

Miller, Penny

From:	Ganje, Jim	FILED
Sent:	Wednesday, September 11, 2013 10:29 AM	IN THE OFFICE OF THE
To:	Miller, Penny	CLERK OF SUPREME COURT
Subject:	Joint Procedure Proposed Amendments - AR 13	SEPTEMBER 11, 2013
		STATE OF NORTH DAKOTA

Penny,

I am usually hesitant to offer comments about rule proposals submitted to the Court, but I thought I would venture an exception with respect to the proposed amendments to the judicial referee rule (AR 13) before the Court on October 29.

A proposed amendment would add small claims cases to the list of proceedings that could be delegated to the referee by the presiding judge under Section 5(a). This may be an unnecessary change. N.D.C.C. § 27-08.1-08 (pasted in at the end of this email) already authorizes, statutorily, a presiding judge to appoint a “referee of the small claims court”. While the title is somewhat quaint, I think the statute has historically been the basis for assigning small claims cases to referees. And the statute actually predates the referee rule, which might explain why small claims proceedings have never been included in the Section 5(a) listing.

An additional proposed amendment to Section 11(a) would except delegated small claims proceedings from the review procedure for referee orders. As with the Section 5(a) amendment, this amendment may also be unnecessary. N.D.C.C. §27-08.1-04 provides that by electing to proceed in small claims court, both the plaintiff and the defendant waive the right to appeal the decision. Although appeal and review (under the rule) are different, it may be somewhat confusing to include an exception from the Section 11(a) procedure for small claims cases, when the right to appeal is already unavailable by statute.

Just a thought or two.

Jim

The statute:

27-08.1-08. Referees of small claims court - Appointment - Term - Method of qualifying - Powers and duties - Compensation.

The presiding judge of the judicial district may appoint a referee of the small claims court who shall hold office at the pleasure of the judge. The referee shall qualify in the same manner as other civil officers, except that the referee need not be a qualified elector of the county, and the duties and powers of the referee in the conduct of trials in the small claims court are governed by the provisions of rule 53(c) of the North Dakota Rules of Civil Procedure insofar as those provisions are not in conflict with the provisions of this chapter. The referee appointed must be a person versed in the law. The presiding judge shall determine the salary or fee of the referee, within the limits of legislative appropriations.