

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 1056

Short Title: D.A. Removal/Costs.

(Public)

Sponsors: Senator Daniel.

Referred to: Judiciary I.

May 6, 1993

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT COURT COSTS MAY BE ASSESSED AGAINST A PARTY THAT FILES, WITHOUT REASONABLE GROUNDS, AN AFFIDAVIT CHARGING THE DISTRICT ATTORNEY WITH GROUNDS FOR REMOVAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-66 reads as rewritten:

"§ 7A-66. Removal of district attorneys.

The following are grounds for suspension of a district attorney or for ~~his~~the district attorney's removal from office:

- (1) Mental or physical incapacity interfering with the performance of ~~his duties~~which the duties of office, which is, or is likely to become, permanent;
- (2) Willful misconduct in office;
- (3) Willful and persistent failure to perform ~~his duties;~~the duties of office;
- (4) Habitual intemperance;
- (5) Conviction of a crime involving moral turpitude;
- (6) Conduct prejudicial to the administration of justice which brings the office into disrepute; or
- (7) Knowingly authorizing or permitting an assistant district attorney to commit any act constituting grounds for removal, as defined in subdivisions (1) through (6) hereof.

A proceeding to suspend or remove a district attorney is commenced by filing with the clerk of superior court of the county where the district attorney resides a sworn affidavit charging the district attorney with one or more grounds for removal. The clerk

1 shall immediately bring the matter to the attention of the senior regular resident superior
2 court judge for the district or set of districts as defined in G.S. 7A-41.1(a) in which the
3 county is located who shall within 30 days either review and act on the charges or refer
4 them for review and action within 30 days to another superior court judge residing in or
5 regularly holding the courts of that district or set of districts. If the superior court judge
6 upon review finds that the charges if true constitute grounds for suspension, and finds
7 probable cause for believing that the charges are true, ~~he~~ the judge may enter an order
8 suspending the district attorney from performing the duties of ~~his~~ office until a final
9 determination of the charges on the merits. During the suspension the salary of the
10 district attorney continues. If the superior court judge finds that the charges if true do
11 not constitute grounds for suspension or finds that no probable cause exists for believing
12 that the charges are true, ~~he~~ the judge shall dismiss the ~~proceeding~~ proceeding and may
13 assess the costs, including reasonable attorneys' fees against the person who filed the
14 affidavit if there were no reasonable grounds for filing it.

15 If a hearing, with or without suspension, is ordered, the district attorney should
16 receive immediate written notice of the proceedings and a true copy of the charges, and
17 the matter shall be set for hearing not less than 10 days nor more than 30 days
18 thereafter. The matter shall be set for hearing before the judge who originally examined
19 the charges or before another regular superior court judge resident in or regularly
20 holding the courts of that district or set of districts. The hearing shall be open to the
21 public. All testimony shall be recorded. At the hearing the superior court judge shall
22 hear evidence and make findings of fact and conclusions of law and if ~~he~~ the judge finds
23 that grounds for removal exist, ~~he~~ the judge shall enter an order permanently removing
24 the district attorney from office, and terminating ~~his~~ the district attorney's salary. If ~~he~~
25 the judge finds that no grounds exist, ~~he~~ the judge shall terminate the suspension, if any.

26 The district attorney may appeal from an order of removal to the Court of Appeals
27 on the basis of error of law by the superior court judge. Pending decision of the case on
28 appeal, the district attorney shall not perform any of the duties of ~~his~~ office. If, upon
29 final determination, ~~he~~ the district attorney is ordered reinstated either by the appellate
30 division or by the superior court upon remand ~~his~~ the district attorney's salary shall be
31 restored from the date of the original order of removal."

32 Sec. 2. This act becomes effective October 1, 1993, and applies to actions
33 commenced on or after that date.