



# INTERIM REPORT PUBLIC TRUST AND CONFIDENCE COMMITTEE

JULY 2016



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## PREFACE

These interim reports outline the work-to-date of the North Carolina Commission on the Administration of Law and Justice (NCCALJ). Chief Justice Mark Martin convened the independent, multidisciplinary commission in September of 2015, and charged the members to evaluate the North Carolina judicial system and provide findings and recommendations for strengthening our courts within the existing administrative framework.

Sixty-five voting members and additional non-voting guests were asked to serve, drawn statewide from business, academia, the bar, the non-profit sector, the Legislature, and the Judicial Branch, to ensure a well-rounded evaluation of the judicial system. Each of the members serves on one of five NCCALJ committees studying the areas of civil justice, criminal investigation and adjudication, legal professionalism, public trust and confidence, and technology. Over the past 10 months, these committees have held forty meetings where members heard presentations from more than ninety different national and statewide experts, practitioners, and court officials, resulting in productive and focused dialogue.

### **The NCCALJ Wants to Hear From You**

The NCCALJ recognizes the vital importance of public participation in the process of court system improvement. The interim reports that follow are intended to inform the public of the relevant issues the committees are addressing and to invite input and feedback. Submit comments online at [www.nccalj.org/interim-reports](http://www.nccalj.org/interim-reports) or sign up to speak in person at one of the four public hearings scheduled for August 2016. The dates, locations, and sign-up forms for those meetings are also at the commission's website.

In the fall of 2016, the NCCALJ's five committees will incorporate the public feedback into final recommendations to be presented to the Chief Justice, the Legislature, and the public in early 2017.

The NCCALJ thanks you for your feedback on how North Carolina courts can best meet institutional needs and 21st century public expectations. We look forward to hearing from you.

## I. INTRODUCTION

The mission of the North Carolina Commission on the Administration of Law and Justice (“NCCALJ”) is to address how North Carolina courts can best meet twenty-first century legal needs and the expectations of the public, and to provide justice for all. The role of the Public Trust and Confidence Committee (“PTCC”) is to identify and evaluate factors that influence public trust and confidence in the judicial system and to recommend actions that enhance this trust and confidence.

To gain an understanding of the current state of public perception in the courts, the PTCC partnered with Elon University Poll and High Point University Survey Research Center to conduct live caller phone surveys in October and November of 2015. Survey results identified issues related to knowledge of the courts, efficiency, fairness, access, and judicial independence, among others. Based on the results of those surveys, the PTCC decided to focus on the following goals aimed at increasing public trust and confidence in the courts of North Carolina:

- Promoting fair and equal access to the courts;
- Eliminating actual and perceived bias in the courts;
- Providing for the just, timely and economical scheduling and disposition of cases;
- Enhancing access to information and court records;
- Recommending a selection process that ensures well-qualified and independent judges;
- Strengthening civics education; and
- Conducting a recurring public opinion survey.

The PTCC has held seven public meetings addressing these issues, and will make recommendations in the second half of 2016 with the goal of improving the public’s perception of North Carolina state courts. The PTCC looks forward to promoting additional education, dialogue, and public input to help guide its work moving forward.

## II. PUBLIC PRESENTATIONS

During the PTCC public meetings, experts and judicial stakeholders gave presentations related to court performance, judicial selection, access, and fairness. The information shared in these presentations educated the commissioners and also provided a launching point for the PTCC’s further inquiry. A summary of the presentations and presenters is listed below.

- Performance Metrics and the Courts  
*Professor David Ammons, UNC School of Government*

- How North Carolina Has Selected Judges, 1776-2016  
*Martin Brinkley, Dean of UNC School of Law*
- Strategies for Dealing with Implicit Bias in the Judicial Process  
*Jim Drennan, Professor of Public Law and Government, UNC School of Government*
- CourTools: Measuring Performance in North Carolina State Courts  
*Brad Fowler, Officer, Planning and Organizational Development, NCAOC*
- A Broader Look at Judicial Selection  
*Charlie Geyh, Professor of Law, Indiana School of Law*
- Attorney Perspectives on Judicial Selection in North Carolina  
*Tony Hornthal, John Wester, and Bill Womble, Jr., North Carolina Bar Association Committee on Judicial Independence*
- National Perspectives on Public Trust in the Judicial System  
*Laura Klaversma, Court Services Director, National Center for State Courts*  
*David Rottman, Principal Research Consultant, National Center for State Courts*
- Public Confidence in North Carolina State Courts: Recent Survey Results  
*Emily Portner, Policy Analyst, NCCALJ*
- Recent Legislative Efforts Regarding Judicial Selection  
*Representative Sarah Stevens, NC General Assembly*
- Judicial Campaign Finance in North Carolina  
*Kim Strach, Executive Director, Board of Elections*
- Understanding Implicit Bias and Its Impact on the Criminal Justice System  
*The Honorable Louis Trosch Jr., District Court Judge, 26th Judicial District*

All of the presentation materials are available on the NCCALJ website at [www.nccalj.org](http://www.nccalj.org).

### III. AREAS OF FOCUS

#### **Promoting Fair and Equal Access to the Courts**

The North Carolina Constitution provides that “[a]ll courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.” Yet the 2015 surveys indicated that a majority of survey respondents (73 percent) do not believe that most people can afford to bring a case to court. Moreover, 76 percent of survey respondents believe that people who have no lawyer representing them receive somewhat worse or far worse treatment in the courts. Therefore, the perception appears to be that much needs to be done to increase public confidence in equal access to the courts.

The PTCC recommends that the Judicial Branch take steps to identify and remove barriers that impede fair and equal access to the courts. These barriers include physical impediments, cost factors, language issues, and the complexity of the judicial process. Courthouses must be able to accommodate persons with disabilities and eliminate any physical impediments that prohibit full access to all courthouse facilities and operations. Citizens who cannot afford an attorney should be able to access forms, educational materials, and other resources that help them understand and navigate the complicated judicial process. Court costs should be affordable for the average citizen, and the system must erase cultural and language barriers. Fair and equal access requires a simple process, manageable costs, cultural competence, and full physical access. The Judicial Branch must be committed to these objectives to ensure that courts are open to all citizens, without favor, denial, or delay.

### **Eliminating Actual and Perceived Bias in the Courts**

A substantial number of respondents in the 2015 surveys believe that certain groups generally receive better treatment than others in North Carolina courts – a perception that undermines the Judicial Branch’s commitment to the fair administration of justice for all. Eighty percent of respondents believe that the wealthy receive better treatment, while 48 percent believe whites receive better treatment. Conversely, a significant number of respondents believe that low-income people (64 percent), non-English speaking individuals (53 percent), African Americans (46 percent) and Hispanics (46 percent) receive worse treatment in the courts. If justice is to be served without favor, denial, or delay, the Judicial Branch must create an atmosphere in which every person serving in the Judicial Branch understands the importance of bias-free behavior in the courts, and every person who interacts with the Judicial Branch experiences a bias-free environment.

Empirical studies recognize the potential for disparate treatment based on demographic factors, such as race, religion, gender, primary language, economic status, or other factors. That potential bias may sometimes manifest itself unintentionally and unconsciously. To ensure a fair and impartial process, the Judicial Branch must acknowledge the potential for bias and train court personnel and judicial officials to recognize and rectify it. Uniform policies and procedures, together with consistent decision-making processes, will help minimize disparate treatment among similarly situated parties. Finally, a workforce that reflects the diversity of the people who interact with the judicial system is critical to promoting greater understanding and acceptance of cultural differences and reducing the potential for bias. To ensure the fair administration of justice, the Judicial Branch must be committed to uniform policies and procedures, impartial decision-making, cultural competence, a diverse workforce, and an overall bias-free environment.

### **Providing for the Just, Timely, and Economical Scheduling and Disposition of Cases**

As stewards of public resources and individual citizens’ time, Judicial Branch officials must strive to operate a court system facilitating the just, timely, and economical scheduling and disposition of cases. This includes a commitment to minimizing trips to the courthouse by citizens and attorneys when feasible. Public perception is that the state’s courts fail to achieve this goal, as only 25 percent of survey respondents agree that cases are resolved in a timely manner.

The PTCC recommends that the Judicial Branch evaluate methods and take actions to encourage the just, timely, and economical scheduling and disposition of cases. Such actions include evaluation of case management strategies that encourage more efficient handling of cases by a single judge, the timely and efficient resolution of hearings and matters before the court, and the increased use of

firm scheduling orders and deadlines. Using improved technology and performance metrics, the Judicial Branch should be well-poised to regularly monitor court performance, identify areas for improvement, minimize inefficiency, and encourage best practices among jurisdictions. The Judicial Branch should also focus on improving the efficiency of its interaction with public actors by eliminating unnecessary trips to the courthouse for jurors, witnesses, parties, and attorneys.

### **Enhancing Access to Information and Court Records**

Participation in the judicial process can be challenging, even for those with knowledge of the law. For those without such knowledge, the process can be especially difficult to navigate. People seeking general information may be unaware of what information is available and how to access it. Parties and self-represented litigants may lack sufficient information and resources to guide them through a sometimes complicated process. Information is power, but channeling that power requires open access to information and resources.

The PTCC recommends that the Judicial Branch enhance access to court records, information, and resources to the greatest extent possible. The courts must use technology to increase the availability of electronic records and information and to minimize the need to visit the physical courthouse. Judicial stakeholders should explore ways to expand the availability of legal assistance for low and moderate-income individuals and to create staffed self-help centers to provide assistance for self-represented litigants. In addition, general information about court processes, procedures, and operations should be readily available electronically. The fair administration of justice depends on an informed citizenry equipped with understandable legal forms, convenient access to public records, and information and resources that help them to navigate the complicated judicial process.

### **Recommending a Selection Process that Ensures Well-Qualified and Independent Judges**

Nothing is more fundamental to our system of justice than having qualified, independent judges to settle disputes. While 60 percent of respondents in the 2015 surveys agree that judges make decisions based on facts, 76 percent do not believe that courts are free from political influence. Respondents generally believe that judges' decisions are influenced by political parties (76 percent) and by the fact they must run for election (75 percent). Moreover, funding of the Judicial Branch remains stagnant, and inadequate salaries threaten the Judicial Branch's ability to identify and retain qualified judges.

The PTCC recommends that the General Assembly take steps to minimize the perceived impact of judicial elections on our system of justice by changing how judges and justices are selected and retained. The PTCC further recommends that the General Assembly take action to ensure sufficient funding for the Judicial Branch and to ensure that judges and justices are provided competitive compensation packages to attract and retain qualified judges. The PTCC also recommends that the Judicial Branch evaluate procedures and guidance related to conflicts of interest for judges and justices.

### **Strengthening Civics Education**

A low percentage of respondents in the 2015 surveys (13%) indicated that they were very knowledgeable about our state courts. Increased citizen understanding of the administration of the state court system is strongly and positively correlated with the public's trust and confidence in the



day-to-day functioning of our state courts. Civics education serves to foster citizen engagement and increase transparency – two overarching principles that are widely recognized to enhance the public’s trust in their government institutions.

The PTCC recommends that the Judicial Branch strengthen civics education in North Carolina among school-aged children and adults through curricula enhancements, programmatic materials, increased social media, and court-user information at first point of contact with the court system. School-aged children should learn early-on the importance of a well-functioning court system as one of three co-equal branches of government. Adult citizens should understand how an effective and efficient court system affects their lives, even if they never come into contact with the system itself. The Judicial Branch should empower its officials and court staff to engage in public service efforts related to civics education. Lastly, when feasible, jurors, witnesses, litigants, and others interacting with the court system should be provided relevant background information on the work of the courts and their respective roles in the judicial process.

### **Conducting a Recurring Public Opinion Survey**

To more effectively serve the public and to maintain and increase public trust and confidence, the Judicial Branch must understand how the public perceives North Carolina’s courts. The best source of the public’s perception of the Judicial Branch is the public itself. The 2015 surveys have been instrumental in framing the issues related to public trust and confidence and shaping the work of the PTCC.

The PTCC recommends that the Judicial Branch establish and conduct a biennial survey to measure public opinion regarding the operation of the courts. The survey should seek to measure the public’s perception of fairness, timeliness, administrative efficiency, and general operation, among other factors to be identified. The survey must also be sensitive to varying perceptions among different socioeconomic groups. By evaluating the survey results from year to year, the Judicial Branch will be in a strong position to address perceived weaknesses, either substantively or through public relations, to track progress over time and to capitalize on acknowledged strengths. The Judicial Branch also should engage in systematic surveying of court system users through periodic in-person courthouse surveys and continuous online surveys for those accessing the court system through the Internet.

## **IV. SUMMARY**

The PTCC has relied on presentations from experts and other judicial stakeholders in shaping its work to date, but public input is essential to the work of the PTCC. Members of the public will be able to identify the issues that matter most to them and to highlight specific situations and issues that negatively or positively affect their perception of the judicial system. The members of the PTCC look forward to sharing information with the public, receiving public input, and working with the public to implement recommended changes. The expectation is that the PTCC’s final recommendations will result in changes that improve the user experience in state courts and enhance the overall level of public trust and confidence in the North Carolina Judicial Branch.