



# **Judicial Council Minutes**

## **January 16, 2020**

### **Room 230, MN Judicial Center**

The Judicial Council met on Thursday, January 16, 2020, in Saint Paul, Minnesota. Judge Leslie Beiers, Sixth Judicial District, and Associate Justice G, Barry Anderson were not in attendance. Fourth District Assistant Chief Judge Toddrick Barnette attended for Chief Judge Ivy Bernhardson.

#### **1. Approval of Draft December 19, 2019, Meeting Minutes**

Technical amendments were offered to the draft December 19, 2019, Meeting Minutes. In addition amendments were offered to the Access and Fairness Survey discussion on Race Equity efforts.

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

#### **Council Action**

The Judicial Council approved the December 19, 2019, Meeting Minutes, as amended.

#### **2. Discussion Item: Cass County pretrial risk assessment tool modifications**

Judge Tamara Yon, Chief Judge, Ninth Judicial District, introduced the Cass County representatives: Jim Schneider, Cass County Probation Director; Travis Fisher, Cass County probation officer & President, Association of Pretrial Agencies; and Dr. Elizabeth Kujava, Associate Professor of Criminal Justice – Bemidji State University.

It was noted that the Cass County pretrial supervision program began on November 1, 2015. As part of this pretrial supervision program Cass County adopted the Hennepin County validated risk assessment tool. The current validation study assessed how well the tool performs for Cass County. As a result of the validation study, modifications to the pretrial risk assessment tool are being requested.

Dr. Elizabeth Kujava and Katie Schurrer, Strategic Planning and Projects Office, State Court Administration, noted that Cass County representatives are working with State Court Administration to address questions about the validation study.

### 3. Discussion Item: MPA Remote with Documents Initiative

Jeff Shorba, State Court Administrator; Cory Ehlebracht, Manager, Development and Support Services, Information Technology Division; Sarah Novak, Staff Attorney, Legal Counsel Division; and Ann Peterson, Project Manager, Strategic Planning and Projects Office, provided responses to the Judicial Council's request for information in three areas:

- Input from the Cyber Security Steering Committee – The Cyber Security Steering Committee confirmed from a security perspective, internal development for MPA Remote can move forward, with Cyber Security approval. Development will include current cyber security requirements.
- Information about the timeline and costs of other internal development projects – It was noted that staff is confident that the remote access application can be successfully developed in-house. It was reported that staff has a proven track record of “on time” internal development. It was noted that a phased approach will allow for checkpoints to ensure that the timing and budget are within agreed upon contingencies. Funding needs for the project are not expected to have a significant impact on existing or future projects.

A discussion ensued on the Judicial Council decision to charge an access fee. It was noted that development of the access fee feature will result in some additional development time and expense. It was also noted that the impact to the State General Fund if no access fee is charged, is unknown.

- State Justice Institute (SJI) grant opportunities – The reporting, financial, and development requirements of SJI grants were reviewed. It was noted that, since remote access to court documents is not a current SJI priority area, limited funds will be awarded to each recipient and may be significantly lower than the \$200,000 award announced for high priority projects.

A discussion ensued on the eRedaction project and whether the project should be completed prior to MPA Remote with Documents. The recommended phased approach and the need for review of each stage before moving forward was also discussed. It was noted that the Public1 documents which would be accessible from a remote location are currently available at courthouse terminals and at court administration counters.

Staff was instructed to provide additional information at the March 2020 meeting. The decision on whether to move the MPA Remote with Documents Initiative forward with internal development will be made at the March meeting.

Consensus was reached that staff will not pursue a SJI grant award.

#### **4. Discussion Item: Proposed Amendments to Judicial Council Policy 221; Court Reporter Transcript Rates**

Jeff Shorba, State Court Administrator, reviewed the impact of two transcript rate increase proposals submitted to the Judicial Council. He noted that the first proposal, submitted by court reporters in the 1st, 2nd, and 8th Judicial Districts, would result in a 100% increase in the page rate for copies of all transcripts. The other proposed increases range from 16% for original civil and IFP SDP/SPP transcripts to 38% for original criminal case transcripts.

A second proposal, submitted by court reporters in the 3rd, 5th, 6th, 7th, 8th and Beltrami County, includes an over 1000% increase in the page rate for copies of all transcripts since the separate per page rate for copies is eliminated. The other proposed increases range from 37% for original civil and IFP SDP/SPP transcripts to 84% for original other IFP case transcripts.

A discussion ensued on the comments submitted by justice system partners and the responses to the comments submitted by court reporters. M. S. § 486.06 was reviewed. The statute provides that the chief justice shall set the transcript preparation rates. It was noted that this responsibility was delegated to the Judicial Council.

The Council also discussed eliminating the separate transcript rate for IFP cases; the fiscal impact to the Judicial Branch IFP budget if transcript rates are increased; eliminating the separate rate for copies of transcripts; the effective date of a transcript rate increase; whether transcript rates should be raised by an automatic trigger, e.g. CPI; whether government attorneys should have a different transcript preparation rate; and whether the policy should provide that all transcripts will be transmitted electronically.

JAD was asked to review the proposals and the discussion noted above, and to report back to the Council in March.

#### **5. Decision Item: Judicial Branch Financial Planning Options**

Dan Ostdiek, Finance Division Director, State Court Administration, reviewed the JAD recommended pilot, aimed at providing a more strategic and deliberate approach to leveraging biennial resources, including accelerating the timeline to address significant statewide technology needs, allowing for the hiring of permanent project staff and reducing reliance on contractors and temporary employees, and maintaining financial flexibility for the district and appellate courts. It was noted that the pilot would apply for the current biennium and would be reviewed before the on-set of the FY21-22 Biennium.

It was suggested that Option 2 be amended to clarify that State Court Administration will contribute to the carryforward balance to address statewide unfunded needs.

A motion was made and seconded to approve the Financial Planning Pilot Option 1, for one year: At the end of the biennium (FY2021), all IV-D Central carryforward would be dedicated to fund permanent, project-related staff, such as technology developers, project

managers, business analysts, and court operations analysts. The motion prevailed.

**Council Action**

The Judicial Council approved the Financial Planning Pilot Option 1, for one year.

A motion was made and seconded to approve the Financial Planning Pilot Option 2, as amended: At the end of FY2020, each judicial district, appellate court, and state court administration would contribute 25% of their General Fund carryforward balance to address statewide unfunded needs. Individual districts/courts would retain the remaining 75%. The motion prevailed.

**Council Action**

The Judicial Council approved the Financial Planning Pilot Option 2, as amended.

**6. Discussion Item: Psychological Services Workgroup Report**

Chief Judge Kathryn Messerich, First Judicial District, and Lisa Jore, Court Services Division, State Court Administration reviewed the Workgroup findings and recommendations. The Workgroup was convened by the Judicial Council in 2018, to review and analyze the current processes for responding to situations involving people living with mental illnesses in the criminal justice system. The Workgroup was charged with providing recommendations to more effectively address these cases and make better use of the limited financial resources allocated for mandated psychological examinations.

Findings from the Workgroup discussions confirm Minnesota continues to struggle when responding to people living with mental illness in court proceedings:

- The number of adult criminal cases with an order for a competency evaluation (Rule 20.01 exam) increased by 73% from 2014 through 2018. During this same time period, the percent of cases with an order for a Rule 20.01 evaluation that had a subsequent finding of incompetency, ranged from 41% to 44%.
- Between 2016 and 2018, the number of mandatory criminal cases with a finding of incompetency was 3,214. Only 41% of these cases directly resulted in commitment or a stay of commitment.
- The state continues to struggle to find a resolution to “gap” cases throughout the state. Three scenarios were identified in which people living with mental illnesses, who have entered into the criminal justice system, fall into a “gap” without access to treatment or care, including when a person: is found incompetent, but does not meet the standards for commitment; is found incompetent and meets the standards for commitment, but is released from commitment when psychiatrically stable rather than restored to competency; and/or is deemed unable to be restored to competency and does not meet the standards for commitment or to be held in jail.

When these scenarios occur, often there is no continuum of care for the people suffering from mental illnesses or cognitive impairment, leading people to cycle through the criminal justice system.

- Examiners report that defendants have been ordered to participate in Rule 20.02 exams without their knowledge and/or consent of the implied affirmative defense. Court data shows that in cases with at least one Rule 20.01 order almost half of those cases had a concurrent 20.02 exam ordered (within 30 days of the 20.01 order). Out of 4,052 Rule 20.02 exams ordered between 2016 and 2018, only 129 defendants (3%) were acquitted due to mental illness or cognitive impairment.
- Courts and justice partners are not always well-served by the forensic examination reports provided in legal proceedings under Minn. R. Crim. P. Rule 20 and civil commitment proceedings under Minn. Stat. §253B due to issues of poor quality, clarity of information, or limited access to necessary court and/or medical records.
- Limited education and training on mental health issues is a challenge for the court and justice partners when responding to cases impacted by people living with mental illnesses. It can also lead to case processing delays as new attorneys are involved in transitions from criminal to commitment proceedings.
- Defendant and respondent's health is a continued concern during court proceedings. Deterioration of a patient's condition can be exacerbated by prolonged court proceedings or stays in jail.

Judge Messerich also outlined the Workgroup recommendations.

It was suggested that more specific details on the recommendations be presented at the March 2020 Judicial Council meeting.

## **7. Discussion Item: Other Business**

- a. Strategic Planning – Chief Justice Gildea announced that a Strategic Planning Workgroup, chaired by Chief Judge Jay Carlson, will begin meeting to draft the FY22-23 Strategic Plan.

## **8. Executive Session**

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.