

THE SUPREME COURT *of* OHIO

ADVISORY COMMITTEE ON CASE MANAGEMENT

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

Meeting Minutes March 24, 2017

Committee Members Present

Judge Jerome Metz, Jr.
Judge Laura J. Gallagher
Judge Craig R. Baldwin
Gretchen Beers, Esq.
Russell Brown, Esq.
Judge Timothy Cannon
Judge Anthony Capizzi
Judge Carol J. Dezso, Retired
Judge Richard Frye
Judge Michael Hall

Judge Kristen K. Johnson
Judge Diane M. Palos
Judge Tom Pokorny, Retired
Elizabeth Stephenson, Esq.
Judge Terri L. Stupica
C. Michael Walsh, Esq.
Judge Curt Werren
Judge Gene Zmuda
Judge Joseph Zone

Committee Members Absent:

Judge Kim Browne
Judge Rocky Coss
Judge Gary Dumm

Lisa M. Gorrasi, Esq.
Susan Sweeney, Esq.

Supreme Court of Ohio Staff Members Present:

Diane Hayes
Nikole Hotchkiss, Ph.D.
Colleen Rosshirt, Esq.

Tasha Ruth, Esq.
Brian Farrington

Introduction

An introduction of new members to the Advisory Committee on Case Management was made. Judge Craig R. Baldwin, Fifth District Court of Appeals and Judge Kristen K. Johnson, Hancock County Probate/Juvenile Court were welcomed to the ACCM.

Meeting Minutes

A motion to approve the minutes from the October 7, 2016 meeting was made by Judge Capizzi, with a second from Judge Stupica. The minutes were approved unanimously.

Update on Superintendence Rule 36 – Case Assignment for Trial Courts (Judge Frye)

A written comment from the Montgomery County Common Pleas Court was received regarding the assignment of a judge to a case prior to indictment. This comment requires additional consideration by the subcommittee and a meeting is scheduled to discuss the comment in detail. An invitation to this meeting was extended to Montgomery County's Administrative Judge and a representative from the prosecutor's office and public defender's office to discuss the implications of the proposed rule amendments on the county's current assignment practices.

Update on Superintendence Rule 36 – Case Assignment for Appellate Courts (Judge Cannon)

An additional subcommittee was created to review Sup.R. 36 from the perspective of appellate courts. Two weeks prior to a scheduled hearing, appellate courts are required to publish the names of the judges assigned to the appellate panel. This procedure is unique to appellate courts. The subcommittee presented their draft language to the ACCM for review. Discussion regarding whether this draft language conflicts with App.R. 15(C), "Power of a single judge to entertain motions," resulted in the conclusion that no conflict existed.

A motion was made to approve the drafted language shown below. This motion passed unanimously.

Drafted Language, as approved for Sup.R. 36:

Random assignment. Courts shall randomly assign all appeals and original actions to judges through an objective and impartial system that ensures, to the extent practicable, equitable distribution of cases among the judges. The random assignment system should have no discernable pattern so that parties will not be able to predict to whom a case is assigned before the actual assignment.

Update on Superintendence Rule 39 – Case Time Standards (Judge Metz)

The Sup.R. 39 subcommittee has completed its work in preparing responses to public comments received on this rule and the ACCM previously approved these changes. The drafted rule was

presented to the Commission on the Rules of Superintendence. The Commission tabled a vote on the proposed amendments until they convene again in June.

Update from the Subcommittee on Collection of Financial Data (Task Force on the Funding of Ohio Courts – Recommendations 5 & 7: Court Financial Data Collection) (Judge Werren and Judge Zmuda)

The overarching goal of this subcommittee is to identify a mechanism for collecting a summary of the operational costs of Ohio courts. This subcommittee has created a Common Pleas Courts subgroup and a Municipal and County Courts subgroup, to approach this topic. The focus of each subgroup is to determine a way in which meaningful data can be collected without over-burdening courts. The subgroups are independently working to draft a template that will assist in the collection of financial information in a uniform manner for each jurisdiction.

The Municipal Court group has recognized that, although all municipal courts are required to report annually, each court reports financial information in a different format and with unique categories. Similarly, the Common Pleas subgroup recognized that reporting is difficult because of the diverse nature of the 88 counties funded from a variety of entities. Court operating costs vary based on local agreements with funding authorities.

The SCO staff is seeking feedback and guidance from the Court’s Administrative Office as to next steps.

Update from the Subcommittee on Resource Sharing Partnerships (Task Force on the Funding of Ohio Courts – Recommendation 8: Resource Sharing Partnerships) (Judge Pokorny)

This subcommittee has concluded its work in determining ways to assist courts in resource sharing. The culmination of the subcommittee’s work was the creation of a webpage that highlights resource sharing projects and allows courts to be connected to new partners. This site will be updated quarterly. ACCM members are asked to continue to promote this resource through organizations and associations.

<http://www.supremecourtofohio.gov/JCS/casemng/resourceShare/default.asp>

New Business: Suggested Rule Changes to Appellate Rule 9(A) (Tasha Ruth)

This issue comes to the ACCM from the Court Administrators of Ohio’s Appellate Courts and was presented by Michael Walsh. The goal of any changes to this rule is to make the transmission of documents more consistent across districts and counties while ensuring the confidentiality of documents throughout the appeal process.

When a case is sent from a lower court to the appellate court, supplemental, confidential documents used by the lower court’s judicial officer during the life of the case are often not included when the casefile is transmitted to the appellate court. The supplemental documents are usually held in a separate physical file, sometimes called a “red file” or “family file.” This separate file often

contains documents that are held in confidence, such as victim impact statements, presentence investigation (PSI) reports, recommendations made by probation officers, GAL reports, or recommendations made by mental health professionals. These confidential documents are sometimes referenced by the judicial officer in the final, written decision, or referenced during the proceedings.

The ACCM discussed the definition of “the record” (under Sup.R. 44, Court Record) and who has the burden to make this determination; it was generally agreed that the clerk is functioning as decision maker as to what constitutes the record. Discussion regarding confidential family court files, particularly with regard to Sup.R.44, concluded with the statement that Sup.R. 44 is a public access rule, not a rule that governs which documents are included on appeal. There was review of ORC 2953.08(F), “Appeal as a matter of right,” which states that a PSI “shall” be transmitted on appeal. Also discussed was whether documents such a probation department’s recommendation report should routinely be included as part of the record on appeal, or whether these reports should only be sent upon request.

It was discussed whether the lower court’s reference to a confidential document in the final appealable order is required, or merely the existence of a document, for its inclusion in the case file transmitted to the appellate court. One example was offered to show that, perhaps, the nature of the appeal should determine which confidential records are included with the case file: if an appeal is filed to dispute venue in a divorce case, there would be no reason for the appellate court to review confidential documents.

Another concern raised during discussion was the way in which attorneys perceive the transmission documents included in “the record.” If an attorney is unaware of the practice of the lower court to maintain a confidential file separate from the case file, the attorney may not know that, for example, investigative reports held in the confidential file are not sent to the appellate court.

A subcommittee was formed to research the preliminary concerns raised during this meeting regarding confidentiality and conflict with existing rules, as well as to draft rule changes as necessary. This subcommittee includes Judge Terri Stupica, Elizabeth Stephenson, C. Michael Walsh, Judge Rocky Coss, Judge Michael Hall, Magistrate Gretchen Beers and Judge Jerome Metz.

New Business: Commission on Technology and the Courts – Standards Workgroup Update (Robert Stuart, Director of Information Technology)

Supreme Court staff member Robert Stuart updated the ACCM regarding the Case Management System Standards Workgroup. This workgroup meets monthly with the goal of standardizing data structures. The workgroup will first identifying areas of commonalities used by courts, for example citations of ORC codes, reporting dispositions, and sentencing information. Then the workgroup will begin to standardize reporting formats of these commonalities. By using master code structures with local code variation options, data reporting will be more reliable and usable. An introduction letter to CMS standards and position paper is on ohiocourts.gov website.

Future meeting dates

- Friday, August 11, 2017
- Friday, October 13, 2017