

# THE SUPREME COURT *of* OHIO

## ADVISORY COMMITTEE ON CASE MANAGEMENT

**Honorable Jerome J. Metz, Jr.**  
Hamilton County Common Pleas Court  
*Chairperson*

**Honorable Kathleen L. Giesler**  
Ottawa County Court of Common Pleas  
Probate/Juvenile Division  
*Vice Chairperson*

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### Meeting Minutes

May 6, 2016

#### **Committee Members Present:**

Russell Brown, Esq.  
Judge Kim Browne  
Judge Timothy Cannon  
Judge Rocky Coss  
Judge Patrick Fischer  
Judge Richard Frye  
Judge Michael Hall  
Judge Jerome Metz, Jr.

Judge Tom Pokorny, Retired  
Elizabeth Stephenson, Esq.  
Susan Sweeney, Esq.  
Judge Curt Werren  
Judge Gene Zmuda  
Judge Joseph Zone

#### **Subcommittee Members Absent:**

Gretchen Beers  
Judge Anthony Capizzi  
Judge Carol J. Dezso  
Judge Gary Dumm  
Judge Laura J. Gallagher

Judge Kathleen L. Giesler  
Lisa M. Gorrasi, Esq.  
Judge Diane M. Palos  
Judge Terri L. Stupica  
C. Michael Walsh, Esq.

#### **Supreme Court of Ohio Staff Members Present:**

Brian Farrington  
Ashley Gilbert, Esq.  
Nikole Hotchkiss

Diane Hayes  
Colleen Rosshirt, Esq.  
Tasha Ruth, Esq.

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### **Introduction**

An introduction of new Advisory Committee on Case Management members was made; these new members include: Judge Kim Browne, Judge Curt Werren, and Susan Sweeney. New Supreme Court Staff member Nikole Hotchkiss (Statistics Analyst) was also introduced.

## **Meeting Minutes**

The minutes from the August 7, 2015 meeting were reviewed and approved unanimously.

### **Old Business: Superintendence Rule 8 – Court Appointments**

Background of Sup.R. 8 was provided by Judge Frye to update new members as to how this rule came under review, namely due to a concern that uniform practices were not being used statewide. This rule has been revised after considering the opinion of 351 judges who responded to a survey seeking their feedback regarding the appointment system. The general opinion of those responding judges was a preference to retain autonomy in the appointment system. After this rule was published for comment, the subcommittee met to incorporate changes with consideration to the comments made by the public. As a result of the comments, a subsection was added to the draft rule that requires individual courts to periodically review the level or hourly rate of compensation made to appointed attorneys. The subcommittee believes the court has a duty to indigent defendants to adequately pay appointed attorneys in order to maintain an appointment list of attorneys who are well qualified to represent the indigent population.

The word “affect” was corrected to “effect.” All other changes proposed by the subcommittee were accepted unanimously.

Next, Sup.R.8 will be presented to the justices in August for final approval.

### **Old Business: Superintendence Rule 38 – Case Inventories**

Judge Coss provided a recap of the past updates to this rule. The subcommittee met to consider comments made during the public comment period. The most significant comment was in regard to the timing for a new judge to complete the inventory. The rule was amended to clarify this issue (“within three months of the date of a judge taking office...and thereafter annually”). Also, the subcommittee amended the rule to allow the judge to be “responsible” for completing the inventory. The purpose of this change is to clarify that the judge is not required to physically conduct the inventory him or herself. Staff added commentary, per the request of the justices, to provide instructions regarding how a judge is to complete a case inventory.

The word “electric” was corrected to “electronic.” All other changes proposed by the subcommittee were accepted unanimously.

Next, Sup.R. 38 will be presented to the justices in August for final approval.

### **Old Business: Superintendence Rule 36 – Case Assignment**

The revision process of Sup.R. 36 was summarized by Judge Frye. This rule has not yet been reviewed by the justices nor published for public comment.

The first concern raised by the subcommittee was whether it was appropriate to retain the section of this rule entitled “Designation of Trial Attorney.” ACCM members agreed it was important to

keep this portion of the rule but recognized it should be separate from the “Case Assignment” section of this rule, which may need to be retitled.

The Advisory Committee agreed unanimously to the following language for Sup.R. 36:

“Each court may require, by local rule or order, that the trial attorney individually responsible for trying the case be designated in the pleadings or by separate notice or entry.”

The ACCM asks Supreme Court staff to retitle Sup.R. 36.01 from “Definitions” to better articulate the purpose of this rule. The title “Assignment of Cases for Trial Court” may be sufficient.

The Advisory Committee opted to leave Sup.R. 36.011 unchanged.

### **Sup.R. 36.015 – Management of Assigned Judge Docket**

Sup.R. 36.015 was amended unanimously to include “case” before the word “management” in the title and sections (A) and (B).

Also added was a reference limiting the authority of the administrative judge within the scope of Sup.R. 39.06, assuming changes proposed for Sup.R. 39.06 are approved.

There was considerable discussion surrounding the term “good cause” as used in both Sup.R. 36.015(A) and (B). After much deliberation, the Committee opted to leave this term in both sections of the Rule.

### **Sup.R.36.018 – Assignment of Cases Following a Recusal**

Sup.R. 36.018, Assignment of Cases Following a Recusal, was considered. There was discussion as to using more precise language regarding how a multi-judge court or division should assign a case where “several” judges have recused. Initially, a motion was made to keep the term “several judges” which was objected to by one member, but carried by a majority. Ultimately, there was a unanimous vote to eliminate the language: “following the recusal of several judges of the court from a particular case”.

The group also voted without objection to eliminate the word “first” in Sup.R. 36.018 (A).

Next, these revisions will be reviewed by the Commission on the Rules of Superintendence, then they will be presented to the Justices for approval to be posted for public comment.

### **Old Business: Update on Superintendence Rule 36 – Case Assignment for Appellate Courts**

This subcommittee was formed to address the assignment of cases in appellate courts. Currently, Sup.R. 36 does not speak to the assignment system in appellate courts. Judge Cannon provided the background regarding the work completed by this subcommittee. A survey was sent to all appellate districts and the results will later be disseminated. It is expected that there will be many ideas from

this survey regarding whether it is appropriate to disassemble a panel after it is appointed. The philosophy of this subcommittee is to identify areas of consistency among the districts and work forward from those places of agreement. A recommendation whether to write a rule will come later from this subcommittee.

### **Old Business: Update on Superintendence Rule 39 – Case Time Standards**

Judge Metz updated the group with information on Sup.R. 39. This rule is still out for public comment until May 16, 2016. Although there have not yet been many comments, Judge Coss advised that a list of comments is being compiled by some associations. It was suggested that many of these comments could be addressed if the revised instructions for statistical reporting were published in whole or in part. At minimum, it was advised that these instructions should be provided to the Justices when this rule is being presented for final approval.

No action for Sup.R. 39 was contemplated.

Next steps for these rule revisions include a subcommittee meeting to review and respond to all public comments, prior to the next full ACCM meeting.

### **Old Business: Update on Superintendence Rule 49 – Commercial Docket**

An update on the progress of this rule was provided by Tasha Ruth. The subcommittee met by conference call on March 24, 2016 to approve changes to this rule which were then approved via conference call by the full Advisory Committee. Substantively, these amendments eliminate the requirement for review by committee of any appointment of a judge to a commercial docket. Also, this rule now requires the education component to be completed within two years before or within in the first year of a judge being appointed to the commercial docket. These amendments were sent to the Commission on Rules of Superintendence.

### **New Business: Task Force on the Funding of Ohio Courts – Recommendations 5 & 7: Court Financial Data Collection; Recommendation 8: Resource Sharing Partnerships**

Brian Farrington introduced this new business by providing a summary of the Chief Justice's Taskforce on the Funding of Ohio Courts, formed in 2012 and reporting out in 2015. The charge of the Taskforce was to identify the statutory duties of the court, identify the various funding sources of the courts, determine the amount of financial resources expended in funding Ohio courts, determine the total amount of fines and fees collected by Ohio courts, examine the ongoing budgetary needs of the courts, and to review the structure of the judicial system. The ACCM was assigned three recommendations that were made as a result of the Taskforce's recommendations.

First, Recommendations 5 and 7 recommend annual reporting from local courts regarding their financial and funding information in order to publish an annual statewide report of financial information. The ACCM is tasked with identifying a uniform reporting system that will provide the public and commissioners with information, with some precision, the cost of running a court.

Next, Recommendation 8 encourages courts to participate in resource-sharing partnerships. The ACCM is tasked with providing a specific mechanism to achieve the goal of this Recommendation.

A motion was made to create two subcommittees to review Recommendation 8 (Resource Sharing) and Recommendations 5 and 7 (Financial Reporting). This motion passed unanimously.

Volunteers for the newly created subcommittees include: Elizabeth Stephenson, Susan Sweeney, Judge Curt Werren, and Judge Gene Zmuda (Financial Reporting-Recs. 5&7) and Russell Brown, Judge Kim Browne, and Judge Michael Hall (Resource Sharing-Rec. 8).

**Future meeting dates**

Friday August 12, 2016. This meeting date may be a conflict for many ACCM members; changes will be made by the Chair and sent via email.

Friday October 7, 2016