

## CHAPTER 27-23 JUDICIAL CONDUCT COMMISSION

### **27-23-01. Definitions.**

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

1. "Chair" means the chair of the commission and includes any acting chair.
2. "Commission" means the judicial conduct commission.
3. "Disciplinary counsel" means one or more attorneys appointed by the commission to gather and present evidence and act on its behalf in proceedings before the commission, a hearing panel, or the supreme court.
4. "Hearing panel" means a four-member panel consisting of at least two citizen members of the commission, appointed by the chair to conduct a hearing and make recommendations after the filing of formal charges or a petition for transfer to incapacity inactive status.
5. "Judge" means a justice of the supreme court, a judge of the district court, a judicial referee, a judge of a municipal court, and, in the case provided in section 29-01-14, a small claims court referee.
6. "Shall" is mandatory, but not jurisdictional, and "may" is permissive.

### **27-23-02. Creation and composition of commission, terms of office, appointment, and powers.**

The judicial conduct commission consists of two judges of the district court, one lawyer licensed to practice law in this state, and four citizens who are not judges, retired judges, or lawyers. Members representing the district court must be appointed by their state association and the lawyer member must be appointed by the board of governors of the state bar association of North Dakota. The citizen members must be appointed by the governor. The term of each member is three years. A member may not serve more than two full three-year terms. Membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy must be filled by the appointing power for the remainder of the term. Any appointment to fill a vacancy not made within forty-five days after the vacancy occurs or the term of office ends must be made by the supreme court. The commission shall select one of its members as chair.

The commission has the power to investigate complaints against any judge in the state and the chair may appoint a hearing panel to conduct hearings concerning the discipline, removal, retirement, or transfer to incapacity inactive status of any judge.

### **27-23-03. Other powers.**

1. A judge is disqualified from acting as a judge, without loss of salary, while there is pending:
  - a. An indictment or an information charging the judge in the United States with a crime punishable as a felony under North Dakota or federal law; or
  - b. A recommendation submitted by the commission to the supreme court for the judge's removal or retirement.
2. On recommendation of the commission or on its own motion, the supreme court may suspend a judge from office without salary when, in the United States, the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under North Dakota or federal law or of any other crime that involves moral turpitude under that law. If the judge's conviction is reversed, suspension terminates and the judge must be paid the salary for the period of suspension. If the judge is suspended and the conviction becomes final, the supreme court shall remove the judge from office.
3. On recommendation of the commission or a hearing panel of the commission, the supreme court may:
  - a. Retire a judge for disability that seriously interferes with the performance of the judge's duties and is, or is likely to become, permanent;

- b. Transfer, with the possibility of reinstatement, a judge to incapacity inactive status; or
- c. Publicly censure or remove a judge for action that constitutes willful misconduct in office, willful failure to perform duties prescribed by law or by administrative rule of the supreme court, willful violation of the code of judicial conduct as adopted by the supreme court, or habitual intemperance.

The commission may impose private, nonpublic discipline for minor misconduct that does not warrant public discipline or may direct disposition of allegations of misconduct in other manners considered appropriate. A proceeding under this section or implementing rules of the supreme court may not be instituted for alleged acts occurring more than six years before receiving a complaint.

4. A judge retired by the supreme court must be considered to have retired voluntarily. A judge removed by the supreme court is ineligible for judicial office, and pending further order of the court, the judge is suspended from practicing law in this state.
5. The supreme court shall make rules implementing this chapter and providing for confidentiality of proceedings.
6. The procedure provided for in this section may be used in addition to the impeachment proceedings provided for in the Constitution of North Dakota as applicable to district and supreme court judges.
7. The commission may employ or share the employment of such officers, assistants, and other employees as it deems necessary for the performance of the duties and exercise of the powers conferred upon the commission; may arrange for and compensate medical and other experts and reporters; may arrange for attendance of witnesses, including witnesses not subject to subpoena; and may pay from funds available to it all expenses reasonably necessary for effectuating the purposes of this chapter, whether or not specifically enumerated herein. The attorney general shall, if requested by the commission, act as its counsel generally or in any particular investigation or proceeding. The commission may employ special counsel from time to time whenever it deems necessary.
8. Each member of the commission must be allowed expenses for travel, board, and lodging incurred in the performance of official duties, as provided in sections 44-08-04 and 54-06-09.
9. An act of the commission or hearing panel is not valid unless concurred in by at least a majority of its members.

#### **27-23-04. Cooperation with, and assistance and information to, commission.**

State and local governmental bodies and departments, officers and employees thereof, and officials, officers, and employees of the courts of this state shall cooperate with and give reasonable assistance and information to the commission and any authorized representative thereof, in connection with any investigations or proceedings within the jurisdiction of the commission.

#### **27-23-05. Duty of sheriffs and police officers to serve process and execute orders of commission.**

It is the duty of the sheriffs and police officers in the several counties and cities, upon request of the commission or its authorized representative, to serve process and execute all lawful orders of the commission.

#### **27-23-06. General powers of commission, hearing panel, and disciplinary counsel.**

In the conduct of investigations and formal proceedings, the commission, hearing panel, or disciplinary counsel may:

1. Administer oaths.
2. Order and otherwise provide for the inspection of books and records.

3. Issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony relevant to any investigation or formal proceeding.

The power to administer oaths, to issue subpoenas, or to make orders for or concerning the inspection of books and records may be exercised by a member of the commission or a hearing panel, unless the commission otherwise determines.

**27-23-07. Process extends to all parts of state.**

In any investigation or formal proceeding under this chapter, process, wherever issued, extends to all parts of the state. A person is obliged to attend as a witness in any investigation or proceeding under this chapter and is punishable as provided in section 12.1-10-02 for failure to do so.

**27-23-08. Petition for order compelling person to attend or testify or produce writings or things - Service of order to appear before court - Order to appear before commission or hearing panel - Contempt.**

If a person refuses to attend, testify, or produce any writings or things required by subpoena, the commission or the hearing panel may petition the district court for the county in which the hearing is pending for an order compelling a person to attend and testify or produce the writings or things required by the subpoena before the commission or hearing panel. The court shall order a person to appear before it at a specified time and place to show cause why the person has not attended or testified or produced the writings or things as required. A copy of the order must be served upon the person. If it appears to the court that the subpoena was regularly issued, the court shall order a person to appear before the commission or hearing panel at the time and place fixed in the order and testify or produce the required writings or things. Upon failure to obey the order, a person must be punished as provided in section 12.1-10-02.

**27-23-09. Deposition.**

In any investigation or formal proceeding under this chapter, the commission, hearing panel, or disciplinary counsel, under the North Dakota Rules of Civil Procedure, may order the deposition of a person residing within or without the state to be taken.

**27-23-10. Fees and mileage of witnesses.**

Each witness, other than an officer or employee of the state or a political subdivision or an officer or employee of a court of this state, shall receive for the witness's attendance the same fees and all witnesses shall receive the same mileage allowed by law to a witness in a civil case. The amounts must be paid by the commission from funds appropriated for the use of the commission.

**27-23-11. Costs.**

No award of costs may be made in any proceeding before the commission, a master, or the supreme court.

**27-23-12. Commission budget.**

The commission is responsible for preparing and presenting to the legislative assembly a proposed biennial budget for the commission and is responsible and accountable for the expenditure of any funds appropriated. The supreme court administrator shall assist in the financial transactions of the commission by providing administrative bookkeeping services and similar related activities but has no authority to expend any funds without specific approval of the commission.