January 19, 2025
Testimony to the **Senate Judiciary Committee**
Submitted By: Jesse Walstad on behalf of the ND Association of Criminal Defense Lawyers
Testimony **in Opposition to S.B. 2102**

Chairwoman Larson and Members of the Senate Judiciary Committee:

My name is Jesse Walstad and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers throughout our state who dedicate a portion of their practice to criminal defense. The mission of the NDACDL is "to promote justice and due process" and to "promote the proper and fair administration of criminal justice within the State of North Dakota." With that mission in mind, the NDACDL **opposes S.B. 2102** and recommend a **DO NOT PASS** from the Senate Judiciary Committee.

Since 1971, N.D.C.C. § 29-15-21, has permitted any litigant one request for disqualification of any judge assigned to their case without any statement of reason or allegation of bias or prejudice if done within ten days of appointment and before the judge opines on a substantive issue in the case. The procedure is brilliant in its simplicity. It protects the interests of litigants by not requiring them to publicly accuse the assigned judge. It protects the court from public accusations of perceived bias, prejudice, and other derogatory claims, against which there is no procedure to defend. It ensures efficiency by swiftly and silently resolving perceived judicial concerns while each case is in its infancy, without any delay. Most importantly, it enhances the credibility of our Courts.

As proposed, S.B. 2102, would make two substantively harmful changes to Section 25-15-21.[1] First, Subsection 4, concerning the substance of a demand, would require the requesting litigant to disclose "the reason the change of judge is sought." Second, Subsection 6, concerning the required judicial actions, would permit denial of a demand when "the reason for the change was not based on reasonable grounds." These two changes would substantially harm judicial efficiency, reduce consistency across judicial districts, diminish litigants' perception of fairness and impartiality, and erode the credibility of our Courts.

There may be a misperception that Section 25-15-21 is used to bump judges defense attorneys' perceive to be "tough on crime" in order to get to judges who may be perceived as more lenient. This is simply untrue. Similarly, the suggestion that some North Dakota judges are soft on crime or fail to recognize and appropriately punish dangerous or repeat offenders, is categorically false. Demanding a change of judge simply does not correlate with lenient sentencing. Altering this statute will have no effect on violent or recidivist crime rates in North Dakota. Even if the proposed change could have some articulable effect depriving all litigants of this commonsense procedural safeguard is unjustified.

The reasons for requesting a change of judge are as varied as the litigants themselves. It may include the lawyer or the client's past personal contact with the judge, judicial demeanor, judicial experience, particular expertise in certain subject matter areas, conflicts of interest, perceived or actual bias or prejudice, docket currency, or perceptions of potential unfairness. The NDACDL opposes requiring disclosure of any reason in support of a demand for change of judge. Requiring litigants to disclose their reasons for requesting a different judge would create an environment where perceptions of bias—real and imagined—are publicly expressed, to the disadvantage of judges and litigants.

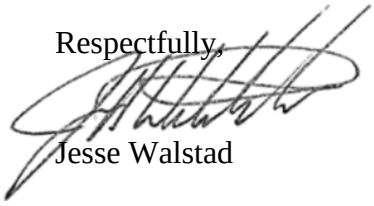
[1] The NDACDL takes no position on the non-substantive stylistic amendments to N.D.C.C. § 29-15-21 proposed in S.B. 2102.

Requiring disclosure of cause will silence many requests. That is a bad thing. Rather than efficiently eliminating perceptions of bias, unfairness, or unfitness at the beginning of each case, those perceptions would be carried forward, tainting litigation strategy, undermining the litigant's perception of the credibility of all substantive decisions made thereafter, and potentially manifesting late in the case to the disadvantage of all involved. Conversely, those who elect to disclose the reasoning for their request would hazard the risk of engaging in a public personal conflict with the sitting judge at the inception of the case. Our citizens should not face a Hobson's choice in the threshold question of each case.

S.B. 2102 also creates a "reasonable grounds" standard without providing our litigants and presiding judges any meaningful guidance. Because "for cause" disqualification is governed by North Dakota Code of Judicial Conduct Rule 2.11, it would be reasonable to interpret "reasonable grounds" for a change of judge under Section 29-15-12 as being something less than the strictures of Rule 2.11. However, that interpretation is not guaranteed. Another reasonable interpretation might be to import some or all of Rule 2.11. S.B. 2102 makes no distinction between the two. As a result, litigants and judges across eight judicial districts will be left to struggle with interpretive differences, further complicated by the absence of a hearing procedure to assess the veracity of allegations. This will result in case delays, expenditure of judicial and litigant resources, and ultimately result in appellate litigation. Said another way, S.B. 2102 will cause case delays, consume state resources, introduce substantial inconsistency, and erode the credibility of our Courts.

If passed S.B. 2102 will not have any measurable effect on future crime or criminal sentencing. It would cause delay, open the door to conflict between litigants and the judiciary, expend judicial resources, erode litigants' perceptions of fairness, increase judicial complaints, and diminish faith in the Courts. The NDACDL strongly urges a **DO NOT PASS** on S.B. 2102.

Respectfully,



Jesse Walstad