



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

Summary of Public Comments on Interim Report

Prepared by: Emily Portner, NCCALJ Research Associate

Overview of Total Comments Received on All Reports

- Detailed feedback received from **24** judicial branch stakeholder organizations, including:
 - NC Conference of Clerks of Superior Court
 - Equal Justice Alliance
 - NC Equal Access to Justice Commission
 - Legal Services of Southern Piedmont
 - The Criminal Justice Debt Working Group
 - NC State Bar (IOLTA)
 - NC Office of Indigent Defense Services
 - NC Conference of District Attorneys
 - Conference of Superior Court Judges of North Carolina
 - NC Conference of Court Administrators
 - NC Magistrates Association
 - Carolina Justice Policy Center
- **423** total attendees at four public hearings; **131** speakers at those hearings.
- Written comments received from **208** unique individual judicial branch employees and members of the general public.
- Four main areas of public interest include:
 - Raising the age of juvenile jurisdiction from 16 to 18
 - Increased funding for civil legal aid services and the North Carolina Legal Education Assistance Foundation (NC LEAF)
 - Family Court expansion
 - The method of judicial selection

Comments Specific to the Public Trust & Confidence Committee Interim Report

I. JUDICIAL BRANCH STAKEHOLDER ORGANIZATIONS

1. Conference of Superior Court Judges of North Carolina

a. Elimination of bias

- i. Of a survey of Superior Court Judges resulting in 29 responses, there is strong support (66%) for more attention to identifying and reducing or eliminating actual and implicit bias from the administration of justice. Comments include:

1. *Rely on existing studies and programs such as “Race Matters for Juvenile Justice.”*
2. *Provide training through continuing education programs.*

b. Judicial selection

- i. 79% of respondents strongly agree or agree that the real or apparent influence of outside factors associated with the election of judges should be reduced or eliminated.

1. One comment suggested that the Committee explore means to do that *other than* the elimination of popular elections, such as non-partisan elections and retention elections.

- ii. However, respondents were equally split on whether or not the popular election of judges should be eliminated altogether. Comments include:

1. *Do not eliminate popular elections until someone comes up with a better and more succinct plan for a better way.*
2. *The public is poisoned by the toxicity of partisan politics.*
3. *The public lacks understanding or appreciation of the role of judges in the administration of justice.*

2. Equal Justice Alliance

a. Language access

- i. The Equal Justice Alliance commends the two-year effort of the Administrative Office of the Courts (AOC) in developing the “Standards for Language Access Services in the North Carolina Court System” and improving language access in the state’s court proceedings. This process was triggered by a U.S. Department of Justice finding that NC was in violation of Title VI of the Civil Rights Act of 1964 by not providing interpretive services to non-English speakers, thereby denying access to its court system. While there have been significant improvements in certain areas, more work is needed for North Carolina to fully realize true language access in its court system. The Language Access Stakeholders Committee should be re-convened by AOC to provide advice and recommendations on how to best ensure language access, including:

1. Notice and awareness of the community and parties about language access rights.
2. Training for all Court personnel.
3. Improved complaint and enforcement procedures.
4. Documentation when interpretive services are denied.
5. Strong and vigorous data collection.
6. Interpretive services for all court proceedings.

3. JusticeMatters

a. Language access

i. In many proceedings involving indigent non-English speaking clients or witnesses, the need for an interpreter in the courtroom is critical. Attorneys may request an interpreter, but currently attorneys are unable to consistently track or confirm the status of that request before they arrive in the courtroom. Where the request for an interpreter has not been fulfilled (for any reason), the attorney has little time or ability to obtain an interpreter, especially where there is a need for an interpreter in languages for which there may be very few interpreters available in that geographic area. These problems lead to unnecessary delays in the court proceedings.

1. To help address this problem, we respectfully recommend the use of an online database through which attorneys and individuals representing themselves may request an interpreter and to confirm that the request has been processed and filled.

b. Enhanced access to court records

i. Pending orders for arrest, warrants, driving records and other criminal records may be public records, but they are often difficult to obtain without having to pay for access through expensive commercial websites. The records are important to help legal service providers screen and monitor clients during the intake process and also to investigate whether there are charges relating to abuse or neglect of a child.

1. We respectfully recommend allowing qualifying pro bono or public interest attorneys to obtain these criminal records from the court system in order to promote higher-quality and timely legal services to indigent clients.

4. Legal Services of Southern Piedmont

a. *LSSP echoes the comments of the Equal Justice Alliance as they relate to language access.*

5. North Carolina Conference of Clerks of Superior Court

a. Promoting fair and equal access to the courts

i. We feel it is important to take away the barriers impeding folks from handling their cases. One of the largest barriers is language. There are not *enough certified translators and scheduling can be an issue*. In addition, the language line to call can be technologically difficult when not trained for proper use in court.

b. Strengthening civics education

i. We strongly agree and support the idea of curricula enhancements, programmatic materials and increased social media to help the general public from early age learn about the court system and the key players in the judicial process.

c. Eliminating actual and perceived bias in the courts

i. Most of our clerks offices statistically reflect the diverse workforce you have suggested. The problem is the lack of *professional training for staff* on how to interact with the public and difficult situations. More helpful tips or proper training would allow staff to think about how to respond to different groups of people who enter their offices.

6. North Carolina Magistrates Association
 - a. Enhanced access to court records
 - i. We absolutely concur with furthering technological resources for easy to find information in regards to criminal records and court calendars.
 - b. Resources
 - i. One comment stands out above all to our organization in the section on selecting and retaining well qualified judges: “Moreover, funding of the Judicial Branch remains stagnant, and inadequate salaries threaten the Judicial Branch’s ability to identify and retain qualified judges.” The same can be said for Magistrates across the state – during the recession and afterwards, Magistrates experienced a much higher than normal turnover rate, and even now many in the profession still view the position as a stepping stone for something better paying or as a supplemental employment for those retired already.
7. North Carolina Official Court Reporters
 - a. We agree that the protracted nature of court proceedings can be frustrating and costly to all stakeholders. With the current advancements in court reporting technology, a live court reporter is able to supply the most accurate record available in a timely fashion. This is achieved by ensuring that all speakers are understood *in the moment*, which provides for quicker production of the public record. Another service offered by a live official court reporter is Computer Aided Realtime Translation (CART) to those North Carolina citizens that are hard-of-hearing, which complies with the Americans with Disabilities Act.

II. VERBAL COMMENTS PROVIDED AT PUBLIC HEARINGS

Comments Re: Judicial Selection

Comments in Support of a New System	Comments in Support of Status Quo/Election	Total Comments
17	2	19
89.5%	10.5%	<i>100.00%</i>

In Support of a New System:

First Name: Jason

Last Name: Idilbi

Public Hearing: Jamestown

Summary of Comments:

Mr. Idilbi is a licensed attorney and expressed his concern about the current election process for judges. He indicated that qualified people may be deterred from running by the current partisan system that requires expensive campaigning in a highly public environment. He favors a judicial selection system that includes a nomination and confirmation process involving the judicial and legislative branches followed by retention elections.

First Name: Bill

Last Name: Womble, Jr.

Public Hearing: Jamestown

Summary of Comments:

Mr. Womble thanked the Public Trust and Confidence Committee for raising the issue of how we elect judges. He described that as an attorney he often receives questions from potential voters seeking a recommendation or information about a judicial election. He noted that many people may not ask questions and may vote based on funds put in a campaign. Mr. Womble supports changing the current system used for selecting judges.

First Name: Jim

Last Name: O'Neill

Public Hearing: Jamestown

Summary of Comments:

Mr. O'Neill spoke in support of changing the selection process for well-qualified judges in favor of an appointment process. He noted that it is difficult for private attorneys to give up their livelihood in hopes that they might get re-elected.

First Name: Sharon

Last Name: Ozment

Public Hearing: Jamestown

Summary of Comments:

Ms. Ozment believes an appointment process for judges would be better than the current selection process. She commented that voters need relevant and reliable information, and she suggested possible linkages to low voter turnout. She also suggested that opportunities for women and minority groups should be included.

First Name: Alan

Last Name: Duncan

Public Hearing: Jamestown

Summary of Comments:

Mr. Duncan believes that an uninformed voter electorate and current campaign funding has hurt the credibility of the judiciary. He wants the best possible candidates for judges and justices who follow the law. He noted that the appointment process is not perfect but he supports the use of a bipartisan group of people. Mr. Duncan also commented that civic education is a great goal, but he cautioned that topics which aren't tested are often not emphasized and caution should be taken in determining the correct way to implement a civics education mandate.

First Name: Rick

Last Name: Manger

Public Hearing: Jamestown

Summary of Comments:

Mr. Manger spoke in support of changing the current selection process for judges. He indicated that most citizens don't know about judges, but he also noted that he is not a believer in a process of appointment by elected officials. He suggested that district court judges could be nominated by the local Bar. Three names could be submitted to the governor and he/she must choose from the list. Reappointment would

then be made by the same local Bar group. Appellate judges would require a wide group of attorneys and non-attorneys to start the selection process.

First Name: Mack

Last Name: Arrington

Public Hearing: Jamestown

Summary of Comments:

Mr. Arrington commented that citizens don't have time or resources to be informed about government. He also expressed a lack of trust in allowing elected officials or a few individuals to make appointments. He noted a preference for a bipartisan group of 12 or more members to select judges. He also wishes it was easier to become informed about the judicial system and judicial candidates, and he suggested that a website might be helpful.

First Name: Brenda

Last Name: McCauley

Public Hearing: Wilmington

Summary of Comments:

Ms. McCauley is a lifelong North Carolina resident, and she has been a voter in Wilmington for eight years. She indicated that there is not a lot of information available about candidates in judicial elections and she has had difficulty familiarizing herself with candidates on the ballot. Many of her peers and friends are in the same situation. She noted that \$6 million was spent on North Carolina Supreme Court elections in 2014 and more than one third of the funds came from outside the state. She commented that these issues give her pause at the opportunity for bias, and she encourage the commission to continue looking at the issue.

First Name: Stuart

Last Name: Vaughn

Public Hearing: Wilmington

Summary of Comments:

Mr. Vaughn is a private citizen in business and noted his dismay with the increased role of money in elections. He commented that he is glad that a process is underway to review judicial selection in favor of a different system.

First Name: Jeb

Last Name: Vaughn

Public Hearing: Wilmington

Summary of Comments:

Mr. Vaughn is a member of the judicial independence committee of the North Carolina State Bar. He pointed out that the committee has a white paper on the topic of judicial selection. Mr. Vaughn noted survey results indicating the public perceives bias exists in the courts (racial, financial, etc.). He encouraged the continued review of the topic of judicial selection, including appointment options as well as looking to procedures of other states.

First Name: Bonnie

Last Name: Nelson

Public Hearing: Wilmington

Summary of Comments:

Ms. Nelson is a private citizen speaking on the topic of judicial selection. She commented that she always conducts research before elections but has seldom voted for judges. She noted her belief that it is difficult to find information about how judges ruled, their experience, etc. She also noted her difficulty making informed decisions because candidates primarily stress political affiliation, and she believes that affiliation and monetary support does result in bias. She thinks the current system results in the loss of capable judges, and she encouraged the NCCALJ to continue evaluating appointment options as well as other systems in other states such as Ohio.

First Name: Jacob

Last Name: Ehrmann

Public Hearing: Asheville

Summary of Comments:

Mr. Ehrmann operates a small family law firm. After his initial reading of the potential changes to judicial selection he was opposed but he later recognized the possible benefits. He is concerned by the current polarization of politics. Judges have a high standard to interpret the law. An appointment process could be a positive option allowing judges to focus on law and make decisions that may be unpopular. He did encourage the commission to think about more options than just appointment.

First Name: John

Last Name: Arrowood

Public Hearing: Charlotte

Summary of Comments:

Mr. Arrowood spoke on public trust: we must have highly competent judiciary that must look like the people of NC. He stated that people must believe that judges are independent and although politics has always been a part of the process but lately there seems to be an exacerbation of politics. Each political party in control has passed over merit selection and now is the time to address this. He feels that judges must raise too much money to fund a successful campaign and that instead, we should have a system of appointment by the governor with approval by the general assembly (this part will require a constitutional amendment), then retention elections.

First Name: John

Last Name: Clark

Public Hearing: Charlotte

Summary of Comments:

Mr. Clark spoke on judicial selection. He believes that a good argument has been made for appointment vs election of judges.

First Name: Edward

Last Name: Hinson

Public Hearing: Charlotte

Summary of Comments:

Mr. Hinson spoke on judicial selection. He believes that there is a perception that money in judicial elections influences outcomes in court cases and by changing judicial selection will improve public trust and confidence. He feels that campaigning distracts incumbent judges and dislikes how judges must raise money from lawyers and potential litigants. Mr. Hinson maintains that the campaign process is unfair (judges cannot run on the issues, cannot defend themselves on these topics) and encourages the commission to look at South Carolina, which has a better process.

First Name: Harrison

Last Name: Lord

Public Hearing: Charlotte

Summary of Comments:

Mr. Lord spoke on judicial selection. He is the prior chair of the Bar's Young Lawyer chapter and explained how young attorneys are not interested in being judges if they have to subject themselves to the public process of elections, openly campaign, fundraise, etc. knowing they'll have to repeat that process every few years to keep serving. He fears that judge seats will be filled by those with the most political connections and is concerned that fundraising breeds the perception of impropriety and the appearance that money matters hinders judges.

First Name: Ed

Last Name: Williams

Public Hearing: Charlotte

Summary of Comments:

In his time with the Charlotte Observer Mr. Williams thought it was important to use the paper to educate the public on the judges on the ballot. He thinks that while some judges are excellent, some are overly ambitious and it is hard for voters to be able to tell the difference. He said that many people don't know who to vote for and/or don't care because they can't find a way to be educated on the races.

In Support of Election:

First Name: Ernie

Last Name: Wittenborn

Public Hearing: Jamestown

Summary of Comments:

Mr. Wittenborn spoke in opposition to the proposed recommendation changing the process for judicial selection. He commented that the change moves selection out of the hands of voters. He suggested that the appointment group would not be nonpartisan, small committees are subject to groupthink, and selection committees are subject to influence by outside groups. He suggested that New York was not successful in its shift away from traditional elections and the NCCALJ should rethink its recommendation. He does agree that retention elections are worth considering.

First Name: Shawn

Last Name: Fraley

Public Hearing: Jamestown

Summary of Comments:

Mr. Fraley commented that the current judicial selection process is fine. He noted that he doesn't want selection removed from the hands of the public and put in the power of a few using the justification that they wouldn't be political or that they are smarter.

III. ONLINE COMMENTS FROM THE GENERAL PUBLIC AND JUDICIAL BRANCH EMPLOYEES

Comments Re: Judicial Selection

Comments in Support of a New System	Comments in Support of Status Quo/Election	Total Comments
3	1	4
<i>75.0%</i>	<i>25.0%</i>	<i>100.00%</i>

In Support of a New System:

First Name: K. Edward

Last Name: Greene

Email: egreene@wyrick.com

Affiliation: Attorney

Online comments:

Judges at all levels (trial and appellate) should be appointed, not elected; Judges should be appointed by the Governor from a short list of candidates approved by a Commission whose members are selected either by the State Bar, or a Commission whose members are selected by North Carolina based voluntary lawyer associations representing different groups, i.e., Women Lawyers, Black Lawyers, Defense Lawyers, etc.; the initial appointment should be for an eight year term, subject to reappointment; and the persons recommended by the Commission should have at least 10 years of experience in the practice of law (governmental or private). We understand an appointed judiciary would require an amendment to our North Carolina Constitution.

If judges are to be elected, the term of office should be four or eight years; the election should be non-partisan, with no party affiliation shown on the ballot; and there should be public financing for these campaigns. Judges should be paid a minimum annual salary of \$150,000, with the Supreme Court Justices receiving an annual salary of \$200,000.

First Name: Ken

Last Name: Keller

Email: krk@crlaw.com

Affiliation: Attorney

Online comments:

I feel the present process of selecting judges through privately funded elections does not result in selection of the best candidates (qualified candidates do not run due to the need to raise funds), creates conflicts of interest (subtle and not so subtle pressure on donors, recognition by Judges that they will need funds from the donors), and damages the professional credibility of the judiciary and bar (ads that have used attack tactics or ridiculous jingles).

For local positions like District Court Judge, I feel our prior practice worked well (the 18th Judicial District Bar met as a whole and recommended a slate to the Governor, from which he was required to choose).

For state wide elections, I favor limiting nominees to those vetted by an independent committee made up of members of the Bar, including local Bars, the State Bar, and NC Bar Association. I also favor public funding for re-election efforts.

First Name: Alexander

Last Name: Dale

Email: ACD@wardandsmith.com

Affiliation: Attorney

Online comments:

I understand the Commission has been considering the issue of judicial selection, and it appears the Public Trust and Confidence Committee received several presentations on this topic. I am sure there is nothing I could add that would be more substantively interesting or eloquently delivered than Dean Martin Brinkley's presentation on this topic. However, if the Commission is interested in considering alternative methods of judicial selection and retention beyond the nominating commission concept that has been rejected, there are some other alternatives.

The success of Delaware's Court of Chancery is well-documented. It is regarded as one of the world's most respected forums for resolution of complex business cases, but its success as a trial court would be immaterial if the appellate courts were not equally as highly esteemed. The Delaware court system uses a nominating committee for judicial selection, but there is one important distinction: The Delaware Constitution requires each court and the judiciary as a whole to be comprised of judges balanced among political parties. Article IV, Section 3 of the Delaware Constitution provides,

“[A]t any time when the total number of the offices of the Justices of the Supreme Court, the Judges of the Superior Court, the Chancellor and all the Vice-Chancellors shall be an even number, not more than one-half of the members of all such offices shall be of the same major political party; and at any time when the total number of such offices shall be an odd number, then not more than a bare majority of the members of all such offices shall be of the same major political party; the remaining members of the Courts above enumerated shall be of the other major political party.”

I share the Delaware example to you as an alternative method. I am not suggesting it is right for North Carolina, and I frankly think there are better alternatives for selection and retention that could be utilized for justices on our Supreme Court. Although I am not recommending this method, I do believe an examination, and possibly blending, of creative alternatives used in other states could help the Commission find a better result for North Carolina, so we can broaden public confidence in our judicial system. I hope the Commission will continue to evaluate this issue.

In Support of Election:

First Name: William

Last Name: Leary

Email: willeary@suddenlink.net

Affiliation: General Public / Private Citizen

Online comments:

I am very concerned with the recommendation that the General Assembly make changes to how judges are selected/elected. I do not see how appointing judges would remove the political considerations from the process. Rather, I can see the selection and appointment process becoming much more political. There would few people involved in an appointment process with the opportunity for great pressure brought to bear on anyone responsible for making the selection. Removing the election process for judges from the hands of the people would be a giant step toward loss of local control. Certainly there would be a loss of accountability to local citizens.

Other Comments

First Name: James

Last Name: Narron

Email: jwnarron@nowlaw.com

Affiliation: Attorney

Online comments:

The judicial system in general and the judiciary in particular are and have been underfunded for maybe a generation. This underfunding is a crisis. It is happening now. The quality of North Carolina judges is critical not only for administering justice but also for maintaining a high level of the confidence of the public in the impartiality of the judiciary.

My father was a country lawyer in Johnston County with an active trial practice. I had the privilege of knowing practically all of the judges who rotated through our Superior Court from the mid-1950s forward, seeing them in his office, having lunch with them, having them at our supper table in the evening. Overwhelmingly, these men (and Judge, later Chief Justice, Sharp, was the only woman during that time) were quality individuals, lawyers who were leaders in the legal community, public leaders, men of substance. To be sure, we still have many of that same caliber on the bench, but there are cracks. Those cracks are noticeable; those cracks get larger with each passing year.

We should all salute each member of our judiciary for his or her sacrifice. Service as a judge is a decided financial burden. This financial burden makes it increasingly more difficult to attract top lawyers, good lawyers, to the bench.

Chief Justice Lake used to relate the story of the salary of the assistant to the assistant to the Director of Charlotte Parks and Recreation Division. That second-level assistant's base salary was more than the salary of the Chief Justice.

In my small firm in this small town, a third-year associate will be compensated more than a District Court Judge; here a fifth-year associate will be compensated more than a Superior Court Judge. Fortunately, we are able to attract good lawyers who were good students. Our lawyers give back by service on various college boards, municipal and county boards, charity boards, and some are active politically. They make CLE presentations to Bar groups, not just in this state, but across the country. Likely none of them will offer himself or herself for service to the State's judiciary. The financial sacrifice is just too great. That is a great shame. It is a shame for those gifted lawyers who do want to make a difference by serving on the bench. It is a shame for North Carolina not to have the benefit of that contribution.

The goal is not parity of pay as between the public and private sectors. The goal is or should be to have a judiciary pay structure which will attract the best lawyers who want to serve, which will allow that service at a level of sacrifice not so high as to prevent, effectively and practically, service by those who are drawn to that service.

There is a penalty for not meeting that goal: The quality of the judiciary suffers. The quality of jurisprudence suffers. The quality of services to our citizens suffers. Finally, the confidence of the public in its judicial system is eroded by second class effort and second class work. The price for quality is not too high; the price to be paid for continued under-funding is the jeopardy of our entire judicial system.

First Name: Sharon

Last Name: Orr

Email: Not provided

Affiliation: Trial Court Coordinator, District 29B

Online comments:

The website isn't incredibly user friendly and I've noticed most counties do not have much county specific information (except those with more staff). No one in the system is permitted to give legal advice, but court procedures should be publicized or included on the website to ensure transparency. AOC employees are overly cautious about being perceived as giving legal advice so much that they are often hesitant to even discuss basic procedures. Additionally, attorneys often give their clients very limited information which paints an inaccurate picture of the events they should expect in the life of their case. Custody Mediation and Family Financial Settlement Programs have been mandatory for just under ten years. There are attorneys that have been practicing the entire time period that still don't seem to completely understand either (or simply resist in the form of "confusion"), much less explain the process to their clients. Something needs to be done to bridge the gap.

Many may say this should be the responsibility of each county/district but again that goes back to inadequate staffing. We have been trying to develop local rules regarding FFS for ages as well as update

our custody mediation rules, only to be halted at some point in the progress by the heavy workload. Some districts have local rules that are extremely extensive and revised regularly. We never have the luxury of that kind of time.

It would seem the variations from county to county and district to district would be burdensome on the attorneys and staff. While we are creating uniformity in many areas, we certainly should have uniformity in basic rules and limitations as to local variations. Perhaps there should be some hard basics that are uniform across the state and an area for variation (because we are a unique state with extremely urban and extremely rural counties throughout) that is addressed as an explanation of procedures/life cycle of the case under the local section of the website.

True justice is also timeliness and typically more rules = more steps = more time involved prior to resolution. Too many rules only further complicates the real goals of timely resolution to disputes. And to echo what Judge Brooks recently said, "Where someone lives should not dictate the type of justice they receive." Sadly that is the case in many situations with so much variation across our state.

First Name: Jackie

Last Name: Freeman

Email: jackiefreeman4@gmail.com

Affiliation: General Public / Private Citizen

Online comments:

Trust in anything, whether it is a person or in this case a judicial entity, trust has to be earned and not given based someone's title or position. The courts, court administrative personnel & judges have been able to not sometimes do their jobs properly or professionally but everyone (private citizens) know that there is nothing that can be done about it. I am having a legal issue with a Deputy clerk from Northampton County that has refused to follow the instructions and procedures written on AOC form#AOC-CV-505 and stated in NCGS 52C-6-605 to register a judgment which is required to establish a contempt/registration case. This is what has set off all the issues with my case that has made it 20 times harder prosecute. Then when I saw Judge Jarrell communicating non-verbally with the defendant's attorney just before granting the motion to dismiss, I lost all respect for him and the judicial process and procedures. I think it is extremely important since Judges are endowed with the powers of determining the faith of people that it is essential that those elected or appointed to these positions are evaluated to the extent that they are mentally healthy to hold just a position. The issue of just passing a background check, education verification or whatever else is look at in the evaluation not everyone can put their personal biases aside to deal people from varying ethnicity, backgrounds which has been shown in case were black defendants have been given higher sentences than other races. When complaints are filed they need to be taken seriously and independently investigated. I think cameras and court reporters should be put back in the courtrooms to deter unprofessional behavior of judges, attorneys and others in the courtroom. It is my opinion that if you are doing your job as required then you should not be bothered by cameras or court reporters are in the courtroom.