



# **Increasing Public Trust Through Procedural Fairness Workgroup**

## **Report and Recommendations**

**Adopted November 2023**

**Notice of Disclaimer:**

The Michigan Supreme Court established the Michigan Judicial Council by MCR 8.128 to make recommendations on matters pertinent to the administration of justice and the strategic plan of the Michigan judicial branch. The opinions and recommendations contained in this document are those of the Michigan Judicial Council and do not necessarily represent the official position or policies of the Michigan Supreme Court or State Court Administrative Office.

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## Letter from the Chair

Dear Colleagues,

The ideal of achieving Procedural Fairness in our courts is aspirational in that it is a goal that will never be fully realized, but for which we are dedicated to refining and strengthening in our everyday practice. Our workgroup has been working to identify the practices that can help develop the habits of respect and courtesy while still adhering to the traditions of decorum.

One of the first things we created was the Promise of Procedural Fairness, which we hope will be prominently displayed in every environment where there is public interaction with the court. The goal is that court users, judicial officers, and staff alike understand the sense of fairness, respect, and equality begins from the moment you walk into a courthouse, zoom into a court waiting room, or access the court website. From those initial entry points, we hope to instill an expectation in each individual that they will be accorded dignity and respect, that the process will be explained to them, they will be given an opportunity to be heard, and they will be given the opportunity to ask questions to ensure they understand what will happen next. This is important for defendants, victims, witnesses, other parties to a case, as well as the general public.

Some of the recommendations direct courts to be specific in addressing the public needs and thereby infringe upon the long sacred cow of “judicial discretion”. I confess, I have long believed too much latitude has been extended to judges in service of “discretion” and simply describing it as *judicial* does not make it just. This is not a popular opinion, especially amongst my fellow jurists, but when we depart from objectively treating each individual in a transparently equal manner, whether in sentencing, deciding on motions, courtroom discourse or assistance at a clerical counter; we open ourselves the perception of bias.

By adhering to the principles of procedural fairness, we challenge our colleagues to be transparent and explain what we are doing and very importantly WHY we are doing it. We hope that each person who comes before us will understand that we are attempting to treat each individual with respect and treat like situations in like manners. We hope that by adhering to the recommendations of procedural fairness, the courts will begin to reduce the perceptions in some communities that the system is weighted against them. Such perceptions, legitimate or not, are common, especially in marginalized communities.

Undertaking this arduous journey toward that aspirational goal of Procedural Fairness is essential to making real efforts to increase access to justice, and justice for all. I want to thank the workgroup for their dedication, time, and patience (especially with me). As ambassadors for Procedural Fairness, you are helping to make the judiciary more inclusive and trusted.

Hon. William Baillargeon,  
MJC – Procedural Fairness Workgroup Chair  
57<sup>th</sup> District Court

## Letter from the Project Director

Dear Colleagues,

As judges and attorneys, we are very comfortable in the court room. Understanding the justice system is easy for us and it is therefore hard to visualize how difficult and scary the justice system can be to litigants, witnesses, plaintiffs, and defendants. In addition, a large majority of matters are not trials where the courts are experts at demonstrating due process, most are arraignments, calendar calls, preliminary examinations, landlord tenant hearings, motion dockets, probation violations, etc. These common hearings are handled in high volume dockets and this fast pace does not necessarily demonstrate procedural due process at its best. Most individuals will form their opinion of the courts based on their experiences during the fast-paced docket of quick hearings, resulting in the public and court users not holding the justice system in the best light.

For me, the medical system was very scary and intimidating. I had recent experiences with medical systems which resulted in two very serious surgeries, open heart surgery and thoracic surgery. Before the final diagnosis, I was scheduled for multiple tests, x-rays, ultrasounds, blood test, and medical procedures. The tests were never scheduled based on my availability nor were they scheduled at the same time for convenience. Also, it was quite challenging having to wait a long time for the results. I advocated for myself after I received a phone message from the receptionist that I was being scheduled for a serious surgery (open heart), after only one test without even talking to me, by going to Cleveland Clinic.

The difference between the local medical care and the Cleveland Clinic was night and day. I had good local doctors, but the medical system was not seamless and very difficult for me to navigate. Although my issues were compounded because this occurred during COVID, and I was not allowed family support with me, I had a medical team who listened, provided respect, eliminated most of my fears, and gave me amazing care.

I want our court users to have a *Cleveland Clinic* experience when they come to Court. We must recognize that people come to court about things that are important to them and that the process can be scary and intimidating. The courts can sincerely demonstrate they care and are listening. It is important for the courts to do our best to be fair and neutral. We can explain our decisions and our rulings in terms that individuals understand and by doing so, we are providing justice that results in a win for all court users even when their case is not decided in their favor.

Hon. Susan L. Dobrich, retired.  
Project Director

## **Executive Summary**

Procedural Fairness practices are one of the most influential factors in increasing public trust and confidence in the courts. Research shows that court users rate courts more favorably if they felt they were treated fairly and with respect, as opposed to whether the outcome of their case was in their favor. The Michigan Judicial Council (MJC) in their 2022-2025 Strategic Agenda identified Public Trust and Understanding as one of their five strategic goal areas for improving the judiciary, and in turn included procedural fairness as one their 2022-2023 priority initiatives and established the Procedural Fairness Workgroup.

### **Workgroup Activities**

The Procedural Fairness Workgroup met regularly to explore available research on procedural fairness practices and develop recommendations for improving the use of those practices throughout trial courts in Michigan. The workgroup spent time informing their work and how it relates specifically to Michigan trial courts by examining trends found in Court User Satisfaction Survey data with the help of the Statistical Research Team at the State Court Administrative Office (SCAO). The workgroup assisted the SCAO in making improvements to the existing survey to ensure that additional data around procedural fairness practices is being captured in the survey results.

Additionally, the workgroup formed two subcommittees to develop recommendations that would assist judicial officers and court staff alike, with enhancing their understanding and implementation of procedural fairness practices. The subcommittee on public expectations worked to develop the Promise of Procedural Fairness document, which is intended to be a public facing document that outlines what court users can expect from judicial officers and court staff, while also shaping a court culture internally that promotes procedural fairness practices.

In addition to public expectations, available education and training on procedural fairness practices was examined by a second subcommittee. The subcommittee reviewed existing materials to determine how courts can implement additional training opportunities at the local level, but also where opportunities for statewide training exist. The subcommittee worked with the Michigan Judicial Institute (MJI) to create a training session on procedural fairness for the Judicial Conference that was held in May of 2023.

### **Areas of Concern/Need for Improvement**

Throughout their extensive research on current practices and available education on procedural fairness practices, the workgroup identified additional areas of concern or areas needing improvement. Those areas include the self-selection out of trainings and the lack of self- assessment tools available for determining use of or improvements in implementation of procedural fairness practices.

## **Fulfilling the Promise of Procedural Fairness: Recommendations for Action**

In response to the charge from the Council to address the need to expand procedural fairness practices, the workgroup has developed several recommendations. These recommendations seek to expand education on procedural fairness practices while shaping a court culture that enhance public trust and understanding.

### ❖ **Recommendation One – Increased Training for Judicial Officers and Court Staff**

The workgroup recommends expansion of training and evaluation efforts that will increase the implementation of procedural fairness practices, including partnerships with the SCAO, MJI and other stakeholder partners to provide free mandatory trainings for judicial officers and court staff on procedural fairness practices.

### ❖ **Recommendation Two – Implementation of the promise of Procedural Fairness**

The workgroup recommends the Michigan Supreme court adopt the Promise of Procedural Fairness and require all Michigan Trial Courts to display the document in courthouses for public viewing.

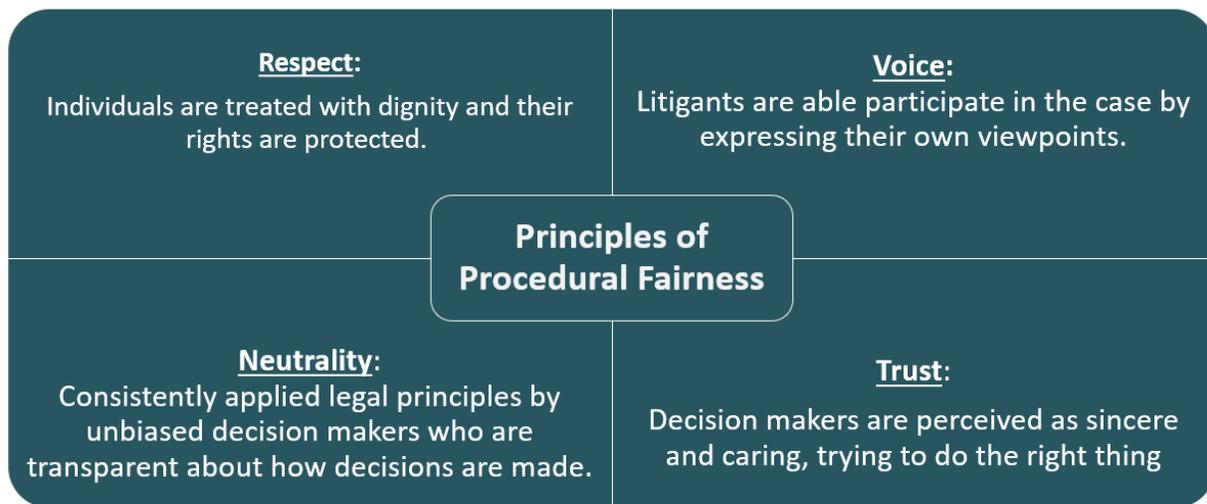
### ❖ **Recommendation Three – Using the SCAO Public Satisfaction Survey as a Management Tool**

The workgroup recommends expansion on the use of the SCAO Public Satisfaction Survey results and development of a management tool that can be utilized by court leadership to determine where procedural fairness practices require improvement.

## Background

Procedural fairness, also referred to as procedural justice, is described by the National Center for State Courts as “an evidence-based practice reliably associated with higher levels of compliance with and greater amounts of satisfaction with decisions by authority figures”.<sup>1</sup> Procedural Fairness practices focus on the court users perceived treatment by the court, how cases are handled, and the quality of the treatment received by individuals throughout the court process, not necessarily case outcomes. Perceptions of procedural fairness are the strongest predictors of public trust and confidence in the courts. Court users having a sense that decisions are made fairly are more inclined to have a positive view of the court.

The four characteristics of Procedural Fairness are: Respect, Voice, Neutrality, and Trust.<sup>2</sup>



In 2022, the Michigan Judicial Council finalized the judiciary’s first ever [Strategic Agenda](#) and identified Public Trust and Understanding as one of the five strategic goal areas for improving the judiciary and identified improving procedural fairness as one of its priority initiatives in the 2022-2023 Operational Plan. The Strategic Agenda states:

Remaining independent, being fair and impartial, responding to needs, being accountable for conduct and performance, and being transparent in the use of public resources are the bedrock for increasing understanding and building and maintaining the public’s trust and confidence.

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<sup>1</sup> National Center for State Courts, <https://www.proceduralfairness.org/>

<sup>2</sup>Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 U of Chicago P 283-357 (2003), available at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/procedural-justice-legitimacy-and-effective-rule-law-crime-and>.

The Council established the Increasing Public Trust Through Procedural Fairness Workgroup to explore ways to enhance to the experience of court users and increase the confidence and trust in the courts. The workgroup was charged with:

- studying, developing, and recommending approaches (e.g., practices, resources, and tools) for embedding procedural fairness principles and practices into court operations including the courtroom and court processes
- assessing the effectiveness of the current SCAO Public Satisfaction survey to garner public perception of the Michigan judiciary, and
- evaluating existing education tools and trainings on procedural fairness

## Workgroup Activities

The Increasing Public Trust Through Procedural Fairness Workgroup explored ways to further implement the elements of Procedural Fairness into everyday court practices and improve court user experiences by reviewing various resources and court data. The National Center for State Courts (NCSC) has a [resource hub](#) that is devoted specifically to Procedural Fairness. The NCSC's site contains a wealth of Procedural Fairness resources such as research, tools for implementation, and educational information for judicial officers and court staff. In addition to the NCSC, states have made increased awareness of Procedural Fairness a priority including Washington and Alaska. The workgroup reviewed the details of a blended learning project held in Washington in 2012, which was a five-part program designed to allow for judicial officers and court staff to assess and change their own behavior, but also to assess and change their court's processes. The program aimed to:

improve perceptions of parties, lawyers, witnesses, jurors, and spectators concerning the impartiality and fairness of how justice is administered; and thereby increase compliance with court decisions. to enhance their abilities to provide a fair and impartial forum where court users felt that they had been treated fairly.<sup>3</sup>

The Washington court system adopted a [self-assessment tool](#) developed by the California Administrative Office of the Courts and Center for Court Innovation to assist court leadership in helping their individual courts to identify “strengths it can build on to enhance users’ perceptions of procedural fairness”.<sup>4</sup> The workgroup also looked at the work of the Alaska court system. In 2013, Alaska released its [Pledge of Fairness](#) to Alaska's citizens, which was posted in every courthouse in the state.

The workgroup looked at current practices within Michigan to enhance procedural fairness. In 2019, Cass County worked on a project to promote increased awareness, understanding, and use of procedural practices through education of key concepts.

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<sup>3</sup> <https://proceduralfairness.files.wordpress.com/2012/04/procedural-fairness-flyer.pdf>

<sup>4</sup> <https://www.courts.wa.gov/education/?fa=education.pfasurvey>

Cass County identified six focus concepts including: Transparency, Respect, Voice, Trust, Neutrality, and Listening, and developed a bench card.

**PROCEDURAL FAIRNESS FROM THE BENCH**

**PRACTICE NEUTRAL GREETINGS**

**Introduce Yourself & Greet Parties Neutrally**

Introduce yourself at the beginning of proceedings and address parties and attorneys by name. Treat all parties and attorneys with respect and without showing favoritism.

**PROVIDE HELPFUL EXPLANATIONS**

**Communicate What Is Happening**

Explain sidebars and other court procedures that parties may not understand or that may have the potential to make a party feel alienated. When explaining matters, use plain language and minimize the amount of legal jargon when possible. Explain the reasoning behind the Court's ruling.

**STAY ON TASK**

**Show You Value A Person's Time**

Start and end scheduled matters on time. If there are timing issues, address any concerns and let the parties know what you are going to do to keep things running smoothly. Stay on task and avoid reading or completing paperwork while a case is being heard.

**ACTIVELY LISTEN AND ENGAGE**

**Let The Parties Know You Are Listening**

Ask open ended questions when appropriate to allow the parties the opportunity to be heard and explain things. Make eye contact when you are speaking and listening to a party or attorney. Be aware of body language that may send signs of frustration to a party.

PROCEDURAL FAIRNESS IS THE FOUNDATION OF JUSTICE

**WHAT YOU SAY FROM THE BENCH MATTERS**

Understand Your Role in Promoting Procedural Fairness

**WHAT IS PROCEDURAL FAIRNESS?**

Procedural Fairness is a set of evidence-based practices that increase public trust in the judicial system by ensuring fairness in court processes.

Procedural Fairness involves practices such as: Giving A Voice, Remaining Neutral, Showing Respect, Building Trust, Actively Listening, and Promoting Transparency.

**WHY IS PROCEDURAL FAIRNESS IMPORTANT?**

Studies have shown, that regardless of the outcome of a proceeding, when Procedural Fairness is practiced, people are more accepting of the court's ruling and more likely to comply with an order.

Cass County Courts have consistently received high marks from the public regarding their experiences with the court. As high as 94% of those surveyed agreed that the Judge, Referee, or Magistrate treated everyone with courtesy and respect.

**HOW DOES PROCEDURAL FAIRNESS IMPACT THE COMMUNITY?**

Practicing Procedural Fairness in all aspects of the judicial system positively impacts the community as a whole.

Procedural Fairness increases access to justice, embraces diversity, combats implicit bias, reduces the harm of criminal victimization, reduces recidivism, and builds public trust.

**HOW CAN I LEARN MORE?**

Check out free resources online.

Kevin Burke & Steve Leben, Procedural Fairness: A Key Ingredient in Public Satisfaction, 44 CT. REV. 4 (2007/ 2008) (an AJA White Paper), available at <http://goo.gl/aFCYT>.

Emily Cold Lagratta, Procedural Justice: Practical Tips for Courts (2015), available at <https://goo.gl/VbUC3K>.

Tom R. Tyler, Procedural Justice and the Courts, 44 CT. REV. 26 (2007-2008), available at <https://goo.gl/UHFkxY>.

THIS BENCH CARD WAS ADAPTED FROM THE BENCH CARD FOUND AT [WWW.PROCEDURALFAIRNESS.ORG](http://WWW.PROCEDURALFAIRNESS.ORG) REVISED 1/18/2019

Figure 1. Bench Cards Prepared by Cass County Probate Court

Additionally, the workgroup engaged with the State Court Administrative Office's (SCAO) statistical research division to examine the connection between procedural fairness practices and the SCAO public satisfaction survey. The Workgroup examined results from prior surveys (2015, 2016, and 2018) to review what we currently know and what we hoped to learn from an updated and expanded survey in 2023. Prior surveys included six key measures of courts – fairness, staff treatment, judge treatment, outcome, understanding, and timeliness. From those prior surveys, we know that:

1. Respondents at the court for a drug, PPO, and/or divorce case consistently rated the court lower than others in terms of all six indicators.
2. Witnesses and family members rated the court lower than others. Attorneys rated the court highest across the indicators of fairness, staff treatment, judge treatment, and timeliness.
3. Those who identify as female rated the courts fairer on average than those who identify as male.
4. Respondents who identify as black, multiracial, or American Indian rated the courts lower in terms of fairness, compared to respondents who identify as white or Asian.

SCAO Public Satisfaction Survey		
Six Measures		
<b>Fairness</b>	<b>Staff Treatment</b>	<b>Judge Treatment</b>
The way my case was handled was fair	I was treated with courtesy and respect by court staff	The judge treated everyone with courtesy and respect
<b>Outcome</b>	<b>Understand</b>	<b>Time</b>
The outcome in my case was favorable to me	As I leave court, I understand what happened in my case	I was able to get my court business done in a reasonable amount of time

*Figure 2 identifies the six key measures used to evaluate courts in the public satisfaction survey.*

After reviewing the revised survey for 2023, the workgroup provided specific feedback on the wording, questions to include, and target audience for the survey. Several workgroup members also joined a survey development team to provide more in-depth feedback. Finally, the SCAO worked with the 3<sup>rd</sup> Circuit Court to pilot test the draft survey for one day at Frank Murphy Hall of Justice. After reviewing the feedback provided by this workgroup, the pilot test, and several other groups, the survey instrument was developed into its final form, shown below, to be implemented later this year:

**2023 Public Satisfaction Survey**  
 XXXXX Court  
 XXXXX Location



**How much do you agree with the following about your experience in court today?**

	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
1) I was able to easily find my way around.	<input type="radio"/>				
2) I was helped quickly today.	<input type="radio"/>				
3) I felt safe at the courthouse today.	<input type="radio"/>				
4) The security screening process was organized and efficient.	<input type="radio"/>				
5) I completed my business easily.	<input type="radio"/>				
6) I completed my business in a reasonable amount of time.	<input type="radio"/>				

**How much do you agree with the following about the court employees and staff you dealt with today?**

	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
7) They treated me the same as everybody else.	<input type="radio"/>				
8) They listened to what I had to say.	<input type="radio"/>				
9) They did their best to help me.	<input type="radio"/>				
10) They were friendly and respectful.	<input type="radio"/>				

**How much do you agree with the following about Michigan courts generally?**

	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
11) Michigan courts do a good job overall.	<input type="radio"/>				
12) I trust Michigan courts to handle my business in the future.	<input type="radio"/>				
13) Michigan courts provide equal justice to all.	<input type="radio"/>				

**COMPLETE THIS SECTION IF YOU WENT TO A HEARING OR TRIAL**

**How much do you agree with the following about the judge (or magistrate/referee) that handled the case?**

	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
14) They treated everyone with courtesy and respect.	<input type="radio"/>				
15) They seemed prepared for the hearing.	<input type="radio"/>				
16) They treated me the same as everybody else.	<input type="radio"/>				
17) They listened to what I had to say.	<input type="radio"/>				
18) They clearly explained any decisions to me.	<input type="radio"/>				

**How much do you agree with the following about the case?**

	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
19) The way the case was handled was fair.	<input type="radio"/>				
20) The outcome in the case was favorable to me.	<input type="radio"/>				
21) I understand what happened in the case.	<input type="radio"/>				
22) The court scheduling process was clear and simple.	<input type="radio"/>				

23) Was the case delayed even if you didn't want it to be?

	Yes	No
	<input type="radio"/>	<input type="radio"/>

**TURN PAGE OVER** 

**PLEASE COMPLETE ALL QUESTIONS IN THIS SECTION**

24) What was your role in court today? (select all that apply)

<input type="checkbox"/> Plaintiff or petitioner on my own case	<input type="checkbox"/> Guardian/Conservator
<input type="checkbox"/> Defendant or respondent on my own case	<input type="checkbox"/> Called for jury duty
<input type="checkbox"/> Victim	<input type="checkbox"/> Support person (family/friend)
<input type="checkbox"/> Witness on a case	<input type="checkbox"/> To watch court
<input type="checkbox"/> Agency Worker (e.g., MDHHS, law enforcement)	<input type="checkbox"/> Other
<input type="checkbox"/> Attorney/Prosecutor	

25) What brought you to the court today? (select all that apply)

<input type="checkbox"/> Child protective case (abuse/neglect)	<input type="checkbox"/> Landlord-tenant, eviction case
<input type="checkbox"/> Civil matter	<input type="checkbox"/> Personal Protection Order (PPO)
<input type="checkbox"/> Criminal case	<input type="checkbox"/> Probation
<input type="checkbox"/> Debt dispute	<input type="checkbox"/> Problem-solving court (e.g., drug, sobriety, mental health, veteran)
<input type="checkbox"/> Divorce, paternity, child support, parenting time	<input type="checkbox"/> Small claims
<input type="checkbox"/> Estate/trust	<input type="checkbox"/> Traffic/ticket
<input type="checkbox"/> Guardian/conservatorship case	<input type="checkbox"/> Other
<input type="checkbox"/> Juvenile delinquency case	

26) For the type of court business you had today, which do you prefer?

<input type="radio"/> Online	27) Did an attorney assist you today?
<input type="radio"/> In-person	<input type="radio"/> Yes, I hired an attorney
<input type="radio"/> No preference	<input type="radio"/> Yes, an attorney was appointed to me
	<input type="radio"/> No

**THE COURT IS COMMITTED TO BEING FAIR AND NOT DISCRIMINATING ON THE BASIS OF AGE, RACE, COLOR, NATIONAL ORIGIN, GENDER, AND ECONOMIC STATUS. COMPLETING THE SECTION BELOW IS OPTIONAL; HOWEVER, YOUR RESPONSE HELPS US KNOW IF WE ARE SUCCESSFUL.**

28) How old are you?

<input type="checkbox"/> 17 or younger	<input type="checkbox"/> 50 - 64
<input type="checkbox"/> 18 - 34	<input type="checkbox"/> 65 or older
<input type="checkbox"/> 35 - 49	

29) With which gender do you most identify?

<input type="checkbox"/> Female
<input type="checkbox"/> Male
<input type="checkbox"/> I prefer to self-identify: _____

30) With which race/ethnicity do you most identify?

<input type="checkbox"/> American Indian/Alaska Native	<input type="checkbox"/> Middle Eastern/
<input type="checkbox"/> Asian	<input type="checkbox"/> North African
<input type="checkbox"/> Black/African American	<input type="checkbox"/> White
<input type="checkbox"/> Hispanic/Latino	<input type="checkbox"/> Other _____

31) What is your highest level of education?

<input type="checkbox"/> Less than a high school diploma	<input type="checkbox"/> Associate's degree
<input type="checkbox"/> High school diploma or GED	<input type="checkbox"/> Bachelor's degree
<input type="checkbox"/> Some college, but no degree	<input type="checkbox"/> Graduate degree

32) Is there anything else you would like to share with us about your experience in court today?

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Thank you for your time. Your feedback really makes a difference.

\*585!2023!DIC03!Wayne!\*

Figure 3 SCAO 2023 Public Satisfaction Survey

In addition to their work on the survey, as well as reviewing research and current practices regarding Procedural Fairness, the workgroup created two sub-committees to continue to advance their work. The first addressed the public's expectations around treatment when they interact with the courts, and the second looked at Procedural Fairness training and education for judicial officers and courts staff.

## Public Expectations Subcommittee

The subcommittee on public expectations developed a framework of what court users can expect from judicial officers and court staff regardless of their roles in a case while interacting with the courts. The subcommittee recognized that all aspects of the court experience affect the perception of being treated respectfully, equally, and fairly. From entering the courthouse, interactions with security, interaction with staff, to interactions with judicial officers throughout their hearing, each interaction can affect perceptions of the user or participant. This is why it is important for not only judicial officers, but all court staff, to receive training and education on procedural fairness.

The subcommittee discussed the points of contact at which judicial officers and court staff have opportunities to enhance court users' perception of how they were treated. The workgroup developed the following list of questions for courts to consider regarding its users' initial experiences upon entering the courthouse:

- How were they greeted?

- Were they singled out for special scrutiny, and if so, was there an objective and clear understanding as to why?
- How were they directed after completing the security process?
- Was there someone to help or direct them on where they needed to go and how to get there?

The subcommittee also noted that interactions with court personnel can deeply impact perceptions. The subcommittee developed the following list of questions for court personnel to consider regarding court users' experiences once they are in the courthouse.:

- Did clerical staff greet them respectfully?
- Did clerical staff provide helpful information or direct them to where they could get the specific assistance required?
- Did court proceedings begin when scheduled?
- How were they addressed by judicial officers?
- Were they provided with a genuine opportunity to express their concerns to the court?
- Was any action taken by the court clearly explained and did they have a good understanding of what the next step would be?

Based on the subcommittee's work on developing questions and self-assessment tools for courts, along with some of the current practices both in Michigan and other states, the subcommittee felt it was important to guide the public on what they should expect when interacting with the courts.

The subcommittee initially, referred to this document as a "bill of rights" that conveyed an aspirational experience rather than something perceived to be "actionable" because so much of what is being aspired to is subjective. This is not to say that the courts should not take actions to move closer to achieving that goal. This document is designed to lay framework to help courts aspire to provide a meaningful, respectful, and fair experience to all those using the court and work toward increasing public trust and confidence in the courts. To that end, the workgroup created the *Promise of Procedural Fairness*. This promise is similar to commitments of other state courts, notably that of Alaska, however it is tailored to fit with the mission and core values of the Judicial Council and to speak specifically to Michigan's court users.



**Michigan's One Court of Justice delivers justice for all by providing access, protecting rights, resolving disputes, and applying the law under the Constitution.**

Procedural fairness is the process through which courts provide a fair and impartial forum. It is the right to be treated with respect, the right to have a voice and be heard by a sincere and empathetic court, and the right to have the court process explained.

**The judges and staff of Michigan's One Court of Justice make the following promises to all court users to gain your trust:**

- We promise to listen.**
- We promise to treat you with respect.**
- We promise to be neutral.**
- We promise to explain and answer questions about court procedure.**
- We promise to act with integrity.**



*Figure 4 The Promise of Procedural Fairness*

## Education for Judicial Officers and Court Staff Subcommittee

The second subcommittee focused on the importance of educating the judiciary and court staff on procedural fairness and assisting them in developing the tools and practices to ensure the public is provided with an experience that aligns with the promises made in the Promise of Procedural Fairness.

Initial efforts from this subcommittee focused on judicial training. Representatives from the workgroup, Judge Tina Yost-Johnson and Angela Tripp, presented a training on Procedural Fairness at the Michigan Judicial Institute's (MJI) New Judges' School in March of 2023. The subcommittee also put together a panel for a breakout session at the Judicial Conference in May of 2023. The session was moderated by workgroup chair, Judge William Baillargeon, which included a presentation on the Promise of Procedural Fairness. In addition, a presentation from John Ropp of the State Court Administrative Office's Statistical Research team analyzed court users' views of their court experience, as reported through the public satisfaction survey, and the connection to procedural fairness practices. The session also featured a panel discussion that discussed firsthand experiences of how the actions of judicial officers and court staff have had a positive and negative impacts on court users.<sup>5</sup> The panel discussed matters such as additional trauma caused to victims, witnesses, and family members because of delay in hearings, the effects of "cattle-call" scheduling, and the positive impacts on court users by giving them time to be heard and explain processes.

One goal of the education subcommittee was to highlight the importance of Procedural fairness training and evaluation for all court staff. One way this was achieved was by collaborating with the Justice for All Commission's (JFA) Training and Outreach Committee to incorporate procedural fairness into recommended training standards. The JFA's Training and Outreach Committee proposed a set of [training recommendations](#) for all court staff, which was adopted by the full commission at its June 12, 2023 meeting. At the education subcommittee's request, introduction to procedural fairness was included in their list of Tier 1 training topics. Under the recommendations, Tier 1 topics are designated foundational and trainings "should take place as part of staff members' orientation and, if possible, before staff begin extensive engagement with the public on behalf of the court"<sup>6</sup> Implementation efforts on these training recommendations are expected to begin in late 2023.

Additionally, the subcommittee drafted a proposed comment for the council's consideration that recommended that training related to procedural fairness be included as part of proposed [Michigan Continuing Judicial Education Rule 4\(B\)\(1\)](#). The proposed court rule lays out minimum continuing judicial education requirements, including "6 hours in the subject area of integrity and demeanor...".<sup>7</sup> The Judicial Council approved

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<sup>5</sup> MJI – Judicial Conference panel members included Jeff Getting (Kalamazoo County Prosecuting Attorney), Kerri Selleck (Barry County Chief Public Defender), Ashley Lowe (Chief Executive Officer of Lakeshore Legal Aid), Stephanie Bradford (Civil Manager at 54A District Court).

<sup>6</sup> JFA Training and Outreach Committee Recommendations, June 2023, p. 6.

<sup>7</sup> ADM File No. 2019-33 – Proposed Recission of AO No. 2021-7 and Proposed Adoptions of the Michigan Continuing Judicial Education Rules.

and submitted the formal comment drafted by the subcommittee, recommending that the proposed rule be amended to add "...including at least one hour on the topic of procedural fairness or procedural justice..."<sup>8</sup> (See Appendix A).

## Areas of Concern / Needs for Improvement

Two possible areas for concern identified by the workgroup were the potential for judicial officers and court staff to self-select out of procedural fairness trainings, and the need for self-assessment tools and opportunities. Procedural fairness practices are one of the biggest indicators of public satisfaction, trust, and confidence in the courts. It is important that judicial officers and court staff are taking the time to reflect on their interactions with court users and judicial stakeholders to ensure that they are conducting themselves in a way that embraces the concepts outlined within the Promise of Procedural Fairness.

There is concern that some individuals will self-select out of those trainings as they may not perceive there is a need for it. This concern also highlights the need for self-assessment tools. Without a way for judicial officers and court staff to gauge how their interactions with court users may be perceived, they might not even be aware that there is a concern or that additional training is needed. The SCAO public satisfaction survey is the only tool being utilized to gauge procedural fairness practices on a statewide level. While improvements are currently being implemented, historically the survey has not been utilized as a management tool, specifically for procedural fairness issues.

An area the workgroup identified as in need of further study was training for judges and court staff on trauma and how to respond to court users to ensure that court proceedings do not trigger additional trauma. The Justice for All Commission's (JFA) Training and Outreach Committee also highlighted a need for trauma informed training in their [report and recommendations](#). The JFA recommended these trainings as part of their tier 2 trainings under "Core Competency Acquisition." It is beneficial to understand incorporate the concept of being trauma informed into procedural fairness practices.

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[https://www.courts.michigan.gov/49f33d/contentassets/66544dd7ece24a0396073f8c8adfadb7/approved/2019-33\\_2023-06-30\\_commentfrommjc.pdf](https://www.courts.michigan.gov/49f33d/contentassets/66544dd7ece24a0396073f8c8adfadb7/approved/2019-33_2023-06-30_commentfrommjc.pdf)

## **Fulfilling the Promise of Procedural Fairness: Recommendations for Action**

### **Recommendation One: Increased Training for Judicial Officers and Court Staff**

Studies indicate that individuals' perceptions of fairness are influenced throughout the entire process. Trust and confidence in the courts is influenced more by the way individuals are treated than the outcomes of their cases. Therefore, it is important to embed procedural fairness elements in everyday practices throughout the legal system.

The workgroup recommends expanding support for training and evaluation efforts that will increase activities and behaviors that lead to all court participants feeling the trademark effects of procedural fairness—feeling heard, feeling helped, feeling respected, and understanding what happened in their court case. Part of this longer-term work will be developing training materials and other support for court staff to evaluate themselves and their peers on procedural fairness. We recommend that the State Court Administrative Office and the Michigan Judicial Institute work to provide trainings related to procedural fairness that would be available to all court staff and lawyers for free by partnering with external entities such as the ICLE. Additionally, we recommend that procedural fairness training continues to be offered as a session at the MJJ – Judicial Conference, and a mandatory training at new judge's school.

The workgroup hopes to continue their work by creating a few standard implementation plans for courts to guide them through increased training and evaluation of procedural fairness in their courthouses. The goal is for each court to have an implementation guide that fits their size, budget, staffing, etc. Along with the standard implementation plans, we hope to provide every court with resources to support their training and evaluation plans. The workgroup would like to develop a procedural fairness training corps of individuals who are well-versed in delivering training, conducting evaluations, and facilitating conversations related to procedural justice. Ideally, these individuals would come from different areas of the state and represent different roles in courthouses so there is a diversity of experiences brought to the corps. The training corps would then be well-placed to assist local courts in implementing their procedural fairness training and evaluation plans. We also recommend the training corps engage in a “roadshow” version of the trainings that this workgroup has facilitated to date, to reach more individuals than we have so far, and to encourage conversations within individual courts on the topics of procedural justice.

### **Recommendation Two: Implementation of the Promise of Procedural Fairness.**

The Promise of Procedural Fairness (see figure 4) is simple but profound. By putting the Promise on display, there is an agreement between the participant and the Judge and/or court staff that the participants will be heard, respected, and treated fairly. A promise heard and witnessed is critical for increasing public trust and confidence in the judiciary. The workgroup recommends that the Michigan Supreme Court mandate that

the Promise of Procedural Fairness be posted in every trial court and posted on every trial court's website.

Procedural fairness isn't limited to what happens inside of individual courtrooms. Other recommendations made by the Justice for All Commission which will increase public trust and confidence include specific signage, creating safe and separate waiting rooms for petitioners and respondents, and the use of a courthouse greeter. The Workgroup supports the recommendations of the JFA and sees the Promise of Procedural Fairness as a way to further advance those recommendations. By clearly displaying, in plain language, what court users can expect from judges and court staff, courts are creating a culture within the courthouse that promotes transparency which has the potential to increase trust and confidence of courts users in the courts.

### **Recommendation Three: Using the SCAO Public Satisfaction Survey as a Management Tool**

Additionally, the workgroup recommends that the State Court Administrative Office continues to work toward creating management tool for courts to utilize the data and feedback received from the SCAO public satisfaction survey in hopes of increasing awareness of and the use of procedural fairness practices. Engaging participants in a satisfaction survey allows the courts to be more responsive to the needs of the participants. The survey can help the court identify problems, unsafe practices, and inefficiencies. In order to reverse declining levels of public trust in the judiciary, the courts must be open to listening and responding appropriately. The survey can also boost morale by showcasing strengths and creating reasons for change. Even subtle changes can make a big impact on the participant's experience.

## Acknowledgements and Workgroup Membership

The Workgroup would like to thank the Justice for All – Training and Outreach Committee for their collaborative efforts and support in our training recommendations. Additionally, we would like to thank MJJ for allowing this workgroup to host a session at the 2023 Judicial Conference as well as our panel members for their willingness to speak at the conference and their continued commitment to improving procedural practices across the judiciary.

### Workgroup Members

Hon. William Baillargeon (Chair)

Hon. Nicholas Ayoub

Hon. Jennifer Deegan

Hon. Matthew Fletcher

Jeff Getting

Laura Hutzell

Daniel Quick

Angela Tripp

Erin Van Campen

Hon. Martha Anderson

Lori Buiteweg

Patrick Finnegan

Hon. Laura Frawley

Nadine Hatten

Em Perry

Kerri Selleck

Hon. Jon Van Allsburg

Hon. Tina Yost Johnson

## Appendix A: Comment on Continuing Judicial Education

June 23, 2023

Michigan Supreme Court  
925 West Ottawa Street  
Lansing, Michigan 48915

RE: Public Comment for ADM File No. 2019-33 – Proposed Recission of AO No. 2021-7 and Proposed Adoptions of the Michigan Continuing Judicial Education Rules

Dear Michigan Supreme Court:

On behalf of the Michigan Judicial Council, we respectfully recommend the Court adopt the proposed Michigan Judicial Education Rules. In addition, we recommend that the Court specify that some of the required hours be devoted to specific areas of focus including procedural fairness and behavioral health. Below you will find out recommended additions to the rule as well as the importance/relevance of those additions.

### **Rule 4(B)(1) – 6 hours in the subject area of integrity and demeanor; and**

The Council requests that one hour of the six hours of required training in the subject of integrity and demeanor address the concept of procedural fairness. We strongly encourage the Court to adopt this recommendation as part of adopting the proposed rules for Judicial Continuing Education, using the following language in Rule 4(B)(1):

*6 hours in the subject area of integrity and demeanor, including at least one hour on the topic of procedural fairness or procedural justice; and*

Procedural fairness (sometimes referred to as procedural justice), refers to the perceived fairness of court proceedings by the people who interact with our legal system. It is an evidence-based practice that results in greater satisfaction and compliance with judicial decisions and orders. Studies show that when court users perceive our legal system to operate fairly, they have a more positive view of their experience, regardless of the outcome of individual cases. Requiring judicial officers to participate in training on the concept of procedural fairness and how to foster fairness in the courtroom will result in greater public trust and satisfaction with Michigan courts. Much more information about the concept of procedural fairness and its many benefits is available online at [www.proceduralfairness.org](http://www.proceduralfairness.org). A more concise overview is available in the form a [procedural fairness bench card](#).

In addition to being an effective approach to improving public trust and the effectiveness of our legal system, procedural fairness is a priority identified by the Michigan Judicial Council. The Council is not alone in prioritizing and promoting principles of procedural fairness. [The National Center for State Courts](#), [Center for Court Innovation](#), and the [Conferences of Chief Justices and State Court Administrators](#) have all adopted measures to promote and encourage the practice of procedural fairness. Procedural

Fairness training is also suggested for all court staff in the forthcoming report and recommendations from the Justice for All Commission's Training and Outreach Committee. Michigan Courts should follow the lead of these organizations by promoting the practice of procedural fairness and requiring Michigan's judicial officers to receive training on the topic.

The practice of procedural fairness is not limited to judicial officers, but judicial officers play a central role. Many of the practical tips and advice for promoting procedural fairness begin with judicial officers and relate to all aspects of their conduct and demeanor in the courtroom. For these reasons, it is critical for Michigan's judicial officers to be familiar with the concept and the best practices for implementing procedural fairness. Many of the practical tips relate directly to the demeanor and integrity judicial officers must exhibit and so directly relate to that portion of the proposed continuing education requirement for judges. Specifically requiring one of those six hours of education to address procedural fairness will bring Michigan's judicial officers in line with the recommendations of leading national organizations and other courts around the country. This requirement would also support judicial officers in becoming ambassadors for procedural fairness and leaders in modeling these principles for all court staff.

Adopting this specific training requirement would not require the development of any new training programs, as many opportunities already exist. We anticipate more will develop in the future, given the number of organizations committed to promoting principles of procedural fairness. For example, the National Center for State Courts has [an hour-long online course](#) available for free to the public. In addition, procedural fairness is already a topic being covered by a panel presentation at the Michigan Supreme Court's Judicial Conference, laying the groundwork for the topic to be included in future conferences.

Training our judicial officers to practice procedural fairness is a critical step to improving public trust, satisfaction, and compliance in Michigan Courts. It will benefit court users and judicial officers alike, without necessitating the development of new programs or materials.

#### **Rule 4(B)(2) – 18 hours in the subject area of judicial practice and related areas**

The Council requests that any number of the 18 hours of required training in the area of judicial practice and related areas address the area of behavioral health including mental health and substance use disorder issues. We strongly encourage the Court to adopt this recommendation as part of adopting the proposed rules for Judicial Continuing Education, using the following language in Rule 4(B)(2):

*18 hours in the subject area of judicial practice and related areas, including mental health and substance use disorder issues.*

We are offering this recommendation to highlight the importance of judicial education in the areas of mental health and substance use disorder issues. Recognizing that those issues permeate the justice system across all trial benches and in criminal and civil matters alike, the Council feels it is important for judicial officers to receive regular

education and guidance on how to better serve individuals who enter their courtrooms that are faced with these challenges.

The council recognizes that behavioral health issues are not exclusive to those involved in treatment courts and that often times when court users who have frequent and recurring interactions with the courts, there is an underlying issue that needs to be addressed. Requiring judicial officers to participate in training that expands their knowledge of mental health and substance use disorders will better prepare them to connect court users to the services they need as well as provide for more efficient and effective problem-solving approaches within our system.

The Judicial Council has identified both procedural fairness and behavioral health in the 2022-2025 Strategic agenda as strategic goals and priority initiatives in the 2022-2023 operational plan, as areas for needed improvement within the judiciary. Adding required education for both of these areas will help to strengthen the judiciary's ability to effectively deliver justice in ways that are equitable and fair, and in turn gain public trust. We appreciate your consideration of our recommended additions to the proposed court rule and thank you for your time.

Respectfully,

The Michigan Judicial Council