

**Minutes**  
Radisson Hotel, Bismarck  
February 21, 2003

Present

Chief Justice Gerald W. VandeWalle, Chair  
Judge M. Richard Geiger  
Judge Gail Hagerty for Judge Benny Graff  
Judge Robert Holte  
Judge Debbie Kleven  
Judge Michael McGuire (via telephone)  
Judge John Paulson  
Judge Allan Schmalenberger

Staff

Ted Gladden  
Greg Wallace

Other Present

Jim Ganje  
Susan Sisk  
Kurt Schmidt

IT WAS MOVED, SECONDED, AND PASSED THAT THE MINUTES OF THE NOVEMBER 25, 2002, BE APPROVED AS DISTRIBUTED.

**Cell Phone Policy**

Discussion focused on the proposed cell phone policy. Kurt Schmidt indicated that the monitoring of usage would fall to the district administrative offices under the policy. If there are excesses in any of the plan minutes, it would be reviewed by the state court administrative office and communicated to the district offices to address. As long as plan minutes are not exceeded, there is no major monitoring that will be required.

IT WAS MOVED, SECONDED, AND APPROVED TO DISTRIBUTE THE DRAFT POLICY FOR COMMENT.

**Civil Case Management Rule Draft**

Judge Schmalenberger reviewed the draft civil case management rule. He indicated the purpose is to conduct early case management. As part of his presentation, he read an excerpt from a caseflow management that stresses the need for early and continuous oversight of all cases by the court. He indicated caseflow management strategies are those that need to be imposed by the court. It should not be the attorneys that control the pace of litigation once a case is filed. There was significant discussion that the drafting of an administrative rule is not the proper place to direct attorneys

and judges regarding case management procedures. Rather, a rule of this nature should be addressed in the Rules of Civil Procedure or the Rules of Court.

In response to questions, Judge Schmalenberger indicated if cases are disposed of within 90 days, such as those that were mentioned in a number of the comments having to do with minor civil actions including informal probates and name changes, this rule would not come into play.

Judge Holte raised a question regarding Appendix A. Judge Schmalenberger reiterated that informal probates and simple cases will be resolved within 90 days. The authority for this rule draft is derived from the North Dakota Rules of Civil Procedure 16. It spells out an implementation process for case management. In response to a question, Ted Gladden indicated that the differentiated case approach of the three tracks would facilitate early case disposal. Those cases that can be put on an expedited or standard track and segregated from the more complex, unusual cases that require greater judicial involvement should be processed more expeditiously. Differentiated management of civil cases is not presently considered in most districts. Judge Schmalenberger concluded that under Rule 3.1 of the Rule on Rules, the Council of Presiding Judges could refer this case management rule to the Supreme Court for consideration.

IT WAS MOVED, SECONDED, AND PASSED TO REFER THE RULE DRAFT TO THE SUPREME COURT AND REQUEST THAT IT BE ESTABLISHED AS A RULE OF COURT OR RULE OF CIVIL PROCEDURE.

### **Indigent Defense Issues**

The Chief Justice reviewed House Bill 1044. He outlined the reasons he was supporting this legislation. He felt that in its current form the legislation allows for much greater flexibility in the delivery of indigent defense services than can be achieved if the services remain within the judiciary. There was discussion over contract issues in the Northeast, Southeast, and Northwest judicial districts. There was concern expressed that if we have to go to hourly payments, we have no ability to control the costs.

Following this discussion, Greg Wallace provided a review of the indigent defense services as part of his quarterly report. Judge Geiger and Greg indicated that due to a contract attorney losing his license in the Northeast district, it will cost up to \$15,000 to complete the caseload assigned to that attorney. After discussion, it was concluded that if there is a shortfall in any one judicial district, we should transfer funds from other districts' indigent defense budgets. There was consensus that every district needs to review their appointing practices, especially as we are experiencing budget

shortfalls in three of the judicial districts for indigent defense services. It was concluded that only as a last step should funds be transferred out of other program areas to address the shortages in the indigents defense program. Indigent defense spending is a program that needs to be addressed statewide.

Greg Wallace then discussed his activities in reviewing and moving the appointing process into an administrative system. He indicated there would be a proposal for implementation in May in the Northwest and Northeast Central judicial districts. Currently the South Central district is handling appointments through an administrative process. Judge Schmalenberger stressed that we need to have a good administrative process in place for monitoring and collecting fees, especially if this process moves to the Office of Administrative Hearings.

Chief Justice VandeWalle excused himself and asked Judge Paulson to preside over the meeting.

### **Protection Orders**

Ted Gladden provided a general review of the temporary and permanent protection orders that are before the Council for final consideration. The major change is to move compliance statements to the front page of the order to facilitate interstate service of these orders.

Jim Ganje discussed concerns that were raised from the comment period. He indicated that the use of social security numbers are not confidential, but there is a bill before the Legislature that would make social security numbers confidential if passed. It was suggested that the social security number be left in and deleted if the legislation passes. In regard to a question of witnesses, it was indicated that a witness signature line is not necessary. In response to one of the comments, an address line will be inserted and amended to reflect last know address.

IT WAS MOVED, SECONDED, AND APPROVED THAT THE REVISED TEMPORARY AND PERMANENT PROTECTION ORDERS, AS FURTHER MODIFIED, BE APPROVED AND DISTRIBUTED ELECTRONICALLY.

### **Draft Policy on Court Ordered Expenses**

Jim Ganje reviewed the draft court ordered expenses policy. The policy is before the Council in response to the need to provide a framework with the court is ordering expenses to be paid by the judiciary. This policy would address all but indigent defense costs. In response to a request that an appendix of expenses for which the judiciary is responsible, Mr. Ganje said he would add an appendix as well as clarify

that the policy applies only to expenses that are ordered to be paid by the judiciary. In terms of the dollar limit, it was concluded \$500 will be the threshold when authorization by the presiding judge is necessary.

IT WAS MOVED, SECONDED, AND PASSED TO SEND THE DRAFT POLICY, AS REVISED, OUT FOR COMMENT.

### **Jury Management Report**

Ted Gladden reviewed the quarterly Jury Management Report through December 31, 2002. He asked the presiding judges' cooperation to please review the data with their judges and personnel in their respective districts. He outlined that during the quarter 24% of all jury trials were cancelled or continued after the jury had arrived at the courthouse. He also indicated that for the last two quarters there has been a rather substantial reduction in the number of jury trials.

### **Weighted Caseload Study**

Ted Gladden provided background on the report to the Council of Presiding Judges regarding the weighted caseload study that has been completed by the National Center for State Courts. The main assumptions presented to the Council for the use of this data include:

1. A two year rolling average would be used for the basis of evaluating judicial need;
2. A 205 day work year for judges and a 213 day work year for judicial referees be approved;
3. The criteria for evaluating workload would be all cases for one defendant disposed of on one day count as the most serious offense;
4. One judge would be counted for each calendar;
5. There be different travel criteria for judges and referees, depending on whether or not they travel.

Mr. Gladden indicated that at the present time the only judicial referee doing any substantial traveling is Dale Thompson in the Northeast judicial district. The other referees do very little traveling. Further, the five criteria outlined will recognize that referees do not serve on the number of statewide committees that judges do, thus their work year should be adjusted to reflect these differences. The major change will be

the counting of all cases disposed of on one date to eliminate the differences between charging practices statewide.

IT WAS MOVED, SECONDED, AND APPROVED TO ADOPT THE WEIGHTED CASELOAD FIGURES AS PRESENTED WITH THE FIVE ASSUMPTIONS ARTICULATED.

Staff were directed to contact the National Center for State Courts to verify all calculations contained in the report to make sure the data is correct.

### **New Legislation**

Chief Justice VandeWalle led the discussion on the number of pieces of new legislation. He directed their attention to HCR 3059 calling for a study of small claims courts. He indicated two small claims court bills (HB 1329 and HB 1472) have both been defeated. He discussed HB 1303 relating to an administrative hearing case reviewed by the district court, which was also defeated.

HB 1088 has passed the House, providing for a \$10 addition to civil filing fees to establish a trust fund for court facilities.

### **Custody Investigators**

Greg Wallace indicated we need to look at reviewing and improving our standards for custody investigators. He stated he is working with Judge Bohlman on the development of a training program for custody investigators, but we need to look at the certification process that is in place. Mr. Gladden indicated that better coordination needs to be established between the state administrative office and the district administrative offices regarding the roles and responsibilities for the establishment and maintenance of custody investigator lists.

The meeting adjourned.