



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. Pamila 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

March 20, 2019

Judicial Council Members Present:

Hon. Mary Ellen Barbera, Chair

Hon. Keith A. Baynes

Hon. Pamila J. Brown

Hon. Matthew J. Fader (via telephone)

Hon. James Kenney, III

Hon. Karen H. Mason

Hon. Patricia L. Mitchell

Hon. John P. Morrissey

Hon. W. Michel Pierson

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. Cynthia Callahan

Hon. Glenn L. Klavans

Hon. Nicholas E. Rattal

Hon. William V. Tucker

Hon. E. Gregory Wells

Faye Gaskin

Richard Abbott

Keith Bageant

Gray Barton

Robert Bruchalski

Carole Burkhart

Lou Gieszl

Abigail Hill

Dominique Johnigan

Sarah Kaplan

Nadine Maeser

Kelley O'Connor

Eliana Pangelinan

Suzanne Pelz

Jonathan Rosenthal

Suzanne Schneider

Nisa Subasinghe

Jamie Walter

A meeting of the Judicial Council was held Wednesday, March 20, 2019, at the Judicial College Education and Conference Center, beginning at 9:30 a.m. Chief Judge Barbera welcomed everyone and then called for approval of the minutes of the January 23, 2019, meeting, which were approved by common consent.

1. **Expungement Manual**

Judge Wells, Chair of the Court Operations Committee and Judge Klavans, Chair of the Expungement Work Group provided an overview of the updated Expungement Manual to the Council for its consideration and approval. Judge Klavans stated that because of the proliferation in laws regarding expungement, including the expansion of eligible offenses, there was a need to update the Manual to ensure the clerks have a clear understanding of the law and business processes. The Manual includes information on how to process expungement requests in both the electronic and manual environments. It is intended to be an online, living document for use by clerks, custodians of records, and court-related agencies. Having an online document provides the flexibility to make timely updates as laws and associated processes change. The Manual is interactive with links to forms, statutes, references, definitions, and best practices. It includes a flow chart of the expungement process from filing of the petition to compliance by each custodian of the records. The Council was asked to approve the Manual and to authorize the Committee to make updates/corrections as necessary.

Judge Wilner asked if the online Manual is accessible to the public and whether it is subject to the Court Access Rules. Judge Klavans responded that it is not accessible to the public and that the work group had not considered its applicability to the Rules. After some discussion, it was determined that the Manual is a procedural document, not a court record and, therefore, not for public dissemination. Judge Wilner agreed to review the access rules and assist with the language to be added to the Manual to indicate such. The Court Operations Committee will monitor legislative changes to expungement laws and make the necessary changes to the Manual. Users will be advised of updates through the change notification process already established within the Court Operations Department.

Judge Pierson moved to recommend to Chief Judge Barbera that she approve the Manual, as revised; to provide that it be disseminated to judges, clerks, and court administrators for processing expungements; to post it online; and to give the Court Operations Committee the authority to make changes as necessary. Following a second by Judge Mason, the motion passed. Chief Judge Barbera accepted the Council's recommendation.

Chief Judge Barbera thanked the work group, the Committee, and staff for their work on the Manual.

2. **Report Concerning the Juvenile Justice Standards and Training**

Judge Tucker, Chair of the Juvenile Justice Standards and Training Work Group, presented to the Council its report and recommendations. He stated that the work group, under the Juvenile Law Committee, was formed to address standards and training for attorneys who represent respondents in delinquency and child in need of supervision proceedings. The work group, which included justice partner representatives, was tasked with considering current standards and training requirements, whether formal standards and training should be required, and if so, the form and substance of the requirements.

Judge Tucker stated that the Court of Appeals generally does not create standards for attorneys, except in limited circumstances. There are no statewide standards for attorneys in

delinquency and CINS matters. Also, there is no statewide training for State's Attorneys; however, the Office of the Public Defender has mandatory training for attorneys who handle those matters. The OPD has a required 40-hour basic training course in which all new hires are expected to participate. In addition, there is a two-day summit for attorneys who handle juvenile cases. The OPD recently received a two-year federal grant from the Office of Juvenile Justice and Delinquency Prevention to create a curriculum for staff and panel attorneys based on the Juvenile Training Immersion Program (JTIP). Staff will be required to satisfactorily complete the training before representing youth. Panel attorneys will be required either to satisfactorily complete the training or pass an exam before receiving juvenile case assignments.

The work group conducted a number of nationwide surveys and found that 16 jurisdictions have standards for attorneys who represent juveniles in delinquency proceedings. Seven jurisdictions have statutes, while 14 have detailed standards. With respect to attorneys being required to possess specified qualifications, 24 jurisdictions address qualifications in some manner and two jurisdictions also address qualifications for judges and/or prosecutors. Eleven jurisdictions have mandatory qualifications attorneys must meet before they can be appointed to represent juveniles and six jurisdictions require attorneys to provide evidence of compliance with the qualifications to the court.

The work group concluded that there exists a need for specialized knowledge, skills, and training. Additionally, the training should be encouraged rather than mandated. The work group also concluded that the National Prosecution Standards should be a best practice for state's attorneys in juvenile proceedings and that the standards developed by the National Juvenile Defender Center should serve as a guide for all attorneys who represent juveniles.

Judge Tucker requested the Council's acceptance of the report and recommendations as best practice, adding that following a briefing to the Conference of Circuit Judges, Recommendation No. 2 was amended to read: *It is strongly encouraged that an online training program be developed to provide specialized training to attorneys who represent juveniles. The curriculum for the online course should follow the training curriculum produced by the National Juvenile Defender Center, which currently is the training known as the Juvenile Training Immersion Program (JTIP), specialized for Maryland law and practice. This training should be developed and provided outside the Judiciary.* The modification was made to make it clear that the Judiciary should not be a direct provider of training to attorneys.

Discussion ensued about how the Council's approval of the report would be interpreted and whether attorneys would perceive approval as requiring certain things to happen. Also, there was concern regarding the layout of the report where the work group's recommendations, as well as standards and qualifications established by other entities, are contained in the appendices, but the final recommendations for consideration are contained within the body of the report. Not all the work group's recommendations were incorporated in the final recommendations. The consensus was that there may be confusion with respect to which recommendations were adopted.

After further discussion, Judge Ripken moved that the Council recommend to Chief Judge Barbera adoption of the report and that the Juvenile Law Committee be directed to develop a plan for implementation of the recommendations proposed on Pages 11 and 12, along with the modified version of Recommendation No. 2, of the Report Concerning Juvenile Justice

Standards and Training, excluding Appendix A on Pages 14-18. Following a second by Ms. Harris, the motion passed. Chief Judge Barbera accepted the recommendation of the Council.

Chief Judge Barbera expressed her appreciation to the committee, work group, and staff for their efforts.

3. Committee Updates

a. *Domestic Law Committee.*

Judge Callahan briefed the Council on the work of the Domestic Law Committee, its subcommittee, and work groups. The Hospitalized Adults Work Group shepherded amendments to Title 10 of the Maryland Rules, including protocols for individuals who need expedited hearings, but are not in an emergency situation requiring continued stay in the hospital or other facility. The 2018 Family Law Bench Book Work Group completed revisions to the bench book, making it easier to use and edit. The bench book is available for Family Law University. The Court Process Work Group is discussing adjustments to the parenting plan and will forward any proposed changes to the Rules Committee. The Legislative Work Group drafted 24 position papers, including two in collaboration with the Human Trafficking Work Group. Judge Callahan commented that the Guardianship and Vulnerable Adults Work Group has done an amazing amount of work, including the Title 10 amendments, collaborating with MACRO around the value of mediation in guardianship cases, planning the Guardianship Symposium that will highlight best practices and managing guardianship cases, and continuing to develop judicial training and resources. Judge Woodward has agreed to edit the Guardianship Bench Book.

Judge Callahan noted a few new projects in which the Committee is engaged, including bringing about consistency in the protocols for best interest attorneys. Training sessions are scheduled for Frederick and Anne Arundel counties and the Eastern Shore. The Committee is beginning some work regarding custody evaluator standards and training. The members are reviewing the Rules and how to implement protocol. Another focus will be around Special Immigrant Juvenile Status litigants and court processes.

The Domestic Violence/Peace Order Subcommittee is reviewing the information in DVCR to ensure it is consistent and aligns with the law. The subcommittee also is exploring a statewide repository for domestic violence statistics. Other efforts underway include working with bailiffs on protocols regarding providing orders and working with the Judicial College on the convergence of domestic violence and criminal law in light of the Extreme Risk Protective Order (ERPO). Judge Callahan stated that the Department of Public Safety and Correctional Services is making modifications to the VINE system to alert the petitioner when the respondent is served.

b. *Legislative Committee*

Chief Judge Morrissey briefed the Council on the highlights of the session thus far. He thanked the committee members and staff for their hard work and for the unique perspectives that they each bring to the discussions.

The Judiciary requested one judge in the circuit court and six judges in the District Court.

Legislation introduced this year covered several broad topics, from increasing the mandatory retirement age for judges to addressing the prescription drug benefits for retirees to various aspects of judicial elections for circuit court judges. Legislation was introduced to rename both appellate courts, as well as the Maryland State Law Library. There were several expungement bills introduced, as well as a bill requiring the State Commission on Criminal Sentencing Policy to expand the information reported in its annual report to the General Assembly to include items such as the name of the sentencing judge and the sentence recommended by the State. Modifications to the Justice Reinvestment Act were introduced, as was a bill to repeal the prohibition against recording or broadcasting criminal sentencing hearings. A bill was introduced to establish the Office of Program Evaluation and Government Accountability in the Department of Legislative Services that would have the authority to conduct performance audits on the Judicial and Executive branches of government. Another bill would establish a work group to study child custody decisions that involve child abuse or domestic violence allegations with reporting requirements to the Governor and General Assembly.

Chief Judge Morrissey stated that a final report will be distributed that will include the outcome of bills of interest to the Judiciary, after the session ends.

c. *Specialty Courts and Dockets Committee*

Judge Rattal briefed the Council on the work of the Specialty Courts and Dockets Committee, acknowledging the work done by the Office of Problem-Solving Courts staff. The Business and Technology Case Management Work Group, which is comprised of judges and attorneys, has scheduled its first meeting. Among the items to be discussed is eligibility criteria for consideration as a business and technology case. Judge Rattal noted that 28 cases were admitted into the program during Fiscal Year 2018, compared to 53 the previous fiscal year.

The Mental Health, Alcoholism, and Addictions Subcommittee continues to address issues and concerns surrounding commitments, as well as HOPE Act requirements. The members will review the mental health performance measures established in collaboration with the National Center for State Courts to determine next steps.

With respect to the work of the Problem-Solving Courts Subcommittee, Judge Rattal stated that the less populous jurisdictions are joining together to form programs, such as the Dorchester County Regional Veteran's Court that serves the entire Lower Eastern Shore. In addition, four other problem-solving courts were approved in 2018 and, currently, seven programs are in various stages of planning. There are 57 operational courts.

The Office of Problem-Solving Courts worked with the National Center for State Courts to develop measures, as best practices, for Adult Drug Courts. They indicated that decisions should be more statistics-based. A training on the measures, which include measures for things such as target population, sanctions and incentives, post-program recidivism, and processing time, recently was held. Training sessions on other areas are scheduled, along with the 16th Annual Problem-Solving Court Symposium.

The problem-solving courts served nearly 8,000 people in Fiscal Year 2018. In addition, judges and magistrates met with participants approximately 25,000 times in court hearings, while the Office of Problem-Solving Courts had 156 face-to-face contacts with problem-solving court

programs. It was noted that between 2008 and 2018, 97 percent of the more than 6 million drug and alcohol tests conducted in Maryland's problem-solving courts returned a negative result. Judge Rattal commented that the participants are tested a minimum of two times a week and they began testing for opioids last year, adding that the cost of testing for synthetics is more expensive. He stated that the insurance companies determine the program facility, as well as the level of testing and that it is impossible to test for everything in every situation because it is cost-prohibitive.

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

The Council went into executive session to discuss an outstanding matter.

There being no further business, the meeting adjourned at 12:20 p.m. The next meeting is scheduled for May 29, 2019, beginning 9:30 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Faye Gaskin".

Faye Gaskin