

## **Council of Presiding Judges Minutes**

September 7, 2001

Bismarck, ND

**Present:**

Chief Justice Gerald W. VandeWalle  
Presiding Judges John T. Paulson,  
M. Richard Geiger,  
Allan L. Schmalenberger,  
Benny A. Graff,  
Michael O. McGuire,  
Debbie Kleven,  
and Robert W. Holte

**Guests:**

Justice Carol Ronning Kapsner

**Staff:**

Jim Ganje  
Ted Gladden  
Greg Wallace  
Carla Kolling  
Jana Thielges  
Keith E. Nelson

The meeting was called to order at 10:05 a.m. by Chief Justice Gerald W. VandeWalle. Chief Justice VandeWalle welcomed everyone and in particular Justice Carol Ronning Kapsner. **The Minutes of the June 13, 2001 were approved as presented.**

### **Judicial Education Strategic Plan**

Justice Kapsner presented an overview of the education plan. This presentation is for information only. She requested input from the judges. Chief Justice VandeWalle asked that Public Trust & Confidence Implementation Committee be briefed on the plan to insure that both groups are working together. Judge Allan L. Schmalenberger suggested the plan also be coordinated with the Case Management Committee. Judge

John T. Paulson reiterated the chief's suggestion that it is important that the plan be coordinated with the Public Trust & Confidence Committee.

### **Committee on Trial Court Operations**

Ted Gladden noted that comments were received (when out for public comment) from Judge Zane Anderson, Kay Braget and Paulette Reule. Their comments follow the draft policy in the agenda book. **After discussion on the comments, Judge Benny A. Graff moved adoption of the policy. Judge Paulson seconded the motion. The motion was carried.**

### **Clerk of Court Attendance in the Courtroom**

Ted Gladden outlined the policy that provides the framework for when clerks are to be in the courtroom. Flexibility is provided for local adaptation within a structure recognizing the need to manage scarce personnel resources. Comments follow the draft policy in the agenda book. Comments were received from Val Weaver and Judge Paulson. Val Weaver's concern is that the rule does not go far enough and that nothing will change. Judge Robert W. Holte stated that he does not feel there is a problem in this regard, generally. **Judge Graff moved adoption of the policy. The motion was seconded by Judge Schmalenberger. Motion carried.**

### **Bond Envelope**

Ted Gladden briefed on the revised bond envelope that was sent out for comment. Five comments were received. They are included following the policy in the agenda book. Judge Debbie Kleven suggested that paragraph 2 add a section that in case of conviction, the bond may be applied to amounts due. The section that provided for a block checking knowledge is recommended to be deleted. Other words were changed to clarify when and to whom the bond will be returned. **Judge Schmalenberger moved adoption with the changes as discussed. Judge McGuire seconded the motion. Motion carried.**

### **Juvenile Court Time Standards**

Greg Wallace briefed on the new time standards for juvenile court cases. Formal disposition is required within 120 days. Juvenile court standard are included within Policy 409 and in proposed amendments to AR12 - Docket Currency.. This policy provides an accountability of cases for judges and referees. **Judge Geiger moved that the standards go to the Supreme Court and that Policy 409 be forwarded to the Juvenile Policy Board for their input. Judge Paulson seconded the motion. Motion carried.**

### **Case Management of Juvenile Cases**

Policy 507 dealing with the case management of juvenile cases was next discussed. The changes proposed involve case management of juvenile cases. **Judge Paulson moved that Policy 507 be sent out for comment. Judge Geiger seconded the motion. The motion was carried.**

### **Jury Management Statistics**

Ted Gladden presented the statistics and suggested that a major problem is settlement on the day of trial after the jury has reported. While this problem is not widespread, it is occurring very often in one judicial district. Chief Justice VandeWalle stated that he believes if judges adopt a firm plea agreement cutoff and final conference just before the trial date, the local legal culture can be changed. The discussion followed on the format of reporting jury management statistics. By consensus, the group agreed that a dollar figure for jurors not used, is not necessarily a good reliable reporting criteria. It was agreed that the standard number of jurors to be called in a case would be used as the criteria for reporting excess juror usages. The size of the jury, plus peremptory challenges allowed, plus two jurors for cause will be the standard used.

### **Work Hours**

Greg Wallace reported that the question is whether people should be permitted to work over the lunch hour with no time off. Discussion followed basically that it is nonproductive for people to work eight hours straight without any breaks or lunch hour. Judge Paulson moved that staff address the issue and provide in policies, existing or new, that a half hour, at a minimum, be mandated as time off for lunch time. Staff was directed to make these changes and come back with the recommended changes next meeting.

### **Automated Telephone Systems (Trust & Confidence)**

Chief Justice VandeWalle mentioned that automatic telephone systems are very impersonal and can operate to turn off the public. Judge Graff noted that these systems are necessary with the minimum staffing that is available in most districts. To have a person answering telephones is nearly a full time occupation. Staff was directed to talk with ITD to see what alternatives there may be presented and to report to the next meeting.

### **Application Fee for Indigent Defense Services**

By consensus it was agreed that these procedures were working satisfactorily. Judge Graff suggested that a form be developed, in fact he is developing one for use by judges. No other changes were proposed.

### **Assistant State Court Administrators for the Trial Courts Report**

Greg Wallace reported that only a few secretaries were not able to attend the court recording session. A new session is being set up for them on November 20, 2001. There will also be a session set up for judicial referees. It was also the consensus of the Council of Presiding Judges that judges should receive some training in court recording and what they have to do in order to get a good record with electronic recording. This session should be set up during the Judicial Conference or during the judges conference on November 20.

Ted Gladden reported that he has scheduled a management review for the clerk of court office in Walsh County in September. Others will follow.

### **For the Good of the Order**

Judge McGuire reported on a persistent problem of child support with overpayments and thus unable to later apply these to current amounts due. After discussion, Judge McGuire stated that he would explore the problem further and contact Ted Gladden if follow up with IV-D is necessary.

Keith Nelson stated that he had received several letters hiring employees signed by people other than the presiding judge. He reminded presiding judges that they are the hiring authority, and they have the responsibility to make the decision. That is not to say that they can't receive inputs from others such as the clerk of court or juvenile court offices, but the decision and the signing should be accomplished by the presiding judge.

Judge Geiger expressed concern with a party, not of interest, in a case who is deaf and what services we owe a person in that category. Jim Ganje stated that state law requires us to provide interpreter services as provided in the ADA. Our duty is clearly prescribed.

The meeting adjourned at 1:45 p.m.

Respectfully submitted,

Keith E. Nelson

