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Court of Appeals

Hon. Sheila R. Tillerson Adams
Circuit Court for Prince George's
County

Hon. Nathan Braverman
Baltimore City District Court

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Hon. John W. Debelius, III, Chair
Conference of Circuit Judges

Hon. Thomas C. Groton, III
Circuit Court for Worcester County

Hon. Susan H. Hazlett
Harford County District Court

Hon. Karen A. Murphy Jensen
Circuit Court for Caroline County

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

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Chief Judge
Court of Special Appeals

Hon. Karen H. Mason
Prince George's County District Court

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

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MARYLAND JUDICIAL COUNCIL

Maryland Judicial Center
580 Taylor Avenue
Annapolis, MD 21401

MARYLAND JUDICIAL COUNCIL Minutes May 20, 2015

Judicial Council Members Present:

Hon. Mary Ellen Barbera, Chair

Hon. Sheila R. Tillerson Adams

Hon. Nathan Braverman

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. John P. Morrissey

Hon. Barbara B. Waxman

Hon. Alan M. Wilner

Hon. Eugene Wolfe

Pamela Harris

Jennifer Keiser

Carol Llewellyn-Jones

Judy Lohman

Sally W. Rankin

Hon. Wayne Robey

Roberta L. Warnken

Others Present:

Hon. Gary G. Everngam

Faye Matthews

Allen Clark

Lou Gieszl

Andrew Ginder

Gregory Hilton

Dominique Johnigan

A meeting of the Judicial Council was held Wednesday, May 20, 2015, at the Maryland State Law Library, 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 Tillerson Adams moved for approval of the minutes of the April 15, 2015 meeting. Following a second by Judge Debelius, the motion passed.

1. Fiscal Year 2014 Statewide Case Assessment

Andrew Ginder and Dominique Johnigan, Court Operations

Department, Administrative Office of the Courts, presented the results of the Fiscal Year 2014 Statewide Case Assessment. Mr. Ginder noted that the Court of Appeals met its standards during the first year of their implementation. The Court measures performance in five areas – regular docket, certified questions of law, attorney grievances, extraordinary writs, and bar admissions. The standard for each of the aforementioned is disposition within the same term the case is argued, or in the case of extraordinary writs and bar admissions, the same term in which the case is filed.

The Court of Special Appeals has seven time standards – criminal, civil, state appeals from the pretrial suppression of evidence, and two standards each for child access/guardianship/CINA/TPR and elective expedited appeals. The Court met its goal of 80 percent within nine months for criminal and civil appeals, as well as its goal for state appeals from pretrial suppression of evidence. With respect to Standard 1 for child access/guardianship/CINA/TPR cases, which is from filing to argument, the Court reported 12 percent of its cases were processed within the established standard. The percent within standard increased to 93 percent for Standard 2, which is from argument or submission on brief to disposition. There were no elective expedited appeals filed during the reporting period.

In the circuit courts, performance against time standards improved in two areas. TPR cases increased from 64 percent of the cases processed within standard in Fiscal Year 2013, to 72 percent in Fiscal Year 2014. Likewise, CINA Shelter performance against the standard increased from 68 percent to 74 percent over the two-year period. In both areas, the percent within standard represents a five-year high. Mr. Ginder commented that the larger jurisdictions tend to perform better in both of these areas. Slight decreases were noted in the remaining case types.

During the assessment period, there was one change made to the circuit court standards. The two-year family law standard was applied only to limited divorces, while the one-year standard was applied to all other family law cases.

In presenting the results of the sub-analysis performed on foreclosure cases, Mr. Ginder stated that the Judicial Council excluded foreclosure cases from the case assessment during Fiscal Years 2011 and 2012 because of the statewide issues surrounding the cases, many of which were outside the court's control. In Fiscal Year 2013, the cases were once again included in the assessment with the Judicial Council directing that a separate analysis be conducted to determine their impact on overall civil case performance. A slight decrease was noted in the percentage of civil cases closed within standard over the last two years. Nearly half of the jurisdictions reported a decrease in performance in foreclosure cases. Smaller and medium-sized jurisdictions seem to struggle more with foreclosure cases. In order to more fully explore overall performance, Mr. Ginder will analyze the nexus between DCM practices and performance against the standard. Mr. Ginder commented that the major bottleneck in foreclosure cases tend to be filing of the final loss mitigation affidavit and mediation. If a status conference is being held and it is determined that the parties are trying to reach a settlement, the judge generally will not close the case. Judge Debelius noted that courts are encouraged to carefully scrutinize documents to ensure everything is in order. Further, the parties are given additional time to correct where necessary. Judge Debelius added that it is a social policy issue and courts are somewhat reluctant to close these cases.

Ms. Johnigan reported that the greatest improvement in performance in the District Court

occurred in traffic 21-902 (DWI) cases, which increased from 72 percent within standard in Fiscal Year 2013, to 76 percent within standard in Fiscal Year 2014. Slight increases were noted in criminal and civil small claims case performance, while slight decreases were noted in the remaining case types. There were no changes to the District Court case time standards for Fiscal Year 2014.

Judge Debelius discussed the following recommended changes to the standards from the Case Management Subcommittee.

- *Recommend that all cases filed prior to the beginning of the trial courts Caseflow Assessment process in 2001 be excluded from future assessments of case processing performance.*
- *Recommend that foreclosure cases continue to be included in the Caseflow Assessment, with Civil General case processing performance measured in the following manners: (1) Overall Civil General performance; (2) Civil General non-foreclosure cases performance, and (3) Civil General foreclosure performance. Breaking the foreclosure cases out will highlight the extent to which civil cases are being affected.*
- *Recommend the creation of a new case time suspension for periods of service delay in District Court Civil Large and Civil Small cases with multiple defendants. The suspension would be in effect from the point of a disposition in a multiple defendant civil case until service has been achieved on the next defendant.* Rule 2-507, which applies to the circuit courts, has a longer time period for indicating dismissal than 3-507, which applies to the District Court. Chief Judge Morrissey stated that the District Administrative Judges discussed possibly modifying Rule 3-507 to comport with Rule 2-507, but determined that doing so would be counter to the Court's core mission.

Judge Debelius moved for approval of the aforementioned recommended changes to the case time standards. Following a second by Judge Tillerson Adams, the motion passed.

Judge Tillerson Adams submitted for consideration another recommendation that would provide a suspension in case aging for an unforeseen state of emergency that results in the court being closed. Judge Debelius commented that the Case Management Subcommittee discussed the recommendation and, while appreciating the circumstances, decided not to forward the recommendation to the Council. The subcommittee expressed concerns about the level of complexity involved in programming the case management systems to track the myriad of things that may fall outside of the norm. Further, the time standards apply to only 98 percent of the cases, which was done to account for outliers that would fall into the remaining 2 percent. Judge Ross added that the subcommittee had discussed the issue in the past and reached the same conclusion, adding that it is very difficult to figure out how to define emergency from a case management perspective.

Discussion ensued about making the suspension contingent on a certain number of days the court is affected by the emergency or the type of emergency. There were a number of questions raised, such as whether the suspension would apply to all cases or just the cases scheduled during the period of the emergency, as well as whether an asterisk with an explanatory note addressing the emergency and its impact on case processing time would suffice.

Judge Tillerson Adams moved that the Case Management Subcommittee consider whether

there should be a suspension for emergency situations and, if so, what parameters would apply. Further, the Case Management Committee should discuss under what circumstances an asterisk with an explanatory note regarding the emergency's impact on case processing time should be used in the case assessment report. Following a second by Chief Judge Morrissey, the motion passed.

2. Fiscal Year 2016 Budget

Allen Clark, Director of Budget and Finance, briefed the Council on the Fiscal Year 2016 budget. The Judiciary's \$523.9 million budget appropriation represents a 4.7 percent increase over the Fiscal Year 2015 appropriation. It includes funding for 184 positions, including 104 contractual conversions, three contractual positions, and 77 regular positions. While merit increases for employees were not approved, employees will retain the cost of living increases that were granted in January of this year.

3. Alternative Dispute Resolution Committee Update

Judge Ross updated on the work of the Alternative Dispute Resolution Committee. He commented on the benefit of having all entities and programs that involve alternative dispute resolution under one umbrella. Judge Ross added that the committee has a diverse membership that includes both circuit and district court judges. It has met twice and will continue to meet on a quarterly basis.

The District Court ADR Subcommittee currently has approximately seven members, with the possibility of expanding. The subcommittee discussed the work of the former committee and noted that one of its goals involves using ADR research to enhance the work that currently is being done. There are new programs/initiatives either operational or in the planning stages in areas including landlord and tenant, peace orders, using ADR in self-help programs, an ADR bench book, and raising citizens' awareness of and participation in ADR. Judge Ross also discussed the Alternative Dispute Resolution Evaluation Support System (ADRESS), which is used to evaluate users' perception of the ADR process, as well as its value. The information is gathered through surveys that are scanned into ADRESS.

Other initiatives underway include the District Court's review of referral language for same-day mediation, high conflict training conducted by MACRO for the Anne Arundel County Circuit Court bench, and consideration of recommendations for the 2016 Public Policy Conflict Resolution Fellows Program. Judge Ross commented on the multi-year cutting edge ADR landscape study that is nearing completion, noting that there were no judges on the committee that oversaw the study. He suggested that the Alternative Dispute Resolution Committee form a subcommittee to review research projects and grants. Judge Ross emphasized that while judges should not control the way research is conducted, they should be aware of what is happening. There were no concerns expressed regarding the creation of the subcommittee and, as such, Judge Ross will proceed with formation of the group.

Chief Judge Morrissey commented that research from Maryland is quantifying that ADR is worth the money. The research indicates that individuals who resolve matters through ADR are less likely to return to the court for enforcement. He added that Maryland is doing state-of-the-art work.

Ms. Harris noted that Maryland was given the research grant from the State Justice Institute because of the Judiciary's national reputation in this area.

Judge Ross concluded his report by stating that the goals for the upcoming year include establishing uniformity in practice, exploring and implementing innovations through research, reviewing rules that involve ADR, and reviewing variations in requirements for getting on the various mediators' lists in the different jurisdictions.

4. Court Technology Committee Update

Judge Everngam briefed the Council on the work of the Court Technology Committee, noting that the committee meets monthly. The Executive Steering Subcommittee addresses policy-related matters and has been heavily involved in the planned implementation of the criminal/traffic modules of MDEC, as well its expansion to the Upper Eastern Shore. Meetings are scheduled for two days in early June to bring the leadership and others from the Eastern Shore together to provide an overview on MDEC, as well as to answer questions and explain what the courts should expect leading up to and during go-live.

The CaseSearch/Data Request Subcommittee has considered two requests for data. The Records Retention Workgroup has joined with the comparable workgroup from the Court Operations Committee to discuss how electronic retention of records differs from paper retention, as well as the transfer of records to the State Archives. The Video Conference Workgroup provided support to the Circuit Court for Carroll County regarding conducting a Frye/Reed hearing via Skype. The workgroup also is working with the Specialty Courts and Dockets Committee on a request from the Department of Health and Mental Hygiene on conducting hearings using video conferencing. The subcommittee is considering issues related to the use of video conferencing testimony, as well as evaluating cloud-based video conferencing.

Chief Judge Morrissey stated that he has been working with the AOC and the Baltimore City District Court on how to maximize the use of video conferencing to process individuals in the event of an emergency. The plan will be shared with the Council for its utility elsewhere.

5. Education Committee Update

Judge Hazlett provided an update on the work of the Education Committee. She discussed a draft policy she developed with Judge Cox to outline the protocol for ensuring coordination of all education and training programs with the Education Committee. She met with AOC responsible for the majority of the Judiciary-sponsored training programs to discuss her concerns and to vet the draft policy. In addition, the draft policy will be sent to the chairs of the Judicial Council committees for review and comment. Judge Hazlett will compile the comments and discuss them with the Education Committee at its upcoming meeting. She then will present the proposed policy to the Judicial Council at its June meeting for approval.

A related matter that will be discussed with the Education Committee is the line of demarcation with respect to the types of training the Judiciary should sponsor and/or fund, as well as what should come to the committee for review and comment.

Chief Judge Barbera emphasized to the Council the importance of sharing their comments regarding the policy with Judge Hazlett, noting that there are a plethora of programs for which the Judiciary historically has been asked to take the lead, some of which could be problematic. She asked the Council to give some thought to the core mission of the Judiciary and the level of involvement the Judiciary should have with respect to training those who appear before the court.

Judge Hazlett commented on the need for more communication and coordination among the committee chairs. She suggested the need for a conduit for the exchange of information to avoid duplication of efforts.

Judge Hazlett noted that there is a sentiment that training for magistrates should come under the Judicial Institute and that the programs currently offered should be open to them as well. The Education Committee will discuss this further and Judge Hazlett will brief the Council on its discussion at its June meeting.

6. Judicial Institute Attendance Policy

Judge Kenney reported that a survey was conducted of the members of Judicial Institute Board regarding the draft attendance policy. While there was consensus around the need for an attendance policy, the issue raised was what happens if a judge does not attend a program for which he or she has been approved and granted administrative leave. The Board suggested that further study is needed to gather statistics, perhaps through a workgroup, on the extent of the problem and to determine the appropriate approach. There also were some logistical concerns about what to do if there is no administrative judge to whom to report problems. Judge Kenney noted that the Board suggested that regardless of the final policy, it should not be effective until Calendar Year 2016.

Judge Hazlett stated that the Education Committee met and submitted a number of recommendations to the Judicial Institute Board. The committee members agreed that referral to Judicial Disabilities is not warranted. Additionally, the committee recommended that attendance data be captured, either through paper sign-in or through swipe card technology, and that it be communicated to the administrative judge with any sanction left to his or her discretion. With respect to leave, the committee recommended that if a judge does not attend a program, the administrative leave should automatically be changed to annual or personal leave.

Discussion ensued around the need for judges to sign in and out of the programs, as well as applying a global approach to what may be the violations of a few. Other comments centered around accountability and consequences. It was suggested that once the final policy is approved by the Council and Chief Judge Barbera that a copy be provided to all judges. At the same time, judges should be made aware of the consequences for violating the policy and the intent to enforce the same.

Judge Kenney stated that the Judicial Institute Board is meeting in June and may have statistics to review. The Board will discuss how best to address the matter and report back to the Council.

Action Items

- The Case Management Subcommittee will consider the addition of a suspension in case aging for emergency situations and the parameters thereof. The subcommittee also will discuss the circumstances under which an asterisk with an explanatory note should be used in the case assessment report.
- Chief Judge Morrissey and the AOC will continue to develop a plan using video conferencing to maximize case processing in emergency situations. The plan will be shared with the Council.
- Judge Hazlett will provide the committee chairs with copies of the draft policy regarding educational and training protocols. Comments are due by June 8 for consideration by the Education Committee. Judge Hazlett will present the proposed policy at the June 24 Council meeting.
- Judge Hazlett will brief the Council at its June 24 meeting about the Education Committee's discussion regarding including magistrates in Judicial Institute training programs.
- Judge Kenney will take the Judicial Institute Attendance Policy to the Judicial Institute Board's June meeting for further discussion and recommendation.

There being no further business, the meeting adjourned at 12:03 p.m. The next meeting is scheduled for June 24, 2015, beginning 9:30 a.m.

Respectfully submitted,

Faye Matthews

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