MINUTES
(Unofficial until approved)
Committee on Trial Court Operations
Ramada Hotel, Bismarck
October 10, 2014

Members Present	Members Absent
Judge Zane Anderson, Chair	Jodie Fixen
Anita Ibach	Scott Johnson
Chris Iverson	
Judge John Greenwood	
Cindy Schmitz	
Bev Stremick	

Others Present (Mental Health Commitment Forms Review)

Sharon Bitz, Cindy Lien, ND State Hospital
Claire Ness, Asst Attorney General, Attorney General's Office
Sarah Erck, Deputy Clerk, Supreme Court
Haley Wamstad, Ass't State's Attorney, Grand Forks County

Chair Anderson called the meeting to order at 10:00 a.m. and drew Committee members' attention to the minutes of the July 18, 2014, meeting. The minutes were approved as distributed.

FURTHER REVIEW OF C-SERIES FORM

C-14 Emergency Treatment Order

Staff reviewed the tentative revision resulting from the July 18 meeting:

- revise the form to generally incorporate the detention alternatives in C-3 and to reflect relevant statutory requirements

Staff said the revisions generally reflect the detention provisions set out in NDCC 25-03.1-25(2) and (3). He noted that the reference to harm "of an immediate nature" on lines 3-4 is likely unnecessary as the reference relates to a different part of the statute.

After discussion, it was agreed to delete the noted reference and to approve the revised form.

Committee members then reviewed revised form C-3(Warrant of Attachment) to determine whether any additional changes should be made in light of the revisions to form C-14.

Judge Anderson noted that revised C-14, on lines 15-16, requires that the respondent be detained "under close supervision" if detained in a jail or correctional facility, which reflects the requirement under

NDCC 25-03.1-25(3)(b). He suggested similar language should be included in revised C-3, on line7, which pertains to holding the respondent in a correction center on a warrant of attachment.

Committee members agreed the suggested language should be added to C-3.

GN-SERIES

The Committee reviewed further revisions to GN-Series forms previously reviewed.

GN-1 - Petition for Involuntary Commitment

Staff said earlier revisions reviewed by the group included the addition of social security number and gender as information to be included in the petition. An additional issue concerns whether a confidential information sheet should be used to provide the information and any other information that is confidential under court rule. A form used in Grand Forks County and the form set out as Appendix H to Rule 3.4 of the Rules of Court were reviewed. Staff noted that the Explanatory Note to Rule 3.4, in the 3rd paragraph, explains that "[u]nless a document is also placed in a non-restricted file, redaction of documents filed in cases that are confidential by law or rule is not required". That, he said, suggests that a confidential information sheet may not be necessary for mental health commitment filings.

Haley Wamstad asked what the consequence would be if the social security number and gender were not included in the form. Chris Iverson said the information is generally required for purposes of reporting related to federal firearms restrictions. She said if the information is not included, the filing information is rejected and sent back to clerk of court staff to obtain the identifying information.

Judge Anderson suggested retaining the revisions to include social security number and gender information and noting the use of a confidential information sheet for possible discussion by the Administrative Council when the revised forms are submitted to the Council.

Claire Ness observed that N.D.C.C.§44-04-28 provides that social security numbers "in the possession of a public entity" are confidential. She asked what the status of the information would be if filings related to commitment are distributed beyond a public entity. Haley Wamstad said that in nearly every case commitment filings are distributed, by service, beyond a public entity. Additionally, she noted that the petitioner may be someone, such as a neighbor, who does not know the personal information related to the respondent.

Staff said if a confidential information sheet is used, then GN-1 may require further revision to reflect on the form only the year of birth, as Rule 3.4 provides, rather than the full date of birth, as the form currently provides.

Chris Iverson reiterated that the essential reason for requesting the information on the form is to acquire the information for purposes of reporting related to the firearms restriction. She said an alternative means of acquiring the information, whether by a separate form or some other method, may be workable.

Judge Greenwood asked whether the information could be provided in an addendum to the petition.

Haley Wamstad explained that in Grand Forks County a set of forms, including a confidential information sheet, is available for persons seeking to file a petition. With respect to the information sheet accompanying Rule 3.4, she said basically social security number and date of birth related to the respondent, are all that is needed, rather than the other kinds of personal information addressed on the form and also related to the "plaintiff".

In response to a question from Chair Anderson, there was general agreement to include a modified confidential information sheet with GN-1, modify GN-1 to request only the year of birth and the last four digits of the social security number of the respondent, and to note the issue for discussion when the revised forms are submitted to the Administrative Council.

With respect to form GN-1, Haley Wamstad noted the requested information related to the name of the attorney who most recently represented the respondent and the date of the most recent filing of a petition, the county in which filed, and whether the petition was granted or dismissed. She wondered if there is any particular reason for requesting the information.

Judge Greenwood observed that information regarding the most recent filing may be useful to the person conducting the evaluation, but it may not be necessary to include the information in the form.

Judge Anderson said the requested information may be generally useful for someone involved in the proceeding. He said if the information is not available or needed, it most likely would not be provided.

Following further discussion, there was general agreement that the noted items be retained in the form.

GN-3 - Notice of Procedures and Rights

Staff reviewed initial revisions resulting from the July 18 meeting:

- Paragraph 4: 1) change "14 days later" to "within 14 days" and reposition to th end of the affected sentence; 2) change "period of 90 days" to period up to 90 days"; 3) change "after the 90 days has expired" to beyond the 90 days"
- Paragraph 5: in subparagraph (a) refer simply to "a hearing" and make related changes in succeeding subparagraphs
- Paragraph 6: revise to reflect contact with the respondent's attorney or the attorney appointed for the respondent, if any

There were no additional revisions.

GN-4 - Application and Order for Waiver of Hearing

Staff reviewed further revisions resulting from the July 18 meeting discussion:

- deletion of draft paragraph 6, tentatively intended to address the Respondent's understanding of the right to a hearing to contest disclosure of treatment records and allow the Respondent to waive the hearing

- revise paragraph 5 to indicate that the respondent agrees with the indicated treatment.
- add modification and medication hearings to paragraph 4.

Judge Greenwood reiterated his concern from the July 18 meeting that the form should be available to clerks. Chris Iverson said she noted the need to establish the form as an Odyssey form so clerks have access.

Haley Wamstad said that in Grand Forks County the state's attorney also signs the GN-4 Application, whereas the form only provides for the signature of the appointed attorney. She said state's attorney review and signature serves as a method of essentially protecting the facility and ensuring proper safeguards are in place before the respondent waives the hearing.

Judge Greenwood noted that, as a practical matter, in Stutsman County the attorney talks with the state's attorney and facility personnel before the waiver is signed.

Following further discussion, there was agreement to retain the current signature requirement, with recognition that if a state's attorney signature is required in certain counties, the form would be adjusted locally.

GN-5 - Application for Emergency Admission

Staff reviewed revisions resulting from the July 18 meeting:

- revise the form to refer to "Application for Evaluation and Emergency Admission".
- revise the last paragraph to reflect statutory language regarding reasonable cause to believe there exists serious risk of harm of an immediate nature (rather than the current reference to serious bodily injury)

Committee members discussed the question reserved from the July 18 meeting regarding the meaning of "time" with respect to the circumstances under which the respondent was taken into custody.

Judge Greenwood suggested that the reference to "time" in the parenthetical listing could be changed to "time taken into custody" as a method of clarifying the meaning. Committee members agreed with the suggested change.

Judge Greenwood noted the form's references to "emergency admission" and wondered whether the focus is more accurately emergency "detention". The process is generally governed by N.D.C.C.§25-03.1-25(1), which does refer to detention.

Committee members noted that N.D.C.C.§25-03.1-26(1), which further implements the process, discusses the person as being "admitted".

After further discussion, there were no additional suggested revisions.

Committee members then turned to a first review of the remaining GN-Series forms.

GN-6 - Request for Transportation for Emergency Detention

Staff noted the references to "likely to cause serious injury" and "expected to cause serious physical injury", which should be changed to reflect the current statutory reference to the existence of a "serious risk of harm".

Haley Wamstad wondered whether it is necessary to retain the check box alternatives related to mental illness and chemical dependency. She suggested the form could simply state that the person is suffering from mental illness "or" chemical dependency.

Staff noted that the relevant statute - N.D.C.C.§25-03.1-25 - does not refer to mental illness or chemical dependency, but instead refers to reasonable cause to believe the person is a "person requiring treatment".

Anita Ibach observed that the petition form retains the check box approach with respect to mentally ill or chemically dependent.

Haley Wamstad said check box alternatives are more appropriate in the petition since either status would be the basis for evaluation. On the other hand, she said, GN-6 is essentially a request to the sheriff to transport the individual.

In response to a question from Chair Anderson, there was agreement to delete the check boxes and revise the "serious injury' language to reflect current statutory language.

Haley Wamstad asked whether the relevant statute requires a description of overt acts that constitute the basis for the belief that the person is mentally ill or chemically dependent, as the 2nd paragraph in the narrative portion of the form requires. She said adding the information essentially duplicates information provided in other forms.

Judge Greenwood said GN-6 is essentially a form for directing law enforcement to transport the individual. He said it is likely redundant to include overt act information when similar information is included in the application for emergency evaluation and admission.

Following further discussion, there was tentative agreement to delete the paragraph requiring a description of overt acts. There was also agreement to add a signature line on page 2 of the form.

GN-7 - Notice of Emergency Detention

Staff said the reference to "serious physical injury" should be changed to reflect the current "serious harm" language. He noted also the earlier issue related to the meaning of "time", with respect particularly to "time of admission" in the form.

Haley Wamstad said the form is confusing in that detention is the focus of the statute, while the form requests date and time of "admission".

Judge Greenwood said "admission" may be appropriate since the relevant statute - N.D.C.C.§25 -03.1-26(1) - requires evaluation within twenty-four hours after *admission*.

Haley Wamstad explained that "admission" is troublesome, for example, in situations in which an individual voluntarily arrives at a treatment facility and then a few days later decides to leave. It is at that time, she said, that the physician will place the hold on the individual. The date of "admission", she said, would be the date when the individual voluntarily arrived, but the date and time regarding when the individual is held involuntarily are the triggers for hearing requirements.

Claire Ness asked whether a focus on "involuntary detention" would be an appropriate alternative.

Staff noted that §25-03.1-26(1) refers to the individual being "admitted" under §25-03.1-25, but the latter statute focuses on "detention" rather than admission.

Claire Ness suggested replacing date and time of admission with date and time of detention at the treatment facility, which would differentiate between when the individual is picked up for transportation and when the individual is actually at the facility.

Judge Anderson suggested retaining the current language regarding date and time of admission, but adding date of detention and time of detention, if different (from the time of admission).

Following further discussion, there was general agreement to tentatively retain "date of admission" and "time of admission" and add "date of involuntary detention at facility, if different" and "time of involuntary detention at facility, if different".

Haley Wamstad noted the signature line, which indicates the form is signed by the (facility) director or the superintendent (of the state hospital). She said the form is rarely signed by the superintendent. It was noted that the definitions of "director" and "superintendent" include the "designee" of each.

There was agreement to add "designee" to the signature line. There was also agreement to change "name of judge" in the first line to "name of court".

<u>GN-8 - Notice of Purpose and Effects of Custody</u>

Staff noted the reference to "serious physical injury", which would be changed to "serious risk of harm".

Haley Wamstad said the hearing timeframe in the form (7 days) should reflect that the hearing must be held within four days if the respondent is alleged to be suffering from chemical dependency. Committee members agreed.

<u>GN-9 - Certificate of Service</u>

There was agreement to add "director, or designee" to the line regarding the superintendent of the hospital or treatment facility in which the respondent is hospitalized or receiving treatment.

GN-10 - Affidavit of Service

There were no suggested changes.

GN-11 - Application for Modification of Alternative Treatment Order and Order for Notice of Hearing

Haley Wamstad said "treatment facility" in the "above name" section should be changed to "treatment program" to reflect statutory language. Committee members agreed.

Judge Greenwood noted that the form is both an application and an order for notice of hearing. He asked whether the combined form can be accommodated in Odyssey. Chris Iverson said combined documents are not permitted in Odyssey, which would require a separate form for the notice portion. She noted, however, that C-6 form is the current notice form.

There was general agreement to delete the notice of hearing portion of the form.

GN-12 - Agreement to Combine Preliminary and Treatment Hearing

It was noted that the form is essentially a consent form and, consequently, the order portion could be revised to indicate the court's consent.

There was tentative agreement to modify the form as described.

GN-13 - State's Attorney's Request for Investigation and Evaluation

Haley Wamstad suggested removing the line indicating "Director (regional human service center)". She said her general experience is that the form, when used, would be sent to the treatment facility in circumstances in which the person is in a facility and a family member, for example, initiates the petition. She suggested replacing the noted phrase with "providing physician" or a similar reference.

Staff noted that the relevant statute - N.D.C.C.§25-03.1-08 - provides that the state's attorney may direct a "qualified mental health professional designated by the regional human services center" to conduct an investigation and evaluate the facts alleged by a person initiating a petition.

Committee members discussed various situations in which the form may be used, particularly when private treatment facilities are involved. There was also discussion of situations in which the human service center may not have designated the mental health professional to conduct the investigation and evaluation as the statute contemplates.

After further discussion, there was general agreement to tentatively revise the "Pursuant to" paragraph to reflect that the human service center must designate the mental health profession who may then be directed to conduct the investigation and evaluation of the petition.

GN-14 - Report of Mental Health Professional

There were no suggested changes to the form.

General

Chair Anderson said the revisions discussed would be reviewed at the next meeting. He said the F-Series forms would be reviewed also and requested that Committee members note any revisions for discussion.

There being no further business, the meeting was adjourned at 1:05 p.m.

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Jim Ganje, Staff