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Conference of Circuit Judges

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Meeting of the Conference of Circuit Judges

A meeting of the Conference of Circuit Judges was held Monday, January 23, 2023, via Zoom for Government, beginning at 9:30 a.m.

Members Present

Hon. Audrey J. S. Carrión, Chair
Hon. Fred S. Hecker, Vice Chair

Hon. Keith A. Baynes	Hon. Stephen Kehoe
Hon. James Bonifant	Hon. Stacy Mayer
Hon. Donine Carrington-Martin	Hon. Dana Middleton
Hon. DaNeeka V. Cotton	Hon. Vicki Pauler
Hon. Kathleen Duvall	Hon. Richard Sandy
Hon. Jeffrey Getty	Hon. S. James Sarbanes
Kristin Grossnickle	Hon. Brian Shockley
Hon. Ruth Jakubowski	Hon. Richard Trunnell

Also, Present Were:

Hon. Sean Wallace
Pam Harris
Nancy Faulkner
Kelley O'Connor
Cynthia Jurrius
Matt Pipkin

1. Welcome and Approval of Minutes

Judge Audrey Carrión welcomed attendees and reminded everyone the meeting would be live streamed as the Conference is subject to the Open Meetings Act. She recognized the newest members of the Conference, Judge DaNeeka Cotton, Judge Dana Middleton, and Judge Stacy Mayer.

Judge Carrión asked for any additions or corrections of the minutes for November 14, 2022. Judge Donine Carrington Martin moved for adoption of the minutes and, after hearing no objections, the minutes were unanimously approved.

2. Complex Litigation Committee Update

Judge Sean Wallace explained the committee was formed in 2020 and looks at various aspects of litigation, except asbestos cases. The committee has met formally seven times since its inception and there is currently one vacancy following Judge Mulford's retirement. Another vacancy will soon become available as Judge Wallace was elected by the General Assembly to serve on the United Nations' Dispute Tribunal in Nairobi, beginning July 2023.

There are two workgroups within the committee, comprised of members from the bench and from the bar to allow coordinated and valuable input on complex matters. Workgroup members are appointed by the committee and members of the bar are recommended by the Maryland State Bar. A handout was provided to show the membership structures of the committee, subcommittee, and workgroups.

The Business and Technology Opinions Subcommittee reviews opinions handed down from the Business and Technology Workgroup. The opinions provide guidance for the bar and their clients by giving them a sense of what a judge may think, although it is not considered binding. The subcommittee ensures the opinions are well-written before being published on the court website.

The Business and Technology Workgroup hosted a bootcamp in April 2022 with 50 attendees, including Justice Fader. Guest speakers included former Chief Justice of Delaware Supreme Court Leo E. Strine and Delaware Vice Chancellor Paul A. Fioravanti. Delaware has become a leading source of authority across the nation and the goal is to equip new groups with the tools to handle complex issues. Another bootcamp is planned for June 2023 with Justice Timothy Driscoll from the U.S. Supreme Court and the outgoing President of the American College as speakers.

In 2022, the Medical Malpractice Workgroup focused on addressing any backlog of cases and its impact on case time standards. Suggestions included coordination between counties to prioritize trials, scheduling despite attorney conflicts under the assumption that at least one case would settle, more attorney involvement in trial scheduling, increase in senior judge use, and scheduling periodic status conferences. Finally, the workgroup discussed setting trial dates at the start of medical malpractice litigation.

Looking ahead, Judge Wallace requested on behalf of the committee for the Conference to:

1. Renew the terms of its existing members, all of whom are willing to continue.
2. Appoint replacements to fill the vacancies.
3. Appoint a committee Chair, noting that Judge Fletcher-Hill has expressed his willingness to serve.

Judge Carrión asked whether Judge Rubin is still doing Business and Technology opinions, and Judge Wallace confirmed that he is still actively involved and was recently the Chair of the Complex Litigation Committee.

Per the request of the committee, Judge Carrión moved to extend to terms of each of its members. Judge Hecker seconded and the request was approved without objection. Next, Judge Wallace recommended Judge Fletcher-Hill as the committee's next Chair. Hearing no objections, Judge Fletcher-Hill was appointed as Chair of the Complex Litigation Committee.

Cynthia Jurrius stated that her staff is actively recruiting new members for the committee. Judge Carrión asked that everyone consider individuals in their courts who could fill the vacancies and suggested placing this issue on the next meeting agenda. She thanked Judge Wallace for his years of leadership and service and wished him luck on his future endeavors.

3. Soderberg Update and Next Steps

Kevin Cox from the Attorney General's Office explained that Criminal Procedure §1-201(a)(1) prohibits members of the public from rebroadcasting legally obtained audio after a proceeding has occurred. A lawsuit challenging the code was filed in 2019 by a journalist wishing to play audio of the Capital Gazette murder trial on a podcast. In December 2022, U.S. District Court Judge Richard D. Bennett issued an opinion granting permanent injunctive release, stating once the audio is released to the public it is protected by the 1st amendments right of the press to publish it.

As a result of the opinion, the Rules Committee proposed an emergency rule restricting public access to recordings unless ordered by the court. The Supreme Court of Maryland had an open meeting to discuss the matter with the public and ultimately it was referred back to the Rules Committee. However, Mr. Cox stated he anticipates the broadcast ban will be addressed in this year's legislative session. There is already a pending bill related to the broadcasting non-confidential case recordings, but it is more realistic that the Rules Committee would make the final changes.

Mr. Cox sent an email advising courts to remove all labels, notices, forms, and administrative orders restricting the public from copying or electronically transmitting recordings obtained from the courts. The courts may still prohibit live recordings or those involving redacted and shielded information. As for the protection of witnesses, Maryland Rule 16-504(g) allows a judge to grant a motion redacting certain portions of an audio recording.

Judge Carrión asked whether juvenile proceedings are still protected, and Mr. Cox affirmed Judge Ruth Jakubowski inquired whether the "safeguard" motion to redact is generally done ahead of trial or during a criminal proceeding. Mr. Cox theorized that the motion would be heard in real time, but suggested reminding litigants of the option prior to the trial date. Judge Jakubowski replied that judges are not typically involved in routine audio requests and asked for

suggestions on how to ensure compliance. Mr. Cox suggested educating the judges and staff handling audio requests and reminding the clerk to log redaction requests when they are made during a hearing. Judge Carrión suggested that court reporters reach out to Mr. Cox directly with any questions or concerns.

Another suggestion was made to have all stakeholders notified when audio recordings are requested, however some expressed concern for clearly defining the terms of notification. Pam Harris added that the Legislative Subcommittee is meeting in early February and will discuss Maryland Rule 16-504(g). Some recourse suggestions would create staff or space limitations, so it is important to be aware of the scrutiny. Judge James Sarbanes added that his court is moving away from court reporters, and they have very little staff to begin with, so he is hopeful that smaller jurisdictions are considered when the rules are developed. Judge Middleton suggested bringing the issue to the Judicial Council to address what courts should do in accordance with these changes. Judge Carrión thanked Mr. Cox for his time and guidance.

4. Court-appointed Attorney Fees in Guardianship Cases

Judge Stephen Kehoe was recently informed by his guardianship liaison that local departments will not compensate attorneys unless the department is named a party in the case. This is creating a hardship for pro bono attorneys as the court could order them to amend their petition to add the department name. Maryland Estates and Trusts §13-705 requires payment if the party is indigent. Mr. Kehoe added that the department could be confusing cases that are brought on by them versus initiated by the public. Judge Hecker suggested taking the issue to the Domestic Law Committee who spearheads guardianship workshops.

5. For the Good of the Order

Judge James Bonifant expressed concern over the number of defendants awaiting hospital space after being declared incompetent and dangerous. Montgomery County has almost 50 inmates waiting, and there are over 200 across the state. He further stated that Judge Glenn Klavans recently issued a contempt order for Maryland Department of Health (MDH). Judge Carrión stated she is meeting with the new Secretary of MDH this week, and Ms. Harris added that Chief Justice Fader is discussing the issue with the new governor this week, as well.

Having no further items to discuss, the meeting ended at 10:41 a.m. The next meeting is scheduled for Monday, March 27, 2023, via Zoom for Government, beginning 9:30 a.m.