

Minutes

Ramada Inn, Grand Forks
May 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
Judge John Paulson
Judge Allan Schmalenberger

Staff

Ted Gladden
Greg Wallace

Other Present

Susan Sisk

IT WAS MOVED, SECONDED, AND PASSED THAT THE MINUTES OF THE FEBRUARY 21, 2003, MEETING BE APPROVED AS DISTRIBUTED.

Budget Transfer

Susan Sisk reviewed the biennial budget transfer that will be required. Data processing fees have increased with the addition of the remaining counties being placed on UCIS resulting in an over expenditure in this area. We have over expended office supplies requiring a line item transfer. We need funds in the budget to fund the biennial end expenditure for the digital audio systems that will be installed in the East Central and Northeast Central Judicial Districts as well as the interactive television initiative in Fargo. While we are within our total statewide indigent defense line item, we do need to transfer funds between districts to cover the shortfall for indigent defense expenditures.

IT WAS MOVED, SECONDED, AND APPROVED TO RECOMMEND TO THE SUPREME COURT THE APPROVAL OF LINE ITEM TRANSFERS TO THE SUPREME COURT AS CONTAINED IN SUSAN SISK'S MEMO OF MAY 6, 2003.

Review of 2003-05 Budget

Ted Gladden indicated that the final budget approved for the judiciary provides for funding at the same level as in the 2001-03 biennium for the supreme court and a 2% increase for the district court budget. While we faired well compared to executive branch agencies with the general increase in operating expenses that will occur as a

result of postal rate increases, telephone rate increase, and other normal operating increases, we will have to watch expenditures for the coming biennium. Susan Sisk then reviewed the budget and outlined the areas for consideration of expenditure reductions during the coming biennium.

Ms. Sisk indicated that all temporary employee salaries have been deleted from the budget except for bailiffs. Out-of-state travel for judges and personnel has been reduced approximately 63%. Professional supplies and materials will decrease in the budget while costs of materials are increasing. Districts are being requested to review their holdings for accuracy and duplication.

A number of items were discussed where funds could be saved for the coming biennium. Ms. Sisk asked the presiding judges to review this list and be prepared at the next meeting to discuss reductions. Judge Geiger requested that a memorandum be sent to all state employees regarding possible areas for budget reductions. The areas for possible cuts would result in the following action:

Mandatory carpooling, when possible

In-State meetings to be reduced and greater use of teleconferencing and ITV considered

Purchase of office supplies, specifically case files, be centralized whenever appropriate

Centralize necessary printing

Discontinuance of payment for licenses and CLE attendance for law clerks

Do not provide payment for parking for any district court personnel

Review of membership payments

Reduce attendance at in-state and out-of-state training functions

Review juvenile court service by publication requirements for possible savings

Judge Paulson requested that we solicit best practices from each district clerk of court office for future consideration. Mr. Gladden indicated that he would see that a memorandum was sent to all state employees regarding possible areas to cut and also gather information from clerks of court on best practices. Judge Schmalenberger

indicated that we should look in to an expansion of the use of first class mail for service of process.

Discussion of Indigent Defense Application Fee and Assessment of Administrative Fees

Ted Gladden reviewed Jim Ganje's memo relating to implementation of HB 1088 which provides for a \$100 administrative fee to be assessed against all misdemeanor and felony cases to fund indigent defense services and court renovation and maintenance.

Judge Schmalenberger indicated that the Southwest Judicial District appoints indigent defense counsel in approximately 18% of the total criminal cases. The appointment rate is 43% in the South Central Judicial District and 50% in the East Central Judicial District. Judge Paulson stated that we need to develop standards for the appointment process. Greg Wallace reviewed the steps he has taken in visiting with court staff to develop an administrative process for the review and approval of indigent defense applications. He indicated that we could have a process in place by August 1, 2003, statewide for administrative personnel to handle indigent defense applications in most jurisdictions.

Judge Kleven indicated that the procedure used in the Northeast Central District is that clerk personnel enter in all of the various administrative fees as part of the criminal judgment as a routine matter in criminal proceedings. This assures that all of the costs are included as part of the criminal judgment at the time of sentencing.

Discussion then focused on the collection rate for administrative fees in the Northeast Judicial District. It was concluded that Judge Geiger should prepare the procedures used in the Northeast District for distribution statewide as they have the highest collection rate of any district in the state. There was a sense that administrative fees should be assessed unless specifically waived in each individual case by a district judge.

Discussion then focused on the priority order of payment of fees, costs, fines, and restitution. After considerable discussion, IT WAS MOVED, SECONDED, AND PASSED THAT THE \$100 ADMINISTRATIVE FEE FOR INDIGENT DEFENSE SERVICES AND THE \$25 APPLICATION FEE FOR INDIGENT DEFENSE SERVICES SHOULD BE THE FIRST ITEM FOR PAYMENT BY DEFENDANT AND PLACED AHEAD OF RESTITUTION. GREG WALLACE WILL SUMMARIZE THE PRIORITY SCHEDULE AND CIRCULATE IT TO THE COUNCIL FOR THEIR CONSIDERATION.

2003-05 Indigent Defense Procedures

Greg Wallace reviewed the outcome of the various meetings he has held with public defenders statewide. The 2003-05 appropriation provides for a 5% increase for indigent defense services. Greg suggested that we should consider increasing all contracts 7% plus an additional 2% payment for out-of-pocket costs. There will be sufficient funds based on a very conservative estimate of the amount of monies that will be paid during the coming biennium for administrative fees. If a total of a 9% increase were approved based on the \$250,000, these funds would be set aside for additional costs. It would leave \$90,000 for extraordinary circumstances. He suggested that the state court administrator be authorized to pay over-contracted amounts in unusual circumstances and that this pool of funds would be available to be used.

Mr. Wallace also recommended that the payment for investigative services should not be part of the contract process but that monies be set aside to handle payment of investigative fees. He suggested that counsel had requested that with any attorney giving notice to the court of the cancellation of the contract that no new assignments would be made within the last 30 days. If a defendant is out on an outstanding bench warrant, when the defendant is brought back to the court, it would be treated as a new assignment. After considerable discussion, it was concluded that we should leave the contract as is and continue to make appointments until the expiration of the contract, however judges should review any requests of extraordinary expenses for extra consideration. IT WAS MOVED, SECONDED, AND APPROVED TO AUTHORIZE THE STATE COURT ADMINISTRATOR TO EXPEND UP TO \$250,000 FOR SPECIAL EXPENDITURES SUCH AS EXTRA WITNESSES OR INVESTIGATIVE SERVICES APPROVED BY THE PRESIDING JUDGES UNDER THEIR CONTRACTS.

Guardian Ad Litem Services

Greg Wallace then discussed the proposed increase for guardians ad litem. He stated that the Court Improvement Committee recommended that the payment of guardians ad litem be increased from \$15 to \$20 per hour, if they have worked as guardians ad litem for more than three years and have provided services in 15 cases and the total number of hours were at least 45. IT WAS MOVED, SECONDED, AND APPROVED TO INCREASE GUARDIANS AD LITEM PAY IF THE REQUIREMENTS HAVE BEEN MET EFFECTIVE JULY 1, 2003.

At this point, the presiding judges thanked Greg Wallace for all of the work he had done in meeting with indigent defense counsel and preparing recommendations for the 2003-05 biennium. Mr. Wallace indicated that he felt the contracts needed to be

expanded in the Northwest District to reduce the number of out-of-contract appointments that have been required in the past years, and indicated that he would continue to work with the administrative personnel and presiding judges as we implement the new contracts.

Discussion of SB 2423, Personnel Reductions

Ted Gladden reviewed the implications of SB 2423 with the Council. He indicated that to effect salary increases, the judiciary will have to reduce the number of personnel by four by December 31, 2003, and four by December 31, 2004. If these reductions are met, it would result in a 1% pay increase effective January 1, 2004, and a 2% pay increase effective January 1, 2005. He indicated that the final legislation had separated the judiciary from the executive and legislative branches so that if the target reductions are met by the judiciary and not by the executive branch, the judiciary would enjoy the benefits of the reduction. Chief Justice VandeWalle questioned the legislation as to whether the salary increase warranted the personnel reductions. He also indicated that if we cut the personnel, we would not be able to come back in the 2005 session requesting additional personnel. He also stated that there are long-term implications that if the reductions are not made, it may jeopardize the possibility of a pay increase in the 2005 session.

Chief Justice VandeWalle indicated that we do need to evaluate every position to determine whether it should be refilled. This is a practice that should be ongoing. IT WAS MOVED, SECONDED, AND APPROVED THAT NO PERSONNEL VACANCIES WILL BE FILLED UNTIL WE RECEIVE DIRECTION BY OMB AND A RECOMMENDATION FROM THE STATE COURT ADMINISTRATOR.

Ted Gladden was directed to prepare criteria for position reductions for the next meeting. Judge Paulson stressed that we do need to underscore the need for language in our policy that will be submitted by state court administration for the review of all position vacancies.

Policy Draft on Court-Ordered Expenses

After review of the policy, Ted Gladden was asked that the policy be brought back at the next meeting, as the appendix was not attached identifying statutes that provide for payment of extraordinary costs by the district court. In addition, item number 4 needs to be reworded to indicate that the policy provides for expenditures that are not specifically identified in indigent defense contracts.

Cell Phone Policy

Ted Gladden reviewed the cell phone policy and indicated that there were limited comments received which were provided to the presiding judges. IT WAS MOVED, SECONDED, AND APPROVED TO REFER THE CELL PHONE POLICY TO THE SUPREME COURT FOR ADOPTION.

As it relates to cell phone usage, Ted Gladden distributed a memorandum from Kurt Schmidt requesting that the Council consider the elimination of telephones that are used less than five minutes per month, on average. Mr. Gladden was directed to contact the individuals that use cell phones less than five minutes for an explanation to determine if these cell phones could be eliminated to reduce costs.

Consideration of Policy 505

Ted Gladden discussed the proposed amendments to Policy 505 that had been requested by the child support enforcement office. It was moved, seconded, and approved to circulate the policy for comment.

Replacement of Stenographic Machines

Greg Wallace reviewed his recommendation to the Council concerning not replacing steno machines on a regular replacement cycle. Following discussion, IT WAS MOVED, SECONDED, AND APPROVED THAT A POLICY BE ADOPTED REPLACING STENOGRAPHIC MACHINES ON AN AS NEEDED BASIS.

Mr. Wallace then discussed AudioSync software requested by court reporters. Following discussion, IT WAS MOVED, SECONDED, AND APPROVED THAT AUDIOSYNC SOFTWARE SHOULD BE PURCHASED AT THE TIME NEW EQUIPMENT IS OBTAINED BY COURT REPORTERS.

Real-Time Reporting

Greg Wallace reviewed his report to the Council on real-time reporting. After considerable discussion, it was concluded that an evaluation component needs to be developed and the issues of certification will have to be reconsidered at some time in the future. However, IT WAS MOVED, SECONDED, AND APPROVED TO PROVIDE CASEVIEW CAPABILITY TO JUDGES AND COURT REPORTERS REQUESTING IT. This will allow the project in the South Central Judicial District to move forward. Mr. Wallace will work with reporters in the South Central District to develop an evaluation component that will be considered at a future time by the Council.

Assisting Self-Represented Litigants

Ted Gladden reviewed the proposed policy that is under consideration by the supreme court. He indicated that not only the policy, but all of the forms had been distributed for comment to judges and court personnel. He suggested that this policy should be reviewed after the end of the comment period. Based on this recommendation, Council will consider this matter at a future meeting.

Juvenile Case Management

Greg Wallace reviewed the status of juvenile cases through March 30. Overall, the caseload is in good shape. He stated that the number of Indian Child Welfare Act cases is going up generally. There are no major issues to deal with at this time.

Quarterly Jury Management Report

Ted Gladden reviewed the status of the jury management report. He indicated that there is still a substantial number of cases settling on the day of trial. He requested that the presiding judges visit with judges of their respective districts on the importance of monitoring and managing the cases so that settlement can be determined prior to the day of trial to reduce this cost, whenever possible.

Mr. Gladden also indicated that he thought that an issue should go to the Jury Management Committee to develop a legislative amendment that would allow for the automatic consolidation of jury master lists between counties when the population of the county gets to a certain level. Presently, the law provides that the judge shall order that the list be consolidated and it should be a more routinized process to accomplish this.

Docket Currency Report

Mr. Gladden reviewed the status of the fall docket currency report. He indicated that cases are being processed timely, and there are no outstanding concerns. He did direct the Council to specific comments regarding changing case management procedures in the Northeast Central Judicial District and Judge Geiger's indication concerning the review of continuances by selected judges in the Northeast District.

Judicial Improvement Program

Ted Gladden indicated he would be contacting the presiding judges within a month regarding the implementation of the judicial improvement review process. The rule provides the presiding judges to designate one person in each judicial district to handle the administrative details of the judicial improvement process.

On a related matter, Judge Hagerty indicated that there has been no activity as part of the informal complaint process. The process is in place, the forms have been distributed, but there has been no activity.

There being no further business, the meeting adjourned.