

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

## JUDICIARY COMMITTEE

Thursday, July 17, 1997  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Wayne Stenehjem, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Wayne Stenehjem, James A. Berg, Marv Mutzenberger, Darlene Watne; Representatives Charles Axtman, Duane L. DeKrey, Lois Delmore, G. Jane Gunter, Kathy Hawken, Roxanne Jensen, Scot Kelsh, William E. Kretschmar, Andrew G. Maragos, Paul Murphy, Darrell D. Nottestad, Leland Sabby, Allan Stenehjem, Gerald O. Sveen

**Members absent:** Senators Rolland W. Redlin, John T. Traynor; Representative Shirley Meyer

**Others present:** See Appendix "A"

Committee counsel reviewed the Legislative Council supplementary rules of operation and procedure.

### COURT UNIFICATION STUDY

At the request of Chairman Stenehjem, committee counsel reviewed a background memorandum entitled [Court Unification Study - Funding of the Clerk of District Court Office - Background Memorandum](#) on the study directed by House Concurrent Resolution No. 3001--the feasibility and desirability of funding the office of the clerk of district court through the unified judicial system and on Senate Concurrent Resolution No. 4045--the funding of the office of clerk of district court, the issues and problems associated with the continued implementation of court unification, and the effective provision of judicial services to the citizens of this state.

Chairman Stenehjem called on Chief Justice Gerald VandeWalle, North Dakota Supreme Court, for comments concerning the court unification and funding of the clerk of court study. Chief Justice VandeWalle said 1997 Senate Bill No. 2002 contains a statement of legislative intent that requires the state to fund the clerks of court and that the judiciary branch budget for upcoming bienniums must provide for that funding. He said the first application for state funding pursuant to the bill, in the amount of \$859,000, has been made by Cass County. The Chief Justice also said the welfare reform legislation passed during the 1997 legislative session, which removes the child support collection and disbursement function from the clerks of district court and which requires the state to establish a centralized automated unit for collection and disbursement, will create a decreased workload for the clerks of court. He said there are clerks in

some counties who work exclusively on child support-related duties. The Chief Justice said a study of the caseload of district judges is being conducted. He said data collection is under way and the recommendations of the study regarding the feasibility of further reductions in judgeships will be completed by the end of the year. He said the results of the study will be made available to the committee at that time.

In response to a question from Senator Stenehjem, Chief Justice VandeWalle said if an incumbent district judge decides not to seek reelection or upon the resignation or death of a sitting judge, the Supreme Court has the authority to vacate that judgeship position. He said a number of issues are considered when this situation arises, including the impact the judgeship vacancy would have on that particular district.

In response to a question from Representative Kretschmar, Chief Justice VandeWalle said with the most recent judgeship position eliminated in January 1996, there are 46 remaining judgeships. He said even with the current number of 46 judgeships, caseload problems exist in some districts. He said additional caseload problems may arise as population shifts occur in some parts of the state. Because of conflicts of interest, he said, there have been a significant number of recusals. He said the list of alternative judges is small. He also said because of judges' busy caseload and travel schedules, many judges are declining requests to serve on the various Supreme Court committees. He said this could result in an end to the court's committee system.

In response to a question from Representative Sveen, Chief Justice VandeWalle said he is not comfortable with the final number of judgeships being set at 42, a number that was not based on scientific data. He said he is hopeful the caseload study will be helpful in determining the ideal number.

Chairman Stenehjem called on Mr. Terry Traynor, North Dakota Association of Counties, for comments concerning the study. Mr. Traynor provided written testimony regarding state funding of the office of clerk of district court, a copy of which is attached as Appendix "B".

Chairman Stenehjem called on Ms. Faye MacIntyre, North Dakota Clerks of Court Association, for comments regarding the study. Ms. MacIntyre provided written testimony, a copy of which is attached as Appendix "C". Ms. MacIntyre said the Clerks of District Court Committee would be willing to

provide information to the committee as the study progresses. She also discussed some of the duties of the clerks as well as the role of the clerks in the judicial system. Ms. MacIntyre distributed a brochure entitled *Clerk of District Court*, a copy of which is on file in the Legislative Council office.

### **DISCRIMINATION IN NORTH DAKOTA STUDY**

At the request of Chairman Stenehjem, committee counsel presented a background memorandum entitled [Discrimination in North Dakota - Background Memorandum](#) on the study directed by Senate Concurrent Resolution No. 4036--the level of and remedies for discrimination in this state.

At the request of Chairman Stenehjem, committee counsel reviewed testimony regarding the discrimination in North Dakota study submitted by Senator Donna Nalewaja. A copy of Senator Nalewaja's written testimony is attached as Appendix "D".

Chairman Stenehjem called on Mr. Claus Lembke, Executive Vice President, North Dakota Association of Realtors, for comments concerning the discrimination study. Mr. Lembke provided written testimony regarding the activities of the association and its attempts to assure equal opportunities in housing. A copy of his testimony is attached as Appendix "E". He said the association emphasizes training, education, and enforcement of fair housing practices.

In response to a question from Senator Stenehjem, Mr. Lembke said the association has a procedure whereby the association will assist a member of the public in filing a complaint against a member of the association. He said the association's authority to act on a complaint only extends to those persons who are members of the organization. He said a person with a complaint may also file a complaint directly with the Real Estate Commission or, in the case of discrimination under the federal Fair Housing Act, a complaint may be filed with the Department of Housing and Urban Development (HUD). He said the North Dakota Fair Housing Council is also available to assist a person in filing a housing discrimination complaint.

In response to a question from Senator Berg, Mr. Lembke said the North Dakota Association of Realtors has a close working relationship with the property management associations. He said complaints regarding housing discrimination usually involve rental property rather than real estate sales.

Chairman Stenehjem called on Ms. Sophia Preszler for comments concerning the study. Ms. Preszler said it is important to provide education regarding discrimination in the schools. She said the federal law in the area of discrimination is lengthy and complex. She said there is a need for more local and state regulation and enforcement of laws regarding discrimination.

Chairman Stenehjem called on Ms. Betty Mills, Chairman, North Dakota Advisory Committee to the United States Civil Rights Commission, for comments concerning the discrimination study. Ms. Mills said a meeting of the North Dakota advisory committee was recently held in Bismarck, during which time the committee received extensive testimony from the public regarding personal experiences of discrimination. She said a copy of the transcript of the meeting will be made available to the committee. She said among the issues discussed during the meeting was the lack of a local authority to which complaints could be made. She said the reasons a person who has been discriminated against may not file a complaint could be because that person cannot afford an attorney, the person may be afraid to complain, or the process for filing a complaint is too complicated.

In response to a question from Senator Stenehjem, Ms. Mills said at the last meeting of the advisory committee, approximately 25 or 30 persons provided testimony about their personal experiences of discrimination. She said another meeting of the advisory committee will be held this fall in Fargo. She said the committee will be notified of the exact date. She said most of the complaints heard by the advisory committee are in the areas of employment, housing, and age discrimination.

In response to a question from Representative Nottestad, Ms. Mills said the public is notified of future meetings through the media and by sending written notification of upcoming meetings to various organizations that may receive discrimination complaints.

In response to a question from Senator Watne, Ms. Mills said the advisory committee does not have any enforcement authority regarding discrimination complaints. She said it is the duty of the committee to advise the United States Civil Rights Commission on the existence and extent of discrimination in North Dakota.

Chairman Stenehjem called on Ms. Linda Isakson, North Dakota Council on Abused Women's Services, for comments concerning the discrimination study. Ms. Isakson presented the written testimony of Ms. Bonnie Palecek, Executive Director, North Dakota Council on Abused Women's Services, regarding areas of discrimination that the committee may want to consider addressing. A copy of Ms. Palecek's testimony is attached as Appendix "F".

Chairman Stenehjem called on Mr. Keith Elston, Executive Director, American Civil Liberties Union of the Dakotas, for comments concerning the discrimination study. Mr. Elston said the American Civil Liberties Union (ACLU) receives numerous discrimination complaints, primarily in the areas of employment and housing. He said the ACLU also receives complaints of gender, age, and sexual orientation discrimination. He said it is important that the committee include sexual orientation discrimination as a part of its study. He said the issue has not been studied in this state.

In response to a question from Senator Stenehjerm, Mr. Elston said because of the fear of discrimination based on sexual orientation discrimination, many persons may be reluctant to publicly share their own experiences. He said he would be willing to provide the committee with information and testimony regarding sexual orientation discrimination.

Chairman Stenehjerm called on Ms. Laurie Loveland, Solicitor General, Attorney General's office, for comments regarding the study. Ms. Loveland provided written testimony regarding the position of the Attorney General on the study. A copy of Ms. Loveland's testimony is attached as Appendix "G".

Ms. Loveland said because the Attorney General's office does not have the authority to handle discrimination complaints from private citizens, statistics are not being gathered on the number and nature of the calls. She said without statistics it is difficult to determine the level and amount of discrimination in the state. Citizens of the state, she said, are heavily dependent on federal discrimination enforcement laws. She said it is important for the committee to study state enforcement of discrimination laws as well as the use of education to inform people of their rights. She said the Attorney General's office would be willing to track the nature and number of calls it receives regarding discrimination complaints and perhaps other agencies who may receive similar calls would be willing to do the same.

In response to a question from Senator Stenehjerm, Ms. Loveland said other than the state court system, there is not a state enforcement mechanism available to private citizens. She said for many persons with complaints, the cost of hiring an attorney is prohibitive and legal aid services are not available for discrimination claims. She said most of the complaints received by the Attorney General's office are employment related.

Chairman Stenehjerm called on Mr. Ron Ness, Deputy Commissioner of Labor, Department of Labor, for comments concerning the discrimination study. Mr. Ness provided written testimony regarding the role of the department in addressing employment discrimination complaints. A copy of Mr. Ness's testimony is attached as Appendix "H".

Mr. Ness said the Department of Labor is able to resolve employment discrimination complaints more quickly and more efficiently than can be done at the federal level. He said the department has maintained an annual contract with the Equal Employment Opportunity Commission (EEOC) to process employment discrimination complaints. He said under the contract, the department receives \$500 per case with a maximum of 65 cases per year. The department processed 107 complaints in 1996. He said any cases that exceeded the contracted number were processed by the department without reimbursement from the EEOC.

In response to a question from Representative Axtman, Mr. Ness said the department does not process employment complaints from federal employees. Federal employees, he said, have separate procedures that are used for addressing complaints.

In response to a question from Representative Jensen, Mr. Ness said the department only surveys employers and employees following the resolution of a complaint processed by the department's Hour and Wage Division. He said the department would consider conducting a followup survey of complainants following other types of complaints as well. He said the department has a procedure available for reviewing the department's decisions. He said the EEOC reviews all decisions that are based on Americans With Disabilities Act-related complaints.

In response to a question from Representative Nottestad, Mr. Ness said when complaints are filed with both a local civil service board and with the Department of Labor, the department and the civil service board work together to resolve the complaints.

Chairman Stenehjerm called on Ms. Lynda Johnson, State Director, North Dakota Fair Housing Council, regarding the discrimination study. Ms. Johnson said the North Dakota Fair Housing Council is available to assist individuals with housing discrimination complaints. She said the focus of the council is outreach and education. She said the council, which has been in existence in North Dakota for three years, has a main office in Bismarck and a satellite office in Fargo.

In response to a question from Senator Stenehjerm, Ms. Johnson said she would provide statistics to the committee regarding the number and types of complaints received by the council as well as the outcome of the cases. She said the council receives 75 percent of its funding from HUD. The remainder of the council's funding, she said, is received from community development block grant funds from Fargo and Bismarck and from private fundraising. She said most of the housing complaints received by the council involve rental situations. She said no complaints have been received against real estate agents or other sellers of real estate.

In response to a question from Representative Maragos, Ms. Johnson said the North Dakota Fair Housing Council does not receive any state funding. She said the establishment of the organization in North Dakota was accomplished by federal grants and by sponsorship from a similar Montana organization.

In response to a question from Representative Axtman, Ms. Johnson said when a housing discrimination complaint is received, a determination is made as to whether there is probable cause to believe discrimination has occurred. She said a person may proceed with a complaint even if the North Dakota Fair Housing Council does not find probable cause. She said the council can only act as a facilitator and cannot adjudicate complaints.

In response to a question from Senator Stenehjem, Ms. Johnson said the most frequent housing discrimination complaints include the exclusion of children from rental property and exclusion because of race and disabilities.

Chairman Stenehjem called on Mr. Darrell Farland, Governor's Council on Human Resources, for comments concerning the study. Mr. Farland said a human rights commission is needed to protect the people of the state. Most people, he said, do not understand discrimination until it affects them personally. He said most people are unable to afford an attorney and feel the process is useless and tireless. He said there are better ways to settle discrimination cases than through the use of the judicial system and that a human rights commission would be useful for settling cases. He said a "one-stop shop" is needed to assist people in the protection of their human rights. North Dakota and Alabama, he said, are the only two states that do not have a human rights commission. He said he will offer whatever information the committee may need to help convince the committee that a human rights commission is needed.

### **CHARITABLE GAMING STUDY**

At the request of Chairman Stenehjem, committee counsel presented a background memorandum entitled [North Dakota Charitable Gaming Laws - Background Memorandum](#) on the study directed by Section 22 of House Bill No. 1167--to determine whether the charitable gaming laws and rules regarding taxation, enforcement, limitations, conduct, and play of charitable gaming are adequate and appropriate.

Chairman Stenehjem called on Mr. Keith Lauer, Gaming Section, Attorney General's office, for comments concerning the charitable gaming study. Mr. Lauer provided written testimony that summarized the gaming law changes made by the 1997 Legislative Assembly. A copy of the summary is attached as Appendix "I".

Mr. Lauer said activity in charitable gaming has been flat over the last 10 quarters. He said actual tax collections were within \$32,000 of projections. He said one important outcome of the 1997 legislation regarding gaming will be clearer and more concise statutes. He said both the number of sections and the length of the gaming chapter in the North Dakota Century Code have been reduced. He said some administrative rules changes will be necessary to implement statutory changes.

Mr. Lauer said one area of concern that the committee may want to address during its study is the lack of reimbursement to cities and counties for enforcement of gaming laws. He said the state relies heavily on local authorities for gaming enforcement. He also said that legislation that would have increased rent for gaming sites was defeated during the 1997 legislative session. Since site rentals have not been

increased since 1991, he said, this may be an issue the committee may want to review.

In response to a question from Representative Jensen, Mr. Lauer said he would make available to the committee information on the number of organizations that have suspended gaming over the past five years and the reasons for the suspension.

In response to a question from Representative Sveen, Mr. Lauer said excessive operating costs may cause some organizations to discontinue operations. He said he would make available to the committee information on the profits of organizations of various sizes.

In response to a question from Representative Maragos, Mr. Lauer said he would provide information to the committee regarding trends in the gaming industry. He said the information would include data on the number of licenses issued, the number of organizations currently operating, and the reasons for the closing of sites. He also said he would provide information on the costs a charity that wants to set up a gaming site may incur.

In response to a question from Representative Sveen, Mr. Lauer said there are about 38 other states that conduct some type of charitable gaming. He said he would provide information to the committee comparing the gaming tax rates of North Dakota with other states.

In response to a question from Representative Jensen, Mr. Lauer said larger charities may have an advantage over smaller charities in that the larger charities often have access to other sources of income, such as membership dues and pledge drives, which can be used to pay excess gaming expenses. He said the increase in manufacturers' license fees from \$2,000 to \$4,000 that was passed during the 1997 legislative session is not likely to be passed on to the charities. He said the license fee is comparable to the license fee of other states.

Chairman Stenehjem called on Mr. Rick Stenseth, Charitable Gaming Association of North Dakota, for comments concerning the charitable gaming study. Mr. Stenseth said the Charitable Gaming Association of North Dakota represents 70 gaming organizations in the state. He said the association's goal is to achieve positive changes for all sizes of gaming organizations. He said, with the exception of sites with dispensing devices, gaming has generally been flat over the past several years. He said gaming in the state is being taxed to the point where any further increases in taxes may close some sites. He said gaming is the most heavily taxed industry in the state.

Regarding the conduct and play of the games, Mr. Stenseth said the gaming association would like to see changes in the games being played, how the games are conducted, and the betting limits. He said the rules for the games of twenty-one and poker are currently in statute. He said to allow for more flexibility in the play of these games, the association supports the idea of allowing the State Gaming Commission to set the rules through the administrative rules process.

Because an organization is limited to two 14-day periods per year for the game of poker, he said, the game is not a viable one for most organizations.

In response to a question from Representative Maragos, Mr. Stenseth said the charitable gaming association represents gaming organizations of all sizes and that its membership dues are not prohibitive to the smaller organizations.

In response to a question from Representative Jensen, Mr. Stenseth said charitable gaming has been impacted by tribal casino gaming. He said the impact varies depending on the geographical distance of the charitable gaming sites from the tribal casinos. Other factors, he said, such as severe winter and flooding, have also contributed to the lower amounts of charitable gaming in the state.

Chairman Stenehjem called on Mr. John Sagsveen, North Dakota Bowling Proprietors, for comments concerning the charitable gaming study. Mr. Sagsveen said, in light of increases in taxes, wages, and utilities over the past several years, his organization would like the committee to consider increasing the amount of rent charities pay to the owners of the gaming sites.

### **COMMITTEE DISCUSSION**

Chairman Stenehjem said in addition to the three areas of study assigned to the committee, the committee is also assigned the responsibility of statutory and constitutional revision and the review of uniform laws. He said more information will be provided to the committee regarding the additional assignments as the interim progresses.

Chairman Stenehjem said it may be beneficial for the committee to meet at sites elsewhere in the state, especially with respect to the charitable gaming study and the discrimination study. He said meeting at other sites in the state may give persons who may not otherwise be able to attend a meeting the opportunity to do so.

Senator Mutzenberger said the committee may want to consider attending the next meeting of the North Dakota Advisory Committee to the United States Civil Rights Commission that will be held in Fargo in the fall.

Chairman Stenehjem said committee counsel will be in contact with state agencies to request that each agency track the number of discrimination complaints that are received by the agency and the nature of the discrimination. He said the agencies to be contacted should include the Attorney General's office, the Department of Labor, the Department of Human Services, the Department of Health, the Governor's office, and state's attorneys.

Chairman Stenehjem said the next meeting of the committee will be in October.

**It was moved by Representative Kretschmar, seconded by Representative Axtman, and carried on a voice vote that the meeting be adjourned. Chairman Stenehjem adjourned the meeting at 2:45 p.m.**

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Vonette J. Richter  
Committee Counsel

ATTACH:9