

***MINUTES***  
**(Unofficial until approved)**  
***Committee on Trial Court Operations***  
***Ramkota Hotel, Bismarck***  
***February 23, 2004***

Members Present

Judge David Nelson, Chair  
Kay Newell Braget  
Ted Gladden  
Judge Debbie Kleven  
Paulette Reule  
Deb Simenson

Members Absent

None

Chair Nelson called the meeting to order at 9:00 a.m. and drew Committee members' attention to Attachment B (February 17, 2004) – minutes of the September 26, 2003 meeting. There being no objection, the minutes were approved as distributed.

Issues for Discussion

Kay Braget discussed Attachment C (February 17, 2004) - her email regarding subsequent judge assignments not appearing in the docket currency reports. She said the clerks in the Northeast and Northeast Central judicial districts have concluded that it would be helpful, when a different judge is subsequently assigned to a case, to have that assignment information reflected in the docket currency report. Paulette Reule noted that the issue has been discussed several times by the UCIS Advisory Committee and the conclusion apparently has been that UCIS cannot be programmed to address the issue. Judge Kleven said it might be useful if subsequent assignment information is reflected in some way in the report.

Kay Braget asked whether the subsequent assignment could be reflected as an "event" in UCIS.

Ted Gladden observed that the docket currency report is essentially a method of monitoring the status of a case, rather than monitoring a specific judge. Additionally, with respect to ensuring accurate information concerning the status of a case, he said administrative staff within each judicial district should be developing a procedure by which judges are apprised on a routine basis of the status of their cases.

Chair Nelson asked whether anything should be included in the clerk manual to address the issue. Kay Braget suggested possibly including information in the General section and noted that there is very little in the manual concerning judge assignment.

Chair Nelson next drew attention to Attachment D (February 17, 2004) - a memorandum from Susan Sisk regarding a recommendation for including two additional items on case file labels: a field identifying the case sub-type number and a disposal date.

Paulette Reule observed that both items were initially included in the case label information but the UCIS Advisory Committee voted to remove them.

Ted Gladden suggested the issue be tabled until he has had an opportunity to discuss it with Becky Lingle and Kurt Schmidt.

Staff then distributed copies of a letter from Minot attorney Lynn Boughey discussing a recent issue concerning whether clerks will file a copy of a pleading as a means of commencing a case. Attached to the letter, he said, is a survey conducted by Mr. Boughey which indicates a variety of practices in clerks' offices regarding whether an original document is required or if a copy will be accepted. A copy of the letter and survey is attached as an *Appendix*. Staff noted that the particular incident referred to in the letter concerns the submission to the judge of original documents, with the copies subsequently submitted to the clerk.

Judge Nelson observed that a clerk should file a copy of a pleading. Ted Gladden said the consequent issue is the disposition of the original document when it is received. He asked whether the clerk would be expected to stamp and file the original and discard the previously filed copy.

Staff noted that Rule 3.1(a) of the Rules of Court provides that a pleading "must be typewritten, printed, or *reproduced* ... ." It is unclear, he said, whether that particular provision means that a *copy* of a pleading may be filed for purposes of commencing a case, or in other respects be treated *as if* it were the original.

Judge Nelson suggested it may be useful to submit the question to the Joint Procedure Committee for purposes of obtaining a possible clarification regarding the meaning of the rule. Ted Gladden said it may be worthwhile to request some direction regarding the disposition of a subsequently received original document if it is concluded that a copy can be filed at the outset.

**It was moved by Ted Gladden, seconded by Judge Kleven, and carried unanimously that the Chair submit the issue to the Joint Procedure Committee for any clarification or direction the Committee could offer.**

Draft Guidelines for Assisting Pro Se Litigants

Chair Nelson explained that he had prepared the draft in response to a referral by Chief Justice VandeWalle which requested a final document be available for presentation at the May clerks conference. He said the draft is based on guidelines developed in Iowa, which were attached to the Chief Justice's referral. He said the draft was distributed to Committee members for review and comment with the objective of finalizing action at this meeting and forwarding the guidelines to the Council of Presiding Judges for review at its March meeting.

Committee members then turned to a review of the draft guidelines and Attachment F (February 17, 2004) - comments submitted Kay Braget, Paulette Reule, and Deb Simenson.

Considering the comments in turn, Committee members agreed the following changes should be made:

- delete the reference to clerks having copies of the Century Code and provide a reference to the websites where the statutes and court rules can be located.
- page 6, Section D(1)(b): change the language to "specific case files".
- page 7, Section F(2)(h): substitute a generic reference to service under "North Dakota Rules".
- page 9, Section F(2), replace "judge" with generic reference to "Court" to address those situations in which clerks have the delegated authority to continue hearings.
- page 10, Section G: change title to "Records Sealed by Court Order" and delete "(e.g., adopted person seeking information)".
- page 10: include a section addressing access to confidential or restricted records.
- page 11, Section B(1): include a reference to Rule 3.1, Rules of Court, regarding the form of pleadings.
- page 12, Section D: in paragraph (1), note that mechanics liens are handled by the county recorder, rather than refer the person to an attorney; delete paragraphs (3) and (4); add new paragraph (3) regarding judgments against the person or the person's property, with a direction that the clerk can refer the person to a public terminal to search records, conduct a record search, or allow the person to search records.
- page 14, Section A: delete the direction to provide instructions for restraining order forms as there are no instructions provided with the forms.
- page 15, Section A(2): include a reference to simple divorce forms being available on the Supreme Court's website.
- page 15, Section A(3): delete the reference to responding within 10 days as there are some types of motions in which the time to respond differs.

- page 16, Section C(4): delete the reference to clerks not calculating support arrearages and add language with respect to suggesting the person contact child support enforcement for purposes of signing a non-AFDC contract.
- page 17, Section C(7): add that the person should be advised to also read the instructions on the affidavit of custodial parent form.
- page 19, Section A: specify that the notice of appeal must be filed within 30 days.
- page 19, Section B(3): clarify that there is an application process and that the clerk may be involved in the application process.
- page 21, Section G: add the DOT contact number for suspensions (328-2604).
- page 21, delete the Victim Service Fee from the list of mandatory fees.
- page 23, Section K(1): change question to reflect that clerks do conduct records searches and provide that clerk may refer person to public terminal to search record information, may permit the person to search records in accordance with AR 41, or may conduct a record search for the person as provided in AR 47.
- page 23, Section K(3): with respect to question about the existence of a warrant, revise answer to provide simply that the person must check with local law enforcement.
- page 23, Section L(1): with respect to lifting a no-contact order in criminal cases, instruct the person to contact the state's attorney (delete reference to defendant's lawyer because it may usually be a state's witness that wants the order dropped).
- page 23, Section L(2): add direction that the person should be told to serve a written request to drop a civil restraining order on the other side.
- page 25, Section 3: with respect to "Do you have my will?", change answer to "refer the person to the Recorder's office."
- page 25, Section 4: change the parenthetical to provide that the clerk should have available the informal probate instructional booklet and related pre-printed forms. Also note that the booklet and forms are available on the Supreme Court's website.
- Page 25, delete Section 6 regarding forms for a claim, which would be addressed in revised Section 4.
- page 26, Small Claims section: except for A(4)(7), delete references to advising the person to consult with an attorney.
- page 26, Section A: delete paragraph (6) regarding the kind of notice.
- page 27, Section A(8): delete the reference to dismissal without prejudice.
- page 27, Section B(2): modify the answer to indicate the counterclaim forms are available in the form sets from the clerk or from the Supreme Court's website.
- page 29, Section E(2): modify the answer regarding how to obtain a satisfaction of judgment to reflect the procedures under Rule 7.1(d), Rules of Court.

After further discussion, **it was moved by Judge Kleven, seconded by Deb Simenson, and carried unanimously that the guidelines as revised be approved and submitted to the Council of Presiding Judges for consideration.**

### **Clerk Manual Review**

#### Probate Procedure

Chair Nelson next drew attention to Attachment G (February 17, 2004) - probate section with suggested revisions submitted by Paulette Reule and an email and additional revisions submitted by Kay Braget.

Staff noted that at the previous meeting, Committee members agreed to delete the first two lines in section 7.2 as set out in the revisions submitted by Paulette Reule. He said the following parts of section 7.2 revisions are restatements of Trial Court Administration Policy 505 with respect to informal and formal probate. He said the tentative agreement at the last meeting was to include the Policy 505 provisions, with a source reference to the policy. He said Committee members had also tentatively agreed with proposed section 7.3 included in Ms. Reule's revisions, which addresses demands for notice. He said there was also some discussion at the last meeting about including a short reference check list for clerks, and such a checklist, developed by Judge Kleven, is set out in Attachment H (February 17, 2004).

Paulette Reule drew attention to the common interested party types and common case types included in her revisions. Committee members agreed these should be included in the revised section.

Committee members then turned to a review of the checklist included as Attachment H.

With respect to #2 on the checklist, Committee members agreed "Is it notarized?" should be replaced with "Must be notarized".

With respect to #7 regarding receipt of a series of wills or codicils, Committee members agreed language should be included that directs the clerk to refer the matter to the judge to determine if formal proceedings are warranted.

With respect to #8 regarding expiration of governing time requirements, Committee members agreed that language directing referral to the judge should be included. It was agreed a similar direction should be included in #9, concerning whether a personal representative has been appointed in another county, and #13 regarding whether the will has been probated in another state.

Committee members agreed another item should be added (#19) to direct referral to the judge if petitions for subsequent administration, ancillary probate, or appointment of a domiciliary foreign person representative are received. It was also agreed that the concluding paragraph should be placed in lower-case, that the last line should be deleted, and that the clerk be directed to refer the matter to the judge if the clerk concludes that a particular will is not entitled to be informally probated.

Committee members then reviewed comments and revisions submitted by Kay Braget - included in Attachment G.

As described in the accompanying email, Kay Braget suggested the Committee confine its discussion to her suggested changes to section 7.6 - Case Monitoring, the other preceding sections having been addressed by revisions submitted by Paulette Reule. Committee members agreed to include the suggested revisions to section 7.6, which would be renumbered accordingly.

Committee members agreed sections 7.7 - 7.9 and the following forms in the current Probate Procedures section would be deleted in favor of the previously discussed revisions.

### Small Claims

Chair Nelson drew attention to Attachment I (February 17, 2004) - the small claims section and suggested revisions submitted by Deb Simenson and Kay Braget. Committee members also reviewed revisions to sections 9.1 - 9.4 submitted by Paulette Reule.

9.1 - Introduction. After discussion, Committee members agreed language should be included noting that small claims actions can be initiated using either the multi-colored, purchased NCR forms or forms printed from the website.

9.2 - Venue. Paulette Reule suggested including a paragraph addressing proof of service when the defendant is a corporation, partnership, unincorporated association, or sole proprietorship. She said she was uncertain whether section 9.2 would be the appropriate placement for the new language, but direction on the issue should be included. After discussion, Committee members agreed the suggested addition should be included in section 9.2.

9.3 - Preliminary Procedures. There were no changes to section 9.3 other than to note in paragraph A the website location for small claims forms.

9.4 - Case Initiation. After discussion, Committee members tentatively adopted the following changes to section 9.4:

- Section 9.4A was modified to read "Receive filing fee and issue receipt (See Court Fee Schedule, included in Section I of Clerk Manual)."
- Section 9.4B was deleted.
- Section 9.4C was modified to provide - "Enter name of parties involved on UCIS."
- Section 9.4D was revised to provide in the first sentence - "File original claim affidavit, indicate file number, and file affidavit of identification in appropriate case file folder."
- Section 9.4E was revised to provide in the opening sentence - "Give the remaining forms to the plaintiff ... " and to add a reference to sheriff's return in E(1)(c).
- Section 9.4F was modified to provide - "Upon receipt from plaintiff of proof of service, use UCIS tickler to note the 20 day period within which defendant must file a request for hearing or intent to remove to district court."
- Section 9.4G was revised to change "within 20 days of service" to "within 24 days of service".
- Section 9.4H: the reference to "20 days" in the first sentence was changed to "24 days" and the last sentence was modified to read "A default judgment is prepared on UCIS and sent to the court if proof of service is in the file".

Committee members next reviewed the suggested revisions to sections 9.5 - 9.8 submitted by Deb Simenson.

9.5 - Answer and Counterclaim. After discussion, Committee members tentatively adopted the following changes:

- The opening paragraph was modified to delete "affidavit" from the first sentence and to replace "time of trial" in the last sentence with "time of hearing".
- Section 9.5A was modified to delete "and initial the stamp".
- Section 9.5B was revised to delete "or".

9.6 - Dismissal Without Prejudice. There were no suggested changes to section 9.6.

9.7 - Demand for Change of Judge. The section was deleted.

9.8 - Removal from Smalls Claims to District Court. After discussion, Committee members tentatively adopted the suggested changes to paragraph C (revised to read "Retain copy of claim affidavit in small claims file").

Committee members then review the suggested revisions to sections 9.9 - 9.14 submitted by Kay Braget.

9.9 - Hearing. After discussion, the following changes to section 9.9 were adopted:

- The first two sentences were modified to provide: "Hearings are informal. A record is not required unless arranged and paid for by one of the parties", and "trial" was replaced with "hearing" in the third sentence.
- Section 9.9A was revised as suggested.

9.10 - Case Disposition. After discussion, the following changes were tentatively adopted:

- The opening sentence was revised as suggested.
- Section 9.10A(2) was revised as suggested, with the addition in the second alternative of sending the affidavit of identification "if the affidavit is not in the file".
- Section 9.10A(3) was revised to provide: "Send copy of judgment and notice of entry of judgment to plaintiff and defendant".
- Section 9.10A(4) was revised as suggested.
- Section 9.10A(5) was revised to read: "Enter docketing date and time following judge's signature and at time of docketing."
- Section 9.10A(6) was revised as suggested.
- Sections 9.10B and 9.10C were revised as suggested.

9.11 - Transcription. The suggested change was adopted.

9.12 - Reports. After review, the suggested changes were adopted.

9.13 - Referees. After review, the suggested changes were adopted.

9.14 - Destruction of Records. There were no suggested changes to section 9.14.

### Guardianship/Conservatorship

Committee members next reviewed Attachment J (February 17, 2004) - the guardianship/conservatorship section of the clerk manual. Staff drew attention to Section 7.5 as included in the probate revisions initially submitted by Paulette Reule. He noted that this section is taken from Policy 505 and pertains to monitoring guardianships and conservatorships and should be reviewed with this section.

Ted Gladden suggested, and Committee members agreed, that all references to probate form numbers should be deleted, as the forms have been recently revised and renumbered. It was also agreed that the beginning "Note" should be deleted. Staff noted that guardianship forms, as

referenced by number in the section, are not available from the state court administrator's office. Committee members recalled the forms as having once been available as part of a bound set distributed many years ago. It was agreed that these forms should be discarded.

Paulette Reule suggested, and Committee members agreed, that the section from Policy 505 should be substituted for all provisions in this section. It was agreed the register of actions and calendar card forms should be deleted. It was also agreed the Notice to Close ... and Order to Close ... forms should be deleted.

Committee members agreed language should be added to the Policy 505 provisions directing the clerk to use the Notice to File Report ... and Order Approving ... forms if the court directs the filing of an annual report.

There being no further business, the meeting was adjourned at 2:10 p.m.