

## **Administrative Council**

Minutes

Alerus Center

Grand Forks, North Dakota

May 18, 2015

### Present:

Chief Justice Gerald W. VandeWalle, Chair  
Judge Cynthia Feland for Judge Gail Hagerty  
Judge Laurie Fontaine  
Judge Donovan Foughty  
Judge John Greenwood  
Judge William Herauf  
Justice Carol Ronning Kapsner  
Judge Gary Lee  
Judge Steven McCullough  
Judge David Nelson  
Ms. Tracy Peters  
Judge Frank Racek  
Judge Bruce Romanick

### Absent:

Judge Gail Hagerty  
Judge Jon Jensen  
Judge Doug Mattson

### Staff:

Sally Holewa

### Others Present:

Scott Johnson  
Justice Lisa Fair McEvers  
Rod Olson  
Dr. Melanie Sage  
Donna Wunderlich

Chief Justice Gerald W. VandeWalle called the meeting to order at 4:00 p.m.

### Minutes

It was moved by Judge Herauf, seconded by Judge Romanick to approve the September 5, 2014 meeting minutes. The motion carried.

### ICWA Status Report

Assistant State Court Administrator Scott Johnson offered introductory remarks regarding the compliance report on the Indian Child Welfare Act (ICWA) which was included in the meeting

materials. He explained that the report was done as part of the Court Improvement Project Committee's three-year strategic plan. The report in the packet is the first of three reports that will be submitted to the Administrative Council. This report covers compliance data for the years 2009 and 2010. The next reports will cover cases filed in 2011-2012 and 2012-2013. Mr. Johnson explained that the ICWA subcommittee has developed a plan to address the issues identified in the study. The plan will go to the full Court Improvement Project Committee for approval in June.

He then introduced the author of the study, Dr. Melanie Sage, Assistant Professor of Social Work at the University of North Dakota. She provided an overview of the methodology used to collect and analyze the data. She noted that the data is from previous years. In the process of obtaining and evaluating the data, she worked closely with Catie Palsgraaf, who was the Court Improvement Program specialist at the time the study was conducted. As Dr. Sage noticed issues or trends with non-compliance, she alerted Ms. Palsgraaf who then provided training to the juvenile court officers and referees in an effort to ameliorate those concerns. For that reason, she expects that the incidences of non-compliance will be less prevalent when she examines more recent cases. She cautioned that the findings may be skewed to being either more positive or more negative than what is actually happening because of how events were recorded differed from case to case. For example, if an order read "parties were advised of right to counsel," they considered that as in compliance with ICWA even though there was no way for the research to know if the parents were specifically told of their right to counsel. Dr. Sage then summarized the major findings of the study.

In response to a question, Dr. Sage said there is a difference between the "active efforts" required by ICWA and the "reasonable efforts" required by the Adoption and Safe Families Act (ASFA). Active efforts are a higher standard. She noted that the new ICWA regulations have defined active efforts for the first time.

Chief Justice VandeWalle said that he has concerns about recommendation 6 of the ICWA subcommittee plan which addresses the need to expand the list of Qualified Expert Witnesses (QEWs). His concern is that the court should not be selecting, training, appointing and then evaluating the work of QEWs because it creates the same kind of conflict of interest that was present when the court was responsible for public defenders. Mr. Johnson said the intent of the subcommittee was to work with the Indian Affairs Commission to identify people who could serve as a QEW and to bring in a third party to provide the actual training.

Judge Foughty noted that under the new ICWA guidelines, the timeline for an initial shelter care hearing was shortened from 60 days to 30 days.

#### **Weighted Caseload for Judges and Workload Assessment for Clerks (WAPC) Studies**

Sally Holewa said that the studies included in the Council's materials are copies of the studies

that were distributed to the members in March. They were included on the current agenda to give the members an opportunity to ask any questions they may have about them.

Judge Nelson said that they are interested in starting a drug court in McKenzie County and in re-starting the juvenile drug court in Williams County once the additional judges are in place. He asked when those needs would be included in the study. Ms. Holewa responded that the studies are based on what has occurred over the past year, so the additional weight for a new drug court would not be included as part of the need until after the court was in operation. Judge Nelson suggested that rather than looking back at shortages the studies should focus more on what it would take to meet future needs so we can plan for growth better.

#### **Clerk of Court Manual**

Chief Justice VandeWalle drew the member's attention to the memo on updates to the Clerk of Court Manual. There were no questions or concerns expressed regarding the change.

#### **Court Security Manual**

Ms. Holewa said the Court Security Manual was approved by the Administrative Council in 2014. Since then she has heard concerns about the requirement for a district security committee and district policies. Rather than a district level committee or policies, it would be more feasible to have them at the county level.

Judge Fontaine said she was one of the people who raised those concerns. She said that it would be difficult to find a county commissioner who would be willing to serve on a committee that was intended to tell another county how to handle security. She said a county commission receiving those types of recommendations would probably not be willing to accept them from someone who is not familiar with their county. She also said that as a presiding judge for 17 counties, she doesn't have time to go to every county to work on security issues. She said she supports the need for security guidelines, but the manual should be pared down and security issues should be handled on a local basis.

Rod Olson said the court administrators have the same concerns. They believe the plans need to be county-based. He said the administrators have discussed creating a boiler plate plan and then taking it to each county to create a local plan. He said the administrators have already been working with the emergency commission in each county to collect exit plans and emergency procedures developed for the county. Mr. Johnson said that he and Carolyn Probst are working with the court administrators on a boilerplate plan.

Chief Justice VandeWalle said he has some concern about buy-in from county commissioners and sheriffs. He said in the past there have been some who are resistant to the idea of the need for heightened security for judges. Ralph Mowder said that all county security committees should include the sheriff and at least one county commissioner. He said that the committees

focus should be “courthouse security” rather than just “court” security since a breach of security would likely affect the whole courthouse.

Judge Foughty said that Ramsey County already has a security committee which he sits on. He said a boilerplate plan would be a useful tool for the committee to help focus their discussions. Judge Romanick and Judge McCullough indicated that the same was true for Burleigh and Cass counties.

Judge Fontaine said the court security plans need to go beyond just judges and should also consider protection of jurors and the public.

Scott Johnson will draft proposed revisions to the manual and bring them back to the next Administrative Council meeting.

### **Mental Health Forms**

Sally Holewa said the mental health forms included in the packet are the work of the Trial Court Operations Committee. The Administrative Council referred this project to the committee in 2007. She said a subcommittee has worked on them since then, and they were on the agenda for approval.

Judge Greenwood said he served on the forms committee. He said most of the changes were technical or clerical in nature. He briefly reviewed some of the more substantive changes. He then referred the members to form GN-1 and said that the committee is specifically asking for a decision from the Administrative Council on revisions to the form. The debate in the committee was whether the form should contain private data such as social security numbers and dates of birth or if this information should be removed from the form and submitted separately on a confidential information form. After discussion, **Judge Herauf moved that those data fields be removed from form GN-1 and a separate Confidential Information form be developed. Seconded by Judge Lee. Motion carried.**

Justice Kapsner pointed out that there would be some changes to the forms based on recently passed legislation and questioned whether the Administrative Council should postpone a decision on the packet until those changes were incorporated. Judge Greenwood said those changes would be not substantive. Ms. Holewa said that she had discussed this with staff attorney Jim Ganje when deciding whether to bring the forms forward for approval at this time. Mr. Ganje had indicated that the changes would be minor. **Judge Foughty moved the approval of all the forms, with the change to form GN-1 as discussed, but on condition that Mr. Ganje advise the Administrative Council of any changes that are made to incorporate legislative changes. Seconded by Judge Romanick. Motion carried.**

The next regularly scheduled meeting is set for September 11, 2015. The meeting was adjourned.