

Administrative Council
Interactive Video Conference
March 18, 2016

Present:

Chief Justice Gerald W. VandeWalle, Chair
Judge Donovan Foughty
Judge William Herauf
Judge John Irby
Judge Jon Jensen
Justice Carol Ronning Kapsner
Judge Stacy Louser for Doug Mattson
Tracy Peters
Judge Frank Racek
Judge Bruce Romanick
Judge Kirsten Sjue for David Nelson
Judge Jerod Tufte for Dan Narum

Absent:

Judge Laurie Fontaine
Judge Gail Hagerty
Judge Gary Lee
Sally Holewa

Staff:

Scott Johnson

Others Present:

Rod Olson
Carolyn Probst
Jeff Stillwell
Donna Wunderlich
Don Wolf

Minutes:

Renee Barnaby

Chief Justice Gerald VandeWalle called the meeting to order at 10:00 a.m. and noted that Judge Dan Narum is the new presiding judge of the Southeast District. Judge Narum was unable to attend the meeting.

Minutes

It was moved by Judge Herauf, seconded by Justice Kapsner, to approve the September 11 and December 11, 2015 meeting minutes. The motion carried.

Weighted Caseload and WAPC Studies

Don Wolf said in 2015, the total judicial officer need is 66.9 positions, which is an increase of 1.3 as compared to 2014. The largest increase in judicial officer need as compared to 2014 is in the South Central with an increase of 1.39 and the North Central with an increase of .81. The largest decrease in judicial officer need is in the Northwest and they had a decrease of .61. However, the 2015 judge need in the Northwest is still an increase of .59 as compared to 2013.

Mr. Wolf said the 2014-15 weighted caseload average shows a total judicial officer shortage of 8.26. This compares to the shortage in the 2013-14 study of 9.79. The net decrease in judicial officer need is 1.53 between the two studies. However, the 2014-15 study reflects the addition of four new judges and the decrease of one referee in the Northeast Central, which is still vacant. The districts with the largest judicial officer shortage are the South Central at 2.31, the Northwest at 2.27, and the North Central at 2.2. The only district showing a judicial officer overage is the Northeast, however, they did show an increase of judicial officer need of .18 as compared to the 2013-14 study.

Mr. Wolf then drew attention to the referee weighted caseload. He said the 2014-15 referee shortage is 1.57, which is an increase of .98 as compared to the 2013-14 study. The overall increase in the referee need is primarily due to the vacant referee position in the Northeast Central. The districts with the largest referee shortage are the Southeast at .77 and the Northwest at .71.

With regard to the law clerk weighted caseload, the 2014-15 law clerk shortage is 3.49, which is a decrease in the total law clerk need of .54 as compared to the 2013-14 study. The districts with the largest law clerk shortage are the Northwest with a 1.21 shortage and the South Central with a 1.17 shortage.

WAPC

The 2014-15 WAPC study is showing a total clerk need of 164.92 positions, which is a decrease of .47 FTE as compared to the 2013-14 average of 165.39. State employed clerk offices with an FTE shortage of greater than 1 FTE include Cass, Grand Forks, Ward, Williams, McKenzie, Burleigh, Morton, and Stark Counties. Burleigh, Williams and Ward Counties have the largest shortage. The total FTE shortage for the 14 state funded counties is 21.13 FTEs. This does not factor in the two temporary clerk positions, one of which is located in Ward and the other in Stark Counties. There is also five contract clerk positions that are not factored in, one in Cass, one in Burleigh, one in Morton, and two in Williams Counties. There are 12 county operated/state funded counties that have an FTE need of greater than one and have the option to become state employed clerk offices for the next biennium. These counties are Benson, Bottineau, Divide, Dunn, McHenry, McLean, Mercer, Mountrail, Pembina, Pierce, Ransom, and Traill Counties.

In response to a question asking if any of the 12 counties are looking at becoming state funded, Mr. Wolf responded that he is not aware of any at this time.

With regard to the discussion concerning the need for any judges or staff in the next biennium, Chief Justice VandeWalle said the court system will most likely not be requesting any new FTEs. He said he believes during the next session, it may be difficult to retain the current FTEs.

Judge Racek noted that court system currently reimburses contract counties for 100% of the WAPC need where in the state funded courts, we are 21 FTEs short of the WAPC need, which is significantly below the 100% reimbursement. He noted Unit 2 is leaving four positions empty for the rest of the biennium in addition to the WAPC shortages, which creates quite a hardship. He suggested if cuts are necessary for the next biennium, that consideration be given to the contract county payments.

Chief Justice VandeWalle noted one of the problems would be cutting in counties when there is only 1 FTE. He suggested the legislators may not support that request.

Judge Racek said there are two significant areas where progress could be made in the rural counties. The first area is processing traffic cases, which can now be done electronically. The state is subsidizing the counties that do not want to make the investment in the electronic equipment by more FTEs in the clerk's office. The second area is child support, which the court administrators are current reviewing. There is a lot of duplication because we still maintain two systems. He said in addition to cutting funds, the FTE need could also be reduced by making progress in those two areas as well.

Chief Justice VandeWalle said Judge Racek's suggestions will be considered.

Jury Utilization Reports

Scott Johnson stated in 2001, the Council of Presiding Judges adopted the standard formula the court uses to determine the number of jurors called by case type. In 2003, the court adopted a recommendation from the National Center for State Courts that 90% of jurors called should reach voir dire. He said no district has achieved that standard in the past five years. In reviewing the 2015 statistics, in 88% of the jury trials where jurors were sworn, excess jurors were called beyond the formula standard. Out of the 244 jury trials in 2015, there were only 12 cases where fewer jurors appeared than the formula allowed, and four of those cases had insufficient jurors to go to trial. He said Sally Holewa notes in her memo that roughly 1,750 jurors were called that were not needed, and the cost for their fees was \$43,675. That figure does not include the mileage, which would increase that cost by three times. Mr. Johnson said the central issue is not cost but rather it is public trust and confidence in our jury processes. Overall, the court system lacks credibility when the standards are routinely set aside. He said the Jury Standards Committee, chaired by Judge Feland, will be discussing the topic at their June meeting.

Judge Herauf said one of the concerns is that attorneys suggest a case may be high-profile, and rather than having a scenario where we are sending a sheriff out to immediately locate citizens for jury service, extra jurors are called so the trial is not delayed.

In response to a question from Justice Kapsner asking why so many excess jurors are called in misdemeanor cases, Judge Romanick responded in the South Central District, they stack cases, both felony and misdemeanor. They have to call enough jurors for a felony case. If the case that does go to trial is a misdemeanor, the clerk has had to prepare for a felony because it may not be settled the day before.

Rod Olson noted that in Unit 2, if they have a felony trial that settled and a misdemeanor is a backup, the clerks are instructed to run a random list the night before and inform the excess jurors they do not need to report. He said they sometimes have significant cases where large numbers of jurors are brought in because with the publicity about the case, and it is uncertain how many jurors will be needed. It can be a challenge to estimate the appropriate number of jurors on some of those cases. Judge Racek added that people are informed early in the process that they need to call after 4 p.m. the day before and listen to the recorded message to get the final instructions.

Judge Romanick noted that a DUI case can be just as difficult to find jurors as a high profile case. In almost every DUI trial, there are jurors that have previously served on a DUI case so then it is an automatic cause challenge for the attorneys. When the minimum number of jurors are brought in on a DUI case, it is questionable whether they are going to have enough. He said he is unsure if that is noted in the statistics, but he has sent the sheriff out to locate jurors and it is not an optimum process for the person who has to serve.

Judge Tufte recalled a case in the Southeast District where several minutes before trial, the prosecutor was unable to prove terrorizing so it was amended to disorderly conduct. He said he is unsure if the statistics capture the original charge or the charge of conviction.

In response to a question from Chief Justice VandeWalle on whether there are any statistics gathered on the reaction of people who are called to serve and then canceled the night before, Donna Wunderlich said her unit only surveys the jurors that actually deliberated. To the best of her knowledge, there is no data on those who were canceled. Chief Justice VandeWalle suggested consideration be given to sending out a survey to citizens who do not actually sit on the jury panel.

Additionally, Chief Justice VandeWalle said it will be up to Jury Standards Committee to review the matter and come up with a recommendation and further noted this has been an ongoing problem for quite some time.

Criminal Case Initiation

Scott Johnson stated the court is working with CJIS to develop an electronic interface between Odyssey and JustWare. The project is called eCharging. The goal of the project is to allow state's attorneys to initiate criminal cases through the interface rather than filing them in paper. The workgroup has brought forward two issues. The first issue is whether a criminal complaint can be filed into Odyssey and a case created before it is reviewed by a judge or whether a process should be created to route the complaint to the judge to determine probable cause before a case is

created in Odyssey. If no probable cause is found, the complaint can be returned to the state's attorney. The second issue is whether or not a case should be created if probable cause is not found so that there is a record of that judicial determination. Mr. Johnson said the court's case management system can accommodate both methods, but brings up two questions: first, should there be one statewide method for handling criminal case processing; and two, should a general administrative file be created to accommodate judicial determination of no probable cause.

Judge Racek said in the East Central everything, even misdemeanors, is commenced with the filing of an information. The clerks open a file so it has a case number before it is sent to the judge. If for some reason the judge is unwilling to sign the arrest warrant, then the judge makes a notation that there wasn't any probable cause. Logistically, the importance for this method for the court system is to reduce the number of times the documents are handled. He noted the older method of having law enforcement bring the complaint to the courthouse to be signed in the presence of a judge may be eliminated in the near future as the Information Technology Department is working on a process to pass the information electronically.

In response to a question asking if the file could be deleted from the system if the judge does not find probable cause, Judge Racek responded that a better alternative might be to seal the file. If a file is sealed, it is not available to the public or any outside source. So, in essence, it is unavailable to everybody but the court.

Judge Romanick noted in the South Central District they are still doing a complaint and then change it to an information at arraignment if probable cause is found. He said there are exceptions. They can file uniform traffic citations other than traffic events without a judge doing probable cause but the judge signs the formal complaint. McLean County uses the same process as the East Central.

Judge Jensen said in the Northeast Central District they sign the summons or the warrant like the East Central except the case is not filed. They receive a paper copy then they initiate the case after that, however, he has no objection to filing the case first.

In the Southeast District Judge Tufte said most are reluctant to make a determination on something that is not yet filed. He said they have had a couple of cases where probable cause is not found, and the exact same case is filed again with a second judge who is unaware another judge has already rejected it. It would be beneficial to have a previous finding in the record. The clerk can add a notation to avoid the risk of "judge shopping".

Judge Louser stated that the North Central District still has the law enforcement officer present the affidavit to the judge.

With regard to the Northwest District, Judge Sjue stated their process is similar to that used in the South Central. She noted there has been some resistance from the state's attorney's office to use

the electronic software. They prepare written complaints and one of the judges reviews them before a case is opened in Odyssey.

Judge Sjue questioned how much information would be visible if a file is sealed. For example, is there a case number where you can see that someone had tried to get a warrant but it was denied? Judge Racek responded you can seal the entire case or just a document. If the entire case is sealed, not even the defendant's name or who the parties are is accessible to the public. Jeff Stillwell added that only the judge who sealed it would actually have access and even IT staff or a clerk would not have access.

Judge Herauf said in the Southwest District the cases are filed and then routed to the judge.

Judge Foughty was not available to comment on the process in the Northeast District.

Judge Racek commented that the legislature has now funded the availability for all of the state's attorneys statewide to get JustWare at no cost. Previously, there was a monthly fee per user.

It was moved by Judge Racek, seconded by Judge Jensen, to develop a process between JustWare and Odyssey where the case is processed and the file is opened and then routed to the judge.

Chief Justice VandeWalle questioned if the file should be sealed if probable cause if not found. Judge Racek noted a rule change would be needed to make it automatic.

The motion carried.

Protection Order Forms

Scott Johnson explained there is an issue transmitting information from protection orders to law enforcement. The first concern is the transmitted document does not include minor children and other parties because it lacks the capability through interface. The second concern is the information transmitted may indicate that the petitioner is a protected person when in fact the petition was filed on behalf of someone else, and the actual individual that protection is sought for is not being picked up by the system. The court system has worked with BCI to correct the interface with programming that will transmit the information for anyone designated in the order as a protected party. The proposed changes to the forms are before the Council for review.

It was moved by Justice Kapsner, seconded by Judge Romanick, to adopt the offered amendments.

Judge Jensen questioned the reference to "protected party's residence" on the Disorderly Conduct Restraining Order form and suggested the word "any" be placed in front of "protected party" to include multiple parties.

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With the consent of the second, **the motion was modified to add the word “any” before the words “protected party” in the second sentence of the second to last paragraph on the Disorderly Conduct Restraining Order form. The motion carried.**

Temporary Disorderly Conduct Restraining Order

Scott Johnson explained the Odyssey User Group has requested that the Temporary Disorderly Conduct Restraining Order be amended to include the name the of the hearing officer. If approved, the field would be inserted in paragraph 3 immediately following the date of the hearing.

It was moved by Judge Jensen, seconded by Judge Herauf, to approve the proposed change. The motion carried.

The meeting adjourned.