



Judicial Council Minutes

September 16, 2021

230 MN Judicial Center

1. Approval of Draft August 19, 2021 Judicial Council Meeting Minutes

A motion was made and seconded to approve the Draft August 19, 2021 Minutes, as submitted. The motion prevailed.

Council Action

The Judicial Council approved the August 19, 2021, Meeting Minutes, as submitted.

2. Discussion Item: Statewide Mandated Services – Court Interpreter Program Audit

Jamie Majerus, Manager, Internal Audit Division, State Court Administration, presented the Court Interpreter Program Audit results. A discussion ensued on the new consolidated scheduler and staff interpreter unit (interpreter/scheduler unit). It was noted that the Fourth Judicial District will not be included in the new unit at this time due to several considerations. The District will, however, participate in unit's planning efforts and will evaluate, once the unit is operating, whether it makes sense to join in. The Fourth Judicial District interpreter unit will comply with audit finding recommendations regardless of whether or not they are a part of the unit.

It was suggested that a follow up report be presented to the Judicial Council in the summer of 2022.

3. Decision Item: Other Side Workgroup Recommendations on Moving Forward

Judge Michelle Lawson, Workgroup Chair and Jenn Super, Emergency Manager, Minnesota Judicial Branch, presented the monthly report. Pandemic data, clearance rate data, and remote hearing trend data were reviewed.

Judge Lawson presented the Workgroup recommendations on the use of remote hearings going forward:

- #1. Adopt a phased approach to remote and in-person hearings to Take Action, Evaluate, and Recommend permanent options to Judicial Council.

- a. A Steering Committee shall oversee implementation of the Judicial Council changes to remote and in-person hearings and help the district courts resolve issues arising during implementation.
- #2. For non-criminal cases:
- a. Implement a strong presumption that evidentiary hearings (hearings where evidence is being presented or testimony is taken on issues in dispute) be held in-person, according to the Non-Criminal Case Types and Hearing Types Presumed Remote and In-person Table.
 - b. Implement a strong presumption that non-evidentiary hearings be held remotely, according to the attached table.
 - c. Case-by-case exceptions, under exceptional circumstances, should be allowed, with extenuating circumstances to be defined by a Chief Justice Order.
- #3. Implement a phased approach to criminal hearings, giving autonomy to the districts to create a plan for remote and in-person hearings that ties in with their backlog plan in Phase I. District plans must incorporate both remote and in-person hearings.
- #4. Treatment Courts should continue to follow the established Treatment Court Hybrid Hearing Exception Process. Judicial Council should refer the Treatment Court Hybrid Guidelines for Chief Judges, to the Treatment Court Initiative Advisory Committee to review these Guidelines.

The County Attorneys Association recommendation that Order to Show Cause and other hearings for civil contempt and parentage cases should continue to be held in person in District Court and the Expedited Process was discussed. The Workgroup concluded that no changes to the original recommendation should be made, based on anecdotal feedback which indicated that there is greater participation when hearings are held in a remote fashion. In addition, the use of remote hearings results in less travel time for child support magistrates and is a more efficient process.

The recommendations pertaining to Order for Protection and Harassment Restraining Order hearings were discussed. It was noted that two options were reviewed at the August Judicial Council meeting:

- Proposed Workgroup Option: Original Recommendation to hold these hearings remotely, case-by-case exceptions.
- Alternative Option: In-person unless judicial officer is remote, case-by-case exceptions.

Based on that conversation, the Workgroup re-examined the options and chose to recommend that these hearings will be held remotely, with case-by-case exceptions.

The next steps were discussed. It was noted that the Chief Justice will appoint a Steering Committee. It was suggested that the effective date of the recommendations should be

upon expiration of the current Chief Justice's Order, but an effective date was not determined at this meeting.

A discussion ensued on the Order for Protection and Harassment Restraining Order recommendations. It was noted that the decision to hold order for protection and harassment restraining order matters in a remote fashion is based on feedback received from victims and advocates. It was also noted that participation is greater when hearings are held in a remote fashion.

Recommendations relating to the civil commitment process were discussed. Concern was expressed with holding commitment trials in a remote fashion. It was noted that concerns can be addressed through the "exceptional circumstances" process.

A discussion ensued on the recommendation to hold live juvenile protection admit/deny and emergency protective custody hearings in-person. It was noted that attendance is better at remote hearings and affords judges the ability to be more efficient. Justice partner availability for in-person hearings was also discussed. It was suggested that this issue be addressed through the Chief Justice Order permitting case-by-case hearing exceptions.

A motion was made and seconded to approve recommendation #1: Adopt a phased approach to remote and in-person hearings to Take Action, Evaluate, and Recommend permanent options to Judicial Council. A Steering Committee shall oversee implementation of the Judicial Council changes to remote and in-person hearings and help the district courts resolve issues arising during implementation.

A discussion ensued. It was noted that the Steering Committee will make quarterly reports to the Judicial Council. It was also noted that the recommended approach affords the Branch the opportunity for experimentation, subject to evaluation and change. The need to take necessary steps to continue to develop and maintain relationships with justice partners and the Bar was acknowledged.

The motion prevailed.

Council Action

The Judicial Council approved the Other Side Workgroup Recommendation #1: Adopt a phased approach to remote and in-person hearings to Take Action, Evaluate, and Recommend permanent options to Judicial Council. A Steering Committee shall oversee implementation of the Judicial Council changes to remote and in-person hearings and help the district courts resolve issues arising during implementation.

A motion was made and seconded to approve recommendation #2: For non-criminal cases: Non-criminal matters shall be held as indicated on the Non-Criminal Case Types and Hearing Types Presumed Remote and In-person Table, subject to the presiding judicial officer to allow for case-by-case exceptions under exceptional circumstances to be defined by Chief Justice Order initially.

A discussion ensued on the juvenile protection recommendations. Judge Lawson moved to amend the Otherside Workgroup recommendation pertaining to juvenile protection matters to provide that counties/district courts may pilot holding juvenile protection hearings in an alternative fashion than shown in the table, if the process is approved by the chief judge and reported to the Steering Committee. The amendment provides that counties/district courts may pilot holding juvenile protection hearings in an alternative fashion than shown in the table, if the process is approved by the chief judge and reported to the Steering Committee. No objection was made to the amendment.

A discussion ensued on the civil pre-trial recommendation. A motion was made and seconded to amend the Non-Criminal Case Types and Hearing Types Presumed Remote and In-person Table to provide that the presiding judge has the authority to determine if civil pre-trials and settlement conferences will be held in-person or remotely. The motion failed.

A motion was made and seconded to amend the Non-Criminal Case Types and Hearing Types Presumed Remote and In-person Table to provide that Expedited Process child support contempt hearings will be conducted with the parties in-person and the child support magistrate either in-person or remote. The motion failed.

A motion was made and seconded to amend the Non-Criminal Case Types and Hearing Types Presumed Remote and In-person Table to provide that evidentiary hearings in orders for protection and harassment restraining order matters be held in-person. The motion failed.

A motion was made and seconded to amend the Non-Criminal Case Types and Hearing Types Presumed Remote and In-person Table to provide that evidentiary hearings in orders for protection and harassment restraining order matters are presumptively in-person, unless the judicial officer is remote.

A discussion ensued. It was noted that, in some districts, referees hear these cases and serve primarily in a remote fashion.

The motion prevailed.

Council Action

The Judicial Council approved an amendment to the Non-Criminal Case Types and Hearing Types Presumed Remote and In-person Table to provide that evidentiary hearings in orders for protection and harassment restraining order matters are presumptively in-person, unless the judicial officer is remote.

A vote was taken on the main motion, as amended, and prevailed.

Council Action

The Judicial Council approved Recommendation #2, as amended: For non-criminal cases:

Non-criminal matters shall be held as indicated on the Non-Criminal Case Types and Hearing Types Presumed Remote and In-person Table, subject to the presiding judicial officer to allow for case-by-case exceptions under exceptional circumstances to be defined by Chief Justice Order initially. In juvenile protection cases only, counties/districts may pilot holding hearings other than as indicated on the table if approved by the Chief Judge and reported to the Steering Committee.

A motion was made and seconded to approve Recommendation #3: Implement a phased approach to criminal hearings, giving autonomy to the districts to create a plan for remote and in-person hearings that ties in with their backlog plan in Phase I. District plans must incorporate both remote and in-person hearings. The motion prevailed.

Council Action

The Judicial Council approved Recommendation #3: Implement a phased approach to criminal hearings, giving autonomy to the districts to create a plan for remote and in-person hearings that ties in with their backlog plan in Phase I. District plans must incorporate both remote and in-person hearings.

A motion was made and seconded to approve Recommendation #4: Treatment Courts should continue to follow the established Treatment Court Hybrid Hearing Exception Process. Judicial Council should refer the Treatment Court Hybrid Guidelines for Chief Judges, to the Treatment Court Initiative Advisory Committee to review these Guidelines. The motion prevailed.

Council Action

The Judicial Council approved Recommendation #4: Treatment Courts should continue to follow the established Treatment Court Hybrid Hearing Exception Process. Judicial Council should refer the Treatment Court Hybrid Guidelines for Chief Judges, to the Treatment Court Initiative Advisory Committee to review these Guidelines.

The Judicial Council discussed the proposed factors for “Exceptional Circumstances” and the effective date of the Judicial Council approved actions relating to in-person and remote proceedings. Judicial Council members were encouraged to forward comments on both topics to Chief Justice Gildea. The effective date issue will be discussed at the October Judicial Council meeting.

4. Discussion Item: Performance Measures Report and Backlog Planning

Jennifer Ogunleye, Research and Evaluation, Court Services Division, presented information on the statewide Performance Measures key results. Grant Hoheisel, Research and Evaluation, Court Services Division, presented information on the major criminal backlog reduction efforts, including the Major Criminal Backlog action plan template. Dan Ostdiek, Finance Director, State Court Administration, reported on financial considerations for implementation of the Major Criminal Backlog Action Plans. Mr. Ostdiek also reported efforts to receive funds from American Rescue Plan funds.

Each chief judge reported on the contents of their respective Major Criminal Backlog Action Plans. The issues of funding, the use of Stand Downs and Warrant Forgiveness Days, and the short form PSI were discussed. It was noted that implementation efforts, efforts to incorporate remote hearings into each plan, and funding for plans, will be discussed at the October Judicial Council meeting.

5. Discussion/Decision Item: COPS Committee Recommendations Relating to Payables Lists

Chief Judge Stoney Hiljus, COPS Committee Chair, presented proposed changes to the Payables Lists.

A motion was made and seconded to publish the proposed 2022 Traffic/Criminal Payables List, proposed 2022 Natural Resources Payables List, and the proposed 2022 Trucks and Common Carrier Payables List for public comment. The motion prevailed.

Council Action

The Judicial Council approved publication of the proposed 2022 Traffic/Criminal Payables List, proposed 2022 Natural Resources Payables List, and the proposed 2022 Trucks and Common Carrier Payables List for public comment.



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6. Postponement of Agenda Items

The following agenda items were postponed until the October Judicial Council Meeting: Quality Court Workplace Survey; Proposed Amendments to Judicial Council Policy 515; Petty Misdemeanor and Payable Misdemeanor Failure to Appear Policy; Reconsideration of Judicial Council 2010 decision to require entry of conviction on all offenses when a citation payment is made; and FY21 Final Financial Report.

7. Discussion Item: Other Business

- a. **Front Line Workers Pay Working Group Update** – Jeff Shorba reported that the Working Group has not yet made any decisions.
- b. **Recognition of Departing Judicial Council Members** – Chief Judge Dwayne Knutsen and Judge John Hoffman, President, Minnesota District Judges Association, were recognized for their service on the Judicial Council.

8. 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.