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Conference of Circuit Judges
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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, March 21, 2022, 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. Glenn L. Klavans

Hon. Richard Sandy
Hon. Sheila R. Tillerson Adams
Hon. Donine Carrington Martin
Hon. Audrey J. S. Carrion, Vice Chair
Hon. Barry Williams
Pamela Harris
Hon. Kathy Smith
Burgess Wood

Also, Present Were:

Hon. Yolanda L. Curtin
Hon. John P. Morrissey
Hon. Sean D. Wallace
Faye Gaskin

Valerie Pompey
Stacey Saunders
Gillian Tonkin

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 welcomed Judge Klavans as the newest member of the Conference, representing the Fifth Judicial Circuit. Judge Baynes called for a motion to approve the minutes of the November 15, 2021 meeting. Judge Eaves moved for approval of the minutes. Following a second by Judge Getty, the motion passed.

2. Diversity and Inclusion Subcommittee – Educational Strategies Proposal

Judge Yolanda Curtin appeared before the Conference to discuss the educational strategies proposal developed by the Equal Justice Committee's Diversity and Inclusion Subcommittee. She provided the historical context for the Committee and the subcommittee, noting that the Committee was formed to address policies, practices, and behaviors that contribute to implicit bias and discrimination within the Judiciary, its programs, and services. The Committee's six subcommittees were charged with developing strategies to more completely achieve the Judiciary's mission of provide fair, efficient, and effective justice for all.

The Diversity and Inclusion Education Subcommittee was tasked with creating a series of mandatory programs and educational opportunities at all levels of the Judiciary to promote inclusiveness, advance equal justice, and bring about an awareness of and appreciation for diversity. The work of the subcommittee led to a review of the Administrative Order on Continuing Education of Judges, Magistrates, and Commissioners issued June 6, 2016. The administrative order set forth certain mandatory educational requirements, some upon appointment, assignment, or election, and others periodically. In addition to the required number of annual judicial education hours, the administrative order also provides for up to an additional five days of education annually at the approval of the administrative judge. Judge Curtin stated that the subcommittee reviewed statistics on the number of judges that avail themselves of the additional training days and determined that in 2017 there were 75 judges, in 2018 there were 54 judges, and in 2019 there were 72 judges who participated in courses beyond the mandatory hours.

After reviewing the existing educational opportunities and discussing other areas where there might be opportunities to provide training on implicit bias, the subcommittee drafted two proposals, one on implicit bias training and the other on educational strategies. The Judicial Council, prior to Chief Judge Barbera's retirement, approved the subcommittee's proposal on implicit bias training. The subcommittee is refining the proposal and devising a plan to launch the training. In November 2021, the subcommittee presented the educational strategies proposal to the Judicial Council and, following some discussion, was asked to solicit additional feedback from the various conferences.

Judge Curtin discussed section of the proposal geared toward judges and magistrates which includes making standard the New Trial Judges Orientation courses – On Being a Judge: Justice, Equality and Fairness; Implicit Bias; and the Art of Judging: Role of a Judge. She added that the recommendation also is that the courses be reviewed with faculty to ensure that diversity and inclusion are integrated when appropriate. With respect to judicial education courses, the subcommittee proposed that course coordinators and faculty discuss the integration of diversity and inclusion matters in the courses where appropriate and that whenever conferences are held, they include diversity and inclusion topics. The final recommendation regarding judicial

education is that judges, magistrates, and commissioners be required to take an additional three hours of diversity and inclusion training annually. There can be a combination of virtual and in person training and, depending on the type of course, the length of the segments can be anywhere from up to one hour to a single three-hour course.

Judge Curtin then provided an overview of the proposed professional development educational strategy. She noted that unlike judges, magistrates, and commissioners, there are no mandatory courses for other Judiciary personnel. The subcommittee proposed that the New Employee Orientation, which comprises 8 modules be expanded to 9 modules, one of which would focus on diversity and inclusion. In addition, the subcommittee proposed that personnel be required to participate in 90 minutes of training on diversity and inclusion topics annually. The training and training formats can vary to include platforms such as coffee talks and lunch and learn series, or subject matter specialists. The subcommittee proposed tracking compliance, not as discipline tool, but rather to ensure follow-through with completion.

Because of the large number of people in the Judiciary, the subcommittee proposed a rollout plan, dividing it into four groups – group 1 – judicial officers, magistrates, executive leadership, and commissioners; group 2 – mid-level management; group 3 – specific classifications; and group 4 – judiciary staff.

Judge Curtin stated that she is hopeful the Conference will consider the proposal and provide feedback. The subcommittee is meeting in early April and she would like to incorporate any feedback into the final proposal before presenting it to the Council.

Judge Carrion thanked Judge Curtin for her thorough presentation and the subcommittee for its work. She inquired as to whether the education would be diverse, noting that the courses would benefit from a level of diversity with respect to class participants (so that not all participants are from the same jurisdiction) and faculty. Judge Curtin stated that the subcommittee talked extensively about ensuring that there are varying voices heard and that there is diversity in all aspects, including the faculty.

Judge Eaves asked if all the modules for the New Employee Orientation would be virtual or in person to which Stacey Saunders responded that the lessons would be online. She added that each lesson within the modules is approximately 15-20 minutes in length so that the entire nine modules is 7 ½ hours. Staff would have 60 days to complete all 9 modules.

3. Unserved Warrants

Chief Judge Morrissey solicited feedback from the Conference on an issue brought to his attention regarding unserved warrants. The Rules Committee will take up the matter and Judge Wilner asked that Chief Judge Morrissey get feedback from the Conference. The issue raised is

the appropriateness of putting a time frame on how long warrants stay active. There is a large number of outstanding warrants pending every day, many for lower-level offenses where the sentence is less than 90 days. Chief Judge Morrissey stated that when he was sitting in Prince George's County, there was an agreement with the State's Attorney and the public defender that after a certain number of years, warrants for certain low-level offenses would be recalled and the case dismissed. He proposed the idea of placing a time limit on outstanding warrants for low-level offenses that carry an incarceration period of up to 90 days. After the time period has passed, possibly three years, the warrant would be recalled, and the State's Attorney would have to request that the warrant be re-issued. He asked for the Conference's thoughts. Judge Baynes noted that if it is decided to go in that direction, he would like to also see driving while suspended/revoked offenses included although they carry a possible incarceration time of up to one year. Chief Judge Morrissey noted that he is not wed to a 90-day incarceration period, so DWIs could be excluded and other offenses with an incarceration period longer than 90 days could be specifically included.

Judge Carrion stated that a system has been established in Baltimore City where the State's Attorney's Office reviews old warrants and brings them to the attention of the judge in charge of reviewing warrants. The system is working fine. She noted that the State's Attorney may object to putting a three-year threshold on warrants.

4. "Stale" Soldiers and Sailors Relief Act Affidavits

Chief Judge Morrissey raised another issue concerning the staleness of certain Soldiers and Sailors Relief Act affidavits in affidavit judgment cases. He noted that although the issue existed prior to the pandemic, additional concerns have arisen as the result of the pandemic. He stated that a number of judges are refusing to grant affidavits if the Soldiers and Sailors Relief Act affidavits exceed a certain time frame. The time frame varies among judge from six months to a year, sometimes longer. Chief Judge Morrissey stated that the backlog in civil cases has exacerbated the problem. He suggested that it would be beneficial to have uniformity regarding how long the affidavit can last before it is considered stale. He noted that he is not aware of any existing time limit. Staff reached out to the ABA and the National Center for State Courts to ascertain what other states are doing, but the matter has not been addressed.

Judge Carrion stated that Baltimore City has been flexible with the requirement during the pandemic and that it has not been a concern. Judge Baynes asked that any comments be sent to Chief Judge Morrissey.

5. Complex Litigation Committee

Judge Sean Wallace briefed the Conference on the work of the Complex Litigation Committee, noting that the Business and Technology Workgroup is moving forward. The

Business and Technology Bootcamp is scheduled for April 20-21, 2022, at the Maryland Judicial Center. To date 49 people have registered and there are a few slots still available. Judge Wallace stated former Chief Judge Leo Strine, Delaware Supreme Court, will be the primary presenter, adding that Delaware is at the forefront of corporate law.

Judge Wallace stated that MACRO raised a concern regarding the approval of mediators for business and technology, and medical malpractice cases. Maryland Rule 17-207 provides for the mediator applications to be checked by MACRO for minimum qualifications prior to forwarding them to the administrative judges final approval, except in business and technology and medical malpractice cases. Maryland Rule 16-702 (d)(3) calls for the Conference to appoint a Committee of Program Judges to approve mediators for the two aforementioned case types. Judge Wallace noted that such a committee does not exist. MACRO suggested that the two workgroups, Business and Technology and Medical Malpractice, be designated to approve mediators for their respective subject matter area, but the Committee felt that would be problematic because there are workgroup members who are practitioners in those fields. It was recommended that the Conference establish the Committee on Complex Litigation as the approving body (i.e., Committee of Program Judges) for business and technology and medical malpractice mediators.

The final area discussed by Judge Wallace was rescheduling medical malpractice cases following the pandemic. He noted that the primary problem is the length of medical malpractice trials, adding that the bar is small, so their calendars fill up for some time out into the future. The Medical Malpractice Workgroup suggested that status hearings be held remotely and that the lead attorneys for both sides be mandated to participate. The workgroup also suggested that the older cases be prioritized and that it would be helpful for the Conference to reiterate that those responsible for scheduling the cases coordinate with their colleagues in the other jurisdictions to accommodate both the court and attorney's calendars. He added that they may have to double-book with the understanding that if both go forward, the case that is set first goes forward first. Judge Wallace noted that in most instances, the case settles. The matters occupy big blocks of the calendar and so the workgroup suggested that the judge follow-up with the attorneys at least 30-60 days before the scheduled trial date to determine the likelihood of the case settling. Additionally, the workgroup recommended that it be mandated that for any trial expected to last more than 3-4 days, there be a requirement to file an ADR form. The workgroup also suggested that while the backlog is being addressed, courts look to greater use of senior judges when assigning medical malpractice cases.

Judge Eaves asked to what extent workgroup members who represent the plaintiff and defense bars are discussing issues and what the courts are attempting to do with their respective groups. She noted that she has heard from various people inquiring about how the courts are proposing to address the backlog in medical malpractice cases. Judge Wallace remarked that the attorney workgroup members were selected by the Maryland State Bar Association. Neither the

Maryland Association for Justice nor the Maryland Defense Counsel had formal input. Judge Wallace stated that he isn't sure of the extent to which the representatives are reporting to their constituent groups, but he will reiterate the necessity of doing so.

Judge Jakubowski noted that her experience is that it has been counsel's inability to schedule cases; the court has open dates, but counsel has not been available. The court has been double booking with all medical malpractice cases specially assigned. If both cases go forward, the older case moves.

With respect to the Committee assuming responsibility for approving the mediators, Judge Jakubowski asked about the expected volume. Judge Wallace noted that he doesn't anticipate a big volume of new applicants. A roster of approved mediator already exists.

Following additional discussion, Judge Getty moved that the Conference designate the Committee on Complex Litigation as the body responsible for approving individuals to serve as business and technology, and medical malpractice mediators. Following a second by Judge Jakubowski, the motion passed.

6. Juvenile MVA Reporting Rules

Ms. Gaskin apprised the Conference of an issue that was brought before the Major Projects Committee regarding the requirement to report juvenile dispositions to the Motor Vehicle Administration (MVA). A clerk questioned an interface that had been created for the Montgomery County MDEC implementation to automatically transmit the data to the MVA; this previously had been a manual process. The concern raised was that the judge sometimes orders that the disposition not be sent to the MVA; the automatic transmission of the data may be counter to the judge's order. Legal Affairs was asked to research the statutory requirements for reporting the dispositions and found that Courts and Judicial Proceedings, §3-8A-23 outlines the requirements. Legal Affairs determined that the judge's order cannot overcome the requirement.

Judge Carrion asked what the courts are doing in this regard. It was determined that the judges would inquire of the practice within their respective courts and discuss the matter at the next meeting of the county administrative judges.

7. For the Good of the Order

Judge Baynes congratulated Judge Eaves on her appointment to the Court of Appeals and noted that this would be her last Conference meeting. He thanked her for her service to the Conference.

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Judge Sarbanes asked if anyone was aware of any proposed legislation to do away with Orphans' Court judges, noting that an Orphans' Court judge in his county brought matter to his attention. He stated that if that is the direction in which the legislature is planning to go, he is concerned about the number of cases that will be added to the circuit court dockets. Judge Eaves stated that Harford and Montgomery counties are the only two jurisdictions where circuit court judges sit as the Orphans' Court. She added that legislation is introduced occasionally, but to date it hasn't gained any traction. Ms. Gaskin will email the proposed legislation to the Conference.

Update: HB 868 – *Circuit Court for Howard County – Judges Sitting as Orphans' Court* was emailed to the Conference members.

There being no further business, the meeting adjourned at 10:22 a.m. The next meeting is scheduled for May 16, 2022.

Respectfully submitted,

Faye Gaskin
Conference Secretary