

State of North Dakota

Barbara L. Whelan

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CHAMBERS

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Good Afternoon Chairman Wanzek, Senators Dwyer, Erbele, Roers and Vedaa.

My name is Barbara Whelan, and I serve as a District Court Judge from the Northeast Judicial District, which covers 11 counties in the upper northeast corner of the state. I am chambered in Grafton, which is Walsh County.

I have been a lawyer since 1990 when I was admitted to the Maryland Bar. I returned to North Dakota in 1993 after being admitted to the North Dakota Bar, and I have practiced law in North Dakota since that time. I started out in private practice and doing part-time State's Attorney work. I became a full time State's Attorney in 1998, and served as an elected State's Attorney in both Pembina and Walsh Counties until 2017. Essentially, I am a trial lawyer at heart.

In October 2017 I was appointed to the bench by Governor Burgum. I stood for election in 2020, and should I choose to remain on the bench will be on the ballot again in 2024.

While I am accustomed to the election process, managing an election across 11 counties is significantly more expensive than running an election in a single county. Although unopposed in 2020, there is no guarantee my campaign in 2024 will be unopposed, making it necessary for me and my husband to plan for the financial burden imposed by a contested election across a broad geographic area.

When I was appointed to the bench by Governor Burgum, I was honored and eager to start this new phase of my career. I was shocked, however, at the solitary nature of being a District Court Judge. As a State's Attorney, I had a full-time Assistant State's Attorney, a paralegal, and a legal secretary at my disposal. When I became Judge, I was assigned one staff person – a Court Recorder with no formal legal training. My Court Recorder spends her time in the courtroom with me, does the calendaring/scheduling, and prepares transcripts. She cannot do research nor draft legal documents for me. I share one staff attorney with four other District Court Judges, and my reliance on the staff attorney is mainly for complex civil cases. Essentially, I am on my own for legal research and writing opinions.

When I became a judge, I expected to work hard and to work long hours. Still, I was overwhelmed by the need to research and study so many different areas of the law, requiring knowledge in probate cases, collection cases, malpractice cases, eviction matters, divorce, primary residential responsibility for children, to name but a few. While I love my job and the challenges it presents, I had no idea what I was getting into! Recently, when discussing the challenges of being a District Court Judge with a much-respected colleague, she advised me she would not recommend mid-level attorneys to pursue judgeship as a career path. While acknowledging the rewards of public service, she recognizes the compensation is simply insufficient for the long hours which Judges are required to work.

I regret not having a recording from our Judge's meetings when the issue of judicial compensation is discussed so that you could hear, with your own ears, the tenor of the conversations. I have been surprised by the conservative and sometimes apologetic nature of my colleagues when deciding whether to seek a raise. I have heard Judges say: "The farming economy isn't that great, we can't ask for a raise." "The Governor has asked us to cut the budget, and we can't cut anything else and still provide judicial services, so we can't ask for a raise." "We are so short-handed and need more Judges, so we should focus our attention on getting more Judges, rather than seeking a raise for ourselves." These are not the statements of entitled lawyers thinking they are worth more than others. These are statements of dedicated public servants who are committed to providing a fair judicial system to our citizens, and who are sensitive to the fiscal conditions present in our State.

Let's be frank: compensation is a difficult subject to discuss. It is even more difficult when the raises seem so large by comparison. The Justices and Judges understand at first glance the requested raises might appear unreasonable and out of line with other salary increases sought across State government. But closer inspection reveals the Judge's requests are not excessive after considering the numerous factors which the testimony will address today. We respectfully ask you to keep in mind that if the increases we seek were to be approved, it would cost North Dakota citizens less than \$6.5 million over the next biennium, or less than one-tenth of one percent (0.1%) of the entire State budget.

I can assure you, Chairman Wanzek and Senators, the decision to seek a significant equity raise during this budget cycle was not lightly made. My colleagues on the bench, and our Supreme Court Justices, are hard-working, humble and dedicated professionals who are at the top of our judicial system. They have significant educations, significant experiences, and they shoulder tremendous responsibility over the lives of the people who appear in their courtrooms. They sacrifice personal relationships. They are recipients of threats from unhappy litigants. They are subjected to news reports that often misrepresent what has occurred, and yet they must remain silent. Their spouses and children must also make personal sacrifices to ensure the Judge maintains his/her ethical obligations. These are part and parcel of serving as a Supreme Court Justice and a District Court Judge, and in my 30 years of practicing law in North Dakota, I have never once heard a Judge complain about the responsibilities and burdens.

I respectfully invite you to consider that Justices and Judges are logical, careful thinkers who need research and evidence to support decisions they make. In this instance, North Dakota's Judicial Officers have logical and well-supported reasons to justify their request for a 20% equity raise for 2023, and an additional 15% equity raise for 2024. This begins with the fact that North Dakota Judges have not requested an equity raise in many years.

The following represents the compensation status of District Court Judges during the time I have been on the bench:

Annual Salary in 2017:	\$143,870
Annual Salary in 2018:	\$143,870, no cost of living or other raise
Annual Salary in 2019:	\$146,269, 1.67% raise (\$200/month cap, not applied to other state employees)
Annual Salary in 2020:	\$149,926, 2.5% raise
Annual Salary in 2021:	\$152,175, 1.5% raise
Annual Salary in 2022:	\$155,231, 2.0% raise

As indicated on the handout supporting the increase, compensation has fallen unacceptably behind for North Dakota Justices and Judges.

North Dakota judicial salaries have fallen behind what peer states are paying their judicial officers. In those peer states paying less, there are specialty courts where the Judges focus on a particular area of the law, rather than the courts of general jurisdiction in North Dakota where Judges are required to be well-versed in all areas of law. The most recent information available to us shows North Dakota ranks 43rd and 45th lowest in the nation. I do not have the time to go through these statistics in detail, but I am certain the Judge's Association would provide that specific study to this Committee if requested.

North Dakota judicial salaries are not in line with salaries being paid to other North Dakota officials and employees. According to our research, there are 243 persons on North Dakota's state payroll who earn more than the Chief Justice of our Supreme Court. The Chief Justice is the administrative head of the state's unified judicial system, a co-equal branch of government. In addition to judicial responsibilities on the court of last resort, the Chief Justice is responsible for administering an annual budget of roughly \$114 million, and supervising more than 360 full-time employees. Sadly, the Chief Justice's compensation is significantly less than many state employees with less formal education. The same type of comparison can be made regarding the remaining Justices on the Supreme Court, whose salary ranks behind 306 other North Dakota officials and

employees. And there are 333 North Dakota officials and employees whose salary is greater than a District Court Judge.*

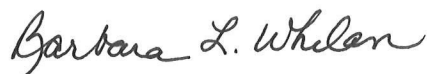
North Dakota judicial salaries have resulted in our Justices and Judges losing the battle of inflation. Judge McCullough is going to provide more detailed information to you on that topic, but in short it is clear judicial salaries have not kept up with inflation.

North Dakota judicial salaries have placed the recruitment and retention of qualified Justices and Judges at risk. This is a very real and present concern for the entire judiciary. To maintain the high standards expected by North Dakota's citizens, it is essential to have Judges from both the public sector and the private sector. In reality, it is not unusual for even mid-level attorneys seeking a Judge's ruling on a dispute to be paid more than the Judge making the ruling! We must offer salaries that attract the best of the legal field without requiring a candidate to suffer a significant pay cut in order to serve on the bench.

These are the reasons I appear today to advocate for a significant increase in judicial salaries as set forth in the budget request by the Judicial Branch. My colleagues on the bench deserve compensation commensurate with the amount of work they do, the depth and breadth of the knowledge and experience they hold, the enormous responsibility they carry on their shoulders, and the professional and personal burdens that come with being an elected District Court Judge.

Thank you for your attention, and I would be happy to try to answer any questions you may have.

Respectfully submitted,



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* Comparisons to other officials and employees is not intended to devalue the expertise, education, knowledge and experience those persons bring to their service to the citizens of North Dakota. The comparisons are made simply to show the judiciary has fallen far behind, and it is time to take a serious look at the compensation of our Justices and Judges.