



Judicial Council Minutes

August 20, 2020

The Judicial Council met on August 20, 2020, via WebEx.

1. Approval of Draft July 16, 2020, Meeting Minutes

Technical amendments were offered to the draft July 16, 2020 Judicial Council Meeting Minutes. At page 7, an amendment was offered to clarify the Hiring Freeze Committee's Exception Plan, in the event of new judges being hired.

A motion was made and seconded to approve the minutes, as amended. The motion prevailed.

Council Action

The Judicial Council approved the July 16, 2020, Meeting Minutes, as amended.

2. Discussion Item: Committee for Equality and Justice 2019-2020 Activities Report

Justice Margaret Chutich and Judge Shari Schluchter, Committee Co-Chairs, presented the Committee for Equality and Justice's 2019-2020 Activities Report. It was noted that there are four items presented for approval by the Judicial Council, including:

- The 2020 Gender Fairness Progress Report – Next Steps
The Access and Fairness Subcommittee reviewed and analyzed the “1989 Gender Fairness Taskforce Report” to identify what has been accomplished, to determine what remains outstanding, to prioritize outstanding items for further action, and to develop an outreach strategy to communicate the results of the review to the public.
- The “Tips for Going to Court in Minnesota” flyer
This document will be included in the Community Dialogue Toolkit and for use by judicial districts in communicating with court users.

It was noted that the document will be posted on the Judicial Branch public web site and that, upon approval, the document will be translated into other languages. A suggestion was made to develop similar documents for remote court proceedings, e.g. Zoom hearings. A request was made to edit the “Tips for Going to Court in Minnesota” flyer to include law libraries as a resource.

- The Implicit Bias Bench Card and Jury Instructions

Civil and Criminal Implicit Bias Jury Instruction Guides (JIG) for judges were developed in collaboration with the Civil and Criminal JIG Committees. The current Implicit Bias Bench Card was reviewed for updates. Research was conducted nationally to gather resources used by other courts on this topic. The subcommittee also requested feedback on the Civil and Criminal Implicit Bias Jury Instruction Guide from court stakeholders.

3. Discussion and Possible Decision Item: Other Side Workgroup Report

Judge Lucinda Jesson and Jeff Shorba presented the Other Side Workgroup Report. The following case processing data was presented:

- The overall pending caseload is up 29% since March.
- The overall clearance rate has fallen from 96=97% to 84%.
- The criminal clearance rate is 54%.
- 1,500 trials have been set for September and 1,600 for October as compared to a pre-COVID rate of 400 a month.

A discussion ensued on the civil trial moratorium, set to expire on September 1, 2020. The Other Side Workgroup recommends that the moratorium be continued to concentrate resources on the criminal backlog. The Workgroup acknowledges that an exception process might be appropriate.

The Workgroup also recommends that;

- Judges be encouraged to meet and confer with attorneys one week before trial;
- Local courts meet with criminal justice partners to discuss a plan for how to address the backlog;
- A goal to increase criminal case processing, e.g. x% increase by x date, be explored; and
- Continue to process cases remotely to the extent possible with in-court criminal matters the priority.

A discussion ensued on the development of criminal case processing goals. Districts could be given time and percentage targets. The Other Side Workgroup will develop recommendations for consideration by the Executive Committee. A discussion ensued on whether the targets will include the use of senior judges. It was noted that a JAD subcommittee is working on recommendations on the use of senior judges and necessary support staff needed.

A discussion ensued on the civil trial moratorium. Concern was expressed that there are civil trials pending that need prompt resolution. It was suggested that chief judges be responsible for determining if there are priority civil cases. The status of civil cases already scheduled post September 1, 2020, was also discussed. It was suggested that, given the scarcity of criminal case processing resources, districts be permitted to schedule criminal cases and backfill with civil cases.

A suggestion was made to extend the moratorium until December 1, 2020 and that an exception process be put in place.

There being no objection to taking action on the issue at the present meeting, a motion was made and seconded to continue the moratorium on civil jury trials for 90 days with local exception process, managed by chief judges, based on considerations developed by the Executive Committee. The issue would be discussed at the September Judicial Council meeting. The motion did not prevail

A motion was made and seconded to provide that no new civil jury trials shall be scheduled to be held before December 1, 2020. Each District Chief Judge shall evaluate the civil jury trials scheduled from September 1, 2020 to December 1, 2020 to determine if the trial should proceed. The motion prevailed. It was noted that criteria would be developed for the Chief Judges to use in making the determination as to whether scheduled civil jury trials proceed.

Council Action

The Judicial Council decided that no new civil jury trials shall be scheduled to be held before December 1, 2020. Each District Chief Judge shall evaluate the civil jury trials scheduled from September 1, 2020 to December 1, 2020 to determine if the trial should proceed.

The Judicial Council was reminded that the deadline for submission of criminal jury restart plans is September 1. If a county is having issues because there are no options, a report should be filed, noting the efforts made to locate a suitable space.

4. Decision Item: Proposed FY21 Treatment Court Initiative (TCI) Work Plan

A motion was made and seconded to approve the FY21 Treatment Court Initiative Work Plan.

In response to a question it was noted that public defenders are not participating in post adjudication treatment courts.

The motion prevailed.

Council Action

The Judicial Council approved the proposed FY21 Treatment Court Initiative Work Plan.

5. Discussion Item: Annual Weighted Caseload Review Pursuant to Judicial Council Policy 501; Determination of Judicial Resources

Jeff Shorba, State Court Administrator, reported that Judicial Council Policy 501; Determination of Judicial Resources, provides that the Judicial Weighted Caseload (WCL) will be reviewed annually and adjusted when necessary to take into account changes to laws, rules, business practices, and administrative policies that affect case weights, the judge year value or case types. The Weighted Caseload Committee has performed the review and

recommends that, at this time, no adjustments should be made. It was noted that adjustments may be necessary, at a later date, to address COVID-19 issues

6. Decision Item: Psych Services Judicial Workgroup Recommendations Implementation Plan

Chief Judge Kathryn Messerich, Workgroup Chair, reviewed progress made to-date to implement the recommendations. She also presented a plan to implement the remainder in three phases:

Phase 1 (3 – 6 months):

- Develop eLearning curriculum from existing content for judicial officers, justice partners, forensic examiners, and court staff.
- Develop order templates for Rule 20 evaluations.
- Conduct assessment of examiner reports and identify report best practices.
- Complete State Justice Institute (SJI) Assessment.

Phase 2 (6 – 9 months)

- Incorporate learnings for Judicial Branch’s Pandemic/Remote operations to:
 - Explore the expansion of electronic records technology.
 - Determine any policy requirements and examiner best practices for use of remote technology.
- Examiner Report Structure – Determine Report criteria and rollout plan.
- Plan Judicial Branch led Mental Health Summit.
- Develop new educational curriculum for judicial officers, justice partners, forensic examiners, and court staff.
- Determine commitment order elements and template.

Phase 3 (Long Term Work)

- Conduct Mental Health Summit.
- Consider and make recommendations on the creation of a Mental Health Advisory Group – informed by SJI Assessment and Mental Health Summit.
- Monitor work of Criminal Rules Committee for revisions or suggestions to adult Rule 20 matters – On-going.
- Continue development of Commitment order elements and template.

It was noted that the group continues to look at the issue of centralization of civil commitment work.

A motion was made and seconded to approve Phase 1, Phase 2, and Phase 3 of the Implementation Plan. The motion prevailed.

Council Action

The Judicial Council approved the Psych Services Judicial Workgroup’s recommended Phase 1, Phase 2, and Phase 3 Implementation Plan and proposed activities for each Phase.

7. Decision Item: Proposed FY21 Audit Activities Plan

A motion was made and seconded to approve the proposed FY21 Audit Activities Plan. The motion prevailed.

Council Action

The Judicial Council approved the proposed FY21 Audit Activities Plan.

8. Discussion Item: Sixth Judicial District Audit

Jamie Majerus, Internal Audit Manager, reviewed the Sixth Judicial District Audit, aimed at determining if the Sixth Judicial District’s internal control structure is adequate to ensure the District safeguarded assets; produced reliable financial data; and, complied with material finance-related laws, regulations, and policies.

The overall conclusion is that the District’s internal controls were generally adequate. The District had internal control weaknesses and instances of non-compliance. It was noted that the District has begun to address the findings and written observations.

9. Discussion Item: State Court Administrator FY21 Goals Jeff Shorba, State Court Administrator

Jeff Shorba, State Court Administrator, reviewed his FY21 Performance Goals.

10. Discussion Item: Strategic Planning Workgroup Report

It was noted that the Judicial Council relies on the Strategic Planning Workgroup to identify priorities for the next biennium, especially those that will require a budget request from the Legislature. Chief Judge Jay Carlson, Workgroup Chair, reported that the Workgroup determined that strategic priorities for the FY22-23 should be focused on what can be done with existing resources through resource allocation and prioritization. It is recommended that no additional money be requested from the Legislature for initiatives in the FY22-23 Strategic Plan.

Judge Carlson also reported that the Committee agreed to an approach for developing and implementing the FY22-23 Strategic Plan. Of primary importance to the Committee was a focus on connection and alignment of the Plan through the entire Branch – from Judicial Council to each employee and judicial officer in the Branch.

11. Decision Item: Review Budget Principles and Guidelines

Dan Ostdiek, Finance Director, State Court Administration, reviewed the JAD recommended amendments to the Budget Principles and Guidelines. The amendments are aimed at providing additional hiring flexibility to districts. The proposal expands the hiring exception process by permitting a district to hire employees if the district has set

aside 5% of their annual budget in an “escrow” account. The amendments also permit the hiring of temporary employees to assist with backlogs.

A discussion ensued on the use of temporary employees and whether the amount of time needed for training will negate the benefit. It was noted that duties assigned to temporary employees should include those for which little training is necessary.

A discussion ensued on the 5% escrow option. It was noted that this option sets aside funds that might be needed to fund positions added. If the funds are not needed for employee costs, the money can be used for unfunded needs.

A motion was made and seconded to approve the JAD recommended amendments to the Budget Principles and Guidelines. The motion prevailed.

Council Action

The Judicial Council approved the JAD recommended amendments to the Budget Principles and Guidelines.

12. Discussion Item: FY22-23 Biennial Budget Request

Dan Ostdiek, Finance Director, State Court Administration, reviewed the menu of possible request items for the FY22-23 Biennial Budget Request. He noted that the menu was expanded to include information requested at the July 2020 Judicial Council meeting, including:

- 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.

Mr. Ostdiek then reviewed budget request options, developed for discussion purposes:

- a. Option 1 - Hold Harmless budget request – Request funds to address the employer share of insurance increases - a 1.82% increase over the Branch’s starting FY22 base budget.
- b. Option 2 – Request funds to address the employer share of insurance increases; 2 new trial court judge units; cyber security needs; and mandated services needs - a 3.01% increase over base.
- c. Option 3 – Request salary increases of 3% each year of the biennium for judges and a 3% salary pool each year of the biennium for court employees; and request funds to address the employer share of insurance increases – a 5.35% increase over base.

A discussion ensued. It was suggested that the funds needed to continue the Roseau County Treatment Court be included in the budget request. Concern was expressed about the impact on morale if salary increases are not requested.

13. Discussion Item: Other Business

- a. Jodi Boyne, Director of Public Affairs, was introduced to the Judicial Council.

There being no further business the meeting adjourned.