

NC Court System History, Mode of Selection, Judicial Districts

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The Court's Job

- **Magna Carta:** *To no one will we sell, to no one deny or delay right or justice.*
- *In the 1660's the English Crown instructed the Lord Proprietors to build a system of courts 'to do equal justice to all men to the best of their skill and judgment, without corruption, favor or affection'.*
- **N C Constitution:** Right and justice shall be administered without favor, denial and delay.
- **N C Code of Judicial Conduct:** A judge should respect and comply with the law and should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. . . A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.



NC Courts 1776-1955, in Five Minutes

- Colonial courts, appointed by Royal Governor
- Early Statehood—Superior court only, legislative selection for life, no other courts until Supreme Court established in 1818
- Clerk of court elected, starting in 1835
- Justice of the peace

NC Courts 1776-1955, in Five Minutes

- Reconstruction constitution and later 1875 amendments
- Judges elected, partisan elections
- Rotation of judges flip-flop
- Local courts authorized

- In the 1950's there were over 250 local courts (city, county, mayor's, recorder's, domestic relations, juvenile, etc.)
- Hundreds of justices of the peace, most part-time, most paid by fees
- No uniform fee structure
- Multiple levels of clerk's offices



North Carolina, we have
a problem.

Fifteen Years Later. . .

- Court Reform,
 - Bell Commission,
 - Courts Commission
- Unification became a primary goal
- Uniformity—no local courts
- Many recommendations, particularly about selection of judges and allocation of responsibility between judicial and legislative branches, were not adopted

1962 Constitutional Amendment

In

- Unified court
- Uniform jurisdiction and fees
- State funding
- District court, and magistrates
- Assignment of judges

Out

- Appointment of judges
- Rule making by supreme court
- Authority to draw districts
- Budget flexibility

Selecting Judges—What People Tend to Agree On

- Judges should be (In addition to being competent in the law, in descending order)
 - Honest
 - Fair
 - Unbiased
 - Good Managers
 - Hardworking
 - Consistent
 - Speedy
 - *Commission on the Future of Justice And the Courts in North Carolina, 1995*

What People Often Disagree About

- How to select judges who have those qualities
- How to weigh those various qualities
- What the role of a judge should be
- Whether the same system works for trial and appellate courts
- How to best keep judges accountable when they should be and independent when they should be

Things to Consider in Any Selection System

- Providing appropriate candidate pool
 - Providing appropriate job security to candidates selected
- Providing appropriate safeguards to protect public from poor choices
- Providing appropriate public input

How Others Do It

- Federal Model
 - Appointment by President, confirmed by Senate
 - Indefinite term, guaranteed salary
 - *“He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.” Declaration of Independence*
- Basic methods used by States
 - Appointment by Executive
 - Appointment by Legislature
 - Partisan Election
 - Nonpartisan Election
 - “Merit” Selection

- State judicial selection is classic federalism
 - Many states combine more than one method
 - Many use different methods for different courts
- Building blocks for a system
 - Filling vacancies in mid term
 - Filling vacancies at end of term/Selection for full term
 - Retention

Appointments

- Clustered in original colonies, in Northeast
 - Some have indefinite terms (“good behavior”)
 - Others have specific terms
 - Usually same process for subsequent terms
 - Most use some form of screening, either formal or informal
 - Legislature/Senate confirms

Legislative Appointment

- Used in South Carolina and Virginia
- Applies to both initial appointment and reappointments
- May also involve some screening by outside entity

Partisan Elections

- Began to appear in 1830's as part of Jacksonian democracy movement
 - Initial method for most new states and for states rethinking method during the 19th century
- Seen as creating independence from appointing authorities
- Candidates selected by parties
- Run in elections on party banners
- Currently in South and Great Lakes area
 - Pa., Ill., Ala., La., N.C. for all courts
 - N.Y., Ind., and Tenn. for trial courts only
 - Tex. for appellate courts only

Nonpartisan elections

- Began to appear in early 20th century
- Established to provide independence from political parties
- Candidates run without party designation
- Clustered in upper Midwest and Northwest
- More common in trial courts (21 states)
- Most common method used (plurality, not majority)

“Merit” Selection/“Missouri” Plan

- First adopted in Missouri in 1940; popular in 1960's and 1970's
- Appointment by some executive authority (usually Governor) for initial term from screened candidates
- Screening done by nominating commission
 - Typically bi- or non-partisan, with multiple appointing authorities, often with lawyer and lay members
- Subsequent, full terms are usually by retention election
- Occasionally, nominee is confirmed by some other body
- 14 states use for supreme court, 9 for trial courts
- Clustered in mid-western states

NC's Judicial Selection

- Crown/provisional governors appointed colonial judges
- Legislature appointed judges until 1868
- Partisan elections in 1868 constitution
- Nonpartisan elections from 1990's to 2017-- Superior Court, then District Court, then Appellate Courts
- Currently partisan elections

Litigation Developments

- NC voting rights litigation in 1980's
 - Led to establishment of smaller superior court districts
- Republican party litigation in 1990's
 - Led to district elections for superior court
- Republican Party of Minnesota v. White, 2002
 - Established judicial candidates right to speak on disputed legal or political issues
- Caperton v. AT Massey Coal, 2009
 - Found due process violation when major contributor to judge's election had case pending which supreme court judge cast deciding vote on

Efforts By Some States to Provide Information to Voters

- Judicial evaluations
- Voter guides
- Recommendation from nominating commissions

Independence and accountability

- Methods to promote independence
 - Salary guarantee
 - Terms of Office
 - More security in retention decision than in initial decision
 - Committees to defend judges

Independence and Accountability

- Methods of holding judges accountable
 - Elections
 - Judicial Standards
 - Criminal prosecution
 - Recusal statutes
 - Appellate review
 - Public media
 - Judicial evaluation

“There Ain’t No Good Way to Select Judges”

- Bottom line—There is a tension between accountability and independence
- States have been seeking the right balance since they were established
- They still are

Judicial Districts--NC Constitution, Art. IV

- “The General Assembly shall, from time to time, divide the state into a convenient number of superior court judicial districts.
- “The General Assembly shall, from time to time, divide the state into a convenient number of local court districts and shall prescribe where the district courts shall sit.
- The General Assembly shall, from time to time, divide the state into a convenient number of prosecutorial districts

History—Before Court Reform

- One superior court judge per district, 1868
- 1868—12 districts
- 1875—9 districts
- 1901—16 districts
- 1913—20 districts
- 1937—21 districts
- 1950—Constitutional amendment to allow more than one judge per district
- 1955—30 (2 judges in Mecklenburg and Guilford)

Judicial Districts, 1960-2010

- 1960
 - Largest--272,000 (Mecklenburg)
 - Smallest--73,000 (1st, 6th, and 24th)
 - Ratio--4/1
 - Average size--151,871
- 2010
 - Largest-969,000 (26th); 952,000 (10th)
 - Smallest—62,500 (9A); 60,500 (20A)
 - Ratio--16/1
 - Average size—222,000 (DA/District Court); 195,000 (Superior Court)

Judicial Districts, 1955-2015

- 1955--Thirty for superior court; in 1967, for all purposes
 - Six one-county districts, two seven-county districts
- 2015
 - Superior Court--69 for elections, 49 for administration
 - District Court—44 for elections, 41 for administration
 - District Attorneys—44 for all purposes
 - 24 one-county S.Ct. districts; two seven-county Dist. Ct. and DA districts

Districting Milestones

- 1950—allowing more than one judge per district
- 1955—thirty district plan adopted
- 1965—district court added to superior court districts
- 1969—prosecutorial districts added to superior court districts
- 1975—first district split (Gaston, Lincoln, Cleveland)—DA only
- 1977—district splits in Orange, Chatham and Alamance and applicable to all three levels

Milestones 1980-90's

- 1981, 1987, 1991—district split for Craven, Carteret, Pitt and Pamlico done in three separate stages
- 1987—redistricting for voting rights compliance; introduction of electoral districts and “sets of districts”
- 1987—one county moved from one district to another (Hoke from 12 to 16)
- 1989—dividing of district previously divided (19A—Cabarrus and Rowan into 19A—Cabarrus and 19C—Rowan)
- 1993—new district from parts of two existing districts (9A—Caswell and Person, from remaining districts 17A and 9)
- 1995—district court district divided into electoral districts only (9 and 9B---Franklin, Granville, Vance and Franklin)

Milestones—2000 to present

- 2001—existing sets of districts redrawn in Wake and Guilford
- 2001—residency requirement for district court candidates established (Johnston, Harnett and Lee)
- 2006—residency district for Union repealed, and in 2007, reinstated for a new district in that county
- 2011—superior court districts redrawn to comply with Blankenship v. Bartlett, *one person, one vote* NC Supreme Court decision

Milestones—2000 to present

- 2013 (eff. 2015)
 - Consolidation of previously split districts--district court and DA 6A and 6B merged into district 6 (Halifax, Bertie, Northhampton,, and Hertford)
 - Creation of new DA district with lines different from both kinds of court districts (Anson and Richmond moved from DA district 20C to form new district 16C)
- 2017 (eff. 2019)—All DA districts renumbered to eliminate “alphabet” districts
- 2019 (eff. 2019)—Elimination of district formed from parts of two districts by putting counties in districts from which they were moved (District 9A eliminated and Caswell moved to district 17A and Person moved to district 9)

Judicial Districts

- Districts have been split
- Divided and rearranged with parts of other districts to form new districts (9A, 16A, 16C)
- Portions of one district have been moved to other districts (Moore from 20 to 19B)
- Divided into sub-districts for electoral purposes only, within a county
- Divided into sub-districts for electoral purposes only, using parts of two or more counties
- District eliminated and merged to form a single district
- District eliminated and counties moved to multiple existing districts

Judicial Districts

- 31 districts have coterminous lines for all three functions (excluding sets of districts)
- Seven district court and district attorney districts comprise two superior court districts (Districts 4, 6, 7, 8, 11, 25, 30)
- One superior court and district court district – 16A—served by two prosecutors 16A and 16C
- Five districts have the same boundaries for the same purposes as in 1965 (1, 2, 23, 24, 28)

County with most movement-- Moore

- 1970—District 20 for all purposes
- 1987—District 20A for superior court, others in District 20
- 1995—Moved to District 19B for all purposes
- 1999—Sub-districts (19B1 and 19B2) established for superior court elections, each composed of part of Moore, Montgomery and Randolph
- 2003—Moved to new district 19D for superior court
- 2006—Moved to new district 19D for DA

Questions??????