

## CLERK OF DISTRICT COURT UNIFICATION STUDY - RESTITUTION COLLECTIONS AND ENFORCEMENT ACTIVITIES - BACKGROUND MEMORANDUM

Section 7 of Senate Bill No. 2002 (attached as an appendix) directs a study of the implementation of the clerk of court unification, including a review of the delivery of services by clerks of court and the responsibility for restitution collection and enforcement activities. By Legislative Council directive, the study is limited to a study of the responsibility of clerks of court for restitution collection and enforcement activities. The study was included in Senate Bill No. 2002, the judicial branch's appropriations bill. Supporters of the study testified at the standing committee hearing that a study is necessary to track the progress of the clerk of court unification process and to determine the responsibility for restitution collection and enforcement activities.

### **BACKGROUND Court Unification**

In 1991 the Legislative Assembly unified the court system through elimination of county courts and the creation of additional district court judgeships from county court judgeships. In 1991 there were 53 district and county judges. Under unification, the law provided that the total number of district court judgeships must be reduced to 42 before January 1, 2001. The Supreme Court began eliminating judgeships, and by January 2, 1995, the primary implementation date for consolidation of trial courts, the number of judgeships was reduced to 47. At the end of 2000, the final judgeship was eliminated, and the number of district judgeships was reduced to 42.

### **Office of Clerk of District Court**

Historically, the clerks of court have been elected county officials whose salaries are set by state law but are paid by the county. The duties of the clerk are prescribed by state law, and the duties of the clerk are essentially performed for the district court. In 1989 the Legislative Assembly enacted legislation that provided counties the option of seeking state funding for the clerk of district court. The legislation, codified as North Dakota Century Code (NDCC) Section 11-17-11, provides that "[t]he board of county commissioners of any county may initiate the option to transfer responsibility for funding for the clerk of district court to the state by the filing of written notice to the state court administrator . . . ."

In 1997 the Legislative Assembly expressed its intent to provide for the state funding of clerks of court by stating in Section 6 of 1997 Senate Bill No. 2002 that "the judicial branch budget for the 1999-2001 biennium and future bienniums include funding necessary to efficiently fund administration of the district courts."

In 1999 the Legislative Assembly enacted legislation to provide for the state funding of clerk of district court services. The legislation, codified as NDCC Chapter 27-05.2, provides for the transfer of the funding for clerk of district court services to the state effective April 1, 2001. The legislation defined clerk of district court services as "those duties and services, as provided by statute or rule of the supreme court, that directly serve the judicial system and the provision of effective and efficient judicial services to the public." The legislation provided that the options available to a county regarding state funding of clerk of district court services depended upon the number of full-time equivalent (FTE) positions the Supreme Court determined to be necessary to provide adequate clerk of district court services. Under the legislation, a county in which the Supreme Court determined that at least five FTE employees are necessary would have the option of state-funded clerk of court services or to provide clerk of district court services at the county's own expense; a county in which the Supreme Court determined that one or more, but less than five, employees are necessary may opt for state-funded clerk of district court services, contract with the Supreme Court for clerk of district court services, or provide the services at the county's own expense; and a county in which the Supreme Court determines that less than one FTE position is necessary may either contract with the Supreme Court for clerk of district court services, or provide the services at its own expense. The legislation further required each board of county commissioners to notify the Supreme Court of its election to provide clerk of district court services, of its consent to the elected clerk of court and designated staff to become state employees, or of its election to enter an agreement with the Supreme Court to provide funding for clerk of district court services by April 1, 2000.

## PREVIOUS STUDIES AND RELATED LEGISLATION 1995-96 Interim

During the 1995-96 interim, the Legislative Council's Budget Committee on Government Finance, pursuant to Section 5 of 1995 House Bill No. 1002, studied the unified court system with emphasis on the distribution of court revenues and the allocation of the costs of the system between the counties and the state. The study included consideration of the allocation of costs and revenues that existed under the existing statutes as well as changes needed to more equitably handle the funding of the unified court system.

The committee reviewed court unification funding. Except for the salaries and expenses of the district court clerks and the facility costs, both of which are funded by the counties, district courts are funded through legislative appropriations.

The committee indicated its support for legislation introduced during the 1997 legislative session which would bring the clerks of district courts into the unified judicial system. The committee indicated its support for this due in part to child support collection and disbursement requirement changes in the federal Welfare Reform Act. The Act removes the child support collection and disbursement function from the clerks of district courts and requires each state to establish a centralized automated unit for the collection and disbursement of child support. Because of these changes and the decreased workload for the clerks of district courts, the committee concluded it would be an opportune time to bring the clerks into the unified court system.

### 1997 Legislation

The 1997 Legislative Assembly enacted Senate Bill No. 2002, which provided that counties are to use the provision of NDCC Chapter 11-10.2 (County Officer Combination, Separation, and Redesignation), Chapter 11-10.3 (Multisubdivisions Office Combinations), or Chapter 54-40.3 (Joint Powers Agreement) to combine or share the services of clerks of district courts and that the judicial branch budget for the 1999-2001 biennium and future bienniums include funding necessary to efficiently fund the administration of the district courts. The legislation further provided that (1) each county must have a register of deeds, and the register of deeds shall perform the functions of the clerk of district court in counties having a population of 6,000 or less, unless the board of county commissioners adopts a resolution separating the offices; (2) in a county having a population of more than 6,000, the offices of clerk of district court and the register of deeds may be combined into an office of register of deeds if the board of county commissioners adopts a resolution combining the offices; and (3) the distribution of fees for

filing civil cases that are not small claims court actions would be revised.

### 1997-98 Interim

During the 1997-98 interim, the Legislative Council's Judiciary Committee, pursuant to House Concurrent Resolution No. 3001 and Senate Concurrent Resolution No. 4045, studied the feasibility and desirability of funding the office of the clerk of district court through the unified judicial system and the issues and problems associated with the continued implementation of court unification.

The committee received testimony regarding the results of the *North Dakota Clerk of Court Consolidation Study* conducted by the National Center for State Courts. The National Center reported that 23 counties could have their clerk of district court functions consolidated, and the consolidated counties could have their court support functions restructured while maintaining public access to the courts without full-scale clerk of court operations. The study further recommended that in the remaining 30 counties, the Supreme Court should bring all court-related clerk of district court operations and personnel within the North Dakota judicial personnel system as state employees. The committee received extensive testimony in opposition to the plan.

In an attempt to address the clerk of court issue, the committee recommended that the North Dakota Consensus Council be involved to develop a plan regarding the number, duties, and funding of the clerks of district court. The Clerk of Court Consensus Process, which was formed to develop a plan regarding clerks of district court, included representatives of the North Dakota Clerks Association, the State Bar Association of North Dakota, the interim Judiciary Committee, the North Dakota Association of Counties, and the North Dakota County Commissioners Association.

The Clerk of Court Consensus Process plan recommended that adequate and proper judicial services, including clerk of district court services, be provided in each county in the state and that funding for clerk of district court services be provided by the state judicial system in cooperation with the boards of county commissioners in the counties of the state. The plan further provided that the options available to a county regarding state funding of clerk of district court services would depend on the number of FTE positions the Supreme Court determines is necessary to provide adequate clerk of district court services. The options available to the counties under the plan included state funding of clerk of district court services, a contract with the state for clerk of district court services, or providing the services at the county's own expense. The interim Judiciary Committee expressed its support for the plan developed by the Clerk of Court Consensus Process.

### 1999 Legislation

The 56th Legislative Assembly passed House Bill No. 1275, the legislation intended to implement the plan proposed by the Clerk of Court Consensus Process. The bill transferred funding for clerk of district court services to the state effective January 1, 2001, and provided for state funding of clerk of district court services. The bill defined clerk of district court services as those duties and services that directly serve the judicial system and provide effective and efficient judicial services to the public. The bill provided that the options available to a county regarding state funding of clerk of district court services depended on the number of FTE positions the Supreme Court determines is necessary to provide adequate clerk of district court services. The bill also provided for the transfer of equipment between the county and the state, fees to be charged by the clerk of the district court for various filing services, and recordkeeping requirements of the clerk. The bill required each board of county commissioners to notify the Supreme Court of its election to provide clerk of district court services, of its consent to the elected clerk of court and designated staff becoming state employees, or of its election to enter an agreement with the Supreme Court to provide funding for clerk of district court services by April 1, 2000.

Two other bills affecting the clerk of court unification process were also passed in 1999. House Bill No. 1002, the judicial branch's appropriations bill, changed the effective date of the transfer of funding of clerk of district court services from January 1, 2001, to April 1, 2001. House Bill No. 1382 changed the number of FTE employees that triggers a county's options for state-funded clerks of district court in House Bill No. 1275. Under this bill, the number of FTE employees required to trigger the first option in House Bill No. 1275 was changed from "at least two" to "at least five"; and the number of FTE employees required to trigger the second option in House Bill No. 1275 was changed from "one or more, but less than two" to "one or more, but less than five."

### 1999-2000 Interim

Pursuant to Section 4 of House Bill No. 1002 and House Concurrent Resolution No. 3067, the Legislative Council's Judiciary Committee studied the impact of court unification on the judicial system and on the effective provision of judicial services to state residents and reviewed and monitored the implementation of legislation enacted by the 56th Legislative Assembly regarding the delivery of clerk of district court services through state funding and alternative methods. The committee received testimony from the Supreme Court which indicated that 11 counties had requested state funding and operation of clerk of district court services;

three counties had elected to pay for clerk of district court services without funding agreements with the state for reimbursement; and one county did not make an election within the time limit set by statute. The remaining 38 counties entered funding agreements with the state to provide clerk of district court services in exchange for reimbursement in accordance with an agreed formula.

Another issue raised during the interim was who was responsible for handling the collection of restitution and the preparation of criminal judgments. The testimony indicated that in some counties, clerks of district court collect restitution and prepare criminal judgments and state's attorneys do this in other counties. According to the testimony, the Supreme Court planned to address that issue in the form of a rule that would propose both functions become clerk of district court functions.

The interim committee also reviewed the hiring procedures being implemented in the state-funded offices. As provided in law, elected clerks of district court automatically became state employees on April 1, 2001, in state-funded offices. The remainder of clerk of district court staff were to be selected from county paid staff in offices being funded by the state. Staffing was expected to be finalized by February 2001, with employment starting on April 1, 2001.

### 2001 Legislation

The 2001 Legislative Assembly passed Senate Bill No. 2002, the appropriations bill for the judicial branch. The bill, as introduced, included a \$638,973 appropriation for the collection of restitution. The bill, as passed, included a \$50,000 appropriation for the collection of restitution in state-funded counties and a statement of legislative intent. Section 6 of Senate Bill No. 2002 provides "[i]t is the intent of the legislative assembly that the county and state offices performing restitution collection and enforcement activities as of April 1, 2001, continue to perform those activities until June 30, 2003."

### RESTITUTION COLLECTION ACTIVITIES

North Dakota Century Code Section 12.1-32-08 establishes the procedure by which a court may order that a defendant make restitution to the victim or other recipient as determined by the court. Restitution may be ordered by the court in a wide variety of cases in which the victim of a criminal offense suffers monetary loss or damage to property. The most common restitution collection is to recover financial loss associated with bad checks. The statute is silent regarding who is responsible for restitution enforcement and collection activities but does provide that an order for restitution may be filed, transcribed, and enforced by the person entitled to the restitution in the same manner as civil

judgments. Historically, restitution has most often been monitored and collected by clerks of court. In some counties, however, restitution collection activities are managed exclusively by the state's attorney's office. In other counties, there has been a shared responsibility between the two county offices. These different divisions of labor regarding collection of restitution have evolved over time in response to local practices, budget considerations, and personnel factors.

In 1999 the Supreme Court's Court Services Administration Committee surveyed clerks of district court to determine the clerk's level of activity in several areas. With respect to restitution, the vast majority of clerks indicated some or all of court-ordered restitution was monitored, collected, and disbursed within their offices. However, within these counties, there was a difference with respect to handling restitution in particular kinds of cases. In some counties, clerks of district court handle restitution only in misdemeanor cases, while the state's attorney's office handles restitution in felony cases. In some counties, it is the opposite. And in some counties, typically smaller counties with part-time state's attorneys, the clerk of district court handles all restitution. In the three counties with the most activity (Cass, Burleigh, and Grand Forks), restitution collection and enforcement are the exclusive responsibilities of the state's attorney's office.

A more recent assessment of the 11 state-funded clerk of court offices indicated that, as previously noted, the state's attorney's office monitors, collects, and disburses restitution in the three counties with the proportionately highest criminal caseload (Cass, Burleigh, and Grand Forks). Of the remaining eight

counties, restitution in felony and misdemeanor cases is handled by the clerk's office in seven counties (Morton, Ramsey, Richland, Stark, Stutsman, Walsh, and Williams). The clerk's office in Ward County handles restitution only in felony cases. The assessment indicated that restitution collection and enforcement activities require 10 FTE positions statewide.

### **SUGGESTED STUDY APPROACH**

The committee, in its review of the delivery of services by clerks of court and the responsibility for restitution collection and enforcement activities, may wish to approach this study as follows:

- Receive testimony from representatives of the judicial branch, county representatives, clerks of district court, and the North Dakota Association of Counties regarding the progress, problems, and issues related to the state funding of clerks of district court, within the study parameters of delivery of services by clerks of court (as limited by the Legislative Council).
- Receive testimony from representatives of the judicial branch, county representatives, clerks of district court, and the North Dakota Association of Counties regarding the concerns, costs, and other issues associated with the responsibility for restitution collection and enforcement activities.
- Develop recommendations and prepare legislation necessary to implement the recommendations.

ATTACH:1