

oneCourtMN Hearings Initiative Justice Partner Meeting Agenda

Civil Case Type

October 19, 2022

12:00 pm to 1:00 pm

Attendees

Justice Partner Attendees: Stephanie Ball (American Board of Trial Advocates), Jeanette Boerner (Hennepin County Adult Representation Services), Janel Dressen (Minnesota State Bar Association), Joan Eichorst (Office of the Minnesota Attorney General), Carla Ferrucci (Minnesota Association for Justice), Portia Hampton-Flowers (Saint Paul City Attorney's Office), Liz Kramer (Office of the Minnesota Attorney General), Anthony Novak (Minnesota Defense Lawyers Association), Paul Peterson (Minnesota State Bar Association), Robert Small (Minnesota County Attorneys Association), Ryan Zipf (League of Minnesota Cities)

MJB Attendees: Beau Berentson, Abby Hager, Heather Kendall, Aaron Lauer, Rhoda Mackereth, Kirsten Maiko, Kate Malmon, Suzanne Mateffy, Judge Kathryn Messerich, Jeff Shorba, Wally Wallestad-Dax

Welcome and Introductions

Jeff Shorba, State Court Administrator, welcomed the justice partners and thanked them for attending the meeting focused on the oneCourtMN Hearings Initiative. The initiative provides strategic direction and helps implement the Minnesota Judicial Branch's strategy related to remote and in-person hearings. It also assists district courts to resolve issues that might arise during implementation. This effort continues the Branch's commitment to innovation and increasing access to justice for all Minnesotans.

OHI's Response to Spring Justice Partner Feedback

Judge Kathryn Messerich, OHI co-chair, said that the OHI Steering Committee is committed to making the initiative an open and transparent process. OHI has worked to engage those affected by its work to understand their experiences, needs, and ideas. Since receiving feedback from justice partners last May and June, OHI has worked to address many of the issues that were shared.

Justice partners shared that they desired to continue to be engaged with OHI as it progresses with its work. In addition to continuing our OHI justice partner meetings, OHI has presented across the state at several partner conferences this summer about OHI and the future of remote hearings. Part of our evaluation framework will also include opportunities for justice partners and court customers to share their experiences and ideas about remote and in-person hearings with us.

Additionally, partners encouraged OHI to continue using remote hearings for some types of hearings because of the accessibility it provides to partners and court customers. The Branch's new hearings framework has resulted in 60% of hearings being held remotely, including over 80% of non-criminal

hearings. We have tried to provide clarity around how hearings are being held and flexibility in hearing settings to accommodate the needs of the parties.

OHI has also addressed remote hearing decorum in response to partner feedback. It created a video and written remote hearing decorum guides found on the Branch's website. These resources help litigants understand how to prepare themselves for court and the decorum expectations during their hearing.

Policy 525 Implementation

Judge Messerich mentioned that last June Judicial Council Policy 525 established a uniform statewide non-criminal hearing framework and a series of district criminal hearing plans tailored to meet the needs of districts as they tackle the criminal case backlog. It is important to note that the initial criminal and non-criminal hearing frameworks are not permanent and will continue to evolve. A critical part of our evaluation process will look at how the non-criminal hearing framework and district criminal hearing plans are being implemented across the state. We will assess what effects they are having and whether any adjustments are necessary to improve hearings in the long term.

OHI: Data Collection Framework

Heather Kendall, OHI co-chair, said that throughout the summer, OHI has worked to establish a data collection framework to understand the impact of its work and gather stakeholder feedback. Evaluation data will be used to inform OHI's efforts and recommendations to Judicial Council.

The oneCourtMN Hearings Initiative is working to build public trust and accountability in our judicial system. To accomplish this important goal requires a statewide high functioning hearing process that is effective, timely, and accessible. During our evaluation phase, we will investigate if these things are happening and why. We will use a range of methods to answer each of these questions, including analysis of existing data. The currently planned methods include surveys of court users and a Resources and Practices study investigating the connection between our hearing practices and resources and outcomes.

Statewide Hearing Data

Heather Kendall stated that critical to our decision-making is the collection and use of data from remote and in-person hearings, as well as feedback from internal and external stakeholders. Data helps us understand the impacts of the hearing framework and changes to court operations brought about by OHI's work.

One example of this outreach is our upcoming survey of court customers, particularly focused on litigants in remote hearings. It will gather court customer perspective on access, timeliness, and effectiveness related to their recent hearing. This survey will also investigate barriers to hearing attendance and court customer preference for appearing remotely or in-person for a hearing.

Kirsten Maiko, OHI Evaluation and Organization Learning Team Lead, walked justice partners through a series of data on non-criminal hearings are being conducted since the implementation of Policy 525.

Since the policy went into effect 62% of criminal hearings and 85% of non-criminal hearings have been held remotely (On the record hearings held from June 6 to September 16, 2022).

Non-criminal hearings must be held according to Policy 525's statewide hearings framework. Statewide non-criminal hearings have been held about 85% remotely since the policy went into effect in early June. Juvenile Protection and Delinquency are the non-criminal hearings that most often occur in an in person or hybrid setting. Over 1,800 orders granting remote or in person appearance case events have occurred. The most frequently occurring reasons are for important/complex cases and travel. Parties can request a change in a presumed hearing setting using forms found on the Branch's website under the [Get Forms section](#). The request form is found in the Other Court Forms Category.

Remote Hearing Decorum Video and Written Guide

Suzanne Mateffy, OHI Training and Support Team Lead, shared information on OHI's efforts to address remote hearing decorum. OHI explored challenges with online courtroom decorum and sought to identify strategies for ensuring virtual hearings have the same level of decorum as hearings in a courthouse. Its initial set of decorum strategies focuses on education and training materials. To help set decorum expectations, OHI created a new video and companion written guide. These resources are posted on the public website's [Going to Court](#) and [Remote Hearings](#) webpages. Both resources provide information on how hearing participants can prepare for their hearing by familiarizing themselves with their case and testing their technology before their hearing. They also include helpful tips to minimize background distractions, take advantage of community legal kiosks for a private setting, choose appropriate clothing as well as learn how to communicate during their hearing. First published in English, the video and written guide will be available soon in Hmong, Spanish, Somali, and Karen.

Remote Hearing Challenges for People in Custody

Wally Wallestad, OHI Hearing Reengineering Team Lead, stated that one of the issues that OHI has been exploring is remote hearing challenges for people in custody. OHI is investigating how jails are working with courts across the state to provide access to remote and in-person hearings.

Earlier this summer a county jail announced it would be returning to pre-pandemic processes. In that jurisdiction, it will now require a writ to transport the person to either the courthouse, or another facility, to attend their hearing. Additionally, it will no longer provide incarcerated persons the ability to appear remotely for their hearing from the jail due to resource constraints. Since that announcement, OHI learned there are several other county jails either prioritizing remote appearances from within their own jurisdiction or requiring a writ. However, there are others who have fully embraced remote appearances and accommodate as best they can.

Input from Justice Partners

Data Collection and Evaluation

The large percentage of non-criminal hearings occurring remotely is consistent with the experience of justice partners. They were surprised by 62% of criminal hearings being held remotely and were

interested in seeing data on the variation across districts. One justice partner mentioned that the variation across districts makes sense given their different case volumes, resources, and needs. If the differences in how hearings are held are explained to justice partners and court customers, it is okay. For example, Hennepin County's high volume of Emergency Protective Care hearings would be difficult to do remotely. But some colleagues in other jurisdictions only have an Emergency Protective Care hearing once a week so they are easier to hold remotely.

Hearing Types for Remote and In-person Hearings

A partner also suggested that there should be more opportunities for hybrid hearings. They offer flexibility to the parties in how they appear. The technology in some jurisdictions is robust enough to support them. Jeff Shorba stressed that the Branch needs to ensure that it has the technology capacity, processes, and practices in place to make hybrid hearings work in all its courthouses as it prepares for a hybrid future. Other justice partners cautioned that for the cases her office handles both sides are represented in complicated civil matters. If either party learned that the other would be in person, then the other would want to be as well. Attorneys view being in person as an advantage because of proximity bias from the being in the courtroom.

A justice partner said that her office handles complex civil matters. For these types of cases, it is much easier to present complex business matters in person than remotely. Another partner cautioned that we need to be careful about the perception of changing the hearing setting for major and not minor civil cases because they are seen as more complex. Someone in housing court may feel put off that a hearing in which they could lose their house is not considered an important or complex case. Jeff Shorba responded that the feedback the Branch has received from litigants has showed a strong preference for remote hearing because of the convenience and reduced costs. If justice partners are hearing something different, please let OHI know so that we can take that into consideration.

One justice partner said that remote hearings involving some people with mental health conditions remote hearings are not appropriate because they may escalate their condition.

Exceptional Circumstances

A partner thought that the current need to have an order to change a hearing's presumptive setting created an undue burden on judges and staff. Judges need more flexibility in changing a hearing setting to meet the needs of the case without having to issue an order. At a recent seminar, she heard from three judges that the process was burdensome for judicial officers and staff. Jeff Shorba clarified that a judge does not need to issue a written order. They just need to state on the record that they are deviating, and it will be recorded by court staff. The process is not meant to be onerous, but OHI needs to know about why particular hearing settings are or are not working for a particular type of hearing. Judge Messerich said that OHI is working to better communicate to judges that they are not required to issue a formal written order to change the hearing setting.

In Person Courtroom Training and Experience for Young Attorneys

Several justice partners found that the rise in remote hearings has been a detriment to training young attorneys in in person court practices. Young attorneys are losing the value of professional development that accompanies in-person hearings. One partner suggested that the federal court had a similar issue occur before the pandemic. The court encouraged experienced attorneys to bring younger attorneys with them to court and, when time allowed, practice before the court.

Remote Hearing Management

A justice partner experienced technology issues (especially challenges with sound quality) and issues with breakout room management. People in breakout rooms are not able to talk with people outside of the breakout room. Providing better communication about who is in which breakout room would be a big help for attorneys. In general, attorneys would like more opportunities to talk with opposing counsel prior to their hearing. MNDES has been helpful in managing exhibits. Jeff Shorba responded that the Branch is working on its technology issues and looking at long-term improvements such as the remote hearing system used in Los Angeles, CA. The [LACourtConnect](#) system allows opposing counsel to create a private conversation that the court does not have to manage. Another partner believed that implementing a system like LACourtConnect would be a huge improvement especially for attorneys being able to speak with indigent clients before a hearing. It would be amazing to have a space outside of the courtroom that attorneys and litigants could control. That sort of system would really help attorneys and justice partners get behind using remote hearings.

One partner also said that for large calendars (e.g., child protection, housing, criminal arraignments) having a scheduled time to appear remotely in a few blocks, help parties who are limited in their cell phone minutes and data. It can be challenging for them wait online for 2-3 hours when all hearing participants are asked to come at one time.

OHI Engagement with the Minnesota State Bar Association

A representative of the Minnesota State Bar Association suggested that the Branch and OHI work with the Minnesota State Bar Association to amplify its message to attorneys throughout the state. They wanted to make sure that the Bar Association was able to be engaged around this important work and can provide feedback from its members to inform it. Jeff Shorba and Judge Messerich mentioned that OHI has been working with the leadership at the Bar Association and OHI is taking part in the Bar Association's Civil Litigation Conference next week. The Chief Justice also spoke to the Bar Association membership last June. Potentially OHI could work with the Bar Association to include an article about its work in the Bar Association's magazine. Heather Kendall said that OHI is making summaries of all its justice partner meetings that will be available to Bar Association and other justice partners. It also has a feedback form that we will share in the post meeting follow-up.

Next Steps

Jeff Shorba thanked the justice partners for sharing their time and expertise during the meeting. Following the meeting OHI will be sharing a meeting summary which can help spark discussions with



your organization and constituents. Justice Partners will also receive a short survey to provide additional feedback. The Branch hopes that justice partners will join us for future OHI justice partner meetings to discuss OHI work efforts and lessons learned from the remote and in-person hearing plans.