

**SB 2252**  
**Senate Judiciary Committee**  
**January 31, 2023**  
**Testimony of Sally Holewa**

My name is Sally Holewa and I serve as the state court administrator.

SB 2252 would gradually convert existing judicial referee positions to district court judge positions. Sen. Magrum has introduced this bill at the request of the Supreme Court. The Court's goal is to phase out referees, which they can do so through a reduction-in-force or by refusing to fill vacancies when a referee terminates employment with us. What this bill does is put a plan in place to ensure that there is no gap in services when a vacancy occurs.

The Court wants to phase out referees, not because they are no longer needed, but because the need has grown far beyond the limited scope these positions were intended to be. Today's referees are able to work in roughly 80% of the case types that district court judges do. However, unlike district court judges, judicial referees are appointed to their positions. North Dakota has chosen to have elected judges, accountable to the people, and that accountability does not exist with the referee position. It is not a matter of unification or even transparency. It is a matter of maintaining the integrity of the judicial system.

Judicial referees are lawyers who are hired by the North Dakota Court System to decide cases. They do not assist district court judges as law clerks and staff attorneys do. Instead, they are assigned a portion of the district court judges' caseload within the jurisdictional scope set forth in statute and rule. As an employee, they are supervised by the presiding judge of the district, however the presiding judge does not – and cannot ethically – oversee the decisions they make in individual cases. Decisions made by referees have the same effect as a decision made by a district court judge, unless superseded by a written order of a district court judge following the review process allowed under Administrative Rule 13. While this provision is an outlet for those litigants who understand the difference between a judge and a referee, in contested cases it can increase the workload.

The position of judicial referee was originally introduced into the North Dakota judicial system as part of the Uniform Juvenile Court Act of 1969. In 1985, the legislature adopted a proposal by the Supreme Court to move the referees from the juvenile section of code into the section on district courts to address issues related

to judicial immunity and to allow them to perform duties outside of the juvenile court. The Court subsequently adopted Administrative Rule 13 setting forth the qualifications and authority of judicial referees. Over time that authority has come to encompass actions in several sections of code.

In addition to the duties under AR 13, referees are also appointed as magistrates under NDCC 27-05-31. Magistrate duties have always been a part of the criminal court process, but the actual position of magistrate was first authorized by the legislature in 1981 to address concerns about being able to reach a judicial officer in a timely manner. In response, the Court adopted Administrative Rule 20 setting forth the qualifications and scope of delegable duties. In their role as magistrate, referees are able to conduct certain proceedings in criminal, probate, mental health and the various types of restraining order cases. I have attached the court rules related to referees and magistrates but also included a separate list of assigned duties since the rules only refer to them by statute or rule number.

As you can see from the explanatory notes to AR 13, the scope of their authority has increased steadily since 2012. It is not coincidental that these changes occurred as case numbers climbed and the number of new causes of action increased. We would not have the case clearance rates the Chief talked about in his State of the Judiciary address if we did not have referees picking up a large part of the caseload. At the same time, if you were to compare the jurisdiction of county court judges<sup>1</sup> before the county courts were merged with the district court, you would see that the differences between a county court judge then and a referee today is how they reach the bench and the geographic regions they serve. County court judges were elected and their jurisdiction was limited to the county borders. Judicial referees are hired by the court system and can act within any of the counties that make up the judicial district in which they are appointed.

You might ask why the supreme court doesn't address its concerns by just scaling back the scope of duties they have authorized referees to carry out. The answer to that is the same answer as to why the scope has increased: the demands of the caseload have exceeded our judicial resources.

We currently have 5 referees serving in three judicial districts: Two work in the East Central Judicial District (Cass, Steele and Traill counties); two work in the South Central Judicial District (Burleigh, Emmons, Grant, Kidder, Morton,

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<sup>1</sup> County court judges could hear civil disputes that involved sums up to \$10,000. The limit on small claims court at that time was \$500. The limit on small claims court today is \$15,000.

McLean, Mercer, Oliver, Sheridan and Sioux counties); and one works in the North Central Judicial District (Burke, Mountrail, and Ward counties).

This is down from the 8 referee positions that we had prior to 2015. Three referee positions were eliminated between 2015 and 2016. One referee position in the Northeast Central Judicial District (Grand Forks and Nelson counties) was held vacant in 2015 due to budget constraints and later eliminated as part of the rescissions enacted in the 2016 interim session. The second referee in the Northeast Central Judicial District and the referee in the North Central Judicial District (Benson, Bottineau, Cavalier, McHenry, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, and Walsh counties) were part of the reduction-in-force that the court enacted in 2016 to meet the lowered appropriation that resulted from the rescissions. Although the loss of referee services was difficult for these districts, they were able to adjust their schedules to meet the expedited timelines required for some hearings.

Three of our judicial districts have never had the services of a judicial referee. Those districts are the Northwest Judicial District (Divide, McKenzie and Williams counties)<sup>2</sup>, Southwest Judicial District (Adams, Billings, Bowman, Dunn, Golden Valley, Hettinger, Slope and Stark counties and Southeast Judicial District (Barnes, Eddy, Foster, Griggs, LaMoure, Logan, McIntosh, Dickey, Ransom, Richland, Sargent and Stutsman counties). These districts have built their schedules to accommodate expedited hearings.

Much of the testimony submitted focuses on juvenile court cases. Statewide, juvenile court cases make up only 3.5% of the caseload. Looking at the numbers by judicial district, they are 4.8% of the ECJD caseload, 3.8% of the SCJD caseload and 3.1% of the caseload. To convert judicial referees to full-time juvenile court judges would be counterproductive. We would be paying them the full salary of a district court judge but cutting their workload to a fraction of what they can currently do at 80% of the salary.

Because referees are already full-time employees and are paid at the rate of 80% of the annual salary of a district court judge, the cost to convert a judgeship is simply the difference between the salaries and the change in employer contribution from

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<sup>2</sup>Effective January 1, 2014, the Northwest Judicial District was divided into a Northwest Judicial District and a North Central Judicial District. Although there was a referee in the original Northwest Judicial District, that position has always been housed in Minot and has not routinely been assigned to cases filed outside of Ward County.

the NDPERS main plan to the Judges Retirement plan. For the coming biennium, that equates to a per position cost of \$132,604.

As I stated at the beginning of my testimony, the need for the work the referees do has outgrown the intent of the position. The five referees we have carry full caseloads. To simply eliminate the position without a plan in place to backfill those vacancies would cause our judge shortage to shoot up from 4 to 9. This bill would put the needed plan in place to do that and I urge a Do Pass.

## **Duties that may be assigned to a Referee**

1. Conduct proceedings in disorderly conduct cases
2. Conduct proceedings in sexual assault restraining order cases
3. Conduct any type of proceeding under the domestic relations and persons section of code, except contested divorce trials (Title 14 includes such things as divorce, annulment, domestic violence protection orders, paternity, parental rights and responsibility, nonparent custody and visitation, adoption, and child relinquishment)
4. Conduct proceedings in non-criminal game and fish violation cases
5. Conduct proceedings in small claims court
6. Conduct proceedings in juvenile cases including delinquency, child welfare, and guardianship
7. Conduct proceedings in regard to debt collection
8. Conduct proceedings in guardianship cases
9. Conduct proceedings in conservatorship cases and other protective actions
10. Conduct reviews of administrative license suspensions for nonpayment of child support
11. Conduct reviews of administrative actions to collect child support
12. Conduct proceedings in eviction cases
13. Conduct proceedings in non-criminal traffic cases

## **Duties that may be assigned to a Magistrate**

1. Issue search warrants in criminal investigations
2. Issue administrative search warrants (search or inspection of property that is “elsewhere authorized by law” and is not considered a criminal search warrant)
3. Approve complaints and issue summonses or warrants
4. Hold initial appearances and set bail
5. Conduct preliminary examinations
6. Perform registrar and clerk duties under the uniform probate code in general, but in particular in informal proceedings and in uncontested probate proceedings
7. Conduct preliminary mental health commitment proceedings

8. Issue temporary domestic violence protection orders
9. Issue temporary disorderly conduct orders
10. Issue temporary sexual assault restraining orders

# **Administrative Rule 13 - JUDICIAL REFEREES**

Effective Date: 8/11/2021

## **Section 1. Authority.**

The 1985 legislative assembly provided for appointment of judicial referees under House Bill 1586. Under N.D. Const. art. VI, § 3, and N.D.C.C. § 27-05-30, the supreme court adopts the following administrative rule relating to judicial referees.

## **Section 2. Statement of Policy.**

The North Dakota judicial system's policy is to provide for the qualifications, the extent and assignment of authority, procedure and the conduct of the role of judicial referees within the North Dakota judicial system in each judicial district.

## **Section 3. Qualifications of Judicial Referees.**

Minimum qualifications for a judicial referee include:

- (a) United States citizenship;
- (b) physical residence in the judicial district of the appointment after appointment unless physical residence is waived by the presiding judge of the judicial district; and
- (c) a license to practice law in the state of North Dakota; or a juvenile supervisor/referee meeting the requirements of N.D.C.C. § 27-20.2-05(1)(i).

## **Section 4. Appointment.**

The presiding judge, on behalf of all of the district court judges of the judicial district, must execute in writing the appointment of all judicial referees, to serve at the pleasure of the district court judges of the judicial district. Judicial referees must be compensated under the personnel system of the North Dakota Judicial System

## **Section 5. Scope of Delegable Duties.**

(a) A presiding judge, after consultation with the district court judges of the judicial district, may authorize a judicial referee to preside in any individual proceeding or class of proceedings under:

- (1) N.D.C.C. ch. 12.1-31.2;
- (2) N.D.C.C. 12.1-31-01.2;
- (3) N.D.C.C. title 14, except contested divorce trials;
- (4) N.D.C.C. §§ 20.1-01-28 and 20.1-01-29;
- (5) N.D.C.C. ch. 27-08.1;
- (6) N.D.C.C. chs. 27-20.1, 27-20.2, 27- 20.3, 27-20.4;
- (7) N.D.C.C. ch. 28-25;
- (8) N.D.C.C. ch. 30.1-28;
- (9) N.D.C.C. ch. 30.1-29;
- (10) N.D.C.C. §§ 50-09-08.6(6) and 50-09-14(2); and
- (11) N.D.C.C. 47-32.

(b) A presiding judge, after consultation with the district court judges of the judicial district, may authorize a judicial referee, while serving and acting as a magistrate appointed under N.D. Sup. Ct. Admin. R. 20, to preside in any individual proceeding or class of proceedings under N.D.C.C. § 39-06.1-03.

(c) A judicial referee has such other authority of a district court judge as is necessary to carry out the delegated duties, including the issuance of orders to show cause, temporary restraining orders, temporary injunctions, and the power to impose remedial sanctions for contempt of court.

(d) An order issued under subsection 5(a) must be reduced to writing and signed by the presiding judge of the judicial district. The order must be filed with the clerk of district court of each county of the judicial district. The



presiding judge must send a copy of this document to the state court administrator. A copy must be made available to any party upon request.

(e) Within the limits set forth in the written order of the presiding judge, district court judges may refer individual cases or classes of cases to a judicial referee by written order.

### **Section 6. Geographical Jurisdiction.**

Each judicial referee will have jurisdiction only within the judicial district of appointment and is expected to maintain an office as assigned by the presiding judge of the judicial district. A judicial referee may be appointed to temporary duty in another judicial district by the presiding judge of the judicial district, with the consent of the presiding judge of the receiving judicial district or by the chief justice under N.D. Const. art. VI, § 3.

### **Section 7. Proceedings on the Record.**

Except in small claims court cases under N.D.C.C. ch. 27-08.1 and in traffic cases under N.D.C.C. § 39-06.1-03, proceedings must be heard on the record.

### **Section 8. Removal from Referee.**

Any party to a proceeding before a judicial referee is entitled to have the matter heard by a district court judge, if written request is filed by the party within seven days after service of either the initiating documents or other notice informing the party of this right.

### **Section 9. Standard of Conduct.**

The Rules of Judicial Conduct must be observed by each judicial referee.

### **Section 10. Findings and Order.**

(a) The findings and order of the judicial referee have the effect of the findings and order of the district court until superseded by a written order of a district court judge.

(b) Copies of the findings and order together with written notice of the right of review must be promptly served on the parties under N.D.R.Civ.P. 5.

### **Section 11. Procedure for Review.**

(a) Except in small claims court cases under N.D.C.C. ch. 27-08.1 and in traffic cases under N.D.C.C. § 39-06.1-03, a review of the findings and order of a judicial referee may be ordered at any time by a district court judge and must be ordered if a party files a written request for a review within seven days after service of the notice in subsection 10(b). The request for review must state the reasons for the review. A party requesting review must give notice to all other parties. A party seeking to respond to a request for review must file their response within 14 days after service of notice of the request.

(b) The review by a district court judge must be a de novo review of the record. The district court may:

- (1) adopt the referee's findings;
- (2) remand to the referee for additional findings; or
- (3) reject the referee's findings.

(c) If the district court judge rejects the referee's findings, the court shall issue its own findings of fact, with or without a hearing.

### **Explanatory Notes**

Adopted as emergency rule effective June 13, 1985; readopted September 17, 1985; amended effective March 1, 1994; January 1, 1995; March 1, 2000; March 1, 2003; March 1, 2004; March 1, 2011; March 1, 2012; June 1, 2012; September 1, 2013; March 1, 2014; March 1, 2015; August 1, 2017; March 1, 2018; January 1, 2019; August 11, 2021.

Section 5 was amended, effective September 1, 2013, to reflect enactment of 2013 House Bill No. 1075 [2013 N.D. Sess. Laws ch. 241, §1], which added three categories of cases to the statutory list of proceedings that may be delegated to a judicial referee by a presiding judge: disorderly conduct

restraining order cases, noncriminal game and fish violations, and review of administrative license suspensions for nonpayment of child support.

Section 5 was amended, effective March 1, 2012, to allow a presiding judge to authorize a judicial referee to preside in proceedings involving disorderly conduct restraining orders.

Section 5 was amended, effective March 1, 2014, to allow a presiding judge to authorize a judicial referee to preside in small claims and traffic court proceedings.

Section 5 was amended, effective March 1, 2015, to allow a presiding judge to authorize a judicial referee to preside in emergency guardianship proceedings.

Section 5 was amended, effective August 1, 2017, to allow a presiding judge to authorize a judicial referee to preside in sexual assault restraining order proceedings.

Section 5 was amended, effective March 1, 2018, to allow a presiding judge to authorize a judicial referee to preside in eviction and guardianship proceedings.

Section 5 was amended, effective January 1, 2019, to allow a presiding judge to authorize a judicial referee to preside in eviction and conservatorship proceedings.

Section 7 was amended, effective March 1, 2014, to clarify that small claims and traffic court matters decided by a judicial referee are not heard on the record.

Section 8 was amended, effective March 1, 2011, to increase the time to request a district court judge from five to seven days after service of initiating documents. A "proceeding" under this rule has the same meaning as a proceeding under N.D.C.C. § 29-15-21.

Section 11(a) was amended, effective March 1, 2011, to increase the time to request a review from a district court judge from five to seven days after

service of the right to review. The time to respond to a request for review was increased from 10 to 14 days after service of notice of the request.

Section 11(a) was amended, effective March 1, 2014, to clarify that small claims and traffic court matters decided by a judicial referee are not reviewable or appealable.

# **Administrative Rule 20 - MAGISTRATES— QUALIFICATIONS, AUTHORITY, EDUCATION AND PROCEDURES**

Effective Date: 8/11/2021

## **Section 1. Authority.**

In accordance with N.D. Const. art. VI, § 3, and N.D.C.C. § 27-05-31, the supreme court adopts the following rule relating to magistrates appointed by a presiding judge.

## **Section 2. Statement of Policy.**

The North Dakota judicial system's policy is to provide for the qualifications, the extent and assignment of authority, and the conduct of the office of magistrate within the North Dakota judicial system in each judicial district.

## **Section 3. Qualifications of Magistrates.**

Minimum qualifications for magistrates includes:

- (a) United States' citizenship;
- (b) except for duties delegated under subsections 5(a)(3), (4), and (6), admission to practice as an attorney in the state of North Dakota;
- (c) physical residence in the county of appointment after appointment unless physical residence is waived by the appointing and confirming authorities.

## **Section 4. Appointment.**

The presiding judge of the judicial district may appoint a magistrate to serve at the pleasure of the presiding judge. A copy of an order appointing a magistrate and designating delegated duties or an order modifying delegated duties must be filed with the state court administrator within three business days of the date of the order. Magistrates may be paid a salary as determined by the supreme court.

## **Section 5. Scope of Delegable Duties.**

(a) The presiding judge of the judicial district may delegate the following duties and authority to a magistrate who has met the qualifications in Section 3:

(1) to issue search warrants under N.D.C.C. § 29-29-01 and N.D.R.Crim.P. 41;

(2) to issue administrative search warrants under N.D.C.C. § 29-29.1-01;

(3) to approve complaints and to issue summonses or warrants under N.D.C.C. ch. 29-05 and N.D.R.Crim.P. 3 and 4;

(4) to hold initial appearance under N.D.R.Crim.P. 5, and to set bail under N.D.C.C. ch. 29-08 and N.D.R.Crim.P. 46;

(5) to conduct preliminary examinations under N.D.R.Crim.P. 5.1;

(6) to perform registrar and clerk duties under the Uniform Probate Code, N.D.C.C. tit. 30.1, particularly N.D.C.C. §§ 30.1-14-02 and 30.1-14-07 in informal probate proceedings and N.D.C.C. § 30.1-15-05 in uncontested formal probate proceedings;

(7) to conduct preliminary mental health commitment proceedings under N.D.C.C. § 25-03.1-09, notwithstanding and consistent with § 25-03.1-02(3) and (8);

(8) to issue temporary domestic violence protection orders under N.D.C.C. ch. 14-07.1;

(9) to issue temporary disorderly conduct restraining orders under N.D.C.C. ch. 12.1-31.2; and

(10) to issue temporary sexual assault restraining orders under N.D.C.C. § 12.1-31-01.2.

(b) The duties delegated to each magistrate under this section must be reduced to writing and signed by the presiding judge of the judicial district.

(c) The duties of a magistrate may be diminished by the presiding judge of the judicial district upon notice in writing to the magistrate.

## **Section 6. Geographical Jurisdiction.**

Each magistrate has the geographical jurisdiction within the judicial district as assigned by the presiding judge of the judicial district, and is expected to maintain an office in conjunction with a district judge.

## **Section 7. Alternate Magistrate.**

The presiding judge of the judicial district may appoint an alternate magistrate in a county in which the presiding judge or another district judge does not reside. The alternate magistrate must meet the qualifications of section 3 and may be delegated duties under section 5. The alternate magistrate will serve as magistrate whenever the magistrate for the county is unavailable to fulfill the duties of magistrate.

## **Section 8. Vacancy.**

The presiding judge of the judicial district may fill any vacancy in the office of magistrate or alternate magistrate under section 4 and section 7.

## **Section 9. Proceedings on the Record.**

Proceedings must be heard on the record as in district court.

## **Section 10. Removal From Office.**

A magistrate may be removed from the office of magistrate by the presiding judge of the judicial district upon notice in writing to the magistrate. The presiding judge must notify the state court administrator of the removal.

## **Section 11. Standard of Conduct.**

The Code of Judicial Conduct is the standard of conduct which must be observed by each magistrate. The judicial conduct commission has jurisdiction over the conduct of magistrates to the same extent as it has over other judges.

## **Section 12. Continuing Education.**

(a) Each magistrate appointed under N.D.C.C. § 27-05-31 must attend a continuing education program every odd calendar year as provided by the judicial branch education commission. The magistrate must be reimbursed for necessary expenses, travel, and subsistence by the judicial system.

(b) If any magistrate fails to attend an educational session without being excused by the state court administrator, the state court administrator will report such fact to the presiding judge of the judicial district and to the judicial conduct commission, for such action as it considers appropriate.

### **Section 13. Effective Date.**

This rule, as amended, is effective August 11, 2021.

### **Explanatory Note**

Rule 20 adopted effective January 1, 1983; amended effective June 24, 1985; emergency amendments adopted effective December 20, 1989, readopted February 22, 1990; amended effective August 1, 1993; January 1, 1995; April 1, 1998; March 1, 2005; July 1, 2007; January 1, 2009; July 1, 2009; March 1, 2012; August 1, 2017; August 11, 2021.