Senate Bill 2252
Senate Judiciary Committee

Testimony Presented by the Judges and Referees of the East Central Judicial District Court January 31, 2023

Good Morning, Chairman Larson and members of the Committee. For the record, we are:

The Honorable John C. Irby, Presiding Judge;
The Honorable Wade L. Webb, District Judge;
The Honorable Steven E. McCullough, District Judge;
The Honorable Susan Bailey, District Judge;
The Honorable Stephannie N. Stiel, District Judge;
The Honorable Tristan J. Van de Streek, District Judge;
The Honorable Reid A. Brady, District Judge;
The Honorable Nicholas W. Chase, District Judge;
The Honorable Constance L. Cleveland, District Judge;
The Honorable Stephanie R. Hayden, Judicial Referee; and
The Honorable Daniel E. Gast, Judicial Referee.

We constitute all of the present judicial officers (both judges and referees) of the East Central Judicial District Court of the State of North Dakota (hereinafter "ECJD"). Because of our workloads we are unable to appear personally and present oral testimony. Therefore, we are all jointly providing this written testimony in opposition to Senate Bill 2252.

The ECJD is comprised of Cass, Steele and Traill counties. Presently, the ECJD is served by nine judges and two judicial referees (all of the undersigned). It is one of three judicial districts in the State which presently utilizes judicial referees (the others being the South Central Judicial District (which includes the cities of Bismarck and Mandan) and the North Central Judicial District (which includes the city of Minot)). It is, therefore, one of the three judicial districts that will be directly affected by Senate Bill 2252.

The purpose of Senate Bill 2252 is to abolish the position of judicial referee and, instead, create additional judgeships in their place. The intent of the Bill is not to provide any additional resources available to help process cases, but merely to allegedly promote unification by eliminating one category of judicial officer and replacing it with another. We point this out only to emphasize that in this session, the Judicial Branch is asking for two additional, and badly needed, judgeships for the ECJD. This Bill will not help to address our pressing need for more judges in the ECJD, and we want to make sure that you are aware our opposition to this Bill in no way undercuts our request for additional judges in the ECJD. In other words, even if this Bill were to become law, it would not provide the needed additional resources for the ECJD.

Our primary opposition to this Bill is that, under the guise of unification, it will actually reduce the quality of services provided to the citizens of the ECJD. Presently, the referees in the ECJD handle cases including juveniles, small claims, evictions, child support enforcement and the issuance of civil protections orders. The referees' single biggest caseload involves handling juvenile matters, which include delinquent matters, matters involving children in need of protection (previously known at deprivations), and matters involving children in need of services (previously known as unruly children). Thus, our testimony will revolve largely around the juvenile area.

From a historical perspective, the handling of juvenile matters was the initial purpose for the creation of the referee position in North Dakota. Since at least 1969, with the passage of the Uniform Juvenile Court Act, the court system of North Dakota has consistently allowed for and utilized referees in the juvenile justice system. 1969 N.D. Laws, ch. 289, § 1; see also 1985 N.D.

Laws, ch. 334, § 1 (replacing the Uniform Juvenile Court Act referee positions with a bill entitled: "Juvenile Court Referees").

Juvenile matters are unlike other matters in the Court system in that they categorically must, by law, be processed more quickly. The processing of cases is generally handled by rules of procedure rather than by statutes. In North Dakota, there are distinct rules of procedure for civil cases, criminal cases and juvenile cases. Only the North Dakota Rules of Juvenile Procedure contain specific time requirements for when interim hearings must be held in a case. See N.D.R. Juv. Pro. 2. A formal case in a juvenile matter is commenced by the filing of a Petition. The rules of procedure in juvenile cases require that if a child is placed into detention, a hearing must be held within 24 hours and if a child is placed into shelter care a hearing must be held within 96 hours. An initial hearing on the Petition must be held within 30 days of the filing of the Petition, and must be held within 14 days if the child is in custody. An adjudicative hearing in a delinquency (akin to the trial in adult criminal case) must be held within 30 days of the initial hearing.

There are no similar rules governing when hearings must be held in either civil or criminal matters. The closest approximation is the right to a speedy trial in criminal matters, which is governed by constitutional and statutory provisions. For example, for alleged sex offenders and controlled substance abusers, there is a statutory right to a speedy trial within 90 days of when a defendant files a demand for the speedy trial. N.D. Cent. Code § 29-19-02; see also N.D. Cent. Code § 29-33-03 (requiring, upon demand by the defendant, that any untried criminal matter pending against someone already incarcerated in this state must be tried within 90 days of the demand).

The point is that all juvenile cases, not just those in which a demand is filed, must move very quickly through the system. Further, juvenile cases, unlike any other general category of cases, have mandated interim hearings that must occur within specific time frames. This is important not only for federal funding when it comes to matters involving children in need of protection (more about which will be discussed later), but it directly impacts how the ECJD has structured its policies and caseload to meet these challenges.

As noted, there are presently nine district judges in the ECJD (hopefully soon to be 11 with the request to add two more judges to our district.) District judges are judges of general jurisdiction in North Dakota. This means that they hear all kinds of cases, from traffic offenses to premeditated murders and from default collections to the most complex class actions. The ECJD judges operate in a rotation, meaning that each week a district judge will be scheduled to hear certain types of cases. This rotation means that a district judge in the ECJD only has the availability to hear interim hearings in cases once every 4-5 weeks. Obviously, this would not allow the ECJD to meet the time restrictions for juvenile cases set forth above.

The 2020-21 weighted caseload study showed that out of the annual average of 2,266 juvenile filings statewide, 583 (26 percent) were filed in the ECJD. In other words, of the eight judicial districts in the state, a quarter of all juvenile filings were in the ECJD (with over 90 percent of those filed in Cass County alone). These large numbers of juvenile filings in the ECJD, combined with a large number of judicial officers, make it necessary to create a specialized system and calendar to handle juvenile matters within the time limits set forth in the rules. If these juvenile matters were simply included into the regular schedule of a judge, there is no way those cases could be processed in a timely manner. The fact that referees are still located in the high volume

districts, such as in Fargo and Bismarck/Mandan, helps to emphasize this point. What may be doable in a district with fewer judges and fewer juvenile filings simply is not possible in the ECJD.

There are only two possibilities which are available to process this number of juvenile matters with this many judicial officers. The first option would be to have different judicial officers hear different parts of a case. In order to meet the time deadlines, one judicial officer might hear the detention hearing (required within 24 hours of when the juvenile is taken into detention). Another judicial officer might then have to conduct the initial hearing on the Petition (required within 14 days of when the child is taken into custody). Another judicial officer might then have to conduct the adjudicative hearing (again, akin to the trial in an adult criminal matter and required to be held within 30 days of the initial hearing). Finally, yet another judicial officer might then have to conduct the dispositional hearing (akin to the sentencing hearing in an adult criminal matter). In short, a child and their family might have five different judges for their one case.

Not only would this present a real risk of conflicting and contradictory opinions or statements from the Court, it also would increase the amount of time required to be spent on each file. Each new judge on the file would have to conduct a review of what happened in previous hearings in order to ensure that the judge has sufficient familiarity with the child and the child's progress (or lack thereof) to date. This is why all of the best practices manuals in the juvenile area advise that the same judicial officer handle the entirety of a juvenile matter. In short, while this first option might eliminate one type of judicial officer (the referee), it would do so at the cost of lessening the quality of the service provided to the public in juvenile cases.

The second possibility is to do what has been done in the ECJD, i.e., to create a specialized docket for the handling of juvenile matters by a limited number of judicial officers. If unification means that the same type of judicial officer does all judicial functions, then the elimination of the referee position would foster unification. If the referee positions were eliminated but a specialty docket were retained, then a limited number of judges (rather than referees) would handle the specialized juvenile docket. This would allow for the same judge (rather than the same referee) to preside over all of the hearings in a single juvenile case. However, in the ECJD, and because of the number of juvenile cases, it would not be possible for that judge to then hear all of the other cases that a "normal" judge would hear during a "normal" rotation. In short, this would simply mean that the specialty docket system with a limited number of judicial officers serving that docket would continue, but only with district judges serving the juvenile docket rather than referees. However, those judges on the specialty, juvenile docket, while technically the same type of judicial officer, would have duties distinct from a judge not serving the specialty, juvenile docket. This second possibility then would not effectively accomplish the goal of unification. It would simply transpose the referee on the specialty docket to a judge on the specialty docket. Further, it would be at greater expense to the state (since referees are paid slightly less than judges).

This Bill is simply proposing to abolish the referee positions and create an equivalent number of corresponding judgeship positions. This Bill does not propose the creation of a separate class of "juvenile court judges." As these judicial officers would be regular judges, they would still be district judges of general jurisdiction. While any such district judge might sit on a specialty juvenile docket for a short period of time, ultimately that district judge would be

entitled to rotate off the specialty juvenile docket and another district judge would have to take their place. This would inevitably result in a diminishment of the expertise of the judicial officers hearing juvenile matters. In short, this Bill would result in less competent judicial officers in the juvenile area at a greater expense to the state. The biggest losers to such a change would again likely be the users of the juvenile justice system (the children and their families).

We are unaware of any existing problems anywhere in the State with either the performance of, or the obtaining of, referees. For example, in the past several years both of the referee positions in the ECJD have come open. One position came open when a referee took a similar referee position for more pay in Clay County, Minnesota. The other came open when a referee retired. We had no problems filling either position. For both positions, we had several extremely qualified individuals apply. Anecdotally, some of those applicants indicated that they would not have applied for, and had no interest in, a district judgeship. They told us this was because of the limited area of expertise required of a referee as opposed to the breadth of knowledge required of, and of the variety of case types heard by, a district judge of general jurisdiction. In short, we do not believe this legislation is being sought by the districts which currently have referees or by the referees themselves.

As indicated above, the federal government has taken an active interest in juvenile justice in the United States. Congress has adopted numerous federal laws addressing the responsibilities of the states relating to the prevention, identification, and treatment of child abuse and neglect. Examples include the Child Abuse Prevention and Treatment Act (Public Law 93-247) [originally adopted in 1974], the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272), and the Adoption and Safe Families Act of 1997 (Public Law 105-89). These Acts recognized goals

of safety, permanency, and timeliness as imperative to the long-term welfare of children. As a result of these Acts, state courts have been charged with assuring the goals are met. In addition to these three major Acts, there have been additional federal laws that have added to the complexity of child welfare practice. Several national entities, including the National Center for State Courts, the National Association of Counsel for Children, the American Bar Association's Center for Children and the Law, the US Department of Human Services' Children's Bureau, and National Conference of Juvenile and Family Court Judges, all promote best practices in juvenile matters. These best practices consistently include specialization of those involved in the juvenile justice system and timeliness of hearing and disposing of juvenile matters. For example, the National Conference of Juvenile and Family Court Judges, in partnership with the Office of Juvenile Justice and Delinquency Prevention, have developed model courts toward achieving the stated goal of "One family – One judge." This Bill takes us farther away from these best practices goals and would not make it better for those involved in the juvenile justice system.

This is important because while child welfare funding in North Dakota is complex, one of the primary sources of funds for juvenile cases our courts handle is Federal IV-E and IV-B dollars (especially as it relates to matters involving children in need of protective services). Further, North Dakota is a state administered/county administered program. Therefore, the performance of those counties which are reviewed in federal audits affects the federal dollars coming into our state overall.

According to the Child Welfare Director for North Dakota, because of its large number of cases, Cass County accounts for around 40 percent of the cases reviewed by the federal government for compliance with federal standards, even in random reviews. To be clear, the

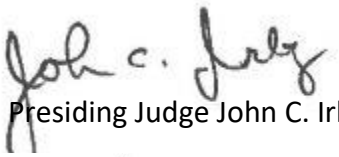
time parameters for federal funding are not the same as those set forth in the North Dakota Rules of Juvenile Procedure. Rather, those time parameters are found in federal regulations governing grants to the states. However, what is important is that because Cass County Social Services (n/k/a Cass County Human Service Zone) serves the largest metropolitan area in the state, it is **always** included in the Child and Family Services Review. This review has a direct impact on the amount of federal funding received for the entire State, and not just Cass County.

As pointed out above, this Bill would require significant changes to how the ECJD (including Cass County) processes its juvenile caseload. Passage of this Bill will almost certainly negatively affect the timeliness of case processing. By eliminating the specialty nature of the docket, it will inevitably result in judicial officers with less familiarity of applicable federal laws, and having to manage competing dockets in other areas of law. All of this is likely to be reflected in the Child and Family Services Reviews conducted by the federal government. This may have an unintended consequence of lessening federal dollars to all parts of the State of North Dakota for child welfare.

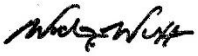
The stated goal of this legislation is further unification of the courts in North Dakota. Even if this Bill passes, North Dakota will not have a completely unified court system. There will still be municipal courts. Undoubtedly, unification of the courts can be a laudatory goal. It can eliminate some potential for confusion for the litigants and can streamline the process. Although some of us have spoken to the judges from the other affected districts, we do not purport to speak for those other areas of the State. However, we can tell you that in the ECJD, the elimination of referees will have a significant negative impact on the users of the system (especially in juvenile cases). It also risks a negative impact on the state-wide funding from the

federal government for juvenile and family cases. In our opinion none of these risks is outweighed by the asserted goal of additional unification. Therefore, we, as the judges and referees of the ECJD, oppose SB 2252 and urge you to adopt a **Do Not Pass** recommendation.

Thank you.



Presiding Judge John C. Irby



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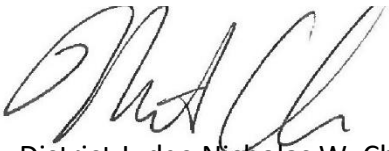
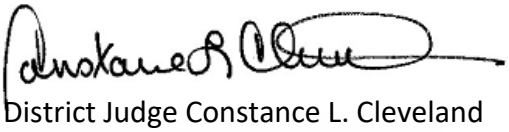
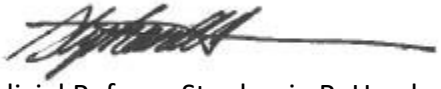


District Judge Nicholas W. Chase



District Judge Constance L. Cleveland



Judicial Referee Stephanie R. Hayden

Judicial Referee Daniel E. Gast