

MINUTES
(Unofficial until approved)
Committee on Trial Court Operations
Ramada Hotel, Bismarck
December 13, 2013

Members Present

Judge Zane Anderson, Chair
Bev Demers
Jodie Fixen
Judge John Greenwood
Anita Ibach
Chris Iverson
Cindy Schmitz

Members Absent

None

Others Present (Mental Health Commitment Forms Review)

Pamela Crawford, Asst Attorney General, Attorney General's Office
Edward Erickson, Asst Attorney General, Attorney General's Office
Cindy Lien, Sharon Bitz; ND State Hospital
Haley Wamstad, Ass't State's Attorney, Grand Forks County
Sarah Erck, Deputy Clerk, Supreme Court

Chair Anderson called the meeting to order at 9:00 a.m. and drew Committee members' attention to Attachment B (December 10, 2013) - minutes of the October 18, 2013, meeting.

It was moved by Bev Demers, seconded by Anita Ibach, and carried that the minutes be approved.

The Committee then turned to a review of the 1st draft revisions to C-Series, Court, forms: C-2 through C-10A.

C-2 Order for Appointment of Expert Examiner and Examination

Staff briefly reviewed the draft revisions resulting from the October 18 meeting:

- add language regarding the cost of the examination (Stutsman form, p.12)
- modify language concerning who conducts the examination to reflect statutory language
- modify the 6th paragraph to reflect that Respondent has the opportunity to voluntarily comply with the requirement to appear for an examination (Stutsman form, p. 12)
- modify the 6th paragraph to provide that if the Respondent fails to appear, the court may issue an order that the Respondent be taken into custody

Haley Wamstad noted new language on line 15 (“Respondent may voluntarily appear...”). She said the language may give the mistaken impression that it is within the respondent’s discretion to appear, when that is not the case.

There was agreement that the new language on line 15 should be deleted as unnecessary.

C-3 Warrant of Attachment - Alternative New form

Staff reviewed draft form C-3, which is based on the Grand Forks County warrant form. The principal addition is an option (lines 5-10) to direct that the respondent be held at a correctional center until a hearing is scheduled. The hold time cannot exceed twenty-four hours.

Judge Greenwood observed that the language in lines 5-10 is accurate but there are concerns about the primary place of detention being a jail. He said there should be an effort to find a different secure facility. Haley Wamstad noted that the language is effective in Grand Forks County as the correctional facility is, by default, the only secure facility. She suggested the possibility of providing another option of holding the respondent in a different secure facility (to be named) if available.

Bev Demers explained that the sheriff in her county will not pick up a respondent unless date of birth is shown on the warrant. It was noted that last known address is also helpful information.

Committee members discussed various rearrangements of lines 3-4 (general direction that law enforcement take the respondent into custody) and lines 5-10 (option for holding at a correctional center). Haley Wamstad noted that lines 5-10 are essentially a qualifier of the general direction in lines 3-10. Edward Erickson observed that there is a statutory preference for a respondent being transported to and held in a treatment facility.

Following further discussion, the following additional revisions were noted:

- insert beneath “Name of Respondent” lines for date of birth and last known address
- remove line 15 (“The Respondent is located at _____”)
- add an option in lines 5-10 directing that the respondent be held in a secure facility until a hearing can be scheduled

There were no additional changes to the 1st draft revisions.

Judge Greenwood asked whether there should be an clear, initial finding that there is *probable cause* to believe the respondent is a person requiring treatment. There was general agreement that probable cause language should be inserted in *form C-2*.

C-4 Order of Dismissal

Staff briefly reviewed the revisions resulting from the October 18:

- delete the first three reasons for dismissal
- retain the fourth reason (motion or stipulation)
- delete the fifth reason for dismissal
- modify the sixth reason for dismissal to read “Respondent does not meet the criteria of being mentally ill or chemically dependent”
- modify the concluding paragraph to read “IT IS FURTHER ORDERED that if the Respondent is in custody, the Respondent shall be discharged and released from any further involuntary civil commitment

Judge Anderson noted the new language on line 10 substituting “being mentally ill or chemically dependent” for “person requiring treatment”. He said since the latter is consistent with the general statutory criteria it may be preferable to retain the current reference. There was general agreement to further revise the last reason for dismissal to read: Respondent does not meet the criteria of “person requiring treatment”.

There were no additional changes to the 1st draft revisions.

C-6 Notice of Hearing

Staff reviewed the draft revisions resulting from the October 18 meeting:

- delete the **bolded** “TO THE ABOVE.....” caption
- include an alternative related to ITV hearings
- limit the hearing descriptions to a simple reference to the hearing being held to determine whether the respondent is a person requiring treatment or continues to require treatment or whether an order should be modified
- delete specific references to mental illness or chemical dependency
- add a general alternative regarding a medication hearing

Judge Greenwood said the probable cause reference in the preliminary hearing option should be retained. He also suggested that line 6, page 2, regarding the medication hearing should be modified to add language regarding authorization to treat with prescribed medication.

Following discussion, the following additional revisions were noted:

- retain “there is probable cause to believe that” in the preliminary hearing option
- modify the medication hearing option to add after “whether” - “the Court shall authorize treatment with prescribed medication”

C-8 Findings of Fact, Conclusions of Law, and Order Following Preliminary Hearing

Staff briefly reviewed the revisions resulting from the October 18 meeting:

- retain current form C-8
- create alternative form C-8A to reflect findings of fact and conclusions of law made on the record
- include in both forms notice of the right to a hearing if treatment extends beyond 14 days
- include a hearing waiver alternative in both forms
- include in both forms check box provisions relating to the firearms limitation (Cass form, p.4)
- include in both forms notice to the respondent regarding the firearms limitation

With respect to the hearing waiver provision on page 1, lines 5-7, there was general agreement that the language should be moved to the top of the form.

Judge Greenwood noted that there is some uncertainty regarding whether the federal firearms limitation applies at the preliminary hearing stage. He said the Administrative Council may request some guidance from the Attorney General's office on the issue.

There was general agreement to retain, pending a resolution of the question, the firearms-related language on page 2, lines 13-15 and line 25, which finds that the limitation does not apply at the preliminary hearing stage. There was general discussion regarding how the finding would be reflected in those orders to which it may apply and whether a separate form should be used to reflect the finding. It was noted that a separate form would facilitate entry of the information into Odyssey by clerks and the subsequent reporting of information to the Attorney General if necessary.

With respect to Section IV of the Order regarding a less restrictive alternative to detention, Judge Greenwood suggested an option be added to indicate that there is a less restrictive alternative but it is not available. He said the A, B, C listing under Section IV is likely not necessary.

After discussion, there was agreement on the following additional revisions:

- move the waiver of hearing option to the top of the form
- include an option in Section IV regarding a less restrictive alternative to detention being unavailable
- delete the A, B, C listing in Section IV
- reflect the same additional revisions in new form C-8A

C-9 Findings of Fact, Conclusions of Law, and Order Following Treatment or Continuing Treatment Hearing

Staff noted agreement at the October 18 meeting to include revisions to C-8 in form C-9 and an alternative C-9A regarding findings on the record. There was agreement to track the revisions made to form C-8, including in new alternative C-9A with respect to findings and conclusions made on the record.

Staff said language related to the firearms limitation in the preliminary hearing form was inadvertently included in C-9 and C-9A and should be deleted or modified. He noted that the notice provision related to preliminary hearings was also included in C-9 and C-9A and should be deleted.

There was agreement that the revisions related to Section IV in forms C-8 and C-8A should be incorporated in forms C-9 and C-9A.

Chris Iverson asked whether a notice provision should be added regarding the right to appeal and the right to counsel, which is provided in statute.

Judge Greenwood suggested options should be available to indicate a finding that the respondent is mentally ill, chemically dependent, or both. Related to that, he suggested adding language indicating that as a result of the respondent's condition, the respondent is a person requiring treatment or, alternatively, a person who continues to require treatment.

After discussion, there was agreement regarding the following additional revisions with respect to forms C-9 and C-9A:

- move the waiver of hearing option to the top of the form
- replace the small bracketed references to mentally ill or chemically dependent with options for mentally ill, chemically dependent, or both
- following the options, include, a finding that "As a result of such condition, the Respondent is a person requiring treatment person who continues to require treatment
- delete the notice requirement related to the preliminary hearing form
- include a notice of the right to appeal and the right to counsel
- modify the firearms limitation provision to provide options regarding whether the limitations do or do not apply

C-9A Order Regarding Involuntary Treatment with Medication - Renumbered as C-9B

Staff reviewed the revisions resulting from the October 18 meeting:

- modify the 3rd paragraph regarding refusal to take medication to reflect statutory language [NDCC 25-03.1-18.1(1)(a)(2)]
- include a provision regarding twenty-four hour notice
- include a hearing waiver alternative (Stutsman form, p.37)

There was agreement to move the hearing waiver alternative to the top of the form. There were no other suggested revisions.

C-10 Order Appointing Independent Expert Examiner

Staff noted the revisions resulting from the October 18 meeting:

- include a provision related to a cap on the expense of the independent examination
- delete the reference to county expense in the first paragraph as it is addressed in the second paragraph
- create new form C-10A to address examinations in the context of a request to treat with prescribed medication.

Judge Greenwood suggested and it was agreed that the form be modified to include the general licensure requirement and psychologist training requirement as set out in form C -2.

With respect to new form C-10A, it was noted that “psychiatrist” should read “licensed psychiatrist”.

Committee members then turned to a first review of forms C-11 through C-19.

C-11 Order for Hospitalization and Treatment

There were no suggested revisions.

C-12 Order for Alternative Treatment

Haley Wamstad noted that the non-compliance section may be a good idea but it sometimes causes confusion. She said law enforcement often wants more direction regarding how to address non-compliance issues. Judge Greenwood said the form is used most often in emergency situations.

There was general agreement that the “Effect of Non-compliance” section should be modified to fully reflect the statutory language.

It was also agreed that the firearms limitation provision should be included.

C-13 Order for Less Restrictive Treatment

It was agreed that the non-compliance section should be revised to track changes in form C-12.

Judge Greenwood noted that clerks often prefer a 1, 2, 3 listing regarding the “description of treatment” provision rather than the narrative approach currently in the form. There was general agreement with the suggested change.

C-14 Emergency Treatment Order

It was suggested and agreed to insert “person requiring treatment and” after “Respondent” in the second line of the form.

There were no other suggested changes.

C-14A Order for Transport

Pam Crawford noted that the Stutsman form, p.27, indicates the Respondent is transported “from” the noted location and “to” another location. She suggested that may be a more useful direction to law enforcement. There was general agreement with the suggested change.

Chris Iverson said that an earlier discussion of the form suggested adding language regarding county responsibility for the cost of transport. It was noted that county responsibility is reflected in N.D.C.C. 25-03.1-39. It was agreed a cost provision should be added.

C-16 Transfer Order

Chris Iverson said earlier discussions indicated this form should be deleted. There was tentative agreement to delete the form.

C-18 Hospitalization Order Following Alternative Treatment Order

Judge Greenwood said language should be included to indicate that findings of fact and conclusions of law have been made if a hearing is held. He suggested that language in the 1st paragraph following “Order for Alternative Treatment” should be revised to read: “or that it is not sufficient to prevent harm or injuries to the Respondent or others”. Additionally, he suggested that “or until further order of the Court” be added to the second paragraph after “[date]”. There was general agreement with the suggested changes.

Chris Iverson said earlier discussions of the form suggested that the references in the form to a specific kind of order be replaced with a blank space to indicate the particular order involved. To better reflect the general nature of the resulting order, it was agreed the title should be modified to read “Modification Order”.

C-19 Detention Order Pending Hearing

Judge Greenwood wondered whether the matter covered in the form may already be covered in C-14. Bev Demers said the form is rarely, if ever, used in her area. There was agreement that the form be tentatively deleted.

Other Matters

Bev Demers said she had been asked by Grand Forks County clerks to bring an issue to the Committee’s attention. She said it appears to be their experience that petitions for commitment are e-filed by the State Hospital without having been signed by the state’s attorney. She noted that the Stutsman County clerk apparently will accept e-filed, unsigned petitions and then take them to the

state's attorney for signature. She said the applicable statute appears to require the signature, or at least the involvement, of the state's attorney when petitions are prepared. Cindy Lien said it was her understanding that signatures were not required on petitions e-filed by the State Hospital

There being no further business, the meeting was adjourned at 12:20 p.m.

Jim Ganje, Staff