

20150092

RECEIVED BY CLERK
SUPREME COURT MAR 23 2015

State of North Dakota

JOINT PROCEDURE COMMITTEE

CHAIR
JUSTICE DALE V. SANDSTROM
STAFF ATTORNEY
MICHAEL J. HAGBURG

FIRST FLOOR JUDICIAL WING
600 E BOULEVARD AVE DEPT 180
BISMARCK, ND 58505-0530

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

MAR 23 2015

March 23, 2015

STATE OF NORTH DAKOTA

Honorable Gerald W. VandeWalle, Chief Justice
North Dakota Supreme Court
600 East Boulevard Avenue
Bismarck, ND 58505-0530

Re: Proposed New N.D.R.Ct. 8.14, Termination of Child Support Order

Dear Chief Justice:

On July 31, 2014, the Supreme Court referred proposed amendments to Trial Court Administrative Policy 505 to the Joint Procedure Committee for comments and recommendations. Under the proposed amendments, a new Section 9 on child support would have been added to the policy. The amendments were drafted by James Fleming, the director of child support enforcement for the Department of Human Services. A copy of Mr. Fleming's proposal is attached for your reference.

The proposed amendments were designed to eliminate the problem of competing child support orders by allowing automatic termination of an order if the obligor under the order was awarded primary residential responsibility in a new order. The committee discussed the proposal briefly at its September 2014 meeting and agreed that the concept behind it seemed useful. The committee discussed the proposal again at its January 2015 meeting and decided that it would be better to put the proposed language in a new, publically accessible, court rule instead of in an internal court policy. A copy of the proposed new rule is attached.

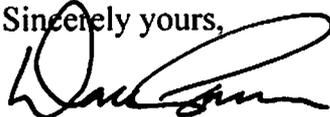
The proposed new rule follows Mr. Fleming's proposal with some minor modifications. It would terminate an order establishing a monthly support obligation if the obligor under the order is awarded primary residential responsibility in a domestic case or custody in a case under the Uniform Juvenile Court Act. One of the main reasons the

committee considered it important to have Mr. Fleming's proposed language in a public court rule is because the proposal would cause the automatic termination of a duly entered court order.

The rule is intended to apply only to North Dakota court orders. The committee added language clarifying that, if the previous order is in a separate court file, the party who obtains primary residential responsibility or custody is responsible for filing a copy of the new order in the separate case file with the old order. The committee discussed how this filing would be done and concluded it could be done electronically through the Odyssey system either by a party's attorney or by a self-represented party working with the court and the clerk.

Thank you for referring this matter to the committee.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Dale V. Sandstrom", written over a horizontal line.

Dale V. Sandstrom

Chair, Joint Procedure Committee



Child Support Enforcement

MEMORANDUM

Date: May 16, 2014
To: Sally Holewa, Supreme Court Administrator
From: James C. Fleming, Director
CC: Jim Ganje
Re: Policy 505 – Section 9 – terminations of current support obligations

As requested, Child Support has reviewed the current language in Paragraph 9(A) of Trial Court Administration Policy 505. As you noted to me, the existing provision for terminations of parental rights in paragraph 9(A) is out of date. Under current law, paragraph 9(A) is relevant only if parental rights have been terminated without specific judicial termination of the duty to support the child and the child is subsequently adopted. Only at that point is administrative termination of the current support obligation necessary and appropriate. Here is how we would suggest changing paragraph 9(A):

Adoption of Minor Child or Following Termination of Parental Rights.

~~The adoption of a minor child or the~~ Unless otherwise specified by the court in its order to terminate an obligor's parental rights toward a child, a termination of parental rights in accordance with N.D.C.C. §14-17-24(6) terminates does not terminate the obligor's current child support obligation until the child is adopted. N.D.C.C. § 14-09-08.21. The adoption of the child following a termination of parental rights terminates the obligor's current support obligation. A certified copy of the adoption decree or and the order terminating parental rights ~~in accordance with §14-17-24(6)~~ must be placed in a sealed envelope in the case file.

In addition to the proposed changes to paragraph 9(A), Child Support would like to recommend the Administrative Council's consideration of the following new paragraph in Section 9:

Unless otherwise specified by court order, the current monthly support obligation will terminate when the obligor of the current support obligation has been awarded

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

Currently, the parents are required to go back to court to terminate the ongoing obligation, which is understandably frustrating because the parents feel like the termination of the current child support obligation is a fairly obvious step given the fact that a court has awarded primary residential responsibility to the obligor and there is no longer a basis for the child support obligation.

RULE 8.14. TERMINATION OF CHILD SUPPORT ORDER

1 Unless otherwise specified by court order, an order issued by a North
2 Dakota court that establishes a monthly support obligation will terminate if the
3 obligor under the order is awarded primary residential responsibility, or custody
4 under the Uniform Juvenile Court Act, of the child or children on whose behalf the
5 obligation is owed.

6 This rule applies when primary residential responsibility or custody is
7 changed or granted by a North Dakota court in:

- 8 (1) the same civil file as the previous support order;
9 (2) a separate civil file in the same county; or
10 (3) a separate civil file in a different county.

11 If primary residential responsibility or custody is changed or granted in a
12 separate civil file, the party awarded primary residential responsibility or custody
13 must file a copy of the order awarding primary residential responsibility or custody
14 with the prior order.

15 EXPLANATORY NOTE

16 Rule 8.14 took effect _____.

17 Sources: Joint Procedure Committee Minutes of January 29-30, 2015,
18 pages _____; September 25-26, 2014, pages 24-25.