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Publication Date: May 7, 2020 in both Finance & Commerce and Minnesota Law

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The March 19 Judicial Council meeting was conducted by video conference, with some members located in the Judicial Center, pictured, and others piping in remotely from their offices. (Staff photo: Kevin Featherly)

## Judicial Council approves MPA Remote reboot

By: Kevin Featherly   March 27, 2020

Overcoming some judges' worries about privacy and expense, the Minnesota Judicial Council last week voted to formally to launch—if incrementally—a long-awaited project to make public court documents accessible online.

"The uncertainty of the situation that we're facing is all the more reason why government transparency is more important," state Supreme Court Chief Justice Lorie Gildea told state Judicial Council members on March 19. "I think it is time for us to move forward."

The council's unanimous vote approved only the first phase of a planned \$1.587 million Minnesota Public Access (MPA) Remote system revamp. The initial phase is expected to take 12 months and cost \$580,000.

The council's vote restarts a project that was approved once before. But it collapsed last year when the assigned vendor failed to get it off the ground. The job now goes to in-house Judicial Branch developers, who will convert the system into one that makes court filings accessible online.

While a version of MPA Remote already exists, most people using it can only access registers of actions—lists of court dates, e-filings, motions and orders. Sitting at court terminals, however, the same user could tap into MPA's courthouse version and read entire briefs, trial transcripts, rulings and other documents. If the approved project succeeds, there will be little or no difference between the systems.

Until mid-2019, the presumption was that the Judicial Branch's vendor, Tyler Technologies, would perform that reboot. But that didn't work out.

A request for proposals in July didn't bear fruit, nor did talks with several other states about potentially building a shared interface. Eventually, the council settled on its own in-house staff, possibly with assistance from outside consultants.

"I am confident that our development staff can put this together and roll it out in an intelligent way," said Ramsey County District Court Chief Judge John Guthmann.

Supreme Court Justice G. Barry Anderson said that he once opposed a self-develop interface, but he has changed his mind. "I think that this plan has been vetted and thoroughly analyzed," he said. "I think it is a reasonable decision to make at this point."

## Skeptics and supporters

The Judicial Council's vote project came just one day before Gildea declared a peacetime emergency order that maximizes social distancing within the courts. Presaging that order, the March 19 Judicial Council meeting was conducted by video conference, with some members located in the Judicial Center, others piping in remotely from their offices.

Gildea's March 20 emergency order emphasizes remote proceedings whenever possible, while limiting access to courtrooms and courthouse facilities. It also shuts down MPA courthouse terminals for both the public and the press.

"As we're closing law libraries and closing courthouses, we are having less and less access to those MPA terminals," State Court Administrator Jeff Shorba told the Judicial Council. "So this project is a big priority and I think it needs to go on."

Nevertheless, some judges expressed skepticism. Among them was 9th Judicial District Court Chief Judge Tamara L. Yon, of Polk County. Yon worries that remote access to court documents poses a risk to "the privacy of our court customers."

"I really think this should be focused on giving our Minnesota-licensed lawyers the access, before we go to a system where the public can access all these documents at any time," she said.

Errors can creep into court records, Yon said, while other documents—even some considered public—contain intimate details of people's lives, particularly in family court and protection-order proceedings.

"I just think we're in a crazy social media world, and it's not too much to ask for the public to do a little more work to get to get all that information," Yon said.

Even stronger concerns were voiced by 5th Judicial District Chief Judge Michelle Dietrich of Lyon County. With the COVID-19 crisis threatening the Judicial Branch's long-term funding, she said, she fears the project's eventual \$1.5 million project cost—and its projected \$445,000 in annual maintenance, might be too big a commitment.

She agreed with Yon about data becoming too easily available online. She suggested that lawyers alone should get remote access and that the public should continue using the courthouse interface. "We have control over attorneys," Dietrich said. "We don't have the same control over the public."

Gildea suggested that's it's too late for such arguments. The state Supreme Court's Rules of Public Access Committee made a decision year ago to provide remote access, she said. "The question since then is how going are we going to provide remote access," Gildea said. "We've gone through this whole process. Now we are where we are."

Anderson said that the branch has often promised the public and lawyers alike that they would eventually have remote access to court documents. "As it stands right now we have

remote access that has provided some—a favored few—with a system that, candidly is not destined for long-time use,” he said. “I think we need to move forward with this now.”

Hennepin County District Court Chief Judge Ivy Bernhardson said she would feel more comfortable doing that if the Minnesota Court Information System (MNCIS) was first equipped with automated redaction software.

Shorba said that is being considered, but it would take more than a year to complete and probably cost “multimillions of dollars.” Meanwhile, if the MPA Remote project gets delayed too long, he said, funding available for it in the current biennium might dry up in the next one.

Shorba also noted the state Supreme Court is considering rule changes to document submissions from attorneys, which means filings that contain information that shouldn’t be there could get rejected. “Which I think could create an additional incentive for attorneys to do a better job with their documents,” he said.

Shorba, Gildea and Anderson repeatedly assured council members that the project is proceeding in incremental steps and includes built-in “off ramps”—numerous mileposts where the plug could be pulled. That could happen with any quarterly report, several said, or whenever it becomes clear that Judicial Branch funding is in trouble.

Some council members offered full-throated support for the project, including 8th Judicial District Court Chief Judge Dwayne N. Knutsen of Yellow Medicine County. His district includes 13 counties, he said, and many of them are shuttering their courthouses because of the COVID-19 crisis.

“They’re falling like dominoes,” he said. “I think this is a very important tool that will help us in the future to keep access to our courthouses available to the public.”

Gildea offered a motion to approve the “MPA Remote with Documents” project, with provisos that it will be a standing agenda topic at every council meeting; that the council will re-approve spending quarterly during Phase One, and that the chief justice will appoint a steering committee to guide the project, monitor milestones and report to monthly on its status.

The motion was approved unanimously.

Once developed, the new MPA Remote interface likely will be available only as a pilot project only to lawyers, to test the system’s security and make sure it doesn’t inadvertently feed out non-public documents.

#### ABOUT KEVIN FEATHERLY



Kevin Featherly, who joined BridgeTower Media in mid-2016, is a journalist and former freelance writer who has covered politics, law, business, technology and popular culture for publications and websites in the Twin Cities and nationally since the mid-1990s.

