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OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2262

2001 SENATE JUDICIARY

SB 2262

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2262

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 29th, 2001

Tape Number	Side A	Side B	Meter #
1	X		24,4-50,8
Committee Clerk Signature			

Minutes: **Senator Traynor** opened the hearing on SB 2262: A BILL FOR AN ACT TO AMEND AND REENACT SECTION 27-05-08 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO THE RESIDENCY REQUIREMENTS OF DISTRICT JUDGES.

Senator Bowman, represents district 39, introduced this bill after a court consolidation, which left his district in limbo. Bill says that we would like at least one of the chambers to be in a city of less than 10,000 people. I understand that there are some people who live in larger cities and do not want live in a rural community and I understand their feelings about that. A compromise was thought up which would allow the judge to live anywhere within the district where the chambers resides. Believes it is important to read the testimony of **District Judge Zane Anderson**, (testimony attached)

Senator Dever, we heard a bill about states attorneys in the government and veterans affairs committee we heard a bill regarding states attorneys and the requirement that they reside within their own county. My conclusion was that we needed to pass that bill or get more lawyers,

which made it easy to pass the bill. Some counties don't have any lawyers at all. Is this bill doing the opposite thing?

Senator Bowman, I can see where people wouldn't want to live in a rural community because there really isn't much to offer them. Whereas if they live in Bowman, a city of 2000, they have facilities, such as; a hospital, golf course and churches. It could be done in this scenario, it would seem like common sense if a judge wanted to live in a larger town within his district. However, one word in the law can mean many things. We are going to have a lot of activity in Bowman soon because of the oil industry.

Senator Dever, I received an e-mail from a judge in Fargo who would have to move to Hillsboro due to this bill.

Senator Bowman, that is why this compromise is in the bill. He can still live in Fargo if he chooses.

Senator Trenbeath, as I read that he was scared as hell.

Keith Nelson, state court administrator, when he drafted the fiscal note he forgot to add other addition costs which would add another \$73,470 dollars. I will have a break down on the expenses later. This bill would require the reversing the supreme courts decision in posing the chamber in Bowman and they have an extensive opinion on that, which I can provide for you. However, I will not get into that at this time. It would require a judge to move physically from Bismark to Linton. Where there is a chamber or Washburn where there too is a chamber. It would require one judge to move from Grand Forks to Lakota.

Senator Traynor, does your fiscal note take into account these other three moves?

Keith Nelson, yes it does. Initially it is important to understand that judges travel to each county, administrative rule 6 provides that "the residents of the various counties within a judicial

district receive judicial services in their own county without the need to travel to chambered cities, the judges in the chambered cities shall travel to the counties within their judicial district to provide the required services." All districts have a plan requiring judges to visit them at least once a month, and sometimes it's more than once a month.

Senator Traynor, can the court address the concerns of Judge Anderson? Without changing the setup of the other districts.

Keith Nelson, I guess they could reverse their previous decision and chamber someone in Bowman. That would certainly satisfy him. I think the odds of that happening are very unlikely considering the great agony the court went through in eliminating that last judge. The work is simply not there.

Senator Watne, I wonder about the jury cost and things like that should be counted in this.

Keith Nelson, this wouldn't effect jury trials since those are held within the county. Judges still needs to travel.

Senator Trenbeath, wouldn't it be easier to let Judge Zane stay where he is? Leave one in Bowman.

Keith Nelson, it would still require regular monthly payments.

Senator Trenbeath, there is certainly some costs associated with shutting that off. That is not in the fiscal note. We've created quite a stir here. I have a little sympathy for Judge Erickson. I would tell him if he were here that it looks like we need a judge in Hillsboro. But that's not what this bill is about. This bill is about Zane Anderson and what's right for that judicial district, and the supreme court has decided otherwise so it has been brought before the legislature to decide.

In respect to the supreme court wouldn't it be relevant to have their opinion here.

Keith Nelson, I don't quite understand?

Senator Trenbeath, we're trying to second guess what the supreme court said, wouldn't it be nice to have what they said here?

Keith Nelson, I can bring their opinion to the committee.

Senator Traynor, you referred to a letter you wrote to Judge Anderson. Was that before the election or after the election?

Keith Nelson, that was before the election.

Senator Traynor, in the ballot, did the ballot refer to the location of the chambers?

Keith Nelson, yes.

Senator Traynor, the voter knew on the ballot that they voting for the judge to be located in Dickinson?

Keith Nelson, I'm not sure.

Senator Trenbeath I think some dimpled chads were involved.

Senator Nelson, Does this bill mean that a Fargo and Grand Forks judge should be chambered in Hillsboro and Lakota?

Keith Nelson, yes.

Senator Nelson, some judges don't want to move?

Senator Lyson, if Judge Erikson is chambered in Hillsboro, do we pay him to travel from Fargo to Hillsboro?

Keith Nelson, no. We pay no one to travel.

Senator Traynor closed the hearing on SB 2262.

**MOTION MADE BY SENATOR BERCIER TO DO NOT PASS, SECONDED BY
SENATOR LYSON. VOTE INDICATED 6 YEAS, 1 NAY, AND 0 ABSENT AND NOT
VOTING. SENATOR BERCIER VOLUNTEERED TO CARRY THE BILL.**

FISCAL NOTE
Requested by Legislative Council
01/29/2001

REVISION

Bill/Resolution No.: SB 2262

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$226,270	\$0	\$226,270	\$0
Appropriations	\$0	\$0	\$226,270	\$0	\$226,270	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill would require moving three judges and their court reporter to a location where there is little work and require them to travel to where the caseload is heavy. One judge and court reporter would have to move from Grand Forks to Lakota, one judge and court reporter from Fargo to Hillsboro, one judge and court reporter from Bismarck to Linton or Washburn and travel would have to be paid from Bowman to Dickinson. The disruption in the lives of the three judges and court reporters required to move is not calculable.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

\$72,000 (travel costs); \$40,800 (lost time to travel); \$40,000 (moving costs); \$73,470 (office expenses, phones, fax, computers, printers, T1 computer connection and office supplies)
total \$226,270

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kiethe E. Nelson	Agency:	Supreme Court
Phone Number:	328-4216	Date Prepared:	01/29/2001

FISCAL NOTE
 Requested by Legislative Council
 01/22/2001

Bill/Resolution No.: SB 2262

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$152,800	\$0	\$152,800	\$0
Appropriations	\$0	\$0	\$152,800	\$0	\$152,800	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill would require moving three judges and their court reporter to a location where there is little work and require them to travel to where the caseload is heavy. One judge and court reporter would have to move from Grand Forks to Lakota, one judge and court reporter from Fargo to Hillsboro, one judge and court reporter from Bismarck to Linton or Washburn and travel would have to be paid from Bowman to Dickinson. The disruption in the lives of the three judges and court reporters required to move is not calculable.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

\$72,000 (travel costs); \$40,800 (lost time to travel); \$40,000 (moving costs) total \$152,800

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Klethe E. Nelson	Agency:	Supreme Court
Phone Number:	328-/216	Date Prepared:	01/24/2001

Date: 1/24/01

Roll Call Vote #: /

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 513 2212

Senate	Judiciary	Committee
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☐ Subcommittee on _____
or _____

☐ Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass

Motion Made By Bercier Seconded By Lyson

[illegible]

Total (Yes) 0 No 1

Absent _____

Floor Assignment Decor.

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 31, 2001 4:28 p.m.

Module No: SR-17-2045
Carrier: Bercler
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2262: Judiciary Committee (Sen. Traynor, Chairman) recommends DO NOT PASS
(6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2262 was placed on the
Eleventh order on the calendar.

2001 TESTIMONY

SB 2262



North Dakota Supreme Court Opinions ▲
Abolition of Judgeship, 1999 ND 226, 603 N.W.2d 57

(Go to Deck)

Filed Dec. 2, 1999

(Download as WordPerfect)

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 INDEX
 GUIDES
 LAWYERS
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 RESEARCH
 COURTS
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 NOTICES
 NEWS
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IN THE SUPREME COURT**STATE OF NORTH DAKOTA****ORDER****1999 ND 226**

**In the Matter of the Consultations Under N.D.C.C. Section 27-05-02.1
 Regarding Judgeship Nos. 6 and 7 in the Northeast Judicial District;
 Judgeship No. 2 in the Northeast Central Judicial District; Judgeship
 Nos. 6, 7, and 8 in the Northwest Judicial District; Judgeship Nos. 4 and
 9 in the South Central Judicial District, and Judgeship Nos. 1, 3, and 5 in
 the Southwest Judicial District**

Nos. 990224, 990246, 990247, 990248 & 990249

[¶1] On January 1, 1991, there were 27 district court and 26 county court judgeships in the state. The 1991 North Dakota Legislative Assembly abolished the county courts and the office of county judge in all counties effective January 1, 1995, and established 53 district court judgeships. See N.D.C.C. § 27-05-00.1.

[¶2] The 1991 Legislative Assembly also required the Supreme Court to reduce the number of district judges to 42 before January 2, 2001, and established the procedure to accomplish the required reduction. See N.D.C.C. § 27-05-01(2) and § 27-05-02.1.

[¶3] To date, this Court has, through attrition, reduced the number of district court judgeships in the state to 43. However, we have made inquiry and we have not received notice of the impending resignation or retirement of any currently sitting district court judge. This Court, therefore, for the first time must exercise the authority conferred on it under N.D.C.C. § 27-05-02.1(2) and (3). These sections specify that if on July 1, 1999, the number of district court judges is more than 42 and no resignation or retirement is pending, this Court must, after consultation with district court judges and attorneys in the affected judicial district, abolish an office of district court judge. N.D.C.C. § 27-05-02.1(2) further requires this Court to notify the affected judicial district and district court judge holding that office, at least one year before the end of the term of office of the district court judge, that the judgeship will be abolished at the end of the term of office.

[¶4] The judgeship to be abolished must be selected from those judgeships whose term expires in December 2000. N.D.C.C. § 27-05-02.1(2). The terms of office for 12 of the 43 district court judgeships will expire December 31, 2000. These judgeships are: Judgeships Nos. 6 and 7 in the Northeast Judicial

District; Judgeship No. 2 in the Northeast Central Judicial District; Judgeships Nos. 6, 7, and 8 in the Northwest Judicial District; Judgeships Nos. 4 and 9 in the South Central Judicial District; Judgeship No. 8 in the Southeast Judicial District; and Judgeships Nos. 1, 3, and 5 in the Southwest Judicial District. Because this Court on April 22, 1999, determined the vacancy in Judgeship No. 9 of the Southeast Judicial District must be filled, we are not revisiting that decision and the judgeship in the Southeast Judicial District has been excluded from this consideration.

[¶5] As required by N.D.C.C. § 27-05-02.1 we consulted with judges and attorneys from the Northeast Judicial District, the Northeast Central Judicial District, the Northwest Judicial District, the Southwest Judicial District, and the South Central Judicial District. As required by our order and N.D. Sup. Ct. Admin. R. 7.2, each district submitted a report addressing the criteria set forth in N.D. Sup. Ct. Admin. R. 7.2, § 4 to evaluate judicial vacancies for compliance with N.D.C.C. § 27-05-02.1. Those criteria include:

1. Population;
2. Caseloads and unusual case types;
3. Trends in 1 and 2;
4. Impact of proposed vacancy disposition on travel requirements;
5. Age or possible retirement of remaining judges in the affected judicial district; and
6. Availability of facilities (e.g., law enforcement, correctional, and court facilities).

[¶6] This Court has reviewed the 1997 weighted caseload study, the 1998 weighted caseload study, and the statistics available under the weighted caseload study for nine months of 1999. The Court has also reviewed information provided by the Department of Health and the Office of the Attorney General regarding population trends and projections and crime statistics.

[¶7] Based upon our review and recognizing our state's scarce judicial resources must be allocated in a manner to best achieve effective judicial administration, we are compelled to designate Judgeship No. 5 in the Southwest Judicial District with chambers in Bowman for abolition effective at the end of the current judicial term.

[¶8] Our decision is based upon a review of caseloads and populations in each of the judicial districts and upon projections of population changes.

[¶9] The weighted caseload study allocates the amount of judicial resources (including judges and judicial referees) needed to handle the cases filed in a district after weighting each type of case by the amount of time required to process an average case of that type. The study adjusts each district for travel time depending on whether that district requires high travel, moderate travel or low travel time from the judges serving the district. The study also

allocates time which is not available for handling cases but which is required in each district for the presiding judge to handle administrative matters. The resulting computation is the minimum judicial resources (expressed as a "judicial FTE" which includes both judges and judicial referees) to meet the needs based upon weighted case filings.

[¶10] When the minimum judicial FTE's required are compared to the judicial FTE's currently available in a district, the difference is expressed as a positive number, indicating there are more judicial resources available than current weighted case filings require, or a negative number, indicating that there are fewer judicial resources than are needed to serve that district's weighted case filings.

[¶11] The weighted caseload studies show the judicial margins in all judicial districts of the state. The following reports omit juvenile dismissals because dismissals of juvenile cases have a negligible impact on judicial workload. Further, because Griggs County was transferred from the Northeast Central Judicial District to the Southeast Judicial District in 1999, the following reports for 1997 and 1998 have been adjusted to assume the filings in Griggs County were part of the Southeast Judicial District:

1997 Weighted Caseload Study Without Juvenile Dismissals

DISTRICT	WEIGHTED FILINGS	JUDICIAL FTE REQUIRED	TOTAL ADJUSTED JUDICIAL FTE	DIFFERENCE
East Central	632,542	9.38	8.88	-0.50
Northeast	404,604	6.95	6.88	-0.07
Northeast Central	366,282 #	5.43	6.88	+1.45
Northwest	454,910	7.07	8.88	+1.81*
South Central	577,863	8.98	9.36	+0.38
Southwest	178,917	2.78	3.88	+1.10
Southeast	380,050	6.53	5.88	-0.65
Totals	2,995,169	47.11	50.64	+3.53 *

The Northeast Central Judicial District experienced a 26% reduction in civil filings in 1997 when compared to 1996. The reduction is believed to be caused by the April 1997 flood that closed the City of Grand Forks for several months. See North Dakota Courts, Annual Report, 1997, at 10.

* Judgeship No. 3, chambered in Minot, North Dakota, was terminated at the retirement on December 31, 1998 of the Honorable Wallace D. Berning.

1998 Weighted Caseload Study Without Juvenile Dismissals

DISTRICT	WEIGHTED FILINGS	JUDICIAL FTE REQUIRED	TOTAL ADJUSTED JUDICIAL FTE	DIFFERENCE
East Central	666,349	9.88	8.88	-1.00
Northeast	383,194	6.58	6.88	+0.30
Northeast Central	429,234	6.36	6.88	+0.52
Northwest	446,741	6.94	7.88	+0.94
South Central	537,403	8.35	9.36	+1.01
Southwest	178,569	2.77	3.88	+1.11
Southeast	385,679	6.62	5.88	-0.74
Totals	3,024,731	47.51	49.64	+2.13

[¶12] In 1997 there were 44 district judges. The weighted caseload study for that year indicates the following weighted filings per existing total adjusted judicial FTE in each district:

DISTRICT	EXISTING TOTAL ADJUSTED FTE	WEIGHTED FILINGS PER JUDICIAL FTE
East Central	8.88	71,232
Northeast	6.88	58,809
Northeast Central	6.88	53,239
Northwest	8.88	51,229 *
South Central	9.36	61,738
Southwest	3.88	46,113
Southeast	5.88	64,634
*Judgeship No. 3 with chambers in Minot was terminated upon the retirement on December 31, 1998 of the Honorable Wallace D. Berning.		

[¶13] Based upon our 1998 study, the weighted filings per existing total adjusted judicial FTE in each district was as follows:

DISTRICT	EXISTING TOTAL ADJUSTED FTE	WEIGHTED FILINGS PER JUDICIAL FTE
East Central	8.88	75,039
Northeast	6.88	55,697
Northeast Central	6.88	62,388
Northwest	7.88	56,693
South Central	9.36	57,415
Southwest	3.88	46,023
Southeast	5.88	65,592

[¶14] The statewide average weighted filing per adjusted judicial FTE in

1998 was 60,933. If one judgeship were eliminated so that the total adjusted judicial FTE's were 48.64, the statewide average weighted case filing per judicial FTE in 1998 would be 62,186.

[¶15] Using 1998 weighted filings, a comparison of all judicial districts with one judge removed in each district, the resulting weighted filing per judicial FTE would be as follows:

DISTRICT	TOTAL ADJUSTED FTE WITH ONE JUDGE REDUCED	WEIGHTED FILINGS PER JUDICIAL FTE
East Central	7.88	84,562
Northeast	5.88	65,169
Northeast Central	5.88	72,999
Northwest	6.88	64,933
South Central	8.36	64,283
Southwest	2.88	62,003
Southeast	4.88	79,033

[¶16] Only the Southwest Judicial District would remain below the statewide adjusted average of weighted filings to judicial FTE if one judgeship were reduced from that district.

[¶17] The weighted caseload studies indicate the Northwest Judicial District (1997 - +1.81; 1998 - +0.94), the South Central Judicial District (1997 - +.38; 1998 - +1.01) and the Southwest Judicial District (1997 - +1.10; 1998 - +1.11) have the largest judicial margins and are most able to accept a reduction in judgeship based upon weighted case filings. When that computation is coupled with population trends, it is apparent that appropriate planning for judicial needs requires the reduction be made where the greatest reduction of population is anticipated.

[¶18] To examine trends in population changes, we have reviewed projections prepared at the direction of the Department of Health.

[¶19] The 1990 populations of the judicial districts were:

DISTRICT	POPULATION
East Central (3 counties)	114,046
Northeast (11 counties)	88,171
Northeast Central (2 counties)	75,093
Northwest (6 counties)	98,355
South Central (12 counties)	130,965
Southwest (8 counties)	41,175
Southeast (11 counties)	90,995

[¶20] The 1998 populations of the judicial districts under review were:

DISTRICT	POPULATION
East Central (3 counties)	127,639
Northeast (11 counties)	84,011
Northeast Central (2 counties)	70,585
Northwest (6 counties)	95,775
South Central (12 counties)	134,619
Southwest (8 counties)	39,094
Southeast (11 counties)	86,521

[¶21] By comparison with the 1990 population, the 1998 population shows a declining trend in most of the districts under review. The percentages of population change from 1990 to 1998 in the districts under review are:

DISTRICTS	PERCENTAGES OF POPULATION CHANGE FROM 1990 to 1998
East Cental	+11.9%
Northeast	-4.7%
Northeast Central	-6.0%
Northwest	-2.6%
South Central	+2.8%
Southwest	-5.1%
Southeast	-4.9%

[¶22] Projections indicate the trends will continue. The projected populations of the districts and the anticipated percentages of population change from 1990 to 2015 are:

DISTRICT	PROJECTED POPULATIONS	ANTICIPATED PERCENTAGES
East Central	143,226	+25.6%
Northeast	80,982	-8.2%
Northeast Central	67,778	-9.7%
Northwest	97,506	-0.9%
South Central	141,020	+7.7%
Southwest	36,515	-11.3%
Southeast	82,040	-9.8%

[¶23] These statistics and projected population trends indicate the Southwest District is, and will continue to be, our least populous judicial district.

[¶24] When the population-to-judge/referee ratio is compared among the districts, reduction of a judgeship in the Southwest Judicial District results in a lower population to judge/referee ratio than any other district except the Northeast Central Judicial District.

DISTRICT	1998 POPULATION	POPULATION PER JUDGE AND REFEREE (CURRENT)	POPULATION PER JUDGE AND REFEREE WITH ONE JUDGE REDUCED
East Central	127,639	14,182	15,935
Northeast	84,011	12,002	14,002
Northeast Central	70,585	10,084	11,764
Northwest	95,775	11,972	13,682
South Central	134,619	14,200	15,875
Southwest	39,094	9,774	13,031
Southeast	86,521	14,420	17,304

[¶25] The 1998 weighted caseload study, however, indicates the Northeast Central Judicial District has only a +.52 judicial margin based upon current number of judges and referees. The Northeast Central Judicial District has a substantially different population mix and weighted case filings and would be less able to maintain efficient judicial administration with a reduction of judges than would the Southwest Judicial District. As noted in paragraphs 12 and 13 above, the weighted case filings per judicial FTE are substantially higher in the Northeast Central Judicial District than in the Southwest Judicial District, and would remain higher than would be the filings per judicial FTE in the Southwest Judicial District even after a reduction in judges in the Southwest Judicial District. The Northeast Central Judicial District has a birth rate substantially higher than the Southwest Judicial District. See Table 1. The Northeast Central Judicial District also has a substantially higher crime rate than the Southwest Judicial District as shown by paragraph 36 below. See Table 2. Existing caseloads and populations as well as anticipated trends in population require selection of the Southwest district when compared with the Northeast Central district.

[¶26] Although our weighted caseload study compares population to judge and referee availability, a comparison of the population-to-judge ratio without referees is pertinent because some judicial functions are not handled by referees. Such a comparison confirms that a reduction of judgeship in the Southwest District most closely maintains balance among the population-to-judge ratio of the various districts. Based upon 1998 population, the statewide average of population per judge with 43 judges is 14,843. With a reduction of one judgeship, the statewide average population per judge based upon 1998 statistics would be 15,196.

[¶27] Comparing the districts for the effect on the population-to-judge ratio of a reduction in judgeship results in the following:

DISTRICT	1998 POPULATION	POPULATION PER JUDGE BASED ON CURRENT JUDGESHIPS	POPULATION PER JUDGE WITH ONE JUDGE REDUCED
East Central	127,639	18,234	21,273
Northeast	84,011	14,002	16,802
Northeast Central	70,585	14,117	17,646
Northwest	95,775	13,682	15,963
South Central	134,619	16,827	19,231
Southwest	39,094	9,774	13,031
Southeast	86,521	14,420	17,304

[¶28] Terminating a judgeship in the Southwest District still leaves that district with a lower population-to-judge ratio than any other district.

[¶29] Within the Southwest Judicial District, there are three judgeships whose terms expire in December, 2000. Two of the judgeships are chambered in Dickinson and one is chambered in Bowman. Although N.D. Sup. Ct. Admin. R. 7.2 permits this Court to consider the age or possible retirement of the remaining judges in the affected judicial district, none of the judges currently occupying these judgeships is of retirement age and none has expressed an intent to retire without seeking another term. Further, we decline to examine personal differences among our three respected colleagues. Instead our decision is based upon statistics available to the court at the time the decision is required by the legislation. To designate a judgeship for termination within the district the Court has focused on caseloads, population and trends for each in the counties comprising the Southwest Judicial District.

[¶30] The weighted caseload study indicates the bulk of the work demanding of judicial time occurs in the northern four counties of the district (Billings, Dunn, Golden Valley and Stark counties). Slightly under 25% of all court filings in the Southwest district occur in the southern four counties of the district (Adams, Bowman, Hettinger and Slope). See Tables 3 and 4. When traffic filings, which are assigned the lowest weight (.35) in our weighted caseload study, are excluded from the filings, the average filings in those four counties is approximately 21% of the total filings of the district.

[¶31] Those filings which demand greater judicial time occur in smaller proportion in the southern four counties than in the northern four counties of the district. The weighted caseload study assigns a weighted load of greater than 1.00 to four types of cases. These case types include felonies, juvenile dependency, juvenile delinquency and administrative appeals. During 1998, greater than 75% of all filings in these categories occurred in the northern half of the district. See Table 3. During 1997, in all of those categories except juvenile dependency, greater than 75% percent of the filings occurred in the northern half of the district. See Table 4.

[¶32] When all weighted filings except juvenile dismissals are compared, the following tables indicate the comparisons between the southern four counties

and the northern four counties of the district for 1997 and 1998.

COUNTIES	1997	1998
Adams	15,390	13,625
Bowman	16,151	14,927
Hettinger	8,179	6,970
Slope	2,775	2,091
Totals	42,495(23.75%)	37,613(21.06%)
Billings	3,970	3,445
Dunn	13,937	12,572
Golden Valley	7,644	9,069
Stark	110,871	115,870
Totals	136,422(76.25%)	140,956(78.94%)

[¶33] Population projections indicate the rate of population decline will most greatly impact the already least populated areas. Within the Southwest District the projected population changes from 1990-2015 are as follows:

COUNTY	1990 POPULATION	1998 POPULATION	2015 PROJECTED POPULATION	PERCENT CHANGE 1990-2015
Adams	3,174	2,714	2,145	-32.4%
Billings	1,108	1,058	1,256	+13.4%
Bowman	3,596	3,317	2,885	-19.8%
Dunn	4,005	3,560	3,058	-23.6%
Golden Valley	2,108	1,876	1,662	-21.2%
Hettinger	3,445	2,924	2,316	-32.8%
Slope	907	865	795	-12.3%
Stark	22,832	22,780	22,398	-1.9%

[¶34] The demand for judicial services will remain most constant in our larger cities. The population demand for judicial services is and will remain in the northern part of the Southwest Judicial District.

[¶35] Our review of the reports prepared by the Office of the Attorney General on crime in North Dakota indicates population density correlates to demand for judicial services, particularly in the area of criminal filings.

[¶36] The Office of the Attorney General, Bureau of Criminal Investigation, annually publishes a statistical compilation of the crime rate in North Dakota. This report is based upon the reporting of indexed crimes including murder/non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny/theft, and motor vehicle theft. The report includes Crime Rates by County based upon reported offenses per 100,000 population. A review of the crime rates by county for the years 1995 through 1998 inclusive, indicates the average rate for the highest reporting county in the

state for that four-year period is 5279 reported indexed crimes per 100,000 population. Over this four-year period, Stark County averages 10th among the 53 counties in the reporting of indexed crimes. The average report per 100,000 population for each county of the Southwest Judicial District over the same four-year period is as follows:

COUNTY	1995	1996	1997	1998	AVERAGE PER 100,000
Adams	1263.1	1221.6	1046.9	877.5	1102.28
Billings	956.5	86.6			521.55*
Bowman	858.4	549.5	889.6		765.83**
Dunn	260.5	129.6	156.3	27.6	143.50
Golden Valley	1175.9	1221.4	920.7		1106.00**
Hettinger	194.8	258.5	357.3	33.9	211.13
Slope	470.0	585.5	1647.1	0	675.65
Stark	2492.8	2399.2	2532.3	2412.5	2459.20
* Based on 2 years. No report filed for 1997 and 1998.					
**Based on 3 years. No report filed in 1998.					

[¶37] We recognize that this order results in all three judges of the Southwest Judicial District being chambered in Dickinson after December 31, 2000. We assume that by allocating judicial resources where the greater filings exist and where the type of filings demand greater judicial involvement, we will reduce the amount of travel required by judges in the district to serve all areas of the district. We anticipate efficient service can be provided to the southern four counties by regular scheduling of judicial time in those counties.

[¶38] The original legislative intent was to abolish judgeships through attrition rather than by abolition of an occupied judgeship. This Court's hope had been that the 1999 Legislative Assembly would have seen fit to extend the time to January 1, 2003 to complete the reduction of judgeships. See Conference Committee's proposed amendment to House Bill 1002. Given the actuarial statistics relating to our existing judges, reduction to 42 by 2003 solely by attrition would have been virtually assured. However, no extension was enacted. Unfortunately, this Court is forced to terminate a judgeship currently occupied by a good jurist and a dedicated public servant.

[¶39] On behalf of the citizens of North Dakota, we express our appreciation to the Honorable Zane Anderson who has ably served the judicial needs of North Dakota in District Judgeship No. 5 since 1994 and previously as a county judge of a multi-county district serving Adams, Bowman, Hettinger and Slope counties.

[¶40] IT IS HEREBY ORDERED, Judgeship No. 5 with Chambers in Bowman, Southwest Judicial District, is abolished upon the expiration of the current term of Judge Zane Anderson on December 31, 2000.

[¶41] The abolition of Judgeship No. 5 is ordered with the intent and confidence that the Honorable Allan L. Schmalenberger, Presiding Judge of the Southwest Judicial District, together with the judges of the district, and their successors, will continue to do their best to provide, through assignment, routine, effective judicial services to the area served by Judgeship No. 5.

[¶42] Dated at Bismarck, North Dakota, this 2nd day of December, 1999.

[¶43]

Gerald W. VandeWalle, C.J.
Carol Ronning Kapsner
Dale V. Sandstrom
Mary Muehlen Maring

[¶44] Neumann, J., dissenting.

[¶45] With the greatest respect for my colleagues, who faced grave doubt and difficulty in reaching this decision, I dissent. I would not terminate this judgeship.

[¶46]

William A. Neumann

TABLE 1
COMPARISON OF BIRTH TO POPULATION RATIOS

NORTHEAST CENTRAL	1998 POPULATION	1998 BIRTHS	BIRTH TO POPULATION RATIO (1998)
Grand Forks	66,869	966	01.44%
Nelson	3,716	26	00.70%
District	70,585	992	01.41%
SOUTHWEST	1998 POPULATION	1998 BIRTHS	BIRTH TO POPULATION RATIO (1998)
Adams	2,714	19	00.70%
Billings	1,058	7	00.66%
Bowman	3,317	34	01.03%
Dunn	3,560	24	00.67%
Golden Valley	1,876	16	00.85%
Hettinger	2,924	22	00.75%
Slope	865	10	01.16%
Stark	22,780	262	01.15%
District	39,094	394	01.01%

TABLE 2
INDEXED CRIME RATE

YEAR	INDEXED CRIME PER 100,000 POPULATION GRAND FORKS	INDEXED CRIME PER 100,000 POPULATION NELSON
1995	5385.0	535.9
1996	5142.3	291.0
1997	4298.0	No Report

1998	4922.1	No Report
Average	4936.9	413.45 *
* Based on 2 years.		

TABLE 3
1998 FILINGS BY COUNTY
SOUTHWEST JUDICIAL DISTRICT

COUNTIES	FILINGS (ALL)	FILINGS (WITHOUT TRAFFIC)	FELONIES	JUVENILE DELINQUENCY	JUVENILE DEPENDENCY	ADMIN. APPEALS
Adams	827	332	7	8	0	0
Bowman	533	346	2	10	0	2
Hettinger	359	155	4	5	0	0
Slope	201	53	0	0	0	1
TOTALS	1920(.2459)	886(.758)	13(.1494)	23(.2233)	0(.0000)	3(.1071)
Billings	304	91	2	1	0	0
Dunn	807	306	4	6	2	3
Golden Valley	344	221	5	10	1	1
Stark	4432	2801	63	63	16	21
TOTALS	5887(.7541)	3419(.7942)	74(.8506)	80(.7767)	19(1.0000)	25(.8929)

TABLE 4
1997 FILINGS BY COUNTY
SOUTHWEST JUDICIAL DISTRICT

COUNTIES	FILINGS (ALL)	FILINGS (WITHOUT TRAFFIC)	FELONIES	JUVENILE DELINQUENCY	JUVENILE DEPENDENCY	ADMIN. APPEALS
Adams	944	347	6	5	5	1
Bowman	651	371	3	5	2	3
Hettinger	563	175	15	4	0	0
Slope	247	61	2	0	1	0
TOTALS	2405(.2451)	954(.2214)	26(.2342)	14(.1944)	8(.4444)	4(.1290)
Billings	304	97	3	3	0	0
Dunn	1543	372	9	0	0	2
Golden Valley	350	230	3	0	0	0
Stark	5209	2655	70	55	10	25
TOTALS	7406(.7549)	3354(.7786)	85(.7658)	58(.8056)	10(.5556)	27(.8710)

[Top](#) | [Home](#) | [Opinions](#) | [Search](#) | [Index](#) | [Lawyers](#) | [Rules](#) | [Research](#) | [Courts](#) | [Calendar](#) | [Comments](#)

District Court Filings 1999

COUNTIES	1999
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Grand Forks	18043
Nelson	988

Cass	21630
Traill	1907

Burleigh	11731
Emmons	756

Stark	5843
Bowman	795

Date: January 29, 2001

To: Members of Senate Judiciary Committee

From: District Judge Zane Anderson

RE: Senate Bill 2262

Members of the Judiciary Committee:

I would like to thank Senator Bill Bowman for filing Senate Bill 2262. I believe he did so, at least in part, in reaction to the recent Supreme Court decision denying my request to move the chambers of my district court judgeship from Dickinson back to Bowman where I had had my chambers for the last 10 years prior to the termination of the Bowman judgeship by the Supreme Court effective as of December 31, 2000.

While I appreciate the efforts of Senator Bowman in filing Senate Bill 2262 and bringing this matter to your attention, I am sure Senator Bowman would agree that this bill is not about doing any personal favors for anyone. You should support Senate Bill 2262 only because it promotes sound public policy and advances the interests of all the people of the State of North Dakota. If you are not convinced that this is the case, then I urge you not to support this bill.

Senate Bill 2262 is about fairness and jobs for rural North Dakota. As you know rural North Dakota is losing population and struggling to prevent further erosion of services, jobs, and population. It is in the interests of all the people of North Dakota to care about the vitality of rural North Dakota and to mend the rural/urban divide that has developed in our state.

When the 1991 Legislative Assembly enacted court consolidation and abolished county courts and the office of county judge concerns were raised about the effect court consolidation would have on rural North Dakota. I believe that to address some of these concerns as well as to gain the support needed to enact court consolidation, the legislature enacted NDCC 27-05-08(1) which required at the time it was enacted that not more than seventy percent of the chambers of district court chambers be located in cities having a population of seven thousand five hundred or more.

At the time court consolidation was passed by the 1991 Legislative Assembly there were 27 district court and 26 county court judgeships in the state. Court consolidation created 53 district court judgeships and also required the Supreme Court to reduce this number to 42 before January 2, 2001. Unfortunately, the implementation of court consolidation and some unforeseen developments along the way have worked to the detriment of rural North Dakota and also have shown that some of the fears that some rural North Dakotans had at the time court consolidation was enacted may have been well founded.

One of the first developments was a change to NDCC 27-05-08. The original law implicitly defined rural judgeships as those whose chambers were located in cities having a population of 7,500 or less. This definition was changed, I believe in 1993, to define rural judgeships as including cities having a population of 10,000 or less. As a consequence of the change two judgeships located in Devils Lake and one judgeship located in Wahpeton are now counted as rural judgeships.

A second development was a change to NDCC 27-05-08(2) which I believe also became effective in 1993. The old law required each district judge to reside in the county where his or her district court chamber was located. The change in the law allowed the

district judge to reside anywhere in the judicial district where he or she was elected. This change has worked to the detriment of rural North Dakota.. The location of some of the rural district court chambers has become a pure fiction. For example, judges currently chambered in Hillsboro, Washburn, and Linton do not reside or even have their offices or staff in these cities.

My personal encounter with court consolidation has also lead to the loss of another rural judgeship. Despite my desire to continue to have my court chambers in a rural county seat, court consolidation has not allowed me to do so.

The Supreme Court, through attrition, reduced the number of district court judgeships to 43 with the last such reduction taking place on April 29, 1998. Because there were no other resignations or announcements of retirement, after consulting with some of the judicial districts, on December 2, 1999, the Supreme Court for the first and only time exercised its authority under the court consolidation law and eliminated an active judgeship by eliminating, effective December 31, 2000, the Bowman judgeship held by me.

In order to continue my career as a judge, I was forced to make the difficult decision of running against a fellow judge. After deciding to do so and after a long and difficult campaign I was fortunate enough to win re-election. Because the Bowman judgeship had been eliminated, the chamber of my present judgeship is designated as Dickinson. I have been a long time Bowman resident and for a variety of reasons, some of which only became apparent to me after the election, I petitioned to transfer my chambers back to Bowman.

In making this request I argued among other things that NDCC 27-05-08(1) requires that not more than seventy percent of the district court chambers be located in cities of ten thousand or more. I reasoned that because we have three district judges in our Southwest Judicial District and all three are chambered in Dickinson (which has a population of more than 10,000) that the transfer of one district court chamber to a rural county seat city would be consistent with the spirit and intent of NDCC 27-05-08(1).

The Supreme Court did not agree and denied my request. The Supreme Court stated among other things in their Order that I had failed to present a compelling reason for the transfer of the chambers. Under the court rule applicable to my request the burden of proof was on me as the petitioner. I believe that if any other rural judge had been thrust into the same situation that they also would have had difficulty in proving a "compelling reason" to transfer their court chamber back to their original rural district court chamber.

The location of district court chambers in rural areas has always been a public policy issue better addressed by the legislature.

Senate Bill 2262 brings the important issue of the location of district court chambers back to your attention. Have court consolidation and unforeseen developments from changes in the law conspired to frustrate the legislative intent in enacting NDCC 27-05-08(1)? Is it still sound public policy to require that some district court chambers be located in rural areas? I think you will agree and find that the legislative intent has been frustrated and that sound public policy does require that some district court judgeships are actually located in rural areas.

Senate Bill 2262 provides a reasonable means to address these concerns. I urge you to give this bill your support.

PETITION FOR CHANGE OF DESIGNATION
OF RESIDENT DISTRICT COURT JUDGESHIP CHAMBER

DEC 22 2000

STATE OF NORTH DAKOTA

Pursuant to Administrative Rule 7.1, Section 2, the undersigned hereby petitions the Supreme Court of North Dakota to change the resident district court judgeship chamber of Southwest Judicial District No. 1, from Dickinson, North Dakota, to Bowman, North Dakota.

The main reasons for the request are as follows:

1. On December 2, 1999, the Supreme Court of North Dakota, abolished Judgeship No. 5 in the Southwest Judicial District with chambers in Bowman, North Dakota, effective on the expiration of the current term of the undersigned on December 31, 2000. In Re Consultation Regarding Judgeship, 1999 ND 226, 603 NW2d 57. This action required the undersigned to run for election against a fellow incumbent judge if the undersigned desired to continue his career as a jurist.

2. The undersigned was able to successfully win election to Judgeship No. 1 in the Southwest Judicial District with chambers in Dickinson although throughout the campaign the media characterized the contest as between a "Bowman" judge and a "Dickinson" judge. Despite this characterization the undersigned was able to win a majority of the votes in every county in the judicial district and to win a decisive majority of the votes in

the four southern counties of the district.

3. Throughout the campaign the undersigned repeatedly stated that he had no plans to change his residence from Bowman, North Dakota, to Dickinson, North Dakota. The undersigned did indicate during the campaign that while he did not intend to petition to change the location of the chambers, that he did intend to continue to reside at Bowman, North Dakota, and to have an office in the Bowman County Courthouse in Bowman, North Dakota.

4. The presiding judge of the Southwest Judicial District after the election has now made it clear to the undersigned that he will not support or allow the undersigned to have an adequately equipped office in Bowman, North Dakota, absent a redesignation of the resident chambers from Dickinson, North Dakota, to Bowman, North Dakota.

5. The presiding judge of the Southwest Judicial District has now also made it clear that he will not allow any accommodation in the scheduling of cases for the undersigned due to the residence of the undersigned in Bowman, North Dakota. Specifically, the presiding judge will not allow the undersigned to continue to handle all master calendar cases for Bowman County as the undersigned has done for the last ten years, but instead has insisted on a rotation of Bowman County master calendar among

all the judges of the Southwest Judicial District.

6. A redesignation of the resident chamber for Judgeship No. 1 from Dickinson, North Dakota, to Bowman, North Dakota, would be in accordance with the mandate of the voters of the Southwest Judicial District who elected the undersigned as District Judge knowing the undersigned resided in Bowman, North Dakota, and intended to continue to reside in Bowman, North Dakota.

7. A redesignation of the chambers for Judgeship No. 1 from Dickinson, North Dakota, to Bowman, North Dakota, would be in accordance with N.D.C.C. §27-05-08(1) as applied to the Southwest Judicial District in that after such redesignation not more than seventy percent of the chambers of the Southwest Judicial District judges would be located in cities with a population of more than ten thousand.

8. A redesignation of the chambers of Judgeship No. 1 from Dickinson, North Dakota, to Bowman, North Dakota, would be in accordance with historical precedent in that the Southwest Judicial District has always had the chambers of at least one full time judge located in a city other than Dickinson, North Dakota.

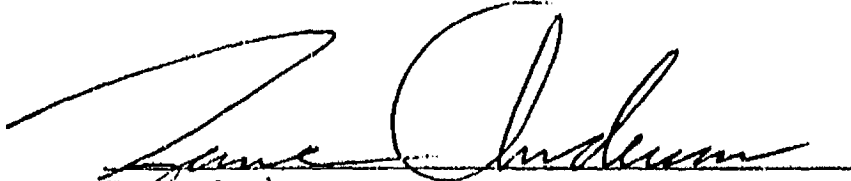
9. A redesignation of the chambers would have minimal impact upon the delivery of judicial services in the Southwest

Judicial District in that there presently exists an adequately equipped and staffed resident chambers at Bowman, North Dakota, and the undersigned would continue to be assigned and preside over a substantially equal number of cases throughout the Southwest Judicial District just as the undersigned has in the past.

10. A redesignation of the chambers is necessary to allow the undersigned to continue to provide effective and efficient judicial services to the people of the Southwest Judicial District and a redesignation of the chambers will promote and enhance the provision of fair, effective, and efficient judicial services to the people of the Southwest Judicial District.

A brief with documentation assessing the criteria for consideration in regard to the transfer accompanies this petition.

Dated this 21st day of December, 2000.


Zane Anderson
District Court Judge

DEC 22 2000

BRIEF IN SUPPORT OF PETITION FOR
CHANGE OF DESIGNATION OF RESIDENT
DISTRICT COURT JUDGESHIP CHAMBER

STATE OF NORTH DAKOTA

Administrative Rule 7.1, Section 2, requires that any petition be accompanied by supporting documentation addressing the following criteria:

CASELOAD

Attachment #1 shows cases filed by county for the years 1997 through 1999 in the Southwest Judicial District, the most recent three year period for which information is available. The attachment shows that overall civil and small claims filings have remained relatively constant, but overall criminal and juvenile filings have shown a modest increase. The attachment shows that about 20% of all case filings occur in the southern four counties of the district.

NUMBER AND LOCATION OF ATTORNEYS

The directory of lawyers and judges for the year 2000 published by the State Bar Board shows approximately 58 licensed attorneys including judges in the Southwest Judicial District with 12 attorneys listed in cities in the southern four counties. Of the 12 attorneys listed in the southern four counties the undersigned has knowledge that one is currently under suspension and one recently died.

COMMUNITY FACILITIES

All county seat locations have adequate lodging, restaurant and other facilities with the exception of Dunn and Slope Counties. Manning, the county seat of Dunn County does not have any restaurant or lodging facilities. Amidon, the county seat of Slope County, has an adequate restaurant facility, but does not have any lodging facilities.

TRAVEL ACCESS

All county seat locations are connected by interstate or major state highways. Dickinson does have a regional airport as well as bus service.

COURT FACILITIES

Courtroom facilities are adequate in all county seat locations with the exceptions of Dunn County and Slope County. Dunn County does not have an adequate courtroom facility and all recent jury trials have been held in Stark County. Dunn County master calendar cases are heard in the county commissioner's office of the Dunn County courthouse in Manning. Slope County does not have an adequate courtroom facility for jury trials. Slope County master calendar cases and other court hearings or trials to the court have been held at the Slope County Courthouse in Amidon. Bowman County currently has and would continue to provide adequate offices for the judge and support staff. The

Dickinson location also has adequate office space.

PROXIMITY TO DETENTION FACILITIES

The Southwest Multi-county Correction Center in Dickinson, North Dakota, provides detention facilities to all counties of the district except Adams and Golden Valley Counties. Adams County operates its own detention facility and contracts with Morton County if they require detention for an extended period of time. Golden Valley County contracts with Fallon County, Montana.

COOPERATIVE SERVICE ARRANGEMENTS WITH THE COUNTY COURTS

This section is no longer applicable because of court consolidation.

PROXIMITY TO DEPARTMENT OF HUMAN SERVICES

The Badlands Human Service Center in Dickinson provides social and human service programs throughout the district. Outreach workers travel from the Dickinson area to other county seat locations in the district.

A regional psychiatric unit is maintained at St. Joseph's Hospital in Dickinson.

IMPACT OF ANY CHANGE ON TRAVEL TIME FOR JUDGES, COURT PERSONNEL, ATTORNEY AND LITIGANTS

The change in designation should have no effect on travel time for lawyers and litigants because judges and court personnel

would continue to travel to each county seat to provide judicial services as necessary and to hear cases venued in the respective counties. Travel time for the judge and judicial secretary chambered in Bowman would increase because of the necessity to travel more to Stark and other counties within the district. The travel time for the other judges and their court recorders or reporters should decrease slightly to the extent they will not be required to travel to locations that could be serviced by the judge in closer proximity in Bowman. The travel time of other court personnel such as juvenile court officers or court administrators should not be impacted by the change in designation.

DISTRICT POPULATION DISTRIBUTION

<u>County</u>	<u>1990</u>	<u>1998</u>
Adams	3,174	2,714
Billings	1,108	1,058
Bowman	3,596	3,317
Dunn	4,005	3,560
Golden Valley	2,108	1,876
Hettinger	3,445	2,924
Slope	907	865
Stark	22,832	22,780

The southern four counties of the judicial district comprise approximately 25% of the district's population according to the 1998 figures obtained from the North Dakota census data center.

IMPACT ON JUDICIAL SYSTEM EMPLOYEES

It is anticipated that a judicial secretary attached to the

multi-judge chambers at Dickinson would be reassigned or given the opportunity to transfer to the Bowman Chambers if the petition is approved.

RECOMMENDATION OF THE PRESIDING JUDGE AFTER CONSOLIDATION WITH
THE JUDGES OF THE DISTRICT COURT

The recommendation of the presiding judge is unknown as of this date. The undersigned was informed by the presiding judge that he had not yet decided what recommendation he would make if the petition for redesignation of the resident chamber was filed.

LAW AND ARGUMENT

The unique circumstances that have arisen after the Court's difficult decision to abolish Judgeship No. 5 in the Southwest Judicial District should be taken into account by the Court in deciding whether to grant the petition for redesignation of the chambers. These circumstances compel the granting of the request to transfer the chambers from Dickinson to Bowman.

The voters of the Southwest Judicial District have spoken. They chose the incumbent judge who resided at Bowman and who they knew intended to continue to reside at Bowman.

After the abolition of Judgeship No. 5 the undersigned was left with no alternative but to run against a fellow judge if he wished to continue his career as a jurist. The undersigned made clear his intention to continue to reside at Bowman and to keep

an office in the Bowman County Courthouse if elected. The undersigned did not intend to petition to redesignate the chambers so long as he could keep an adequately equipped and staffed office at Bowman. The undersigned was well aware of several other instances throughout the State where District Judges were permitted to keep offices near where they chose to live rather than at their designated chamber cities. Examples include the District Judges chambered at Linton, Washburn, and Hillsboro.

Following the election, the presiding judge of the Southwest Judicial District has now made it clear that the undersigned will not be permitted to maintain an adequate office at Bowman absent a redesignation of the resident chambers. The presiding judge has also refused to accommodate in any way the assignment and scheduling of cases to take into account the personal residence of the undersigned.

Besides being an acknowledgment of the voters' mandate, the redesignation would be consistent with the legislature's expressed intention that not more than 70% of district court chambers be located in cities of ten thousand or more. See N.D.C.C. §27-05-08(1). After the redesignation instead of 100% of the District Court Chambers in the Southwest Judicial District being located in a city with a population of ten thousand or

more, the location of the chambers would be consistent with the expressed intention of the legislature as set forth in the above statute.

The redesignation would also be in accordance with historical precedent in southwestern North Dakota. At least one district judge resident chamber has been located outside of Dickinson going back to the early 1900's. As a matter of public policy the historical precedent has been that not all of the district judges would be chambered in Dickinson.

Because the undersigned resides at Bowman, North Dakota, and expects to continue to reside at Bowman, the change in designation would have a very significant impact on personal travel time. On days when the undersigned was not required to attend or be available for trials or hearings in other counties, the undersigned would not be required to travel to Dickinson, but could instead much more conveniently and efficiently conduct all appropriate court business out of the Bowman chambers. It is anticipated based on past experiences and taking into account the reduction in the number of judges that approximately one half of work time will be spent in chambers.

Being away from wife and family for long periods is a significant personal stressor that impacts the effectiveness of a judge. At a recent presentation Professor Isaiah Zimmerman noted

that a significant source of judicial stress was isolation. Isolation would certainly be increased by long absences from wife, family and friends.

The change in designation of the resident chambers would increase travel costs for the State. This increase could be minimized with more efficient and intelligent scheduling.

This petition has absolutely nothing to do with saving the monetary cost of personal travel. The undersigned would accept as a condition of the transfer any conditions or restrictions related to travel costs that the Court might feel appropriate. The undersigned would accept as a condition of the redesignation of the resident chamber that all travel costs of the undersigned be computed from Dickinson or from Bowman whichever was less costly to the State.

The location of district court chambers throughout the State are based on historical precedent and where the elected judge happened to reside. The location of chambers has never been based solely on costs savings or efficiency.

A redesignation will not have a significant impact on the delivery of judicial services to the people of the Southwest Judicial District. Cases will continue to be assigned on a substantially equal basis among all the judges of the district. The only change will be some accommodation in the assignment and

scheduling of cases to recognize the location of the judges. Specifically, it is anticipated that the undersigned would continue to handle all master calendar cases in Bowman County.

For the past ten years the undersigned has handled all master calendar cases in Bowman County. All individual calendar cases throughout the district have been assigned among the judges on an equal basis. Those judges chambered in Dickinson have shared Dunn County master calendar. This minimal and reasonable accommodation due to the location and personal residence of the judges can apparently only continue if the petition to redesignate the resident district court chamber is granted.

A significant factor compelling the undersigned to file the petition before the Court is the hope that the redesignation of the resident chamber will allow the undersigned's current judicial secretary the opportunity to continue her employment. The undersigned feels a moral and ethical responsibility to pursue this possibility.

Because of appendix 1 to policy 219 of the administrative policy manual of the Unified Judicial System the undersigned's judicial secretary was unfairly targeted to lose her job because of the abolition of the Bowman judgeship without any consideration of her years of experience or abilities as compared to other judicial secretaries within the judicial district. This

employee has worked for the undersigned since 1987 including the time period from when the undersigned first became a full time judge in 1991. She has provided exemplary service and has been a significant factor in the success of the undersigned as a jurist.

The Court should be aware that when it abolished the Linton Judgeship and transferred the Hettinger Judgeship of the Honorable Donald L. Jorgensen to Linton in 1995 that the judicial secretary position associated with the Hettinger chamber ended up being transferred to the Dickinson chambers. The point being made is that the application of appendix 1 to policy 219 to the unique circumstances that have now arisen in the Southwest Judicial has caused an unforeseen and probably unintended injustice. A long time employee has been targeted for elimination based solely on the policy and not based on length of service, ability, fairness or any other consideration.

Although the facts and circumstances before the Court may have justified the difficult decision it made when it abolished judgeship no. 5 in the Southwest Judicial District, the decision before the Court at that time did not focus on where the chambers of the district judges in the Southwest Judicial District should be located. The Court should now recognize that the unique circumstances leading to the election of the undersigned support the relocation of the resident chamber.

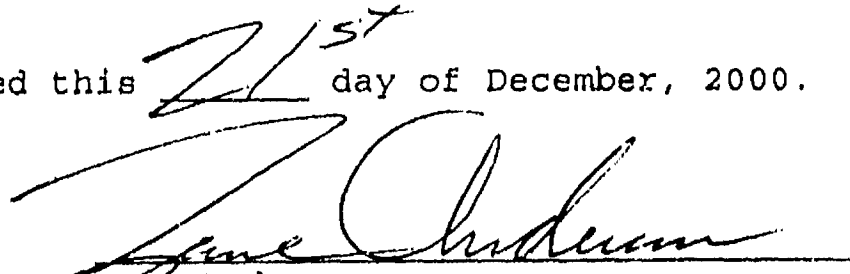
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Although in the abstract the workload or other considerations may justify the location of all three district judges' chambers at Dickinson, the mandate of the voters in electing the undersigned, the public policy expressed by the legislature that 30% of the judges be chambered in cities under ten thousand and the unique facts and circumstances leading to the present petition before the Court compel the granting of the petition.

Respectfully submitted this 21st day of December, 2000.


Zane Anderson
District Court Judge

Southwest Judicial District: Cases Filed 1997-1999 by County

Attachment #1

		CIVIL		SMALL CLAIMS				CRIMINAL		JUVENILE			3-YEAR	3-YEAR
COUNTIES	1997	1998	1999	1997	1998	1999	1997	1998	1999	1997	1998	1999	Total	%
Adams	172	164	202	45	34	44	165	266	275	1	8	9	1365	7.9%
Billings	31	34	59	4	7	14	60	67	60	0	1	2	339	1.9%
Bowman	181	220	197	30	34	39	206	179	165	0	9	7	1267	7.2%
Dunn	147	200	197	34	31	26	239	293	275	4	17	14	1477	8.4%
Golden Valley	80	98	79	12	17	4	162	175	171	4	6	10	818	4.6%
Hettinger	90	106	109	25	20	16	104	68	116	1	8	8	671	3.8%
Slope	29	26	25	1	7	3	32	45	40	1	0	1	210	1.2%
Stark	1186	1749	1685	199	239	225	1495	2059	2238	71	111	166	11433	65.0%
Totals	1916	2597	2563	350	369	371	2463	3152	3340	82	160	217	17600	100.0%

HISTORICAL PRECEDENT - DISTRICT COURT JUDGES
CHAMBERED IN CITIES OTHER THAN DICKINSON IN
SOUTHWESTERN NORTH DAKOTA *

<u>Names</u>	<u>Dates</u>	<u>Chambers</u>
Zane Anderson	1995-2000	Bowman
Donald Jorgensen	1985-1995	Hettinger
Lyle G. Stuart	1976-1984	Hettinger
Emil A. Giese	1957-1976	Hettinger
J. O. Wigen	1946-1956	Hettinger
F. T. Lembke	1920-1946	Hettinger
W. C. Crawford	1909-1919	Hettinger
W. H. Winchester	1908	Hettinger
Arthur Sand (J.O.P)	1908	

* The listing is based on information provided by the Adams County Clerk of Court and does not include full time multi-county judges including the Honorable Zane Anderson chambered at Bowman from 1991 to 1994; the Honorable F. Gene Gruber who was chambered at Hettinger from 1983-1990; or other full time multi-county judges. The Southwest Judicial District was previously designated as the 6th Judicial District and for a short time the 10th Judicial District.

SOUTHWEST JUDICIAL DISTRICT - JUDGESHIP NO. 1
COUNTY BY COUNTY ELECTION RESULTS

<u>County</u>	<u>Zane Anderson</u>	<u>Maurice Hunke</u>	<u>Total Votes</u> <u>Cast</u>
Adams	866 (76.6%)	265 (23.4%)	1,131
Billings	298 (58.5%)	211 (41.5%)	509
Bowman	1103 (75.1%)	366 (24.9%)	1,469
Dunn	890 (52.4%)	809 (47.6%)	1,699
Golden Valley	410 (53.5%)	356 (46.5%)	766
Hettinger	977 (65.9%)	506 (34.1%)	1,483
Slope	316 (70.7%)	131 (29.3%)	447
Stark	<u>4807</u> (50.3%)	<u>4748</u> (48.7%)	<u>9,555</u>
Overall			
Totals	9667 (56.7%)	7392 (43.3%)	17,059

Bowman judge, Dickinson judge vie for same judgeship

THE DICKINSON PRESS

ONLINE

INDEX

Friday, January 21st, 2000

[Home](#)
[News](#)
[Sports](#)
[Weather](#)
[Opinion](#)
[Classifieds](#)
[Archive](#)
[About](#)

Bowman judge, Dickinson judge vie for same judgeship

The upcoming race for a Southwest District Court judgeship will involve the unprecedented case of two sitting judges running against each other.

District Judge Zane Anderson of Bowman announced Thursday that he will seek election to judgeship No.1, which is currently held by District Judge Maurice Hunke of Dickinson.

Anderson's Bowman judgeship was abolished by the North Dakota Supreme Court last month. The court acted to follow a mandate from the Legislature to reduce the number of the state's district judges from 53 to 42.

Anderson said he decided to seek the post because he wanted to continue his career.

"I'm 48 years old and I've made this my career," he said in a prepared statement. "This is my 10th year as a judge, and I don't intend to back out now."

Anderson's judgeship was the first and only district judgeship to be abolished while the position was filled. The other positions were eliminated after the death or retirement of an incumbent judge. The situation now with two colleagues vying for the same position in the same district is also a first.


"I'm sure it's the first time two district judges are running against each other," Hunke told The Dickinson Press.

During a North Dakota Supreme Court hearing last year in which the court's justices heard arguments on abolishing a judgeship, Hunke said vacating a Grand Forks position would be a better option than eliminating a Southwest District judgeship.

CERTIFICATE OF MAILING

I, Jan Stebbins, hereby certify that I mailed a true and correct copy of the NOTICE OF PETITION and PETITION FOR CHANGE OF DESIGNATION OF RESIDENT DISTRICT COURT JUDGESHIP CHAMBER to the following person at the addresses set forth below this 21st day of December, 2000:

<u>Name</u>	<u>Position or Title</u>	<u>Address</u>
Hon. Allan Schmalenberger	Presiding Judge of the SW Judicial District	P.O. Box 1507 Dickinson, ND 58602
Dennis Johnson	Mayor - City of Dickinson	TMI 50 S 3rd Ave W Dickinson, ND 58602
Kenneth Woodley	Mayor - City of Bowman	P.O. Box 191 Bowman, ND 58623
Chester Willard	Chair - Stark County Commission	P.O. Box 130 Dickinson, ND 58602
Eugene Miller	Chair - Bowman County Commission	P.O. Box 439 Bowman, ND 58623



Jan Stebbins

NOTICE OF PETITION:

In accordance with Administrative Rule 7.1 of the North Dakota Rules of Court, notice is hereby given of the filing of a petition with the North Dakota Supreme Court seeking change of designation of the resident district court judgeship chamber for Southwest District Court Judgeship No. 1 from Dickinson, North Dakota, to Bowman, North Dakota.

Dated this 21st day of December, 2000.

A handwritten signature in cursive script, appearing to read "Zane Anderson", written over a horizontal line.

Zane Anderson
District Judge

JAN 3 2001

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2001 ND 1

**IN THE MATTER OF THE PETITION FOR CHANGE
OF DESIGNATION OF RESIDENT DISTRICT COURT
JUDGESHIP NO. 1 WITH CHAMBERS IN DICKINSON,
NORTH DAKOTA, SOUTHWEST JUDICIAL DISTRICT,
TO CHAMBERS AT BOWMAN, NORTH DAKOTA,
SOUTHWEST JUDICIAL DISTRICT**

No. 20000362

ORDER OF DENIAL.

[¶1] On December 22, 2000, the Honorable Zane Anderson, Judge of the District Court, Southwest Judicial District, filed a Petition for Change of Designation of Resident District Court Judgeship Chamber under N.D. Sup. Ct. Admin. R. 7.1(2) requesting the Supreme Court to change the designation of District Court Judgeship No. 1, with chambers in Dickinson, North Dakota, to chambers in Bowman, North Dakota. Included with the Petition was a Brief in Support discussing the criteria for redesignation under N.D. Sup. Ct. Admin. Rule 7.1(4).

[¶2] In September 1999, this Court had occasion to receive and review testimony on judicial service needs, population and caseload trends, and other criteria identified in N.D. Sup. Ct. Admin. R. 7.2, Section 4, regarding several judgeships, including Judgeship Nos. 1 and 5, in the Southwest Judicial District. See Supreme Court Nos. 990224 and 990249. This review and the associated consultations were conducted to assist this Court in identifying an existing district judgeship to be abolished to satisfy the required reduction in the number of judges by January 1, 2001. Judgeship No. 5, with chambers in Bowman, North Dakota, Southwest Judicial District, was

abolished by Order dated December 2, 1999, and effective December 31, 2000. See In the Matter of the Consultation under N.D.C.C. Section 27-05-02.1 Regarding Judgeship Nos. 6 and 7 in the Northeast Judicial District; Judgeship No. 2 in the Northeast Central Judicial District; Judgeship Nos. 6, 7 and 8 in the Northwest Judicial District; Judgeship Nos. 4 and 9 in the South Central Judicial District; and Judgeship Nos. 1, 3, and 5 in the Southwest Judicial District, 1999 ND 226, 603 N.W.2d 57.

[¶3] A hearing was not conducted concerning this Petition for Change of Designation of Resident District Court Judgeship Chamber for Judgeship No. 1. However, we take judicial notice of the information contained in Supreme Court Nos. 990224 and 990249, including the information resulting from the consultation with judges and lawyers of the Southwest Judicial District.

[¶4] We have reviewed whether the redesignation of the chambers is warranted in light of the information received in the Petition. In view of the 1999 hearing and data received, the Court finds no compelling reason to transfer the chambers from Dickinson to Bowman

[¶5] IT IS THEREFORE ORDERED, that the Petition for Change of Designation of Resident District Court Judgeship No. 1, with chambers in Dickinson, North Dakota, Southwest Judicial District, is DENIED.

[¶6] Dated at Bismarck, North Dakota, January 3, 2001.

[¶7]

Shirley W. Vandewalle, C.J.
William A. ...
Dale Sandstrom
Mary Muehlen Moring
Paul Ramsey Hansen