

KFN
7910
.A836
1984
c. 2

REPORT
of the
North Carolina Courts Commission
to the 1984 General Assembly

June 12, 1984

The North Carolina Courts Commission is directed by statute to make "continuing studies of the structure, organization, jurisdiction, procedures, and personnel of the Judicial Department and of the General Court of Justice" for the purpose of "making recommendations to the General Assembly for such changes therein as will facilitate the administration of justice." In furtherance of that duty, the Commission's 1983 report contains 14 recommendations for legislative action to improve the court system. Nine of those were approved, and all but one of the rest can receive action this session. The conditions leading the Commission to recommend the proposals have not changed; accordingly, the Commission reaffirms its support for the proposals that are eligible for consideration in 1984. The proposals are:

1. H 310--A bill to allow recall of retired appellate Supreme Court Justices to service on either the Supreme Court or the Court of Appeals.
2. H 473--A bill to allow magistrates salary credit for previous experience in a clerk's office or as a law enforcement officer.
3. H 474--A bill to allow trial judges to award attorneys fees to the prevailing party in certain civil actions.
4. H 491--A bill to classify minor traffic offenses as infractions, and to provide a procedure for disposition of infractions.

In addition, the Commission filed a supplemental report on April 6, 1983 dealing solely with the state's program to provide legal services to indigent persons. A major recommendation of the report was that the funding level be increased to levels adequate to meet the costs of the program. Action taken in the 1983 session to increase the level of funding and to earmark the funds recouped from indigents in a nonreverting special fund for indigents' legal services have satisfied that need for the 1983-85 biennium. The other major recommendation of the Commission in that report was that the General Assembly consider establishment of public defender's offices in districts in which it is cost effective. For the reasons detailed in that report, the Commission reaffirms that recommendation. The Administrative Office of the Courts will have up-to-date statistics available by the time the 1984 session convenes, and the Commission recommends that those statistics be used as a basis for determining the appropriate districts for expansion.

For the 1984 "budget" session, the Commission recommends two bills. One of its principal recommendations for 1983 was a revision of the court costs section of General Statutes Chapter 7A. That recommendation was incorporated into the Tax Adjustment Act of 1983. After several months of experience, the clerks of superior court and the Administrative Office have encountered several ambiguities that need legislative attention. Appendix A to this report will clarify those ambiguous sections.

Appendix B clears up recently discovered confusion over the status of some magistrates. Under the salary plan for magistrates adopted in 1977, magistrates working less than forty hours are classified as "part-time" for salary purposes, even though they typically are "on call" for most or all of the time. The retirement statutes do not generally entitle "part-time" employees to membership in the state retirement system, and a question has arisen about the status of "part-time" magistrates. Those magistrates have

KFN
7910
A836
1984

been included in the retirement system until now, and the Commission recommends that they be redesignated as "limited duty" magistrates. That designation will more clearly define their actual job assignments and will insure their continued entitlement to benefits.

While the Commission has no additional proposals for statutory change, it expresses its support for additional appropriations for the court system. Two major pieces of legislation enacted in 1983--the Safe Roads Act and the child support enforcement acts--have had a significant impact on the court system. Both deal with major social problems that need attention, and the Commission does not quarrel with the intentions or the results of the legislation. In fact, child support collections will probably be up significantly this year (from \$43 to \$54 million) and DWI arrests and alcohol-related traffic deaths have decreased since the enactment of the Safe Roads Act. But each has created new demands on the courts' limited resources, and the Commission believes it will be necessary to provide funds for additional equipment and personnel to deal with the increased demand.

A few statistics will illustrate the problem. North Carolina is estimated by the Administrative Office to have 102,000 active child support cases. In over 60% of those, the supporting parent is not up to date in his payments. Under the new laws, the clerk of court must notify the delinquent parent and if that notice does not result in the payment of the past-due support, the district court must conduct a hearing to determine if the parent should be held in contempt of court. The first task has a significant impact on the clerks' offices, since it requires calculation of arrearages (often a complex job), as well as preparation and mailing of notices. The second involves increased use of the scarcest resource in the system--a judge's time--and its impact on district court dockets is now being felt all over the state.

The Safe Roads Act, in its attempt to deter persons from drinking and driving, reduced the discretion court officials have in disposing of drunken driving cases, stiffened the punishment for conviction, reduced the judge's options at sentencing, and made district attorneys and judges document their reasons in writing for many of their decisions. The net result of those changes is a more formal procedure, especially at sentencing. In addition, the opportunities to encourage guilty pleas by charge or sentence reductions are reduced. When this new procedure is applied to a charge that occurs approximately 7,000 times a month, its demands on the system are obvious. In addition, the Act creates a totally new procedure--a ten day, immediate license revocation for drivers who have an alcohol concentration of 0.10 or more or who refuse a breath or blood test. This proceeding requires magistrates and clerks to create a new civil-revocation file for almost every arrested drunk driver. In the first six months after the Safe Roads Act became effective, there were 27,500 of these revocations across the state.

Like increased child support activities, those increased DWI efforts are serving a very useful purpose. But they do come at a cost, and the Commission believes that cost in DWI and child support cases will be increased personnel for the clerks and the district court, with corresponding increases in the related costs for running those offices. It also believes that modernized

equipment is essential to improve the operation of the system, especially in the clerk's office where routine repetitive procedures can be performed much more efficiently with automated equipment.

The Administrative Office is in the process of documenting the extent of the increase in workload and its equipment needs as this report is being written. It will have more precise estimates of its needs when the June 1984 session convenes. The Commission will not have time to review those statistics or estimates, but its investigations and the testimony it received make it clear that the need is clear and strong and the General Assembly should address it in the 1984 session.

Finally, the Commission recommends favorable consideration of two items dealing with judge's salaries. Last year, the main appropriations bills established the principle of merit pay for judges, based on length of service. Increments were funded at the five- and ten-year levels of service. The Commission believes that this modest additional compensation plays an important role in retaining quality judges, and it recommends funding for the fifteen- and twenty-year steps.

Retired judges who consent to return to temporary service are reimbursed for their expenses and paid \$75 per day. These judges provide an important service to the state by enabling it to meet temporary demands for more court sessions or to fill in for judges who are ill or on vacation. The Commission recommends that the level of compensation be raised to a more reasonable level to help insure that retired judges who are able and willing to serve will continue to do so. The Commission, however, recognizes that retired judges already receive a pension, and that it is appropriate to consider that fact in setting the daily compensation levels. Accordingly, it recommends no change in the rule limiting a retired judges' compensation (pension plus daily pay for service as a retired judge) to no more than a similar active judge earns in salary.

APPENDIX A

A BILL TO BE ENTITLED

AN ACT TO MODIFY COURT COSTS AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-307(a)(2) is amended by deleting the third sentence and adding the following in its place: "In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk."

Sec. 2. G.S. 7A-307(b) is amended by deleting the first sentence and adding the following in its place: "In collections of personal property by affidavit, the facilities fee and twenty-two (\$22.00) of the General Court of Justice fee shall be paid at the time of filing the qualifying affidavit pursuant to G.S. 28A-25-1. In all other cases, these fees shall be paid at the time of filing of the first inventory."

Sec. 3. G.S. 7A-307(b1)(1) is amended by adding between the words "filing" and "a" the words "and indexing".

Sec. 4. G.S. 7A-307(b1)(2) is amended by deleting the word "testamentary" and inserting in its place the words "to fiduciaries".

Sec. 5. G.S. 7A-307(b1) is amended by adding a new subdivision (5) to read as follows:

"(5) Docketing and indexing a will probated in another county in the State

- first page 1.00
- each additional page or fraction thereof25."

Sec. 6. G.S. 7A-308(a)(6) is amended by deleting "maiden" and inserting "former".

Sec. 7. G.S. 7A-308(a)(11) is rewritten as follows:

"(11) recording or docketing (including indexing) any document

- first page 4.00
- each additional page of fraction thereof25."

Sec. 8. G.S. 7A-308(a)(13) is amended by adding between the words "preparation" and "of" the following: "and docketing".

Sec. 9. G.S. 7A-308(a)(16) is rewritten as follows:

"(16) On all funds placed with the clerk by virtue or color of his office, to be administered, invested, or administered in part and invested in part, a fee of five percent (5%). The fee is based on and assessed at the time of receipt of any principal of the funds and may not be charged on any interest earned in the investing of the funds. The maximum fee charged over the life of the account cannot exceed \$1,000."

Sec. 10. a. Beginning August 1, 1984 the fee specified in the second sentence of G.S. 7A-306(a)(2), as amended by Chapter 713 of the 1983 Session Laws, shall be assessed at the conclusion of the proceeding if there is no sale, or at the time the property is sold if there is a sale, regardless of the date the proceeding was initiated.

b. Beginning August 1, 1984 the additional sum based on the gross estate specified in G.S. 7A-307(a)(2), as amended by Chapter 713 of the 1983 Session Laws, shall be assessed at the time the inventory or account is filed, regardless of the date the proceeding was initiated, and no maximum fee shall apply.

c. Beginning August 1, 1984 the additional sum based on the final sale price specified in G.S. 7A-308(a)(1), as amended by Chapter 713 of the 1983 Session Laws, shall be assessed at the time the property is sold, regardless of the date the action or proceeding was initiated.

d. Beginning August 1, 1984 the fee specified in G.S. 7A-308(a)(16), as amended by Chapter 713 of the 1983 Session Laws, shall be assessed at the time the funds are received, regardless of when the account was established.

e. Beginning August 1, 1984 except as otherwise specified in this section, the miscellaneous fees specified in G.S. 7A-308, as amended by Chapter 713 of the 1983 Session Laws, shall be assessed at the time the service is rendered.

f. The fee set out in Section 5 of this act shall be assessed at the time the service is rendered.

Sec. 11. This act is effective August 1, 1984.

APPENDIX B

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE STATUS OF LIMITED-DUTY MAGISTRATES FOR PURPOSES OF RETIREMENT BENEFITS, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The first two paragraphs of G.S. 7A-171.1(2) are rewritten to read as follows: "A limited-duty magistrate, so designated by the Administrative Officer of the Courts, shall receive an annual salary based on the following formula: The average number of hours a week that a limited-duty magistrate is assigned work during his term shall be multiplied by the annual salary payable to a full-time magistrate who has the same number of years of service prior to the beginning of that term as does the limited-duty magistrate and the product of that multiplication shall be divided by the number 40. The quotient shall be the annual salary payable to that limited-duty magistrate. A limited-duty magistrate is one assigned less than 40 hours of duty a week, and must be assigned an average of at least 10 hours of duty a week during his term. A limited-duty magistrate is entitled to membership in the Teachers' and State Employees' Retirement System. The provisions of this paragraph shall also be applicable to magistrates assigned duty for less than 40 hours a week prior to July 1, 1984."

Sec. 2. This act shall become effective July 1, 1984.



NORTH CAROLINA COURTS COMMISSION

STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27611

H. PARKS HELMS, CHAIRMAN
CHARLOTTE

June 7, 1984

The Honorable James C. Green
Lieutenant Governor of North Carolina

The Honorable Liston B. Ramsey
Speaker of the House of Representatives

Gentlemen:

The North Carolina Courts Commission is pleased to submit its interim report to the 1984 General Assembly. During the course of the Commission's deliberations since the adjournment of the 1983 Session, a number of matters have come to the attention of the Commission which require legislative action and which need to be presented to the Legislature for its consideration during the short legislative session in June.

We have also endorsed several proposals relating to the efficient administration of justice in North Carolina and hope that this Session of the General Assembly will make a special effort to address some of the concerns which have been expressed by members of the judiciary and by citizens who are called upon to use the resources of our court system.

The Commission will present a more comprehensive report to the 1985 General Assembly with recommendations for any changes that will facilitate the administration of justice in North Carolina.

Respectfully,

A handwritten signature in dark ink, appearing to read "H. Parks Helms", with a long horizontal line extending to the right.

H. Parks Helms

HPH:cj

Attachment