

State of the Judiciary
Chief Justice Lorie S. Gildea, Minnesota Supreme Court
Message to the Minnesota State Bar Association
June 22, 2022

Good afternoon, members of the Minnesota Bar. It is an honor to speak with you today, and a true joy to be with all of you here, in person. It was wonderful to walk in here today and see so many friendly and familiar faces. Thank you to the MSBA for inviting me here today, and thank you all for sharing your lunch hour with me.

At the risk of preempting the ceremony to follow my remarks, I'm taking this opportunity to congratulate and thank Jennifer Thompson for her service as MSBA president over the past year.

I can attest that leading an organization through a pandemic is full of unique challenges, and I have been continuously impressed by how the MSBA has navigated these unprecedented times. I specifically recognize Jennifer's leadership on issues related to attorney well-being and affirming the Bar's commitment to ensuring access to justice. I also thank Jennifer and the Bar for your partnership and support during the past Legislative Session. Jennifer, thank you for your excellent leadership and partnership over the past year. Both the Bench and Bar are grateful for your service.

And let me be among the first to congratulate Paul Peterson on his new role. Paul, I am very much looking forward to working with you in the year ahead. As you'll hear about in my remarks today, you are entering into this leadership position at a moment when a strong Bench and Bar relationship is as vital as it's ever been. I know that your service will help fortify and grow that crucial partnership.

Members of the Bar, this year's State of the Judiciary address comes at a moment of historic transformation for Minnesota's courts.

For the past two years, I have come before the Bar to discuss the impact of the COVID-19 pandemic on our courts, along with the dramatic steps we were forced to take to keep an open door to justice in Minnesota during these challenging times. These past two years have been among the most difficult in our state's history and have tested our ability to deliver justice in unprecedented ways.

But as our state emerges from this time of crisis, I am pleased to report that Minnesota's judiciary is strong and resilient. And while our courts face some lasting challenges from the pandemic, we are also ready to take advantage of the invaluable lessons we have learned over the past two years and are using those lessons to expand access to justice and improve how we serve the people of Minnesota.

Our justice system is moving forward, together, and charting a new course that will guide the long-term, post-pandemic future of the judiciary in Minnesota. Without question, the biggest and most impactful transformation happening in our courts as we emerge from the pandemic is the widespread use of remote hearings in our district courts.

As detailed on this chart, approximately 80 to 90 percent of all district court hearings in Minnesota have been held online during the pandemic. While the number of in-person hearings

has begun to increase in recent months, remote hearings remain the predominate way hearings are held in Minnesota district courts.

Minnesota's transition to widespread remote hearings was entirely a function of the pandemic. But even though this transition to remote hearings was driven by necessity, our courts and those we serve quickly discovered value in this virtual form of justice. Court users quickly embraced the ease and convenience provided by online court hearings.

Throughout the past two years, we have used surveys, focus groups, and other methods to gather feedback from judges, court staff, attorneys, and litigants about remote hearings. That feedback has been overwhelmingly positive, as remote hearings have:

- Made it easier to attend court hearings, and reduced failure to appear rates in many types of cases;
- Reduced barriers to attend court hearings, like taking time off work, finding childcare, and paying for parking; and
- Created new efficiencies for those who work in the courtroom, such as allowing attorneys to quickly appear in multiple counties in a single day, or to represent a client in a faraway location without spending half a day traveling.

Given these benefits, judges, court staff, attorneys, and litigants have told us throughout the pandemic that remote hearings should have a permanent role in the ongoing operations of our courts, even as the pandemic subsides.

After listening to all of that feedback, last fall, the Minnesota Judicial Council made the historic decision to adopt a framework for the long-term use of remote hearings in our district courts. This was a monumental decision by our state's judicial leadership. While most states across the country experimented with remote hearings during the pandemic, many saw that transition as a temporary necessity. Now that the crisis has begun to subside, we are seeing many of those same states returning to their pre-pandemic status quo and bringing most or all of their hearings back into the courthouse.

In Minnesota, our Judicial Council felt it was imperative that our courts respond to all of the positive feedback we've received about remote hearings from those we serve. The Council's decision to embrace the long-term use of both remote and in-person hearings reflects our commitment to serving and listening to the public and making our courts as accessible and customer-focused as possible.

While the Council approved this new framework last fall, the Omicron wave and spiking COVID case rates kept our courts working under our emergency pandemic procedures for several more months. But with pandemic conditions improved this spring, the Judicial Council officially enacted the new framework for how our courts will use in-person and remote hearings on June 6, a little more than two weeks ago.

The framework is implemented through two primary documents, which are available on the Judicial Branch website. That includes a new Judicial Council policy—the oneCourtMN Hearings Initiative Policy—and a related Chief Justice order. Let me briefly walk you through this new framework.

For non-criminal hearings, the Judicial Council has approved a case-by-case chart that shows which hearing types will be presumptively in person and which will be presumptively remote.

The general rule of thumb is that most evidentiary hearings—that is, hearings where evidence is being presented or testimony is taken on issues in dispute—are held in person, while most

non-evidentiary hearings are held remotely. But that's not a hard-and-fast rule, which is why we developed the detailed chart.

Our Policy also recognizes that every case and every hearing is different, and that judges need to have the flexibility to depart from these guidelines on occasion. Under the Policy, judges have the authority to grant exemptions to these guidelines under exceptional circumstances.

On April 19, I issued a statewide order that defines what constitutes an exceptional circumstance. This includes situations like a party not having access to technology in order to participate in a remote hearing, and the judge finding that the party cannot reasonably be expected to gain access to such technology before the hearing. Another example would be if there is a safety concern or other significant impediment to a party appearing at a hearing that is presumptively in person under Policy.

For criminal cases, we are taking a more localized approach. Each of Minnesota's 10 judicial districts have developed a local plan that details how they are using both remote and in-person hearings for criminal cases. You can find copies of these plans right on the Judicial Branch website.

I want to be clear that having 10 different approaches to how we hold criminal hearings is not our ultimate goal. We believe statewide consistency is important, especially for those of you who routinely practice in multiple counties and multiple districts.

We are taking this local approach on a temporary basis to provide flexibility to our districts as they work through the backlog of felony and gross misdemeanor cases resulting from the pandemic. Once we get through that backlog—which I'll touch on in more detail shortly—the Judicial Council will use the lessons learned and experience gained while using the district-level plans to refine a statewide approach to using remote and in-person hearings for criminal cases on a long-term basis.

To be clear, the framework we just approved is really a first step in our transition. As we implement the new Policy, we have a statewide Committee of judges and court administrators overseeing the process. One of the key things that Committee is doing is exploring how we can improve how we conduct both in-person and remote hearings.

For example, the Committee is exploring online courtroom decorum, and what strategies we can employ to ensure virtual hearings have the same level of decorum as hearings in a courthouse. This has been an issue we've heard about frequently from judges and attorneys, and it will be an area of high focus going forward.

The Committee will be exploring how best to raise the decorum of remote proceedings, whether that's through training and education, finding ways to set the proper expectations for new court users, or perhaps even using technology to make online Zoom rooms feel and look more like real

courtrooms. One idea that's also been tried in other jurisdictions is having a Zoom bailiff who manages remote hearing rooms while also enforcing decorum rules and providing more structure to the proceedings.

The Steering Committee will also be building on our efforts to close the digital divide and ensuring all Minnesotans can access online court hearings and services.

I can't say enough about the great work our district courts undertook during the pandemic to help Minnesotans access online court services. The installation of Zoom Rooms inside courthouses, where litigants could find a quiet space with the technology needed to participate in a remote hearing, has been crucial to our success during the pandemic.

I also thank our partners in the Minnesota Legal Services Coalition, which recently deployed more than 270 kiosks at community locations throughout the state. These kiosks can be used to access a variety of statewide legal services, and many are located in private areas suitable to participate in remote court hearings.

Bar members, I hope you are aware of these resources, and are encouraging your clients to use these spaces if they have limited internet access or don't have the technology needed to connect to Zoom. These Zoom Rooms and legal kiosks are available to everyone, and we encourage attorneys to connect your clients with these valuable community resources.

The Steering Committee is also overseeing new technology initiatives aimed at improving the remote hearing experience. One example of that work is our new Digital Exhibit Management System that allows you, as attorneys, or litigants themselves to upload and manage digital exhibits from anywhere, all within a secure server that is only accessible to you and the court. You can then use that same system to display your digital exhibits—like photos, videos, or audio recordings—during remote and in-person court hearings.

This new Digital Exhibit Management System is already available in nine counties, and I'm sure some of you have already used it. It's getting great reviews from attorneys, judges, and court staff, and it should be available statewide by the end of 2022.

One final, important focus of our Steering Committee will be outreach: that's outreach with all of you and our other justice partners, and continued outreach with our judges and staff to make sure the new remote hearing framework is working well in our statewide court system.

In May and June, the Steering Committee held a series of six stakeholder meetings with our statewide justice partners, including the MSBA, about the new hearing framework to hear questions and feedback. These meetings were extremely productive, and we heard a lot of positivity from our partners about continuing the use of remote hearings in our district courts. We also talked about many of the issues I've already identified, such as courtroom decorum, overcoming the digital divide, and how we can continue to improve the technology and processes behind remote hearings. Going forward, the Steering Committee is going to continue to conduct ongoing outreach to the Bar and other statewide justice partners, to gather your input and feedback on the new hearing framework.

As I said earlier, we are embracing the framework because of all the positive feedback we heard from attorneys, justice partners, and litigants throughout the pandemic. That's why it is vital that

we continue hearing from all of you throughout this transition; to ensure the new approach to hearing cases in Minnesota continues to be a success.

While the oneCourtMN Hearings Initiative is at the forefront of our work in the Judicial Branch, it is far from our only priority. I am pleased to share with the Bar that our courts are making great progress on tackling the backlog of felony and gross misdemeanor cases that built up during the pandemic.

By way of background, here is a chart that shows the increasing backlog of pending felony and gross misdemeanor cases since the pandemic arrived in March 2020. As you can see, much of the buildup was a result of those first few weeks of the pandemic, when we restricted most access to our physical courthouses. All told, our pending Major Criminal caseload grew by nearly 40 percent between the start of the pandemic and November 2021.

Last year, we asked each of our 10 judicial districts to develop a local strategy for bringing down their Major Criminal case backlogs. We then secured federal pandemic relief funding to bring on senior judges, hire temporary staff, and secure other resources necessary to implement those strategies. We then set a goal to reduce the Major Criminal case backlog by 20 percent every four months, beginning November 1 of last year. If successful, this strategy will eliminate the entirety of the pandemic backlog by June 30, 2023.

While our backlog action plans were slowed by the omicron wave that hit our state in the fall and winter, I'm pleased to report our courts are now making excellent progress on our reduction goals. From November 1 through the beginning of June, our courts had reduced the total number of pending felony and gross misdemeanor cases by nearly 30 percent.

That's a reduction of nearly 4,000 Major Criminal cases from our pandemic backlog.

This great progress could not happen without a lot of hard work, not only by our district court judges and staff, but by our prosecutors, public defenders, and private attorneys who are taking on bigger and bigger caseloads to help bring down the backlog. I thank the Bar and our justice partners for all your efforts to help us address the backlog and ensure timely access to justice for the people of Minnesota.

One of the other major pandemic-era successes of our state court system was the launch of Minnesota Court Records Online, our groundbreaking application that provides online access to public Minnesota state district court records and documents. We officially launched the first phase of Minnesota Court Records Online—or MCRO—on March 17, 2021. Over the past year, we have phased in a variety of enhancements that have added new functionality and better search capability to the application.

The new application has been extremely well-received by attorneys and court users, and usage of the application has been extremely high. Since MCRO launched in March 2021, users have downloaded more than six million documents through the application, with nearly 800 new downloads occurring every hour. Even better, in more than a year of active use, we haven't seen any significant technical issues or outages with the application.

We are currently pilot testing the final Phase of development of MCRO. This final Phase will bring additional search functionality to the application, including the ability to search for

hearings scheduled on court calendars, as well as monetary judgments. Assuming the pilot goes well, our goal is to make the new functionality available to all users later this summer.

The one remaining issue to be decided related to MCRO is a fee to access a document through the application. Currently, state statute requires the courts to charge \$8 for copies of uncertified court documents. All of the revenue from that statutory fee goes to the state's General Fund.

As I've shared with the Bar in the past, our intent was to begin charging that statutory fee on documents accessed through the MCRO application once development of the application is complete later this year. This past Legislative Session, there was a bipartisan, bicameral effort to eliminate that fee, both for uncertified copies at the courthouse and for documents accessed through MRCO. While the provision was in both the House and Senate omnibus public safety budget bills, the Legislative Session concluded before a final, negotiated omnibus bill could be brought to the floor for a final vote.

Quite frankly, this puts our courts in a bit of a quandary. In order to begin charging that fee through MCRO, we will need to go through the time and expense of adding that fee payment capability into the application. Do we go through that time-consuming development process now, or do we delay implementation in order to give the Legislature time to act during the next Legislative Session?

This is a policy decision currently being discussed among our Judicial Branch leadership teams, so I can't give you a firm answer to that question right now. But I did want to share an update on this issue, as I know it's of great interest to the Bar. Stay tuned for further updates on this topic, and hopefully we will see a legislative resolution to the fee issue in the near future.

Setting the fee issue aside, I don't want to overlook what an incredible achievement the MCRO project has been. I'm proud to say that MCRO was approved, developed in-house, and launched all during the COVID-19 pandemic, which I think is a great credit to the judges and court staff involved in this important effort. The launch of MCRO and its continued development is a huge step forward in increasing access and transparency and providing convenience in our court system.

There is so much other great work happening in our courts right now that it's hard to capture it all in these brief remarks today.

- Our Committee for Equality and Justice is tackling several important issues as part of its current strategic plan, including developing recommendations to ensure our juries are selected from lists that represent the communities they serve, and exploring how our courts can eliminate disparities in probation revocation.
- In addition, our new Civil Justice Subcommittee, which is a joint effort with the MSBA, recently completed a statewide review of all the innovative approaches used in housing courts across the state as a response to the eviction moratorium off-ramp in 2021. They will use that information to explore whether there are strategies or best practices that can be used to improve how we conduct housing court proceedings going forward.
- Meanwhile, our Legal Paraprofessional Pilot Project just entered its second year, and we now have 18 approved paraprofessionals working under the supervision of a licensed attorney to

provide legal advice and representation to individuals in certain landlord- tenant disputes or family law matters.

I recently spoke to our state's Paralegal Association about this Pilot, and they said that many of their members are interested in being part of it and helping address the civil justice gap, but they've been unable to find attorneys willing to serve as their supervising attorneys for the purpose of the Pilot. For those of you who work with talented, experienced paralegals, I'd really encourage you to consider taking part in the Legal Paraprofessional Pilot Project. We recently extended it into 2024, so there is still plenty of time to help address some of the unmet legal need in the state.

I'm also pleased to share that earlier this spring, we were able to provide \$500,000 in matching grants to 13 counties to improve their local courthouse security, thanks to a recent legislative appropriation. Courthouse security is truly an access to justice issue, and we appreciate the Legislature's continued support to make our court facilities safe for those who work in and visit these important community locations.

You can learn more about these and many more initiatives underway in our courts in the Judicial Branch's most recent Annual Report to the Community. You can see the link here on the screen.

To close my remarks today, I felt it was important to update the Bar about one of the most significant challenges facing our courts, and our justice system as a whole. That challenge is ensuring our justice system has the skilled and talented workforce it needs to carry out our Constitutional mission and guarantee timely access to justice for the people of Minnesota.

We all know that the pandemic and our economic recovery from it has had a dramatic impact on our workforce, and low unemployment rates have made it difficult for many employers to keep and attract experienced staff.

Our court system is feeling these workforce challenges acutely. The compensation we provide to our judges and employees is dependent on our legislative appropriation, and, in recent years, we have seen our compensation system fall far behind other public sector employers in Minnesota, such as the Executive Branch and local governments.

This is having a big impact on our ability to recruit and retain talented and experienced employees. Since 2018, we have seen the annual number of employees leaving the Judicial Branch increase by more than 40 percent, while the number of applicants for each open position has fallen by 40 percent.

As attorneys, you understand how important it for our courts to have experienced judges presiding over cases, qualified court staff managing case files and assisting court users, skilled court reporters keeping the record, trained interpreters working in the courtroom, and expert IT staff keeping our electronic tools and digital case management system up and running.

Simply put, our ability to deliver justice and provide high-quality service to the people of Minnesota depends on attracting and retaining skilled employees.

Of course, we are seeing these workforce challenges throughout our state's justice system; from our state public defender's office to our correctional facilities.

As you all know, funding for our justice system was a topic of major importance during this year's Legislative Session. We are extremely grateful for our champions in both the House and Senate who made justice system funding a top priority this Session. We know they were as disappointed as we were when the Session ended without passage of this important new funding, despite the state's historic budget surplus.

With a legislative special session looking unlikely, it seems like our justice system is going to continue facing these severe workforce issues for at least another year, as we look toward the 2023 Legislative Session and passage of a new biennial budget for the state.

In the meantime, I would encourage members of the Bar to keep up your excellent advocacy efforts on behalf of our justice system, especially as we enter this important campaign season. There is no better time to talk to your elected representatives about the importance of maintaining Minnesota's nation-leading justice system than when they are at your door seeking your vote. Your voice can ensure that policymakers across the state know that the Bench and Bar are united behind a high-functioning, accessible, independent, and adequately funded justice system for the people of Minnesota.

On behalf of the judges and staff of the Minnesota Judicial Branch, I thank all of you for your continued partnership, your leadership on issues of great importance to our state's legal system, and your flexibility and adaptability as our judiciary has navigated the past two years of challenges and changes. Alone we can do so little, but together we can do a lot. Those words reflect the wisdom of Helen Keller but I think they perfectly capture our partnership.

Through the combined work of the Bench and Bar, we have been able to keep the doors to justice in Minnesota open during this historic crisis. Your work as attorneys has been vital to helping Minnesotans navigate the myriad of changes, and I value your service to the profession during these difficult times.

While we know the challenges of the pandemic aren't over, we are also looking ahead to a bright future for our state's judiciary. By using the lessons learned and experience gained during the pandemic, we are transforming how our courts deliver justice and improving how we serve the people of Minnesota. We are moving forward, together, and I look forward to working with the State Bar Association on building a stronger, more resilient court system as we emerge from this crisis.

Thank you.