

# JUDICIAL BRANCH OF GOVERNMENT

## CHAPTER 262

### HOUSE BILL NO. 1453

(Representatives Devlin, Kroeplin, Nelson, Weisz)  
(Senator Andrist)

### SMALL CLAIMS VENUE

AN ACT to amend and reenact section 27-08.1-01 of the North Dakota Century Code, relating to the location of small claims actions.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>1</sup> **SECTION 1. AMENDMENT.** Section 27-08.1-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

#### **27-08.1-01. Small claims court - Jurisdictional limits - Venue.**

1. All judges of the district courts may exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of that jurisdiction must be known and referred to as the "small claims court". The jurisdiction of this court is confined to cases for recovery of money, or the cancellation of any agreement involving material fraud, deception, misrepresentation, or false promise, where the value of the agreement or the amount claimed by the plaintiff or the defendant does not exceed five thousand dollars.
2. The proceedings in this court must be commenced:
  - a. If the defendant is a corporation, limited liability company, or a partnership, in any county in which the defendant has a place of business or in any county in which the subject matter of the claim occurred.
  - b. If the claim is for collection of a check written without sufficient funds or without an account, in the county where the check was passed, or in the county of the defendant's residence or place of business.
  - c. If the defendant is an individual and the claim is for collection of an open account on which credit has been extended:
    - (1) In the county of the defendant's residence or place of business; or

---

<sup>1</sup> Section 27-08.1-01 was also amended by section 1 of Senate Bill No. 2068, chapter 263.

- (2) If the amount of the claim is less than ~~five hundred one~~ thousand dollars and is not from a telephone or mail order transaction, in the county where the transaction occurred or in the county of the defendant's residence or place of business.
    - d. If the defendant is an individual and the claim is not made under subdivision b or c, in the county of the defendant's residence.
    - e. If the defendant is an individual and the claim arose as the result of the defendant's lease of real property, in the county where the defendant resides or in the county where the real property is located.
    - f. If the plaintiff is a political subdivision and the claim is for a public utility debt, in the county in which the political subdivision is located.
3. Except for an action under subdivision c, e, or f of subsection 2, the defendant may elect to remove the action to a small claims court in the defendant's county of residence. No claim may be filed by an assignee of that claim. No garnishment or attachment may issue from this court.

Approved April 10, 1997

Filed April 10, 1997

## CHAPTER 263

### SENATE BILL NO. 2068

(Judiciary Committee)

(At the request of the Supreme Court)

## SMALL CLAIMS JUDGMENTS AND REMOVAL

AN ACT to amend and reenact subsection 3 of section 27-08.1-01, sections 27-08.1-02, 27-08.1-04, and 27-08.1-05 of the North Dakota Century Code, relating to small claims judgments and the commencement and removal of small claims actions; and to repeal section 27-08.1-06 of the North Dakota Century Code, relating to docketing and execution of small claims judgments.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>2</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 27-08.1-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Except for an action under subdivision e of subsection 2, the defendant may elect to remove the action to a small claims court in the defendant's county of residence. ~~No~~ A claim may not be filed by an assignee of that claim. ~~No~~ A garnishment or attachment may not issue from this court until after judgment is entered.

**SECTION 2. AMENDMENT.** Section 27-08.1-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**27-08.1-02. Commencement of action - Claim affidavit.** Actions in the small claims court are commenced whenever any person executes and files with the court a claim affidavit, and causes to be served by a person of legal age, not a party to or interested in the action, the affidavit on the defendant or mails it to the defendant by certified mail along with a form upon which the defendant must indicate whether a hearing is requested and whether the defendant ~~intends~~ elects to remove the action to district court. If, within twenty days of service of the affidavit and form, the court has not received a request for a hearing or an election to remove to district court, or if the defendant indicates that a hearing is not requested, a hearing will not be scheduled and judgment may be entered against the defendant by default. If the defendant requests a hearing in small claims court, the hearing must be not less than ten days and not more than thirty days after receipt of the request. Except for an action under subdivision e of subsection 2 of section 27-08.1-01, the mailing, or personal service, may be made anywhere within the state. Forms used in small claims court actions must be approved by the state court administrator and obtained from, or at the direction of, the clerk of district court.

**SECTION 3. AMENDMENT.** Section 27-08.1-04 of the North Dakota Century Code is amended and reenacted as follows:

---

<sup>2</sup> Section 27-08.1-01 was also amended by section 1 of House Bill No. 1453, chapter 262.

**27-08.1-04. Election to proceed in small claims court irrevocable.** Election by the plaintiff to use the procedures provided for in this chapter is irrevocable. In the event the plaintiff elects to discontinue the proceedings, the court shall enter its order accordingly, and unless otherwise provided in the order ~~such the~~ dismissal must be deemed to be with prejudice. By election to proceed in small claims court, the plaintiff waives ~~his the~~ right to appeal to any other court from the decision of the small claims court. The defendant waives ~~his the~~ right to appeal from the decision of the small claims court upon receiving ~~his the~~ order for appearance as required herein, unless ~~he the defendant~~ elects to remove the action from the small claims court to a district court ~~which would have jurisdiction over said matter in the absence of the small claims court by filing with the small claims court and serving.~~ If the defendant elects to remove the action to district court, the defendant must serve upon the plaintiff a notice of ~~such the~~ removal; and ~~filing file~~ with the clerk of the court to which ~~said the~~ action is removed a copy of the claim affidavit and the defendant's answer ~~thereto~~ along with the filing fee, except for an answer fee, required for civil actions ~~in said court, not later than forty-eight hours before the hearing set for the appearance of the defendant.~~

**SECTION 4. AMENDMENT.** Section 27-08.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**27-08.1-05. Judgment.** The court ~~will~~ shall enter a written judgment indicating its decision on all cases filed with the court on the basis of the evidence presented. A judgment must be entered even if either party fails to appear at the hearing. The court may award the costs of the action to the prevailing party. For purposes of enforcement and execution, a judgment of the small claims court has the same force, effects, and attributes of a judgment of the district court.

**SECTION 5. REPEAL.** Section 27-08.1-06 of the 1995 Supplement to the North Dakota Century Code is repealed.

Approved April 9, 1997  
Filed April 10, 1997

## **CHAPTER 264**

### **HOUSE BILL NO. 1064**

(Legislative Council)

(Judiciary Committee)

(Representatives Delmore, Nottestad, Christenson)

(Senators Watne, W. Stenehjem, Traynor)

### **JURY SELECTION**

AN ACT to create and enact a new section to chapter 27-09.1 of the North Dakota Century Code, relating to the selection of jurors.

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

**SECTION 1.** A new section to chapter 27-09.1 of the North Dakota Century Code is created and enacted as follows:

##### **Selection of jurors from judicial district - Grounds and method for selection.**

The court, upon its own motion, may direct that prospective jurors be selected from one or more counties in the judicial district in which the court is located if the county of venue has a population of not more than ten thousand persons and the court determines that the number of prospective jurors within the county of venue is inadequate to obtain a fair and impartial jury. Following notification by the court, the clerk of court of any county in the judicial district shall submit a specified number of names, with mailing addresses, of the prospective, qualified jurors to the clerk of court of the county of venue.

Approved March 23, 1997

Filed March 24, 1997

## CHAPTER 265

### SENATE BILL NO. 2103

(Judiciary Committee)  
(At the request of the Supreme Court)

### STATE BAR BOARD MEMBERSHIP

AN ACT to amend and reenact section 27-11-06 of the North Dakota Century Code, relating to the membership of the state bar board.

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

**SECTION 1. AMENDMENT.** Section 27-11-06 of the North Dakota Century Code is amended and reenacted as follows:

**27-11-06. State bar board established - Appointment and qualifications of board members.** The state bar board must consist of at least three but no more than five members appointed by the supreme court of this state. ~~All~~ At least three of the members of such the board must be resident licensed members of the bar and. Each board member must be appointed from a list of members of nominees submitted by the bar association of the state of North Dakota to be submitted from time to time by said association. ~~The list so submitted, for each appointment to be made, must consist of three members of the association in good standing. The supreme court may return the list to the bar association for additional nominees. If the bar association nominates a member for reappointment, a list of nominees is not required unless requested by the supreme court.~~

Approved March 11, 1997  
Filed March 13, 1997

## CHAPTER 266

### HOUSE BILL NO. 1306

(Representatives R. Kelsch, Carlisle, Mahoney)  
(Senators Nalewaja, W. Stenehjem, Tallackson)

### JUVENILE COURT TRANSFERS

AN ACT to amend and reenact subdivision b of subsection 1 of section 27-20-34 of the North Dakota Century Code, relating to transfers from juvenile to adult court.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>3</sup> **SECTION 1. AMENDMENT.** Subdivision b of subsection 1 of section 27-20-34 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. The child was fourteen years of age or more at the time of the alleged conduct and the court determines that there is probable cause to believe the child committed the alleged delinquent act and the delinquent act involves the offense of murder or attempted murder; gross sexual imposition or the attempted gross sexual imposition of a victim by force or by threat of imminent death, serious bodily injury, or kidnapping; or the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance in violation of subdivision a or b of subsection 1 of section 19-03.1-23, except for the manufacture, delivery, or possession with intent to manufacture or deliver marijuana in an amount less than one pound [.45 kilograms]; or the gratuitous delivery of a controlled substance not a narcotic drug or methamphetamine which is a singular and isolated event involving an amount of controlled substance sufficient solely for a single personal use; or

Approved April 9, 1997  
Filed April 10, 1997

---

<sup>3</sup> Section 27-20-34 was also amended by section 1 of House Bill No. 1045, chapter 267.

## CHAPTER 267

### HOUSE BILL NO. 1045

(Legislative Council)

(Criminal Justice Committee)

(Representatives Bernstein, R. Kelsch, Kliniske, Brown, Mahoney)

(Senator Nalewaja)

### DISTRICT COURT JURISDICTION

AN ACT to create and enact a new subsection to section 27-20-34 of the North Dakota Century Code, relating to district court jurisdiction over certain adults who committed an offense as a child.

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

<sup>4</sup> **SECTION 1.** A new subsection to section 27-20-34 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

A person at least twenty years of age who committed an offense while a child and was not adjudicated for the offense in juvenile court may be prosecuted in district court as an adult, unless the state intentionally delayed the prosecution to avoid juvenile court jurisdiction. The district court has original and exclusive jurisdiction for the prosecution under this subsection.

Approved March 23, 1997

Filed March 24, 1997

---

<sup>4</sup> Section 27-20-34 was also amended by section 1 of House Bill No. 1306, chapter 266.



## CHAPTER 268

### SENATE BILL NO. 2148

(Senators Nalewaja, LaFountain, Schobinger)  
(Representative Sandvig)

## FOSTER CARE COURT ORDER DURATION

AN ACT to amend and reenact subsections 3 and 4 of section 27-20-36 of the North Dakota Century Code, relating to time limitations on court orders for children in foster care.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsections 3 and 4 of section 27-20-36 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. An order of disposition pursuant to which a child is placed in foster care ~~continues~~ may not continue in force for ~~not~~ more than eighteen months. Any other order of disposition ~~continues~~ may not continue in force for ~~not~~ more than two years.
4. Except as provided in subsection 1, the court may ~~seener~~ terminate an order of disposition before the expiration of the order or extend its duration for further periods. An order of extension may be made if:
  - a. A hearing is held ~~prior to~~ before the expiration of the order upon motion of a party or on the court's own motion;
  - b. Reasonable notice of the hearing and opportunity to be heard are given to the parties affected;
  - c. The court finds ~~that~~ the extension is necessary to accomplish the purposes of the order extended; and
  - d. The extension does not exceed ~~eighteen~~ twelve months from the expiration of an order limited by subsection 3 or two years from the expiration of any other limited order. However, the court may order that the child permanently remain in foster care with a specified caregiver and that the duration of the order be left to the determination of the court if the court determines that:
    - (1) All reasonable efforts have been made to reunite the child with the child's family;
    - (2) The deprivation is likely to continue;
    - (3) With respect to a child under the age of ten, termination of parental rights and subsequent adoption would not be in the best interests of the child; and

- (4) The placement of the child in permanent foster care is in the best interests of the child.

Approved March 19, 1997

Filed March 19, 1997

## CHAPTER 269

### SENATE BILL NO. 2030

(Legislative Council)

(Criminal Justice Committee)

(Senators W. Stenehjem, Nalewaja)

(Representatives R. Kelsch, Brown, Mahoney, Bernstein)

## JUVENILE OFFENDER DATA COLLECTION

AN ACT to create and enact a new section to chapter 27-20 of the North Dakota Century Code, relating to data collection on certain juvenile offenders; and to provide a penalty.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 27-20 of the North Dakota Century Code is created and enacted as follows:

#### **Law enforcement data base.**

1. If a court adjudicates that a child has committed a delinquent act that, if committed by an adult, is defined as a sexual assault under section 12.1-20-07 or is a violation of section 12.1-16-01, 12.1-18-01, 12.1-18-02, 12.1-20-03, or 12.1-20-04 or chapter 12.1-17, 12.1-27.2, or 12.1-29, the court shall send written notice of the disposition to the attorney general. The notice must be sent within twenty days of the disposition. The notice must contain the child's name, the child's date of birth, the child's social security number, the child's address, the name and location of the child's school, the names and addresses of the child's parents or guardians, and a copy of the disposition order. The court shall send a copy of any modification to the order to the attorney general within twenty days of the disposition or modification.
2. If a person who is listed on the data base has a change in name or address, that person shall inform the attorney general in writing, within ten days, of the person's new name or address and shall otherwise comply with address verification procedures as required by the attorney general. The person shall comply with this requirement for ten years after the date of the disposition, or until destruction of the records is ordered by the court, whichever date is earlier. A person listed on the data base who violates this section is guilty of a class A misdemeanor.
3. Notwithstanding any other provision of law, the attorney general shall release disposition information on file to law enforcement officers for law enforcement purposes and to the department of human services for licensing purposes. The court shall notify the superintendent of the school district and the principal of the school the child attends of the disposition. The school administration shall notify the child's teachers and guidance counselor of this information and shall notify others in similar positions if the child transfers to another learning institution in or outside the state. A law enforcement agency shall disclose to the public relevant and necessary disposition information released by the attorney general if the agency determines that an individual adjudicated of a

second delinquent act under subsection 1 is a public risk and disclosure of the disposition information is necessary for public protection.

4. A law enforcement agency or school district, its officials, and its employees are not subject to civil or criminal liability for disclosing or failing to disclose information as permitted by this section.

Approved April 10, 1997

Filed April 10, 1997

## CHAPTER 270

### SENATE BILL NO. 2123

(Judiciary Committee)

(At the request of the Supreme Court)

## JUDICIAL CONDUCT COMMISSION COMPOSITION AND DUTIES

AN ACT to amend and reenact sections 27-23-01, 27-23-02, 27-23-03, 27-23-06, 27-23-08, and 27-23-09 of the North Dakota Century Code, relating to the creation, composition, duties, and operation of the judicial conduct commission; and to provide an effective date.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

**27-23-01. (Effective until 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~~ or 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 temporary court of appeals, 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.

**(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~~ or 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; ~~and~~ (b) transfer, with the possibility of reinstatement, a judge to incapacity inactive status; or (c) publicly censure or remove a judge for action that constitutes willful misconduct in office, willful failure to perform ~~his~~ duties as prescribed by law or by administrative rule ~~or regulation~~ of the supreme court, willful violation of ~~provisions of~~ the code of judicial conduct as adopted by the supreme court, or habitual intemperance. ~~No proceedings hereunder~~ The commission may impose private, nonpublic discipline for minor misconduct that does not warrant public discipline or may direct disposition of allegations of misconduct in other manners considered appropriate. A proceeding under this section or implementing rules of the supreme court may not be instituted for alleged acts occurring more than six years prior to before receiving a complaint.
4. A judge retired by the supreme court must be considered to have retired voluntarily. A judge removed by the supreme court is ineligible for judicial office, and pending further order of the court, ~~he~~ the judge is suspended from practicing law in this state.
5. The supreme court shall make rules implementing this chapter and providing for confidentiality of proceedings.
6. The procedure provided for ~~herein~~ in this section may be used in addition to the impeachment proceedings provided for in the Constitution of North Dakota as applicable to district and supreme court judges.
7. The commission may employ or share the employment of such officers, assistants, and other employees as it deems necessary for the performance of the duties and exercise of the powers conferred upon the commission ~~and upon the masters~~; may arrange for and compensate medical and other experts and reporters; may arrange for attendance of witnesses, including witnesses not subject to subpoena; and may pay

from funds available to it all expenses reasonably necessary for effectuating the purposes of this chapter, whether or not specifically enumerated herein. The attorney general shall, if requested by the commission, act as its counsel generally or in any particular investigation or proceeding. The commission may employ 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~~ hearing panel at the time and place fixed in the order and testify or produce the required writings or things. Upon failure to obey the order, a person must be punished as provided in section 12.1-10-02.

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



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

Approved March 11, 1997

Filed March 13, 1997

## CHAPTER 271

### SENATE BILL NO. 2062

(Senator Lips)

### JUDICIAL VACANCY FILLING

AN ACT to amend and reenact section 27-25-04 of the North Dakota Century Code, relating to appointments to fill vacancies in judicial offices.

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

**SECTION 1. AMENDMENT.** Section 27-25-04 of the North Dakota Century Code is amended and reenacted as follows:

**27-25-04. Governor to appoint or call special election.** Within thirty days after receipt of the list of nominees, the governor shall do any of the following:

1. Fill the vacancy by appointment from the list of nominees submitted by the committee. ~~The appointment continues only until the next general election, when the office must be filled by election for the remainder of the term.~~
2. Return the list of nominees and direct the committee to reconvene.
3. Call a special election to fill the vacancy for the remainder of the term.

If the governor determines to call a special election to fill the vacancy, the governor shall issue a writ of election to the auditors of the counties in the district in which the district vacancy occurs commanding them to notify the boards of election in the counties to hold a special election at a time designated by the governor. If the governor determines to call a special election within sixty days of the time of the next general election, the special election must be held at the same time as the general election.

Approved March 21, 1997  
Filed March 21, 1997