



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

Melissa Batie
Chair, Conference of Circuit Court Administrators

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

Hon. Pamela J. Brown
District Court in Howard County

Hon. Angela M. Eaves
Circuit Court for Harford County

Hon. Matthew J. Fader, Chief Judge
Court of Special Appeals
Marina Fevola
Vice-Chair, Conference of Court Administrators

Markisha Gross, Administrative Clerk
District Court in Montgomery County

Hon. Katherine Hager
Vice-Chair, Conference of Circuit Court Clerks

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

Hon. Patricia L. Mitchell
District Court in Montgomery County

Hon. John P. Morrissey, Chief Judge
District Court of Maryland

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

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

Hon. Bonnie G. Schneider
District Court in Cecil County

Mary K. Smith, Administrative Clerk
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. Dorothy J. Wilson
Baltimore County District Court

Faye Gaskin, Secretary
(410) 260-1257

MARYLAND JUDICIAL COUNCIL

Meeting Location:
Maryland Judicial Center
Room 121, First Floor

Minutes
March 11, 2020

Judicial Council Members Present:

Hon. Mary Ellen Barbera, Chair
Hon. Keith Baynes
Hon. Pamela J. Brown
Hon. Matthew J. Fader
Hon. James Kenney, III
Hon. Karen H. Mason
Hon. Patricia L. Mitchell
Hon. John P. Morrissey
Hon. Laura S. Ripken
Hon. Bonnie G. Schneider

Hon. Alan M. Wilner
Hon. Brett W. Wilson
Hon. Dorothy J. Wilson
Melissa Batie
Markisha Gross
Hon. Katherine Hager
Pamela Harris
Hon. Charlene Notarcola
Mary Kay Smith
Roberta L. Warnken

Others Present:

Hon. Fred Hecker
Hon. Michael Stamm
Faye Gaskin
Renee Abbott
Richard Abbott
Robert Bruchalski
Carole Burkhart
Lou Gieszl
Abigail Hill
Jeff Huddleston
Melinda Jensen

Cynthia Jurrius
Sarah Kaplan
Nadine Maeser
Kelley O'Connor
Eliana Pangelinan
Suzanne Pelz
Gillian Tonkin
Sec. Robert Neall
Deputy Sec. Gregg Todd
Webster Ye

A meeting of the Judicial Council was held Wednesday, March 11, 2020, at the Maryland Judicial Center, beginning at 9:35 a.m. Chief Judge Barbera welcomed everyone and then called for approval of the minutes of the January 15, 2020, meeting, which were approved by common consent.

1. Coronavirus Update

Secretary Robert Neall and Deputy Secretary Gregg Todd, Maryland Department of Health, briefed the Council on the State's efforts regarding Covid-19. At this point, there are six confirmed Covid-19 cases of which all are travel-related. Secretary Neall added that while the cases are self-contained, it is only a matter of time before there is community transmission. The State has to get more aggressive in the areas of testing and social distancing. There currently are no therapies, nor is there a vaccine for Covid-19. The State is considering sensible, reasonable tactics that will have a huge impact on the transportability of the virus. The people most at risk are those over 60 years old and those who have chronic health problems or underlying issues. The State is taking steps to address issues prevalent in nursing homes – the Nursing Home Diversion Program. The goal is to keep people in their homes with wrap-around services.

The Governor has established a panel of experts to assist with the State's response, along with the efforts underway within the Maryland Department of Health. Secretary Neall stated that the Judiciary should plan for courts to be closed for some time during the public emergency. Chief Judge Barbera commented that the courts are collectively concerned about the number of people who come into the courthouses. Chief Judge Morrissey noted that $\frac{3}{4}$ of the District Court facilities are in Department of General Services' buildings. The courts have a constitutional requirement to stay open to address certain matters. As such, he asked if the Governor could, in the event of the declaration of a State of Emergency, defer to Chief Judge Barbera to determine if courts should close or remain open on a limited/curtailed basis.

Secretary Neall noted that the quarantine period is 14 days and the incubation period is 5-9 days. An individual with coronavirus is contagious for a couple weeks and could possibly be asymptomatic. The executive branch is experimenting with telework, to the extent possible, to mitigate exposure to risks.

With respect to masks and gloves, Secretary Neall stated that if an individual has the coronavirus, a mask will help prevent that individual from spreading the virus to others. Individuals are advised to not touch their faces and to frequently wash their hands. As such, gloves may or may not be effective, particularly if the individual touches his or face.

With respect to directives and information, Secretary Neall stated that county health departments and local emergency management offices are the heart of the community, although a lot of the orders will emanate from the Governor's office. Secretary Neall stated that he is unsure how a community spread will be manifested and then trigger further action. He further stated that there could be one or more clusters. The plan is to have doctors and nurses interview individuals and start testing in those areas. The public health professionals and experts know how to communicate information in terms that are understandable to the general-public. It is intended that the Governor's office will be the conduit through which accurate and timely information is shared.

Mr. Todd noted that there are 1,000 patients and 3,000 staffers in health care facilities. The Department is exploring what can be done to mitigate the spread of the virus in those facilities.

The employees cannot telework. If they call in sick, they are asked questions regarding coronavirus symptoms, testing, etc. The Department requested that in lieu of status hearings, written reports be accepted. The Department has been relatively successful getting patients admitted within 10 days but is having difficulty with community placement for those who have reached the point of release. There is a concern that a backlog will soon develop. The Department requested time to implement a plan and process for dealing with this matter.

Chief Judge Barbera stated that she will rely on Chief Judge Morrissey and others to be in open and constant communication with the Department. She thanked Secretary Neall for adjusting his schedule to meet and share information with the Council.

2. Legislative Update

Chief Judge Morrissey updated the Council on the 2020 Legislative Session. He noted that the Judiciary's legislative package only included one bill, HB 529/SB 256 – *Circuit Court Real Property Records Improvement Fund – Surcharge on Recordable Instruments*, which would make permanent the \$20 surcharge on recordable land records instruments. The bills received favorable reports. In addition, the Judiciary's budget analyst recommended that provisions to ensure continuation of the surcharge be added to the Budget Reconciliation and Financing Act.

The session was heavy on expungement bills with an emphasis on partial expungements, which is difficult for the Judiciary to accomplish. There also were expungement bills related to automatic expungements, for which there are policy issues. Members of the Judiciary testified numerous times, attempting to clearly articulate the issues regarding implementation of partial and automatic expungement legislation. There also were bills introduced regarding the expungement of marijuana possession charges. The fiscal impact of the various bills is in the millions of dollars, encompassing expenditures for technology changes and additional staff resources.

There were several bills pertaining to judicial elections for circuit court judges, each containing provisions for retention elections. The bills ranged from eliminating contested elections and replacing them with retention elections every 12 or 14 years to altering the method of selecting circuit court judges and making continuation in office subject to confirmation by 80 percent of the Senate, with the possibility of a contested election.

The criminal law bills introduced that impact the Judiciary include, but are not limited to, legislation regarding cameras in the courtroom during criminal sentencing hearings, a bill to make modifications to the Justice Reinvestment Act, bills that would permit individuals serving certain terms of confinement to petition the court to reduce the sentence after serving a certain percentage of the term, and a bill to establish a District Court Jobs Court Pilot Program.

Other legislation includes a bill to rename the Court of Appeals the *Supreme Court of Maryland*, and the Court of Special Appeals the *Appellate Court of Maryland*, and changes the name *judge* in the Court of Appeals to *justice*; a bill that establishes the Court Dog and Child Witness Program in each circuit court that voluntarily participates; and, a bill that would enable

the Maryland State Bar Association to issue attorney security passes to attorneys in good standing, permitting them to bypass screening to enter courthouses.

Ms. Harris thanked everyone who worked on position papers and fiscal notes during the session. Judge Ripken acknowledged Chief Judge Barbera, Chief Judge Morrissey, Ms. Harris, Kelley O'Connor, and the Government Relations staff for their tireless efforts during the session.

Chief Judge Barbera commented that navigating the legislative session requires the collective efforts of many people. She expressed her appreciation for everyone who contributed in any way.

A copy of the bills and a brief synopsis of each is attached to these minutes.

3. Committee Updates

a. Court Technology Committee.

Judge Fred Hecker briefed the Council on the work of the Court Technology Committee. He stated that the CaseSearch Subcommittee researched how other court systems are addressing screen scraping and bulk searches and found that some states instituted rules to prohibit screen scraping of its data. There are several concerns with screen scraping, including the adverse impact on performance, the Judiciary's loss of control over the data once it is extracted, and the ability for the screen scraper to manipulate the data which potentially affects the integrity of the same. Further, if the case record or information within the case is shielded or expunged, the information can no longer be protected. Judge Hecker asked the Council to consider the use of Captcha or some other technology to prohibit screen scraping and to provide direction to the Committee regarding the way forward when the Committee next reports to the Council.

Ms. Harris inquired as to why the Committee is suggesting the Council wait to give direction when the ramifications of screen scraping already are apparent. Judge Hecker responded that the technology initiatives currently underway contributed, in part, to the Committee's decision. He asked the Council to authorize the Committee to formulate recommendations, to be presented at the next Council meeting, on a process for limiting screen scraping. Judge Brett Wilson moved that the Council recommend to Chief Judge Barbera that the Court Technology Committee formulate recommendations regarding screen scraping and to present the same to the Council for consideration at its next meeting. Following a second by Judge Ripken, the motion passed. Chief Judge Barbera adopted the Council's recommendation.

Judge Hecker reported that an upgrade to MDEC (2018.1) was implemented in the summer/fall of 2019 and that the Major Projects Committee is overseeing the rollout of MDEC in the remaining jurisdictions – Montgomery and Prince George's counties, and Baltimore City. Regarding the Hearing Notification Public Judicial Access System (text messaging), more than 44,000 phone numbers were registered and in excess of 160,000 messages were sent through December 2019. The appearance rate for defendants registered to receive text notification of upcoming hearings was 94 percent. The evaluation of the pilot is underway.

An update also was provided on the migration of all courts to the Judiciary's email platform (mdcourts.gov). All courts have migrated except Montgomery County, which has been postponed until MDEC is implemented, and Prince George's County. JIS is working with the IT department in Prince George's County to implement a dual email platform that will accommodate both the Judiciary's email platform and the county's email platform, where necessary.

Judge Hecker briefed the Council on several new projects, including replacing the traditional telephone platform with VoIP, which provides telephone and voice communication using data network; exploring data analytics solutions, a long-term project to ensure accurate and reliable data and reports; investigating a centralized cloud-based back-up for digital recordings; and, improving the eWarrant process, making it more user-friendly.

Chief Judge Barbera stressed the importance improving the effectiveness of remote platforms, such as the eWarrant program, given the current state. She directed that this be a top priority.

b. *Juvenile Law Committee*

Judge Michael Stamm updated the Council on the work of the Juvenile Law Committee. He noted that he serves on the Juvenile Justice Reform Council, whose purpose is to change the focus of juvenile law. Over the last year, there has been a great deal of review and study of what makes the juvenile justice system work. Through the Juvenile Justice Reform Council, contact has been made with all jurisdictions to determine what's needed, where weaknesses exist. Following a brief discussion regarding concerns, Judge Stamm stated that he will reach out to the representative in Dorchester County to address ongoing issues.

The Committee supported the establishment of the Crossover Youth Practice Model, which is a collaboration between the Judiciary, the Department of Juvenile Services, and the Department of Human Services to improve responses to children involved in both the juvenile justice and child welfare systems, in Carroll, Harford, and Howard counties. In addition, the Committee supported the planning of programs in Allegany, Frederick, and Washington counties. Baltimore City and Baltimore County are beginning planning to institute the Crossover Youth Practice Model in their respective jurisdictions.

The Committee, through its Juvenile Rules Work Group, is reviewing drafts of new and/or revised juvenile rules. The Committee also formed a joint work group with the Specialty Courts and Dockets Committee to provide guidance regarding whether changes are recommended with respect to rules, statutes, policies, and practices to support court-related truancy efforts.

The Foster Care Court Improvement Program Subcommittee shifted its focus to trauma-induced issues because of the high percentage of children in the system who are suffering from trauma. The subcommittee has worked to provide tools to help judges recognize the existence of trauma. The subcommittee also continued work around kinship care versus foster care.

The Juvenile Justice Subcommittee is continuing its work to develop bench cards for juvenile judges and magistrates, with the goal to develop a bench book. In addition, the subcommittee also is determining where statewide forms for juvenile justice proceedings are needed and, if necessary, creating the forms.

Chief Judge Barbera acknowledged the work of the committee members and staff, adding that they continue to demonstrate effective collaboration and communication.

There being no further business, the meeting adjourned at 11:36 a.m. The next meeting is scheduled for May 20, 2020, beginning 9:30 a.m.

Respectfully submitted,

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

Faye Gaskin
