Southwest Judicial District

Caseflow Plan and Policies

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Southwest Case Management Plan and Goals

This plan is adopted to efficiently manage and distribute the caseload in the Southwest Judicial District. The plan recognizes the importance of differentiated case management in the timely disposition of cases under Administrative Rule 12. Court sessions will be scheduled regularly in each county through a system of master calendar and individual calendar scheduling. Administrative Order 2002-1 establishing this system is included in the appendix on page 20.

Requests for case management, calendar, or policy changes should be directed to the court administrator for consideration at monthly judges meetings.

Administrative Rule 2 Compliance

Acting Presiding Judge

Presiding Judge William Herauf, elected under Administrative Rule 2, has issued an administrative order providing who shall be the acting presiding judge during the absence from the district or incapacity of the presiding judge. Administrative Order 2013-3 can be found in the appendix on page 23.

Assignment of Judges

Criminal misdemeanor cases will be assigned to the judge on master calendar when a not guilty plea is entered at the initial appearance. Felony cases will be assigned on rotation after arraignment. Civil and domestic relations cases will be randomly assigned. Formal probate cases will be randomly assigned.

Demands for Change of Judge

Demands for change of judge must be made within ten days in accordance with NDCC 29-15-21 and will be managed by the calendar control clerk. If the demand for a change of judge is made against the presiding judge, the demand will be forwarded to the judge who would be acting presiding judge if the presiding judge were absent.

Case Management Practices, Policies, and Orders

Scheduling Practices and Calendar Structure

Hearings and trials will be scheduled in a manner that minimizes delay and reduces the possibility of continuance of scheduled events. The court will control cases from initiation through post-disposition proceedings.

Clerks of court will schedule routine matters on the master calendar. The calendar control clerk will schedule trials, motion hearings, revocations of probation, and sentencing hearings.

The four judges in the Southwest Judicial District will manage all case types. Their duties will follow a five week rotation which includes:

One master calendar week
One criminal trial week
One civil trial week
One miscellaneous week for pretrial hearings and rural master calendar
One shuffle week in which judges share master calendar and trial duties

Master Calendar Weeks

Four District Judges work primarily from Stark County and rotate to all 8 county seats on an equal basis. Rural counties hold master calendar once per month. The judge in their miscellaneous week travels to the counties whose master calendar is on Thursday of their miscellaneous week. The schedule includes:

- The first Thursday in Adams and Hettinger Counties
- The second Thursday in Bowman and Slope Counties
- The third Thursday in Dunn County
- The fourth Thursday in Billings and Golden Valley Counties

Criminal Trial Weeks

Criminal motions, pretrials, and trials are managed in each judge's criminal weeks. Pretrials are scheduled into each judge's criminal week 16 weeks after the initial appearance. Trials are stacked into the judge's next criminal week with a date certain provided to parties the week of trial.

Civil Trial Weeks

Civil motions, pretrials, and trials are managed in each judge's civil week.

Continuance Policy

The court will adhere to N.D.R.Ct. 6.1 when determining if a continuance will be granted. Continuance requests must include names/case numbers of conflict cases and provide alternate dates and times within Administrative Rule 12. Administrative Order 2013-1 relating to continuances is included in the appendix on page 24.

Hearing Management

Block scheduling

Block scheduling will be utilized on master calendar for initial appearances, bond hearings, failure-to-comply hearings, felony preliminary hearings, juvenile initial appearances and pretrials, child support orders to show cause, formal probates, evictions, protection orders, and traffic hearings.

Initial appearances

Initial appearance dates in Stark County will be issued by the arresting officer who will set them for the 2nd Wednesday following arrest. Initial appearances in the rural counties will be block scheduled on the appropriate Thursday for master calendar in each county.

Pretrial conferences
Criminal pretrial conferences will be block scheduled on Tuesdays during each judge's miscellaneous trial week.

Motion hearings
Motion hearings will be scheduled on the assigned judge's individual calendar during the judge's civil or criminal weeks.

Revocation of probation hearings
Revocation hearings will include an initial appearance before the master calendar judge. Revocations will be set with the sentencing judge during that judge's criminal trial weeks.

Sentencing hearings
Sentencing hearings will be set during the assigned judge's criminal trial weeks.

Interim Order hearings
Interim Order hearings will be set with the assigned judge during that judge's master calendar week if possible.

Post-conviction relief hearings
Post-conviction relief matters will be filed as a civil matter and assigned to the judge who was assigned to the underlying criminal matter.

Trial Scheduling and Management

Criminal trial dates will be provided to litigants in the courtroom according to the schedule on file with the calendar control clerk. Pretrials will be set 16 weeks after initial appearance and trials will be set 19 weeks after initial appearance.

Civil trial dates will be set by the calendar control clerk after a judge is assigned and a scheduling order is filed.

Juvenile trial dates are provided to the parties along with initial appearance and pretrial dates.

Differentiated Case Management

Management techniques will be tailored to the requirements of individual cases and their unique demands on judicial resources using as little time and resources as possible.

Cases where judicial continuity is not essential and the amount of judge time involved is relatively short will be handled by the master calendar judge. Cases that require judicial continuity will be assigned to individual calendars.

A copy of the order establishing which case types will be scheduled on individual and master calendars is included in the appendix on page 20.

Criminal Case Related Procedures

Bonds / Bond Schedule

The judges of the Southwest Judicial District have established a schedule of bond amounts for various levels of crimes. Persons who meet conditions for release will be scheduled to appear before the court on the master calendar. Administrative Order 2011-1 can be found in the appendix on page 25. Persons who do not meet the conditions or who cannot post the scheduled bond will be brought before the master calendar judge without unnecessary delay. Interactive Television is utilized to facilitate bond hearings.

Bond review hearings will be scheduled with the master calendar judge if the request is filed within the first 14 days. Bond review requests filed after 14 days will be set with the assigned judge on their individual calendar. Bond review requests for cases in which no bond was allowed must follow motion procedures.

Bonds will generally be applied to fines and fees unless otherwise ordered in the Court's judgment. Administrative Order 2009-2 can be found in the appendix on page 28.

Notification of Rights and Acknowledgement

A standard form outlining a defendant's rights is presented to each defendant in a criminal case. A copy of the form is included in the appendix on page 29.

24 / 7 Sobriety Program

The judges of the Southwest Judicial District will order defendants to participate in 24/7 testing for offenses outlined in the statute. An Order on Failure to Comply with the 24/7 Sobriety Program was entered to outline procedures to be followed when a defendant fails a test, fails to appear for a test. An order was also entered to outline procedures to be followed when a juvenile is ordered to participate in 24/7 and they fail to comply with the program. Copies of the orders can be found in the appendix on page 31 and 32.

Collection of Fines and Fees

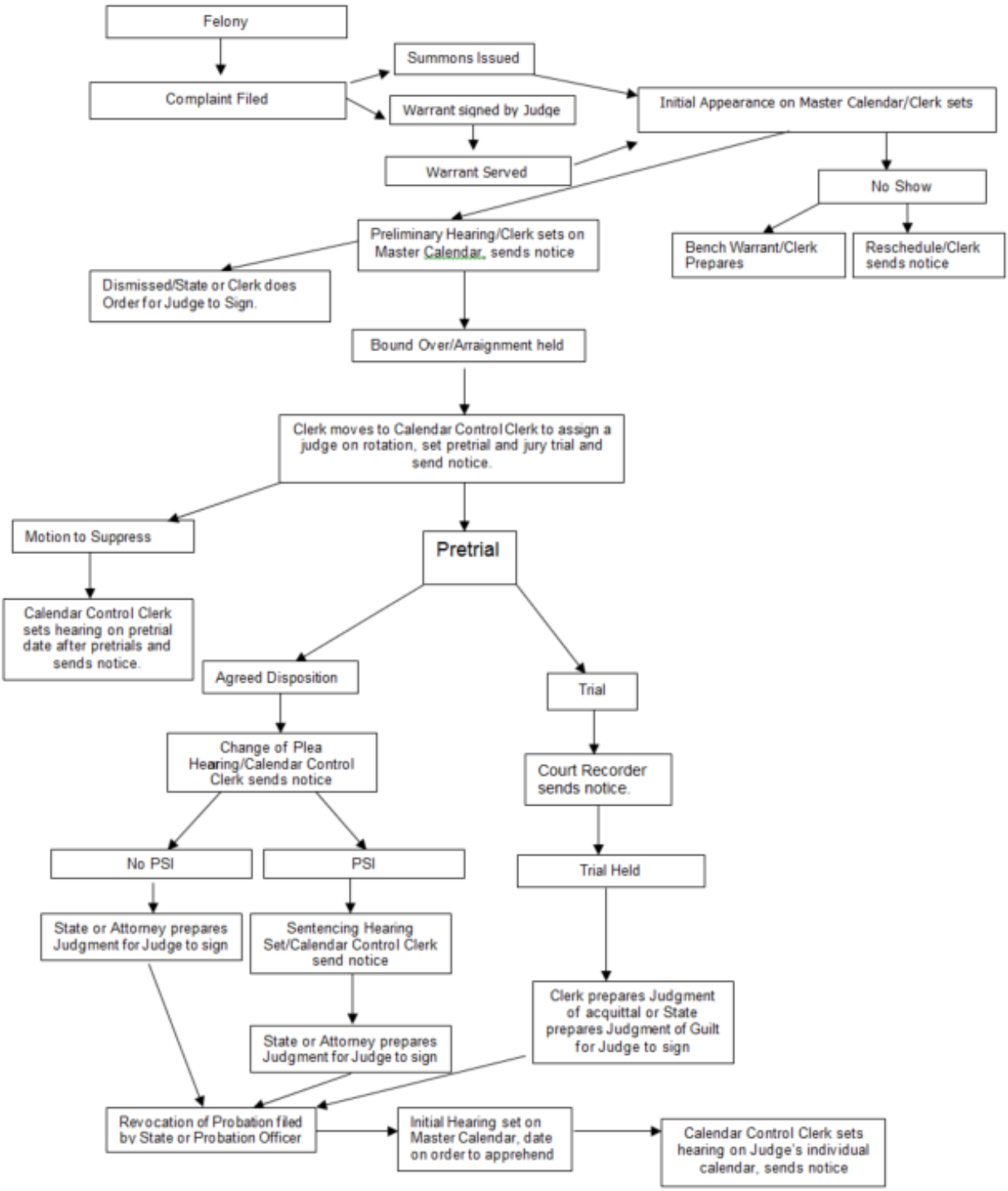
Defendants are informed that fines and fees are due at the close of business on the day they are assessed. Clerks have been given authority to establish payment plans and to propose warrants be issued for cases in which a party fails to comply with the plan. A copy of the order regarding the clerk's authority in this regard can be found in the appendix on page 33.

Failures to Comply

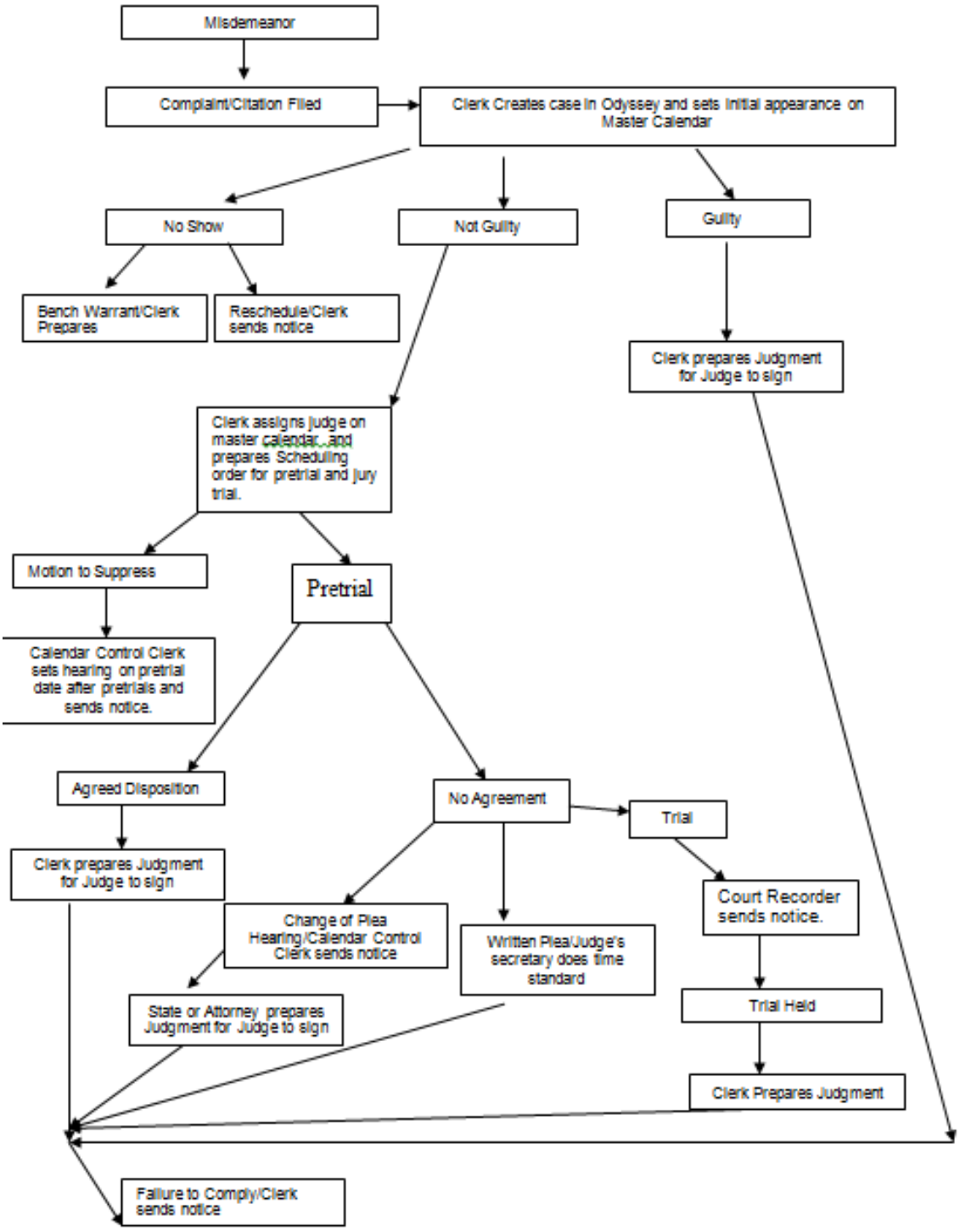
Defendants who fail to comply with terms of their sentence will be scheduled for an order to show cause hearing. Clerks will cancel the hearing if defendants satisfy the condition prior to the hearing. Warrants will be issued if defendants fail to appear for the hearing.

Felony, Misdemeanor, and Infraction case processing flow charts follow.

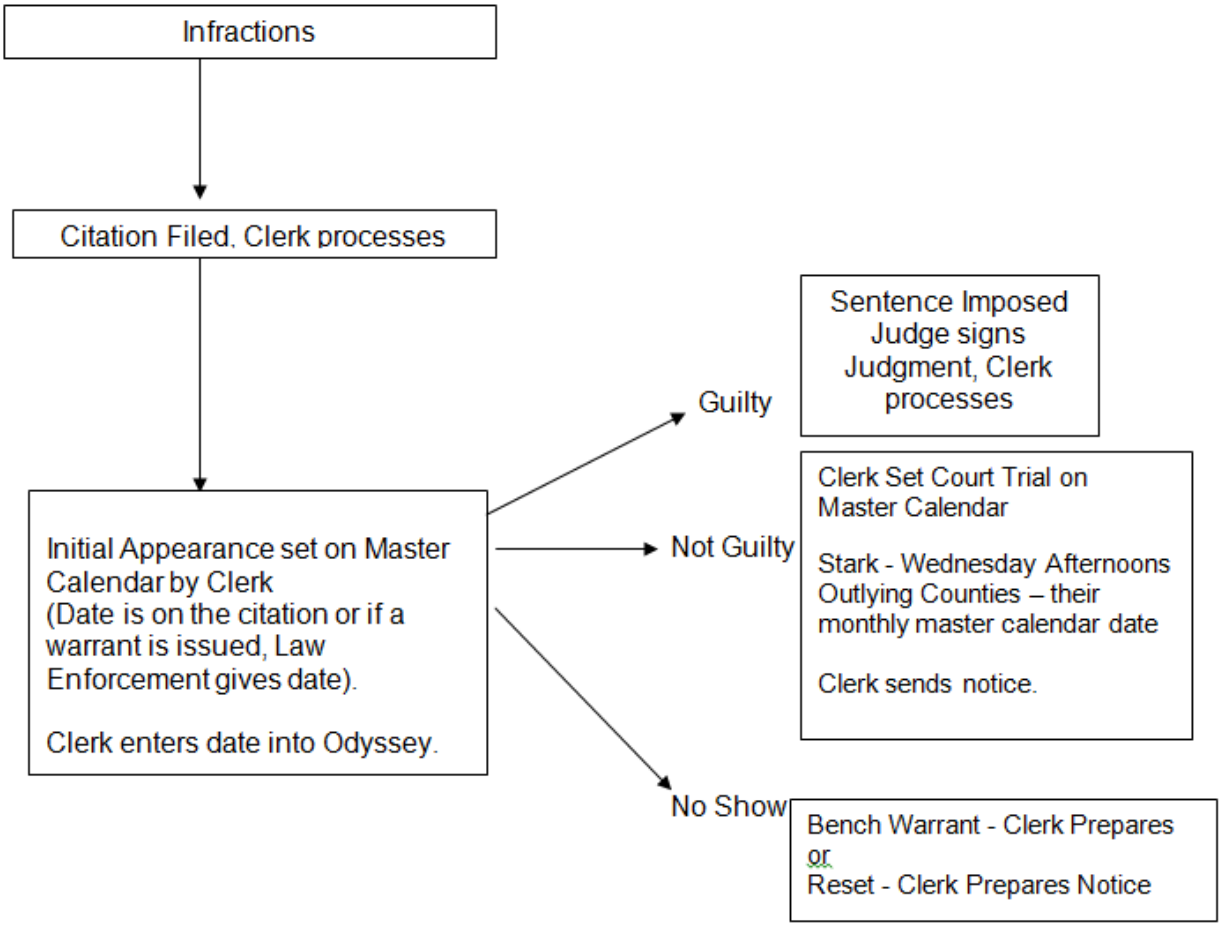
SWJD Felony Case Disposition



SWJD Misdemeanor Case Disposition



SWJD Infraction Disposition Chart



Civil, Domestic, and Small Claims Case Related Procedures

Civil and domestic relations cases requiring judicial continuity will be randomly assigned at case initiation.

Civil cases where judicial continuity is not essential and the amount of judge time involved is relatively short will be handled by the master calendar judge. These matters include evictions, adoptions, small claims cases, child support orders to show cause, and protection order cases.

Interim Orders

Interim order hearings will be set on Monday mornings during an assigned judge's master calendar week.

Pretrial Conferences / Scheduling Orders

The court may direct the attorneys and parties to appear in court for purposes of expediting disposition of the action, facilitating settlement of the case, disposing of pending motions, enforcing discovery deadlines, and establishing continuing control under N.D.R.Civ.P. 16. An administrative order requiring pretrial conferences is included in the appendix on page 34.

Mediation

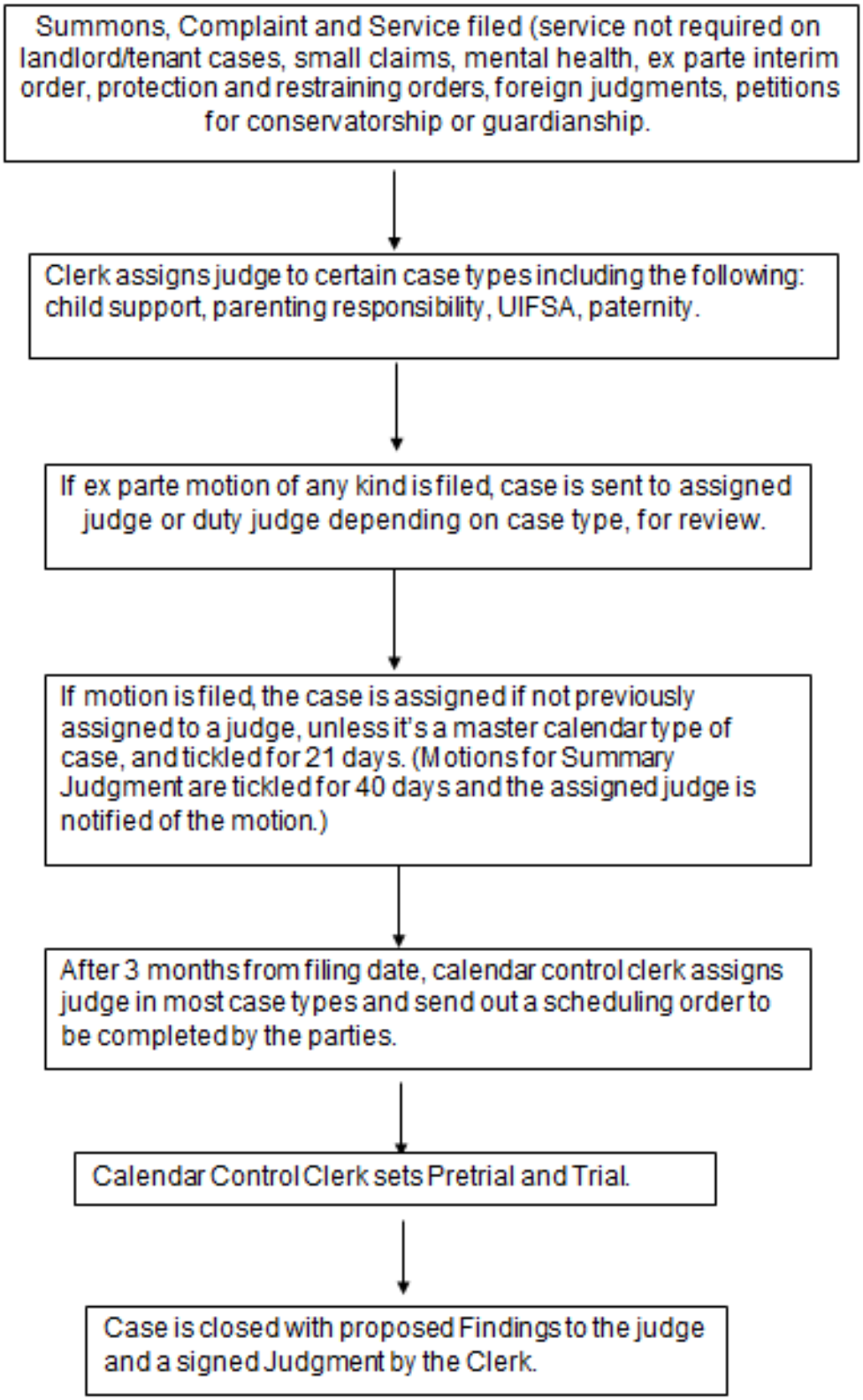
Any case which involves a primary residential responsibility or parenting time dispute will be referred for mediation pursuant to Supreme Court Administrative Order 17.

Alternative Dispute Resolution

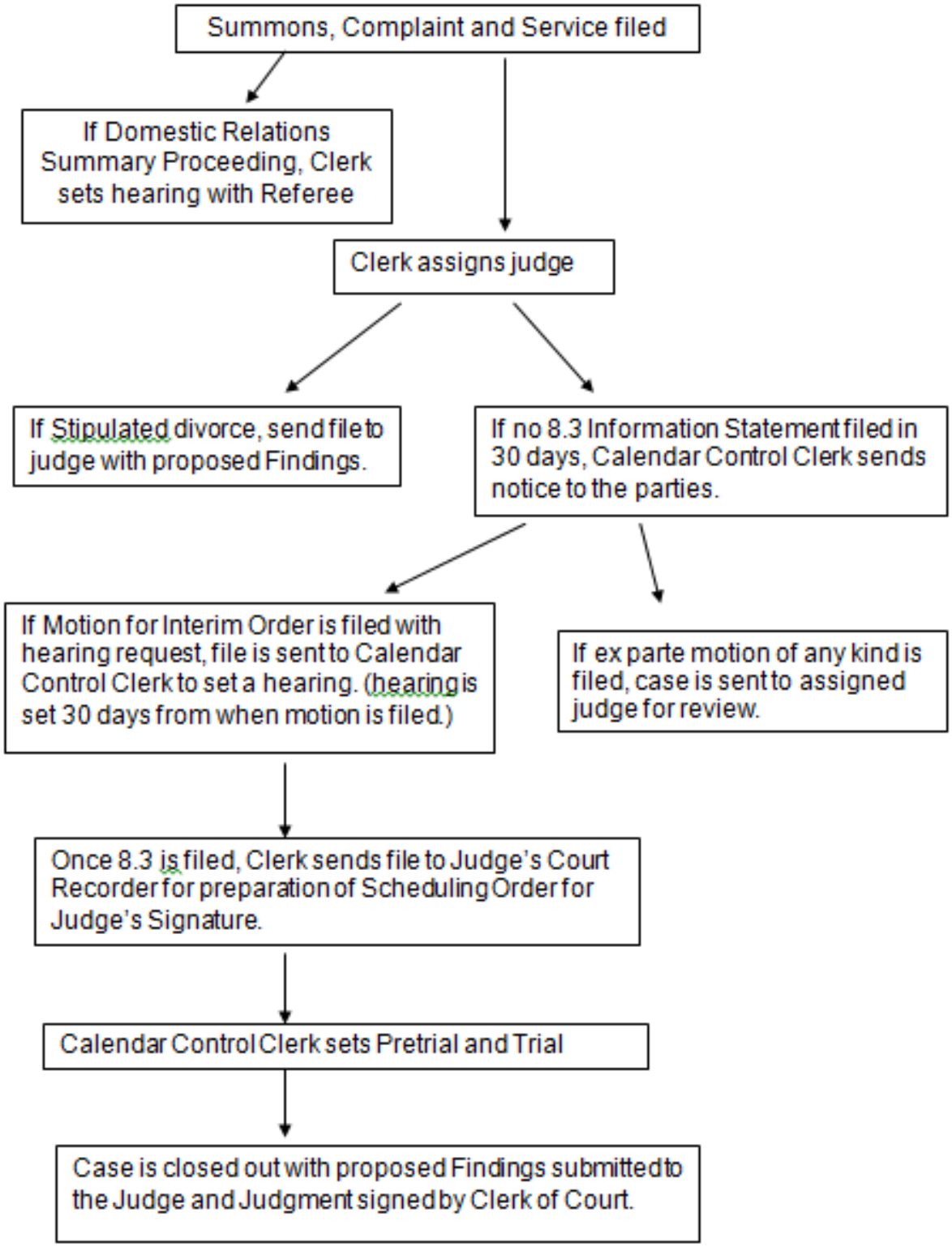
Parties to civil suits will be encouraged to participate in Alternative Dispute Resolution outlined in N.D.R.Ct. 8.8.

Civil, Divorce, and Small Claims case processing practices follow.

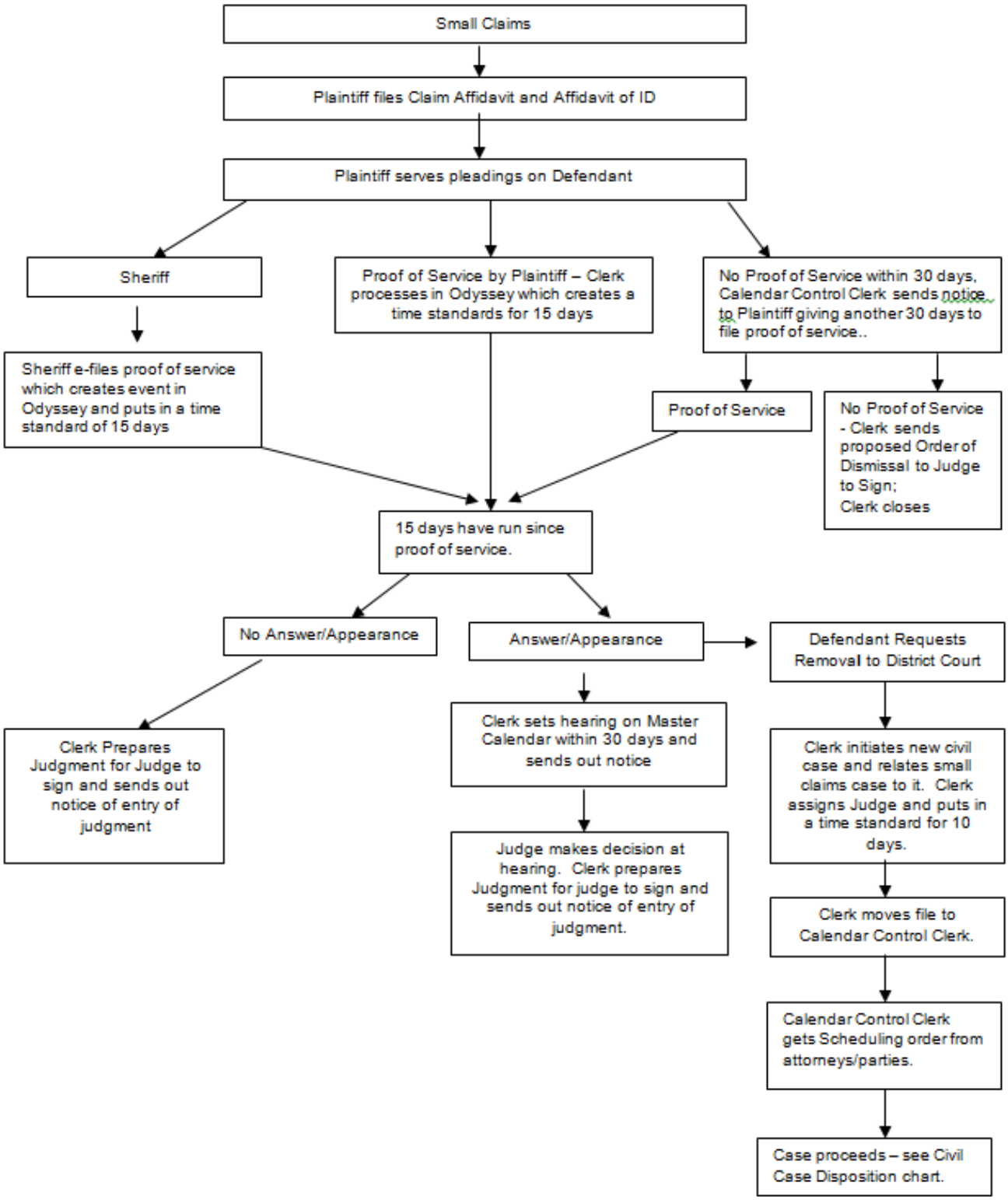
Civil Case Disposition Chart



Divorce Case Disposition Chart



SWJD Small Claims Case Disposition



Juvenile Case Processing

Juvenile cases will be evaluated at intake, as sent out in the Juvenile Best Practice Manual, to determine whether the case will be managed formally or informally.

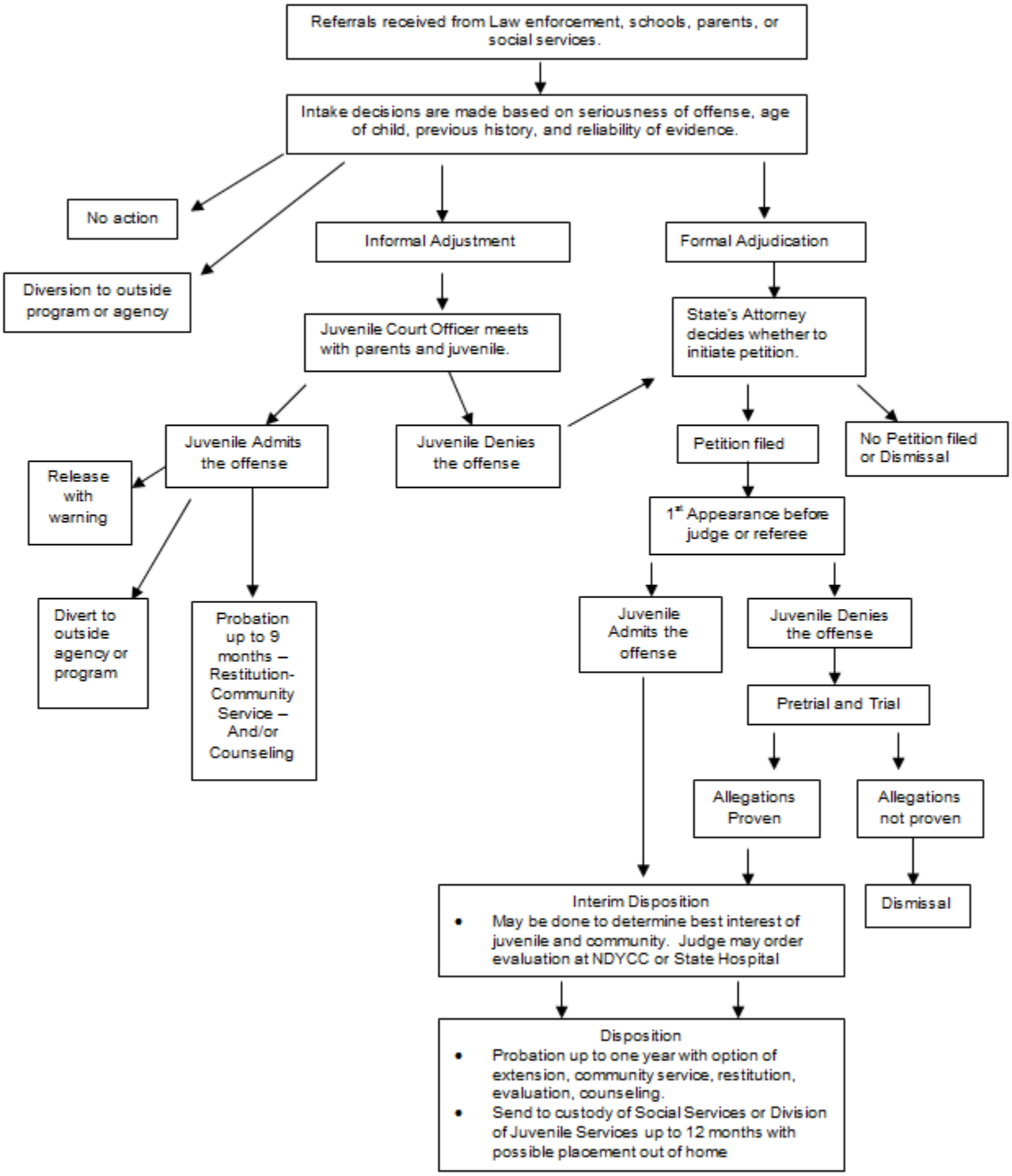
Informal cases (delinquent and unruly) are managed internally by juvenile court staff. Formal juvenile cases (delinquent, unruly, and deprivation) are referred to the state's attorney for possible filing of a petition. These cases are then set for appearance and disposition before a judge or judicial referee on a time frame set out in N.D.C.C. 27-20, Juvenile Court Rules, and Supreme Court Policy 409.

Permanency hearings are held within 12 months of the child's removal from the home or entry to foster care and every 12 months thereafter until the child returns home or the adoption is finalized.

Emergency hearings, when needed, are scheduled with the master calendar judge.

Juvenile case processing practices follow.

SWJD Juvenile Case Disposition



Magistrates

Clerks in the district have been appointed as magistrates to perform magistrate duties related to probate matters and approving complaints in NSF check cases. A copy of Administrative order 2011-3 is included in the appendix on page 36.

An administrative order was entered appointing a magistrate who can issue search warrants, approve complaints, hold initial appearances, set bail, and conduct preliminary mental health matters when the judges in the district are unavailable. A copy of the Order Appointing Magistrate can be found in the appendix on page 37.

Court Security

Security is the responsibility of the sheriff in each county. If arrangements for additional security are necessary, the sheriff will be notified on a case by case basis.

Telephonic appearances

Telephonic appearances are allowed at the discretion of the judge; the policy for Court Appearance by Telephone is included in the appendix on page 38.

Interactive Television

Interactive Television is available in Stark, Adams, Bowman, Hettinger, and Dunn Counties. The sites will be used to communicate with correctional facilities, institutions, and other courts. Appearances by interactive television will be managed in accordance with Administrative Rule 52.

Interpreters

Interpreters will be hired and signage will be available in accordance with the Limited English Proficiency Plan under Trial Court Administration Policy 522. A telephonic interpretation service may be used for hearings that are relatively short in length. In-person interpreters will be hired for trials and for hearings longer than one hour. The Notification of Rights and Acknowledgement form has been translated into Spanish. A copy of that form can be found in the appendix on page 30.

Media Policy

Media coverage of courtroom proceedings is governed by Administrative Rule 21. Media representatives who provide media coverage outside the courtrooms must comply with the media policy included in the appendix on page 41.

Animals in Court

Animals may be allowed in a courtroom but only after a motion for accommodation is made to the judge presiding over the proceeding. The policy can be found on p. 36.

Indigent Defense

Defendants who request court appointed attorneys will complete an application for counsel. Clerks will approve/deny the applications following the guideline set forth by the Commission on Legal Counsel for Indigents. Applications requiring further review will be forwarded to a judge.

Jury Management

Juries will be managed through the use of the automated jury management program to comply with guidelines provided by the Administrative Office of the Courts (AOC).

Juror utilization

Jurors will be summoned according to the jury standards issued by the State Court Administrator for each trial unless the clerk is advised by the assigned judge that a greater number of jurors will be needed.

Juror excusal

Clerks may defer jurors to a different date if the juror has a conflict with the date for which they were originally summoned.

Bailiffs

Bailiffs will be trained in accordance with N.D.Sup.Ct.Admin.R. 29. One or two bailiffs will manage six person juries and two bailiffs will manage nine and twelve person juries.

Clerk attendance in the Courtroom

Clerks will be present in the courtroom throughout voir dire. Clerks will not be present throughout the remainder of a jury trial unless requested by the judge.

Monitoring Systems

Court personnel will monitor all cases to ensure that no case exists for which a future action or review date has not been scheduled. The court will manage all cases to monitor case progress and comply with docket currency standards identified in Administrative Rule 12 and Judicial System Policy 507.
Court personnel will utilize time standard reports and docket currency reports to identify cases which require additional attention.

Appendices

Administrative Order 2002-1 Establishing case assignment plan

STATE OF NORTH DAKOTA
IN DISTRICT COURT
SOUTHWEST JUDICIAL DISTRICT

ADMINISTRATIVE ORDER 2002-1

The Presiding Judge of the Southwest Judicial District hereby establishes an assignment plan for the Southwest Judicial District. The type of case and hearing will determine if it is placed on the master or individual calendar. On the master calendar, the Clerks of the District Court will routinely schedule; and on the individual calendar, the District Court Administrator will routinely schedule.

Any matter submitted to a judge as part of the master calendar will not be considered an event prohibiting the subsequent filing of a demand for change of judge if that case is thereafter assigned to that judge.

MASTER CALENDAR

The following matters will routinely be scheduled on the master calendar:

1. Administrative traffic.
2. Adult abuse.
3. Disorderly conduct restraining orders.
4. Child support enforcement proceedings if the assigned judge is unavailable.
5. Civil defaults if not otherwise assigned.
6. Criminal summons, warrants, and complaints.
7. Eviction.
8. N.D.R.Crim.P. 5 initial appearances.

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9. Infractions, if not assigned.

10. Mental health.

11. Name changes.

12. Hearings for non-compliance with court-ordered payments, community service, or other conditions in any misdemeanor case.

13. Preliminary hearings/arraignments.

14. Search warrants.

15. Sentencing modifications in misdemeanor cases assigned to other judges. If a defendant appears before a master calendar judge for setting the conditions of release, violating conditions of probation, order to show cause, pretrial, or initial appearance in any criminal case, the master calendar judge may modify any previously entered misdemeanor judgment, or accept pleas or negotiated agreements on any other misdemeanor case involving the same defendant as is necessary to promote a fair and expeditious disposition of the case or cases on the master calendar.

16. Small claims.

17. Routine and uncontested probate, guardianship, conservatorships, and trust proceedings.

18. Uncontested adoptions.

19. Other emergency matters if the assigned judge is unavailable.

Master Calendar Schedule and Assignments

The procedure for the master calendar schedule and assignments will be set by the Trial Court Administrator and presiding judge after consulting with the judges of the district.

INDIVIDUAL CALENDAR

The following matters will routinely be scheduled on the judge's individual calendar:

1. Domestic relations cases.

2. Contested civil litigation.

3. Proceedings under the Uniform Juvenile Court Act.

4. Extraordinary writs, injunctions, and claim and delivery actions.

5. Contested or complex guardianships or conservatorships.

6. Contested probates.

7. Felony cases after arraignment.

8. Misdemeanor trials.

9. If a defendant is subject to supervised probation, any hearing to modify or revoke the probation.

10. Sentencing - if a defendant enters a guilty plea before the master calendar judge and the case is not concluded by that master calendar judge, or a presentence investigation is ordered, the case will be assigned to that judge and sentencing scheduled on the judge's individual calendar.

11. Any motions for modification of a sentence.

12. Any other matter assigned to an individual judge.

Individual Calendar and Assignments

All the judges will be assigned throughout the district as is necessary to assure an equitable distribution of the caseload and to promote a fair, expeditious disposition of all cases in compliance with the docket currency standards. Utilizing the district's assignment plan, the Trial Court Administrator shall assign the cases among the judges of the district and notify them of all cases assigned to them.

In addition, the Trial Court Administrator shall be responsible for scheduling, indigent defendant counsel services, budget preparation and administration, court case management, court facilities, personnel administration, jury management, and court records management for all courts within the judicial district.

Dated: September 23, 2002.

Allan Schmalenberger
Presiding District Judge

Administrative Order 2018-1 Designating acting presiding judge

IN DISTRICT COURT
SOUTHWEST JUDICIAL DISTRICT
STATE OF NORTH DAKOTA

ADMINISTRATIVE ORDER 2018-1

Supreme Court Administrative Rule 2, Section 6, provides for the presiding judge to designate a judge of the district as acting presiding judge when the presiding judge is not within the judicial district or when the office of presiding judge is vacant for 40 days or less.

THEREFORE, IT IS HEREBY ORDERED, the Hon. Dann Greenwood and Hon. Rhonda R. Ehlis, in the order listed, is the acting presiding judge during the absence from the district or incapacity of the presiding judge or the acting presiding judge.

Dated: April 16, 2018.

William Herauf
Presiding District Judge

Administrative Order 2013-1 Continuances

IN DISTRICT COURT
SOUTHWEST JUDICIAL DISTRICT
STATE OF NORTH DAKOTA

ADMINISTRATIVE ORDER 2013-1

The Presiding Judge of the Southwest Judicial District does hereby order that all requests for continuances shall be in accordance with as follows:

1. All continuances must be requested pursuant to Rule 6.1 of the North Dakota Rules of Court.

2. If a continuance is requested as the attorney is "engaged in another trial or hearing," the request must specifically state by name and case number the trial or hearing to which the attorney is engaged and the date under which the attorney was notified of the other trial or hearing.

3. All other continuances based upon "good cause shown" must specifically state the "good cause" in an affidavit.

4. All requests for continuances must state that the attorney has consulted with the attorney for the other side as well as the Calendaring Clerk to secure an alternate date and time for the trial or hearing that would be consistent with Administrative Rule 12 entitled North Dakota Docket Currency Standards for District Courts.

Dated this 10 day of Sept, 2013

William A. Herauf
Presiding District Judge

Administrative Order 2011-1 Bond Schedule

SOUTHWEST JUDICIAL DISTRICT
ADMINISTRATIVE ORDER 2011-1

The presiding judge of the Southwest Judicial District DOES HEREBY ORDER AND AUTHORIZE the Southwest Judicial District Clerks of the District Court; Southwest Judicial District County Sheriffs; North Dakota Highway Patrol; North Dakota Game Wardens; and Administrators of the Southwest Multi-County Correctional Center, and Adams County Jail for offenses occurring within their respective jurisdictions within the Southwest Judicial District, to arrange, receive, and approve bond after the arrested person has been processed on the offense according to their established procedures and in accordance with this Administrative Order.

UNIFORM TRAFFIC COMPLAINT AND SUMMONS

A. Whenever the arresting officer utilizes a uniform traffic complaint and summons for offenses authorized by N.D.C.C. §29-05-31, the arresting officer may release the defendant on the defendant's promise to appear unless the arresting officer determines that such release will not reasonably assure the appearance of the person, or such release will pose a danger to any person or the community.

B. If the arresting officer determines that such release will not reasonably assure the appearance of the person, or such release will pose a danger to any person or the community, persons charged on a uniform traffic complaint and summons may post bond in accordance with the following schedule:

1. Class A Misdemeanor: $400.00
2. Class B Misdemeanor: $300.00
3. Infractions: $200.00

C. If the arresting officer requires the posting of bond bail, the officer must advise the accused that:

1. The accused is entitled to have conditions of release set by a magistrate;
2. The conditions of release will be set by the magistrate upon the consideration of the factors set forth in N.D.R.Crim. 46 which includes the accused's past record; of appearance, community and family ties, employment and the offense charged;
3. The accused will be presented to the magistrate without unnecessary delay after these advices are given;
4. The accused may waive his right to such a release hearing by posting the bond bail in the amount set by this schedule. However, the arresting officer, upon good

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cause, may require the accused to appear before a magistrate without unnecessary delay for the setting of pretrial release conditions.

CONDITIONS OF RELEASE

A. In order to be released, all persons must sign an undertaking and promise to appear in District Court on the next regularly scheduled hearing date for that county. And the bail bond undertaking envelope used by this district must be completed with all the requested information completed.

B. All bond received shall be transferred to the appropriate Clerk by the close of the first business day following receipt of the bond.

C. In the discretion of the Clerk, bonds may be posted in cash, certified check, money order, or personal check, and a receipt shall be issued by the agency or Clerk accepting such bond.

D. Receipts issued for bond shall be issued in at least three (3) copies:

1. Original to person posting the bond,
2. Copy to issuing agency, and
3. Copy to Clerk of Court.

E. Persons herein authorized to receive bond may authorize their deputies to act in their stead.

ARREST WITHOUT WARRANT AND PERSONS NOT RELEASED

If an arrested person is unable to post the appropriate bond or does not meet the conditions for utilizing a uniform traffic complaint and summons, the following procedure is to be followed:

1. The arresting officer will notify the State's Attorney of the county which the alleged offense occurred.

2. The State's Attorney will determine whether the person should be released with or without a promise to appear. If the State's Attorney determines the person should be released, the arrested person shall be released without any further Court order.

3. If the State's Attorney decides a complaint and warrant needs to be issued or the arrested person needs to be brought before the nearest available magistrate, the State's Attorney will contact the magistrate and make the

necessary arrangements to comply with N.D.R.Crim.P. 5.

ARREST WITH A WARRANT

If a person is arrested on a warrant and the warrant has endorsed upon it the amount of bail recommended or acceptable, the above-enumerated individuals are authorized to arrange, receive, and approve bond in compliance with those conditions after they have processed the arrested person on the offense according to their established procedures. In receiving such bond, they shall also comply with the conditions of release set forth in this Administrative Order.

If the warrant does not set conditions of release or the arrested person is unable to meet the conditions, the officer or other person making the arrest shall comply with N.D.R.Crim.P. Rule 5 and take the arrested person without unnecessary delay before the nearest available magistrate.

GAME AND FISH VIOLATIONS

Game wardens or law enforcement personnel are authorized to release those cited in accordance with the North Dakota Game & Fish Bond Schedule.

MOTOR CARRIER SAFETY, HAZARDOUS MATERIALS, AND PUBLIC SERVICE COMMISSION VIOLATIONS

The North Dakota Highway Patrol are authorized to release those cited in accordance with the Motor Carrier Safety, Hazardous Materials, and Public Service Commission Violation Reference Guide.

EFFECTIVE DATE OF ORDER

This Administrative Order supersedes any prior orders setting a bond schedule and procedure in the Southwest Judicial District and is effective August 1, 2011

This Order shall remain in effect until the further Order of this Court.

Dated: July 12, 2011.

William A. Herauf
Presiding District Judge

Administrative Order 2009-2 Application of Bond

IN DISTRICT COURT
SOUTHWEST JUDICIAL DISTRICT
STATE OF NORTH DAKOTA

ADMINISTRATIVE ORDER 2009-2

There has been some confusion concerning how to handle bond if not specifically addressed in a criminal judgment. To clarify the confusion, IT IS HEREBY ORDERED that all bond monies are to be applied to outstanding fines, fees or other financial obligations unless specifically stated otherwise in the Court's judgment. Any excess over and above fines, fees or other financial obligations shall be returned to the individual so posting the bond.

Dated this 26th day of August, 2009.

William A. Herauf
Presiding District Judge

Notification of Rights and Acknowledgement – English

STATE OF NORTH DAKOTA, IN DISTRICT COURT, SOUTHWEST JUDICIAL DISTRICT

State of North Dakota, Plaintiff v. _____, Defendant. Case No: _____

NOTIFICATION OF RIGHTS AND ACKNOWLEDGMENT

You have the following rights:

1. To be informed of the charge against you and any accompanying affidavit. You have the right to have a copy of the information or complaint and have it read to you.
2. To remain silent because any statement made by you may later be used against you. Thus, you cannot be compelled to testify against yourself.
3. To the assistance of counsel before making any statement or answering any questions and to be represented by counsel at each and every stage of the proceedings. If necessary, counsel will be appointed at public expense. If counsel is appointed, you may be required to reimburse the State for any fees and expenses paid on your behalf. To apply for appointed counsel, you must pay a $25 fee. The Court may waive or reduce the fee if you cannot pay the entire fee.
4. To be informed of mandatory minimum punishment, if any, and the maximum possible punishment provided by statute.
5. To be released pending trial on conditions of release which will reasonably assure your appearance in Court.
6. If the offense is a felony, you have the right to a preliminary examination. At the preliminary examination, the State must produce evidence that there is probably cause to believe that an offense has been committed and that you committed it. If you are assisted by counsel, you may waive the right to a preliminary examination at the initial appearance.
7. If the offense is a misdemeanor, you have the right to appear and defend in person or by counsel.
8. To trial by jury and any verdict of guilty must be unanimous.[1]
9. To a speedy, public trial.
10. To confront and cross-examine the witnesses against you.
11. To the subpoena power of the State for the purpose of summoning witnesses in your own behalf.
12. You are presumed innocent. The burden is on the State to establish your guilt by proof beyond a reasonable doubt.
13. To plead not guilty, or to persist in that plea if it has already been made, or plead guilty. If you plead guilty, there will not be a further trial of any kind, so that by pleading guilty you waive the right to a trial by jury or otherwise, the right to be confronted with the adverse witnesses, and the right to remain silent.
14. If you are currently on probation or parole, a plea of guilty on this charge could result in revocation of your probation or parole.
15. To appeal the decision of the Court or jury.
16. If you are convicted of a crime involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or where involved in another similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition, pursuant to federal law 18 U.S.C. 922(g)(9) and state law. There are also federal and state laws which prohibit you from possession firearms if you are convicted of a felony offense. If you have any questions whether these laws make it illegal for you to possess of purchase a firearm, you should consult an attorney.

I STATE THAT I AM THE DEFENDANT; I HAVE READ THIS NOTIFICATION AND HAVE BEEN ORALLY INFORMED OF THESE RIGHTS BY THE COURT; AND I UNDERSTAND EACH OF THEM.

Dated:_____ Name:_____

[1] Note: A person charged with an infraction is not entitled to be furnished counsel at public expense, nor to have a trial by jury unless subject to a sentence of imposition.

Notification of Rights and Acknowledgement - Spanish

ESTADO DE DAKOTA DEL NORTE, EN EL DISTRITO JUDICIAL DE LA CORTE DE DISTRITO DE SOUTHWEST

Estado de Dakota del Norte, demandante v. _____, demandado. Caso No: _____

NOTIFICACIÓN DE DERECHOS Y RECONOCIMIENTO

Usted tiene los siguientes derechos:

1. A ser informado de la acusación contra usted y cualquier declaración jurada adjunta. Usted tiene derecho a tener una copia de la información o queja y lo lea.
2. Callarse porque cualquier declaración hecha por usted puede utilizarse posteriormente contra usted. Por lo tanto, no puede ser obligado a declarar contra sí mismo.
3. A la asistencia de un abogado antes de hacer cualquier declaración o responder a cualquier pregunta y ser representado por un abogado en cada etapa del procedimiento. Si es necesario, será nombrado consejero en gasto público. Si se nombra a un abogado, lo exijan para reembolsar al Estado por los honorarios y gastos pagados en su nombre. Para solicitar un abogado designado, debe pagar una tarifa de $25. El Tribunal puede renunciar o reducir la cuota si no puede pagar la cuota completa.
4. Para estar informado de castigo mínimo obligatorio, si alguna y el posible castigo máximo previsto por la ley.
5. Para ser lanzado a espera de juicio sobre las condiciones de liberación que razonablemente le asegurarán su aparición en la Corte.
6. Si el delito es un delito, tiene derecho a un examen preliminar. En la averiguación previa, el Estado debe producir pruebas que probablemente hay motivos para creer que se ha cometido un delito y que te lo comprometido. Si son asistidos por un abogado, puede renunciar al derecho a un examen preliminar en la comparecencia inicial.
7. Si el delito es un delito menor, usted tiene derecho a comparecer y defenderse en persona o por un abogado.
8. A juicio por jurado y cualquier veredicto de culpabilidad debe ser unánime.[1]
9. A un juicio rápido, público.
10. Para enfrentar y contrainterrogar a los testigos contra usted.
11. La potencia de la citación del Estado con el propósito de convocar testigos en su propio nombre.
12. Se presume inocente. La carga está en el Estado para establecer su culpabilidad por la prueba más allá de toda duda razonable.
13. A no declararse culpable, o a persistir en ese motivo si ya se hizo o declararse culpable. Si usted declararse culpable, no habrá un juicio ulterior de ningún tipo, por lo que por culpable renuncia al derecho a un juicio por jurado o de otro tipo, el derecho a enfrentarse a los testigos adversos y el derecho a guardar silencio.
14. Si se encuentra actualmente en libertad condicional o libertad condicional, una súplica de culpable de este cargo puede resultar en la revocación de su libertad condicional o libertad condicional.
15. Para apelar la decisión de la Corte o el jurado.
16. Si es condenados por un delito de violencia que son o fueron un cónyuge, pareja, padre o tutor de la víctima o son o cuando en otra relación similar con la víctima, puede ser ilegal poseer o adquirir un arma de fuego, incluido un rifle, pistola o revólver o municiones, conforme a la ley de U.S.C. 18 922(g)(9) y estado de derecho federal. También existen leyes federales y estatales que le prohíben armas de fuego de posesión si es condenados por un delito de felonía. Si tienes alguna pregunta si estas leyes hacen ilegal que poseen de la compra de un arma de fuego, debe consultar a un abogado.

DECLARO QUE SOY EL ACUSADO; HE LEIDO ESTA NOTIFICACION Y HABER SIDO INFORMADO ORALMENTE DE ESTOS DERECHOS POR EL TRIBUNAL; Y ENTIENDO QUE CADA UNO DE ELLOS.

Dated:_____ Name:_____

[1] Nota: Una persona acusada de una infracción no tiene derecho a probarse el abogado a cargo público, ni a tener un juicio por jurado a menos que sujeta a una pena de imposición.

Administrative Order – Failure to comply with 24/7 Sobriety Program

In District Court
Southwest Judicial District
State of North Dakota

ORDER ON FAILURE TO COMPLY WITH THE 24/7 SOBRIETY PROGRAM

The 24/7 Sobriety Program requires participants to appear for twice daily alcohol testing. Regarding any failure to appear or a failure of a test it is hereby ORDERED as follows:

1. Any participant who fails a test shall be taken into custody immediately.
2. Any participant who fails to appear for the test at the appointed time shall be taken into custody upon presenting themself for testing at a later time.
3. If a participant fails to appear within 24 hours of the appointed time, a warrant will be issued.
4. The failure or inability to pay any required fee or fees does not constitute a violation of the terms of the 24/7 Sobriety Program.

Dated this 23rd of September, 2013.

William A. Herauf, Presiding Judge

Zane Anderson, District Judge

Dann Greenwood, District Judge

Administrative Order – Juvenile participants in 24/7 Sobriety Program

IN DISTRICT COURT
SOUTHWEST JUDICIAL DISTRICT
STATE OF NORTH DAKOTA

ORDER

The 24/7 Sobriety Program for Juveniles requires participants to appear for twice daily alcohol testing as ordered by the Juvenile Court. Participants in the program must comply with all sobriety program guidelines, including paying for all tests. All violations of the program shall be reported to the Juvenile Court office and result in further action by the court. It is **ORDERED** that participants who fail a test be released to a parent or guardian, when appropriate, until their appearance on the violation in Juvenile Court or the child may be taken into custody and placed into an Attendant Care or other **Non-secure** facility.

Dated this 10 day of September, 2013.

William Herauf, Presiding Judge

Administrative Order – Clerk Authority for establishing payment plans

IN THE DISTRICT COURT, FOR THE SOUTHWEST JUDICIAL DISTRICT

STATE OF NORTH DAKOTA

ORDER

CLERK'S AUTHORITY IN ESTABLISHING PAYMENT SCHEDULE

Unless other arrangements are made with the Clerk of Court, all fees, fines, restitution, and Court costs shall be due by the close of business on the date which they are assessed. The Clerk of Court or the Clerk's designee is hereby authorized as follows:

1. To conduct interviews with persons requesting to establish a payment schedule on monies due the Court.

2. To require further documentation of financial information as necessary.

3. To make any necessary contacts to verify the information provided by the applicant.

4. To evaluate each request, grant, or deny the request based upon the applicant's financial ability, and determine the length of the payment schedule.

5. To require verification of job search contacts in conjunction with establishing a payment schedule.

6. To contact persons owing monies to the Court by mail or telephone to notify them of delinquency, discuss payment arrangements, or schedule a follow-up interview.

7. To cause a bench warrant to be issued for the arrest of persons who violate any Court order or the payment schedule established by the Clerk.

8. To cause a bench warrant to be canceled in conjunction with the granting of a further or revised payment schedule.

Dated: July 3, 2003.

BY THE COURT:

Allan Schmalenberger
Presiding District Judge

Order for all civil pretrial conferences

IN DISTRICT COURT
THE SOUTHWEST JUDICIAL DISTRICT
STATE OF NORTH DAKOTA

ORDER FOR ALL CIVIL PRETRIAL CONFERENCES

In all civil cases assigned to District Judge Allan Schmalenberger, a copy of this order shall be served and filed with all notices scheduling a final pretrial conference. For all such pretrial conferences, all parties and counsel must comply with this order unless it is specifically modified or vacated by a separate order filed in the individual case.

THEREFORE, IT IS ORDERED:

The attorneys for the parties are directed to appear at the pretrial conference to consider and cover the items in N.D.R.Civ.P. 16(d).

All documents, records and exhibits to be offered in evidence at the trial must be produced at the conference. Any exhibit consisting of more than one page must be securely bound, and no duplicate exhibits will be permitted. The exhibits will be marked at the time of the pretrial conference and determinations made as to their admissibility. After the pretrial conference, the exhibits will be left with the Clerk of the District Court unless counsel stipulate otherwise.

One week prior to the pretrial, counsel are required to submit a pretrial brief and requested jury instructions, if it is a jury case, with copies furnished to the judge at his chambers. The brief shall set forth (a) the alleged cause of action or defenses, (b) a brief statement of facts that counsel expect to prove in support thereto, (c) the details of damages claimed or other relief sought, and (d) the law in support.

In preparation for the pretrial conference, the attorneys shall have a prior attorney's conference and discuss all matters contained in this order together with the possibility of settlement.

At the attorney's conference, the parties shall exchange a list identifying all exhibits they expect to offer at trial, to use as demonstrative exhibits, or to be used or referred to by any of their witnesses, including expert witnesses. The listing of the exhibit does not commit the party to using it. Subject to any objections that have not been waived, any party may use any exhibit that has been listed by another party.

The exhibit list shall be in a format to be used as a record of exhibits offered and received during the trial. It shall contain the title, case number, and be in the following format:

(Parties' name) EXHIBITS

EXHIBIT NO.	FOUNDATION (Waived Or not waived)	DESCRIPTION	OFFERED	RECEIVED

Before permanently marking exhibits, counsel shall obtain from the judge's court reporter exhibit stickers and the method for marking exhibits.

1

Except to the extent a party gives notice to the contrary at the attorney's conference, counsel shall be deemed to have agreed (for purposes of this trial only), that:

1. the originals of the listed exhibits are authentic within N.D.R.Ev. 901 or 902.

2. duplicates, as defined in N.D.R.Ev. 1001, of the listed exhibits are admissible to the same extent as the originals;

3. any listed exhibits purporting to be correspondence were sent by the purported sender and received by the purported recipient(s) on approximately the dates shown or in accordance with customary delivery schedules;

4. any disputes regarding the accuracy of any of the listed exhibits that purport to be summaries under N.D.R.Ev. 1006 affect only the weight, not the admissibility, of such exhibits;

5. any listed exhibits purporting to be records described in N.D.R.Ev. 803(6) meet the requirements of that rule without extrinsic evidence; and

6. any listed exhibits purporting to be public records or reports described in N.D.R.Ev. 803(8) meet the requirements of that rule.

Except for good cause shown, the parties will be precluded from offering in evidence, using as demonstrative evidence, or examining any witnesses concerning any exhibit not so identified.

Counsel for each party shall also exchange at the attorney's conference a listing of the names and addresses of all witnesses who may be called on behalf of their client at the trial. This witness list shall be included as part of the proposed order after pretrial. If the witness to be called is an expert, his specialty shall be stated. Except for good cause shown, the parties will be precluded from calling any witness not so identified.

At the conclusion of the attorney's conference, counsel shall prepare and sign a proposed pretrial order. This proposed pretrial order shall be delivered to the Court one working day prior to the pretrial. For illustrative purposes, a copy of a proposed order after pretrial may be obtained from the judge's staff.

The attorneys appearing at the pretrial conference must be prepared to discuss the action and be authorized to act for their clients. If any attorney for a party <u>fails to comply with the order</u> or fails to appear at the pretrial conference, the Court will imposed authorized sanctions and proceed with the conference as may be appropriate.

Dated: August 20, 2007.

BY THE COURT:

Allan Schmalenberger
District Judge

Order granting clerks to perform magistrate duties

IN DISTRICT COURT
SOUTHWEST JUDICIAL DISTRICT
STATE OF NORTH DAKOTA

ADMINISTRATIVE ORDER 2011-3

The Presiding Judge does hereby order and assign to the Clerks of the District Court and their deputies, in their respective counties, the following duties:

1. Pursuant to N.D.C.C. §27-05-31 and Administrative Rule 20, they are appointed as a magistrate to approve complaints and to issue summons pursuant to N.D.C.C. Chapter 29-05 and N.D.R.Crim.P. 3 and 4.

2. Pursuant to N.D.C.C. §30.1-02-06, they are designated to perform the duties of the court required by N.D.C.C. §30.1-24-05 and enter an order establishing the filing of the authenticated copies of a domiciliary foreign personal representative's appointment and any official bond the person has given. The issuance of this Administrative Order is not a limitation of any authority granted to the Clerk by N.D.C.C. §30.1-02-06 to sign all appropriate documents in uncontested probate matters and for such authority section 30.1-02-06 governs.

This Administrative Order supersedes any prior orders delegating any duties by the Court to the Clerks of District Court in the Southwest Judicial District and is effective August 1st, 2011.

This Order shall remain in effect until the further order of this Court.

Dated: July 12, 2011

William A. Herauf
Presiding District Judge

Order appointing Magistrate in absence of judges

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTIES OF ADAMS, BILLINGS, BOWMAN, DUNN, GOLDEN VALLEY, HETTINGER, SLOPE, and STARK

SOUTHWEST JUDICIAL DISTRICT

ORDER APPOINTING MAGISTRATE

The Presiding Judge of the Southwest Judicial District appoints Robert A. Keogh as magistrate in and for the Southwest Judicial District whenever the District Judges for the Southwest Judicial District are unavailable to fulfill the duties of magistrate.

The presiding judge delegates the following duties and authority to the magistrate:

1. To issue search warrants pursuant to N.D.C.C. §29-29-01 and N.D.R.Crim.P. 41.

2. To issue administrative search warrants pursuant to N.D.C.C. §29-29.1-01.

3. To approve complaints and to issue summons or warrants pursuant to N.D.C.C. Chapter 29-05, N.D.R.Crim.P. 3 and 4.

4. To hold initial appearances pursuant to N.D.R.Crim.P. 5 and to set bail pursuant to N.D.C.C. Chapter 29-08 and N.D.R.Crim.P. 46.

5. To conduct preliminary mental health commitment proceedings pursuant to N.D.C.C. §25-03.1-09, notwithstanding and consistent with N.D.C.C. §25-03.1-02(2) and (8).

6. The appointment is made pursuant to N.D.C.C. §27-05-31 and Administrative Rule 20 and is not a salaried position. This order shall remain in effect until terminated or modified by the Presiding Judge, and any previously issued orders appointing magistrate are hereby terminated.

Dated: July 12, 2011.

William A. Herauf
Presiding District Judge

Policy No. 2 – Court appearance by telephone

POLICY NO. 2

Southwest Judicial District

Court Appearance by Telephone

1. PURPOSE:

To promote more uniform judicial practices in the Southwest Judicial District and to clarify the circumstances under which parties and witness appearances will be allowed by telephone. This policy is intended to ensure the protection of confidentiality for restricted access hearings and emphasize the dignity of the Court. This policy is in no way intended to limit judicial discretion.

2. GUIDELINES:

a. Parties are expected to appear in person for all hearings unless good cause is shown as to why a personal appearance is unnecessary or is not feasible.

b. Anyone requesting permission to present testimony or appear electronically or telephonically must do so in writing, with notice served upon all parties. All requests shall be made in advance of the hearing date with sufficient time for the judge to rule and with sufficient time for the requesting party to make arrangements to be personally present if the request is denied.

c. If permission is granted to appear by telephone or other electronic means, appropriate steps shall be taken to:

1. Safeguard the confidentiality of the proceedings.
2. Verify the identity of the party appearing.
3. Ensure that the far site is free from persons who may have a coercive or chilling effect on the party appearing electronically or telephonically.

d. Anyone given permission to appear by telephone or other electronic means must promptly notify all other parties that they will not be personally present at the hearing.

Dated this 1st day of December, 2009.

BY: _____
William A. Herauf

Policy No. 1 – Media coverage

POLICY NO. 1

Southwest Judicial District

Electronic & Photographic Media Coverage of Judicial Proceedings

1. PURPOSE:

The purpose of this policy is to establish guidelines for electronic and photographic media coverage in the Southwest Judicial District. This policy is directed to the judicial hearing, pre-trial conferences, trial, and post-trial motions.

The affected counties are:

Adams, Billings, Bowman, Dunn, Golden Valley, Hettinger, Slope and Stark

2. GUIDELINES:

The following guidelines apply to the foregoing counties and for the foregoing purposes:

A. To assure that judicial proceedings are not disrupted and to assure ingress and egress of participants and the public, media representatives shall confine camera and audio media coverage to areas not immediately adjacent to courtrooms. The designated areas will be in main floor of the courthouses of the Southwest Judicial District. Cameras and audio equipment are not allowed beyond the main floor lobby area of any courthouse for specific coverage during any judicial proceedings, except as expressly provided in Subsection B. Audio and/or video interviews of trial participants during any judicial proceedings shall be limited to the first floor of the courthouse.

B. Exceptions to the foregoing policy shall be limited to those prescribed in North Dakota Supreme Court Administrative Rule 21. Any additional request for an exception to this policy is to be directed to the office of the Clerk of Court and the Judge in writing, at least 48 hours in advance of the judicial proceeding. The request shall outline:

1. The title of the action the media representatives wish to cover.
2. The duration and type of coverage being requested.
3. The specific request of what is to be excepted.

C. Media representatives may contact the Calendar Control Clerk at least 48 hours in advance of judicial proceeding for the assignment of specific space for use by the press. This space shall be available to monitor proceedings. Personal interviews during the course of the judicial proceedings of interest must be conducted in accordance with Section A.

3. POLICY REVIEW:

This policy will be reviewed by the Judges of the Southwest Judicial District every two (2) years. Suggested revisions should be addressed to the Presiding Judge for consideration.

4. SUMMARY:

These procedures assure that media representatives will be allowed general coverage of judicial proceedings in accordance with this policy and Administrative Rule 21. This policy assures the dignity of the participants and the integrity of the judicial proceedings in this judicial district.

Dated this 1st day of December, 2009.

BY: _____
William A. Herauf
Presiding Judge
Southwest Judicial District

Policy – Animals in Court

IN DISTRICT COURT
SOUTHWEST JUDICIAL DISTRICT
STATE OF NORTH DAKOTA

POLICY - ANIMALS IN COURT

The purpose of this policy is to provide a safe and healthy environment for Court employees, allow access to participants and the public, limit potential distractions and disturbances though Court proceedings, and to address the use of service animals in Court.

[1] Animals are prohibited from courtrooms with the exception of authorized service animals and emotional support animals as defined below.

[2] Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

[3] Emotional support animals or comfort animals are often used as part of medical treatment plans as therapy animals, however, they are not considered service animals under the ADA. Support animals provide companionship, relieve loneliness, and sometimes help with depression, anxiety, and certain phobias but do not have special training to perform tasks that assist people with disabilities.

[4] Emotional support animals or comfort animals may be allowed in the courtroom but only after motion is made to the judge presiding over the proceeding and granted for accommodation.

[5] All service animals and emotional support or comfort animals must be under proper care and supervision of their handlers. Any service and emotional support or comfort animal that behaves in an unacceptable way or is not in control by its handler, will be asked to be removed by their handler.

[6] Employees are permitted to ask whether the animal is required because of a disability and what work or task the animal has been trained to perform.

Dated this 15 day of September, 2020.

William A. Herauf
Presiding District Judge