

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 239
Committee Substitute Favorable 3/8/17
PROPOSED SENATE COMMITTEE SUBSTITUTE H239-PCS40365-TG-7

Short Title: Reduce Court of Appeals to 12 Judges.

(Public)

Sponsors:

Referred to:

March 6, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE THE NUMBER OF JUDGES ON THE COURT OF APPEALS TO
3 TWELVE; TO PROVIDE AN APPEAL OF RIGHT FOR TRIAL COURT DECISIONS
4 REGARDING CLASS ACTION CERTIFICATION AND TERMINATION OF
5 PARENTAL RIGHTS; AND TO PROVIDE FOR DISCRETIONARY REVIEW BY THE
6 SUPREME COURT IN CASES WHERE THE SUBJECT MATTER INVOLVES THE
7 JURISDICTION AND INTEGRITY OF THE COURT SYSTEM.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 7A-16, as amended by Section 22(a) of S.L. 2016-125, reads as
10 rewritten:

11 "§ 7A-16. Creation and organization.

12 The Court of Appeals is created effective January 1, 1967. It shall consist initially of six
13 judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of
14 the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at
15 the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the
16 Court of Appeals shall take the oath of office prescribed for a judge of the General Court of
17 Justice.

18 The Governor on or after July 1, 1967, shall make temporary appointments to the six initial
19 judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected
20 at the general election for members of the General Assembly in November, 1968, and shall take
21 office on January 1, 1969, to serve for the remainder of the unexpired term which began on
22 January 1, 1967.

23 Upon the appointment of at least five judges, and the designation of a Chief Judge, the court
24 is authorized to convene, organize, and promulgate, subject to the approval of the Supreme
25 Court, such supplementary rules as it deems necessary and appropriate for the discharge of the
26 judicial business lawfully assigned to it.

27 Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on
28 or after March 1, 1969, shall make temporary appointments to the additional judgeships thus
29 created. The appointees shall serve until January 1, 1971. Their successors shall be elected at
30 the general election for members of the General Assembly in November, 1970, and shall take
31 office on January 1, 1971, to serve for the remainder of the unexpired term which began on
32 January 1, 1969.

33 Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or
34 after July 1, 1977, shall make temporary appointments to the additional judgeships thus created.
35 The appointees shall serve until January 1, 1979. Their successors shall be elected at the



1 general election for members of the General Assembly in November, 1978, and shall take
2 office on January 1, 1979, to serve the remainder of the unexpired term which began on
3 January 1, 1977.

4 On or after December 15, 2000, the Governor shall appoint three additional judges to
5 increase the number of judges to 15.

6 On or after January 1, 2017, whenever the seat of an incumbent judge becomes vacant prior
7 to the expiration of the judge's term due to the death, resignation, retirement, impeachment, or
8 removal pursuant to G.S. 7A-374.2(8) of the incumbent judge, that seat is abolished until the
9 total number of Court of Appeals seats is decreased to 12.

10 The Court of Appeals shall sit in panels of three judges each and may also sit en banc to
11 hear or rehear any cause upon a vote of the majority of the judges of the court. The Chief Judge
12 insofar as practicable shall assign the members to panels in such fashion that each member sits
13 a substantially equal number of times with each other member, shall preside when a member of
14 a panel, and shall designate the presiding judge of the other panel or panels.

15 Except as may be provided in G.S. 7A-32, three judges shall constitute a quorum for the
16 transaction of the business of the court when sitting in panels of three judges, and a majority of
17 the then sitting judges on the Court of Appeals shall constitute a quorum for the transaction of
18 the business of the court when sitting en banc.

19 In the event the Chief Judge is unable, on account of absence or temporary incapacity, to
20 perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting
21 Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief
22 Judge."

23 **SECTION 2.** G.S. 7A-27, as amended by Section 22(b) of S.L. 2016-125, reads as
24 rewritten:

25 "**§ 7A-27. Appeals of right from the courts of the trial divisions.**

26 (a) Appeal lies of right directly to the Supreme Court in any of the following cases:

- 27 (1) All cases in which the defendant is convicted of murder in the first degree
28 and the judgment of the superior court includes a sentence of death.
- 29 (2) From any final judgment in a case designated as a mandatory complex
30 business case pursuant to G.S. 7A-45.4 or designated as a discretionary
31 complex business case pursuant to Rule 2.1 of the General Rules of Practice
32 for the Superior and District Courts.
- 33 (3) From any interlocutory order of a Business Court Judge that does any of the
34 following:
- 35 a. Affects a substantial right.
- 36 b. In effect determines the action and prevents a judgment from which
37 an appeal might be taken.
- 38 c. Discontinues the action.
- 39 d. Grants or refuses a new trial.
- 40 (4) Any trial court's decision regarding class action certification under
41 G.S. 1A-1, Rule 23.
- 42 (5) Any order that terminates parental rights or denies a petition or motion to
43 terminate parental rights.

44 (b) Except as provided in subsection (a) of this section, appeal lies of right directly to
45 the Court of Appeals in any of the following cases:

- 46 (1) From any final judgment of a superior court, other than one based on a plea
47 of guilty or nolo contendere, including any final judgment entered upon
48 review of a decision of an administrative agency, except for a final judgment
49 entered upon review of a court martial under G.S. 127A-62.
- 50 (2) From any final judgment of a district court in a civil action.

- (3) From any interlocutory order or judgment of a superior court or district court in a civil action or proceeding that does any of the following:
 - a. Affects a substantial right.
 - b. In effect determines the action and prevents a judgment from which an appeal might be taken.
 - c. Discontinues the action.
 - d. Grants or refuses a new trial.
 - e. Determines a claim prosecuted under G.S. 50-19.1.
 - f. Grants temporary injunctive relief restraining the State or a political subdivision of the State from enforcing the operation or execution of an act of the General Assembly. This sub-subdivision only applies where the State or a political subdivision of the State is a party in the civil action.

- (4) From any other order or judgment of the superior court from which an appeal is authorized by statute.

(c) through (e) Repealed by Session Laws 2013-411, s. 1, effective August 23, 2013."

SECTION 3. G.S. 7A-31, as amended by Section 22(d) of S.L. 2016-125, reads as rewritten:

"§ 7A-31. Discretionary review by the Supreme Court.

(b) In causes subject to certification under subsection (a) of this section, certification may be made by the Supreme Court before determination of the cause by the Court of Appeals when in the opinion of the Supreme ~~Court:~~Court any of the following apply:

- (1) The subject matter of the appeal has significant public ~~interest,~~interest.
- (2) The cause involves legal principles of major significance to the jurisprudence of the ~~State,~~State.
- (3) Delay in final adjudication is likely to result from failure to certify and thereby cause substantial ~~harm,~~harm.
- (4) The work load of the courts of the appellate division is such that the expeditious administration of justice requires certification.
- (5) The subject matter of the appeal is important in overseeing the jurisdiction and integrity of the court system.

(c) In causes subject to certification under subsection (a) of this section, certification may be made by the Supreme Court after determination of the cause by the Court of Appeals when in the opinion of the Supreme ~~Court:~~Court any of the following apply:

- (1) The subject matter of the appeal has significant public ~~interest,~~interest.
- (2) The cause involves legal principles of major significance to the jurisprudence of the ~~State,~~State.
- (3) The decision of the Court of Appeals appears likely to be in conflict with a decision of the Supreme Court.

Interlocutory determinations by the Court of Appeals, including orders remanding the cause for a new trial or for other proceedings, shall be certified for review by the Supreme Court only upon a determination by the Supreme Court that failure to certify would cause a delay in final adjudication which would probably result in substantial harm.

...."

SECTION 4. G.S. 7B-1001(a) reads as rewritten:

"§ 7B-1001. Right to appeal.

(a) In a juvenile matter under this Subchapter, appeal of a final order of the court in a juvenile matter shall be made directly to the Court of ~~Appeals.~~Appeals unless otherwise specified. Only the following juvenile matters may be appealed:

...

- 1 (5) An order entered under G.S. 7B-906.2(b) with rights to appeal properly
2 preserved, as follows:
3 a. The Court of Appeals shall review the order eliminating reunification
4 as a permanent plan ~~together with an appeal of the termination of~~
5 ~~parental rights order~~ if all of the following apply:
6 1. A motion or petition to terminate the parent's rights is heard
7 and granted.
8 2. The order terminating parental rights is appealed in a proper
9 and timely manner.
10 3. The order eliminating reunification as a permanent plan is
11 identified as an issue in the record on appeal of the
12 termination of parental rights.
13 b. A party who is a parent shall have the right to appeal the order if no
14 termination of parental rights petition or motion is filed within 180
15 days of the order.
16 c. A party who is a custodian or guardian shall have the right to
17 immediately appeal the order.
18 (6) Any order that terminates parental rights or denies a petition or motion to
19 terminate parental ~~rights~~ rights shall be made directly to the Supreme Court."

20 **SECTION 5.** G.S. 7A-27(a)(5), as enacted by Section 2 of this act, and Section 4
21 of this act become effective January 1, 2019, and apply to appeals filed on or after that date.
22 The remainder of this act is effective when it becomes law.