



MARYLAND JUDICIAL COUNCIL

Maryland Judicial Center
580 Taylor Avenue
Annapolis, MD 21401

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Faye Matthews, Secretary
(410) 260-1257

MARYLAND JUDICIAL COUNCIL

Minutes

April 15, 2015

Judicial Council Members Present:

Hon. Mary Ellen Barbera, Chair
Hon. Sheila R. Tillerson Adams
Hon. Nathan Braverman
Hon. Kathleen Gallogly Cox
Hon. John W. Debelius, III
Hon. Susan H. Hazlett
Hon. Karen A. Murphy Jensen
Hon. James A. Kenney, III
Hon. Peter B. Krauser
Hon. Karen H. Mason

Hon. Barbara B. Waxman
Hon. Alan M. Wilner
Hon. Eugene Wolfe
Sharon L. Hancock
Pamela Harris
Jennifer Keiser
Carol Llewellyn-Jones
Judy Lohman
Sally W. Rankin
Roberta L. Warnken

Others Present:

Hon. Alexandra N. Williams
Faye Matthews
Allen Clark
Gregory Hilton

Lou Gieszl
Suzanne Pelz
Melinda Jensen
Drew Snyder

A meeting of the Judicial Council was held Wednesday, April 15, 2015, at the Judiciary Education and Conference Center, beginning 9:30 a.m. Chief Judge Barbera began the meeting by welcoming everyone and then called for approval of the minutes of the previous meeting.

Judge Jensen moved for approval of the minutes of the March 18, 2015 meeting. Following a second by Judge Wolfe, the motion passed.

Chief Judge Barbera then congratulated the staff of the Government Relations Division of the Administrative Office of the Courts for their dedicated and hard work leading up to and during the 2015 Legislative Session. She noted that while it was a challenging Session, the staff's work and creativity guided the Judiciary leadership

in the right direction. Chief Judge Barbera also thanked Chief Judge Morrissey, in absentia, for his hard work during the Session.

1. **Legislative Update**

Judge Williams, who provided the legislative update in Judge Long's stead, echoed Chief Judge Barbera's sentiments, adding that while the Legislative Committee reviews the legislation, the heavy lifting goes to Government Relations staff who reviews all of the legislation in advance and then drafts the position papers following the meetings. Judge Williams highlighted the following bills:

- **HB 51/SB 66 – *Circuit Court Real Property Records Improvement Fund – Funding.*** These bills extend the sunset on the \$20 surcharge for land instrument recordations to July 1, 2020. The legislation passed.
- **HB 54/SB 64 – *Circuit Court Real Property Records Improvement Fund – Funding.*** These bills permit the State Court Administrator and the Chief Judge of the District Court to assess surcharges on certain cases filed in the appellate courts and the trial courts. The funds will be deposited into the Circuit Court Real Property Records Improvement Fund and used for MDEC electronic filing. The bills take effect July 1, 2015.

Chief Judge Barbera noted that the importance of the above-referenced legislation cannot be overstated. If the bills had not passed, Major IT, as well as land records employees and operations in the circuit courts would have been adversely impacted.

- **HB 131/SB 87 – *Criminal Procedure – Transfer to Juvenile Court – Petition for Expungement.*** These bills require petitions for expungement of criminal charges that have been transferred to the juvenile court to be filed in the court of origin. The bills passed.
- **HB 312/SB 77 – *Commercial Law – Secured Transactions – False Records.*** These bills prohibit a person from filing or recording false financing statements with a filing office under the Maryland Uniform Commercial Code. They authorize the filing office to terminate the financing statement if the office believes the statement is false. In addition, the bills authorize the debtor to request that the filing office terminate the financing statement for the same reason. The bills passed.
- **HB 304/SB 652 – *Criminal Procedure – Expungement of Records.*** These bills establish that a person is not entitled to an expungement if the petition is based on a PBJ, except if the PBJ for which the conviction is based is no longer a crime

within three years of the PBJ or the person is a defendant in a pending criminal procedure. The bills also repeal the prohibition against an expungement if the expungement is based on the entry of a *nolle prosequi*. Heretofore, a person was not entitled to an expungement if there was a subsequent conviction between the disposition of the original case and the expungement request. The individual will now be able to have the case expunged even if there is a subsequent conviction. The bills passed. The Legislative Committee opposed the bills as amended.

- HB 224/SB 315 – *Domestic Violence – 2 Year Protective Order*. These bills expand the circumstances under which a two-year protective order may be granted by authorizing the protective order to be issued by consent of the respondent within one year after the expiration of a prior final protective order against the same respondent on behalf of the same petitioner. The bills also permit the court to extend the term of a final protective order to two years if the respondent consents to the extension. The bills passed.
- HB 225/SB 269 – *Domestic Violence – Additional Relief*. These bills expand the relief a judge can grant to include any relief the judge thinks is necessary for the protection of the petitioner. The bills passed. The Legislative Committee opposed these bills.
- SB 477 – *Domestic Violence – Persons Eligible for Relief*. This bill expands the definition of those eligible for relief, which now will include an individual who has had a sexual relationship with the respondent within one year before the petition is filed. Under this new section, the court cannot order the respondent or any persons eligible for relief to participate in counseling or a domestic violence program. The bill passed. The Legislative Committee opposed the bill.
- HB 390/SB 270 – *Protective Order and Peace Order Petitions – Maryland Residents*. These bills clarify who is eligible to petition the court for a protective order or peace order in Maryland, providing that persons are eligible if the alleged abuse occurred in the State or the petitioner, or person eligible for relief is a resident, regardless of where the alleged abuse occurred. The bills passed.
- HB 244 – *Maryland Second Chance Act of 2015*. This bill permits an individual to petition the court to shield his or her records three years after the individual has satisfied the sentence imposed for the convictions related to the shielding request,

including parole, probation, or mandatory supervision. The authorization does not apply to domestic-related offenses. This is a one-chance shielding opportunity over a lifetime. The bill passed. The Legislative Committee opposed the bill.

- SB 517 – *Criminal Law – Use and Possession of Marijuana and Drug Paraphernalia*. This bill establishes that smoking marijuana in a public place is a civil offense and also establishes that possession of marijuana-related paraphernalia is a civil offense. The bill passed.

- SB 472 – *Family Law – Grounds for Divorce – Mutual Consent*. This bill authorizes a court to grant an absolute divorce on the ground of mutual consent if there are no minor children, the parties submit a written settlement agreement, neither party files a pleading to set aside the agreement prior to the hearing, and both parties appear before the court at the hearing. The bill passed.

Judge Williams noted that there were a number of bills of interest that did not pass, including HB 461, which would have raised the District Court’s civil jurisdiction to \$50,000; HB 596, which would have established the Maryland Appointed Attorneys Program Corporation to provide legal representation in response to *DeWolfe v. Richmond*; and HB 494, which would have mandated that law enforcement charge crimes with a possible incarceration of less than 18 months by citation, with certain exceptions. In addition, the legislation to raise the mandatory retirement age of judges was not successful.

Chief Judge Barbera stated that the judgeship bill did not pass again this year, but the Judiciary will continue to fight for passage next year because of the critical necessity of the courts being adequately resourced.

2. **Fiscal Year 2016 Budget**

Allen Clark, Director of Budget and Finance, briefed the Council on the Fiscal Year 2016 budget, noting that more detailed information will not be available until the Joint Chairmen’s Report is issued. He stated that as a service organization, a majority of the budget funds salary and salary-related items (68 percent). The Judiciary was appropriated approximately \$523 million for Fiscal Year 2016, representing a 4.7 percent increase over the Fiscal Year 2015 appropriation. The legislature approved 104 contractual conversions, three contractual positions, and 77 positions that will permit temporary positions to be converted to permanent positions. There will not be any merit increases for employees. It was noted that the request for the positions was not well received, but the leadership continued to fight for the positions, emphasizing to the legislators that the positions were already occupied by employees who deserve the same benefit package as their counterparts.

Ms. Harris commented that funds to implement Phase 1 of the compensation study were not appropriated, but the request will be submitted again next year. She added that if the Judiciary had been aware of the State's budget realities when it submitted its budget on November 1, the request probably would not have been made this year.

3. Elder Justice Initiative

Judge Cox provided an update on the work of the Guardianship Workgroup regarding the elder justice, noting that the members discussed more broadly how the Judiciary should address the elder population as it interacts with the courts. It was determined that the initial focus would be on effective management of guardianship cases, particularly how to safeguard against and deal with financial abuse. To that end, the workgroup surveyed the circuit courts to ascertain their practices with respect to guardianship cases, including reporting requirements, case monitoring, and training for appointed guardians. Responses were received from 17 jurisdictions. Judge Jensen will contact the remaining seven jurisdictions to obtain their survey responses. The workgroup is exploring how to improve the management of these cases and will offer recommendations for improvement through the development of best practices.

Judge Jensen noted that there are a number of goals the workgroup hopes to achieve by the end of the year, including recommending to the Council minimum qualifications to serve, finalizing a proposed training module for lawyers who want to be appointed to serve as counsel for disabled guardians, finalizing a training module for lay persons appointed to serve as a guardian of either person or property, and developing training requirements for lawyers appointed as guardians of property for the disabled. She added that training templates already exists in some jurisdictions and quite possibly can be utilized. Judge Jensen noted that there seemingly are a lot of problems created by non-lawyer guardians who may not be as versed in the laws governing these cases, adding that courts aren't catching the abuses early enough. Judge Cox stated that some changes can be implemented quickly, possibly by administrative order. Chief Judge Barbera stated that it should be a rule instead of an administrative order.

Judge Jensen commented that the workgroup is moving forward to meet the challenge, and that it isn't dismissing the idea of looking more broadly at the criminal end, but that the members are focusing on what they think can be accomplished sooner. Ms. Hancock volunteered her trust clerk to serve on the workgroup.

Ms. Harris inquired as to whether the workgroup had considered recommending time standards for guardianship cases to which Judge Jensen responded that the matter had been discussed, as well as implementing post guardianship controls.

Judge Jensen stated that Montgomery County has a guardianship liaison who works with the families and that the workgroup would like the same type of model implemented in other circuit courts. She added that, for funding purposes, it could be modeled after the permanency planning liaisons in the circuits who are funded through the Judiciary's budget. The workgroup would like to require guardians receive the requisite training before they can be considered for appointment.

Judge Wilner noted that the Rules Committee had been doing some work in this area and is willing to consider any recommendations for forms, procedures, etc. He added that the twenty-four jurisdictions are doing things differently and it becomes even more complicated when there is an estate because the Orphans' Courts are involved as well.

Chief Judge Barbera commended the workgroup on its work and its ideas. She inquired as to whether anyone had considered the report from the Conference of Chief Justices to determine what other states are doing. Judge Jensen noted that she has the report and it is not her intent to reinvent the wheel.

4. Education Committee Update

Judge Hazlett briefed the Council on the work of the Education Committee, noting that the Education Division had assumed responsibility for scheduling within the Judiciary Education and Conference Center (JECC) and that they are in the process of developing a master calendar of programs and events that will be accessible to everyone to view.

Judge Hazlett stated that the Judiciary has award-winning training programs that are only open to State-funded Judiciary employees. The Education Committee has taken the position to expand the programs to include county-funded Judiciary employees and is working to address any issues. Judge Hazlett commented that more inclusive programs will result in a more professional workforce throughout the Judiciary. The Professional Development Subcommittee has been tasked with anticipating training needs to help the Professional Development unit staff develop appropriate and timely training.

Judge Hazlett noted that the Education Committee is considering adding a Technical Training Subcommittee in an effort to ensure there is broader representation with respect to planning and delivery of technical training, particularly given the multiple systems being implemented and the need to coordinate training efforts in the most effective manner.

Discussion ensued around the Judicial Institute and the need to develop an enforceable attendance policy for judges participating in Judicial Institute programs. Judge Hazlett

commented that it is the sentiment that some judges apparently do not complete the educational programs although they register and, in some instances, attend the opening session. She provided draft policy language for the Council's consideration which included a requirement that all absences and make-up classes be reported to the appropriate administrative judge for action. Additionally, the Committee proposed that the Chief Judge of the Court of Appeals receive all Judicial Institute attendance records at the end of each calendar year. Other recommended changes included requiring judges to sign in and out of each program, distributing reimbursement forms at the end of each class, providing codes on the sign-in and sign-out forms, amending the administrative order to provide a mechanism for fulfilling the educational requirement, creating online accounts for judges that contain a list of all programs attended so that they can manage their enrollment, and informing judges that failure to fulfill their educational requirement will be reported to the Chief Judge of the Court of Appeals.

Judge Hazlett stated that the Committee is recommending that if a judge does not fulfill the two-day educational requirement each year, the judge be given six months to make up the class. If the class is not made up, the judge should lose one annual leave day. The administrative judge would be notified within three or four business days that the judge failed to make up the class. She added it appears that the administrative judge would not have a problem enforcing the sanction, but that it should be codified either by rule or administrative order. With respect to retired recalled judges, the recommendation is that their designation to sit be suspended until the requirement is met.

Judge Tillerson Adams asked if it is proposed that the administrative judge will have any discretion not to impose the sanction for good cause or will the Chief Judge of the Court of Appeals have to give approval. She added that once the administrative judge is notified, maybe the judge could be required to provide a written explanation and if the absences is not justifiable, then some type of sanction should be invoked.

Judge Wolfe stated that the issue is larger than the judge not showing up; the judge is supposed to be at work. Intentionally not attending is an offense against the State. He added that there should be some other sanction.

Judge Debelius commented that this could happen and the administrative judge not be aware, adding that if the administrative judge learns of the infraction, it is his or her obligation to report the judge to Judicial Disabilities as the administrative judge would be on notice at that point.

Judge Jensen inquired as to the extent of the problem. Chief Judge Barbera commented that regardless of the magnitude of the problem, it has to be addressed. She added that when a judge signs up and obtains approval, the judge is granted administrative leave and is expected to attend and complete the educational program. She continued that while there may be a small number of judges who are operating in this manner, it should not be allowed to continue; it has an adverse impact on others who attend the session, the administrative judge, and judicial operations.

Judge Kenney stated that historically the numbers have not been great. He suggested that the judge be dealt with administratively at first before it turns into a sanction. He agreed to talk to Judge McDonald about possibly forming a workgroup to address the concerns and bring any suggestions back to the Council at its May meeting. Judge Wolfe asked that the workgroup expand the discussion to include the Judicial Conference.

Judge Tillerson Adams moved that while awaiting adoption of an attendance policy, the Judicial Institute notify the appropriate administrative judge when a judge fails to attend or complete an educational program for which the judge has been approved. Following a second by Judge Debelius, the motion passed.

Judge Hazlett concluded her committee update by making a motion to add Hon. Nancy M. Purpura and Susan Bowen to the Education Committee and Patrick Loveless to the Professional Development Subcommittee. Following a second by Judge Jensen, the motion passed.

5. Forms Subcommittee

Roberta Warnken advised the Council that the Forms Subcommittee of the Court Operations Committee is working on creating a standard vetting process. The subcommittee would like to have a point person from each committee with whom the forms can be vetted to ensure timely and complete feedback. Ms. Matthews will contact the chairs of the various committees to obtain the names of the individuals who will serve in that capacity. In response to a number of questions, Ms. Warnken noted that she will talk to the Chair of the subcommittee to determine if Orphans' Courts and Registers of Wills will be included, as well as whether there will be a comment period for others not on any of the committees.

Ms. Harris commented that there was a joint forms committee in the past, but for some reason the circuit court representatives were dropped off. A new process was started with the MDEC forms where the forms were vetted with the various groups and then to the Legal Affairs

department for review. The process proved to be inefficient. The idea of the Forms Subcommittee was to have a central entity responsible for vetting and approving forms.

Judge Wolfe noted that when new forms are put into use, the old forms continue to be used although a change to the rules or statutes precipitated the creation of a new or revised form. He asked that the Forms Subcommittee implement a policy or procedure to phase out old forms so that individuals will be required to use the most up-to-date forms. Judge Braverman commented that the onus ultimately is on the courts to enforce compliance with any rule or statutory change even if the wrong form is used. Judge Wilner stated that it may make a difference if the form is mandated or permissive because the court may not be able to reject mandated forms.

After additional discussion, it was determined that the issue be taken to the Conference of Circuit Judges and the Conference of Circuit Court Clerks for discussion regarding any policy or procedure they have in place to ensure that outdated forms are destroyed.

Chief Judge Barbera asked that the committees continue to work, even with summer on the horizon.

Action Items

- Judge Jensen will contact the seven jurisdictions that did not respond to the guardianship survey.
- Judge Kenney will talk to Judge McDonald about forming a workgroup of the Judicial Institute Board to address the attendance concerns and present recommendations regarding the same to the Council at the May 20th meeting.
- The Judicial Institute will ensure that administrative judges are notified when judges do not attend or complete educational programs for which they have been approved and received administrative leave.
- Ms. Warnken will talk to the chair of the Forms Subcommittee about whether the Orphans' Courts and Registers of Wills be included, as well as whether others will be permitted to comment on forms.
- Ms. Matthews will request the names of points of contact from the Judicial Council committees for the Forms Subcommittee.

There being no further business, the meeting adjourned at 11:10 a.m. The next meeting is scheduled for May 20, 2015, beginning 9:30 a.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Faye Matthews", with a stylized flourish at the end.

Faye Matthews