

MINUTES
(Unofficial until approved)
Committee on Trial Court Operations
Ramada Hotel, Bismarck
March 7, 2014

Members Present

Judge Zane Anderson, Chair
Jodie Fixen
Judge John Greenwood
Chris Iverson
Scott Johnson

Members Absent

Bev Demers
Anita Ibach
Cindy Schmitz

Others Present (Mental Health Commitment Forms Review)

Claire Ness, Asst Attorney General, Attorney General's Office
Sharon Bitz; ND State Hospital
Sarah Erck, Deputy Clerk, Supreme Court

Chair Anderson called the meeting to order at 10:00 a.m. and drew Committee members' attention to Attachment B (March 3, 2014) - minutes of the December 13, 2013, meeting. Judge Greenwood noted the discussion under "Other Matters" (pp. 7-8). He asked that the minutes reflect that he questioned the assertion that Stutsman County will accept e-filed, unsigned petitions and submit them to the state's attorney for signature and filing. He explained that it is true a state's attorney signature is required when a petition is filed by a private citizen, for example. But, he said, a petition may be submitted by the state hospital or a human services center as well.

It was moved by Scott Johnson, seconded by Chris Iverson, and carried that the minutes be approved as modified.

The Committee then turned to a review of the 2nd **draft revisions** to C-Series forms: **C-2 through C-10A** [See December 13 meeting minutes for earlier draft revisions].

C-2 Order for Appointment of Expert Examiner and Examination

Staff briefly reviewed further draft revisions resulting from the December 13 meeting:

- delete draft language reflecting that Respondent has the opportunity to voluntarily comply with the requirement to appear for an examination

Judge Greenwood noted draft language on lines 22-23 which directs that the cost of examination is paid by the Respondent's county of residence. He asked whether Odyssey will

automatically designate the county of residence. There was general agreement that county information would not appear.

After discussion, it was agreed to insert a blank space following “residence” on line 23 in which the county of residence could be entered.

C-3 Warrant of Attachment - Alternative New Form

Chair Anderson noted the previous discussion about the alternative form based on a Grand Forks County form. He asked whether the alternative form should replace the current warrant form or if it should serve as an additional, alternative warrant form.

Staff reviewed the additional revisions resulting from the December 13 meeting:

- 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

Judge Greenwood observed that there may be some continued use for the current warrant form.

No additional changes to the draft form were noted. The Committee will further discuss the form at the next meeting.

C-4 Order of Dismissal

Staff briefly reviewed additional revisions resulting from the December 13 meeting:

- modify the revised sixth reason for dismissal to read “Respondent does not meet the criteria of “person requiring treatment”

There were no additional changes to the 2nd draft revisions.

C-6 Notice of Hearing

Staff reviewed the draft revisions resulting from the December 13 meeting:

- 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”

Chris Iverson suggested, and Committee members agreed, that p.2 line 1, should be modified to delete “on the”.

There were no additional changes to the 2nd draft revisions.

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

Staff briefly reviewed the additional revisions resulting from the December 13 meeting:

- 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

With respect to the deletion of the A,B,C listing in Section IV, Judge Anderson said the listing is related to the earlier reference to “for the following reasons” and should probably be retained. Committee members agreed.

No other additional changes were noted.

C-8A Findings of Fact, Conclusions of Law, and Order Following Preliminary Hearing (Alternative Form - Findings of Fact and Conclusions on the Record)

Judge Greenwood suggested “for the following reasons” be deleted from p. 1, line 17, as there is no following area to list reasons. Reasons will be reflected on the record.

Committee members agreed with the suggested change. There were no other changes to the draft form.

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

Staff reviewed additional revisions to the form resulting from the December 13 meeting:

- 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

Staff asked whether, with respect to the firearms finding in Section VII, it would be helpful to include an introductory phrase regarding the court having committed the respondent for treatment. There was tentative agreement to include the introductory language.

Staff explained that the statute governing the firearms finding, also requires that the court notify the respondent of the limitations imposed by federal and state law. He distributed draft notice language that could be included in C-9 and C-9A:

NOTICE TO RESPONDENT: Having been committed for treatment in accordance with this Order, Respondent is prohibited by federal law [18 U.S.C. §922(d)(4) and (g)(4)] from possessing or receiving any firearm or ammunition. Respondent is prohibited by North Dakota law [N.D.C.C. §62.1-02-01(1)(c)] from purchasing a firearm or having a firearm in possession or under control.

There was agreement to include the notice provision in the necessary forms.

With respect to the notice on p.3 line 22, regarding the right to appeal, Judge Greenwood suggested the 30 day timeframe to appeal should be indicated. Committee members agreed.

Sarah Erck asked whether the form — and other similar forms — should indicate whether the Respondent was not present at the hearing. Committee members agreed to add an alternative in the 2nd paragraph on p.1, and in other forms as necessary, indicating Respondent was not present.

C-9A Findings of Fact, Conclusions of Law, and Order Following Treatment or Continuing Treatment Hearing [Alternative Form - Findings of Fact and Conclusions on the Record]

Judge Greenwood suggested inclusion of Section VI related to a treatment program – as reflected in form C-9, with the exception of the provision related to specific risks. There was general agreement with the suggested change.

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

Staff reviewed additional revisions resulting from the December 13 meeting:

- move the waiver of hearing option to the top of the form

No additional changes were noted.

C-10 Order Appointing Independent Expert Examiner

Staff noted additional revisions resulting from the December 13 meeting:

- include a general licensure requirement and psychologist training requirement as set out in for C-2

Sarah Erck suggested, and Committee members agreed, a blank line should be inserted on line 8 so the county of residence can be indicated.

No other changes were noted.

C-10A Order Appointing Independent Expert Examiner (Request to Treat with Prescribed Medication)

Staff noted the revision resulting from the December 13 meeting:

- “psychiatrist” should read “licensed psychiatrist”.

Committee members agreed a blank line should be included on line 7 so the county of residence can be indicated.

Committee members then reviewed 1st revisions to forms **C-11 through C-19**.

C-11 Order for Hospitalization and Treatment

Staff noted the inclusion of language regarding the firearms-related finding. There was agreement to include the introductory clause as with the earlier forms.

Judge Greenwood noted that the form is used for a wide variety of reasons. Judge Anderson agreed and said that, as a consequence of the varying use of the form, including the firearms language may be problematic.

Judge Greenwood asked whether C-11 could be used as an alternate form or whether the substance of the form could be included in form C-8 or C-9. He noted that if form C-8A or C-9A were used, then C-11 would not be used. However, he said, if C-8 or C-9 were used, then C-11 would be used. He said the waiver language in C-8 and C-9 could possibly be set out in C-11, as the waiver would normally come into play with respect to a preliminary or continuing treatment hearing.

After discussion, it was agreed to defer review of the form until the next meeting. Issues to be discussed: delete the form, revise the form, or add the form language to other forms, e.g., C-8 or C-9 or both.

C-12 Order for Alternative Treatment

Staff reviewed the revisions resulting from the December 13 meeting:

- “Effect of Non-compliance” section should be modified to fully reflect the statutory language
- firearms limitation provision should be included

Judge Greenwood suggested the following changes on p.1: Insert “and is a person requiring treatment” on line 3, after “dependent”, and insert “or until further order of the Court” after “[date]” on line 7. Committee members agreed.

The introductory clause will be added to the firearms provision.

C-13 Order for Less Restrictive Treatment

Staff reviewed the revisions resulting from the December 13 meeting:

- “Effect of Non-compliance” section should be modified to fully reflect the statutory language
- include a 1, 2, 3 listing regarding the “description of treatment” provision rather than the narrative approach currently in the form

Staff noted that language regarding the firearms limitation was also included for review. There was discussion regarding whether the firearms provision should be included in the form since the finding would have been made earlier.

Sarah Erck asked whether an outpatient treatment facility, which may receive the respondent for less restrictive treatment, would necessarily be aware of the court’s earlier finding regarding firearms.

After discussion, it was agreed to modify the firearms provision to indicate that the court’s finding “remains in effect”.

Judge Greenwood suggested, and Committee members agreed, that “the requested facility” on p. 1, line 3, should be replaced with a blank line so the facility could be identified.

C-14 Emergency Treatment Order

Staff reviewed the revision resulting from the December 13 meeting:

- “person requiring treatment and” inserted after “Respondent” in the second line of the form

Judge Greenwood said the probable cause language should be revised to reflect the statutory language related to emergency situations [N.D.C.C. 25-03.1-25(1)] – respondent is a person requiring treatment and “there exists a serious risk of harm to self, other persons, or property”. Committee members agreed.

Judge Greenwood suggested that lines 5 and 6 on p.1 regarding accessibility of a secure facility be replaced with the substance of N.D.C.C. 25-03.1-25(3), which describes in greater detail possible places of detention.

Following further discussion, Committee members agreed the form would be discussed further at the next meeting.

C-14A Order for Transport

Staff reviewed the revisions resulting from the December 13 meeting:

- modify lines 3-5 to indicate the Respondent is transported “from” the identified location and “to” another location for a hearing
- add a cost provision to indicate county responsibility as reflected in N.D.C.C. 25-03.1-39

Sarah Erck suggested it may be useful to also indicate that the sheriff must return the respondent to the identified location after the hearing. Committee members agreed with the suggested change.

Committee members agreed a blank line should be included in the cost provision so the county can be identified.

C-16 Transfer Order

Staff noted that the preliminary conclusion from the December 13 meeting that the form should be deleted.

Judge Greenwood observed that there is a process in statute for transferring the respondent from one facility to another.

After discussion, it was concluded there would be no harm in retaining the form.

C-18 Hospitalization Order Following Alternative Treatment Order

Staff reviewed additional revisions resulting from the December 13 meeting:

- include language to indicating findings of fact and conclusions of law have been made if a hearing is held
- revise the 1st paragraph following “Order for Alternative Treatment” to read: “or that it is not sufficient to prevent harm or injuries to the Respondent or others”
- insert “or until further order of the Court” in the second paragraph after “[date]”
- modify form title to read “Modification Order”.

It was agreed to insert “dated _____” on line 3 after “Order _____”).

C-19 Detention Order Pending Hearing

Staff noted that the initial conclusion at the December 13 meeting was that the form should be deleted since C-14 may be sufficient for use.

Following further discussion, it was agreed there is no harm in retaining the form.

Judge Greenwood noted a form in Odyssey for an order extending the time for a hearing. He said it may be useful to include a similar form in the C-series. He said it is a simple, short form and is often used given short timeframes in commitment proceedings and difficulties arranging availability of lawyers. He said the form may also be useful in smaller counties when judge scheduling may be an issue. A somewhat similar Stutsman County form was noted on p. 32 of the assembled forms. He suggested a similar form could be included as new C-6A to follow the current C-6 Notice of Hearing form.

Sarah Erck asked whether the Odyssey form indicated the new hearing date and time. If not, she said, another notice form would be required to provide the date and time information. She said the Stutsman County form combines the order extending time with the notice of the new hearing date and time.

Following discussion, it was agreed that the Stutsman County form be included as new C-6A. It was also agreed to include an option for conducting the new hearing by ITV, similar to the option in C-6. Working form title: Order for Continuance for Good Cause.

Chair Anderson said the revised C-Series forms would be reviewed at the next meeting.

GN-SERIES

The Committee next began review of the GN-Series forms.

GN-1 - Petition for Involuntary Commitment

Chris Iverson asked whether the Respondent's social security number should be included for purposes of reporting the firearms limitation. There was agreement to add the social security number. It was also agreed to replace "Sex" with "Gender".

Judge Greenwood noted that the statutory reference at the bottom of the form should be "N.D.C.C. 25-03.1-08".

GN-4 - Application and Order for Waiver of Hearing

Judge Greenwood noted that State Hospital personnel have suggested the deletion of the Order portion of the form on p.2. He said it is often cause for confusion. Committee members agreed with the suggestion.

Also with respect to GN-4, Judge Greenwood noted the Stutsman County form (p. 26 of the assembled forms) and the inclusion of paragraph 6, which addresses the Respondent's understanding of the right to a hearing to contest disclosure of treatment records and allows the Respondent to waive the hearing. He suggested the paragraph be included in GN-4. Committee members agreed.

Chair Anderson asked that Committee members review the GN-Series forms for other possible revisions. Review of the forms will continue at the next meeting.

There being no further business, the meeting was adjourned at 12:50 p.m.

Jim Ganje, Staff