

**CHAPTER 27-17**  
**RETIREMENT OF JUDGES**

**27-17-01. Retirement of supreme court judges and district court judges.**

1. Every judge of the supreme court or of the district court, including one who has served or shall have served in either or both capacities, shall, at the time the judge ceases to be such judge and regardless of the individual's age at that time and without further payment by that individual into the judicial retirement fund, acquire a vested right to the judicial retirement salary herein provided for, payable upon application therefor at any time after that individual has attained any of the retirement ages with years of service, as follows:
  - a. 65 and 20 years of service;
  - b. 66 and 18 years of service;
  - c. 67 and 16 years of service;
  - d. 68 and 14 years of service;
  - e. 69 and 12 years of service; or
  - f. 70 and 10 years of service.

Provided, however, that any judge of the supreme court or district court who is appointed or elected to such court from and after July 1, 1960, who has become eligible for retirement hereunder but fails to make application therefor prior to attaining the age of seventy-three years, shall automatically waive all retirement benefits hereunder and shall receive a return of only such moneys as have been retained by the state of North Dakota as a judicial retirement assessment, upon the salary of such judge.

2. If a judge has served fewer than the years of service above required for any given retirement age, the judge is entitled to receive judicial retirement salary only in proportion that the judge's years of service bear to the years of service otherwise required for retirement at such age. Any judge who has not served at least ten years on reaching that individual's seventy-third birthday may not be deemed to have waived retirement benefits under this chapter, provided the judge retires at the expiration of the judge's present term.
3. The amount of judicial retirement salary payable to a retired judge under subsection 1 must be equal to fifty percent of the annual salary payable to judges of the classification the retired judge had at the time the individual retired, provided that prior to retirement the individual was re-elected as a judge of either the supreme or district court following July 1, 1973, but in no event may the individual's judicial retirement salary be computed upon a judicial salary less than the one the individual last received prior to re-election. The amendment to this section may not be construed to affect supreme or district court judges who shall have retired prior to July 1, 1973, or who shall retire during or at the end of their term of office which commenced prior to that date. As used in this subsection, the word "re-elected" also includes election of a former district judge to the supreme court, and election of a former supreme court judge to the district court.
4. The judicial retirement salary payable under this section must be paid to the retired judge during the remainder of the individual's natural life and must be paid by the director of the office of management and budget, within thirty days after receiving application therefor, in the same manner as salaries are paid to judges of the district court and judges of the supreme court, except that judicial retirement salaries are not subject to judicial retirement assessment.
5. In lieu of receiving the judicial retirement salary otherwise payable under this chapter, the judge, at any time after having attained retirement age, may irrevocably elect to receive judicial retirement salary according to one of the following optional modes of payment:
  - a. First Option. Three-fourths of the judge's retirement salary payable to the judge alone until death and thereafter one-half of such amount payable to the surviving

spouse upon the spouse's attaining sixty-two years of age and until the spouse remarries or dies.

- b. Second Option. Two-thirds of the judge's retirement salary payable to the judge alone until death and thereafter a like amount payable to the surviving spouse upon the spouse's attaining sixty-two years of age and until the spouse remarries or dies.
- c. Third Option. One-half of the judge's retirement salary payable to the judge until death and a like amount payable to the spouse upon the spouse's attaining sixty-two years of age and so long as the spouse continues to be the judge's spouse or unremarried surviving spouse.

The election of one of the foregoing optional modes of payment must be made in the application for payment of judicial retirement salary, or by written declaration of such election, signed by the judge and delivered to the director of the office of management and budget. In the event the judge has elected an optional mode of payment and dies without having made application for judicial retirement salary, the judicial retirement salary payable to the surviving spouse according to the judge's option is payable to the surviving spouse in the same manner as if the judge had made application for judicial retirement salary. In the event that a judge entitled to retirement pay dies without having elected an optional mode of payment, the surviving spouse is entitled to payments as provided by the first option as set forth in subdivision a. Judicial retirement salary payable according to one of the foregoing optional modes of payment must be paid in like manner as the full judicial retirement salary is paid. Any judge who retired prior to the effective date of the amendment to this section as provided for in chapter 222 of the 1961 Session Laws, and otherwise eligible for the optional modes of payment herein provided for, may apply for one of the optional modes of payment by written declaration to the director of the office of management and budget; provided, however, such judge shall repay to the state treasury the amount of money the individual has drawn since the date of the individual's retirement in excess of what the individual would have drawn if the individual had chosen the optional mode of payment now applied for at the date of the individual's retirement.

#### **27-17-01.1. Supplemental retirement benefits.**

Repealed by S.L. 1983, ch. 576, § 4.

#### **27-17-02. Retention of assessments from judges' salaries - Withdrawal of sums so retained.**

1. Every judge of the supreme court or of the district court is subject to a judicial retirement assessment in the amount of five percent of the judge's salary during the first twenty years of service as such judge, from and after the effective date of this section, which amount must be deducted, withheld, and retained by the state of North Dakota. In computing the period of assessment, every judge must be credited with all previous years in which judicial retirement assessments have been deducted and withheld from the judge's salary.
2. In lieu of receiving judicial retirement salary under this chapter, a judge of the supreme court or a judge of the district court, or in the event of the judge's death, the surviving spouse or legal representative, upon application to the supreme court at any time after the person ceases to be such judge and without having made application for and received judicial retirement salary under this chapter, is entitled to receive the amount of judicial retirement assessments heretofore or hereafter deducted and withheld by the state of North Dakota. If such judge has received judicial retirement salary under this chapter, the amount of judicial retirement assessments deducted and withheld by the state of North Dakota in excess of judicial retirement salary received by such judge, are payable, in the event of the judge's death, but not otherwise, to the surviving spouse if living, otherwise to the judge's legal representative.
3. If any former judge, after having withdrawn judicial retirement assessments withheld by the state of North Dakota, shall thereafter become a judge of the supreme court or

of the district court of this state, the person may, at the person's election, within one year after becoming such judge, reinstate the person's prior years of service by returning to the fund the amount withdrawn by the person, with simple interest at the rate of four percent per annum from the time of such withdrawal.

**27-17-03. Services and compensation of retired justices and judges.**

1. Upon retirement of a justice of the supreme court or a judge of the district court, the chief justice of the supreme court may appoint the retired justice or judge to serve as a surrogate judge of the supreme court to aid and assist the court in the performance of judicial duties within the unified judicial system as may be assigned by the chief justice with the retired justice's or judge's consent.
2. An appointment under this section does not become effective until the appointee subscribes and files in the office of the secretary of state an oath or affirmation substantially as follows: "I do solemnly swear (or affirm) that I will support the constitutions of the United States and the state of North Dakota, and that I will faithfully discharge the duties of the office of surrogate judge of the state of North Dakota to the best of my ability."
3. Subject to subsection 4, a surrogate judge is entitled to receive compensation for services rendered for each day actually engaged in the performance of judicial duties in an amount equal to five percent of the gross monthly salary of a regularly elected or appointed and qualified justice or judge of the court to which the services are rendered, or one-half of that daily compensation for services of one-half day or less.
4. A surrogate judge is not entitled to receive as compensation for services rendered in the performance of judicial duties during any calendar year a sum of money which when added to any judicial retirement benefits received by the surrogate judge for that year exceeds the annual salary of a justice or judge of the court from which the justice or judge retired. The compensation must be paid upon the certificate of the surrogate judge showing that the services were performed for the number of days claimed in the certificate. Services of a surrogate judge under this section and receipt of compensation therefor do not reduce or otherwise affect the amount of any retirement benefits to which the judge otherwise would be entitled.
5. In addition to daily compensation, a surrogate judge is entitled to receive reimbursement for travel expenses necessarily incurred in the performance of judicial duties under the assignment, as regularly elected or appointed and qualified justices and judges are entitled to receive.
6. A retired justice of the supreme court or a retired judge of the district court is also eligible to serve as a master and to be compensated for services rendered in any civil case or other judicial proceeding when so designated by the court having power to appoint masters; a retired justice or judge, when requested, is also eligible to serve as legal counsel and to be compensated for services rendered in the office of the attorney general, in any executive department, commission, or bureau of the state, and for any committee of the legislative assembly.

**27-17-04. Salary of retired judges.**

Repealed by S.L. 1957, ch. 210, § 3.

**27-17-05. Disposition of contributions.**

All moneys in the judges retirement fund in the general fund are hereby transferred to a special fund within the state treasury to be known as the judicial retirement fund. Any money collected pursuant to this chapter must be deposited with the state treasurer, who shall credit the same to the special fund to be known as the judicial retirement fund.

**27-17-06. Immediate withdrawal of present active judges from judges retirement fund.**

1. From and after July 1, 1973, each judge of the supreme or district court serving on that date and each former judge of the supreme or district court, not receiving judicial

retirement salary, may elect to withdraw the judge's previous contributions made pursuant to this chapter, and thereafter not participate in a judicial retirement program provided for by law. This option ceases to be available and may not be exercised after June 30, 1975. If a judge selects this option, the judge is entitled to receive the combined total of the following sums:

- a. The entire amount of the judge's previous contributions made pursuant to this chapter, to be calculated to the date of election under this section; plus
  - b. An amount calculated by applying the vesting schedule set forth in section 54-52-11 to an amount equal to sixty percent of the judge's individual contributions as calculated in subsection 1, plus earnings thereon as calculated in subsection 3; plus
  - c. An amount calculated by applying the figure .05625 to the periodic annual or partial annual balances in the individual judge's account during the judge's years of service prior to selecting the option provided by this section. The figure applied pursuant to this subdivision must be compounded annually.
2. The total amounts received pursuant to this section may not be considered taxable income for the purposes of chapter 57-38. Selection of the option provided by this section must be made in writing to the director of the office of management and budget.