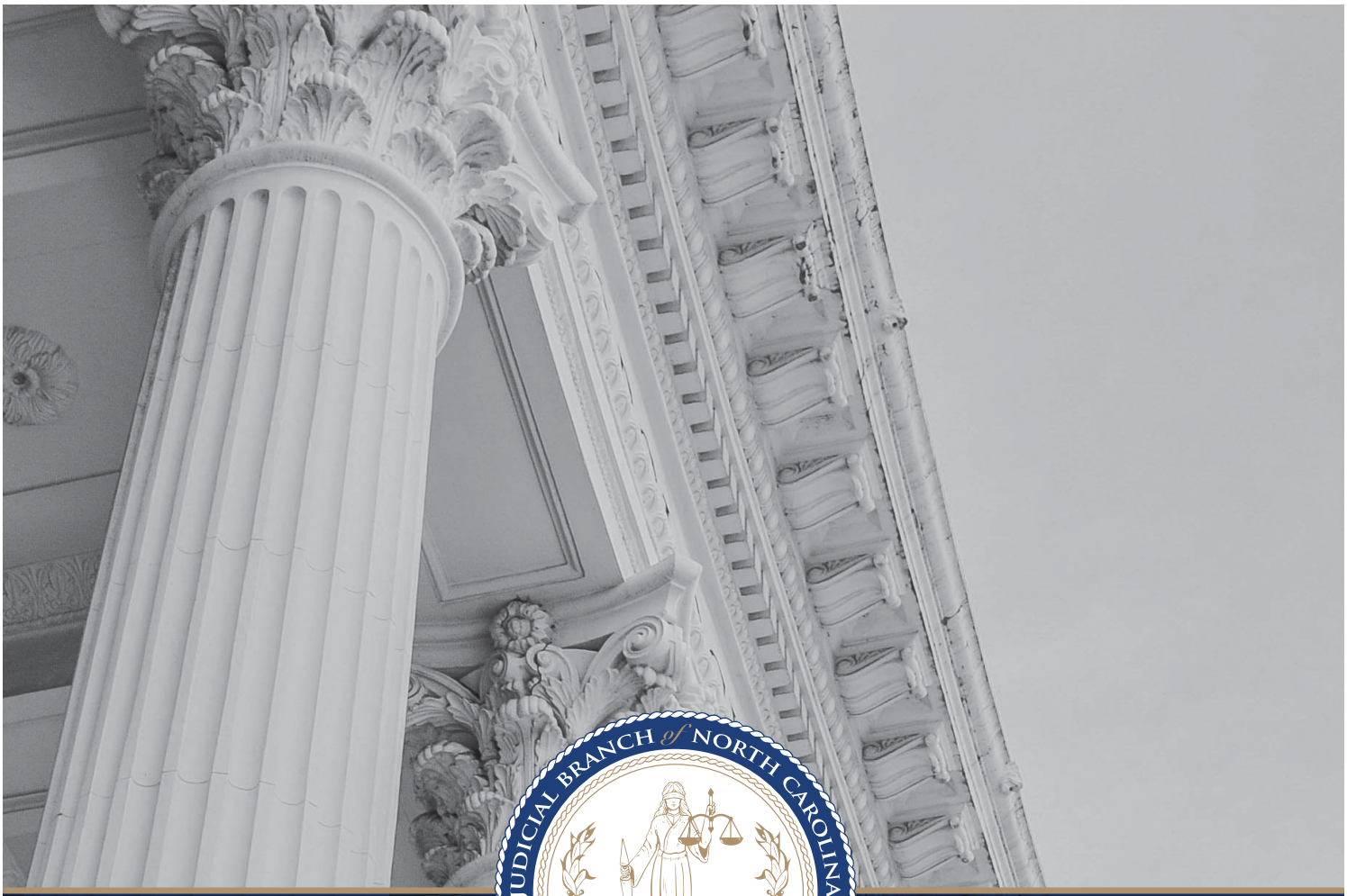

HISTORY *of* THE NORTH CAROLINA JUDICIAL BRANCH

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FROM 1776 TO THE CIVIL WAR

North Carolina's first state courts were largely continuations of the colonial system and thus influenced greatly by the English court system. A county court, called the Court of Pleas and Quarter Sessions, was held in each county by the justices of the peace appointed by the governor from the recommendations of the General Assembly. The justices of the peace were paid from fees collected. In other words, if these justices did not collect any fees, they were not paid! When the county court was out of term, they held court individually or in pairs, to consider lesser matters.

The Constitution of 1776 authorized the legislature to appoint judges of the Supreme Court of Law and Equity. The name is misleading in today's nomenclature, because this is the court that has become known as superior court. Initially, there were three superior court judges who were supposed to hold court twice a year in each of the several districts that were established. The system was criticized because the sessions were not held often enough; there were not enough judges; and their opinions sometimes conflicted, with no means for appeal.

In 1779, the General Assembly required the superior court judges to meet together in Raleigh to resolve their differences. This Court of Conferences put its opinions in writing. In 1805 its name was changed to the Supreme Court, but it was not until 1818 that the court became an independent body with three justices of its own to review cases from the superior court.

Beginning in 1806, the superior was required to hold sessions in each county twice a year, and the state was divided into half a dozen circuits for the rotation of judges. County courts of justices of the peace continued to operate separately.

THE CONSTITUTION OF 1868 TO THE 1950S

With Reconstruction came dramatic changes in North Carolina government. For the courts, the most far reaching provision in the Constitution of 1868 was the election of judges. Both the Supreme Court, increased to five members, and the superior court, expanded to a dozen judges, were to be chosen directly by the voters for the first time.

The Reconstruction reforms also abolished the Court of Pleas and Quarter Sessions, although justices of the peace were retained as separate judicial officers with limited jurisdiction. Initially they were appointed by the governor; that power was later transferred to the legislature. The distinction between proceedings in law and equity was abolished.

The basic state court structure established in 1868 remained the same throughout the first half of the twentieth century. Before the reforms of the 1960s, the number of superior court judges had grown to 38 in 30 districts, and those judges continued to rotate, moving from district to district on a regular six-month basis. There were 21 district "solicitors" (the old term for district attorneys) who were paid by the state. The clerk of court exercised some judicial functions, primarily as the judge of




probate and sometimes as a juvenile judge. In some counties, the superior court had specialized branches for domestic relations and juvenile offenses.

Below the superior court, two levels of local courts developed. First, there were a number of general county courts, county criminal courts, domestic relations courts, juvenile courts and city and county recorder's courts. Some were established by general state law and many by local acts applying to only one locality. About half were county courts, half city or township courts. Most heard misdemeanors, particularly traffic offenses, and some considered civil cases.

The judges usually were part-time and were chosen by various methods of appointment or election. Below those courts were about 90 mayor's courts and over 900 justices of the peace, all of whom heard petty offenses in the $50 or 30-day range. These officials were compensated by the fees collected. All told, there were probably about 1,400 local courts in existence statewide by the 1950s, with no uniformity of jurisdiction, rules or method of selection.

BELL COMMITTEE AND THE GENERAL COURT OF JUSTICE

Growing dissatisfaction with the maze of local courts, the variations in jurisdiction and rules, the backlog of cases, and the obvious danger of having a judge's pay depend on the fines imposed, prompted Governor Luther Hodges in 1955 to call for court reform. The North Carolina Bar Association responded by creating a Committee on Improving and Expediting the Administration of Justice in North Carolina, composed of 27 members, 15 of whom were lawyers. The committee became known as the "Bell Committee" after its chairman, J. Spencer Bell, a distinguished attorney from Charlotte.

Bell reported the findings and recommendations of his committee to the 1958 summer convention of the Bar Association. Their primary concerns were:

- The competence and fairness of those administering justice--that is, justices of the peace who were not lawyers, judges who had to run in partisan elections, and solicitors who had private law practices
- The unfairness of having fees differ from court to court in the same county and for officials to be compensated by how much they collected
- The inefficiency and confusion of so many different local courts, and the resulting uneven justice from place to place in the state
- The general poor operation of the courts resulting in delays in having cases hear, excessive costs, inconvenience to litigants, and poor record keeping

After Bell's committee established the basic goals of court reform, the State Committee for Improved Courts was created in 1958 to decide how to accomplish those objectives. Chaired by J. Spencer Love of Burlington of Burlington Industries, and consisting of one lawyer and one lay member from each of the 30 judicial districts, the committee developed a package of specific recommendations to the General Assembly. Those proposals went to the legislature in 1959.

The Senate passed the bill after amending it to retain more authority for the legislature, but when the House watered it down even further, proponents withdrew the bill altogether. The Bar Association reworked the proposal and presented it again in the 1961 session. Once more, the legislature amended the bill to take authority away from the Supreme Court, but the bill passed. Constitutional amendments were approved by the voters in 1962, the Bar Association continued its legislative efforts in 1963, the Courts Commission was established, and beginning in the mid-1960s the Administrative Office of the Courts was created and implementation of the new district court began.

By the end of the 1960s, the new unified, statewide court system--the General Court of Justice--was in place. Its most important features were:

- Replacement of the variety of local courts and justices of the peace with a statewide district court system and magistrates
- Establishment of the Administrative Office of the Courts (AOC) for statewide administration of the new system
- Conversion of part-time solicitors to full-time district attorneys paid by the State
- Common boundaries for all superior court, district court, and prosecutorial districts
- Uniform funding of salaries and other expenses of all court personnel through the AOC
- Establishment of the Court of Appeals as an intermediate level appeals court

The Bell Committee's vision of an independent accountable and flexible judicial system was not fully realized, however, primarily because of the General Assembly's resistance to giving the court system full control over its own operations.

The commission had proposed, for example, that the new district judges be appointed by the chief justice, but the legislature chose for them to be elected locally. (An earlier proposal from a Bell Committee subcommittee to have all judges appointed had not even made it to the final report.) The General Assembly rejected giving the Supreme Court the authority to set the rules of civil and criminal procedure for the trial courts, instead retaining that authority for itself. Also falling by the way was a constitutional amendment to allow the legislature to choose later whether juries could have as few as six members, verdicts could be by majority vote in civil cases, and whether defendants could waive the right to a jury in most criminal cases in superior court.

PRESENT ORGANIZATION

Since the late 1960s, North Carolina has operated a uniform, statewide court system consisting of two trial level courts--the district and superior courts--and two appellate courts, the Court of Appeals and the Supreme Court.