

# **Minutes: Minority Justice Implementation Committee**

(Unofficial Until Approved)

**19 May, 2016**

**North Dakota Department of  
Corrections  
3100 Railroad Avenue  
Bismarck, North Dakota**

**University of North Dakota (ITV  
Location), Abbott Hall Room 119  
151 Cornell Street Stop 9024  
Grand Forks, North Dakota**

## **Members Present**

Hon. Donovan Foughty  
Leann Bertsch  
Travis Finck  
Dr. Leander McDonald  
Cory Pedersen  
Sally Holewa  
Scott Davis  
Anthony Weiler  
Bruce Quick  
Brad Peterson (for Richard LeMay)  
Professor James Grijalva

## **Members Absent**

Birch Burdick  
Hon. Steven McCullough  
Ulysses Jones

## **Guests**

Ross Munns  
Caroline Grueskin (Bismarck Tribune)

## **Staff**

Lindsey Nieuwsma

Call to Order: 10:01 a.m.

**Anthony Weiler moved to approve the minutes from the January 28, 2016 Committee meeting. Sally Holewa seconded the motion and it carried unanimously.**

Staff, committee members, and guests introduced themselves. Guests included Ross Munns, Assistant Court Administrator for Unit 3, and Caroline Grueskin, Reporter for the Bismarck Tribune.

## **Limited Scope Rules – Proposed Amendments**

Anthony Weiler provided an explanation and update on the proposed amendments to rules related to limited scope representation. The process to amend the rules began about a year ago, with the purpose of making it easier for an attorney to take a limited scope representation case and withdraw from the representation when completed. The Supreme

Court recently issued Notice of Comment for the proposed rule changes and the drafts are available on the Supreme Court website.<sup>1</sup> The comment period ends on June 13, 2016.

Mr. Weiler provided a summary of the proposed rule changes. The first amendment is to Rule 1.2 of the Rules of Professional Conduct<sup>2</sup>, which would require any agreement to a limited scope representation to be in writing. The rule change began in front of the Joint Procedure Committee, but was sent over to the Joint Committee on Attorney Standards because it is a rule related to attorney conduct. The Joint Committee on Attorney Standards included a brief two-word amendment that specified that consent to limited scope representation must be “in writing.” Previously, the comments to the rules of professional conduct suggested that a written agreement to limited scope representation was preferred, but the rule did not require it. Both committees believed that including the writing requirement in the black letter law was a good idea. The Joint Committee on Attorney Standards recommended inclusion of a written agreement requirement.<sup>3</sup> Mr. Weiler explained that any time a rule amendment comes from the Joint Committee on Attorney Standards, it is sent to the Board of Governors of the State Bar Association for review. The Board of Governors supported the written agreement requirement. Mr. Weiler stated that it is poor practice not to have a written representation agreement in any type of representation, so adding that requirement to the black letter of the law is a good idea.

The next modifications were to Rule 11 of the Rules of Civil Procedure<sup>4</sup>, which deals with signing of pleadings, motions and other papers, and Rule 11.2, Rules of Court<sup>5</sup>, which deals with attorney withdrawal. Mr. Weiler acknowledged that Judge Foughty recommended proposed draft amendments prepared by MJI to the Joint Procedure Committee. While the Joint Procedure Committee did not adopt the changes exactly as suggested by MJI, the spirit of the changes remains. Under the Rule 11(e) changes, an attorney can prepare briefs, pleadings, and other documents that will be filed with the court by a self-represented party. The preparation of those pleadings will not constitute an appearance and no notice is necessary under the rules. However, the filing must be signed by the self-represented party as “self-represented.” Brad Peterson asked whether the attorney has to identify that he or she prepared the document, and stated that he has seen pleadings with a phrase “affidavit prepared by [attorney name].” Mr. Weiler stated that there is nothing in the rule requiring the attorney to identify himself or herself, but there is nothing prohibiting the pro se party or attorney from including an identification. Under Rule 11(e)(2), the important point is that if the attorney is making a limited appearance, he or she must serve a notice of limited appearance on each party outlining the scope of the limited appearance. If the representation goes beyond the scope of the limited appearance, the attorney must give additional notice. Once the attorney has finished the work of the limited representation, the attorney must file a certificate of

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<sup>1</sup> <http://www.ndcourts.gov/court/Notices/20150366/notice.htm>

<sup>2</sup> <http://www.ndcourts.gov/Court/Notices/20150366/Rule1.2.lpc.htm>

<sup>3</sup> <http://www.ndcourts.gov/Court/Notices/20150366/petition2.pdf>

<sup>4</sup> <http://www.ndcourts.gov/Court/Notices/20150366/Rule11.civ.htm>

<sup>5</sup> <http://www.ndcourts.gov/Court/Notices/20150366/Rule11.2.ct.htm>

completion of limited appearance. Mr. Weiler surmised that the certificate of completion may be the first instance that the judge and court is aware of limited representation. He suggested that this rule contemplates the types of cases where the attorney helps the client and there is no case filed with the court.

Chair Donovan Foughty asked Mr. Weiler whether he believed, with the proposed modifications, that an educational program could be developed to educate the North Dakota bar about the new rules and provide model forms for use; i.e. “These are the steps you take, and this is how you do it.” Mr. Weiler responded that absolutely, it could be done and that it would have to be done. The new rules are not complicated and he believed that, once the steps were outlined, lawyers would understand how to take on limited scope representation cases. His hope was that the rule changes would lead to lawyers taking more cases. It is a step in the right direction, but will require some education. The Bar is committed to educating lawyers about how the rule works.

Chair Foughty reiterated the purpose behind the rule changes as an issue of access to justice. In the Race and Bias Commission study, it was found that there were a lot of people in poverty without resources to access the court system. There has been extraordinary pressure put on Legal Services of North Dakota and across the nation to meet the access needs. As a practical matter, without sufficient resources it is very difficult to get access to an attorney. The limited scope representation is a way for an attorney to listen to someone with little or no resources and provide some assistance, such as pleadings, a courtroom appearance, but not a full representation or full commitment to the case.

Mr. Weiler added that often attorneys are reluctant to take a case if it is outside their area of expertise, but that they are more likely to provide basic services, such as pleading preparation, which they have performed many times before.

Mr. Weiler moved on to modifications to Rule 11.2 related to withdrawal from representation. He commented that withdrawal was a common fear for attorneys in standard representation, because once a case is accepted, the attorney is “stuck” and must ask for leave to withdraw from the judge. Under Rule 11.2, if the only activity the attorney is performing is outlined in the limited scope agreement, withdrawal is fairly easy and automatic. If the representation deviates from the agreement, the attorney must look to the standard rules for withdrawal.

Chair Foughty asked whether the limited scope representation situation would be helpful to Legal Aid. Brad Peterson responded that any help is welcome, but in reality it likely would not cause a change. He added that the hope is that it will bring more private attorneys in to help and that Legal Services is currently overwhelmed with case applications.

**Mr. Weiler moved to submit a letter to the Court from the Committee in support of the proposed changes to Rules 1.2, 11, and 11.2 to the Court. Professor Grijalva seconded.** Mr. Weiler commented that the changes are different than those suggested by

the Committee, but they are cleaner and fit well within the current rules. He commented that SBAND is only meeting approximately 10% of the need through its programs, and that it would be great if these rules would allow more of the need to be met. Chair Foughty asked if there was any particular information that Legal Services would like to include in the letter, such as caseload numbers. Mr. Weiler noted that the comment period for the rule changes ends on June 13, 2016.

Professor Grijalva asked Mr. Weiler whether there was anything in the rule changes which distinguishes between pro bono or for fee work in limited scope representation. Mr. Weiler stated that there was no distinction in the rules and lawyers could do either. Professor Grijalva commented that these changes were clearly within the scope of the Committee's mission and will be helpful in allowing attorneys to carve off discrete pieces of a lawsuit to assist the clients. He also commented that while the SBAND has an obligation to educate the bar, this committee should support that effort as well. **Motion carried unanimously.**

Mr. Weiler commented that he, staff, and Catie Palsgraaf can work together after the amendments are adopted to develop forms which reflect the rule changes and can be provided for those seeking to pursue a limited scope representation.

Sally Holewa asked about curriculum for an educational program; was there a group at SBAND that could develop a program, or what was envisioned to develop an educational program? Mr. Weiler responded that the first step is to get the rules passed, second, to provide good forms to lawyers who are looking to enter into limited scope representation. The pro bono committee at SBAND would be the best group to work on an educational program and has experience in this area. An educational program could be as easy as a one hour webinar, a session at the next annual meeting, etc. Judge Foughty added that local bar associations would be a good resource also. Mr. Weiler agreed that SBAND would commit to developing a curriculum; SBAND is committed to access to justice and educating the bar.

### **State Tribal Cooperative Agreements**

Chair Foughty introduced the topic of state/tribal cooperative agreements. Staff provided an update on the March 2, 2016 meeting of the Tribal and State Relations legislative committee. Chair Foughty, Scott Davis and staff attended the meeting. One of the topics of discussion at the legislative committee meeting was finding a way for tribal youth adjudicated in tribal court to receive the same services that a youth adjudicated in state court could receive. The main point of that committee's discussion was that legislation was not needed to develop an agreement to provide services and the main concern was the costs of such an arrangement after MOU's were developed. Discussion revolved around what type of services were needed, funding sources, challenges, and current resources available. Scott Davis commented on the potential effect of new Medicaid rules on such an arrangement. He also commented that treatment services are really limited for each tribe, though plans are in the works to build a 16-bed treatment center in Bismarck. There are multiple issues left to iron out with the treatment center, including whether it will be open to only tribal members and the level of state involvement. There

was discussion of state and federal licensing requirements, funding for the facility, and other comparable facilities.

Chair Foughty provided background regarding how the discussion of cooperative agreements came about and his discussion with a Utah judge and the Memorandum of Understanding that was in place there. The Utah agreement is for tribal use of a facility comparable to North Dakota's YCC, which is considered the "deep end" for kids in the system. In tribal courts, there is not enough infrastructure up front (informal agreements, diversion, assessments, programming and services), to keep kids from having to go before a judge. These resources are commonly available in the state juvenile court system, and the state makes every effort to keep kids away from a judge. He commented that the focus should not be only on an agreement to allow tribes the use of YCC for its youth, but on cooperative agreements for upfront services that would make state juvenile court resources available for tribes to use. Dr. McDonald commented that tribes do not have the interventions available to avoid bringing kids before a judge, and that placing juveniles in YCC exposes them to bad influences, hardens them and introduces the stigma of being in "kid prison." Chair Foughty stated that we need to develop better cross-communication between tribal courts and state courts, which will be discussed at the next Tribal and State Court Affairs Committee meeting. Leann Bertsch reiterated that only providing access to "deep end" resources like YCC is a disservice to kids and families, is not fiscally prudent, and is not fair to the kids who do not have diversion services available.

Chair Foughty noted that there is a different level of service provided to people on the state side as compared to the tribal side. Staff questioned whether the issue is jurisdictional or actual availability of services; members of the committee responded that both were problems with the development of an agreement. Mr. Peterson noted his experience with the difficulty in providing services to rural youth and indicated that access is a statewide issue, not just a tribal issue. Committee members discussed experiences and challenges with placement of youth in different residential facilities.

Cory Pedersen asked whether Chair Foughty anticipated a statewide agreement with each tribe or an agreement between each district and tribe. Mr. Pedersen and Dr. McDonald both envisioned a state agreement with each tribe. Chair Foughty responded that the issue is determining which services are available in different areas and coordinating with the nearby tribal courts.

Mr. Davis provided information to the committee about cross-deputization agreements, high-speed pursuit agreements, and use of force agreements that tribes and county law enforcement are working on together, such as the McLean County agreement with White Shield.

Mr. Davis also provided an update to the committee on work being done by the Substance Exposed Newborn Task Force. The task force is finishing up the final recommendations, one of which includes the evaluation of the pros and cons of a potential affirmative defense for substance abusing mothers. The consensus is that it is

not helpful to criminalize substance abusing mothers; the focus should be on educating, encouraging prenatal visits, and hospital births. The committee members discussed medical information privileges, mandatory reporting, and challenges with using the mother's substance abuse as an affirmative defense. There was also discussion about the conflicting interests of a criminal case and an abuse and neglect case and how the substance abuse information is used in each case; Travis Finck and Brad Peterson gave information regarding their experiences with the conflicts. Mr. Davis pointed out that although this is a problem that minorities face, it has no socioeconomic tie and is a problem throughout the state. A data collection system is being used to collect more information on prevalence. Staff asked whether there had been research on how other states have addressed the issue. Chair Foughty asked whether the task force had looked into decriminalizing substance abuse by a pregnant mother and transferring it to a civil commitment type of model. Ms. Bertsch commented that in the past, the Alternatives to Incarceration Committee has discussed getting rid of the ingestion law, which did not go anywhere, and is hoping to revisit it. Mr. Davis pointed out that these babies being born are going to experience problems throughout their lives, and there will be problems that need to be addressed in each stage. Sally Holewa expressed her interest in the civil commitment idea for substance abusing mothers. A civil commitment would fulfill the community's desire to see a consequence for the mother without criminalizing the behavior. Ms. Holewa suggested an amendment to the criteria to "a danger to yourself or others" portion of the current civil commitment statute to include pregnant mothers. There was discussion about the effect on deprivation proceedings and indirect consequences to mothers by criminalizing substance abuse while pregnant, such as loss of government assistance and criminal records.

The committee moved to discussion regarding expungement of criminal records. Ms. Bertsch pointed out that although expungement has been a topic of discussion in the past, social media and technology makes it impractical to expect that the information can ever be removed from the internet. Ms. Holewa asked whether an expungement typically includes a reinstatement of lost rights and privileges, such as federal fund eligibility. Ms. Bertsch explained the difference between a pardon and an expungement and the consequences of each.

Staff provided information for the committee on the upcoming Tribal and State Court Affairs meeting on June 24, 2016. One of the goals of that meeting is to discuss information sharing agreements for juveniles, with a secondary goal of service sharing agreements. Chair Foughty stated that his court has an information sharing agreement with Spirit Lake. Dr. McDonald asked how the agreement has been working. Chair Foughty said that so far, there have only been a couple phone calls.

The major topic of discussion for the Tribal and State Court Affairs meeting is the presentation of a domestic violence benchbook prepared by the Northern Plains Indian Law Center. A representative from the Department of Human Services will also be there to talk about behavioral health services in Indian country.

### **Education Programs**

Prof. Grijalva provided background on the Race and Bias Commission's recommendations regarding education outreach to underserved communities. The Native American Law Student Association at UND Law School has been a resource for these efforts, but the membership fluctuates because it is made up of law students, who graduate and move on. Scott Davis invited Prof. Grijalva to bring a law student to the High School Leadership Summit in June 2015. Prof. Grijalva and the president of NALSA attended the Summit and spoke with high school students about opportunities in the law, what Native American lawyers can do, and the importance of representation of Native Americans in the legal profession. After that experience, Mr. Weiler and Prof. Grijalva formed a plan to conduct outreach to the tribal colleges, with the goal of bringing a group of tribal lawyers, bar members, law professors, law students, etc. to encourage tribal college students to consider law as a career option. A letter was sent out to all of the tribal college presidents in the state asking for contact information and expressing interest in reaching out. Unfortunately, no responses were received, but Mr. Weiler and Prof. Grijalva intend to follow up.

Prof. Grijalva also described discussions with tribal colleges which evolved into a field trip to the law school for criminal justice students. Three tribal colleges, United Tribes Technical College, Sitting Bull College, and Cankdeska Cikana Community College, brought about 22 students and some staff to the law school, on April 18, 2016. It was the first time the law school has formally hosted students from the tribal colleges. Full-day activities were planned and included sitting in on an Indian gaming class, having a mock law school class, going through a portion of a Supreme Court case, and observing two law students present a treaty rights moot court argument in the law school courtroom. The Indian Center hosted the students for a lunch and discussion of their services, and there was also an admissions/financial aid presentation. Prof. Grijalva felt it was a tremendous success. The hope is to continue the event annually. Prof. Grijalva discussed costs of the visit for the tribal colleges and mentioned previous discussion of the possibility of using Committee education funds for the event in future years.

Dr. McDonald commented that there is interest in developing pre-law curriculum/courses at UTTC, that they would welcome assistance in developing that program, and the hope is to add a pre-law track prior to the 2017 accreditation site visit. An LSAT prep course could also be added to the curriculum. Mr. Weiler commented that there is no set curriculum for pre-law, and that there is a continuing commitment to make site visits to each of the tribal colleges. He also commented that courses which could train lay advocates or provide other legal background would be helpful. There was discussion about plans for site visits, contact information for students who are interested in law school and law school tours, and types of skill sets that should be developed to help students get into and succeed in law school.

### **Jury Study Report**

Ross Munns presented information and background about the jury study. *Meeting Materials, No. 2*. The study began at the end of 2013. Mr. Munns worked with this Committee and the jury user group to identify areas that could be measured to evaluate jury pool representation with respect to race and ethnicity.

The report contains almost three years of information; almost all of 2014, 2015, and 2016 through April. The first document is baseline information, at the local level, produced by the US Census. The report contains about 12 counties of baseline data, listing the race percentage breakdowns by county.

The master jury wheel for district court level is produced in February in odd years and covers a two year cycle. The source list is created from the recent voter records and drivers license and state ID cards for individuals 18 years and older.

The report is fairly self-explanatory with the race and ethnicity breakdown and the race labels parallel what is in the US Census. There are three more categories: “No response,” “Other,” and “Unknown.” Mr. Munns explained these designations. “No response” represents a conscious decision by the prospective juror not to participate in the study. If the questionnaire was left entirely blank, it was classified as “Unknown.” “Other” represents a race or combination of races that were not identified as an option.

Mr. Munns used Rolette County as an example. *Meeting Materials, No. 2, pg. 1.* The Census data lists the Native American population there for 2014 as 76.4%, but the jury pool breakdown has a Native American representation of 31.18%. Unfortunately, that is one of the better representations for the Native American population. The representation percentage should be closer to the 76% and the study does show that the Native American population is underrepresented in that instance. Mr. Munns also walked the group through the numbers for Burleigh County, which also demonstrates some underrepresentation. These numbers could be affected by the “Unknown,” but his conclusion was that there was still likely a little bit of an underrepresentation.

Mr. Munns pointed out that there was a difficulty in finding a definitive source to resolve the underrepresentation problem. There was discussion of using tribal ID cards, but they typically do not contain an address and the tribe typically does not collect 911 address information from the members. There was also discussion of using tribal enrollment records or tribal election records, but these also do not typically contain a physical address for each individual, only a mailing address.

Mr. Munns stated that the Native American population is the minority group where there is a concern with underrepresentation and the potential to do better. The percentages for the Asian and African American populations do not have the same degree of disparity and follow the county baseline by and large. Mr. Munns stated that we are limited in terms of source options, but suggested that we continue to study the records and work to identify good sources of juror source information. The main issue is that the summons must be received in the actual physical county of residence. He would prefer to err on the side of over-inclusion rather than under-inclusion.

There was a suggestion to get tribal enrollment records or membership list and possibly test it out in one or two counties near a reservation, such as Spirit Lake. Ms. Holewa pointed out a difference between whether the issue is that individuals are not being

summoned to begin with or whether there is a low response rate to summonses. Chair Foughty stated that he believed there was a high response rate from Spirit Lake members and that there was a lot of people that were not being summoned.

### **Juvenile Detention Screening Tool Validation Study**

Cory Pedersen presented background and information about the juvenile detention screening tool validation study, which was funded through a technical assistance from the compliance division of OJJDP. *Meeting Materials, No. 3 & 4*. The study covers Morton and Burleigh Counties.

Burleigh and Morton Counties are using the screening tool differently than other parts of the state by pre-screening juveniles prior to detention, partly due to available resources. The rest of the state screens after detention. The goal of the screening tool is to objectively evaluate risk level and assist in the decision making in the placement or release of juveniles. The tool is scored by the Youth Bureau of the police departments in Burleigh and Morton.

The meeting materials contain the final version of the study and documents created by Mr. Pedersen to facilitate discussion. *Meeting Materials, No. 3 & 4*. Some things that came out of the study: the database contains hand-reported information which could contain errors and the question of whether a process can be created to allow the tool to be used the same statewide.

Staff asked whether the tool is helpful. Mr. Pedersen stated that he knows it is helpful locally, but mainly it is useful in establishing the philosophy of the community in avoiding detention for juveniles if possible.

There was discussion about alternatives to detention, such as attendant care. There are issues in areas outside of Burleigh and Morton Counties with lack of resources and services available as an alternative to detention.

Staff asked whether law enforcement exercises discretion in when to use the tool. Mr. Pedersen explained that every delinquent qualifies for detention by statute; law enforcement is not screening every delinquent. They screen the delinquents that might be problematic and use the tool to see if the juvenile needs detention. The police officer decides whether or not to call the Youth Bureau. Staff asked whether law enforcement could be trained to score the tool; Mr. Pedersen indicated that the issue was more whether law enforcement wanted to be the ones to score the tool.

Mr. Pedersen indicated that there was no good indication of success for the tool. Staff asked about reasons for overrides. Mr. Pedersen stated that many of them were statutory; safety of self or others, failure to appear, and pick-up and holds. He stated that there was room for improvement and Juvenile Court would like to see the tool used pre-detention statewide. Other ideas are an on-call system for Juvenile Court and an automated database.

Ms. Holewa stated that she was encouraged by the results because it did not appear that anyone was trying to skew the results, or manipulate the scoring to justify the result. She requested that staff review the overrides and reasons for the overrides. Mr. Pedersen stated that pick-up and holds are a problem and communication and education regarding whether these juveniles can go to attendant care instead of detention would be helpful.

Chair Foughty asked whether North Dakota was chosen by CSG for the juvenile reform efforts. Ms. Holewa stated that North Dakota was not selected as one of the three sites, but was offered some limited technical assistance.

Mr. Pedersen added that CSG gave North Dakota kudos for its use of detention, but was concerned about North Dakota's use of residential services as out of proportion with where it should be. CSG provided recommendations on improvements. Chair Foughty stated there was a tendency to place children in residential facilities, but failure to assess the specific individual needs of the child and measure outcomes. The focus should be to use residential placement better, not necessarily less.

Brad Peterson pointed out that juvenile cases are not being looked at soon enough after placement to assess results and progress. Ms. Holewa and Chair Foughty suggested research into more frequent post-disposition review hearings, standards for regular hearings, and outcome measurements. She suggested that changes could be referred to the Juvenile Policy Board. Chair Foughty mentioned the ICWA 30 day review requirements.

Mr. Pedersen also brought up the issue of whether juveniles should have representation for post-disposition review hearings. Typically counsel is released after disposition, so there is no appointed counsel to request a post-disposition hearing.

### **Pretrial Reform**

Chair Foughty provided an update on the request to Chief Justice VandeWalle for MJI to join the PJI Three Days Count Initiative. Chief VandeWalle did not approve the Committee's request, mainly due to concerns about PJI's approach to pretrial reform and the potential that it might use litigation. As a committee under the judiciary, it would not be appropriate for this committee to be involved in litigation. Chief VandeWalle was in favor of the goals of pretrial reform and recommended that the committee contact the National Center for State Courts (NCSC) to inquire about assistance they may offer.

Ms. Bertsch commented that there has been nationwide attention on the issue of bail and people in poverty getting caught up in jail, as well as the disproportionate impact on minorities. The Incarceration Issues Committee, under the CSG initiative, is likely to come out with some recommendations on pretrial services. Staff provided an update on contact with the NCSC and background on the legal challenges to implementing pretrial services and a pretrial assessment tool. NCSC would help the committee put together a State Justice Institute grant and provide other assistance, such as drafting, garnering stakeholder support, and education. NCSC has and would work in conjunction with CSG's efforts on the Justice Reinvestment Initiative. **Leann Bertsch moved to request**

**approval from Chief Justice VandeWalle to request assistance from the National Center for State Courts for a pretrial assessment tool and potentially pretrial services. Motion was seconded and passed unanimously.**

### **Annual Report**

Mr. Weiler asked to whom the Committee submits its report. Ms. Holewa answered that the annual report is submitted to Chief Justice VandeWalle, and published on the Supreme Court website upon his approval. Mr. Weiler suggested it may be beneficial to include an appendix to the report with materials such as the juror survey and the juvenile detention screening tool.

With respect to edits to the report, Prof. Grijalva suggested that his name be substituted for Dean Rand, since he is the designated representative. Dr. McDonald corrected that he is not the Chairman anymore, and is now the President of the United Tribes Technical College. Judge McCullough's name was also misspelled. *Meeting Materials, No. 1.*

Ms. Holewa asked Mr. Weiler whether it would be beneficial to include the attorney survey that was conducted. Mr. Weiler stated that he did not believe it would add much.

Plans were discussed to submit the report in the next three weeks after the suggested corrections were made.

### **Grants**

Staff welcomed members to contact her with any ideas or opportunities that they saw for grants for their agencies or organizations. She provided some examples that were available, but pointed out that they often have short timeframes that makes it difficult to complete with the infrequent meetings. Staff gave information about the Justice Assistance Grant, which has a deadline of May 2017 for 2018 funding.

Mr. Weiler asked about funding that was available for education programs, such as the visits discussed by Prof. Grijalva. Ms. Holewa answered that although she does not know the exact number, but there is funding for activities that are directly tied to the committee's work and benefit the state. As an example, for the tribal college visit day, the money could be used to fund presenters and their expenses, but cannot give funds or subsidies to individual members who are attending. There is a sizable pool available for work done by the Committee, such as contracting with researchers, matching grant funds, and publications.

There were questions and discussion regarding authority of this committee, the Court, and the state agencies to receive grant funds.

### **Pretrial Demographic Data**

Staff gave an update on CSG's presentation to the Incarceration Issues Committee on April 20. The report noted that race information was missing from 80% of the records that they reviewed. Staff noted that the lack of information makes it difficult for this Committee to identify problem areas. Ms. Bertsch suggested that this committee make a

recommendation to CSG to include data collection as an area of reform. The consensus was to send a letter to Chief VandeWalle outlining the issues and informing him that we do not have good data available. There was discussion that mandatory race data reporting should be implemented.

### **Automated Court Date Reminders**

Staff introduced the suggestion of an automated court date reminder for court participants, similar to what many receive from their doctor's office. Many MJI and Access to Justice groups use them to improve appearance rates with good success. Ms. Bertsch asked what the cost would be. Mr. Finck asked if there was an issue with represented parties and talked about discussions in other committees about text notifications. Donna Wunderlich is looking into the issue. Ms. Holewa said that the concern was whether the Odyssey system was capable. Mr. Pedersen said that juvenile court still uses the old-fashioned method of calling people prior to their hearing. There was discussion about the technical obstacles; Ms. Holewa said that Larry Zubke in IT would be a good contact to discuss the feasibility.

### **Community Outreach**

Mr. Weiler provided information about the upcoming SBAND annual meeting in Grand Forks on June 15-17. Justice Alan Page will talk about diversity and bias in the profession, and Paulette Brown, the first African American woman president of the American Bar Association, will be on a panel with Judge Foughty to discuss diversity and bias in the profession. The talks will be open to the public. Paulette Brown's focus has been on inner city youth and their challenges; the hope is to talk about challenges faced by youth in Indian Country, which may be similar to some of the issues Ms. Brown has seen around the country.

Dr. McDonald provided information about the Annual Summit, September 6-8, 2016 at the Bismarck Event Center. Staff will follow up with Dr. McDonald to send out a link to Committee members with event information.

Staff discussed other community outreach ideas; such as a radio tip of the day or diversity articles. Mr. Weiler welcomed any articles in the Gavel, such as Ms. Bertsch's and Chair Foughty's tour of the Norwegian prison system. Ms. Bertsch discussed some of the methods that have been adopted in the North Dakota system from the Norwegian model to instill more humanity into the process. The prison has implemented an inmate group committee, transitional housing units, organizing opportunity to attend family events, and a focus on reducing use of solitary confinement.

Having no further business, the meeting adjourned at 2:30 p.m.