MARYLAND JUDICIAL COUNCIL

Maryland Judicial Center
580 Taylor Avenue
Annapolis, MD 21401

MARYLAND JUDICIAL COUNCIL
Minutes
March 18, 2015

Judicial Council Members Present:

Hon. Mary Ellen Barbera, Chair
Hon. Sheila R. Tillerson Adams
Hon. Nathan Braverman
Hon. Kathleen Gallogly Cox
Hon. John W. Debelius
Hon. Thomas C. Groton, III
Hon. Susan H. Hazlett
Hon. Karen A. Murphy Jensen
Hon. James A. Kenney, III
Hon. Karen H. Mason
Hon. John P. Morrissey
Hon. Barbara Waxman
Hon. Alan M. Wilner
Hon. Eugene Wolfe
Pamela Harris
Jennifer Keiser
Carol Llwellyn-Jones
Judy Lohman
Sally Rankin
Wayne Robey
Roberta Warnken

Others Present:

Hon. Glenn Harrell
Hon. Daniel Long
Hon. Nicholas Rattal
Hon. Michael Stamm
Faye Matthews
Mark Bittner
Lou Gieszl
Gregory Hilton
Stephane Latour
Julie Linkins
Suzanne Pelz
Lee Robinson
Suzanne Schneider
Dennis Scott

A meeting of the Judicial Council was held Wednesday, March 18, 2015, 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 Tillerson Adams moved for approval of the minutes of the February 18, 2015 meeting. Following a second by Judge Hazlett, the motion passed.

Chief Judge Barbera then introduced Suzanne Schneider, her newly appointed Chief of Staff, and Stephane Latour, the newly appointed Assistant Administrator/Managing Counsel in the Administrative Office of the Courts

1. Report of the *Ad Hoc* Subcommittee on Retired Recalled Judges

Judge Kenney provided context for the report and recommendations of the *Ad Hoc* Subcommittee on Retired Recalled Judges, noting that the report had been introduced at the Council's previous meeting. He added that Chief Judge Barbera had initially directed Judge Harrell to submit a report outlining recommendations regarding how the Judiciary could best support retired recalled judges at all levels of the courts. Later, Chief Judge Barbera created the subcommittee of the Council to continue that effort. Judge Kenney noted that the subcommittee is continuing its discussions regarding retired recalled judges in the trial courts, adding that the report and recommendations regarding the aforementioned will be forthcoming.

Judge Harrell stated that during its discussion, the subcommittee determined that the differences in how the courts operate administratively do not allow for a one-size fits all approach. He added that it soon became apparent that appellate and trial judges could be separated when considering the adequacy of support; thus, the subcommittee agreed to focus initially on appellate judges and then turn its attention to trial judges.

The subcommittee considered a number of areas of support for retired recalled appellate judges, including space in the courthouse, furniture, IT equipment, supplies, and legal resources. When the retired recalled judge commits to serve for at least 61 ½ days, the subcommittee recommends that law clerk and administrative assistant support be provided to the judge for that year. Judge Harrell noted that the subcommittee did not envision necessarily every appellate judge having his or her own administrative support, but rather that the judges could share the support based on geographic location, if feasible.

Further, Judge Harrell commented that given the space constraints in the courthouses, appellate judges might, instead, be set up with a home office to include an IT package, which JIS estimates could be secured at a cost of between $1,500 and $2,000 in 2015 dollars.

Chief Judge Barbera noted that retired recalled judges are critical to operations, but acknowledged the space challenges in certain courthouses. Judge Tillerson Adams suggested that while there may not be courthouse space available, the courts could try to negotiate space in county-owned buildings. A number of Council members agreed that space is an issue and that in some courts, retired recalled trial judges utilize sitting judges' chambers whenever possible. Other concerns expressed included long-term space needs and the variability in the utilization of retired recalled judges, which may impact support needs.

Chief Judge Barbera asked the Council to consider sending this matter to the Conference of Circuit Judges and the District Court Chief Judge's Committee for review and comment. She stated that it is critical that the Judiciary does whatever it reasonably can do, but that the two aforementioned bodies should consider the feasibility of implementing the recommendations, including alternative solutions to address space issues, and report back to the Council. Judge Barbera added that space for retired recalled judges may have to be handled on an ad hoc basis.

With respect to retired recalled appellate judges, Chief Judge Barbera asked Judge Harrell and Judge Kenney to talk with their colleagues to ascertain their space needs, adding that some appellate judges may indicate that they can work from home with the proper resources, while others may indicate a preference to work in the courthouse.

Pamela Harris noted that providing technology in the home offices, as well as the necessary equipment should not be a problem, but issues around connections to local networks will have to be addressed. She added that resources for retired recalled judges was sought in the budget and that she will be able to speak more about that at the April meeting.

Judge Kenney noted the recommendations are aspirational and that the subcommittee decided to address the needs of appellate judges first and then focus its attention on trial judges, given the added complexities.

Judge Tillerson Adams made a motion that the Council move forward with adoption of the subcommittee's recommendations as to retired recalled appellate judges as aspirational, recognizing that it may not be possible to implement all aspects of the recommendations. Following a second by Judge Cox, the motion passed.

2. Education Committee Proposed Structure

Judge Hazlett presented the proposed committee structure for the Education Committee. The Committee will guide, promote, and encourage the education, training, and professional development of all Judiciary employees. Judge Hazlett noted that one of the Committee's tasks will be to work with other committees, departments and justice partners to coordinate training opportunities and to ensure that the opportunities are effectively communicated. She added that the will consider innovative methods by which to deliver training, utilizing new technologies. The Committee also will address the lack of a consistent repository for information.

There are a number of subcommittees under the Education Committee, including the Commissioner Education, Judicial Institute, Professionalism, and Professional Development subcommittees. Judge Hazlett stated that the members of the Commissioner Education Subcommittee was seeking an exception to the two-year term. The members wanted approval for five-year terms, citing the enormity of its charge and the amount of time it takes to become knowledgeable of the laws and rules which allows them to be able to provide commissioner training.

Discussion ensued with a number of the Council members echoing the aforementioned sentiment, stating that it takes time to build rapport, acquire institutional knowledge, and become proficient in the applicable statutes and rules. Other Council members commented on the importance of rotating membership to gain new perspectives and ideas. It was suggested that individuals do not have to be on the committee to conduct the training and, as such, an extended term is not necessary. It also was suggested that the Workgroup on Committee Structure underwent a tedious process to develop the new committee structure and protocol and that the Council should wait to see how it works before making changes.

Chief Judge Barbera agreed that the Council is still the early stages of the new structure, that it is still evolving, and that it will be tweaked as necessary.

Judge Hazlett noted that a number of the Judicial Institute Board members expressed an interest in term limits and, as such, asked for approval to make the members subject to term limits. Chief Judge Barbera approved her request.

Judge Jensen moved to recommend approval of the proposed structure. Following a second to the motion by Judge Waxman, the motion passed. Chief Judge Barbera approved the recommendation.

3. Legislative Update

Judge Long provided an update on the 2015 Legislative Session. He stated that the first year of any new administration is always a challenge, adding that there is an unprecedented number of new legislators, as well as new Chairs of the Appropriations and Judicial Proceedings committees. As a result of the new members, Judiciary leadership has spent time meeting with the legislators, building relationships.

The Legislative Committee meets every Wednesday by conference call to consider bills that affect the Judiciary, either directly or indirectly.

The following bills were highlighted:

HB 51/SB 66 – *Circuit Court Real Property Records Improvement Fund – Funding*. These bills repeal the sunset on the additional $20 surcharge for recording land record instruments. The bills passed both houses with an amendment to extend the sunset to 2020.

HB 54/SB 64 – *Circuit Court Real Property Records Improvement Fund – Funding*. These bills permit the Chief Judge of the District Court and the State Court Administrator to assess a surcharge of varying amounts on cases filed in the appellate and trial courts. The surcharges are to be deposited into the Circuit Court Real Property Records Improvement Fund for MDEC electronic filing. The bills are still pending.

HB 111/SB 332 – *Judgeships – Circuit Courts and District Court*. These bills increase the number of judgeships in the circuit courts by five (one each in Baltimore City and Baltimore, Charles, Montgomery, Prince George's counties) and in the District Court by two (one each in Prince George's and Montgomery counties). HB 111 passed third reader. SB 332 has not been voted on.

HB 283/SB 319 – *Award of Attorney's Fees and Expenses – Violation of Maryland Constitutional Right*. These bills authorize a court to award attorney fees to the prevailing plaintiff or prevailing defendant under certain circumstances by considering the factors listed in Maryland Rule 2-703(f)(3). These are fee-shifting bills that came out of the Access to Justice Commission. HB 283 received a favorable vote with amendments. SB 319 has not been voted on. The Legislative Committee took no position.

HB 348/SB468 – *Civil Right to Counsel – Implementation*. These bills require the Governor to include appropriations to provide legal representation in protective order, contested custody, and visitation

proceedings to individuals who meet Maryland Legal Services Corporation income eligibility requirements. The bills establish the Judicare Pilot Program and the Workgroup to Monitor the Implementation of a Civil Right to Counsel. The bills came out of the Access to Justice Commission. SB 468 received an unfavorable vote. HB 348 was withdrawn. The Legislative Committee took no position.

HB 1083/SB 550 – *Child Custody – Legal Decision Making and Parenting Time*. These bills change provisions of law that relate to child custody and visitation proceedings and establish a number of factors to be considered by the court in cases involving legal decision making and parenting time. The bills came out of the Commission on Child Custody. They have not been voted on. The Legislative Committee took no position.

Judge Cox noted that the bills reflect a comprehensive overhaul of custody and visitation that is ahead of where the law is in Maryland. There was concern expressed with the provisions of the bill, such as the provision to deal with de facto parenting, as well as the factors the court must and must not consider. If passed, there will have to a comprehensive educational program developed for circuit court judges and family magistrates.

HB 1135/SB 849 – *Criminal Procedure – Life Without Parole – Repeal of Sentencing Proceeding*. These bills will eliminate the bifurcated trial process that requires a separate jury sentencing hearing for defendants convicted of first degree murder, facing life without parole. Neither bill has been heard. The Legislative Committee supported both bills.

SB 847 – *Judges – Mandatory Retirement Age*. This bill would increase the mandatory retirement age from 70 to 75. The hearing was favorable with an amendment to reduce the age from 75 to 73.

HB 346 – *Court Personnel – Altering References from Master to Magistrate*. This bill changes statutory references from "master" to "magistrate." The bill passed the House. The Legislative Committee supported this bill.

Judge Long noted that Maryland Rules, effective March 15 2015, changed the name from "master" to "Family Magistrate." If the legislation passes, the rules will have to be changed again. Judge Wilner commented that in anticipation of its enactment, the subcommittee is meeting to ensure the rules are in sync with the statutes.

HB 461 – *District Court – Civil Jurisdiction – Amount in Controversy*. This bill increases the District Court's original civil jurisdiction from $30,000 to $50,000. The bill has not be voted on in the House. The Legislative Committee opposed the bill. It defeats the purpose of quick resolution. In addition, there is no provision in the District Court for discovery.

HB 361 and 496 – *Criminal Procedure – Government – Funded Legal Representation – Initial Appearance*. This bill proposes a constitutional amendment that establishes that Article 24 of the Maryland Declaration of Rights may not be construed to require government-funded legal representation of indigent defendants in initial appearances before a commissioner. The bills have not been voted on yet. The Legislative Committee took no position on these bills.

Judge Long noted that there are a number of bills regarding the election of circuit court judges. Chief Judge Barbera, Judge Debelius, and Judge Wright all testified in favor of the bills that would do away with elections.

Chief Judge Barbera thanked the committee for its hard work.

4. Juvenile Committee Update

Judge Stamm updated the Council on the work of the Juvenile Law Committee. He noted that the committee meets every Tuesday via conference call to discuss the numerous bills affecting juvenile law, including child welfare. In addition, the subcommittees meet weekly as well so that they can provide their positions on the various bills to the Legislative Committee. The plan is to begin meeting monthly once the session ends.

Judge Stamm commented on SB 172, which has language requiring juveniles charged as adults to be housed in juvenile facilities while in detention. The committee is opposed to this legislation and is meeting with Secretary Sam Abed to discuss the committee's concerns, which include the "shall" language, as well as the provision that a child can only be detained 28 days without a review, but if charged as an adult, the child can be detained 180 days. Judge Stamm noted that while delinquency numbers are down, the seriousness of the offenses has increased. Secretary Abed also will be asked to be involved with the two initiatives around juvenile justice and foster care. Judge Stamm noted that the implementation dates for the foster care initiative are tied to the federal requirements.

Ms. Harris moved to recommend approval of the proposed initiatives. Following a second to the motion by Judge Cox, the motion passed. Chief Judge Barbera approved the recommendation.

5. Specialty Courts and Dockets Committee

Judge Rattal briefed the Council on the work of the Specialty Courts and Dockets Committee. He noted that the Committee held its first meeting in February and while it was not assigned any of the strategic initiatives, the Committee will work with the Court Access and Community Relations Committee on its initiative, *Develop Strategic Initiatives*. Judge Rattal stated that the bulk of the committee's work will funnel through the subcommittees.

Judge Rattal noted that the Business and Technology Subcommittee is gathering information and reports outlining the work of the previous committee. The information is not compiled electronically, so the subcommittee is working to add fields to MDEC to facilitate electronic reporting. The subcommittee also is reaching out to the Business Section of the Maryland State Bar Association, as well as the Chambers of Commerce to gather information that will assist in the development of a plan. The subcommittee is looking at factors to be considered in business and technology cases. In addition, the subcommittee is discussing introductory and advanced training for judges in this area.

The Mental Health, Alcoholism, and Addiction Subcommittee is the most active subcommittee at this time with members testifying on various pieces of legislation. The subcommittee is concerned with the delay in obtaining bed space and getting mental health evaluations. Among the areas of focus are consistency in use of forms, designation of judges to handle cases with these issues, education and training, and

designation of parole and probation agents who have been trained to deal with individuals with mental health issues.

With respect to the Problem-Solving Courts Subcommittee, Judge Rattal noted that the subcommittee is meeting with representatives from St. Mary's County to discuss its application for a Family Recovery Court. In addition, he informed the Council of an issue regarding information sharing between the various justice partners. Apparently, as a result of the merger of the Alcohol and Drug Abuse Administration and the Mental Hygiene Administration into the Behavioral Health Administration (BHA), there will not be any coordinated sharing of information between treatment providers and the courts going forward. BHA is moving away from SMART, which is the system used for sharing information. Instead, treatment providers are being told to obtain their own electronic health record systems. Judge Rattal further explained that in order for the providers to be reimbursed for services, they have to use another system, Value Options. If this plan holds, court coordinators/case managers and the justice partners will not be able to view real time information, such as drug screening results and attendance in treatment and they will have to resort to regular mail, fax, or email. This will adversely impact the problem-solving courts programs.

Judge Rattal stated that the Department of Public Safety and Correctional Services is holding a follow-up meeting, but there is no judge representation. He is planning to call a meeting following the Department's meeting to determine how to move forward. Judge Rattal will forward a copies of the emails on this issue to Chief Judge Barbera.

6. Strategic Initiatives Updates

Faye Matthews briefed the Council on the courthouse equity initiative, stating that through the initiative, a strategy to ensure the equitable allocation of resources across the Judiciary will be developed. She added that the primary focus at this point will be the circuit courts. To date, a survey was sent to the circuit court executive teams, comprising the county administrative judge, clerk, and court administrator. The survey was designed to obtain information regarding perceived resource inequities in areas such as staff, equipment, space and security. The responders also were asked to comment on funding support from the local government, as well as from the state.

In addition to the survey, a focus group comprising representatives from the grant-making departments was convened to discuss the types of grants provided, as well as the factors considered when awarding grants. Once the information from the focus group and the surveys is compiled, it will be provided to the Courthouse Equity subcommittee and the Grants Advisory workgroup of the Court Operations Committee for consideration and further action. It is anticipated that a recommended strategy for obtaining courthouse equity will be presented to the Council at its September meeting.

Lee Robinson briefed the Council on the Employee Reward and Recognition Program initiative. He commented on each of the five components – Revised Compensation Structure, Professional Achievement Recognition, Education Enhancement, Immediate Rewards, and Stakeholder Involvement. The compensation study is in the second of four phases and is a comprehensive study of the Judiciary's compensation structure. The Professional Achievement Recognition, which is included in the compensation study, will provide recognition for achieving an exceptional level of expertise. Education Enhancement expands tuition reimbursement to include certifications. Immediate Rewards will permit administrative

heads to provide on-the-spot reward for jobs well done. The final component, Stakeholder Involvement, will provide an electronic suggestion or ideas bank for individuals to submit suggestions for improvement.

Mr. Robinson noted that implementation of the initiative may be contingent on available funding.

Chief Judge Barbera inquired as to how the attainment of a certain level of expertise will be assessed. Mr. Robinson stated that the compensation study will provide the protocol to be used to conduct the analysis. He added that this component may not be applicable to all classifications and that the details are still a work in progress.

Sally Rankin commented that the initiative appears to focus on State-funded employees and asked how a similar program can work for county-funded employees. Judge Mason emphasized the importance of not watering down the rewards and possibly providing administrative leave to employees for suggestions that lead to improved efficiencies.

Mark Bittner briefed the Council on the Ideas Bank, noting that it is an electronic implementation of the suggestion box. He suggested that we start off with a baseline and then build up the functionality as the initiative starts to mature. Chief Judge Barbera agreed, noting the need to proceed carefully so as not to create unintended issues.

7. For the Good of the Order

Judge Wolfe raised the issue of individuals with State-issued badges not being able to access courthouses without being screened. He was told by the Sheriff that the badges are not recognized because of the inability to account for employees who have left employment in other jurisdictions or with the State, but continue to maintain possession of the badges. Judge Wolfe commented that there should be a way for Judiciary employees, regardless of location, to gain access adding that if attorneys can gain access, employees should be able to do so as well. After some discussion surrounding the issues such as security in the circuit courts handled by the sheriff offices, Chief Judge Barbera asked Judge Debelius if he could take the matter before the Conference of Circuit Judges and provide feedback to the Council.

Judge Tillerson Adams requested a suspension in case aging for unexpected catastrophes such as the weather-related flooding that closed the Prince George's courthouse. The matter will be referred to the Case Management Subcommittee of the Court Operations Committee. Judge Tillerson Adams noted that she plans to put together a lessons learned document for her court.

Action Items

- Judge Rattal will forward copies of the emails related to the discontinued use of SMART to Chief Judge Barbera.
- Chief Judge Morrissey and Judge Debelius will take the matter of providing space before their respective bodies for comment.
- Judge Debelius will solicit feedback from the Conference of Circuit Judges regarding access to courthouses for all Judiciary employees.

There being no further business, the meeting adjourned at 12:00 p.m. The next meeting is scheduled for April 15, 2015, beginning 9:30 a.m.

Respectfully submitted,

Faye Matthews