



Judicial Council Minutes

November 16, 2023

9:00 a.m.

Room 230, MN Judicial Center and via Zoom

The Judicial Council met in Saint Paul, Minnesota, and via Zoom on Thursday, November 16, 2023.

1. Approval of Draft September 14, 2023, Meeting Minutes

A motion was made and seconded to approve the draft September 14, 2023, Meeting Minutes, as amended. The motion prevailed.

Council Action

The Judicial Council Approved the September 14, 2023, Meeting Minutes, as amended.

2. Governance Follow Up

Judge Michelle Lawson, Judicial Council Vice Chair, provided a governance update. Judicial Council representation met with new MDJA President Judge Mary Mahler and Vice President Judge Richard Kyle. They had a productive meeting noting a mutual desire to move forward in a positive and professional manner and to collaborate in good faith. Judge Lawson felt all were on the same page and does not see a need for future updates on this issue.

3. Discussion Item: Proposed Revisions to Judicial Council Policy 523: Storage of Captured Records of Court Proceedings and Judicial Council Policy 523.1: Capturing the Record of Court Proceedings-Back Up of Recordings and Redundant Storage

Dawn Torgerson, Deputy State Court Administrator, and Deb Blees, Judicial Senior Attorney, Legal Counsel Division, presented revisions to Judicial Council Policy 523: Storage of Captured Records of Court Proceedings and Judicial Council Policy 523.1: Capturing the Record of Court Proceedings-Back Up of Recordings and Redundant Storage. The policy revisions are in response to the Statewide Court Records Audit presented at the September 2023 Judicial Council meeting.

SCAO staff engaged with a group of court reporters in preparation of policy changes and proposed changes were presented to JAD for feedback. There are several changes to the policies that are primarily compliance related and provide greater clarification.

The major policy changes include:

- Removing the Pandemic amendment to Policy 523. The temporary use of employee-owned steno equipment for backup recordings would end. The use of video conferencing software such as Zoom would continue for use in taking the record electronically and backup recordings when a courtroom audio system is not available.
- Policy 523 would require steno court reporters, that are electronically certified, who take the record electronically to make a “no filing” note to ensure the administrator who is monitoring for compliance will know there will not be a steno record filed.
- Policy 523 and 523.1 would set the minimum requirements for log notes/tags and clarify that log notes are not needed for backup recordings when the record is being taken stenographically.
- Policy 523 would continue to require audio recordings be filed in the county of venue consistent with Minn. Stat. § 486.03. When a court record contains cases venued in multiple counties, the court reporters will need to continue to follow procedures to identify those counties so the record in the Repository is available to the administrators in the other counties of venue when monitoring for compliance. Efforts are underway to streamline those procedures.
- Policy 523.1 would set minimum requirements for naming audio files to assist in locating audio recordings and backup recordings in the Repository. Districts will need to establish or update standards in their Court Record Management Plan to meet the specific needs of their counties/district.
- Policy 523 would specify that video files cannot be filed into the Repository to preserve space and avoid duplication.
- Policy 523.1 would change the term “redundant storage” to “district copy” and clarify what records must be kept at the district level.
- Policy 523 would increase the time to file records of court proceedings; clarify the permissible format of raw steno notes and dictionaries; and provide additional guidance for compliance monitoring.

A discussion ensued. Concern was expressed as to whether court administrators were the appropriate group to determine compliance in accordance with the policy and if it was better suited for court reporters to monitor compliance for each other. It was noted that court administrators are responsible for maintaining the record and are the most appropriate group to determine compliance. A question was raised whether court administrators have access to court reporter notes. It was noted that the Legal Counsel Division would follow up on the question. A question was raised if there was discussion about how the proposed monitoring changes would impact court administrator’s time. It was noted that the proposed effective date is July 1, 2024, to give districts time to comply and that there would be training opportunities. It was clarified that the policy changes are intended to expressly state standards that districts should already be doing with the

possible exception of viewing steno notes and listening to audio. A suggestion was made to work with IT on an automatic review solution.

4. Discussion Item: Sixth District Audit Follow Up

Jamie Majerus provided a follow up on the Sixth District Audit. The original audit from July 2018 to December 2019 found that internal controls were generally adequate to ensure that they safeguarded assets, produced reliable financial information, and complied with finance-related legal requirements and judicial policies. The district had internal control weaknesses and instances of non-compliance. The overall follow up conclusion found the Sixth Judicial District made progress on addressing all findings and observations.

The finding that the district did not always adequately restrict employee's access in MNCIS has been an issue in all districts. Ms. Majerus recommends that JAD review process and procedures regarding MNCIS access and evaluate how the Judicial Branch can correct this issue statewide.

5. Discussion Item: Treatment Court Audit Follow Up

Jamie Majerus provided a follow up on the Treatment Court Audit conducted between January 2018 and March 2019. The original audit found the branch's internal controls were generally adequate to ensure that they safeguarded assets and complied with legal requirements and judicial policies. The branch had internal control weaknesses and instances of non-compliance. The overall follow up conclusion found the Judicial Districts have made progress to date on addressing all findings and observations.

Two findings were either partially resolved or not resolved. The finding that treatment courts did not always comply with applicable legal requirements for contracts was partially resolved. The finding that the Judicial Branch has some weaknesses over the gift card and incentive programs of its treatment courts was not resolved.

A discussion ensued. Questions were raised over what type of contracts were not being complied with. It was noted that treatment courts contract for a variety of services including drug testing, defense counsel, program evaluators, and assessments. Ms. Majerus clarified the type of contracts was not the issue, the issue was not properly executing contracts prior to service or goods being provided. Questions were raised over how to address the gift card finding. It was noted that the audit team will work with JAD and Court Services to look at staff training and if the policy needs to be adjusted. Concern was expressed about the written observation to streamline treatment court fees. It was noted that the current discussion at the National Association of Drug Court Professionals is whether fees should be imposed at all because fees contribute to inequality and that federal guidance will be released soon on the topic.

Ms. Majerus will return to Council in six months to provide an update on the gift card finding.

6. Discussion Item: Treatment Court Cannabis Workgroup Budget Proposal

Cecilia Bliss, State Treatment Court Coordinator, and Shelley Ellefson, Third District Judicial Administrator presented the Cannabis Workgroup budget proposal. JAD approved the proposal with two requests: 1) flexibility between categories without additional approval from Council, and 2) the Court Services Division will seek approval from JAD before hiring permanent positions.

The Minnesota Legislature allocated \$1.5 million in FY24 and in FY25 and \$2.5 million in FY26 and in FY27 to the Minnesota Judicial Branch for treatment courts through the Adult-Use Cannabis Legislation. Thus far, the Minnesota Judicial Branch has spent \$606,925 for treatment courts to increase the funding formula allocation from 89% to 100%. For the remaining funds, the workgroup is recommending spending the funds on:

- a. Expanding access to treatment courts
 - i. Funding up to 4 new courts in FY25, and up to 8 new courts in each FY26 and FY27.
 - ii. Funding an implementation resource to provide project management services to judges and court staff seeking to implement new courts. This could be an employee or independent contractor and the position will be revisited after a few years.
- b. Microgrants to support targeted, high-need costs identified by the Treatment Court Initiative (TCI) and program staff.
- c. Training and education
 - i. Funding an annual training budget for treatment court teams.
 - ii. Funding a treatment court training resource. This could be a contract or employee position.
 - iii. Developing a proposal for a certification process.

A discussion ensued. It was clarified that the cannabis funding is in addition to the branch's existing treatment court budget, and it is approximately a 30% increase in funding. It was also clarified that treatment courts are funded pursuant to a funding formula that requires a local match. The funding formula is based on a calculation related to the number of participants served. Court Services Division is also in the process of developing an RFP to review the existing formula that was developed in 2016. It was also clarified that mental health courts are paid by DHS funding.

7. Decision Item: New Treatment Court Approval

Chief Judge Joseph Buelteel, TCI Advisory Committee Co-Chair, presented the TCI recommendation to approve the Sibley County Treatment Court. Sibley County is one of the eleven counties that does not have a treatment court and has the capacity to serve ten participants in addition to the 15 served by LeSuer County. Sibley County will merge with LeSuer County which operates an existing treatment court.

Concern was expressed related to the subjectivity of the eligibility criteria due to the prosecutor's ability to determine eligibility or reject a candidate. It was noted that there is more detail in the policy regarding eligibility criteria that aligns with best practices at the national level.

A motion was made and seconded to approve the creation of the Sibley County Treatment Court. The motion prevailed.

Council Action

The Judicial Council approved the creation of the Sibley County Treatment Court.

8. Discussion Item: LAW Recommendations

Judge David Knutson, Legislative Advisory Workgroup Chair, reported on Workgroup activities and recommendations on the 12 legislative proposals submitted to the State Court Administrator's Office. The Workgroup recommends the following proposals be approved by Judicial Council for its 2024 legislative package:

- 2024 Safe and Secure-Courthouse Initiative to fund a competitive grant program for courthouse safety and security improvements.
- Increased funding for psych examiners and expanding the examiner roster.
- Increased funding for interpreters.
- Improving the jury experience by increasing per diem and mileage and providing vicarious trauma services.
- Allowing electronic service for OFPs and HROs.
- Increasing the minimum amount required for interest-bearing trust accounts.
- Eliminating the nonapplicable revenue recapture notice.
- Automating electronic notification for driver's license suspensions.
- Judicial and Court Safety Security and Privacy Act to protect personal information of judges and judicial staff.
- Protecting jurors with differential shifts.
- Allowing court-generated notices to be served by publication on the Minnesota Judicial Branch webpage.

In addition, LAW recommends the Judicial Council approve a proposal to establish a Law Library Taskforce and requests funding in the amount of \$1.75 million per year for cybersecurity. Several members expressed support to boost the Judicial Branch's cybersecurity efforts.

A discussion ensued. It was recognized that MDJA and SCAO are working collaboratively on the Judicial Safety Security and Privacy Act. A question was raised as to how many other states allow out-of-state examiners to perform exams remotely and whether they would be available to testify in court. It was noted that Colorado is trying something similar. A question was raised as to what vicarious trauma services would be provided for the jurors. It was noted that the branch would contract with regional local services. A suggestion was made to include a county administrator on the Law Library

Taskforce board. It was also suggested that the Council consider prioritizing its funding requests.

9. Decision Item: Approval of the 2024 Payables List – Chief Judge Stoney Hiljus, COPS Committee Chair

Judge Stoney Hiljus, Chief Judge, COPS Committee Chair, reviewed the process for development of the Payables List. He noted that the proposed 2024 Statewide Payables Lists were published for a 30-day comment period and that eight comments were received in four categories. After reviewing the public comments, the COPS committee recommended approving the proposed 2024 Statewide Traffic/Criminal, Natural Resources, and Trucks and Common Carriers Payables Lists that were preliminarily approved by Judicial Council at its meeting in September 2024, with one recommended update that fourth degree possession and sale of cannabis should be designated as not payable by juveniles.

A motion was made and seconded to approve the proposed 2024 Traffic/Criminal, Natural Resources, and Trucks and Common Carriers Payables List. The motion prevailed.

Council Action

The Judicial Council approved the proposed 2024 Traffic/Criminal Payables List, Natural Resources, and Trucks and Common Carriers Payables List.

10. Other Business

a. Recognize Departing Member

Judge Toddrick Barnette was recognized for his service on the Judicial Council.

11. Adjourn

There being no further business the meeting adjourned.