



Judicial Council Minutes

January 20, 2022

Via Zoom

The Judicial Council met on Thursday, January 20, 2022, via Zoom.

Annette Fritz, Court Administrator, Washington County, was not in attendance.

1. Approval of Draft Judicial Council Meeting Minutes

An amendment to the December 16, 2021, Meeting Minutes was suggested.

A motion was made and seconded to approve the December 16, 2021, Meeting Minutes as amended. The motion prevailed.

Council Action

The Judicial Council approved the December 16, 2021, Meeting Minutes, as amended.

A motion was made and seconded to approve the January 6, 2022, Meeting Minutes, as submitted. The motion prevailed.

Council Action

The Judicial Council approved the January 6, 2022, Meeting Minutes, as submitted.

2. Discussion Item: Minnesota Pretrial Assessment Tool (MPAT) Validation Study Project Update

The history of the development of the Minnesota Pretrial Release Risk Assessment Tool (MNPAT) was reviewed. In 2014, the Committee for Equality and Justice initiated a study on the use of pretrial risk assessments in MN. The Committee's findings led to launch of the Judicial Branch Pretrial Release Initiative. In January 2018, the Judicial Council promulgated Policy 524; Pretrial Release Evaluation, mandating the use of

pretrial risk assessment tools in every county. The Policy also provides that, at a minimum, validation studies must be done every 5-7 years.

Judge Sara Grewing, Second Judicial District, Chair of the MNPAT Validation Committee, Grant Hoheisel, Court Services Division, State Court Administration, and Amanuel Medhanie, Research Consultant provided an update on the recent MPAT validation study. It was noted that the MNPAT is used in 82 counties.

It was noted that risk assessment tools are research-based tools that help judges make informed pretrial release decisions. The tools are comprised of risk factors and a total risk score that provides information about a defendant's likelihood for a future failure to appear or a new offense.

It was noted that risk assessment tools provide judges objective, predictive information about a defendant's risk; allow all parties to a case to work from the same information; can reduce the possible impact of implicit bias; and can lead to effective use of public money by allocating resources toward high-risk defendants

It was also noted that the tool validation is an on-going process.

An MNPAT Validation Committee has conducted a validation study of the current tool. The Validation Committee questions, and preliminary findings are as follows:

1. Is the MNPAT, as it is currently being used, a valid tool for use as a pretrial risk assessment?
 - "Valid" means that the likelihood for a defendant to fail to appear for a future hearing or commit pretrial crime increases as the risk score increases

Committee finding: Yes, though the overall level of predictiveness could be improved.

2. Does the MNPAT tool, as it is currently being used, show bias between defendants of different races or genders?
 - Bias is defined as statistically significant differences in predictiveness

Committee finding: Yes. The tool is less predictive for Black and Native American defendants compared to White defendants. There were no differences by gender.

3. In what way should the risk factors on the MNPAT be weighted to arrive at a more accurate and less biased risk score?

Committee guidance: Follow empirical methods to maximize predictiveness and accurate scoring.

It was noted that the MNPAT is a valid tool, with a lower level of predictiveness than expected. The results of the validation study show issues with predictiveness with Black

and Native American offenders. The Committee recommends that improvements to the MNPAT be sought.

The Validation Committee recommends that data be collected on potential risk factors and that the best combinations with revised scores be identified. This empirical approach can result in a more accurate and predictive tool with fewer racial disparities.

Three models, with differing scoring factors, were reviewed by the Validation Committee and presented to the Judicial Council. It was noted that Model 3, which suppresses criminal history and failure to appear on the scoring sheet, is the most predictive model. It was noted that the judge can still consider both when making pretrial release decisions.

A discussion ensued. The Judicial Council requested that the Validation Committee review national models and explore whether the tool should remain as is with development of a bench card to guide judges in making decisions using the tool. The Committee was asked to report back to the Council before further actions are taken by the Validation Committee.

3. Discussion Item: Request to Establish Otter Tail County Adult Drug Court

Judge Sara Hennesy, Chief Judge, Seventh Judicial District, presented the Otter Tail County Adult Drug Court request. It was noted that the request has been approved by the Treatment Court Initiative and that the Drug Court has obtained BJA funding.

There being no objection to acting on the proposal at the current meeting, a motion was made and seconded to approve the establishment of the Otter Tail County Adult Drug Court. The motion prevailed.

Council Action

The Judicial Council approved the establishment of the Otter Tail County Adult Drug Court.

4. Discussion Item: HR/EOD Recommendations on Senior Judge Compensation and Proposed Amendments to Judicial Council Policy 210; Senior Judge Policy

Chief Judge Tamara Yon, Chief Judge, Ninth Judicial District, and HR/EOD Committee Chair presented proposed amendments to Judicial Council Policy 210; Senior Judge Policy. It was noted that the Committee reviewed the Minnesota history of senior judge compensation, national information, and considered recommendations put forth by the Minnesota District Judges Association.

The Committee recommendations are to amend the policy to change the rate of daily compensation to 90% of a sitting judge and to add the option to utilize senior judges for half day increments, at a rate of 50% of the full day Senior Judge rate.

A discussion ensued. It was noted that the proposal was reviewed by districts benches, with considerable support. It was also noted that the Court of Appeals and District Court

budgets can absorb the additional cost. It was suggested that a definition of “Half-Day Rate” be added to the Definitions Section of the Policy.

The proposed amendments will be a decision item at the February Judicial Council meeting.

5. Discussion Item: Effective Date of Judicial Council Actions Relating to In-Person and Remote Proceedings

Jennifer Super, Emergency Management Analyst, State Court Administration, presented information on the most current COVID-19 data.

A discussion ensued on the effective date of the In-Person and Remote Proceedings recommendations. It was suggested that the Judicial Council continue to monitor the COVID-19 data, continue to operate under the existing Chief Justice Order, and discuss an implementation date at the February Judicial Council meeting. There was no objection to the continuation of the topic to the February meeting.

It was reported that the Executive Committee has been meeting weekly to monitor the COVID-19 data. Based on the most current review, the Executive Committee recommends that the Minnesota Judicial Branch adopt additional mitigation strategies related to COVID-19 and the Omicron variant. The committee recommends:

1. Moving all branch-sponsored events to a virtual environment or reschedule to a later date.
2. Implementing the maximum amount of distancing between people wherever possible within court facilities.
3. The State Court Administrator will immediately take steps to procure high quality masks (i.e., N95 or KN95 masks) for use by judicial officers and employees at the courthouse and for jury trial participants.
4. Recognizing that the current Chief Justice Order gives chief judges discretion to move proceedings to a remote environment, the Council should develop criteria that chief judges should consider when exercising their discretion.

A discussion ensued. It was noted that the recommendations seek to minimize the considerable time and effort needed to re-notice scheduled hearings. It was also noted that the recommendations are aligned with CDC guidelines.

A discussion ensued on recommendation #2: Implementing the maximum amount of distancing between people wherever possible within court facilities, specifically the definition of the terms “maximum distancing and “whenever possible.” It was noted that the recommendation recognizes that there will be variations in the amount of distancing each courthouse and courtroom can provide. There is no mandate to provide 6 feet of distancing. It was also noted that the Executive Committee chose to leave these decisions to chief judges and district administrators, who can best determine the needs of the district.

It was reported that the Executive Committee also discussed whether an amended Chief Justice Order should be issued to temporarily pause all in-person trials except criminal jury trials with speedy trial demands. The Executive Committee chose instead to recommend that each district determine how to proceed, based on local COVID conditions, availability of judges, staff and justice partners, and local courtroom configurations.

A discussion ensued on the efforts being made in each district to process cases. It was suggested that recommendation #2 be amended to read as follows: “All courts and offices should implement a reasonable amount of distancing between people within court facilities and courtrooms, as practicable.”

A motion was made and seconded to adopt the Executive Committee recommendations, as amended, effective January 21, 2022. A friendly amendment was accepted to also provide that the COVID 19 Preparedness Plan will be updated to reflect the recommendations. The motion prevailed.

Council Action

The Judicial Council approved the following actions:

1. All Judicial Branch sponsored events (such as trainings, conferences, and meetings) should be moved to a virtual environment or rescheduled to a later date.
2. All courts and offices should implement a reasonable amount of distancing between people within court facilities and courtrooms, as practicable.
3. The State Court Administrator will immediately take steps to procure high-quality masks (i.e., N95 or KN95 masks) for use by judicial officers and employees at the courthouse and for jury trial participants.
4. Chief Judges continue to have the discretion to limit in-person proceedings in their district or in a specific court, as provided in the Chief Justice June 28 order, subject to criteria prescribed by the Judicial Council.
5. The Judicial Branch COVID-19 Preparedness Plan will be updated to reflect the recommendations.

A discussion ensued on the criteria that chief judges should consider when exercising their discretion to limit in-person proceedings. The Judicial Council discussed efforts already underway in judicial districts. Following discussion, the following criteria was suggested for consideration by Chief Judges when deciding to limit in-person proceedings in a specific court or district:

- Community COVID-19 test positivity rates
- Infection rates of staff and judges, as well as the number of staff and judges who are under quarantine
- Feedback from the local bench
- Feedback and consultation with the district administrator
- COVID-19 disruption to current trials
- Infection rates and availability of justice partners and participants
- Availability of jurors

- Local jail conditions

A discussion ensued on whether there should be a recommended duration for chief judge orders. It was agreed that each chief judge can determine the length of the order, the COVID data will continue to be monitored and the decision on whether to revoke, rescind. or amend orders can be made when the situation improves.

A motion was made and seconded to approve the suggested criteria. The motion prevailed.

Council Action

The Judicial Council identified the following criteria Chief Judges should consider when deciding to limit in-person proceedings in a specific court or district:

- Community COVID-19 test positivity rates
- Infection rates of staff and judges, as well as the number of staff and judges who are under quarantine
- Feedback from the local bench
- Feedback and consultation with the district administrator
- COVID-19 disruption to current trials
- Infection rates and availability of justice partners and participants
- Availability of jurors
- Local jail conditions

6. Discussion/Decision Item: Legislative Advisory Workgroup Recommendations

Judge Lucinda Jesson, Chair, Legislative Advisory Workgroup (LAW), reviewed the Workgroup’s recommendations for Judicial Branch 2022 Legislation. She noted that three proposals were submitted. The Workgroup recommends that one be pursued during the 2022 Session.

The first proposal amends the method for serving a respondent with an Order for Protection issued pursuant to the Domestic Abuse Act – Minnesota Statutes § 518B.01, subd. 8; and serving a Respondent with a Harassment Restraining Order issued pursuant to Minnesota Statutes § 609.748, subd. 5(c). The proposal would permit service by mail. LAW recommends that the proposal be further refined, specifically that the proposal be vetted with justice partners, that challenges posed by service by mail be explored, and consideration be given to whether alternative service methods should be applied to additional case types.

The second proposal update statutes pertaining to court reporters. This proposal has been put forward in the past. LAW recommends that the proposal not go forward in 2022.

The third proposal reconciles service requirements for forfeiture actions heard in Conciliation Court in Minn. Stat. § 169A.63, subd. 8 and Minn. Stat. § 609.5314, subd. 3.

At present the two statutes provide conflicting direction for litigants and staff. LAW recommends that the proposal be pursued in the 2022 Legislative Session.

A discussion ensued on the court reporter proposal. It was noted that the Workgroup prefers that additional discussions take place with stakeholder groups before legislation is pursued.

A motion was made and seconded to approve the Legislative Advisory Workgroup recommendation that legislation be pursued to reconcile service requirements for conciliation court forfeiture actions. The motion prevailed.

Council Action

The Judicial Council approved the Legislative Advisory Workgroup recommendation that legislation be pursued to reconcile service requirements for conciliation court forfeiture actions.

Judge Jesson provided a summary of 2 legislative proposals aimed at addressing competency issues. It was agreed that these proposals are preliminary and that no action should be taken at this time. The State Court Administrator's Office was tasked with monitoring all legislation introduced to address competency matters and gap cases.

7. Discussion Item: Update on Recruitment and Retention Efforts

Dana Bartocci, Director, Human Resources and Development Division, State Court Administration, provided information on recruitment and retention challenges and efforts identified to address them.

A discussion ensued on law clerks. It was noted that one option would be to develop 2 tracks for law clerk positions: a confidential employee for individual judges and a pool of subject matter expert law clerks, available to assist as needed. It was suggested that the HR managers discuss the option in greater detail.

8. Discussion Item: Possible Second Supplemental Budget Request

It was noted that the Judicial Council, at the October meeting, recommended a supplemental budget request of 2.5% compensation increases for judges and a 2.5% compensation pool increase for employees for FY23. A discussion ensued on whether a second supplemental budget request should be put forth, given the historic state budget surplus.

Compensation options, for increase at 5%, 5.5%, 6%, and 7% were presented. It was noted that the Executive Branch is providing step and across the board (ATB) increases for both years of the biennium. Step increases, on average, are 3.5%. ATB increases range from 2.0% - 3.0%. In total, this results in an increase ranging from 5.5% - 6.5%. Also, the Federal Courts are providing a Cost-of-Living adjustment of 3.7% and an annual performance review increase of 3-5% for a total of 6.7% to 8.7%.

It was noted that larger compensation increases, if approved, would help the Judicial Branch stay competitive with other public sector employers, support employee recruitment and retention, and, most importantly, recognize the incredible work judges and staff have done throughout the pandemic.

A discussion ensued on whether an increase of 7% should be pursued. Concern was expressed that this might have future ramifications if salary increases are tied to inflation.

Other items for possible inclusion in the request were reviewed, including enhancements to cyber security funding, funds to address the increase in costs of providing mandated psychological examinations, and funds to make permanent the temporary increases to contract interpreter payment rates passed by the Legislature in 2021.

It was noted that it is not known if the Governor will adjust his supplemental budget request after the February forecast is announced.

A motion was made and seconded to approve a revised supplemental budget request to provide funding for a 6.0% salary increase for judges in FY23, and a 6.0% compensation increase pool for Judicial Branch employees in FY23, enhancements to cyber security funding, funds to address the increase in costs of providing mandated psychological examinations, and funds to make permanent the temporary increases to contract interpreter payment rates passed by the Legislature in 2021. The motion prevailed.

Council Action

The Judicial Council approved a supplemental budget request to provide funding for a 6.0% salary increase for judges in FY23, a 6.0% compensation increase pool for Judicial Branch employees in FY23, enhancements to cyber security funding, funds to address the increase in costs of providing mandated psychological examinations, and funds to make permanent the temporary increases to contract interpreter payment rates appropriated by the 2021 Legislature.

9. Discussion Item: Update on OSHA Emergency Temporary Standard

It was noted that the OSHA Emergency Temporary Standard will not be implemented. The Judicial Branch will continue the mask mandate, testing requirements, and vaccination status reporting requirements.

10. Discussion Item: Other Business

- a. Sarah Lindahl Pfeiffer presented a request from JAD that Quality Court Workplace (QCW) implementation efforts be put on hold to enable staff to concentrate on addressing the backlog. In addition, JAD will have additional recommendations on whether other initiative should temporarily be put on hold, for presentation at the Judicial Council February meeting. It was noted that the recommendation only applies to employee campaigns. There was no objection to temporarily suspending

employee QCW campaigns, and to the suggestion that the Judicial Council consider, at the February meeting, additional initiatives to be put on hold.

11. Executive Session – Personnel Matters

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.