

State of North Dakota

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CHAMBERS

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Good Morning Chairman Sorvaag and members of the Committee.

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. We are a unique judicial district because the counties that we serve are rural, with the largest county seat being Devils Lake, and the smallest being Minnewauken. The 6 District Court Judges that serve the Northeast Judicial District are responsible for providing judicial services to 68,600 citizens, covering 5,339 square miles. While these 6 judges are assigned to local chambers, all of us travel across our district to cover cases assigned to us outside of our local chambers.

I have been a lawyer since being admitted to the Maryland Bar in 1990, where I began my practice. Since returning home to North Dakota in 1993, I have been a member of the bar for more than 30 years. I started out in private practice and doing part-time State's Attorney work, eventually moving to a full-time elected State's Attorney position. I served in that capacity in both Pembina and Walsh Counties until 2017 when Governor Burgum appointed me to the bench. As a State's Attorney I had an office staff which included a full-time Assistant State's Attorney, a paralegal and a legal secretary.

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 criminal cases, probate cases, collection cases, malpractice cases, eviction matters, divorce, primary residential responsibility for children, to name but a few. Often, time to actually contemplate the legal issues before me is non-existent during the 9-5 work week. I spend much of my "free" time thinking about my cases and the decisions I must make. While I love my job and the challenges it presents, I did not fully appreciate how being a Judge would turn me into such a solitary person.

As Judge, I have 1 staff person to assist me. I started with a certified court recorder who spent her time in the courtroom with me, doing calendaring/scheduling, and preparing transcripts. She was not able to research or draft legal documents for me. I had one staff attorney available to me, but she was shared with 4 other District Court Judges, so my reliance on the staff attorney

was mainly for complex civil cases. After 30+ years serving the Court system, my court recorder retired last month.

The Court system filled the vacancy left by my court recorder with an attorney who was recently admitted to the bar. This “staff attorney” position is still required to provide court recording services, but I am optimistic that with the shifting of some responsibilities my staff attorney will provide some relief with regard to legal research and writing.

Replacing my court recorder with a staff attorney is simply a necessity. The complexity of legal issues is more challenging than ever. The seriousness of the criminal caseload seems to be skyrocketing. As just 1 example, a criminal defendant appeared before me last week on a domestic violence case, and when I was reviewing his criminal history for the purpose of setting bond, I learned that this defendant had no less than 22 previous felony convictions for crimes committed within the State of North Dakota. And the mental health and chemical addiction issues present some of the most perplexing and time-consuming cases that your North Dakota judges must routinely manage. Not only in criminal court, but in juvenile court where children raised in homes with these issues are often in need of intensive services. Trying to balance the safety of the community with the reality of lack of community services and early parole of so many defendants is a huge burden that every judge shoulders.

North Dakota judges work hard. We carry very heavy caseloads. In fact, the National Center for State Courts recently released the results of a multi-year [study](#), which found that adjusted for population, North Dakota’s judges carry the highest criminal caseload in the nation. Not only do we carry the highest criminal caseload in the nation, but we also handle our cases timely, meaning we have more cases than the rest of the nation per capita, and we manage those cases more efficiently than the rest of the country. That is evidence-based research proving that North Dakota’s citizens are getting great service from their judges.

When the issue of judicial compensation is discussed at judge’s meetings, I have noted that my colleagues are conservative and sometimes apologetic about seeking increased compensation. That is the North Dakota way. Often times the comments are made such as: 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 shorthanded and need more judges, so we should focus our attention on getting more judges, rather than seeking a raise for ourselves.

As the natural result, judicial salaries have fallen behind the national average and what our peer states are paying their judicial officers. According to the National Center for State Courts, North Dakota’s judges are paid 38th and 41st lowest in the nation and are behind South Dakota, Minnesota, and Wyoming.

The judges that I serve with in my district are proud of the rural nature of our Court services. The citizens we serve expect a judicial presence in their rural communities, just as the citizens

in more populated areas of the State take for granted the presence of a Courthouse with numerous judges available to serve their needs. Regardless of where we are chambered, every North Dakota judge I have encountered is absolutely dedicated to providing justice across our State. And every North Dakota judge works hard and will continue to work hard.

I acknowledge that last session the Judges Association ruffled a few feathers with our request for a salary increase. That was my first experience testifying before the Legislature. It was a tremendous learning experience for me, and I have had time to reflect upon what transpired. I believe that after years of neglecting to seek raises to keep judicial salaries at par with the national average and also competitive with attorneys in private practice, the dedicated Judges serving North Dakota put out a desperate plea for a salary package that would level the playing field. We come before you again this session with the same concerns, and perhaps even more of a sense of desperation.

Senator Soorvaag and members of the Committee: heavy caseloads and limited staffing for North Dakota's judges justify a national average salary, which is at least marginally competitive with private practitioners in North Dakota's legal market. If we fail to keep judicial salaries in line, we will soon be facing a crisis. Attorneys with experience will not be willing to forfeit financial rewards to take a position on the bench where the pay is simply not commensurate with the work load and responsibilities. You will shortly hear testimony from a respected attorney in private practice who will address this very issue.

These are the reasons I appear today to advocate for an 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,

Barbara L. Whelan
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