

## **CHAPTER 44-10 REMOVAL BY JUDICIAL PROCEEDINGS**

### **44-10-01. Additional proceedings - Removal from office.**

In addition to the proceedings mentioned in chapter 32-13 and chapters 44-02, 44-08, and 44-11, and apart and distinct from any other criminal action or proceedings, the provisions of this chapter are adopted to obtain a judgment of removal from office.

### **44-10-02. Accusation by grand jury - Causes for removal.**

An accusation in writing against any district, county, township, city, or municipal officer, school board member, or any state officer not liable to impeachment, except a representative in Congress and a member of the legislative assembly, for misconduct, malfeasance, crime, or misdemeanor in office, or for habitual drunkenness or gross incompetency, may be presented by the grand jury to the district court of the county in or for which the officer accused is elected or appointed. When the proceedings are against a state officer not liable to impeachment, the accusation may be presented by the grand jury of the county in which the officer resides or in which the officer has an office for the transaction of official business.

### **44-10-03. Form of accusation.**

The accusation must state the offense charged in ordinary and concise language without repetition and in such manner as to enable a person of common understanding to know what is intended.

### **44-10-04. Service of accusation by judge and state's attorney - Filing original.**

After receiving the accusation, the judge to whom it is delivered forthwith shall cause it to be transmitted to the state's attorney of the county except when the state's attorney is the officer accused. The state's attorney shall cause a copy thereof to be served upon the defendant and shall require by written notice of not less than five days that the defendant appear before the district court of the county and answer the accusation at a specified time. The original accusation then must be filed with the clerk of court.

### **44-10-05. Defendant must appear and answer accusation.**

The defendant must appear at the time appointed in the notice and answer the accusation, unless for sufficient cause, the court assigns another day for that purpose. If the defendant does not appear, the court may proceed to hear and determine the accusation in the defendant's absence.

### **44-10-06. Defendant's answer.**

The defendant may answer the accusation either by objecting to the sufficiency thereof or of any article therein, or by denying or admitting the truth of the same.

### **44-10-07. Objections for insufficiency by defendant.**

If the defendant objects to the legal sufficiency of the accusation, the objection must be in writing but need not be in any specific form, it being sufficient if it presents intelligibly the ground of the objection.

### **44-10-08. Denial of accusation may be oral.**

If the defendant denies the truth of the accusation, the denial may be oral and without oath and must be entered upon the minutes.

### **44-10-09. Objections to sufficiency of accusation overruled - Answer.**

If an objection to the sufficiency of the accusation is not sustained, the defendant must answer the accusation forthwith.

**44-10-10. Conviction on plea or trial.**

If the defendant pleads guilty, the court must render judgment of conviction against the defendant. If the defendant denies the matters charged or refuses to answer the accusation, the court immediately, or at such time as it may appoint, must proceed to try the accusation.

**44-10-11. Trial by jury.**

The trial must be by a jury and must be conducted in all respects in the same manner as the trial of an information or indictment for a misdemeanor.

**44-10-12. Judgment on conviction.**

Upon a conviction, the court must pronounce judgment that the defendant be removed from office. To warrant a removal the judgment must be entered upon the minutes, assigning therein the causes of removal.

**44-10-13. Process for witnesses.**

The state's attorney, or other person appointed to prosecute, and the defendant, respectively, are entitled to such process as may be necessary to enforce the attendance of witnesses as upon a trial of an information or indictment.

**44-10-14. Appeal from judgment of removal.**

From a judgment of removal, an appeal may be taken to the supreme court in the same manner as from a judgment in a civil action, but until such judgment is reversed the defendant is suspended from office. Pending the appeal the office must be filled as in case of vacancy.

**44-10-15. Proceedings to remove state's attorney.**

The proceedings provided for in this chapter may be had on like grounds for the removal of a state's attorney, except that the accusation must be delivered by the judge to the clerk of the district court, and by the clerk to such person as may be appointed by the judge to act as prosecuting officer in the matter. The prosecuting officer is authorized and required to conduct the proceedings.

**44-10-16. Other accusations - Delivery by judge to state's attorney.**

When an accusation in writing and verified by the oath of any person is presented to the district court, alleging that an officer or school board member within the jurisdiction of the court has been guilty of charging and collecting illegal fees for services rendered or to be rendered in that officer's or school board member's office, or has refused or neglected to perform the official duties pertaining to that officer's or school board member's office, or has been rendered incompetent to perform said duties by reason of habitual drunkenness or other cause, the judge of the court to whom it is delivered must transmit the accusation to the state's attorney of the county, or in case it is against the state's attorney of the county, the accusation must be delivered as provided by section 44-10-15.

**44-10-17. Accusation - Notice to appear - Service on defendant.**

The state's attorney of the county, or person appointed to prosecute, must cause a copy of the accusation to be served upon the accused and, by written notice, must require the accused to appear before the court at a time specified, not more than twenty days nor less than five days from the time the accusation was presented, and answer said accusation.

**44-10-18. Hearing - Evidence - Determination of issues.**

On the day named in said notice or on some subsequent day not more than thirty days from that on which the accusation was presented, to be fixed by the judge, the court must proceed to hear the accusation and evidence offered in support of the same, and the answer, if any is made, and the evidence offered by the party accused. The court may try and determine the issues unless the accused requires that they be submitted to a jury.

**44-10-19. Jury called on request.**

If a jury is required as provided in section 44-10-18, the court forthwith, in a summary manner, must cause a jury to be impaneled and the matter submitted to it. Challenges must be allowed and the trial conducted in the same manner as a trial by jury in a civil action.

**44-10-20. Proceedings on trial of court case - Costs - Appeal.**

If the charge is tried by the court, it shall proceed as upon the trial of a civil action by the court. The decision of the court or the verdict of the jury must be "guilty" or "not guilty". Costs must be awarded as in a civil action. If the accused is found guilty, either by the decision of the court or by the verdict of the jury, the court shall render judgment that the accused be removed from office, and for the costs of the action. A statement of the case may be settled and an appeal taken as provided by law in a civil action. The court in its discretion, if the accused is found guilty, may award treble costs against the accused. If the court finds that the accusation was made without probable cause, it must tax the costs of the prosecution and trial against the complainant.

**44-10-21. Proceedings do not bar criminal prosecution.**

Nothing contained in this chapter may be construed to prevent any officer from being proceeded against for a crime or public offense in the manner which may be provided by law for proceeding against any other person accused of a crime or public offense, nor to limit the power of the court to remove such officer from office, upon conviction, when authorized by law to do so.