

KEITH A. BAYNES
CIRCUIT ADMINISTRATIVE JUDGE
SECOND JUDICIAL CIRCUIT
CHAIR
(410) 996-5317



AUDREY J. S. CARRIÓN
CIRCUIT ADMINISTRATIVE JUDGE
EIGHTH JUDICIAL CIRCUIT
VICE-CHAIR
(410) 396-5130

Conference of Circuit Judges
MARYLAND JUDICIAL CENTER
187 HARRY S. TRUMAN PARKWAY
ANNAPOLIS, MD 21401

MINUTES OF THE MEETING OF THE
CONFERENCE OF CIRCUIT JUDGES

A meeting of the Conference of Circuit Judges was held Monday, May 16, 2022, via Zoom for Government, beginning at 9:30 a.m.

Conference Members Present

Hon. Keith A. Baynes, Chair	Hon. Stephen H. Kehoe
Hon. Audrey J.S. Carrión, Vice Chair	Hon. Glenn Klavans
Hon. Sheila R. Tillerson Adams	Hon. Viki M. Pauler
Hon. James A. Bonifant	Hon. Richard Sandy
Hon. Donine Carrington Martin	Hon. S. James Sarbanes
Hon. Yolanda Curtin	Hon. Brian D. Shockley
Hon. Jeffrey S. Getty	Hon. Barry G. Williams
Hon. Fred S. Hecker	Hon. Kathy P. Smith
Hon. Ruth Ann Jakubowski	Burgess Wood

Also, Present

Hon. Matthew J. Fader	Jamie Walter
Hon. John P. Morrissey	Pamela Harris
Hon. Alan M. Wilner	Ebonye Caldwell
Pamela Harris	Kevin Cox
Jeffrey Luoma	Valerie Pompey

1. Welcome and Approval of Minutes

Judge Baynes offered words of welcome and informed everyone that the meeting would be live streamed as the Conference is subject to the Open Meetings Act. He then welcomed Chief Judge Matthew Fader as the new Chief Judge of the Court of Appeals. Judge Baynes moved for approval of the minutes. Following a second by Judge Getty, the motion passed.

2. Chief Judge Fader Remarks

Chief Judge Fader greeted the Conference in his new capacity as Chief Judge of the Court of Appeals. He remarked that thus far, his new position has been an educational process and will continue to be. In his former role as Chief Judge of the Court of Special Appeals, he had insight into what was being done during the last 27 months as a result of the COVID-19 pandemic. He stated that a great deal of thanks and credit goes to the Conference for the work it has done and continues to do noting that the Judiciary is much better prepared for what comes next because of the Conference's efforts. He emphasized the importance of paying attention to efficiency and clarity in operations. He stated that he is an individual who believes in improving processes and noted his intent to call upon the Conference for assistance, information, requests, and ideas that they might have. He concluded his remarks by indicating that he looks forward to working with the Conference.

3. Attorney General Update / E-Service – Official Communications Discussion

This discussion was a combination of agenda items #4, Attorney General Update and #5, E-Service – Official Communications Discussion.

Kevin Cox, Assistant Attorney General, addressed an issue that was presented to him by the Circuit Court for Baltimore County regarding e-service. The query is what qualifies as an "official communication." Per Rule 20-205(c), the clerk's office is required to serve all writs, notices, official communications, court orders, and other dispositions. Judge Jakubowski stated that there is disagreement with the clerk's office as to what constitutes as an "official communication." Specifically, whether anything that is docketed constitutes as an "official communication" thus requiring service. Judge Jakubowski stated that everything is docketed in Baltimore County including correspondence, inmate mail, etc. In addition, she opined that anything that the court or judge sends out should be considered an "official communication" as well. She noted that this practice has become an issue because of the volume of items that are docketed.

Judge Alan Wilner stated that with the Title 20 Rules were initially adopted, they are modeled after what they believed the practice would be in Anne Arundel County as it was the first county to go-live. He noted that the Title 20 Rules continue to be a work in progress and that the Rules Committee is open to making changes that fit the current framework as opposed to the anticipated framework that was used during their promulgation. The Rules Committee will review this Rule.

4. Attorney General Update / Sending (Serving) of Magistrate Notices

This discussion was a combination of agenda items #4, Attorney General Update and #6, Sending (Serving) of Magistrate Notices.

Mr. Cox addressed a second issue that was presented to him by the Circuit Court for Baltimore County regarding e-service. The issue at hand is whether it is the clerk's office or the magistrate's office that is responsible for the service of magistrate notices, recommendations, and/or reports. Rule 2-541(e)(3) states that "The magistrate shall serve a copy of the recommendation and any written report on each party pursuant to Rule 1-321." The clerk's office in Baltimore County has interpreted this Rule to mean that the magistrates must e-serve these items through their assistants, not through the clerk's office. After conducting research on the Rule history, Mr. Cox noted that there was no clear indication as to the intent behind the Rule. In addition, in the case *Barrett v. Barrett*, 240 Md.App. 581 (2019), the Court touched on the issue of the service of magistrate reports; however, it did not fully address who bears the responsibility of service. Mr. Cox stated his intent to conduct a survey of all the circuit courts to see how each jurisdiction handles this issue in the hopes of resolution and to create uniformity.

Mr. Cox briefed the Conference on information gained thus far through preliminary research. While the Rule states "the magistrate shall serve," it appears as though, in practice, a lot of the courts handle e-service via the clerk's office. In other instances, it appears as though magistrates generally hand serve their reports at the conclusion of the hearing, thus eliminating the need for e-service altogether. Mr. Cox noted that if after the conclusion of the survey, it is determined that magistrates are responsible for e-service, there may need to be training for the magistrate's assistants to facilitate this.

Judge Jakubowski provided the background on how this issue first arose. When e-service across the board was implemented, the issue of magistrate recommendations was raised. The clerk's office interpreted Rule 2-541(e)(3) to mean that the magistrate is responsible for serving their reports. However, Judge Jakubowski opined that because this is an older Rule, the intent behind it may no longer be relevant to current practice. In the past, magistrates were not a part of the courts. Eventually they were brought in-house but this transition period may be why the Rule gave this responsibility to the magistrates. Judge Jakubowski stated that the inference that service is a clerk's office function is supported by a plethora of rules. She noted that upon surveying the magistrates in Baltimore County, 90% indicated that their rules and recommendations are served in the court. For all seven magistrates, there are about 25 to 30 recommendations that require e-service on a monthly basis. She concurred with Mr. Cox stating that, if it is determined that magistrates should be the ones serving their reports then training will be required. She further opined that e-service should be a clerk's office function as magistrate reports should be docketed, and the clerk's office handles docketing. In addition, the low number of magistrate reports that would require e-service would not be an undue burden on the clerk's office.

Judge Carrión remarked that Baltimore City does not do e-service as they are not currently an MDEC jurisdiction. She stated that the current practice within the court is for the magistrates to either mail or serve their reports in-person. She concurred with Judge Jakubowski that the majority of the reports are served in-person by the magistrates.

Judge Wilner stated that this is an area of judicial administration where the Rules Committee is only an implementer, not a decisionmaker. Ordinarily, the preference is to have whatever is being done, to be done statewide so as to eliminate potential uniformity issues. Judge Jakubowski stated that during the pandemic, because of the increase in remote magistrate hearings, the need for e-service increased. With the Judiciary's return to normal operations, courts are now doing a hybrid model where parties can request remote hearings if necessary, but the majority of hearings are back to in-person. Judge Wilner noted that any rule change will need to consider the impact of remote hearings.

Judge Carrión stated that it is important to see what other jurisdictions are doing before a decision is made. She indicated her hesitancy in requiring this of the clerk's office because the magistrate's office in Baltimore City differs from that in Baltimore County.

Judge Hecker commented that consideration also needs to be given regarding documents served in open court versus those that are not.

The Conference agreed that a survey of the current practice in each jurisdiction should be done. Mr. Cox stated that he would send a communication to all of the administrative judges for compilation and discussion at a future meeting.

5. CONNECT – Routing Approvals for Judges Leave, Education Requests, and Timesheets

Melinda Jensen, Assistant State Court Administrator for Operations, and Ebonye Caldwell, Deputy Director of Human Resources, briefed the Conference on understanding the way the matrices in CONNECT work. When CONNECT was developed a few years ago, a special workflow process was created to allow flexibility for the courts for approval of leave, education requests, and time for judges, magistrates, senior judges, and county employees. Courts are given the discretion to choose which option is best for them. There are three levels of approvers in CONNECT:

- ❖ First Level Approver: Access to approve immediately submitted information (schedulers for dockets)
- ❖ Second Level Approver: Judicial assistants and/or court administrators approver for timesheets, education, and absence requests.

- ❖ Third Level Approver: Administrative judge and court administrator approver for timesheets, education, and absence requests.

Ms. Caldwell provided copies of the matrices to members of the Conference so that they could review their current configuration. She stated that it is important to ensure that the approval levels are correct as they are a protection method for auditing purposes.

Ms. Caldwell provided best practices for courts as to who should be assigned to what approval level depending on the request. The following best practices are recommended:

- ❖ Leave requests
 - 1st Level: scheduling staff, judicial assistants, or designee for Level 1
 - 2nd Level: judicial assistants and court administrator
 - 3rd Level: circuit court administrative judge and court administrator
- ❖ Time (senior judges and magistrates)
 - 1st Level: scheduling staff or designee for Level 1
 - 2nd Level: court administrator, judicial assistants, or designee for Level 2
 - 3rd Level: circuit court judge, court administrator, and judicial assistants
- ❖ Education
 - 1st Level: scheduling staff or designee for Level 1
 - 2nd Level: judicial assistants, court administrator, or designee for Level 2
 - 3rd Level: court administrator, administrative judge, or designee for Level 3

Ms. Caldwell requested that the Conference review their matrices within the next two weeks, after which HR will follow up to confirm that the information therein is correct.

6. Annual Financial Disclosures for Staff

Jeff Luoma, Supervisor, Legal Affairs, addressed an issue concerning financial disclosures. It was brought to the AOC's attention that there are some questions about which employees have to file the State Ethics financial disclosures. Legal Affairs worked with HR to look at the list of employees who are currently filing and compared this to the current law regarding who should be filing. After consulting with the State Ethics Commission, it was determined that the current list of employees that the Judiciary has been using does not track the law. There are some employees who file that do not have to file as well as some employees who *should* be filing but are not. General Provisions § 5-103 provides the list of individuals who are required to file. Specifically, (d)(1)(i) stated that an individual in the Judicial Branch includes anyone who is : (1) employed in the office of the clerk of court; (2) paid by a county to perform services in an orphans' court or circuit court; (3) employed by the Attorney Grievance Commission; (4) employed by the State Board of Law Examiners; or (5) employed by the Court of Appeals Standing Committee on Rules of Practice and Procedure." Only employees who meet the

compensation threshold of \$48,360 (State grade level 16) are required to file. This includes employees such as judicial assistants and court administration staff. These categories were chosen when the law was promulgated in 1979.

Judge Carrión stated that this question came from Baltimore City after many administrative assistants received correspondence stating that they were out of compliance with the requirement to file a financial disclosure. There were concerns over what possible penalties the employees would face if they did not file. Judge Carrión opined that employees who are not involved in making policies, giving policy advice, or any making any other decisions as outlined in the statute should therefore be excluded as an exception from the financial disclosure requirement. Mr. Luoma said that the typical penalties for failure to disclose includes fines and even termination from employment. However, the State Ethics Commission noted that they have only ever fined a few people. It is not their intent to penalize anyone. Judge Carrión stated that even if this is the case, this notice is stressful to employees who may be in fear for their jobs. Ms. Caldwell stated that the State Ethics Commission will not be penalizing anyone at this time especially since the Judiciary is now in the process of discussing this issue.

Mr. Luoma stated that the Judiciary can submit a request to the State Ethics Commission to exclude certain employees from the disclosure requirement. Under General Provisions § 5-103(d)(2) "The Ethics Commission may exclude individuals in a position in the Judicial Branch from inclusion as public officials under paragraph (1)(ii) of this subsection: (i) on the recommendation of the State Court Administrator; and (ii) if the Ethics Commission determines that the position does not have policy, policy advice, quasi-judicial, or procurement functions." He noted that the Commission relies on the Judiciary for this information and will accept an exclusion so long as there is an adequate explanation as to why these individuals are excluded. HR and Legal are working together to clean up this list based on the salary threshold and position requirements.

Judge Sarbanes questioned whether this initiative was driven by the State Ethics Commission or whether it was an internal discovery. He noted that there are employees who have worked for the Judiciary for years and have never had to file so it was unsettling when they received delinquency notices. Ms. Caldwell answered that the discovery was internal. A communication was sent in October requiring court auditors to file and then it was determined that based on the salary threshold, there were a lot more employees who may be required to file. However, upon further examination it appears that not everyone may be required to file regardless of their salary threshold. The employees who received a communication from State Ethics Commission were informed that the matter was being investigated and that there will be no further communication from the Commission until this matter is settled.

Judge Jakubowski stated that she is not aware of any employees who received the delinquency notice. She asked if employees who have not filed in the past will be required to file for prior

years. Mr. Luoma said that there has been no written confirmation from the Commission, but it appears as though this requirement would not be retroactive. Judge Adams questioned whether employees would be required to file for 2021 since the deadline has passed. Ms. Caldwell stated that employees will not be required to do anything at this time but once the final list is created, they may need to go back and file for 2021. If this is the case, a communication will go to the administrative judge, and the court administrator.

Judge Carrión stated that she is currently compiling a list that contains employees that she would like to exclude from the disclosure requirement. Mr. Luoma stated that this is fine. HR will send a list to the administrative judges of employees who are exempted and not exempted. If there is an employee from HR's list that the administrative judge believes should be exempted, they will just need to provide a justification. Judge Sarbanes asked whether HR is looking for consistency through job description or job title. He noted that there are employees with the same job titles, but their responsibilities vary. Ms. Caldwell stated that a small justification should suffice. Mr. Luoma stated that the Commission takes into account employees who have a hand in policy decisions which can vary.

Mr. Luoma noted that some employees who received delinquency notices have done their own research and informed HR that based on this, they should be exempted from the requirement. Specifically, they have reviewed the State Ethics Commission Financial Disclosure Filer Identification Manual from March 2022. Mr. Luoma stated that the provision identified by the employees is really geared towards the executive branch although the manual does not clearly label it as such. For Judiciary employees, the onus is put more on the AOC as opposed to the Commission to identify employees who are exempt or not exempt from the requirement.

7. Jurisdictional Grants – Discontinue Charging Parties for State Funded Services

Ms. Harris discussed a recent issue regarding grants. After meeting with staff, it was discovered that some jurisdictions are charging for services even after receiving state funding via grants. She asked that the courts not do this as these grants are allocated by the legislature to the Judiciary provided that the services are free. Ms. Harris asked that each administrative judge speak with their courts to stress this requirement.

8. Pending Cases Reports

Jamie Walter, Director of Research and Analysis, briefed the Conference on two MDEC reports that the Data and Statistical Workgroup has asked to be created: the Pending Caseload Report and the Age of Active Pending Caseload Report.

The Pending Caseload Report is similar to the Open Cases Report and may be merged with that report. The report can be run with an "as of" date by case type. There are some known issues

with case count such as cases that are still pending from years ago. There are thousands of these cases that need to be cleaned up. Ms. Walter provided a comparison of civil, criminal, foreclosure, family, and juvenile case types with an "as of" date of May 1st from 2019 – 2022.

The Age of Active Pending Caseload report are cases that are pending before the court, measures as the number of days from filing until the time of measurement. This report is analogous to a refrigerator in that filings are all of the things going into the fridge, and dispositions are things coming out. While pending is how many things are in the fridge and age is a measure of how long things have been in the fridge. The report only looks at cases with an associated time standard. Any case with an open suspension on the "as of" date will not be included. In addition, a case with an open warrant would not be included while a case with a warrant that was served would be included; however, the time that the warrant was open would be subtracted from the age. A two-week testing period was conducted for this report looking at two dates: April 19, 2022 and April 30, 2021, roughly one year apart. This report does not include Montgomery County, Prince George's County, or Baltimore City as they were not on MDEC in April of 2021. Ms. Walter noted that this data has not yet been reviewed by the courts. She then reviewed the trends in the reports and explained why there may be some discrepancies in age dates. The data was not collected by county because it needs to be cleaned up and there may be some court practices that were not considered. There were also be some changes to the flags based on feedback from SMEs. Certain cases will be flagged for priority review where the time standard configuration is now with the recent Odyssey 2018 upgrade. She noted that older time standards from 2015 may be problematic.

Judge Carrión questioned whether there are numbers for the non-MDEC courts. Ms. Walter answered that those numbers are currently being worked on and should be ready by next week. Judge Bonifant questioned how Montgomery County's numbers from 2021 would be included. Ms. Walter stated that when the conversion happens, time standards are applied to older cases so non-MDEC cases will be included in this data.

Ms. Harris stated that money was withheld from the Judiciary's budget because there was no case time standards report submitted last year nor the year before. The legislature did not understand why time standards were not reported on for the last two years as a result of the pandemic. The legislature requested that the report be submitted in January 2023. Ms. Walter has worked with the Case Management Subcommittee to create these reports so that they can be reviewed and cleaned up by the courts if necessary. She noted that they will be starting with the 2023 assessment in July so that data quality checks can be completed throughout the year.

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9. For the Good of the Order

There being no further business, the meeting adjourned at 11:01 a.m. The next meeting is scheduled for September 19, 2022.

Respectfully submitted,

Valerie Pompey