

MARYLAND JUDICIAL COUNCIL

Minutes

January 26, 2022

Judicial Council Members Present:

Hon. Joseph M. Getty, Chair

Hon. Keith Baynes

Hon. Pamila J. Brown

Hon. Audrey J.S. Carrion

Hon. Karen Holt Chesser

Hon. Angela M. Eaves

Hon. Matthew J. Fader

Hon. Jeffrey Getty

Hon. James Kenney, III

Hon. Donine Carrington Martin

Hon. John P. McKenna

Hon. John P. Morrissey

Hon. Bonnie G. Schneider

Hon. Alan M. Wilner

Hon. Kathleen Duvall

Markisha Gross

Kristin Grossnickle

Pamela Harris

Hon. Kathy Smith

Lara Stone

Roberta L. Warnken

Others Present:

Hon. Kathleen Cox

Hon. Fred Hecker

Hon. Glenn L. Klavans

Hon. Dorothy Wilson

Hon. Katherine Hager

Faye Gaskin

Robert Bruchalski

Carole Burkhart

Terri Charles

Marina Fevola

Melinda Jensen

Jeffrey Luoma

Kelley O'Connor

Bradley Powers

Stacey Saunders

Suzanne Schneider

Mary Kay Smith

Bradley Tanner

Gillian Tonkin

Jamie Walter

A meeting of the Judicial Council was held Wednesday, January 26, 2022, via Zoom for Government. The meeting began at 9:30 a.m. with Chief Judge Getty advising everyone that the meeting was being live-streamed pursuant to the Open Meetings Act. He then welcomed the new members, namely Judge John McKenna, Administrative Judge for the District Court in Anne Arundel County; Clerk Kathleen Duvall, Clerk of Court for the Circuit Court for Talbot County and Vice Chair of the Conference of Circuit Court Clerks; Kristin Grossnickle, Court Administrator for the Circuit Court for Washington County and the Vice Chair of the Conference of Circuit Court Administrators; and Lara Stone, District Administrative Clerk for District 9 – Harford County.

Chief Judge Getty provided a status on the most recent administrative order issued regarding COVID and judicial operations, remarking that the order was necessitated by the impact of the Omicron variant. The Judiciary reverted to Phase 3, extending it to March 6. Chief Judge Getty stated that if the numbers continue to decline, he will issue another administrative order at the appropriate time to move to Phase 5 on March 7. Chief Judge Morrissey stated that he and Ms.

Harris are participants on regular conference call meetings with the Maryland Department of Emergency Management (formerly MEMA) that includes all the pertinent stakeholders where regular updates are provided regarding COVID. During the group's most recent meeting, it was stated that the numbers seem to have peaked in early January. He and Ms. Harris will continue to participate in the meetings and keep everyone apprised. Ms. Harris stated that the Administrative Office of the Courts and District Court Headquarters received from the Department of Health 500,000 KN95 masks for distribution to the courts and administrative staff. Another shipment of 250,000 masks is expected, which will be distributed as needed. Ms. Harris asked that the masks be provided to employees as well as courthouse visitors, as they are believed to be the best deterrent to the Omicron variant.

The Department of Health also agreed to provide 9,000 home test kits and asked if they could deliver a supply every two weeks. When the test kits are received, they will be distributed to the courts and should be made available to employees and jurors, as well as any courthouse visitors who request them. The Department has requested that the kits be available at all clerk counters and anywhere jurors assemble. Ms. Harris noted that the test kits are not intended to replace the PCR tests for unvaccinated individuals, but rather are for individuals who come into contact with someone who has COVID or who is experiencing COVID symptoms.

Chief Judge Getty remarked that this is a period of uncertainty and conditions can change at any moment. He noted that the Judiciary is proceeding as if March 7 is the date and that the courts' focus should be on preparing to return to normalcy, addressing backlogs, scheduling jury trials, etc. He added that for those reasons, and in consultation with the Judicial College, it was determined that it would not be prudent to hold the Judicial Conference in late April. As such, he instructed the Judicial College to work with the hotel to reschedule the Conference and to continue to refine the program, including a segment on experiences with returning to normal operations post-COVID. Additional information regarding the Conference is forthcoming.

Chief Judge Getty provided an update on the legislative session, noting that the Maryland General Assembly reconvened on January 12. The Judicial Council's Legislative Committee is actively tracking bills and preparing position papers as necessary. The Judiciary submitted a relatively conservative budget, increasing approximately 4.4 percent over the previous year's appropriation. The capital budget includes several District Court locations as well as planning for the new Courts of Appeal building. Regarding judicial compensation, Judge Jonathan Biran, who chairs the Judicial Compensation Committee, made a presentation to the Judicial Compensation Commission; a joint resolution regarding the same has been filed. Most of the budget hearings are scheduled for February, so additional information is forthcoming.

Judge Brown moved for approval of the minutes of the November 17, 2021 meeting. Following a second by Ms. Harris, the motion carried.

1. Reserved Case Report

Judge Glenn Klavans and Bradley Powers updated the Council on the work of the Court Operations Committee's Reserved Cases Work Group. Judge Klavans stated that the work group, chaired by Judge Kathleen Cox, was formed to review the reserved cases reporting process and to make recommendations for improvement as well as to update the instructions. The work group presented its recommendations to the Committee, the Conference of Circuit Judges, the Conference of Circuit Court Clerks, and the Conference of Circuit Court Administrators. The feedback received from those groups was incorporated into the final report and recommendations.

Mr. Powers discussed the work group's scope of work, which in addition to the aforementioned, included determining the feasibility of automating the processes and reports in MDEC. Some of the major tasks completed include updating the instructions, developing MDEC event codes and detailed reports, and finalizing changes to definitions and processes. The recommended criteria for reporting cases as reserved include reporting only those cases that are 60 days or older, reporting all case types/categories (currently only civil general and criminal matters are reported), excluding problem-solving court cases, and reporting post-disposition matters as reserved only after a hearing has been held. Mr. Powers compared the existing and proposed reporting templates, noting that the new template is for use only in MDEC. The MDEC template provides dropdown reasons based on casetype and 60 days from the date the case is placed in reserve status is auto populated. Mr. Powers stated that the events are non-docketable in MDEC and, as such, will not be displayed on Case Search. Training resources will be provided to judges and staff.

Mr. Powers demonstrated the MDEC reports, including how to access and generate them. Access to the reports is based on location and position, so judges will be able to generate their individual reports, county administrative judges will be able to generate reports for their jurisdiction, circuit administrative judges will be able to generate reports for their circuit, and Research and Analysis will be able to generate statewide reports. The work group recommended that judges in MDEC jurisdictions be required to use the MDEC event code and reports. There was some discussion during the meetings with the three conferences regarding who would be responsible for data entry in MDEC. Currently, reserved case reporting generally is handled by judicial assistants. There was consensus that the decision be left to the individual court as responsibility may vary. Mr. Powers then discussed the proposed format of the statewide report which will break the cases down by case type, age of cases, circuit, and reserve reasons. The PSI ratio will continue to be calculated.

The next steps, if the recommendations for the changes to the process and reports are approved, are to finalize the training and documentation for the MDEC process, select an implementation date, and communicate the changes to the circuit courts.

Judge Cox commented that the work product will allow for more effective tracking.

Judge Baynes stated that the recommendations were presented to the Conference of Circuit Judges and that the Conference is in support of the changes, specifically regarding the mandate for MDEC judges to utilize the new processes in MDEC.

Judge Baynes moved that the Council accept the work group's recommendation that MDEC judges be required to utilize the process and reports developed for use in MDEC. Judge Fader asked if there was an argument for MDEC judges not utilizing the system to which Mr. Powers noted that the initial concern was that most judicial assistants do not currently enter information into MDEC. They will be given access and training will be provided. Also, the Conference of Circuit Court Clerks expressed concern about judicial assistants having unfettered access to MDEC, but that concern will be addressed with rules around access roles. Chief Judge Getty inquired about how the information is transferred to MDEC if the judicial assistant enters the information on the Excel spreadsheet. Mr. Powers stated that under the current scenario, the information would not be transferred to MDEC. The proposed process and reporting structure for MDEC courts is embedded in the system, making the process more efficient. Judge Cox remarked that another concern is inconsistency in reporting in the same court if some judges utilize the MDEC process and others utilize the Excel spreadsheet.

Following the additional discussion, Judge Jeffrey Getty seconded the motion, which carried. Chief Judge Getty accepted the Council's recommendation.

Judge Eaves then moved that the Council accept the work group's recommendations regarding changes to the reserved case reporting process and reporting parameters. Following a second by Judge Carrington Martin, the motion carried. Chief Judge Getty accepted the Council's recommendation.

2. Joint Subcommittee on Post-COVID Judicial Operations

Chief Judge Fader reported on the work of the Joint Subcommittee on Post-COVID Judicial Operations, a joint group of the Major Projects Committee and the Court Technology Committee. He noted that the subcommittee was convened at the request of Chief Judge Getty and was tasked with reviewing innovations and adaptations deployed during the pandemic and recommending which should move forward post-pandemic. The subcommittee's charge did not include recommending when or how to move forward. The subcommittee's recommendations were presented to the two committees for feedback, which will be incorporated into the final report and recommendations. The final report will be presented at the next meeting of the Council. Chief Judge Fader noted that the presentation at hand was intended to be a progress update.

The subcommittee began its work in September 2021 with a review of some of the technology

innovations implemented and tools utilized to permit the Judiciary to continue operations during the pandemic. The subcommittee's first task was to gather information and determine the effectiveness of the tools. This was accomplished through an internal survey to all Judiciary personnel where questions centered around the use of technology, participation in remote trainings and meetings, etc., as well as their level of productiveness. There were approximately 1,800 responses received. An external survey was sent to various stakeholders/justice partners. Responses were received from 94 different organizations amounting to hundreds of pages. The subcommittee held listening sessions in December where information was solicited from various groups.

Some of the subcommittee's considerations included the effect the innovations had or may have had on access to justice, as well as the Judiciary's partners and stakeholders; efficiency and effectiveness of judicial operations; availability of resources; and judicial accountability. Chief Judge Fader remarked that one theme that emerged is that the Judiciary was able to provide the most critical services throughout the pandemic. Judicial Information Systems is continuing to rollout updates and tools to increase effectiveness and improve the innovations that were adopted. Another theme that has emerged is that there is broad support for continuing to make remote access available for some proceedings and to evaluate the effect on access to justice. He added that when properly used, remote proceedings have great potential and tremendous benefits. Chief Judge Fader noted as an example that utilizing remote technology for status conferences allows some parties and participants who otherwise would not be able to attend to do so. Another benefit is alleviating the need for individuals to be transported to and from the courthouse. Some of the challenges cited include issues with assessing credibility, exacerbating the digital divide, due process as it relates to confrontation, and the lack of a controlled environment. Chief Judge Fader stated that the subcommittee will be recommending the types of proceedings that may be conducive to remote proceedings, as well as those that are not.

The subcommittee is looking at the use of alternative work arrangements and the flexibility of the same. Other areas under consideration are scheduling and docket management tools implemented, especially as they relate to high volume dockets. The subcommittee discussed the use of technology for non-judicial functions such as meetings and training sessions, noting that while there were some inefficiencies, there were efficiencies gained with the use of virtual platforms.

Chief Judge Fader expressed his appreciation for the feedback and the information received, both internally and externally.

Chief Judge Getty commented that the overarching goal is to find the best of what was adopted during challenging circumstances and including the good parts in the Judiciary's future. He added that doing so may require some Rules changes. What other states are doing is being tracked as the team tries to position the courts to be in the best position for the future.

3. Committee/ Strategic Initiative Updates

- a. ***Court Technology Committee.*** Judge Fred Hecker briefed the Council on the work of the Court Technology Committee. He provided a review of technology activities that occurred during 2021, stating that there was wide spectrum of technology implemented to help advance the Judiciary's mission during the pandemic. Among the highlights were the implementation of MDEC in Montgomery County in October 2021; continuation of the security education and awareness training with a 96 percent completion rate for the entire Judiciary; implementation of a multi-factor authentication process in the summer of 2021 which authenticates the identity of Judiciary personnel who access the network outside of the Judiciary; implementation of CAPTCHA (Completely Automated Public Turing Test to Tell Computers and Humans Apart) to limit screen scraping from Case Search; initiation of an effort to improve and optimize cashiering functions for revenue not handled through MDEC, drafting an RFP to replace the current functionality; continuation of the work to modernize the current telephone systems in the Annapolis Complex by moving to a Voice over Internet Protocol (VoIP), laying the groundwork for future communication; and utilization of the AGILE methodology to update the Attorney Information System, including changes to payment processing and password processing among other improvements.

Judge Hecker provided several statistics, noting that during 2021 nearly 136,000 remote hearings and meetings were held, primarily using Zoom for Government and approximately 300 courtrooms were equipped with systems to enable remote proceedings. The Audio Streaming Workgroup was formed to examine audio streaming of court proceedings, including which should and should not be streamed, particularly those that should be confidential pursuant to Rule or statute or that contain confidential subject matter or information that is not suitable for public consumption such as problem-solving courts. The workgroup will publish its final report and recommendations in early 2022, but its work, likely, will be folded into the work of the Joint Subcommittee on Post-COVID Operations.

As the Committee plans for future activities, Judge Hecker noted that the members will continue to work with the Major Projects Committee; work to implement the recommendations of the Joint Subcommittee on Post-COVID Operations; review technical architecture updates from JIS; participate in discussions regarding implementation of online alternative dispute resolution; and explore redaction and artificial intelligence software applications that will be particularly helpful in implementing the new expungement laws.

Judge Wilner stated that when MDEC was first approved for implementation in 2014, the decision was made to put all the Rules necessary to implement MDEC in Title 20 and, as MDEC has expanded, necessary modifications have been made. As the Judiciary nears the

end of statewide rollout, MDEC-related Rules now contained in Title 20 will have to be incorporated in all the Rules. He asked that the Committee consider the Rules Committee and advise when it is determined that a new Rule or amendments may be needed. Judge Wilner added that there will be a lot of shifting of the text, so the Rules Committee will need as much opportunity as possible to seek clarification and develop an understanding.

- b. ***District Court Chief Judge's Committee.*** Chief Judge Morrissey provided an overview of the work of the District Court Chief Judge's Committee, stating that the Committee reviews and establishes policy and implements best practices for the District Court. The Committee generally meets quarterly but met more frequently during the pandemic. The members discussed the various administrative orders, received updates on Chief Judge Morrissey's regular meetings with the Department of Health and the Department of Public Safety and Correctional Services, discussed efforts to resolve MDEC issues, and the Home Detention Monitoring Program. Other topics included District Court construction projects, the Centers for Disease Control and Prevention (CDC) orders regarding landlord tenant matters, the availability of mental health beds, and the online dispute resolution traffic portal. Chief Judge Morrissey noted that the Committee was provided updates from the Justice Reinvestment Act (JRA) meetings, discussed changes to landlord tenant processes, reviewed bond forfeiture audit issues, and received regular updates from the District Court Headquarters' executive staff.

The Committee held its regular annual joint meeting with the Conference of Circuit Judges where several topics of interest to both trial courts were discussed including the Maryland Justice Passport and updates from the Department of Health. The Committee discussed discharge delays for mental health patients, bailiff issues and received updates on topics of interest such as implementation of CAPTCHA, the Attorney General's Task Force on Landlord Tenant, the opening of the Montgomery County Court Help Center, and the shooting at the Essex courthouse which led to internal security discussions on short and long-term plans.

Chief Judge Morrissey acknowledged the hard work of the judges and other District Court personnel during very challenging times.

Chief Judge Getty thanked everyone for their presentations and for the hard work of the committees, subcommittees, and work groups.

4. Resolutions

Chief Judge Getty acknowledged Judge Dorothy Wilson, Marina Fevola, Clerk Katherine Hager and Mary Kay Smith for their work on the Judicial Council as their terms came to end. He expressed his appreciation for their service and contributions to the administration of justice.

There being no further business, the meeting adjourned at 11:07 a.m. The next meeting is scheduled for March 23, 2022, beginning 9:30 a.m.

Respectfully submitted,

Faye Gaskin
