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MINUTES OF THE MEETING OF THE
CONFERENCE OF CIRCUIT JUDGES

A meeting of the Conference of Circuit Judges was held Monday, November 15, 2021, via Zoom for Government, beginning at 9:30 a.m.

Members Present

Hon. Keith A. Baynes, Chair

Hon. S. James Sarbanes
Hon. Brian D. Shockley
Hon. Stephen H. Kehoe
Hon. Angela M. Eaves
Hon. Ruth A. Jakubowski
Hon. Jeffrey S. Getty
Hon. Viki M. Pauler

Hon. Fred S. Hecker
Hon. William C. Mulford
Hon. Sheila R. Tillerson Adams
Hon. Donine Carrington Martin
Hon. Audrey J. S. Carrion, Vice Chair
Marina Fevola
Hon. Katherine Hager

Also, Present Were:

Hon. Sean D. Wallace
Magistrate Julie Minner
Magistrate Stephanie Porter
Faye Gaskin
Richard Abbott
Gray Barton
Robert Bruchalski

Linda Fallowfield
Lou Gieszl
Melinda Jensen
Eliana Pangelinan
Lisa Preston
Brad Powers
Jamie Walter

1. Welcome and Approval of Minutes

Judge Baynes offered words of welcome and informed everyone that the meeting would be live streamed as the Conference is subject to the Open Meetings Act. He then called for a motion to approve the minutes of the September 20, 2021 meeting. Judge Hecker moved for approval of the minutes with the necessary corrections. There was a correction made to agenda item 2 – Security Update – to insert a missing word and to correct the name of the *Maryland*

Police Training and Standards Commission. Following a second by Judge Shockley, the motion passed.

2. Committee on Complex Litigation

Judge Sean Wallace briefed the Conference on the work of the Committee on Complex Litigation. The amendments to Rule 16-308 proposed by the Committee to define certain types of cases that are presumptively referable to the Business and Technology Program, as well as the types of cases that are not, were approved by the Rules Committee and will be included in an upcoming Report to the Court of Appeals for consideration. Since last reporting to the Conference, the Committee also approved the redesign of the Business and Technology Case Management Program (BTCMP) webpage to be more user-friendly and informative. It includes sections for the Committee, business and technology, and medical malpractice.

The proposed agenda for the April 2022 Business and Technology Bootcamp was approved by the Committee. The bootcamp will be held over two days and will include a discussion of Maryland and Delaware law, covering both procedural and substantive areas. Judge Wallace noted that Delaware is a leader in this space. He encouraged the administrative judges to ensure that members of their respective benches who are designated Business and Technology judges and any judge, active or senior, who may come across those cases in their assignments to register. There are 90 available slots, and they will be opened to judges from other states if space is available. Judge Wallace stated that the Business and Technology Work Group has arranged for some very competent instructors to facilitate the bootcamp. There is no cost for the, but out-of-state judges will be responsible for securing their own lodging. The registration information can be found on the website.

The Medical Malpractice Work Group is developing recommendations for model scheduling orders, as well as discussing case time standards and the best practice for setting trial dates – earlier or later in the process to which there are varying opinions based on how the court approaches calendaring. The work group also began discussions on healthcare arbitration but will seek guidance from the Committee regarding whether that matter, as well as case time standards, are within its purview.

Judge Wallace noted that the Committee will continue to keep the Conference apprised of its work and appear in person whenever requested to do so.

3. Magistrate Onboarding Package

Magistrate Stephanie Porter and Magistrate Julie Minner appeared before the Conference seeking approval for the packet of magistrate onboarding documents created by the Magistrate's Education Subcommittee. They stated that there has been an informal mentoring program, but

the subcommittee wanted to create a more formal process to orient new magistrates in a guided and efficient manner. To accomplish that goal, the subcommittee developed several documents to provide to magistrates when they are hired or shortly thereafter, including a welcome letter, contact/resource information, a personal checklist, and a graphic of the various departments and other support mechanisms that can be of assistance. Magistrate Minner remarked that the goal is that the materials will provoke new magistrates to think about areas they should review and to inform them about where to go to obtain needed information and resources. The graphic is a visual depiction of the supports across the entire Judiciary and the welcome letter will familiarize magistrates with court partners and courthouse personnel as well as experiences to enhance their knowledge. The Judiciary Human Resources department will provide the documents to new magistrates during the onboarding process. Additional information will be sent by the Magistrate Education Subcommittee.

Judge Jakubowski moved to approve the magistrate onboarding resource package developed by the Magistrate Education Subcommittee. Following a second by Judge Getty, the motion carried.

Judge Jakubowski thanked the subcommittee for putting the information together, adding that it is very much needed and will be helpful to all incoming magistrates.

4. eService

Lisa Preston discussed the eService initiative used by MDEC jurisdictions, which allows court staff to send court documents electronically. The process was piloted in Worcester County several years ago and then approved for all MDEC jurisdictions, but some courts have been reluctant to implement the process because of several challenges. Ms. Preston noted that one topic of discussion for some time has been how to efficiently serve parties. Currently, there is no automated way to do so. Court personnel are required to navigate two sites to view the needed information and then serve the parties. Circuit courts vary with respect to using the tool or continuing to mail documents. Additionally, within some circuit courts, the process is not consistent between departments or between the clerk's office and assignment when it is handled by court administration.

Ms. Preston stated that using the eService tool permits registered users to be served more quickly than self-represented users who are not registered and continue to depend on the United States Postal Service. The goal is to make the process more fluid and use electronic service wherever possible. The Major Projects Committee discussed the matter, and the question was raised regarding at what point all courts be required to use electronic service.

Judge Jakubowski noted that part of the clerk's office in her court is doing eService and asked if there was an established timeline to move all departments within all courts to this

platform. Ms. Preston responded that no timeline has been established, but the various conferences are being asked to provide feedback as to whether to move forward now or to wait for additional functionality. Judge Jakubowski commented that the clerks have indicated that the process not so straightforward and that the workarounds seem to be more complicated in civil and family cases. Ms. Preston stated that she is not sure if complexity by casetype is the issue or rather that eService cannot be done in Odyssey (MDEC); there is a manual intervention by the clerk in File and Serve to effectuate the process. The vendor is working on improving the functionality.

5. Reserved Cases Report

Jamie Walter and Bradley Powers briefed the Conference on the changes to the Reserved Cases Report process and instructions proposed by the Reserved Cases Work Group and approved by the Court Operations Committee. In addition to updating the process and instructions, the work group explored the feasibility of incorporating the reserved cases reporting in MDEC.

The main changes to the instructions included requiring judges to only report cases that are 60 days or older, reporting on all case types, excluding problem-solving court cases from the required cases, and reporting post-conviction and habeas corpus matters only after the hearing has been held. The work group combined the separate Excel reporting templates into a single template where all cases can be reported, regardless of casetype. The work group also worked with Judicial Information Systems to create a new event code in MDEC to capture when cases are placed in reserve status. The change is still being tested, but the court user will be able to enter the date the case was placed in reserve status, along with the reason and the name of the judge presiding over the case. The date the matter is expected to be resolved will automatically populate 60 days out. Mr. Powers stated that MDEC will not automatically pick up the fact that the case is in reserve status; the court user will have to choose the reserved cases event code and enter the necessary information. He added that this is a non-docketable event so it will not be publicly accessible. Also in testing is a new Reserved Cases Report that will be available in MDEC. Circuit administrative judges will be able to generate reports by location in each circuit or for the entire circuit. County administrative judges will be able to generate reports for their jurisdiction, and the Administrative Office of the Courts will be able to generate statewide reports. Individual judges will only be able to generate reports on their own cases. Mr. Powers demonstrated how to generate the report, using various parameters.

The new instructions will be sent to all judges and their staff. In addition, those judges not currently on MDEC also will receive the updated Excel template along with tutorials on how to complete the spreadsheet. While MDEC judges are not required to use the new MDEC event code and report, they are strongly encouraged to do so. The manual process is more cumbersome. Information will be sent regarding training for the MDEC process.

Judge Hecker inquired as to the availability of the information to the public once it is in MDEC and expressed concern about how it could be interpreted if so. Ms. Walter responded that she is not sure if the information could be subject to a public records request, noting that the current report sometimes is requested by and made available to the Commission on Judicial Disabilities. She will confer with Legal Affairs to get a definitive response. Judge Hecker asked if senior judges are required to report reserved cases. Mr. Powers stated that the instructions indicate that they should be included; he will review the instructions to ensure that they are clear.

Clerk Hager noted that undocketable events can be seen by all MDEC users to which Mr. Powers indicated that he will follow-up on this matter. She also asked whether judicial assistants would have access to MDEC to make the docket entries because the clerks generally don't handle reserved cases reports. Mr. Powers stated that the work group had discussed several options and determined that the process should be left to the local court to decide what works best for their location. Also being considered is how to tailor the process to allow judicial assistants to enter certain events if it is decided within a court that the judicial assistant will enter the information in MDEC. He added that if it is decided on the bench, the courtroom clerk could enter the information and Assignment could then follow-up with the judicial assistant to complete the process. Another option would be for the judicial assistant to send a task to the clerk to enter the information. The aforementioned are options for consideration by individual courts. Mr. Powers will do some research on the visibility of the event code and determine if anything changes.

Judge Jakubowski remarked that typically the judicial assistant prepares the report and asked if it is anticipated that the judicial assistant will be allowed to enter the event code in MDEC. She added that it makes more sense for the judicial assistant to enter the information because they have the information, which alleviates the need to create a task for the clerk. Mr. Powers reiterated the decision is best made at the local level, but that it is technologically possible for the judicial assistant to have that access. Clerk Hager stated that she would not have an issue with judicial assistants entering undocketable events. Judge Adams noted that in non-MDEC courts, the clerk is not involved in the process, which is the same in MDEC courts. Judicial assistants can be trained on how to enter the information in MDEC.

Mr. Powers stated that the final step is to go before the Judicial Council, with the feedback from the various conferences incorporated into the presentation. He added that at this point, there is no authority to make implementing the MDEC process mandatory, but it is agreed that it should be done uniformly statewide. The plan is to present to the Council at its January meeting and, if approved, implement the new instructions and process shortly thereafter.

Judge Baynes asked that Mr. Powers and Ms. Walter come to the January Conference meeting with the feedback incorporated into the presentation, and the answers to the questions so that the Conference will be aware of what will be presented to the Council.

6. Monitoring of Guardianship of the Property Cases

Richard Abbott and Nisa Subasinghe appeared before the Conference seeking support for two proposals related to the monitoring of guardianship of the property cases. Ms. Subasinghe noted that eight circuit courts rely on external trust clerks who are paid out of the estate to perform the monitoring duties. The cost for the monitoring depletes the resources at a high rate and the external trust clerks do not provide the same level of service to the guardians as that provided by internal trust clerks. The Domestic Law Committee's Guardianship and Vulnerable Adults Work Group identified gaps for ongoing training for both internal and external trust clerks. Ms. Subasinghe remarked that there has been a steady increase in the number of guardianship cases over the last three years, which she attributed to the increase in the aging population as well as an increase from hospitals regarding guardianship of the property cases.

The two recommendations proposed by the work group would provide funding in the jurisdictional grants to pay for the tasks performed by external trust clerks and create a position in the Juvenile and Family Services department (JFS) to provide technical assistance to internal trust clerks, conduct the more complex investigations in courts with internal trust clerks, and provide training for both internal and external trust clerks. When more complex investigations are required, the court may contract with someone external to the court and the estate has to pay the cost. JFS will draft a contract template for external trust clerks. It was noted that, if the recommendations are approved, the eight courts with external trust clerks will not have to change their process and hire staff trust clerks; the recommendation simply would provide funding to alleviate the burden to the estate, particularly the smaller estates whose funds can be quickly depleted. Mr. Abbott stated that, based on the number of guardianship cases, there is a possibility that there could be regional trust clerks that cover several counties.

7. Sentencing Subcommittee Recommendations

Judge Adams briefed the Conference on the recommendations from the Sentencing Subcommittee that were approved by the Judicial Council at its July meeting. The approved recommendations fall into six broad categories – best practices, judicial training, the impact of sentencing on children under 18, parole and probation, resource guide for judges, and analyzing sentencing policies to eliminate bias and inequity. Judge Adams stated that the subcommittee, which comprises a cross-section of members, discussed several concerns, including how the courts handle the scheduling of violation of probation cases. She mentioned that during the discussions, it was noted that it sometimes takes some time before a defendant goes before a VOP judge or to a judge to get a bond. Additionally, there are times when the underlying offense that led to the VOP is settled while the defendant is still in jail.

The subcommittee also discussed presentence investigations and when they should be ordered, acknowledging that resources within the Division of Parole and Probation is sometimes

an issue. The subcommittee determined, however, that a wealth of information can be garnered through a PSI that is valuable at sentencing. As such, it was agreed that PSI's should be requested whenever the judge feels they are warranted.

The subcommittee agreed that judges should be aware of any resources, services, and programs available within their local jurisdiction, which can assist in decision-making in sentencing and whether the individual should be incarcerated or placed on probation with the necessary programs. Judge Adams noted that it became clear that not every judge is aware of the resources available in their communities. The recommendation in this area was for the administrative judge to designate someone to be responsible for developing a resource guide, in collaboration with the District Court, and that it is updated regularly and provided to every judge on the bench. The subcommittee drafted a resources guide template for use in this effort.

Another area the subcommittee addressed was the judge being aware of any substance or mental health issues of the defendant when presented with an ABA plea. The subcommittee is of the opinion that every attorney should state on the record that those issues were taken into consideration as part of the plea discussion. A communication was forwarded to the Rules Committee asking that the Committee consider including this requirement in the Rules. Judge Adams stated that the concern is that people continue to be repeatedly cycled through the system without the underlying issues being addressed.

The subcommittee recommended that consideration be given to implementing additional problem-solving courts across the State and that the criteria be reviewed and adjusted to permit access to more individuals. Judge Adams commented on the importance of the programs, not only with respect to the impact they have on the participants but also the ripple effect in the community.

With respect to the best practices outlined in the report, Judge Adams noted that only administrative judges can have the influence to affect change through implementation of the same.

Regarding judicial training, the subcommittee recommended that judges be given the opportunity to attend national programs related to behavioral science. Judge Adams noted that while not every judge may think that it is their responsibility, when someone keeps coming before the court, there may be underlying issues that need to be addressed. Awareness and understanding in this area are beneficial. The subcommittee also recommended that discussions regarding equity, bias, and fairness be incorporated in bench meetings.

The subcommittee recommended that administrative judges have discussions with Parole and Probation regarding the inclusion in presentence investigation reports a section that discusses the impact of sentencing on children. Such information might trigger the Department of Social

Services to contact the family to discuss available resources that can help to keep the family together and deal with the issues from a system perspective.

Finally, the subcommittee will continue to gather and review data from the judges' survey, courts, the Division of Correction, and local detention facilities and make recommendations as necessary and appropriate to ensure equity and fairness.

Judge Mulford expressed concern that the report does not seem to reflect the State's or victim's perspective and stated that those views have to be considered as well. Judge Adams noted that the subcommittee discussed extensively bail reviews and the fact that ultimately judges handle the case as they deem appropriate given the factors of the individual case. Further, the report reflects the subcommittee's initial recommendations; the subcommittee continues to meet to discuss ways to ensure equity and fairness holistically. Judge Adams stated that the rights of victims will not be neglected, and that the subcommittee will hear from the State. She added that the data reviewed thus far indicates that an inordinate amount of people languishing in the system are Black people.

Judge Hecker stated that the Justice Reinvestment Act changed the landscape of the violation of probation proceedings in certain cases, adding that a lot of it is driven by the defense attorney getting before the court so that people aren't incarcerated for longer than the recommended sentence. Judge Adams noted that there was a lot of discussion within the subcommittee about how VOPs are handled; in some instances, there is no hearing until the underlying offense is adjudicated. The subcommittee recommends that a defined process be established.

It was suggested that juvenile resources and driver's education be included in the resources template. Judge Jakubowski stated that she is concerned about the seeming lack of programs in the DOC facilities for incarcerated persons. Judge Adams noted that representatives attended one of the subcommittee meetings and discussed the available programs, as well as what's on the horizon. The pandemic has impacted some of the programs.

Judge Jakubowski remarked that many of the recommendations are already implemented and asked if the intent is for administrative judges to consider them in terms of policy and procedure to which Judge Adams responded in the affirmative.

8. For the Good of the Order

Judge Baynes acknowledged the service of Ms. Fevola and Clerk Hager as their terms on the Conference come to an end. He thanked both for their hard work and commitment to the administration of justice.

Judge Carrion inquired as to how the court are handling expungements when the defendants have not fulfilled restitution requirements. She stated that she has been in communication with Kevin Cox who indicated that juvenile respondents must pay restitution before the expungement is considered. Judge Carrion is concerned with notice to victims to whom restitution is ordered. She raised the concern because of a letter received from Parole and Probation who indicated that as a result of the expungement, they will not be able to send the restitution to the victim. Mr. Cox is discussing the issue with the Assistant Attorney General for Parole and Probation.

Update: Mr. Cox followed-up and stated that since a civil judgment is recorded for the restitution, even if the case is expunged, the victim can still attempt to collect the restitution civilly on the judgement.

Judge Sarbanes stated that there are problems trying to go back and trace if the case is expunged case.

There being no further business, the meeting adjourned at 11:32 a.m. The next meeting is scheduled for January 24, 2022.

Respectfully submitted,

Faye Gaskin
Conference Secretary