

IN THE SUPREME COURTSTATE OF NORTH DAKOTAFILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

JUN 22 2015

La Verne Koenig,
Petitioner,

v.

Frank L. Racek, in his
Capacity as Presiding Judge
East Central Judicial District,

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS
MANDAMUS AND FOR WRIT
OF PROHIBITION OR OTHER
WRIT, MOTION FOR EXPEDITED
REVIEW

Sup. Ct. case No. _____

Petitioner La Verne Koenig respectfully states as follows:

PARTIES TO THE ACTION

Petitioner La Verne Koenig is the Defendant in State v. Koenig, Dist. Ct.

No. 49-2014-CR-198, *pending* in the East Central Judicial District of North
Dakota.Respondent Frank L. Racek, is the Presiding Judge of the East Central Judicial
District Court in the State of North Dakota.JURISDICTION

The Court has original jurisdiction with authority to issue, hear and determine such original and remedial writs as may be necessary to properly exercise its jurisdiction. N.D. Const. Art. VI, Sec. 2; N.D.C.C. 27-02-04; State ex rel. Kusler v. Sinner, 491 N.W. 2d 382 (N.D. 1992); State ex rel. Peterson v. Olson, 307 N. W. 2d 528, 530-31 (N.D. 1981). The Court's original jurisdiction extends to those cases where the questions presented are publici juris and affect the franchises or prerogatives of the state, or the

liberty of its people. **State ex rel. Link v. Olson**, 286 N. W. 2d 262 (N.D. 1979). The interest of the state is primary, and the public must have an interest or right that is affected. **State ex rel. Peterson v. Olson**, 307 N. W. 2D 528, 530-31 (N.D. 1981).

This Court issues supervisory writs to rectify errors and prevent injustice when no adequate alternative remedies exist. **Reems v. Hunke**, 509 N. W. 2d 45, 45 (N.D. 1993). This Court has held that Orders denying demands for change of judge are not appealable. **In re Estate of Ketterling**, 515 N. W. 2d 158, 161 (N.D. 1994)

Under N.D.C.C. Sec. 27-02-04, the Supreme Court has supervisory power over inferior courts and may issue writs in the exercise of this power.

At issue here is whether or under what circumstances the North Dakota legislature in its legislative capacity, implements statutory mandated procedures for the disqualification of assigned judges to hear cases, providing a specific time in which the parties to the action must act, granting the citizens a right to demand a change of judge without showing of cause or prejudice, mandating that the Presiding Judge give reasons if it invalidates the demand for change of judge, which the East Central Judicial District Court has failed and/or refused to comply with the legislative enactment. Denying a demand for change of judge without setting forth any reasons for the denial violating the Due Process Clause.

This issue has significant public interest to North Dakota residents, defendants and plaintiffs in civil and criminal proceedings, as the practice gives the appearance of impropriety, is arbitrary, contrary to State law in that all Judges are sworn to uphold the law of the State of North Dakota as implemented by the State legislature. It denies the public of equality under the law and clearly implies that the State Legislature required the

performance of idle acts, if its statutory procedures for demand a change of judge can be disregarded by Judges so that the parties never know what reasons their demand for change of judge was denied for and denies this Appellate Court of any findings of facts to determine if the lower Court's conclusions of law are just and proper.

It further violates the rights of citizens of this State, and Petitioner, of the right to demand a change of judge without a showing of cause or prejudice as provided by State Statute, N.D.C.C. 29-15-21 as that Statute was interpreted by this Court in State v. Zueger, 459 N. W. 2d 235 (N.D. 1990).

The practice violates Petitioner's and the citizens of this State of their right to an impartial judge. Every person appearing in Court's of Law, have the Constitutional right to an impartial tribunal, as so held by United States Supreme Court. The Order herein violates Petitioner's right to demand a change of judge, without a showing of cause or prejudice, as provided by State Statute and State case law. The record below provides the facts that the demand for change of judge was timely filed, made in compliance with State Statute, N.D.C.C. 29-15-21, the Judge sought to be disqualified had not ruled upon any matter in the case, and the demand was made in good faith and not for the purposes of delay.

The Demand set forth cause which Petitioner firmly believes proves he is entitled to demand the disqualification of Judge Susan L. Bailey. Cause that a reasonable detached person would deem the Petitioner is not able to enforce his Constitutional and Statutory rights before said Judge Susan L. Bailey.

The Order denying the change of judge sets forth no reasons for the denial contrary to

State Statute, N.D.C.C. 29-15-21(6).

Conversely, the State has no legitimate interest in allowing its District Court Judges to circumvent legislative enactments, that are and/or may be inconsistent with their personal beliefs, desires or whims.

NATURE OF PROCEEDING

On May 11, 2015, the Traill County Clerk of the Court's gave Notice of Hearing in Case No. 49-2015-TR-00594. The Notice of Hearing [Scheduling Order] gave the parties Notice that the Judge assigned was Susan L. Bailey, the hearing date was scheduled for May 27, 2015, at 9:45 A.M. to be heard in Traill County Courthouse, Hillsboro, North Dakota.

The Clerk of Courts served this Notice of Hearing by United States Mail on May 12, 2015. Petitioner received Notice on May 14, 2015. Petitioner filed a Demand for Disqualification/Change of Judge of Judge Susan L. Bailey on May 21, 2015.

On May 27, 2015, Judge Susan L. Bailey recognized the timely Demand for Disqualification Change of Judge, stated that she had no authority or jurisdiction to proceed until the Presiding Judge had ruled upon the Demand. This in accord with N.D.C.C. 29-15-21(6). No further proceedings were held thereto.

On June 1, 2015, the Clerk of Court's served by U.S. Mail an Order denying Petitioner's Demand for Disqualification/Change of Judge. The Order contains no findings of facts or reasons for the denial of the Demand for Disqualification of Judge Susan L. Bailey.

North Dakota Century Code, Section 29-15-21(6) mandates the Presiding Judge state

reasons for invalidating demands for change of judge. This purported Order is not signed with a legible signature, nor is the purported signature followed by a printed signature. The Signature does not appear to Petitioner to be that of the Presiding Judge of the East Central Judicial Circuit Court, Judge Frank L. Racek. The Order appears to have been signed on May 28, 2015 at 1:13:34 PM. A New Notice of Hearing was served dated May 29, 2015, which again noticed the Judge assigned as Susan L. Bailey, with the hearing scheduled for July 29, 2015 at 9:30 AM in the Traill County Courthouse, Hillsboro, North Dakota. No proceedings have been held before Judge Susan L. Bailey, nor has Judge Bailey ruled on any issues involved in this matter.

NATURE OF RELIEF REQUESTED

This case represents issues essential to North Dakota's public interest and which directly affect its constituents. Whether the Judges in the East Central Judicial District may circumvent State legislative enactments for their personal interests, desires, at the cost of depriving the citizens of their rights and privileges of timely demanding the change of an "assigned" judge, as mandated by N.D.C.C. 29-15-21 and **State v. Zueger**, 459 N. W. 2d 235 (N.D. 1990). The legislative enactment 29-15-21 and **Zueger**, act as a vested interest to the citizens rights, if they timely act upon notice of assignment of judge, of their right to demand a change of judge without a showing of cause or prejudice. The failure/refusal of the Presiding Judge to set forth reasons for invalidating a demand for change of judge, mandated by N.D.C.C. 29-15-21(2) constitutes an "abuse of discretion" evinces acts as an arbitrary, discriminatory and unconstitutional entrenchment of power purely the result of manipulation and intimidation, that violates

the Constitution's Due Process and Equal Protection Clause. It violates the citizens of North Dakota of their statutory right to demand a change of judge without showing of cause or prejudice.

These issues require the Court's immediate attention since this Court has held that denial of demands for change of judge is not appealable. **In re Estate of Ketterling**, 515 N. W. 2d 158, 161 (N.D. 1994). Based thereon, the Petitioner is entitled to a writ of mandamus, as Petitioner has a clear legal right to performance of the particular act sought to be compelled, the right to disqualify Judge Susan L. Bailey without a showing of cause or prejudice, and no other plain, speedy, and adequate remedy in the ordinary course of law exists. *See* N.D.C.C. 32-04-01, 32-34-02; **Christianson v City of Bismarck**, 476 N. W. 2d 688, 689 (N.D. 1991); **Old Broadway Corp. v. Backes**, 450 N. W. 2d 734, 746 (N.D. 1990).

This petition for a writ of mandamus, writ of prohibition or other appropriate writ and motion for expedited review is based upon the attached brief in support of petition, attached Exhibits, the Affidavits of La Verne Koenig and Erika Kolstad and the records and files attached in this case.

WHEREFORE, Petitioner Koenig prays that:

Petitioner La Verne Koenig respectfully requests that the Court invoke its original and supervisory power over inferior courts as provided by N.D.C.C. 32-34, Writ of Mandamus; N.D.C.C. 32-35, Writ of Prohibition.

This Court issue a Writ of Mandamus, ordering Respondent Frank L. Racek, to vacate all orders "reassigning" this case to Judge Susan L. Bailey.

Alternatively, this Court issue a Writ of Prohibition, prohibiting Judge Susan L. Bailey, from presiding over any matter involving Petitioner.

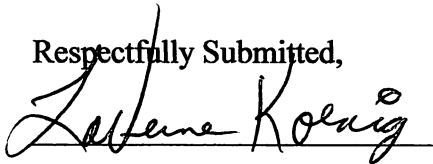
Order the Presiding Judge of the District Court's to enter written reasons for their denial of demands for change of judge as mandated by N.D.C.C. 29-15-21(6), with their written signatures being legible to the general public with a printed signature immediately below their written signature.

Order the Presiding Judge of the District Courts to honor N.D.C.C. 29-15-21 command that the citizens of this State have an unqualified right to disqualify assigned Judge's without a showing of cause or prejudice if they timely file their request to disqualify an assigned Judge as provided by N.D.C.C. 29-15-21 et al.

Grant such other and further relief as this Court deems appropriate and just as justice demands.

Dated this 19th day of June, 2015.

Respectfully Submitted,

A handwritten signature in cursive script, reading "La Verne Koenig", written over a horizontal line.

La Verne Koenig
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