

KATHLEEN GALLOGLY COX
CIRCUIT ADMINISTRATIVE JUDGE
THIRD JUDICIAL CIRCUIT
CHAIR
(410) 887-6510

LAURA KIESSLING
CIRCUIT ADMINISTRATIVE JUDGE
FIFTH JUDICIAL CIRCUIT
VICE-CHAIR
(410) 222-1290



FAYE D. GASKIN
SECRETARY
P: (410) 260-1257
F: (410) 974-2066

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 Monday, November 20, 2017, at the Judicial College Education and Conference Center in Annapolis, Maryland, beginning at 9:30 a.m.

Members Present

Hon. Kathleen Gallogly Cox, Chair

Hon. Brett W. Wilson
Hon. Brian D. Shockley
Hon. Keith A. Baynes
Hon. Stephen H. Kehoe
Hon. Mickey J. Norman
Hon. W. Timothy Finan
Hon. Viki M. Pauler
Hon. J. Barry Hughes
Hon. Laura S. Kiessling, Vice Chair

Hon. Theresa M. Adams
Hon. Robert A. Greenberg
Hon. Sheila R. Tillerson Adams
Hon. Marjorie L. Clagett
Hon. Audrey J.S. Carrion
Hon. W. Michel Pierson
Hon. Susan Braniecki
Pamela Harris
Timothy Sheridan

Also, Present Were:

Hon. John P. Morrissey
Faye Gaskin
Keith Bageant
Kelley O'Connor
Eliana Pangelinan
Suzanne Pelz
Jonathan Rosenthal
Nisa Subasinghe

Alan Wiener
Sara Arthur
Christopher Dunn
Anne Hoyer
Brittany Luzader
Victor Velasquez
Josaphine Yuzuik

1. Approval of Minutes

Judge Cox called for approval of the minutes of the September 18, 2017 meeting. Judge Hughes moved for approval of the minutes, which was seconded by Judge Shockley. The motion passed.

2. Try-By-Date

Attorney Christopher Dunn appeared before the Conference to discuss a concern for civil defense attorneys regarding the practice of certain insurance companies and the impact of that practice on the civil case time standard. Mr. Dunn stated that the insurance companies file suit while their clients are still being treated, resulting in service being protracted, adversely impacting the ability to meet the established case time standard. He commented that the courts seemingly are not attuned to the practice and, as such, are not addressing it with respect to the time standard. Complicating the matter, according to Mr. Dunn, is when third party complaints are filed. He suggested that the standard be revised to 18 months from filing *or* 14 months from when the last defendant is served.

Judge Cox noted that suggestions for changes to the case time standards are discussed by the Case Management Subcommittee and the Court Operations Committee. Any recommendations arising from those discussions are presented to the Judicial Council for consideration.

Judge Wilson stated that he utilizes management reports from the case management system to manage the movement of cases in his court. If there is no service after a set period of time, a status conference is scheduled. Mr. Dunn noted that it is his experience that most courts are not sending the Md. Rule 2-507 notice for six to eight months, which puts defense attorneys at a disadvantage as courts strive to meet the time standard that begins at case filing. Timothy Sheridan commented that insurance companies generally do not settle until the end and that courts have to properly enforce Md. Rule 2-507. Judge Pierson added that the time standard applies to only 98 percent of the cases, allowing for the two percent of cases that may be outliers. A number of Conference members noted that they were not aware that there was a problem with the Md. Rule 2-507 notices not being sent timely.

After further discussion, the Conference members agreed to review practices within their respective circuits to determine if there is a systemic problem and discuss the matter at the next meeting.

3. Safe at Home Address Confidentiality Program

Josaphine Yuzuik, Anne Hoyer, and Brittany Luzader briefed the Conference on the Safe at Home Address Confidentiality Program within the Office of the Secretary of State, which has been in existence since 2006. The program helps to protect victims of domestic violence, human trafficking, stalking, and sexual assault by providing a substitute address to be used as the

victims' legal residence. In order to be considered for participation in the program, the individual has to fear for his or her safety or the safety of his or her children, be a Maryland resident, and has recently moved or intends to move to an address unknown to the abuser or attacker.

The program leads noted that they are trying to bring awareness of the program to judges and also are training advocacy groups throughout the state to determine appropriate candidates for the program. Ms. Hoyer explained the process for informing the court when someone becomes a participant so that the substitute address is used. Judge Carrion inquired as to what happens if the participant is involved in a subsequent case and does not inform the court or the clerk. She added that if the individual is not in the program, but the judge feels he or she is a good candidate, the court can't postpone the case to permit the individual to go through the process of getting into the program. Susan Braniecki stated that if the individual gets into the program after the case is heard, the clerk would have to go back and redact all addresses. Ms. Hoyer stated that they are working with participants to make sure they know to inform the court if they are in the program. She also commented that the program works with all agencies, such as the Motor Vehicle Administration, to ensure participants' addresses are shielded. Participants are provided contact information for the various agencies.

Ms. Hoyer stated that currently there are approximately 1,000 people in the program, but that number is expected to double as they increase awareness. It was suggested that information be sent to the Domestic Violence Coordinators, State's Attorneys, and magistrates and to make it available in the clerks' offices. Judge Kiessling suggested that the program leads meet with the Domestic Law Committee.

Judge Cox asked the Conference to send to her suggestions for improving usage of the program in the courts.

4. ADR Practitioner Screening

Jonathan Rosenthal, on behalf of the ADR Committee, discussed potential changes to the rules regarding screening prospective ADR providers and adding them to the courts' rosters. Currently, individuals submit their applications to each court for which they want to serve. The county administrative judge for each jurisdiction reviews the application and makes the decision on whether or not the applicant is selected for his or her court's roster. There are twenty-four different ways of handling the screening process.

In contrast, individuals who want to serve as Business and Technology or Health Care Malpractice Claims mediators submit their applications to MACRO for review with final determination made by the ADR Committee. Applicants indicate each jurisdiction in which they want to serve. MACRO maintains a central repository for applications and the rosters, and also ensures that the list and contact information are current.

The ADR Committee recommended that the process for ADR practitioner screening be changed to comport with the process for business and technology and health care malpractice mediators. Doing so would reduce duplication of effort by the courts, provide consistency in the

review process and keep the contact information up-to-date, as well as ensure continuing education for the mediators.

Mr. Rosenthal noted that the District Court's ADR program is centralized. There are continuing education and contact information updates every year. Individuals interested in serving as mediators indicate on the application all of the jurisdictions in which they want to serve.

Changing the process will require changes to Title 17 of the Maryland Rules. The ADR Committee is currently reviewing possible changes.

Mr. Rosenthal noted that the ADR Committee is not recommending that the decision to determine whether the individual is qualified be centralized, but rather that the initial review is centralized. After the applications are reviewed, the information would be sent to the appropriate county administrative judge to make the final decision. MACRO would maintain a master list for each jurisdiction's authorized mediators. Judge Hughes commented that there still would remain the risk of varying interpretations if the final decision is left to the county administrative judge. Judge Cox asked why the ADR Committee would not have the final decision to which Mr. Rosenthal responded that there was a concern about an entity other than the court making the decision and removing the discretion from the county administrative judge. Alan Wiener noted that another concern is that the court may not be prepared to accept additional practitioners.

Judge Pierson commented that the ADR Committee and MACRO are better equipped to vet the applicants than are the courts. Judge Clagett expressed concern regarding what happens if the list gets too large and practitioners' business is diluted. Judge Kehoe echoed a similar sentiment. Following additional discussion, Judge Pierson moved to recommend that the process be modified and centralized so that MACRO vets the applications to determine if the applicant meets requirements and is qualified. Once qualified, the county administrative judge has the autonomy to add the mediator to the roster or to put the mediator on hold until space becomes available. Following a second to the motion by Judge Clagett, the motion passed.

5. Courthouse Security

Judge Kiessling conducted an informal poll to determine how each courthouse is handling courthouse security screening. She noted that she had spoken with Keith Bageant regarding best practices and Sara Arthur with respect to how the Maryland State Bar Association (MSBA) would work with the courts.

Mr. Bageant then discussed universal security screening with the Conference. He noted that with universal screening, everyone who enters the courthouse, including judges, employees, and attorneys, are screened. Universal screening is recommended by the National Center for State Courts, the United States Marshall's Service, and Maryland Judiciary Security.

Mr. Bageant discussed the four tiers of security screening: 1) only screen outside customers of the courts; 2) screen outside customers, vendors, and members of the bar; 3) screen the majority of people coming to the court; and 4) screen all people coming to the court. He noted that he would like to see all courthouses operate at the Tier 3 level where the only people

exempted from screening would be sitting judges and state and local elected officials whose offices are in the courthouse.

Mr. Bageant suggested that the administrative judges form a courthouse security committee and involve anyone who provides security for the courthouse. Judge Kiessling stated that the security committee for her court met and she will be instituting two screening lines, one for employees and attorneys and one for the public.

Judge Baynes noted that he has had discussions in his courthouse for some time regarding instituting universal screening, but has received pushback from clerk staff and other courthouse occupants who have stated that they need after-hours access. Mr. Bageant responded that one possible solution would be to install an access alarm that will activate if someone enters the courthouse.

Judge Carrion asked if there is money for security equipment to which Mr. Bageant responded that the Administrative Office of the Courts has assisted the courts through grant funding. The court executive teams are notified when funding is available.

Ms. Arthur and Victor Velasquez informed the Conference that the MSBA supports security measures being in place, but asked that they be part of the discussion. They would like to have a level of consistency and requested that they be the conduit to informing the MSBA members on what to expect in the various courthouses. Ms. Arthur added that the attorneys are not asking to bypass security, but would like to have the same access level, during peak times – mornings and after lunch – granted to employees.

Mr. Velasquez then discussed the membership identification biometric smartcard, noting that use of the cards is increasing dramatically. The cards can be managed centrally or decentralized. The cards do not allow greater access, just quicker access. The attorneys would go through a pre-check system to have the information stored on the card. The MSBA is willing to fund the project to ensure it works with the security systems.

The cards would be made available to all attorneys; MSBA members would get the cards free of charge, while all other attorneys would have to pay. The MSBA would work with the local bar associations to work with the courts to implement the program at each courthouse.

Judge Cox thanked them for their presentation and asked everyone to give some consideration to what was presented.

6. Guardianship Update

Nisa Subasinghe updated the Conference on amendments to the Title 10 rules regarding guardianship that take effect January 2, 2018. The areas affected include disqualifying offenses, requirements for posting a bond, and appointment of an investigator. Ms. Subasinghe also discussed the various certificates from medical professionals that will be required when requesting a guardian. The forms have to be approved by the State Court Administrator and posted on the website.

Ms. Subasinghe highlighted a number of other changes including requirements for court-

appointed attorneys and orientation and training for guardians. To be eligible for appointment, attorneys must be members in good standing of the Maryland Bar, provide evidence of financial responsibility, and have been trained in the various aspects of guardianship law and practice in conformance with the Maryland Guidelines for Court-Appointed Attorneys in Guardianship Proceedings. Ms. Subasinghe noted that the Elder Law Section of the MSBA is working on attorney training. There will be online training for consultants on the Judiciary's website.

With respect to orientation and training for guardians, there will be a pre-appointment orientation program, which is provided via video training on the Judiciary's website. This must be completed by everyone interested in becoming a guardian and will give the prospective guardian an idea of what is involved in serving in that capacity. In addition, guardians must complete post-appointment training, comprised of sessions on guardians of the person, guardians of the property, and attorney-guardian ethics.

Judge Baynes inquired as to why the training takes place after the appointment rather than prior to being appointed and asked what recourse the court has if the guardian does not complete the training. Ms. Subasinghe commented that the workgroup discussed the matter and was concerned about putting too much burden on prospective lay guardians. She added that other states provide post-appointment training as well. Addressing non-compliance with the post-appointment training is at the court's discretion.

Judge Cox noted that there are two camps regarding the appointment of guardians. The orientation and training program is not intended to cover circumstances when the grandparent is granted custody of the minor.

Ms. Subasinghe stressed that this is a big change for everyone involved and the workgroup tried to focus on the concepts. The workgroup members have offered to visit the courts to provide whatever assistance is needed. She added that before the order is signed, the judge will direct the individual to the clerk's office to view the video, which means that a computer will have to be available. The video should be ready by mid-December.

Judge Cox stated that implementation may vary from jurisdiction to jurisdiction. She added that a lot of work has gone into this endeavor and that the content is a vast improvement. She encouraged the Conference to take Judge Jensen and Ms. Subasinghe up on their offer to visit the courts to provide assistance.

7. Magistrate Leave

Judge Theresa Adams discussed the issue of magistrate leave with the Conference. She expressed her concern regarding the magistrates' mental health and burnout issues given the types of cases over which they preside and stated that the rate at which leave is earned is not reasonable. Judge Cox suggested that administrative judges consider how magistrates are utilized in an attempt to mitigate the concerns expressed by Judge Adams. Judge Kiessling agreed, stating that in Anne Arundel County magistrates are only on the bench four days a week.

Judge Sheila R.T. Adams voiced her agreement with Judge Theresa Adams, adding that magistrates handle family matters that take a considerable amount of time. The public does not

see a magistrate; they do not know the difference. She added that they should be viewed differently because they function as judicial officers and the courts would come to a standstill without magistrates.

Judge Cox noted that the issue of magistrate leave had been discussed in the past and that Chief Judge Barbera took the matter under consideration and decided not to provide additional leave for a number of reasons, including the fact that magistrates are State employees and, as such, are governed by the same leave earning rules as other State employees. Judge Cox also stated that magistrates were given a pay raise in an effort to bring about equity across the State, which cost approximately \$1.2 million. Increasing leave would approach another half million dollars. Judge Cox added that magistrates are not classified as judicial officers, but rather judicial appointments. If their leave earnings is adjusted, then there would have to be a broader study of all senior level managers who are employed by the State Judiciary.

Judge Claggett noted that magistrates once were in the judges' retirement system, but were removed by legislative action. She added that magistrates are hard-working and that one consideration could be that they earn leave at the rate of 90 percent of that of judges. Judge Claggett suggested that the matter be put before the Magistrate Subcommittee for consideration and a formal recommendation to the Conference.

Judge Theresa Adams suggested that the Conference give the matter a little more time before once again approaching Chief Judge Barbera.

8. JRA Implementation Update

Judge Cox asked if there were any issues or concerns regarding the implementation of JRA, adding that the JRA Oversight Board meets periodically and, if necessary, any issues could be addressed during those meetings. Judge Pierson inquired about what Parole and Probation is doing about the new forms and also asked if the agents could provide the demographic information because the judges have no way to discern certain demographic characteristics. Judge Cox stated that the new forms should indicate whether the violation is technical or non-technical and, if the former, whether it is the first, second, or third violation. The forms should be ready soon. She noted that the director of Parole and Probation indicated that his agents do not have the ethnicity information and Judge Cox added that judges will not ask for it in the courtroom. Chief Judge Morrissey stated that because it is a JRA requirement, he raised the concern regarding the difficulties associated with collecting demographic information with the Board.

9. For the Good of the Order

Judge Sheila R.T. Adams noted that anywhere from eight to ten Clerks of Court will not seek re-election next year, which is concerning. She stated that the courts cannot function without a well-functioning clerk's office. The Seventh Circuit requested that the Conference discuss establishing qualifications for the Clerk of Court. Judge Adams understands that instituting minimum qualifications would require a constitutional amendment. Judge Pierson suggested that the amendment should be to move from an elected to an appointed office, with those already in office grandfathered in.

Judge Clagett stated that the Seventh Circuit recommended the creation of public service announcements (PSAs) explaining the role of the Clerk of Court. Pamela Harris stated that she would be happy to come up with information for the PSAs.

Judge Sheila R.T. Adams suggested that the administrative judges have conversations with their elected officials and the bar about the benefits of having an effective, functioning clerk's office. Susan Braniecki stated that it is a concern, adding that a number of potential candidates for the impending vacant seats have approached her inquiring about what they need to do.

Judge Sheila R.T. Adams asked the Conference to give consideration to minimum qualifications for the Clerk of Court, as well as to moving from an elected to an appointed office.

Judge Cox distributed the revised Notice of Post-Trial Rights form, noting that the Forms Subcommittee made a few modifications.

Judge Cox also distributed a survey of the Maryland correctional administrators regarding compliance with Md. Rule 4-351(a)(6), which requires the clerk to provide a copy of any order or judgment of restitution with the commitment record. Of the correctional administrators responding to the survey, the majority indicated that they either were not receiving the information regularly or are only occasionally receiving the information.

Action Items

- Conference members to review the issuance of Md. Rule 2-507 notices with the courts in their circuits to determine if there are any issues. The matter will be discussed at the next meeting.
- Conference members to send suggestions for improving the use of the Safe at Home Address Confidentiality Program to Judge Cox.
- Conference members to review results of the survey regarding including restitution orders with commitment orders to ensure compliance with the Rule.

There being no further business, the meeting was adjourned at 12:25 p.m. The next meeting will be held on Monday, **January 8, 2018**, at the Judicial College Education and Conference Center in Annapolis, Maryland. The meeting will begin at 9:30 a.m.

Respectfully submitted,



Faye D. Gaskin
Conference Secretary