



Judicial Council Minutes

October 14, 2021

Via Zoom

The Judicial Council met on Thursday, October 14, 2021, via Zoom. Chief Judge Susan Segal, Court of Appeals, and Shelley Ellefson, Third Judicial District Administrator, were not in attendance.

1. Approval of Draft September 16, 2021, Judicial Council Meeting Minutes

Amendments were suggested to the draft September 16, 2021, Minutes to clarify the discussion and motions made.

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

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

Mark Ford, Project Manager, State Court Administration, and Sarah Novak, Senior Staff Attorney, State Court Administration, presented the MCRO Quarterly Update.

Phase 2 Pilot:

The Pilot began on September 28, 2021. Positive feedback and suggestions for enhancements have been received. The Pilot will end on October 26. The MCRO Steering Committee will decide in early November whether to release to the general public. The public launch is anticipated for late 2021. A demonstration of the information available in the Phase 2 Pilot was presented. A discussion ensued on the protective order information that will appear on MCRO. It was noted that the existence of a protective order can be found on the case events tab.

MCRO Schedule:

Phase 3 development is underway. When completed, document search, case search, register of actions viewing, and judgment and hearing searches will be available. It is anticipated that the Phase 3 pilot testing will begin in spring 2022 and that Phase 3 will be completed by the summer of 2022.

A discussion ensued on the benefits the MCRO system will afford. It was suggested that the Judicial Council discuss, at a later date, improvements to the Minnesota Government Access (MGA) application.

MCRO Phase 1 Usage

It was noted that the MCRO site is being actively used for viewing and downloads since the application went live on March 17, 2021. As of September 30, 2021, an average of 350 downloads per hour have occurred and over 1.4 million documents have been downloaded. It was reported that no major performance or technical concerns have been reported.

MCRO Budget

The MCRO Initiative Phase 3 is on-time and on-budget.

3. Discussion Item: Treatment Court Initiative (TCI) Recommendation to Approve Creation of Clearwater County DWI Treatment Court

Chief Judge Bueltel, Co-Chair, TCI, presented the TCI recommendation to approve the creation of the Clearwater County DWI Treatment Court. It was noted that Clearwater County will partner with Beltrami County and will share a coordinator. It is anticipated that the treatment court will serve approximately 10 participants on an annual basis. The Treatment Court will be funded by the Department of Public Safety, Office of Traffic Safety.

There being no objection to acting on the request at the present meeting, a motion was made and seconded to approve the creation of the Clearwater County DWI Treatment Court. The motion prevailed

Council Action

The Judicial Council approved the creation of the Clearwater County DWI Treatment Court.

4. Discussion and Decision Items: Major Criminal Backlog Action Plans

Each Chief Judge gave an update on implementation of the Criminal Backlog Action Plans. Actions being taken include:

- Adjusting calendars to accommodate the need to concentrate on the major criminal backlog;
- Incorporating the use of senior judges;
- Determining increased staff needs;
- Actively meeting with justice partners;
- Scheduling case resolution events;
- Analyzing the impact of In-person and Remote Hearing Requirements; and
- Incorporating the opportunities afforded by the American Rescue Plan (ARP) Funds allocated to the Judicial Branch, including increased use of senior judges and increased staff.

It was noted that improvements have already been seen in several counties/districts. It was also noted that increased and consistent communications both internally and with justice partners is crucial. A lack of public defenders was cited in many locations.

Dan Ostdiek, Director of Finance, State Court Administration, reviewed the ARP Funds allocation recommendation. The recommendation distributes the \$9.961M allocated to the Judicial Branch to tackle the major criminal backlog. The recommended allocation for each district is based on each district's proportion of the total Major Criminal backlog hours. It was noted that districts will have the ability to transfer unneeded funds to a central account for distribution to districts in need of additional funds. It was also noted that, for audit purposes, ARP funds must be tracked separately and that good documentation is the key for the use of ARP funds.

There being no objections to acting on the proposal at the current meeting, a motion was made and seconded to approve the JAD recommendation on the ARP Funds allocation. The motion prevailed.

Council Action

The Judicial Council approved the JAD recommendation on the American Rescue Plan Funds allocation.

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 Judge Order, and discuss an implementation date at the November Judicial Council meeting. There was no objection to the continuation of the topic to the November meeting.

6. Discussion Item: Proposed Amendments to Judicial Council Policy 515; Petty Misdemeanor and Payable Misdemeanor Failure to Appear Policy

Deb Blees, Senior Staff Attorney, State Court Administration, reviewed the proposed amendments to Judicial Council Policy 515 and the rationale for the amendments. It was explained that Minn. Stat. §§169.92 and 171.16 were amended by the 2021 Legislature. This necessitates amendments to Policy 515.

Specifically, effective January 1, 2022, Minn. Stat. §§ 169. 92, subd. 4 and 171.16, subd. 3 are amended to prohibit the Commissioner of Public Safety from suspending driver's licenses for failing to appear for petty misdemeanors and driving after suspension violations, and for failing to pay fines. Three amendments are recommended to address this change:

1. Remove footnote 2, “Failing to pay a fine in lieu of appearing in court in response to a citation is *not* a failure to pay under Minn. Stat. § 171.16, subd. 3.”
2. Amend Administrative License Sanctions paragraph 1 by striking “petty misdemeanor or” to remove Court Administration’s requirement to notify the Department of Public Safety when a person fails to appear for a petty misdemeanor case involving the operation of a motor vehicle.
3. Amend Administrative License Sanctions paragraph 1 to add an exception for a misdemeanor charge of Driving after Suspension (DAS) in violation of Minn. Stat. § 171.24, subd. 1.

Ms. Bles noted that there are other housekeeping amendments included in the proposal. It was also noted that a request was made to include the term “referee” at II. Definitions, C. Failure to Appear – A person is deemed to have failed to appear in response to a payable citation when the person has not:

- a) appeared in court before a judge, referee, or hearing officer, or...

There being no objection to moving on the proposed amendments at the current meeting, a motion was made and seconded to approve the proposed amendments with the amendments to include the term “referee” in the definition section, effective January 1, 2022.

The motion prevailed.

Council Action

The Judicial Council approved proposed amendments to Judicial Council Policy 515; Petty Misdemeanor and Payable Misdemeanor Failure to Appear Policy, effective January 1, 2022.

7. Discussion Item: Reconsideration of Judicial Council 2010 decision to require entry of conviction on all offenses when a citation payment is made. Possible Amendments to Judicial Council 506.1; Statewide Payable Offense Policy

Chief Judge Stoney Hiljus, Chair, COPS Committee, reviewed an issue discussed at the last COPS Committee meeting, specifically possible reconsideration of the 2010 Statewide Payable Offense Policy decision that requires entry of conviction and imposition of the payable fine amount on all charges/counts when defendant opts to pay a payable citation without appearing in court. Concern was expressed that this policy in effect treats persons who elect to appear in court differently from those who pay without appearing; that defendants might not be aware of potential collateral consequences when paying a citation; and that the policy may conflict with existing statutes. It was noted that when the policy was promulgated in 2010, technology limitations greatly shaped the current policy.

A discussion ensued on the possibility of further exploration into whether there are technical or process changes that could be implemented to prevent the entry of multiple convictions and sentences. It was noted that determining the legal and technical requirements would involve a large-scale effort that would require the involvement of judges, district court staff, and State Court Administration staff. Changes in the automated process would likely require more manual work by court staff and more hearings for district court judges. It was also noted that a technological solution may require the services of the case management system vendor and that a manual solution may prove too labor intensive.

The Judicial Council determined that the issue will be reviewed at a later date. Staff was instructed to place notice on the public web site of the possible collateral consequences when a defendant opts to pay a payable citation containing multiple charges/counts without appearing in court.

8. Discussion Item: FY21 Final Financial Report – Dan Ostdiek, Finance Director, State Court Administration

Dan Ostdiek, Finance Director, State Court Administration, presented the FY21 final financial report.

9. Decision Item: Quality Court Workplace Survey – Proposed Next Steps

Chief Judge Tamera Yon, HR-EOD Committee Chair, and Katie Schurrer, Strategic Planning and Projects Division Manager, State Court Administration, reviewed the Quality Court Workplace proposed next steps.

It was noted that the recommendations align the Quality Court Workplace results with local priorities. Jurisdictions may tailor activities to unique needs and resource availability. It was noted that the issue of stress needs emphasis and special attention. HR/EOD will lead action planning efforts for the judge/justice results and should work with the Implementation Committee to collect and share information on survey follow-up activities.

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

Council Action

The Judicial Council approved the Quality Court Workplace proposed next steps.

10. Discussion Item: Supplemental Budget Request

A discussion ensued on whether the Judicial Branch should pursue a supplemental budget request seeking compensation increases of 2.5% for judges and a compensation pool of 2.5% for employees for FY2023. It was noted that the FY2022-23 budget request, submitted for consideration by the 2021 Legislature, contemplated that if the economy improved the Branch would consider whether additional funds should be requested. A discussion ensued on whether a compensation request should be discounted, based on discussions with Minnesota Management and Budget. The topic of whether additional funds should be sought for other Judicial Branch initiatives was also discussed.

There being no objection to acting on the recommendation at the present meeting, a motion was made and seconded to submit a supplemental budget request of 2.5% for judges and 2.5% compensation pool for employees for FY23. The motion prevailed.

Council Action

The Judicial Council approved submission of a supplemental budget request of 2.5% for judges and 2.5% compensation pool for employees for FY23.

11. Discussion Item: Other Business

- a. **BCA Testing Delays** – A discussion ensued on BCA testing delays and the inability of BCA lab staff to appear live at court hearings. Efforts to resolve the criminal case backlog are greatly impacted by these situations and both situations have resulted in dismissals because speedy trial demands cannot be met. It was agreed that the Chief Justice and State Court Administrator will arrange a meeting with the BCA Superintendent to discuss these concerns.

- a. **Senior Judge Usage** – The Judicial Council discussed the current rate of compensation for senior judges and whether adjustments are appropriate. It was noted that senior judges are paid a daily rate of 70% the salary of a sitting judge and that the compensation increases when a sitting judge’s salary is increased. It was also noted that the percentage of compensation senior judges pay into a health care savings plan is based on a vote taken by senior judges and would require a vote by that group to change the amount contributed. The Judicial Council was advised that using American Rescue Plan (ARP) funds to increase senior judge salaries may not be permissible and would likely trigger an audit. It was recommended that this issue be further analyzed.

It was agreed that the issue will be referred to the HR/EOD Committee for further analysis. It was suggested that the Committee explore the following:

- The use of ARP funds to increase senior judge daily salary rate and audit concerns connected with this action;
- What other states pay senior judges for service;
- Whether senior judge salary rates should be converted to an hourly rate;
- Sources of funding salary increases; and
- The impact on active judges and staff if a salary increase is implemented.

- c. **Front Line Worker Pay Workgroup Update** – It was reported that there is no resolution to the issue.
- d. **November Judicial Council Meeting** – It was agreed that the November meeting will be held via Zoom.
- e. **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.