

Fifty-fifth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2123

Introduced by

Judiciary Committee

(At the request of the Supreme Court)

1 A BILL for an Act to amend and reenact sections 27-23-01, 27-23-02, 27-23-03, 27-23-06,
2 27-23-08, and 27-23-09 of the North Dakota Century Code, relating to the creation,
3 composition, duties, and operation of the judicial conduct commission; and to provide an
4 effective date.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 27-23-01 of the 1995 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

8 **27-23-01. (Effective until January 1, 2000) Definitions.** In this chapter, unless the
9 context or subject matter otherwise requires:

- 10 1. ~~"Chairman"~~ "Chair" means the ~~chairman~~ chair of the commission and includes any
11 acting ~~chairman~~ chair.
- 12 2. "Commission" means the ~~commission on~~ judicial conduct commission.
- 13 3. ~~"Counsel"~~ "Disciplinary counsel" means one or more attorneys appointed by the
14 commission to gather and present evidence and act on its behalf in proceedings
15 before ~~a master or~~ the commission, a hearing panel, or ~~in~~ the supreme court.
- 16 4. "Hearing panel" means a four-member panel consisting of at least two citizen
17 members of the commission, appointed by the chair to conduct a hearing and
18 make recommendations after the filing of formal charges or a petition for transfer to
19 incapacity inactive status.
- 20 5. "Judge" means a justice of the supreme court, a judge of the temporary court of
21 appeals, a judge of the district court, a judicial referee, a judge of a municipal court,
22 and, in the case provided in section 29-01-14, a small claims court referee.
- 23 5. ~~"Master" means one or more judges, active or retired, or attorneys appointed by~~
24 ~~the supreme court upon the request of the commission; or one or more members~~

~~of the commission designated by the commission to hold hearings and make findings of fact on issues of fact arising in proceedings under this chapter.~~

6. "Shall" is mandatory, but not jurisdictional, and "may" is permissive.

(Effective January 1, 2000) Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. ~~"Chairman"~~ "Chair" means the ~~chairman~~ chair of the commission and includes any acting ~~chairman~~ chair.

2. "Commission" means the ~~commission on~~ judicial conduct commission.

3. ~~"Counsel"~~ "Disciplinary counsel" means one or more attorneys appointed by the commission to gather and present evidence and act on its behalf in proceedings before ~~a master of~~ the commission, a hearing panel, or ~~in~~ the supreme court.

4. "Hearing panel" means a four-member panel consisting of at least two citizen members of the commission, appointed by the chair to conduct a hearing and make recommendations after the filing of formal charges or a petition for transfer to incapacity inactive status.

5. "Judge" means a justice of the supreme court, a judge of the district court, a judicial referee, a judge of a municipal court, and, in the case provided in section 29-01-14, a small claims court referee.

~~5. "Master" means one or more judges, active or retired, or attorneys appointed by the supreme court upon the request of the commission; or one or more members of the commission designated by the commission to hold hearings and make findings of fact on issues of fact arising in proceedings under this chapter.~~

6. "Shall" is mandatory, but not jurisdictional, and "may" is permissive.

SECTION 2. AMENDMENT. Section 27-23-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27-23-02. Creation and composition of commission, terms of office, appointment, and powers. The ~~commission on~~ judicial conduct ~~is hereby created to consist~~ commission consists of two judges of the district court, one lawyer ~~who is~~ licensed to practice law in this state, and four citizens who are not judges, retired judges, or lawyers. Members representing the district court must be appointed by their state association and the lawyer member must be appointed by the ~~executive committee~~ board of governors of the state bar association of North

Dakota. The citizen members must be appointed by the governor. The term of each member is three years. ~~Initially, two members shall serve for three years, two members shall serve for two years, and three members shall serve for one year; as determined by lot.~~ No A member may not serve more than two full three-year terms. Membership terminates if a member ceases to hold the position that qualified ~~him~~ the member for appointment. A vacancy must be filled by the appointing power for the remainder of the term. Any appointment to fill a vacancy not made within forty-five days after the vacancy occurs or the term of office ends must be made by the supreme court. The commission shall select one of its members as ~~chairman~~ chair.

The commission has the power to investigate complaints against any judge in the state and the chair may appoint a hearing panel to conduct hearings concerning the discipline, removal, ~~or~~ retirement, or transfer to incapacity inactive status of any judge.

SECTION 3. AMENDMENT. Section 27-23-03 of the North Dakota Century Code is amended and reenacted as follows:

27-23-03. Other powers.

1. A judge is disqualified from acting as a judge, without loss of salary, while there is pending:
 - a. An indictment or an information charging ~~him~~ the judge in the United States with a crime punishable as a felony under North Dakota or federal law; or
 - b. A recommendation submitted by the commission to the supreme court for ~~his~~ the judge's removal or retirement.
2. On recommendation of the commission or on its own motion, the supreme court may suspend a judge from office without salary when, in the United States, ~~he~~ the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under North Dakota or federal law or of any other crime that involves moral turpitude under that law. If ~~his~~ the judge's conviction is reversed, suspension terminates; and ~~he~~ the judge must be paid ~~his~~ the salary for the period of suspension. If ~~he~~ the judge is suspended and ~~his~~ the conviction becomes final, the supreme court shall remove ~~him~~ the judge from office.
3. On recommendation of the commission or a hearing panel of the commission, the supreme court may (a) retire a judge for disability that seriously interferes with the performance of ~~his~~ the judge's duties and is, or is likely to become, permanent;

1 ~~and~~ (b) transfer, with the possibility of reinstatement, a judge to incapacity inactive
2 status; or (c) publicly censure or remove a judge for action that constitutes willful
3 misconduct in office, willful failure to perform his duties as prescribed by law or by
4 administrative rule or regulation of the supreme court, willful violation of provisions
5 of the code of judicial conduct as adopted by the supreme court, or habitual
6 intemperance. ~~No proceedings hereunder~~ The commission may impose private,
7 nonpublic discipline for minor misconduct that does not warrant public discipline or
8 may direct disposition of allegations of misconduct in other manners considered
9 appropriate. A proceeding under this section or implementing rules of the supreme
10 court may not be instituted for alleged acts occurring more than six years prior to
11 before receiving a complaint.

- 12 4. A judge retired by the supreme court must be considered to have retired
13 voluntarily. A judge removed by the supreme court is ineligible for judicial office,
14 and pending further order of the court, ~~he~~ the judge is suspended from practicing
15 law in this state.
- 16 5. The supreme court shall make rules implementing this chapter and providing for
17 confidentiality of proceedings.
- 18 6. The procedure provided for ~~herein~~ in this section may be used in addition to the
19 impeachment proceedings provided for in the Constitution of North Dakota as
20 applicable to district and supreme court judges.
- 21 7. The commission may employ or share the employment of such officers, assistants,
22 and other employees as it deems necessary for the performance of the duties and
23 exercise of the powers conferred upon the commission ~~and upon the masters~~; may
24 arrange for and compensate medical and other experts and reporters; may arrange
25 for attendance of witnesses, including witnesses not subject to subpoena; and may
26 pay from funds available to it all expenses reasonably necessary for effectuating
27 the purposes of this chapter, whether or not specifically enumerated herein. The
28 attorney general shall, if requested by the commission, act as its counsel generally
29 or in any particular investigation or proceeding. The commission may employ
30 special counsel from time to time whenever it deems necessary.

8. Each member of the commission ~~and each master~~ must be allowed expenses for travel, board, and lodging incurred in the performance of ~~his~~ official duties, as provided in sections 44-08-04 and 54-06-09.

9. ~~No~~ An act of the commission or hearing panel is not valid unless concurred in by at least a majority of its members.

SECTION 4. AMENDMENT. Section 27-23-06 of the North Dakota Century Code is amended and reenacted as follows:

27-23-06. General powers of commission ~~or masters~~, hearing panel, and disciplinary counsel. In the conduct of investigations and formal proceedings, the commission, hearing panel, or ~~the masters~~ disciplinary counsel may:

1. Administer oaths.
2. Order and otherwise provide for the inspection of books and records.
3. Issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony relevant to any ~~such~~ investigation or formal proceeding.

The power to administer oaths, to issue subpoenas, or to make orders for or concerning the inspection of books and records may be exercised by a member of the commission or a ~~master~~ hearing panel, unless the commission ~~shall~~ otherwise ~~determine~~ determines.

SECTION 5. AMENDMENT. Section 27-23-08 of the North Dakota Century Code is amended and reenacted as follows:

27-23-08. Petition for order compelling person to attend or testify or produce writings or things - Service of order to appear before court - Order to appear before commission or ~~masters~~ hearing panel - Contempt. If ~~any~~ a person refuses to attend, testify, or produce any writings or things required by subpoena, the commission or the ~~masters~~ hearing panel may petition the district court for the county in which the hearing is pending for an order compelling a person to attend and testify or produce the writings or things required by the subpoena before the commission or ~~the masters~~ hearing panel. The court shall order a person to appear before it at a specified time and place ~~and then and there~~ to show cause why ~~he~~ the person has not attended or testified or produced the writings or things as required. A copy of the order must be served upon ~~him~~ the person. If it appears to the court that the subpoena was regularly issued, the court shall order a person to appear before the commission or ~~the masters~~

1 hearing panel at the time and place fixed in the order and testify or produce the required
2 writings or things. Upon failure to obey the order, a person must be punished as provided in
3 section 12.1-10-02.

4 **SECTION 6. AMENDMENT.** Section 27-23-09 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **27-23-09. Deposition.** In any investigation or formal proceeding under this chapter,
7 the commission, hearing panel, or ~~the masters~~ disciplinary counsel, ~~pursuant to~~ under the
8 North Dakota Rules of Civil Procedure, may order the deposition of a person residing within or
9 without the state to be taken.