



Judicial Council Minutes

September 15, 2022

9:00 a.m.

Via Zoom

The Judicial Council met on Thursday, September 15, 2022, via Zoom.

1. Approval of Draft August 18, 2022, Meeting Minutes

A motion was made and seconded to approve the draft August 18, 2022, Meeting Minutes as submitted. The motion prevailed.

 | **Council Action**

 | The Judicial Council approved the August 18, 2022, Meeting Minutes, as submitted.

2. Discussion Item: Current COVID-19 Data

Jennifer Super, Emergency Management Analyst, State Court Administration, presented current COVID data.

3. Discussion Item: HR/EOD Recommendation: Judicial Law Clerk Compensation Structure

Judge Tamara Yon, Chief Judge Ninth Judicial District, HR-EOD Committee Chair, provided information on the Committee’s examination of the District Court and Court of Appeals judicial law clerk salary structures and the Committee’s recommended change. The HR/EOD Committee recommends that the Branch implement a salary range for District Court and Court of Appeals¹ law clerks. The Committee believes that this change will support and improve the Judicial Branch’s ability to recruit, reward, and retain law clerks.

The recruitment and retention benefits of a salary range were presented. In terms of recruitment, a salary range allows the Branch to:

¹ The proposal does not include the Supreme Court law clerks because these individuals serve for one year.

- advertise the full salary range to attract lawyers with post law school experience (lateral hires); and
- pay new law clerks with post law school experience a higher salary within the range.

In terms of retention, a salary range allows the Branch to:

- reward continued service for law clerks who chose to stay in the position; and
- offer a pay for performance model, including annual merit-based raises dependent on legislative funding.

A discussion ensued. It was noted that the Minnesota District Judges Association supports the recommendation. It was also noted that law clerk recruitment and retention issues are occurring both in greater Minnesota and the metro area. Other contributing factors to recruitment and retention issues, e.g. decline in available attorneys, were also discussed.

There being no objections to acting at the present meeting, a motion was made and seconded to approve implementation of a District Court and Court of Appeals law clerk salary range, effective FY24, contingent on the FY24-25 budget funding and allocation. The motion prevailed.

Council Action

The Judicial Council approved implementation of a District Court and Court of Appeals law clerk salary range, effective FY24, contingent on the FY24-25 budget funding and allocation.

4. Decision Item: Judicial Branch FY24-25 Judicial Branch Budget Request

Judge Joseph Buetel, Chief Judge, Third Judicial District, Treatment Court Initiative (TCI) Co-Chair, presented the TCI recommendations for the Treatment Court FY24-25 Biennial Budget request. He reviewed previous funding recommendation discussions and the TCI recommendation that existing courts below the minimum census requirement be granted an exception and that new courts below the minimum threshold, be funded.

He noted that the sixteen treatment courts that are anticipated to have a reduction in funding for FY24-25 completed an action plan. This included fourteen existing and 2 new treatment courts. Common challenges for all sixteen courts were noted, including jail closures, drug testing facility closures, and the strain of increased substance use and mental health challenges.

Common strategies were also identified:

- Increasing program capacity and/or expanding eligibility;
- Developing new methods to proactively identify candidates;
- Streamlining and/or expediting referral processes; and
- Providing outreach and public education to community stakeholders.

All sixteen treatment courts also identified a contingency plan if no exception or new funding is provided.

It was noted that the question before the Judicial Council is whether to include a request for additional funds in the FY24-25 Biennial Budget Request. Decisions about distribution of treatment court funds will be made after the FY24-25 Biennial Budget is determined.

A motion was made and seconded to adopt the TCI funding recommendation:
Request \$1.2M for FY24-25:

1. Grant a one-time policy exception to continue FY22-23 funding levels through FY24-25 for all courts currently included in the funding formula to account for census challenges posed by the COVID-19 pandemic; and
2. Apply the one-time exception to the 2 new treatment courts that do not meet minimum thresholds for inclusion in the funding formula.

A discussion ensued. Concern was expressed over granting exceptions to the funding formula. It was suggested that the sixteen courts be given time to aggressively explore contingency planning and that the topic be re-visited in January. It was noted that justice partners are aware of the challenges.

It was suggested that the budget request be limited to funding for four recently established treatment courts that were launched through soon-to-expire federal grants.

A vote was taken on the motion to approve the TCI recommended request of \$1.2M for the FY24-25 Biennium. The motion did not prevail.

A motion was made and seconded to bring this treatment court funding discussion back to the Judicial Council in January, that the Council explore internal funding for the 16 treatment courts that would drop a funding bucket/not receive Branch funding in FY24-25, and that \$50,000 each year (\$100,000 for the biennium) for new treatment courts that meet the minimum participant thresholds will be included in the FY24-25 budget request. The motion prevailed.²

Dan Ostdiek reviewed the budget options for inclusion in the FY24/25 Biennial Budget request. Core permanent funding options include:

- Increase judge salaries by 9% in FY24 and 6% in FY25, and establish an employee compensation pool increase of 9% in FY24 and 6% in FY25;
- Fund the employer share of anticipated health care cost increases;
- Provide funds to address the rising cost of providing psychological examinations in criminal and civil commitment cases; and
- Make permanent the temporary increase to contract court interpreter payment rates approved by the 2021 Legislature.

² The funding request amount was subsequently amended to \$422,000 each year.

In addition, several one-time funding options were presented:

- Using senior judges and hiring temporary referees and staff to address the Major Criminal case backlog.
- Hiring temporary staff to assist with evaluation and implementation of the oneCourtMN Hearings Initiative and to support the Judicial Branch's ongoing use of remote hearings.
- Upgrading courtroom technology to support the use of remote hearings, interpreter capabilities, and digital exhibits.
- Extension of the Courthouse Security Grant Program.

A motion was made and seconded to seek funding for four new treatment courts which meet the funding formula threshold. The motion prevailed.

A motion was made and seconded to also request funding for the following permanent and one-time items:

Permanent Funding Items:

- Salary increases: Increase judge salaries by 9% in FY24 and 6% in FY25, and establish an employee compensation pool increase of 9% in FY24 and 6% in FY25;
- Employer share of anticipated health care cost increases;
- Funds to address the rising cost of providing psychological examinations in criminal and civil commitment cases; and
- Permanent increase to contract court interpreter payment rates approved by the 2021 Legislature.

One-time Funding Items:

- Using senior judges and hiring temporary referees and staff to address the Major Criminal case backlog.
- Hiring temporary staff to assist with evaluation and implementation of the oneCourtMN Hearings Initiative and to support the Judicial Branch's ongoing use of remote hearings.
- Upgrading courtroom technology to support the use of remote hearings, interpreter capabilities, and digital exhibits.

The motion prevailed.

Council Action

The Judicial Council approved the FY24-25 Judicial Branch Budget Request including the following permanent and one-time items:

Permanent Funding Items

- Salary increases: Increase judge salaries by 9% in FY24 and 6% in FY25, and establish an employee compensation pool increase of 9% in FY24 and 6% in FY25;
- Employer share of anticipated health care cost increases;
- Funds to address the rising cost of providing psychological examinations in criminal and civil commitment cases;
- Permanent increase to contract court interpreter payment rates approved by the 2021 Legislature; and
- Funding for four new treatment courts which meet the funding formula threshold.

One-time Funding Items:

- Using senior judges and hiring temporary referees and staff to address the Major Criminal case backlog.
- Hiring temporary staff to assist with evaluation and implementation of the oneCourtMN Hearings Initiative and to support the Judicial Branch’s ongoing use of remote hearings.
- Upgrading courtroom technology to support the use of remote hearings, interpreter capabilities, and digital exhibits.

See also the Minutes discussion at #9.

5. Discussion Item: Audit Issues

Jamie Majerus, Internal Audit Manager, State Court Administration, presented a summary of the Office of Legislative Auditor – Child Protection Removals and Reunifications Audit. In response to the finding that “The Judicial Council should consider additional performance measures that more fully reflect statutory priorities for child protection cases “, it is noted that the Branch has performance measures in place and an accelerated process for appellate review of child protection cases. State Court Administration has drafted the following options for follow-up actions to the audit:

- Form a committee to explore additional performance measures to add to MJB Policy.
- Ask the CJI Lead Judges Workgroup to review the audit and recommend future actions to the Judicial Council.
- Continue work on improving court performance in juvenile protection cases through education and support but add no new performance measures to Judicial Council Policy.

There being no objection, the topic of review of performance measures was referred to the CJI judges with a report back to the Judicial Council when the review is completed.

Ms. Majerus also reviewed the internal audit of 10th Judicial District Operations. A discussion ensued on the finding that the district did not follow certain procedures in compliance with Minnesota Judicial Council Policy 523; Storage of Captured Records of Court Proceedings. It was noted that the issue may also exist in other parts of the state. A suggestion was made to direct the Internal Audit Unit to amend the FY23 Audit Plan to include a statewide audit of compliance with the Policy.

Tenth Judicial District representatives noted that efforts to address the findings and written observations have begun. The District will share results with interested districts.

6. Decision Item: IFP Transcript Pilot Project Recommendations

Dawn Torgerson, Deputy State Court Administrator, reviewed the additional IFP Pilot Project data requested at the August Judicial Council Meeting, including data on cost effectiveness, transcript accuracy, and proposed efforts to improve the audio record.

A discussion ensued. It was noted that the cost effectiveness data depicts an estimate of the savings that could reasonably be expected if IFP transcripts were prepared in-house. It was noted that staff costs are not included in the savings estimate. The transcript accuracy data identifies existing issues with compliance with Judicial Council Policy 523; Storage of Captured Records of Court Proceedings, the quality of the audio recording, and issues with tagging, log notes, and uploading of documents into the central repository. These issues are not unique to contract transcribers and need further analysis and attention.

Options for going forward were presented:

1. Option 1
 - a. Extend the Pilot Project by twelve months to September 30, 2023.
 - b. Expand the list of exclusions to the Pilot.
 - c. Give districts the option to include Mental Ill and Dangerous (MID) and Child in Need of Protective Services (CHIPS) cases, and court and jury trials in the Pilot.
 - d. Provide that court reporters must complete transcripts during work hours with exclusions.
 - e. Direct the Internal Audit Division to periodically review compliance during the Pilot.
2. Option 2
 - a. Extend the Pilot Project by twelve months to September 30, 2023.
 - b. Expand the list of exclusions to the Pilot.
 - c. Give districts the option to include Mental Ill and Dangerous (MID) and Child in Need of Protective Services (CHIPS) cases, and court and jury trials in the Pilot.
 - d. Direct the Internal Audit Division to periodically review compliance during the Pilot.
3. Option 3
 - a. Extend the Pilot Project by twelve months to September 30, 2023.

2. Implement a new process for administering the outsourcing of IFP transcripts to reduce demands on court administration and SCAO staff and address issues raised by the auditor.

A review of the history of the Pilot Project was presented. It was noted that in 2016 the Judicial Council held a “Special Topics” session on production of the Court Record. As a result, the Court Record Workgroup was formed. The 2018 Workgroup Final Report recommended that transcript production be brought into the workday. Voluntary pilots were recommended, commencing in 2019. Court Records Management Plans were developed. The pilot project concept was put on hold during COVID. In 2021, as part of the biennial review of transcript rates, the Judicial Council approved a \$1 per page increase in transcript rates and approved the IFP Pilot Project.

It was noted that Option 2 is a compromise. It permits the Pilot to continue and affords the Branch the opportunity to identify improvements to ensure all necessary steps are being taken to produce an accurate record.

A motion was made and seconded to approve Option 2.

A discussion ensued. Concerns were expressed over whether the Pilot was successful and whether continuation would put an unnecessary burden on judges and staff. Concern was also expressed that continuation of the Pilot will not address the issues surrounding the accuracy of the record.

It was suggested that a fourth option be explored: Terminate the Pilot Project; conduct a statewide audit of compliance with Judicial Council Policy 523; Storage of Captured Records of Court Proceedings, and work on improving the audio record.

It was noted that Option 2 allows the Branch to collect information for improvement even if continuation of Pilot Project has limitations. The information gathered during the Pilot will assist in development of future improvements.

The vote was taken on the motion to approve Option 2. The motion did not prevail.

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

Chief Judge Stoney Hiljus, Tenth Judicial District, COPS Committee Chair, presented the Committee’s recommendations on the proposed 2023 Payables List. Chief Judge Hiljus noted that recommendations were solicited from justice partners. Three recommendations were received and reviewed by the Committee:

- The Mendota Heights Chief of Police requested that the Branch consider making the general criminal/traffic surcharge based on violator income.
- The Department of Natural Resources requested changes to the Natural Resources List.

- The Department of Transportation requested changes to the Trucks and Common Carriers List.

In addition, the Committee reviewed whether the \$50 default petty misdemeanor fine amount should be amended.

A motion was made and seconded to make no changes to the list or Judicial Council Policy in response to the Mendota Heights Police Chief request as this issue was addressed by the Legislature. The motion prevailed.

A motion was made and seconded to give preliminary approval of the changes to the Natural Resources and Trucks and Common Carrier lists. The motion prevailed.

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

A motion was made and seconded to give permission to publish the preliminarily approved lists for a 30-day notice and comment period pursuant to the Statewide Payable Offense Policy. The motion prevailed.

Council Action

The Judicial Council approved the following actions related to the 2023 Payables List:

- No changes to the list or Judicial Council Policy in response to the Mendota Heights Police Chief request as this issue was addressed by the Legislature.
- Preliminary approval of the changes to the Natural Resources and Trucks and Common Carrier lists.
- Default petty misdemeanor fine amount to remain at \$50.
- Publish preliminarily approved lists for a 30-day notice and comment period pursuant to the Statewide Payable Offense Policy.

8. Discussion Item: Statewide Interpreter Audit & Minnesota Interpreter and Scheduling Specialist Team (MISST) Update

Shelley Ellefson, Third Judicial District Administrator, provided an update on efforts underway to address the Statewide Interpreter Audit and an update on the establishment of the Interpreter and Scheduling Specialist Team (MISST).

In terms of the audit:

- A statewide workgroup was formed to assess consolidating employee interpreter and interpreter scheduling duties by October 22, 2022.
- Revisions to interpreter policies are in draft stage.

- Training curriculum for scheduling specialists has been updated.
- Communications will be sent to contract interpreters regarding policy and systems requirements.
- System enhancements are on hold pending completion of policy updates.
- Financial analysis has been conducted to identify where repayments are necessary. Repayment collection efforts are underway.

It was noted that a follow up audit will occur after the Branch has implemented strategies to address audit findings and observations.

The history of MISST was noted. In response to several findings and written observations in an internal audit of the interpreter system, it was noted that the creation of the interpreter/scheduling unit will provide the opportunity to promote greater consistency in policy and procedure application and ensure ongoing compliance with the audit recommendations.

It was reported that there are three phases to implementation. The first phase established a new consolidated supervision structure to oversee scheduling specialists for all Districts, excluding the Fourth Judicial District, and was completed as of June 27, 2022.

Phase 2 includes the consolidation of staff interpreters from all districts except the Fourth Judicial District, into MISST with the schedulers and reviewing current financial practice opportunities to increase efficiency and address audit findings. Staff interpreters will join MISST on October 24, 2022. The remaining tasks are in progress.

Phase 3 will explore the feasibility of the Fourth Judicial District scheduling specialists and staff interpreters joining MISST. Initial discussions have begun.

It was noted that a progress report will be presented in about six months.

9. FY24-25 Judicial Branch Budget Request – Part 2

It was reported that the amount to be requested for the Treatment Court Initiative in the approved biennial budget request needs to be revised. The correct amount is \$422,000 per year. Correcting the amount brings the budget request to \$87,718,000 in permanent funding to be requested, a 11.37% increase over the current base budget.

A motion was made and seconded to amend the request to substitute \$844,000 for the \$100,000 in the previously approved biennial request. The motion prevailed.

10. Discussion Item: FY22 Operational Plan Update

Katie Schurrer, Strategic Planning and Projects Manager, State Court Administration, reviewed the FY22 Operational Plan and the accomplishments made to address the Operational Plan priorities.

11. Executive Session

A motion was made and seconded to go into Executive Session. The motion prevailed.

Following discussion, a motion was made and seconded to exit Executive Session. The motion prevailed.

A motion was made and seconded to approve the Third Judicial District Jury Summons changes as a statewide pilot with a report back in one year for consideration of statewide implementation. The motion prevailed.

State Court Administration staff was asked to compile data on the history of juror per diem rates and other out-of-pocket expenses incurred and to report back to the Judicial Council.

It was suggested that the Supreme Court consider amendments to the provisions in the Jury Management Rules that gives Chief Judges authority to order corrective action and changes to the jury process, to better reflect current practices and the role of the statewide jury program.

There being no further business the meeting adjourned.