IMPROVING PSYCHOLOGICAL SERVICES WHILE CONTAINING COSTS IN THE TENTH JUDICIAL DISTRICT

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ABSTRACT

The Judicial Branch in the State of Minnesota is a unified court system as of July 2005. The Tenth Judicial District is the second largest district in the State of Minnesota. It is the largest multi-county district.

The state has been facing budget shortfalls for the last ten years. The state has taken various measures to meet the budget shortfalls. This has included layoffs, voluntary separation incentives, unpaid salary savings leave, hiring freeze, holding open judicial vacancies, increased filing fees, and cuts to various budgets. The mandated services budget includes, but is not limited to, psychological services cases involving civil commitments and Rule 20's. Rule 20 evaluations occur in criminal cases when there is a belief that a defendant may not be competent to proceed with the case or was not responsible at the time of the alleged offense because of mental illness or developmental disability.

Psychological Services has been an area that has seen increased case filings and increased costs. The budget allocations have not been able to keep up at the same rate. Over the years of the budget shortfalls, there have been various workgroups formed to address this longstanding issue. An initial state workgroup issued recommendations which were adopted by the Judicial Council. Various components of those recommendations were implemented. This included developing a statewide roster of medical examiners for court administration to utilize. It also involved setting payment policies to help to contain costs that examiners were charging. Yet in the Tenth Judicial District, costs continued to rise. The eight counties that comprise the Tenth Judicial District have an average cost per case type that is higher than the state

average. It has been a longstanding issue not only statewide, but especially within the Tenth Judicial District. No one has had the time to analyze the "whys" of this issue. The research addresses the following areas:

- The number of cases in each of the eight counties in the Tenth Judicial District along with costs and how that compares to the state average.
- The process flow in each of the eight counties.
- The typical recommended process flow.
- The process improvement approach that will have the greatest overall impact on court operations and policy implementation in which staff intensive mandated services can be provided more efficiently and cost effectively.

Reports were pulled from a statewide database. This contained detailed information on case types, cost, average by state and county. Reports also included detailed costs per examiner. District invoices were researched to identify costs per examiner and case type in more detail than the statewide database information. All eight counties were interviewed to identify local processes and concerns.

The research identified that counties within the Tenth Judicial District use a limited number of examiners. This is primarily due to judge preference, local contracts, convenience, and those willing to travel to counties in rural locales. Although there are some court processes that could be enhanced, the common issue is the cost of the examiner invoices. These costs are a function of wide variations in examiner work processes and practices. These, in turn, are a function of existing court policy and examiner management practices. The examiners are following the state policy guidelines on maximum hourly rates, but the policy does not limit the number of hours that can be charged for case review, interviews, report writing, or travel. Some of the counties are starting to use an employee model, which places the psychological

services examiner on the court's payroll versus a contract. This has proven to better contain costs, but the employee model has not been able to keep up with demand.

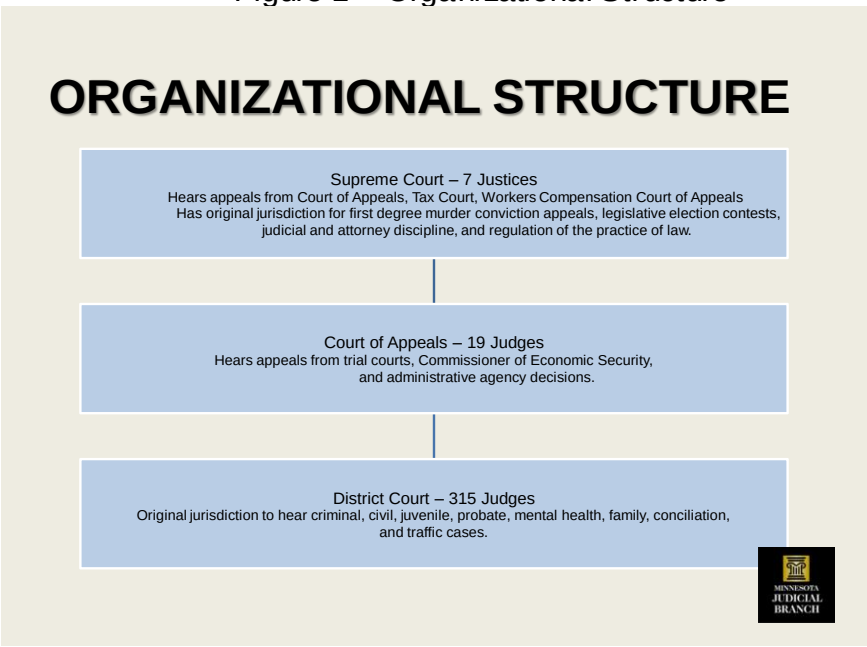
Recommendations include continuation of an analysis of both the employee and contractor models. This includes piloting the employee model within an assignment or geographical area in the Tenth Judicial District. A workgroup should be formed in the district that includes district staff, court administration staff, and representatives from the bench. This group would continue to analyze the information, share best practices, and make appropriate process improvements to enhance the efficiency of the program.

INTRODUCTION

The Minnesota Judicial Branch is comprised of three units of the judiciary. There is the Supreme Court, the Court of Appeals, and the District Trial Courts (See Figure 1). The Minnesota Judicial Branch is a unified court system. The state funding of trial courts was completed in July of 2005. Although the budgets are allocated from the State Court Administrator's office, there is still autonomy within the Districts down to the County levels with regard to funding allocation and operations. Many processes are individual to each county. With unification, districts are now able to benefit from the administration and sharing of resources and ideas of multiple counties.

Currently there are over 300 District Court judges serving in 87 counties which are organized into 10 judicial districts. These judges hear all case types including traffic, civil, family, criminal, probate and juvenile. There are approximately 3,000 employees in the Minnesota Judicial Branch. There are approximately 1.7 million cases filed in Minnesota's District Courts annually.

Figure 1 – Organizational Structure



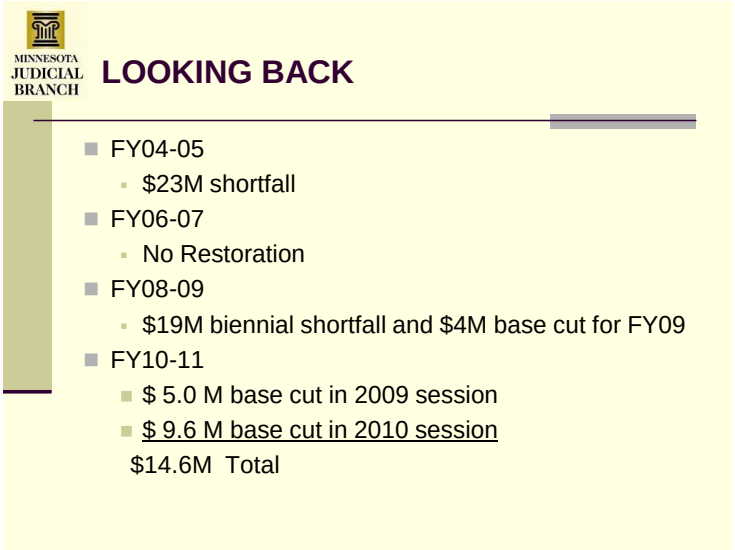
Minnesota Courts have faced a trend of budget shortfalls even though the courts make up less than two percent (2%) of the overall state budget.

The Judicial Branch continues to face significant fiscal challenges and continues to aggressively employ strategies to contain costs, including:

- Instituting a hiring freeze, voluntary separation program and leave without pay, layoffs, and voluntary furloughs—now operating nearly 10% short staffed—delays in case processing are building,
- Closing public counters in over half of the districts for up to 1/2 day per week,
- Holding open all judicial vacancies for minimum of four months,
- Cutting retired judge funding, mandated services budgets, and operating budgets,
- Cancelling most judicial and staff educational conferences,
- Working with problem-solving courts to identify grant funding opportunities to keep existing courts in operation,
- Changing the trial court funding distribution formula to better match budgets to case filings, resulting in budget cuts to low volume, geographically dispersed areas and staff and service hour reductions,
- Consolidating administration — Reducing county level court administrator positions by one third, and,
- Expanding the Payables List— Eliminating 100,000 traffic-related mandatory court appearances.

However, there comes a time when the courts cannot cut anymore. Chief Justice Lorie S. Gildea is quoted as saying, “The courts are one of the first promises made in our Constitution. They are essential to preserving our democracy, securing the rule of law and ensuring the public safety." (Gildea, 2011)

Figure 2 – Budget Shortfall



In addition to the historic Judicial Branch data shown in Figure 2 above, the State of Minnesota faces an unprecedented FY 12-13 budget deficit of $6.2 billion which led to a shutdown of state government. The court was "held harmless" in the current appropriation. It is unlikely previous budget cuts will ever be restored considering the continuing budget pressures. This funding problem is the "new normal".

The mission statement of the Minnesota Judicial Branch is "To provide justice through a system that assures equal access for the fair and timely resolution of cases and controversies". Although we are constantly being asked to do more with less, Mary McQueen, President of the National Center for State Courts has said, "Don't do more with less. Do things differently" (McQueen, 2011). That is the whole premise of this project. There is an obligation to deliver core services to the public. The public will not accept the fact that we just 'don't have time' or 'just don't have the resources' to process their cases in a timely manner. The courts are also held by statute as to specific timeframes that certain cases have from initiation to disposition. We need to find a way

to do things differently. Statesmen have historically stated that we should never sacrifice liberty for efficiency.

The project focuses on identifying process improvements and/or process reengineering to enhance the delivery of Psychological Services without compromising liberty or the rights of the citizens. This is a current significant issue facing the Minnesota Judicial Branch and more specifically the Tenth Judicial District. Many counties are still not funded to add staff, yet the case filings continue to increase.

The results of the research identify business process enhancements that will enable the Minnesota Courts to be more efficient and cost effective yet not sacrifice quality, and achieve the mission. Sue Dosal, Minnesota State Court Administrator was quoted as saying, “We have a unique view of humanity” (Dosal, 2010). The Minnesota Court employees and judges interact with people on a daily basis that are facing life changing events that are more often negative than positive. The employees and judges of the Minnesota Judicial Branch work tirelessly to make a difference in peoples’ lives.

The Tenth Judicial District currently has the second highest average costs for Psychological Services in the state of Minnesota. The district bench along with the district administrator has long been asking for change yet no one has had the time or resources to research. The district may not necessarily adopt a one-size-fits-all model but one that would streamline process flow, lower costs, leave room for each county’s needs and continue to preserve respondent’s rights as well as comply with Minnesota State Statutes and Minnesota Rules of Court. This includes the needs of the judges. Change is inevitable. Anoka County will be looking for changes come March of 2012 as

their current psychological services provider is selling his business to a partner. So the timing is extremely relevant.

The outcome is a set of recommendations to the bench and district administrator on a potential process improvement developed by analyzing existing psychological services practices in the Tenth Judicial District. The process improvement will potentially streamline processes in some counties, reduce the average cost per case and make more efficient use of limited resources.

This research project addresses the following questions.

1. What is the number of psychological services cases by case type in each of the eight counties in the Tenth Judicial District and what was spent annually (elements of cost including type of service provider) in each county for the last biennium? How does that compare to the rest of the state?

2. What is the process flow in each of the eight counties?

3. How does that compare to the 'typical' process flow?

4. Which process improvement approach will have the greatest overall impact on court operations so that staff intensive mandated services can be provided more efficiently? Are there process changes that will benefit court administration, judges and reduce cost?

It was first necessary to illustrate the number of case filings by case type for the Psychological Services of the eight counties in the Tenth Judicial District of the Minnesota Judicial Branch. This also includes what was spent per case type along with the average per case type in each fiscal year of the last biennium. This contains cost information per examiner to help identify cost trends or patterns with the use of particular examiners. All of this data is shown in relation to the state costs and averages.

Second, it was to necessary to analyze the process flow of Psychological Services regarding civil commitments and Rule 20's by county within the Tenth Judicial District. This was done through interviews of subject matter experts in each county.

Finally, it was necessary to compare the process flow in the eight counties within the Tenth Judicial District to a typical process flow that is used in the Minnesota Judicial Branch. Thereafter, it was possible to make a recommendation to the District Administrator and the judges of the district.

LITERATURE REVIEW

The modern fathers of the "reengineering revolution" are Michael Hammer and James Champy. They tell us that today's organizations need to reinvent themselves. "What matters in reengineering is how we want to organize work today, given the demands of today's markets and the power of today's technologies. How people …did things yesterday doesn't matter." (Hammer and Champy, 1993, p.2.) To them, reengineering means starting all over. Their later work gave us a detailed approach for doing this that has served private sector and some public sector organizations well for the past seventeen years. (Hammer and Stanton, 1995.)

Courts have come late to the realization of a need for this. Although the courts in Santa Clara and San Mateo counties in California were reengineering their processes as early as 1998, other courts are just beginning. As a result, reengineering and process improvement are in the forefront of court management literature today. There is now a moderate amount of research and material on both subjects.

According to *Caseflow Management: The Heart of Court Management in the New Millennium*, "Business Process Enhancement" is defined as the establishment of goals or expectations for one or more processes, analysis of how those processes are actually carried out in a court or any other organization, and adjustment of those processes if their results do not meet the goals or expectations. Different approaches such as process improvement or process reengineering may be used together or separately to enhance business processes. (NCSC, 2004).

H. James Harrison (Business Process Improvement: The Breakthrough Strategy for Total Quality, Productivity, and Competiveness, 1991) further defines process improvement as a disciplined approach to the simplification and streamlining of

business processes, using measurements and controls to aid continuous improvement. He also defines process reengineering as a disciplined approach to the fundamental rethinking and radical redesign of business processes to bring about dramatic improvements in performance.

A significant objective in the examination of process is the need to eliminate, or at least control variation. Processes work most efficiently if they are designed to be uniformly the same at all times and in all places. W. Edwards Deming and Robert M. Juran among others were architects of this approach to management that spawned the entire contemporary quality movement (Deming, 1982; Juran 1951). Courts, of course, always seek uniformity of justice, but due to unique local circumstances this is not always possible. Nonetheless, uniformity with explainable variation in court processes ought to be the goal.

In this context, process improvement involves continuous incremental change. Process reengineering seeks rapid and dramatic improvements that actually replace old processes. This project looks at both process improvement and process reengineering, with a particular emphasis on the costs of variation in the way the Minnesota Courts deliver services today.

Chief Justice John T. Broderick Jr. spoke to the mid-year conference of the National Association of Court Management in February of 2011 about reengineering the courts. He mentioned a 2007 statement by a president of the California State Bar that, “Either we’ll need to adapt our system to more actively meet more of society’s needs or society will change the system for us” (Broderick, 2011). Broderick noted that declining civic knowledge along with the steep decline in state budgets could make for the

"perfect storm". We interact daily with people who come to us at a low point in their lives yet not understanding how the judicial process works.

We also cannot ignore the pro se litigants that are increasing at an exponential rate. It is our duty and responsibility to provide access to justice in a fair and timely manner. Much of what we do is dictated by statute or law. We have a constitutional obligation to deliver such services. Efficiency, speed, and transparency are expected by today's society. But in achieving efficiency and speed, we need to be mindful of data quality along with expenditures. Every action we take can seriously affect the lives of others.

To complicate this high demand, budget allocations are declining. We can no longer keep stating we have to do more with less. We need to take action to enhance, modify, or drastically change the way we do business. The courts are well known for carrying on processes for years because "it's the way we've always done it". That is unacceptable in today's court culture. Courts that maintain this philosophy will surely fail. This in turn may lead to backlogs and compromising public trust and confidence.

According to the article "It's a New Day: Future Trends Require Revolutionary Changes in Courts", (Martin et al., 2011), the social, economic, technological, and policy trends shaping the courts since the 1990's coupled with emerging trends, will require courts to alter their roles more profoundly by 2020 than ever before. Courts must revolutionize how they provide justice services, rethink how they do business, and assertively shape a better future.

According to Dr. John A. Martin, speaking at the 4th National Symposium on Court Management, one of the overarching trends that will impact courts includes structural

budget deficits in the state and local governments, increasing scrutiny of the use of public tax dollars, and the emergence of what seems to be a “perpetual funding crisis” in the courts. He further stated that the “new normal” presents dynamic opportunities for improving the structure, governance, and business of the state courts (Martin et al., 2010).

Minnesota Courts have tried tirelessly over many years to address the concerns of Psychological Services. This program is the largest component of the Mandated Services Budget. In 2003, a project team was developed to address the various components of the increasing costs of Psychological Services. According to the project plan, one of the approaches identified was to examine the psychiatric services process from the viewpoint of the administrator and focus on the following deliverables.

1. Standard contracts to use with providers of psychiatric services.
2. Standardized forms for the providers to use when dealing with the state. For example, a standard examination report form that is consistently used across counties and districts.
3. Standard format for bills sent and remittances received.
4. Financial and Managerial Reports to be used by administrators to track and manage the process.
5. Creation of a database to store and present management information in a consistent manner across the state.

Then in 2005, a Best Practices Committee was tasked with looking at cost reduction and quality improvement. This involved possible tasks including creating an examination database, creating procedures for maintaining a provider roster, templates for orders and reports, statewide contract protocol, development of innovative polices and guidelines, and archiving of Rule 20 (Criminal) reports that could be made available to Rule 20 examiners with proper court order. In 2007, A Psychological Services

Advisory Group was formed comprised of administrators, representatives from Court Services, along with a judge. The group was tasked with looking at systemwide improvements in the delivery of services. This included best practices that were developed by Dr. Larry Panciera from Hennepin County that had been endorsed by the Judicial Administrators Group in the Minnesota Judicial Branch (Appendix 1). The recommendations from the group's final report in December 2007 focused on the following:

1. Enact a Psychological Services Program Policy
2. Request Legislative changes
3. Defer the formation of a centralized SDP/SPP (Sexual Psychopath Personalities/Sexually Dangerous Persons) Court
4. Develop State Court Administrator Office Roster and Payment Policies
5. Regionalize examiner services
6. Implement administrative and bench practices that promote cost benefit efficiencies.

METHODS

The project involved gathering information from a variety of resources available. The Judicial Branch has a report database in which reports can be generated by inserting particular parameters of measurement. Personal interviews were conducted with various individuals involved in all facets of psychological services. Historical agendas and minutes were researched to provide additional information.

The statistical data from the 2010 and 2011 fiscal years was pulled in October 2011 from a central database within the Minnesota Judicial Branch's internal website, *Courtnet.* This information includes the following information:

- Total cost by district/county and case type
- Total cost by examiner and case type
- Statewide total cost by case type
- Second examiner requests

This information provided the statistical analysis for the basis of the research. It was chosen to illustrate the issue and its relevance. The cost analysis is the driving force of the need for reform. Reports were run to not only give high level statewide information but also to drill down to the county level, case type, and examiner. They are ad hoc reports that can be run by entering the timeframe and specific district or county desired. The information is based on the contractor model (outside professional) and does not include the Fourth District that uses the employee model (court staff).

During the month of October and the first week of November 2011, visits were made to the eight counties in the Tenth Judicial District (Anoka, Chisago, Isanti, Kanabec, Pine, Sherburne, Washington, and Wright). Meetings were held with

supervisors and staff that handle the civil commitments and Rule 20's for their respective counties. They were asked to describe how the process flow works in their county for both. Each staff member went into great detail including time frames that are determined by statute, examiners that are used, best practices, concerns, and forms.

Three members of the original psychological services workgroup were identified as key contributors to the foundation of the project. Personal interviews were conducted with all three. Dr. Lawrence Panciera oversees the employee model that is used in the Fourth Judicial District. He shared a brief history of Psychological Services in Minnesota and spoke in detail about the various models throughout the state. He has also been instrumental and a key participant in various statewide work groups and committees throughout the years. His work is illustrated throughout this paper. Judge McBride is a judge in the Tenth Judicial District and has participated on the statewide Psychological Services Advisory Workgroup. He provided a history of agendas and minutes from that workgroup which has helped to illustrate the foundation of this overall issue and progress that has been made. Michael Moriarity, Tenth Judicial District Administrator, has also participated on the statewide committees and workgroups throughout the history of the groups that have been tasked to address the issue. Mr. Moriarity has also provided historical data via email to aid in the findings that are illustrated within.

There were minimal problems gathering the data and information. It was dependent mainly on the availability of the participants. Personal interviews were chosen due to the comprehensiveness of the information presented. In- person

discussions provided for two-way communication and the ability to follow up. It also provided a venue for document sharing.

FINDINGS

According to the Best Practices as developed by Dr. Lawrence Panciera, the role of the forensic (court) examiner requires diagnosis, risk assessment and a functional analysis of the subject's abilities relevant to a specific legal issue. There are two forms of commitments that are addressed in the research. The first is Civil Commitment. Civil Commitment is defined as a legal process that allows the state to order a proposed patient into treatment even if the person objects. The second form of commitment falls under Rule 20. Rule 20.01 determines if the defendant is competent to proceed. In this case, this information is generated during criminal proceedings. Rule 20.02 provides for the medical examination of the defendant upon defense of mental deficiency or mental illness. This is to determine if the defendant was competent during the alleged criminal activity. In 2006, Dr. Lawrence Panciera, Fourth District Chief Forensic Psychologist developed a set of best practices (Appendix 1) for psychological evaluations that was endorsed by the Judicial Council.

Findings: Cost of Psychological Services

The research focused on the last biennium. The first illustration (Table 1) shows the FY '10 and '11 statewide averages of civil commitments in comparison to the counties in the Tenth Judicial District. The second illustration (Table 2) shows the FY '10 and '11 statewide averages of Rule 20's in comparison to the counties in the Tenth Judicial District. The district shows a considerably higher average in almost every county for both case types in both fiscal years with the exception of Rule 20's in Washington County. Anoka has the lowest average in the Tenth Judicial District. The

primary examiner charges $105 which is a “metro” rate. This particular examiner does all the interviews and exams in the courthouse on the day of the hearing. He also does not charge travel.

In FY ’10, the Tenth Judicial District budget for Psychological Services was $699,000 with expenditures of $782,800. For FY ’11, the Tenth Judicial District budget for Psychological Services was $614,000 with expenditures of $793,071. Full details can be found in the appendices of FY ‘10 cost averages for the state (Appendix 2) and counties in the Tenth Judicial District (Appendix 3) along with FY 11 cost averages for the state (Appendix 4) and counties in the Tenth Judicial District (Appendix 5).

Table 1 – Total Comparative Costs by County for Civil Commitments – FY '10 and '11

Total Cost By County FY '10

Civil Commitment

Approved invoices submitted between 7/1/2009 and 6/30/2010

This report excludes approved invoices from employee examiners because the Psych Services invoicing system does not track salary information for employee examiners.

District	County	Case Type	Cases	Total Costs	Average Cost
10th	Anoka	Civil Commit	313	$200,756.75	$641.40
	Chisago		28	$55,116.25	$1,968.44
	Isanti		29	$42,504.00	$1,465.66
	Kanabec		6	$8,068.75	$1,344.79
	Pine		25	$35,221.75	$1,408.87
	Sherburne		19	$23,360.75	$1,229.51
	Washington		18	$35,496.75	$1,972.04
	Wright		34	$59,062.75	$1,737.14
	State Ave.		3013	$1,853,068.46	***$615.02***

Total Cost By County FY '11

Civil Commitment

Approved invoices submitted between 7/1/2010 and 6/30/2011

This report excludes approved invoices from employee examiners because the Psych Services invoicing system does not track salary information for employee examiners.

District	County	Case Type	Cases	Total Costs	Average Cost
10th	Anoka	Civil Commitment	245	$187,002.00	$763.27
	Chisago		31	$42,855.25	$1,382.43
	Isanti		20	$21,863.43	$1,093.17
	Kanabec		8	$13,661.50	$1,707.69
	Pine		24	$33,451.00	$1,393.79
	Sherburne		25	$31,277.21	$1,251.09
	Washington		25	$47,940.59	$1,917.62
	Wright		30	$63,481.25	$2,116.04
	State Ave.		3066	$2,121,270.22	***$691.87***

Table 2 - Total Comparative Costs by County for Rule 20 – FY '10 and '11

Total Cost By County FY '10
Rule 20

Approved invoices submitted between 7/1/2009 and 6/30/2010

This report excludes approved invoices from employee examiners because the Psych Services invoicing system does not track salary information for employee examiners.

District	County	Case Type	Cases	Total Costs	Average Cost
10th	Anoka	Rule 20	51	$56,946.00	$1,116.59
	Chisago		7	$11,231.25	$1,604.46
	Isanti		4	$5,687.50	$1,421.88
	Kanabec		7	$17,806.25	$2,543.75
	Pine		6	$8,506.00	$1,417.67
	Sherburne		2	$3,000.00	$1,500.00
	Washington		15	$13,659.45	$910.63
	Wright		9	$10,975.00	$1,219.44
	State Ave.		492	$485,066.84	***$985.91***

Total Cost By County FY '11
Rule 20

Approved invoices submitted between 7/1/2010 and 6/30/2011

This report excludes approved invoices from employee examiners because the Psych Services invoicing system does not track salary information for employee examiners.

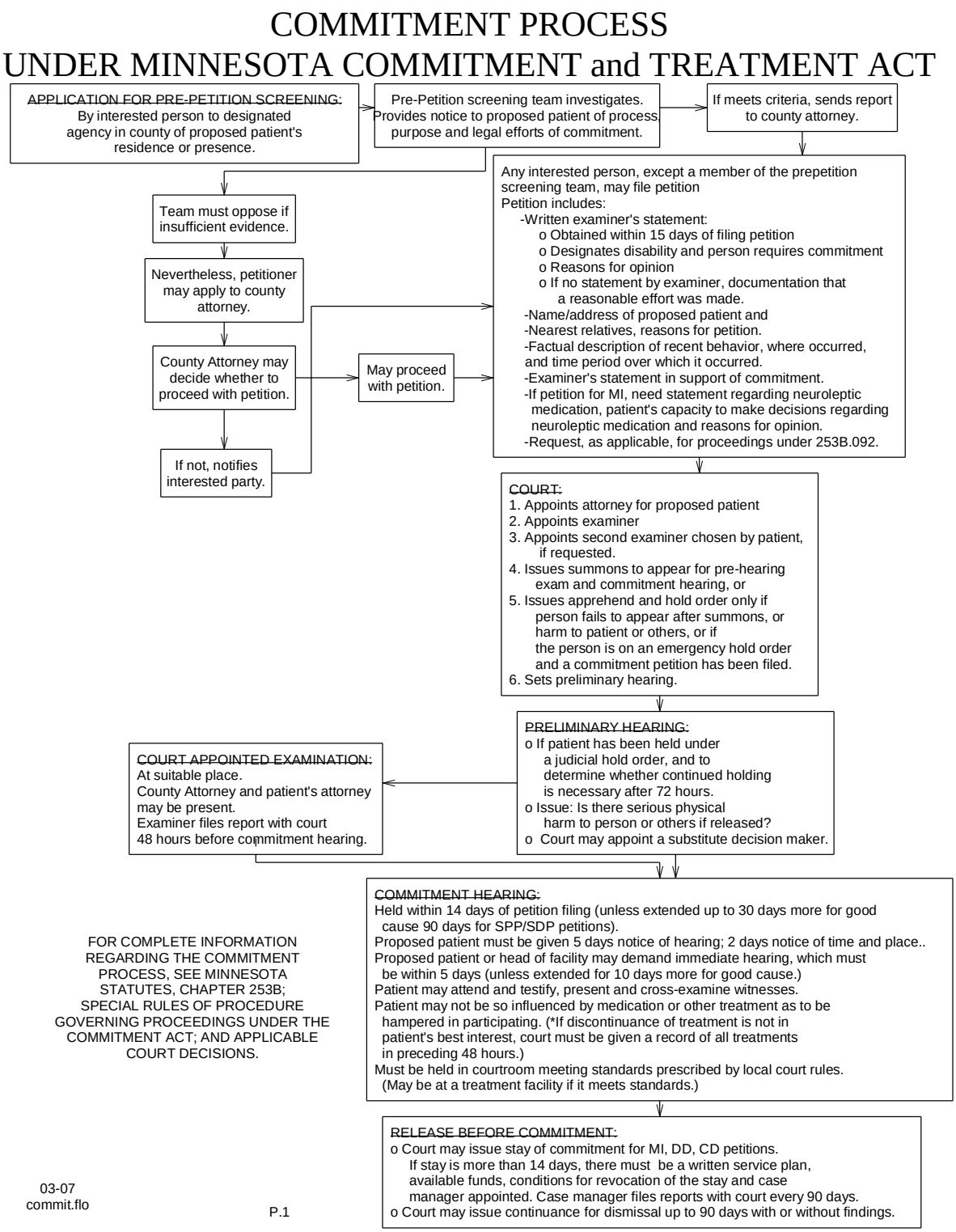
District	County	Case Type	Cases	Total Costs	Average Cost
10th	Anoka	Rule 20	75	$81,937.50	$1,092.50
	Chisago		16	$26,468.75	$1,654.30
	Isanti		2	$2,462.50	$1,231.25
	Kanabec		5	$8,875.00	$1,775.00
	Pine		6	$6,731.25	$1,121.88
	Sherburne		9	$15,787.50	$1,754.17
	Washington		28	$26,243.86	$937.28
	Wright		12	$12,562.50	$1,046.88
	State Ave.		625	$620,488.13	***$992.78***

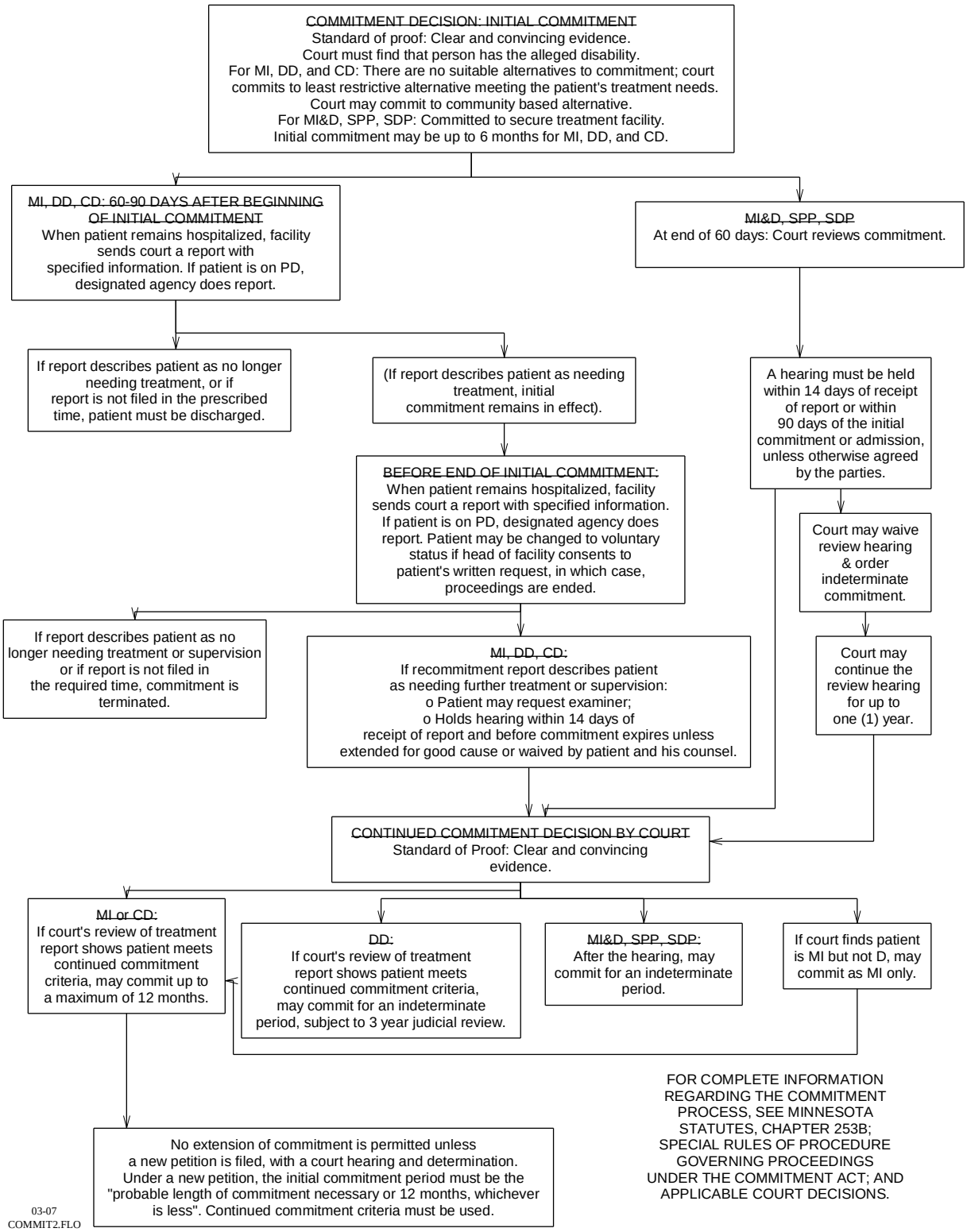
Findings: Psychological Services Work Processes

The state put together a flowchart of the recommended steps for the commitment process (Figure 3). This is a very detailed flowchart. Many timelines are set by statute. The eight counties in the Tenth Judicial District are following the state recommendations. Any variations are slight and that is due to the preferred practice of

the bench, attorneys, and court administration. In the end, the process in each county does meet the recommendations and time restrictions. The current process for each of the eight counties in the Tenth Judicial District is described following Figure 3.

Figure 3 – State Recommended Commitment Process Flow





FOR COMPLETE INFORMATION REGARDING THE COMMITMENT PROCESS, SEE MINNESOTA STATUTES, CHAPTER 253B; SPECIAL RULES OF PROCEDURE GOVERNING PROCEEDINGS UNDER THE COMMITMENT ACT; AND APPLICABLE COURT DECISIONS.

03-07
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Anoka County:

Anoka County is the largest county in the Tenth Judicial District. There are 17 chambered judges. Although it has 59% of the cases in the District, its average cost per case is significantly lower than the other seven counties. Interviews were conducted with the Court Operations Supervisor of the Civil Division, the Court Operations Supervisor for the Financial Division, the Court Operations Supervisor and the Court Operations Manager of the Criminal Division.

Civil Commitments:

Court administration is typically notified via email from the county attorney. Court administration will initiate three to four orders. Once the petition is received, court administration will fax to all applicable parties. Part of the process is also to wait for fax confirmation to ensure the parties have received the petition. Anoka County typically has individuals in Abbott Northwestern and Mercy hospitals. The county is designated based upon home address. Anoka works with a prominent examiner through a contract for services. If this examiner is not available, then it is up to him to find a replacement. This particular examiner is in Anoka County two days per week for commitment hearings. He is in attendance at both the preliminary hearing and the commitment hearing. A major difference from the other counties is this particular examiner doesn't meet with the individuals until the day of their hearing. That can have a tendency to back up the process. There are typically five to ten hearings scheduled per day. The judge typically rules from the bench at these hearings. Very few of the petitions are contested. Anoka has the patients attend the settlement hearing thus transportation costs are high.

Rule 20:

A Rule 20 is ordered by the defense, prosecutor, or the judge. The order is typically presented after the initial hearing. If there are findings of incompetency at the review hearing, and order finding incompetency is signed by the judge and the criminal proceedings are put on hold. There are sixty days in which to complete the evaluation and submit the report. Anoka contracts through the Department of Corrections and Associated Counseling Services. Approximately thirty to forty percent of defendants not in custody 'no show' to their evaluation appointment. Some of those are then taken into custody until the evaluation is complete. This can take six months to a year with the various continuances due to defendants not showing up to their appointments.

Once the report is complete, it is submitted through the Department of Corrections. The Department of Corrections then submits the report to the criminal division. The Criminal Division distributes the report to the defense attorney, the prosecuting attorney, and the court file. If there are findings of incompetency, the criminal proceedings are typically put on hold unless it's a misdemeanor. If there are findings of incompetency, misdemeanors are typically dismissed. Court administration used to call to find a bed for the individual at a participating hospital. Currently social services handles this task. With a Rule 20, the facility in which the defendant is held typically submits progress reports every ninety days to six months. Anoka reported that it typically sees the same defendants come through this process.

Chisago County:

Chisago County is comprised of three chambered judges. Interviews were conducted with the Court Administrator and Judge John McBride who has been a

member of the statewide Psychological Services Advisory Workgroup. Chisago's overall average cost per case falls in the middle of the eight counties in the district.

Civil Commitment:

In Chisago County, the local practice is that the pre-screening physician needs to be different than the examining physician. Chisago County utilizes the state provided roster of physicians and the costs are borne by the State. Staff is encouraged to find a physician in the assignment area in order to reduce travel time costs. The county does not contract with any particular physicians group for services. The court administrator feels that money could be saved by entering into a contract for a flat fee, limiting the number of pages in the reports and using report templates. The particular examiner Chisago uses along with other doctors on the state roster currently charge by the hour. Once a defendant is in custody in a criminal matter, the assessment is made at the jail by the officer and jail coordinator as to whether or not the defendant can be added to the jail population. There is also an on-call nurse available. If further testing is deemed necessary and it is determined that the defendant may have mental health issues which could result in harm to themselves or others, the defendant is taken to typically one of three hospitals. These are comprised of Cambridge hospital which has negotiated a lower rate due to a contract for a particular number of beds. There is also Fairview Riverside and Regents that are available. There are three to four people including a social worker and physician that conduct the pre-screening. The social worker will refer his or her findings to the county attorney. The county attorney along with the social worker will file the civil commitment if necessary. At this time, court administration is notified and a petition for civil commitment is filed. There is now an additional 72 hours

from the judge's order to hold until the preliminary hearing. During this time, court administration is securing the attorney, the examiner, and setting the hearing date. All forms are faxed to the hospital and attorneys. All staff in court administration are trained so there is a sense of immediacy. Cases typically settle before the final hearing. The county attorney then submits the order for the court to sign. Examiners in Chisago County are not at the preliminary hearing and are only present at the final commitment hearing. Chisago County also reported that there are many individuals that are repeatedly in the process. The traditional commitment process also occurs in Chisago County in which a patient is hospitalized for mental health issues and the physician or family members are concerned about the patient's mental health so Health and Human Services in the patient's county of residence is contacted. The county's prescreening group is convened in that process as well and there is no contact with the criminal justice system. If someone is found to be in need of commitment by the prescreening group, the respective caseworker contacts the County Attorney's Office and a petition for civil commitment and hold is prepared by the County Attorney and the process continues as indicated above.

Rule 20:

This request is typically filed by the county attorney or the defense attorney. Sometimes the physician is identified within the order. Chisago typically uses a prominent examiner. It is recognized that although he is not the least expensive, he is pleasant and appeals to the needs of the bench. Chisago automatically orders both Rule 20.01 and 20.02 in each case.

Isanti County:

Isanti County is a two judge county. Interviews were conducted with the court administrator and the court operations supervisor. Isanti is currently using the shortened form for some reports. The judges have not voiced any concerns. Isanti has historically used a prominent examiner used by other counties. Approximately a year ago, Isanti started using the employee model out of Hennepin County as this particular examiner was not always available. Isanti has experienced some cost savings by using the Hennepin County group. Trying the Hennepin model was necessary as local examiners were not always available and it assisted in helping to contain costs. Isanti judges are also the only judges in the district that will do phone hearings, which saves travel time and reduces the appearance time.

Civil Commitment:

The current process is changing. Social Services notifies the county attorney. The county attorney calls court administration but may not have looked at the paperwork. Court administration starts the process when the attorney may not take the case. According to the supervisor, court administration appreciates the advanced notice but ends up cancelling half because the assistant county attorney does not take the case. Court Administration is currently meeting with Family Services and the assistant county attorney to determine if a change in process is necessary.

Court administration contacts the contracted attorney for the patient and prepares a transport order. That process is driven by the petition. The preliminary hearing is held within 72 hours of the physical hold. It isn't until after the preliminary hearing that the examiner is secured. Minnesota statute 253B on Civil Commitments states that the

commitment hearing must be set within 14 days from the petition. In Isanti County, individuals are sometimes transported for the exam. Court administration receives the examination report approximately 48 hours before the commitment hearing. Court administration then distributes to the attorneys, caseworker, and the judge.

The average commitment hearing runs for 15-30 minutes. More often than not, the cases are settled at the commitment hearing. The physician is already there either in person or by phone. If the commitment is contested, then a second examination is requested at the time of the commitment hearing. If the case is uncontested or no settlement presented, the judge will rule from the bench at that time. When settlements are presented at the hearing, the examiner is on standby but does not charge a fee.

Rule 20:

With regard to a Rule 20, either the state, defense attorney or judge can enter a petition. At that point, criminal proceedings are suspended. Court administration or counsel then completes the Rule 20 order and an examiner is secured. A year ago, Isanti started working with Hennepin County with the employee model. There is a $900 flat rate which helps to control costs. If the defendant is incompetent, a commitment hearing is set within 14 days. A different examiner is used than in the Rule 20. The court pays for the second examiner. If the defendant is competent, there are ten days to contest. Typically in Isanti County, both Rule 20.01 and 20.02 are ordered.

Kanabec County:

Kanabec County is a one judge county. It is in a rural area located approximately an hour to an hour and a half from the metro area, which limits the number of examiners that are willing to travel to that county. Kanabec's average costs per case are fourth in

the district. Interviews were conducted with the Court Administrator and two Senior Court Clerks.

Civil Commitment:

The County Attorney's office or Family Services notifies court administration that a person is on a 72 hour hold. Following that, the County Attorney's office will forward a copy of the first page of the pre-screening report. This report will give court administration the information it needs to proceed. This includes the type of commitment that is being requested, the expiration of the hold, and who the social worker that has been assigned. Once the petition is filed, court administration then sets the preliminary hearing date and the commitment hearing date. Court administration then contacts an attorney from the court appointed attorney's list and communicates the dates. Then an examiner is chosen. Typically Kanabec contacts a prominent examiner used by other counties in the Tenth Judicial District. If he is not available, then they contact examiners from the state approved list. Ms. Nelson stated that this particular examiner is very accommodating yet not the most cost efficient. His office is three blocks from the courthouse which eliminates any travel. Kanabec typically has patients in Cambridge hospital. The examiner will travel to the patient. There is not an examiner present at the preliminary hearing. There is not an examiner's report yet at this time. Once the petition is filed, the examiner will meet with the individual within the 14 days. Once the report is received, court administration sends a copy to the attorneys. The defense attorney can ask for a second examiner and the court pays for that examiner. The examiner's reports are typically 13-14 pages in length. Other examiners generally submit shorter, less thorough, reports. If the attorneys have not come to an agreement

before the commitment hearing, the examiner comes to testify along with any witnesses. Typically, the judge will rule from the bench. The majority of cases are settled prior to the commitment hearing. Uncontested hearings will typically last approximately 15 minutes. Contested hearings with testimony given can last up to one hour. This includes filing the agreement with the court.

Rule 20:

Rule 20's are typically requested by the defense attorney. Then an order is prepared within a few days. Once the order is received, the examiner will conduct an examination within 60 days. All other proceedings are suspended. Once the report is received, a hearing is set. The examiner does not appear at this hearing. If deemed competent a plea may be presented at the hearing and criminal proceedings will continue. If deemed incompetent, it will trigger the county attorney to dismiss the criminal charges or proceed with the commitment. The same examination is used for the Rule 20.01 and the 20.02. The examiner doesn't visit the individual a second time. The initial report is expanded to state the findings. If charges are not dismissed and an individual is committed, sometimes cases can be suspended for years.

Pine County:

Pine County is a two judge county in the northeastern part of the district. It is considered rural. The average costs per case are the third highest in the district. An interview was conducted with the Court Administrator.

Civil Commitment:

The County Attorney or Health and Human Services usually contact court administration in advance of filing the petition. Individuals are typically held in

Cambridge or Duluth although they may be at other facilities too. Court administration may start preliminary planning but nothing is officially processed. Once the official petition is received, court administration prepares the orders, appoints the attorney, secures the examiner, and issues the transport order. The judge will sign all the orders at once. Pine County often uses a prominent examiner that is used in other counties in the Tenth Judicial District as the first examiner, except for Jarvis cases. He is very flexible and accommodating. If he is not available, court administration will utilize the state's roster. The Pine County attorneys and judges are familiar with this particular examiner and find his reports to be thorough and reliable. The attorneys will rarely ask for a second examination. The examiner is encouraged to conduct the examination after the preliminary hearing in case a settlement is reached at that hearing. Another concern is that the individual may not be stabilized by the time of the preliminary hearing. There is a significant difference in the behavior of individuals by the commitment hearing. They are able to be more stabilized through medication or whatever treatment is prescribed. The examiner travels to the respondent's location to conduct the examination which reduces transport costs for the county and is less stressful for the respondent. The examiner submits the reports at least 48 hours in advance of the commitment hearing. The examiner is present for the hearing. If there is a settlement, it is typically derived from the report itself. Ms. Blegen stated that she likes the process flow as it helps staff comply with statutory timelines and reduces the need to search for examiners available and willing to provide services in Pine County but there is a high cost. She is quoted as saying that "Budgets are important but shouldn't drive the process". Pine County judges have allowed the examiner to testify

by telephone although that is not preferred. Pine County often will see persons going through the commitment process more than once. In that case, court administration will try to secure the same attorney and examiner because they are familiar with the case.

Rule 20:

Either the attorney or the judge recommends at the criminal hearing. The criminal hearing is then put on hold. The review is set for 60 days and the judge signs the order for the Rule 20. Civil division does not get involved until the examination is received with a finding of incompetence, the judge issues an order in the criminal file, and the county files a commitment petition. Depending on the results of the competency evaluation, it will follow the process of the other counties by mapping over to the civil commitment process or proceed with the criminal case.

Sherburne County

Sherburne County is a four judge county. Their average cost per case is the second highest in the district. An interview was conducted with the Court Administrator.

Civil Commitment:

Sherburne is notified by Social Services or the County Attorney. Once the petition is signed, court administration will set both the preliminary hearing and commitment hearing. The judge is assigned to a civil calendar for a week to handle any cases. Commitment cases are scheduled for Thursdays but work the cases in earlier if necessary due to statutory timelines. The examinations are done before the preliminary hearing. Sherburne just started using the group of physician's out of Hennepin County in January of 2011. Court administration contacts the scheduling manager in Hennepin County. If no one is available, court administration will go to the state roster.

Individuals are not transported. The doctor will go to the facility. If they are not detained, the doctor will work with the attorney to meet with the individual. The doctor is required to be present at the preliminary hearing. Even if a settlement is presented, the doctor still charges a fee. The bench is very happy with the examination reports from the Hennepin group. However, they are not always available to meet the needs of Sherburne County.

Rule 20:

Sherburne is piloting a program with the St. Peter State Forensic Services. This is a pilot using examiners that charge a flat rate of $700-$900 per case. The court administrator is still working through the details of orders and forms that will meet the interests of all parties involved.

Washington County

Washington County is a ten judge county. Washington had the highest average cost per case in the district for FY '10 and the fourth highest for FY '11. Interviews were conducted with the Staff Generalist II, Court Operations Supervisor of the Criminal Division, and the Administrative Manager. Washington County is unique in that it has two prisons in the county. When hearings are held that involve prisoners, the attorney fees and staff time are reimbursable by statute.

Civil Commitment:

The County Attorney contacts court administration to notify that a commitment petition is coming. The County Attorney sees the signing judge. Court administration selects the examiner from the state roster and sets the preliminary hearing. The commitment hearing is scheduled during the preliminary hearing. The examiner goes to

the patient. Court administration faxes the report to the attorneys. Ninety percent of the respondents request a second exam. There are only five psychiatrists that will travel to Stillwater. Some commitments are referred to Ramsey County as they have a contract with Regions Hospital in St. Paul, Minnesota. This generates a change of venue. With the civil commitments, there are no settlements at or before the preliminary hearing. Ms. Haas stated that Washington County is in initial talks with all justice partners and judges in streamlining the prison commitments. This could possibly result in a designated hearing day. There is concern about finding a secure area for this. Now these hearings take place at the prison. There currently are seven levels of security for the judge team to come through. This can add to two hours to the process.

Rule 20:

Washington County is the only county in the district that has a contract with the Hennepin employee group led by Dr. Panciera for Rule 20's and Sexually Dangerous/Psychopathic cases. There is a flat rate of $900 per case. Otherwise, the county uses the statewide roster. Washington County used to use Human Services Inc. as it was an onsite program. Once the policy of cost control was set in place by the Minnesota Judicial Branch, Human Services Inc. would no longer offer its services to Washington County. In order to facilitate individual appearance for examination, Washington County provides the individual with a packet at the time a Rule 20 is ordered. This includes a map, Dr. Panciera's contact information, and bus route.

Wright County

Wright County is a six judge county. The average cost per civil commitment case was the second highest in FY '10 and was the highest in FY '11. Interviews were

conducted with the Court Administrator, both Court Operations Supervisors, and two Senior Court Clerks

Civil Commitment:

Human Services sends an email to court administration with the 72 hour hold. The County Attorney will submit the petition. Court administration then starts calling physicians. The first one that answers or calls back is chosen. The examiners do not appear at the preliminary hearing. The defense attorney typically requests two examiners at the preliminary hearing. The 2nd examiner is paid for by the state Psychological Services budget. The examiner is present for the entire hearing. If there is a settlement, the examiner is called off. Otherwise the agreement is presented at the commitment hearing and the physician is there.

Rule 20:

Typically the order is presented at the criminal hearing. The order already identifies the examiner. Forensic Services out of Human Services takes over the case. They charge $750 per Rule 20. Then the date is set for the hearing. If the defendant is ruled as competent, either the criminal case will proceed or a continuance is filed. If the defendant is found incompetent, criminal proceedings are suspended until the commitment hearing is held. Rule 20.01 and 20.02 are ordered together.

Each county in the Tenth Judicial District has unique differences as illustrated in the specific county processes. These differences in process flow are determined by judge preference, court culture, and if there are mental health facilities and/or prisons within the specific jurisdiction. Although there are differences, overall the court work process itself does not have a significant impact on the cost per case. Seven of the eight courts

require less than one full time employee to manage the commitment process. Therefore, we must look elsewhere for the disparities in costs.

Findings: Use of Examiners

In comparing the recommended work process to practices in the Tenth District, each county (with the exception of the Rule 20.01 and 20.02 examinations sometimes being ordered together) is following the model, That doesn't appear to be what is driving up the costs for that case type. All counties are using examiners from the Statewide Roster that was derived from the workgroup's recommendations. The Statewide Roster contains forty-six names. Yet there is a much smaller number that is used by the Tenth Judicial District. Many examiners do not want to travel to the outlying counties, limiting those that can be selected. Some counties have stated that they utilize a few particular examiners because of the convenience, as well as the judges and attorneys being used to their reporting and testimony. This may not always be the least expensive examiner. Many are paying for the convenience and familiarity. Over the last biennium, all eight counties have higher average costs than the state averages in both civil commitment and Rule 20 cases, with the exception of Washington County's Rule 20 per case average.

In 2008, examiners were asked to provide much more detail in their invoices through a new web-based billing system similar to the one used by the court interpreters. This included types of examinations performed, an hourly rate, the number of hours to perform the examination including time spent in court, reviewing records, travel and examination time. This has provided a considerable amount of important

data. Although the examiners are in compliance with the per hour rate, their average cost per case are considerably higher than the state average.

Table 3 – Total Cost by Examiner and Case Type – FY '10

Examiners in the Tenth Judicial District – FY '10						
State Average			***$615***			***$986***
FY '10	**Civil Commitments**			**Rule 20**		
Examiner	**Number of cases**	**Total Costs**	**Average**	**Number of cases**	**Total Costs**	**Average**
1	6	$8,541	$1,423			
2	68	$90,126	$1,325	23	$45,244	$1,967
3	3	$2,501	$834			
4	38	$57,008	$1,500			
5	19	$24,390	$1,284			
6				50	$56,369	$1,127
7	6	$7,049	$1,175	1	$2,063	$2,063
8	15	$19,025	$1,268			
9	6	$6,323	$1,054			
10	13	$25,399	$1,954			
11	2	$2,038	$1,019			

*Names have been removed in both tables

Table 4 – Total Cost by Examiner and Case Type – FY '11

Examiners in the Tenth Judicial District – FY '11						
State Average			*$692*			*$993*
	Civil Commitments			Rule 20		
Examiner	Number of cases	Total Costs	Average	Number of cases	Total Costs	Average
1	7	$8,841	$1,263.00	2	$4,413	$2,206
2				1	$1,437	$1,437
3	6	$6,937	$1,156			
4	58	$71,835	$1,239	34	$53,444	$1,572
5	5	$8,522	$1,704	1	$1,344	$1,344
6	22	$34,067	$1,549			
7	5	$8,483	$1,697			
8	7	$6,343	$906			
9	19	$23,471	$1,235			
10	1	$1,663	$1,663			
11				72	$78,438	$1,089
12	13	$19,766	$1,520			
13	5	$6,386	$1,277			
14	85	$69,950	$823	2	$3,450	$1,725
15				5	$5,426	$1,085
16	24	$42,763	$1,782			
17	1	$1,766	$1,766			

There are a number of factors that may account for the variation shown on the tables above. The Tenth Judicial District is a combination of metropolitan and rural counties. There is also the consideration of the individual nuances and preferences of each judge. The counties' unique factors such as prisons also need to be taken into consideration. The outlying counties are limited in the resources available on the Statewide Roster due to travel preferences of the examiners. The Tenth Judicial District is challenged to identify examiners who meet the requirements and live or are officed in the areas. All of this complicates the ability of the District to create an examiner utilization policy that

minimizes variation, or at least seeks uniformity with explainable variation in services and costs.

Importantly, the Minnesota Judicial Branch Policy 510(a) (Appendix 6) sets the parameters for payment of examiners. It sets a maximum compensation rate for both civil commitment cases and Rule 20 competency/criminal responsibility cases. There are seven “metropolitan area’ counties which are permitted to pay a maximum chargeable amount of $105 per hour. Anoka and Washington counties fall into that category. The remaining counties are considered “outstate” which have a maximum allowable amount of $125 per hour. Travel is calculated at 60% of the hourly compensation rate. There are multiple counties in the state that are being charged above the policy limit. Some examiners are charging $195 per hour, which also drives up the travel rate. This is a result of using a Psychiatrist or an amount that can be authorized by the judge.

Although the examiners are generally billing within the rates set by the policy, there is nothing that regulates the number of hours spent on the examinations, record reviews, interviews, testimony, report writing, and travel. With the absence of controls in these areas, the costs remain excessive. It is recognized that each examiner has a different process and way of reporting. The state is currently testing a standardized report that may limit the number of pages and time to complete the report. This will be a new process for many judges and may be met with some resistance. Some judges prefer very detailed reports.

As noted above, travel is currently being billed as a percentage of the hourly rate per case type rather than strict mileage reimbursement. Examiners often do provide

some detail about their travel destination, but not necessarily where they are traveling from. This makes auditing of actual travel costs impossible.

High costs and variation in costs appear to be a function of the examiners process practices. The counties are following the policies as set forth by state court administration along with the recommended process flow. The examiners are billing according to the statewide policy, but there is no cap on the amount of fees that can be charged, nor a policy in place that assists the court in managing examiner practices.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion 1: At this time there is no evidence that a recommended study of service models has been completed. The State Psychological Services Advisory Workgroup recommended in 2007 that an analysis should be done to compare the employee versus contract model.

Recommendation 1: A closer examination of the employee model is warranted. The employee model should be formalized in a Tenth Judicial District assignment area or geographic area. **This should serve as a pilot to allow more detailed evaluation of the merits of this approach.**

The study should be done as both models are being utilized in the Tenth Judicial District. It is not anticipated that the same recommendation will result district-wide. This analysis should include those counties that are currently using Hennepin County examiners. As it stands now, those counties contribute to the Hennepin County Psychological Services budget based on anticipated case filings. The analysis should include the costs of the employee model in comparison to the contract rates.

Hennepin County currently cannot meet the demand using this model. Counties contribute to the Hennepin County Psychological Services budget to support the employee salaries. The counties contribute a set dollar amount based on a projected number of case filings. Hennepin County in turn supports the program with a designated FTE (full time equivalent). This is not a particular person. This approach utilizes a coordinator to select employees based on case type and area of specialization. Thus a county could benefit from the contribution of various employees. This falls under the work group's recommendation of regionalization. Some of the

Mandated Services budget could be dedicated to Hennepin to further support this model.

Conclusion 2: There are hourly rates put in place by the state court administrator policy, yet there is no cap on the amount of hours that can be billed. Examiners are currently billing per the policy at the designated hourly rate. Yet the number of hours that are being billed vary extensively. There are no controls in place to contain the number of hours examiners are billing for interviews, report writing, record review, and travel.

Recommendation 2: Conduct an analysis of time reported by examiners. Analyze the examiners in the Tenth Judicial District to determine the number of hours being billed per process. This can be compared to a statewide average and the amount of time employee examiners are spending on similar case types. An analysis should also be done to compare the cost of using the current hourly travel rate versus mileage reimbursement.

Conclusion 3: During the life of a civil commitment case, there can be multiple examinations. A significant number of individuals have continuing problems that result in new petitions.

Recommendation 3: Develop a system to facilitate the sharing of previous examiner reports so that historical information is more readily available which will assist the examiner in conducting the exam.

It would save a considerable amount of billable time by exploring the possibility of a statewide database of report sharing. This would need to take into consideration the sharing of confidential information contained in such reports. But if previous reports are shared, this may limit the amount of time spent on interviews and report writing.

Conclusion 4: Currently, each county has its own unique process. As previously recognized, the judges of each county are unique in their needs and preferences. There is also the factor of rural versus metro demands. Counties that house prisons and state hospitals within their jurisdiction tend to have more complex requirements for examiners.

Recommendation 4: Creation of a district workgroup to analyze the court examination process and work toward a policy for examiner management that ensures uniformity with explainable variation.

A work group would be implemented to continue to focus on the issues confronting individual courts and analyzing pilot programs within the district. The group would also monitor examiner cost averages per case type in comparison to the rest of the state. This group could share best practices of efficiencies from each county. The goal would be to create and monitor an examiner management policy that achieves uniformity with explainable differences in all the counties of the Tenth District. The group could also be effective in negotiating assignment area rates if a contractor model is deemed the most efficient.

Conclusion 5: Through the implementation of these recommendations, efficiencies are possible within the Tenth Judicial District. However, they need to be monitored to ensure that they are achieving their purposes.

Recommendation 5: A future analysis should be completed to illustrate any cost savings to the program and to ensure service delivery has not been compromised. This analysis can be done by the district work group by illustrating costs per county per case type in comparison to previous fiscal years to show any trends. A trend analysis of the examiners and their specific costs per county, per case type should also be completed. The work group should develop a survey to be completed by judges, court administrators, and attorneys to ensure service delivery has not been compromised.

APPENDICES

Appendix 1 – Best Practices as developed by Dr. Lawrence Panciera.

Best Practices In Court Appointment of Mandated Examinations

The following suggestions apply in whole or in part to court appointed evaluations that are funded by the State Court (civil commitment and adult Rule 20 evaluations)

1) **Use qualified psychologists whenever available in all examinations except a) Price Hearings and b) in Jarvis Hearings when there is the presence of a complicating medication condition.**

Psychologists generally charge less for their services than medical doctors. In addition, qualified psychologists are as well trained to address the psycho-legal issues that are the subject of court appointment. Performing an evaluation and providing testimony for the court is an area of specialty among clinicians. The role of the forensic (court) examiner requires diagnosis, risk assessment and a functional analysis of the subject's abilities relevant to a specific legal issue. Forensic psychologists are trained to perform diagnoses and have available a variety of instruments developed in the field of psychology to aid in the diagnostic process (for example, the Minnesota Multiphasic Personality Inventory-2), as well as a variety of forensic instruments developed in the field of psychology designed to assess the competencies at issue in court, malingering and risk assessment. A psychologist who is trained to conduct forensic examinations is qualified to address any issue before the Court that does not involve a medical question.

2) **Second examinations should occur in very few Rule 20 cases and will be seen routinely only in the Sexually Dangerous Person and Sexual Psychopathic Personality examinations.** In criminal cases, generally speaking, <u>if the Court is satisfied with a court appointed Rule 20 evaluation</u> but the Prosecution or Defense wishes a second examination (opinion), the Prosecution or Defense should fund the second Rule 20 examination. In civil commitment cases, while the patient has a right to have a second examiner appointed under Minn. Stat. 253B, practice in some counties indicate that a second examiner is not required in most cases. Only in SDP/SPP cases are second examiners routinely used.

3) **Rule 20.01 and Rule 20.02 examinations should not be routinely ordered together.** There are several reasons for not ordering the two examinations together. First , many more persons are found incompetent to proceed than are found not criminally responsible because of mental illness. The respective issues do not occur with the same frequency. Second, if a person is in fact incompetent to proceed, the examiner should not address the 20.02 question. It is not clear that all examiners are aware of this and some may proceed to the 20.02 question and charge the court unnecessarily for the extra time. Third, Defense should, but does not always, consider the wishes of the defendant in this matter and consider fully the consequences to the defendant of being found not criminally responsible. The 20.02 matter is an affirmative defense and can only be raised by the defendant and his attorney. Many mentally ill

people do not see themselves as mentally ill, do not want to be considered mentally ill and would prefer to go to prison. They would never agree to a 20.02 defense, even if they might qualify. The potential loss of liberty may be greater in the case of civil commitment than in a criminal sentence for many charged offenses. Again, the defense may not seek a criminal responsibility defense even if the defendant might qualify.

4) **Use State Operated Services Outpatient Examiners Sparingly. Use less expensive qualified examiners who can conduct the evaluation near the time of the hearing.** SOS charges a minimum $1250 for an evaluation regardless of time needed to complete , with an additional hourly charge after ten hours. SOS may also take a relatively long time to provide a report, with significant delays between when the examination occurred and when the hearing takes place. Best Practice would have the examination occur close in time to the hearing on the result of the examination.

5) **Use outpatient evaluations before inpatient evaluations.** A rapid Rule 20 evaluation and a finding of incompetency will move the defendant to a hospital quickly and at less cost to the Court and to the County.

6) **Have the Court require the prosecuting agency to provide the examiner with a chronologically ordered set of unduplicated documents in Sexually Dangerous Person and Sexual Psychopathic Personality examinations.** SDP/SPP cases typically involve thousands of pages of documents to be considered by the examiner. In one case an examiner took ten hours simply to organize the documents and billed that time to the Court. This requirement would eliminate this costly use of examiner time. In cases handled by the Attorney General's Office, this practice may be in place.

7) **Examiners should not routinely sit in on the entire SDP/SPP Trial.** In some jurisdictions, SDP/SPP examiners are required to sit through the entire trial and charge the court for their time. This is a practice that occurs in no other type of trial. It has been rationalized on the basis that the potential curtailment of the subject's is so great that it is warranted. On the other hand, examiners have stated that only on rare occasions has the practice impacted their testimony. Is therefore recommended that either the prosecution or the defense should demonstrate a particular need, on a case by case basis, for any request that an examiner sit in on other testimony. Such extra time in court should be restricted to the relevant part of the testimony.

8) **Use information from the Database (see item C in the Workplan) to develop guidelines for length and manner of conducting court appointed evaluations.** Once reliable data has been obtained on fees charged by examiner, the information can be used to set time and format parameters on different types of mandated examinations.

9) **Use information from the Database (see item C in the work plan) to develop guidelines for contracting court appointed evaluations.** The practice varies between counties with respect to paying by the hour or a fixed rate for court appointed

examinations. The advantage of paying by the hour is that examinations, primarily in the case of Rule 20s, SDP/SPP and Mentally Ill and Dangerous evaluations can vary significantly and the court would wish to pay for only the time required. The disadvantage is that there is minimal incentive within the fee arrangement for the examiner to work with maximum efficiency. The advantage of fixing a single fee for each type of examination is that it is easier to budget and there is maximum incentive within the fee arrangement for the examiner to work most efficiently. The disadvantage for the Court is that it will have to determine a fee that will balance the extra cost of easier examinations and the savings on more complicated evaluations. This will require data from the proposed database.

Appendix 2 – Statewide Total Cost by Case Type FY '10

Statewide Total Cost by Case Type FY '10

Approved invoices submitted between 7/1/2009 and 6/30/2010

This report excludes approved invoices from employee examiners because the Psych Services invoicing system does not track salary information for employee examiners.

Case Type	Cases	Total Costs	Average Cost
(CD) Chemically Dependent	348	$141,374.66	$406.25
(DD) Developmentally Disabled	14	$6,587.00	$470.50
(MI) Mentally Ill	1,839	$1,229,635.88	$668.64
MI and Dangerous	73	$99,129.25	$1,357.93
MI, CD	685	$349,432.42	$510.12
MI, CD, DD	4	$1,695.50	$423.88
MI, DD	26	$9,915.00	$381.35
MI, DD, & D	24	$15,298.75	$637.45
Statewide Civil Commitment Totals	**3,013**	**$1,853,068.46**	**$615.02**
Rule 20.01	147	$141,667.14	$963.72
Rule 20.01/20.02	296	$301,674.70	$1,019.17
Rule 20.02	49	$41,725.00	$851.53
Statewide Rule 20 Totals	**492**	**$485,066.84**	**$985.91**

Appendix 3 - Total Cost by County and Case Type for FY '10

Total Cost By District/County and Case Type

Approved invoices submitted between 7/1/2009 and 6/30/2010

This report excludes approved invoices from employee examiners because the Psych Services invoicing system does not track salary information for employee examiners.

District	County	Case Type	Cases	Total Costs	Average Cost
District 10					
	Anoka				
		(CD) Chemically Dependent	43	$18,086.25	$420.61
		(DD) Developmentally Disabled	1	$710.75	$710.75
		(MI) Mentally Ill	145	$116,772.75	$805.33
		MI and Dangerous	7	$12,645.00	$1,806.43
		MI, CD	113	$51,124.50	$452.43
		MI, DD	4	$1,417.50	$354.38
	Anoka Civil Commitment Totals		**313**	**$200,756.75**	**$641.40**
		Rule 20.01	4	$2,777.50	$694.38
		Rule 20.01/20.02	45	$52,368.50	$1,163.74
		Rule 20.02	2	$1,800.00	$900.00
	Anoka Rule 20 Totals		**51**	**$56,946.00**	**$1,116.59**
	Chisago				
		(MI) Mentally Ill	21	$41,596.25	$1,980.77
		MI, CD	7	$13,520.00	$1,931.43
	Chisago Civil Commitment Totals		**28**	**$55,116.25**	**$1,968.44**
		Rule 20.01	1	$1,831.25	$1,831.25
		Rule 20.01/20.02	6	$9,400.00	$1,566.67
	Chisago Rule 20 Totals		**7**	**$11,231.25**	**$1,604.46**
	Isanti				
		(CD) Chemically Dependent	7	$8,581.25	$1,225.89
		(MI) Mentally Ill	12	$19,997.75	$1,666.48
		MI, CD	10	$13,925.00	$1,392.50
	Isanti Civil Commitment Totals		**29**	**$42,504.00**	**$1,465.66**
		Rule 20.01	2	$2,437.50	$1,218.75
		Rule 20.01/20.02	1	$1,812.50	$1,812.50
		Rule 20.02	1	$1,437.50	$1,437.50
	Isanti Rule 20 Totals		**4**	**$5,687.50**	**$1,421.88**
	Kanabec				
		(MI) Mentally Ill	4	$5,331.25	$1,332.81
		MI, CD	2	$2,737.50	$1,368.75
	Kanabec Civil Commitment Totals		**6**	**$8,068.75**	**$1,344.79**
		Rule 20.01	4	$11,150.00	$2,787.50
		Rule 20.01/20.02	2	$4,468.75	$2,234.38
		Rule 20.02	1	$2,187.50	$2,187.50
	Kanabec Rule 20 Totals		**7**	**$17,806.25**	**$2,543.75**

District	County	Case Type	Cases	Total Costs	Average Cost
	Pine				
		(CD) Chemically Dependent	2	$1,487.50	$743.75
		(MI) Mentally Ill	14	$20,496.75	$1,464.05
		MI and Dangerous	2	$3,937.50	$1,968.75
		MI, CD	7	$9,300.00	$1,328.57
	Pine Civil Commitment Totals		**25**	**$35,221.75**	**$1,408.87**
		Rule 20.01	1	$1,468.75	$1,468.75
		Rule 20.01/20.02	5	$7,037.25	$1,407.45
	Pine Rule 20 Totals		**6**	**$8,506.00**	**$1,417.67**
	Sherburne				
		(MI) Mentally Ill	10	$13,048.50	$1,304.85
		MI, CD	9	$10,312.25	$1,145.81
	Sherburne Civil Commitment Totals		**19**	**$23,360.75**	**$1,229.51**
		Rule 20.01	1	$2,062.50	$2,062.50
		Rule 20.01/20.02	1	$937.50	$937.50
	Sherburne Rule 20 Totals		**2**	**$3,000.00**	**$1,500.00**
	Washington				
		(DD) Developmentally Disabled	1	$420.00	$420.00
		(MI) Mentally Ill	14	$27,380.00	$1,955.71
		MI and Dangerous	3	$7,696.75	$2,565.58
	Washington Civil Commitment Totals		**18**	**$35,496.75**	**$1,972.04**
		Rule 20.01	5	$4,525.00	$905.00
		Rule 20.01/20.02	7	$6,355.70	$907.96
		Rule 20.02	3	$2,778.75	$926.25
	Washington Rule 20 Totals		**15**	**$13,659.45**	**$910.63**
	Wright				
		(CD) Chemically Dependent	2	$3,472.50	$1,736.25
		(MI) Mentally Ill	25	$47,097.75	$1,883.91
		MI, CD	7	$8,492.50	$1,213.21
	Wright Civil Commitment Totals		**34**	**$59,062.75**	**$1,737.14**
		Rule 20.01	1	$800.00	$800.00
		Rule 20.01/20.02	7	$9,425.00	$1,346.43
		Rule 20.02	1	$750.00	$750.00
	Wright Rule 20 Totals		**9**	**$10,975.00**	**$1,219.44**

Appendix 4 – Statewide Total Cost by Case Type FY '11

Statewide Total Cost by Case Type FY '11

Approved invoices submitted between 7/1/2010 and 6/30/2011

This report excludes approved invoices from employee examiners because the Psych Services invoicing system does not track salary information for employee examiners.

Case Type	Cases	Total Costs	Average Cost
(CD) Chemically Dependent	301	$145,200.50	$482.39
(DD) Developmentally Disabled	22	$11,773.50	$535.16
(MI) Mentally Ill	1,981	$1,379,788.58	$696.51
MI and Dangerous	63	$129,159.34	$2,050.15
MI, CD	642	$421,874.56	$657.13
MI, CD, DD	2	$885.00	$442.50
MI, DD	31	$17,507.75	$564.77
MI, DD, & D	24	$15,081.00	$628.38
State Civil Commitment Totals	**3,066**	**$2,121,270.22**	**$691.87**
Rule 20.01	145	$137,941.65	$951.32
Rule 20.01/20.02	414	$424,107.97	$1,024.42
Rule 20.02	66	$58,438.51	$885.43
Statewide Rule 20 Totals	**625**	**$620,488.13**	**$992.78**

Appendix 5 – Total Cost by County and Case Type for FY '11

Total Cost By District/County and Case Type

Approved invoices submitted between 7/1/2010 and 6/30/2011

This report excludes approved invoices from employee examiners because the Psych Services invoicing system does not track salary information for employee examiners.

District	County	Case Type	Cases	Total Costs	Average Cost
District 10					
	Anoka				
		(CD) Chemically Dependent	39	$17,356.50	$445.04
		(DD) Developmentally Disabled	1	$1,522.50	$1,522.50
		(MI) Mentally Ill	106	$105,060.25	$991.13
		MI and Dangerous	6	$3,385.75	$564.29
		MI, CD	85	$54,235.50	$638.06
		MI, DD	8	$5,441.50	$680.19
	Anoka Civil Commitment Totals		**245**	**$187,002.00**	**$763.27**
		Rule 20.01	12	$13,262.50	$1,105.21
		Rule 20.01/20.02	58	$64,675.00	$1,115.09
		Rule 20.02	5	$4,000.00	$800.00
	Anoka Rule 20 Totals		**75**	**$81,937.50**	**$1,092.50**
	Chisago				
		(CD) Chemically Dependent	2	$2,075.00	$1,037.50
		(MI) Mentally Ill	20	$26,201.50	$1,310.08
		MI, CD	9	$14,578.75	$1,619.86
			31	**$42,855.25**	**$1,382.43**
	Chisago Civil Commitment Totals				
		Rule 20.01	3	$2,893.75	$964.58
		Rule 20.01/20.02	12	$22,362.50	$1,863.54
		Rule 20.02	1	$1,212.50	$1,212.50
	Chisago Rule 20 Totals		**16**	**$26,468.75**	**$1,654.30**
	Isanti				
		(CD) Chemically Dependent	2	$2,343.75	$1,171.88
		(MI) Mentally Ill	11	$10,313.43	$937.58
		MI, CD	7	$9,206.25	$1,315.18
	Isaniti Civil Commitment Totals		**20**	**$21,863.43**	**$1,093.17**
		Rule 20.01/20.02	2	$2,462.50	$1,231.25
	Isanti Rule 20 Totals		**2**	**$2,462.50**	**$1,231.25**
	Kanabec				
		(MI) Mentally Ill	4	$8,361.50	$2,090.38
		MI, CD	4	$5,300.00	$1,325.00
	Kanabec Civil Commitment Totals		**8**	**$13,661.50**	**$1,707.69**
		Rule 20.01	1	$1,125.00	$1,125.00
		Rule 20.01/20.02	3	$5,843.75	$1,947.92
		Rule 20.02	1	$1,906.25	$1,906.25
	Kanabec Rule 20 Totals		**5**	**$8,875.00**	**$1,775.00**

District	County	Case Type	Cases	Total Costs	Average Cost
	Pine				
		(CD) Chemically Dependent	4	$3,562.50	$890.63
		(MI) Mentally Ill	16	$23,194.75	$1,449.67
		MI, CD	4	$6,693.75	$1,673.44
	Pine Civil Commitment Totals		**24**	**$33,451.00**	**$1,393.79**
		Rule 20.01	1	$1,737.50	$1,737.50
		Rule 20.01/20.02	5	$4,993.75	$998.75
	Pine Rule 20 Totals		**6**	**$6,731.25**	**$1,121.88**
	Sherburne				
		(CD) Chemically Dependent	2	$2,433.75	$1,216.88
		(MI) Mentally Ill	13	$14,672.89	$1,128.68
		MI, CD	10	$14,170.57	$1,417.06
	Sherburne Civil Commitment Totals		**25**	**$31,277.21**	**$1,251.09**
		Rule 20.01	2	$4,081.25	$2,040.63
		Rule 20.01/20.02	7	$11,706.25	$1,672.32
	Sherburne Rule 20 Totals		**9**	**$15,787.50**	**$1,754.17**
	Washington				
		(DD) Developmentally Disabled	1	$525.00	$525.00
		(MI) Mentally Ill	19	$33,183.75	$1,746.51
		MI and Dangerous	5	$14,231.84	$2,846.37
	Washington Civil Commitment Totals		**25**	**$47,940.59**	**$1,917.62**
		Rule 20.01	8	$8,155.54	$1,019.44
		Rule 20.01/20.02	15	$13,572.32	$904.82
		Rule 20.02	5	$4,516.00	$903.20
	Washington Rule 20 Totals		**28**	**$26,243.86**	**$937.28**
	Wright				
		(CD) Chemically Dependent	6	$9,282.50	$1,547.08
		(MI) Mentally Ill	19	$41,827.25	$2,201.43
		MI, CD	5	$12,371.50	$2,474.30
	Wright Civil Commitment Totals		**30**	**$63,481.25**	**$2,116.04**
		Rule 20.01	3	$2,250.00	$750.00
		Rule 20.01/20.02	9	$10,312.50	$1,145.83
	Wright Rule 20 Totals		**12**	**$12,562.50**	**$1,046.88**

Appendix 6 – Psychological Services Examiner Payment Policy

Minnesota Judicial Branch Policy/Procedures

Policy Source:	State Court Administrator
Policy Number:	510(a)
Category:	Court Operations
Title:	Psychological Services Examiner Payment Policy
Origination Date:	June 20, 2008
Effective Date:	July 1, 2008
Revision Date:	May 10, 2010
Contact:	Director of Court Services Division

Psychological/Psychiatric Services Examiner Payment Policy

I. POLICY

The State of Minnesota shall compensate non-employee examiners for examination and testimony pursuant to court order and pursuant to this payment policy.

II. APPLICABILITY

The Psychological Services Payment Policy applies to:
(1) all District courts in the appointment of a court-ordered examination;
(2) all District Courts in the processing of examiner invoices; and
(3) all non-employee examiners who perform court ordered examinations for the courts.

III. DEFINITIONS

"Examiner" refers to a person performing court-ordered psychological examinations who is knowledgeable, trained, and practicing in the diagnosis and assessment or in the treatment of the alleged impairment, and who is:
(1) a licensed physician; or
(2) a licensed psychologist who has a doctoral degree in psychology or who became a licensed consulting psychologist before July 2, 1975; and
(3) in good standing with the appropriate professional licensing board.

"Metro Area" refers to the seven (7) county metro area: Hennepin, Ramsey, Washington, Anoka, Dakota, Scott, and Carver.

IV. COMPENSATION

The compensation established for court-ordered psychological/psychiatric exams is as follows:

A. Maximum Compensation Rate

The State Court Administrator shall establish and periodically review a maximum examiner rate and/or a maximum total fee that may not be exceeded without obtaining prior judicial authorization. Each judicial district shall establish a rate within that limit. The court shall compensate first and second examiners based on the rate as determined by the judicial district. The maximum rate does not apply to exams performed by examiner employees.

1. The maximum examiner rate for civil mental health commitment cases and criminal Rule 20 competency/criminal responsibility cases shall be:

a) Metro area $105.00 per hour.
b) Outstate area $125.00 per hour.

2. The maximum statewide rate for Sexually Dangerous Persons and/or Sexually Psychopathic Personality cases is $125.00 per hour. A maximum fee of $5,000 shall be paid for services performed in an SDP/SPP case (not including travel compensation and related expenses in Paragraph B.2.) unless prior judicial authorization has been obtained to exceed the maximum fee.

3. The maximum statewide rate for psychiatrists, appointed in cases where the judge has determined that psychiatric testimony is necessary to evaluate the issue before the court, is $195.00 per hour.

4. Contracts: Any hourly, flat fee per case, or per service rate negotiated under a separate contract with the state must not exceed the maximum examiner rate set by the State Court Administrator in this policy.

B. Reimbursement

Examiners shall be paid for record review, interview of the proposed patient, report writing, and testimony. All requests for reimbursement shall be submitted within 60 days of the completed work. Other reasonable expenses may be reimbursed pursuant to the following guidelines.

1. Testimony

Examiners shall be paid for direct and cross examination related to the court-ordered report only. Payment for general observation of a trial may only be

allowed on a case-by-case basis with prior judicial authorization. Payment may be expanded only on case-by-case basis with judicial authorization.

2. Travel

All travel will be paid at 60% of the hourly compensation rate as established by the district in Paragraph A. There will be no reimbursement for mileage.

When travel is required, the Court Administrator may authorize reasonable expenses based upon the Judicial Branch's travel policy.

The following are examples of items NOT reimbursed.

a) Reimbursement for meals and incidental costs during travel.
b) Previously approved travel costs that are not broken out and itemized on the examiner's bill.
c) Work done outside the agreed upon location unless previously authorized by the Court Administrator or as further ordered by the court.

3. Cancellation or Continuance of Trial

The court shall attempt to give notice of cancellation or continuation of trial at least 24 hours prior to the start of the court proceeding, excluding weekends and official state holidays.

If an examiner appears at the courthouse and discovers a case has been cancelled or continued the examiner may bill for the actual round trip time expended to appear for the cancelled or continued proceeding at a rate not to exceed the hourly rate as established by the district in Paragraph A and/or the Travel rate as established in Paragraph B 2.

Approval:

Sue Dosal, State Court Administrator

April 29, 2010
Date

Appendix 7 – Psychological Services Examiner Roster Policy

Minnesota Judicial Branch Policy/Procedures

Policy Source:	State Court Administrator
Policy Number:	510(b)
Category:	Court Operations
Title:	Psychological Services Examiner Roster Policy
Origination Date:	June 20, 2008
Effective Date:	July 1, 2008
Revision Date:	
Contact:	Director of Court Services Division

Psychological/Psychiatric Examiner Services Roster Policy

I. POLICY STATEMENT

Whenever a first examiner is required to be appointed by the court and the court does not have or is unable to utilize an employee examiner, or an examiner who is under contract to provide examiner services to the court, court administration shall first attempt to select an examiner who is listed on the statewide roster.

The State Court Administrator shall maintain and publish annually a statewide roster of psychological/psychiatric examiners. If the court administrator has made diligent efforts to obtain an examiner who is on the statewide roster and none is found to be available, the court administrator may select an examiner who is not listed on the statewide roster and who is otherwise qualified.

The court may, at any time, make further inquiry into the selection of a particular examiner.

II. ROSTER REQUIREMENTS

The Examiner shall submit annually an affidavit verifying he/she is:

1) a licensed physician; or

2) a licensed psychologist who has a doctoral degree in psychology or who became a licensed consulting psychologist before July 2, 1975;

3) in good standing with the appropriate professional licensing board; and

4) the carrier of valid malpractice insurance.

Roster examiners shall:

1) Attend an orientation program approved by the State Court Administrator designed to inform the examiner of court process and his or her role in the process; and

2) Sign a letter of agreement setting forth the standard payment rate, travel reimbursement rate, and cancellation policy.

Approval:

Sue Dosal, State Court Administrator

June 20, 2008

Date

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