

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 345

SENATE BILL NO. 2354
(Senators Christensen, Heigaard, Lips)
(Representative E. Pomeroy)

JUDGES' SALARIES

AN ACT to amend and reenact sections 27-02-02 and 27-05-03 of the North Dakota Century Code, or in the alternative if House Bill No. 1729 does not become effective, to amend and reenact sections 27-02-02 and 27-05-03 of the North Dakota Century Code, relating to salaries of the judges of the supreme and district courts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1729 becomes effective, section 27-02-02 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-02-02. Salaries of judges of supreme court. Each judge of the supreme court shall receive an annual salary commencing July 1, ~~1981~~ 1983, of ~~forty-nine thousand nine hundred fifty-three thousand nine hundred~~ dollars and commencing on July 1, ~~1982~~ 1984, an annual salary of ~~fifty-three thousand nine hundred fifty-four thousand nine hundred seventy-eight~~ dollars except that the chief justice of the supreme court shall receive an additional one thousand five hundred dollars per annum.

SECTION 2. AMENDMENT. If House Bill No. 1729 does not become effective, section 27-02-02 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-02-02. Salaries of judges of supreme court. Each judge of the supreme court shall receive an annual salary commencing July 1, ~~1981~~ 1983, of ~~forty-nine thousand nine hundred dollars and commencing on July 1, 1982~~ an annual salary of ~~fifty-three thousand nine hundred~~ dollars except that the chief justice of the supreme court shall receive an additional one thousand five hundred dollars per annum.

SECTION 3. AMENDMENT. If House Bill No. 1729 becomes effective, section 27-05-03 of the 1981 Supplement to the North

Dakota Century Code is hereby amended and reenacted to read as follows:

27-05-03. Salaries and expenses of district judges. Each district judge of this state shall receive an annual salary commencing July 1, 1981 1983, of ~~forty-six thousand nine hundred fifty thousand~~ six hundred dollars and commencing on July 1, 1982 1984, of ~~fifty thousand~~ six hundred fifty-one thousand six hundred twelve dollars and his actual travel expenses, which shall include mileage and subsistence while engaged in the discharge of his official duties outside the county in which his chambers are located. Such salary and expenses shall be payable monthly in the manner provided by law.

Each district judge who has been appointed by the supreme court to act as presiding judge of a judicial district shall receive an additional one thousand two hundred dollars per annum.

SECTION 4. AMENDMENT. If House Bill No. 1729 does not become effective, section 27-05-03 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-05-03. Salaries and expenses of district judges. Each district judge of this state shall receive an annual salary commencing July 1, 1981 1983, of ~~forty-six thousand nine hundred dollars and commencing on July 1, 1982, of fifty thousand six hundred dollars~~ and his actual travel expenses, which shall include mileage and subsistence while engaged in the discharge of his official duties outside the county in which his chambers are located. Such salary and expenses shall be payable monthly in the manner provided by law.

Each district judge who has been appointed by the supreme court to act as presiding judge of a judicial district shall receive an additional one thousand two hundred dollars per annum.

Approved April 11, 1983

CHAPTER 346

HOUSE BILL NO. 1208
(Committee on Judiciary)
(At the request of the State Bar Board)

ATTORNEY LICENSURE

AN ACT to amend and reenact sections 27-02-07, 27-11-01, 27-11-13, 27-11-17, and 27-11-22 of the North Dakota Century Code, relating to the supreme court's authority to adopt rules relating to the practice of law, the penalty for practicing law without a license, the certificate of admission and licensure fee requirements for the practice of law, and the powers of the state bar board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-02-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-02-07. Rules relating to the unauthorized practice of the law may be made ~~in~~ by supreme court. The supreme court of this state may make all necessary rules for-

- 1- ~~The admission of persons to practice the profession of law in this state;~~
- 2- ~~The disbarment, disciplining, and reinstatement of attorneys at law in this state; and~~
- 3- ~~The the~~ restraint of persons unlawfully engaging in the practice of the law in this state.

SECTION 2. AMENDMENT. Section 27-11-01 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-11-01. Practicing law and serving on courts of record without certificate of admission and without payment of annual license fee prohibited - Penalty. ~~No person, except~~ Except as otherwise provided ~~in section 27-11-27, shall by state law or supreme court rule, a person may not~~ practice law, act as an attorney or counselor at law in this state, or commence, conduct, or defend in any court of record of this state, any action or proceeding in which he is not a party

concerned, nor may a person be qualified to serve on the supreme court or district court a court of record unless he has:

1. Secured from the supreme court a certificate of admission to the bar of this state; and
2. Secured an annual license therefor from the state bar board.

Any person violating any of the provisions of who violates this section is guilty of a class A misdemeanor.

SECTION 3. AMENDMENT. Section 27-11-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-11-13. Powers of state bar board. The state bar board may employ such assistants, purchase such supplies, and incur such expense as may be necessary to carry out the duties imposed upon it, but expenditures therefor shall not exceed the moneys in the state bar fund. It shall possess such other powers and duties relating to the admission of applicants to the bar as prescribed by state law or the supreme court.

SECTION 4. AMENDMENT. Section 27-11-17 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-11-17. Fee payable by all applicants for admission to bar - Disposition of fees. The state bar board shall receive a fee to be determined from time to time by the state bar board with the approval of the supreme court of an amount not to exceed fifty dollars from each applicant for admission to the bar of this state who submits to examination by the state bar board and shall receive a fee to be determined from time to time by the state bar board with the approval of the supreme court of an amount not to exceed one two hundred fifty dollars from each applicant for admission to the bar of this state who seeks admission upon motion in accordance with the provisions of sections 27-11-25 and 27-11-26 state law or supreme court rule. All such fees received shall be deposited and disbursed in accordance with section 54-44-12.

SECTION 5. AMENDMENT. Section 27-11-22 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-11-22. Annual licenses to practice law and to serve on certain courts - Requirement - Issuance - Fees. Every person who has an unrevoked certificate of admission to the bar of this state and who desires to engage in the practice of law, or who is to serve as a duly qualified justice of the supreme court or judge of a district court on or before the first day of January of each calendar year judge of a court of record, shall secure an annual license from the state bar board on or before January first of each year. Such The secretary-treasurer of the board shall issue the license shall be

issued by the secretary-treasurer of such board upon compliance with the rules adopted or approved by the supreme court to assure the professional competence of attorneys, and upon payment of a fee established by the state bar association at its last annual meeting, by a majority vote of its members in attendance at the meeting, not to exceed one hundred fifty dollars, and shall be good for one year from and after the first day of January of the. The license is valid for the calendar year for which it is issued.

Approved April 14, 1983

CHAPTER 347

SENATE BILL NO. 2463
(Olson)

SUPREME COURT SECURITY SERVICES

AN ACT to amend and reenact section 27-04-09 of the North Dakota Century Code, relating to security services to the supreme court; and to repeal section 27-04-10 of the North Dakota Century Code, relating to sheriffs acting as marshals of the supreme court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-04-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-04-09. ~~Marshal of supreme court---Compensation of marshal. The sheriff of the county in which a term of the supreme court is being held shall be marshal of the supreme court. He shall be authorized to serve all process of the court and may charge and receive the same fees and mileage for the service of any process issued by such court or otherwise, relating to the business of the court as is allowed by law to sheriffs for performing similar duties in the district court. Such fees and compensation shall be paid out of the state treasury as other expenses are paid. Court security. The state highway patrol and other law enforcement agencies, at the request of the chief justice, shall provide security services to the supreme court when the court considers those services to be necessary.~~

SECTION 2. REPEAL. Section 27-04-10 of the North Dakota Century Code is hereby repealed.

Approved March 10, 1983

CHAPTER 348

HOUSE BILL NO. 1389
(Kretschmar)FILING REQUIREMENT FOR CANDIDATE FOR
COUNTY JUDGE

AN ACT to amend and reenact section 27-07.1-01 of the North Dakota Century Code, relating to the filing requirements for a candidate for the office of county judge.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-07.1-01 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-01. County courts established in all counties - Election of judges. Following the completion of the terms of the present county judges, county justices, and judges of county courts with increased jurisdiction these offices and judgeships shall cease to exist and there shall be established in each county a county court pursuant to the provisions of this chapter. Except in those counties which have entered into an agreement with another county pursuant to section 27-07.1-02, at the general election in 1982 and every four years thereafter there shall be elected in each county a judge of the county court. The board of county commissioners of any county may authorize by resolution one or more additional judges for that county. In those counties which have entered into an agreement pursuant to section 27-07.1-02, one or more judges of the county court shall be elected by the eligible voters of the counties entering into the agreement. Each candidate for the office of judge of the county court in a county which has entered into a multicounty agreement shall comply with the appropriate filing requirements in each county to be served by the position any county in the multicounty area, and the county auditor in that county shall certify to the county auditors of the other counties which entered into the multicounty agreement the names of the candidates filing for the position.

Approved March 15, 1983

CHAPTER 349

HOUSE BILL NO. 1153
(Committee on Judiciary)
(At the request of the Attorney General)

MULTICOUNTY AGREEMENTS TO SHARE COUNTY JUDGE

AN ACT to amend and reenact section 27-07.1-02 of the North Dakota Century Code, relating to multicounty agreements to share the services of a county judge.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-07.1-02 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-02. Multicounty agreements to share services of judges. The boards of county commissioners of any two or more counties may enter into an agreement to provide for the election of a single judge or any number of judges to serve the county courts of the several counties entering into the agreement. Any county entering into such an agreement shall retain its own county court which shall be located in the county seat and each action shall be venued in the county court of any county in which venue is proper under other provisions of law or rule of the supreme court. The agreement shall set forth the number of judges to be elected, the manner in which the salary and expenses of the judge or judges and any court reporters will be divided by the various counties, and the manner in which services will be provided to the various counties. Any such agreement must be entered into at least one hundred twenty days prior to the primary election in any year in which a general election is to be held, except a county in which no candidate is elected and qualified or in which a vacancy occurs may enter into an agreement with another county for the services of a judge at any time. Any agreement must remain effective for the duration of the term to which the county judge is to be elected, or, in the event of a vacancy which occurs after the agreement is entered into, until the vacancy is filled by election and the person elected takes office. The candidates nominated or candidates elected as county judge shall be determined in both the primary and general elections by using the total combined votes in those counties which have entered into a multicounty agreement for judicial services. The candidate elected as judge of the county court in those counties which have agreed to share the services of a county judge is exempt from the requirement of section 11-10-04, but must be a resident of this state at the time of nomination.

Approved March 14, 1983

CHAPTER 350

HOUSE BILL NO. 1604
(Schneider)

COUNTY JUDGES' SALARIES

AN ACT to amend and reenact section 27-07.1-04 of the North Dakota Century Code, relating to salaries of county judges.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-07.1-04 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-04. Salaries of judges of county courts - Amount and payment. A county judge of a county court of this state shall receive the same salary being paid judges of the county courts of increased jurisdiction on December 31, 1982. The salary of judges serving more than one county pursuant to section 27-07.1-02 shall be based on the combined population of the counties served by the judge. A county judge is entitled to an annual salary of eighty-five percent of the salary paid to a district court judge, but the county or counties may increase that amount up to the same salary as a district court judge. Such salary shall be payable by the county or counties in equal monthly installments and shall be full remuneration for all official duties, including all fees collected for official acts as judge of the county court, except fees charged for performing marriage ceremonies. All fees collected for official acts as judge of the county court, except fees charged for performing marriage ceremonies, shall be deposited by the court into the county treasury of the county in which the court is located.

Approved March 10, 1983

CHAPTER 351

HOUSE BILL NO. 1340
(Conmy, Thompson)

COUNTY COURT MAGISTRATE

AN ACT to amend and reenact section 27-07.1-07 of the North Dakota Century Code, relating to magistrates in county courts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-07.1-07 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-07. Magistrates - Appointment - Salary - Authority. In these counties which have entered into an agreement to share the services of a judge pursuant to section 27-07.1-02 and in which the person serving as county judge does not reside, the county judge, subject to confirmation by the board of county commissioners, shall may appoint any qualified person, including the clerk of district court, to serve as magistrate. An appointed magistrate shall be paid a salary as fixed by the board of county commissioners and shall have such authority performable by the county judge as assigned by the county judge. The supreme court may promulgate rules for the qualifications of magistrates, the extent and assignment of authority by county judges, and the conduct of the office, including regulations for training sessions and regulations for continuing education.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 4, 1983

CHAPTER 352

HOUSE BILL NO. 1056
(Legislative Council)
(Interim Judiciary Committee)

COUNTY COURT JURISDICTION

AN ACT to amend and reenact sections 27-07.1-17, 30.1-02-02, 30.1-32-01, 30.1-32-03, 30.1-32-04, 30.1-33-01, 30.1-33-03, 30.1-33-04, 30.1-33-05, 30.1-33-06, 30.1-34-03, 30.1-34-04, 30.1-34-05, 32-03-28, 33-06-01, 33-06-02, 33-06-03, 33-06-04, 57-27-01, 59-01-11, 59-02-12, 59-02-20, 59-04-02, 59-04-03, 59-04-04, 59-04-08, 59-04-10, 59-04-15, 59-04-24, 59-04-25, 59-04-26, 59-04-27, 59-04-29, 59-04-31, 59-05-28, and 59-05-55, relating to county court jurisdiction over trusts, garnishment, attachment, claim and delivery of property, and forcible detainer cases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-07.1-17 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-17. Jurisdiction of county courts. A county court of any county of this state shall have jurisdiction in the following types of cases:

1. Civil cases with not more than ten thousand dollars in controversy. The jurisdiction of the county court extends to the following actions:
 - a. A garnishment action when the sum for which judgment is demanded in such action does not exceed ten thousand dollars.
 - b. An attachment action when the amount of damages claimed does not exceed ten thousand dollars.
 - c. An action for claim and delivery of property when the value of the property together with the sum, if any, demanded as damages does not exceed ten thousand dollars.

- d. An action for eviction from real property irrespective of value when the amount demanded therein for rents and profits or damages does not exceed ten thousand dollars.
2. Criminal misdemeanor, infraction, and noncriminal traffic cases.
 3. Small claims cases.
 4. Probate, guardianship, and other testamentary cases, including trusts and contested matters, pursuant to title 30.1.
 5. Trusts pursuant to title 30.1 and title 59.
 6. Preliminary hearings and arraignments in felony criminal cases.
 - 6- 7. Commitment proceedings pursuant to chapter 25-03.1.
 - 7- 8. Any other cases, except proceedings conducted pursuant to chapter 27-20, as assigned by the presiding district judge of the judicial district in which the county is located; provided, however, that any party is entitled to have any matter assigned pursuant to this subsection heard by a district judge if a written request therefor is filed with the presiding district judge within three days after receiving notice of the assignment, and, provided further, that the trial of a criminal matter may not be assigned to a county judge who presided at the preliminary hearing except where a preliminary hearing has been waived.

* SECTION 2. AMENDMENT. Section 30.1-02-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-02-02. (1-302) Subject matter jurisdiction.

1. To the full extent permitted by the Constitution, the The county court has jurisdiction over all subject matter relating to guardianship, probate, and testamentary matters, including:
 - a. Estates of decedents, including construction of wills and determination of heirs and successors of decedents.
 - b. Estates of protected persons.
 - c. Protection of minors and incapacitated persons.

* NOTE: Section 30.1-02-02 was also amended by section 64 of House Bill No. 1058, chapter 82.

- d. Trusts, to the extent necessary for the exercise of the court's jurisdiction over probate and testamentary matters.
2. The district court has subject matter jurisdiction over trusts, except as provided in subdivision d of subsection 1, and of all causes at law and equity not inconsistent with the exclusive original jurisdiction vested in the court by the North Dakota Constitution over probate and testamentary matters, the appointment of administrators and guardians, the settlement of accounts of executors, administrators, and guardians, the sale of land by executors, administrators, and guardians, and such other probate jurisdiction as conferred by law. The district court also has appellate jurisdiction over proceedings in the court as provided in chapter 30-26. The district and county courts have concurrent subject matter jurisdiction over trusts, except as provided in subdivision d of subsection 1. The district court has jurisdiction of all causes at law and equity not inconsistent with the exclusive original jurisdiction over probate and testamentary matters vested by subsection 1 in the county court.

SECTION 3. AMENDMENT. Section 30.1-32-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-32-01. (7-101) Duty to register trusts. The trustee of a trust having its principal place of administration in this state shall register the trust in the a district or county court of this state in the county encompassing the principal place of administration. Unless otherwise designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the trust instrument, is:

1. The usual place of business of the corporate trustee if there is but one corporate cotrustee; or
2. The usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one such person and no corporate cotrustee; and otherwise
3. The usual place of business or residence of any of the cotrustees as agreed upon by them.

The duty to register under this chapter does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release. The clerk of the district or county court

shall keep a record of all trust registrations in his county, and of any orders, or responses relating thereto, by the district or county court, and shall establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information.

SECTION 4. AMENDMENT. Section 30.1-32-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-32-03. (7-103) Effect of registration.

1. By registering a trust, or accepting the trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the district or county court in any proceeding under section 30.1-33-01 relating to the trust that may be initiated by any interested person while the trust remains registered. Notice of any proceeding shall be delivered to the trustee, or mailed to him by ordinary first-class mail, at his address as listed in the registration or as thereafter reported to the district or county court and to his address as then known to the petitioner.
2. To the extent of their interests in the trust, all beneficiaries of a trust properly registered in this state are subject to the jurisdiction of the district or county court of registration for the purposes of proceedings under section 30.1-33-01, provided notice is given pursuant to section 30.1-03-01.

SECTION 5. AMENDMENT. Section 30.1-32-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-32-04. (7-104) Effect of failure to register. A trustee who fails to register a trust in a proper place as required by this chapter, for purposes of any proceedings initiated by a beneficiary of the trust prior to registration, is subject to the personal jurisdiction of any district or county court in which the trust could have been registered. In addition, any trustee who, within thirty days after receipt of a written demand by a settlor or beneficiary of the trust, fails to register a trust as required by this chapter is subject to removal and denial of compensation or to surcharge as the district or county court may direct. A provision in the terms of the trust purporting to excuse the trustee from the duty to register, or directing that the trust or trustee shall not be subject to the jurisdiction of the district or county court, is ineffective.

SECTION 6. AMENDMENT. Section 30.1-33-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-33-01. (7-201) District court exclusive and county courts concurrent jurisdiction of trusts.

1. The district court has exclusive and county courts have concurrent jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trust, except for the proceedings over which the county court has exclusive jurisdiction as provided in section 30.1-02-02. These include, but are not limited to, proceedings to:
 - a. Appoint or remove a trustee.
 - b. Review trustees' fees and to review and settle interim or final accounts.
 - c. Ascertain beneficiaries, determine any question arising in the administration or distribution of any trust including questions of construction of trust instruments, instruct trustees, and determine the existence or nonexistence of any immunity, power, privilege, duty, or right.
 - d. Release registration of a trust.
2. Neither registration of a trust nor a proceeding under this section result in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval, or other action of any court, subject to the jurisdiction of the district or county court as invoked by interested parties or as otherwise exercised as provided by law.

SECTION 7. AMENDMENT. Section 30.1-33-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-33-03. (7-203) Trust proceedings - Dismissal of matters relating to foreign trusts. The district or county court will not, over the objection of a party, entertain proceedings under section 30.1-33-01 involving a trust registered or having its principal place of administration in another state, unless:

1. All appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration; or
2. The interests of justice otherwise would seriously be impaired.

The district or county court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust is registered or has its principal place of business, or the district or county court may grant a continuance or enter any other appropriate order.

SECTION 8. AMENDMENT. Section 30.1-33-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-33-04. (7-204) District and county court - Concurrent jurisdiction of litigation involving trusts and third parties. The district or county court of the place in which the trust is registered has concurrent jurisdiction with other district or county courts of this state of actions and proceedings to determine the existence or nonexistence of trusts created other than by will, of actions by or against creditors or debtors of trusts, and of other actions and proceedings involving trustees and third parties. Venue is determined by the rules generally applicable to civil actions.

SECTION 9. AMENDMENT. Section 30.1-33-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-33-05. (7-205) Proceedings for review of employment of agents and review of compensation of trustee and employees of trust. On petition of an interested person, after notice to all interested persons, the district or county court may review the propriety of employment of any person by a trustee, including any attorney, auditor, investment adviser, or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed, and the reasonableness of the compensation determined by the trustee for his own services. Any person who has received excessive compensation from a trust may be ordered to make appropriate refunds.

SECTION 10. AMENDMENT. Section 30.1-33-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-33-06. (7-206) Trust proceedings - Initiation by notice - Necessary parties. Proceedings under section 30.1-33-01 are initiated by filing a petition in the district or county court and giving notice pursuant to section 30.1-03-01 to interested parties. The district or county court may order notification of additional persons. A decree is valid as to all who are given notice of the proceeding though fewer than all interested parties are notified.

SECTION 11. AMENDMENT. Section 30.1-34-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-34-03. (7-303) Duty to inform and account to beneficiaries. The trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration. In addition:

1. Within thirty days after his acceptance of the trust, the trustee shall inform, in writing, the current beneficiaries and if possible, one or more persons who under section 30.1-03-03 may represent beneficiaries with future interests, of the district or county court in which the trust is registered and of his name and address.
2. Upon reasonable request, the trustee shall provide the beneficiary with a copy of the terms of the trust which describe or affect his interest and with relevant information about the assets of the trust and the particulars relating to the administration.
3. Upon reasonable request, a beneficiary is entitled to a statement of the accounts of the trust annually and on termination of the trust or change of the trustee.

SECTION 12. AMENDMENT. Section 30.1-34-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-34-04. (7-304) Duty to provide bond. A trustee shall provide bond to secure performance of his duties unless the terms of the trust expressly excuse the trustee from furnishing bond. On petition of the trustee or other interested person, the district or county court may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be filed in the court of registration or other appropriate court in amounts and with the sureties and liabilities as provided in sections 30.1-17-04 and 30.1-17-06 relating to bonds of personal representatives.

SECTION 13. AMENDMENT. Section 30.1-34-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-34-05. (7-305) Trustee's duties - Appropriate place of administration - Deviation. A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes of the trust and to its sound, efficient management. If the principal place of administration becomes inappropriate for any reason, the district or county court may enter any order furthering efficient administration and the interests of beneficiaries, including, if appropriate, release of registration, removal of the trustee, and appointment of a trustee in another state. Trust provisions

relating to the place of administration and to changes in the place of administration or of trustee control unless compliance would be contrary to efficient administration or the purposes of the trust. Views of adult beneficiaries shall be given weight in determining the suitability of the trustee and the place of administration.

SECTION 14. AMENDMENT. Section 32-03-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-03-28. Damages for tenant's willful holding over. For willfully holding over real property by a tenant, after the end of his term and after notice ~~to quit~~ of intention to evict has been duly given and demand of possession made, the measure of damages is double the yearly value of the property for the time of withholding, in addition to compensation for the detriment occasioned thereby.

SECTION 15. AMENDMENT. Section 33-06-01 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

33-06-01. When ~~forcible detainer~~ eviction maintainable. An action of ~~forcible detainer~~ eviction to recover the possession of real estate is maintainable in the proper county court when:

1. A party, by force, intimidation, fraud, or stealth, has entered upon the prior actual possession of real property of another and detains the same.
2. A party, after entering peaceably upon real property, turns out by force, threats, or menacing conduct the party in possession.
3. A party, by force or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise.
4. A lessee, in person or by subtenant, holds over after the termination of his lease or expiration of his term, or fails to pay his rent for three days after the same shall be due.
5. A party continues in possession after a sale of the real property under mortgage, execution, order, or any judicial process and after the expiration of the time fixed by law for redemption, or after the execution and delivery of a deed, or after the cancellation and termination of any contract for deed, bond for deed, or other instrument for the future conveyance of real estate or equity therein.
6. A party continues wrongfully in possession after a judgment in partition or after a sale under an order or decree of a county court.

SECTION 16. AMENDMENT. Section 33-06-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

33-06-02. Notice ~~to quit~~ of intention to evict - When required - When and how served. In all cases arising under subsections 4, 5, and 6 of section 33-06-01, three days' written notice ~~to quit of intention to evict~~ must be given to the lessee, subtenant, or party in possession, before proceedings can be instituted. Such notice may be served and returned as a summons is served and returned.

SECTION 17. AMENDMENT. Section 33-06-03 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

33-06-03. Legal representatives may bring ~~foreible detainer~~ eviction actions. Executors and administrators may bring actions of ~~foreible detainer~~ eviction in the county courts in the same manner as their testators and intestates, as the case may be.

SECTION 18. AMENDMENT. Section 33-06-04 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

33-06-04. ~~Foreible detainer~~ Eviction actions not joinable with other actions - Exception - When counterclaims only interposable. An action of ~~foreible detainer~~ eviction cannot be brought in a county court in connection with any other action, except for rents and profits accrued or for damages arising by reason of the defendant's possession. No counterclaim can be interposed in such action, except as a setoff to a demand made for damages or for rents and profits.

SECTION 19. AMENDMENT. Section 57-27-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-27-01. Rights of purchaser when lands not redeemed. Any owner of a tax sale certificate, original or subsequent, shall be entitled, if there is no redemption, to the possession, rents, and profits of the land involved, at the expiration of the period of redemption, and if on demand of such owner the party in possession refuses or neglects to surrender possession, he may be proceeded against as one holding over after the determination of his estate, by an action ~~in foreible detainer~~ of eviction, but all rights of the owner of such tax sale certificate shall cease and shall be deemed forfeited and extinguished, and the auditor of the county wherein such premises are situated must cancel such lien from his records, unless the owner of such tax sale certificate shall present the same to the county auditor and request the giving of notice of the expiration of the period of redemption within ten years from and after the date of the tax sale to which such certificate relates.

SECTION 20. AMENDMENT. Section 59-01-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-01-11. Transactions adverse to beneficiary prohibited - Exceptions. Neither a trustee nor any of his agents may take part in any transaction concerning the trust in which he or anyone for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee and of all other facts concerning the transaction which might affect his own decision and without the use of any influence on the part of the trustee, permits him to do so;
2. When the beneficiary, not having power to contract, the district court upon the like information of the facts, grants the like permission; or
3. When some of the beneficiaries having capacity to contract and some not having it, the former grant permission for themselves and the district or county court for the latter in the manner above prescribed.

SECTION 21. AMENDMENT. Section 59-02-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-02-12. Discretionary power of trustee - How exercised. A discretionary power conferred upon a trustee is not presumed to be left to his arbitrary discretion, but shall be controlled by the district or county court if not reasonably exercised, unless an absolute discretion clearly is conferred by the declaration of trust.

SECTION 22. AMENDMENT. Section 59-02-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-02-20. Discharge of trustee. A trustee can be discharged from his trust only as follows:

1. By the extinction of the trust;
2. By the completion of his duties under the trust;
3. By such means as may be prescribed by the declaration of trust;
4. By the consent of the beneficiary, if he has capacity to contract;
5. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind; or
6. By the district or county court.

SECTION 23. AMENDMENT. Section 59-04-02 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-02. Commencement of trust proceedings. Any trustee, beneficiary, or person interested in a trust may file a petition with the clerk of the district or county court praying that the administration of the trust be supervised. The form of said petition in substance shall be as is provided in sections 59-04-03 and 59-04-04 and notice of hearing thereon shall be given to interested parties as provided by sections 30.1-03-01 and 30.1-33-06, and such further notice shall be given as may be prescribed by court rules. The court, upon hearing, may enter its order that all further proceedings in the supervision of the administration of such trust shall be had in said court. The district or county court of the county where any portion of the trust property is located, upon petition of any interested person and upon like notice and hearing, may adopt and confirm as the act of such district or county court any order or decree of a foreign court with respect to the sale, mortgaging, leasing, or other disposition of the real property of a trust within this state. In all cases of public or charitable trusts, the attorney general and the state's attorney of the county where the trust is established shall be deemed persons interested in the trust estate.

SECTION 24. AMENDMENT. Section 59-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-03. Form of title in trust administration proceeding. The caption or title of the petition and of all orders, notices, or other proceedings relating to the supervision of the administration of a trust in district or county court shall be substantially as follows:

In the Matter of the administration by -----, trustee, of the trust created by -----.

SECTION 25. AMENDMENT. Section 59-04-04 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-04. Requisites of petition. The petition shall contain all of the following:

1. A statement showing the residence and post-office address of the trustee.
2. A statement as to the time and manner of the creation of the trust, as by will, deed, declaration, or contract.
3. A copy of the instrument creating the trust, recited in or annexed to the petition, and if the instrument is not available to the petitioner, that fact shall be stated.

4. If the fact is known to the petitioner, a statement showing where the original trust instrument is on file, or in whose possession it may be.
5. A statement showing whether the trustee has come into possession of the trust property through distribution under probate proceedings upon a will or through other judicial proceedings.
6. An itemized inventory giving the description, location, and estimated value of all property included in the trust, recited in or annexed to the petition.
7. A statement showing whether such inventory was filed by the trustee or other person interested.
8. The names and post-office addresses of all beneficiaries or persons interested in the trust property so far as known to the petitioner.
9. A statement showing whether the residence or post-office address of any such beneficiary or interested person named in the petition is unknown to the petitioner.
10. A statement as to whether there are or may be beneficiaries or interested persons other than those specifically named who are unknown to the petitioner.
11. Such other and further showing as the petitioner may consider relevant.
12. A prayer for the supervision of the administration of the trust by the district or county court and for the direction or order of the district or county court in respect to such other and specific matters as the petition may disclose.
13. Repealed by S.L. 1973, ch. 257, § 82, effective July 1, 1975.

SECTION 26. AMENDMENT. Section 59-04-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-08. Appearance - Waiver of notice - Admission of service. The general appearance of any interested person at any hearing in person, by attorney, or by the guardian of a minor or ~~person~~ incompetent person shall render prior notice to him unnecessary. Any such person, attorney, or guardian may waive notice of any hearing in the proceeding by written waiver filed with the clerk of the district or county court. Any such person, guardian, or attorney in the proceedings may admit in writing the due service of any notice in the proceeding. Where jurisdiction is made to depend upon the appearance, waiver, or admission of an attorney, his authority in writing must be filed with the clerk.

SECTION 27. AMENDMENT. Section 59-04-10 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-10. Orders of district or county court - Effect. Every order entered in trust proceedings, upon the notice prescribed in section 30.1-03-01, shall have the force and effect of a judgment. It shall be subject to appeal as provided by the terms of section 59-04-25 and shall be binding upon all interested persons ~~in interest~~ resident within or without the state, known or unknown, ascertained and in being, or otherwise.

SECTION 28. AMENDMENT. Section 59-04-15 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-15. Powers and duties of trustee. Every act of the trustee in contravention of the terms of the trust and statute shall be absolutely void except where the district or county court having jurisdiction and supervision of the administration of such trust, by order, on notice and hearing as provided in this chapter, shall authorize any such trustee to sell, mortgage, pledge, lease, or otherwise dispose of or invest trust property in such manner as best may accomplish the object and purpose of the trust, where it is made to appear to the satisfaction of the court that such order is necessary and for the best interests or benefit of the trust estate or person or persons beneficially interested therein, or who thereafter may acquire an interest therein, and where it is further established to the satisfaction of the court that the trust instrument is lacking in specific and adequate directions as to the disposition or investment of trust property, or that strict compliance with the terms of such instrument will tend to destroy the trust estate or create losses of principal or income.

SECTION 29. AMENDMENT. Section 59-04-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-24. Correction of mistakes - Relief from default - Copy of record furnished. Any person interested in the trust estate may file written objections to any account, report, or petition of the trustee before or at the time of the hearing and may present proof and evidence in support thereof. Any order made by the court in such proceeding may be modified or vacated to correct clerical errors or mistakes of calculation apparent on the face of the records, either by the court on its own motion or with or without notice. Within six months after the entry of any order, the district or county court may relieve any interested person from the order where it has been taken against him through his mistake, inadvertence, surprise, excusable neglect, or default therein, upon fifteen days' notice to the opposite party as prescribed by the terms of section 59-04-22. Whenever any person interested in the trust estate has been served with any notice of any proceeding based upon any petition, report, accounting, or other record required to be filed under the terms of this chapter, he may demand a copy

thereof and it shall be furnished forthwith and mailed or served on the interested party demanding it, free of charge, by the trustee or any other party commencing the proceeding.

SECTION 30. AMENDMENT. Section 59-04-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-25. Appeals. Any trustee, beneficiary, or person interested in such trust feeling aggrieved by any order of the district or county court made in such proceedings may appeal from the same or any part thereof to the supreme court within six months after the filing of such order with the clerk of the district or county court. Such appeal shall be taken in the manner, and upon the record and notice, provided by the terms of this chapter, and a single appeal may include any number of orders made appealable by this section.

SECTION 31. AMENDMENT. Section 59-04-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-26. Appeal - How taken. Within the time prescribed by this chapter, any interested person may take an appeal to the supreme court from any order or orders entered by the district or county court, by the service of a notice of appeal and by filing the same with a return or affidavit of service or admission thereof, together with a bond for costs in the sum of two hundred and fifty dollars, with the clerk of the district or county court. The bond for costs shall be executed by the appellant, with the sureties to be approved by the clerk of the district or county court, and shall be conditioned to the effect that the appellant will pay to the parties entitled thereto all costs that may be awarded against the appellant upon such appeal.

SECTION 32. AMENDMENT. Section 59-04-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-27. Stay of proceedings. Upon the perfecting of an appeal in the manner prescribed in section 59-04-26, no further proceedings under the order or orders appealed from may be taken pending the appeal, unless the district court, county court, or supreme court may direct otherwise upon hearing, and upon such notice thereof as the court by order may prescribe. The court may prescribe the terms and conditions of a supersedeas bond, deposit, or other act in lieu thereof. Otherwise no bond shall be required, except the cost bond in the sum of two hundred and fifty dollars, to stay all proceedings from the date of the filing of the notice of appeal together with the undertaking on appeal and the service thereof.

SECTION 33. AMENDMENT. Section 59-04-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-29. Procedure on appeal. The procedure on appeal to the supreme court and for certification of the record and the form of assignment of errors shall be, insofar as applicable, and except as

herein otherwise provided, as now provided by the statute for appeals in cases properly triable by the court without a jury in which an issue of fact has been joined. Where no testimony was taken by the court reporter at the hearing on which the order or orders appealed from was entered, the original records and files of the district or county court used upon the hearing, with the original notice of appeal and undertaking, shall be attached together and certified by the clerk of court and shall constitute the record for the purposes of appeal. The time for procuring a transcript of evidence for appeal shall ~~commence~~ commences to run from the date of the entry of the order from which the appeal is taken.

SECTION 34. AMENDMENT. Section 59-04-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-04-31. Affidavit of prejudice Demand for change of judge - Disqualification of judge. Any judge of the district or county court before whom a proceeding for the supervision of the administration of a trust has been commenced as is provided by this chapter may be disqualified to act as such judge at any time thereafter by the filing of an affidavit of prejudice a demand for change of judge with the clerk of such court, as is provided in title 28 29, Judicial Procedure, Civil Criminal, by any person interested in the trust estate who owns or controls a beneficial interest therein amounting to twenty-five percent or more in value of the estate. The procedure upon the filing of such affidavit demand in other respects shall conform to the procedure upon the filing of an affidavit of prejudice a demand for change of judge prescribed in title 28 29, Judicial Procedure, Civil Criminal.

SECTION 35. AMENDMENT. Section 59-05-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-05-28. Binding conditions - Court may supply defective execution. With the exceptions contained in this chapter, the intentions of the author of a power as to the mode, time, and conditions of its execution must be observed, subject to the power of a district or county court to supply a defective execution in the cases provided in sections 59-05-37 and 59-05-57.

SECTION 36. AMENDMENT. Section 59-05-55 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-05-55. District or county court acts if testator omits to designate trustee. When a power in trust is created by will and the testator has omitted to designate, expressly or by necessary implication, by whom the power is to be executed, its execution devolves on the district or county court.

Approved March 16, 1983

CHAPTER 353

HOUSE BILL NO. 1406
(Murphy)

SMALL CLAIMS COURT JURISDICTIONAL LIMITS

AN ACT to amend and reenact sections 27-08.1-01 and 27-08.1-03 of the North Dakota Century Code, relating to jurisdictional limits of small claims courts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-08.1-01 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08.1-01. Small claims court - Jurisdictional limits - Effective date. All judges of the county courts shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of said jurisdiction shall be known and referred to as the "small claims court". The jurisdiction of such court shall be confined to cases for recovery of money, or the cancellation of any agreement involving material fraud, deception, misrepresentation, or false promise, where the value of the agreement or the amount claimed by the plaintiff or the defendant does not exceed one thousand five hundred dollars. The proceedings in this court shall be commenced in the county of the defendant's residence, if the defendant is a natural person. If the defendant is a corporation or a partnership, the proceedings shall be commenced in any county in which the defendant has a place of business or in any county in which the subject matter of the claim arose. No claim shall be filed by an assignee of that claim. No garnishment or attachment shall issue from this court. Actions commenceable in the small claims court shall only be those in which the cause of action has accrued on or after January 1, 1971.

SECTION 2. AMENDMENT. Section 27-08.1-03 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-08.1-03. Informal hearing - Answer and counterclaim - Filing and service fees - Examination of debtor. No formal pleadings other than the claim affidavit and order for appearance shall be required, and the hearing and disposition of actions shall be informal. No court

reporter shall be required to be present to take the testimony unless arranged for and paid for by one of the parties to the action. The defendant may file an answer, and file a claim affidavit setting forth any new matter constituting a counterclaim, not to exceed one thousand five hundred dollars, which shall be delivered to the plaintiff in person or mailed to him by certified mail, not later than forty-eight hours before the hearing set for the appearance of the defendant. The compulsory counterclaim rule shall not apply to counterclaims in excess of one thousand five hundred dollars. At the hearing, the plaintiff and the defendant may appear without counsel. The court will conduct the proceedings and may make its own inquiry before, during, or after the hearing. After the court has found that money is owing by any party to the proceeding, the court may, in the presence of the prevailing party, inquire of the debtor as to plans for payment of the debt. The court may examine the debtor concerning the property owned by the debtor, at the hearing, as would be made under the provisions of chapter 28-25. The examination may be made without first having issued an execution against the property of the debtor and without further notice as otherwise provided in chapter 28-25. A trial by jury shall not be allowed in small claims court. A fee of ~~two~~ five dollars shall be charged for filing the claim affidavit, or counterclaim affidavit, plus one dollar for each defendant served.

Approved April 5, 1983

CHAPTER 354

HOUSE BILL NO. 1290
(Unhjem, Hamerlik)

JURORS' SUMMONS AND MILEAGE REIMBURSEMENT

AN ACT to amend and reenact subsection 3 of section 27-09.1-09 and section 27-09.1-14 of the North Dakota Century Code, relating to mileage and mailing of summons for jurors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 27-09.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. If a grand, petit, or other jury is ordered to be drawn, the clerk thereafter shall cause each person drawn for jury service to be served with a summons either personally or by registered or certified mail, return receipt requested first class mail, addressed to him the person at his or her usual residence, business, or post-office address, requiring him the person to report for jury service at a specified time and place.

SECTION 2. AMENDMENT. Section 27-09.1-14 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-09.1-14. Mileage and compensation of jurors. A juror shall be paid mileage at the rate of ~~fifteen cents per mile {1.61 kilometers}~~ for his travel expenses for each mile {1.61 kilometers} actually and necessarily traveled each way provided for state employees in section 54-06-09. A juror shall be compensated at the rate of twenty-five dollars for each day of required attendance at sessions of the district or county court and ten dollars for each day of required attendance at sessions of a coroner's inquest. The mileage and compensation of jurors shall be paid by the state for jurors at sessions of the district court and paid by the county for jurors at sessions of the county court. Jurors at coroner's inquests shall be paid by the county.

Approved April 5, 1983

CHAPTER 355

HOUSE BILL NO. 1632
(Kretschmar)

JUDICIAL COUNCIL MEMBERSHIP AND EXPENSES

AN ACT to amend and reenact sections 27-15-01, 27-15-02, and 27-15-10 of the North Dakota Century Code, relating to the membership and expenses of the judicial council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-15-01 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-15-01. Judicial council established. There shall be maintained a judicial council consisting of:

1. All judges of the supreme court, district courts, and county courts of the state.
2. The attorney general.
3. The dean of the school of law of the university.
4. Five members of the bar who are engaged in the practice of law who shall be chosen by the ~~executive committee~~ board of governors of the state bar association.
5. All retired judges of the supreme and district courts of the state.
6. Two municipal judges selected by the North Dakota supreme court.
7. Two magistrates selected by the North Dakota supreme court.

SECTION 2. AMENDMENT. Section 27-15-02 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-15-02. Term of office - Vacancy, how filled. The judges of the supreme court, district courts, and county courts, the attorney general, and the dean of the school of law in the university shall hold office as members of the council during the time they occupy their respective official positions. The retired judges of the supreme and district courts shall hold office as members of the council during retirement from their respective official positions. The term of office of municipal judges and magistrates who shall be appointed by the supreme court, and of the members of the bar who shall be appointed by the state bar association of North Dakota, shall be two years, commencing on the first Monday of January of odd-numbered years. A vacancy shall be filled by the authority originally selecting the member.

SECTION 3. AMENDMENT. Section 27-15-10 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-15-10. Compensation - Expenses. No member of the council shall receive compensation for any services rendered by him in such that capacity, but any necessary travel expenses, including mileage and subsistence, incurred by any judge of the district or county court, or justice of the supreme court, in the discharge of his duties as a member shall be are deemed expenses incurred in the performance of the duties of his that office and shall be paid as such. The necessary travel expenses of all other judges or justices, including mileage and subsistence, incurred in the discharge of duties as a member by retired district court and supreme court judges, municipal court judges and magistrates shall be paid from funds appropriated for the purposes of the judicial council from the supreme court budget. The necessary travel expenses of, including mileage and subsistence, incurred in the discharge of duties as a member by all other members of the council shall be audited and paid from the state bar fund in the same manner as other claims against such that fund are paid except that in the matter of mileage expenses, the retired judges who are members. Members of the council shall be paid such only for necessary travel expenses incurred within the this state, unless otherwise authorized by the chief justice of the supreme court.

Approved March 14, 1983

CHAPTER 356

HOUSE BILL NO. 1542
(Representative R. Larson)
(Senator Lodoen)

JUVENILE SUMMONS SERVICE AND COST

AN ACT to amend and reenact section 27-20-23 of the North Dakota Century Code, relating to the service of juvenile summons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-23. Service of summons.

1. If a party to be served with a summons is within this state and can be found, the summons shall be served upon him ~~personally~~ in accordance with Rule 4 of the North Dakota Rules of Civil Procedure at least twenty-four hours before the hearing. If he is within this state and cannot be found, but his address is known or can with reasonable diligence be ascertained, the summons may be served upon him by mailing a copy by registered or certified mail at least five days before the hearing. If he is without this state but he can be found or his address is known, or his whereabouts or address can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy to him personally or mailing a copy to him by registered or certified mail at least five days before the hearing.
2. If after reasonable effort he cannot be found or his post-office address ascertained, whether he is within or without this state, the court may order service of the summons upon him by publication in accordance with Rule 4 of the North Dakota Rules of Civil Procedure. The hearing shall not be earlier than five days after the date of the last publication.
3. Service of the summons may be made by any suitable person under the direction of the court.

4. The court may authorize the payment from ~~county~~ state funds of the costs of service and of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

Approved March 4, 1983

CHAPTER 357

HOUSE BILL NO. 1444
(Swiontek, Unhjem, Eagles)

DEPRIVED CHILD CASE DISPOSITION

AN ACT to amend and reenact section 27-20-30 of the North Dakota Century Code, relating to the disposition of juvenile court cases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-30. Disposition of deprived child.

1. If the child is found to be a deprived child the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child:
 - a. Permit the child to remain with his parents, guardian, or other custodian, subject to conditions and limitations as the court prescribes, including supervision as directed by the court for the protection of the child;
 - b. Subject to conditions and limitations as the court prescribes, transfer temporary legal custody to any of the following:
 - (1) Any individual who, after study by the juvenile supervisor or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child;
 - (2) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child;

- (3) The director of the county welfare social service board or other public agency authorized by law to receive and provide care for the child;
 - (4) An individual in another state with or without supervision by an appropriate officer under section 27-20-40; or
- c. Without making any of the foregoing orders transfer custody of the child to the juvenile court of another state if authorized by and in accordance with section 27-20-39 if the child is or is about to become a resident of that state.
 - d. Require the parents, guardian, or other custodian to participate in the treatment ordered for the child.
2. Unless a child found to be deprived is found also to be delinquent he shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children.

Approved March 4, 1983

CHAPTER 358

HOUSE BILL NO. 1387
(Kretschmar)

COUNTY JUDICIAL NOMINATING COMMITTEE

AN ACT to create and enact a new chapter to title 27 of the North Dakota Century Code, relating to vacancies in the office of judge of county court and to a judicial nominating committee; and to amend and reenact section 27-07.1-03 of the North Dakota Century Code, relating to vacancies in the office of judge of the county court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new chapter to title 27 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. In this chapter unless the context or subject matter otherwise requires:

1. "Candidate" means any person under consideration by the committee to fill a vacancy in the office of judge of the county court.
2. "Chairman" means the chairman of the committee and includes any acting chairman.
3. "Committee" means the judicial nominating committee.
4. "Judge" means a judge of county court.
5. "Nominee" means any candidate selected by the committee for inclusion on the list of candidates submitted to the county commission or, if there has been an agreement for sharing salary and expenses of a judge of the county court pursuant to section 27-07.1-02, county commissions.
6. "Permanent member" means a person appointed to serve on the committee for all vacancies in the office of judge of the county court during the member's term.

7. "Temporary member" means a person appointed to serve on the committee only for the time necessary to fill a vacancy in the office of the judge of county court in the member's area.

Creation and composition of committee - Terms of office - Appointment - Vacancies.

1. A judicial nominating committee is hereby created to consist of six permanent members and three temporary members.
2. The six permanent members shall be the same persons appointed to serve as permanent members of the judicial nominating committee for supreme court and district court vacancies pursuant to section 27-25-02. The chairman of that committee shall also be chairman of the judicial nominating committee established by this Act.
3. Each appointing authority, as established by section 27-25-02, shall appoint an additional temporary member from the area having a vacancy to serve on the committee for the time necessary to fill the vacancy. If two or more vacancies in the office of county judge occur in one area at the same time, the committee may submit a combined list of nominees to the county commission affected.
4. The executive director of the state bar association or a designee shall serve as nonvoting secretary of the committee.

Submission of nominee list to county commission. Within sixty days after receipt of written notice from a county commission that a vacancy in the office of judge of county court exists, the committee shall submit to the commission affected a list of not fewer than two nor more than seven nominees for appointment. No list of nominees is valid unless concurred in by a majority of the members of the committee and certified by the chairman. If the committee fails to submit a list of at least two nominees within the time prescribed by this section, the commissions affected may direct that the committee be reconvened. If the committee fails to submit a list of at least two nominees to the commissions affected within sixty days after receipt of written notice from the commissions directing the committee to reconvene, a special election may be called by a majority of the members of each of the boards of county commissioners affected.

Commissions to appoint or call special election.

1. Within thirty days after receipt of the list of nominees, the commissions affected shall do any of the following:
 - a. Fill the vacancy by appointment from the list of nominees submitted by the committee. The appointment

shall continue only until the next general election, when the office shall be filled by election for the remainder of the term.

- b. Return the list of nominees and direct the committee to reconvene.
 - c. Call a special election to fill the vacancy for the remainder of the term. If a special election is called within sixty days of the time of the next general election, the special election shall be held at the same time as the general election.
2. Any action to fill a vacancy pursuant to this section must be approved by a majority of the members of each of the boards of county commissioners of the counties affected.

Powers and duties. The committee shall:

- 1. Seek out qualified judicial candidates and may solicit judicial candidate nominations from any citizen.
- 2. Make such inquiry into the qualifications of each candidate, including legal knowledge and ability, judicial temperament, experience, and moral character, as the committee deems appropriate in order to secure a list of the most highly qualified nominees.

Submission of names by citizens - Withdrawal. A person may submit a name of any qualified citizen for consideration as a candidate. Submission shall be in writing on forms provided by the committee. Any candidate may withdraw from consideration by written request to the chairman of the committee.

Committee members ineligible for vacancy appointment. No member of the committee may be considered as a candidate or nominee during the member's term on the committee.

Expenses of committee. Committee members and the nonvoting secretary shall be allowed expenses for travel, board, and lodging incurred in the performance of their duties as provided in sections 44-08-04 and 54-06-09. The expenses shall be paid by the supreme court, which shall include the anticipated expenditures in the committee budget required by section 27-25-09.

SECTION 2. AMENDMENT. Section 27-07.1-03 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-03. Vacancies. Any vacancy in the office of county judge shall be filled by the board of county commissioners pursuant to section 1 of this Act, unless the board, by resolution, determines to fill the vacancy in accordance with section 44-02-04, except that in those counties which have entered into a multicounty

agreement pursuant to section 27-07-1-02, any appointment to fill a vacancy must be approved by a majority of the members of each of the boards of county commissioners of the counties which are party to the agreement.

Approved April 14, 1983