



TED C. GLADDEN
STATE COURT ADMINISTRATOR

State of North Dakota
OFFICE OF STATE COURT ADMINISTRATOR

RECEIVED BY
Chief Justice
Supreme Court

AUG 11 2004

STATE OF
NORTH DAKOTA

August 11, 2004

Comment

20040186

ORIGINAL

SUPREME COURT
Judicial Wing, 1st Floor
600 E Boulevard Ave Dept 180
Bismarck, ND 58505-0530
Phone: (701) 328-4216
Fax: (701) 328-2092

20040186
FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

AUG 18 2004

STATE OF NORTH DAKOTA

TO: Supreme Court Justices
FROM: Ted Gladden
SUBJECT: Amendments to Administrative Rule 20

Recently, a district judge brought to my attention a correction that needs to be made to Administrative Rule 20. Attached is a proposed amendment to the rule that I would request be considered as part of the public hearing on this rule.

TG/rb
Attachment

*AR 20 amended
Effective April 1, 1998*

**MAGISTRATES—QUALIFICATIONS,
AUTHORITY, EDUCATION AND
PROCEDURES**

Administrative
Rule 20

Section 1. Authority.

The 1991 Legislative Assembly provided for the appointment of magistrates under Section ~~27-05-31, NDCC~~. In accordance with Article VI, Section 3, North Dakota Constitution, and Section 27-05-31, NDCC, the Supreme Court adopts the following administrative rule relating to magistrates.

Section 2. Statement of Policy.

It is the policy of the North Dakota Judicial System to provide for the qualifications, the extent and assignment of authority, and the conduct of the office of magistrate within the North Dakota Judicial System in each judicial district.

Section 3. Qualifications of Magistrates.

Minimum qualifications for magistrates shall include:

- (a) United States' citizenship.
- (b) Physical residence in the county of appointment after appointment unless physical residence is waived by the appointing and confirming authorities.

Section 4. Appointment.

The presiding judge of the judicial district may appoint a magistrate to serve at the pleasure of the presiding judge. Magistrates may be paid a salary as determined by the Supreme Court.

Section 5. Scope of Delegable Duties.

- (a) The presiding judge of the judicial district may delegate the following duties and authority to a magistrate who has met the qualifications in Section 3:
 1. To issue search warrants pursuant to Section 29-29-01, NDCC, and Rule 41, NDRCrimP.

2. To issue administrative search warrants pursuant to Section 29-29.1-01, NDCC.
 3. To approve complaints and to issue summons or warrants pursuant to Chapter 29-05, NDCC, and Rules 3 and 4, NDRCrImP.
 4. To hold initial appearance pursuant to Rule 5, NDRCrImP, and to set bail pursuant to Chapter 29-08, NDCC, and Rule 46, NDRCrImP.
 5. To perform registrar and clerk duties pursuant to the Uniform Probate Code, Title 30.1, NDCC, particularly Sections 30.1-14-02 and 30.1-14-07, NDCC, in informal probate proceedings and Section 30.1-15-05, NDCC, in uncontested formal probate proceedings.
 6. To conduct preliminary mental health commitment proceedings pursuant to Section 25-03.1-09, NDCC, notwithstanding and consistent with Section ~~25-03.1-02(2)~~ 25-03.1-02(3) and (8).
- (b) The duties delegated to each magistrate under this section must be reduced to writing and signed by the presiding judge of the judicial district.
- (c) The duties of a magistrate may be diminished by the presiding judge of the judicial district upon notice in writing to the magistrate.

Section 6. Geographical Jurisdiction.

Each magistrate has the geographical jurisdiction within the judicial district as assigned by the presiding judge of the judicial district, and is expected to maintain an office in conjunction with a district judge.

Section 7. Alternate Magistrate.

The presiding judge of the judicial district may appoint an alternate magistrate in a county in which the presiding judge or another district judge does not reside. The alternate magistrate shall meet the qualifications of Section 3 and may be delegated duties pursuant to Section 5. The alternate magistrate shall serve as magistrate whenever the magistrate for the county is unavailable to fulfill the duties of magistrate.

Section 8. Vacancy.

The presiding judge of the judicial district may fill any vacancy in the office of magistrate or alternate magistrate pursuant to Section 4 and Section 7.

Section 9. Proceedings on the Record.

Proceedings must be heard on the record as in district court.

Section 10. Removal From Office.

A magistrate may be removed from the office of magistrate by the presiding judge of the judicial district upon notice in writing to the magistrate.

Section 11. Standard of Conduct.

The Code of Judicial Conduct is the standard of conduct which shall be observed by each magistrate. The Judicial Conduct Commission has jurisdiction over the conduct of magistrates to the same extent as it has over other judges.

Section 12. Continuing Education.

- (a) Each magistrate appointed under Section 27-05-31, NDCC, must attend a continuing education program every odd calendar year as provided by the Continuing Judicial Education Commission. The magistrate must be reimbursed for necessary expenses, travel, and subsistence by the judicial system.
- (b) If any magistrate fails to attend an educational session without being excused by the State Court Administrator, the State Court Administrator shall report such fact to the presiding judge of the judicial district and to the Judicial Conduct Commission, for such action as it deems appropriate.

Section 13. Effective Date.

This Rule, as amended, is effective ~~April 1, 1998~~.

Dated this ~~1st day of April 1998~~.

ATTEST:
Penny Miller, Clerk
North Dakota Supreme Court

SOURCE: N.D. Const., Art. VI, Sec. 3; Sec. 27-07.1-07, NDCC. AR 20 adopted December 22, 1982, effective January 1, 1983; amended effective June 24, 1985; emergency amendments adopted effective December 20, 1989, readopted February 22, 1990; amended June 24, 1992, which amendments became effective on August 1, 1993; Sec. 27-05-31, NDCC; amended November 16, 1994, with amendments effective January 1, 1995; amended April 1, 1998; amended_____.