

Testimony to the
JUDICIAL PROCESS INTERIM COMMITTEE
Presented by Peter D. Welte, Grand Forks County State's Attorney

February 10, 2010

Regarding Mental Health and Sexually Dangerous Individual Costs Study

Chair Meyer and Committee members. Thank you for the opportunity to be heard this morning.

In the past three years, Grand Forks County has spent the following amounts on defense attorneys for civil commitments:

Year	Mental Health	SDI's
2007	\$ 30,000.00	\$ 28,807.25
2008	\$ 30,000.00	\$ 21,538.32
2009	\$ 30,000.00	\$ 7,105.13
2010 (to date)	\$ 2,500.00	\$ 6,675.50 ¹

As you can see, although larger Counties may be able to control the expenditure of funds on Mental Health hearings, the lack of uniformity and control in the SDI expenditures is problematic. Grand Forks County is an exception to the rule, insofar as Grand Forks County is one of the counties able to plan for the wide variation in the SDI expenditures. But most counties in North Dakota simply aren't equipped for this lack of predictability and lack of uniformity in expenditures.

A natural consequence of this unpredictability in expenditures is that important legal decisions—the decisions to civilly commit a mentally ill, chemically dependent or sexually dangerous individual—might be based solely on availability of funding for defense counsel. This is unsound public policy.

Conversely, the State budgeting process leaves more room for the unpredictability of expenditures. An unexpected \$20,000 expense is more easily planned for and absorbed in a State-level budget than in a County-level budget.

But the dollars and cents are only one legitimate reason for transferring this responsibility to the State level of government. Another primary reason is that this is a statewide issue as a matter of policy. The issue of the treatment of mentally ill, chemically dependant, and sexually dangerous individuals is not just confined to the county level of government. It is one of statewide importance, and is recognized as such by the involvement of multiple state agencies throughout the process.

For example, in the civil commitment of a mentally ill/chemically dependent person, a petition is initiated by the State's Attorney, and presented before a State District Court. The matter is scheduled by the District Clerk of Court's office. If the petition has merit, a decision is made by the State District Judge to have the person either evaluated at a local North Dakota Human Service Center, or sent to the North Dakota State Hospital for assessment and treatment. Any

¹ This figure will be much larger, as a new SDI hearing was held yesterday, February 9, 2010, and it was the first hearing of the entire process

follow-up hearings are arranged through the Clerk of Court for rehearing before the State District Judge.

Throughout the above process, the only County-level government employee or agency is the State's Attorney. All other principals, the District Court, the District Judge, the Clerk of Court, the Human Service Center, and the State Hospital, are employees and/or representatives of the State of North Dakota. It stands to reason that the costs of the defense attorney should also be an obligation of the State of North Dakota.

As another example, sexually dangerous individuals are held, pre-release, at the North Dakota State Penitentiary. If they participate in sex offender treatment, the treatment program is administered either through the State Human Service Center or the NDDOC. Before release, they are assessed by the North Dakota Department of Corrections and Rehabilitation and, if appropriate for civil commitment, referred by a NDDOCR representative—usually a North Dakota State Probation and Parole Officer—to a State's Attorneys office for civil commitment. If the State's Attorney proceeds, the North Dakota State Hospital plays a crucial role in the commitment process. Additionally, if the petition is to be heard, it is scheduled by the Clerk of Court for a hearing in front of the State District Judge, and the State's primary witness is a psychologist from the North Dakota State Hospital. If the civil commitment is found to be meritorious, then the matter is re-heard by the State District Court on an annual basis.

Again, throughout the above process, the only County-level government employee or agency is the State's Attorney. All other principals, the NDDOC, the State Probation and Parole Officer, the District Court, the District Judge, the Clerk of Court, the Human Service Center, and the State Hospital, are employees and/or representatives of the State of North Dakota. Again, it stands to reason that the costs of the defense attorney should also be an obligation of the State of North Dakota.

Finally, if the State were to assume responsibility for the defense attorney costs in these hearings, there would be an improvement in the quality of representation of the respondents. Through centralized training and centralized policies and procedures, the uniformity throughout the process would result in more efficient representation, and also would maximize judicial economy throughout the commitment process.

Administratively, the State of North Dakota is far better equipped to administer the defense attorney component of this process than the fifty-three separate counties of our fair State. Fiscally, as well, the State of North Dakota is better equipped to administer the defense attorney aspect of this process than the fifty-three separate counties. Finally, as a matter of public policy, this issue is not confined to just one county or another. It is a matter of statewide concern, and it merits consideration accordingly.

I thank you for the privilege of appearing in front of you this morning. I stand available to answer any questions, or respond to any comments, you may have.