

**House Bill 1087**  
**House Judiciary Committee**  
**Testimony Presented by Sara Behrens**  
**January 4, 2022**

Good afternoon Chairman Klemin, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in support of House Bill 1087. Currently, section 29-32.1-09 is titled summary disposition and intermingles summary disposition and summary dismissal of an application for post-conviction relief in one statute. Combining the two concepts into a single statute makes it more difficult to understand. HB 1087 simply splits the statute into two: section 29-32.1-09 would cover summary dismissal which occurs when the court, on its own motion, determines the application is meritless prior to the state responding. The court, on its own motion, may also dismiss any claim that postconviction counsel is ineffective as that is not a claim allowed under chapter 29-32.1.

A new section to chapter 29-32.1 would cover summary disposition which occurs on a motion by either party that the application, pleadings, any previous proceeding, discovery, or other matters show that there is no genuine issue of material fact and the party is entitled to judgment as a matter of law. This provision is akin to summary judgment under Rule 56 of the North Dakota Rules of Civil Procedure. If any issues of material fact remain, the court can hold an evidentiary hearing on just those issues. The wording is not changed from the current statute, but is only moved to a new section.

Thank you for your consideration and we urge a do pass.