

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIARY COMMITTEE

Wednesday, September 20, 2000
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, Dennis Bercier, Judy Lee, Stanley W. Lyson, Carolyn Nelson, John T. Traynor, Darlene Watne; Representatives Duane DeKrey, Lois Delmore, Kathy Hawken, Dennis E. Johnson, Scot Kelsh, Lawrence R. Klemin, Amy N. Kliniske, Kim Koppelman, John Mahoney, Shirley Meyer, Phillip Mueller

Members absent: Senator Joel C. Heitkamp; Representative G. Jane Gunter

Others present: See attached appendix

It was moved by Representative DeKrey, seconded by Representative Meyer, and carried on a voice vote that the minutes of the May 25-26, 2000, meeting be approved as distributed.

COURT UNIFICATION AND CLERK OF DISTRICT COURT STUDY Clerk of Court Legislation Implementation Update

Chairman Stenehjem called on Chief Justice Gerald W. VandeWalle, North Dakota Supreme Court, for comments concerning the implementation of the clerk of district court legislation. Chief Justice VandeWalle said he is more comfortable with the clerk of district court process now than he was a year ago or even at the committee's last meeting in April. He said the court's most recent newsletter to the counties regarding the implementation of the 1999 legislation, which had been mailed to the committee members as well, contained detailed information regarding the number of full-time equivalents (FTEs) that will be funded in each county. He said the number of FTEs authorized was based on the 600 filings per FTE formula.

Chief Justice VandeWalle said, as provided by law, the elected clerk of court will automatically become a state employee on April 1, 2001, in state-funded offices. The remainder of clerk of court staff in those offices, he said, will be selected from existing staff. This fall, he said, eligible deputy clerks will receive application forms and instructions. Individuals who are interested in a position with the state-funded office will be asked to submit the application to the presiding judge of the judicial district. The presiding

judge, he said, will make the decisions concerning hiring personnel after consultation with the clerk of court and others as appropriate. He said the decision will be based on job performance and on a best-qualified basis.

Chief Justice VandeWalle said 11 counties have requested that the state fund and operate clerk of court offices. He said three counties have elected to pay for clerk of court services without funding agreements with the state for reimbursement. One county, he said, did not make an election within the time set by statute, and, as a result, will operate the clerk of court office at its own expense. All remaining counties, he said, have entered into funding agreements with the state to provide clerk of court services in exchange for reimbursement in accordance with an agreed-upon formula.

In response to a question from Representative Mueller, Chief Justice VandeWalle said the application process will not be open to the public unless an insufficient number of applications are received.

In response to a question from Senator Bercier, Chief Justice VandeWalle said those persons who currently hold deputy clerk positions will have first chance at the positions. If the positions cannot be filled internally from the existing staff, the positions will be opened to the public.

In response to a question from Senator Watne, Chief Justice VandeWalle said an across-the-board formula has been developed to address accrued vacation time and sick leave.

Chairman Stenehjem called on Mr. Keith Nelson, State Court Administrator, for comments concerning the implementation of the clerk of court legislation. Mr. Nelson said much anxiety exists among the clerks regarding operational issues. He said he will travel to all clerks' offices in the state over the next eight weeks to provide information regarding state employee benefits and policies and to answer questions. He said all deputy clerks who wish to become state employees will need to apply for their positions and will need to provide information regarding their years of service and current pay grade. He said the court will give credit for length of time in county service and for accrued sick and vacation time. He said since elected officials do not accrue sick and vacation leave, the clerks of court who become state

employees will be given a certain amount of leave at the time they become state employees. He said a study was performed by 18 clerks of court regarding the amount of time necessary to perform certain duties. He said there was general satisfaction among the clerks that the assessment was fair. He said there have been many questions concerning who will handle restitution and preparation of criminal judgments. He said the Supreme Court is considering a rule that proposes that both duties become clerk of court functions. He said no additional positions will be created as a result of the implementation of the legislation. He said the funds appropriated by the 1999 Legislative Assembly will not be sufficient to operate state clerk of court offices and meet funding agreement obligations from April 1, 2001, through June 30, 2001. He said the cost of bringing the clerks into the state system will be approximately \$10.2 million.

In response to a question from Senator Stenehjem, Mr. Nelson said one of the problems regarding the restitution issue is that in some counties the clerk of court collects restitution, while in other counties, restitution is collected by the state's attorney. He said a uniform definition of restitution is needed. He said in the state's largest counties--Cass, Burleigh, and Grand Forks--restitution is not collected by the clerk of court. He also said there is a question of whether all the counties' computer systems are compatible. He said his preference would be that all counties use the Uniform Court Information System. He said Cass County uses a different system, and the court is leaning toward bringing Cass County under the Uniform Court Information System.

In response to a question from Senator Watne, Mr. Nelson said probation and parole officers only collect restitution for those persons on supervised probation. He said many persons who pay restitution are not on supervised probation. He said the question to be answered is whether clerks of court should be accounting for restitution.

Senator Lee said to require Cass County to use the Uniform Court Information System would be a step backward as far as technology is concerned.

Judge Ralph Erickson, East Central Judicial District, said while taking a step backward is not desirable, the change may be necessary for the good of the group.

Senator Stenehjem said if the state has a unified court system, it should have a unified computer system as well.

In response to a question from Senator Lee, Mr. Nelson said he was not familiar with the idea that the Department of Human Services is proposing to contract with the counties for child support collection. Chief Justice VandeWalle said it would be fine if the Department of Human Services would like to contract with the 39 states under contract with the state, but if the department wants to contract with the clerk of court offices in the 11 counties that will be

state-funded, the department will have to talk with the Supreme Court.

Juvenile Drug Court

Chairman Stenehjem called on Judge Erickson for a presentation regarding the implementation of a juvenile drug court pilot program in Cass and Grand Forks Counties. Judge Erickson said the juvenile drug court program is a postpetition and postadjudication program designed to work with kids with chemical dependency and chemical abuse issues. He said the program is not a separate court but is a part of the juvenile court system within the district court. He said the juvenile drug court "team" screens participants, designs an individual accountability plan, and monitors and reports on each participant's progress. He said the team includes the judge, a juvenile court officer, a state's attorney, a public defender, a treatment provider, and a school representative. He said the goal of the juvenile drug court is to reduce juvenile crime and substance abuse by referring youth to a court-managed treatment program that holds them accountable and emphasizes personal responsibility. He said the program, which started in May 2000, has about 30 juveniles participating in the program in the two sites. He said there has been minimal recidivism among the participants, and of those participants who have had offenses, the offenses have been lesser offenses than those with which the participants have previously been charged. He said the participants are doing better in school, and parents are reporting better behavior at home. He said the participants themselves are reporting that they are doing better. He said there are concerns about the reliability of the drug testing. A copy of Judge Erickson's presentation is on file in the Legislative Council office.

Chairman Stenehjem thanked Judge Erickson for volunteering his time to the juvenile drug court program.

In response to a question from Senator Nelson, Judge Erickson said the participants range from 13 to 18 years of age. He said the schools participate in the program by providing a school representative on the team and by providing weekly progress and attendance reports. He said he frequently talks with teachers.

In response to a question from Senator Bercier, Judge Erickson said there are a number of products on the market that a person can take to alter the results of a drug screen. He said the drug screens used by the program cost about \$50 each. He said a more comprehensive drug screen that would detect altered samples would cost between \$200 and \$500.

Senator Bercier said both the Turtle Mountain and Fort Berthold Reservations have received funding for juvenile drug courts. Chairman Stenehjem said it would be helpful if someone from one of the tribal juvenile drug court programs would discuss their program with the committee.

In response to a question from Representative Delmore, Judge Erickson said he spends about eight hours per week on his juvenile drug court duties. He said he has been able to stay current with his other judicial responsibilities. He said time will tell if the costs of the program justify the benefits.

In response to a question from Senator Watne, Judge Erickson said a planning grant was obtained to get the program started. He said no additional personnel have been added; however, they are looking at hiring one FTE juvenile drug court administrator for the program.

CENTRAL LEGAL RESEARCH

Chairman Stenehjem called on Ms. Elaine Ayers, Program Director, Central Legal Research (CLR), University of North Dakota School of Law, for testimony concerning the funding of the central legal research program. Ms. Ayers said CLR's mission is to answer the research needs of judges, prosecutors, and court-appointed defense attorneys in an essentially rural state where legal resources are at a premium. She said CLR's staff consists of six researchers who are second- and third-year law students. She said the students are supervised by the program director who is a licensed attorney. She said a certified legal assistant manages the office and publishes the on-line newsletter. Each year, she said, CLR researches and writes about 80 to 100 legal memoranda and responds to countless other requests for less complex research assistance. She said the memoranda give lawyers and judges foundational assistance for the writing of legal briefs and the making of judicial decisions. She said for most of CLR's 22-year history, the program was funded as part of the School of Law budget. In the 1999 legislative session, she said, no dollars were earmarked for CLR in the higher education budget. Faced with the loss of the service, she said, the Legislative Assembly approved an \$80,000 passthrough for CLR in the 1999-2001 biennial district court budget. She said although this level was less than half of the appropriation CLR received in the previous biennium, it meant that the branch of government that benefits the most directly from CLR's services--the court system--had assumed a share of the funding responsibility. She said in 1999 CLR was awarded a one-year contract from North Dakota's Protection and Advocacy Project. This contract, she said, provided for about 25 percent of CLR's remaining expenses. Ms. Ayers submitted written testimony and other CLR materials, copies of which are on file in the Legislative Council office.

In response to a question from Senator Bercier, Ms. Ayers said the only two, full law libraries in the state are the Thormodsgard Law Library at the University of North Dakota School of Law and the Supreme Court Library in the Judicial Wing of the State Capitol. She said some legal sources are

available on-line, but some of the on-line sources are very expensive.

Representative Mahoney said the service provided by CLR is very valuable, especially for those attorneys and state's attorneys in remote areas of the state.

In response to a question from Representative Klemin, Ms. Ayers said on-line research can be very time consuming, and she receives many comments from CLR users about how much time they save by using CLR.

In response to a question from Senator Watne, Ms. Ayers said while most of the memoranda deal with criminal law, CLR does assist judges on all types of cases. She said because state's attorneys also serve as legal advisers for the counties, CLR also receives noncriminal topic requests from state's attorneys.

FAMILY LAW STUDY Family Law Working Group Recommendations

Chairman Stenehjem called on Ms. Sandi Tabor, Executive Director, State Bar Association of North Dakota, for the presentation of a report regarding the family law study. Ms. Tabor said the report entitled *Joint Study on Family Law Issues--Final Report* summarizes the findings and the recommendations of the working groups of the Family Law subcommittee. She said the study was conducted by 12 members of the Judiciary Committee and nine members of the Joint Family Law Task Force. She said during an organizational session in late 1999, five areas of study were identified by the combined group: (1) property division; (2) spousal support; (3) mediation; (4) guardians ad litem; and (5) statutory review.

She said ultimately, four working groups were formed and the process of issue identification was started by each group. She said the Property Division and Spousal Support Working Groups combined efforts. Each working group, she said, held a series of meetings either in person or by conference call. She said the recommendations for each of the working groups are:

Property Division/Spousal Support

1. The working group encourages the Council of Presiding Judges to implement an informal procedure whereby the Maricopa County guidelines will be used to calculate spousal support, and the results of that calculation will be compared to the actual spousal support awarded by the court.
2. The working group determined that Rule 60 of the North Dakota Rules of Civil Procedure provides adequate relief and decided to make no recommendations regarding the disclosure issue.
3. The amendments to North Dakota Century Code (NDCC) Section 14-05-24 regarding division of property should be forwarded to

the interim Judiciary Committee for its consideration.

4. A new section regarding spousal support which includes amended language from NDCC Section 14-05-24 be created.
5. Language from Section 14-05-24 dealing with child support should be incorporated into Section 14-09-08.

Mediation

1. The Judiciary Committee should encourage the Supreme Court to explore options for establishing a court-annexed mediation program.
2. The Judiciary Committee should encourage the Supreme Court to consider adopting a code of ethics for mediators.

Guardian Ad Litem

1. The Judiciary Committee should favorably consider the inclusion of an immunity clause in Section 14-09-06.4.
2. The Supreme Court and Department of Human Services should be encouraged to conduct a joint study exploring the possibilities of coordinating services and resources in the area of child custody investigators.

Statutory Review

1. The chapters dealing with divorce and separation should be consolidated into one chapter, and archaic terms and language should be removed.
2. The penalty for intentionally removing a child from the state in violation of a custody order should be reinserted into NDCC Chapter 12.1-18.
3. Section 14-04-04 should be amended to incorporate the best interest factors into the section, and the present archaic standard should be deleted.

In response to a question from Senator Traynor, Ms. Tabor said there are no licensure requirements for mediators in North Dakota. She said anyone can become a mediator. Under the new proposed Supreme Court rules, only lawyers would be permitted to be licensed as mediators. She said the Mediation Working Group was made aware of several instances of flagrant abuses by mediators who were not law-trained.

In response to a question from Representative Mueller, Ms. Tabor said the working group received information from Catholic Family Services and Lutheran Social Services regarding the use of third-party providers for child custody investigator services. She said both organizations expressed concerns about training issues and the administration of the services. She said the position of both organizations is that it would not be possible to adequately provide the necessary services with the amount of training required by the rules.

In response to a question from Representative Klemin, Ms. Tabor said because the mediators are court-appointed, the Supreme Court can set standards and qualifications for mediators. She said the court can refuse to recognize the mediation performed by unlicensed or nonlawyer mediators.

In response to a question from Senator Lee, Ms. Tabor said regarding the use of regional human services personnel as child custody investigators, the primary concern was the potential conflict of interest that would exist since the staff is often involved in working with the families on other issues. She said the Department of Human Services was also concerned about adding additional duties to its already taxed staff. Judge Bruce Bohlman, Northeast Central Judicial District, said some regional human service centers have occasionally done child custody investigator work, but there is a question as to whether it is appropriate. Judge Erickson said the use of regional human service center personnel is not a clean or desirable way of providing these services.

At the request of Chairman Stenehjem, committee counsel presented a bill draft regarding the division of property in a divorce. She said the bill draft would provide that property acquired by an individual spouse through inheritance or by gift, if titled and maintained in the sole name of the donee spouse, is the property of that party and is not subject to division.

In response to a question from Representative Meyer, committee counsel said the bill draft would apply to inherited or gifted property received both before and during the marriage.

In response to a question from Representative Mahoney, Ms. Sherry Mills Moore, Family Law Task Force, said the bill draft would shift the burden of proof to the other party to prove that to not include the gifted or inherited property would be inequitable. Ms. Maureen Holman, Family Law Task Force, said under current law all property is subject to division. She said the courts usually start with the presumption the property is to be split 50-50, and the parties have to prove why such a division would be inequitable. Judge Lee Christofferson, Northeast Judicial District, said the property division proposed by the bill draft would be fairer than under current law.

In response to a question from Senator Traynor, Ms. Moore said this bill draft would reverse existing case law regarding the distribution of property received by gift or inheritance.

Chairman Stenehjem called on Mr. John Val Emter for comments regarding the property division bill draft. Mr. Emter said his divorce took more than three and one-half years to resolve. He said in his case, the property division was not equitable because his ex-wife received more than one-half of the property. He said the law and the courts are very unclear as to what is meant by "equitable." He said he spent 15 days in jail for contempt of court for failing to

comply with the judgment in his case. He said it is very difficult to understand the law.

In response to a question from Senator Stenehjem, Mr. Emter said he was not sure if he supported the property division bill draft.

Chairman Stenehjem called on Mr. Jack McDonald for comments concerning the bill draft. Mr. McDonald said to only require that gifted or inherited property be "titled" in one party's name may not be sufficient. Judge Benny Graff, South Central Judicial District, responded to Mr. McDonald's concerns. Judge Graff said the court would start with the basis that the property is titled in only one spouse's name. He said that would shift the burden to the other spouse to prove that exempting the property would be inequitable. Ms. Holman said the bill draft does not track the Minnesota language on property division. She said Minnesota excludes all premarital property from division.

At the request of Chairman Stenehjem, committee counsel presented a bill draft regarding immunity for child custody investigators and guardians ad litem. She said the bill draft also adds child custody investigators to the persons a court can appoint in contested custody proceedings.

In response to a question from Representative Klemin, committee counsel said the bill draft provides that the good faith of the guardian ad litem or child custody investigator is a disputable presumption. Judge Erickson said the terms "disputable presumption" and "rebuttable presumption" are interchangeable.

Concerns were expressed by Ms. Holman and Judge Bohlman that the statute should apply to paternity proceedings as well as divorce proceedings.

It was moved by Representative Hawken, seconded by Senator Lyson, and carried on a voice vote that the bill draft be amended on line 10 to delete the words "affecting the marriage relationship" and to add "or visitation" after the word "custody."

In response to a question from Senator Traynor, Senator Stenehjem said child custody investigators and guardians ad litem currently have court-imposed immunity for their acts.

At the request of Chairman Stenehjem, committee counsel presented a bill draft that contained changes to the state's separation and divorce chapters. She said because of the similarities in the proceedings for separations and divorces, the two chapters were consolidated. She said the bill draft also removes archaic terms and obsolete language. She said the bill draft also provides for a criminal penalty for intentionally removing a child from the state in violation of a custody order. She said the bill draft incorporates the best-interest standards for children of an annulled marriage.

At the suggestion of Judge Bohlman, Chairman Stenehjem said the words "Upon the filing of a

complaint by either party to a marriage," on page 2, line 3, of the bill draft should be deleted.

Chairman Stenehjem called on Mr. Emter for comments concerning the statutory review bill draft. He said judges are not consistent in the way they interpret the laws. He said his divorce has been very difficult, and he needs closure on the matter.

Chairman Stenehjem expressed his appreciation to all the committee members and the task force members who worked on the family law study. He said the success of this working group process can serve as an example to the Legislative Council for future studies.

Representative Hawken also expressed her appreciation to the task force members for their contributions to the committee's family law study.

Grandparent Visitation

Chairman Stenehjem called on Ms. Jean Mullen, Assistant Attorney General, for testimony regarding a recent United States Supreme Court opinion, *Troxel v. Granville*, ___ U.S. ___, 120 S. Ct. 2054 (2000), in which the Court declared a Washington grandparent visitation statute unconstitutional and for testimony regarding the impact that decision may have on the North Dakota law regarding grandparental visitation rights. Ms. Mullen said in 1983 North Dakota enacted a statute regarding grandparental visitation rights. She said that statute provided the test the court was to apply was whether visitation was in the best interests of the minor and would not interfere with the parent-child relationship. Further, she said, the court was to consider the amount of personal contact between the grandparents or great-grandparents and the minor and the minor's parents.

Ms. Mullen said in 1993 the statute was amended to require that visitation must be granted to grandparents unless the court found that visitation was not in the best interests of the minor. She said that statute shifted the burden to the nonconsenting parent to prove that visitation was not in the best interests of the child by providing that visitation rights of grandparents to an unmarried minor were presumed to be in the best interest of the minor. In 1999, she said, the North Dakota Supreme Court reviewed this statute and found unconstitutional the 1993 amendment providing the presumption that grandparent visitation was in the best interests of the child and shifting the burden to the parent to prove that it was not. She said the court based its decision on a finding that parents have a fundamental constitutional right to parent their children, including control of their children's associations.

Ms. Mullen said the Washington statute under review by the United States Supreme Court was very broad, permitted "any person" to petition a court for visitation rights "at any time," and authorized the court to grant such visitation rights whenever "visitation may serve the best interest of the child." She said the

Court, in finding the statute unconstitutional as applied, reiterated its prior holdings that "there is a presumption that fit parents act in the best interests of their children." She said the Court also found that the statutes' application of a presumption in favor of the grandparents was a fatal flaw in the application of the statute. She said the 1993 amendments to North Dakota's grandparent visitation statute would not have withstood constitutional scrutiny under the *Troxel* decision. She said the now applicable 1983 statute appears to be constitutional under the Supreme Court's analysis in *Troxel*. Ms. Mullen submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Traynor, Senator Stenehjem said the Legislative Assembly needs to amend its grandparent visitation statute to comply with the decision of the North Dakota Supreme Court regarding the statute.

It was moved by Senator Nelson, seconded by Representative DeKrey, and carried on a voice vote that the Legislative Council staff be requested to prepare a bill draft to amend NDCC Section 14-09-05.1, the grandparent visitation statute, to comply with the 1999 North Dakota Supreme Court decision.

Voter Registration and Residency Study

At the request of Chairman Stenehjem, committee counsel presented a bill draft concerning the use of provisional ballots for challenged voters. She said the bill draft provides that if a challenged voter completes an affidavit and a ballot, the ballot is to be considered a provisional ballot until the voter's eligibility can be confirmed.

Representative Koppelman said there may be concerns about the county auditor reviewing the ballots.

Chairman Stenehjem called on Mr. Alvin A. Jaeger, Secretary of State, for comments concerning the challenged voter bill draft. Mr. Jaeger said he has a concern about the wording of the bill draft as it relates to the secrecy of the ballot. He said the language on lines 24 and 25 of the bill draft appears to imply that the county auditor is to review the ballot and make a recommendation. He said the issue is not the ballot itself but rather the issue is the qualifications of the voter to vote. He said it may be clearer if the bill draft provided that the county auditor should review the statement of the reason for the challenge on the outside of the envelope and make a recommendation. Mr. Jaeger submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Stenehjem, Mr. Jaeger said he supports the idea proposed in the bill draft and that it would be worth trying.

Chairman Stenehjem requested that the Legislative Council staff incorporate Mr. Jaeger's suggested

language into the bill draft to be reviewed at the next meeting.

UNIFORM LAWS

Uniform Interstate Enforcement of Domestic Violence Protection Orders Act

Chairman Stenehjem called on Mr. Jay E. Buringrud, Secretary, North Dakota Commission on Uniform State Laws, for testimony regarding the recommendation of the commission for the enactment of a new uniform law. Mr. Buringrud said the commission recommends the enactment of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act. He said this uniform law was approved in August 2000 by the National Conference of Commissioners on Uniform State Laws and has not yet been enacted by any other states. He said the bill draft provides for the interstate enforcement of protection orders issued by another state's tribunal. He said the bill draft only provides for the enforcement of protection orders and does not provide for the enforcement of support orders. The bill draft, he said, provides for the repeal of a similar North Dakota law, NDCC Section 14-07.1-02.2, which was enacted in 1999. He said the uniform law is different from Section 14-07.1-02.2 in that the uniform law defines a protection order; the uniform law allows for the presentation of the protection order to a law enforcement officer by electronic or other medium if it is retrievable in perceivable form; and the uniform law provides for immunity for officials acting in good faith who are enforcing a valid protection order.

In response to a question from Senator Traynor, Mr. Buringrud said the court would make a determination on the validity of the protection order based on the criteria set forth in the bill draft. He said no other states have yet adopted this uniform act, although North Dakota and other states have laws in effect that are similar to the uniform act.

In response to a question from Senator Watne, Mr. Buringrud said the person against whom the order is being enforced is the person who would contest that the order is inaccurate or is not currently in effect.

In response to a question from Senator Nelson, Mr. Buringrud said for a number of reasons, this Act provides better protection and immunity than current North Dakota law. He said the uniform law is similar to current law in that no fees may be charged for the registration of a foreign protection order or for the correction or removal of a foreign protection order.

Chairman Stenehjem called on Ms. Bonnie Palecek, Executive Director, North Dakota Council on Abused Women's Services, for comments concerning the domestic violence protection orders bill draft. Ms. Palecek said in 1999 North Dakota passed a statute relating to full faith and credit of protection orders. She said the language was carefully patterned after the federal language embodied in the Violence Against Women Act and was done in

consultation with the National Full Faith and Credit Project. She said the 1999 statute appears to be working well. She said her organization has been actively working on the clarification of various issues that would make enforcement more effective. She said the Violence Against Women Act was scheduled for reauthorization during the current Congressional session. With only one week left, she said, reauthorization will probably not happen. She said this gives even more significance to this uniform law effort. She said although the goal of the uniform law is not in question, it is her understanding the final version of the uniform law has not yet been approved and the process will not be complete until December. She said her organization would like to wait to give full support to this uniform law until a final product is available. She said given the amount of work that went into the crafting of the current law and how carefully her organization worked with the National Full Faith and Credit Project and the National Council of Juvenile and Family Court Judges, she would recommend the committee defer action on this bill draft until the final version is available and it is determined that it meets the needs of victims in this state. Ms. Palecek submitted written testimony and other information on full faith and credit of domestic violence protection orders, copies of which are on file in the Legislative Council office.

Revised Uniform Commercial Code Article 9 (1998)

Chairman Stenehjem called on Ms. Jennifer S. N. Clark, Counsel on the Legislative Council staff, to discuss the changes made to the Revised Uniform Commercial Code Article 9 bill draft. She said the new version of the bill draft contains three new sections regarding the computerized central indexing system. She said this language exists in the current Article 9, and if passed, this language would be retained but in a different title of the code. She said it would most likely be placed in NDCC Title 54 under the duties of the Secretary of State. The second change in this bill draft, she said, which was made on page 122, line 21, is regarding a third-party's right to take possession after defaults. She said the change would allow the existing practice to continue. The next changes, she said, were made beginning on page 67 of the bill draft. These changes, she said, have resulted in inconsistencies between existing language and the new Article 9. She said the inserted language addresses the existing nonuniform law regarding crops and livestock and the central notice system. She said similar language was inserted on pages 68 through 70 and on page 115, lines 25 and 26. She said the Revised Article 9 defines "agricultural lien" on page 20 and "farm operation" on page 25. She said these terms are not defined in the current Article 9. She said Revised Article 9 is intended to address the perfection priority in the

enforcement of security interests, and it may be necessary to review how that will conflict with Title 35, which deals with liens, including agricultural liens. She said Title 35 addresses the creation, scope, and attachment of a lien. She said the language added in this bill draft creates inconsistencies regarding the priority of agricultural liens.

Representative Klemin said the State Bar Association has held a seminar regarding the Revised Article 9. He said a book is available on the Revised Article 9. He said the book provides comments and a comparison between the current Article 9 and the Revised Article 9.

In response to a question from Representative Klemin, Ms. Clark said the January 1, 2002, effective date was used to allow for a period of transition. She said the effective date could be changed to allow the law to go into effect in July or August 2001.

In response to a question from Representative Koppelman, Ms. Clark said the language inserted in this bill draft was intended to add existing law on agricultural liens. She said as a result, inconsistencies were created. She said the interested parties will need to address these inconsistencies and determine how to address these inconsistencies.

Chairman Stenehjem called on Mr. Jaeger for testimony regarding the changes made to the Revised Article 9 bill draft. Mr. Jaeger said during the past several months, he and his staff have been working and reviewing the bill draft and would recommend a number of changes. He said it would be difficult for his office to implement the changes if the bill draft would go into effect in July or August 2001. He said his office currently uses Social Security numbers as identifiers. He said he realizes the use of Social Security numbers raises privacy issues, and he said he will be asking the Legislative Assembly for funds to develop a program that would allow for the continued use of the number without the number being made available to the public. He said his concerns with the bill draft are from the filing officer's point of view. He said there are a number of other interested parties with other concerns. He said all parties need to work together to resolve the remaining concerns with the bill draft. Mr. Jaeger submitted written testimony and proposed amendments to the bill draft, copies of which are on file in the Legislative Council office.

Chairman Stenehjem called on Mr. Dan Kuntz, North Dakota Grain Dealers Association, for comments concerning the Revised Article 9 bill draft. Mr. Kuntz said he was appearing on behalf of Mr. Tom Smith, attorney, Bismarck, who was unable to attend the meeting. He said the North Dakota Grain Dealers Association is a trade association of country elevators and allied industries that buy and sell agricultural products to farmers. He said these industries often sell supplies, such as fertilizer, seed, and petroleum products, to farmers. He said these industries use the central notice system to make sure they are

protected when buying the products. Consequently, he said, they have a particular interest in this bill draft. He said an agricultural lien is created when a verified statement is filed with the Secretary of State's office within a certain number of days after the product is sold. He said that lien is included on the central indexing system. He said the current system is working and people are familiar with it. He said it appears from the bill draft the intent is to not change the priorities of the liens. He said, however, inconsistencies exist that need to be addressed. Mr. Kuntz provided a list of concerns regarding the bill draft, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Stenehjem, Mr. Kuntz said interstate uniformity on priorities on these types of liens is not that important because most of the transactions are completed within the state.

In response to a question from Representative Meyer, Mr. Kuntz said a security interest is not perfected until a financing statement has been filed with the Secretary of State. He said that puts the rest of the world on notice that someone has a security interest in the property. He said that distinction does not exist with agricultural liens because those liens are created with the filing of the verified statements with the Secretary of State. He said that is why it is a problem to try to mesh the two types of liens.

Chairman Stenehjem called on Mr. Jack McDonald, Independent Community Banks of North Dakota, for comments concerning the Revised Article 9 bill draft. Mr. McDonald said this bill draft is important to banks, especially in the area of agricultural liens and priorities. He said there is a concern that a system that is working well will be changed by the enactment of Revised Article 9. He said there is a concern about lien law uniformity with other states because it may affect whether a financial institution will provide financing in the state. He said his organization is interested in working with the committee on the bill draft. He said the agricultural liens laws should either be taken out of Revised Article 9 completely or should be made uniform with existing law.

Chairman Stenehjem called on Mr. Steven Vogel-pohl, attorney, Bismarck, for comments regarding the Revised Article 9 bill draft. Mr. Vogel-pohl said his law practice is concentrated in the area of municipal bond counsel services. He said present law provides that Revised Article 9 does not apply to transfers by a government or governmental subdivision or agency. He said the bill draft being considered would not continue this exclusion. He said this would create the situation that absent another statute expressly governing the creation, perfection, priority, and enforcement of a security interest created by the state, those issuers would be subject to Revised Article 9 and its requirements. He said a report

prepared by the National Association of Bond Lawyers outlines the potentially negative impact Revised Article 9 would have on municipal bond issuers, and it identifies several states that have enacted legislation to mitigate those effects. He said two of those states are Washington and Alaska. Mr. Vogel-pohl submitted written testimony, a copy of the report of the National Association of Bond Lawyers, and copies of the Washington and Alaska statutes, all of which are on file in the Legislative Council office.

Uniform Electronic Transactions Act

At the request of Chairman Stenehjem, committee counsel distributed a copy of a letter submitted to Chairman Stenehjem by Mr. Smith regarding the Uniform Electronic Transactions Act. In his letter, he urged the committee to recommend for introduction into the 2001 legislative session the present bill draft before the committee.

Senator Stenehjem said the federal law passed in June 2000 will preempt state law unless the states adopt the Uniform Electronic Transactions Act.

Chairman Stenehjem called on Mr. Jaeger for comments concerning the Uniform Electronic Transactions Act. Mr. Jaeger said he wanted to reiterate his concerns about the bill draft that he made at the committee's April meeting, and he encouraged the committee's favorable attention when considering the bill draft. Mr. Jaeger submitted written testimony, a copy of which is on file in the Legislative Council office.

Technical Corrections Bill Draft

At the request of Chairman Stenehjem, Mr. John Walstad, Code Revisor on the Legislative Council staff, presented a bill draft relating to technical corrections to the North Dakota Century Code. He said the bill draft makes technical corrections, including improper, inaccurate, redundant, missing, or obsolete references. He said there have been two North Dakota Supreme Court cases in which statutes have been declared unconstitutional. He said those are not technical corrections, and it will be up to the Legislative Assembly to correct those statutes during the session.

Chairman Stenehjem called on Mr. Jaeger for comments regarding the technical corrections bill draft. Mr. Jaeger said he has a concern regarding the numerous references to "registered mail" in the Century Code, and he said the committee may want to consider addressing the issue in this bill draft. He said the "registered" versus "certified" mail first became a concern for his office when the mailing language in 1999 Senate Bill No. 2229 was changed by the Legislative Council staff. He said there are at least 16 references to registered mail in the Century Code. He said it would be more appropriate if those references could be changed to "certified" mail.

Mr. Jaeger submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Nelson, the code revisor said the problem with directing the code revisor to make a uniform change throughout the Century Code is that the Legislative Assembly is not reviewing the actual statutes that are being changed. He said such a directive has never been the subject of judicial scrutiny, and he is unsure if that would be considered an unconstitutional delegation of legislative authority to someone else.

It was moved by Senator Watne, seconded by Representative Meyer, and carried on a voice vote that the meeting be adjourned.

Chairman Stenehjem adjourned the meeting at 4:15 p.m.

Vonette J. Richter
Committee Counsel

ATTACH:1