



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

**Matthew T. Barrett, Vice-Chair**  
Conference of Circuit Court Administrators

**Hon. Pamela J. Brown**  
Howard County District Court

**Tamera Chester, Administrative Clerk**  
District Court

**Hon. Kathleen Gallogly Cox, Chair**  
Conference of Circuit Judges

**Hon. Amy J. Craig, Chair**  
Conference of Circuit Court Clerks

**Pamela Harris**  
State Court Administrator

**Doug Hofstedt, Chair**  
Conference of Court Administrators

**Hon. James A. Kenney III, Chair**  
Senior Judges Committee

**Hon. Karen H. Mason**  
Circuit Court for Prince George's County

**Hon. Timothy W. Miller Vice-Chair**  
Conference of Circuit Court Clerks

**Hon. Patricia L. Mitchell**  
Montgomery County District Court

**Hon. John P. Morrissey, Chief Judge**  
District Court

**Hon. W. Michel Pierson**  
Circuit Court for Baltimore City

**Cheryl Miller, Administrative Clerk**  
District Court

**Hon. Gerald V. Purnell**  
Worcester County District Court

**Hon. Laura S. Ripken, Vice-Chair**  
Conference of Circuit Judges

**Hon. Dorothy J. Wilson**  
Baltimore County District Court

**Roberta Warnken, Chief Clerk**  
District Court

**Hon. Alan M. Wilner, Chair**  
Standing Committee on Rules of  
Practice and Procedure

**Hon. Brett W. Wilson**  
Circuit Court for Dorchester County

**Hon. Patrick L. Woodward, Chief Judge**  
Court of Special Appeals

**Faye Gaskin, Secretary**  
(410) 260-1257

# MARYLAND JUDICIAL COUNCIL

Meeting Location:

**Judicial College Education and Conference Center**

Upper Level 4 & 5

## MARYLAND JUDICIAL COUNCIL

Minutes

November 28, 2018

### Judicial Council Members Present:

Hon. Mary Ellen Barbera, Chair

Hon. Pamela J. Brown

Hon. Kathleen Gallogly Cox

Hon. James A. Kenney, III

Hon. Karen H. Mason

Hon. Patricia L. Mitchell

Hon. John P. Morrissey

Hon. W. Michel Pierson

Hon. Laura S. Ripken

Hon. Alan M. Wilner

Hon. Brett W. Wilson

Hon. Dorothy J. Wilson

Hon. Patrick L. Woodward

Matthew Barrett

Tamera Chester

Hon. Amy Craig

Pamela Harris

Douglas Hofstedt

Cheryl Miller

Hon. Timothy Miller

Roberta L. Warnken

### Others Present:

Hon. Mimi Cooper

Hon. Fred S. Hecker

Hon. E. Gregory Wells

Hon. Pamela J. White

Faye Gaskin

Carole Burkhart

Maureen Denihan

Lou Gieszl

Jeff Huddleston

Nicholas Iliff

Melinda Jensen

Nadine Maeser

Kelley O'Connor

Pamela Ortiz

Eliana Pangelinan

Jonathan Rosenthal

Suzanne Schneider

Jamie Walter

A meeting of the Judicial Council was held Wednesday, November 28, 2018, at the Judicial College Education and Conference Center, beginning at 9:40 a.m. Chief Judge Barbera called for approval of the minutes of the September 26, 2018 meeting, which were approved by common consent.

## 1. **Journalist Guide**

Judge Pamila Brown presented the *Journalist's Guide to Maryland's Legal System*, noting that it was a culmination of more than a year's long effort spearheaded by the Journalist Guide Work Group of the Court Access and Community Relations Committee. The work group comprised representatives from the Judiciary, bar, and media. The guide, once approved, will be the third edition, representing the first revision in more than 15 years. The revision was necessitated by changes in laws, practices, and procedures, as well as advances in technology. The work group determined that the guide should be designed for conversion to a digital format, which addressed two important considerations – the reliance on electronic devices by journalists and media outlets to perform their jobs and the need to be environmentally responsible.

The guide will include messages from Chief Judge Barbera and Judge Keith Truffer, president of the Maryland State Bar Association. It will cover topics ranging from the Open Meetings Act to copyright laws and radio, television, and digital codes of ethics. Additionally, the guide will include links to relevant websites and resources. Judge Brown stated that the plan is to work with the MSBA and the University of Maryland's Philip Merrill College of Journalism to launch the third edition of the *Journalist's Guide to Maryland's Legal System* in the spring.

Judge Brown acknowledged the work of the work group, as well as the staff, past and present, of the Communications Department within the Administrative Office of the Courts.

Chief Judge Barbera expressed her appreciation to the work group for its hard work. She then asked for a motion to approve posting the *Journalist's Guide to Maryland's Legal System* on the Judiciary's website for informational purposes. The motion, which was made by Pamela Harris and seconded by Judge Woodward, was approved.

## 2. **Mediator Standards of Conduct**

Judge Mimi Cooper and Jonathan Rosenthal continued a discussion of the draft Mediator Standards of Conduct that began during last meeting of the Council. Judge Cooper reiterated that the ADR Committee wanted to reconcile the two sets of standards – *Standards of Conduct for Mediators, Arbitrators and other ADR Practitioners* approved by the Court of Appeals in 2001 and the *Maryland Program for Mediator Excellence Maryland Standards of Conduct for Mediators* approved by the Mediator Excellence Council in 2006, with the goal to produce one set of standards that would be used by mediators practicing in courts, as well as those practicing outside of the courts. To that end, the Work Group on Standards of Conduct for Maryland Mediators included representatives from the four major mediator organizations outside of the Judiciary, judges from all court levels, and the Judiciary's mediation offices. The work group held five forums around the state and an online forum to get input and buy-in from the community.

Mr. Rosenthal addressed questions that were raised at the Council's previous meeting. In response to Judge Wilner's question regarding the use of established standards of conduct in lawsuits against mediators, Mr. Rosenthal stated that the focus of most lawsuits has been breach

of confidentiality rather a general violation of the standards of conduct. Chief Judge Barbera had inquired about what other states are doing with respect to standards of conduct. Mr. Rosenthal noted that through his research he determined that it is handled differently from state-to-state. In many states, the appellate court determines the standards of conduct and most only cover in-court mediations. Mr. Rosenthal added that in many states there are multiple sets of standards to cover in-court and out-of-court mediations.

Ms. Harris inquired as to why the standards of conduct are not part of the Rules to which Mr. Rosenthal responded that the ADR Committee was following the process that was used in the past. He added that there are three instances where the Rules reference the standards and indicate that they are approved by the Court of Appeals. Judge Wilner stated that the approach was adopted when the first mediation rules, which only were applicable to civil cases, were adopted. Mediation was relatively new in Maryland and the issue of ethical standards was raised. Judge Wilner commented that there was reluctance to put the standards in the Rules because of the different standards for in-court and out-of-court mediators. The sentiment was not to lock them in the Rules, which would require any changes to go through the Rules process. The thought was that the Court of Appeals did not have the authority to adopt standards for mediation that takes place outside of the court. Further, the MSBA wanted the Rules to only permit attorneys to mediate, but the Court did not place that restriction on court-related mediation.

Judge Brown commended the Committee's efforts to bring everyone to the table, adding that adopting the standards would result in uniformity of practice, particularly if the external groups adopt the standards, which is the goal. Judge Cooper added that part of the reason for reconciling the two sets of standards is the fact that they are not identical.

Judge Pierson observed that the draft revised standards would only apply to mediators, not other ADR neutrals. Mr. Rosenthal agreed, adding that the Court would have to decide what to do, if anything, with respect to standards for other ADR neutrals. Judge Wilner suggested caution, noting that arbitration is non-binding and that there are other ethical standards governing arbitrators. He added that the Rules address settlement conferences.

Mr. Rosenthal stated that the Committee asked Judge Wilner about appending the standards to the Rules. Judge Wilner noted that the precedence for adding the standards as an appendix, but not having to go through the Rules process is what was done with Court-Appointed Child Advocate Attorneys. He added that he considered areas such as interpreters, which are not part of the Rules. Chief Judge Morrissey stated that having the standards in the Rules gives mediators one place to go, noting that parts of the standards already are in the Rules.

Chief Judge Barbera expressed concern about the standards not being in the Rules, adding that the Rules process appears to be the most perfect way to vet the issues. She acknowledged her appreciation for the work that has been done. Following further discussion about the most appropriate process, Chief Judge Morrissey moved to refer the standards to the Rules Committee for review and recommendation. Following a second by Judge Woodward, the motion passed.

### **3. Committee Updates**

#### **a. *Court Access and Community Relations***

Judge White briefed the Council on the work of the Court Access and Community Relations Committee. She thanked the Journalist Guide Work Group for its work, adding that the guide will be useful to journalists and attorneys alike. Judge White then highlighted some of the work of the committee, its subcommittees, and work groups.

The Language Access Subcommittee worked with the Rules Committee to revise the interpreter Rule (Rule 1-333) and the appendix of interpreter *voir dire* questions. The revisions, which take effect January 1, 2019, streamline the interpreter process and clarify the terms *qualified* and *certified* when referring to interpreters. Judge White noted that the revised *voir dire* questions will be useful to judges.

The Self-Represented Litigants Subcommittee worked with the Access to Justice Department to develop a series of expungement, child welfare, and child custody self-help videos, along with supporting materials.

The Accessibility and Accommodations Subcommittee was engaged in three listening events across the State focused on the disability advocacy communities. The subcommittee's goal was to gain perspectives on how courts might better serve people with sensory, mental illness, cognitive, and developmental disabilities. The Committee forwarded several recommendations to the Education Committee to encourage educational programs for judges on accessibility as the members continue to discuss the lessons learned from the sessions. Pamela Ortiz noted that the Committee is conversing with the Fair Practices Officer and Judiciary Human Resources as it develops a roadmap for moving forward. Judge Mitchell commented that it would be helpful to incorporate training and awareness for both judges and court personnel, adding that awareness is telling because sometimes people who come to the courts have cognitive disabilities or have experienced some type of trauma.

#### **b. *Court Operations Committee***

Judge Wells briefed the Council on the work of the Court Operations Committee, noting that the Committee's diverse membership brings different perspectives and opinions, which is very helpful. Among the highlights reported is the technical assistance to courts in developing their case management plans has been completed and the approved plans are posted on the Judiciary's website. The grand jury brochure is being revised and a new orientation video is being developed that can be used by all courts. It is hoped that their use will result in some degree of uniformity.

The Case Management Subcommittee is researching various case characteristics, such as self-represented litigants and Hicks waivers and their impact on case processing. The subcommittee also is developing a system to review and revise case management templates. Additionally, the subcommittee reviewed the case time standards and suggestions for

modifications to the same.

The Forms Subcommittee is gearing up for the upcoming legislative session and the impact legislative changes will have on the various forms. The subcommittee also is collaborating with the Administrative Office of the Courts and various Circuit Courts on new forms, as well as revisions to existing forms.

The Joint Subcommittee on Communications and Access to Judicial Information continued to make improvements to the Data Dashboard, which is available to the public on the Judiciary's website. The site contains a wealth of information on all four court levels.

The Courthouse Equity Subcommittee surveyed grantees to ascertain their feedback on the grants process. The response was overwhelmingly positive, with respondents noting that the process is less confusing, more streamlined, and more user-friendly. Judge Wilson commented that the subcommittee was established in response to complaints that grant funding was not equitably distributed. The subcommittee has determined that there is equity in funding and that some courts may not have received funding in certain areas because they did not apply for funding.

Judge Wells thanked the chairs, members, and staff for their hard work.

### *c. Court Technology Committee*

Judge Hecker provided an update on the work of the Court Technology Committee, recognizing now deceased Judge Gary Everngam for his leadership, compassion, and contribution to the Committee's work. Judge Hecker also thanked and acknowledged committee members and staff for their hard work.

Judge Hecker highlighted some of the work of the work groups, subcommittees, and the committee. Twenty jurisdictions and the appellate courts are now on MDEC with Baltimore County scheduled to go live in February 2019. Baltimore County was successfully transitioned to the Judiciary's network and email system. The CaseSearch/Data Request Subcommittee worked extremely hard, particularly on ensuring proper access to Secure CaseSearch, leading to the Council approving changes in access levels. The Text Messaging Pilot is scheduled to roll out in early December, with subscribers registering with the commissioners through the Public Defender Eligibility application. The goal is to help reduce FTA rates in criminal cases. A member of the committee will serve as a liaison to the Jury Subcommittee as it explores implementing text messaging through the jury application.

Judge Hecker stated that JIS is upgrading the operating system to Windows 10 and expects to complete the upgrade to all Judiciary-issued systems by summer 2019. In the security arena, online security training (Wombat) is done quarterly. The compliance rate thus far is 78 percent. The committee discussed what, if anything, should be done with those individuals who do not complete the training. The Committee is working on a unification plan to use the mdcourts.gov domain for all Judiciary business. Judge Hecker noted that it is important to have a

unified email system and that it greatly assists with conducting business, such as video bail. With respect to remote participation in litigation, Judge Hecker stated that the Rules permit, but do not require, remote participation. He added that the Committee is gathering information on the practices in other states regarding how the public is made aware of the possibility to participate remotely in court proceedings. When the Rule permitting remote participation took effect, an administrative order was issued that incorporated the guidelines.

Chief Judge Barbera thanked Judge Hecker for picking up the mantle and leading the committee following Judge Everngam's passing.

*d. District Court Chief Judge's Committee*

Chief Judge Morrissey updated the Council on the work of the District Court Chief Judge's Committee, stating that the committee, which comprise the District Administrative Judges, a judge elected from each of the five regions, and members of his executive staff, discusses matters of importance to the District Court, share best practices, and conducts training. Chief Judge Morrissey noted that he periodically meets with Secretary Neall (Maryland Department of Health) to discuss issues of mutual concern, including progress toward meeting the 10-day requirement to find placement for individuals ordered by the court to undergo competency evaluations, as well as the courts' requirement to set the matters in for a hearing once the Department determines that competency has been restored. He also briefed the Council on Noah's Law and the ignition interlock program, noting that the court should check to see if the MVA already has imposed the ignition interlock before doing so. The court, however, still can require as a condition of probation use of the ignition interlock if the MVA already has imposed it as part of its administrative sanction.

The Committee established a work group to review the bailiff security manual, security committee, and active training. Chief Judge Morrissey noted that the Committee discussed a new bail review video that is being developed in collaboration with the Communications Department, the survey results from the pre-trial summit, and MDEC concerns.

Chief Judge Morrissey discussed the joint meeting of the Conference of Circuit Judges and the District Administrative Judges during which the attendees discussed matters of mutual concern to both trial courts. There was a presentation by representatives from ICE (Immigration and Customs Enforcement) concerning policies and procedures regarding ICE warrants and arrests in the courthouse, as well as how writs are handled if the individual is being held on an ICE detainer. The Maryland Department of Health discussed improvements with 8-507 commitments, progress regarding the 10-day time requirements imposed by HB 111 to admit individuals for evaluations ordered by the court, and designated mental health liaison judges to work with the Centralized Admissions Office to streamline communications between the courts and the Department. Representative from the Department of Parole and Probation discussed best practices for JRA (Justice Reinvestment Act) reporting. Other topics covered included Noah's Law, best practices for transmission of documents between the trial courts in MDEC jurisdictions, judicial education initiatives, and legislative requirements regarding extreme risk protective orders. The meeting concluded with an active shooter training conducted by the

Administrative Office of the Courts' Office of Security Administration. Chief Judge Morrissey and Judge Cox both commented that they received positive comments from all in attendance, as well as suggestions to hold joint meetings once or twice a year.

Chief Judge Barbera thanked the committees and staff for their hard work and commitment.

**4. For the Good of the Order**

Judge Kenney congratulated Chief Judge Woodward on the job he has done as Chief Judge of the Court of Special Appeals and for his work on the Council.

**5. Resolutions**

Chief Judge Barbera acknowledged Chief Judge Woodward, Judge Cox, Clerk Amy Craig, Tamera Chester, and Doug Hofstedt for their work on the Judicial Council as their terms came to end. She expressed her appreciation for their service and contributions to the administration of justice through the Council.

There being no further business, the meeting adjourned at 12:00 p.m. The next meeting is scheduled for January 23, 2019, beginning 9:30 a.m.

Respectfully submitted,



Faye Gaskin