

**MINUTES**  
**(Unofficial until approved)**  
**Committee on Trial Court Operations**  
**Ramada Hotel, Bismarck**  
**October 18, 2013**

Members Present

Members Absent

Judge Zane Anderson, Chair  
Bev Demers  
Jodie Fixen  
Judge John Greenwood  
Anita Ibach  
Chris Iverson  
Cindy Schmitz

None

Others Present (Mental Health Commitment Forms Review)

Pamela Crawford, Asst Attorney General, Attorney General's Office  
Cindy Lien, Sharon Bitz; ND State Hospital  
Haley Wamstad, Ass't State's Attorney, Grand Forks County

Chair Anderson called the meeting to order at 10:00 a.m. Following introductions, he reviewed the Committee's general responsibilities, including a continuation of the review of the current forms used in the mental health commitment process. He noted Attachment B (October 5, 2013), which in items 1 - 7 identifies preliminary forms revisions discussed when the review process initially began. He noted also the bound collection of forms (Cass County, Stutsman County, and Odyssey), which will provide additional information for the review. The bound collection is numbered pages 3 through 83. Future page references are to the bound collection.

Anita Ibach provided a copy of the Region VII Mental Health Commitment Guide, which may be a useful resource.

Committee members agreed the current forms should be reviewed in conjunction with consideration of the Stutsman County forms given the number of commitment proceedings conducted in the county. It was noted that the current C-Series court forms often have separate forms related to particular issues, while the Stutsman County forms often are combined forms. Judge Greenwood cautioned that there may be forms used in Stutsman County other than those in the bound material as clerks differ in how commitment cases are processed.

Discussion then turned to a review of the C-Series (Court Forms).

C-2 Order for Appointment of Expert Examiner and Examination

Haley Wamstad noted the 6<sup>th</sup> paragraph regarding the Respondent's failure to appear for the examination. She said the process in Grand Forks County is to afford the Respondent in a non-emergency situation the opportunity to voluntarily comply before moving to a warrant of attachment. A similar process was noted in Stutsman form, p. 12. She said the same paragraph provides that if the Respondent fails to appear "a peace officer may take the Respondent into custody... ." She explained that the language is of concern as treatment providers sometimes contact law enforcement and ask, based on the language, that the Respondent be picked up. She said law enforcement often decline as the language is not considered specific enough to authorize taking the Respondent into custody.

After discussion, the following preliminary revisions were noted:

- add language regarding the cost of the examination (Stutsman form, p.12)
- modify language concerning who conducts the examination to reflect statutory language
- modify the 6<sup>th</sup> paragraph to reflect that Respondent has the opportunity to voluntarily comply with the requirement to appear for an examination (Stutsman form, p. 12)
- modify the 6<sup>th</sup> paragraph to provide that if the Respondent fails to appear, the court may issue an order that the Respondent be taken into custody

#### C-3 Warrant of Attachment

Haley Wamstad noted that Grand Forks County uses a more detailed warrant form.

Committee agreed to review an alternative warrant form based on the Grand Forks form.

#### C-4 Order of Dismissal

Chris Iverson said the earlier discussion of possible forms revisions suggested deleting the first five reasons for dismissal and modifying the sixth reason to simply provide that the respondent does not meet the criteria of being mentally ill or chemically dependent.

Haley Wamstad said the fourth option, which provides for dismissal based on a motion or stipulation, may be useful.

The last paragraph (IT IS FURTHER ORDERED.....), which concludes with "the Respondent *shall be* discharged and released..." was noted. There is confusion regarding whether the language would prevent a respondent from remaining in treatment voluntarily.

The following preliminary revisions were noted:

- delete the first three reasons for dismissal

- retain the fourth reason (motion or stipulation)
- delete the fifth reason for dismissal
- modify the sixth reason for dismissal to read “Respondent does not meet the criteria of being mentally ill or chemically dependent”
- modify the concluding paragraph to read “IT IS FURTHER ORDERED that if the Respondent is in custody, the Respondent shall be discharged and released from any further involuntary civil commitment

#### C-5 Motion for Dismissal

There were no suggested revisions.

#### C-6 Notice of Hearing

Committee members agreed a check box alternative regarding a hearing by ITV should be included - Stutsman form, p.16.

Chris Iverson said the previous discussion of possible revisions suggested deleting the bold, capitalized heading addressing the notice to certain individuals and adding a “cc” at the bottom to identify to whom notice would be given. Committee members tentatively agreed that a “cc” format should not be included in the forms.

Chris Iverson said the previous discussion suggested adding options for a modification hearing and a medication hearing.

Judge Greenwood suggested there is no need for the separate identification, by check box, of “mental illness” and “chemical dependency” in each hearing reference. Additionally, he suggested that each hearing description could be limited to a simpler recitation of a determination of whether the respondent is a person requiring treatment or continuing treatment.

Committee consensus was to revise the form as described.

#### C-7 Order Appointing Attorney

There were no suggested revisions.

#### C-8 Findings of Fact, Conclusions of Law, and Order Following Preliminary Hearing

Judge Anderson said item 2 in Attachment B (October 5, 2013), suggests combining various order forms (Stutsman contested hearing, p. 33 and hearing waiver, p.34) and notes that general practice is for findings of fact and conclusions to be made on the record. He said item 3 in Attachment B recommends including the statutory directive that the court give written notice that

the respondent has the right to a full treatment hearing if involuntary treatment extends beyond 14 days.

With respect to a form that provides that findings of fact and conclusions are made on the record, Haley Wamstad said there is value in retaining current form C-8 as it would provide more detail regarding the court's considerations and conclusions.

Committee members discussed the statutory requirement that the court make a finding regarding whether the federal firearms possession limitation applies to the respondent. It was noted that there is a difference of opinion regarding whether the finding requirement applies in the context of preliminary hearing. The Cass County preliminary hearing form, p. 4, includes check box provisions indicating the firearms limitation does not apply as it is a preliminary hearing and the order is subject to dismissal. Application of the findings requirement in the context of chemical dependency was discussed.

There was tentative agreement to include a check box provision regarding application of the federal limitation in all order forms. The issue will be discussed further by the Committee or by the Administrative Council upon submission of recommended revised forms.

After discussion, the following additional revisions were noted:

- retain current form C-8
- create alternative form C-8A to reflect findings of fact and conclusions of law made on the record
- include in both forms notice of the right to a hearing if treatment extends beyond 14 days
- include a hearing waiver alternative in both forms
- include in both forms check box provisions relating to the firearms limitation (Cass form, p.4)
- include in both forms notice to the respondent regarding the firearms limitation

With respect to reporting a finding that the federal firearms limitation applies, Chris Iverson suggested that for Odyssey purposes devising a separate form reflecting only the finding or, alternatively, an order form with the finding and an order form without the finding. She said a check box approach likely will not work for purposes of isolating the finding in Odyssey.

#### C-9 Findings of Fact, Conclusions of Law, and Order Following Treatment or Continuing Treatment Hearing

There was agreement to track the revisions made to form C-8, including an new alternative C-9A with respect to findings and conclusions made on the record.

With respect to paragraph VI regarding the treatment program not being adequate, Judge Greenwood said sometimes the court will find that there is an alternative adequate and sufficient treatment program but that the program is not available at the time. He said paragraph VI should be modified to reflect that situation. See Stutsman form, p.31.

#### C-9A Order Regarding Involuntary Treatment with Medication

The form will be renumbered to reflect the creation of new alternative form C-9A above.

Judge Greenwood noted caselaw [*In re R.A.J.*, 554 N.W.2nd 809 (N.D. 1996)] that requires twenty-four hour notice if alternative medication is to be used. Note Stutsman form, p. 38.

After discussion, the following revisions were noted:

- modify the 3<sup>rd</sup> paragraph regarding refusal to take medication to reflect statutory language [NDCC 25-03.1-18.1(1)(a)(2)]
- include a provision regarding twenty-four hour notice
- include a hearing waiver alternative (Stutsman form, p.37)

#### C-10 Order Appointing Independent Expert Examiner

Haley Wamstad noted the issue for counties related to the expense associated with the independent examination. She said Grand Forks orders identify a reimbursement amount and provide that any higher requested reimbursement is subject to court approval. She suggested similar language could be include in the form.

Judge Greenwood suggested an alternative form to be used when treatment with prescribed medication is requested. In that situation, he said, the required examination is to be conducted only by a psychiatrist, rather that one or the other of the individuals identified in C-10.

After discussion, the following revisions were noted:

- include the suggested provision related to the expense of the independent examination
- delete the reference to county expense in the first paragraph as it is addressed in the second paragraph
- create new form C-10A to address examinations in the context of a request to treat with prescribed medication.

#### Hearing Waivers

With respect generally to hearing waivers, Judge Greenwood suggested the Committee should discuss at some point whether a separate waiver form should be provided or whether the check box approach used in the revisions should be followed.

#### Other Committee Activities

Chair Anderson explained the Committee's responsibility for maintaining a current Clerk of Court Manual and said the Committee would turn to a review of the current manual after the forms revision project is completed.

Chris Iverson said she is currently involved in a review of the Odyssey Business Practices Manual and the Clerks Manual. She said the objective is to consider possible revisions to the Clerks Manual that would orient the manual toward being a more general resource, while the Business Practices Manual will set out particular practices and processes to be followed in Odyssey.

There being no further business, the meeting was adjourned at 1:50 p.m.

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Jim Ganje, Staff