



Hon. Matthew J. Fader, Chair
Chief Justice, Supreme Court of
Maryland

Hon. Donine Carrington-Martin
Circuit Court for Charles County

Hon. Audrey J. S. Carrión
Chair, Conference of Circuit Judges

Hon. Karen Christy Holt Chesser
District Court in St. Mary's County

Hon. Kathleen Duvall
Chair, Conference of Circuit Court
Clerks

Nancy Faulkner, Secretary
Deputy State Court Administrator

Hon. Jeffrey S. Getty
Circuit Court for Allegany County

Kristin Grossnickle,
Chair, Conference of Circuit Court
Administrators

Pamela Harris
State Court Administrator

Hon. Fred S. Hecker
Vice-Chair, Conference of Circuit
Judges

Kathy Hefner, Administrative Clerk
District Court in Montgomery County

Hon. Geoffrey Hengerer
District Court in Baltimore City

Hon. James A. Kenney, III
Chair, Senior Judges Committee

Stephanie Medina
Vice-Chair, Conference of Circuit
Court Administrators

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

Hon. Bonnie G. Schneider
District Court in Cecil County

Hon. Shaem Spencer
District Court in Anne Arundel County

Lara Stone, Administrative Clerk
District Court in Harford County

Hon. Kevin Tucker
Vice-Chair, Conference of Circuit
Court Clerks

Roberta Warnken, Chief Clerk
District Court of Maryland

Hon. E. Greg Wells
Chief Judge, Appellate Court of
Maryland

Hon. Alan M. Wilner
Chair, Standing Committee on Rules of
Practice and Procedure

MARYLAND JUDICIAL COUNCIL

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Meeting Minutes

May 24, 2023

Judicial Council Members Present:

Hon. Matthew J. Fader, Chair

Hon. Donine Carrington-Martin

Hon. Audrey J.S. Carrión

Hon. Karen Christy Holt Chesser

~~Hon. Kathleen Duvall~~

Nancy Faulkner

Hon. Jeffrey S. Getty

Kristin Grossnickle

Hon. Fred S. Hecker

Kathy Hefner

Hon. Geoffrey Hengerer

Hon. James Kenney, III

Stephanie Medina

Judy Rupp

Hon. Bonnie G. Schneider

Hon. Shaem Spencer

Lara Stone

Kevin Tucker

Roberta L. Warnken

Hon. E. Greg Wells

~~Hon. Alan M. Wilner~~

Others Present:

Hon. Vicki Ballou-Watts

Melissa Canada

Lou Gieszl

Pam Harris

Warren Hedges

Eliana Pangelinan

Sharon Reed

Gillian Tonkin

A meeting of the Judicial Council was held on Wednesday, May 24, 2023, at the Maryland Judicial Center, beginning at 9:30 a.m. Chief Justice Matthew Fader opened with a reminder that the meeting was being livestreamed on mdcourts.gov. Justice Fader then welcomed the new State Court Administrator, Judy Rupp. He explained that she has been a part of the Judiciary for some time now so many members may already be familiar with her. Ms. Rupp thanked everyone and stated she looks forward to collaborating throughout the state in her new role.

Justice Fader moved for approval of the minutes from the March 22, 2023 meeting, which were adopted by general consent.

1. Soderberg Case Update

Kevin Cox, Chief Counsel from the Office of the Attorney General's Courts and Judicial Affairs Division, provided an update regarding the broadcast ban. He explained that litigation should be resolved within the next few months. The case is scheduled for a

settlement conference following the Plaintiff's request for attorney's fees. With respect to the rule change, an emergency meeting occurred in January where the Supreme Court heard feedback from the media, advocacy groups, attorneys, and members of the public. Many stated they were unaware of the previous opportunities to comment on the proposed changes and as a result, the Supreme Court remanded the issue back to the Rules Committee. The extension would provide additional time for open meetings and potentially allow the General Assembly to address the broadcast ban in the upcoming legislative session. Mr. Cox noted that the issue was, in fact, not addressed during session and that the Rules Committee is expected to send a final, thoroughly vetted proposal sometime in the next few months. Mr. Cox indicated that the Supreme Court will have another open meeting, and the new language has already received higher support from the public.

The proposed changes pertain to Criminal Procedure § 1-201, which prohibits a person from publicly broadcasting a legally obtained recording of a criminal proceeding. The Rules Committee gave great thought to keeping the integrity of the process and protecting the victims while respecting the requests from the media. Under the new rule members of the public will be allowed to listen to or review unredacted proceedings at the courthouse, but only certain entities will be entitled to obtain an audio copy of the proceeding. Provisions are included for attorneys to share these copies with staff, colleagues, expert witnesses, etc. Previously, only a party to a case could make a request to redact sensitive information. The new Rule will allow any interested party or a judge, *sua sponte*, to make the request based on clear and convincing evidence.

Judge Wells asked that Mr. Cox walk through the new redaction procedure during a criminal trial, such as a victim requesting a portion to be redacted. Mr. Cox explained that interested parties will be able to make the request at any time. Ideally a victim or witness would be represented, and the issue would be raised prior to trial, however, if they are uncomfortable with the testimony the judge would be in a position to hear both sides at that time. If the redaction is opposed, the new rule provides various factors for the judge to consider. The clerk would be responsible for logging the redactions and, although a person could hear the testimony in person, a copy of the audio recording would be redacted. The Office of Public Defender requested a notice provision for when a request for an unredacted version occurs, but the request was opposed and will not be included in the proposal.

Judge Carrión inquired how a person would obtain a video or oral transcript and whether the rule addresses what would happen if someone were to broadcast it illegally. Mr. Cox explained that the rule decision acknowledges that, under the First Amendment, once an audio is distributed, then it is considered to not be restricted, including the news, social media, etc. Under the new rule, the media would receive a redacted version of the audio and could broadcast it freely. The rule includes the ability for the court to hold someone in contempt if a recording is broadcasted illegally.

Judge Chesser asked whether a redaction decision without hearing from both sides could be considered premature. Mr. Cox acknowledged that a hearing would provide an opportunity to proffer what testimony is being redacted, but would be determined on a case-by-case basis. Judge Carrión suggested that judges operate under the assumption that unredacted copies given to an interested party will be broadcasted.

Ms. Harris asked whether the new rule defines interested party versus interested person, noting that judges may need a clearer definition. Mr. Cox answered that the new draft version (Md. Rule 16-504.1) does not define interested person. It could be anyone who arguably articulates an interest, and it would ultimately be up to the court. Judge Spencer closed the questions by inquiring whether there is a provision for when an interlocutory appeal is made. Mr. Cox stated that the draft does not mention that scenario.

Justice Fader thanked Mr. Cox for the update. He stated that the rules process is designed to work with the public for consideration and is intended to be open to anyone with an interest in the rule, including judges, clerks, administrators and those who believe there should be clarification. Justice Fader encouraged everyone to pay attention to the rules process and to notify Judge Wilner if anything needs clarification. He stated that those in the room with him have the greatest vantage point, and the process works best when everything is considered prior to reaching the Supreme Court level.

2. Equal Justice Committee

Judge Vicki Ballou-Watts, Lou Gieszl, and Warren Hedges appeared on behalf of the committee. Judge Ballou-Watts explained that the purpose of the committee is to build upon the knowledge of personnel to strengthen equal justice for all. There are currently 28 members of the committee.

Last year, the Equal Justice Committee (EJC) oversaw six subcommittees. The Access and Fairness Subcommittee was chaired by Judge Carlos Acosta and focused on improving access to counsel, language services, and self-help resources. The subcommittee worked to improve the Judiciary's outreach and accommodation for disabilities. Many of the recommendations presented by the subcommittee were adopted by the Judicial Council last year. The subcommittee is now overseen by the Court Access Committee.

Judge Yolanda Curtin chaired the Diversity and Inclusion Education Subcommittee. The focus was to identify implicit bias training needs and diversity education for judges, magistrates, commissioners, and staff. An administrative order was issued last summer requiring all judges to attend diversity and inclusion training beginning in 2024. The subcommittee is now overseen by the Education Committee.

The Rules Review Subcommittee, chaired by Judge Daniel Friedman, presented a thorough report to the Judicial Council in March 2023, which included 108 recommendations for the Rules Committee. The report was approved by the Judicial Council and sent to the chair of the Rules Committee, Judge Alan Wilner. As a member of the Rules Committee, Judge Ballou-Watts confirmed that dissemination of the recommendations to the appropriate subcommittees has already begun. The Rules Review Subcommittee is now sunset.

The EJC currently oversees three subcommittees. Judge Audrey Carrión chairs the Community Outreach Subcommittee, which focuses on creating forums across the state to discuss topics of community interest. The purpose is to educate the community as it relates to the justice system and to provide transparency. For instance, the public may wonder what options a judge has for an offender with a mental health issue. It is an opportunity to explain that sometimes there are limitations with detention centers or with juvenile services. During the meeting, the public writes questions and comments for a panel to review, which always includes a local community partner. Eight public forums have been conducted to date, many of which were held remotely. Most recently the subcommittee held a forum in Carroll County to discuss substance abuse. A follow-up survey is provided to attendees for feedback and additional topics of interest. There are several forums in the works to discuss bail reform, including Cecil, Harford, Allegany, and St. Mary's counties.

Through the work of the Community Liaisons Workgroup, chaired by Stephanie Medina, the committee is also working to develop community advisory councils in each jurisdiction. The workgroup consists of court administrators and clerks from various court sizes and is also looking to include representation from District Courts. A grant was recently approved for a Diversity, Equity, and Inclusion liaison position in Baltimore County and Montgomery County circuit courts. The hope is to set an example and gain momentum for future funding.

The Operations Subcommittee is chaired by Judge Sharon Burrell and focuses on internal and external relations. The subcommittee sent an Employee Experience Survey in 2021 and met with several leaders to review the results, which remained anonymous. Another survey will be sent in September 2023. The Public Perception Survey provides a QR code for the public to scan and provide feedback on their court experiences. The language at the end of the survey recently changed to refer to a matter as a “concern” rather than a “complaint”. Upon completion of the survey, the individual is redirected to the Judiciary’s website. The goal is for the surveys to remain continuously available to the public.

The Sentencing Subcommittee was originally chaired by Judge Sheila Tillerson-Adams, but, following her retirement, is now led by Judge Joseph Stanalonis. The subcommittee is reviewing Judge Tillerson-Adams’ second draft Interim Report and updating as appropriate. Jamie Walter from Research and Analysis will be presenting to the subcommittee in June regarding the results of an outside survey naming Maryland among the worst states for sentencing disparity. The members will also review Judiciary sentencing data and submit a report to the EJC.

The EJC has met twice already this year. Chief Judge John Morrissey forwarded to the committee a letter from an experienced rent court agent who shared observations of a pattern in the way litigants were being treated. The concerns disproportionately impacted African American women where bailiffs were asking women to remove their hair wraps. The matter was addressed by the committee and is being referred to the Education Committee to include in diversity training and education.

Chief Judge Greg Wells thanked Judge Ballou-Watts for assuming her role in such an important committee. Judge Carrión also thanked the staff of the EJC for their hard work behind the scenes. Chief Justice Fader stated that the goal of changing the structure of the Equal Justice Committee was to fully integrate the work that was already being done within the Judiciary. He noted that many of the EJC members are also members of the Judicial Council and thanked everyone for their work.

3. Senior Judges Committee

Judge James Kenney and Eliana Pangelinan appeared on behalf of the Senior Judges Committee. Judge Kenney acknowledged that the committee is small but works hard to integrate senior judges into the Judiciary operations as efficiently as possible. There are currently 174 senior judges; nine who are designated in an appellate court, 60 in circuit court, 54 in District Court, and 51 that are cross-designated. There are 44 senior judges who fill 119 seats on Judicial Council committees, subcommittees, and workgroups.

Communication, especially regarding the needs of the courts, is always a concern among senior judges. Chief Justice Fader’s approval of laptops for the senior judges has helped to improve the access to information.

The committee has formed a joint workgroup with the Court Operations Committee to develop a best practice guide regarding trial court utilization of senior judges. Another workgroup was formed to create a central calendar for circuit court senior judges to share their availability with administrative judges.

Required course completion by senior judges has increased tremendously since the pandemic ended. Judge Kenney praised the Judicial College for enabling senior judges to access required education courses and training at the same time as the active judges.

A newsletter is provided to senior judges periodically throughout the year and is posted on the Judiciary's Senior Judges webpage. The 2023 Senior Judge Award was presented to Judge Karen Jensen who was instrumental in improving guardianship rules.

Judge Kenney indicated that the loss of prescription drug coverage remains an ongoing concern. Without further judicial action and legislative intervention, the State will no longer fund prescription drug coverage for retirees beginning January 2025. Judge Kenney thanked Chief Justice Fader for addressing some of the senior judges' concerns on the recent administrative orders. He also thanked Chief Judge Morrissey, who has only missed one meeting of the Committee, and Eliana for her knowledge and support of him and the Committee as a whole.

Judge Carrión raised a question regarding senior judges no longer having parking at BWI airport. Judge Kenney stated the issue has been raised many times but is small in comparison to other financial needs of the Judiciary. Chief Judge Morrissey explained that the parking became a controversial topic, and the decision was made not to pursue it.

Judge Kenney moved on to explain that senior judge compliance with education requirements is likely higher than reported. When sitting, senior judges are generally willing to stay as long as the courthouse needs, but only request information on when and how they are needed for their planning purposes.

Chief Justice Fader thanked Judge Kenney and all senior judges who continue to serve and support the Judiciary. He explained that Pam Harris spearheaded the laptop initiative and Senior Judge Technology Day. Chief Judge Morrissey added that a JIS regional representative can meet senior judges at the District Court courthouses to provide additional training. Sharon Reed maintains the District Court senior judge laptop needs and scheduling.

4. For the Good of the Order

Chief Justice Fader thanked everyone in attendance. There being no further business, the meeting adjourned at 10:50 a.m. The next meeting is scheduled for September 27, 2023, beginning 9:30 a.m.