

N.D.A.G. Letter to Duppler (April 24, 1985)

April 24, 1985

Mr. Alan Duppler
Mercer County State's Attorney
Mercer County Courthouse
Stanton, North Dakota 58571

Dear Mr. Duppler:

You have asked whether the clerk of court is under any obligation to file an "Open and Notorious Statement" and related papers requested to be filed by James R. Billedeau.

Upon review of the "Open and Notorious Statement," it appears to be designed to put certain public officials or private persons on "notice" of various federal civil rights statutes. The purpose, presumably is to establish a knowing violation of Mr. Billedeau's civil rights by public officials who may take action against him at sometime in the future. It thus appears to be an attempt to develop evidence on legal or factual issues that may arise in a possible lawsuit that may be filed at some future date.

It is my opinion that the clerk of court is not obligated to accept these papers for filing.

In general, the clerk of court is a purely ministerial officer who has no discretion to refuse to accept papers in a cause before the court or in connection with specific duties imposed by statute. 15A Am. Jur.2d, Clerks of Court, §23 (copy attached). This general duty, however, does not extend to an obligation to accept any and all papers where such papers are unrelated to some "cause" properly before the court or where the clerk's duty to accept such papers is not prescribed by law.

In North Dakota, there is but one type of civil action. Rule 2, N.D.R.Civ.P. It must be commenced by a summons and complaint. Rule 3, N.D.R.Civ.P. In addition, the clerk is obligated to accept any special papers that are part of special procedures established by statute. Rule 81(a) and Table A, N.D.R.Civ.P. Criminal proceedings are similarly subject to issuance of a complaint. Rule 3, N.D.R.Crim.P. It seems clear that Mr. Billedeau's "Open and Notorious Statement," affidavit and letter to Kent Conrad are related to no specific Mercer County civil or criminal action nor to a special procedure or duty of the clerk as provided by statute.

The duties of the clerk of court are statutorily established. N.D.C.C. §11-17-01(1) describes the mandatory general duties of the clerk of court. While Subsection 1 is broadly written to require the clerk to "[T]ake charge of all books, papers, and records which are filed or deposited in his office, and safely keep and dispose of the same according to law," this section does not encompass a duty to file papers which have no relation to matters which are filed in connection with a matter properly before the court or

which have no relation to some other statutory duty of the clerk of court. Any reading of N.D.C.C. §11-17-01(1) which would require the clerk to accept any papers of any kind or description would require the clerk's office to become an open repository for free paper and book storage. This conclusion is supported by N.D.C.C. §11-17-01(15) which requires the clerk to "keep such other records . . . as are prescribed by law." (Emphasis added.)

It is my opinion that the clerk must accept only such papers as are filed pursuant to a civil or criminal action, as defined by the rules, a "special proceeding" defined by statute and when the clerk is specifically required by statute to accept and file certain records.¹ Since the "Open and Notorious Statement," affidavit and letter by Mr. Belledeau meet none of these criteria, the clerk may refuse to file these papers.

While North Dakota does not seem to have any reported cases defining the parameters of the nature of documents which are entitled to be filed, the case of Miller v. Johnson, 541 F. Supp. 1165, 1176 (D.C.D.C. 1982), held that a federal clerk of court was under no obligation to accept papers from a pro se litigant after the underlying cause had been dismissed by the court. It seems equally sound that the clerk has no obligation to accept papers unless a cause of action has been commenced or some other statutory duty to file papers exists.

For the guidance of the clerk of court, the power to make decisions as to the propriety of any paper submitted, or as to the right of a person to file such paper, is vested in the court rather than the clerk. 15A Am. Jur.2d, Clerks of Court, §23. Thus, if the clerk is unsure as to whether the papers may properly be filed, the clerk should seek the guidance of the court.

In the event that the clerk is receiving repetitious documents which are not entitled to be filed, the clerk's office may consider suggesting that the court adopt a local rule of court on such papers, pursuant to Rule 83, N.D.R.Civ.P., "Practice When Procedure Not Specified." Such rules may be adopted by the district court without the prior approval of the Supreme Court, although they must be sent to the clerk of the Supreme Court for referral and review by a standing committee as to continuance, rejection, or adoption as a statewide rule.

I sincerely apologize for the delay in responding to this letter.

Sincerely,

Nicholas J. Spaeth

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¹ The clerk of court has certain duties which do not relate to court actions. For example, the clerk is required to file for record a notary's commission and seal. N.D.C.C. §44-06-04(1).