

COURTS COMMITTEE AGENDA

January 21, 2010 AT 8:00 A.M.

PLEASE NOTE: This meeting will be held in Courtroom 2 Jury Room.

- **Review and Approval of Minutes**
- **Winona's case clearance rate and default omnibus hearings – Judge Bostrack and Judge Thompson**
- **Criminal voir dire – Judge Thompson**
- **Domestic abuse risk assessment bench guide – Judge Thompson**
- **Shelter for pets of domestic abuse victims – Judge Thompson**
- **DWI sentences – Brian Glodosky**
- **E-complaints - Chuck MacLean**
- **Misdemeanor work group – Sally Cumiskey**
- **Parking warrants – Brian Glodosky**

Next Meeting Date:

February 18, 2010

CJCC COURTS COMMITTEE MEETING

January 21, 2010

Present: Judge Bostrack, Duane Hebert, Brian Glodosky, Judge Thompson, Matt Hudson, Sherri Brekke, Carmaine Sturino, Julie Thompson, Marsha Metzler, Julie Koop, J.P. Plachecki, Sue Smelser, Chris Ledebuhr, Judy Gilow, Marge Oium, Karin Sonneman, Tami Mueller, Aarah Saugen, Steve Buswell, Chuck MacLean, Kalene Engel, Lynne Caldwell

Purpose: The purpose of the Committee is to make court case scheduling and case management more effective, efficient, and convenient. Meetings shall provide an opportunity for open discussion on scheduling issues while keeping a record of areas of agreement and issues in scheduling.

The meetings are held the third Thursday of every month at 8:00 a.m. in the jury room adjacent to Courtroom 2. The next regular meeting will be held on Thursday, February 18, 2010.

Discussion:

Review and approval of December meeting minutes

Winona's case clearance rate, default omnibus hearings – Judge Bostrack, Judge Thompson: Judge Bostrack discussed a new arrangement wherein two Wednesdays a month would be blocked off on the calendar for default omnibus hearings. The courts started this on Wednesday, January 20th. If contested hearings are requested, motions will be filed at the default omnibus hearings. A contested hearing date will not be set at the default hearing unless a motion is filed. In the case where there are discovery issues, not guilty pleas will be entered, omnibus issues reserved, and motions filed within 28 days.

Judge Thompson suggested creating a subcommittee of the Courts Committee for the purpose of further discussing Winona's case clearance rates. Karin Sonneman, Chuck MacLean and J.P. Plachecki agreed to be a part of the subcommittee.

Criminal voir dire – Judge Thompson: Judge Thompson expressed that there could be improvement in the way voir dire is conducted. He handed out an article from the Court of Appeals suggesting the elimination of attorney voir dire and replacing it with the federal system. Judge Thompson said he is generally against this idea but sometimes thinks it may be beneficial.

an individual who was a court of appeals judge

Domestic abuse risk assessment bench guide – Judge Thompson: The bench guide was received from state court administration. One thing mentioned in the guide was not to elicit safety or risk information from victims in open court. The judges agreed that victim names would stay off the record, but the names are required to be listed in the order.

Shelter for pets of domestic abuse victims – Judge Thompson: Judge Thompson referred to an article in the Minneapolis Star Tribune regarding a program developed by the City of Minneapolis for pets of domestic abuse victims. The article discussed how pets are often targeted by domestic abusers and become a tool of control. Judge Thompson thinks some

kind of similar program is a good idea for Winona. Chuck MacLean said the local Humane Society is willing to come out to a home to pick up a pet.

DWI cases and sentences – Brian Glodosky: Mr. Glodosky expressed concern with omnibus hearings for misdemeanor cases. He feels as though the process is too slow and drawn out. The criminal rules allow the Rasmussen hearing to be held the morning of trial, and he would like to see this implemented. Judge Bostrack suggested that if a legitimate motion is filed after arraignment, an omnibus hearing would be held. If no motion is filed, a not guilty plea would be entered and the case would be set for trial. If an issue came up, it could be heard right before trial.

Mr. Glodosky also said the dispositions after a DWI trial often end up being the same as dispositions in cases where the defendant pled guilty in traffic court. He feels that as a prosecutor, he has nothing to offer defendants to encourage settlement.

The group proceeded to discuss waiving the ^{co-pay} surcharge for defendants represented by public defenders. Judge Bostrack has seen a lot of inconsistencies among judges regarding this issue. There was talk about individuals obtaining a public defender when they did not qualify for one.

E-complaints – Chuck MacLean: Mr. MacLean has attended three presentations on e-complaints. Four pilot counties in the state are now actively pursuing e-complaints. Mr. MacLean said the e-complaint system is probably of more value in a county with a larger geographic reach than Winona's. He recommends that Winona County wait to pursue implementation of e-complaints until more of the bugs have been worked out. It was agreed that the Courts Committee would return to the discussion of e-complaints six months down the road.

Parking warrants: Judge Thompson said that while attending judicial council meetings, the Supreme Court staff attorneys spoke to him about the way Winona handles parking warrants. Judge Thompson says he will not sign any more warrants until the issue gets settled. The Committee will return to this topic next month.

Next regular meeting: February 18, 2010 at 8 a.m.

Next agenda:

**Review and approval of minutes
Misdemeanor work group
Parking warrants**



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January 20, 2010

Hon. Nancy L. Bostrack
Hon. Mary C. Leahy
Hon. Jeffrey D. Thompson
Judges of District Court
Winona County Courthouse
171 West Third Street
Winona, Minnesota 55987

RE: Input regarding case aging & the role of the Courts Committee

Dear Judges:

We write to express our concerns regarding case clearance rates in Winona County. As we have all labored under a mountain of work with insufficient staff, we have all strived to find efficiencies, and have tried a number of options, some of which helped and some of which did not. So today we find ourselves finally resolving or trying cases that arose in 2008, and at least two inmates of the Winona County Jail have been awaiting disposition of their cases since 2008, as they languish in jail. Perhaps our best efforts and creative ideas have, at times, yielded unintended consequences. These comments are not the final word, and we don't have all the answers, but these are some critical issues and questions that must be addressed.

The Role of the CJCC

The Winona County Criminal Justice Coordinating Council ("CJCC") was formed to provide a forum and an alliance to help the Winona County criminal justice system provide due process during tough budgetary times. But, we have been dismayed that the majority of the efforts carried out under the aegis of the CJCC seem to have been at the margin, or have focused on pushing pet projects rather than addressing the true CJCC quest, to ensure due process in tough budget times.

The real problems adversely affecting due process in the Winona County criminal justice system are not prison release programs or diversion program details or in-jail programming. The real problems are related to the utter lack of adequate funding for key roles in the system, e.g., the Courts, Court staff, and most of all, public defender resources. But instead of focusing on those real problem areas, the CJCC seems to have focused predominantly on the periphery, on the minutiae.

In sum, the real role of the CJCC is to work together to ensure due process in tough budget times. Let's re-dedicate ourselves to that mission.

The Role of the Courts Committee

The Courts Committee has worked for years to find ways to "tweak" the system to make it more effective. But our efforts, while sometimes helpful, and always well-intentioned, have sometimes backfired in the extreme. Here are a few examples of backfires to date, and a few new suggestions:

Default Omnibus Hearings – At this point, the practice is for the defense attorney, at the Rule 8, to request a default Omnibus hearing, which is often set as much as 2-3 months out. Then as the default Omnibus approaches, the defense attorney decides there is an issue the attorney wishes to litigate. Then at the default Omnibus, the defense attorney asks that the matter be set on for contested Omnibus hearing at a subsequent date. Often, at the subsequent contested Omnibus, the defense attorney waives all Omnibus issues, then the matter is set for Settlement Conference after which the matter is then finally set on for pretrial/jury trial. At other times, the contested Omnibus is held, a briefing schedule is set, briefs are filed, a Court order and memorandum are issued, an Arraignment date is set about a month out, and then at the Arraignment, the pretrial/jury trial dates are finally set (sometimes after a Settlement Conference is sandwiched in between). Add it up – that can amount to a year from start to finish. We propose that the Court consider discontinuing the default Omnibus approach, require the prosecutor to make all available disclosures within five working days of the Rule 5, set all Rule 8's exactly 14 days after the Rule 5, then require the defense attorneys, at the Rule 8, to either waive or demand contested Omnibus [also requiring that the specific Omnibus issue(s) be identified at the Rule 8 hearing]. This will require expedited notice of which defense attorney is appointed/retained.

Settlement Conferences – At this point, Settlement Conferences are set in many felony cases, and are only rarely successful. That low success percentage is not the real problem with Settlement Conferences. Rather, the problem is the delay. A case is set for default Omnibus (set out 2-3 months), then at the default Omnibus, the defense counsel waives Omnibus, and the matter is set on for Settlement Conference (again, 1-3 months out). Then at the Settlement Conference, few cases are settled, and are instead set on for pretrial/jury trial (again, about 2-3 months out). The delay is the issue – again closing in on a year before trial in even a routine case. We recommend that Settlement Conferences be discontinued in all cases except where the Defendant is not English-speaking, and a Settlement Conference enables defense counsel to meet with the client with an interpreter present. Finally, attorneys need not (and usually ought not) involve judges in settlement discussions. Instead, attorneys should settle cases earlier the old-fashioned way – with the attorneys meeting with each other ahead of time in their offices, on the phone, or via e-mail or letter. We need not exhaust precious court time for this part of the process.

Pretrial Furloughs – When one reviews the Case Clearance study details, one can see the problem sort of comes and goes, and Winona is not as far off the pace as may first appear. But another thing is clear, serious DUI cases have a very low clearance rate in Winona County (near 40/100). This is often caused by Defendants charged with serious DUI cases seeking furloughs for treatment, which can stretch on-and-on. This pretrial furlough problem is not restricted to serious DUI cases, of course, but is often abused leading to tremendous delay in case resolution and clearance. One egregious example is Tyler Hall. He has been in custody status since October 4, 2008 (384 days) awaiting resolution of his cases. That period included a four-month furlough and a three-day escape. He remains in custody awaiting sentencing after his November 19, 2009 plea (over a year after his initial arrest). In a recent DUI case, Jordan Blevins was charged with felony DUI. His case was set for a jury trial to commence on July 21, 2009. Defense counsel sought a continuance based upon Blevins's treatment status on July 8, 2009. That continuance was granted and the jury trial was reset for October 19, 2009. Due to additional delays, Blevins's DUI case is now set for jury trial February 22, 2010. In essence, his treatment furlough triggered a sequence that led to an additional seven months of delay. We recommend the Court discontinue or much more sparingly grant pretrial furloughs of all kinds.

Delay Tactics – In some cases, it appears the defense continues a hearing (or continues a series of hearings) as a dodge. A couple examples are instructive. Michael Goodwin was arrested on April 11, 2009. He escaped and was recaptured. A default Omnibus hearing was requested and set. At the default Omnibus hearing on August 13, 2009, the defense attorney asked instead for a contested Omnibus hearing. In a later-filed motion for continuance, the defense attorney indicated the case involved complex legal issues. The contested Omnibus hearing was set for January 9, 2010. At that contested Omnibus hearing, the defense counsel waived all Omnibus issues. The Defendant then waived jury trial, and the Court Trial is now scheduled for March 23-25, 2010, more than eleven months after the incident. Most of that is inexcusable and indefensible delay. Or the case of Anthony Brown in which he was charged on November 19, 2008 for an incident on November 18, 2008. The defense demanded a contested Omnibus hearing on December 18, 2008. After a series of a half-dozen continuances or so, occasioned by the defense, that contested Omnibus hearing was finally set on for October 1, 2009, nearly eleven months after the Complaint was filed. At that contested Omnibus hearing, the defense counsel waived Omnibus issues and the matter was finally set on for jury trial on January 25, 2010, fourteen months after the Complaint was issued. We recommend the Court more searchingly consider continuance motions where a pattern has been exhibited in that case or by that counsel.

Public Defender staffing/officing in Winona County – There is no longer any doubt that the few public defenders appearing in Winona County courts can no longer ensure due process and adequate representation for their clients. We – those of us in the system – owe Defendants much more than that – we owe them due process – we swore to uphold their right to due process. We need to do much more than complain and try to keep our noses above water. While the CJCC has been absorbed in creating new programs at the periphery of the criminal justice system, we have ignored the core – due process for

criminal defendants facing charges. It is no longer defensible for the CJCC to tinker at the margins, the CJCC needs to jump in. And if any CJCC sub-committee has the imprimatur to affect the core, it is the Courts Committee. We recommend the CJCC find funding (donations, grants, whatever we can drum up) to open and staff a public defender office in Winona County (possibly in the Courthouse, but if not, then very nearby). The public defenders are operating on a shoestring with no administrative support and no central physical office at all – some are almost officing out of their cars – their cellphones are their lifelines. Perhaps the County could dig up space in the Courthouse or in the County Office Building expansion building across the street, and provide that free of charge during this budget challenge. That could happen if the CJCC were only to ask. Furthermore, there are three institutes of higher learning in the City of Winona that could provide students for extended internships or externships with the local public defenders – paralegals, criminal justice majors, legal secretary students, etc. If a stipend were required to attract such free staff for the local public defenders, then perhaps the CJCC can help find the funds.

Preplea Sentencing Worksheets – At this time, preplea sentencing worksheets are requested near the end of the process as trial dates draw near. In other counties, the Department of Corrections creates a reliable, thorough, and accurate pre-trial criminal history report in every felony case at the beginning of the case. Then that accurate criminal history report, throughout the pendency of the case, forms the undergirding for settlement discussions and the like. Waiting until the end of the process to create a reliable criminal history report slows the system down. An often inaccurate or incomplete Bail Study created at the beginning of the process (as we have now) does not help anyone. If the DOC were given three-four weeks (from the Complaint date or first appearance) to prepare a criminal history report for every felony defendant, that would save everyone else in the system from having to do their own back-of-the-envelope criminal history estimate on the fly, will ensure more accurate and earlier plea negotiations, and reduce surprises when the sentencing worksheet is eventually prepared.

Pro bono representation – Although we have floated this idea up, the local Bar did not step up. We recommend that the Bench or others extend personal invitations to area attorneys to attract some pro bono volunteers to step in where public defender resources are insufficient.

Enhanced capacity to visit with clients – It is a recurring challenge for public defenders to visit with their clients in a timely fashion. That just delays the whole criminal justice process, increasing all our costs, and leaving some public defender clients in custody longer than due process would require (or allow). This problem has only accelerated of late as Winona County continues to house prisoners in other County jails, which have very challenging procedures for outside attorneys wishing to speak with their inmates. Perhaps the CJCC can recommend that area County jails loosen their attorney-inmate contact rules (such as by phone) so that public defenders are not forced to travel hours roundtrip (hours they do not have) to speak face-to-face with their clients. Or perhaps the CJCC could recommend that ITV or CCTV equipment be installed in area jails to facilitate electronic meetings between inmates and their attorneys. In some

circumstances, the Winona County Sheriff will also agree to bring an inmate to the Winona County Jail for face-to-face discussions when that might be fruitful.

Consolidation of Rule 5/8 hearings – At present, especially since discovery is sometimes delayed, or where defense attorneys have had insufficient time to review the discovery that has been timely disclosed, defense attorneys set the case on for default Omnibus just to keep all the balls in the air. But if the public defender appointments are accelerated, perhaps those disclosures can be made before the Rule 5 such that the defense counsel can make a reasoned choice to consolidate the Rule 5 and Rule 8 hearings and at that very first appearance, have enough familiarity with the file to either demand or waive evidentiary hearings.

The prosecutors are part of the problem and part of the solution – As of now, prosecutors sometimes are late in sending discovery to the defense, and sometimes neglect to obtain and disclose electronic discovery (audios, videos, photos, etc.). Prosecutors also have been known to wait around for hearings to approach before they reach out with meaningful plea offers. We recommend the Courts Committee consider strongly suggesting that prosecutors: (1) make all extant discovery available to the defense within five working days of the Rule 5, (2) explore and develop an electronic discovery approach whereby discovery would be available on-line to appointed and retained defense counsel without waiting for the US Mail to deliver it in hard copy, (3) extend earlier plea offers, and (4) extend offers that provide clear and palpable benefits to defendants who resolve their cases sooner than later.

In summary, the CJCC, and most especially the Courts Committee, have strived to improve the system, but some of those efforts have backfired. Furthermore, the CJCC itself has lost its way, focusing on new whiz-bang or feel-good programs at the periphery rather than focusing on the core of the criminal justice system's current budgetary challenges. We hope the CJCC and the Courts Committee will consider some of these suggestions in the light they are intended, as an effort to use our CJCC alliance to improve our system at the core, and provide due process and justice even in these daunting budgetary times.

Thank you for your consideration and courtesies.

Very truly yours,
WINONA COUNTY ATTORNEY'S OFFICE



Charles E. MacLean
Winona County Attorney



Kevin P. O'Laughlin
Asst. Winona County Attorney & Criminal Team Leader

VOIR DIRE CAUTION:

VOIR DIRE IS AN OPPORTUNITY FOR THE ATTORNEYS TO QUESTION JURY PANELISTS FOR THE PURPOSE OF DISCOVERING INFORMATION THAT WILL HELP THEM MAKE INTELLIGENT DECISIONS ABOUT MAKING CHALLENGES FOR CAUSE AND IN EXERCISING THEIR PEREMPTORY CHALLENGES.

VOIR DIRE IS NOT A TIME TO INDOCTRINATE THE JURY IN AGREEING WITH YOUR VIEW OF THE FACTS OR THE LAW. IT IS NOT A TIME TO BUILD RAPPORT WITH THE JURY. JURORS CANNOT BE ASKED TO MAKE ANY PROMISES. THEY NEED NOT ANSWER ANY BAR EXAM QUESTIONS TO SERVE AS JURORS.

THE ONLY OBLIGATION OF JURORS IS TO DECIDE THE CASE FAIRLY BASED UPON THEIR DETERMINATION OF THE FACTS APPLYING THE LAW GIVEN THEM BY THE COURT.

THIS IS A TIME TO GET INFORMATION FROM THE JURY, NOT TO ARGUE YOUR CASE.

THIS IS YOUR OPPORTUNITY TO LISTEN TO THE JURORS, NOT TO LECTURE THEM ABOUT YOUR VIEW OF THE FACTS OR THE LAW.

THIS IS A TIME TO GET INFORMATION FROM THE JURORS ABOUT THEIR BACKGROUNDS, BELIEFS AND PREDJUDICES, NOT TO GET THEM TO PROMISE TO DO OR NOT DO THINGS.

ANY ATTEMPT BY ANY ATTORNEY TO USE THIS VOIR DIRE FOR AN IMPROPER PURPOSE WILL BE PROMPTLY STOPPED BY THIS JUDGE. ANYONE HAVING TO BE WARNED WILL ALSO RISK HAVING FURTHER IMPROPER VOIR DIRE TERMINATED.

Domestic Violence Risk Assessment Bench Guide

*A research-based bench guide for use by Minnesota judges
at all stages of family, Order for Protection, civil or criminal involving domestic violence*

Note: The presence of these factors can indicate **elevated risk** of serious injury or lethality. The absence of these factors is not, however, evidence of the absence of risk of lethality.

1. Does alleged perpetrator have access to a **firearm**, or is there a firearm in the home?
2. Has the alleged perpetrator ever used or threatened to use a **weapon** against the victim?
3. Has alleged perpetrator ever attempted to **strangle** or choke the victim?
4. Has alleged perpetrator ever **threatened to or tried to kill** the victim?
5. Has the **physical violence increased in frequency or severity** over the past year?
6. Has alleged perpetrator **forced** the victim to have **sex**?
7. Does alleged perpetrator try to **control** most or all of victim's **daily activities**?
8. Is alleged perpetrator constantly or violently **jealous**?
9. Has alleged perpetrator ever threatened or tried to commit **suicide**?
10. Does the **victim believe** that the alleged perpetrator will re-assault or attempt to kill the victim? *A "no" answer does not indicate a low level of risk, but a "yes" answer is very significant*
11. Are there any pending or prior Orders for Protection, criminal or civil cases involving this alleged perpetrator?

These risk assessment factors are validated by a number of studies. See Campbell, Jacquelyn, et al., "Intimate Partner Violence Risk Assessment Validation Study: The RAVE Study Practitioner Summary and Recommendations: Validation of Tools for Assessing Risk from Violent Intimate Partners", National Institute of Justice (December, 2005); Heckert and Gondolf, "Battered Women's Perceptions of Risk Versus Risk Factors and Instruments in Predicting Repeat Reassault", Journal of Interpersonal Violence Vol 19, No 7 (July 2004).

How To Use The Domestic Violence Risk Assessment Bench Guide

- **Obtain information regarding these factors through all appropriate and available sources**
 - Potential sources include police, victim witness staff, prosecutors, defense attorneys, court administrators, bail evaluators, pre-sentence investigators, probation, custody evaluators, parties and attorneys
- **Communicate to practitioners that you expect that complete and timely information on these factors will be provided to the court**
 - This ensures that risk information is both sought for and provided to the court at each stage of the process and that risk assessment processes are institutionalized
 - Review report forms and practices of others in the legal system to ensure that the risk assessment is as comprehensive as possible
- **Expect consistent and coordinated responses to domestic violence**
 - Communities whose practitioners enforce court orders, work in concert to hold alleged perpetrators accountable and provide support to victims are the most successful in preventing serious injuries and domestic homicides
- **Do not elicit safety or risk information from victims in open court**
 - Safety concerns can affect the victim's ability to provide accurate information in open court
 - Soliciting information from victims in a private setting (by someone other than the judge) improves the accuracy of information and also serves as an opportunity to provide information and resources to the victim
- **Provide victims information on risk assessment factors and the option of consulting with confidential advocates**
 - Information and access to advocates improves victim safety and the quality of victims' risk assessments and, as a result, the court's own risk assessments
- **Note that this list of risk factors is not exclusive**
 - The listed factors are the ones most commonly present when the risk of serious harm or death exists
 - Additional factors exist which assist in prediction of re-assault
 - Victims may face and fear other risks such as homelessness, poverty, criminal charges, loss of children or family supports
- **Remember that the level and type of risk can change over time**
 - The most dangerous time period is the days to months after the alleged perpetrator discovers that the victim
 - might attempt to separate from the alleged perpetrator or to terminate the relationship
 - has disclosed or is attempting to disclose the abuse to others, especially in the legal system

COURTS COMMITTEE AGENDA

February 18, 2010 AT 8:00 A.M.

PLEASE NOTE: This meeting will be held in Courtroom 2 Jury Room.

- **Review and Approval of Minutes**
- **Misdemeanor work group – Sally Cumiskey**
- **Parking warrants – Brian Glodosky**
- **Review of committee goals and work groups – Kalene Engel, Judge Bostrack**

Next Meeting Date:

March 18, 2010

CJCC COURTS COMMITTEE MEETING

February 18, 2010

Present: Judge Bostrack, Sherri Brekke, Carmaine Sturino, Sally Cumiskey, Marsha Metzler, Julie Koop, Lynne Caldwell, Sue Smelser, Marge Ouim, Chris Ledebuhr, Lori Larsen, Tami Mueller, Bruce Nelson, Kalene Engel, Melissa Graner

Purpose: The purpose of the Committee is to make court case scheduling and case management more effective, efficient, and convenient. Meetings shall provide an opportunity for open discussion on scheduling issues while keeping a record of areas of agreement and issues in scheduling.

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Discussion:

Review and Approval of January Meeting Minutes: A modification should be made on page 2, regarding the DWI cases and sentencing discussion topic. The word "surcharge" in the third paragraph should be changed to "co-pay."

Minor changes to the criminal voir dire discussion topic are also necessary. Judge Thompson received the article from an individual who is not a Court of Appeals judge; the article is not from the Court of Appeals.

Misdemeanor Work Group – Sally Cumiskey, Carmaine Sturino: The first MEGA settlement day is on February 19, 2010. Nineteen individuals are appearing who have many files pending before the court. Ms. Sturino feels that the process has gone well so far. The committee will have another report next month to discuss the outcomes of the settlement day.

Parking Warrants – Bruce Nelson: Changes have been made as to how parking warrants are issued. They will now be administrative citations.

Review of Committee Goals and Work Groups – Judge Bostrack and Kalene Engel: A chart was passed out detailing the committee's various work groups and their members. Many of the work groups no longer meet on a regular basis. It was decided that the chart would be color-coded by Kalene Engel to reflect the status of the work groups. One color will be for work groups where goals are accomplished and the group is done meeting. The Rule 15 in Spanish work group is in this category. Another color will be used for groups who are working on accomplishing their goals and are actively meeting at this time. The Case Clearance Rates, Soundproofing, and Conciliation Court work groups are in this category. The third color will be used for groups that are not actively meeting, but are remaining intact, should an issue that requires their attention come up in the future. The balance of the committee's work groups are included in this category.

The Sentencing Checklist work group will be re-named the "Sentencing" work group.

Case Clearance Rates – Julie Koop and Kalene Engel: Julie Koop was at the last Case Clearance Rates work group meeting. No issues were resolved at the meeting, but there was discussion on how figures may be skewed, and a discussion on the discovery backlog. The County Attorney's office is working with the Police Department on the discovery issues. The work group has decided to meet again.

Kalene Engel has heard about free technical assistance from the Pretrial Justice Institute. The institute would do a case processing analysis and give recommendations. This would allow someone who is neutral to give advice on the case clearance and discovery issues. The committee referred this idea to the Case Clearance Rates work group.

Soundproofing – Sally Cumiskey: This is an ongoing issue. The architect has been contacted. It has been determined that some of the refurbishment work was not done according to design plans, and some of the design plans were inadequate to ensure proper soundproofing. One of the original construction companies is scheduled to look at the wall between the fourth floor courtrooms and look at the fourth floor conference rooms on February 18, 2010 at noon.

Additionally, Sally Cumiskey reported that it was discovered that because no humidifier was put on the courthouse furnace, wood in courtrooms has been splitting. Maintenance will put a humidifier on the furnace, but no decision has been made on what to do with the split wood.

MNCIS Sentencing Orders – Sally Cumiskey: Chief Justice Magnuson sent out an order mandating use of the MNCIS Sentencing Order Form beginning on July 1, 2010. Staff will have the ability to make some local configurations to the form. There will be training for judges and staff in Rochester on May 6, 2010.

Conciliation Court Referees- Sally Cumiskey: An information session was held about becoming a conciliation court referee. Sally Cumiskey attended the session and took notes, making a list of questions as to how certain conciliation court procedures should be handled in Winona County. The judges will need to make a joint decision on how to handle these procedures, to ensure consistency. The next step in the process will be an order appointing conciliation court referees.

Next regular meeting: March 18, 2010 at 8 a.m.

Next agenda:

Review and approval of minutes

Misdemeanor work group

Soundproofing work group report

Conciliation Court work group report

Case clearance rate work group report

COURTS COMMITTEE AGENDA

March 18, 2010 AT 8:00 A.M.

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- **Review and Approval of Minutes**
- **Misdemeanor work group – Sally Cumiskey, Carmaine Sturino**
- **Soundproofing work group report – Sally Cumiskey**
- **Conciliation Court work group report**
- **Tracking files – Brian Glodosky**

CJCC COURTS COMMITTEE MEETING

March 18, 2010

Present: Judge Bostrack, Kalene Engel, Brian Glodosky, Julie Thompson, Marsha Metzler, J.P. Plachecki, Sue Smelser, Tami Mueller, Lynne Caldwell, Bruce Nelson, Kevin O'Laughlin, Sherri Brekke, Rena Patterson, Sally Cumiskey

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Discussion:

Review and approval of February meeting minutes

Misdemeanor work group – Sally Cumiskey, Carmaine Sturino: Ms. Cumiskey gave an update for Ms. Sturino on the MEGA settlement process, who said that so far it is working well. She has had enough time to contact the prosecutor and client. Ms. Sturino said so far the arrangement has been working like traffic court. She sits in the conference room outside the courtroom to talk to clients, the bailiff will bring her the white slips, and she can go into the courtroom when needed. Ms. Sturino believes that the arrangement will continue to be beneficial if she has the built-in time to review files.

Soundproofing work group report – Sally Cumiskey: Ms. Cumiskey said they had a meeting with the construction workers and they were set to soundproof the fourth floor court rooms and conference rooms, but ran into an issue on getting approval for the work. She said there would be another meeting that day to discuss the construction, so she will have an update for the committee soon. Duane Hebert has said that the work must be completed by the end of the month.

Conciliation court work group report – Sally Cumiskey: Ms. Cumiskey said that the current opinion is that an attorney who is a conciliation court referee cannot practice in the civil division of that county. The Judicial Council will discuss this issue during its March 18-19 meeting. This item will be discussed at next month's Courts Committee meeting.

Tracking files – Brian Glodosky: Mr. Glodosky addressed the policy of needing to obtain judge approval in order to track a file for probation violations. Mr. Glodosky expressed that this policy makes it difficult to settle a case. Concerns were raised of files being in limbo and Julie Koop getting too many emails without this policy in place. Judge Bostrack said this issue will be on next month's agenda so as to give Judge Thompson and Julie Koop an opportunity to weigh in. Mr. Glodosky noted that Carmaine Sturino is also interested in this issue.

Other issues:

Sally Cumiskey inquired as to whether public defenders were doing source code cases or not. She said the First Judicial District has not provided any direction yet as to source code cases. Judge Christian is handling the cases for the Third District, but there is no backup judge. If he is removed, Judge Benson will assign another judge.

Kalene Engel said she is interested in reconvening the discovery work group. It will be discussed at next month's meeting.

Next regular meeting: April 15, 2010 at 8 a.m.

Please note: This date is different than what was announced at the meeting.

Next agenda:

Review and approval of minutes
Conciliation court work group report – Sally Cumiskey
Soundproofing work group report – Sally Cumiskey
Tracking files
Discovery work group – Kalene Engel

The Courts Committee did not meet in April, 2010.

COURTS COMMITTEE AGENDA

May 27, 2010 AT 8:00 A.M.

PLEASE NOTE: This meeting will be held in Courtroom 2 Jury Room.

- **Review and Approval of Minutes**
- **Conciliation Court work group report – Sally Cumiskey**
- **Soundproofing work group report – Sally Cumiskey**
- **Tracking files**
- **Discovery work group – Kalene Engel**

Next meeting: June 17, 2010 at 8 a.m.

CJCC COURTS COMMITTEE MEETING

May 27, 2010

Present: Judge Bostrack, Kalene Engel, Julie Thompson, Marsha Metzler, J.P. Plachecki, Sue Smelser, Sally Cumiskey, Carmaine Sturino, Julie Koop

Purpose: The purpose of the Committee is to make court case scheduling and case management more effective, efficient, and convenient. Meetings shall provide an opportunity for open discussion on scheduling issues while keeping a record of areas of agreement and issues in scheduling.

The meetings are held the third Thursday of every month at 8:00 a.m. in the jury room adjacent to Courtroom 2. The next regular meeting will be held on Thursday, June 17, 2010.

Discussion:

Review and approval of March meeting minutes

Conciliation court work group report – Sally Cumiskey: This process is moving forward. The judges have developed standards for referees, the final copy has been approved and they have been sent out to the referees. Judge Benson needs to appoint the referees and plans to release an order doing so by June 1st. Right now Winona County has four dates for referee conciliation court. Five referees will be appointed for the county.

Soundproofing work group report – Sally Cumiskey: Ms. Cumiskey told the group that a meeting was scheduled for June 3rd with the architect, contractors, county administrator and herself to discuss the work that has been done. The jury room in Judge Thompson's courtroom has been sealed so that now those in the courtroom are unable to hear what is happening in the jury room. The doors will be sealed next.

Tracking files: This has not been an issue since last discussed by the Committee.

Discovery work group report – Kalene Engel: Ms. Engel said there was a meeting on April 22nd which included herself, two people from IT, a representative for the sheriff, the police department, the county attorney, and Carmaine Sturino. The discussion focused on e-discovery. The ultimate goal would be to have an electronic repository for all parts of a file, which would be accessible to anyone needing access. A notice would be sent out to the parties once a new item became available. Mark Anderson said this would be a year long process. Before the meeting, the state public defender's office sent out a letter stating they were currently not prepared to handle e-discovery, and they would only accept non-hard copy discovery on CDs or DVDs.

Other issues:

Strategic planning session for CJC – Kalene Engel: The CJC is soliciting goals, topics for consideration, etc. for the October planning session. They are asking for new ideas now to allow time for research on potential initiatives before the session. Any ideas can be submitted to Ms. Engel.

Third floor holding room – Carmaine Sturino: Ms. Sturino says the holding room has been working well and brought up a concern regarding the intercom.

Court administration update – Sally Cumiskey: By sometime in July, court administration will have the interactive voice response and interactive web response systems, which will refer people to pay citations by phone or online. The end goal for the court system is to have people call the court payment center, rather than having court staff take money for citations. An auto assessment system will be implemented to automatically split fines in lieu of the court clerk figuring it out. Testing of this will occur in October. Scanning of tickets is scheduled to start around January 2011. Tickets will be imaged on MNCIS.

Next meeting: June 17, 2010 at 8 a.m.

June agenda:

Review and approval of minutes
MNCIS sentencing order – Sally Cumiskey

COURTS COMMITTEE AGENDA

June 17, 2010 AT 8:00 A.M.

PLEASE NOTE: This meeting will be held in Courtroom 2 Jury Room.

- Review and Approval of Minutes
- MNCIS sentencing order – Sally Cumiskey
- Case clearance workgroup report – Judge Thompson
- Accessing DVDs – Sally Cumiskey
- Public defender screening – Kalene Engel
- Child support problem solving courts,
<http://www.childsupportandthecourt.org> – Kalene Engel

Next meeting: July 15, 2010 at 8 a.m.

CJCC COURTS COMMITTEE MEETING

June 17, 2010

Present: Judge Bostrack, Kalene Engel, Judge Thompson, Lynne Caldwell, Chuck MacLean, J.P. Plachecki, Karen Duncan, Carmaine Sturino, Sally Cumiskey, Sherri Brekke, Tami Mueller, Aarah Saugen, Matt Hudson

Purpose: The purpose of the Committee is to make court case scheduling and case management more effective, efficient, and convenient. Meetings shall provide an opportunity for open discussion on scheduling issues while keeping a record of areas of agreement and issues in scheduling.

The meetings are held the third Thursday of every month at 8:00 a.m. in the jury room adjacent to Courtroom 2. The next regular meeting will be held on Thursday, July 15, 2010.

Discussion:

Review and approval of May meeting minutes

MNCIS sentencing order – Sally Cumiskey: Starting July 1, use of the sentencing order will be mandatory for gross misdemeanors and felonies. The order will be completed in the courtroom, or more likely, as soon after the hearing as possible. The court clerk can make manual adjustments to the order if need be.

Case clearance work group report – Judge Thompson: This group was formed as a result of statistics indicating that Winona County had the lowest case clearance rate in the state for major criminal cases from September 2008 through August 2009. The group met in January and again in May. The group concluded that the low case clearance rate in the county was the result of a statistical anomaly. Judge Thompson discussed the steps taken in efforts to increase the case clearance rate.

Judge Thompson spoke of a presentation given to the Judicial Council about Minnesota demographic trends by Tom Gillaspay, State Demographer. The report indicates that the amount of individuals 65+ in age is increasing and will overtake the 18-24 age group by 2020. As a result, the government will be under pressure to provide more support for older people and less funding will be available for other areas, including the court system.

Accessing DVDs – Sally Cumiskey: This item was addressed at the request of Judge Walters. When a DVD or other electronic evidence is submitted to the court, if special software or a machine is necessary to view the information, it should be provided by the submitter.

Public defender screening – Kalene Engel: Ms. Engel discussed ways to screen individuals thoroughly to determine if they qualify for a public defender. She said one idea was a computer form that would automatically calculate eligibility based on plugging in numbers and would not allow applicants to omit information. Ms. Cumiskey said we have someone that screens individuals for eligibility, and this has always been a priority, but it is time-consuming to evaluate proof of income and follow up. The process may not be able to continue when court admin loses staff in October. Karen Duncan discussed what happens in the Public

Defender's Office when changes of circumstances occur. They are in a difficult situation because ethically, the attorneys must act in the best interests of the client. However, if a client becomes employed and does not report it to the court, the public defender must do so. The Office does not have a formal screening process.

Child support problem solving courts – Kalene Engel: Ms. Engel briefly discussed a handout containing information on a child support problem solving court in North Carolina. She said this was a suggestion of something to explore further, and an example of an idea that could be brought before the CJCC for the planning session in October.

Other issues:

Conciliation court referees – Sally Cumiskey: The referees will start next Monday. Kalene Engel will be the first referee.

Soundproofing – Sally Cumiskey: The doors have yet to be soundproofed. Ms. Cumiskey will give an update when they are complete.

Public Defender's Office update – Karen Duncan: Ms. Duncan said Dennis Rutgers would be on a three-month leave of absence. Leaves of absence were formulated by the State Board of Public Defenders as a means to alleviate some of the financial strain. Mr. Rutgers' files will be reassigned to Christina Moriarty, who will start in Winona in July. Karin Sonneman is now a political candidate, and the policy of the Public Defender's Office is to relocate candidates so they are not practicing in the same county in which they are running for office. Ms. Sonneman will not be assigned any new cases in Winona County and will be assigned cases in Olmsted County. Ms. Moriarty will be picking up Ms. Sonneman's cases.

Ms. Duncan talked about public defenders filing motions to withdraw from cases based on their inability to abide by the ethical rules to serve clients. The hope is that prosecutors will be willing to stipulate to baseline facts and determine which cases have to move forward.

Ms. Duncan wishes to speak to prosecutors about proactively certifying cases on the payables list as petty misdemeanors. This would help avoid public defenders being appointed to misdemeanor cases.

Finally, Ms. Duncan stated that a meeting would be held in July for prosecutors to determine interest in a statewide diversion policy.

Next meeting: July 15, 2010 at 8 a.m.

July agenda:

Review and approval of minutes

CASE CLEARANCE WORKGROUP REPORT

The Case Clearance Workgroup met on May 3, 2010. Present were: Karin Sonneman, Chuck MacLean, Rich McCluer, J. P. Placheki, Lynne Caldwell and Judge Jeff Thompson.

The Workgroup last met on January 27, 2010. At that meeting, the problem addressed was the report that from September 2008 to August 2009, Winona's clearance rate for major criminal cases was 77.7%, the lowest in the State. The case clearance data were shared and a general discussion ensued. Overall, Winona's case clearance rate was 102.1%, which was compared to the 3rd District average of 103.3%. Major criminal cases clearly stood out, but why? Questions included:

- Was this just a statistical anomaly?
- What could be done individually and systemically to improve these case clearance rates?
- Could continuation requests be minimized?

During the interim, steps were taken to improve major criminal case clearance rates:

- Default omnibus hearings were subject to block scheduling.
- Settlement conferences were eliminated.
- Separate arraignments following the issuance of Omnibus Orders were eliminated. The cases were to be set for jury trials and pleas could be entered at pre-trial hearings.
- Kalene Engel provided information about grants for technical assistance from the Justice Institute to assist and study court scheduling.
- Attorneys agreed to minimize continuance requests.
- The County Attorney agreed to expedite getting discovery to defense counsel.

At the meeting on May 3rd, additional statistical information from the State Court Administrator's Office was provided for further examination.

There was general agreement that the major criminal case clearance rates have fluctuated over the past few years and the problematic statistic may have just been an anomaly.

Felony DWI's have been delayed, along with DWI cases of all types all over the State, due to the Source Code litigation which is expected to be resolved in the reasonably foreseeable future.

The lack of adequate funding of public defenders has added to the court's scheduling problems and acted as a brake on the speedy resolution of major criminal cases.

The County Attorney pledged to continue working on getting discovery to defense counsel more quickly so that hearings early in the criminal process could be more meaningful.

Court and State budget projections suggest that the case clearance rate issue will be looking for a "new normal" and the old time lines may well be a thing of the past. Other counties in our district are suffering tremendously. Non-targeted misdemeanors in Olmsted County are being set for mega-jury trial calendars in August of 2011.

We discussed ways of making the Default Omnibus Calendars less wasteful of attorney time. Apparently, Houston County has a procedure providing that if a motion for a Contested Omnibus Hearing is timely filed, the case is set for a Contested Hearing and the matter removed from the Default Calendar.

We agreed to meet again after the workgroup members had a chance to review the newly provided data. The workgroup hopes to arrive at a consensus as to any additional steps that need to be taken.

One further meeting is contemplated but not yet scheduled.

Respectfully submitted,

Jeffrey D. Thompson

District Court Judge

June 3, 2010.

State of Minnesota,

Plaintiff,

Court File No. _____

FINANCIAL AFFIDAVIT

_____,
Defendant.

I am applying for the assistance of the Public Defender in the above case, and I certify that:

1. Full Name: _____ Date of Birth: _____
2. Permanent Address: _____
Temporary Address: _____
3. Home phone: _____ Cell phone: _____ Work phone: _____ Other: _____
4. Number of dependent children: _____ Ages of dependent children: _____
5. Marital status: Married Single Divorced Separated Widowed
6. Present employer's name and address: _____
7. Present employer's phone: _____ Date Employed: _____
8. Present wage: \$ _____ Hourly Hours worked/week: _____ Weekly gross: \$ _____
9. If unemployed, name of last employer and date last employed: _____
Do you receive unemployment benefits: Yes No Amount: \$ _____
11. Other income or means of support (explain): _____
10. Do you or any of your legal dependents receive any form of public assistance (cash assistance, food stamps, medical assistance, Social Security)? Yes No
If yes, specify type of assistance received and amount: _____
11. Spouse's employer: _____
12. Present wage: \$ _____ Hourly Hours worked/week: _____ Weekly gross: \$ _____
13. Checking account: Yes No Amount: \$ _____ Bank: _____
14. Savings account: Yes No Amount: \$ _____ Bank: _____
15. Other assets (cash on hand, boats, snowmobiles, motorcycles, bonds, etc.): _____
If so, please list the value of each: _____
16. Motor Vehicles owned: Make: _____ Year: _____ Value: \$ _____ Balance owed: \$ _____
List all additional vehicles, if any: _____
17. Housing: Own home Payment: _____ Value: \$ _____ Mortgage: \$ _____ Balance: \$ _____
 Rent Monthly rent: \$ _____
 Other Specify: _____
18. Other Debts: _____ Amount: \$ _____
19. Do you have any assets, including your homestead, that can be sold, pawned, or pledged for cash?
 Yes No If yes, describe those assets and list value: _____
21. Have you sold, given away, or transferred any assets within the last 90 days or after the date of the charged offense, whichever is earlier: Yes No
If yes, describe those assets and list their value: _____
22. Have two attorneys refused to handle your case because you could not afford to pay the required fee? Yes No
23. Do you have any special circumstances that you feel should be considered by the Court in deciding whether to appoint a public defender? If yes, explain: _____

By signing this Affidavit, I am certifying that these statements are true under penalty of perjury, and that I must disclose any changes in financial circumstance that may be relevant to my eligibility status.

DATED: _____

Subscribed and sworn to before me
, _____ day of _____, 2009.

Notary Public

State of Minnesota,

Plaintiff,

Court File No.

FINANCIAL AFFIDAVIT

Defendant.

I am applying for the assistance of the Public Defender in the above case, and I certify that:

1. Full Name: _____ Date of Birth: _____

2. Permanent Address: _____
Temporary Address: _____

3. Home phone: _____ Cell phone: _____ Work phone: _____ Other: _____

4. Number of dependent children: _____ Ages of dependent children: _____

5. Marital status: Married Single Divorced Separated Widowed

6. Present employer's name and address: _____

7. Present employer's phone: _____ Date Employed: _____

8. Present wage: \$ _____ Hourly _____ Hours worked/week: _____ Weekly gross: \$ _____

9. If unemployed, name of last employer and date last employed: _____
Do you receive unemployment benefits: Yes No Amount: \$ _____

11. Other income or means of support (explain): _____

10. Do you or any of your legal dependents receive any form of public assistance (cash assistance, food stamps, medical assistance, Social Security)? Yes No
If yes, specify type of assistance received and amount: _____

11. Spouse's employer: _____

12. Present wage: \$ _____ Hourly _____ Hours worked/week: _____ Weekly gross: \$ _____

13. Checking account: Yes No Amount: \$ _____ Bank: _____

14. Savings account: Yes No Amount: \$ _____ Bank: _____

15. Other assets (cash on hand, boats, snowmobiles, motorcycles, bonds, etc.): _____

16. Motor Vehicles owned: Make: _____ Year: _____ Value: \$ _____ Balance owed: \$ _____

List all additional vehicles, if any:

17. Housing: Own home Payment: _____ Value: \$ _____ Mortgage: \$ _____ Balance: \$ _____
 Rent Monthly rent: \$ _____
 Other Specify: _____

18. Other Debts: _____ Amount: \$ _____

19. Do you have any assets, including your homestead, that can be sold, pawned, or pledged for cash?
 Yes No If yes, describe those assets and list value: _____

21. Have you sold, given away, or transferred any assets within the last 90 days or after the date of the charged offense, whichever is earlier: Yes No
If yes, describe those assets and list their value: _____

22. Have two attorneys refused to handle your case because you could not afford to pay the required fee? Yes No

23. Do you have any special circumstances that you feel should be considered by the Court in deciding whether to appoint a public defender? If yes, explain: _____

By signing this Affidavit, I am certifying that these statements are true under penalty of perjury, and that I must disclose any changes in financial circumstance that may be relevant to my eligibility status.

DATED: _____

Subscribed and sworn to before me
; day of , 20 .

Notary Public

COURTS COMMITTEE
CHILD SUPPORT PROBLEM SOLVING COURT
All information taken from www.childsupportandthecourt.org

The threat of going to jail or going to jail is just a temporary fix for failure to pay child support. The child support system must be willing to try new innovative ideas and alternative sentencing in contempt issues.

An endless cycle occurs by using temporary fixes. Parent is ordered to pay child support, Parent doesn't pay, Parent is issued a show cause, Parent is served, Parent comes to court, Parent is found in contempt, Parents is ordered to pay a purge or go to jail, Parent pays the purge, Parent is released and the cycle continues.

"Breaking the Cycle" means to eliminate the reasons why a non-custodial parent will not or is unable to financially support their children.

"Breaking the Cycle" includes implementing remedies to assist the non-custodial parent in removing barriers that prevent employment such as: substance abuse, literacy issues, minimal education, criminal records, no drivers license, no transportation and no stable residence.

Alternatives to incarceration have the potential to increase child support collections, financially improve the lives of the child and family, save taxpayer's money and reduce over-crowding in jails.

Although it has nothing to do with paying child support, "one of the main reasons, or excuses, a non-custodial parent doesn't pay child support is because they are not allowed to visit the child or children" (Child Support and the Court).

Wake County, located in North Carolina, has become a model for its implementation of a child support problem solving court. One service it offers families is cost free mediation through a program entitled Carolina Dispute Settlement Services (CDSS). Many of the cases presented in child support court do not contain custody and visitation orders as the parties are financially unable to pay for required legal services. CDSS gives families the opportunity to settle the matter through voluntary mediation or if no settlement is reached, a parent may file using a prepared custody and visitation packet CDSS offers. This service has been successful in increasing communication between parents and creating a willingness for the non-custodial parent to pay child support.

Another program Wake County has utilized is Working for Kids (WFK). WFK is an employment service organization that works with non-custodial parents who are unemployed or underemployed and who have trouble paying their child support. Wake County's child support court, court orders participants to participate in the program. Failure to participate and pay their child support or find employment results in other consequences such as electronic monitoring, electronic house arrest or jail.

StarTribune.com



Who gets a free lawyer in Dakota County?

As the ranks of public defenders shrink, Dakota County tries to make sure only the truly poor qualify.

By **JOY POWELL**, Star Tribune

Last update: June 8, 2010 - 8:18 PM

On a busy morning recently, Dakota County District Judge Michael Mayer warned defendants -- as he does routinely -- that they could be charged with a felony if they lie about their finances just to get a public defender.

It's a message more important than ever, with a budget crisis that has meant fewer public defenders. But attempts to determine eligibility of defendants seeking public defenders are surprisingly inconsistent from county to county, and judges are often forced to rely on gut instinct when deciding who will get those services.

To remove some guesswork, Dakota County has begun a pilot project in which screeners gather financial data on all defendants who apply for a public defender. The information is given to judges, who must decide at a fast

pace which defendants will be eligible.

For years, the county has had screeners go to the jail to interview defendants to see whether they qualify, based on federal poverty guidelines. Now, the screening has expanded to also include defendants who are not in custody.

Screeners set up shop in conference rooms near courtrooms in Hastings, Apple Valley and West St. Paul. They ask defendants about finances, including rent or mortgage payments. Some are asked to bring in documents, from a tax return to proof of public assistance.


"We can spend the time with the people and ask the right questions," said Carol Renn, Dakota County District Court administrator.

"We want to make sure that the people who get the services of the public defender actually qualify for those services."

Across Minnesota, there's a hodgepodge of standards for determining eligibility for public defenders.

And beyond that, judges report little confidence in the accuracy of information they use to weigh whether someone can

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afford a private attorney, according to a report in February by the Office of the Legislative Auditor.

That report recommends the Legislature enact fixed income standards for public defender eligibility.

"We all have to work together to make the system work," Renn said. "If we can say to the judge, 'This person doesn't qualify,' at least we're making the effort to help the public defenders."

While screeners would not ask people to sell their homes, if they have a \$10,000 boat or a second car, they may be told they have assets they could liquidate, she said.

Dakota County judges and public defenders have developed their own income standards that are tied to the seriousness of the charge. Those charged with serious offenses can earn up to \$20 an hour and qualify for a public defender. Those charged with the least serious offenses can earn up to \$12 an hour.

Most defendants who claim to be poor truly are, the legislative auditors found. But their report also said steps should be established to catch cheaters.

Phil Prokopowicz, chief deputy of the Dakota County attorney's office, said prosecution of cheaters is rare. One reason, he acknowledged, could be too little verifying of what people claim on their applications.

Prokopowicz said eyebrows occasionally have been raised when a defendant claims poverty and gets a public defender, yet comes up with \$10,000 for bail.

There have been cases, too, when someone with a public defender is found to own a luxury car or is able to afford a private attorney after months of using a public defender.

Statewide, courts rarely verify with third-party sources information that defendants put on public defender applications. Only half of state judges surveyed said they sometimes required verification.

Time to crack down?

Judges in Dakota County welcome the pilot program.

"It's useful because, otherwise, we have just the application with no verification and no real follow-up," said Judge Edward Lynch, chief of the First Judicial District, which

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Renn said as the process is fine-tuned, and as manpower becomes available, she hopes more verification will be done.

The expanded Dakota system is mostly a reaction to state budget cuts that are leading to 18 percent fewer public defenders than three years ago.


"The system is broke," Judge Mayer told defendants recently.

He knows public defender workloads are too high, leaving lawyers too little time to spend with clients, prepare for court or cover calendars.

John Stuart, Minnesota's chief public defender, said Monday that another 13 public-defender positions are expected to be lost in the next year, on top of 60 lost in the past two years.

"Public defender time has become a scarce resource in the court system," Stuart said. "We need to be working with the court system to come to a consensus about who really is eligible, and then to carry it out throughout the state."

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State of Minnesota,

Court File No. _____

Plaintiff,

FINANCIAL AFFIDAVIT

Defendant.

I am applying for the assistance of the Public Defender in the above case, and I certify that:

1. Full Name: _____ Date of Birth: _____
2. Permanent Address: _____
Temporary Address: _____
3. Home phone: _____ Cell phone: _____ Work phone: _____ Other: _____
4. Number of dependent children: _____ Ages of dependent children: _____
5. Marital status: Married Single Divorced Separated Widowed
6. Present employer's name and address: _____
7. Present employer's phone: _____ Date Employed: _____
8. Present wage: \$ _____ Hourly Hours worked/week: _____ Weekly gross: \$ _____
9. If unemployed, name of last employer and date last employed: _____
Do you receive unemployment benefits: Yes No Amount: \$ _____
11. Other income or means of support (explain): _____
10. Do you or any of your legal dependents receive any form of public assistance (cash assistance, food stamps, medical assistance, Social Security)? Yes No
If yes, specify type of assistance received and amount: _____
11. Spouse's employer: _____
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13. Checking account: Yes No Amount: \$ _____ Bank: _____
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If so, please list the value of each: _____
16. Motor Vehicles owned: Make: _____ Year: _____ Value: \$ _____ Balance owed: \$ _____
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17. Housing: Own home Payment: _____ Value: \$ _____ Mortgage: \$ _____ Balance: \$ _____
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 Other Specify: _____
18. Other Debts: _____ Amount: \$ _____
19. Do you have any assets, including your homestead, that can be sold, pawned, or pledged for cash?
 Yes No If yes, describe those assets and list value: _____
21. Have you sold, given away, or transferred any assets within the last 90 days or after the date of the charged offense, whichever is earlier: Yes No
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22. Have two attorneys refused to handle your case because you could not afford to pay the required fee? Yes No
23. Do you have any special circumstances that you feel should be considered by the Court in deciding whether to appoint a public defender? If yes, explain: _____

By signing this Affidavit, I am certifying that these statements are true under penalty of perjury, and that I must disclose any changes in financial circumstance that may be relevant to my eligibility status.

DATED: _____

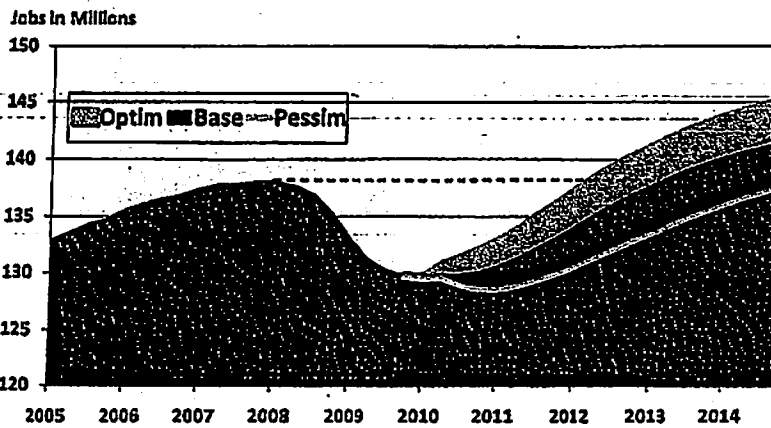
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_____ day of _____, 2009.

Notary Public

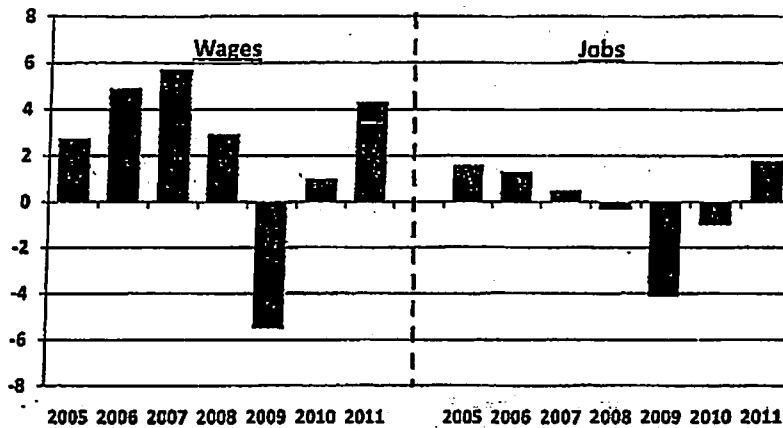
Minnesota Demographic Trends And Government Services

Tom Gillaspay, State Demographer
Mn Dept of Administration
May 2010

U.S. Employment Not Expected to Return to Pre-Recession High Until Spring 2013



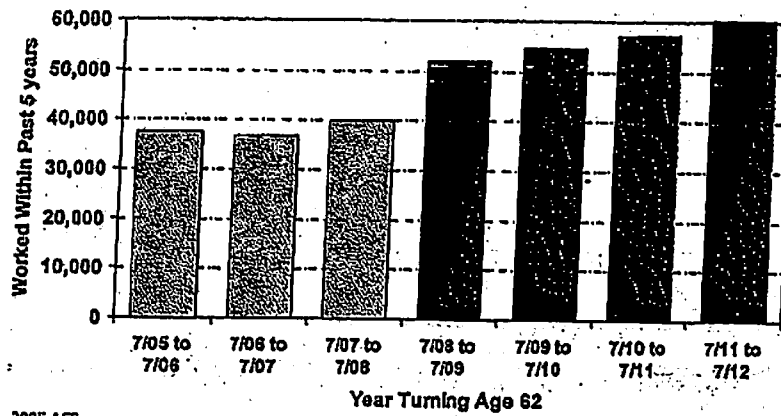
Minnesota Wages and Employment Fell During This Recession



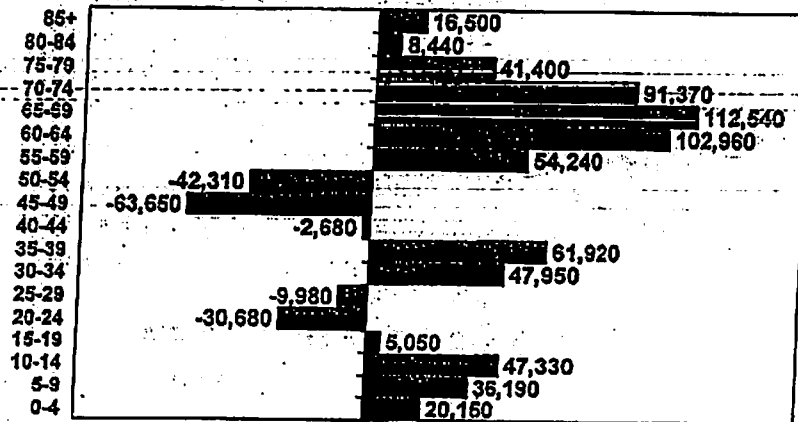
The Economic/Demographic Environment Has Changed for as Far as We Can Forecast

- ✗ Short run economic cycle has merged with long run demographic cycle
- ✗ We have entered the Age of Entitlement—economic growth in the next 25 years will be slower than what it was in the past 25.
- ✗ This is a national/global issue

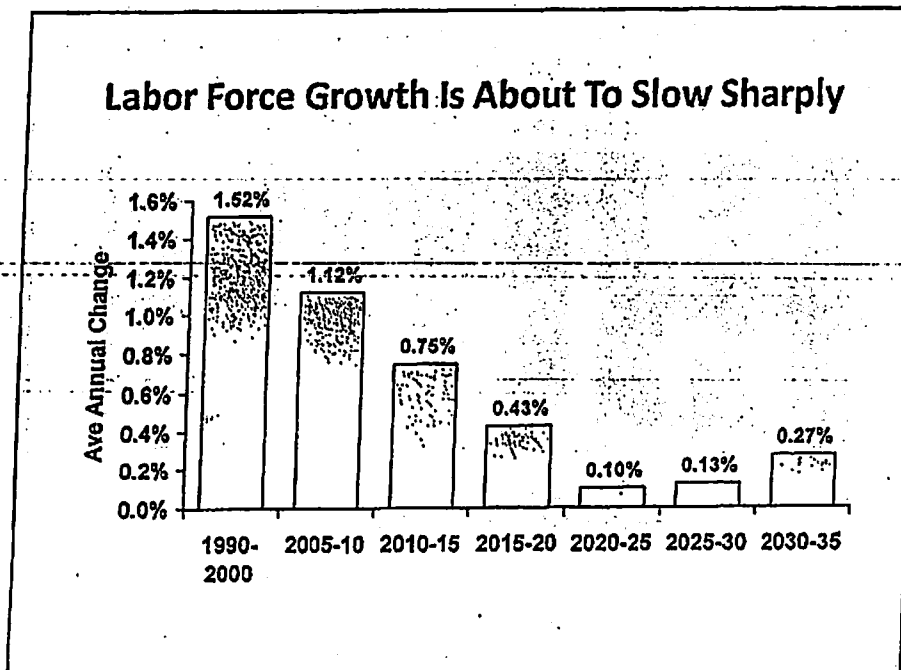
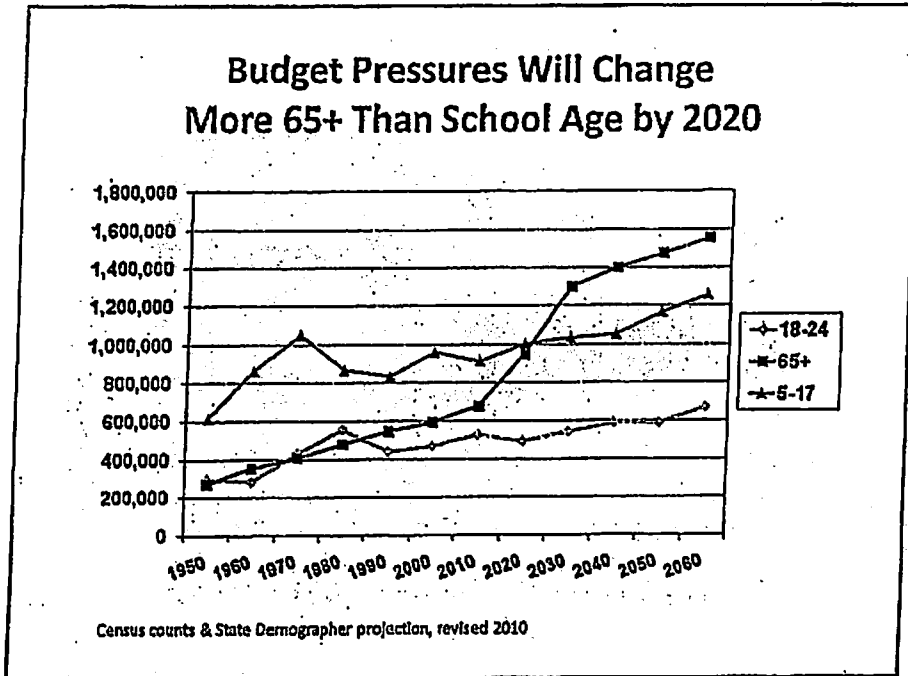
Minnesota Saw a 30 Percent Jump in Workers Turning Age 62 in 2008



From 2010 to 2020, Minnesota Will See Large Increases Age 50s and 60s



Source: Minnesota State Demographic Center, rev 2007
Numbers are rounded



**The Great Recession Has Raised the Level of
Social Angst**

**But What Is Really Happening
Is That We Have Entered A
"New Normal"**

The "New Normal" Probably Means

- Higher interest rates
- Slower economic growth
- Increasing numbers of retirees
- Less consumption; more saving
- A more diverse population
- More uncertainty in our personal & national futures
- A shift in the balance between private and public sectors

The "New Normal" Probably Means--2

- A shift in the balance between private and public sectors
- Chronic government deficits & cuts in service
- Worries about how to pay for past promises
- Creative destruction/disruptive innovation will change the way we deliver services
- A whole new way of looking for opportunities

Grieving For The "Old Normal"

- Denial -- "This is not happening." "Just wait, things will return to normal."
- Anger -- "Who is to blame?" Rage and gridlock rule and anyone who symbolizes life, energy, progress, success, happiness, etc. is treated with resentment and mistrust.
- Bargaining -- "I'll change if this just goes away." Somehow, we can get back to the old normal if we just return to good, ole fashioned (conservative/liberal) values
- Depression (emotional, not economic) -- "What's the point in trying?" "We are all doomed anyway." The certainty/finality of events is finally recognized.
- Acceptance -- "It's going to be okay" Looking for opportunities begins.

Minnesota Faces a Fiscal Trap

1. The issue is a long run, structural one— short run solutions will not solve the problem
2. Trend growth alone will not be sufficient. Fundamental changes are necessary
3. Revenue growth will slow. Efforts to increase it will be met with resistance
4. Spending pressures will increase driven largely by issues of aging and health
5. State spending will shift its focus from education, infrastructure and higher education to care and support of the aging

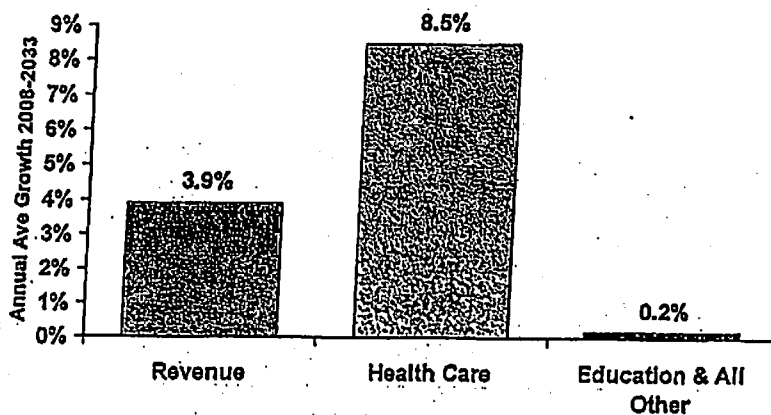
FY 2012-13 Budget Gap Now \$5.8 Billion

(\$ in millions)	<u>FY 2012-13</u>
Resources	\$32,906
Spending	<u>38,695</u>
Difference	(\$5,789)
<u>Inflation</u>	<u>\$1,181</u>

Planning estimates assume:

- Complete repayment of the K-12 aid deferral Delaying repayment would save \$1.163 billion
- No repayment of the K-12 Property tax recognition shift Repayment would cost 564 million
- No continued GAMC spending Restoring the GAMC to its former level would cost \$928 million Current agreement costs \$214 million

If State Health Care Costs Continue Their Current Trend, State Spending On Other Services Can't Grow



General Fund Spending Outlook, presentation to the Budget Trends Commission, August 2008, Dybdal, Reitan and Brost

**But Why Fear The New Normal?
It Plays To Our Strengths!**

- ✦ **Future economic growth will depend increasingly on increasing productivity and less on labor force size**
- ✦ **Education has been the key to Minnesota's productivity and prosperity**
- ✦ **Future productivity increases will depend on decisions and the investments we make now**
- ✦ **Public Sector Productivity Growth Will Be Essential**

**Productivity Is Not Just
Producing at a Lower Cost**

**Increasing Productivity Also
Means**

- **Making things better**
(improved quality)
- **Making better things**
(innovation, new products)

***"Making Things Better" May Offer
the Greatest Potential***

- **Cost cutting efforts have focused on transactional jobs**
- **Largest future productivity gains are likely to come from investments that lead to better outcomes**
Lower lifetime health care costs, reduced recidivism rates, improved graduation rates
- **Adapting service delivery plans to meet the needs of the "New Normal"**

***"I skate to where the puck will be,
not to where it has been."***

**Wayne Gretzky
Hockey Great**

COURTS COMMITTEE AGENDA

July 15, 2010 AT 8:00 A.M.

PLEASE NOTE: This meeting will be held in Courtroom 2 Jury Room.

- **Review and approval of minutes**
- **Traffic court procedure – Sally Cumiskey**
- **Criminal e-charging/e-filing rule – Sally Cumiskey**
- **Strategic planning sessions – Kalene Engel, Justin Green
(see information item below)**
- **Committee charge – Kalene Engel, Justin Green**

Next meeting: August 19, 2010 at 8 a.m.

Information Item – Strategic Planning Session Planning (Justin Green):
Justin Green requests that all Committees spend some time at upcoming meetings to do some advance planning for the October Strategic Planning Session. The planning session will be more difficult than last year because we have already addressed some of the easier problems. Each committee should spend time answering the following questions:

- (1) Of the list of projects that the Committee has talked about, what has it accomplished?
- (2) What impact have these accomplishments had on the system and how much of this impact is attributable to the CJCC? Try to state this in terms of true impact—such as dollars saved or increased collaboration among departments; and
- (3) What remains undone and what are the biggest challenges that the Committee would like to tackle?

CJCC COURTS COMMITTEE MEETING

July 15, 2010

Present: Judge Bostrack, Kalene Engel, Lynne Caldwell, J.P. Plachecki, Carmaine Sturino, Sally Cumiskey, Sherri Brekke, Tami Mueller, Marsha Metzler, Julie Koop, Sue Smelser, Kevin O'Laughlin, Justin Green

Purpose: The purpose of the Committee is to make court case scheduling and case management more effective, efficient, and convenient. Meetings shall provide an opportunity for open discussion on scheduling issues while keeping a record of areas of agreement and issues in scheduling.

The meetings are held the third Thursday of every month at 8:00 a.m. in the jury room adjacent to Courtroom 2. The next regular meeting will be held on Thursday, August 19, 2010.

Discussion:

Review and approval of June meeting minutes

Traffic court procedure – Sally Cumiskey: Ms. Cumiskey has been receiving feedback that more traffic court defendants are pleading not guilty, resulting in an increase in the amount of cases set for trial. Fewer cases are being referred to the driver's license program. Kevin O'Laughlin says he will speak with the county attorneys handling traffic court and report back next month.

Criminal e-charging/e-filing rule – Sally Cumiskey: E-charging/e-filing is no longer in pilot status. The Supreme Court has promulgated the rule.

Strategic planning sessions, committee charge – Justin Green, Kalene Engel: The CJCC engages in strategic planning every fall. Last year, the council did the planning, the tentative results were brought before the committees for comments, and then the feedback was brought to the council. This year, the committees will do the planning, bring the ideas before the council, and the council will combine them and set priorities for the year. Ms. Engel handed out a chart to the committee, listing its goals and the strategies that have been implemented to achieve each goal. The committee is to discuss the current status, benefit to the county, and tasks remaining for each goal and strategy. The committee addressed the goals of increasing earlier resolution of cases, reducing court time on civil matters, reducing time and expense on lower level misdemeanors, and providing for earlier appointment of public defenders. The committee will discuss the goals of promoting equal access to justice, providing for more efficient exchange of discovery, increasing speed, consistency and accuracy in sentencing orders, and increasing speed of opening or processing new files at next month's meeting. Also to be discussed next month is the committee charge.

Other issues:

Court administration update – Sally Cumiskey: Court administration will be using generic codes for county and city attorneys rather than writing out the specific names of the attorneys assigned to a particular case.

Court administration is evolving into centralization of court fines as of August 16th. Payment at the counter will still be accepted but court administration will be referring people by phone to the centralized payment center. Law enforcement officers will carry cards with centralized payment information for handing out.

Next meeting: August 19, 2010 at 8 a.m.

August agenda:

Review and approval of minutes
Traffic court procedure update – Kevin O’Laughlin
Public defender eligibility – Sally Cumiskey
Warrant appearances – Rich McCluer
Committee goals
Committee charge

COURTS COMMITTEE AGENDA

August 19, 2010 AT 8:00 A.M.

PLEASE NOTE: This meeting will be held in Courtroom 2 Jury Room.

- **Review and approval of minutes**
- **Traffic court procedure update – Kevin O’Laughlin**
- **Public defender eligibility – Sally Cumiskey**
- **Warrant appearances – Rich McCluer**
- **E-charging – Sue Smelser**
- **Committee goals**
- **Committee charge**

Future agenda items:

- **Free legal clinic – Kalene Engel, Judge Bostrack**
- **Omnibus waiver – Judge Thompson**
- **Houston County omnibus hearing order – JP Plachecki**

Next meeting: September 16, 2010 at 8 a.m.

CJCC COURTS COMMITTEE MEETING

August 19, 2010

Present: Judge Bostrack, Judge Thompson, Lynne Caldwell, Rena Patterson, Kevin O'Laughlin, J.P. Plachecki, Sherri Brekke, Julie Koop, Marsha Metzler, Sue Smelser, Kalene Engel, Christine Ledebuhr

Purpose: The purpose of the Committee is to make court case scheduling and case management more effective, efficient, and convenient. Meetings shall provide an opportunity for open discussion on scheduling issues while keeping a record of areas of agreement and issues in scheduling.

The meetings are held the third Thursday of every month at 8:00 a.m. in the jury room adjacent to Courtroom 2. The next regular meeting will be held on Thursday, September 16, 2010.

Discussion:

Review and approval of July meeting minutes

Traffic court procedure update – Kevin O'Laughlin: The County Attorney's Office is in a state of flux regarding who will be handling traffic court. Justin Wesley and Ryan Hansch will be the attorneys appearing in traffic court in the immediate future. The office will be hiring a new assistant county attorney for a position lasting through July 31, 2011, and this newly hired attorney will most likely take over traffic court.

Public defender eligibility – Sally Cumiskey: Ms. Cumiskey was not present. This item will be on next month's meeting agenda.

Warrant appearances – Rich McCluer: Mr. McCluer was not present. This item will be on next month's meeting agenda.

E-charging – Sue Smelser: Winona County is scheduled to start e-charging formal complaints in December.

Committee goals: The committee continued to discuss its goals and strategies utilizing the chart created by Kalene Engel. The committee discussed the goals of promoting equal access to justice, more efficient exchange of discovery, increasing speed, consistency and accuracy in sentencing orders, and increasing the speed with which files are processed.

Committee charge: Justin Green suggested a new charge, as follows: "The Courts Committee will search for strategies that will enable the courts to function more efficiently and at less cost to the taxpayer while continuing to respect due process and the rule of law."

Any suggestions regarding the charge can be submitted to Sarah Hadler by email. The Committee will discuss the suggestions at next month's meeting.

Other issues:

Case clearance rate workgroup – Judge Thompson: The workgroup met on July 30. Judge Thompson said that making court hearings more efficient and meaningful has been an ongoing challenge, but there is no need to continue this workgroup. Next year the Winona judges will not have to travel to Rochester for equalization in the district. This will result in more available court time, which should help with the case clearance rate. The group discussed default omnibus hearings. Judge Bostrack said default omnibus hearings have been going very well and have been meaningful.

Pretrial Justice Institute – Kalene Engel: The Pretrial Justice Institute in Washington, D.C. has a grant to render technical assistance to entities who would like their pretrial procedures evaluated. Ms. Engel applied on behalf of Winona County and has received a verbal acceptance for free assistance. Ms. Engel will further update the committee next month.

Reducing time spent on civil matters – Kalene Engel: Ms. Engel suggested setting up a co-parenting workgroup. One suggestion was looking at programs designed to help parents get jobs, such as giving parents a break on child support arrears as encouragement to seek jobs. This is included as a strategy to discuss in the future.

Winona Youth Home – Rena Patterson: The youth home will be closing its doors on September 21st. No new referrals will be accepted.

Next meeting: September 16, 2010 at 8 a.m.

September agenda:

Review and approval of minutes
Public defender eligibility – Sally Cumiskey
Warrant appearances – Rich McCluer
Courthouse soundproofing – Sally Cumiskey
Pretrial Justice Institute – Kalene Engel
Free legal clinic – Kalene Engel, Judge Bostrack
Omnibus waiver – Judge Thompson
Houston County omnibus hearing order – J.P. Plachecki
Committee charge

The Courts Committee will search for strategies that will enable the courts to function more efficiently and at less cost to the taxpayer while continuing to respect due process and the rule of law.

COURTS COMMITTEE
COMMITTEE CHARGE RESEARCH

To encourage the broad integration of the problem-solving philosophy....to improve court processes and outcomes while preserving the rule of the law

To encourage judges to take a proactive role

To encourage proactive and innovative programs and methodologies that reduce/discourage... coordinated strategy to problem solving while creating an environment where participants are encourage to take responsibility for change.

Developing new techniques to improve outcomes

Provide a support system for all problem-solving courts

Identify ways to incorporate problem-solving theories into mainstream courts

Assist participants in developing skills that will allow them to live within community standards

Collect and evaluate data to show successes

Public's perception of judicial system is knowledgeable

Use technology in a manner appropriate to the dispensing of justice to ensure dispute resolution is fair, efficient and accessible

Provide timely, fair, humane, and affordable resolution of disputes.

Develop a case management and scheduling process that ensures an effective and equitable allocation of cases among...

Technology maximized to increase/to allow for efficient flow of information

Comprehensive education and outreach programs

Enhancing efforts to achieve timely disposition and accurate records of court proceedings (through increased technology use)

Makes the best use of public funds

Courts Committee Action

Committee Charge: To make court case scheduling and case management more effective, efficient and convenient.

Goal	Strategy	Current Status/ Evaluation	Benefit to County	Tasks remaining/priority
<p>To increase or promote earlier resolution of cases</p>	<p>Public Defender Misdemeanor Representation (Mega Settlement Days)</p>	<p>PD representation at arraignments but resulted in ↑ early resolution rates but was discontinued due to PD staffing issues and replaced by mega-settlement days, which are going well. The wait list has been eliminated.</p>	<p>Earlier and efficient resolution of lower level cases reduces staff time (prosecutor, PD, court, corrections) which would have to be spent later on these cases if they weren't resolved. The wait list is gone</p>	<p>High priority. Continue with mega days and other strategies to promote earlier resolution of cases.</p>
	<p>Settlement Conferences (Default Omnibus Procedure)</p>	<p>Settlement conferences were discontinued because they were not an efficient way to resolve cases in the felony area due to lack of offers in advance. Default omnibus procedure was instituted instead and pre-trials have now substituted for settlement conferences</p>	<p>Fewer court hearings are now scheduled due to the default omnibus procedure.</p>	<p>Low priority. Continue to maintain default omnibus while Case Clearance Rates workgroup explores other pinch-points.</p>
	<p>Discovery Workgroup</p>	<p>Two issues: earlier exchange of discovery (both paper and electronic discovery) and possible establishment of e-discovery. The workgroup brought awareness to the issues and, locally, discovery exchange has improved overall. There are still some issues with exchange of electronic discovery. The County Atty's Office and IT Department are working on setting up e-discovery, but it will be a long process.</p>	<p>Earlier exchange of discovery promotes earlier resolution of cases because defense attorney is able to evaluate case earlier and recommend and discuss offers with client.</p>	<p>Medium priority. Still need to iron out issues with electronic discovery (exchange of audio, video, etc) and continue to work on e-discovery</p>
	<p>Case Clearance Rates</p>	<p>Workgroup was set up to evaluate the issue and continues to meet. Resolution rates are improving, but we are still "red" in all criminal areas. Committee has suggested omnibus waiver forms and policies which will be discussed by the Courts Committee. Continuance issue still needs to be addressed. The Pre-Trial Justice Institute will be providing technical assistance to evaluate pinchpoints.</p>	<p>Procedures have yet to be implemented, but if successful would lead to earlier resolution of cases; fewer court hearings and overall less time spent on each case pre-trial.</p>	<p>High priority. Possible need to have this workgroup identify the pinchpoints (such as continuances) and delegate to other workgroups to explore discrete issues.</p>
<p>To reduce court time spent on civil matters</p>	<p>Conciliation Court Referees</p>	<p>Referees started hearing cases in June of 2010 and procedure is going well. Winona is only 1 of a handful of counties who are doing this.</p>	<p>Use of private attorney referees eliminates need for judge time and reduces court administration time spent on hearings.</p>	<p>No tasks remaining other than to monitor.</p>
	<p>Co-Parent Courts</p>	<p>New goal/idea which is still being researched.</p>	<p>If successful, would promote increased payment of child support and parental involvement; reduced</p>	<p>Medium priority. Need to establish workgroup to conduct additional</p>

			court time spent on child support and custody issues	research.
To reduce time and expense expended on lower level misdemeanors	PD Misdemeanor Representation	See Public Defender Misdemeanor (above)	See above	See above
	Certification of Misdemeanors as Pettys	Workgroup researched issue and passed information onto Judicial Council through Judge Thompson. Some prosecutors do this and others do not—it is case specific; more things are going on the payables list.	Certification promotes earlier resolution of cases and reduces court time since petty's do not qualify for a jury trial.	Low priority. May need to be revisited depending upon what is on payables list.
To provide for earlier appointment of public defenders/attorneys for those who qualify	Public Defender Screening Process	Two issues: (1) screening defendants in jail v. at courthouse (2) ensuring that screening is accurate and only qualified individuals receive PD appointments	Since 9/08, screening of defenders has taken place in jail, saving sheriff time in having to wait at courthouse for screening and also allowing for earlier appt of PD.	Medium priority. Still need to ensure that the right people are being appointed PDs.
	PD Misdemeanor Representation (see above)	See Public Defender Misdemeanor (above)	See above	See above
	Pro Bono Private Bar Representation	Recruit members of private bar to handle lower level criminal cases. Private bar members were not interested.	None. Not implemented.	Low priority. May need to be revisited if interest is shown by private bar.
To promote equal access to justice and ensure due process	Rule 15 Petition in Spanish	Rule 15 Petition was developed and implemented.	Increased understanding of rights by Defendants; more efficient plea hearings	None. Task completed.
	Representation on State Equal Access to Justice Committee	Judge Thompson and Judge Bostrack serve on this committee, which is looking at different strategies to promote equal access to justice.	State/County coordination on access to justice issues.	Medium Priority. Courts Committee will receive updates regarding EAJ Committee's work
	Courthouse Soundproofing	County representatives continue to meet with architect and contractor. Some issues have been resolved; others are in progress.	Ensure due process by protecting privileged or confidential communications	High priority. Continue to work on resolving issues
To provide for the earlier and more efficient exchange of discovery	Discovery Workgroup	See Discovery Workgroup (above)	See above	See above
To increase speed, consistency and accuracy in sentencing orders	Sentencing Checklist	Workgroup created sentencing checklist which was used but later replaced by the state sentencing order	Order promotes accuracy and ensures that all participants are aware of terms of sentence at time of sentencing	Low priority. Court admin is setting up macros to speed up processing of orders.
To increase speed with which new files are processed/opened on MNCIS	E-charging/citations and E-filing	Winona County has been placed on a list to implement e-charging by December; however, because of training and other issues, this may not occur by that time. County Atty's Office is receptive to e-charging.	Would speed case processing and increase accuracy in charging	High priority. Program still needs to be implemented.

COURTS COMMITTEE AGENDA

September 16, 2010 AT 8:00 A.M.

PLEASE NOTE: This meeting will be held in Courtroom 2 Jury Room.

- **Review and approval of minutes**
- **Public defender eligibility – Sally Cumiskey**
- **Warrant appearances – Rich McCluer**
- **Courthouse soundproofing – Sally Cumiskey**
- **Pretrial Justice Institute – Kalene Engel**
- **Free legal clinic – Kalene Engel, Judge Bostrack**
- **Omnibus waiver – Judge Thompson [see attachment]**
- **Houston County omnibus hearing order – J.P. Plachecki [see attachment]**
- **Co-parent courts – Kalene Engel**
- **Third District County Attorney/Public Defender meeting – Kalene Engel**
- **Adult pre-trial diversion – Tom Frost**
- **Committee charge [see attachment]**

Next meeting: October 21, 2010 at 8 a.m.

COURTS COMMITTEE

September 16, 2010 AT 8:00 A.M.

Proposed charge: "The Courts Committee will search for strategies that will enable the courts to function more efficiently and at less cost to the taxpayer while continuing to respect due process and the rule of law."

Suggestions:

NEW CHANGE
"The Courts Committee will search for strategies and procedures that will enable the courts to function more effectively and at reasonable cost to the taxpayer while promoting respect for due process and the rule of law."
uphold

CJCC COURTS COMMITTEE MEETING

September 16, 2010

Present: Judge Bostrack, Lynne Caldwell, J.P. Plachecki, Sherri Brekke, Julie Koop, Marsha Metzler, Sue Smelser, Kalene Engel, Christine Ledebuhr, Rich McCluer, Carmaine Sturino, Tom Frost, Sally Cumiskey, Shelby Hoff, Aarah Saugen, Julie Thompson, Lori Larsen, Holly Szablewski

Purpose: The Courts Committee will search for strategies and procedures that will enable the courts to function more effectively and at reasonable cost to the taxpayer while upholding due process and the rule of law.

The meetings are held the third Thursday of every month at 8:00 a.m. in the jury room adjacent to Courtroom 2. The next regular meeting will be held on Thursday, October 21, 2010.

Discussion:

Review and approval of August meeting minutes

Public defender eligibility – Sally Cumiskey: This item will be placed on the agenda after it is addressed by the committee in St. Paul.

Warrant appearances – Rich McCluer: Mr. McCluer expressed his understanding that if there is a warrant out for an individual, they can appear at the jail prior to 8 a.m. to be booked and can appear in court at 11 a.m. the same day. Recently Mr. McCluer has had clients show up at the jail before 8 a.m. but have not been on the jail list and have been unable to appear at 11 a.m. Sally Cumiskey said that a person must be on the jail list so court administration knows that they will be appearing. The jail list comes out before 8 a.m. An individual can be added to the list by calling or emailing Julie Koop. Ms. Cumiskey said she would follow up on this issue by talking to jail staff.

Courthouse soundproofing – Sally Cumiskey: Ms. Cumiskey said they are waiting to get an estimate to cover the speakers in the third floor courtroom from the same company who did the duct work in the fourth floor conference room. Duane Hebert said they may have to go to arbitration regarding the work on the walls. Ms. Cumiskey will update the Committee next month.

Pretrial Justice Institute – Kalene Engel, Holly Szablewski: Ms. Szablewski is a representative from the Pretrial Justice Institute. She explained that the Bureau of Justice Assistance, in collaboration with the Pretrial Justice Institute, has funds to provide counties free technical assistance. PJI evaluates requests for assistance and decides with the BJA whether to award grant money. Winona County was selected to receive a grant, and as a result Ms. Szablewski is on site for two days to look at the way the county processes cases and meet with certain individuals. She will then review the material collected and prepare a report addressing the issues raised. The report should be available in mid November.

Free legal clinic – Kalene Engel: SMRLS and Olmsted County Legal Aid are sponsoring a free legal clinic on Tuesday, October 26th from 10 a.m. to 4 p.m. at the Hawthorne Adult Literacy Center in Rochester. They are seeking volunteers for two-hour time slots in the areas

of housing, immigration, estate planning, and family law. This is the first time these entities are holding a clinic. Ms. Engel hopes to have one in Winona County in the future.

Houston County omnibus hearing order – J.P. Plachecki: The Houston County order was discussed. The procedure should be that if an attorney files a motion and requests a contested omnibus, the default omnibus hearing would be taken off the calendar. Judge Bostrack said that this was the expectation when Winona County originally started scheduling default omnibus hearings. Mr. Plachecki said he would be following this policy, and Judge Bostrack said she would discuss this with the other judges. Tom Frost suggested having a formal order outlining the procedure.

Co-parent courts – Kalene Engel: Ms. Engel was given information relating to contempt actions in child support matters from Susan Cooper. A meeting was held with the Workforce Center, County Attorney, DHS, and Ms. Engel. The judges can order people without a job to go to the Workforce Center and make contacts. The child support unit will be following up on whether the individual has done so. Prosecutors will no longer be asking the judge to require an individual to make a set number of job contacts per week.

Third District County Attorney/Public Defender meeting – Tom Frost: Processing cases more efficiently was the dominant topic of conversation at the meeting. There was a universal agreement that cases were settling too late, and attorneys were trying the cases they were least prepared for. A presentation by county attorneys and public defenders will be given at the district judge meeting.

Adult pretrial diversion – Tom Frost: Mr. Frost was on the board for pretrial diversion in Minneapolis, and he is interested in creating a program for Winona County. He has spoken with the Olmsted County Attorney. A workgroup would be helpful with representatives from the DOC and defense attorneys. Those interested in participating should contact Kalene Engel.

Committee charge: The Committee agreed to a new charge as follows: "The Courts Committee will search for strategies and procedures that will enable the courts to function more effectively and at reasonable cost to the taxpayer while upholding due process and the rule of law."

Next meeting: October 21, 2010 at 8 a.m.

October agenda:

Review and approval of minutes

E-charging, e-filing update – Sally Cumiskey, Kevin O'Laughlin

Dual diagnosis in custody treatment program – Aarah Saugen, Nancy Valentine

CARE program – Aarah Saugen, Nancy Valentine, Sharon Sommers

Felony level DUI offenders with staggered sentencing – Aarah Saugen

Courthouse soundproofing update – Sally Cumiskey

Adult pretrial diversion workgroup update – Tom Frost

EHM/Wisconsin transfer cases – Rena Patterson, Judge Bostrack

STATE OF MINNESOTA
COUNTY OF HOUSTON

IN THE DISTRICT COURT
THIRD JUDICIAL DISTRICT

IN THE MATTER OF RULE 8
AND OMNIBUS HEARINGS

ORDER

Commencing on November 1, 2007, in all felony and gross misdemeanor cases, the following procedure will be followed at Rule 8 hearings and the scheduling of omnibus hearings (pursuant to MRCrP Rules 8 and 11):

1. **At the Rule 8 hearing:**
 - A. Defendant may enter a guilty plea.
 - B. If a defendant does not enter a guilty plea, defendant will either waive or request an omnibus hearing.
 - C. If a defendant waives an omnibus hearing, a not guilty plea will be entered. At this time, the defendant may request a speedy trial. The matter will be scheduled for a settlement conference.
 - D. If a defendant demands an omnibus hearing, it will be scheduled for a "default" omnibus hearing within 14 days. If a defendant files a written Rule 8.03, or 11.03 motions, requesting a testimonial omnibus hearing, then the case may set on the contested omnibus calendar.
2. **At the Rule 11 omnibus hearing:**
 - A. All Rule 11 hearings will initially be scheduled as a "default" omnibus hearing. No testimony will be taken, except as provided in the following paragraphs.
 - B. If a defendant requests a "testimonial" omnibus hearing, counsel for defendant shall serve and file written motions with the Court and serve the State three days before the "default" omnibus. Counsel for the defendant shall notify the scheduling clerk of the approximate length expected for the hearing. If a defendant requests a "testimonial" omnibus hearing and if the motions are timely filed with the Court and

if the scheduling clerk was properly notified, defendant and counsel need not appear at the previously scheduled default omnibus hearing.

- C. If a defendant does not request a "testimonial" omnibus hearing, the defendant shall appear at the "default" omnibus hearing to formally waive the omnibus hearing at which time the defendant will enter either guilty or not guilty plea.
- D. The defendant shall be given the opportunity to present non-testimonial evidence (i.e. police reports only) at the "default" omnibus hearing if (1) the defendant has filed a timely motion and (2) the matter can be presented to the Court in no more than five minutes.
- E. If a defendant enters a not guilty plea, the case will be scheduled for a settlement conference.

Houston COUNTY DISTRICT COURT

(Adopted October 3, 2007 and effective November 1, 2007)

James A. Fabian, District Judge

State of Minnesota,

Plaintiff,

OMNIBUS WAIVER/NOTICE OF HEARING

vs.

Court File No. _____

Defendant.

TO THE ABOVE-NAMED COURT

I _____, Defendant in the above-entitled action, do respectfully represent and state as follows:

1. I have been told and I understand that I have a right to a probable cause hearing.
 - a. I know that I could now move that the complaint against me be dismissed for lack of probable cause and I know that if I do not make such a motion and if I go ahead with entering my plea of not guilty, I will not be able to later move the Court to dismiss the charges against me for lack of probable cause.
 - b. I also know that if I waive my right to a probable cause hearing, I waive all right to successfully object to the absence of a probable cause hearing

2. My attorney has told me and I understand:
 - a. That the prosecutor for the case against me, has:
 - i. physical evidence obtained as a result of searching for and seizing the evidence;
 - ii. evidence in the form of statements, oral or written that I made to police or others regarding this crime;
 - iii. evidence discovered as a result of my statements or as a result of the evidence seized in a search;
 - iv. identification evidence from a line-up or photographic identification;
 - v. evidence the prosecution believes indicates that I committed one or more other crimes.
 - b. That I have a right to a pre-trial evidentiary hearing before a judge to determine whether or not the evidence the prosecution has could be used against me if I went to trial in this case.
 - c. That if I requested such a pre-trial evidentiary hearing I could testify at the hearing if I wanted to, but my testimony could not be used as substantive evidence against me if I went to trial in this case.
 - d. I know that if I do not make such a motion and go ahead with entering my plea of not guilty, I waive all right to successfully object to the absence of such a pre-trial evidentiary hearing.

3. That in view of all above facts and considerations I wish to waive my right to a probable cause and/or pre-trial evidentiary hearing and enter a plea of not guilty.

4. I hereby request a **JURY** -- **COURT** (circle one) trial.
5. I understand and acknowledge that I have received notice of the following hearing dates:

Pretrial Hearing: _____, 20__, at _____ .m. before the Honorable _____, in Courtroom _____ at the Winona County Courthouse.

Trial: _____, 20__, at _____ .m. before the Honorable _____, in Courtroom _____ at the Winona County Courthouse.

Dated: _____

Signature

Name: _____

Street Address: _____

City/State/Zip: _____

I, _____ state that I am the attorney for the defendant; and that I personally observed the defendant date and sign the above Omnibus Waiver.

Dated: _____

Attorney for Defendant

COURTS COMMITTEE AGENDA

October 21, 2010 AT 8:00 A.M.

PLEASE NOTE: This meeting will be held in Courtroom 2 Jury Room.

- **Review and approval of minutes**
- **E-charging, e-filing update – Sally Cumiskey, Kevin O’Laughlin**
- **Dual diagnosis in custody treatment program – Aarah Saugen, Nancy Valentine**
- **CARE program – Aarah Saugen, Nancy Valentine, Sharon Sommers**
- **Felony level DUI offenders with staggered sentencing – Aarah Saugen**
- **Courthouse soundproofing update – Sally Cumiskey**
- **Adult pretrial diversion workgroup update – Tom Frost**
- **Length of continuance for dismissal/stay of adjudication – Sally Cumiskey**

Next meeting: November 18, 2010 at 8 a.m.

CJCC COURTS COMMITTEE MEETING

October 21, 2010

Present: Judge Bostrack, Lynne Caldwell, J.P. Plachecki, Sherri Brekke, Julie Koop, Marsha Metzler, Kalene Engel, Christine Ledebuhr, Carmaine Sturino, Tom Frost, Sally Cumiskey, Aarah Saugen, Lori Larson, Nancy Valentine, Vic Souders, Sharon Sommers

Purpose: The Courts Committee will search for strategies and procedures that will enable the courts to function more effectively and at reasonable cost to the taxpayer while upholding due process and the rule of law.

The meetings are held the third Thursday of every month at 8:00 a.m. in the jury room adjacent to Courtroom 2. The next regular meeting will be held on Thursday, November 18, 2010.

Discussion:

Review and approval of September meeting minutes

E-charging, e-filing update – Sally Cumiskey: The set-up process will begin by January 1st, 2011 and the system should be up and running by March 1st, 2011. Tom Frost said these dates were chosen to ensure the new county attorney will be involved.

Dual diagnosis in custody treatment program – Aarah Saugen, Nancy Valentine: This is a 96 hour chemical dependency program that meets two to three times a week in conjunction with Wenden Recovery Services and Hiawatha Valley Mental Health Center. The number of program attendees has been dwindling over the past year, raising the issue of ability to continue the program. This program is advantageous because it keeps individuals engaged in treatment much longer than a 28 day in-patient program, which results in a better success rate. It also provides a better transition back into society, as patients see the same therapists once they return to the community. Many individuals may not successfully complete other programs because they request treatment outside of jail just to get out, but don't take treatment seriously. The DOC wants judges to be aware of this program and know that it can be court-ordered. The individual must be in the Huber unit and the jail could serve as the residential component.

CARE program – Vic Souders, Sharon Sommers: This voluntary program works with people in custody in order to help them get services provided immediately upon release, such as insurance, treatments and assessments. Previously there was only one case worker for the program, but they now have two and will therefore be able to handle a larger volume of people. So far the program has had 28 active clients, 5 dormant clients and 8 terminations. The program is for convicted adults who are not level three sex offenders and preferably Winona County residents, or planning to establish residency in Winona County once released. Participation in the program is not intended to be used as a sentencing alternative or mitigating factor for sentencing, but rather as a supplemental aspect to release to make people more successful and hopefully reduce recidivism.

Felony level DUI offenders with staggered sentencing – Aarah Saugen: The DOC has been having issues with felony level DUI offenders who are represented by public defenders and need to request waiver of a portion of their staggered sentence. Ms. Saugen has been

told by the County Attorney's Office that a formal motion needs to be filed on the anniversary of the sentencing date. The problem is that those individuals who were represented by a public defender do not have an attorney after sentencing and do not have the means to hire a private attorney solely for a motion. Judge Bostrack said a motion is not needed, from now on the DOC can write a letter if they feel as though someone should have the time waived, and will request a review hearing. The DOC will put this in the cover letter of their progress report and the County Attorney's Office will receive a copy.

Courthouse soundproofing update – Tom Frost: Mr. Frost and Ms. Cumiskey were to attend a meeting that day with Duane Hebert to discuss what has and has not been done and look at where the project stands. They are still considering arbitration or a lawsuit if issues remain unresolved. This item will be on next month's agenda.

Adult pretrial diversion workgroup update – Tom Frost: The workgroup met the week before the Courts Committee meeting. Kalene Engel is putting together a description of the program criteria and the DOC will put together a description of what services are available. The program will be for first time property offenders at the felony level, and the scope of the offenses will be those in which restitution can be made within one year. The group also talked about a bad check diversion program, which many counties in Wisconsin and Minnesota have been using. In addition to recovering funds, the program provides programs to teach management of finances. The program is at no cost to the city or county, as costs are recovered from the offenders. The bad check diversion program could be up and running by the end of the year. This item will be on the agenda for next month.

Length of continuance for dismissal/stay of adjudication – Sally Cumiskey: For unsupervised continuance for dismissal or stays of adjudication, the length of stay and fact that it is ordered as unsupervised need to be correctly entered into the database. On MNCIS, there is no place to enter the length of stay unless the continuance for dismissal is entered as probation and the length of stay is entered as a probation condition.

Other issues:

Domestic abuse prevention program – Tom Frost: The Office of Justice Programs in the Department of Public Safety have a grant for domestic abuse prevention programs. This is similar to the Blueprint for Safety program in Ramsey County and other counties. The grant proposal is due November 9th. A workgroup has already been formed, so even if funding is not attained at this time, progress can be made to institute a domestic abuse prevention program in Winona County down the road.

Citations – Sally Cumiskey: Tickets will be scanned to central location starting early next year. Right now tickets are coming in that need to be sent back to law enforcement because the listed statutes are incorrect or the community of offense is incorrect or vague. Training is needed to prevent these errors. Ms. Cumiskey and Mr. Frost will decide who will form a uniform citation committee. This item will be revisited at next month's meeting.

Warrantless appearances – Sally Cumiskey: Ms. Cumiskey mentioned that an individual can turn themselves in up until 10 a.m. and appear that day at first appearances provided Julie Koop is notified.



Next meeting: November 18, 2010 at 8 a.m.

November agenda:

Review and approval of minutes

Courthouse soundproofing update – Sally Cumiskey, Tom Frost

Adult pretrial diversion workgroup update – Tom Frost

Uniform citation committee – Sally Cumiskey, Tom Frost

Law library update – Judge Bostrack, Kalene Engel

COURTS COMMITTEE AGENDA

November 18, 2010 AT 8:00 A.M.

PLEASE NOTE: This meeting will be held in Courtroom 2 Jury Room.

- **Review and approval of minutes**
- **Monitoring systems – Char Wilson, Midwest Monitoring**
- **Courthouse soundproofing update – Sally Cumiskey, Tom Frost**
- **Adult pretrial diversion workgroup update – Tom Frost**
- **Uniform citation committee – Sally Cumiskey, Tom Frost**
- **Law library update – Judge Buytendorp, Kalene Engel**

Next meeting: December 16, 2010 at 8 a.m.

CJCC COURTS COMMITTEE MEETING
November 18, 2010

Present: Judge Buytendorp, Judge Thompson, Judge Leahy, Julie Koop, Sue Smelser, J.P. Plachecki, Tom Frost, Carmaine Sturino, Kalene Engel, Marsha Metzler, Sally Cumiskey, Sherri Brekke, Lori Larsen, Aarah Saugen

Purpose: The Courts Committee will search for strategies and procedures that will enable the courts to function more effectively and at reasonable cost to the taxpayer while upholding due process and the rule of law.

The meetings are held the third Thursday of every month at 8:00 a.m. in the jury room adjacent to Courtroom 2. The next regular meeting will be held on Thursday, December 16, 2010.

Discussion:

Review and approval of October meeting minutes

Monitoring systems – Char Wilson, Midwest Monitoring: Ms. Wilson first described alcohol monitoring or house arrest systems. The E3 machine tracks when an individual leaves and returns their home and any curfew violations. The MEMS 3000 is a breath test with video capabilities. The unit takes a snapshot of the person taking the test to ensure the sample was actually taken from the client. The MEMS 3000 alerts the client when a test is required. Midwest Monitoring has a standard amount of tests it requires, but additional testing can be requested through the sheriff's department. If a client tests positive, the machine will continue testing until the alcohol level is down to 0. Violations are reported immediately to the sheriff's department. The E3 and MEMS are now cellular based, so clients do not need to have a landline. However, in areas of poor cellular reception, it will not work.

Ms. Wilson next spoke about the Tracker Pal, which is an active GPS unit. This piece of equipment is used in domestic assault, sex offender, and juvenile truancy cases. It is used to ascertain the whereabouts of a client or to exclude a client from a particular zone. If an exclusion zone is set, an alert is generated almost immediately (depending on cell coverage) if the client enters that zone. A staff monitors those using the Tracker Pal 24 hours a day and notifications are sent to the sheriff's department. The unit measures the rate of speed, so it can ascertain whether a client is just driving through an exclusion zone or actually stopping. The bracelet has a speaker on it and can be called and it also has a tamper alert. It must be charged two hours a day.

The SCRAM bracelet is an alcohol-monitoring device that takes a sample emitted through the skin every thirty minutes. It takes about 1.5 to 2 hours for alcohol to be detected through the skin after consumption, so the bracelet will not detect the presence of alcohol as quickly as a breath test. The bracelet will detect environmental alcohol and the alcohol level must reach .02 to set off an investigation. If a client were to challenge the technology at a court hearing, Midwest Monitoring does not testify. The manufacturer, Alcohol Monitoring Systems, would come to Minnesota to testify. The technology has been upheld in 28 states.



The SCRAM X provides alcohol and house arrest monitoring in one bracelet. It works like the MEMS 3000.


Courthouse soundproofing update – Sally Cumiskey, Tom Frost: The speakers in the third floor ceiling have been covered. Ms. Cumiskey and Mr. Frost were scheduled to meet with Duane Hebert the day following the meeting.

Adult pretrial diversion workgroup update – Tom Frost: The workgroup has a working document which is close to being finalized and is scheduled to meet the day following the Courts Committee meeting. The group will meet with the judges in the near future.

Uniform citation committee – Sally Cumiskey, Tom Frost: The goal of this committee is uniformity for statutes referenced in citations. A meeting was held with representatives from the sheriff's department and the police department. Intensive training of officers is needed. July 1st is the date of implementation. Justin Wesley is the point person for this initiative. An update will be provided to the Courts Committee at February's meeting.

Law library update – Judge Buytendorp, Kalene Engel: The rolling shelves will soon be moved out and the floor cleaned up. Obsolete books will be removed. A part time staff member is needed, approximately 10 hours per week. The criminal fee will go from \$5 to \$10 in July to fund the library.

Other issues:



Blueprint for Safety – Kalene Engel: The proposal for the grant was submitted on November 9th, for an award period beginning January 1st. Ms. Engel believes she will hear back soon on the status of the grant.

Next meeting: December 16, 2010 at 8 a.m.

December agenda:

Review and approval of minutes

COURTS COMMITTEE AGENDA

December 16, 2010 AT 8:00 A.M.

PLEASE NOTE: This meeting will be held in Courtroom 2 Jury Room.

- Review and approval of minutes
- Review of PJI report – Judge Buytendorp, Kalene Engel
(see email attachment)
- Tracking Hispanic names – Sally Cumiskey
- New rules regarding payable juvenile citations – Sally
Cumiskey
- Adult pretrial diversion workgroup update – Tom Frost,
Kalene Engel (see new policy posted on CJCC website at:
[http://www.winonacountycjcc.org/cjccinitiatives/aduldiver
sionprogram.html](http://www.winonacountycjcc.org/cjccinitiatives/aduldiver
sionprogram.html))

Next meeting: January 20, 2011 at 8 a.m.

CJCC COURTS COMMITTEE MEETING

December 16, 2010

Present: Judge Buytendorp, Julie Koop, Sue Smelser, Tom Frost, Carmaine Sturino, Kalene Engel, Sally Cumiskey, Sherri Brekke, Lori Larsen, Aarah Saugen, Lynne Caldwell

Purpose: The Courts Committee will search for strategies and procedures that will enable the courts to function more effectively and at reasonable cost to the taxpayer while upholding due process and the rule of law.

The meetings are held the third Thursday of every month at 8:00 a.m. in the jury room adjacent to Courtroom 2. The next regular meeting will be held on Thursday, January 20, 2011.

Discussion:

Review and approval of November meeting minutes

Tracking Hispanic names – Sally Cumiskey: Hispanic names have been difficult to find in the system. Oftentimes the middle name of an individual is actually their last name, while the last name listed is the mother's name. Sometimes tickets come in with the middle and last names hyphenated. Court administration would like a way to cross-reference the names. Ms. Cumiskey will check to see if there is a procedure that could be followed at the state level. This will be an issue for the uniform citation group to discuss. Ms. Cumiskey will follow up.

New rules regarding payable juvenile citations – Sally Cumiskey: Payable citations for juveniles go into effect July 1, 2011. Court administration will send out a form detailing an individual's rights and another form will be included to be filled out in order to pay the fine.

Adult pretrial diversion workgroup update – Tom Frost: The pretrial diversion program is now set up and an explanation and all forms are on the website. The county attorneys are reviewing all eligible pending cases for diversion. The website is <http://www.winonacountycjcc.org/cjccinitiatives/adultdiversionprogram.html>

Review of PJI report – Judge Buytendorp, Kalene Engel: The case processing delays on page 15 of the report were discussed, namely the time between conviction and sentencing, discovery, and appointment of defense counsel, along with the recommendations for improvement. A public defender workgroup will be formed, which will focus on the flow of appointment rather than eligibility. The report recommended the use of a pretrial scheduling order and promoting earlier discovery and early case resolution. The use of a pretrial scheduling order was attempted before without success. Continuances were discussed as a reason for causing delays. A district continuance policy exists and the judges will discuss strictly enforcing the continuance policy at their next meeting. A pretrial supervision program workgroup was suggested, which would join with Justin Green's workgroup. An update will be given at February's Courts Committee meeting.

Other issues:

K2/plant food as drug – Aarah Saugen: The DOC is concerned because they have heard of many kids overdosing on this but it is not illegal if sold as plant food. It is a type of synthetic marijuana that can cause hallucinations. This issue will be discussed at the next judges' meeting.

Next meeting: January 20, 2011 at 8 a.m.

January agenda:

Review and approval of minutes