

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1348

Introduced by

Representatives Byerly, Brown, Wald

1 A BILL for an Act to create and enact four new sections to chapter 27-14 of the North Dakota
2 Century Code, relating to the creation, powers, and duties of a lawyer conduct commission; to
3 amend and reenact sections 27-14-03, 27-14-04, and 27-14-05 of the North Dakota Century
4 Code, relating to the duties of the state bar board; and to repeal section 27-14-06 of the North
5 Dakota Century Code, relating to prosecution by the state bar board.

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

7 **SECTION 1.** Four new sections to chapter 27-14 of the North Dakota Century Code are
8 created and enacted as follows:

9 **Lawyer conduct commission - Appointment.** The lawyer conduct commission
10 consists of two judges of the district court, one lawyer who is licensed to practice law in this
11 state, one member from each house of the legislative assembly who is not a lawyer or a retired
12 judge, and two citizens who are not judges, retired judges, or lawyers. Members representing
13 the district court must be appointed by their state association, the board of governors of the
14 state bar association of North Dakota shall appoint the lawyer member, and the governor shall
15 appoint the members of the legislative assembly and the citizen members. The term of each
16 members is three years. No member may serve more than two full three-year terms.
17 Membership terminates if a member ceases to hold the position that qualified the member for
18 appointment. A vacancy must be filled by the appointing authority for the remainder of the term.
19 The supreme court shall make any appointment to fill a vacancy not filled within forty-five days
20 after the vacancy occurs or the term of office ends. The commission shall select one of its
21 members as chairman.

22 **Powers of lawyer conduct commission.**

- 1 1. The lawyer conduct commission may investigate complaints against any lawyer in
2 the state and conduct hearings concerning the discipline, removal, or retirement of
3 any judge.
- 4 2. On recommendation of the lawyer conduct commission, the supreme court may
5 suspend a lawyer from practicing law when, in the United States, the lawyer pleads
6 guilty or no contest or is found guilty of a crime punishable as a felony under North
7 Dakota or federal law or of any other crime that involves moral turpitude under that
8 law. If the conviction becomes final, the supreme court shall disbar the lawyer.
- 9 3. Except for an isolated incident of minor misconduct for which the commission may
10 impose private, nonpublic discipline, the commission shall impose public discipline
11 or shall direct disposition of allegations of misconduct to the appropriate authorities
12 for disposition. On recommendation of the commission, the supreme court may
13 impose one or more of the following forms of discipline:
 - 14 a. Disbarment.
 - 15 b. Suspension for an appropriate fixed period of time.
 - 16 c. Immediate interim suspension pending final determination of discipline.
 - 17 d. Probation.
 - 18 e. Reprimand by the court.
 - 19 f. Restitution to persons financially injured.
 - 20 g. Reimbursement to the client protection fund.
 - 21 h. Assessment of costs and expenses of proceedings against the lawyer.
 - 22 i. Limitation on the nature or extent of the lawyer's future practice.
- 23 4. The lawyer may appeal a decision of the commission to the supreme court.
- 24 5. The supreme court shall adopt rules implementing this section.
- 25 6. The procedure provided for in this section may be used in addition to any other
26 proceeding provided for by law.
- 27 7. The commission may employ or share the employment of personnel necessary for
28 the performance of the duties and exercise of the powers conferred upon the
29 commission; may arrange for and compensate medical and other experts and
30 reporters; may arrange for attendance of witnesses, including witnesses not
31 subject to subpoena; and may pay from funds available to it all expenses

1 reasonably necessary for effectuating the purposes of this chapter, whether or not
2 specifically enumerated. If requested by the commission, the attorney general
3 shall act as its counsel generally or in any particular investigation or proceeding.

4 8. Each member of the commission is entitled to reimbursement of expenses incurred
5 in the performance of the member's duties as provided in sections 44-08-04 and
6 54-06-09.

7 9. An act of the commission is not valid unless concurred in by at least a majority of
8 its members.

9 **Petition for order to appear - Service of order - Order to appear - Contempt.** If any
10 person refuses to attend, testify, or produce any writing or thing required by subpoena, the
11 commission may petition the district court for the county in which the hearing is pending for an
12 order compelling a person to attend and testify or produce the writing or thing required by the
13 subpoena before the commission. The court shall order a person to appear before it at a
14 specified time and place and show cause why the person has not attended or testified or
15 produced the writing or thing as required. A copy of the order must be served upon the person.
16 If it appears to the court that the subpoena was regularly issued, the court shall order a person
17 to appear before the commission at the time and place fixed in the order and testify or produce
18 the required writing or thing. Upon failure to obey the order, a person must be punished as
19 provided in section 12.1-10-02.

20 **Deposition.** In any investigation or formal proceeding under this chapter, the
21 commission, under the North Dakota Rules of Civil Procedure, may order the deposition of a
22 person residing within or without the state to be taken.

23 **SECTION 2. AMENDMENT.** Section 27-14-03 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **27-14-03. Reference to ~~state bar board~~ lawyer conduct commission by supreme**
26 **court.** Whenever a verified complaint is made and filed with the clerk of the supreme court
27 charging any member of the bar of this state with conduct warranting his disbarment or
28 suspension as an attorney at law and it appears to the court that ~~such~~ the charges should be
29 investigated, they must be referred to the ~~state bar board~~ lawyer conduct commission with
30 directions to investigate the ~~same~~ charges.

1 **SECTION 3. AMENDMENT.** Section 27-14-04 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **27-14-04. Investigation by ~~bar board~~ lawyer conduct commission - Witnesses,**
4 **subpoenas, oaths, testimony.** When a complaint charging a member of the bar with
5 misconduct is referred to the ~~state bar board~~ lawyer conduct commission for investigation, each
6 member of ~~such board~~ the commission may:

- 7 1. Issue a subpoena commanding any witness to appear at any place within the
8 judicial district in which the witness resides;
- 9 2. Administer oaths to witnesses; and
- 10 3. Take testimony concerning the charges made in the complaint.

11 **SECTION 4. AMENDMENT.** Section 27-14-05 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **27-14-05. Report by ~~bar board~~ lawyer conduct commission.** When the ~~state bar~~
14 ~~board~~ lawyer conduct commission has completed its investigation of a complaint filed against a
15 member of the bar as provided in section 27-14-04, it shall make a report to the supreme court
16 stating ~~therein~~ its conclusions as to the charges investigated and its recommendations as to
17 further proceedings.

18 **SECTION 5. REPEAL.** Section 27-14-06 of the North Dakota Century Code is
19 repealed.