



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

Hon. Nathan Braverman
Baltimore City District Court

Hon. Kathleen Gallogly Cox, Vice-Chair
Conference of Circuit Judges

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

Hon. Laura S. Kiessling
Circuit Court for Anne
Arundel County

Hon. Peter B. Krauser,
Chief Judge
Court of Special Appeals

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

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

Hon. Gerald V. Purnell
Worcester County District Court

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

Hon. Eugene Wolfe
Montgomery County District Court

Hon. Susan Braniecki, Vice-Chair
Conference of Circuit Court Clerks

Pamela Harris
State Court Administrator

Jennifer Keiser, Chair
Conference of Court Administrators

Carol Llewellyn-Jones,
Administrative Clerk
District Court

**Robert Prender, Administrative
Clerk**
District Court

Hon. Wayne A. Robey, Chair
Conference of Circuit Court Clerks

Timothy H. Sheridan,
Vice-Chair
Conference of Circuit Court
Administrators

Roberta Warnken, Chief Clerk
District Court

Faye Matthews, Secretary
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MARYLAND JUDICIAL COUNCIL

MARYLAND JUDICIAL CENTER

580 Taylor Ave
Annapolis, MD 21401

Meeting Minutes

May 18, 2016

Judicial Council Members Present:

Hon. Mary Ellen Barbera, Chair
Hon. Nathan Braverman
Hon. Kathleen Gallogly Cox
Hon. John W. Debelius III
Hon. Susan H. Hazlett
Hon. James A. Kenney III
Hon. Laura S. Kiessling
Hon. Karen H. Mason
Hon. John P. Morrissey

Hon. Alan Wilner
Hon. Eugene Wolfe
Hon. Susan R. Braniecki
Carol Llewellyn-Jones
Jennifer Keiser
Robert Prender
Timothy Sheridan
Roberta L. Warnken

Others Present:

Hon. Patrick L. Woodward
Hon. E. Gregory Wells
Hon. Gary G. Everngam
Hon. Karen Murphy Jensen (Ret.)
Faye Matthews
Luke Dillon
Lou Gieszl
Andrew Ginder
Gregory Hilton
Melinda Jensen
Dominique Johnigan

Stephane Latour
Connie Kratovil Lavelle
Theresa Nudell
Eliana Pangelinan
Jonathan Rosenthal
Suzanne Schneider
Nisa Subasinghe
Jamie Walter
Lynne Wheeler
Alan Wiener

A meeting of the Judicial Council was held Wednesday, May 18, 2016, 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 Braverman moved for approval of the minutes of the April 20, 2016 meeting, followed by a second to the motion by Judge Hazlett. The motion passed.

1. Fiscal Year 2015 Caseflow Assessment

Judge Debelius, Dominique Johnigan, and Andrew Ginder presented the results of the Fiscal Year 2015 Case Assessment. Mr. Ginder provided an overview of the methodology and noted that the trial courts in Anne Arundel County were exempted from the Assessment because of the MDEC implementation.

In presenting the results of the analysis of the performance of the Court of Appeals, Ms. Johnigan stated that the Court reached its goal of disposing 100 percent of the cases argued during the term for the second consecutive year. With respect to the Court of Special Appeals, Mr. Ginder stated that the Court met the standard of disposing 80 percent of its cases within nine months in the aggregate; however, and although not separately delineated in the standard, the percent within standard for reported opinions was slightly below standard at 79 percent. The Court also has additional case time standards for certain case types, including Child Access/Guardianship/CINA/TPR, State Appeals from the pretrial suppression of evidence, and Elective Expedited Appeals cases. The Court met the standard of 100 percent for cases involving state appeals from the pretrial suppression of evidence. In the child access/guardianship/CINA/TPR two additional standards apply; (1) time from filing to argument, and (2) the time from argument to disposition. The Court disposed 97 percent of its cases within the argument to disposition standard, just shy of the goal of 100 percent. In the filing to argument standard, the Court disposed nine percent of its cases within standard. Mr. Ginder noted that a number of factors that impact the Court's ability to reach the prescribed goal are outside the Court's control; however, the Court continues to explore ways to improve in that area.

Mr. Ginder then discussed the assessment results from the circuit courts, noting that performance against the time standards improved in a number of cases types over the last two fiscal years, with the greatest improvement (two percent) occurring in civil general and family law cases. A one percent improvement was noted in CINA Non-Shelter cases during the same time period. Decreases in the percentage of cases disposed within standard were noted in a number of casetypes, including TPR (six percent), Criminal (four percent), CINA Shelter (three percent) and Limited Divorce (two percent). Statewide, none of the standards were met; however, a number of jurisdictions either met or exceeded the case time standard goals in each of the last five years. Mr. Ginder noted that the primary factor impacting performance in TPR cases is effecting service in a timely manner. In a separate analysis done on foreclosure cases, it was determined that performance has remained relatively consistent. Additionally, the analysis revealed that foreclosure cases on average take about 100 days longer to close than other civil cases.

Ms. Johnigan reported that while the standard was not met in any of the District Court case types, performance against the case time standards improved in four areas – Civil Large (three percent), Criminal (two percent), Traffic Payable (two percent), and Civil Small (two percent). There was a one percent decline in performance in Traffic Must Appear cases. Ms. Johnigan noted that the smaller jurisdictions tend to meet the standard more often than the medium and larger jurisdictions.

Judge Debelius, on behalf of the Case Management Subcommittee, presented the following recommended changes to the case time standards.

- Foreclosure Cases – Recommend that foreclosure cases be subject to a two-year (24-month) case time standard. All other civil cases will be subject to the existing 18-month case time standard.

Judge Debelius noted that over the last several years, there has been discussion regarding whether or not foreclosure cases should be included in the annual assessment. He stated that one of the discussion points for the Case Management Subcommittee has been the use of Maryland Rule 2-507 to effect movement of the cases, but doing so potentially raises social policy questions with people being removed from their homes. Timothy Sheridan commented that there is a business consideration to moving the cases along, including vacant houses having a negative impact on property values. Judge Debelius stated that the subcommittee discussed each of the aforementioned considerations and agreed to recommend the 24-month case time standard for foreclosure cases.

Judge Kenney moved to approve the recommended 24-month standard. Following a second by Judge Hazlett, the motion passed.

- Civil Cases – Recommend that the Rules Committee consider potential modification of Maryland Rule 3-507, in light of the Rule's provisions related to the District Court civil case time standards and in comparison with the provisions of Maryland Rule 2-507.

Judge Debelius noted that the standards for civil cases in the District Court are 120 days and 250 days and civil small and civil large cases, respectively. The Rule does not permit the Court to take action for dismissal for lack of jurisdiction or lack of prosecution until one year has passed. When the case becomes eligible for dismissal, it is already out of standard. Chief Judge Morrissey commented that while he does not oppose referring the matter to the Rules Committee, he doesn't think Maryland Rule 3-507 could ever mirror Maryland Rule 2-507 because of the number of self-represented litigants in the District Court who may not be aware of the service requirement and therefore not adhere to the shorter time period.

Chief Judge Morrissey moved to approve the recommendation that the Rules Committee review Maryland Rule 3-507. Judge Debelius seconded the motion. Judge Wolfe offered a friendly amendment that the Rules Committee be asked to consider reducing the time from one year to six months. The amendment was accepted and the motion passed.

- Traffic Payable Cases – Recommend that the case time stop for all traffic payable cases be the date of disposition, rather than sentencing.

Chief Judge Morrissey explained that often the judge will impose some type of sanction to assess the defendant before imposing a sentence. There is no attorney in the cases to stet them, so judges use other methods of leniency. The case time standard has sentencing as the stop, which penalizes the court. Further, the case stop in criminal cases is disposition.

Chief Judge Morrissey moved to approve the recommendation to change the case stop from sentencing to disposition. Following a second by Judge Mason, the motion passed.

2. Workgroup on the State of the Court Reports

Judge Wilner presented the report and recommendations of the Workgroup on the State of the Court Reports. He stated that the workgroup was tasked with reviewing the reports submitted by each District and Circuit Court and identifying any discernible trends with respect to concerns and issues. The workgroup was charged with making recommendations regarding any trends, as well as any other critical issues deemed important. In addition, the workgroup was asked to formulate recommendations regarding the future of the trial courts over the next five years, with a focus on how to optimize efficiency and effectiveness of operations and administration.

Judge Wilner stated that the most common issues were adequacy of facilities and security. He added that in many facilities, there is no room for expansion and that staff and customers are exposed to deplorable conditions that adversely impact the administration of justice and that raises health and safety concerns for employees and visitors. He noted that Chief Judge Morrissey is aware of the issues pertaining to the District Court facilities and is pursuing avenues to address the problems. Judge Wilner commented that the problems in the Circuit Courts are complicated by the fact that the facilities are owned and maintained by the county or city. He added that courts are not county agencies, but rather part of State government and cannot compete with county priorities, such as schools, roads, libraries, etc., for funding.

Judge Wilner stated that the issues in the reports are not new and have been raised by prior workgroups and commissions in eight different studies. In seven of those studies, it was noted that the only rational conclusion is consolidation and a fully state-funded judiciary. He added that the workgroup recognizes the political realities of moving in that direction and that whatever is decided will have to be done incrementally.

The following recommendations were presented for consideration:

- Recommendation No. 1 – The Courthouse Equity Subcommittee of the Court Operations Committee consider whether to recommend a statutory requirement of a major State contribution to all new courthouse construction. Further, there should be an immediate focus on Baltimore City (Circuit and District Court) and Howard County and to assure that any replacement of the Queen Anne’s courthouse will be adequate. Any American with Disabilities Act non-compliance issues need to be addressed. Finally, the Judiciary should create a task force to develop standards for courthouse facilities.
- Recommendation No. 2. – The Judiciary should deal more comprehensively with security issues:
 - Require every court to conduct an annual security survey in accordance with the State of the Courts Security Recommendations developed by the Administrative Office of the Courts.
 - Prisoner holding areas and transport routes in the courthouses should be moved away from judicial chambers, employees’ offices, and public areas.

- To the extent practicable, create secure parking for judges and other court personnel, to include fencing, gates, and other privacy barriers to protect judges and personnel from open areas that lead directly into the courthouse.
- Install high-quality security cameras in and on buildings and require that they be monitored by court security personnel.
- Install protective glass barriers at clerk counters and to the extent practicable, bullet-proof barriers around entry points to courthouses.
- Recommendation No. 3 – Provide a pathway for transferring all judicial employees in the Circuit Courts to State service.
 - The State Court Administrator should adopt enforceable policies regarding rights and protections afforded by State or Federal law that will apply to all employees who work in the Circuit or District Courts, whatever their basic employment status may be. Those policies should include informing the employees about, and providing for the enforcement of rights and conditions regarding:
 - Nepotism – the employment of relatives
 - Whistleblower protection
 - Rights under the American with Disabilities Act
 - Rights under Federal or State civil rights and anti-discrimination laws
 - The right to be free from sexual harassment
 - Disciplinary actions
 - Rules regarding substance abuse, other employment, and standards of conduct
 - Applicable grievance procedures for filing complaints or defending against disciplinary actions
 - Transition grant-funded positions that are no longer part of pilot projects and that have been evaluated and determined to align with the Judiciary’s mission and vision to regular positions over a five-year period.
 - Transition locally-funded positions to the State Judiciary budget over a five-year period. (Note: Judge Debelius and Judge Wolfe dissented from this recommendation because of the variability between the local versus State salaries and the potentially adverse impact to jurisdictions with a higher cost of living.)
- Recommendation No. 4. – In accordance with the recommendation of the Conference of Circuit Judges, which is supported by the Courthouse Equity Subcommittee and the Court Operations Committee, set the salary of a magistrate to 90 percent of a District Court judge’s salary.
- Recommendation No. 5. – Provide the Circuit Courts with access to State judiciary contracts that may result in savings in the purchase of goods and services.
 - Provide the Circuit Courts with information necessary to “piggy back” on State Judiciary contracts and ensure that State Judiciary contracts, to the extent possible, contain the necessary language to permit the Circuit Courts, when financially beneficial to them to do so.
 - Review all AOC-issued grants to determine if letting a State-wide Judiciary contract is more fiscally sound than awarding individual grants. It is recommended that this begin with the baseline services outlined in the Programs, Services, and Access Report prepared by the Courthouse Equity Subcommittee.
- Recommendation No. 6 – The Judicial Council, working with the Conference of Circuit

Judges, develop templates for more uniform forms, case management plans, jury plans, operations and procedures in the clerks' offices, and case assignment policies and procedures so that (1) all of the courts are adhering to similar sets of best practices, and (2) unnecessary inconsistencies are eliminated.

- Recommendation No. 7 – In developing a plan for the implementation of any of the recommendations that may require additional State funding, the Judiciary should comply as much as possible with the conditions noted by DLS in its evaluation of the 1999 Circuit Courts Action Plan, offering not only clear and accurate projections of cost and a fiscally reasonable plan to phase in any significant increase, but also an honest and reliable estimate of how each recommended action will, in fact, improve the ability of the courts to carry out their mission more effectively and efficiently.

Judge Debelius commended Judge Wilner on the extraordinary job he did spearheading the workgroup. He indicated that he supports all of the recommendations with the exception of transitioning locally-funded employees to State-funded positions. Judge Debelius noted that the cost-of-living varies from county to county and lower salaries make it difficult to attract and retain employees in key positions. He added that the scope of the jobs vary from small to large jurisdictions. Judge Debelius further stated that while he understands the issues with counties not adequately funding courts, the intent is to raise up courts that are not properly supported and not to pull down courts that are. Judge Debelius asked that other creative solutions to the existing problems be explored and the recommendation regarding transition of locally-funded employees not be adopted.

Judge Wilner noted that similar issues were raised when social services and tax assessor positions were transitioned from local to State government. If the recommendation is adopted, the Judiciary Human Resources department would conduct a thorough analysis of the positions to determine the appropriate salaries.

With respect to the recommendation regarding setting the magistrates' salary to 90 percent of a District Court judge's salary, Judge Wells noted that if a magistrate's current earning level is above the recommended salary level, he or she would be grandfathered in at his or her existing salary. He added that the Courthouse Equity Subcommittee had a rich discussion and considered other alternatives, such as implementing a sliding scale. The discussion then focused on judges and others who are brought in at the same level to do similar jobs. The ultimate recommendation was 90 percent of a District Court judge's salary.

Chief Judge Barbera stated that she would not call for a motion to adopt the report and recommendations in their entirety because the Council needed additional time to carefully read them and to consider all of the issues. She noted that a lot of hard work went into drafting the report and formulating the recommendations over a short period of time and thanked everyone on the workgroup for their hard work. Judge Barbera asked the Council to be ready to discuss the report and recommendations at the next meeting. She then asked for a motion on the recommendation regarding magistrate salaries.

Judge Cox moved to adopt the recommendation to set magistrates' salary at 90 percent of a District Court judge's salary with those magistrates being grandfathered in at their current

salary if it exceeds that rate. Following a second by Judge Hazlett, the motion passed.

Judge Cox stated that the issue of magistrates' leave was raised during a meeting of the Domestic Law Committee, specifically that if the magistrate is new to State service, he or she only gets two weeks of leave for five years. Judge Debelius added that the concern was discussed by the Conference of Circuit Judges. He noted that the courts are looking to attract successful practitioners who are at the top of their career. The Conference supports a recommendation for magistrates to earn leave at the rate of 90 percent of what a judge earns.

3. Court Technology Committee

Theresa Nudell, who manages the Office 365 effort for JIS, briefed the Council on the software suite. She stated that Office 365 is a Microsoft suite of software and subscription services that takes traditional computing (internal hardware storage) and moves it outside to the "cloud" to be managed offsite. Moving to this technology is a cost savings to the Judiciary in a number of ways, including reduced JIS administration costs and elimination of some VPN accounts. It also provides for larger mailbox quota sizes for users, as well as unlimited archive mailboxes. In addition, Office 365 permits mobile access to productivity tools and has a home use program that allows the user to install the same Microsoft products on up to 10 devices (at home or at work) at no additional cost.

JIS, along with employees in the Judicial College and some members of the Court Technology Committee have piloted Office 365. The pilot will be expanded to AOC. JIS is ready to move forward with the next step, which is to move Outlook to the cloud. The move will be transparent to the user. The Judicial College is developing training on operating within the cloud, which will include SharePoint. It is expected that Office 365 will be rolled out to the entire Judiciary within six months.

Judge Debelius raised concerns with having permanent email history. He asked if there was any plan for deletion of email after a certain time period. Judge Everngam stated that retention policies are being discussed, but there is nothing in place at this time. Chief Judge Barbera inquired about the level of security within the cloud to which Judge Everngam stated that security is very stringent and is subject to federal audits. In addition, JIS does penetration testing to determine the strength of the security system. To date, there have not been any security issues. Mr. Sheridan commented that rolling this out Judiciary-wide will create another issue for individuals on county networks. Chief Judge Morrissey stated that there has been an effort to have a unified Judiciary network and that discussions are continuing.

Judge Everngam informed the Council that JIS is transitioning to a cloud-based system for reporting issues to the Help Desk called ServiceNow. Judiciary users will be able to submit issues directly into the system, which has more robust reporting capabilities. Users will be able to provide additional information, including screen shots, regarding their issues, as well as track the status of issue resolution. Users will be able to report issues in three ways – the ServiceNow portal, email, or calling the Help Desk.

4. Guardianship Workgroup Report and Recommendations

Judge Woodward, Judge Cox, and Judge Jensen presented the revised report and recommendations of the Guardianship Workgroup. Judge Jensen commented that the workgroup considered feedback from the Council and Conference of Circuit Judges in making the revisions. The principal areas on which the workgroup focused its revisions on training of attorneys, applicability to the Orphans' Court, and bonds. Judge Jensen noted that nothing in the recommendations excludes guardianship of minors.

Judge Woodward discussed the recommendations that had been revised since initially presented to the Council.

- Recommendation No. 4 – There was concern over the appointment of guardians who might be disqualified under the statute. The recommendation was revised to provide guidance to the courts regarding factors to consider for “good cause.”
- Recommendation No. 8 – There was concern about disqualifying convictions when appointing guardians of property. The recommendation was revised to provide guidance with respect to factors courts should consider when appointing guardians.
- Recommendation No. 11 – There was concern expressed regarding whether to require a bond. The recommendation was revised to list all factors the court should consider when determining if a bond should be posted. Judge Woodward stated that the court should not necessarily take the default posture and that consideration should be given to Maryland Rule 10-702 to protect the individual. He added that Maryland Rule 10-702 leaves the requirement of a bond to the court's discretion. Further, the bond can be changed. The workgroup's sentiment is that monitoring and education will dovetail to provide the necessary protection.
- Recommendation No. 12 – There was a desire to more aptly describe the information that is to be departed. It was determined that describing it as an educational program is a better description than training. The idea is to give information and resources.
- Recommendation No. 15 – There was concern about the Judiciary training attorneys. The workgroup agreed that the Judiciary should not facilitate the training, but should be involved in some manner to ensure the training programs meet the Judiciary's standards for attorneys appointed to serve as guardians. To that end, the revisions provide for collaboration between the Judiciary and the respective bar association or other organization to develop training. Judge Woodward noted that the guardians are the Judiciary's agents and it is the Judiciary's responsibility to provide educational programs for them, although not for the attorneys.
- Recommendation No. 16 – The revisions address the development, by the Judiciary, of an online pre-appointment orientation and informational program. Judge Woodward added that the Administrative Office of the Courts provided an Access to Justice grant to the Circuit Court for Montgomery County to develop a prototype of an online informational video. It is hoped that the video can be used statewide.
- Recommendations Nos. 17 and 19 – The revisions to the two recommendations provide for the Judiciary to collaborate with the bar associations and other organizations to develop the training programs.
- Recommendation No. 20 – The revisions reiterate that the Judiciary will host a guardianship webpage to provide resources to guardians, not attorneys.

- Recommendation No. 22 – The revisions provide for dedicated guardianship staff in each jurisdiction that will be responsible for providing educational programs to guardians.
- Recommendation No. 25 – This is a new recommendation that provides for the utilization of mediation and other forms of ADR in contested guardianship cases.

Chief Judge Barbera inquired as to whether there has been any discussion with the Education Committee regarding the video being produced by Montgomery County. Judge Cox noted that the script had been circulated and that the final product will go to the Education Committee once the content/substance has been approved. The Education Committee had not seen it as of the Council's meeting.

Chief Judge Barbera asked if the intent of the collaboration is for the Judiciary to develop the standards, and then have the bar associations use the standards to develop and implement the educational programs to which Judge Jensen replied that it is the intent. She added that modules were already developed in Baltimore City and Howard and Montgomery Counties. Chief Judge Barbera also asked if the standards are aspirational or certified. Judge Cox responded that it is a policy question that might best be addressed by the Rules Committee, although one concern is the lengthy rules process as there is a sense of urgency around the issue.

Chief Judge Barbera expressed her appreciation for all of the hard work that went into the report and recommendations. Mr. Robey thanked the workgroup from his perspective as the trust clerk.

Judge Braverman moved for approval of the revised report and recommendations of the Guardianship Workgroup. Following a second by Mr. Robey, the motion passed.

9. For the Good of the Order

Judge Mason commented on judicial elections, noting that it is not the best way to appoint judges. She stated that the integrity of the bench has to be protected. Judge Kiessling noted that Judge Sheila Adams raised the issue during the last meeting of the Conference of Circuit Judges, voicing concern that candidates who oppose sitting judges are not vetted in the same manner as judges who are subject to the judicial nominating process. Judge Adams proposed more stringent criteria for candidates for circuit court judgeships, adding that doing so would require a constitutional amendment. Judge Braverman stated that Maryland is losing experienced circuit court judges who do not want to go through the election process. Chief Judge Barbera agreed that it is an issue of great concern. Judge Debelius expressed his disappointment with the failure of the legislature concerning contested judicial elections. He noted that the Judiciary needs to make sure there is a clear understanding that the office of judge is not a political office. He added that the circuit court is the only level of court with contested elections.

Judge Debelius informed the Council that he received a letter from the Department of Health and Mental Hygiene indicating that Clifton T. Perkins Hospital Center and Springfield Hospital Center were out of bed space and will not be able to admit anyone until someone is released. He added that the courts are experiencing backlogs and that individuals are being kept in restraints with guards at Shadygrove Adventist Hospital, which is much more expensive. There is a crisis in the local jails which are detaining individuals who are mentally ill and

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dangerous because of the lack of beds in the institutions designed to accommodate them.

10. Resolution

Chief Judge Barbera acknowledged Judge Jensen for her invaluable service to the Council and to the Judiciary as a whole on the occasion of her retirement.

Action Items

- Council members should review the report and recommendations of the State of the Court Reports Workgroup and be prepared to discuss them at the next meeting.

There being no further business, the meeting adjourned at 12:09 p.m. The next meeting is scheduled for July 20, 2016, beginning 9:30 a.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Faye Matthews', with a long horizontal flourish extending to the right.

Faye Matthews