

TRIAL COURT ADMINISTRATION

Policy 505

September 5, 2014

MANAGEMENT OF PROBATE, SUPERVISED TRUST, GUARDIANSHIP/CONSERVATORSHIP, CRIMINAL, FOSTER CARE, SPOUSAL SUPPORT, AND CASES INVOLVING CURRENT MONTHLY CHILD SUPPORT OBLIGATIONS

SECTION 1. Authority and Purpose

This policy is adopted under N.D.Sup. Ct. Admin. R. 22 and Administrative Policy 501 to provide a process for the consistent and uniform management of certain case types. Administrative closure shall not affect future judicial activity in any case.

SECTION 2. Procedures for Monitoring and Administratively Closing Probate Cases

Informal Probates

- A. The clerk of district court opens the case file.
- B. After the district judge or clerk signs appropriate letters, the case is closed by the clerk (when the personal representative's sworn statement is filed with the clerk of district court's office, the clerk does not need to reopen the case).
- C. The clerk is to reopen the case when there is a need for judicial action by a district judge.

Formal Probates and Supervised Administration

- A. The clerk of district court is to open the case with the filing of the initiating documents. If there is a request for hearing, a hearing is to be scheduled by appropriate court personnel before a judge. After the hearing has been held, and the order signed, the clerk of district court is to close the case. If the case has not been closed 90 days from filing, it shall be referred to a district judge for a determination regarding administrative closure.
- B. The clerk is to reopen a probate case when there is a need for judicial action by a district judge.

SECTION 3. Procedures for Monitoring and Administratively Closing Supervised Trusts (N.D.C.C. § 59-04-17)

- A. The clerk of district court is to open a case file after entry of an order taking

jurisdiction of the estate. The case is to be administratively closed with the filing of a verified itemized account and report.

- B. The clerk is to reopen a supervised trust case upon the filing of petition by any beneficiary or upon the courts own motion. The case is to be closed following judicial determination of the petition or motion.
- C. The clerk, using case ticklers, shall monitor the filing of annual reports as provided by law. When an annual report is filed, the report must be submitted to the assigned or designated judge. If a hearing is scheduled regarding the report, the affected case must be reopened. The case will be closed following disposition.

SECTION 4. Procedures for Monitoring and Administratively Closing Guardianships/Conservatorships (N.D.C.C. §§ 30.1-27-09, 30.1-28-12, 30.1-29-16)

- A. The clerk of district court is to open a case file with the filing of a petition for appointment of a guardian or conservator. The case is to be administratively closed with the filing of an order of the court.
- B. The clerk is to reopen a guardianship or conservatorship case upon the filing of a petition or on a motion by a party or upon the court's own motion. The case is to be closed following judicial determination of the petition or motion.
- C. The clerk, using case ticklers, shall monitor the filing of annual reports or other reports as directed by the court. When a report is filed, the report must be submitted to the assigned or designated judge. If a hearing is scheduled regarding the report, the affected case must be reopened. The case will be closed following disposition.

SECTION 5. Deferred Impositions of Sentence - Misdemeanors and Infractions (N.D.R.Crim.P. 32.1)

Effective March 1, 1999, for all misdemeanor and infractions disposed of:

- A. When a judge defers the imposition of sentence, monitor the case on the date the deferred sentence is to end. On that date, the clerk of court will send a case management report to the state's attorney.
- B. If the state's attorney does not file a motion with the court within 61 days or indicates all conditions have been met, the case is to be dismissed and the record sealed. The

state's attorney has 61 days from the end of deferral to file a motion with the court if a dismissal should not be entered.

- C. Notice of the dismissal should be provided to the state's attorney's office for updating their records and submission to the Bureau of Criminal Investigation. If the conditions have not been met, the case should be set for hearing by the district court. The defendant does not have to be notified of the action taken.

SECTION 6. Procedures for the Transfer of Criminal Cases from the County for Plea and Sentence (N.D.R.Crim.P. 20)

A defendant arrested, held, or present in any county other than that in which the indictment, information, or complaint is pending against the defendant, may state in writing the intention to plead guilty, to waive trial in the county in which the indictment, information, or complaint is pending and to consent to disposition of the case in the county in which the defendant was arrested, held, or present subject to the approval of the prosecuting attorney.

County transferring case:

1. Upon written approval of the prosecuting attorney, the clerk shall transmit the papers in the proceeding, or certified copies thereof, to the clerk of court for the county in which the defendant is held or present. The prosecution continues in that county.
2. The clerk shall close the case with the Rule 20 transfer. Indicate "Rule 20, Transfer to _____ County" and close the case with the transfer to another county.
3. If the defendant subsequently enters a not guilty plea, the county that received the transfer must return the case. The case will be reopened and processed in the originating county.

County receiving Rule 20 transfer:

1. Upon receipt of the criminal case, the receiving clerk shall open a new case, in the same manner as it was received, and process the case with the companion cases.
2. If the defendant enters a guilty plea, the case shall be processed and disposed of in the receiving county.
3. If the defendant enters a not guilty plea, the case shall be closed as a Rule 20 transfer and returned to the originating county for disposition.

SECTION 7. Case Management Procedures for Foster Care Rising Out of Juvenile Proceedings

The purpose of this section is to provide a procedure for cases initiated as juvenile proceedings wherein subsequent actions are brought for payment of foster care by the custodian.

If an action is brought for payment of foster care, as a result of a juvenile proceeding, the case should not be opened based on a 3.2 Motion. Rather, a new civil case should be created for the foster care proceeding.

SECTION 8. Procedures for Monitoring and Enforcing Spousal Support Cases

- A. If the order provides for payment of spousal support, and the payment is to a spouse or former spouse who resides with a child for whom child support has been ordered, the spousal support should be enforced like a child support case under N.D.C.C. ch. 14-09. See, e.g., N.D.C.C. § 14-09-09.10(3).
- B. A payment for interim spousal support is to be paid through the State Disbursement Unit as provided in N.D.R.Ct. 8.2 (c).
- C. If the permanent order provides that spousal support **only** is to be paid, it should be treated as any other civil order unless there is specific language in the order of the court indicating the case is to be paid through the State Disbursement Unit, enforced through income withholding, or otherwise enforced like a child support order. If spousal support **only** is ordered by the court to be paid through the State Disbursement Unit or enforced like a child support order, the obligation is subject to immediate income withholding unless the court specifies otherwise under N.D.C.C § 14-09-09.24.

SECTION 9. Procedures for the Termination of Current Child Support Obligations

This section provides a procedure for termination of a current child support obligation when the basis for the ongoing monthly obligation no longer exists. This procedure does not affect cases in which child support arrears are owed. Unless Section 10 also applies, child support arrears will continue to be enforced. If the conditions in the following paragraphs are satisfied, the clerk will close the case administratively and discontinue enforcement of the current monthly support obligation.

- A. Adoption of Minor Child or Termination of Parental Rights - Court Order.

Unless otherwise specified by the court in its order to terminate an obligor's parental rights toward a child, a termination of parental rights does not terminate the obligor's current child support obligation until the child is adopted. N.D.C.C. § 14-09-08.21. The adoption of the child following a termination of parental rights terminates the obligor's current support obligation. A certified copy of the adoption decree and the order terminating parental rights must be maintained as confidential documents within the court record.

B. Majority of Child.

Unless otherwise specified by court order, the current child support obligation will terminate when the minor child turns age 18 or, if the Affidavit of Custodial Parent (SFN 16837) has been filed, when the minor child graduates from high school or turns age 19, whichever occurs first. If the child support obligation is terminated when the minor child turns age 18 but the Affidavit of Custodial Parent is later timely filed in accordance with N.D.C.C. § 14-09-08.2(5), the current child support obligation must resume.

C. Marriage of Parties.

When parties involved in a support order remarry each other, the remarriage terminates the current child support obligation. A certified copy of the marriage license must be filed with the support order. When parties involved in a paternity and support order marry each other, the marriage terminates the current child support obligation. A certified copy of the marriage license must be filed with the support order.

D. Duplicate Child Support Orders Involving Same Parties.

A divorce order takes precedence over a prior established support order. The filing of a certified copy of the divorce order containing a provision for current child support terminates the current child support obligation in the prior established support order.

E. Death of Minor Child.

The death of a minor child covered by a per-child support order terminates the current child support obligation for that child. The death of the only, or only remaining, minor child in a per-family support order terminates the current child support obligation. A certified copy of the death certificate of the minor child must

be filed with the support order.

F. Death of Obligor.

Unless otherwise specified by court order, the current child support obligation will terminate upon the obligor's death. When available, documentation of the obligor's death must be filed with the support order.

G. Registration and Modification of a North Dakota Order in Another State Pursuant to the Uniform Interstate Family Support Act (UIFSA).

Registration and modification of a North Dakota child support order in an other state pursuant to the Uniform Interstate Family Support Act (UIFSA) terminates the current child support obligation on the North Dakota order. Whenever possible, a certified copy of the modified child support order obtained from the other state must be filed with the North Dakota support order.

H. Closure by the Child Support Enforcement (IV-D) Program of an Incoming Interstate Referral Case Where Another State's Order Has Been Registered in North Dakota for Enforcement Only.

When another state's child support order has been registered in North Dakota for enforcement only pursuant to an incoming interstate referral to the Child Support Enforcement (IV-D) program, the current child support obligation may be terminated upon receiving notice from the IV-D program that the incoming interstate referral case has been closed.

I. Award of Primary Residential Responsibility

Unless otherwise specified by court order, the current monthly support obligation terminates when the obligor of the current support obligation has been awarded primary residential responsibility of the child or children on whose behalf the obligation is owed. This paragraph applies whether primary residential responsibility has been changed in the same civil file or a separate civil file, even if venue is a different county, as long as each order has been issued by a North Dakota court. If primary residential responsibility is changed in a separate civil file, a certified copy of the order awarding primary residential responsibility to the obligor must be filed with the prior established support order.

SECTION 10. Criteria for Designating Child Support Arrears as Uncollectible

This section provides criteria for designating certain child support arrears as uncollectible.

These arrears are not canceled or discharged. This section is intended to recognize that certain arrears, for practical purposes, are not am enable to enforcement tools and that, accordingly, limited resources can be better directed to the enforcement of other arrears.

Arrears of Deceased Obligor.

The arrears of deceased obligor may be designated as uncollectible if the current child support obligation has been terminated and any probate of the obligor's estate that had been opened in North Dakota has been closed.

Approved by Council of Presiding Judges 04/21/04; amended by the Administrative Council effective 09/05/14

TRUST, GUARDIANSHIP/CONSERVATORSHIP WORKSHEET

Case #: _____

Are future Reports/Accountings to be filed with
the Clerk of District Court?

Yes No

If Yes

Annual Report
Other Time Period
Frequency: _____

Date of Order

Judge Name