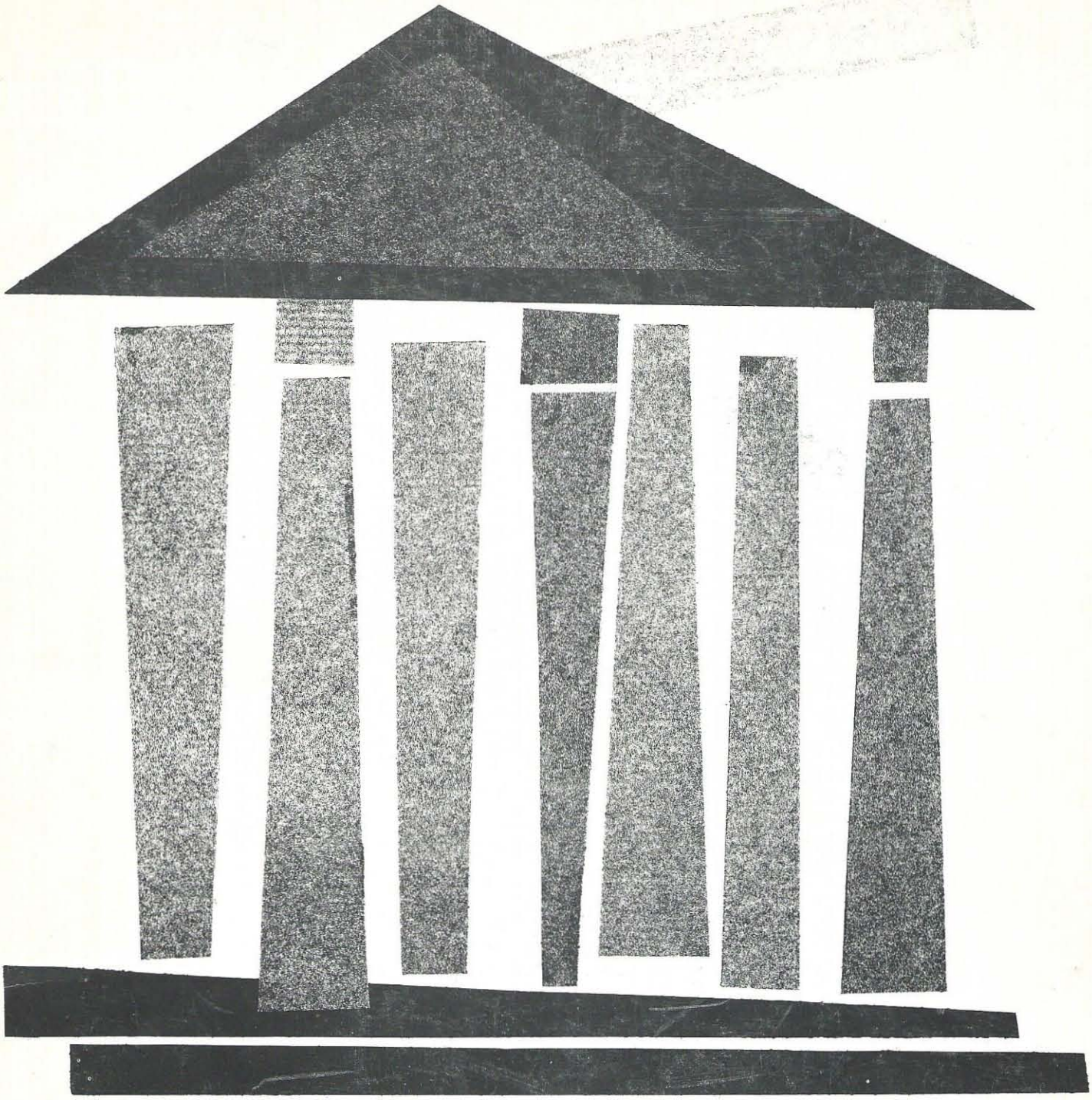

The Judicial Department Act of 1965: a series of explanatory articles from Popular Government reprinted by the North Carolina Courts Commission

DAN K. MOORE
Governor

State of North Carolina
COURTS COMMISSION

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Chairman

STATE LEGISLATIVE BUILDING
RALEIGH, N. C.

TO THE MEMBERS OF THE 1967 GENERAL ASSEMBLY

SUPERIOR AND DISTRICT COURT JUDGES

SOLICITORS AND PROSECUTORS

MAGISTRATES AND CLERKS OF SUPERIOR COURT

The Judicial Department Act of 1965 activates the new District Court system in six judicial districts embracing twenty-two counties of the State in December, 1966. Three-fourths of the remaining counties will come under the new system in the next biennium. It is important that all officials, legislative and judicial, state and local, have a thorough understanding of the far-reaching provisions of this legislation.

Several issues of Popular Government in the months since enactment of this legislation have carried articles explaining various facets of the Act. These articles were prepared by Mr. C. E. Hinsdale, who served as secretary and draftsman for the Commission. The Commission feels that their collection in one place, by means of this special reprint, will be a substantial convenience and contribute to a better understanding of the legislation. We commend their study to all citizens interested in the improvement of the administration of justice in North Carolina, as a supplement to the Act itself, which is contained in Chapter 7A of the General Statutes.

As a further aid, especially to members of the General Assembly, Article IV (The Judicial Department) of the Constitution, has been included as an Appendix. This edition includes the 1965 amendment which authorizes the General Assembly to create an intermediate Court of Appeals.

Lindsay C. Warren, Jr.
Chairman

The Courts Commission's Recommendations

[*Editor's Note: The 1963 General Assembly created the Courts Commission and charged it with preparing legislation to implement the new Article IV (Judicial Department) of the Constitution. The Commission reported to the 1965 General Assembly early this month. The report was accompanied by a lengthy bill, introduced by Senator Lindsay C. Warren, Jr., Commission chairman. The bill, among other things, creates a District Court Division of the General Court of Justice, and establishes certain district courts therein.*

This brief summary of the recommendations of the Commission, amended slightly to reflect the provisions of the legislation as finally enacted, presupposes general familiarity with the provisions of the Judicial Article.]

Creation and Organization of District Court Division

The State is divided into thirty district court districts, the numbers and boundaries of which are the same as the present superior court judicial districts. The district court sits in the county seat of each county, and at such additional places as may be authorized by the General Assembly. District court judges and prosecutors, in numbers fixed by the General Assembly, serve on a district-wide basis. Magistrates, as officers of the district court, serve each county within a district, in accordance with a minimum-maximum quota per county established by statute. The clerk of superior court performs the clerical functions of the district court on a county basis; there is no separate clerk of district court.

The following districts are established (that is, activated) on the first Monday in December, 1966: the first, the twelfth, the fourteenth, the sixteenth, the twenty-fifth, and the thirtieth. Others are activated on the same day in December, 1968, and the final group of districts becomes active in December, 1970.

Districts embracing a county with a population of 100,000 or more are entitled—on recommendation of the chief district judge approved by the Administrative Office of the Courts—to a quota of State-paid family court counselors, to assist the district judge who hears domestic relations and juvenile cases.

District Court Judges

District court judges, in the number authorized by the General Assembly, are elected by districts, for four year terms. The first judges will be elected in the regular elections of 1966. District judges serve full-time, are forbidden to practice law, and receive $15,000 annual salary. In a multi-judge district (there will probably be two to six judges per district, depending on population) the Chief Justice of the Supreme Court appoints one of the judges as chief district judge. The responsibilities of the chief district judge include assigning himself and the other judges of his district to sessions of court, supervising the times and places at which magistrates will discharge their duties, assigning civil cases to magistrates, and promulgating a schedule of traffic offenses for which magistrates and clerks of court may accept written appearances, waivers of trial and pleas of guilty. Specialization by judges is encouraged.

Holdover judges (Article IV, Sec. 21) serving out their terms as district court judges, are subject to assignment to duty by the chief district judge.

Judges may be removed from office by a regular superior court judge, after hearing. Vacancies in office are filled by the Governor, for the unexpired term, from nominations submitted by the district bar (if submitted within two weeks).

District Court Prosecutors

The senior regular resident superior court judge appoints a full-time prosecutor for his district. Full-time assistant prosecutors may be authorized by the General Assembly; part-time assistants, if needed, are authorized by the Administrative Officer of the Courts, and paid a per diem. All assistants are appointed by the prosecutor, and serve at his pleasure. The prosecutor receives $11,000 annual salary, and full-time assistants receive $9,000. Prosecutors may be suspended, removed, and reinstated, for the same causes and under the same procedures as district court judges. Vacancies are filled in the same manner as the original appointment.

Superior Court Assistant Solicitors

Assistant solicitors become State employees. The Administrative Officer of the Courts determines the need for assistant solicitors, by solicitorial districts. They are paid $35 per day and serve at the pleasure of the solicitor who appoints them. This change is effective throughout the State in December, 1966.

District Court Magistrates

Magistrates for each county are appointed for two year terms by the senior regular resident superior court judge, on nomination of the clerk of superior court. They are officers of the district court, and subject to the supervision of the judge in nondiscretionary matters, and to the clerk in clerical matters. They are full-time or part-time officials, as determined by the chief district judge, and their salaries, to be paid by the State, range from $1200 to $6000 per year, in accordance with their duties. If the minimum quota (never less than one) of magistrates in a county proves to be inadequate, additional magistrates within a maximum quota per county may be authorized by the Administrative Office, on recommendation of the chief district judge.

The magistrate's authority in criminal matters is limited to accepting guilty pleas in certain cases formerly within the jurisdiction of justices of the peace, to issuing warrants, and to conducting preliminary examinations in misdemeanor cases. For minor traffic offenses, the fine is set in advance by the chief district judge, so that the magistrate has neither trial nor sentencing discretion in this type of case. In civil cases, the magistrate is authorized to try small claim cases involving up to $300, plus summary

NOTE: *Table of Contents on back cover.*

ejectment, on assignment of the chief district judge. In addition, the magistrate is assigned those civil, quasi-judicial functions, (such as marriage) formerly discharged by justices of the peace.

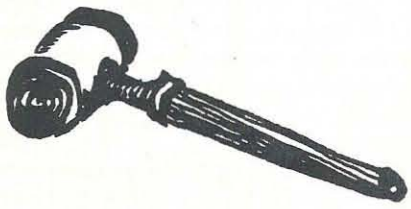
Clerk of Superior Court

The clerk of superior court assumes the clerical functions of the district court. There is no separate clerk of district court. The clerk of superior court operates one unified, consolidated clerk's office for the trial divisions of the General Court of Justice. In counties in which additional seats of district court are authorized, the clerk furnishes assistants and deputies as needed to serve at the additional seat, but the clerk's office at the county seat remains the permanent depository for official records.

The clerk's function as judge of juvenile court (in about 90 counties) is transferred to the district court judge. His function as judge of probate remains undisturbed.

To compensate the clerk for his increased clerical responsibilities, and to recognize his judicial responsibilities, the annual salary of the clerk is fixed at from $6500 to $18,000, depending on the population of his county. This salary is paid by the State. In return, the clerk gives up *all* fee compensation.

Assistant and deputy clerks are appointed by the clerk, and serve at his pleasure. They are paid by the State, in accordance with a schedule to be determined by the Administrative Office, after consultation with local officials.



Court Reporters

Court reporters are appointed by the senior regular resident judge, for the superior court, and by the chief district judge, for the district court. Compensation is set by the appointing judge, within limits fixed by the Administrative Office. If a reporter is not available, on request of the senior regular resident superior court judge, or the chief judge, electronic recording equipment will be furnished by the State. The clerk of superior court is responsible for operating such machinery, and for preserving the record thus produced.

Jury Trials

In criminal cases there is no jury in district court, or before the magistrate. On appeal from the magistrate to the district judge, or from the district court to the superior court, trial is de novo. In civil cases, there is no jury before the magistrate, but there is a 12-man jury in district court, on demand. Appeals from district court are on the record, on matters of law, to the superior court.

Criminal Jurisdiction

The superior court retains exclusive jurisdiction over felonies, and with certain minor exceptions, the district court has exclusive jurisdiction over misdemeanors. Indictment by grand jury and trial by petit jury in the superior court remain unaffected. Preliminary examinations in felony cases are conducted by the district court judge (not the magistrate). Clerks and magistrates issue warrants and set bail. (Law enforcement officers are prohibited from exercising these functions.)

Civil Jurisdiction

The clerk of superior court retains exclusive original jurisdiction over the probate of wills and the administration of decedents' estates. Civil jurisdiction, otherwise, is concurrent between the trial divisions of the General Court of Justice. The proper division for cases involving amounts in controversy of $5000 or less, is the District Court Division, however; and cases involving amounts in controversy of more than $5000 are properly filed in the Superior Court Division. By consent of the parties cases may be filed and tried in the "improper" division, since jurisdiction is concurrent. No justiciable matter is ever "thrown out," therefore, for lack of jurisdiction. Exceptions to the general rule of the amount in controversy determining the proper forum arise in certain specific subject matter categories. For example, civil domestic relations matters are assigned to the district court, and the superior court is the proper forum for constitutional issues, special proceedings, condemnations, corporate receiverships and reviews of administrative agency rulings.

Small Claim Actions

On request of the plaintiff, a civil action involving an amount in controversy not in excess of $300, or summary ejectment, may be assigned by the chief district judge to a magistrate for trial. The defendants must be residents of the county of the magistrate. Process is issued by the clerk, and simplified trial procedures are provided. If the chief judge fails to assign the action to a magistrate within 5 days, it is tried in district court in accordance with the regular rules provided for civil cases generally.

Appeals from District Court

In civil actions, appeals from district court are on the record, on matters of law or legal inference. The right of appeal is unlimited. A simplified appellate procedure from the district court is provided.

Civil and Criminal Procedure Generally

Except as necessarily changed by the shift to a system of district courts, and the advent of the magistrate as an officer of the district court, the civil and criminal procedure now set forth in Chapters 1 and 15, respectively, of the General Statutes, remains substantially unchanged. Procedures in juvenile matters, set forth in Chapter 110, Article 2, are also unaffected.

Expenses of the Judicial Department

In district court districts, all operating expenses of the Judicial Department are borne by the State. This includes salaries of all judges, solicitors and prosecutors and their assistants, clerks and all employees of their offices, magistrates, and reporters. It also includes books, supplies, records, and equipment in the clerk's office, and the fees of all jurors and of witnesses for whom the government is responsible. Counties and cities retain responsibility for providing physical facilities for the courts, such as courtrooms and clerks' offices.

Uniform Costs and Fees

The present piecemeal approach to costs and fees is abandoned in favor of a lump-sum, averaging of costs (per type of case and court) approach. In civil actions, special proceedings and the administration of estates, there are only two cost items: a General Court of Justice fee, which accrues to the State for support of the courts generally, and a "facilities" fee, which accrues to the county or city supplying the physical facilities. The amount of the fee in each case varies with the

nature of the action or proceeding, and with the court in which it is tried.

In criminal actions, there are four items in the uniform bill of costs. In addition to the GCJ fee and the facilities fee, there is a law enforcement officers' fee of $2, chargeable for each arrest or personal service of criminal process, and payable to the county or city whose officer performed the service. The fourth item is a $3 Law Enforcement Officers' Benefit and Retirement Fund fee which embodies the present fee for this purpose (G.S. 143-166), plus an additional $1 to provide increased benefits in compensation for the abolition of various local benefit funds.

In addition to these four basic cost items, in a particular case additional expenses, such as fees of witnesses, jurors, and court-appointed guardians ad litem, commissioners, etc., may be incurred. These charges are assessable against the party liable in addition to the basic items. Witness fees are proposed at $3 per day, plus mileage, and juror fees are set at $7 per day, plus mileage. A short special fee bill for the miscellaneous services rendered by magistrates and clerks is also authorized, and the civil process and related fees chargeable by sheriffs are lumped into five all-inclusive, uniform categories. No charges of any kind other than those specified in the bill may be imposed. All fees of officials accrue to the government unit concerned; none accrues to individuals.

Administrative Office of the Courts

A Director of an Administrative Office of the Courts is appointed by the Chief Justice. The Director is a non-judicial, housekeeping officer, responsible for a variety of administrative functions of the Judicial Department. His major functions include fixing the number of employees in the clerks' offices, and setting their salary schedules; determining the salaries of magistrates, after consultation with the chief district judges; preparing the budget for the Judicial Department; prescribing uniform forms, records and business methods for the offices of clerks; keeping statistics; and assisting the Chief Justice in the assignment of judges and the Supreme Court in scheduling sessions of superior court.

Conclusion

The foregoing highly condensed version of the Commission's recommendations is not intended to serve as a substitute for the bill itself. For precise particulars, the actual language of the proposed legislation should be studied.

The Judicial Department Act of 1965

A ten year crusade for the improvement of North Carolina's system of lower courts came to a fruitful climax in the General Assembly on April 27 when the presiding officers of the House and Senate signed into law the "Judicial Department Act of 1965" (Ch. 310, S. L. 1965). This far-reaching court reform legislation, drafted after many months of painstaking work by the Courts Commission, slipped through the legislature with—to some—surprising ease.

The summary of the Court Commission recommendations, set out in the March, 1965, issue of *Popular Government*, is an accurate reflection of the provisions of the Act as enacted, with two modifications of interest primarily to lawyers: district bars will not formally endorse candidates for district judgeships, and any civil case tried initially in the new district court may be appealed to the Supreme Court as of right.* These two changes were made in committee. Only one serious challenge to any part of the bill was made on the floor. This was a proposed amendment to provide for the popular district-wide election of prosecutors (rather than appointment by the resident superior court judge). Effectively sponsored in the Senate by Sen. King of Scotland County, and Sen. Robert Morgan of Harnett, and opposed with equal effectiveness by Court Commission Chairman Sen. Lindsay C. Warren, Jr., of Wayne County, the amendment was defeated 36 to 10. In the House under the able leadership of Court Commission member and "speaker-elect" Rep. David Britt of Robeson County, the amendment was able to muster only five votes.

**These changes have been made in preceding reprint from the March, 1965 issue.*

Schedule of Implementation

The Act becomes effective on July 1, 1965, but no major impact will be felt in a particular county until a district court is established (activated) therein. Activation occurs in accordance with a schedule to be completed in December, 1970. In phase one of the schedule, district courts are activated in six judicial districts in December, 1966. The box chart on page 6 furnishes further details concerning these twenty-two counties.

Law Enforcement Benefit Fund Changes. A companion bill, to raise the costs of court (in criminal conviction cases) assessed for the benefit of the Law Enforcement Officers' Benefit and Retirement Fund from $2 to $3, was also enacted without opposition. This Act (Ch. 351, S.L. 1965) amends G.S. 143-166, by providing a separate fund, supported by the additional $1 costs of court assessment, to be used for a death benefit (and other benefits) for all law enforcement officers. Costs of court assessed for all *local* benefit funds are repealed on the effective date of this Act, 1 July 1965. These changes are effective in *all 100 counties* of the State on that date.

Other Early Effects of Act. In the coming biennium, in 22 counties, the nomination and election of district court judges (spring and fall of

General Court of Justice — Superior
Uniform Costs

I. Uniform Costs and Fees:	Criminal Action	Civil Action
Law Enforcement (to county or city)	M—$ 2 DC— 2 SC— 2	Not applicable
Facilities (to county or city)	M—$ 2 DC— 2 SC— 15	M—$ 2 DC— 5 SC— 5
LEOB & RF (to State)	M—$ 3 DC— 3 SC— 3	Not applicable
General Court of Justice (to State)	M—$ 8 DC— 8 SC— 20	M—$ 3-6 DC— 3-6-10 SC— 20
The General Court of Justice and Facilities fee are payable in advance (except in civil actions in forma pauperis). In special Proceedings and Estates, $13 and $8, respectively, of the GCJ fee are payable in advance. Costs on appeal are cumulative.		
II. Additional expenses:	**Criminal Action**	**Civil Action**
1. Witness fees	$3 per day plus mileage round trip each day	Same as in criminal
2. Expert witness fees	As provided by law	As provided by law
3. Counsel fees	As provided by law	As provided by law
4. Cost on appeal to Super. Ct., transcript of testimony	As provided by law	As provided by law
5. Fees for personal service of civil process	Not applicable	As provided by law
6. Fees of guardians ad litem, next friends, referees, etc.	Not applicable	As provided by law
7. *Special* jury fee	Not applicable	Not applicable
8. Jail Fee	$2 per day	$2 per day

(Editor's note: The above chart is taken from the Courts Commission's Report to the 1965 General Assembly. It is based on the provisions of Article 28 of the Judicial Department Act of 1965 (Ch. 310, S.L. 1965, ratified 27 April 1965). The above costs are chargeable in 22 counties of the State on the first Monday in December,

ɔurt and District Court Divisions
ıd Fees Bill

Special Proceedings	Estates
Not applicable	Not applicable
SC (CSC)—$2	SC (CSC)—$2
Not applicable	Not applicable
SC (CSC)—$13 plus $.20 per $100 valuation of land not to exceed a maximum additional cost of $100	SC (CSC)—$8 plus $.10 per $100 valuation of personal property, limit $1,000

Basic Costs and Fees:	Mag	DC	SC
Criminal Action	$15	$15	$40
Civil Action	$ 5-8	$ 8-15	$25

Special Proceedings	Estates
Same as in criminal	Same as in criminal
As provided by law	As provided by law
As provided by law	As provided by law
As provided by law	As provided by law
As provided by law	As provided by law
As provided by law	As provided by law
$2 per juror	Not applicable
Not applicable	Not applicable

Miscellaneous GCJ Fees and Commissions, (to State)

(a) Commitment of the mentally ill, etc., $10.
(b) Foreclosure, $10.
(c) Inventory of safe deposits, $5.
(d) Proceeding supplemental to execution, $5.
(e) Confession of judgment, $4.
(f) Taking a deposition, $3.
(g) Registration of professional and technical persons, $2.
(h) Execution, $2.
(i) Notice of resumption of maiden name, $2.
(j) Taking an acknowledgment or administering an oath, or both, with or without seal, each certificate, $1.
(k) Bond, taking justification or approving, $1.
(l) Certificate, with seal, $1.
(m) Recording or docketing (including indexing) any document, per page or fraction thereof, $1.
(n) Preparation of copies, including transcripts, per page or fraction thereof, $1.
(o) Substitution of trustee, $1.
(p) Issuing pistol permit, $1.
(q) Probate of any instrument, $.50.
(r) 3% commission on G.S. 2-53 and G.S. 28-68 funds.

Above chargeable only when not part of another fee bill. When two or more items involved, charge is for greater only.

Magistrate's Special Fees:

(a) Marriage, $4.
(b) Year's Allowance, $4.
(c) Deposition, $3.
(d) Acknowledgement, $.50.
(e) Other stat. function, $1.

1966. Uniform fees for sheriffs, included in the Act, are not shown above. The chart is unofficial, and does not cover all situations. In actual cases, the language of the law itself should be consulted.)

1966) will take place, and clerks of superior court will nominate magistrates for appointment by superior court judges.

There will be a need to make budgetary adjustments in these counties for the fiscal year 1966-67 because in December, 1966, the operating expenses of the Judicial Department will become a State responsibility. Subchapter VI of the new law prescribes detailed guidelines for financing the new system of courts, and an unofficial chart of costs of court in the unified General Court of Justice is set forth on the immediately preceding pages of this article.

Also in December, 1966, assistant solicitors (Superior Court) become a state responsibility in all counties. The effect of this change will be limited to those 15 or 20 counties which now provide an assistant to the superior court solicitor.

In the counties affected in 1966, the following cities may have some sizeable budgetary adjustments to make: Hickory, Fayetteville, Canton, Elizabeth City and Waynesville. This is so because of the abolition of a city court, or of a county court supported in part by a city. To a minor extent other cities in the initial 22 counties may be directly or indirectly affected.

Law enforcement officials in the 22 counties will be particularly concerned with the fact that in December, 1966, Mayor's courts and justice of the peace courts are abolished.

DISTRICT COURTS AND COURT OFFICIALS, DECEMBER, 1966

Jud. Dist.	*District Judges*	*Full Time Asst. Pros.*	*County*	*Magistrates Min. - Max.*		*Additional Seats of Court*
1	2	0	Camden	1	2	-------
			Chowan	1	3	-------
			Currituck	1	2	-------
			Dare	1	3	-------
			Gates	1	3	-------
			Pasquotank	2	3	-------
			Perquimans	1	3	-------
12	4	1	Cumberland	4	6	-------
			Hoke	1	3	-------
14	3	0	Durham	3	6	-------
16	3	1	Scotland	2	3	-------
			Robeson	7	12	Fairmont Maxton Red Springs Rowland St. Pauls
25	3	1	Burke	3	5	-------
			Caldwell	2	4	-------
			Catawba	4	6	Hickory
30	2	0	Cherokee	2	3	-------
			Clay	1	2	-------
			Graham	2	3	-------
			Jackson	2	3	-------
			Macon	2	3	-------
			Swain	2	3	-------
			Haywood	3	4	Canton

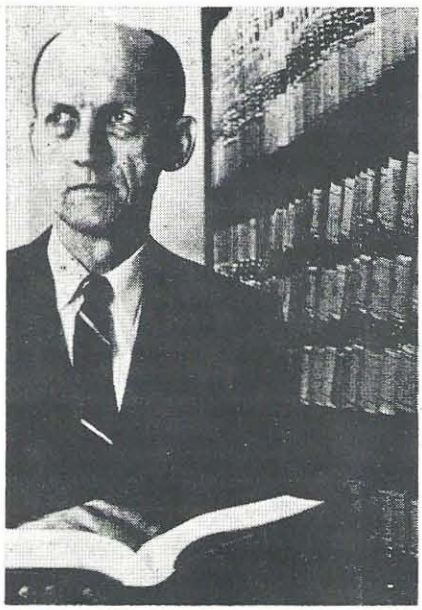
Magistrates, as officers of the district court, will only be partial replacements, since they will not be empowered to try not guilty cases. Arrest and search warrants will be issued by clerks of court and magistrates only, not by law enforcement officers. Sheriffs' fees, including all arrest fees, become uniform throughout the State, and accrue in all cases to the government (not to an individual). □

The Administrative Office of the Courts

The Judicial Article of the North Carolina Constitution, rewritten in 1962, creates a single, unified, three-level General Court of Justice for the entire State, and provides for creation of an "administrative office of the courts" to "carry out" the provisions of the Article. The "Judicial Department Act of 1965," enacted by the General Assembly last April, actually created this office. Thus North Carolina joins some 30 other states which, since the late 1930's, have established such an office.

Typically, an administrative office of the courts (as they are nearly always called) is established on the level of the highest court of a state, and is charged, as the name implies, with handling a large variety of *administrative* functions peculiar to the judicial department of the government. In doing so, the administrative office relieves the judges of a great number of time-consuming nonjudicial chores which might otherwise interfere with the efficient performance of their primary judicial functions. The North Carolina Administrative Office is no exception to the general rule.

The 1965 Act provides that the Chief Justice of the State Supreme Court shall appoint the Director of the Administrative Office of the Courts, who shall serve at his pleasure. On July 1, the Chief Justice appointed the Honorable J. Frank Huskins, Resident Superior Court Judge of the 24th Judicial District, to the office of Director. The appointment is a particularly fortunate one, for Judge Huskins brings a wide background of experience in the legislative, executive and judicial branches of state government to this important new office. The judge, who was born in Toledo, North Carolina, attended the University of North Carolina (A.B., 1930). He also studied law at Chapel Hill, and practiced law in Burnsville for a number of years prior to serving in the General Assembly as the representative from Yancey County in 1947 and 1949. He was appointed to the Industrial Commission in 1949, and served as its chairman for several years. For the past ten years he has seen service as a regular superior court judge, and has held court in nearly half of the counties of the State. Few peoples in North Carolina are as well equipped as Judge Huskins for shouldering the many difficult new responsibilities which are his as Director of the Administrrative Office.



Judge Huskins

Article 29 of the Judicial Department Act is devoted to the organization and functions of the Administrative Office, and Sec. 7A-343 lists ten major duties of the Director. But so interrelated are the functions of the office with all levels of the General Court of Justice, with various agencies of the executive branch, and with the General Assembly, that the Office is mentioned in no less than 19 other sections of the Act. It will be the objective of this article to classify and discuss these duties and functions.

Functions Within the Judicial Department

Appellate Division

The primary, overall function of the Director, or Administrative Officer, as he is also called in the Act, is to supervise the nonjudicial business operations of the three levels of the General Court of Justice —the Appellate Division (Supreme Court), the Superior Court Division, and the District Court Division. Since there is only one Supreme Court, and it has its own marshal, clerk, librarian and reporter, the Director will have few time-consuming duties involving this Division. Under the new law he is charged with preparing its portion of the departmental budget, procuring equipment, books and supplies, and assisting the Chief Justice in the transfer of district court judges for temporary or specialized duties. (This last function is, properly speaking, a District Court Division function, with responsibility for its discharge extending to the highest level, but in any event, transfers of district court judges are not likely to occur on an extensive scale.) He must also submit an annual report on the work of the Department to the Chief Justice (sending a copy to each member of the General Assembly), and perform such additional duties as may be assigned by the Chief Justice.

The Assistant Director (also statutory) of the Administrative Office, to which post the Chief Justice has appointed his former administrative assistant, Bert Montague, is specifically charged with responsibility for assisting the Chief Justice in the assignment of superior court judges, and in assisting the Supreme Court in the preparation of calendars of superior court trial sessions. These latter two functions were formerly performed by Mr. Montague as administrative assistant; but this position has been absorbed and superseded by the Administrative Office of the Courts, which now has administrative responsibility for the entire Judicial Department.

Superior Court Division

The establishment of the Administrative Office should require no major adjustments in the day to day operations of the *superior court judges*, or in the relation of the judges to the State. Assignments of judges and calendaring of superior court sessions will

be carried on as in the past, the key official, Mr. Montague, merely having changed titles while continuing to perform these chores. The judges and the State, however, will have new responsibilities with respect to *court reporters* and *magistrates*.

If the senior regular resident superior court judge finds that human court reporters are unavailable, he may request the Administrative Office to supply electronic recording equipment. Should he continue to utilize live reporters, he appoints the reporters (for the superior court), and determines their compensation and allowances, within limits set by the Director of the Administrative Office. Compensation and allowances of reporters thus need not necessarily be uniform statewide, but may vary from district to district.

The senior regular resident superior court judge is required to appoint the number of magistrates prescribed by law for each county in his district, from nominations submitted by the clerk of superior court in each county. Before this procedure can be intelligently carried out, the salary of each magisterial office must be known; and the setting of individual magisterial salaries is the responsibility of the Administrative Officer. Close collaboration between the judge and the Administrator concerning the proposed location and duties of each magistrate will be necessary prior to arriving at an equitable salary figure. Once a chief district judge is appointed, he will replace the superior court judge in the collaboration process (but not in the appointment process). The responsibility of the Administrator over salaries continues, however, as to magistrates in both the minimum and maximum quotas for each county. Initially, at least, this is likely to be a time-consuming task, a matter of trial and error requiring adjustments from time to time, especially in counties allotted several magistrates. It is further complicated by the possibility that the initial minimum quota of magistrates may turn out to be inadequate for the peculiar needs of an individual county, in which event, on recommendation of the chief district judge, the Administrator may authorize an additional magistrate or magistrates from that county's maximum quota. Close attention to the workings of the judicial process on the lowest level in each county will thus be necessary, in the interests both of fair distribution of magisterial manpower among counties in comparable situations; and the most efficient use of State funds.

Under the terms of the 1965 Act, *superior court assistant solicitors* become a State responsibility in all districts on the first Monday in December, 1966. A solicitor will no longer be dependent upon the counties of his district for assistants, but in each case will have to justify the need for an assistant (or assistants) to the Administrative Officer, whose duty under the Act it is to authorize assistant solicitors. Assistants may be designated either on a district wide or an individual county basis, presumably upon the recommendation of the district solicitor, who will choose them. Assistant solicitors will receive $35 per day for each authorized day's work in court. Since none of the counties being activated as district court counties in 1966 now regularly authorize the district solicitor to employ an assistant solicitor, this is not likely to be a major problem for the Director in the next biennium, but there is a probability that the General Assembly in 1967 will make some substantial changes in the present solicitorial organization. In any event, this is another facet of superior court administration on which the Administrator must keep a watchful eye.

With no other official in the entire Judicial Department will the Administrator have a closer and more detailed working relationship than with the *clerk of superior court*. Although the clerk continues to be elected by the people of his county under the 1965 Act, he will in fact become far more an official of the State than of his county, and in most nonjudicial matters the Director will become his administrative superior. In many ways, the routine of the clerk's office is conducted differently from county to county, and the coming uniformity requirement is undoubtedly highly desirable. However, it is no exaggeration to say that the duties imposed upon the Director with respect to the office of the clerk of superior court compose the most difficult, time-consuming, and in some respects, the most sensitive responsibilities of the Administrative Office.

Under the 1965 Act the clerk and all of his office personnel become State officials. The number of clerical employees, their classification (assistants, deputies, etc.), and their salaries become the responsibility of the Administrator. Under the new law, prior to setting salaries in any county, the Administrator is to consult with the clerk and with the board of county commissioners (or its designee), and also must take into account the "salary levels and the economic situation in the county." It remains to be seen whether the guidance afforded by these consultations and considerations will be a genuine aid to the Administrator. It is true that the situation in no two counties with respect to caseload, seats of court, adequacy of present personnel, economic status, etc., will be the same, and the statutory guidelines offer abundant authority and reason for varying numbers and salaries of clerical personnel from county to county. But they also make it much more difficult to arrive at general rules which can be applied to groups of counties, and make countless individualized decisions practically mandatory. Fortunately for the Administrator, few of the 22 counties being activated in 1966 have more than one or two employees in addition to the clerk himself.

Personnel problems beyond doubt will be a major difficulty facing the Administrator, but dwarfing these in complexity are his duties concerning the general administration of the clerk's office. Three separate sections of the new law deal with this:

> "The Administrative Office of the Courts and the Department of Administration, subject to the approval of the State Auditor, shall establish procedures for the receipt, deposit, protection, investment, and disbursement of all funds coming into the hands of the clerk of superior court .. ." (Sec. 7A-103.)

> [The clerk of superior court] ". . . maintains, under the supervision of the Administrative Office of the Court, an office of consolidated records of all judicial proceedings in the Superior Court Division and the District Court Division of the General Court of Justice in his county. Such records shall include all those books, records and indexes required to be maintained by G.S. 2-42, adapted in a form and style prescribed

by the Administrative Office of the Courts, for the purpose of maintaining uniform consolidated records of both trial divisions of the General Court of Justice;" (Sec. 7A-180 (c).)

[The Administrative Officer shall] "Prescribe uniform administrative and business methods, systems, forms and records to be used in the offices of the clerks of superior court." (Sec. 7A-343 (c).)

The broad sweep of these provisions makes it clear that local variations in practically any aspect of the clerk's duties, other than those functions involving his judicial discretion, are henceforth to be subordinated to the Administrator's uniform regulations; and that literally a monumental effort, extending perhaps over several years, will be necessary for the Administrator to comply with the law. Undoubtedly the active and sympathetic cooperation of the clerks themselves, as well as the State officials mentioned in the statute, will be eagerly sought and carefully considered.

The Director of the Administrative Office and the clerks of superior court will have yet additional business relations. The former must prescribe bonds (faithful performance of duty) for clerks, and for all assistants and deputies; prescribe accounts and records to be kept by the magistrate, under the general supervision of the clerk of superior court; approve the budget for each clerk's office; with other state officials, prescribe procedures for the payment of witnesses and jurors, and the procurement of small supplies locally; procure and distribute equipment, books, forms, and supplies for the clerks' offices; biennially in September notify each clerk of the salary schedule for the magistrates to be appointed in his county; and require of each clerk pertinent financial and judicial statistics on the basis of which an accurate picture of the operations of the Judicial Department can be made. The clerk of superior court is the key figure in the judicial system on the local level, just as the Administrator is the key figure for the State as a whole, and a close mutual understanding and cooperation between these officials is absolutely essential to an efficient court system.

District Court Division

Unlike the Appellate and Superior Court Divisions of the General Court of Justice, the District Court Division is entirely new, existing only on paper, and it must look to the Administrative Officer for midwifery services, nursing care, adolescent guidance, and leadership in its eventual maturity.

On this level the key local *judicial* official is the *chief district judge,* with whom the Administrative Officer will work in several areas. One significant function involves approval of courtroom facilities at additional (non-county seat) sites of court. Even though such sites have been authorized by the General Assembly, actual sessions of court are not required unless these two officials concur that the physical facilities are adequate. This joint approval is likely to require, in some instances, a significant improvement in current physical accommodations and in the concomitant judicial atmosphere.

In districts embracing counties with over 100,000 population (Durham, and Cumberland-Hoke, in 1966) the chief district judge and the Administrator may jointly determine that "special counselor services" should be made available to the district judge hearing domestic relations and juvenile cases. In this event, the Administrator may authorize a chief counselor and a number of assistant counselors, and set their salaries, after giving due regard (again) to the salary levels and the economic situation in the district. (Actual appointment of counselors is by the chief district judge, and they serve at his pleasure.)

As noted earlier, the Director sets the salaries of all magistrates and clerical employees. He also has final authority over the increased salary of a holdover judge in those districts in which the chief district judge assigns a holdover judge to duties in excess of those which he was formerly performing as a lower court judge.

With respect to the appointment of district court reporters, or to the procurement of electronic court reporting equipment, the functions of the chief district judge and the Administrator parallel those of the senior resident superior court judge and the Administrator at the superior court level. This arrangement makes it possible, even probable in the long run, that both live and mechanical court reporting will be utilized in the same district. This potential competition of man v. machine is all to the good; whichever wins out, if indeed, either does, the end result can only be greatly increased (and greatly needed) efficiency in court reporting.

District judges are subject to transfer by the Chief Justice from one district to another for temporary or specialized duty. Under the new Act it is the duty of the Administrative Officer to assist the Chief Justice in this task. While this function may be exercised but rarely, it is likely that the Administrative Officer, prior to effecting such transfers (in the name of the Chief Justice), will consult with the chief district judge(s) concerned.

On the district court level the most important *administrative* official is, of course, the *superior court clerk.* This terminology is unfortunate and confusing, but nevertheless accurate. The superior court clerk by law is charged with performing all the clerical duties connected with the district court, and he in fact presides over one unified clerk's office for *both trial divisions* of the General Court of Justice. His title is frozen in the Constitution, else he might well be called simply "clerk of court" or some similar less restrictive title. The detailed relationships of the Administrator to the clerk of superior court have already been enumerated. These relationships apply to matters on the district court level, and they are no less important because not repeated here. As a matter of fact, they may be more important, because the clerk in some instances will be performing functions (especially in the criminal law field) entirely new to him; and he will need maximum guidance from the Administrator in the clerical details associated exclusively with this trial level.

Prosecution of criminal offenders in the district courts will be by full time *prosecutors,* aided, in the larger districts, by full time *assistant prosecutors,* all paid by the State. Some districts will need assistant prosecutors, but not on a full-time basis. Prosecutors of districts who need part-time assistants will make an appropriate request to the Administrative Officer, whose duty it will be to allocate per diem assistant prosecutors to the various districts, and to determine the number of days for which they will

be authorized. Since no two districts are comparable in terms of caseload, size, travel time between courthouses, numbers of sites of court, and other pertinent factors, general rules for allocation of part-time assistant prosecutors, as in the case of assistant solicitors, will be difficult to formulate; and the Director will probably have to proceed on an *ad hoc* basis for the indefinite future in approving part-time assistants for district prosecutors.

The *magistrate* is an entirely new judicial official. As an officer of the district court, he will work under the supervision of the chief district judge, or the superior court clerk, depending on the nature of the particular function. But, as noted earlier, the Administrative Officer, after consultation with the chief district judge, sets the magistrate's pay in *each* case, authorizes appointments, when needed, of additional magistrates per county from the county's maximum quota, provides for their bonding, and prescribes what records they shall keep. Initially, these duties of the Administrator will take considerable time, but once the system is worked out for each county, minor annual or biennial adjustments should serve to reduce these functions to routine, with the sole exception of adjusting salary demands with the funds available and the duties performed.

All courts below the superior court level cease to exist in each county upon the establishment of the district court therein. There are 180-odd courts (not including Justices of the Peace) to be so replaced. Many of these present seats of court will continue as seats of district court; others will be eliminated. In either case, the records of these superseded courts are to be transferred to the clerk of superior court in each county, pursuant to rule of the Supreme Court. In some instances, difficult problems of actual physical control, security, and availability of records, active and inactive, will arise. The Supreme Court will undoubtedly request the Administrative Officer to recommend rules to minimize these problems.

Relations with the Executive and Legislative Branches

As chief administrative officer of the Judicial Department, the Director of the Administrative Office will be the principal agency of contact with the executive and legislative branches of the State government. The 1965 Act specifically requires the Director to work with the Department of Administration to establish procedures for the receipt, deposit, protection, investment, and disbursement of all funds coming into the hands of the clerk, and to establish procedures on the local level for the prompt payment of jurors, witnesses, and small expense items. In each case the procedures are to be approved by the State Auditor. Undoubtedly the advice and assistance of budgetary, finance, personnel and procurement employees of the State will also be solicited.

With the *legislative* branch the Director will have contact on both the local and State levels. He must consult with the *county commissioners* prior to setting salary scales in the clerk's office, and he and the chief district judge will probably consult on occasions with the *city governing bodies* concerning the adequacy of proposed courtroom facilities in cities which are authorized to have seats of court. And when any county, or city having a seat of court, desires to use "excess" facilities fees (G.S. 7A-304) to retire outstanding indebtedness incurred in the construction of the facilities, or to supplement the operations of the General Court of Justice in the county, the Administrator must first approve the expenditure. Facilities fees are intended to be used primarily for direct support of courtroom and closely related functions, and not for support of local government operations in general, and it will be the duty, undoubtedly difficult at times, of the Administrator to assess the adequacy of these facilities before permitting the use of these locally-accumulated funds for secondary purposes.

The Administrator's relationship with the *members of the General Assembly* will unquestionably be of critical importance, especially in the early years of the Administrative Office and of the unified General Court of Justice. Not surprisingly, this relationship is not set forth in the law in so many words, but is rather to be inferred from certain other language, and from a common sense study of the 1965 Act as a whole. Only one sentence in the entire Act ties the Administrator directly and specifically to the legislature: Sec. 7A-343 requires him to prepare and submit an annual report on the work of the Judicial Department to the Chief Justice, and "transmit a copy to each member of the General Assembly."

Other powers and duties of the Administrator are likely to be of more interest to the legislature than the frequently unread pages of the all-too-common annual report. For example, the Administrative Officer must prepare the budget for the Judicial Department. Presumably, if he prepares it, he must also justify it before not only the Advisory Budget Commission, but the appropriate committees of the General Assembly as well. Under a State-supported General Court of Justice, the budget will be a multi-million dollar affair, and in the transitional years, to 1971, with little or no relevant statistical data on which to base reliable estimates, preparation and justification of accurate figures may be extremely difficult.

Two final duties of the Administrator, quoted here from Sec. 7A-343, are extremely important:

> "(b) Determine the state of the dockets and evaluate the practices and procedures of the courts, and *make recommendations* concerning the number of judges, solicitors, prosecutors and magistrates required for the efficient administration of justice; . . .
> (g) *Make recommendations* for the improvement of the operations of the Judicial Department; . . ." (emphasis supplied).

These provisions are extremely broad in scope. The Administrator is charged with making a continuous study of all phases, administrative and judicial, of the operations of the Judicial Department. When in his opinion, efficient operation of the Department requires change, it is his duty to formulate recommendations. While perhaps some changes can be placed in effect on his own authority, or on approval of the Chief Justice, ordinarily the action agency will be the General Assembly itself. *Making recommendations* in existing law in the long run may be the most significant function of the Administrative Office. Certainly the nature and extent of these recommendations will play a vital part in the administration of justice in North Carolina. While this function under the law is currently shared with the Courts Commission and with the Judicial Council, the former is a temporary body, and the latter's struc-

ture and duties may well be altered in the transitional period, 1967-71.

The Administrative Office of the Courts has occupied an office on the fourth floor of the Justice Building in Raleigh. Judge Huskins and Mr. Montague are hard at work. The efficient administration of justice over the next decade in this State rest largely in their able hands. □

Traffic Cases and the New District Court System

[*Editor's Note. This article, slightly modified, is the text of an address by the author before the Standing Committee on the Traffic Court Program of the American Bar Association at its annual convention, Miami, Florida, in August, 1965.*]

In April of this year, the North Carolina General Assembly enacted the "Judicial Department Act of 1965." This is the second step in a 10-year campaign to modernize and reform the State's lower court system. The first step was achieved in 1962, when the people by popular vote overwhelmingly adopted an amendment to the Constitution which entirely rewrote the Judicial Article. These two steps, taken together, over the next few years will bring North Carolina's court system into the 20th century.

Old Court System

Following is a very brief outline of the present North Carolina court system, the inadequacies of which gave rise in the mid-50's to the reform movement. North Carolina has the fairly standard three-level arrangement of courts: the appellate level, consisting of the Supreme Court; the general trial jurisdiction level, consisting of the Superior Court, characterized by unlimited civil and criminal jurisdiction, with indictment by grand jury, trial by a constitutional twelve-man petit jury, and concurrent jurisdiction (in most counties) over misdemeanors; and, on the lowest level, a hodgepodge of local courts of limited jurisdiction, including, at the very bottom, the fee-compensated Justice of the Peace.

Under the new court system, the Supreme Court will remain unchanged. Unchanged also will be the general trial jurisdiction court (Superior Court), save for the loss in some counties of its concurrent jurisdiction over misdemeanors, and loss on the civil side of cases involving $5,000 or less in money value.

It is on the third, or lowest, level of courts that the change is most noticeable. Here the entire level is swept away — lock, stock, and barrel. North Carolina's present system of lower courts — and I use the word "system" loosely — consists of about 180 city and county courts of every conceivable description. These courts have been created over the decades since the Constitution of 1868 by special acts of the legislature, and by general acts with so many local exceptions as to amount to special acts, each amended again and again over the years, so that it is literally true that no two of these 180-odd courts are alike. They vary in jurisdiction, (both territorial and subject matter), in procedure, in practices, in organization, and in costs, from county to county and city to city, so that not even lawyers, in moving from one court to another, know exactly what to expect. Some counties have six to nine of these courts; other counties have none.

These recorders' courts (to use the most common name for them) are characterized, except in five or six of the largest cities, by part-time judges and part-time solicitors. One-fourth of the judges have no legal training. They are locally paid, and subject to local political influences. Costs of court vary from a low of about $9 to a high of about $27 for the same type of case, giving rise to the suspicion that sometimes the court exists more to earn a profit for the local treasury rather than to dispense justice.

At the bottom of this so-called system are the Justices of the Peace — about 900 of them — still compensated in criminal cases entirely by fees levied against the convicted defendant. (If the Justice acquits the defendant, he receives no fee for his services). The blatant injustice of an arangement such as this, plus the Justice's unsupervised conduct and generally undignified surroundings,

were the most frequently cited examples of the need for court reform in North Carolina during the entire court reform campaign.

District Court Division

In place of this jungle of confusing and inefficient lower courts, North Carolina will have a District Court Division, which will be the lowest level of a three-level, single, unified General Court of Justice. The two top levels of the General Court of Justice are the Appellate Division (the present Supreme Court), and the Superior Court Division. The two top levels are already in existence, and, as noted earlier, will continue substantially unchanged.

The District Court Division will sit, as a district court, in each county of the state, and will be exactly the same in each county — no variations in jurisdiction, procedures, organization, or costs. The district court will have exclusive misdemeanor jurisdiction, and $5,000 money - value civil jurisdiction, plus authority in domestic relations and juvenile matters. The State is divided into 30 district court districts, the boundaries of which, for reasons of simplicity and practicality, are the same as the 30 superior court judicial districts. Districts will thereby be composed of from one to seven counties, the average being three. Each district court district will be allotted from two to six district court judges, depending on the population of the district. Judges will be elected by the people of the district for four-year terms. This is a constitutional provision. While the national trend seems to be away from popular election of judges, this issue was thoroughly debated in North Carolina in 1959 and 1961, and the reform group which urged appointment or nonpartisan election of judges was defeated in the General Assembly. For the next few years at least, and probably for longer than that, judges in North Carolina are going to be elected in the regular old-fashioned way.

District court judges must devote their full time to the duties of the office — no more part-time judges, holding court on Monday morning and practicing law or running a store the remainder of the week. Judges will be paid $15,000 annual salary, and required to give up the practice of law or other gainful occupation.

Since there will be, in most districts, three to four judges, there will be opprtunity for specialization among the judges by subject matter. The Chief District Judge (who will be appointed by the Chief Justice of the Supreme Court) is required by statute, to the maximum extent practicable, to assign himself and the other judges of the district so as to permit specialization. It is thus possible — even probable, in the larger districts — that traffic cases, for example, will be handled by a judge who specializes in this type of case, and who, in all likelihood, will receive special training in this field. In the rural, sparsely-populated, two-judge districts, specialization will not be possible, but the coming of a full-time, career-motivated judge should nevertheless be a big improvement over the present system.

Prosecutors in the district courts will also be full-time, paid $11,000 per year, and forbidden to pursue any other occupation. Furthermore, since the Constitution is silent as to how prosecutors should come into office, they will be *appointed*. The legislature felt that the prosecutor should be freed of fears of what a record as a vigorous prosecutor would do to his chances for re-election. His appointment will be made by the senior regular superior court judge of his district, an official whose every professional inclination will be to obtain the most qualified man available for the job.

Under the district court system all judges, prosecutors, clerks, and other court employees will be paid by the State. Compensation will be by salary — not fees — and salaries will be uniform. The opportunity for undue influence which sometimes arises from payment of salaries locally will be eliminated. Furthermore, the costs of court will be uniform throughout the State. For example, a misdemeanor conviction — any misdemeanor — in District Court (in any county of the State) will cost $15. This is a standard charge. The fine, of course, if any, will remain subject to the judge's discretion, but not the cost of court. Most of this $15 will go to the State to support the Judicial Department, but a fixed portion will be retained locally to be used exclusively to maintain the courtroom and clerk's office, and to support law enforcement activities.

Under the 1962 North Carolina Constitution, the court of the Justice of the Peace is abolished outright. Since a minor judicial official is still needed at the lowest level, however, to issue warrants, to conduct probable cause hearings and set bail, and to dispose of the most petty civil and criminal matters, an official known as the Magistrate was created. The Magistrate, unlike the unsupervised Justice of the Peace, is an officer of the District Court, *appointed* by the resident superior court judge, and under the direct administrative control of the Chief District Judge. In addition to issuing warrants, he will be allowed to accept guilty pleas in minor ($50 or 30-day) criminal cases, including some but not all traffic offenses, and to try, on specific assignment, small claims not over $300 in value. He will receive a *salary* ($1200 to $6000, depending on the work load) paid by the State.

Traffic Offenses

With respect to the handling of traffic offenses, North Carolina's new system may, in some respects, be unique. While traffic offenses, like other misdemeanors, will be within the exclusive jurisdiction of the district court, in some cases they will be handled somewhat differently from other misdemeanors. Control over *convictions* and *sentences* in all traffic cases will be vested in district judges; magistrates will not be allowed to exercise discretion over conviction or sentence in any traffic case. All contested traffic cases will be heard by the district judge. The Chief District Judges, once a year, on call of the Chief Justice, will meet to formulate a list of traffic offenses for which magistrates will be allowed to accept written appearances, waivers of trial and pleas of guilty. For each offense on the list, the amount of the fine (or at least the upper and lower limits of the fine) will also be specified. It is not contemplated that serious offenses will ever be placed on the list, although of necessity some of the less hazardous moving violations will be listed. It is also considered unlikely that offenses for which revocation or suspension of an operator's license is mandatory — and there are quite a few of these in North Carolina — will be placed on the list. The two major categories of listed offenses are likely to be equipment violations and minor

speeding infractions. Of course the Conference of Chief District Judges will be free to place any traffic misdemeanor on the list, but in view of the present climate in North Carolina which is strongly favorable to highway safety measures, this is considered highly unlikely. If this should happen, the legislature would be free, of course, to prescribe a list of offenses, such as that set out in the Model Traffic Court Act, for which court appearance would be mandatory.

The big advantage of this arrangement for the processing of traffic cases is that the discretion of the JP-type lowest judicial officer is removed from the traffic picture. The Magistrate is in effect a "violations bureau" and nothing more, in traffic matters. All authority over traffic offenses is centralized in a small group of 30 full-time, career-minded, highly-trained judges. With the authority, of course, goes the responsibility. If the system fails to work, or works less well than it should, it will be easy to locate the trouble and apply the cure.

A traffic offender who desires to plead guilty to an offense on the waiver list has but to sign a written-appearance, waiver-of-trial and plea-of-guilty form, and leave the amount of the fine, plus costs ($15), with the Magistrate. The Uniform Traffic Ticket, already in use throughout most of the State, will be suitable, with some slight modification, for this purpose. If the offense charged is not on the waiver list, or if the motorist wants to plead not guilty, he will (if the Magistrate finds probable cause) post bail for his appearance in district court. In many counties, court will be held daily or almost daily, and even in the most rural areas, will be held at least once a week. Bail will be set in an amount designed to insure the appearance of the offender; if he does not appear, his bail bond will be forfeited, and he will be subject to arrest and trial in the usual manner. Uniform bail schedules will be within the authority of the Conference of Chief District Judges. (The whole subject of bail, is, of course, undergoing great ferment, and perhaps constitutional challenge, so that procedures in this area are necessarily subject to adjustment as caselaw developments require.)

The new system will bring about a change in present practices with respect to the issuance of warrants. Currently in many parts of the State, especially the larger cities, a practice of warrant issuance by police desk officers has grown up. This placing of a judicial function in a law enforcement official is admittedly a bad practice, if not of shaky constitutionality. The new law provides that warrants will be issued by Magistrates and clerks of court only, thus completely separating this important function from the hands of the police. This means, of course, that Magistrates will have to be located at various places in the county in addition to the county seat, for the convenience of law enforcement personnel, and that Magistrates (and perhaps some deputy clerks) will have to work irregular hours (or at least be available) for the same reason, but this should present little difficulty since such working conditions will be known in advance of appointment.

Nonjudicial Affairs

Finally, and of great importance, the nonjudicial affairs of the entire court system are placed under a statewide Administrative Officer of the Courts, to be appointed by, and responsible to, the Chief Justice of the Supreme Court. This office is given broad authority under the new law to administer the affairs of the entire General Court of Justice in a business-like manner, freeing the judges of all nonjudicial housekeeping. In particular, the Administrator will have power to prescribe uniform record-keeping and business methods for the office of clerk of court and for the Magistrate, to approve the adequacy of courtroom facilities at outlying seats of court (other than county seats), to authorize additional Magistrates and per-diem prosecutors when and where needed, to prepare the budget for the Judicial Department, to collect statistics, recommend assignments of judges, and make recommendations for the improvement of the administration of justice generally. On 1 July 1965 the Chief Justice of the Supreme Court appointed a superior court judge (J. Frank Huskins) to this office, and the Judge has already plunged into the big task of planning for a radically new judicial set-up in all 100 counties of the State. The Administrator's salary is fixed at $19,500, plus very liberal noncontributory retirement benefits, thus reflecting the legislative intent that this office should carry the respect and prestige equal to its assigned responsibilities.

Gradual Change

North Carolina is shifting over to a new lower court system on a gradual, five-year, three-phase schedule. Gradual implementation is a constitutional requirement, and in view of the tremendous adjustments to be made in switching from a 19th century to a 20th century court system, it is undoubtedly a good thing. Since judges must be elected, the schedule of implementation is coordinated with the regular election machinery. Twenty-two counties will elect district court judges and enter into the new system in 1966; about 60 counties will do so in 1968, and the few remaining counties will come under the district court system in 1970. While total 100-county implementation is possible in 1968, it is considered likely that at least a few counties will choose to hold out, perhaps for political reasons if no other, so that total implementation is unlikely before 1970. This lengthy transitional period gives a valuable opportunity to correct, on a small scale, oversights, or to make adjustments in the overall plan. In a major reorganization such as this, undoubtedly some minor modifications will be required from time to time. □

The District Court Judge in North Carolina

In November, 1966, the voters of six judicial districts, totalling 22 counties, will elect 17 district court judges. These judges will take office on the first Monday in December, 1966, and phase one of the State's three-phase conversion to a new system of lower courts will begin. Phase two begins in December, 1968, when several dozen district court judges, representing perhaps 20 more judicial districts, and about 60 more counties, will take office. In 1970 (phase three) judges will be elected to serve the few remaining districts of the State not already under the new system. In all, approximately 100 full-time district court judgeships will be filled, replacing entirely the present patchwork "system" of 180-odd recorder-type judges and courts below the level of the superior court.

District court judges are *elected*, and the filing deadline for the 1966 primary is fast approaching. In the few short weeks remaining, potential candidates for the office of district court judge, both from the ranks of incumbent recorder-type court judges and from the citizenry generally, must weigh the pros and cons of public service in a new, and largely different, judicial office. This article is devoted to a discussion of the office of district court judge, with a view to informing both the prospective candidate and the voting public.

District Courts in North Carolina

Judicial Districts	*No. of Judges*	*Counties*
1	2	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans
12	4	Cumberland, Hoke
14	3	Durham
16	3	Robeson, Scotland
25	3	Burke, Caldwell, Catawba
30	2	Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain

The North Carolina Constitution, Article IV, Section 8 states:

> "The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit; but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner provided by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected . . . The number of District Judges . . . shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled, for the unexpired term, in a manner provided by law . . ."

Section 9 of the Constitution provides that the Chief Justice may transfer district judges from one district to another for temporary or specialized duty. Subject to the Chief Justice's supervision, assignment of district judges within each local court district shall be made by the chief district judge. Sec. 15(2) authorizes the General Assembly to provide by general law for the removal of district judges for misconduct or mental or physical incapacity. Sec. 21 provides that when a district court becomes operative in a particular county, the lower court judges in that county, except mayors and justices of the peace, become district judges for the remainder of their respective terms.

There are no other direct references in the Constitution to the office of district judge. Save for the one extremely important restriction that he must be elected, the General Assembly was left with a substantially free hand as to what kind of creature the district judge was to be.

The General Assembly in the "Judicial Department Act of 1965" (Chap. 310, S. L. 1965) used its free hand to create a judgeship of substantial prestige and importance. First the legislature abandoned the present system of part-time lower court judges by providing that each district court judge must devote his full time to the duties of the office. An annual salary of $15,000, to be paid by the State, was specified for the office, and district judges become regular contributing members of the Teachers' and State Employees' Retirement system, and of the social security system. Reimbursement for judicial travel and subsistence will be at the rate for State employees generally (currently 8c per mile and $12 per day).

District court districts are coterminous with superior court judicial districts. Since probably all districts will have at least two judges, the Chief Justice of the Supreme Court will appoint — eventually — 30 chief district judges, each to serve at his pleasure. A vacancy in a district judgeship is filled for the unexpired term by appointment of the Governor from nominations submitted by the bar of the affected district. If the district bar fails to submit nominations within two weeks from the date the vacancy occurs, the Governor may appoint to fill the vacancy without further delay. District judges may be suspended or removed from office for the same reasons generally as the present lower court judges, sheriffs, prosecutors, police officers or constables (G.S. 128-16), and also for "mental or physical incapacity." Before removal, a full due-process hearing is required before a superior court judge, with right of appeal to the Supreme Court. These provisions are set forth in detail in Art. 14 of the Act.

So much for the formal trappings of office. To see what the office is really like, it is necessary to go into more fundmental matters such as jurisdiction of the district court, powers of the chief judge, the opportunities for specialization among judges by types of cases, and the judge's relationship to other judicial officials such as the

judges and the clerks of superior court, magistrates of the district court, and the Administrative Officer of the Courts.

Jurisdiction of the District Court

Generally speaking, the district court will have exclusive jurisdiction over misdemeanors, and over preliminary examinations when the offense charged is a felony. This is the situation at present in most counties and cities having a recorder's court. There will be no jury in a criminal case in district court, however, and the defendant will be tried on a not guilty plea even though he requests a jury trial. This is the practice now only in a minority of our lower courts. The accused, if convicted, is entitled, of course, to a trial *de novo* on appeal, with a 12-man jury.

The civil jurisdiction of the district court will be different in both substance and procedure from the vast majority of recorder-type courts now in existence. First, the money value jurisdictional limit of the court is $5,000, which is exceeded by fewer than 10 of the present 180-odd recorder-type courts. This limit is merely "proper", that is, not jurisdictional; if all parties agree, there is no limit to the monetary value of a suit which may be brought in district court. It is likely, of course, that the bulk of the cases exceeding $5,000 in money value will be filed in superior court, but the significant point is that, regardless of the amount in issue, in presiding over such trials the district court judge must conduct the trial precisely as though he were sitting in superior court.

Special proceedings, as before, remain initially within the province of the superior court clerk, and a few important non-monetary matters, such as constitutional issues, certain types of injunctions, eminent domain proceedings, and receiverships, are "properly" brought only in superior court. Actions involving domestic relations matters, both civil (annulment, divorce, alimony, child support and child custody), criminal (if nonfelonious), and juvenile, are properly heard in the district court before the judge. Finally, in civil actions, a 12-man constitutional jury is available, on demand, in district court, and it must be selected and instructed under the same rules as in superior court.

In summary, the trial duties of a district court judge in civil actions are identical in most respects to those of a superior court judge. Domestic relations and juvenile matters are additional responsibilities of the district court judge. All the training and skill of an experienced practising attorney will be called for by these duties. While laymen are not prohibited from holding this office, it is difficult to see how a lay judge could preside, for example, over contested civil proceedings, especially if jury instructions are required, without an unacceptable percentage of appeals and reversals by higher courts. It is to be hoped that the prestige plus the substantial compensation of this office will persuade qualified attorneys to run for election to district court judgeships.

Special Duties of the Chief District Judge

All districts scheduled for activation in 1966 are allotted two or more judges, and it is quite likely that by the time the last district is activated in December, 1970, even the smallest district can justify at least two judges. In such districts, the Chief Justice will appoint one of the district judges as chief district judge. This designation carries with it an additional $500 per year, but the additional compensation is in no sense comparable to the added responsibilities.

The chief judge has "administrative supervision and authority over the operation of the district courts and magistrates" in his district. His major duties include:

> "(a) Arranging schedules and assigning district judges for sessions of district courts;
>
> (b) Arranging or supervising the calendaring of matters for trial or hearing;
>
> (c) Supervising the clerk of superior court in the discharge of the clerical functions of the district court;
>
> (d) Assigning matters to magistrates, and prescribing times and places at which magistrates shall be available for the performance of their duties;
>
> (e) Making arrangements with proper authorities for the drawing of civil court jury panels and determining which sessions of district court shall be jury sessions;
>
> (f) Arranging for the reporting of civil cases by court reporters or other authorized means;
>
> (g) Arranging sessions, to the extent practicable, for the trial of specialized cases, including traffic, domestic relations, and other types of cases, and assigning district judges to preside over these sessions so as to permit maximum practicable specialization by individual judges;
>
> (h) Promulgating a schedule of traffic offenses for which magistrates and clerks of court may accept written appearances, waivers of trial, and pleas of guilty, and establishing a schedule of fines therefor;
>
> (i) Assigning magistrates, in an emergency, to temporary duty outside the county of their residence, but within the district; and
>
> (j) Designating another district judge of his district as acting chief district judge, to act during the absence or disability of the chief district judge." (Sec. 7A-146)

It is obvious that this partial list of powers (additional powers are scattered throughout the Act and will be discussed later) gives the chief judge broad authority over the conduct of the judicial business of his particular district court district. It does not extend, of course, to the *judicial* acts of his fellow judges, or of the clerks of court (except on appeal), or of the magistrates in matters properly assigned to them (again except on appeal), but in *administrative* matters his power and responsibility is complete, subject only to the general supervision of the Chief Justice. While this may at first glance appear to be too much of a burden to place on a judge who is expected to be an active trial judge, in fact many of these chores are susceptible of reduction to a standing rule, or rules, needing modification but rarely, so that time actually devoted to *administration*, once the preliminary period of adjustment is past, should be no more than a few hours or less a week. This, at any rate, is the thinking, apparently, of the Courts Commission and of the General Assembly, for no office or secretarial assistance, other than that normally afforded by the clerk's office, is provided.

Judicial Specialization. Article IV of the Constitution, consistent with the modern trend toward unified, all-

purpose courts, speaks of only one kind of district court judge. The 1965 implementing Act also speaks of only one type of judge — *the* district court judge. Neither Constitution nor statute prohibit specialization by subject matter by district judges, however, in the interest of efficient administration of justice. The Act, in fact, encourages specialization "to the extent practicable" by assignment by the chief judge, as noted in Sec. 7A-146 (g), quoted above. No judge is assured, prior to his election, however, of assignment, for example, to domestic relations cases, or to nonjury actions to the exclusion of all other types of judicial business. Substantial assurance can be given, of course, in some of the districts with three or more judges, by assignment of the chief judge, but even in these districts trial schedules, vacations, illness, etc., will make it a virtual certainty that any judge, on occasion, must discharge judicial business other than that in which he might ordinarily specialize. Any other arrangement would result in a waste of judicial manpower, with added expense and delays.

The advantages of specialization were recognized by the General Assembly in an additional respect. Sec. 7A-147 provides that, in a three-or-more judge district, if the chief judge and the Administrative Officer concur, one or more judgeships may be designated as specialized judgeships. In each case the specialty must be designated in advance and filed with the State Board of Elections. A candidate for a district judgeship desiring to specialize, for example, in domestic relations or traffic matters, could file for such a specialized judgeship. This provision has the advantage of permitting both the candidate and the voter to know in advance the nature of the candidate's duties. A specialized judge would, however, in the interest of efficient utilization of judicial manpower, be subject to general assignment by the chief judge, when so needed, and for this reason he would have at all times the full powers of a regular district judge.

This provision for specialized judgeships cannot be utilized in any judicial district the first time judges are elected, however, as there will be no "chief judge" with whom the Administrative Officer can concur in designating a specialty. The earliest year this provision can be effective is 1970. The delay was deliberate, to provide ample opportunity to observe the workings of the new system, and to weigh the feasibility of voter participation in this limited type of statutory specialization.

Relationship of District Judges with Other Officials of the General Court of Justice

In the vast majority of our present recorder-type courts, appeals to the superior court are tried *de novo*. Little or no opportunity is afforded for the superior court to supervise effectively the lower courts, in either their judicial or administrative functions. The lower court judge is, in fact, responsible to no judicial official for his performance of duty. He should be independent, of course, in the exercise of his judicial discretion, *subject to review on appeal;* in the routine business affairs of the courts, however, there is no reason why he should not be subject to supervision in the interest of efficient overall coordination of the machinery of justice.

The 1965 Act makes the district court judge a fully-integrated cog in the wheels of justice. The chief judge is, of course, subject to the general supervision of the Chief Justice. And while criminal actions on appeal to the superior court will still be tried *de novo,* the superior and district court judges are both officials of one unified, statewide General Court of Justice, and Sec. 7A-281 provides that "The superior courts have power to issue any remedial writs necessary to give general supervision and control over the proceedings of the district courts of their respective judicial districts." Futhermore, appeals from the district court to the superior court in civil matters will be *on the record,* with power in the superior court to dismiss, affirm, remand, reverse, modify, vacate, or take other appropriate action.

On the administrative side, district and superior court judges will operate independently of each other, for the most part. In judicial matters, each will be served by the clerk's office. Neither is provided separate secretarial or office facilities. Each (the chief district judge and the senior regular resident superior court judge) hires and fixes (within State-set limits) the salary or salaries for court reporters for his trial division and district, or alternatively, requests electronic recording equipment from the State. The only overlapping area of any concern is likely to be in courtroom use. Presumably superior court trial sessions, scheduled by the State, will continue to have priority in the use of the main — and frequently only — courtroom in each county suitable for jury trials. The chief district judge has authority to schedule district court sessions, with and without a jury, but this authority will undoubtedly have to be exercised only after consideration of the superior court schedule in each county. In some counties this will pose a serious problem, one which will be solved ultimately only by providing additional courtroom facilities.

The chief district judge is going to be tied much closer administratively to the Administrative Officer of the Courts than to the superior court judge. The Administrator, working under the Chief Justice, will exercise general administrative supervision over the entire District Court Division. The line of communication in most matters will probably be directly to the clerk of superior court, as the chief local administrator for the system, but the chief district judge is charged (Sec. 7A-146(c)) with supervising the clerk in the discharge of the clerical functions of the district court. Beyond any question the Administrator is going to have to rely heavily on the chief judge in each district not only for supervision, but for advice and recommendations, especially in the early days of the new system when lots of local common sense will be needed to supplement tentative and perhaps general regulations from the central office. Furthermore, the new Act specifically provides that the Administrative Officer controls the salaries of magistrates, and assistant and deputy clerks of court; concurs in the adequacy of additional seats of court; approves the use of part-time prosecutors and additional magistrates; furnishes supplies and equipment; prescribes forms and business methods; prepares the budget; assists the Chief Justice in the transfer of district judges for temporary or specialized duty; and makes overall recommendations concerning the operations of the system. All of these matters are of keenest personal and professional interest to the chief district judge.

Looking at the local judicial organization, the district judge, especially the chief district judge, will be concerned with two officials: the clerk of superior court and the magistrate, the latter a new, statutory officer of

the district court. It is likely that his statutory supervision over the work of the clerk will be general and non-specific, especially since the clerk's office becomes, in practical effect, a State office, operated largely in accordance with uniform regulations issued by the State.

The chief judge's relations with the magistrate, however, are likely to be less impersonal. In the first place, he must prescribe the times and places at which each magistrate will conduct judicial business, and, of even more difficulty, decide which magistrates shall be authorized to try small claims cases, and, finally—probably by standing rule—assign or withhold assignment of each small claim case. Since the district judge must hear all appeals from the magistrate, he is going to be keenly interested in the quality of justice dispensed by the latter. Although he does not have the magisterial appointment power, his recommendations concerning salary (to the Administrative Office) or reappointment (to the senior regular resident superior court judge) are likely to carry great weight, and for alleged misconduct he has the power to suspend a magistrate from office, pending a hearing in superior court. If a county needs additional magistrates the chief judge, under Sec. 7A-171, initiates the machinery for obtaining the needed assistance.

Special Powers of Chief District Judges over Traffic Offenses

The 1965 Act provides a somewhat new and different approach to the handling of traffic offenses. Gone will be the haphazard, unsupervised, and sometimes unfair system of traffic justice now administered by over 1000 lower court judges, mayors and justices of the peace. *The responsibility and authority for the fair and efficient adjudication of traffic misdemeanors will be centralized in the hands of the chief district judges,* of whom there will be only 30 for the entire State. The magistrate, it is true, is in some ways a replacement for the abolished justice of the peace, but in traffic matters he is merely a clerical arm of the district court judge.

In traffic offenses, the magistrate will be allowed to accept guilty pleas only, and even then only to offenses specifically listed by the chief district judge. The amount of the fine will be specified for each listed offense. (Costs of court, of course, are uniform.) It is not likely that offenses for which confinement is appropriate, or which involve serious moving violations, will be listed. The chief judges are required by law to assemble once a year to prescribe, among other things, a uniform statewide list of traffic offenses for which magistrates may accept written waivers of appearance and trial and pleas of guilty. Persons charged with traffic offenses who desire to plead not guilty will be bound over by the magistrate, if probable cause is found, for trial by the district court, or for grand jury action. The subject of North Carolina's handling of traffic cases in the new district court system is discussed more fully in the October, 1965, issue of *Popular Government.*

Miscellaneous Powers of Chief District Judge

Some of the duties of a chief district judge, quoted earlier from Sec. 7A-146, are reasonably clear and require no discussion; other duties have been amplified in earlier comments regarding specialization and the judge's relationship with the clerk and the magistrate. A few duties, mentioned in Sec. 7A-146, or elsewhere in the 1965 Act, or both, require special consideration.

The courtroom facilities at authorized seats of court other than county seats (*e.g.,* Hickory, Canton, Fairmont, etc., in 1966-67) must meet the joint approval of the chief district judge and the Administrative Officer of the Courts. (Sec. 7A-130) The cities concerned may in some instances have to improve the appearances of their courtrooms. If the chief district judge determines that a city courtroom does not meet minimum standards of adequacy for a "temple of justice" (and there are some that do not), he is not required to schedule sessions of court in that facility.

In districts which have counties with 100,000 population or over, the chief judge may determine (again jointly with the Administrative Office) that "special counselor services" should be made available in the *district* to the judge or judges hearing domestic relations cases. (Sec. 7A-134) In the next biennium, the one-county district of Durham and the two-county district of Cumberland-Hoke are covered by this provision. It was the general intent of this section to make available, in the larger counties, professional assistance to a judge specializing in domestic relations (including juvenile) matters roughly to the some extent that such assistance is now available in these counties. The Administrator fixes the number of counselors per district, considering (presumably) the previous level of such services in the district, as well as the availability of State funds. The chief district judge appoints the chief counselor and the designated allowance of assistant counselors, if any, for his district, and they serve at his pleasure. In counties where this system is established, it will operate independently of, but, it is hoped, in cooperation with, the county welfare department.

The Constitution (Article IV, Sec. 21) provides that certain lower court judges continue in office as district court judges for the remainder of their terms when a district court is established in their county. There may be several of these "holdover" judges in phase one (to December, 1968). A holdover judge will perform such duties "as the chief district judge shall determine." (Sec. 7A-145). The chief judge may assign a holdover judge to full-time service, if he is needed, at the annual salary paid regular district court judges. If the chief judge does not consider a holdover judge qualified, however, he is not required to assign him to trial sessions or other judicial business involving difficult matters of law. The salary of the holdover judge will be not less than that which he was receiving formerly, and may be adjusted upward by the Administrator if the judge is assigned to duties requiring more time than he devoted to his former judgeship. To eliminate any problem with respect to holdover judges in phase two of the transitional period, Sec. 7A-145 contains this provision:

> "The term of any judge taking office after the ratification of this Act [27 April 1965] to serve any existing inferior court in a county shall, unless it has sooner expired, automatically expire on the date on which a district court is established for that county."

Sec. 7A-192 states in part that the chief district judge and any *district judge designated in writing by him,* may in chambers hear motions and enter interlocutory orders in all cases pending in the district courts of the

district. This provision was designed, among other reasons, to permit the chief district judge to restrict the in-chambers authority of an unqualified judge. This is the only difference between the *judicial* authority of a chief judge and other district judges (excepting holdover judges).

The power of the chief district judge to arrange schedules and assign judges for sessions of district court will present no particular problem in those districts which have only one, two, or even three seats of court. A degree of specialization can be had in these smaller districts, since travel from one seat of court to another will not take an excessive amount of time, and only under rare circumstances should a judge need to hold sessions in two separate courthouses the same day. In the larger rural districts, however, where the seats of court increase, and the number of judges most often does not increase proportionately, specialization will be inhibited by time and space factors. To be specific, and to take perhaps the two worst examples, judicial districts one and 30, each with seven counties and only two judges, present almost insurmountable barriers to specialization. Since each county should have at least one session of district court each week, for traffic misdemeanors, preliminary hearings, juvenile matters, etc., even limited specialization would require both judges to travel a great many hours each week, if not daily. In these districts, the only practicable solution appears to be for the chief judge and second judge to divide the districts into two subdistricts, each handling *all* district court trials within his own subdistrict. The chief judge would retain ultimate administrative control over the entire district, of course, but could delegate some of the routine administrative matters to the judge of the other subdistrict.

A final duty of chief district judges concerns the appointment of a reporter or reporters for their respective districts, and fixing their compensation and allowances within limits set by the Administrative Officer. The shortage of competent reporters is already acute, and those now employed by the superior court may choose to remain there, leaving the district court little choice but to follow the alternative permitted by Sec. 7A-198—request the State to furnish electronic recording equipment for installation in the district courtroom. This is not necessarily a poor choice, comparatively, since this type of equipment has demonstrated a high degree of reliability in recent years, and is coming into widespread use in courts in other jurisdictions. Usage of this equipment, however, will require some conscious adjustment to its limitations on the part of the judge, as well as counsel.

1966 Primary Filing Deadline

The chart accompanying this article lists the 22 counties from which the State's first 17 district court judges will be elected. Under G.S. 163-119, by analogy to superior court judges and solicitors, who are nominated by districts, the last date for filing as a candidate for the office of district court judge is March 18, 1966.

This date is not entirely free of doubt, however, since superior court judges and solicitors take office in January, while district court judges take office the first Monday in December after the election, the same day county officials take office. If it should be held that the analogy under G.S. 163-119 to county officials is stronger than to "district" officials, then 16 April would be the last date for filing. An inquiry of the Attorney-General may be necessary to settle this ambiguity. □

The District Court Magistrate

In North Carolina's ten-year campaign for modernization of its lower courts, the "horrible example" of the need for reform most frequently cited by the campaigners was the court of the justice of the peace. Unsupervised by judicial authority, operating usually in undignified surroundings, and compensated only by the fees of his "victims," the justice was an easy mark. His nineteenth century role as a community leader and respected arbiter of justice in his neighborhood had been overtaken by a changing society. The constitutional amendment of 1962 did away with the *court* of justice of the peace, and the Judicial Department Act of 1965 administered the coup de grace — the *office* itself was abolished. Death and burial take place at different times in different counties, starting with 22 counties in 1966, and is not complete throughout the State until December, 1970.

The demise of the justice of the peace does not mean, however, that all of the functions for which he was so essential in an earlier day no longer are required. A need still exists, for example, for a minor judicial official to issue warrants and to accept guilty pleas to minor offenses after normal working hours and at various widely separated locations within a county. To fulfill this need, the office of *magistrate* was created.

It would not be accurate to say that the magistrate *replaces* the justice of the peace. To a limited extent this is true; but in a larger sense— in the major attributes which caused the office of justice to fall into disrepute — the magistrate is simply not comparable. First of all, the magistrate is an officer of the district court, and as such is under the close, direct supervision of the district court judge. Second, his authority in criminal matters is severely curtailed. Finally, he is compensated by a salary, to which he is entitled irrespective of his decisions in cases tried by him.

Constitutional Provisions

A discussion of the magistrate must begin with the Constitutional references to this new office. The key provisions are in Article IV, Section 8: ". . . For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint for a term of two years, from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court . . . The number of . . . Magistrates shall, from time to time, be determined by the General Assembly . . . Vacancies in the office of Magistrate shall be filled, for the unexpired term, in the manner provided for original appointment to the office."

Other sections of Article IV provide that the General Assembly shall prescribe the jurisdiction and powers of magistrates; that appeals from magistrates shall be heard *do novo*; that the General Assembly shall provide for the removal of magistrates for "misconduct or mental or physical incapacity"; and that in no case shall the compensation of any magistrate depend upon his decision or upon the collection of costs.

Statutory Provisions

The Judicial Department Act of 1965 (Chap. 310, S.L. 1965) fills in many details concerning the office of magistrate. Article 16 (Secs. 7A-170 to -176) completes the formal description of the office. The magistrate is required to take the same oath of office as a district judge (conformed to the office of magistrate), giving emphasis to his constitutional status as an officer of the district court. The chief district judge prescribes the times and places at which each magistrate is required to maintain regular office and court hours, and "to be otherwise available" for the performance of his duties. "To be otherwise available" is intended to cover rural community situations, for example, where a magistrate may be required to keep no regular office hours, but merely be present, whatever the hour, for the convenience of law enforcement personnel seeking warrants or itinerant motorists desiring to post bond for, or plead guilty to, a minor traffic offense.

Since the Constitution requires the General Assembly to determine the number of magistrates per county, and since the number needed depends on several interrelated factors which cannot be fixed in advance, the General Assembly sought to achieve flexibility, convenience and economy by providing for a minimum and a maximum quota of magistrates for each county. For the 1965-67 bienninum, quotas given in the table accompanying this article.

The steps by which the minimum quota of magistrates comes into office are somewhat complicated, four different officials having a hand in the process. Not later than the first Monday in September, 1966, and biennially thereafter, the Administrative Officer of the Courts, after consulting with the chief district judge (or the senior regular resident superior court judge if—as will be the case initially in each district — there is no chief district judge) fixes the salaries of the various magistrates to be appointed in each county, and so notifies the clerk of superior court. The salary for each magistracy is fixed upon consideration of the time which the particular magistrate will be required by the chief judge to devote to his office. Not later than the first Monday in October of the same year, the clerk of superior court shall submit to the senior regular resident superior court judge of the district *nominations* of magistrates to fill the minimum quota for the county, specifying as to each nominee the salary level for which nominated. Thereafter, by the first Monday in November, the senior regular superior court judge shall, from the clerk's nominations, appoint magistrates to fill the minimum quota for each county of the district, at the various prescribed salary levels. Magistrates so appointed take office the first Monday in December, and serve for two years.

Sec. 7A-171(b), following the constitutional language, speaks of *nominations* of magistrates to fill the

Judicial District	Counties	No. of Magistrates Minimum	Maximum
1	Camden	1	2
	Chowan	1	3
	Currituck	1	2
	Dare	1	3
	Gates	1	3
	Pasquotank	2	3
	Perquimans	1	3
12	Cumberland	4	6
	Hoke	1	3
14	Durham	3	6
16	Robeson	7	12
	Scotland	2	3
25	Burke	3	5
	Caldwell	2	4
	Catawba	4	6
30	Cherokee	2	3
	Clay	1	2
	Graham	2	3
	Jackson	2	3
	Macon	2	3
	Swain	2	3
	Haywood	3	4

minimum quota. If the minimum quota is one magistrate, presumably the law requires the clerk to submit at least two nominees. If the minimum quota is more than one, and all vacancies draw the same salary, the law is less clear. Must the clerk nominate two candidates for *each* vacancy? Suppose only one candidate per magistracy chooses to seek the position, etc.? This ambiguity was recognized in the drafting stage, and in the General Assembly. More appropriate language, to do away with any ambiguity and to provide for all possible situations, could not be agreed upon. It was finally concluded that the interpretation of this language would be left to the common sense and good faith of the clerk and the judge concerned. In the unlikely event that this solution fails to work, further efforts to clarify the respective powers of the clerk and judge can be made by later legislatures.

If the chief district judge, in the light of experience, finds that the minimum quota of magistrates for any county in his district is inadequate, he may, with the approval of the Administrative Officer, certify to the clerk that a specific number of additional magistrates, within the maximum quota, is necessary in such county. The Administrative Officer fixes the salary for the additional magistrate or magistrates, and the clerk submits nominations to the superior court judge, as in the case of appointments to fill the minimum quota. Additional magistrates so appointed take office immediately, and serve until the end of the two year term for which the initial minimum quota was appointed.

Vacancies in the office of magistrate, whether in the minimum or maximum quota, are filled for the unexpired term in substantially the same manner as for the original appointment. The clerk must make nominations within 30 days, and the judge must appoint within 15 days thereafter, the salary level of the magistracy remaining unchanged.

The salary of a magistrate is set at not less than $1200, and not more than $6000, per year. Presumably magistrates assigned to rural intersections, to be available to issue warrants and to bind over or accept guilty pleas from minor misdemeanants from time to time, will be compensated near the lower end of this scale. Magistrates in urban areas assigned full time to the trial of small claims cases, as well as criminal matters, will probably be salaried at the maximum rate. No magistrate will receive any fees. All fines, forfeitures, costs and fees received by the magistrate will be remitted to the clerk of court for further disposition. Full-time magistrates will be covered by the State employees' retirement system and by social security. Coverage of part-time magistrates by the State retirement system is uncertain, apparently depending on whether such employees are considered "permanent" or not.

On rare occasions suspension or removal of a magistrate from office may be appropriate. Chief district judges possess the suspension power; removal power is vested in the senior regular resident superior court judge or any regular superior court judge holding court in the district. Grounds for suspension or removal are the same as for a district judge: willful or habitual neglect or refusal to perform the duties of the office, willful misconduct or maladministration in office, corruption, extortion, conviction of a felony, or mental or physical incapacity. Disciplinary action is initiated by the filing of sworn written charges in the office of the clerk of superior court. The chief district judge examines the charges, and if he finds that the charges, if true, constitute grounds for removal, he *may* suspend the magistrate from performing the duties of his office pending a hearing. The magistrate's salary continues during the suspension. The hearing is held by the superior court judge within 10 to 30 days after the magistrate has been given written notice and a copy of the charges. If the judge finds that grounds for removal exist, he shall order the magistrate permanently removed from office, and terminate his salary. If the judge finds no grounds for removal, he shall lift the suspension. An appeal from removal lies to the Supreme Court for errors of law. Pending the decision on appeal, the suspension continues. If the Supreme Court orders the magistrate reinstated, his salary is restored from the date of removal.

Since magistrates will be handling government funds, bonds (faithful performance of duty) are required. The amount of the bond is fixed by the Administrative Officer and made payable to the State which pays the

premium. The bond may be individual or collective. The Administrative Officer also prescribes certain records, dockets, and accounts to be kept by the magistrate, under the general supervision of the clerk of the superior court.

Authority of the Magistrate

Authority in Criminal Matters.

Within the jurisdiction of the district court, in criminal actions, any magistrate has power:

> "(a) In misdemeanor cases, other than traffic offenses, in which the maximum punishment which can be adjudged cannot exceed imprisonment for thirty days, or a fine of $50, exclusive of costs, to accept guilty pleas and enter judgment;
>
> (b) In misdemeanor cases involving traffic offenses, to accept written appearances, waivers of trial and pleas of guilty, in accordance with a schedule of offenses and fines promulgated by the chief district judge;
>
> (c) In any misdemeanor case, to conduct a preliminary examination and bind the accused over to the district court for trial upon a waiver of examination or upon a finding of probable cause, making appropriate orders as to bail or commitment;
>
> (d) To issue arrest warrants valid throughout the State;
>
> (e) To issue peace and search warrants valid throughout the county; and
>
> (f) To grant bail before trial for any noncapital offense."
>
> (Sec. 7A-273)

The power of the magistrate in criminal matters is thus less than that of the justice of the peace in at least two important respects: the magistrate can accept guilty pleas only, and, if the charge is a traffic offense, he can accept guilty pleas only to those offenses on a list promulgated by the chief district judge, and also impose only the listed fine. Discretion of the magistrate is restricted to the amount of the sentence in those guilty-plea non-traffic misdemeanors within his $50/30-day maximum authority. On the other hand, the authority of the Magistrate to issue warrants is greater than that of the justice of the peace — he can issue an arrest warrant which is valid throughout the State, without "backing" by a justice in another county or certification by the clerk of superior court. (At the same time, the authority of law enforcement officers to issue warrants is terminated.)

The special treatment for traffic offenses represents an effort on the part of the legislature to bring a measure of uniformity into procedures and punishments in minor traffic cases, to limit the number of judicial officials concerned with the disposition of traffic matters, and to concentrate the responsibility for the administration of justice in traffic cases in the hands of a few, presumably specially trained, judges.

Authority in Civil Matters; Small Claims.

Within the jurisdiction of the district court, the authority of the magistrate in certain civil cases has been expanded considerably over that held by the justices of the peace. The magistrate is authorized to try a *small claim action* in which the amount in controversy does not exceed $300, provided:

(a) the principal relief requested is monetary, or the recovery of specific personal property, or summary ejectment, or a combination thereof;

(b) the plaintiff requests assignment to a magistrate for trial;

(c) the chief district judge assigns the claim to a magistrate; and

(d) all the defendants reside in the same county as the magistrate.

The procedures for the trial of a small claim action are set forth in detail in Article 19 of the 1965 Act. Such an action is initiated by filing a "Small Claim" complaint with the clerk of superior court. The chief district judge exercises the assignment power in his sole discretion. He may assign all small claims actions, by standing order, to a particular magistrate or magistrates; he may assign certain types of claims to designated magistrates, or he may withhold all assignments, thereby forcing each small claim to be tried by a judge. If he fails to assign a small claim within five days, it is automatically treated as a regular civil action, to be tried before a judge in district court.

If the judge orders assignment, the clerk issues a "magistrate summons" to the defendant. This commences the action. Notice of assignment is also given to the plaintiff and to the designated magistrate. The defendant may be subjected to the jurisdiction of the court over his person by the usual methods, and also by certified mail, return receipt requested, if the defendant signs the receipt. Failure of the defendant to answer after proper service constitutes a general denial, but default judgments are not rendered unless the defendant answers and admits all the material allegations of the complaint. Counterclaims, cross-claims, and third party claims which would make the amount in controversy exceed the assignable limit of $300 are not permissible. The only pleadings are the complaint and the answer, but on appeal and trial *de novo* before a district court judge (with or without a jury), appropriate counterclaims, cross-claims, third party claims, replies and answers to cross-claims are allowed. Motions for a change in venue or objections to jurisdiction are heard by a district court judge. Otherwise trial procedures, rules of evidence, etc., are as in non-jury civil actions generally. In a small claim action seeking summary ejectment, if the defendant denies the title of the plaintiff, the action is transferred to the regular district court civil docket.

Judgments of the magistrate are judgments of the district court, and are recorded and indexed by the clerk as are civil judgments generally; they constitute a lien and are subject to execution in the same manner as judgments of the superior court. The provisional and incidental remedies of claim and delivery, subpoena duces tecum, and production of documents are obtainable in small claim actions. Sample forms for various types of small claim actions and procedures are set forth in the statute. Substantial compliance with the forms is sufficient.

Additional (Non-Trial) Authority of Magistrates.

In addition to the powers of magistrates in civil and criminal actions, the following incidental and supplemental powers are also given to the magistrates:

(a) to administer oaths;

(b) to punish for contempt;

(c) when authorized by the chief district judge, to take depositions and examinations before trial;

(d) to issue subpoenas and capiases valid throughout the county; and

(e) to perform any civil, quasi-judicial or ministerial function assigned by general law to the office of justice of the peace. (Sec. 7A-292)

Subsection (e) above, requires special comment. Several hundred sections of the General Statutes refer to the justice of the peace. Some of these statutes concern obsolete 18th or 19th century functions; some embrace duties, such as the ceremonial marriage function, appropriate or necessary for continuance by the 20th century magistrate; others may not fall clearly into either category and require further study. Pending completion of an intensive section-by-section study of these statutes to single out and carry forward those non-trial, quasi-judicial functions appropriate for discharge by the magistrate, the Courts Commission and the legislature resorted to general language, for which specific functions can be substituted upon completion of the necessary research. Preliminary indications are that only a score or so of specific duties need be carried forward, and that several score of statutes referring to the justice of the peace can be repealed outright. It is not considered likely that any of these essential ministerial or quasi-judicial functions will occupy an appreciable portion of the time of the average magistrate.

Magistrate's Costs and Fees

As noted earlier, the magistrate is compensated solely by a State salary. Fines and forfeitures continue to inure to the benefit of the county school fund, by constitutional mandate. Costs of court and special fees collected by the magistrate are all remitted to the clerk of superior court for further disposition to the State, or county or city, as provided in the uniform costs bill applicable to the entire General Court of Justice.

The costs of court for a criminal conviction before a magistrate total $15. This is the same as before the district court judge, and is uniformly applicable regardless of plea. (The defendant, of course, is always free to plead not guilty, requiring that his case be heard before a district court judge.) Therefore, there is no financial incentive to plead guilty before a magistrate, although convenience might be a factor in making such a plea.

The $15 is allocated to four separate funds: $2 to the county or city whose officer performed the arrest, or served the process; $2 to the county or city furnishing the trial (courtroom) facility; $3 to the State Law Enforcement Officers' Benefit and Relief Fund; and $8 to the State for support of the Judicial Department generally.

The $2 facilities fee is to be used by the county or city for courtroom and related judicial facilities, including ". . . adequate space and furniture for . . . magistrates . . ." Thus by law the county or city is responsible for providing office space or a hearing room of some sort for magistrates. The magistrate's duties are such that ordinarily a single room in the courthouse or other suitable building will be adequate. This will impose an additional obligation on the county or city, at least where a magistrate is assigned to full time regular office hours. In rural communities, however, where a magistrate may be assigned merely for occasional issuance of warrants or acceptance of guilty pleas to minor traffic offenses, providing an office for a magistrate may be impractical. The facilities fee is collectible in any event, however, and unless a city provides the facility in which the magistrate performs his duties, the fee is remitted to the county.

In small claim actions assigned to a magistrate, the cost of court varies with the amount in controversy. If the amount sued for is $100, or less, the cost is $5; if the amount in issue is over $100 but less than $300, the cost is $8. In each instance, $2 of this sum is allocated to the county (city) for facilities; the remainder is remitted to the State. These costs are collected in advance by the clerk of superior court.

In addition to costs collectible in civil and criminal actions, the magistrate is allowed to charge the following special fees: performing a marriage ceremony, $4; hearing petition for a year's allowance to a surviving spouse or child, allotting same, etc., $4; taking a deposition, $3; proving execution or taking acknowledgement of instruments, $0.50; and performing any other statutory function not incident to a civil or criminal action, $1. Fees of assessors or commissioners ($2 each) appointed by a magistrate may also be charged. All of these fees are remitted to the State.

Miscellaneous Matters

The status of a magistrate as an officer of the district court undoubtedly prohibits his holding any other public office under the dual office-holding prohibition in Article XIV, Section 7 of the State Constitution.

Magistrates may be assigned by the chief district judge in an emergency, to temporary duty outside the county of their residence, but within the district. Since all counties will have at least one magistrate, and most counties will have several, this provision will probably see little use. When additional magistrates are needed on a permanent basis, implementation of the maximum quota provision of the law is the proper solution. If the maximum quota is already in use, legislative action to raise the quotas should be sought.

In small claim actions, the law provides that the magistrate has no authority except as to actions which have been specifically assigned to him for trial. A judgment rendered by a magistrate in an unassigned small claim is therefore invalid. No other powers of the magistrate are dependent upon assignment, the law directly providing that the magistrate possesses "all the powers of his office at all times during his term." In the exercise of his criminal and quasi-judicial powers, therefore, the chief district judge may not legally restrict the magistrate. He may, of course, by administrative agreement, in the interest of efficient operations or con-

venience, provide that only designated magistrates perform marriages, for example, or that contested preliminary hearings be conducted only by magistrates to whom a suitable hearing room is available. The acts of any magistrate conducted in violation of any administrative agreement would be perfectly valid, however. This is so in order that the magistrate's acts be immune to challenge on the grounds that he exceeded the authority granted to him by the chief district judge. Administrative restrictions of this type will probably be uncommon, but they may be necessary occasionally to balance workloads among magistrates, to fit workloads to salary schedules, or to channel certain functions (such as marriage ceremonies) to the magistrate with the most suitable office. In any event, a magistrate who persisted in performing functions contrary to the wishes of the chief district judge would undoubtedly jeopardize his reappointment.

For the 22 counties activated in 1966, a minimum of 48 magistrates, and a maximum of 85, is prescribed. A statewide projection of these numbers, taking into account that the quotas for the most populous counies have not yet been fixed, results in an eventual total of about 250 magistrates as a minimum, and about 450 as a maximum. (This is less than half the present total of about 900 justices of the peace.) The majority of these will probably be part-time magistrates; only in the larger population centers will full-time magistrates be required.

In spite of the magistrate's lack of authority to try not-guilty criminal cases, he will need a thorough basic knowledge of several areas of the law. Issuance of valid warrants, especially search warrants, is a function of constantly increasing complexity. Proper conduct of a preliminary examination will require a knowledge of certain principles of constitutional law and criminal procedure. The conduct of a contested small claim may require familiarity with the law of contracts or negligence. Various other duties will require special training. This requirement for legal training, plus the high standard of personal integrity always demanded of a judge, means that the office of magistrate is a highly responsible one and that appointments to it should be made with great care. □

The Clerk of Superior Court and the New District Court

This article deals with a pre-existing office—a centuries-old office which is continued under the amended Constitution and the 1965 Act—the clerk of superior court. While the title of this important office remains the same, the changes in the office wrought by the 1965 Act are the most far-reaching since 1883, when the probate judge was abolished and his functions transferred to the clerk of superior court.

Constitutional Provisions

Article IV, Section 7(3) of the Constitution now provides:

> "A clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the time and in the manner prescribed by law for the election of members of the General Assembly. If the office of Clerk of the Superior Court becomes vacant otherwise than by expiration of the term, or if the people fail to elect, the senior regular resident Judge of the Superior Court serving the county shall appoint to fill the vacancy until an election can be regularly held."

Sec. 10(2) provides that ". . . The Clerks of the Superior Court shall have such jurisdiction and powers as the General Assembly shall provide by general law uniformly applicable in every county of the State." Sec. 15(3) provides that "Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against whom proceedings are instituted shall receive written notice of the charges against him at least ten days before the hearing upon the charges . . . Any Clerk so removed from office shall be entitled to an appeal as provided by law."

These provisions are the same in substance as those contained in the former Article IV, except for the section on removal from office. "Misconduct" has been added as a cause for removal, the removing judge is now the senior regular resident superior court judge rather than the "judge riding the district," and the right of appeal "as provided by law" replaces a constitutionally guaranteed ultimate appeal to the Supreme Court. (The 1965 Act continues this right of appeal to the Supreme Court).

Judicial Department Act

The principal objective of the Judicial Department Act of 1965 was to implement the Constitution by establishing a District Court Division of the General Court of Justice. The Act did not attempt to reorganize the Superior Court Division, including the office of the clerk of superior court. But the process of creating the District Court Division inevitably affected portions of the superior court's organization, structure, and jurisdiction. For example, although Chapter 2 of the General Statutes, dealing with the office of clerk of superior court, was left intact, many sections of it are superseded, directly or by implication, by the provisions of the 1965 Act, which take effect in December, 1966, in 22 counties of the State, and by statutory schedule in all other counties in 1968 and 1970. This situation must be kept in mind in following this discussion. When the 1965 Act is silent, earlier laws are still in effect. A complete picture of the clerk's office thus must include both the earlier laws and the 1965 additions, but it is the purpose of this article to discuss only those aspects of the clerk's office which were affected by the 1965 Act.

True to the constitutional concept of one unified statewide General Court of Justice, Sec. 7A-39.1 of the Act makes it clear that the clerk of superior court, in the exercise of his judicial powers as *ex officio* judge of probate, and with respect to special proceedings and the administration of guardianships and trusts, is an officer of the superior court, and *not a separate court*. This section pointedly omits any reference to the judicial powers of the clerk with respect to juvenile matters; these powers are specifically taken from the clerk and given to the district court judge by Sec. 7A-277. This change affects not only the 90 counties in which the clerk is now judge of juvenile court; in all 100 counties, including those 10 in which the clerk now has no connection with the juvenile court, the clerk inherits the clerical responsibilities attendant upon the discharge of juvenile matters in the district court.

Clerical Functions of District Court

Most clerks will accept the loss of the function of juvenile judge with equanimity, if not joy. Another change will be greeted with different emotions. This thrusts upon the clerk all of the clerical functions of the district court in his county. The Courts Commission and the General Assembly felt that efficiency, convenience and economy would be best served if all the clerical functions of *both trial divisions* of the General Court of Justice in each county were placed under one official. Logically, such an official should be called simply "Clerk of Court" or "Clerk of Trial Courts," but "Clerk of Superior Court" is the constitutional title. (A clerk of district court is also mentioned in the Constitution, but only in passing, in the section on removal; there is no constitutional mandate to create such an officer). The title of "Clerk of District Court" could not also be given to the clerk of superior court, as this might run afoul of the dual office-holding prohibition of the Constitution. The only solution was simply to provide that the clerk of superior court's judicial, clerical, administrative and fiscal duties with respect to district court matters would be the same as in superior court matters. This responsibility includes the duty to maintain consolidated records of all judicial proceedings in both the superior court and the district court in his county.

New Powers of Clerk

The clerk is given two important new functions in his enlarged role as clerk of both the superior and district courts. The first of these is the power to accept written appearances, waivers of trial and pleas of guilty to certain traffic offenses listed by the chief district judge, and the second is the authority to issue warrants of arrest valid throughout the State, and search warrants valid throughout the county. The clerk shares each of these duties with the magistrate, and assistant and deputy clerks are also so empowered. This promotes flexibility and convenience during normal working hours and after hours as well, since assistant and deputy clerks may be assigned irregular hours when desirable to supplement the limited number of magistrates which may be available for these important functions. Under this new system, law enforcement officers will be prohibited from issuing warrants.

Compensation

The advent of the District Court brings to an end the era of the fee-compensated clerk. Clerks (including assistants, deputies, and other clerical employees) are placed on the State payroll, and salaried according to a scale keyed to county population. The scale runs from $6500, in counties of less than 10,000 people, to $18,000, in counties of 250,000 people and more. This scale represents some increase in compensation for the majority of clerks. Population groupings are subject to adjustment after each federal decennial census. Any additional compensation by means of fees or commissions is forbidden, but county commissioners, by virtue of a provision of Sec. 7A-101 are authorized to supplement the salary of the clerk from certain costs of court. Salary supplements of this kind are likely to be uncommon.

All clerks will become members of the Teachers' and State Employees' Retirement system. Clerks who are now members of the Local Government Employees' Retirement system will be automatically shifted to this system without loss of coverage under existing law. Special legislation will probably be needed for the benefit of those clerks not now covered by the Local Government Employees' Retirement System. Social Security coverage, of course, continues.

Assistants and Deputies

All employees of the clerk's office are also shifted to the State payroll. The number of such employees is to be determined by the Administrative Officer of the Courts, as well as their salaries, the latter to be set after consultation with the clerk and the county commissioners concerned. Salaries must also be fixed with "due regard to the salary levels and the economic situation in the county." The clerk appoints all his office employees to serve at his pleasure.

Additional Seats of Court

The District Court is required to sit at the county seat in each county, and at such additional places as the General Assembly may authorize. In the 22 counties activated in 1966, additional seats are authorized in the counties of Catawba (Hickory), Haywood (Canton), and Robeson (Fairmont, Maxton, Red Springs, Rowland, St. Pauls). Many of the counties to be activated in 1968 or 1970 will probably have one or more additional seats of court. The clerk will be responsible for supplying necessary clerical assistance at these locations, but only such records as are necessary for the efficient processing of current judicial business are to be kept at these sites. Office space and furniture at the additional site must be provided by the city concerned.

Nomination and Supervision of Magistrates

The constitution (Article IV, Sec. 8) creates the new office of magistrate, a minor judicial officer of the district court, and assigns to the clerk of superior court the duty to make nominations (to the senior regular resident superior court judge) for appointment to this new office. Each county will have at least one magistrate, and a few counties may have 10 or more. In advance of the nominations, the salary for each magistracy will be fixed by the Administrative Officer, and, although not required by the law, the duties and location of each magistracy will probably also be known. The clerk must then find qualified candidates for each magisterial position and submit his nominees to the judge. While the chief district judge prescribes the times and places at which magistrates will be available for duty, and assigns small claims cases to them for trial, the clerk is charged by law with general supervision of the record keeping functions of the magistrate. This arrangement makes it highly desirable that the clerk nominate the most highly qualified candidates he can find for the position of magistrate.

Mechanical Court Reporting Equipment

The new law anticipates a continuing shortage of competent court reporters, not only in the superior court, but in the district court as well. When live reporters are not available, the local judge concerned may request the State to supply mechanical court reporting equipment. When such equipment is furnished it is the duty of the clerk to provide for its operation, to preserve the record of trial so recorded, and to transcribe the record as required. An employee trained in these functions will be necessary. Transcription costs, presumably at the rate currently prevailing in the locality, are assessable on appeal from district court to superior court.

Financial Accountability

Procedures for the "receipt, deposit, protection, investment, and disbursement" of all funds coming into the hands of the clerk of superior court will be promulgated by the State. The State Auditor will conduct an annual post audit of the fiscal transactions of each clerk. Each clerk will be bonded to the State for faithful performance of duty. The administrative Officer fixes the amount of the bond and the State pays the premium. Assistant and deputy clerks are bonded similarly, except that a blanket bond is authorized for all clerical assistants.

Clerk's Jurisdiction in Probate and Administration

Earlier it was noted that, except for loss of his juvenile judgeship, the jurisdiction of the clerk remains substantially unchanged. This is emphasized in Sec. 7A-241, which specifies that exclusive original jurisdiction for the probate of wills and the administration of decedent's estates is exercised by the superior court and the clerk thereof as *ex officio* judge of probate, according to established practice and procedure.

Original civil jurisdiction of all other matters (except claims against the State) is vested in the trial divisions. Current procedure with respect

to special proceedings, guardianship and trust administration, and condemnation actions remains undisturbed; technically, either trial division has "jurisdiction," but the superior court is the *proper* division. (A detailed explanation of the terms "jurisdiction" and "proper" is beyond the scope of this discussion.) And Sec. 7A-251 provides that all matters properly heard originally before the clerk are appealable to the judge of the superior court, as provided in Chapter 1 (Civil Procedure) of the General Statutes.

Clerical Procedures in Civil Actions

All civil actions and proceedings in either trial division of the General Court of Justice are instituted in (and the original records maintained in) the office of the clerk of superior court "*without regard to the trial division in which a particular cause may be pending from time to time.*" Of course, this does not mean that labelling of papers to indicate the trial division involved is forbidden; in fact, the complainant is required to indicate on the complaint or other initiating paper which division he deems proper. If no designation is made, the clerk dockets the cause for the superior court division. If, upon motion of the parties granted by the judge, or on the judge's own motion, a cause is transferred from one division to the other, the clerk merely makes appropriate notations on the dockets and the case file. If the volume of business is great, separation of pending cases by trial division may be convenient but it is not required by law.

Civil Appeals from District to Superior Court

Civil actions finally decided in the district court are appealable to the superior court on the record, for error of law. These appeals are governed by a set of rules set out in Sec. 7A-286 of the Act. The procedures vary materially from the procedures on appeal from the superior to the Supreme Court. The role of the clerk in such appeals is specified in detail in the Rules, and will not be repeated here other than to say that the clerk prepares the record on appeal, which consists of the original papers and exhibits filed in the case, the transcript of proceedings, if and to the extent requested, and a certified copy of all docket and minute entries. Upon assembly of the record on appeal, the clerk dockets it on the appellate docket of the superior court in his office and notifies the parties. Judgments are entered by the clerk in the civil judgment docket in the same manner as judgments of superior court trials.

Criminal Appeals from District to Superior Court

Criminal actions (misdemeanors) tried in the district court are appealable to the superior court for trial *de novo*, with jury. If notice of appeal is given in open court or within 10 days thereafter, the clerk transfers the case to the superior court criminal docket.

Special Small Claims Procedures

Civil actions in which the amount in controversy does not exceed $300 (including claim and delivery and summary ejectment actions), upon request of the plaintiff, are assignable by the chief district judge to a magistrate for trial. Assignment will probably be made in most cases by the clerk, pursuant to standing order or rule of the judge. Art. 19 of the 1965 Act sets out special procedures for these cases. The plaintiff requests assignment by stamping "Small Claim" on the face of his complaint, which is filed with the clerk. In assigned cases, the clerk issues a "magistrate summons," which commences the action, and notifies the parties and the designated magistrate of the assignment. If a small claim is not assigned within five days, it is treated as a regular civil action. Special, simple forms for use in small claims are set forth in the Article. Service of process may be obtained by certified mail, if the plaintiff so requests and pays the clerk the fee (postage) for this service. Trial is had before the magistrate, who signs the judgment and returns the papers to the clerk for entry of judgment on the consolidated civil judgment docket, in the same manner as civil judgments rendered by a district or superior court judge. On appeal the clerk places the action on the district court civil issue docket for trial *de novo* before a judge.

Expenses of Clerk's Office

The Constitution provides that the operating expenses of the Judicial Department will be paid by the State. This means, in addition to the salaries of all personnel in the clerk's office, other expenses of the office, including ". . . supplies and materials, postage, telephone and telegraph, bonds and insurance, equipment, and other necessary items," (Sec. 7A-300 (5)). The State is authorized to establish local procedures for the prompt payment (from State funds) of the fees of jurors, certain witnesses, and other small expense items. The county (or the city, if an additional seat of court is located in a city), must provide the courtroom and related judicial facilities, however, including the clerk's office spaces, furniture and vaults. Supplies and equipment in the clerk's office on the date a district court is established in any county become the property of the State.

Costs of Court

The principal features of the uniform costs of court bill have been explained in the March and June, 1965, issues of *Popular Government*. In place of the lengthy, detailed costs bill with which most clerks now struggle, there will be a simplified, all-inclusive lump - sum - per - major-category-of-judicial-business type of bill. While it may take some effort to adjust to the new system of costs, the time saved in computing separate costs in countless cases will more than compensate for this temporary inconvenience.

Relations with Administrative Officer of the Courts

While the clerk continues to be elected to his office by the voters of his county, he is responsible primarily to the State—in particular, to the Administrative Officer of the Courts—for the proper discharge of the nonjudicial functions of his office. Sec. 343(c) specifies that the Administrative Officer prescribes ". . . uniform administrative and business methods, systems, forms and records to be used in the offices of the clerks of superior court." This sweeping authority will eventually result in overturning 100 different ways of doing routine business in the offices of the clerk, and substitute one uniform, statewide method. To this end the Administrator has already asked a select committee of clerks of superior court to advise him as to just what "methods, systems, forms and records" should be utilized

in the clerks' offices. Since November, this committee* has been at work, meeting weekly. It will make its recommendations to the Administrator in late summer.

For each clerk's office the Administrator must "Procure, distribute, exchange, transfer, and assign . . . equipment, books, forms and supplies . . ." (Sec. 7A-343(f)). Looking to the State rather than the county for office equipment and supplies may initially cause some inconvenience, since neither individual clerks nor the Director of the Administrative Office can be expected all at once to anticipate accurately and completely all the needs of a new court system and a new supply system. Passing inconvenience, however, should be more than offset by the advantages of statewide uniformity and centralized procurement. Understanding on the part of the clerks will facilitate these transitional adjustments, with minimum difficulty for all concerned.

The Administrative Officer will undoubtedly have need of certain statistics and reports in order to discharge his statewide responsibilities efficiently. These reports in large measure must be supplied by the clerks. Sec. 7A-345 makes it their duty to supply to the Administrative Officer, on request, information and statistical data relative to the work of the courts. Submitting statistics to the State is, of course, nothing new. The nature of the data requested, however, may be. Information on which the budget for the entire judicial department can be compiled, for example, will be needed, and again the cooperation and accuracy of the clerk will greatly assist the State office in accomplishing this task of mutual concern.

*Members are D. M. McLelland, Alamance (Chairman); W. E. Church, Forsyth; Alton Knight, Durham; Ben Neville, Nash; Russell Nipper, Wake; Mrs. Frances Rufty, Rowan; and J. P. Shore, Guilford. All are clerks of superior court.

Not All Procedures Changed

After this long catalogue of changes, it may be a refreshing relief to many clerks to hear that some things are not changed. For example, civil procedure generally, as set forth in Chapter 1 of the General Statutes, remains unchanged. Criminal procedure, in general, also remains as set out in Chapter 15, and other chapters, of the statutes. Juvenile court procedures are likewise specifically retained as now set out in Chapter 110, Article 2; and procedures for drawing jurors for the district court are the same as prescribed for the superior court. While it is likely that major portions of each of these procedural fields will be revised in the next decade, most of these changes will come after the new organizational changes have taken place and become settled routine. By now it should be clear to all clerks, however, that the decade ahead will be marked by the biggest upheavals in the clerk's office in nearly a century. □

The County and the District Court

December 5, 1966, will be an important day in the judicial history of North Carolina. On that day in 22 counties of the State the first sessions of the new district court will be held. As provided in the Judicial Department Act of 1965, (Ch. 310, S.L. 1965) the district court will replace in these counties all existing courts below the superior court level. While a lead time of over 20 months was written into the new law to provide ample opportunity to prepare for the new court system, the changeover will not take effect without some major adjustments. Persons in county government in particular will have many adjustments to make. This article will attempt to advise county officials of pertinent provisions of the new law, in an effort to make the changeover as smooth as possible.

Fiscal Considerations

Article IV, Section 21 of the Constitution, as amended in 1962, provides for the abolition in each county of all courts below the level of the superior court when the district court is activated in the county, and in no event later than 1 January 1971. Section 18 of the same Article provides, in part, that "The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers shall be paid from State funds." Taken together, these two provisions relieve the counties of all substantial judicial functions, and transfer the responsibility for judicial operations to the State. Since in monetary terms this responsibility runs to six figures in some counties, the impact of the change is considerable. The impact is intensified by the implementing legislation, the Judicial Department Act of 1965, which deprives the counties in large measure of court-produced revenues (costs of court), diverting this "income" to the State treasury.

In a typical county under present law the board of commissioners appoints, or the voters elect, for the county court, a judge, a solicitor, and a clerk. For the superior court in each county the voters elect a clerk. The commissioners fix the number of the clerk's assistants and their salaries. The county furnishes and maintains the courtroom and the clerk's office and provides the clerk's supplies and equipment. The salaries of all persons connected with the court, from judge to clerk to reporter, are paid by the county. Fees and mileage of jurors are also a county responsibility. In the average county these outlays may amount to a sizeable percentage of the total county budget. To compensate for these expenses, the county sets (or through its representative requests the legislature to set) a bill of costs for various services rendered by the court. In most counties, the income derived from this bill of costs in the superior court is inadequate to defray the court's expenses. In the county court, on the other hand, where most commonly there is no jury, the costs of court frequently more than offset the expenses. The net result in some counties is a "profit" on overall court operations. This profit is used to support other functions of county government.

Under the district court system, the voters of the county will continue to elect the clerk of superior court, and the county will continue to furnish and maintain a courtroom and related physical facilities, but all else will be changed. In particular, court personnel become State employees; the excess of costs of court, if any, over expenses for operating the court, will no longer be available to the county commissioners; and the minor percentage of the costs of court actually retainable by the county will be earmarked for the support of judicial facilities only. In 22 counties adjustments in anticipation of these changes must be made in the fiscal year 1966 budget. The changes are not all on the debit side of the budget, but no one can predict with assurance of any accuracy whether the credits will balance the debits.

Section 7A-300 provides that in counties having a new district court the following expenses become a State responsibility:

- Salaries and expenses of assistant solicitors [superior court], district judges, prosecutors, assistant prosecutors, magistrates, family court counselors, clerks of court, their assistants and deputies, and other clerical employees;
- Expenses of the clerk's office, including supplies and materials, postage, telephone and telegraph, bonds and insurance, equipment, and other necessary items;
- Fees and travel expenses of jurors, and of witnesses required to be paid by the State; and
- Compensation and allowances of reporters.

Section 7A-302 provides that responsibility for the following expenses remains with the county: ". . . courtrooms and related judicial facilities (including furniture) . . ." Reference to section 7A-304 is necessary to determine what are "courtroom and related judicial facilities":

> ". . . adequate space and furniture for judges, solicitors, prosecutors, magistrates, juries, and other court-related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; and a law library (including books) if one has heretofore been established or if the governing body hereafter decides to establish one."

The meaning of "operating expense," to be met by the State under the mandate of the Constitution, and "non-operating expense," to be met by the county, is reasonably clear. Physical facilities, that is, realty, together with its permanent, non-consumable furnishings is deemed to be non-operating, and hence a county responsibility; all else is an operating ex-

pense, and chargeable to the State. In practice a few questions may arise. For example, are file cabinets whose tops are used as counters furniture (county) or equipment (State)?

Supplies and equipment in the clerk's office at the time the district court is activated become the property of the State. (Sec. 7A-303). While technically the county commissioners in the name of economy are thus given an opportunity between now and the time the district court is activated in their county to remove specific items of the clerk's office equipment, or to fail to repair or replace such equipment, such conduct is considered unlikely, since its main result would be to inconvenience the people of the county. And in view of the statutory duty imposed on the county commissioners under G. S. 2-8 to furnish the "requisite stationery, records, furniture and filing cases and devices" for the clerk's use, such actions would also be unfair, if not illegal.

Costs of Court

A vital feature of the new court system is a uniform statewide costs-of-court bill. Under this bill the major percentage of costs collected will go to the State to support its obligation to pay the operating expenses of the system. The counties, however, will be allowed to retain a *facilities fee* as compensation for furnishing the physical facilities in which the courts will operate.

The facilities fee varies with the subject matter and the court level, as follows:

Subject Matter	*District Court*	*Superior Court*
Civil Action	$5 (Before a Magistrate $2)	$5
Criminal Action	$2	$15
Special Proceeding	—	$2
Estate Administration	—	$2

On appeal from the clerk of superior court, or from the district court to the superior court, the fee is chargeable a second time, except in civil appeals from the clerk to the judge. Assuming the availability in each county of current data as to the numbers of cases in each of the above categories, it will nevertheless be impossible to arrive at a reasonably accurate estimate of how much revenue the facilities fee will produce because of one or more of the following uncertainties: the number of criminal cases in which the fee will not be collected; the number of civil cases involving prayers for money judgments of $300 or less which are within the magistrate's "jurisdiction" and the extent to which the magistrate will in fact be used in small claims cases; the number of misdemeanors formerly tried in superior court which now must originate in the district court; and the volume of appeals from the magistrate, the clerk of superior court, and the district court judge.

As noted earlier, the uses to which accumulated facilities fees may be put are restricted. Sec. 7A-304 specified that they must be used for "providing, maintaining, and constructing" courtroom and related judicial facilities. This section goes on to say, however, "In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county . . . may, with the approval of the Administrative Officer of the Courts as to the amount, use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to supplement the operations of the General Court of Justice in the county." It is a matter of some speculation to what extent this "safety valve" will be useful. Counties with recently completed — and adequate — courthouses and related judicial facilities may be eager to devote funds cumulated by means of the facilities fee to the retirement of bonded indebtedness on the facilities. On the other hand, while recently constructed and adequate facilities may need little maintenance or additions for years to come, eventually the need will arise for major expenditures for renovation or expansion, and such expenditures can best be met only if an adequate sinking fund has been gradually accumulated.

Counties blessed with modern, adequate facilities and no indebtedness resulting from their construction— if there be any counties so fortunate— may, with State permission, "supplement the operations of the General Court of Justice" in their counties by (for example) supplementing the salary of the clerk of superior court (Sec. 7A-101), or giving the clerk additional clerical personnel, or hiring additional counselors for district court judges sitting in domestic relations cases. These possibilities are perhaps more speculative than real.

The facilities fee is the county's sole source of income from the courts for the support of its *judicial* facilities. The 1965 Act, however, sanctions the collection of several other fees in support of court-related (law enforcement) activities. None of these fees is new, although the amount of the fee may be:

● *Arrest Fee* For each arrest made by a county or State law enforcement officer, resulting in a conviction, a $2 arrest fee is assessable in favor of the county. (Sec. 7A-304). This fee is also collectible for personal service of criminal process, including citations. The revenue this fee will produce can be estimated with reasonable accuracy in all counties. If the arrest is made by a city policeman, the city receives the arrest fee. No arrest fee accrues to the benefit of any individual.

● *Sheriff's Fees* Sec. 7A-311 standardizes, throughout the State, the fees chargeable by the sheriff in a civil action or special proceeding, for service of civil process ($2), seizure and care of personal property (all necessary expenses), sales of property (5% on the first $500, 2½% on higher sums, plus necessary expenses), ejectment (all necessary expenses), etc. These fees become the property of the county; no fees accrue to any individual. This civil process fee schedule was adopted by the legislature as recommended by a committee of sheriffs whose primary aim was to arrive at a fair fee bill substantially representative of fees currently charged in the various counties. In some counties it may bring in more revenue than the former fee bill did; in others, less. Increased income, if any, may be offset by the need in some counties to place deputies, formerly fee-compensated, on a county salary.

● *Jail Fee* Defendants lawfully confined in the county jail, and who are finally convicted, are liable to the county at the rate of $2 per day for each day's confinement, or fraction thereof. While the sums collectible hereunder will not operate this facility in the black, places of confinement cannot reasonably be expected to be self-supporting, much less show a profit.

● *Fines and Forfeitures; The County*

School Fund What has been said so far applies only to costs of court. *Fines and forfeitures*, under Article IX, section 5 of the Constitution, continue to accrue to the benefit of the county school fund. The total amount of fines and forfeitures collected, however, may decrease substantially in those counties in which the prevailing method of settling minor traffic offenses is by forfeiture of cash collateral (appearance bond) rather than by written waivers of trial, pleas of guilty and depositing of a pre-set fine and costs of court. Under the 1965 Act, the forfeiture-of-collateral method will be replaced in all counties by the waiver method. The effect of this can be best shown by an example. Assume an offender is charged with speeding five miles an hour over the limit. Assume further that collateral for this offense has been set by the local judge at $20 (equivalent, as it usually is, to the anticipated fine ($5) and costs ($15) if the offender appeared in court and was convicted). Under the present system the $20 forfeited collateral goes to the school fund; under the new system, only the $5 fine would go to the school fund. (The county would receive $2 facilities fee and $2 arrest fee and the State would get $11.) Multiplied by hundreds or thousands of cases, this could have a noticeable impact on the school fund.

Non-Financial Relationships

While the coming of the district court system has its most important impact on county finances, its effect in other areas of county government is by no means negligible. Perhaps the most important of these non-financial concerns is the relationship of the clerk of superior court to the county and the county commissioners. In the constitutional and political sense, the clerk, since he is still elected by the qualified voters of his county, remains a county officer; in the practical, administrative sense the clerk's ties to the county are all but severed, and he becomes primarily a State official. First, the clerk's compensation is fixed and paid by the State (Sec. 7A-101); secondly, the number of his assistants, deputies and other employees, and their compensation, is also fixed by the State (Sec. 7A-102); and finally, his office supplies, equipment and methods of doing business all become exclusively a State responsibility.

In an effort to preserve some semblance of the traditional salary relationships of county officials, particularly "courthouse" officials, Sec. 7A-102 of the 1965 law provides that the Administrative Officer of the Courts, prior to setting the numbers and salaries of clerical employees in each county, shall consult with the clerk of superior court and with the board of county commissioners or its designated representative in each county, and fix the salaries of clerical employees "with due regard to the salary levels and the economic situation in the county." This procedure was fostered by a tacit recognition that State salaries tend generally to be higher than county salaries, and that imposition of a single, statewide salary schedule on the poorer counties might create wide disparity in "courthouse" salary schedules, resulting in morale problems and further pressure on county commissioners to raise county salaries generally. To the extent that this procedure tends to lessen what disparities there are between State and local salary schedules, it may in the long run in fact improve morale and minimize a recurrent personnel problem.

The independence of local judicial operations from county controls is further illustrated by a number of other provisions of the new district court law. Henceforth the superior court clerk's books and records are to be audited by the State Auditor rather than by the county. (Sec. 7A-103). The clerk's sole responsibility to the county is to remit, once monthly, the fees due the county under the uniform costs bill. (Sec. 7A-103). The clerk's bond, and that of his employees, is fixed by, and made payable to, the State, which pays the premiums. (Sec. 7A-104). There is but *one* clerk of court, who is responsible for all trial court clerical functions in the county. (sec. 7A-180). Clerks of former county courts, particularly domestic relations or juvenile courts, some of them appointed by county commissioners, will become assistants to the clerk of superior court, but only upon appointment by the latter. (Sec. 7A-102). The prosecutor for the district court will be appointed by the senior regular resident superior court judge, for the district. (Sec. 7A-160). In some counties there may be assistant prosecutors, full or part-time; they will be appointed by the prosecutor, on authority of the State (Sec. 7A-164, 165). Assistant solicitors are treated similarly. (Sec. 7A-43.2). Magistrates, officers of the district court and in a sense replacements for the justice of the peace, will be allowed each county in a number determined solely by the State. (Sec. 7A-132-133). The clerk will make nominations for each authorized magistracy, and the resident superior court judge will make the appointment. (Sec. 7A-171). Even the schedule of sessions of district court will be free of county control; they will be set by the chief district judge. (Sec. 7A-146). When a jury session is called for, the chief judge will notify the appropriate county authorities in time for a jury panel to be summoned in the same manner as in the superior court.

Finally, the availability of special counseloring services for judges sitting in domestic relations cases is made a State responsibility (Sec. 7A-134). The Administrative Officer of the Courts may authorize such counselors only in counties in districts which have a county with over 100,000 population. The county of course is not barred from supplementing the operations of the State in this field, either through the district court system or the county welfare department.

Adequacy of Physical Facilities

The 1965 Act, in reference to "adequate courtroom and related judicial facilities" does not define the term "adequate." Adequacy is of importance to a county, however, when it desires to use accumulated facilities fees to retire outstanding indebtedness incurred in construction of the facilities. Then the Administrative Officer of the Courts is unlikely to approve such a use unless existing courtrooms and related judicial facilities are fully adequate.

Aside from related judicial facilities such as jails and juvenile detention homes, it can safely be said that in some counties courtrooms have been neglected, and will undoubtedly prove inadequate for the demands of the district court system, as they are currently inadequate for the superior court. The pending activation of the new court presents an ideal opportunity for the county commissioners in all counties to examine critically their courtroom facilities, and to make

plans *now* for the necessary improvements. Whether this means new construction or merely remodeling, it is well to remember several basic principles:

● The caseload in a particular county is not going to change drastically simply because of the establishment of the district court. If one courtroom has been sufficient both for the superior court and the recorder's court up to the present, in all probability it will continue to be sufficient for the superior court and the district court.

● The district court will have a 12-man jury, in civil cases involving $5000 or less. If it is necessary to schedule sessions of civil district court at the same time as sessions of the superior court, *each* courtroom must have facilities for a jury.

● While misdemeanor and domestic relations sessions of district court will not require a jury, if new construction or extensive remodeling is required it would be false economy not to provide jury facilities. Flexibility in scheduling trials and provision for future growth will more than make up for the added cost.

● No courtroom is really adequate unless it has convenient side rooms for jury deliberations, for the judge to conduct in-chambers matters, and for attorneys to confer with clients and witnesses. Since the district court prosecutor will be a full-time official, an office should also be provided for him. A room for the courtroom clerk, and reporter, and for jailed defendants awaiting trail is also desirable. If two or more courtrooms are constructed on the same floor, some of the side rooms might serve both courts.

● Many courtrooms now in service throughout the State were designed to double as public meeting halls. There is no judicial requirement for a courtroom seating several hundred spectators. The maximum demand for courtroom seating will never exceed the requirements of a special venire.

● In most counties, the clerk of superior court, as clerk of all trial courts, including the former domestic relations and juvenile courts, will have a need for more space. The amount of the increase will vary with a number of factors, from county to county, and cannot be accurately predicted by a general rule.

● The county is responsible for providing space for magistrates also. This may not be feasible for the part-time magistrate assigned to a rural community for occasional issuance of warrants or acceptance of waivers of trial and guilty pleas to traffic offenses, but for those magistrates assigned full-time to the trial of small claims or for round-the-clock warrant issuance in urban areas, an office will be mandatory. While an otherwise unoccupied courtroom can be used, especially for small claims matters, a courtroom is not necessary. For small claims magistrates, a hearing room convenient to the clerk's office, and large enough for the litigants and counsel, will be adequate. For the warrant-issuing magistrate assigned to serve the sheriff's department or the city police, a room convenient to, but separate from, these activities, is all that is required. Separation serves to emphasize that warrant-issuance is a *judicial* function, and not simply an adjunct of law-enforcement.

● The need for judicial facilities is increasing faster, proportionately, than the population. Counties with rising populations will find that courtroom facilities barely adequate for today will be inadequate tomorrow.

● No building or remodeling plan is sound that emphasizes quantity at the expense of quality. Soundproofing, central heating, air-conditioning, and efficient internal arrangements are elements of adequacy just as much as numbers of courtrooms.

The Role of the Municipality

In the great majority of cities and towns which now have a recorder's court, the municipality's role in judicial operations will be terminated. In some counties, however, there will be cities other than the county seat designated by the legislature (Sec. 7A-130) as authorized seats of district court. Hickory, (Catawba county), Canton (Haywood county), and certain towns in Robeson county are examples of this in the counties adopting the district court system in December of 1966. In each of these cities, provided the chief district judge and the Administrative Officer of the Courts concur in a finding that the facilities offered by the city are adequate, regular sessions of the district court may be held, and the facilities fees thus collected will be remitted to the city rather than to the county. County commissioners in these counties must bear in mind that both the caseload and the facilities fees must be shared with the city or cities concerned. In the cities concerned the planning and financing impact will be substantially the same as described herein for the counties. □

The District Court Prosecutor

This is the last of a series of articles in this publication dealing with the officers of the Judicial Department under the 1962 amendment to the State Constitution, and the Judicial Department Act of 1965. Earlier articles dealt with the Administrative Officer of the Courts, the District Court Judge, the District Court Magistrate, and the Clerk of Superior Court. The District Court Prosecutor has been left until last, not because he occupies an unimportant office, but because the functions of this office are not significantly changed from that of the present typical recorder's court solicitor, and because fewer long-range preparations are needed for activation of this office than for the others.

While the prosecuting *function* continues unchanged, the prosecuting *office* and *organization* are radically altered. These changes, discussed below, have been adopted with a view to achieving greater efficiency and uniformity throughout the State in the administration of the criminal law.

Constitutional Provisions

The new Judicial Article of the State Constitution, adopted in 1962, provided for the creation of a three-level General Court of Justice: the Appellate Division, consisting of the present Supreme Court; the Superior Court Division, consisting of our present superior courts, substantially unchanged; and a District Court Division, which is to replace, uniformly and statewide, our present hodgepodge of local courts inferior to the superior court. Replacement starts in six judicial districts, embracing 22 counties, in December, 1966, and is to be accomplished in all counties by December, 1970.

Only one sentence in the new Judicial Article refers to the prosecution of crimes in the District Court Division. Section 16 (2) specifies that "Criminal actions in the District Court division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State." The details were left to the General Assembly, which took implementing action in 1965.

Judicial Department Act of 1965

In the Judicial Department Act of 1965 (Chap. 310, S. L. 1965), the legislature sought to provide for a uniform statewide prosecutorial system which would be an improvement over present arrangements. Currently there are approximately 170 city and county courts in the State with misdemeanor jurisdiction. Nearly all of these courts have an officer, usually called a solicitor, who prosecutes the criminal docket in the name of the State. With a very few exceptions limited to the larger cities, the solicitor is a part-time official, typically engaged in "prosecuting" one or two half-days a week, and pursuing the private practice of law the remainder of his time. He is paid locally, and thus necessarily subject in some degree, no matter how subtly or unconsciously, to undue "pocketbook" influences. The degree of influence may vary with his status as an elected or an appointed official. Since his career interests place his part-time solicitorship in a secondary role, he is frequently not as available to local law enforcement officials for advice as the best discharge of his public function might require. More often than not he is dependent upon approval of the local citizenry for retention in office —in many cases as often as every two years—a situation which renders more difficult the firm and impartial enforcement of the criminal laws.

In seeking to recommend a better system to the legislature, the Courts Commission, a legislatively-created body charged with making recommendations for implementation of the constitutional amendment, first examined the office of superior court solicitor. Consideration was given to merging the prosecuting functions of the superior and district court divisions—creating a single solicitor, with assistance as needed, to represent the State in the prosecution of *all* crimes in the trial courts of the State. But here two major disadvantages were noted. First, a superior court solicitor is a part-time official, allowed to practice civil law when not engaged in his solicitorial function, and the Courts Commission felt that the time was ripe for placing the prosecuting function in a full-time official. Secondly, and of even greater difficulty, there are fewer solicitorial districts than there are judicial districts, leading at times to conflicting sessions of criminal court, confusion, and waste. The Courts Commission felt that efficiency and sound principles of organization demanded that this system not be extended to the district courts. District court lines, therefore, for both judges and prosecutors, were made coterminous with superior court judicial district lines. (Revamping of the solicitorial system to eliminate these disadvantages was considered, but delayed pending further study and an opportunity to observe the operations of the new district court.) To lessen the possibility of adding to the confusion, the title of *prosecutor* rather than solicitor was deliberately chosen for the district court.

Given these two basic decisions—that district court districts would be coterminous with superior court judicial districts, and that the district court prosecutor would be a full-time officer of the court—many lesser details fell readily into place. These are set out in Art. 15 of the Act.

A decision to have the senior regular resident superior court judge *appoint* the prosecutor evoked some opposition in the General Assembly, but in crying that appointment rather than election was an unwholesome departure from democratic traditions, the opposition ignored the facts: currently over a third, or about 55, of our present lower court solicitors are appointed. The legislature felt that the superior court judge would have every professional incentive to appoint the most qualified man available, and that freedom from the periodic pressures of getting re-elected might result in a firmer and fairer policy of prosecution. A four - year term, to correspond with that of the solicitor and to reduce turnover in the office, was prescribed.

In addition to prosecuting the misdemeanor docket in his district, the prosecutor is required to advise the officers of justice in his district, and to "cooperate with the superior court solicitor in criminal actions arising in the district court." Presumably the quoted phrase refers to appeals from

district court misdemeanor convictions, but it might also cover felony cases in which the prosecutor conducted a preliminary examination.

To compensate for the loss of income occasioned by the giving up of a private law practice, the 1965 Act provides an annual salary of $11,000 for the prosecutor, and $9,000 for a full-time assistant prosecutor. Travel expenses, at the same rate as State employees generally, will also be paid, for travel on official business outside the county of residence. If these salaries prove to be inadequate to attract qualified practitioners, they can of course be raised readily by the legislature.

Full-time assistant prosecutors are prescribed by the legislature for districts where it is estimated that the caseload will require them. For districts activated in December, 1966, the 12th (Cumberland and Hoke counties), the 16th (Scotland and Robeson), and the 25th (Burke, Caldwell and Catawba counties) are allowed a full-time assistant prosecutor. Full-time assistants for the districts to be activated in 1968 and 1970 will be prescribed by the 1967 legislature. If the caseload of a district is such that the prosecutor (and his full-time assistants, if any) need assistance to keep the dockets reasonably current, or if a full-time assistant becomes disabled, or if the prosecution of criminal cases in a specific location within a district would be better served, the prosecutor, with the approval of the Administrative Officer of the Courts, may appoint a part-time assistant, to be compensated at $35 per day for each day in court. All assistants are appointed by the prosecutor, to serve at his pleasure.

A prosecutor may be suspended or removed from office, and reinstated, for the same causes and under the same procedures as are applicable to a district court judge. These include the prefering of sworn written charges, a due process hearing before a superior court judge, and the right of appeal to the Supreme Court.

A vacancy in the office of prosecutor is filled, for the unexpired term, in the same manner as the original appointment. If a prosecutor in a district which has no full-time assistant prosecutor becomes for any reason unable to perform his duties, the senior regular resident superior court judge for that district may appoint an acting prosecutor to serve during the period of disability. An acting prosecutor has the same power and authority as the regular prosecutor. He is entitled to $45 per diem for each day in which he acts as prosecutor.

Criminal Jurisdiction of District Court

Exclusive jurisdiction over misdemeanors is given to the district court, subject to minor exceptions primarily to permit the superior court solicitor to pursue to a conclusion all criminal matters which originate by means of felony indictments. This will be a change in about three-fourths of the counties, where, under G.S. 7-64, the superior court and the local city or county court now exercise concurrent jurisdiction over misdemeanors. This may bring a welcome relief to some superior court solicitors, but it will not of course remove the solicitor from the trial of misdemeanors entirely, since many misdemeanors (drunk driving, for example) for one reason or another will continue to be appealed to the Superior Court for trial *de novo*. It may bring swifter justice, however, to some defendants who choose not to appeal, since the district court will certainly be in session much more frequently in most counties than the superior court now sits in criminal sessions.

Working Conditions

The prosecutor looks to the State for his compensation, to the senior regular resident superior court judge for his appointment and reappointment, and to the chief district judge for his schedule of sessions of criminal court. To the county he must look for his office space, if any, since the Act specifically provides that counties shall use a portion of the costs of court (the *facilities* fee) for providing, among other court-related facilities, ". . . adequate space and furniture for . . . prosecutors . . ." While in most counties an office for the part-time recorder's court solicitor may not have been provided, it will be in the best interest of the counties affected to make provision for space for the prosecutor as soon as possible since he will be a full-time official whose value to the county will suffer if he has no place other than the courtroom in which to work. (In some counties, a *city* may provide a courtroom, and in such case, it should provide space for the prosecutor also.) As for secretarial assistance, this is apparently an *operating* expense, chargeable under the Constitution to the State, and the implementing legislation makes no provision for secretarial assistance for prosecutors. In this respect the prosecutor is no worse off than judges or solicitors.

Most district court districts include more than one county, and in these districts the prosecutor must be prepared to travel, especially if his is a "one prosecutor" district. In most districts this will be no problem, but in a few, such as the first and the 30th, each embracing seven counties, the distances involved give rise to serious disadvantages. It may be that in these districts the caseload will call for one prosecutor, but the time and distance factors will call for two, or at least for a part-time assistant. Problems of this nature must be resolved by the Administrative Officer of the Courts, who, under the Act, is responsible for making recommendations concerning the number of prosecutors required in each district for the efficient administration of justice. □

APPENDIX North Carolina Constitution Article IV. Judicial Department

(as amended in 1965)

Section 1. Division of judicial power. The judicial power of the State shall, except as provided in Section 3 of this Article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction which rightfully pertains to it as a co-ordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this Article.

Section 2. General Court of Justice. The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration; and shall consist of an appellate division, a Superior Court division, and a District Court division.

Section 3. Judicial powers of administrative agencies. The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice.

Section 4. Court for the Trial of Impeachments. The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. When the Governor or Lieutenant-Governor is impeached, the Chief Justice shall preside over the Court. A majority of the members shall be necessary to a quorum, and no person shall be convicted without the concurrence of two-thirds of the Senators present. Judgment upon conviction shall not extend beyond removal from and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

Section 5. Appellate division. The appellate division of the General Court of Justice shall consist of the Supreme Court and, when established by the General Assembly, an intermediate Court of Appeals.

Section 6. Supreme Court.

(1) Membership. The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. In the event the Chief Justice is unable, on account of absence or temporary incapacity, to perform any of the duties placed upon him, the senior Associate Justice available is authorized to discharge such duties. The General Assembly may provide for the retirement of members of the Supreme Court and for the recall of such retired members to serve on that Court in lieu of any active member thereof who is, for any cause, temporarily incapacitated.

(2) Sessions of the Supreme Court. The sessions of the Supreme Court shall be held in the City of Raleigh unless otherwise provided by the General Assembly.

Section 6A. Court of Appeals. 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. Sessions of the Court shall be held at such times and places as the General Assembly may prescribe. The General Assembly may provide for the retirement of members of the Court of Appeals and for the recall of such retired members to serve on that Court in lieu of any active member thereof who is, for any cause, temporarily incapacitated.

Section 7. Superior Courts.

(1) Superior Court districts. The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is elected. The General Assembly may provide by general law for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.

(2) Open at all times; sessions for trial of cases. The Superior Courts shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed pursuant to a calendar of courts promulgated by the Supreme Court. At least two sessions for the trial of jury cases shall be held annually in each county.

(3) Clerks. A Clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the time and in the manner prescribed by law for the election of members of the General Assembly. If the office of Clerk of the Superior Court becomes vacant otherwise than by the expiration of the term, or if the people fail to elect, the senior regular resident Judge of the Superior Court serving the county shall appoint to fill the vacancy until an election can be regularly held.

Section 8. District Courts. The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit; but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner provided by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint for a term of two years, from nominations submitted by the Clerk of the Superior Court of the county,

one or more Magistrates who shall be officers of the District Court. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled, for the unexpired term, in a manner provided by law. Vacancies in the office of Magistrate shall be filled, for the unexpired term, in the manner provided for original appointment to the office.

Section 9. Assignment of Judges. The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or specialized duty. The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed. For this purpose the General Assembly may divide the State into a number of judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of District Judges within each local court district shall be made by the Chief District Judge.

Section 10. Jurisdiction of the General Court of Justice.

(1) Supreme Court. The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over 'issues of fact' and 'questions of fact' shall be the same exercised by it prior to the adoption of this Article, and the Court shall have the power to issue any remedial writs necessary to give it a general supervision and control over the proceedings of the other courts. The Supreme Court shall have original jurisdiction to hear claims against the State, but its decisions shall be merely recommendatory; no process in the nature of execution shall issue thereon; the decisions shall be reported to the next Session of the General Assembly for its action.

(2) Court of Appeals. The Court of Appeals, if established, shall have such appellate jurisdiction as the General Assembly may provide.

(3) Superior Court. Except as otherwise provided by the General Assembly, the Superior Court shall have original general jurisdiction throughout the State. The Clerks of the Superior Court shall have such jurisdiction and powers as the General Assembly shall provide by general law uniformly applicable in every county of the State.

(4) District Courts; Magistrates. The General Assembly shall, by general law uniformly applicable in every local court district of the State, prescribe the jurisdiction and powers of the District Courts and Magistrates.

(5) Waiver. The General Assembly may by general law provide that the jurisdictional limits may be waived in civil cases.

(6) Appeals. The General Assembly shall, by general law, provide a proper system of appeals: Provided, that appeals from Magistrates shall be heard de novo, with the right of trial by jury as defined in this Constitution and the laws of this State.

Section 11. Forms of action; rules of procedure.

(1) Forms of action. There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment of the same, shall be termed a criminal action.

(2) Rules of procedure. The Supreme Court shall have exclusive authority to make rules of procedure and practice for the appellate division. The General Assembly shall have authority to make rules of procedure and practice for the Superior Court and District Court divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court divisions.

Section 12. Waiver of jury trial. In all issues of fact joined in any court, the parties in any civil case may waive the right to have the same determined by a jury; in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

Section 13. Administration. The General Assembly shall provide for an administrative office of the courts to carry out the provisions of this Article.

Section 14. Term of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court. Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualifed voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may provide.

Section 15. Removal of Judges and clerks.

(1) Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of Superior Court. Any Justice of the Supreme Court, Judge of the Court of Appeals, or Judge of the Superior Court may be removed from office for mental or physical incapacity by joint resolution of two-thirds of both houses of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the General Assembly shall act thereon. Removal from office for any other cause shall be by impeachment.

(2) District Judges and Magistrates. The General Assembly shall provide by general law for the removal of District Judges and Magistrates for misconduct or mental or physical incapacity.

(3) Clerks. Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against

whom proceedings are instituted shall receive written notice of the charges against him at least ten days before the hearing upon the charges. Clerks of District Courts shall be removed for such causes and in such manner as the General Assembly may provide by general law. Any Clerk so removed from office shall be entitled to an appeal as provided by law.

Section 16. Solicitors and solicitorial districts.

(1) Solicitors. The General Assembly shall, from time to time, divide the State into a convenient number of solicitorial districts, for each of which a Solicitor shall be chosen for a term of four years by the qualified voters thereof, as is prescribed for members of the General Assembly. When the Attorney General determines that there is serious imbalance in the work loads of the Solicitors, or that there is other good cause, he shall recommend redistricting to the General Assembly. The Solicitor shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

(2) Prosecution in District Court division. Criminal actions in the District Court division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State.

Section 17. Vacancies. Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than thirty days after such vacancy occurs, when elections shall be held to fill such offices: Provided, that when the unexpired term of any of the offices named in this Article of the Constitution in which such vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of said offices shall neglect and fail to qualify, such office shall be appointed to, held, and filled as provided in case of vacancies occurring therein. All incumbents of said offices shall hold until their successors are qualified.

Section 18. Revenues and expenses of the judicial department. The General Assembly shall provide for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice. The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers, shall be paid from State funds.

Section 19. Fees, salaries, and emoluments. The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article; but the salaries of judges shall not be diminished during their continuance in office. In no case shall the compensation of any judge or magistrate be dependent upon his decision or upon the collection of costs.

Section 20. Effect of uniform general law requirement. Where the General Assembly is required by the provisions of this Article to enact only general laws uniformly applicable throughout the State or in every county or local court district thereof, no special, public-local, or private law shall be enacted relating to the subject-matter of those provisions, and every amendment or repeal of any law relating to such subject-matter shall also be general and uniform in its application and effect throughout the State.

Section 21. Schedule. Immediately upon the certification by the Governor to the Secretary of State of the amendments constituting this Article, the Supreme Court and the Superior Courts shall be incorporated within the General Court of Justice, as provided in this Article. All Justices of the Supreme Court and Judges of the Superior Court shall continue to serve as such within the General Court of Justice for the remainder of their respective terms.

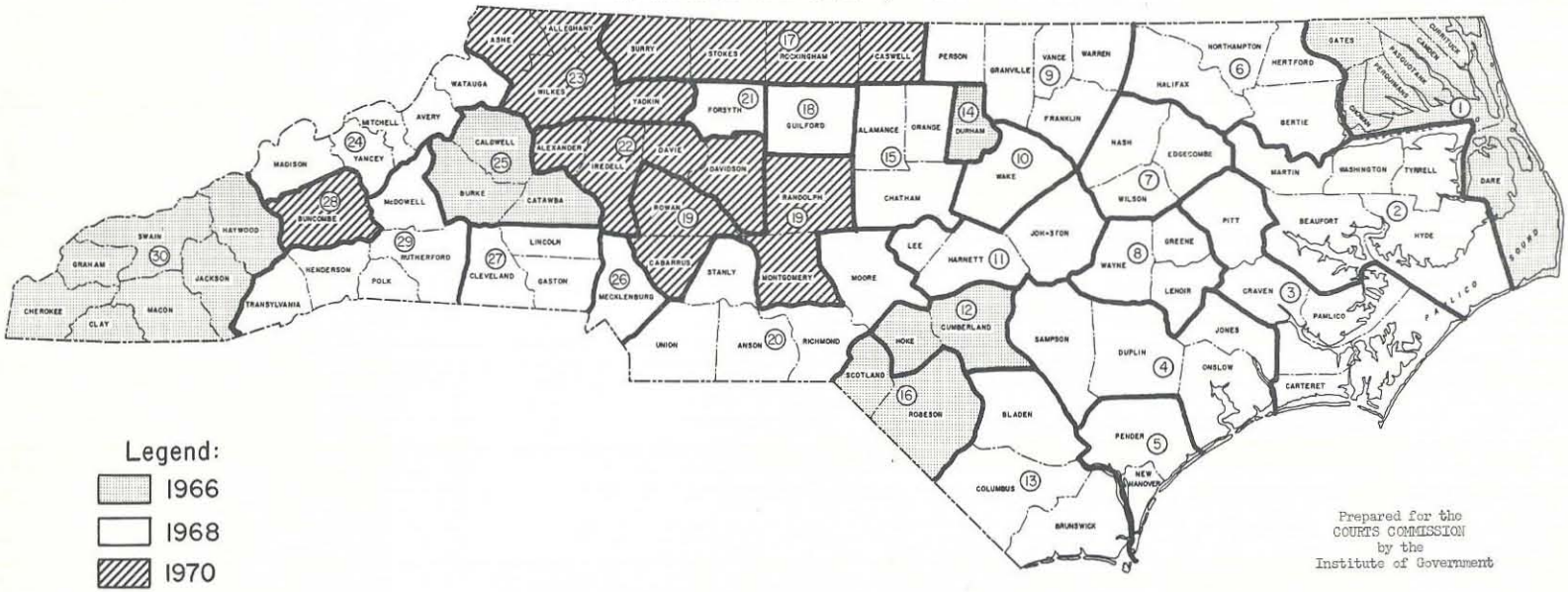
The statutes and rules governing procedure and practice in the Superior Courts and inferior courts, in force at the time the amendments constituting this Article are ratified by the people, shall continue in force until superseded or repealed by rules of procedure and practice adopted pursuant to section 11(2) of this Article.

Upon certification of the Governor to the Secretary of State of the amendments constituting this Article, the General Assembly shall proceed, as rapidly as practicable, to provide for the creation of local court districts and the establishment of District Courts therein; District Courts shall be established to serve every county of the State by not later than January 1, 1971. As of January 1, 1971, all previously existing courts inferior to the Superior Court shall cease to exist, and cases pending in these courts shall be transferred as provided in the next succeeding paragraph of this Section. Until a District Court has been thus established to serve a county, all of the courts of that county, including the Superior Court, shall continue to be financed and the revenues of these courts shall continue to be paid as they were immediately prior to the certification of the amendments constituting this Article; and the laws and rules governing these courts and appeals from the inferior courts to the Superior Court shall continue in force and shall be deemed to comply with the provisions of this Article.

As soon as a District Court has been established for a county, all of the provisions of this Article shall become fully effective with respect to the courts in that county, and all previously existing courts inferior to the Superior Court shall cease to exist. All cases pending in these inferior courts shall be transferred to the appropriate division of the General Court of Justice, and all records of these courts shall be transferred to the appropriate clerk's office pursuant to rule of the Supreme Court. Judges of these inferior courts, except mayors' courts and justice of the peace courts, shall become District Judges and shall serve as such for remainders of their respective terms.

As soon as a District Court has been established to serve every county of the State, all of the provisions of this Article shall become fully effective throughout the State.

DISTRICT COURT IMPLEMENTATION IN NORTH CAROLINA, 1966 - 1970



Legend:

- 1966
- 1968
- 1970

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