

20100169  
FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

**IN THE SUPREME COURT  
STATE OF NORTH DAKOTA**

JUN 15 2010

STATE OF NORTH DAKOTA

**IN THE MATTER OF THE JUDICIAL VACANCY  
IN DISTRICT JUDGESHIP NO. 4, WITH  
CHAMBERS IN NEW ROCKFORD, NORTH DAKOTA  
SOUTHEAST JUDICIAL DISTRICT**

**Supreme Court No. 20100169**

**AMENDED BRIEF IN SUPPORT OF THE PETITION  
FOR FILLING OF AND REDESIGNATION OF JUDGESHIP NO. 4,  
WITH CHAMBERS IN NEW ROCKFORD, NORTH DAKOTA,  
SOUTHEAST JUDICIAL DISTRICT,  
TO CARRINGTON, NORTH DAKOTA,  
SOUTHEAST JUDICIAL DISTRICT.**

Rodney Olson, Trial Court Administrator of the Southeast Judicial District hereby petitions the Supreme Court of the State of North Dakota to transfer Judgeship No. 4 with chambers in New Rockford, North Dakota, Southeast Judicial District to the Southeast Judicial District, Carrington, North Dakota.

On May 6, 2010, Governor John Hoeven notified Chief Justice Gerald W. VandeWalle that the Honorable James M. Bekken, District Judge for the Southeast Judicial District, had passed away on May 3, 2010. Judge Bekken's death creates a vacancy of Judgeship Number Four under Section 27-05-02.1, N.D.C.C., which requires the Supreme Court to determine whether the judgeship is necessary for effective judicial administration in the Southeast Judicial District. The Supreme Court now needs to review the need for this judgeship and decide whether it should be filled, transferred or abolished. It is the position of the Southeast Judicial District that it would

be more effective to transfer this judgeship within the Southeast Judicial District from chambers in New Rockford, North Dakota to chambers in located in Carrington, North Dakota.

The Southeast Judicial District is comprised of eleven counties including Barnes, Dickey, Eddy, Foster, Griggs, LaMoure, Ransom, Richland, Sargent, Stutsman and Wells. There are seven judges who currently serve this district.

There are five possibilities for the location of chambers within the district. The first, leaving the chambers in New Rockford, has a history of having a judge's chambers but New Rockford sits on the very northern edge of the Southeast District which is a disadvantage in driving to counties in the rest of the district.

The second possibility is Richland County and though it has a higher Weighted Caseload than some other counties (1.25), Judge Grosz is presently chambered in Richland County. Wahpeton the county seat of Richland County has the drawback of being on the far southeastern corner of the district, which makes it difficult to have relatively short drives other than to Ransom and Sargent counties.

The third possibility, Ransom County, has submitted letters in the past for open vacancies suggesting that they should be considered for a chambered judge location. A case could be made for Ransom County, due to their higher Weighted Caseload (.4) than many of the smaller counties of the Southeast District and the fact that there is room designated for a judge's chambers and work area for a judge's staff. However, since Judge Narum resides in LaMoure, and with Judge Grosz nearby Ransom County, it is a relatively short drive for either of those and the county can also be serviced by judges from Valley City.

The fourth possibility is Stutsman County. All counties north of Interstate 94 could be serviced by a combination of judges from Jamestown and Valley City. A new judgeship located in Jamestown was created for the Southeast District during the last legislative session which resulted in Judge Merrick being appointed. With this recent addition of a judgeship being added to Stutsman County many of the smaller counties may feel slighted if three judges were chambered in Jamestown.

The last possibility, and the location that I am endorsing, is Foster County. It has the advantage of being located in the middle of the northern four counties of the district yet is still close enough to lend support to Stutsman County. There is an assurance by the Foster County Commission to provide adequate facilities for the judge and staff.

Pursuant to N.D. Sup. Ct. Admin. R. 7.1 (4), attached is the criteria which supports changing the location of Judgeship No. 4 within the Southeast Judicial District.

WHEREFORE, YOUR PETITIONER PRAYS FOR THE FOLLOWING RELIEF:

1. That Judgeship No. 4, currently chambered in New Rockford, North Dakota, Southeast Judicial District be moved to Carrington, North Dakota, Southeast Judicial District.
2. That if a hearing is held, your petitioner and other representatives of the Southeast Judicial District be allowed to appear before the North Dakota Supreme Court at the time, place and conditions of which to be designated by the Supreme Court upon proper notice to your petitioner and interested parties pursuant to Section 2(3) NDRDCJC.
3. That your petitioner and other representatives of the Southeast Judicial District be granted the opportunity for further written comment or filing of briefs with the time, place of filing and conditions of filing being designated by the Supreme Court.
4. That the Southeast Judicial District be granted such other and further relief as may be just and equitable.

Dated this 12<sup>th</sup> day of June, 2010.

  
Rodney Olson  
Trial Court Administrator-Unit 2  
Petitioner for the Southeast Judicial District

**Rule 7.1**

Section 4 of Administrative Rule 7.1 sets forth a number of criteria to be considered in the establishment of a district court judgeship. The facts contained in the following criteria will unquestionably demonstrate the need for the transfer of the now vacant judgeship in the Northwest Judicial District to the Southeast Judicial District for filling.

**Criterion A. Annual Combined Civil, Criminal and Formal Juvenile Caseload:**

The annual combined civil, criminal and formal juvenile caseload in the Southeast Judicial District, listing the number of counts filed, for the most recent three-year period is shown in the following table:

| Case Type          | 1998  | 1999  | 2000  |
|--------------------|-------|-------|-------|
| Child Support      | 320   | 339   | 347   |
| Domestic Relations | 1,010 | 854   | 957   |
| Mental Health      | 238   | 197   | 244   |
| Probate & Trust    | 496   | 515   | 532   |
| Small Claims       | 1,044 | 1,058 | 960   |
| Other Civil        | 1,207 | 1,172 | 1,241 |
| Juvenile           | 188   | 187   | 216   |
| Criminal           | 4,988 | 5,094 | 5,201 |
| Total:             | 9,491 | 9,416 | 9,698 |

**Criterion B. Number and Location of Attorneys:**

There are a total of 82 attorneys who reside in the Southeast Judicial District. There are currently a larger number of attorneys located in Carrington than in New Rockford. In addition, Carrington is closer for attorneys from Jamestown which is where one-fourth of the attorneys in the district reside.

| Location    | Number of Attorneys |
|-------------|---------------------|
| Carrington  | 4                   |
| Cooperstown | 1                   |
| Ellendale   | 1                   |
| Enderlin    | 2                   |
| Fessenden   | 1                   |
| Forman      | 2                   |

|                       |           |
|-----------------------|-----------|
| Harvey                | 5         |
| Jamestown             | 21        |
| LaMoure               | 3         |
| Lisbon                | 4         |
| Luverne               | 1         |
| New Rockford          | 2         |
| Oakes                 | 2         |
| Rutland               | 1         |
| Valley City           | 15        |
| Wahpeton/Breckenridge | 16        |
| Dickey                | 1         |
| <b>Total:</b>         | <b>82</b> |

**Criterion C. Community facilities:**

Carrington has 3 hotels one of which includes a conference center. There is also a Bed and Breakfast. Carrington has 6 restaurants including fast food, mom and pop diners to up-scale eateries.

**Criterion D. Convenience of travel access from surrounding communities:**

Carrington is located at the junction of two major North Dakota highways 52 and 200 and is served by a local municipal airport and is 43 miles from the Jamestown Regional Airport which has non-stop service to Minneapolis. Carrington is covered by all parcel service companies.

**Criterion E. Compliance with or commitment to court facility standards:**

Foster County has made improvements to their court facilities by applying for Court Facility grants. New windows have been put in the courtroom and judge's chambers. The courtroom is air conditioned and the county has made a commitment to update the judge's chambers, judge's staff, and a law library if the chambers are moved to Foster County.

**Criterion F. Proximity to detention facilities for adults and juveniles:**

Carrington is 43 miles from the Jamestown jail and Jamestown Correctional Facility. The North Dakota State Hospital is also located in Jamestown.

Each of the counties listed below have cities with a Class I (hold up to one year) jail.<sup>1</sup> Stutsman County also has the James River Correctional Center which is part of the State Penitentiary system. The current classifications are as follows:

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<sup>1</sup> <http://www.nd.gov/docr/county/jails.html>

| County   | Facility                               | Classification     |
|----------|--|--------------------|
| Barnes   | Barnes County Jail                     | Class I            |
| Stutsman | Stutsman County Law Enforcement Center | Class I            |
| Stutsman | James River Correctional Center        | State Penitentiary |
| Richland | Richland County Law Enforcement Center | Class I            |

**Criterion G. Cooperative court service arrangements with the county courts:**

Not applicable

**Criterion H. Proximity to a Human Service Center of the Department of Human Services:**

The South Central Human Service Center for Region IV, which serves seven of the counties in the Southeast Judicial District, including Foster County is located in Jamestown. The Region III Human Service Center which is located in Devils Lake serves Eddy County. Ransom, Richland, and Sargent Counties are served by the Region V Human Service Center which is located in Fargo.<sup>2</sup>

**Criterion I. Impact of any change of chamber on travel time for judges, court personnel, attorneys, and litigants:**

Moving the chambers to Carrington will not have a significant impact on travel time for judges or court personnel within the northern region. However, the move will serve to bring the judge

<sup>2</sup> <http://www.nd.gov/dhs/locations/regionalhsc/>

and court personnel closer to the rest of the Southeast Judicial District and thus in a better position to add to the flexibility of judge use within the district.

The five-year average Weighted Caseload for counties North of Interstate 94 is .92 FTE as shown in the following chart.

| County        | WCL |
|---------------|-----|
| Eddy County   | .19 |
| Foster County | .24 |
| Griggs County | .18 |
| Wells County  | .30 |
| TOTAL         | .92 |

**Criterion J. Population distribution in the judicial district or de facto sub district:**

The Southeast Judicial District is comprised of Barnes, Dickey, Eddy, Foster, Griggs, LaMoure, Ransom, Richland, Sargent, Stutsman, and Wells Counties. The current population estimates and population projections for counties within the district are set forth in the table below:

| County         | Year   |        |        |        |
|----------------|--------|--------|--------|--------|
|                | 2005   | 2010   | 2015   | 2020   |
| Barnes         | 11,574 | 11,564 | 11,629 | 11,675 |
| Dickey         | 5,536  | 5,426  | 5,365  | 5,283  |
| Eddy           | 2,669  | 2,633  | 2,550  | 2,470  |
| Foster         | 3,637  | 3,557  | 3,395  | 3,216  |
| Griggs         | 2,557  | 2,418  | 2,271  | 2,099  |
| LaMoure        | 4,466  | 4,310  | 4,104  | 3,898  |
| Ransom         | 5,834  | 5,844  | 5,860  | 5,840  |
| Richland       | 17,715 | 17,570 | 17,414 | 17,218 |
| Sargent        | 4,258  | 4,230  | 4,225  | 4,272  |
| Stutsman       | 21,452 | 21,278 | 21,037 | 20,737 |
| Wells          | 4,783  | 4,593  | 4,364  | 4,094  |
| District Total | 84,481 | 83,423 | 82,214 | 80,802 |

\* Source: North Dakota State Data Center, North Dakota Population Projections: 2005 to 2020, Issued September 2002. <http://www.ndsu.nodak.edu/sdc/publications/reports/ProjectionsReport2002updated.pdf>

**Criterion K. Impact on affected judicial system employees:**

Moving the chambers will have minimal effect on District Court employees. The present Electronic Recorder lives close to Carrington. If backup support staff is needed, it will be closer to drive to Carrington rather than New Rockford.

**Recommendation of the presiding judge of the district:**

I approve the brief and the petition; the other judges of the district agree that the position needs to be filled. The workload strain over the last several years has resulted in docket currency deficiencies, which until recently, with the addition of Judge Merrick, have started to decline. Without the judgeship, deficiencies will increase.

STATE OF NORTH DAKOTA )  
 )  
COUNTY OF CASS )

**AFFIDAVIT OF SERVICE BY MAIL**

RECEIVED BY CLERK  
SUPREME COURT  
JUN 2 2010

Supreme Court No: 20100169

Kristen Erickson, being first duly sworn on oath, does depose and say: She is a resident of the City of Fargo, North Dakota, of legal age, and not a party to the above-entitled matter.

On the 14<sup>th</sup> day of June, 2010 affiant deposited in the United States Post Office at Fargo, North Dakota, a true and correct copy of the following documents:

**AMENDED BRIEF IN SUPPORT OF THE PETITION FOR FILLING OF AND REDESIGNATION OF JUDGESHIP NO. 4, WITH CHAMBERS IN NEW ROCKFORD, NORTH DAKOTA, SOUTHEAST JUDICIAL DISTRICT, TO CARRINGTON, NORTH DAKOTA, SOUTHEAST JUDICIAL DISTRICT**

The copies of the foregoing were securely enclosed in an envelope with postage duly prepaid and addressed as follows:

Barnes County Commissioner  
230 - 4<sup>th</sup> Street NW  
Valley City, ND 58072

Ransom County Commissioner  
205 - 5<sup>th</sup> Ave. W  
P.O. Box 668  
Lisbon, ND 58054-0668

Dickey County Commissioner  
P.O. Box 215  
Ellendale, ND 58436

Richland County Commissioner  
418 - 2<sup>nd</sup> Ave. N  
Wahpeton, ND 58075

Eddy County Commissioner  
524 Central  
New Rockford, ND 58356

Sargent County Commissioner  
355 Main Street  
Forman, ND 58032

Foster County Commissioner  
1000 - 10<sup>th</sup> Ave. N  
Carrington, ND 58421

Stutsman County Commissioner  
511 - 2<sup>nd</sup> Ave. SE  
Jamestown, ND 58401

Griggs County Commissioner  
808 Rollin Ave. SW  
Cooperstown, ND 58425

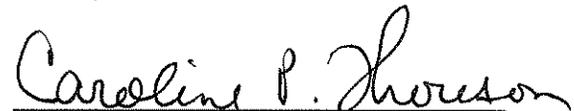
Well County Commissioner  
P.O. Box 596  
Fessenden, ND 58438

LaMoure County Commissioner  
202 - 4<sup>th</sup> Ave NE  
P.O. Box 128  
LaMoure, ND 58458

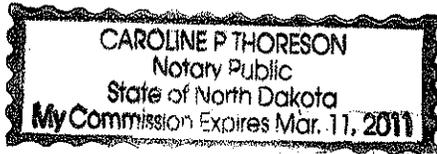
To the best of affiant's knowledge, the addresses above given were the actual post office addresses of the parties intended to be served.

  
Kristen Erickson

Subscribed and sworn to before me this 14 day of June, 2010.

  
Notary Public, Cass County, ND

(SEAL)

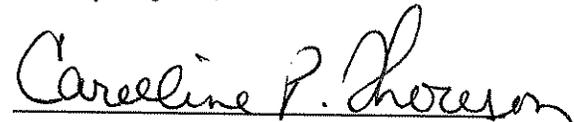




To the best of affiant's knowledge, the addresses above given were the actual post office addresses of the parties intended to be served.

  
Kristen Erickson

Subscribed and sworn to before me this 14 day of June, 2010.

  
Notary Public, Cass County, ND

(SEAL)

