

MINUTES
(Unofficial until approved)

Committee on Trial Court Operations
Radisson Hotel, Bismarck
January 17, 2003

Members Present

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

Members Absent

Chair Nelson called the meeting to order at 9:00 a.m. and drew Committee members' attention to the minutes of the November 25, 2002, meeting. The minutes were approved without objection.

Issues for Discussion

Staff drew attention to an issue carried over from the last meeting concerning whether, if a record taken in small claims court, either by tape or shorthand notes, the clerk should be responsible for storage of the record. He distributed a series of emails outlining the issues, most of which note the time commitment for clerk staff in maintaining the record. Judge Nelson noted that judges or referees sometimes request that a record be taken in the event an ethics complaint is later filed against the judge or referee by someone involved in the proceeding.

Doug Johnson wondered why, if small claims court is not a court of record, a record should be taken. Judge Nelson responded that if other proceedings are being taped, it likely imposes little extra burden to simply continue taping the small claims proceeding.

Deb Simenson said the judicial referee in the South Central judicial district records the proceedings and maintains the tapes himself. Kay Braget noted that it does become a work issue if a judge or referee requests that clerk staff index and store the tapes. Ted Gladden said the question is part of a larger issue concerning general record maintenance and the cost of records storage. He suggested that if separate tapes for small claims proceedings are used, then perhaps the judge or referee could maintain the tape. If, he said, the volume of small claims hearings is minimal and they are included among other taped proceedings, then they could be indexed and maintained along with other recorded proceedings.

Judge Nelson cautioned against providing in the manual that the clerk should decline to save a tape when the judge or referee desires that the proceeding be recorded and the tape saved. The judge or referee, he said, would then have to establish an ad hoc, separate method of maintaining the tape.

Doug Johnson noted there is no retention value identified for small claims tapes in the retention schedule provided under Administrative Rule 19.

Paulette Reule agreed clerk staff should not be responsible for indexing and storing small claims tapes if the proceedings are recorded on separate tapes.

Judge Nelson suggested that the question should be addressed in a general manner, i.e., how tapes are handled for all proceedings that are not of record. The approach, he said, could be to provide that recordings of proceedings that are not of record would be maintained by the judge or referee conducting the proceeding, unless as a matter of routine the proceeding is recorded on a separate tape.

It was moved by Judge Kleven, seconded by Ted Gladden, and carried unanimously that the procedure, as described, be included in appropriate sections of the Manual.

Clerk of Court Manual - Review

Chair Nelson drew attention to Attachment B (January 10, 2003) - an email concerning a suggested revision to permit mailing of court records by first class mail, rather than by certified mail; and Attachment C (January 10, 2003)- comments and revisions to the General Section submitted by Paulette Reule. Committee members then turned to a review of the General Section.

1.1 - Separate Case File Series

Paulette Reule noted from Attachment C the suggested inclusion of "M - Transcripts of Money Judgments" in the identified case file series. Committee members agreed with the suggested inclusion of the "M" series. She said it was also suggested that paragraph C be modified to make clear that protection orders are not confidential. Staff noted that the second sentence in paragraph C does explain that orders are not confidential, while the files are. Judge Kleven suggested the first sentence could be revised to include, as confidential, domestic violence files and disorderly conduct restraining order files when the order is sought due to domestic violence. She said the second sentence could be revised to provide that the orders with respect to those two kinds of case are not

be confidential. Committee members agreed paragraph C should be tentatively modified as described.

With respect to the Confidential series, Deb Simenson noted that her office places cases involving settlements for minors in a restricted file. Committee members suggested such cases would not be confidential unless sealed by the court.

Paulette Reule noted the suggested inclusion in Section 1.1 of a new paragraph F for transcripts of judgments from other counties in the state. Kay Braget observed that NDCC 28-20-17 addresses the issue and should be referenced. Committee members agreed with including the new paragraph and statutory reference.

Ted Gladden wondered whether there is any purpose in retaining paragraph D, which explains what the fourth and fifth file series would include. It was agreed the paragraph could be deleted as redundant.

With respect to the file series identifiers, Kay Braget suggested the "R" series should refer to "Confidential/Restricted". Committee members agreed. It was also agreed the "T" series should refer to "Traffic/Non-Criminal Citations". The "T" series would include such filings as hunting and game and fish violations.

Kay Braget suggested, and Committee members agreed, paragraph A should include foreign judgments.

Paulette Reule wondered whether the section should include a reference to money judgments from the Supreme Court, which are treated as foreign judgments. Kay Braget said she has received such judgments most often as judgments against disbarred attorneys for fees and she has treated them as a transcript of judgment. Deb Simenson agreed. Kay Braget said the problem is that an originating county number is needed to enter the judgment in UCIS, and the Supreme Court does not have such a number unless Burleigh County is used. Penny Miller will be contacted regarding a possible approach. Paulette Reule said if a Supreme Court judgment is to be treated as a transcript of judgment then a UCIS number for the Supreme Court will be needed.

1.2 - Case Numbering

With respect to the question posed in Attachment C regarding how to file multiple defendants, Deb Simenson suggested the issue would be better addressed in the criminal section. Paulette Reule said UCIS can handle only one defendant name at one time.

Paulette Reule noted the suggested deletion of paragraph D concerning numbering paternity cases separately in the confidential series. She said that approach is likely not correct. It was agreed the paragraph could be deleted.

Ted Gladden drew attention to paragraph C, which provides that multiple counts against one defendant in one complaint are to be filed under one case number. He noted that there is, and has been, a divergence in practice regarding how certain criminal matters are charged and subsequently counted. He said the issue of how cases are filed and counted should be closely reviewed. Following discussion, it was agreed no changes to paragraph C were necessary but that the preferred practice would be for multiple charges against one defendant be included in one complaint so they could be maintained in one file. Ted Gladden suggested the Committee could make recommendations to the Council of Presiding Judges on this issue for procedures that support clerk operations.

With respect to the opening paragraph of Section 1.2, Kay Braget suggested a reference to the county be included in the identified components of the case number. Committee members agreed.

1.3 - "Received" and "Filed" Case Papers

With respect to paragraph A(3), Paulette Reule wondered why police reports should be retained as a "received case paper" when they are, at most, exhibits. It was agreed A(3) should be deleted in its entirety.

With respect to paragraph A(7) regarding judge's bench notes, Paulette Reule said she retains the notes in the file only if the judge instructs that the notes be kept.

With respect to handling papers filed on the left side of the file (received papers), Ted Gladden said what is needed is a clear procedure governing what to do with those documents. He said the purpose of paragraph A (received papers) and paragraph B (filed papers) is to identify those papers received but not docketed (A) and those that are docketed (B), with the received papers on the left side of the file and the docketed papers on the right. The ultimate aim, he said, is to be able to effectively purge the documents on the left side of the file. He suggested, and Committee members agreed, the opening segment of paragraph A should be modified to delete the reference to long term retention value and provide instead that received papers must be discarded no later than when the time for appeal has expired.

Judge Nelson wondered whether it would helpful to have another category of papers that are "received" but which will be discarded in short order, rather than retained until the time for appeal has expired.

After further discussion, the following tentative changes to paragraph A were agreed upon: all documents listed in paragraph A should not be retained in the file, except for judge's bench notes and notes of court personnel, which would be discarded after the time for appeal had expired; registers of action would be added to the list; the three paragraphs under "Received papers should" would be moved to the beginning paragraph under A; and the note concerning tax intercepts would be deleted as suggested in Attachment C.

With respect to paragraph B (filed case papers), it was agreed that paragraphs B(1) and (2) should be changed as indicated in Attachment C. Paragraph B(5) should be changed as suggested in Attachment C, with the added reference to Rule 2.2 of the Rules of Court.

1.4 - File Stamping

With respect to the first paragraph, Kay Braget suggested the following language should be included after the first sentence: "Documents must be file stamped the day received in the clerk's office whether received by mail or personal delivery." Committee members agreed.

Deb Simenson suggested adding "Time Standards" to the section caption and making clear, perhaps as a new paragraph D, that filed documents must be entered on the register of actions and placed in the file within two working days after the date of file stamping. Committee members agreed.

With respect to paragraph B, Committee members agreed to the addition of the reference to tickling exhibits and discovery documents as suggested in Attachment C.

1.5 - Papers Filed by FAX

Committee members agreed paragraph A should be modified as suggested in Attachment C.

Paulette Reule noted previous directives regarding the fee clerks must charge when FAXing documents. She suggested that requirement be included in the procedures at an appropriate place. She also noted recent changes to Rule 2.2, which become effective March 1 and provide that FAXed orders and warrants have the same effect as the original.

1.6 - Procedures for Case Papers with Errors

Kay Braget wondered whether "filed with the clerk" is the correct reference since Rule 3.1 of the Rules of Court require pleadings and documents to be submitted in certain formats before they can be "filed." Paulette Reule suggested "received by the clerk" may be more appropriate. Staff noted that under the rule clerks likely cannot reject a non-conforming document for filing except as provided under Rule 3.1(g). That provision, he said, requires attorneys to submit documents and pleadings with the appropriate file number and nonconforming documents cannot be filed. Otherwise, he said, the rule seems to leave it to the court to determine what sanctions are appropriate for nonconforming documents [Rule 3.1(e)].

Committee members agreed language should be added to clarify that the clerk cannot reject a pleading or instrument for filing except as provided in Rule 3.1(g). It was also agreed paragraphs B and C should be deleted as they outline clerk actions to correct a nonconforming document before it is filed, which the rule does not generally contemplate.

1.7 - Procedures for Placing Case Papers in the File Folder

Committee members agreed paragraph A is unnecessary and should be deleted as suggested in Attachment C. It was also agreed paragraph D should be deleted.

Deb Simenson suggested, and Committee members agreed, paragraph B regarding correct case number and name should include a reference to venue.

Committee members agreed paragraph F should be modified to delete the reference pertaining to register of actions and to provide that location of separately stored papers or exhibits should be noted on the front upper right of the file folder. It was also agreed a new paragraph should be added to provide that, whenever possible, briefs and any attachments should be fastened in the file.

Committee members agreed Section 1.7, with revisions, should be combined with Section 1.3.

1.8 - Case Papers Kept Separately from the File Folder

With respect to paragraph B, Paulette Reule wondered what was intended to be included under "Verbatim Reports of Proceedings." It was agreed a reference to transcripts and stenograph notes would be more appropriate.

With respect to paragraph A regarding exhibits, Paulette Reule suggested a sample form on which to list exhibits would be helpful. Committee members agreed and a reference to an appendix form (to be provided) will be included in paragraph A.

There were no suggested changes for Section 1.9 - Access to the File Folder by Non-clerical Personnel.

1.10 - Court Seal and Other Stamps

Committee members agreed a reference to "Received Date Stamp" should be added to the section as suggested in Attachment C.

1.11 - Change of Venue

Committee members agreed a new subparagraph f should be added to paragraph A(1) to provide for an acknowledgment of receipt form to be sent to the receiving county on a change of venue.

With respect to paragraphs A(2) and (3), Committee members agreed with the suggested changes in Attachment C, except for the suggested reference in (3) regarding remanded files. Additionally, it was agreed that the reference to stipulation should be deleted from subparagraph (c) of paragraph A(2).

1.12 - Procedures for Mailing Official Court Records

Committee members agreed the section should be modified to provide as follows: "Transmit court records from one county to another or to the Supreme Court by first class mail."

1.13 - Procedures for Making Copies of Court Records

With respect to the opening paragraph, Paulette Reule wondered why deputy clerks cannot exemplify or authenticate copies of documents. Committee members agreed deputies are generally empowered to perform duties of the principal and the reference should be deleted. A similar change would be made to paragraph B(3).

With respect to paragraph A(2), Committee members agreed with the suggested change, with "if possible" added, in Attachment C.

1.14 - Consolidation of Cases

Committee members agreed paragraph A(2) should be modified as suggested in Attachment C and paragraph B should be replaced with a reference to section 6 of Trial Court Administration Policy 505.

1.15 - Keep Files in Numeric Sequence

Committee members agreed the section could be revised to simply provide: "Keep active and closed case files, except for traffic cases, together to save space in the office, since closed case files could be moved to secondary storage areas after the last paper is filed."

1.16 - File Folder Specifications

Kay Braget suggested, and Committee members agreed, that paragraph B should only refer to folders being "at least" 14 point weight, rather than "11 to 14 point weight", with the concluding lines of the paragraph deleted.

Section 1.17 (Filing Equipment) will be reviewed to determine whether it can be rewritten and shortened.

1.18 - Exhibits

Committee members agreed the opening sentence of paragraph A should be modified as suggested in Attachment C, i.e., specify procedures for receipt of exhibits in the courtroom "if clerk attendance is required."

With respect to paragraph B(2), Paulette Reule observed that it made little sense to require narcotics, weapons, etc., to be kept in the clerk's office if a security storage cabinet is unavailable in the courtroom. Judge Nelson suggested the provision be modified to direct that if a security cabinet is unavailable, the clerk would be responsible for arranging a secure location. Committee members agreed.

Committee members agreed a reference to using a UCIS tickler to aid in disposing of exhibits should be included in paragraph C. A reference to a form to be used would also be added.

1.19 - Clerks Procedures during Hearings and Trial

With respect to paragraph B, Paulette Reule wondered whether clerks are actually required to be in the courtroom to take minutes of proceedings. Judge Nelson observed that his proceedings are recorded so he has the recorder's notes if needed. He said there is likely little reason to have another person, a clerk, taking minutes of the proceedings if recorder's notes are available.

Judge Kleven suggested, and Committee members agreed, that the body of Section 1.19 be replaced with a general statement that clerk's minutes are no longer required and that a reference be included to Trial Court Administration Policy 512 with respect to guidelines for clerk attendance in the courtroom.

1.20 - Jury Trial Instructions, Oaths

Committee members agreed subparagraph 20 in paragraph B regarding juror payroll and file preparation is more appropriately placed in paragraph C concerning after trial procedures. It was also agreed that the deletions of subparagraphs (2) and (3) suggested in Attachment C should be made. Also added to paragraph C would be directives to file the juror selection sheet and enter the jury trial ended event on UCIS.

1.21 - Juror Records

Ted Gladden suggested clerk responsibility to maintain the jury management worksheet should be noted.

Committee members agreed to substitute "manually or electronically process juror payments" for present paragraph B, which directs that expense records be submitted to the court administrator or presiding judge.

No changes were noted for Section 1.22 (Court Reporters' Note/Tapes).

1.23 - Inactive Records Storage

Committee members agreed paragraph C regarding designating case papers that do not have long-term retention values could be deleted.

1.24 - Forms Design

It was agreed the designation of case types in paragraph B(1) could be deleted as they have been identified in Section 1.1.

With respect to paragraph C(6) regarding signatures, Kay Braget wondered whether attorneys ever sign criminal case forms as subparagraph (a) suggests. It was agreed this provision could be deleted.

Next Meeting

Paulette Reule, Deb Simenson, and Kay Braget will review a possible combination of a part of the Civil section with UCIS procedures.

There being no further business, the meeting was adjourned at 2:00 p.m.

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