



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:
Zoom for Government

Minutes
September 23, 2020

Judicial Council Members Present:

Hon. Mary Ellen Barbera, Chair	Hon. Alan M. Wilner
Hon. Keith Baynes	Hon. Brett W. Wilson
Hon. Pamela J. Brown	Hon. Dorothy J. Wilson
Hon. Angela M. Eaves	Melissa Batie
Hon. Matthew J. Fader	Marina Fevola
Hon. James Kenney, III	Markisha Gross
Hon. Karen H. Mason	Hon. Katherine Hager
Hon. Patricia L. Mitchell	Pamela Harris
Hon. John P. Morrissey	Hon. Charlene Notarcola
Hon. Laura S. Ripken	Mary Kay Smith
Hon. Bonnie G. Schneider	Roberta L. Warnken

Others Present:

Hon. Kathleen Beckstead	Dominique Johnigan
Hon. Fred Hecker	Kelley O'Connor
Hon. Stacy Mayer	Eliana Pangelinan
Faye Gaskin	Suzanne Pelz
Justin Bernstein	Valerie Pompey
Robert Bruchalski	Suzanne Schneider
Lou Gieszl	Gillian Tonkin
Jeff Huddleston	Jamie Walter
Melinda Jensen	

There also were two unidentified individuals on the conference call (410-....700 and 301-....500).

A meeting of the Judicial Council was held Wednesday, September 23, 2020, remotely, via Zoom for Government. The meeting began at 9:30 a.m. Chief Judge Barbera welcomed everyone, remarking on how professionally and personally challenging the last several months have been. She expressed her thanks to everyone for their leadership and their efforts in ensuring that proper safety and health protocols have been implemented for staff, as well as all those who enter the courthouses. Ms. Harris moved for approval of the minutes, which was seconded by Judge Brown. The motion carried.

1. Screen Scraping

During the March 11, 2020, meeting of the Judicial Council, the Court Technology Committee was asked to formulate recommendations for the Council's consideration regarding how the Judiciary might address data mining or screen scraping of its data through the Case Search application. Judge Hecker, presenting on behalf of the Committee, noted that there were two recommendations for which approval was being sought, one focusing on the approach to addressing screen scraping and the other to modify the existing Case Search disclaimer.

Judge Hecker reiterated some of the concerns with screen scraping Judiciary data, foremost being the Judiciary's loss of control of the data and integrity thereof, leading to the potential of inaccurate data being released by third parties and used in decision-making. He noted that the Judiciary has received inquiries, complaints, and concerns regarding inaccurate data on the Internet. The data referenced is data that has been screen scraped and cannot be modified, updated, or verified.

The Court Technology Committee's Case Search Subcommittee proposed four options for addressing screen scraping to Judicial Information Systems (JIS): 1) block screen scraping altogether using an automated product such as CAPTCHA; 2) offer bulk subscription services with a login; 3) block screen scraping but offer bulk subscription service with expungement enhancement; or, 4) maintain the status quo. Judge Hecker noted that Option 4 was rejected outright. Options 2 and 3 would require significant development to create a bulk subscription service. The Committee recommended approval of Option 1, which would require the users to verify that they are not robots. JIS anticipates that implementation will require from 80 – 200 development hours.

Judge Hecker stated that the recommended solution is expected to be temporary as the Major Projects Committee's Data Governance Subcommittee is exploring a much longer systematic way to view and access Judiciary data.

Chief Judge Barbera inquired as to whether any consideration was given to public outreach to which Judge Hecker responded that the Committee suggests doing a public outreach/public relations campaign in advance of implementing any changes. He added that the changes are not intended to prohibit the public's right to access Judiciary information, and thus stressed the importance of messaging why the Judiciary thought it important to make this change.

With respect to what might be considered "legitimate" screen scrapers, Judge Hecker commented that the Committee does not have a handle on the number or identity of screen scrapers. As such, the Committee recommended implementing the change and responding to questions/concerns on a case-by-case basis and, where appropriate, making the necessary accommodations. Jeff Huddleston, JIS, added that the Committee discussed pseudo justice partners, such as Maryland Legal Aid, who may use the data to identify cases eligible for expungement, for instance. For such situations, the Judiciary could consider entering into a Memorandum of Understanding for data exchange.

After additional discussion, Judge Ripken moved that the Judicial Council recommend to Chief Judge Barbera adoption of the Court Technology Committee's recommendations to 1) implement Option 1 to deploy anti-screen scraping measures such as the use of CAPTCHA or a similar product to block or inhibit automated screen scraping; and 2) replace the disclaimer currently on Case Search with the language set forth in the Court Technology Committee's memorandum to the Judicial Council, dated September 23, 2020, and edited by the Council; and, 3) embark upon a public relations campaign before implementing screen scraping technology. Following a second to the motion by Judge Brett Wilson, the motion passed. Chief Judge Barbera adopted the Council's recommendations and expressed her appreciation to Judge Hecker, the Court Technology Committee, and JIS for their efforts.

The disclaimer on Case Search will read as follows:

In accordance with Federal and State statutes and the Rules governing the courts of the State of Maryland or court order, certain records may not be available for public inspection. Common examples of confidential records may include juvenile case records, cases involving trade secrets and records in any case ordered shielded by a judge. Confidential records and information will not be returned in your search results.

The information displayed on this web site is generated from computerized records in the custody and control of the Maryland Judiciary and is intended for informational purposes only. The Judiciary provides this information as a public service and makes no warranties, either expressed or implied, regarding its accuracy, reliability, currency, completeness, or suitability for any particular purpose. PLEASE NOTE that this information is NOT intended to be used as an authoritative public record or as a legal document and shall have no legal force or effect.

Additionally, the Judiciary assumes no liability for the improper or illegal use of information obtained from its computerized systems. Attempts to interfere with the operation of the Judiciary's computerized systems or to alter records in the Judiciary's computerized systems is strictly prohibited and may result in criminal prosecution, civil penalties, or disciplinary action where appropriate. In addition, the Judiciary will seek indemnification, including costs and attorneys' fees, for any claims brought in connection with the improper or illegal use of information obtained from its computerized systems.

By clicking "I Agree" you indicate that you understand and accept the conditions stated above.

I Agree.

2. Committee/ Strategic Initiative Updates

- a. ***Court Operations Committee.*** Judge Brett Wilson updated the Council on the work of the Court Operations Committee, remarking that much of the day-to-day operations of the courts are affected by the work of the Committee, its subcommittees, and its work groups. He then touched upon some of the activities, aligning them with the Judiciary's strategic goals. The Jury Use and Management Subcommittee developed the *Tips for Coping with Stress* brochure to assist jurors who may, from the particulars of the case, encounter stress or need assistance dealing with the burden associated with the responsibility of service. The brochure is intended to be used at the judge's discretion, based on the needs of individual jurors. Judge Kenney moved that the Judicial Council recommend to Chief Judge Barbera adoption of the *Tips for Coping with Stress* brochure. Following a second by Judge Fader, the motion passed. Chief Judge Barbera adopted the Council's recommendation and noted the appropriateness of not mandating disclosure of the brochure but leaving it to the judge's discretion as he or she is best equipped to discern if there is a problem.

The Jury Use and Management Subcommittee also created the *Maryland Judiciary Jury Office Finance Manual*. Judge Wilson noted that one challenge in creating the manual was the variety of practices in the courts. The manual addresses several topics, including internal controls and best practices, as well as continuity of operations. Also included is a frequently asked questions (FAQs) section. Judge Mitchell moved that the Judicial Council recommend to Chief Judge Barbera adoption of the *Maryland Judiciary Jury Office Finance Manual* and to permit the Court Operations Committee to make updates regarding processes to the manual, as needed, without first seeking the Council's approval. Following a second by Judge Eaves, the motion passed. Chief Judge Barbera adopted the Council's recommendation.

Judge Wilson highlighted additional committee, subcommittee, and work group activities, including the work being done to examine pay equity for grant-funded employees, and enhancements to the Data Dashboard to include comparative data across multiple years and the addition of commissioner, language access, and self-help center data. The inclusion of data from the three aforementioned areas is in the testing phase and will be implemented and added to the website upon successful completion. Jamie Walter provided a demonstration of the Data Dashboard.

Judge Wilson thanked the Joint Subcommittee on Communications and Access to Judicial Information, Research and Analysis, Chief Judge Morrissey, District Court Headquarters, and the Office of Commissioner Activity for their work on the Data Dashboard.

Judge Kathleen Beckstead, Chair of the Case Management Subcommittee, Dominique Johnigan, and Justin Bernstein then provided an overview of the Fiscal Year 2019 Caseflow Assessment for the trial courts. It was noted that there have been no changes to the case time standards since 2016.

The District Court did not experience any significant changes in performance against the case time standards over the last two years. Criminal case disposition time increased by 2 percent over the last two years, while a corresponding decrease of 2 percent was noted in both traffic 21-902 and traffic payable case disposition times during the same period. The case time standard goal of 98 percent was not achieved in any case type, although the percentage of cases within standard ranged from 93 percent to 96 percent. The percentage of cases disposed within the established time standards for traffic 21-902 and traffic must appear cases was 73 percent and 78 percent, respectively.

The fluctuation in performance against the standards was more varied in the circuit courts, ranging from a 9 percent decrease in TPR case disposition time to a 5 percent increase in foreclosure cases over the last two years. CINA shelter case disposition time increased by 4 percent, while a 1 percent increase was reported in civil general, family law, limited divorce, juvenile, and CINA non-shelter case disposition time during the same period. Criminal case disposition time remained steady at 87 percent of the cases disposed within the case time standard.

The Case Management Subcommittee considered 19 requests for modifications to the case time standards and, after discussing each, agreed to recommend three to the Judicial Council.

- i. TPR – Rape Survivor Protection Act. The subcommittee recommended that cases falling under this category be measured based on the family law case time standard. This matter previously was before the Judicial Council and the subcommittee was asked to perform an analysis based on practice and to formulate a recommendation as to whether the TPR or the family law standard should apply. The recommendation is based on that analysis.
- ii. CINA Shelter Cases – Good Cause Extension. The subcommittee recommended the addition of a suspension, not to exceed 30 days, for the safety of the child in conformity with Courts and Judicial Proceedings § 3-815(c)(4). The suspension would allow the parents and/or the Department of Social Services to explore options for the child.
- iii. Moratorium. The subcommittee recommended that once a proposed modification is considered and not recommended, the same proposal not be reconsidered for three years unless there is a demonstrated material change in the circumstances since the modification was considered last.

Judge Ripken expressed concern with the recommendation regarding the moratorium and requested that she be allowed to discuss it with the administrative judges at their weekly meeting to get their feedback. She noted that as the Chair of the Conference Judges, she appreciates the opportunity to discuss matters that impact the circuit courts with the Conference and to provide feedback.

Following a discussion regarding the proper protocol when matters are before the

Council and concern about the recommendation of the Council and ultimate decision of the Chief Judge being subject to another body, it was agreed that in this instance the Council would vote on its recommendation and that Chief Judge Barbera would hold her decision regarding the moratorium in abeyance until receiving input from the circuit court administrative judges. It was stressed that going forward, matters that impact other bodies, such as the Conference of Circuit Judges, should be forwarded to them for input prior to bringing them before the Council for its consideration.

Ms. Harris moved that the Judicial Council recommend to Chief Judge Barbera adoption of the three modifications presented by Judge Beckstead on behalf of the Case Management Subcommittee. Following a second by Judge Mitchell, the motion passed. Chief Judge Barbera adopted the Council's recommendation with respect to the TPR – Rape Survivor Protection Act being subject to the family law case time standard and the suspension of case aging for CINA shelter cases when the safety of the child is at issue, but held her decision regarding the moratorium until receiving feedback from the circuit court administrative judges.

Chief Judge Barbera expressed her appreciation for the Council's feedback.

Update: Judge Ripken, Chair of the Conference of Circuit Judges, reported the discussion and recommendations of the county administrative judges after a presentation by Judge Wilson, Chair, Court Operations Committee, to Chief Judge Barbera who expressed her appreciation for their input. Upon consideration of the judges' thoughtful analysis and recommendations, as well as the discussion at September 23, 2020, Judicial Council meeting, Chief Judge Barbera decided that there will be no moratorium on repeat proposals. She noted that the Case Management Subcommittee; however, will not be required to consider a repeat proposal to change a time standard if its implementation would violate a statute or rule. Further, the subcommittee may consider and respond to other repeated requests in the manner it finds to be appropriate.

- b. Legislative Committee.** Judge Stacy Mayer briefed the Council on the 2020 legislative session. The abbreviated session affected several bills, including several that the Legislative Committee was actively monitoring. Judge Mayer stated that the Committee reviewed more than 2,700 bills, actively followed 737 bills, and received feedback on 230 bills from other Judicial Council committees. She acknowledged the judges who testified on various bills.

Judge Mayer highlighted legislation of interest to the Judiciary. The following bills passed:

- Senate Bill 101/House Bill 311 – *Courts – Court Dog and Child Witness Program – Established*. These bills establish the programs in each circuit court that voluntarily participates.
 - House Bill 248/Senate Bill 210 – *Protective Orders – Relief Eligibility – Rape and Sexual Offenses*. These bills clarify where a victim of rape or sexual assault can seek
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- relief, removing the offenses from the peace order statute and placing them in the domestic violence statute.
- House Bill 250/Senate Bill 227 – *Peace Orders and Protective Orders – Extension*. These bills extend the expiration date of the final peace or protective order in instances where a motion is filed to extend the term, but a hearing is not held on the motion prior to the original expiration date.
 - House Bill 280/Senate Bill 234 – *Vehicle Laws – Suspension of Driver’s License or Registration – Unpaid Citations or Judgments*. These bills prohibit the Motor Vehicle Administration from suspending a driver’s license for non-payment of a traffic citation or judgment and reduces the fine threshold an individual must meet to enter into an installment plan from \$300 to \$150.
 - House Bill 36 – *Juvenile Proceedings – Fines, Fees, and Costs*. This bill repeals the statutory provisions that authorize the juvenile court to impose civil fines or court costs, assess attorneys’ fees, or order a parent to pay a sum to support the child. The bill applies to juvenile proceedings other than CINA proceedings.
 - Senate Bill 207/House Bill 206 – *Unaccompanied Minors in Need of Shelter and Supportive Services*. These bills authorize unaccompanied minors in need of shelter to consent to shelter and supportive services and provide for the necessary parameters. The Judiciary initially opposed the bills because of safety concerns, but they were amended to address those concerns.
 - House Bill 242/Senate Bill 206 – *Criminal Procedure – Motion to Vacate Judgment – Human Trafficking (True Freedom Act of 2020)*. These bills expand the eligibility for victims of human trafficking to file a motion to vacate the judgment if convicted of certain offenses, and to petition for an expungement of the conviction. The Judiciary initially opposed these bills, but they were amended to give the judge discretion instead of mandating how the cases are handled.
 - House Bill 40/Senate Bill 64 – *Criminal Procedure – Evidence – Causing Unavailability of Witness*. These bills change the standard of proof related to the admission in evidence under the hearsay rule from clear and convincing to a preponderance of the evidence.
 - House Bill 233/Senate Bill 212 – *Criminal Law – Assault in the First Degree – Strangulation*. These bills expand the crime of first-degree assault to include intentionally strangling someone.
 - House Bill 81 – *Criminal Law – Sodomy – Repeal*. This bill repeals the crime of sodomy, prohibits expungement under certain circumstances, and clarifies that the crime cannot be used for impeachment purposes.
 - HB 1083 – *Criminal Organizations – Penalties and Procedure*. This bill changes “gang” to “criminal organization” throughout the code.
 - HB 637/Senate Bill 534 – *Courts – Discovery – In-Custody Witness Testimony*. These bills require the State’s Attorney to take certain actions for in-custody testimony, including recording the testimony in writing and disclosing to the defendant or the defendant’s attorney all material information required under Rule 4-263 within 30 days of first appearance unless granted an extension by the court.
 - House Bill 858/Senate Bill 249 – *Courts – Documentary Evidence – Protective Order*. These bills permit a defendant to seek a protective order against a licensed
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- professional in a malpractice claim.
- House Bill 946/Senate Bill 847 – *Child Support – Guidelines*. These bills revise the child support guidelines. They apply only to cases filed on or after October 1, 2020.
- House Bill 269/Senate Bill 579 – *Child Support – Shared Physical Custody*. These bills establish a formula for child support obligations when there is shared physical custody. They apply only to cases filed on or after October 1, 2020.

Judge Mayer also highlighted several bills of interest to the Judiciary that did not pass, including those dealing with expungement that were vetoed by the Governor. It is expected that the vetoes of the expungement bills will be overridden. There were several bills that dealt with the election, selection, and tenure of circuit court judges. Judge Mayer noted two bills associated with the State Commission on Criminal Sentencing Policy that had reporting implications for the Judiciary. Other bills that did not pass ranged from permitting cameras in the courtroom to altering the sentence reconsideration period to making modifications to the Justice Reinvestment Act.

Chief Judge Barbera thanked Judge Mayer for the thorough presentation and remarked that she is looking forward to another year of hard work from the Committee.

- c. ***Major Projects Committee***. Chief Judge Morrissey and Ms. Harris provided an update on the activities of the Major Projects Committee, noting that the Committee works collaboratively with the Court Technology Committee and JIS. While the Committee’s primary focus has been on MDEC, it also considers other technology initiatives. Chief Judge Morrissey remarked that the full impact of MDEC has been seen during the coronavirus pandemic. Users can file into the system remotely, and likewise judges and staff are able to access MDEC to process filings and view documents remotely to help facilitate virtual proceedings.

With respect to MDEC, court staff, JIS, and Tyler Technologies have worked toward implementation in Montgomery County, which has required significant development and testing to incorporate elements of the court’s legacy system critical to the efficient and effective operation of the court. The functionality being developed will be of value to Prince George’s County and Baltimore City when MDEC is implemented in those courts, as well as to courts already using MDEC. Development also is underway to permit the State’s Attorney to electronically file juvenile petitions and, eventually, initiate criminal case filings. Because of the amount of development and testing required, it was necessary to move the go-live date from October 2020 to May 2021.

The MDEC team has been working with Prince George’s County for approximately one year in preparation for its go-live, which will be followed by Baltimore City, the last jurisdiction scheduled to implement MDEC.

Chief Judge Morrissey provided an update on several initiatives, including eService, which was piloted in Worcester County and allows clerks to electronically file documents back to registered users; the text messaging program which sends text notifications

regarding court proceedings to defendants and had been suspended because of the coronavirus pandemic but has now been reinstated; the forms translation project that involves providing certain instructions in the top five languages on court forms; the guide and file pilot, which is an interview tool for self-represented litigants to assist in the completion of court forms; and the implementation of technology to enable remote proceedings with attorneys, parties, detention facilities, and Maryland Department of Health facilities.

The Major Projects Committee has a number of subcommittees and work groups, namely:

- MDEC Advisory Subcommittee – This subcommittee focuses on operational concerns involving MDEC. Its membership includes representatives from the last jurisdiction in which MDEC was implemented, the jurisdiction currently being implemented, and the jurisdiction next in line for implementation. The forum provides an opportunity for exchange of issues/concerns/suggestions.
- Data Governance Subcommittee – This subcommittee was formed to create a centralized structure for recommending policies regarding the Judiciary’s data. Policy areas include scope of the data included in the governance framework, data ownership and retention, data access, and data usage
 - NODS Work Group – The NODS work group is charged with reviewing the National Open Court Data Standards (NODS), developed by the National Center for State Courts in collaboration with judiciaries, businesses, and others, and formulating recommendations regarding the Judiciary’s adoption, in part or whole, of the same. The work group’s recommendations will help to inform the data analytics effort.

Ms. Harris provided background information on and added context to the NODS initiative, commenting that she believes it to be one of the most important issues the Judiciary will face for the foreseeable future. She added that the other branches of government, along with learning institutions, advocacy groups, the press, individuals and others want the Judiciary’s data and their interest isn’t necessarily in the integrity of the data – it’s accuracy and completeness. Many entities that screen scrap to get Judiciary data develop their methods of analyzing it and then publish the data or even sell it.

Ms. Harris remarked that the mass gathering of data from judiciaries and criminal justice partners is a national trend that isn’t going away. She added that many states are under attack from external entities that have published reports, using Judiciary data, providing outcomes that cannot be replicated by the Judiciary because of the manner in which the data was interpreted or analyzed, as well as the staleness of the data. This often puts judiciaries on the defense as they attempt to explain why the analysis and resulting reports are not correct, sometimes to no avail.

The national initiative began approximately 10 years ago with *Measures for Justice*, which is a non-profit organization whose mission is to bring transparency to local criminal justice systems. *Measures for Justice* has garnered national support through federal grant funds and private businesses such as Google and Microsoft to analyze and publish data on the criminal justice system across the nation. No state has been able to replicate its findings.

In a continuing effort to address the development of an extensive set of standards to curtail uninformed and incorrect reporting, such as what is published through the *Measures for Justice* initiative, the National Center for State Courts convened judges, administrators, clerks, advocates, government officials, private businesses, and others to facilitate the creation of an extensive set of standards for state and local judiciary data, as well as criminal justice data generally.

The project has been completed and states are encouraged to map their data to the NODS standards. The NOD Work Group is mapping Maryland Judiciary data to the definitions established by NODS. The Judicial Council will be kept apprised of the work group's efforts.

- Online Dispute Resolution (ODR) Work Group – This work group is charged with examining and recommending ODR solutions. The areas currently under consideration to pilot the selected solution are non-incarcerable traffic cases, small claims cases, and child support enforcement matters.
- Landlord/Tenant Bulk Filing Work Group – This work group is tasked with working with Tyler Technologies, the Judiciary's case management system vendor, to develop a solution within MDEC to enable the processing of bulk landlord/tenant filings. The solution, which is being tested, will be piloted in the District Court in Baltimore County.

Chief Judge Barbera thanked the Committee, subcommittees, and work groups for their efforts as they work to improve operational efficiency and effectiveness through technology.

Chief Judge Barbera acknowledged the years of service Judge Finan dedicated to the administration of justice as he retires from active service.

There being no further business, the meeting adjourned at 12:14 p.m. The next meeting is scheduled for November 18, 2020, beginning 9:30 a.m.

Respectfully submitted,



Faye Gaskin
