

SB 2277

Written Testimony

Submitted by the North Dakota Supreme Court

After decades of study, in 1995 the district courts and the county courts in North Dakota were unified into a single unified system through the elimination of the county courts. The county courts, county judges and county court clerks were eliminated. Although we have continued to informally refer to some positions, in some counties, as “*County Clerks of Court*”, those positions no longer exist. There are individual county employees who provide service within a state district court office.

Since 1995 the statewide judicial system has maintained a state district court office in each of our 53 counties, and organized into eight judicial districts. The districts themselves are comprised of multiple counties. For example cases pending in Nelson County and in Grand Forks County are both pending in the same State District, the Northeast Central Judicial District. The judges, the record keeping system, the clerk of court functions, and scheduling are all state court functions. A case is filed and is pending in a district court comprised of multiple counties, it is not filed and pending in a particular *county court*.

Unification was not without opposition. One of the primary points of opposition was the concern unification would lead to the elimination of court locations within individual counties, and the consolidation of services in only a few counties. Although complete unification has always been the goal only the 11 largest counties transferred their employees to state employment. Since that time 3 additional counties have voluntarily transferred their employees to state employment. No county has requested to depart from state employment.

The legislature recognized that elimination of the county court system, including the clerk of court functions, without transferring all of the employees to state employment left a gap. The compromise, reached between legislators and the counties, was for the state court system to make contract payments to counties and counties would in return provide the state court with workers to perform the state court clerk functions. Counties were free to fill the position with elections or appointment and were in control of the compensation to be paid to

the workers. This is significant. The individuals are performing state court functions in state court offices, they are not performing county functions.

The idea of ending the payments to counties and directly staffing state court offices with state employees is not new. It was intended from the very beginning of unification.

One common question that has been raised is why is it necessary to complete the unification process now. More appropriately, the questions should be framed as why it has taken almost 30 years. One immediate answer is that in the past 30 years, technology has brought us to a place where we no longer have to choose between keeping local offices or centralizing staff. Technology has also brought greater transparency in how court work is done and higher expectations as to accuracy and timeliness. The following are some of the reasons to fill the state court clerk positions with state employees:

- In 1995, our record keeping was in physical paper files. Filings were required to be complete at a physical location and files were kept in a single physical location. Since 2011 our files have been stored electronically. There is access to any file from any location in the state. Filings, previously done manually with paper documents are now done electronically. A document can be filed in any district court in the state from any location in the state.
- Clerk of court functions can now be completed from any location in the state, regardless of the district for which the document is being filed. For example, the filing of a document for Grand Forks County can be completed by someone in Nelson County. This has enabled individuals who prefer to reside in smaller communities to be employed by the state court system to work for offices physically located in other communities. Just one example is an individual who resides and works in the courthouse in Washburn, ND who, until recently, worked for the state district court office located in Bismarck, ND.
- When the contract arrangement was implemented in 1995 staffing at clerk of court offices was provided by individuals working exclusively for the court. That has changed significantly. Since the non-court

functions, like vital statistics and passports, were legislatively transferred to the county recorder, the compromise legislation on clerks designated the county recorder in the contract counties who chose not to fulfill the clerk duties in another way as the ex officio clerk of court. This was the beginning of the blurred county and state roles that has grown over time with shrinking case filings and counties combining offices. Because the state judicial system does not have any influence over the appointment or election process, it cannot determine who will be working in the state district court office. There are some exceptional people who work in counties with contracts, and we would like those people to work within the state system. However, there are also significant problems, including the following:

- Often times the individuals have multiple job roles requiring they split their attention between providing services to the state court and county functions. Naturally, given the county appointment or election, attention is often first provided to the county duties.
- Some individuals do not have the basic skills to provide the services required for clerk duties. In our state-employed offices, we can address performance issues through correction or termination. When the individual is employed by the county it is difficult to address because the county cannot remove an elected official or the county may be reluctant to act because the individual may be excellent in their county duties even if they are unable to provide satisfactory work in their clerk duties.
- Individuals have little opportunity to thoroughly learn their job because of low case numbers. Because certain types of cases are filed infrequently, a large amount of training and assistance that has to be provided by state employees in other locations.
- Other offices use multiple people to fill multiple roles, leading to problems with who to train and identifying who was responsible for a particular task.

- Our court system, since 2011, has operated almost exclusively through electronic filing and file management. The state-employed offices are consistent and uniform. An attorney or litigant filing a case in an office with state employees can be assured the filing process is identical in every office staffed by state employees. In contrast, not all district court offices staffed by county employees maintain the same consistent filing practices. This leads to increased costs to parties and significant barriers to court access.
- We have some very talented people working in state district court offices who are county employees. The state judicial system can use those individuals more efficiently, increasing their responsibility, providing them with new challenges, and allowing for significant advancement. Our current state court administrator started in a clerk of court office, most of our unit administrators were once in clerk of court offices, and many of our clerks of court in state offices once worked as deputy clerks. Transfer to state employment offers opportunities and new challenges.
- The pandemic and the ebbs and flow of oil production have confirmed the resiliency and responsiveness of our electronic filing system. If an office was short staffed in one location, rather than moving people to that location we simply routed the work to where there were people available to complete the work. If all court workers were state employees, we could do the same with our smaller communities. Stable, good paying jobs can be guaranteed in those communities. Rather than raising and lowering employment as case loads fluctuate, work from around the state can be allocated to where there is capacity. This eliminates the need to consolidate offices and protects smaller communities.
- Having all state district court offices staffed by state employees promotes efficiency within the judicial system as a whole. Workloads can be shared. When excess capacity for work exists in one state office it can be allocated additional workload. We are doing this now between state offices. Our state employee staffed offices are by every measure more efficient and more productive than the average state office staffed by non-state employees. This is not a reflection of

the abilities of the county employees who are doing district court work. It is a result of the size and variety of their workload. There are exceptional people doing work that they cannot excel at because they are prevented that opportunity because of the structure we have in place.

The judicial branch is committed to staffing every state court office in every county. It is an obligation owed to the people of the state of North Dakota. We have a state court office now in every county. The question is not about the location of state offices, there are 53 now, one in each county. With state employment their day-to-day activities may change, but staff location will not. The question is whether the staff in those offices will be state employees able to fully share in the work of the court or if staffing will continue to be done indirectly through the county as an adjunct to other county duties.

Many of the concerns raised in opposition to this bill are premised on the misconception the clerk of court functions are still county functions. As noted above, these are state district court offices. County courts were abolished in 1995. The services being provided now will be provided after employment changes from the county to the state. The clerk functions will be performed in the same location.

This process has been transparent. It was started in 1995. It was noted as a goal in the 2021 State of the Judiciary address. In 2022 an invitation to meet was sent to the individuals staffing state clerk of court offices and county commissions to meet and discuss the process. The purpose of those meetings was two-fold. First, to fully inform anyone with an interest this bill would be filed. We are confident we have provided significant information and answered all of the questions raised before, during, and after those meetings. Not all of the answers we have provided are the answers some individuals would have preferred, but we have been inclusive in this process.

The second purpose of the local meetings was to insure this committee was presented with full and complete opposition to this bill; yes opposition to this bill. Despite significant notice of this bill the opposition is

modest. I urge you to read the materials from the opposition to this bill while considering the following question – how much of the opposition is based on speculation about what may occur and conjecture of worst case scenarios. In contrast, the judicial system has had a 30 year opportunity to review and evaluate state offices staffed by state employees and state offices not staffed by state employees. The state offices that are staffed by state employees are more efficient and provide more consistent service. Bringing all court workers into state employment will be a better use and allocation of taxpayer funds because it will give us the means to balance workloads, improve worker knowledge and skills, and expand capacity to provide much needed services.

The bill has been crafted to employ as state employees the individuals currently staffing the state district court offices. There are relatively few individuals who will not see increases in job stability, compensation, benefits, and opportunity for new career challenges. We acknowledge there will be a limited number of individuals who will see a decrease in compensation either because they are paid for working multiple jobs for the county and would have to choose between continued county employment or the opportunity of full-time state court employment, and a second group who are paid more by the counties. While not entirely eliminating that issue, an amendment is being offered to this bill that would transfer a number of those few adversely impacted individuals to state employment with increased compensation.

We all strive to be good stewards of taxpayer funds, both those at the state and county level of government. Staffing state court offices with non-state employees does not achieve that goal. We have had thirty years to test the operation of state-employee state court offices and non-state staffed offices. Regardless of where the individual working on a case gets his or her paycheck, it is the judicial branch, not the counties, that is responsible for the quality of their work. We know from experience that the current situation is not ideal. We can achieve the goal of being good stewards through uniform staffing of state court offices.