



Judicial Council Minutes

July 15, 2021

230 MN Judicial Center

The Judicial Council met on Thursday, July 15, 2021, in St. Paul, Minnesota. Judge James Cunningham and Sarah Lindahl-Pfieffer were not in attendance.

1. Approval of Draft Judicial Council Meeting Minutes

a. June 17, 2021 Meeting Minutes

A suggestion was made to amend the draft June 17, 2021 Meeting Minutes, at page 5, to clarify the intent of raising the transcript rate by \$1:

A suggestion was made to increase the transcript rates by \$1.00, rather than \$.75, to offset the elimination of the copy fee.

A motion was made and seconded to approve the June 17 Meeting Minutes, as amended.

Council Action

The Judicial Council approved the June 17, 2021 Meeting Minutes, as amended.

b. June 29, 2021 Meeting Minutes

A motion was made and seconded to approve the June 29, 2021 Meeting minutes, as submitted. The motion prevailed.

2. Discussion Item: Minnesota Court Records Online (MCRO) Initiative Quarterly Report

Judge Peter Cahill, MCRO Steering Committee Chair, Mark Ford, Project Manager, and Sarah Novak, Senior Staff Attorney and Project Owner, presented the MCRO Quarterly Report. It was noted that the project is in Phase 2 which includes development to enable users to view the register of actions, and to perform search activities.

Phase 2 Development

- Development activities since April update:
 - Completed Development
 - Completing Project Team Testing including Digital Accessibility

Phase 2 User Acceptance Testing, Training, and Communication, Pilot

- August 11-September 1: User Acceptance Testing Timeframe
- June-November: Key Communication Activities
- September: Steering Committee Go-No-Go
- Late September-October: Pilot Begins

The MCRO Schedule was also reviewed. It was noted that Phase 2 will generally be available by the end of 2021, pending successful completion of the pilot phase. Phase 3 began in July 2021 and focuses on the ability of the user to perform advanced searches and to purchase documents. It is anticipated that Phase 3 will be available in the summer of 2022.

Phase 1 (limited document access) usage was reviewed. It was noted that the MCRO site is being actively used for viewing and downloads.

- Average 240 downloads per hour (as of 7/6)
- Over 767,000 documents have been downloaded to-date (as of 7/6)
- No major performance or technical concerns have been reported.

The MCRO budget was also reviewed. It was noted that the Phase 3 budget will be presented to the Judicial Council for approval at the August 2021 meeting.

A discussion ensued on current access to documents. It was noted that the feedback received has been positive and that the questions and concerns raised pertain to a desire for expanded access.

3. Discussion Item: Remote Interpreting Implementation Workgroup Annual Report

Brian Jones, Judicial District Administrator, First Judicial District, and Cara Melvin, Programs Unit Manager, Court Services Division, presented the Remote Interpreting Implementation Workgroup Annual Report.

It was noted that, in May 2020, the Judicial Council approved JAD's recommendations on statewide expansion of remote interpreting, to be led by a Remote Interpreting Implementation Workgroup. The Judicial Council requested a report of accomplishments at the close of FY21.

- Seven recommendations from the Court Interpreter Workgroup Report were combined into four overarching target areas for action.
 - Expand use of remote interpreting
 - Technology and training
 - Use of staff interpreters
 - Tracking progress and reporting
- SCAO and each judicial district created an implementation plan.

It was noted that the districts developed strategies in their local action plans to address unique barriers.

Each target area was discussed. It was reported that the original goal for expansion of remote hearings provided that 10-20% of interpreter events in each District will be conducted with the interpreter appearing remotely in FY21. As a result of the pandemic, the percentage of interpreter events conducted with the interpreter appearing remotely has risen to over 90% of all interpreter events.

In terms of technology and training, conducting remote hearings shifted the need from technology equipment in the courtroom to technology to support remote hearings, e.g. Zoom. Training has been developed and delivered to support remote and simultaneous interpreting. The Interpreter bench card has been updated. Quick reference Guides and FAQs have been developed.

Data shows an increase in sharing staff interpreter resources across district lines as the rates of remote interpreting increased. The district administrators are working on a uniform process to share staff interpreters statewide that can be formally adopted and implemented. At present a project for all districts, except the Fourth District, will first create a consolidated interpreter schedulers unit and later add staff interpreters.

In terms of tracking progress and reporting, surveys have been conducted with attorneys, judges, court staff, and contract interpreters. In general, survey respondents reported that remote interpretation is as effective as live, increases access to justice, and saves time.

Seventy two percent (72%) of attorney survey respondents believe remote interpretation is effective, 14% believe remote interpreting is ineffective, and 14% believed it is neither effective nor ineffective.

The judicial officer and court staff survey results indicated that 85% of survey respondents believed their most recent remote hearing with a remote interpreter was successful. In addition 84% reported no technology issues during the hearing. A need for more training and use of simultaneous interpreter features in Zoom was identified.

Ninety one percent (91%) of contract interpreter survey respondents believed their most recent remote court hearing was successful. In addition, 98% reported no trouble logging in or accessing the link and 90% reported no technology issues. More training on and use of simultaneous features in Zoom were identified as improvements that should be implemented.

A discussion ensued on the use of simultaneous interpretation. It was noted that there is a need to examine courtroom technology to insure it can accommodate simultaneous interpretation.

It was noted that it is difficult to measure whether there are cost savings from the use of remote interpreting. Under the current contract interpreter payment policy, remote interpretation is cost effective for brief hearings. For longer hearings, applicable policies will require revision to capitalize on similar savings. It was also noted that it is harder to measure savings resulting from more efficient use of interpreters. The use of remote

interpretation enables interpreters to work more hearings during the time they would have been traveling to courthouses for an in-person interpretation event.

4. Discussion Item: Treatment Court Initiative (TCI) FY21 Annual Report and Proposed FY22 Work Plan

Chief Judge Joseph Buelteel, TCI Co-Chair, presented the Treatment Court Initiative FY21 Annual Report and the proposed FY22 Work Plan. It was noted that the new Veterans legislation will be monitored for possible impact on veterans treatment courts.

A discussion ensued about the language in the new Veterans legislation, specifically whether the court actions to be taken will require an independent psychological examination, and the entity that is responsible for the cost of the examination. Staff was instructed to explore this issue.

Chief Judge Buelteel reported that one of the proposed FY22 activities is to identify treatment courts that do not currently participate in the Judicial Branch Treatment Court Initiative, and to engage in conversations about the advantages of participation.

5. Discussion Item: Other Side Workgroup Report

Judge Michelle Lawson, Other Side Workgroup Chair, presented the monthly report. She reviewed the framework for recommendations: How can the Branch use remote hearings post-pandemic because it wants to, not because it has to. The use of remote hearings should include consistency throughout the state, while allowing flexibility for addressing unique local issues. The use of remote hearings should balance the benefits and challenges of its use. The recommendations follow key principles of access to justice, effective administration of justice, and public trust and accountability. The results from fifty listening sessions held with judicial officers, court staff, and external court customers, were instrumental in the development of recommendations.

The following recommendations were presented:

- The Judicial Council should establish standards for how to approach district court remote hearings to promote consistent access to justice across Minnesota. These standards need to be tailored by case type and hearing type, and there should also be a process for case-by-case exceptions (which is already consistent with existing Court Rules which allow for ITV or other types of remote hearings).
- 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.
- 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 part of this approach, the Judicial Council should request that the Supreme Court direct

review of the Court Rules that may be in conflict or prohibit implementation of these recommendations. Judicial Council should also establish an evaluation plan that ties into the existing Performance Measures process in September 2022.

- 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.
- 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. Case-by-case exceptions, under extenuating circumstances, should be allowed, with extenuating circumstances to be defined by Court Rules.
- 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. Case-by-case exceptions, under extenuating circumstances, should be allowed, with extenuating circumstances to be defined by Court Rules.
- The Workgroup made specific recommendations based on case type, for which hearings should be held in a remote fashion or in-person. The following case types are included in the recommendations:
 - Minor Criminal cases
 - Major Criminal cases
 - Family/Civil cases
 - Juvenile Child Protection cases
 - Juvenile Delinquency cases
 - Probate/Mental Health cases
- Major and Minor Criminal uncontested matters should be presumed to be held remotely. However, any judicial district/county interested in holding these hearings in-person can ask for an exception. Exception requests should include a district/county-wide plan for uncontested criminal matters to be held in-person, or both in-person and remotely. The districts/counties must collaborate with local criminal justice partners in the development of these plans and articulate how the plan supports the priority of reducing the pandemic-related Major Criminal case backlog within the FY22-23 biennium. Plans should be approved by the Judicial Council Executive Committee. A template could be provided by State Court Administration.

- 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.

Anticipated implementation issues were identified:

- Supreme Court Rules may be in conflict with these recommendations
 - Chief Justice orders may be necessary in the interim before Court Rules are revised
- Statutes may be in conflict with these recommendations
- Need for local and statewide collaboration with justice partners
- Temporary workarounds are not sustainable on a permanent basis

A discussion ensued. The recommendation that provides that the Judicial Council should establish standards for how to approach district court remote hearings to promote consistent access to justice across Minnesota and provides a process for case-by-case exceptions was discussed. Concern was expressed that this recommendation results in another layer of implementation plans and exception processes, at the same time as efforts are being made to address the backlog. It was noted that the purpose of the exception process is to address unique, extenuating circumstances. It was recommended that the exception process be further defined through the court rulemaking process.

A discussion ensued on the recommendation that Major and Minor Criminal uncontested matters should be presumed to be held remotely, with any judicial district/county interested in holding these hearings in-person having the ability to ask for an exception. Concern was expressed with a presumption that arraignment hearings be held in a remote fashion.

The Workgroup was asked to address whether the child support expedited process is an exception to the in-person hearing recommendation, It was noted that expedited process rules have always allowed the Magistrate to approve a telephone or ITV appearance.

It was suggested that the Workgroup recommendation to establish an exception process for Major and Minor Criminal case types is aimed at tracking how case types are being handled throughout the state. The Workgroup was asked to address whether it would be less burdensome to permit courts to report how hearings are conducted, as opposed to having to ask for exceptions. It was noted that the Judicial Council Executive Committee is able to consider exception requests in a nimble fashion, as demonstrated with the approval process for jury plans. It was suggested that the Workgroup consider a process whereby chief judges are given the authority to grant exceptions.

It was noted that the on-going impact of remote hearings will need to be monitored for its impact on the budget and on both judge and staff weighted caseload systems.

Other issues identified include:

- Has the issue of tracking how cases are being handled been considered? Could this be accomplished through MNCIS?
- If a judge prefers to hold a hearing in a hybrid manner will an exception need to be sought?
- Whether the Other Side Workgroup recommendation that Harassment Restraining Order and Order for Protection matters hold first appearance hearings in a remote fashion should be adopted. Concern was expressed that remote hearings may not adequately address access to the process.
- Court Rules will need revision to clearly spell out permitted use of technology in each courtroom. This process could take considerable time.
- The detailed recommendations on how each case type will be handled (remote vs. in-person) needs further review. Some case types, e.g. child protection pre-trials, may be resolved more quickly if all parties are in the same room.
- The impact of continued fatigue on judges and staff, associated with conducting hearings remotely is an important consideration that must be addressed before recommendations are implemented.
- The increased responsibilities placed on staff must be addressed, e.g. the need to continue to maintain space for attorneys in the courthouse, the need to continue to staff remote hearing applications, e.g. Zoom.
- The need for the Judicial Council to take the time necessary to make sound decisions on the long-term use of remote hearings. This discussion will change how the Branch has operated for over 100 years.

It was agreed that discussion on the recommendations will continue in August, with no decisions to be made at the August meeting. Judicial Council members were encouraged to discuss the recommendations with local judges and staff and to submit additional questions and concerns to the Workgroup.

6. Discussion/Decision Item: Proposed FY 22/23 Budget

Dan Ostdiek, Finance Director, State Court Administration, reviewed the legislative appropriations approved for the Judicial Branch for FY22/23. He also presented the proposed FY22/23 budget and decision items.

Trial Courts – 2021 Session Changes

- Increase Central budgets to reflect the wage and salary increases allocated by the Legislature.
- Increase the Judge budget to reflect the wage and insurance increases allocated by the Legislature.
- Increase the District/Court Payment Center budgets to reflect the wage and insurance increases allocated by the Legislature.
- Increase the Judge budget to reflect the new judge unit authorized by the Legislature.
- Increase the Mandated Services budget to reflect the contractor interpreter compensation increases.

A motion was made and seconded to approve the proposed Trial Court 2021 Session Changes. The motion prevailed.

Council Action

The Judicial Council approved adjustments to the Trial Court Budget, to reflect new funds allocated by the 2021 Legislature.

Trial Courts – Budget Adjustments

- Move 50% of the way towards equalization in FY2022 and 100% in FY2023.
- Fund two Court Administrative Processes (CAPS) positions from DIS permanently.
- Fund two Document Security Specialists positions from DIS permanently.
- Transfer \$1.409M from DIS to Mandated Services to fund Psych Services.
- Allocate \$1.817M in FY2022 and FY2023 to fund the Minnesota Court Records Online (MCRO) tails, eReminder Project, and Trial Courts Digital Management program.

A motion was made and seconded to approve the FY22-23 Trial Court Budget Adjustments. The motion prevailed.

Council Action

The Judicial Council approved proposed FY22-23 Trial Court Budget Adjustments.

Court of Appeals

- Implement wage and insurance increases, as allocated by the 2021 Legislature.
- Allocate an additional \$16K in FY2022 and \$16K in FY2023 to fund Strategic Initiative Projects.
- Per Judicial Council Policy, reimburse any Court of Appeals judge, whose permanent place of residence is more than 50 miles from the judge's permanent chambers in St. Paul, for housing expenses or mileage for travel from the judge's permanent chambers.

A motion was made and seconded to approve the FY22-23 Court of Appeals Budget, as adjusted by the wage and insurance increases allocated by the 2021 Legislature, monies for Strategic initiatives, and the continuation of the Court of Appeals housing expenses and mileage reimbursement. The motion prevailed.

Council Action

The Judicial Council approved proposed FY22-23 Court of Appeals Budget Adjustments.

Supreme Court

- Implement wage and insurance increases, as allocated by the 2021 Legislature.

- Allocate \$500,000 in FY22 for the courthouse security grants, as allocated by the 2021 Legislature.
- Allocate \$30,000 for the Pre-Sentence Traumatic Brain Injury Feasibility Study, as allocated by the 2021 Legislature.
- Allocate an additional \$80K in FY2022 and \$80K in FY2023 to fund Strategic Initiative Projects.

A motion was made and seconded to approve the FY22-23 Supreme Court Budget, as adjusted by the wage and insurance increases allocated by the 2021 Legislature, the \$500,000 appropriated by the Legislature for courthouse security grants, the \$30,000 appropriated by the 2021 Legislature for Pre-Sentence Traumatic Brain Injury Feasibility Study, and funds for Strategic Initiative Projects.

Council Action

The Judicial Council approved proposed FY22-23 Supreme Court Budget Adjustments.

Mandated Services

- Transfer \$1.409M from DIS to the Mandated Services budget to fund Psych Services, with the understanding that the Districts will need to self-fund any deficit from their DIS budgets.

A motion was made and seconded to approve the transfer of funds from the DIS budget to the Mandated Services Budget. The motion prevailed.

Council Action

The Judicial Council approved the transfer of \$1.409M from the DIS budget to the Mandated Services Budget.

Judge Budget

- Assume a two judge vacancy rate per pay period.
- Budget disability expenses for 1.75 judges.
- Senior Judge Administrative Pool be funded at \$100K per year (\$10K per district).
- Senior Judge Vacancy reimbursement be funded at 75% of the per diem rate.
- Judicial Equalization be funded at \$15.5K of additional resources per year, which raises all Districts to a minimum of the statewide average of 99.4% of the Judicial Weighted Caseload need with one new judge.

A motion was made and seconded to approve proposed adjustments to the FY22-23 Judge Budget. The motion prevailed.

Council Action

The Judicial Council approved the proposed adjustments to the FY22-23 Judge Budget.

Allocation of Federal IV-D Child Support Reimbursement Funds

- Allocate IV-D funds to the Districts, eCourtMN, Conservator Account Auditing Program and Tyler Maintenance.
- Fund Strategic Initiative projects with any biennial balance.
- Allocate each District budget proportionally based on their actual FY2022 reimbursement.
- Fund Expedited Child Support Order Processing in the Eighth District. In FY2022/23 all Districts will contribute a prorated amount of IV-D Funds at the start of each fiscal year, determined by their amount of expedited orders. In FY2022 Districts will be allowed to carry forward IV-D Funds in the amount up to 150% of their annual IV-D budget plus their contribution. In FY2023 the allowed amount to carry forward will be reevaluated.
- IV-D carry forward from FY2021 to FY2022 to be used for project staffing and operational need in FY2022.

A motion was made and seconded to approve the proposed allocation of Federal IV-D Child Support Reimbursement Funds. The motion prevailed.

Council Action

The Judicial Council approved the proposed allocation of Federal IV-D Child Support Reimbursement Funds.

7. Decision Item: Proposed FY22-23 Judicial Branch Strategic Plan

It was noted that the proposed FY22-23 Strategic Plan was originally presented to the Judicial Council in June 2020. The draft plan was taken under consideration by the Council pending final legislative action on the FY22-23 Biennial Budget. The Plan is back at the present meeting for final approval. Katie Schurrer, Strategic Projects and Planning Division, State Court Administration, provided highlights of the Plan and noted that the draft Plan served as the basis for development of the proposed FY22-23 Operational Plan.

A motion was made and seconded to approve the proposed FY22-23 Judicial Branch Strategic Plan. The motion prevailed.

Council Action

The Judicial Council approved the proposed FY22-23 Strategic Plan.

8. Decision Item: Proposed FY22 Operational Plan

Katie Schurrer, Strategic Projects and Planning Division, State Court Administration, reviewed the proposed FY22-23 Operational Plan. It was noted that the Committee for Equality and Justice’s strategic plan has been incorporated into the document.

A motion was made and seconded to approve the proposed FY22-23 Judicial Branch Operational Plan. The motion prevailed.

Council Action

The Judicial Council approved the proposed FY22-23 Operational Plan.

9. Discussion Item: Other Business

a. Legislative Update

Jeff Shorba reported that State Court Administration has not heard if the Branch will receive funds being allocated through the Front Line Workers Relief Fund and the American Rescue Plan (ARP) Fund.

There being no further business the meeting adjourned.