



# Judicial Council Minutes

## September 17, 2020

### Via WebEx

#### 1. Approval of Draft August 20, 2020, Meeting Minutes

Technical amendments were offered to the draft August Minutes at pages 3, 4, and 5. An additional amendment was suggested at page 3:

It was noted that criteria would be developed for the Chief Judges to use in making the determination as to whether scheduled civil jury trials ~~could~~ proceed.

A motion was made and seconded to approve the draft August Judicial Council Meeting Minutes, as amended. The motion prevailed.

**Council Action**

The Judicial Council approved the August 20, 2020, Meeting Minutes, as amended.

#### 2. Decision Item: Committee for Equality and Justice 2019 and 2020 Work Products

Judge Shari Schluchter, Co-Chair, Committee for Equality and Justice, reviewed the Committee's 2019 and 2020 work products. In response to questions posed, the following information was provided:

- The Committee will work with State Court Administration staff to translate the "Tips for Going to Court in Minnesota" flyer to appropriate languages. It was suggested that, at a minimum, the flyer be translated in Spanish and Somali.
- The proposed Implicit/Unconscious Bias JIGS address both civil and criminal cases. It is anticipated that use of the proposed JIGS are left to the discretion of the judge. The next step is to request that the Criminal and Civil JIGS Committees include the Implicit/Unconscious Bias JIGS in the published jury instructions.

A motion was made and seconded to approve the Gender Fairness Progress Report – Next Steps. The motion prevailed.

**Council Action**

The Judicial Council approved the Gender Fairness Progress Report – Next Steps.

A motion was made and seconded to approve the "Tips for Going to Court in Minnesota" flyer. The motion prevailed.

**Council Action**

The Judicial Council approved the “Tips for Going to Court in Minnesota” flyer.

A motion was made and seconded to approve the Implicit/Unconscious Bias Jury Instructions. The motion prevailed.

**Council Action**

The Judicial Council approved the Implicit/Unconscious Bias Jury Instructions.

A motion was made and seconded to approve the Implicit Bias Bench Card. The motion prevailed.

**Council Action**

The Judicial Council approved the Implicit/Unconscious Bias Jury Instructions.

**3. Decision Item: Proposed 2021 Payables Lists out for public comment**

Chief Judge Kathryn Messerich, Chair, COPS Committee, reviewed the submissions and proposed changes to the Payables Lists.

- A joint request, from the Minneapolis City Attorney, St. Paul City Attorney, and the Hennepin County Public Defender, to remove the following offenses from the Criminal/Traffic Payables List:
  - Minnesota Statute Section 152.027, subd. 3 – marijuana in a motor vehicle;
  - Minnesota Statute Section 152.027, subd. 4(a) – possess/sale of small amount of marijuana; and
  - Minnesota Statute Section 609.855, subd. 1 – fare evasion.

Proponents cited concerns with possible collateral consequences of admitting guilt and paying the citation.

A discussion ensued. It was noted that offenders have the option to come to court to re-open the case. It was also noted that the impact of making these offenses subject to mandatory court appearances is unknown. The placement of information about collateral consequences on the Uniform Traffic Ticket, collateral consequence information currently provided on the Judicial Branch “Pay Fine” page, and the development of a notice to offenders about collateral consequences of paying a citation, were also discussed.

The COPS Committee recommends that the marijuana offenses remain on the Traffic/Criminal Payables List.

- The COPS Committee recommends that the default petty misdemeanor violation remain at \$50.

- The COPS Committee recommends that the Judicial Branch treat the certification of convictions for violations of section 152.027, subd. 3 (possession of marijuana in a motor vehicle), the same as other violations of section 152.027. The change would require a finding by the court that the offender was the driver of the vehicle before certifying the violation to the Department of Public Safety. The Cert to DPS indicator would be changed to N\*.
- The COPS Committee recommends that the Judicial Council give preliminary approval of the proposed changes to the Traffic/Criminal and DNR Payables Lists.

It was noted that there were no suggested changes to the Trucks and Common Carriers Payables List. Upon approval, the Traffic/Criminal and DNR Payables Lists will go out for public comment and will return to the Judicial Council in November for final approval.

A motion was made and seconded to keep the default petty misdemeanor fine amount at \$50. The motion prevailed.

*Council Action*

The Judicial Council approved the recommendation to keep the default petty misdemeanor fine amount at \$50.

A motion was made and seconded to retain Minn. Stat. §§ 152.027, subd. 3 and subd. 4(a), and 609.855, subd. 1 (marijuana offenses) on the 2021 Traffic/Criminal Payables List. The motion prevailed.

*Council Action*

The Judicial Council approved the recommendation to retain Minn. Stat. §§ 152.027, subd. 3 and subd. 4(a), and 609.855, subd. 1 (marijuana offenses) on the 2021 Traffic/Criminal Payables List.

A discussion ensued on whether the Court Payment Center or the Pay Fine web sites provides information on the collateral consequences of admitting guilt and paying a citation. State Court Administration staff was instructed to explore options for providing notice of collateral consequences.

A motion was made and seconded to change the Cert to DPS indicator to N\* for section 152.027, subd. 3 offenses (possession of marijuana in a motor vehicle), which will consistently apply the finding requirement of section 152.0271 to all section 152.027 offenses. The motion prevailed.

*Council Action*

The Judicial Council approved the recommendation to change the Cert to DPS indicator to N\* for section 152.027, subd. 3 offenses (possession of marijuana in a motor vehicle), which will consistently apply the finding requirement of section 152.0271 to all section 152.027 offenses.

A motion was made and seconded to give preliminary approval to the 2021 Traffic/Criminal Payables List and that the preliminary list be put out for a 30 day public notice and comment period. The motion prevailed.

**Council Action**

The Judicial Council gave preliminary approval to the 2021 Traffic/Criminal Payables List and directed that the preliminary list be put out for a 30 day public notice and comment period.

A motion was made and seconded to give preliminary approval to the 2021 DNR Payables List and that the preliminary list be put out for a 30 day public notice and comment period. The motion prevailed.

**Council Action**

The Judicial Council gave preliminary approval to the 2021 DNR List and directed that the preliminary list be put out for a 30 day public notice and comment period.

**4. Decision Item: State Court Administrator FY21 Goals**

A motion was made and seconded to approve the State Court Administrator's FY21 Goals. The motion prevailed.

**Council Action**

The Judicial Council approved the State Court Administrator's FY21 Goals.

**5. Discussion Item: Other Side Workgroup Report**

Judge Krista Martin, Workgroup Chair; Kristen Trebil and Grant Hoheisel, Court Services Division, State Court Administration, presented the Workgroup Report.

The transitional strategies first suggested by the Workgroup in April 2020, were reviewed. Larger transitional strategy recommendations were presented:

1. Strategies for contested payable cases
  - Encourage prosecutors to meet with defendants to discuss plea agreements/settlements.
  - Use Senior Judges.
2. Conduct Informal Probate appointments remotely
  - Encourage the use of remote technology (e.g., phone, Zoom).
  - Consider centralizing informal probate matters within the district.
3. Share conciliation court resources

- Regionalize or centralize existing per diem and volunteer referees for use within the district, regionally or statewide.
4. Streamlining search warrants
    - Explore process improvement opportunities (e.g., district or multi-county work sharing, use senior judges during business hours).
    - Bring proposals to Chief Judges for implementation.
  5. Online dispute resolution (ODR)
    - Consider an ODR solution that includes prosecutors and hearing officers for payables.
    - Support the Self-Represented Litigant program's pursuit of an ODR solution by referring topic to the FY22-23 Strategic Planning Committee.
  6. Centralize civil commitments
    - Work toward specialization by referring topic to the FY22-23 Strategic Planning Committee.

The use of senior judges and the usage plan developed by JAD was discussed.

- The plan intends to utilize senior judges to promote efficiency and maximize their use to address the backlog.
- Leverages the knowledge and experience of senior judges.
- Focuses on low priority cases, leaving more time for chambered district court judges to focus on higher priority matters, including the Major Criminal backlog.
- Calendars should be specialized by case type:
  - Centralized signing of search warrants/other signing needs
  - Criminal misdemeanors
  - Eviction
  - Contested payables
  - Juvenile traffic
  - Conciliation
- Senior Judges should work remotely.
- Equipment will be provided.
- Temporary staff will be provided.

It was noted that CARES Act funding has been applied for to defray the cost of senior judges, staff and equipment.

It was noted that the use of temporary employees to support senior judges is challenging because of the technical nature of the work to be done. It was suggested that effort be made to identify cases where an equipment operator can take the record without the current training and certification requirements.

The results of the Pandemic Strategy Survey were reviewed. It was noted that there is strong support for remote hearings and paper processing. In response to concern expressed that access and fairness might be negatively impacted by remote technology, it was noted that over half of survey respondents believed that access to justice was increased through the use of technology. It was also noted that respondents felt the use of paper review for child protection matters was beneficial. Last, it was noted that the Lead CJJ Judge Group is reviewing this practice.

**6. Discussion Item: Access and Fairness Survey Follow-Up**

Katie Schurrer, Strategic Planning and Projects Office, reviewed the status of actions taken to address the Access and Fairness Survey results. She noted that the FY21 Operational Plan includes activities aimed at addressing the Survey results, for example improvements to the public web site; expansion of services offered through the public website; development of a survey tool and implementation plan to deploy website surveys for ongoing customer feedback on the website; exploration of different calendaring strategies to address COVID-19 pandemic backlog and other customer concerns; and exploration of the needs of the vulnerable adult population.

**7. Discussion Item: Judicial Council Policy 400; Education - Exception to Education Standards for Judicial Officers**

Chief Justice Lorie S. Gildea presented an amendment to Judicial Council Policy 400; Education. She noted that the policy provides that all district court judges are required to tour one approved institution to which they sentence/commit individuals during each full term of office and all referees are required to tour an approved institution to which they sentence/commit individuals once every six years. Due to the COVID-19 pandemic, state correctional facilities are not currently conducting these tours. She suggested that the deadline for judicial officers required to complete the tour by December 31, 2020 be extended to December 31, 2021.

There being no objections to acting on the amendment at the current meeting, a motion was made and seconded to extend the deadline for judicial officers required to complete the tour by December 31, 2020 to December 31, 2021. The motion prevailed.

Council Action

The Judicial Council approved amendments to Judicial Council Policy 400: Education, to extend the deadline for judicial officers required to complete the approved institution tour by December 31, 2020 to December 31, 2021.

**8. Decision Item: Annual Weighted Caseload Review Pursuant to Judicial Council Policy 501; Determination of Judicial Resources – Jeff Shorba, State Court Administrator**

A motion was made and seconded to approve the annual weighted caseload review which recommends that no adjustments be made to the 2019 case weights, case types, or the judge year value. The motion prevailed.

Council Action

The Judicial Council approved the annual weighted caseload review which recommends that no adjustments be made to the 2019 case weights, case types, or the judge year value.

## **9. Discussion Item: Performance Measures Report**

Jennifer Ogunleye, Court Services Division, State Court Administration, presented statewide Performance Measures highlights:

- Positive Performance Measures Results:
  - The statewide clearance rate in Family cases improved to 101% in FY20.
    - Four of ten districts were at or above a 100% clearance rate in Family cases in FY20.
    - Results ranged from 95% (1<sup>st</sup> District) to 107% (4<sup>th</sup> District).
  - Statewide time to disposition results in FY20 met the timing objectives for Major Civil cases.
  - Dissolutions (with and without child) and Domestic Abuse cases performed above timing objectives.
- Areas of Concern:
  - In FY20, clearance rates declined in six case categories.
  - The largest decline was in Major Criminal.
  - Clearance rates below 100% led to increased pending caseloads in FY20.
  - Statewide, 19.9% of Juvenile Delinquency cases were pending beyond the timing objective as of 7/3/2020 (goal is 1% or less).

Each judicial district and the appellate courts presented information on performance measures. Judicial districts cited a lack of justice partner resources and issues related to social distancing requirements in court facilities as impediments to timely case processing. Regular meetings with justice partners and improved internal communications were cited as positive steps toward addressing caseload issues.

## **10. Decision Item: FY22-23 Biennial Budget Request**

Dan Ostdiek, Director, Finance Division, State Court Administration, reviewed the FY22-23 Biennial Budget request timeline, noting that requests must be submitted to MMB by October 15, and that the Governor has to submit the proposed FY22-23 budget recommendations to the Legislature by January 26, 2021.

Four budget request options were reviewed:

1. Option 1: Hold harmless request – Request the employer share of insurance increases;
2. Option 2: Request the employer share of insurance increases; 2 trial judge units, mandated services deficit funding, cyber security, courthouse security, and Treatment Court Option C;
3. Option 3: Request 3% compensation increases each year of the biennium for judges and 3% compensation pool each year of the biennium for employees, and the employer share of insurance increases; and
4. Option 4: Request the employer share of insurance increases each year of the biennium, a 3% compensation increase the second year of the biennium for judges, and a 3% compensation pool the second year of the biennium for employees.

A discussion ensued. It was noted that Option 4 recognizes the state budget challenges caused by the pandemic and is hopeful that the budget situation will improve in the second year. In addition, Option 4 seeks to recognize the extraordinary services of judges and staff during the pandemic.

Concern was expressed about the future of the Roseau County Drug Court. It was noted that the Treatment Court budget includes funds for treatment courts in need and that those funds can be applied to the Roseau County Drug Court for the FY22-23 biennium.

A motion was made and seconded to approve Option 4. The motion prevailed.

Council Action

The Judicial Council approved the FY22-23 Biennial Budget Request to include: Employer share of insurance increases each year of the biennium, 3% compensation increase the second year of the biennium for judges and 3% compensation pool the second year of the biennium for employees.

A motion was made and seconded to:

- With respect to pandemic workload, take all measures to ensure during each fiscal year of the FY 22/23 Biennium that there is a combination of new judge/senior judge resources or CARES ACT Funding available for pandemic workload;
- Include a prioritization of senior judge/new judge funding or reallocation of existing funding to assure judge coverage for pandemic workload including elimination of any restriction on District DIS budget and senior judge budget for the hiring or retention of temporary staff or senior judges;
- Provide that senior judge funding for pandemic workload includes all necessary expenses to support senior judges whether that be temporary judicial employees, court reporters, who take the record, law clerks and temporary or permanent staff to assist senior judges in handling pandemic workload and all potential expenses including but not limited to computers, monitors, headphones etc.; and
- Ensure sufficient funding during each year of the FY 22/23 Biennium for pandemic workload relief any necessary reprioritization of DIS funding, at the district level, and reprioritization of the unfunded needs budget and senior judge budget to assure that senior judge coverage priorities are the first priority of expenditures of the Judicial Branch during each year of the Biennium.

It was noted that the goal of the motion is to include in the Judicial Branch budget for FY2021, 2022, and 2023, a specific plan to address the pandemic overload with a priority on judicial caseload management, to be presented and approved by the Judicial Council.

A discussion ensued on the fiscal impact of the motion and whether a decision on prioritization of Judicial Branch funds should be postponed until the FY22-23 Biennial Budget is known. Concern was expressed that the commitment should be in place before any budget allocations are made. It was also noted that the Council should commit to



using senior judges as a priority as long as the Branch is addressing the pandemic related backlog.

An amendment was offered to the main motion:

Substitute the following language:

The Budget Principles and Guidelines are amended to provide that senior judges, and associate resources, including but not limited to staff and equipment, be prioritized and that restrictions on DIS spending for these purposes be removed while the pandemic related backlog persists. Review of the specifics of this guideline will be referred to JAD and reviewed by the Judicial Council at a later date.

The substitute language was accepted as a friendly amendment.

A vote was taken on the substitute motion and prevailed.

*Council Action*

The Judicial Council amended the Budget Principles and Guidelines to provide that senior judges, and associate resources, including but not limited to staff and equipment, be prioritized and that restrictions on DIS spending for these purposes be removed while the pandemic related backlog persists. Review of the specifics of this guideline will be referred to JAD and reviewed by the Judicial Council at a later date.

**11. Discussion Item: Other Business**

- a. The October Judicial Council Meeting was cancelled.

There being no further business the meeting adjourned.