



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

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

**Melissa Batie, Vice-Chair**  
Conference of Court Administrators

**Hon. Keith A. Baynes, Vice-Chair**  
Conference of Circuit Judges

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

**Hon. Matthew J. Fader, Chief Judge**  
Court of Special Appeals

**Markisha Gross, Administrative Clerk**  
District Court

**Pamela Harris**  
State Court Administrator

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

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

**Cheryl B. Miller, Administrative Clerk**  
District Court

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

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

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

**Hon. Charlene M. Notarcola, Vice-Chair**  
Conference of Circuit Court Clerks

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

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

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

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

**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

January 23, 2019

### Judicial Council Members Present:

Hon. Mary Ellen Barbera, Chair

Hon. Keith A. Baynes

Hon. Matthew J. Fader

Hon. James Kenney, III

Hon. Karen H. Mason

Hon. Patricia L. Mitchell

Hon. John P. Morrissey

Hon. Gerald V. Purnell

Hon. Laura S. Ripken

Hon. Alan M. Wilner

Hon. Brett W. Wilson

Hon. Dorothy J. Wilson

Matthew Barrett

Melissa Batie

Markisha Gross

Pamela Harris

Cheryl Miller

Hon. Timothy Miller

Hon. Charlene Notarcola

Roberta L. Warnken

### Others Present:

Hon. Mimi Cooper

Hon. E. Gregory Wells

Faye Gaskin

Carole Burkhart

Terri Charles

Malarie Dauginikas

Maureen Denihan

Lou Gieszl

Constance Hurley

Nicholas Iliff

Melinda Jensen

Carla Jones

Cynthia Jurrius

Jose Knight

Stephane Latour

Nadine Maeser

Kim McPeters

Kelley O'Connor

Eliana Pangelinan

Rebecca Riemer

Jonathan Rosenthal

Suzanne Schneider

A meeting of the Judicial Council was held Wednesday, January 23, 2019, at the Judicial College Education and Conference Center, beginning at 9:30 a.m. Chief Judge Barbera began the meeting by welcoming everyone and introducing the Council's new members: Chief Judge Matthew Fader, Judge Keith Baynes, Clerk Charlene Notarcola, Melissa Batie, and Markisha Gross. She then called for approval of the minutes of the November 28, 2018 meeting, which were approved by common consent.

## 1. Appeal of Denial of Request for Data

Nadine Maeser and Rebecca Riemer apprised the Council of a request from Alexander Billy, a Georgetown University Ph.D. student, for data on moving violations. The request was denied by the State Court Administrator and, per Maryland Rule 16-909(f)(3), was appealed to the Council. Ms. Maeser provided a brief overview of the history of the request. She noted that the appeal was the first considered by the Council under Maryland Rule 16-909. Ms. Riemer discussed Rule 16-909, stating that, after reviewing a request, the State Court Administrator can approve, deny, or conditionally approve the request. She noted the reasons enumerated in the Rule for denying a request and stated that the denial reasons must be in writing. Upon receiving the denial, the requestor can appeal to the Judicial Council, who then considers the request and makes a recommendation to the Chief Judge of the Court of Appeals.

Discussion ensued regarding the factors that led to the denial of Mr. Billy's request and whether he was given the opportunity to pay for the necessary programming. Carla Jones, Judicial Information Systems (JIS), stated that the programming time necessary to fulfill a request is just one of the factors considered. She added that until MDEC is fully-implemented statewide, JIS must query several case management systems to fulfill data requests, which elevates the levels of effort. Doing so requires additional staff time and increases complexity. In addition, staff may be assigned to other projects, essential to operations, from which they cannot be pulled without posing an administrative burden. Those considerations would lead to a denial of the request, which was the case in this instance.

Judge Wilner moved that the Council recommend to the Chief Judge that the Administrative Office of the Courts be directed to expeditiously resend the denial letter, clearly articulating the reasons for denial of the request. The motion, which was seconded by Judge Baynes, passed. Chief Judge Barbera accepted the Council's recommendation.

Note: Chief Judge Morrissey and Ms. Harris recused themselves from discussion on the appeal because of their prior involvement in the matter.

## 2. Email Retention Work Group Recommendations

Matthew Barrett, on behalf of the Email Retention Work Group of the Court Technology Committee, presented the recommended Email Retention Policy to the Council. The work group developed three recommendations, one of which to transition all courts to the mdcourts.gov platform, was previously approved by the Council. The Committee reasoned that all courts should be on the same email platform before a retention policy could be implemented. There are three courts remaining to transition to the mdcourts.gov platform.

Mr. Barrett was before the Council seeking approval of the final two recommendations – 1) retain all incoming email for twelve months and 2) automatic deletion of email after twelve months unless intentionally preserved by the user. If approved, it is anticipated that the programming necessary to facilitate implementation of the policy, as well as the necessary notification and education of users, including flagging/tagging email folders for retention beyond the twelve months, can be implemented by December 31, 2019.

Judge Dorothy Wilson asked if there would be any time limitations placed on email

folders that are flagged/tagged, which would result in the emails being deleted at some point. Mr. Barrett responded that the user determines the deletion period for flagged/tagged folders.

Judge Kenney moved to adopt the work group's recommendations. Following a second by Judge Brett Wilson, the motion passed.

### **3. Courthouse Equity Subcommittee**

Judge Wells and Judge Brett Wilson briefed the Council on the work of the Courthouse Equity Subcommittee, a subcommittee of the Court Operations Committee, noting that it was created to address concerns raised regarding the perceived inequity in the distribution of funding to the circuit courts. Judge Wilson commented that through its work, the subcommittee determined that there are no inequities in funding support, adding that if there is inequity, it resulted from the courts not seeking grant funding. Judge Wilson also noted that the perception at the outset was that smaller courts were being ignored. Again, the subcommittee's study determined that was not the case and, in fact, the smaller courts seemingly benefitted more from the support of the Administrative Office of the Courts.

Judge Wilson stated that, with the Council's approval, the subcommittee established a process to ensure the baseline needs of courts are addressed in the areas of security, access, and problem-solving courts, referred to as Tier 1 needs. In addition, another level, Tier 2, was established to indicate areas to be addressed once the baseline needs are fulfilled.

In addition to the above, the subcommittee embarked upon several special projects, including inequity in magistrate salaries. The Council adopted the subcommittee's recommendation to equalize magistrates' salary at 90 percent of a District Court judge's salary. The subcommittee also looked at equalizing the responsibilities and salaries of grant-funded personnel, but determined that the differences in job responsibilities, as well as variations in local-government supplemental contributions added complexities that could not be easily overcome. The subcommittee then attempted to develop a sliding scale for funding support, but determined that there is no substitute for the human element. The members decided that there was no need to continue that effort as no problems with equity had been discerned.

After discussing the subcommittee's original charge, as well as the efforts to date, the members concluded that a subcommittee was no longer needed and that the same tasks could be accomplished through the Court Operations Committee. The recommendation was presented to the Committee, which agreed to recommend to the Council that the subcommittee be sunset and that its functions be rolled into the Committee, to include that at least one member to be responsible for equity issues; that equity issues be on the Committee's agenda for at least two meetings per year; and that the Committee create work groups, as needed, to address equity issues.

Judge Wells noted that he had concerns with completely sunseting the subcommittee, particularly since the perception is that the subcommittee ensures that all courts are treated fairly. His concern was that sunseting it without having a mechanism in place to continue to monitor equity would send the wrong message.

Judge Kenney moved to approve sunseting the subcommittee and to subsume its

functions into the scope of the Court Operations Committee. Following a second by Judge Ripken, the motion passed.

Chief Judge Barbera asked if more had to be done to raise the awareness of funding availability. Judge Wilson responded that one goal was to publicize and make people aware of the grant opportunities. To that end, there is an annual grants conference where attendees are apprised of all available grants. Judge Ripken asked that Judge Wilson speak about the availability of grant funds at the meetings of the Conference of Circuit Judges and the Conference of Circuit Court Administrators.

Chief Judge Barbera thanked the subcommittee members for their work.

#### **4. Major Projects Executive Steering Committee**

Chief Judge Morrissey and Ms. Harris discussed with the Council the addition of another committee to the Council's eleven standing committees. They noted that the MDEC Executive Steering Committee (the ESC) was formed to oversee the acquisition and implementation of the statewide case management system, MDEC. During the committee restructuring, the ESC was not included and, at some point, was renamed the Major Projects Executive Steering Committee by the late Judge Gary Everngam who assumed it was a subcommittee of the Court Technology Committee. Chief Judge Morrissey stated that the ESC has always functioned independently, but it needs to be formalized. If approved, the new committee's membership would include the Chair of the Court Technology Committee.

Chief Judge Barbera asked if the ESC functioned more as a policy body, while the Court Technology Committee functioned more as an operational committee to which Ms. Harris responded that the description was accurate. Chief Judge Morrissey added that membership on the committee requires a tremendous time commitment, as well as an understanding of the innerworkings of the Judiciary.

Judge Brett Wilson suggested that a scope of activity/purpose statement be developed and posted so that the Judiciary understands what the committee does and to remove any perception of it being a secret committee. He added that, seemingly, the policy implications and complexity requires longevity and that maybe the committee should not function in the same manner as other committees with members rotating over time.

Judge Ripken moved to create the Major Projects Committee as the twelfth standing committee of the Judicial Council. Following a second by Judge Mitchell, the motion carried.

#### **5. Committee Updates – Alternative Dispute Resolution Committee**

Judge Cooper briefed the Council on the work of the Alternative Dispute Resolution (ADR) Committee. She acknowledged the staff for their hard work. Judge Cooper stated that the Standards of Conduct Work Group held six forums, including one online forum, to solicit feedback from the mediator community on the two sets of standards under which mediators operate with the goal to reconcile the two sets into one uniform set of standards. The draft standards were discussed at the previous Judicial Council meeting and are pending review by the Rules Committee.

The Committee continues to work with other Council committees, including the Domestic Law Committee's Court Process Work Group where the Committee reviewed and provided comments on draft processes, as well as distributed them to the ADR community for comment. The Committee also worked with the Domestic Law Committee's Guardianship/Vulnerable Adults Work Group to help identify the practicality of ADR in guardianship cases, best practices, and ongoing collaboration with stakeholders.

The Committee presented at the New Trial Judges' Orientation on the topic of ADR in the Courts and provided 40-hour mediation training to 16 judges and one magistrate in support of the Education Committee.

The ADRESS system, which is used to gather evaluative information on ADR, continues to evolve. There are six pilots of the system currently underway. To date, three reports have been completed.

Other activities of the ADR Committee include verification of the ADR Business and Technology practitioner roster, support of the ADR Rules for the Orphans' Courts, development of a uniform mediator application form, and rollout of agreement forms in the District Court to help users understand participation in ADR. There are several pilots underway, including case disposition sheets for Peace and Protective Order and Failure to Pay Rent Day of Trial ADR programs.

The Research and Grants Subcommittee streamlined court ADR data collection, awarded grants to eight courts in Fiscal Year 2019, and provided grant funding to 20 justice partners. Out of the grant-funded programs, more than 12,000 processes were conducted in the Circuit Courts with nearly 6,000 settlements reached. Additionally, 2,916 ADR processes were provided by community justice partners with 2,023 settlements reached. Judge Cooper noted that not all jurisdictions have systems that compile ADR information.

Judge Cooper highlighted the goals for 2019 and beyond, including completion of the Standards of Conduct for Mediators, Rules updates, mediation quality assurance, and court ADR data collection.

Chief Judge Barbera thanked the Committee for its hard work.

## **6. For the Good of the Order**

Chief Judge Barbera informed the Council that they would receive invitations to the State of the Judiciary Address, scheduled for February 6.

There being no further business, the meeting adjourned at 11:40 a.m. The next meeting is scheduled for March 20, 2019, beginning 9:30 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Faye Gaskin". The ink is black and the signature is fluid and legible.

Faye Gaskin