

Fifty-fifth  
Legislative Assembly  
of North Dakota

## HOUSE BILL NO. 1347

Introduced by

Representatives Byerly, Brown, Wald

Senator Solberg

1 A BILL for an Act to amend and reenact sections 27-23-02 and 27-23-03 of the North Dakota  
2 Century Code, relating to the judicial conduct commission.

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

4 **SECTION 1. AMENDMENT.** Section 27-23-02 of the 1995 Supplement to the North  
5 Dakota Century Code is amended and reenacted as follows:

6 **27-23-02. Creation and composition of commission, terms of office, appointment,**  
7 **and powers.** The ~~commission on~~ judicial conduct is hereby created to consist commission  
8 consists of two judges of the district court, one lawyer who is licensed to practice law in this  
9 state, one member from each house of the legislative assembly who is not a lawyer or a retired  
10 judge, and ~~four~~ two citizens who are not judges, retired judges, or lawyers. Members  
11 representing the district court must be appointed by their state association and the lawyer  
12 member must be appointed by the ~~executive committee~~ board of governors of the state bar  
13 association of North Dakota. The governor shall appoint the members of the legislative  
14 assembly and the citizen members ~~must be appointed by the governor~~. The term of each  
15 member is three years. ~~Initially, two members shall serve for three years, two members shall~~  
16 ~~serve for two years, and three members shall serve for one year; as determined by lot. No~~  
17 ~~member may serve more than two full three-year terms.~~ Membership terminates if a member  
18 ceases to hold the position that qualified ~~him~~ the member for appointment. A vacancy must be  
19 filled by the appointing power for the remainder of the term. Any appointment to fill a vacancy  
20 not made within forty-five days after the vacancy occurs or the term of office ends must be  
21 made by the supreme court. The commission shall select one of its members as chairman.

22 The commission has the power to investigate complaints against any judge in the state  
23 and to conduct hearings concerning the discipline, removal, ~~or retirement~~, or transfer to  
24 incapacity inactive status of any judge.

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

3           **27-23-03. Other powers.**

4           1. A judge is disqualified from acting as a judge, without loss of salary, while there is  
5 pending:

6           a. An indictment or an information charging ~~him~~ the judge in the United States  
7 with a crime punishable as a felony under North Dakota or federal law; or

8           b. A recommendation submitted by the commission to the supreme court for ~~his~~  
9 the judge's removal or retirement.

10          2. On recommendation of the commission or on its own motion, the supreme court  
11 may suspend a judge from office without salary when, in the United States, ~~he~~ the  
12 judge pleads guilty or no contest or is found guilty of a crime punishable as a felony  
13 under North Dakota or federal law or of any other crime that involves moral  
14 turpitude under that law. If ~~his~~ the judge's conviction is reversed, suspension  
15 terminates, and ~~he~~ the judge must be paid ~~his~~ the salary for the period of  
16 suspension. If ~~he~~ the judge is suspended and ~~his~~ the conviction becomes final,  
17 the supreme court shall remove ~~him~~ the judge from office.

18          3. On recommendation of the commission, the supreme court may (a) retire a judge  
19 for disability that seriously interferes with the performance of ~~his~~ the judge's duties  
20 and is, or is likely to become, permanent; ~~and~~ (b) transfer, with the possibility of  
21 reinstatement, a judge to incapacity inactive status; or (c) publicly censure or  
22 remove a judge for action that constitutes willful misconduct in office, willful failure  
23 to perform ~~his~~ the duties as prescribed by law or by administrative rule or  
24 regulation of the supreme court, willful violation of provisions of the code of judicial  
25 conduct as adopted by the supreme court, or habitual intemperance. ~~No~~  
26 ~~proceedings hereunder~~ Except for an isolated incident of minor misconduct for  
27 which the commission may impose private, nonpublic discipline, the commission  
28 shall impose public discipline or shall direct disposition of allegations of misconduct  
29 to the appropriate authorities for disposition. A proceeding under this section or  
30 implementing rules of the supreme court may not be instituted for alleged acts  
31 occurring more than six years ~~prior to~~ before receiving a complaint.

- 1           4.   A judge retired by the supreme court must be considered to have retired  
2                 voluntarily. A judge removed by the supreme court is ineligible for judicial office,  
3                 and pending further order of the court, ~~he~~ the judge is suspended from practicing  
4                 law in this state.
- 5           5.   The supreme court shall make rules implementing this chapter and providing for  
6                 confidentiality of proceedings.
- 7           6.   The procedure provided for ~~herein~~ in this section may be used in addition to the  
8                 impeachment proceedings provided for in the Constitution of North Dakota as  
9                 applicable to district and supreme court judges.
- 10          7.   The commission may employ or share the employment of such officers, assistants,  
11                 and other employees as it deems necessary for the performance of the duties and  
12                 exercise of the powers conferred upon the commission and upon the masters; may  
13                 arrange for and compensate medical and other experts and reporters; may arrange  
14                 for attendance of witnesses, including witnesses not subject to subpoena; and may  
15                 pay from funds available to it all expenses reasonably necessary for effectuating  
16                 the purposes of this chapter, whether or not specifically enumerated herein. The  
17                 attorney general shall, if requested by the commission, act as its counsel generally  
18                 or in any particular investigation or proceeding. The commission may employ  
19                 special counsel from time to time whenever it deems necessary.
- 20          8.   Each member of the commission and each master must be allowed expenses for  
21                 travel, board, and lodging incurred in the performance of ~~his~~ official duties, as  
22                 provided in sections 44-08-04 and 54-06-09.
- 23          9.   ~~No~~ An act of the commission is not valid unless concurred in by at least a majority  
24                 of its members.