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Conference of Circuit Judges
COURTS OF APPEAL BUILDING
ANNAPOLIS, MD 21401

**MINUTES OF THE MEETING OF THE
CONFERENCE OF CIRCUIT JUDGES**

A meeting of the Conference of Circuit Judges was held March 21, 2016, at the Judiciary Education and Conference Center in Annapolis, Maryland, beginning at 9:30 a.m.

Members Present

Hon. John W. Debelius, Chair

Hon. Thomas C. Groton, III
Hon. Daniel M. Long
Hon. Paul M. Bowman
Hon. Thomas G. Ross
Hon. Kathleen Gallogly Cox
Hon. Donald E. Beachley
Hon. M. Kenneth Long, Jr.
Hon. J. Barry Hughes

Hon. Laura S. Kiessling
Hon. Theresa M. Adams
Hon. Sheila R. Tillerson Adams
Hon. W. Michel Pierson
Pamela Harris
Hon. Wayne Robey
Jennifer Keiser

Also, Present Were:

Hon. John P. Morrissey
Faye Matthews
Kelley O'Connor
Suzanne Pelz
Jamie Walter
Andrew Ginder

Lauren Kitzmiller
Connie Kratovil-Lavelle
Andrew Tress
Eliana Pangelinan
David Soule

1. Approval of Minutes

Judge Kenneth Long moved for approval of the minutes of the November 16, 2015, meeting. Following a second by Judge Hughes, the motion passed.

2. Risk Assessment Feasibility Study Update

David Soule, Executive Director of the Maryland Commission on Criminal Sentencing Policy (the Commission), updated the Conference on the Risk Assessment Feasibility Study. He began by providing an overview of study's origin, noting that the Commission, at the request of an *ad hoc* committee chaired by Judge Philip Caroom, studied the feasibility of using a risk assessment at sentencing. Throughout the study, the Commission has consulted with the Judiciary Risk Assessment Advisory Group (the advisory group) appointed by Chief Judge Barbera. The Commission's second draft of its report addressed a number of concerns noted by the advisory group, and focused on three primary areas: the availability of the information required for the risk/needs instruments, the feasibility of adapting existing instruments for sentencing, and the advantages and disadvantages of various recidivism measures.

With respect to availability of information required for the instruments, the Commission determined that while most of the information could be obtained through the PSI, only 16.2 percent of guidelines cases had a PSI ordered and primarily were focused on the more serious offenses. The Commission is proposing to use the instrument for lower-risk offenses. Judge Debelius commented about the length of time it takes for the court to receive the PSI and inquired as to whether use of the instrument would increase the time frame (which is already at least six weeks) and or the cost of a PSI.

Mr. Soule asked if it would be more practical to start with a risk-only instrument, as opposed to a risk/needs instrument. The risk-only instrument would be scored by the State's Attorney rather than Parole and Probation. Mr. Soule noted that the State's Attorneys in Virginia score the instrument, but only if the guidelines indicate incarceration.

The discussion then moved to the feasibility of adapting existing instruments for sentencing. Mr. Soule commented that creating a new tool would be the ideal as it would result in a greater sense of ownership because of the collaboration required; however, it would require a substantial time and resource investment. Using an off-the-shelf tool could be costly and would have to be tweaked and validated for Maryland.

The Commission concluded implementation, in the short term, of the risk-only instrument is the more viable option. Mr. Soule noted that if the PSI system is automated, moving toward a risk-needs tool should be considered. Parole and Probation is planning to begin using the LSI-R instrument, which is the most commonly used risk-assessment instrument, for all probationers. Implementation of the LSI-R may lessen logistical issues if the risk-needs instrument is implemented. The Commission also recommended using arrest as the recidivism measure. It was noted that others are using incarceration or conviction as the recidivism measure.

Judge Debelius commented initial implementation of the risk assessment instrument will yield a great deal of sociological information about offenders. He inquired as to whether that information would be placed into an accessible, which would alleviate the need to recapture it each time. Mr. Soule stated that the Commission had not discussed that possibility, but based on when the information is initially gathered, the court may want to reassess because predictors may have changed and the information may be outdated.

3. MAGS Deployment Schedule

Mr. Soule updated the Conference on the Maryland Automated Sentencing Guidelines (MAGS) implementation. He noted that MAGS has been successfully implemented in six counties. The next implementation is scheduled for April in Harford County, followed by Baltimore County in October. The Baltimore County implementation will account for approximately 50 percent of all guidelines worksheets. The final implementation is scheduled for Anne Arundel County in July 2020.

Mr. Soule informed the Conference that effective July 1, 2016, judges and their designees will be able to access submitted worksheets, pdf "read-only," on line.

Mr. Soule inquired about the possibility of participating in the law clerk orientation in 2016. During the 2015 program, Commission staff provided training and a hands-on MAGS session. In addition, they provided followed-up sessions with courts where requested.

4. Sentencing Matrix for Drug Offenses

Pamela Harris reminded the Conference to provide comments to Mr. Soule regarding the revisions to the sentencing matrix for drug offenses. The revisions are scheduled to be implemented July 1, 2016.

5. Maryland Judicial Workload Assessment Update

Jamie Walter and Andrew Ginder provided an update on the Maryland Judicial Workload Assessment. They noted that the Judiciary contracted with the National Center for State Courts (the Center) to update the judgeship needs certification model utilized for trial court judges, which, was last updated ten years ago. The model "weights" case types based on complexity to determine the amount of judicial time required from pre-trial through post-judgment. The study is being overseen by Judicial Needs Assessment Workgroup of the Court Operations Committee and is co-chaired by Judge Brett Wilson and Judge Leo Ryan.

In order to compile the information needed to update the model, trial court judges will participate in a four-week time study where they will track time spent on case-related and non-case-related work. In addition to active judges, recalled judges, magistrates, commissioners, and standing examiners will track their time as well. The time study is scheduled to take place from

April 18 through May 15. It is expected that recording time will take no more than 5-10 minutes each day. Participants will complete the log sheets and electronically submit them to the Center. The Center will have a dedicated Help Desk available to assist. In addition, there will be a self-guided training available and participants will be given other documents to assist them, including a glossary to define case types, events, etc. and various scenarios to describe how to properly code different aspects of work.

6. Recalled Judges Handling Paid Mediation

Judge Debelius briefed the Conference on a concern that has been raised regarding recalled judges who also conduct paid mediation. The Rules Committee plans to discuss whether the existing rule, which permits a recalled judge to conduct paid mediation, needs to be changed in any way. Judge Cox noted that the Rules Committee's concern may be with recalled judges who are affiliated with groups that do both mediation and litigation.

After some discussion, the Conference, by consensus, determined that there is no need to change the rule and that any concerns regarding disclosure in those instances where the recalled judge is affiliated with a group that does both mediation and litigation are subject to the ethics rules.

7. Compensatory Time for Magistrates

Judge Daniel Long inquired as to which courts permit magistrates to earn compensatory leave. Ms. Harris noted that the majority of the courts do not permit magistrates to earn compensatory leave. She added that she is in the process of reviewing all Judiciary Human Resources policies and will ensure that there is no ambiguity; magistrates should not earn compensatory leave.

8. Legislative Update

Judge Daniel Long provided a legislative update, noting the session ends on April 11 and that a number of issues are still in play. He stated that there were 17 expungement bills introduced. Chief Judge Morrissey and Kelley O'Connor have been heavily involved with the Justice Reinvestment legislation. Judge Debelius commented on the various bills dealing with the election of circuit court judges, all of which failed. Judge Long also noted that the bills to increase the mandatory retirement age for judges had not been voted on in the Senate or House. The judgeship bills appear to be on the path to passage.

The various expungement bills provide for different subsections to be expunged or shielded. One bill would permit certain parts of a case to be expunged or shielded even if the entire case is not eligible, which is problematic because it would require the judge or clerk to review the entire file to determine what should and should not be expunged or shielded.

The Justice Reinvestment Act legislation proposes that adopting evidence-based practices leads to a reduction in recidivism, which leads to cost savings. Those savings are then put back into the justice system to use for criminal justice programs and services. The legislation would increase diminution credits for non-violent offenders, reduce sentences and fines for theft-related and drug-related offenses, make driving while suspended or without a license non-jailable offenses, and create probation revocation caps with graduated sanctions.

9. Access to Federal PACER System

Ms. Harris informed the Conference that the United States District Court for the District of Maryland has agreed to provide free access to the federal PACER system to one judge in each jurisdiction. The access will be valid for one year, so the judge will have to request renewal on annual basis. The request has to be made on the court's letterhead. Ms. Harris will send the administrative judges an electronic copy of the template they can use to request access.

10. Federal Agents Executing Warrants on Visitors in State Courthouses

Judge Tillerson Adams inquired about the existence of a policy regarding federal agents serving summons or executing arrest warrants on individuals in the courthouse. The issue was raised by an organization that has an office in the courthouse. The organization noted that summons had been served in its office. No one was aware of any such policy.

11. Photographs of Courtrooms

Judge Pierson stated that he has received a large number of requests to take pictures of courtrooms, when not in use, in Baltimore City to be used as background footage. He noted that it may be a security issue and asked if other courts allow pictures to be taken. Judge S.R.T. Adams stated that she has received several requests, which have been denied. She added that she has gotten requests from lawyers who want to use the pictures in their advertisements. Judge S.R.T. Adams noted that she does allow pictures to be taken during the adoption day ceremonies.

Judge Debelius commented that allowing pictures to be taken should be determined on a case-by-case basis, such as a high profile case versus a moot trial competition. Judge Pierson expressed his preference to have a policy so that there is statewide consistency, partly because of the difficulty in distinguishing what is and isn't a news organization. Several Conference members expressed concern about placing limitations on when pictures can be taken.

After additional discussion, Judge Debelius commented that he is not sure the Conference has the authority to preclude administrative judges from allowing pictures to be taken. Judge Daniel Long added that the matter should be handled in the same manner as firearms and other security issues, which is at the discretion of the administrative judge.

12. Guardianship Workgroup Report

Judge Cox briefed the Conference on the work of the Guardianship Workgroup of the Domestic Law Committee, noting that the workgroup was tasked with reviewing existing practices in the management of guardianship cases and formulating recommendations for improvement. The workgroup was comprised of a representative group of individuals from within and external to the Judiciary. The review, analysis, and subsequent discussions resulted in 22 recommendations, categorized into three distinct areas: the appointment and training of court-appointed counsel for alleged disabled persons, the appointment and training of guardians of the person, and the appointment and training of guardians of the property.

The recommendations centered on the requirements for becoming a guardian, as well as subsequent training requirements following appointment. It was noted that appointees often do not have a clear understanding of their role as guardians; training is critical in clarifying that understanding. In addition, it was noted that the court should know up front if the guardian is unwilling or unable to fulfill his or her responsibilities. The recommendations for guardians of property include submission of a credit report, unless waived by the court. Judge Cox noted that so many people who might want to serve as guardians are not able to get bonded.

Judge Cox stated that the initial implementation of the recommendations would be guided by the Rules Committee. The appropriate training programs would then be developed, as well as the expanded use of standardized forms. The workgroup recommended every jurisdiction have dedicated guardianship staff, as well as dedicated, specially-trained guardianship judges except in smaller jurisdictions where it is recommended that the courts share staff.

Judge Cox noted that the Council's concern is the role of the Judiciary in training attorneys who appear before the court. She commented that the workgroup's overarching concern is that guardians act as the court's agent, but there are very few guidelines that help to guide what they do. In light of the Council's concerns, the workgroup is reviewing the recommendations. Judge Cox emphasized the importance of getting feedback from the Conference, particularly since the circuit courts will have to implement the recommendations.

Judge Cox asked the Conference to review the report and recommendations and to forward comments to her. The workgroup will review them and, where appropriate, revise the recommendations before presenting them to the Judicial Council.

13. For the Good of the Order

Judge Tillerson Adams stated that she has gotten requests from the Muslim community to set aside a place in the courthouse for prayer. She noted that space isn't provided to other religious groups and she does not want to do something for one group that she isn't able to do for others. The Conference concurred.

Judge Debelius informed the Conference that Judge Carr will present the report of the Medical Malpractice Subcommittee at the May 16, 2016, meeting.

Judge Debelius informed the Conference that Chief Judge Barbera formed the State of the Court Reports Workgroup to review the reports submitted by each court and to formulate recommendations to address the concerns/issues articulated in the reports. Among the primary concerns gleaned from the reports are disparities in facilities and funding. The workgroup also will review the prior reports drafted regarding the future of the trial courts.

Judge Pierson stated that he would like to make changes to the workflow in CONNECT regarding judges' leave approval. He asked if anyone had any objection because the changes would affect all of the courts. No objections were noted.

Judge Kenneth Long introduced Judge Beachley, who will serve as the elected representative from the Fourth Circuit.

Action Items

- The Medical Malpractice Workgroup report will be discussed at the next meeting.
- The Conference should review the Report and Recommendations of the Guardianship Workgroup and forward any comments to Judge Cox.
- Ms. Harris will send an electronic template to administrative judges to use when requesting access to PACER.

There being no further business, the meeting was adjourned at 12:35 p.m. The next meeting will be held on Monday, May 16, 2016, at the Judiciary Education and Conference Center in Annapolis, Maryland. The meeting will begin at 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
Conference Secretary