



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

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

Vacant
District Court Judge

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

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MARYLAND JUDICIAL COUNCIL

MARYLAND JUDICIAL CENTER

580 Taylor Ave
Annapolis, MD 21401

MARYLAND JUDICIAL COUNCIL

Minutes
September 21, 2016

Judicial Council Members Present:

Hon. Mary Ellen Barbera, Chair	Hon. Gerald V. Purnell
Hon. Kathleen Gallogly Cox	Hon. Alan M. Wilner
Hon. John W. Debelius III	Hon. Eugene Wolfe
Hon. Susan H. Hazlett	Hon. Susan R. Braniecki
Hon. James A. Kenney, III	Pamela Harris
Hon. Laura S. Kiessling	M. Carol Llewellyn-Jones
Hon. Peter B. Krauser	Robert Prender
Hon. Karen H. Mason	Timothy Sheridan
Hon. John P. Morrissey	Roberta L. Warnken

Others Present:

Hon. Patrick L. Woodward	Melinda Jensen
Hon. Gary G. Everngam	Kevin Kane
Hon. George Lipman	Connie Kratovil-Lavelle
Hon. Nicholas E. Rattal	Kelly O'Connor
Hon. Thomas G. Ross	Eliana Pangelinan
Hon. Michael J. Stamm	Suzanne Pelz
Faye Matthews	Jonathan Rosenthal
Gray Barton	Stacey Saunders
Mark Bittner	Andrew Tress
Lou Gieszl	Lauren Troxell
Polly Harding	Tracy Watkins
Gregory Hilton	Alan Wiener

A meeting of the Judicial Council was held Wednesday, September 21, 2016, at the Judicial College 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 Debelius moved for approval of the minutes of the July 20, 2016 meeting, followed by a second to the motion by Judge Purnell. The motion passed.

1. **Cloud Security**

In response to questions regarding the security of the Cloud raised during the previous meeting, Judge Gary Everngam and Mark Bittner provided an overview of the Microsoft Government Cloud, which is used by the Judiciary for its cloud computing services. Judge Everngam noted that the federal government mandated *cloud first*, where there is a choice, in 2010, adding that the government cloud is highly regulated. In addition, it is always up-to-date because it is maintained by the provider.

Mr. Bittner stated that the data and processes are housed and managed off premises. Service providers who are moving in this direction can purchase, leverage, and share resources amongst multiple users making the technology cost effective because of the economies of scale. Secondly, the licensing term allows users access to the software from anywhere without concern about compatibility. Thirdly, the cloud is safe against intrusion. Providers use the same firewall authentication used by Judicial Information Systems (JIS) on site. In addition, the data are encrypted in transit to and from the server and the device. Further, only JIS has the encryption key; the provider does not have the key. Mr. Bittner added that the Judiciary's data are replicated in multiple locations and that Microsoft never stores a comprehensive set of data in one place. The data are broken up, stored in multiple places, and then put back together using an algorithm when needed.

2. **FCCIP Proposed Legislation**

Judge Patrick Woodward and Judge Michael Stamm discussed a proposed amendment to Courts and Judicial Proceedings Section 3-801 that will bring Maryland in compliance with federal mandates. This will ensure that federal funding for children in foster care is not lost for non-compliance. In May 2015, the *Justice for Victims of Trafficking Act* passed by Congress provides that any state that wants to continue to receive funding has to comply, statutorily, by including child victims of sex trafficking in the definition of neglect. The Foster Care Court Improvement Program Subcommittee amended the definition of sexual abuse to include child victims of sex trafficking and also added a definition for sex trafficking to comport with the federal definitions, mirroring the language verbatim. The subcommittee conferred with the appropriate individuals in the federal government to ensure the amendment was sufficient to bring Maryland into compliance and thus remain eligible to receive funding. The Act goes into effect May 2017. The proposed legislation has an effective date of June 1, 2017.

Human trafficking remained in the statute without amendment because it is broader and includes the importation of humans for labor. The federal government noted defining human trafficking alone is not sufficient to bring Maryland into compliance.

Judge Mason moved to include the proposed legislation – *Juvenile Causes – Children in Need of Assistance – Definition of Sexual Abuse* – in the Judiciary's legislative package for 2017. Following a second by Judge Kenney, the motion passed.

Chief Judge Barbera expressed her appreciation to the subcommittee for its work to

ensure children in foster care in Maryland will not be harmed because of non-compliance.

3. 2017 Meeting Schedule

Chief Judge Barbera proposed that in consideration of the members' schedules the Judicial Council meet every other month rather than every month. She added that the schedule does not preclude her from convening additional meetings as deemed necessary. There was no objection to the proposed schedule, which will go into effect January 2017.

4. Social Media Policy

Chief Judge Barbera led a discussion regarding the proposed Maryland Judiciary Social Media Policy. During the previous meeting, concerns were raised regarding the need for judges, who are excluded from the aforementioned policy, to have guidelines established about the use of social media. Also during that meeting, it was recommended that elected Clerks of Court be excluded from the policy. In response to those concerns, Chief Judge Barbera asked Judge Debelius and Chief Judge Morrissey to head a workgroup to establish guidelines for judges and magistrates on the use of social media. She also asked Ms. Braniecki to discuss the policy with the Conference of Circuit Court Clerks (the Conference) and to be prepared to discuss the clerks' concerns.

Judge Debelius stated that during a meeting of the workgroup, a number of questions were raised, including whether judges and magistrates can participate in blogs or listservs anonymously and how the guidelines would impact the ethical constraints under which they already operate. Judge Debelius noted that the discussion highlighted two areas on which the workgroup will focus, safety/security and ethics. The workgroup will present its recommendations to the Judicial Council at its next meeting. Chief Judge Morrissey suggested consideration be given to including commissioners in the recommended guidelines for judges and magistrates.

Ms. Braniecki stated that the Conference concluded that while the policy is in the best interest of employees, elected Clerks of Court should be excluded. She added that she was not sure the Conference would be open to the adoption of a separate policy that applies to the Clerks of Court because they are subject to the election laws, which do not speak to social media.

Judge Kiessling pointed out that the Conference of Circuit Judges recommended a footnote be added to the policy indicating that the workgroup established by Chief Judge Barbera was developing a policy that would apply to judges and magistrates so that employees would know that others within the Judiciary would be governed by guidelines for social media usage as well. Chief Judge Morrissey added that part of the basis for the policies and guidelines is to highlight the fact that when employees, judges, magistrates, and Clerks of Court speak or post comments, they are representing the Judiciary. He added that everyone has to be cognizant of what they say and how it impacts the Judiciary, particularly if there is any indication that they are associated with the Maryland Judiciary and they don't affirmatively state that their comments in no way reflect the views of the Judiciary. Judge Debelius commented that elected clerks have to

delve into their own politics and what can be done in an official capacity. He added that there should be specific guidelines for Clerks of Court that highlight what is and isn't appropriate.

Judge Cox commented on the realities of the political process and social media. She added that she understands the Clerks of Court feeling constrained given that they are always in the process of fund raising. Judge Mason noted that it is complicated when it comes to the Judiciary and that part of the issue is generational because younger judges are accustomed to using social media as a part of their daily lives and, as such, don't perceive the use of it as problematic. Judge Hazlett added a perspective from the Commission on Judicial Disabilities, stating that the number of complaints submitted containing photographs of judges on Instagram is unnerving. Judge Hazlett's concerns emanate from a safety and security standpoint because people who want access to judges or their families have greater access because of social media. Ms. Braniecki stated that the Conference will consider adopting guidelines.

Judge Kiessling commented that she thought the judges would get something more restrictive because of ethical constraints. She added that she would appreciate guidelines.

Further discussion ensued around how the language might be tweaked and what was intended by "users of Judiciary systems" because the users extend beyond Judicial Branch employees. It was suggested that the intent was users of systems in the course of their employment. After discussion, Chief Judge Morrissey moved to adopt the policy with the following amendment to *Scope*: ***This policy applies to all official users of Judicial Branch systems, except as otherwise provided in this paragraph. This policy does not apply to judges or elected officials.*** In addition, his motion included the addition of a second footnote to read: ***The Conference of Circuit Court Clerks will consider the adoption of guidelines for the use of social media.*** Judge Debelius seconded the motion, which passed.

Discussion then moved to the *Personal Use of Social Media Outside of Work* section. It was noted that there needs to be confines on personal usage of social media and with the individual's personal equipment. Judge Cox noted that "employee" throughout the policy has to be changed to "users of Judiciary systems" to comport with the approved changes to the *Scope*. Ms. Braniecki noted that the language directing individuals to seek guidance from Judiciary Human Resources regarding the policy is problematic because not all users are Judicial Branch employees.

After additional discussion, Chief Judge Barbera stated that while she understands and respects the need for urgency in the adoption of a policy, the Court Access and Community Relations Committee should review the draft policy in light of the concerns expressed and make recommendations for changes. The Committee should circulate the revised draft policy to the Judicial Council for a two-week comment period and then reconcile the comments. The revised draft policy will be presented at the next meeting of the Judicial Council.

5. Commissioner Residency Legislative Proposal

Chief Judge Morrissey presented proposed legislation that would permit commissioners

to reside in counties contiguous to the county in which they work, which is a change from the current requirement that they live where they work. He noted that the existing requirement impacts the recruitment and retention of commissioners due to the high cost of living in several jurisdictions. Commissioners are on call twenty-four hours a day, 365 days a year and, as such, have to be able to get to their duty station. Chief Judge Morrissey is of the opinion that permitting them to reside in a contiguous county will not adversely impact their ability to perform the duties and responsibilities of their position. He added that Timothy Haven, Executive Director for Commissioners, suggested that expanding the residency allowance any further, including the ability to reside in any county within the District, might be problematic. He is hopeful that this legislation, if passed, will improve recruitment and retention.

Judge Hazlett moved to include the proposed legislation – *District Court – District Court Commissioners – Residency*, in the Judiciary’s legislative package for 2017. Following a second by Judge Purnell, the motion passed.

6. **Forms**

Judge Wilner led a discussion regarding where the responsibility for forms is most appropriately placed. He noted that a number of forms, primarily probate and guardianship, are located in the rules, some detached but mandated. Judge Wilner suggested that the forms might be more appropriately placed with the Forms Subcommittee. He stated that the Rules Committee can review the forms and identify those that should be removed and handled in the same manner as other statewide Judiciary forms.

After some discussion, the Judicial Council agreed that responsibility for forms should be transferred to the Forms Subcommittee to the extent reasonable and feasible. Judge Wilner will work with the Forms Subcommittee to facilitate the transfer.

7. **Strategic Initiative Updates**

Alternative Dispute Resolution Committee. Judge Ross provided an update on the work of the Alternative Dispute Resolution Committee. He noted that the committee, along with its two subcommittees – the District Court Alternative Dispute Resolution Subcommittee and the Research and Grants Subcommittee – strive to enhance alternative dispute resolution throughout the courts.

Some of the initiatives highlighted by Judge Ross include ongoing training programs including basic mediation training for 55 judges and magistrates, as well as 25 court staff with plans to provide the training to 25 judges and magistrates in December; completion of a five-year statewide study on alternative dispute resolution with the results discussed in a symposium comprising the Judiciary and other stakeholders; planned changes to the Standards of Conduct and Confidentiality rules for mediators; piloting alternative dispute resolution in the Orphans’ Court in Prince George’s County; and incorporating alternative dispute resolution in differentiated case management plans. In addition, the committee established two new goals, to develop recommendations to apply the findings of the statewide alternative dispute resolution research and to collaborate with state, local, and specialty bar associations, as well as other

justice partners to educate citizens about the law and the legal system. Judge Ross noted that the committee is discussing the need for alternative dispute resolution rules for probate cases. Judge Wilner stated that the Rules Committee had been requested to draft rules for alternative dispute resolution in the Orphans' Court. Judge Ross noted that his committee plans to give copies of its minutes to the Rules Committee to aid in its rules development in that area.

Judge Krauser commented that the District of Columbia courts are modeling their appellate mediation program after Maryland's program. He also noted that the Court of Special Appeals' mediation program, in conjunction with the Pro Bono Resource Center, presented an all-day training on appellate mediation. In exchange for the training, the participating attorneys agreed to provide one day of mediation services pro bono.

Chief Judge Barbera stated that she has received compliments about Maryland's mediation programs. She thanked the committee and its staff for all of the valuable work they are doing.

Specialty Courts and Dockets Committee. Judge Rattal provided an update on the work of the Specialty Courts and Dockets Committee, noting that the goal of the problem-solving courts is to reduce recidivism. He noted that Fiscal Year 2016 was a busy period for the courts with 3,347 participants in drug and mental health courts of which 71 percent were male. The number of female participants continues to increase. Other demographics include 32 percent of the participants were between 21-29 years old, while 34 percent were over 40 years old. The latter is attributed to older heroin users. Approximately 51 percent of the participants were African-American and 40 percent were White. The participants also included 100 veterans.

Judge Rattal commented that the growing best practice is medically-assisted treatment where drugs that counteract the effect of other drugs are administered to users. The treatment comes in various forms with counties addressing the problems in the manner they deem most appropriate. He added that heroin is hard to deal with and that it brings about other issues, including medical and mental health problems.

Judge Rattal indicated that the Affordable Health Care Act has had more of an effect on problem-solving courts. The courts assist the participants in obtaining health insurance, but that raises another issue because the Health Department then requires a co-pay. Some of the participants don't complete the program because they can't afford the co-pay. The same issue is apparent with community service payments.

Montgomery County recently was approved to begin a mental health court in both its District and Circuit Courts. The Allegany County Circuit Court will submit its application for an adult drug court. In addition, the Anne Arundel County District Court is drafting an application for a veteran's court, while Frederick County is considering proposing a plan for a veteran's court.

Judge Rattal reported that the Office of Problem-Solving Courts received a \$200,000 grant from the Department of Justice to establish and train adult drug court best practices.

Judge Rattal commented that the Business and Technology Subcommittee is working to move forward. The subcommittee is exploring the possibility of a day-long symposium with all of the stakeholders and is awaiting recommendations from the Maryland State Bar Association.

Judge Lipman discussed the work that is being done in the mental health arena, noting that there has been some improvement in getting beds, as well as adherence to court orders. He commended Judge Gale Rasin for her efforts and thanked Chief Judge Barbera for her commitment. Judge Lipman stated that drug treatment dollars fluctuated from \$7.5 million to \$6 million and back to \$9 million this year. In addition, the delay in getting beds has decreased from 190 days to 130 days. He stressed the importance of the courts tracking their cases. He also noted that a lot of work has gone into the forms and procedures manuals to help facilitate placement.

Chief Judge Barbera thanked the committee for its hard work.

Action Items

- The Court Access and Community Relations Committee will review the draft Social Media Policy in light of the concerns discussed and make any changes it deems appropriate. The draft policy will be circulated to the Judicial Council for review and comment prior to the next meeting.

There being no further business, the meeting adjourned at noon. The next meeting is scheduled for October 19, 2016, beginning 9:30 a.m.

Respectfully submitted,

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

Faye Matthews