



Judicial Council Minutes July 16, 2020

The Judicial Council met via WebEx on Thursday, July 16, 2020.

1. Approval of Draft June 18, 2020, Meeting Minutes

A motion was made and seconded to approve the draft June 18, 2020, Meeting Minutes as submitted. The motion prevailed.

Council Action

The Judicial Council approved the June 18, 2020, Meeting Minutes, as submitted.

2. Discussion Item: Quarterly Report MPA Remote with Documents Initiative

Judge Peter Cahill, MPA Remote with Documents Steering Committee Chair, gave the project's quarterly report. The project scope, the project schedule and timeline were reviewed. Ann Peterson, State Court Administration, reviewed the completed activities and the logic behind making the appropriate documents accessible. Sample pages for the application were also reviewed.

The project schedule going forward was presented. A discussion ensued on the pilot for Phase 1, scheduled to commence in January 2021. Pilot details, including participants and length, will be discussed at the August Steering Committee meeting. Participants could include attorneys and support staff. It was noted that the application will not be accessible to the general public during the pilot phase.

The project budget was discussed. It was noted that the project is on track in terms of time and the budget for Phase 1. It was noted that the total budget is \$1.5M with tails of \$445,000 each year. The funding of tails can be discussed during the FY22-23 Budget Request development. It was agreed that the next report will be presented in October 2020.

3. Discussion Item: Other Side Workgroup Report

Judge Krista Martin, Workgroup Chair, reviewed the Other Side Workgroup Guiding Principles:

- The recovery transition will be fluid, and the Branch will need flexibility to ramp work up and down.
- Statewide solutions must be considered.

- Local approaches/plans/support are needed to address local-specific issues.
- The Branch must leverage what is being learned.
- Use of Supreme Court Orders may be necessary.
- Outreach to justice partners is necessary.

Grant Hoheisel, State Court Administration, reviewed the Jury Trial Pilot feedback. He noted that, in general the pilots have gone well. Trials are reaching verdict. Jurors and attorneys feel safe. Jurors are appearing at pre-COVID 19 rates. Social distancing, using physical cues, e.g. floor markings, is being maintained. Challenges were also noted. In some courtrooms there are public viewing issues, e.g. audio quality, single camera angle. Communication between defense attorneys and clients can be an issue. Courtroom configurations can cause issues with sightlines and podium locations. The trial process is longer, due to a variety of factors, e.g. newness of the process, cleaning requirements.

Cara Melvin, State Court Administration, reviewed jury trial re-start planning tips. It was noted that the process to support significant planning, preparation, and justice partner conversations is beneficial and results in a smoother process. She noted that it is important to maintain consistency across staff and to have clear lines of communication. Counties should expect to make adjustments, based on experience and need.

A discussion ensued on the use of cameras to broadcast the proceedings in a separate room. It was noted that defendant has the right to a public trial and, with social distancing requirements, it is not always possible to have the public in the courtroom where the proceedings are taking place. Challenges to accommodate this need were discussed. It was noted that fixed cameras and camera angles can make it difficult for the public to see a panoramic view. It was also noted that the cameras are broadcasting to another room and are not recording court sessions.

Grant Hoheisel, State Court Administration, reviewed the current backlogs, noting that criminal and delinquency case types have the largest backlogs. He noted that overall pending the caseload is up 19% from March when the Branch began tracking the impact of the pandemic.

The pending caseload, by case type, was reviewed. There are 26,000 additional criminal cases pending as compared with pre-COVID. It was noted that the growth in backlog is occurring in all districts. Mr. Hoheisel also reviewed challenges in resolving criminal cases:

- Defendants failing or refusing to appear for remote hearings.
- Attorneys raising concerns about participating in hearings remotely or in-person.
- Attorneys refusing to be available for more hearing calendars than pre-COVID-19 scheduled hearing days.
- Trial date has traditionally been a milestone for completing plea agreements, jury trials not yet expanding significantly.
- Concern about victims not receiving justice due to trial delays and witness unavailability.

A discussion ensued on whether the backlog can be measured by applying the Judicial Weighted Caseload analysis. It was noted that the Weighted Caseload addresses judge need for an entire year and that the current rise in the backlog is a bubble caused by the pandemic. It is estimated that it will take approximately 35,000 hours of judge time to address the backlog, approximately 100 hours of extra work per judge. Eighty percent (80%) of the time (28,000 hours) is needed to address the criminal backlog, an average of 80 extra hours per judge. It was also noted that, because of safety and social distancing requirements, it will take longer to process cases than Judicial Weighted Caseload time processing standards.

A discussion ensued on staff needed to process cases. It was noted that anecdotal feedback received from the jury pilots indicates that more staff is needed to navigate the process and more bailiffs are needed. The feedback did not include specific staff FTE needs.

Opportunities as a result of the pandemic were reviewed:

- Judges are not traveling as much, freeing up more time for hearings.
- Attorneys are not traveling as much - moving between remote hearings is quicker than to different courtrooms or counties.
- Hearings are time certain (not mass calendars).
- There is more predictability for attorneys and judges.

Lessons learned to-date were also reviewed:

- Counties seeing a decrease in backlog have added calendars and/or remote hearing officer appointments.
- Judge specialization (e.g. calendaring, signing) is a useful tool.
- Strong communication and collaboration with justice partners is essential.
- Creative ideas to address barriers (e.g. Zoom Rooms, treatment court remote hearings) are welcome.
- Increased internal communication and dialogue is important.

Kristen Trebil, State Court Administration, reviewed recent Other Side Workgroup progress:

- Reviewing data to inform strategies.
- Working with legal, business practice, and IT experts to analyze feasibility of transitional strategies.
- Developing tools to seek feedback from judges, employees, and customers (jurors, attorneys).
- Collecting and disseminating information on innovative practices.

Judge Martin concluded the presentation with a review of future areas to be addressed:

- Addressing the criminal backlog.
- Anticipating Unlawful Detainer filings increase.
- Collecting and reviewing creative ideas for processing cases.
- Continued analysis of transitional strategies.
- Proposing follow-up meetings with criminal justice partners (statewide and encourage local meetings)

- Surveying judges and employees to seek feedback on what is working well and what else may be needed.

A request was made for JAD to provide guidance to court administrators on the processing of unlawful detainer actions.

4. Discussion Item: FY20 Treatment Court Initiative Annual Report, Proposed FY21 Treatment Court Initiative Work Plan, and Proposed FY22-23 Budget Request Recommendations

Judge Kathryn Messerich reviewed the Treatment Court Initiative (TCI) FY20 activities and the proposed FY21 work plan.

Judge Kathryn Messerich and Abby Kuschel, State Court Administration, reviewed the four options identified by the TCI, for inclusion in the FY22-23 Biennial Budget request. The options range from \$0 (request no new funding) - \$578,000 (request funding to offset the current funding range shifts and potential range shifts, provide funds to include Roseau County Drug Court in the treatment court funding formula, and maintain the training, technical assistance and caseload adjustment funding similar to current levels). The options will be discussed as part of the FY22-23 Biennial Budget Request development.

It was noted that federal funding for the Roseau County Drug Court will end in FY21. It was also noted that the county contributes to the Roseau County Drug Court and that, if no funds are received via the funding formula, the court will try to partner with a neighboring county to continue operation.

Lastly, it was noted that at present there are no known issues with treatment courts being at capacity and turning participants away. From time to time a few treatment courts have a short term waiting list and effort is made to adjust participant levels to accommodate new participants.

5. Decision Item: Draft FY21 Operational Plan

Katie Schurrer, State Court Administration, presented the draft FY21 Operational Plan, noting that the changes requested at the last JC meeting are included.

A suggestion was made to further amend Initiative 1.A. ii. Examine ways to maximize services provided for judicial officers.

1. Based on Judicial Council direction after the Judicial Resource Allocation special topic presentation, develop and begin executing an approved alternative judicial staff support action plan.

A discussion ensued on Initiative 2.A.ii. Produce a consistent user service experience throughout the state, through the use of technology, cross-county and district collaborations, and implementation of uniform court business practices. It was noted that the initiative is focused on court administration processes. It was acknowledged that the

initiative does not contemplate examination of judicial election boundaries. It was noted that the issue of judicial district re-districting will be included in the Judicial Resources Management Special Topic presentation, currently on hold pending the resumption of in-person meetings.

A motion was made and seconded, to approve the draft FY21 Operational Plan, as amended. The motion prevailed.

 | **Council Action**
 | The Judicial Council approved the FY21 Operational Plan, as amended.

6. Discussion Item: Statewide Accounts Receivable Audit Report

Jamie Majerus, State Court Administration, presented the Statewide Accounts Receivable Audit Report. She noted that JAD is exploring whether this work could be centralized on a district or statewide basis.

7. Discussion Item: FY20 Audit Report and Proposed FY21 Audit Activities

Jamie Majerus, State Court Administration, reported on FY20 Audit activities and presented the proposed FY21 Audit Activities.

8. Discussion Item: Judicial Council Policy 220; Internal Audit Policy

It was noted that each year the Judicial Council needs to review and re-affirm the Internal Audit policy. This policy serves as the charter for internal audit activities. No proposed amendments were identified by the Internal Audit Division or Judicial Council members.

There being no objection to acting on the re-affirmation at the present time, a motion was made and second to re-affirm Judicial Council Policy 220; Internal Audit Policy. The motion prevailed.

 | **Council Action**
 | The Judicial Council re-affirmed Judicial Council Policy 220; Internal Audit Policy.

9. Discussion Item: FY22-23 Biennial Budget Request

Dan Ostdiek, State Court Administration, reviewed the menu of possible request items for the FY22-23 Biennial Budget Request.

Requests were made to add the following items to the list:

- a. A 5.05% salary increase for judges, each year of the biennium, to reflect the recommendations in the Minnesota District Judges Association Economic Report.
- b. A 5.05% salary pool increase for staff, each year of the biennium.
- c. A 3.5% salary increase for judges, each year of the biennium, to reflect the Compensation Council recommendations.

- d. Any one time funding that will be needed to address the issues raised by the pandemic that are not funded through the CARES Act funding, e.g. senior judge funding.

A request was made to include information on Judicial Branch CARES Act funds spending in the August Judicial Council materials.

It was noted that, at present, the tails for the MPA Remote with Documents Initiative, are set to be funded from the strategic off the tops funds. It was suggested that this cost not be included in the possible funding list.

It was suggested that, for purposes of discussion, three options be drafted for discussion:

- a. Hold Harmless Budget;
- b. Biennial Budget Increase of 3%; and
- c. Biennial Budget increase of 5-6%.

10. Discussion Item: Other Business

- a. It was announced that the December Judges Conference will be held virtually and will concentrate on providing education sessions for judges who need credits for reporting purposes.
- b. It was noted that there was an error in calculating the Weighted Caseload need ranking and that Council members will receive an updated ranking chart.
- c. Members were reminded that if a district requests an exception from the hiring freeze the district should plan to address the need to get to the approved 95% implied need. In addition, if a new judge is appointed and there is no court reporter or law clerk, the district may fill one of these positions without the need for a hiring freeze exemption. The Hiring Freeze Subcommittee encourages districts to discuss law clerk sharing plans and to provide the Subcommittee with results if implemented.
- d. It was noted that the Judicial Branch received \$518,000 CARES Act funding which is being used primarily for PPE.

11. Executive Session: Personnel Matters

A motion was made and seconded to go into Executive Session to address personnel matters. The motion prevailed.

Following discussion, a motion was made and seconded to exit Executive Session. The motion prevailed.

There being no further business the meeting adjourned.