

August 16, 2013

TO: Chief Justice Gerald W. VandeWalle

FROM: Jim Ganje

SUBJECT: Administrative Rule 13 - Judicial Referees - Draft Amendments

Chief - you'll recall that House Bill 1075 (copy attached) was introduced by the Court in the last legislative session to clarify and expand (in one instance) the kinds of cases that may be delegated to judicial referees. If the Court has not yet done so and is inclined to review draft amendments, attached following the copy of the bill are draft amendments to AR13 that reflect the statutory changes.

The principal draft amendments are to Section 5(a) and (b). In essence, the amendments simply relocate from subsection (b) to subsection (a) references to cases involving disorderly conduct restraining orders and review of administrative license suspensions due to nonpayment of child support. These cases are currently delegable to a judicial referee under the "also appointed as a magistrate" umbrella in subsection (b). Subsection (b) is no longer necessary as the bill authorizes delegation of these cases directly to the judicial referee. Also added to subsection (a) is the reference in new (a)(3) to noncriminal game and fish violations - the entirely new case category added by House Bill 1075.

JG/

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1075
(Judiciary Committee)
(At the request of the Supreme Court)

AN ACT to amend and reenact section 27-05-30 of the North Dakota Century Code, relating to judicial referees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-05-30 of the North Dakota Century Code is amended and reenacted as follows:

27-05-30. Judicial referees.

1. ~~There may be appointed in each judicial district, by the district court having jurisdiction therein,~~ The presiding judge of a judicial district, on behalf of the judges of the district court having jurisdiction therein, may appoint one or more referees to serve on a full-time or part-time basis. A referee is entitled to receive a salary within the limits of legislative appropriation.
2. ~~A district court,~~ In accordance with rules of the supreme court, the presiding judge may assign a referee to preside in any case or proceeding provided for in chapter 12.1-31.2, title 14, sections 20.1-01-28 and 20.1-01-29, chapter 27-20, and chapter 28-25 pursuant to rules of the supreme court, subsection 6 of section 50-09-08.6, and subsection 2 of section 50-09-14.
3. The supreme court may promulgate rules for the qualification of referees, the extent and assignment of authority by the ~~district court judges of the judicial districts~~ presiding judge, procedure, and the conduct of the office, including regulations for training sessions and continuing education.

JUDICIAL REFEREES

Administrative Rule 13

Section 1. Authority.

The 1985 Legislative Assembly provided for appointment of judicial referees under House Bill 1586. Under N.D. Const. art. VI, § 3, and N.D.C.C. § 27-05-30, the Supreme Court adopts the following administrative rule relating to judicial referees.

Section 2. Statement of Policy.

The North Dakota Judicial System's policy is to provide for the qualifications, the extent and assignment of authority, procedure and the conduct of the role of judicial referees within the North Dakota Judicial System in each judicial district.

Section 3. Qualifications of Judicial Referees.

Minimum qualifications for judicial referees include:

- (a) United States citizenship;
- (b) physical residence in the judicial district of the appointment after appointment unless physical residence is waived by the presiding judge of the judicial district; and
- (c) a license to practice law in the state of North Dakota; or a juvenile supervisor/referee meeting the requirements of N.D.C.C. § 27-20-06(1)(i).

Section 4. Appointment.

The presiding judge, on behalf of all of the district court judges of the judicial district, must execute in writing the appointment of all judicial referees, to serve at the pleasure of the district court judges of the judicial district. Judicial referees must be compensated under the personnel system of the North Dakota Judicial System.

Section 5. Scope of Delegable Duties.

- (a) A presiding judge, after consultation with the district court judges of the judicial district, may authorize a judicial referee to preside in any individual proceeding or class of proceedings under:
- (1) N.D.C.C. ch. 12.1-31.2;
 - (+) (2) N.D.C.C. title 14, except contested divorce trials;
 - (3) N.D.C.C. §§ 20.1-01-28 and 20.1-01-29;
 - (2) (4) N.D.C.C. ch. 27-20; and
 - (3) (5) N.D.C.C. ch. 28-25; and
 - (6) N.D.C.C. §§ 50-09-08.6(6) and 50-09-14(2).
- (b) ~~A presiding judge, after consultation with the district court judges of the judicial district, may authorize a judicial referee, while serving and acting as a magistrate appointed under N.D. Sup. Ct. Admin. R. 20, to preside in any individual proceeding or class of proceedings under:~~
- (+) ~~N.D.C.C. ch. 12.1-31.2; and~~
 - (2) ~~N.D.C.C. §§ 50-09-08.6(6) and 50-09-14(2).~~
- (c) (b) A judicial referee has such other authority of a district court judge as is necessary to carry out the delegated duties, including the issuance of orders to show cause, temporary restraining orders, temporary injunctions, and the power to impose remedial sanctions for contempt of court.
- (d) (c) The order issued under Subsection (a) of this section must be reduced to writing and signed by the presiding judge of the judicial district. The order must be filed with the clerk of district court of each county of the judicial district. The presiding judge must send a copy of this document to the State Court Administrator. A copy must be made available to any party upon request.
- (e) (d) Within the limits set forth in the written order of the presiding judge, district court judges may refer individual cases or classes of cases to a judicial referee by written order.
- (f) (e) After July 1, 1987, a judicial referee who hears matters under N.D.C.C. ch. 27-20 may not exercise supervision of personnel who supervise juveniles.

Section 6. Geographical Jurisdiction.

Each judicial referee will have jurisdiction only within the judicial district of appointment and is expected to maintain an office as assigned by the presiding judge of the judicial district. A judicial referee may be appointed to temporary duty in another judicial district by the presiding judge of the judicial district, with the consent of the presiding judge of the receiving judicial district or by the chief justice under N.D. Const. art. VI, § 3.

Section 7. Proceedings on the Record.

Proceedings must be heard on the record.

Section 8. Removal from Referee.

Any party to a proceeding before a judicial referee is entitled to have the matter heard by a district court judge, if written request is filed by the party within seven days after service of either initiating documents or other notice informing the party of this right.

Section 9. Standard of Conduct.

The Rules of Judicial Conduct must be observed by each judicial referee.

Section 10. Findings and Order

- (a) The findings and order of the judicial referee have the effect of the findings and order of the district court until superseded by a written order of a district court judge.
- (b) Copies of the findings and order together with written notice of the right of review must be promptly served on the parties under N.D.R.Civ.P. 5.

Section 11. Procedure for Review.

- (a) A review of the findings and order may be ordered at any time by a district court judge and must be ordered if a party files a written request for a review within seven days after service of the notice in Section 10(b). The request for review must state the reasons for the review. A party requesting review must give notice to all other parties. A party seeking to respond to a request for review must file their response within 14 days after service of notice of the request.
- (b) The review by a district court judge must be a de novo review of the record. The district court may:
 - (1) adopt the referee's findings;

- (2) remand to the referee for additional findings; or
 - (3) reject the referee's findings.
- (c) If the district court judge rejects the referee's findings, the court shall issue its own findings of fact, with or without a hearing.

EXPLANATORY NOTE

Section 5 was amended, effective March 1, 2012, to allow a presiding judge to authorize a judicial referee to preside in proceedings involving disorderly conduct restraining orders.

Section 8 was amended, effective March 1, 2011, to increase the time to request a district court judge from five to seven days after service of initiating documents.

Section 11(a) was amended, effective March 1, 2011, to increase the time to request a review from a district court judge from five to seven days after service of the right to review. The time to respond to a request for review was increased from 10 to 14 days after service of notice of the request.

ATTEST:
Penny Miller, Clerk

SOURCE: Joint Procedure Committee Meeting Minutes of September 23-24, 2010, pages 14-15, 21; April 29-30, 2010, page 21; April 24-25, 2003, page 3; January 30-31, 2003, pages 21-23; April 25-26, 2002, pages 16-17; May 6-7, 1999, pages 14-15; April 29-30, 1993, page 2; Court Services Administration Committee Meeting Minutes of May 17, 1985, pages 2-4. Family Caselaw Referee Study Subcommittee of Court Services Administration Committee Meeting Minutes of April 19, 1985, pages 3-8; March 15, 1985, pages 1-6; February 22, 1985, pages 1-9; January 11, 1985, pages 2-8; and December 17, 1984, page 5. North Dakota Constitution, Article VI, Section 3; and Section 27-05-30 N.D.C.C.

[Adopted as emergency rule effective June 13, 1985; readopted September 17, 1985; amended effective March 1, 1994; January 1, 1995; March 1, 2000; March 1, 2003; March 1, 2004; March 1, 2011; March 1, 2012; June 1, 2012;_____.]