and magistrates. The resources will include a list of provider services statewide, as well as what agencies provide trauma-based services.

There being no further business, the meeting was adjourned at 2:10 p.m. The next meeting of the Conference of Circuit Judges will be held Monday, November 18, 2019, at the

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Maryland Judicial Center in Annapolis, Maryland. The meeting will begin at 9:30 a.m. The District Administrative Judges will next meet on November 1, 2019, at the Maryland Judicial Center beginning at 10 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Faye Gaskin".

Faye D. Gaskin
Conference Secretary