



**North Carolina Commission on the Administration of Law and Justice
Public Trust and Confidence Committee**

Meeting Minutes / October 18, 2016

MEETING DATE	October 18, 2016
TIME	10:30 a.m. – 2:30 p.m.
LOCATION	NCJC, 901 Corporate Center Drive, Raleigh NC, 27607

Attendees

Acting Chair: Dean Suzanne Reynolds

Members: Sherif Earl R. Butler, Frank Emory Jr., Juan Flores, Frank B. Holding Jr., John Hood, A. Dale Jenkins, Senator Floyd B. McKissick Jr., Dean Michael R. Smith (Ex-Officio), and Robert C. Stephens, Representative Sarah Stevens (Ex-Officio).

NCCALJ Staff: Will Robinson and Emily Portner.

Reporters: Andrew Atkins and Mildred Spearman.

Approval of Minutes

The committee members unanimously approved the minutes from the September meeting.

Committee Action

Certification of Unresolved Questions of State Law

Chief District Court Judge for the Eastern District of North Carolina, James C. Dever, III appeared on behalf of Chief Judge Frank D. Whitney, Chair of the North Carolina State-Federal-Tribal Council to discuss the process of certification of unresolved questions of state law from the Federal courts to the North Carolina Supreme Court. He noted that North Carolina is the only state that does not have such a process. Other states have adopted a certification process either by statute or by court rule. The Council has requested the Committee to consider recommending the adoption of such a procedure. Judge Dever explained that without such a rule, Federal judges are required to predict how the North Carolina Supreme Court would rule and that those predictions do not have precedential effect. He indicated that certification is relatively rare. For example, in the Fourth Circuit Court of Appeal, only 11 certifications have been made within the last 5 years. Judge Dever believes that adoption of such a process would provide more certainty to litigants.

The Committee members asked several follow-up questions to Judge Dever’s presentation. He indicated that the he has heard was that some justices in the past may have been concerned with whether certification constituted a “case or controversy.” He indicated that such concern

must have been addressed in other states, since all of them have implemented a certification process. He noted that while the procedures can be set by statute or rule, generally they would allow the Supreme Court to decline to rule on a certified question. Judge Dever suggested that the Council is interested in the Supreme Court considering this issue, at least initially, as support of the Justices would likely be necessary to implement a certification process, either by rule or by statute.

Procedural Fairness

Judge Steve Leben from the Kansas Court of Appeals appeared via WebEx to discuss the issue of procedural fairness. He believes it is extremely important for a committee addressing public trust and confidence to consider these issues. He noted that the public's view of the courts and judges has been declining overall. He also noted polarization. Judge Leben indicated that the public is most concerned with fair procedure, not necessarily fair results. The components of procedural fairness are (1) Voice; (2) Neutrality; (3) Respect; and (4) Trust. Judge Leben indicated that acceptance of court decisions is more likely when the individual believes the procedures utilized were fair.

The Committee asked several follow up questions, particularly regarding what types of procedures could be suggested by the Committee. Judge Leben stated that education for judges and court employees was important, particularly continuing education. He also stated that measurement, either in court house surveys or otherwise, was important. The Committee continued to discuss Judge Leben's presentation in the context of the drafting of its recommendations.

Additional information related to Judge Leben's presentation can be found in the PowerPoint slides posted on the NCCALJ website.

Drafting of Recommendations

The Committee discussed revisions to the Committee's recommendations. Global changes were made to use the word should throughout. Specific line-item suggestions were made to the recommendations titled "Strengthening Civics Education," "Public Survey," "Access to Information," and the Procedural Fairness section of "Elimination of Bias." The Committee's discussion included an individual review of each point made in those recommendations and involved robust discussion.

Administrative Matters

The final PTCC Committee meeting is scheduled for Tuesday, November 15, 2016. The final full Commission is scheduled for December 2, 2016. The PTCC will need to present its final report to the Commission by the first week of December.

Prior to the next meeting, the members are expected to review the remaining recommendations and send any suggested changes to the reporters to incorporate into an updated version of the Committee report. The Committee will also review the additional information sent related to certification of unresolved questions of state law.

Next Meeting

Date: Tuesday, November 15, 2016

Time: 10:30 a.m. to 2:30 p.m.

Location: North Carolina Judicial Center, 901 Corporate Center Drive, Raleigh NC, 27607