



Judicial Council Minutes

August 19, 2021

9:00 a.m.

230 MN Judicial Center

The Judicial Council met in Saint Paul Minnesota, on Thursday, August 19, 2021. Eighth Judicial District Assistant Chief Judge Stephanie Backman attended for Chief Judge Dwayne Knutsen, Tenth Judicial District Assistant Chief Judge Elizabeth Strand attended for Chief Judge Stoney Hiljus, and MDJA Vice President Lois Conroy attended the morning session for MDJA President John Hoffman. Court of Appeals Chief Judge Susan Segal was not in attendance.

1. Approval of Draft July 15, 2021 Judicial Council Meeting Minutes

A motion was made and seconded to approve the July meeting minutes with amendments on pages 3, 4, 5, 7, & 8.

The motion prevailed.

Council Action

The Judicial Council approved the July 15, 2021 Meeting Minutes, as amended.

2. Discussion Item: Weighted Caseload Committee Annual Report

It was noted that Judicial Council Policy 501 provides that the Judicial Weighted Caseload (WCL) is to 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 State Court Administrator is responsible for implementing the policy and is required to seek the advice of an advisory group.

Judge Tracey Warner, Weighted Caseload Committee Chair, presented the annual weighted caseload report:

- The changes to legislation, court rules, and policies over the last year are not expected to impact case types, case weights, or the judge year value – the components of weighted caseload used to determine judge need. One statutory change could impact case filings. The Public Safety and Judiciary Omnibus Bill, Article 4 – Criminal Sexual Conduct established a new judgeship to account for the possible increase in criminal sexual conduct case filings, and the resulting increase in judge need.
- The work of the courts changed rapidly and, in some instances, significantly due to the COVID-19 pandemic. The implementation of case priorities, the transition to

remote hearings or written submissions, adjustments to court calendars and jury trials in order to comply with health guidelines, are a few of the notable changes. If these changes are instituted as the new way of doing business after the pandemic, their impact on case weights and judicial resources may need to be examined.

The Judicial Weighted Caseload Advisory Committee does not recommend any adjustments to the current (2019 study) case weights, case types, or the judge year value. The committee will make a recommendation regarding the timeline for the next Judicial WCL study no later than the annual review in August 2022.

Judge Warner also reported progress on examination of the issues that were discussed during the 2019 WCL Study. The committee's review is expected to be completed over the next year and will be reported to the Judicial Council in August, 2022.

3. Decision Item: Minnesota Court Records Online (MCRO) Phase 3 Budget

Dan Ostdiek, Finance Director, State Court Administration, presented the proposed MCRO Phase 3 Budget. JAD recommends that the Phase 3 budget of \$850,000 be funded with Strategic Off the Top funds.

A motion was made and seconded to fund the MCRO Phase 3 Budget with Strategic Off the Top funds. The motion prevailed.

Council Action

The Judicial Council approved the JAD recommendation to fund the MCRO Phase 3 Budget with Strategic Off the Top funds.

4. Decision Item: Treatment Court Initiative (TCI) FY21 Proposed FY22 Work Plan

Chief Judge Joseph Buelteel presented the Treatment Court Initiative Work Plan for FY22. He noted that, in response to the questions posed about the new veterans legislation at the July meeting, research indicates that the cost of any necessary examinations should be borne by the offender and should not result in additional Rule 20 costs. He also noted that State Court Administration staff is working on technology changes needed to accurately track discharge and dismissal actions in these cases.

A motion was made and seconded to approve the Treatment Court Initiative FY22 Work Plan. The motion prevailed.

Council Action

The Judicial Council approved the Treatment Court Initiative FY22 Work Plan.

5. Discussion Item: Other Side Workgroup Report

Judge Michelle Lawson, Other Side Workgroup Chair and Jennifer Super, Emergency Manager, gave the monthly report. The most current COVID-19 statistics were reviewed.

Updated recommendations for holding hearings in a remote fashion were reviewed. The Workgroup recommends a phased approach to implementation

1. Take Action
2. Evaluate
3. Recommend /Implement

Updates to the phased approach will be based on feedback received.

Recommendations:

1. The Judicial Council should establish standards for how to approach district court remote hearings to promote consistent access to justice across Minnesota.
 - Standards need to be tailored by case type and hearing type.
 - There should also be a process for case-by-case exceptions.
 - Use of a phased approach is recommended.
2. Judicial District Administrators, Court of Appeals Judicial Administrator, and SCAO Directors Group (JAD) should be consulted on challenges and opportunities as needed related to the implementation of these recommendations before Judicial Council makes a decision.
3. The Judicial Council should direct a comprehensive approach to address implementation issues, which may include assessing, changing or developing practices, protocols, or tools to support these recommendations. As a part of this approach:
 - Recommend a Chief Justice Order to suspend court rules restricting the use of remote hearings while the backlog is addressed and rules committees discuss a long-term recommendation.
 - Recommend phased approach, including a take action phase and accompanying initiative to address implementation issues, and an evaluation phase before permanent recommendations will be made related to remote hearings in all case types in a recommend/implement phase.
4. Due to significant benefits to public safety and effective administration of justice, in-custody defendants should be presumed to attend hearings remotely, but this should be determined locally in consultation with local jail administration, based on local conditions such as the availability of in-custody courtrooms.
 - State Court Administration, in collaboration with district court administration, should work with the Department of Corrections to established protocols and best practices for scheduling hearings for individuals in prison to continue remote participation.

5. For Phase I, the Workgroup recommends a strong presumption that contested hearings (hearings where evidence is being presented or testimony is taken on issues in dispute) be held in-person in non-criminal cases. Case-by-case exceptions, under extenuating circumstances, should be allowed, with extenuating circumstances to be defined by a Chief Justice Order.
6. For Phase I, the Workgroup recommends a strong presumption that uncontested hearings (hearings where no evidence is presented or testimony taken on issues in dispute) be held remotely in non-criminal cases. Case-by-case exceptions, under extenuating circumstances, should be allowed, with extenuating circumstances to be defined by a Chief Justice Order.
7. Case Type Specific Recommendations for Phase I, non-criminal cases as presented in July, with one exception. It was noted that two options are presented for conducting Order for Protection/Harassment Restraining Order Hearings:
 - Proposed Workgroup Option: Original Recommendation to hold these hearings remotely, case-by-case exceptions.
 - Alternative Option: In-person unless judicial officer is remote, case-by-case exceptions.
8. Major and Minor Criminal Matters
 - The Branch should take a phased approach to criminal hearings, giving autonomy to the districts to create a plan that ties in with their backlog plan in Phase I.
9. For Phase I, Treatment Courts should develop and document their plan for hearings to be held in-person, remotely, or hybrid, including whether these approaches change based on the participant's phase in treatment court. Judicial Council should refer the Treatment Court Hybrid Hearing Exception Process Guidelines for Chief Judges, to the Treatment Court Initiative Advisory Committee to further develop these Guidelines.

Additional recommendations for processing criminal cases were presented. It was noted that the criminal recommendations were adjusted based on feedback at the July Judicial Council meeting.

It was also noted that the Workgroup envisions a “nimble” implementation group to oversee implementation efforts.

A discussion ensued. It was suggested that:

- The Branch make a concerted effort to reach out to litigants who use the self-help services for feedback;
- Efforts be made to measure whether there are different outcomes of live vs. remote hearings; and
- The impact of remote hearings on pro se litigants be examined.

A discussion ensued on the recommendation for conducting Order for Protection/Harassment Restraining Order Hearings. Preference was expressed for the alternative option: In-person unless judicial officer is remote, case-by-case exceptions.

A discussion ensued on the recommendation that provides a strong presumption that contested hearings (hearings where evidence is being presented or testimony is taken on issues in dispute) be held in-person in non-criminal cases. Case-by-case exceptions, under extenuating circumstances, should be allowed, with extenuating circumstances to be defined by a Chief Justice Order. It was noted that the presiding judge should make the determination and that a process be put into place to track these cases. It was also noted that the definition of "extenuating circumstances" should be more stringent that "all parties agree." The determination of whether "extenuating circumstances" apply should be unique to each case.

It was noted that the recommendations do not address pre-trials in civil cases. It was recommended that, for case types not on the recommendations chart, a similar case type recommendation be followed.

The Judicial Council reached consensus that the alternate recommendation for conducting Order for Protection/Harassment Restraining Order Hearings, in-person unless judicial officer is remote, with case-by-case exceptions, is the preferred approach.

It was noted that a longer term plan to address staff resources needed to implement the plan will be presented at a later date. Documentation of staff needs will be included in the initial evaluation of the recommendations.

The recommendations will be acted on at the September Judicial Council meeting.

6. Discussion Item: Quality Court Workplace Survey – Proposed Next Steps

Katie Schurrer, Manager, Strategic Planning and Projects, State Court Administration, and Chief Judge Tamara Yon, Chair, HR/EOD Committee, reviewed the proposed next steps. It was noted that the proposal recognizes efforts already underway.

7. Discussion Item: Proposed Amendments to Judicial Council Policy 205.2; New Judge Travel Reimbursement

Dan Ostdiek, Finance Director, State Court Administration, presented a proposed amendment to Judicial Council Policy 205.2; New Judge Travel Reimbursement. The amendment recognizes the decision made at the July Judicial Council meeting to fund Court of Appeals Judge reimbursement for housing and travel expenses for the biennium.

There being no objection to acting on the proposal at the present meeting, a motion was made and seconded to approve the amendments to Judicial Council Policy 205.2; New Judge Travel Reimbursement. The motion prevailed.

Council Action

The Judicial Council approved proposed amendments to Judicial Council Policy 205.2; New Judge Travel Reimbursement.

8. Discussion Item: Proposed Sunset of Judicial Council Policy 604; Qualifications for Attorneys Appointed by the Court to Represent Parents, Guardians, and Legal Custodians in Juvenile Protection Matters

Kristen Trebil, Court Services Director, State Court Administration, presented a proposal to sunset Judicial Council Policy 604; Qualifications for Attorneys Appointed by the Court to Represent Parents, Guardians, and Legal Custodians in Juvenile Protection Matters. The sunset is recommended in recognition of 2021 changes to law which repeal the requirement that attorneys in these cases “(1) has a minimum of two years' experience handling child protection cases; (2) has training in handling child protection cases from a course or courses approved by the Judicial Council; or (3) is supervised by an attorney who meets the minimum qualifications under clause (1) or (2).”

There being no objection to acting on the proposal at the present meeting, a motion was made and seconded to approve the sunset of Judicial Council Policy 604. The motion prevailed.

Council Action

The Judicial Council sunsetted Judicial Council Policy 604; Qualifications for Attorneys Appointed by the Court to Represent Parents, Guardians, and Legal Custodians in Juvenile Protection Matters.

9. Discussion Item: State Court Administrator FY22 Performance Goals

Jeff Shorba, State Court Administrator, reviewed his FY22 Performance Goals.

There being no objection to acting on the proposal at the present meeting, a motion was made and seconded to approve the State Court Administrator FY22 Performance Goals. The motion prevailed.

Council Action

The Judicial Council approved the State Court Administrator FY22 Performance Goals.

10. Discussion Item: Other Business

a. Court Interpreter Matters

i. Contractor Interpreter Hourly Rate Increase

Jeff Shorba, State Court Administrator, reviewed actions taken in response to the \$200,000 a year appropriated in FY22-23 for increases in contract interpreter

pay. He noted that the rates will increase by 8% for spoken and sign language interpreters effective August 15. The increase is only effective for the FY22-23 biennium unless the Legislature extends it.

ii. Court Interpreter Appeal Panel

Jeff Shorba, State Court Administrator, reported that appeals of actions taken against contract court interpreters are to be handled by an appeals panel, appointed by the Judicial Council. There being no objections, the Judicial Council delegated the authority to appoint the appeals panel to the Chief Justice.

b. Update on Front Line Worker Pay Working Group

Jeff Shorba, State Court Administrator, reported that no actions have been taken by the Front Line Worker Pay Working Group.

c. Executive Session – Personnel Matter

A motion was made and seconded to go into Executive Session to discuss 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.