

2013 HOUSE JUDICIARY

HB 1075

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1075
January 15, 2013
Job 17224

Conference Committee

Kristie Helgler

Explanation or reason for introduction of bill/resolution:

Judicial referees.

Minutes:

Testimony 1

Chairman Koppelman: Opens

Jim Gange, Court administrator: HB 1075 authorizes the presiding judge of the Judicial District to appoint a Judicial Referee (Attachment 1). The referees would be governed by rule; by the rule making authority, the court has in place what kind of duties Judicial Referees can do.

Rep Hogan: Do you anticipate that Judicial Referees will assume additional responsibilities?

Jim Gange: That is hard to predict but if going by history, no.

Rep Hogan: Because of the extreme load that the courts have been experiencing, has the number of Judicial Referees been increased over the last 10 years and do you anticipate using them more for routine duties?

Jim Gange: It has remained fairly stable; right now we have about 8. The Supreme Court would not be asking for more District judges if they were going to give more work to Judicial Referees.

Chairman Koppelman: What about in Small Claims Court?

Jim Gange: Small Claims Court is under a different statute.

Rep Brabandt: What is a primary function of a referee?

Jim Gange: They basically handle cases that are relatively routine, like child support enforcement. They serve as the Judicial Officer in Juvenile Court, and some domesticated cases.

Rep Ketschmar: Has the Supreme Court discussed or talked about rules they would have set up if this bill passes.

Jim Gange: Supreme Court has had in place for a long time Administrative Rule 13, which is the rule that sets the qualifications for Judicial Referee, the area of their jurisdiction, establishes a removal process if a person does not want the referee, and it provides review of the referees decision. It specifies what referees are allowed to do.

Chairman Koppelman: I also noticed another change here is the authority for appointment, just listed to District Judges but changing that to presiding judge. Was it practice before that any judge could appoint a referee?

Jim Gange: The statute in this sense, the amendments reflect what the rule currently provides. Provides intern with copy of the Supreme Court Administrative Rule 13.

Chairman Koppelman: Closes

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1075
Job 17260
January 15, 2013

Conference Committee

Kristie Helgley

Explanation or reason for introduction of bill/resolution:

Judicial Referee.

Minutes:

Chairman Koppelman: Opens

Senator Hogan: Moves a Do Pass.

Rep Delmore: Seconds.

Carried by: Rep Brabandt.

Yes 12

No 0

Absent 2

Date: 1-15-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. # HB 1075**

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep Hogan Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos					
Rep. Gary Paur	/				
Rep. Vicky Steiner					
Rep. Nathan Toman	/				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Brabandt

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

REPORT OF STANDING COMMITTEE

HB 1075: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1075 was placed on the
Eleventh order on the calendar.

2013 SENATE JUDICIARY

HB 1075

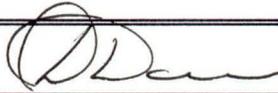
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1075
2/18/2013
Job #19093

Conference Committee

Committee Clerk Signature



Minutes:

Attachment

Relating to judicial referees

Senator David Hogue - Chairman

Jim Ganje - Explains the bill and gives a handout (1). He gives the delegations of judicial referees. He said if a referee can hear a protection order case then they should also be able to handle disorderly conduct or restraining order. He said they also handle child support enforcement proceedings so they should be able to handle appeals or reviews of license suspensions or failure to comply with child support orders. This bill allows the Supreme Court to determine by rule the scope of duties that can be delegated to the judicial referees. This statute would align with the statute that governs the appointment of magistrates by the presiding judge. Senator Armstrong asks if you are a party in front of a judicial referee you can always move it to a District Court Judge to which Mr. Ganje replies you can. Senator Hogue states that cannot do jury trials but can they do criminal trials, Mr. Ganje replies they cannot. Senator Sitte asks if this is going to add cost to the citizen who has to go through two proceedings. Mr. Ganje outlines what the judicial referees do and that they are much needed. He says it makes absolute good sense to give certain cases to the judicial referees. Senator Sitte says she is concerned that it is way too broad. Mr. Ganje says that is why there are safety valves.

Opposition - none

Neutral - none

Close the hearing

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1075
3/18/2013
Job #20109

Conference Committee

Committee Clerk Signature	
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Minutes:

Vote

Senator David Hogue - Chairman

Committee work

Senator Armstrong proposes an amendment, marked Armstrong Amendment (vote 1). He describes the amendment to the committee and says he spoke with Jim Ganje to make it workable for them. Senator Hogue explains to the committee what judicial referees do. He mentions that under our federal system and our state system it is the legislature that prescribes what types of cases courts can hear, not the courts themselves and that is the purpose of the amendment.

Senator Armstrong moves the amendment
Senator Lyson seconded

Discussion

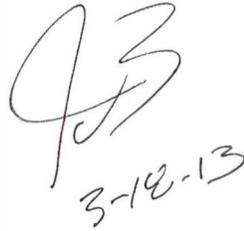
Senator Sitte asks for clarification on Section two to which Senator Armstrong explains what the amendment does to Section two. The committee discusses disorderly conduct cases and how time consuming they can be. Senator Armstrong explains how they can be appealed and the hearing process. The committee discusses county court and what they handled.

Verbal vote on the amendment - all yes
Amendment passes

Senator Armstrong moves a do pass as amended
Senator Grabinger seconded

Vote - 7 yes, 0 no
Motion passes
Senator Armstrong will carry

March 18, 2013



Handwritten signature and date: 3-18-13

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1075

Page 1, line 11, replace "The" with "In accordance with rules of the supreme court, the"

Page 1, line 12, remove the overstrike over "~~provided for in~~" and insert immediately thereafter "chapter 12.1-31.2."

Page 1, line 12, remove the overstrike over "~~title 14,~~" and insert immediately thereafter "sections 20.1-01-28 and 20.1-01-29."

Page 1, line 12, remove the overstrike over "~~chapter 27-20,~~"

Page 1, line 12, remove the overstrike over "~~chapter 28-25~~"

Page 1, line 12, remove "in"

Page 1, line 13, remove "accordance with"

Page 1, line 13, overstrike "rules of the supreme court" and insert immediately thereafter "subsection 6 of section 50-09-08.6, and subsection 2 of section 50-09-14"

Renumber accordingly

Date: 3/18/13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1075

Senate JUDICIARY Committee

Check here for Conference Committee 13,8029.01001

Legislative Council Amendment Number Armstrong Amendment

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Armstrong Seconded By S. Lyson

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue			Senator Carolyn Nelson		
Vice Chairman Margaret Sitte			Senator John Grabinger		
Senator Stanley Lyson					
Senator Spencer Berry					
Senator Kelly Armstrong					

Total (Yes) _____ No _____

Absent Verbal - all yes

Floor Assignment S.

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

Date: 3-18-13
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1075**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8029.01001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Armstrong Seconded By S. Grabinger

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment S. Armstrong

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

REPORT OF STANDING COMMITTEE

HB 1075: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1075 was placed on the Sixth order on the calendar.

Page 1, line 11, replace "The" with "In accordance with rules of the supreme court, the"

Page 1, line 12, remove the overstrike over "~~provided for in~~" and insert immediately thereafter "chapter 12.1-31.2."

Page 1, line 12, remove the overstrike over "~~title 14,~~" and insert immediately thereafter "sections 20.1-01-28 and 20.1-01-29."

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Renumber accordingly

2013 TESTIMONY

HB 1075

HB-1075

Testimony ①



North Dakota Supreme Court Rules N.D. Sup. Ct. Admin. R.

Effective June 1, 2012
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Administrative Rule 13 - JUDICIAL REFEREES

Section 1. Authority.

The 1985 Legislative Assembly provided for appointment of judicial referees under House Bill 1586. Under N.D. Const. art. VI, § 3, and N.D.C.C. § 27-05-30, the Supreme Court adopts the following administrative rule relating to judicial referees.

Section 2. Statement of Policy.

The North Dakota Judicial System's policy is to provide for the qualifications, the extent and assignment of authority, procedure and the conduct of the role of judicial referees within the North Dakota Judicial System in each judicial district.

Section 3. Qualifications of Judicial Referees.

Minimum qualifications for a judicial referee include:

- (a) United States citizenship;
- (b) physical residence in the judicial district of the appointment after appointment unless physical residence is waived by the presiding judge of the judicial district; and
- (c) a license to practice law in the state of North Dakota; or a juvenile supervisor/referee meeting the requirements of N.D.C.C. § 27-20-06(1)(i).

Section 4. Appointment.

The presiding judge, on behalf of all of the district court judges of the judicial district, must execute in writing the appointment of all judicial referees, to serve at the pleasure of the district court judges of the judicial district. Judicial referees must be compensated under the personnel system of the North Dakota Judicial System

Section 5. Scope of Delegable Duties.

- (a) A presiding judge, after consultation with the district court judges of the judicial district, may authorize a judicial referee to preside in any individual proceeding or class of proceedings under:
 - (1) N.D.C.C. title 14, except contested divorce trials;

- (2) N.D.C.C. ch. 27-20; and
- (3) N.D.C.C. ch. 28-25.

(b) A presiding judge, after consultation with the district court judges of the judicial district, may authorize a judicial referee, while serving and acting as a magistrate appointed under N.D. Sup. Ct. Admin. R. 20, to preside in any individual proceeding or class of proceedings under:

- (1) N.D.C.C. ch. 12.1-31.2; and
- (2) N.D.C.C. §§ 50-09-08.6(6) and 50-09-14(2).

(c) A judicial referee has such other authority of a district court judge as is necessary to carry out the delegated duties, including the issuance of orders to show cause, temporary restraining orders, temporary injunctions, and the power to impose remedial sanctions for contempt of court.

(d) The order issued under Subsection (a) of this section must be reduced to writing and signed by the presiding judge of the judicial district. The order must be filed with the clerk of district court of each county of the judicial district. The presiding judge must send a copy of this document to the State Court Administrator. A copy must be made available to any party upon request.

(e) Within the limits set forth in the written order of the presiding judge, district court judges may refer individual cases or classes of cases to a judicial referee by written order.

(f) After July 1, 1987, a judicial referee who hears matters under N.D.C.C. ch. 27-20 may not exercise supervision of personnel who supervise juveniles.

Section 6. Geographical Jurisdiction.

Each judicial referee will have jurisdiction only within the judicial district of appointment and is expected to maintain an office as assigned by the presiding judge of the judicial district. A judicial referee may be appointed to temporary duty in another judicial district by the presiding judge of the judicial district, with the consent of the presiding judge of the receiving judicial district or by the chief justice under N.D. Const. art. VI, § 3.

Section 7. Proceedings on the Record.

Proceedings must be heard on the record.

Section 8. Removal from Referee.

Any party to a proceeding before a judicial referee is entitled to have the matter heard by a district court judge, if written request is filed

by the party within seven days after service of either the initiating documents or other notice informing the party of this right.

Section 9. Standard of Conduct.

The Rules of Judicial Conduct must be observed by each judicial referee.

Section 10. Findings and Order.

(a) The findings and order of the judicial referee have the effect of the findings and order of the district court until superseded by a written order of a district court judge.

(b) Copies of the findings and order together with written notice of the right of review must be promptly served on the parties under N.D.R.Civ.P. 5.

Section 11. Procedure for Review.

(a) A review of the findings and order may be ordered at any time by a district court judge and must be ordered if a party files a written request for a review within seven days after service of the notice in Section 10(b). The request for review must state the reasons for the review. A party requesting review must give notice to all other parties. A party seeking to respond to a request for review must file their response within 14 days after service of notice of the request.

(b) The review by a district court judge must be a de novo review of the record. The district court may:

- (1) adopt the referee's findings;
- (2) remand to the referee for additional findings; or
- (3) reject the referee's findings.

(c) If the district court judge rejects the referee's findings, the court shall issue its own findings of fact, with or without a hearing.

EXPLANATORY NOTE

Section 5 was amended, effective March 1, 2012, to allow a presiding judge to authorize a judicial referee to preside in proceedings involving disorderly conduct restraining orders.

Section 8 was amended, effective March 1, 2011, to increase the time to request a district court judge from five to seven days after service of initiating documents.

Section 11(a) was amended, effective March 1, 2011, to increase the time to request a review from a district court judge from five to

seven days after service of the right to review. The time to respond to a request for review was increased from 10 to 14 days after service of notice of the request.

SOURCE: Joint Procedure Committee Meeting Minutes of September 23-24, 2010, pages 14-15, 21; April 29-30, 2010, page 21; April 24-25, 2003, page 3; January 30-31, 2003, pages 21-23; April 25-26, 2002, pages 16-17; May 6-7, 1999, pages 14-15; April 29-30, 1993, page 2. Court Services Administration Committee Meeting Minutes of May 17, 1985, pages 2-4. Family Caselaw Referee Study Subcommittee of Court Services Administration Committee Meeting Minutes of April 19, 1985, pages 3-8; March 15, 1985, pages 1-6; February 22, 1985, pages 1-9; January 11, 1985, pages 2-8; and December 17, 1984, page 5. North Dakota Constitution, Article VI, Section 3; and Section 27-05-30 NDCC.

[Adopted as emergency rule effective June 13, 1985; readopted September 17, 1985; amended effective March 1, 1994; January 1, 1995; March 1, 2000; March 1, 2003; March 1, 2004; March 1, 2011; March 1, 2012; June 1, 2012.]

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by the party within seven days after service of either the initiating documents or other notice informing the party of this right.

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27-05-31. Magistrates - Appointment - Salary - Authority. The presiding judge of a judicial district may appoint, subject to rules adopted by the supreme court, any qualified person, including a clerk of the district court, to serve as magistrate. A magistrate appointed pursuant to this section may be paid a salary as determined by the supreme court and has that authority performable by a district court judge as assigned by the presiding judge. The supreme court may adopt rules for the qualifications of magistrates, the extent and assignment of authority, and the conduct of the office, including rules relating to training sessions and continuing education.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1075

Page 1, line 11, replace "The" with "In accordance with rules of the supreme court, the"

Page 1, line 12, remove the overstrike over "~~provided for in~~" and insert immediately thereafter "chapter 12.1-31.2,"

Page 1, line 12, remove the overstrike over "~~title 14~~" and insert immediately thereafter "sections 20.1-01-28 and 20.1-01-29"

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Page 1, line 12, remove "in"

Page 1, line 13, remove "accordance with"

Page 1, line 13, overstrike "rules of the supreme court" and insert immediately thereafter "subsection 6 of section 50-09-08.6, and subsection 2 of section 50-09-14"

Renumber accordingly

The bill with the above amendments:

27-05-30. Judicial referees.

1. ~~There may be appointed in each judicial district, by The presiding judge of a judicial district, on behalf of the judges of district court having jurisdiction therein, may appoint~~ one or more referees to serve on a full-time or part-time basis. A referee is entitled to receive a salary within the limits of legislative appropriation.
2. ~~A district court~~ In accordance with rules of the supreme court, the presiding judge may assign a referee to preside in any case or proceeding provided for in chapter 12.1-31.2, title 14, sections 20.1-01-28 and 20.1-01-28, chapter 27-20, and chapter 28-25 pursuant to rules of the supreme court, subsection 6 of section 50-09-08.6, and subsection 2 of section 50-09-14.
3. The supreme court may promulgate rules for the qualification of referees, the extent and assignment of authority by the ~~district court judges of the judicial districts~~ presiding judge, procedure, and the conduct of the office, including regulations for training sessions and continuing education.