

HISTORY OF THE COURT OF APPEALS OF NORTH CAROLINA

July 1967 – March 2016

By Justice David M. Britt
Updated in 2016 by Judge Robert N. Hunter, Jr.

The North Carolina Court of Appeals was established by the General Assembly in 1967. A history of the Court would not be complete, however, without mentioning events that occurred before 1967, following the admonition that the past is prologue.

In the 1950's, our State's court system was basically the same as it had been since 1868 when a new constitution was adopted. The greatest change had come in the courts below the Superior Court by the creation of numerous types of local courts. There were county courts, mayor courts, recorder courts, and municipal courts, in addition to the justice of the peace courts.

Leaders of the North Carolina Bar Association recognized that our court system needed a major updating and convinced Governor Luther Hodges that this should be done. In 1955, at the request of Governor Hodges, the Bar Association appointed a committee for "Improving and Expediting the Administration of Justice in North Carolina." The Committee consisted of twenty-seven outstanding citizens, approximately one-half of whom were leaders of the Bar and the others were non-lawyers, including several newspaper editors. J. Spencer Bell, a Charlotte lawyer and later a state senator, served as chairman. Shearon Harris, President of Carolina Power & Light Company, served as vice chairman. The Committee made its final recommendations to the 1958 annual meeting of the North Carolina Bar Association, and the recommendations were adopted in principle.

While the recommendations called for a unified court system, particularly for a district court system such as we now have, the recommendations also included the following with respect to an intermediate appellate court: "That the General

Assembly be empowered upon recommendation of the Supreme Court to establish an intermediate appellate court in the appellate division; that the structure and organization of such intermediate court be determined by the General Assembly; . . .”

Bills that would lead to implementation of the recommendations were introduced in the 1959 General Assembly. Because the major changes proposed involved amendments to the Constitution, a three-fifths vote of the membership of each house was necessary for the amendments to be submitted to a vote of the people.

Senator J. Spencer Bell of Mecklenburg County led the proponents in the Senate and Representative H. P. Taylor, Jr., of Anson County led the proponents in the House. Although the proponents received substantial support in both houses, they failed to receive the three-fifths majorities required by the Constitution.

The movement for court improvement continued and when the 1961 General Assembly convened, new bills were introduced. However, shortly before the convening date, leaders of the movement learned that members of the Supreme Court felt that North Carolina did not need an intermediate appellate court and that the Supreme Court could handle all of the appellate work. Consequently, proposed legislation for court improvement that was considered by the 1961 legislative session contained no provision for an additional appellate court.

After a lot of hard work by proponents, all proposed constitutional amendments received the necessary votes in the General Assembly to be submitted to a vote of the people. The most far-reaching amendment was the one mandating that the legislature provide for a unified district court system.

The proposed amendments were submitted to the voters at the November 1962 general election, and were approved by comfortable margins. Because the 1963 General Assembly convened only three months after the 1962 election, there was insufficient time to make the necessary study and prepare legislation for consideration by the 1963 legislative session. Consequently, the 1963 General

Assembly, by joint resolution, created a Courts Commission and charged it with the duty of “preparing and drafting legislation necessary for the full and complete implementation of Article IV of the Constitution.” The Courts Commission was composed of fifteen members appointed by a group that included the Governor, the President of the Senate, and the Speaker of the House.

Senator Lindsay C. Warren, Jr. of Wayne County was designated chairman of the Commission. In addition to Senator Warren, the membership included Senators Wilbur M. Jolly of Franklin County and J.J. Harrington of Bertie County; Representatives H.P. Taylor, Jr. of Anson County, David M. Britt of Robeson County, and A.A. Zollicoffer of Vance County; Dean Dickson Phillips of the UNC Law School; and Honorable James B. McMillan of the Charlotte Bar. Colonel C. E. Hinsdale of the Institute of Government served as staff person.

Between the 1963 and 1965 sessions of the legislature, the Courts Commission studied and worked on proposed legislation for the district court system. At about the time the 1965 General Assembly convened, certain members of the Supreme Court let it be known that the workload of that Court had become extremely heavy and that an intermediate appellate court should be considered.

Because the creation of a new appellate court would require a constitutional amendment, members of the Courts Commission concluded that all that could be accomplished by the 1965 General Assembly would be to approve an amendment to be submitted to the voters. Courts Commission leaders consulted Governor Dan Moore, and he promised his full support of an amendment to the Constitution authorizing an intermediate appellate court. Governor Moore also suggested that the proposed amendment be submitted at a special election to be held in the fall of 1965 when a popular highway bond referendum would be held.

Although members of the Courts Commission serving in the legislature in 1965 had their hands full with the proposed legislation establishing the district courts,

they took on the task of promoting a constitutional amendment authorizing an intermediate appellate court. Fortunately, the “climate” in the 1965 session was favorable: Lieutenant Governor Bob Scott was supportive and Senators Warren and Harrington were very influential in the Senate. Commission members Representatives Taylor, Zollicoffer, and Britt were in key positions in the House. Taylor was Speaker, Zollicoffer was Appropriations Committee Chairman, and Britt was Chairman of the Committee on Courts and also had the unanimous support of the Democrats in the House to succeed Taylor as Speaker.

Ultimately, not only did the proposed legislation to create the district courts pass by a substantial majority, but the proposed constitutional amendment authorizing an intermediate appellate court also passed overwhelmingly. The proposed constitutional amendment was submitted at a special general election held in November 1965 for the primary purpose of approving a highway bond issue. The amendment was very brief, with its major provisions being as follows: “The structure, organization, and composition of the Court of Appeals, if established, shall be determined by the General Assembly. The Court shall have not less than five members, and may be authorized to sit in divisions, or other than en banc.” The proposed bond issue was so popular it passed by an overwhelming majority and evidently the strong tide for the bond issue caused the constitutional amendment to pass by a substantial majority.

Very soon after the amendment was adopted, the Courts Commission gave the Court of Appeals study its top priority. First, it sought guidance from the experience of sixteen other states that had intermediate appellate courts at that time. After considering the systems in all of those states, the Courts Commission was more impressed with New Jersey and Michigan.

At the request of the Courts Commission, one of the architects of the Michigan system, a professor at the University of Michigan School of Law, visited the Courts

Commission in December 1965 and gave the members valuable insight into the problems involved in creating an intermediate appellate court. Not long thereafter, representatives from the Courts Commission visited New Jersey for the purpose of obtaining information regarding that state's system. That group included Courts Commission member David M. Britt; Frank Huskins, Administrative Officer of the Courts and an ex officio member of the Commission; and C. E. Hinsdale, staff member. They were so impressed with the New Jersey system that it became a model for the one to be proposed for North Carolina.

During 1966, the membership of the Courts Commission was strengthened when Representative Earl W. Vaughn of Rockingham County became a member. His assistance proved very valuable in the work of the Courts Commission and in getting its recommendations enacted by the legislature. After more than six months of sustained study, the Courts Commission completed its study and preparation of the legislation to be proposed to the 1967 General Assembly.

Senator Warren was reappointed chairman of the Senate Committee on Courts. At the Speaker's urgent request, Representative Vaughn accepted appointment as chairman of the House Committee on Courts. Very early in the 1967 session, Representative Vaughn received pledges of support from every Democrat in the House to be Speaker in 1969. He was appointed Speaker pro tempore for the 1967 session, was elected majority leader for that session, and was very effective in getting the Court of Appeals legislation through the House. The recommendations of the Courts Commission were approved in committee, with very little change, and the Senate and House passed the legislation with few dissenting votes.

The law creating the Court of Appeals provided that the Court would originally have six members, to be appointed by the Governor in 1967. It also provided that, as of 1 July 1969, the membership of the Court would be increased to nine and it

authorized the Governor serving at that time to appoint the additional three members.

On 5 July 1967, the day before the 1967 session of the legislature adjourned, Governor Dan Moore announced his appointments to the Court. They were: Superior Court Judges Raymond B. Mallard of Tabor City, Hugh B. Campbell of Charlotte, James C. Farthing of Lenoir, and Walter E. Brock of Wadesboro; and practicing attorneys Naomi E. Morris of Wilson and David M. Britt of Fairmont. Representative Britt immediately resigned as Speaker of the House and Representative Vaughn was elected to complete the remainder of his term.

Chief Justice R. Hunt Parker named Judge Raymond B. Mallard as the first chief judge of the new Court. The Court held its first conference in late August 1967. Temporary offices for the Judges were provided in a Fayetteville Street bank building while necessary renovations were being made to the building on the corner of Fayetteville and Morgan Streets known as the State Library Building.

Prior to 1940, when it moved to the new Justice Building, the Supreme Court occupied several floors of the State Library Building. After the Supreme Court moved to the Justice Building, parts of the State Library Building formerly used by the Supreme Court were taken over by the Utilities Commission. Utilities Commission members used the offices formerly occupied by the Justices, and the former Supreme Court courtroom became the hearing room for the Utilities Commission.

After the creation of the Court of Appeals, the State Library moved to new quarters on Jones Street. The Utilities Commission then moved to the second floor of the former State Library, and the Court of Appeals was assigned the third floor for offices and a courtroom, and the fourth floor for its clerk, library, and other purposes. The name of the building was changed to the Ruffin Building, in memory of Chief Justice Thomas Ruffin, but about 1978, the name was changed to the Court of

Appeals Building. In the mid-1970s, the Utilities Commission moved to new quarters, and the Court of Appeals took over the second floor of the building.

The new Court spent most of the autumn months of 1967 working on its rules, which were approved by the Supreme Court. In 1975, the Rules of Appellate Procedure, governing both the Supreme Court and the Court of Appeals were adopted.

On 6 December 1967, Judge James C. Farthing died suddenly. Several weeks thereafter, Francis Marion Parker of the Asheville bar was appointed by Governor Moore to fill the vacancy.

In late January 1968, the Court heard its first appeals. However, renovations to the courtroom in the Ruffin Building had not been completed and it was necessary for the Court to make temporary arrangements for a courtroom. Arrangements were made with the Legislative Building Commission for the Court to use one of the large committee rooms on the ground floor of the Legislative Building for a courtroom. Several months later, renovations to the Ruffin Building were completed and the new Court took up permanent residence in the Ruffin Building.

As provided in the law creating the Court of Appeals, in 1969 membership of the Court was increased to nine. History repeated itself when House Speaker Earl W. Vaughn resigned to accept Governor Robert W. Scott's appointment to the Court. At the same time, Governor Scott also appointed R. A. Hedrick of Statesville and W. E. Graham of Charlotte. The three new members were administered their oaths on 23 July 1969.

By the time the 1977 General Assembly convened, the workload of the Court had increased to the point that additional judges were needed and, at that session, the number of judges was increased to twelve. On 2 December 1977, Governor James B. Hunt, Jr. appointed Superior Court Judge John Webb of Wilson, District Attorney

Burley B. Mitchell, Jr., of Raleigh, and Representative Richard C. Erwin of Winston-Salem to the Court.

As the work of the Court continued to increase, the General Assembly, on 30 June 2000, enacted legislation that authorized the expansion of the Court of Appeals from twelve to fifteen judges, and provided that the Governor appoint three additional judges on or after 15 December 2000. On 5 January 2001, Governor James B. Hunt, Jr. appointed Loretta C. Biggs of Winston-Salem, Hugh B. Campbell, Jr. of Charlotte, and Albert S. Thomas, Jr. of Wilson, to the newly-created seats on the Court of Appeals. Judicial review of this legislation can be found in the North Carolina Supreme Court case of *Pope v. Easley*, 354 N.C. 544, 556 S.E.2d 265 (2001), holding that part of the legislation was constitutionally permissible but that part of it violated a section of the North Carolina Constitution, as to the term of office.

Thanks largely to the efforts and persistence of Chief Judge Gerald Arnold, the North Carolina Court of Appeals' courtroom underwent an extensive and detailed restoration, which was completed in 1997. While the courtroom was being renovated, the Court received permission to again hold sessions of court in the auditorium in the Legislative Building. Holding sessions in the Legislative Building was a return to the place where the Court heard its first cases as noted earlier in the history of the Court.

In 2002, Chief Judge Sidney Eagles instituted a voluntary appellate mediation program, which offered parties an opportunity to mediate cases pending before the Court. Since its inception, the program has been very successful, with nearly half of the cases the parties agree to mediate being resolved in mediation.

The Court of Appeals Building underwent an extensive eighteen-month renovation in 2008 and 2009. In 2010, after renovations were completed, the building was re-dedicated. Chief Judge John C. Martin noted that the goal of the renovation

“was to marry the historical attributes of this beautiful old building with the efficiency and utility of a modern office building.”

In 1968, the Court’s first full year of operation, 466 appeals were filed with the Court. No records were kept as to the number of motions and petitions filed. The Court’s workload grew steadily for the next five years under an expanded court of nine judges, so that by 1973 the number of appeals had almost doubled to 828. In 1977, the Court expanded again, this time to twelve judges. That year, 1,078 appeals were filed, as well as 1,374 motions and petitions. In 1986, the Court’s work had increased and 1,357 appeals were filed, in addition to 2,119 motions and petitions. The Court again expanded in 2000 to its current size of fifteen judges, whose workload consisted of 1,548 appeals and 4,190 motions and petitions. Filings reached an historical high of 1,759 in the year 2002. That year, 4,813 motions and petitions were also filed, which was an all-time high number. The nationwide economic meltdown of 2007 saw the number of appeals in the Court decrease to 1,581. In 2014, there were 1,415 appeals filed, along with nearly 4,500 motions and petitions. At the end of 2015, a rebound appeared to be underway, with the Court receiving more than 1,400 appeals and more than 4,500 motions and petitions.

List of Those Who have Served As
Judge of the Court of Appeals

(*Served as Chief Judge)

| | |
|-------------------------|-----------|
| *Raymond B. Mallard | 1967-1973 |
| Hugh B. Campbell | 1967-1974 |
| James C. Farthing | 1967-1967 |
| *Walter E. Brock | 1967-1979 |
| David M. Britt | 1967-1978 |
| *Naomi E. Morris | 1967-1982 |
| Francis M. Parker | 1968-1980 |
| *Robert A. Hedrick | 1969-1992 |
| *Earl W. Vaughn | 1969-1985 |
| William E. Graham, Jr. | 1969-1973 |
| James M. Baley, Jr. | 1973-1974 |
| James H. Carson, Jr. | 1973-1974 |
| Robert M. Martin | 1974-1982 |
| *S. Gerald Arnold | 1974-1998 |
| Edward B. Clark | 1974-1982 |
| Burley B. Mitchell, Jr. | 1977-1979 |
| John Webb | 1977-1986 |
| Richard C. Erwin | 1977-1980 |
| Harry C. Martin | 1978-1982 |
| J. Phil Carlton | 1979-1979 |
| Hugh A. Wells | 1979-1994 |
| Cecil J. Hill | 1979-1984 |
| Willis P. Whichard | 1980-1986 |
| Charles L. Becton | 1981-1990 |
| Clifton E. Johnson | 1982-1996 |
| E. Maurice Braswell | 1982-1984 |
| Eugene H. Phillips | 1983-1991 |
| *Sidney S. Eagles, Jr. | 1983-2004 |
| *John C. Martin | 1985-1987 |
| | 1993-2014 |
| Sarah E. Parker | 1985-1992 |
| Jack L. Cozort | 1985-1996 |
| Robert F. Orr | 1986-1995 |
| K. Edward Greene | 1986-2002 |
| Donald L. Smith | 1988-1989 |
| John B. Lewis, Jr. | 1989-2000 |
| Allyson K. Duncan | 1990-1990 |
| James A. Wynn, Jr. | 1990-1998 |
| | 1999-2010 |

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|--------------------------|--------------|
| Ralph A. Walker | 1991-1992 |
| | 1995-2002 |
| Joseph R. John | 1993-2000 |
| Elizabeth G. McCrodden | 1993-1994 |
| Sydnor Thompson | 1994-1994 |
| Mark Martin | 1994-1999 |
| *Linda M. McGee | 1995-present |
| Patricia Timmons-Goodson | 1997-2005 |
| Clarence E. Horton, Jr. | 1998-2000 |
| Robert C. Hunter | 1998-2014 |
| Robert H. Edmunds, Jr. | 1999-2000 |
| James C. Fuller | 2000-2000 |
| J. Douglas McCullough | 2001-2008 |
| | 2011-present |
| Robin E. Hudson | 2001-2006 |
| John M. Tyson | 2001-2009 |
| | 2015-present |
| Hugh B. Campbell, Jr. | 2001-2002 |
| Albert S. Thomas, Jr. | 2001-2002 |
| Loretta C. Biggs | 2001-2002 |
| Wanda G. Bryant | 2001-present |
| Ann M. Calabria | 2003-present |
| Richard A. Elmore | 2003-present |
| Sanford L. Steelman | 2003-2015 |
| Martha A. Geer | 2003-present |
| Eric L. Levinson | 2003-2007 |
| Alan Z. Thornburg | 2004-2004 |
| Barbara Jackson | 2005-2010 |
| Linda Stephens | 2006-present |
| Donna Stroud | 2007-present |
| John Arrowood | 2007-2008 |
| Cheri Beasley | 2009-2014 |
| Samuel J. Ervin, IV | 2009-2014 |
| Robert N. Hunter, Jr. | 2009-2014 |
| | 2015-present |
| Cressie Thigpen | 2010-2012 |
| Chris Dillon | 2013-present |
| Mark Davis | 2013-present |
| Lisa Bell | 2014-2014 |
| Richard Dietz | 2014-present |
| Lucy Inman | 2015-present |
| Valerie Zachary | 2015-present |

List Of Those Who Have Served As
Clerk of the Court of Appeals

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|------------------------|--------------|
| Theodore C. Brown, Jr. | 1967-1976 |
| Francis E. Dail | 1976-1993 |
| John H. Connell | 1993-2015 |
| Daniel M. Horne, Jr. | 2015-present |

THEODORE CECIL BROWN, JR. was born in Ashland, Kentucky on 30 June 1933. He graduated from Wake Forest University School of Law in June 1959, and was a Staff Attorney with the N.C. Attorney General's Office until August 1967. He served as the first Clerk of the North Carolina Court of Appeals taking office in September 1967, and served in that capacity until January of 1976, at which time he resigned to become a Staff Attorney with the N.C. Utilities Commission. He died on 5 November 2003.

FRANCIS EARL DAIL was born in Kinston, North Carolina on 28 October 1940. He attended High Point University where he received his A.B. in 1963, and attended Wake Forest University School of Law where he received his *Juris Doctor* in 1973. He was admitted to the Bar in 1973. From 1964 to 1968, he served in the U.S. Army. He entered private law practice in 1973 in Pinehurst and practiced there until 1975 at which time he was employed by Lawyers Title Insurance Company in Raleigh. In 1976, he was appointed Clerk of the North Carolina Court of Appeals by the Court and served in that capacity until January 1993, at which time he was appointed Administrative Counsel to the Court. He retired from the Court in April 2008.

JOHN HEWLETTE CONNELL was born in Augusta, Georgia on 15 March 1959, six minutes before his twin brother Michael. He graduated from high school in Macon, Georgia in 1977, from UNC-Chapel Hill in 1981 with a B.A., and in 1985 with a *Juris Doctor*. He practiced law in Raleigh for one year before joining the Court of Appeals as its Assistant Clerk in 1986. In January 1993 he became the Clerk of Court. He retired from the Court in October 2015.

DANIEL M. HORNE, JR. was born in Fayetteville, North Carolina on 3 July 1959. He graduated from Campbell University, receiving his B.S. in 1980. He attended law school at the University of North Carolina, receiving his *Juris Doctor* in 1990. He began his work with the Court of Appeals in 1990 as law clerk to Judge Gerald Arnold (later Chief Judge). After his clerkship, he remained with the Court as a member of the Office of Staff Counsel, becoming Assistant Director in 1999. In 2008, Chief Judge John C. Martin named him Administrative Counsel to the Court. In November 2015, he was appointed Clerk of the Court of Appeals.