REPORT OF THE

COURTS COMMISSION

to the North Carolina General Assembly

1985

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NORTH CAROLINA COURTS COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH, NORTH CAROLINA 27611

H. PARKS HELMS, CHAIRMAN
CHARLOTTE

March 26, 1985

TO THE MEMBERS OF THE 1985 GENERAL ASSEMBLY

On behalf of the North Carolina Courts Commission, I am pleased to transmit to the General Assembly the report for 1984 which represents a portion of the Commission's work to date, and includes recommendations for specific legislation as well as endorsements of other important policy decisions affecting our court system. In arriving at these recommendations, the Commission has continued its practice of holding public hearings across the State to give citizens and court officials an opportunity to express their views on the structure, organization, jurisdiction, procedures, and personnel of the Judicial Department and the General Court of Justice. These hearings have proven to be very helpful, and as a result, the Commission has worked diligently in considering numerous proposals to facilitate the administration of justice in our State.

It is apparent that the growing caseload and the complexity of issues coming into our court system will place an increasing burden on both our trial and appellate courts. It is imperative that the Courts Commission continue its ongoing studies of our system so that needed changes and modifications can be enacted in a timely manner to facilitate the administration of justice. Consistent with its statutory duty, the Commission is continuing to deliberate several important projects which we believe will enhance the credibility of our court system in the eyes of the citizens of North Carolina.

I express my personal gratitude to the members of the Commission for their dedicated efforts toward achieving this goal.

Respectfully submitted,

Parks Helms

H. Parks Helms

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I. INTRODUCTION

The North Carolina Courts Commission was established to make continuing studies of the structure, organization, jurisdiction, procedures, and personnel of the Judicial Department and of the General Court of Justice and to make recommendations to the General Assembly that will improve the administration of and enhance the credibility of the court system. The Commission was first established in 1963 and was responsible for the major legislation necessary to implement the uniform court system mandated by a 1962 constitutional amendment. That Commission was terminated in 1975 and in the intervening years the need for a continuing commission was recognized and the Commission was reestablished in 1979.

The Commission has reported to the 1981 and 1983 sessions of the General Assembly. In those reports, the Commission has recommended legislation designed to make all components of the courts--from magistrates to the Supreme Court--more effective and efficient. Among the recommendations enacted are constitutional amendments to allow direct Supreme Court review of major utility cases, to allow more flexibility in using retired appellate judges for temporary service, and to require district attorneys to be lawyers. Statutory recommendations that have been adopted include the establishment of a Conference of District Attorneys, a revision of the laws regulating probation conditions, a modernization of the statute regulating preparation of jury lists, a long-overdue updating of the court costs statutes, and a new provision to allow judges to award attorney fees to the prevailing party in frivolous civil cases.

To prepare this report, the Commission continued its practice, begun in 1982, of conducting hearings in locations away from Raleigh to hear from interested citizens and court officials. The Commission held hearings in Roanoke Rapids and Winston-Salem, and in addition, it conducted a public

hearing in Raleigh that was broadcast statewide over the Open-Net cable television network. The hearings were productive and instructive, and the comments of the citizens who participated contributed greatly to the Commission's effort to determine its priorities for study. In addition, the Commission once again invited the associations interested in the courts to appear before it, and the suggestions those groups made also helped the Commission determine its priorities. A complete list of all who appeared at the hearings is available in the Commission offices.

II. MATTERS AFFECTING THE APPELLATE DIVISION

The Commission was directed by Res. 52 of the 1983 Session to study the problem of "case overload" in the Court of Appeals. In conducting the study, the Commission was directed specifically to study the structure of the court to determine if any alterations in that structure will enable the court to do its job better. In response to that directive, the Commission invited the Chief Justice and the Chief Judge of the Court of Appeals to address the Commission to discuss the needs and problems of the state's appellate courts. Both judges accepted the invitation and presented testimony that the Commission found to be useful. Over the course of this study, the Chief Justice appeared two additional times, and the appellate judges serving as members helped keep the Commission informed of the thinking of the appellate judges.

As a result of this study, the Commission has several recommendations that will help make the appellate courts function more efficiently. Some should help immediately, while others will have a beneficial long term effect. The Commission believes that the cumulative effect will be to enable the

appellate courts to make better use of its resources and thus to be more efficient and effective in fulfilling its duty to the citizens of North Carolina.

A. Judicial Center Study Commission. The Commission's first recommendation is that a study commission be created to investigate the state of the facilities being used by the state level components of the court system (the appellate courts and the Administrative Office of the Courts) and to recommend any appropriate action that is needed to provide an adequate facility. The Commission received testimony from Chief Justice Branch, then Chief Judge (now Justice) Vaughn, and Administrative Officer of the Courts Franklin Freeman about the inadequacy of the current facilities used by the appellate courts and the Administrative Office of the Courts. In reviewing the data presented to it, the Commission found the following facts to be pertinent.

1. The appellate courts and the Administrative Office of the Courts are using five different buildings, several of which are more than five miles apart.
2. The Administrative Office of the Courts is now renting private office space to meet its needs, at a cost of $150,000 per year.
3. The Supreme Court Library has no shelf space for the books it already has, and no room to expand.
4. There is no room for expansion in the court of appeals, and the space now allocated to the supreme court's research assistants is inadequate.

5. Clerks to both the appellate courts have inadequate space to store the papers they are required by law to retain.
6. The warehouse space used by the Administrative Office to store case reports is inadequate and in time will cause the books stored there to become unusable.

With this background in mind, the Commission was faced with a decision about how to approach this problem. It was apparent that more space is needed, and even more will be needed in the future. It was also apparent that any effort to obtain more space will require either displacing existing agencies or obtaining new space. Either course of action is going to cost money, and will require a considerable amount of study about the exact space needs of the Administrative Office, the Supreme Court, and the Court of Appeals. The Commission discussed the possibility of its conducting the study, but concluded that it would be inappropriate for it to do so. The study will take more time than the Commission can give any single project, and will need a separate appropriation, a separate professional staff, and a devotion to this single task that will be necessary if the purposes of the study are accomplished.

While the Commission recommends a separate study, it recognizes the need to carefully limit the study commission's duties. The Commission recommends that the study commission not have the power to obtain land, commit funds, or select an architect for a new building, if that is its recommendation. Instead, it should limit its study to the need for improved facilities and should make only a general recommendation as to how the facility should be provided.

The Commission recommends that the study commission have eight members, plus the Director of the Administrative Office of the Courts, with the Governor, the Chief Justice, the Speaker, and the Lieutenant Governor each appointing two members. This wide spectrum of appointing authorities reflects the complex nature of the project. For adequate facilities to become a reality, the legislature must appropriate money, the Governor's Administration must spend the money, and the court system must participate in the planning to insure that any recommended course of action will meet its needs.

B. Law clerks for appellate judges. As previously indicated, Res. 52 mandated a study of the case overload in the Court of Appeals. To determine the extent of any "overload," the Commission invited then Chief Judge (now Justice) Vaughn to appear before the Commission to address the question. The statistics he presented suggest that the backlog of cases is not as bad as it has been in the past, and in fact the Court is now disposing of more cases than it is taking in. For example, in 1981-82, 1994 new cases were filed and 1781 were disposed of. In 1982-83, 1881 were filed and 1646 were disposed of. In 1983-84, this trend was reversed; there were 1785 filings and 1835 dispositions. The 1983-84 figures are significant for two reasons. It was only the second time since 1977 that the court disposed of more cases than it took in. It is also the second straight year in which the number of case filings declined.

While the trend of these numbers is encouraging, they nonetheless demonstrate that the court is working hard (an average of over 150 opinions per judge per year, 300 more cases on which he sits as a panel member and, other duties such as deciding petitions) and must continue to keep up this

pace to stay current in its work. The Commission recognizes that the demands placed on these appellate judges are among the highest in the country, and accordingly decided to look beyond the statistics to see if changes to the court's structure are appropriate.

The Commission examined several suggested options for altering the court. It considered and rejected the following:

a. adding new judges; the court itself rejected this remedy as being unnecessary, and costly, both in terms of money and loss of collegiality.

b. dividing the court temporarily or permanently into subject matter areas; the Commission concluded that this remedy was of speculative benefit, and would tend to make the job of appellate judge less attractive by limiting the kind of case the judge would hear.

c. dividing the court into geographical regions; the Commission found that the court had begun to assign panels to hear cases in Asheville as the need arises; while this is expensive in terms of the judges' and staff members' time, it is preferable to a permanent assignment of a panel or panels to half the state, with all the regional rules of law that develop in that situation. The Commission believes that the appellate cases should apply uniformly across the state and that is not possible with regional panels of an appellate court.

d. restricting the right of appeal in some cases; the Commission concluded that this remedy, while effective, would come at too

great a cost to litigants since some of them would have to sacrifice their right to an appeal.

The Commission also considered the level of staffing available to the court to see if it was adequate for its purposes. Now, each judge is authorized a secretary and a law clerk. Both those employees are hired by the judge and work only for him. In addition, the Court of Appeals as a whole has a central staff to aid the court. That staff has eleven attorneys and three secretaries who are hired under the supervision of the Chief Judge. They work in two main areas. They prepare summaries of docketed cases and petitions to be used by the judges, and they also prepare draft opinions in cases in which routine, settled issues of law are presented. In some circumstances, central staff members are temporarily assigned to assist individual judges.

The experience of judges who have had at the same time a law clerk and a central staff attorney has generally been beneficial. They find that the problems of supervision of both attorneys are not overwhelming, and the quality and quantity of work done is increased. The Commission believes that, as a matter of policy, the most beneficial measure it can recommend is that each judge be authorized up to two law clerks, and it recommends that G.S. 7A-7 be amended to that end. This recommendation states a policy decision. An additional decision will have to be made by the appropriations committee to determine the best way to fund the positions. Nevertheless, the Commission believes this policy statement will help the appropriations committee and the Administrative Office of the Courts make the budget decisions necessary to provide this level of staffing for the court. The Commission believes that the added help would be beneficial to the court and

as soon as funds are available it recommends that the positions be funded in the most cost-effective manner.

The Commission also recommends that the Supreme Court be provided an additional law clerk to each associate justice if the increased staff is provided for the court of appeals.

C. Recall of Retired Judges. The next recommendations deal with a manpower problem that has plagued the appellate courts in recent years. The problem is created when vacancies are not filled promptly or sitting judges or justices are ill. The Commission has two recommendations to deal with this issue. The first implements a constitutional amendment approved by the voters in 1982. The amendment allows the General Assembly to authorize retired Court of Appeals Judges or Supreme Court Justices to be recalled to temporary service on either the Supreme Court or the Court of Appeals. Before the amendment was approved, the constitution limited such service to the court from which the judge or justice retired.

In considering what it should initially recommend as implementing legislation, the Commission in 1982 consulted the Supreme Court to find out the views of its members. The Court unanimously took the position that retired Supreme Court Justices should be eligible to serve on either court, but that retired Court of Appeals Judges should not be eligible for temporary service on the Supreme Court. The Commission agreed, and the legislation it recommended was consistent with that position. The 1983 legislation was not enacted, for reasons unrelated to this recommendation; the Commission continues to believe this legislation is necessary, and as in 1983, it believes it is appropriate that service on the Supreme Court, even on a temporary basis, be limited to those persons who have previously been

appointed or elected to that Court. That will still make retired justices available to assist the Court of Appeals temporarily, and the Commission believes it is wise to evaluate this use of the power granted by the amendment before taking the more controversial step of allowing retired court of appeals judges to serve on the Supreme Court. If that step becomes necessary, future sessions of the General Assembly can deal with the problem.

The Commission also makes a separate recommendation that addresses a related problem. While the current and proposed statutes are quite broad as to which retired judges can be recalled, the only reason for which a judge can be recalled is to serve in place of a temporarily incapacitated judge or justice. Experience in recent years suggests that characterization may be too narrow. For example, on the Court of Appeals the time between retirement of a judge and the naming of his successor has been as long as six months. During those periods the Court has to operate with only eleven members, thereby adding to each member's workload and correspondingly reducing the effectiveness of the Court as a whole. There are other potential problems as well. For example, with the normal age and maturity of appellate judges, it is likely that some of them will have close family members who suffer serious and prolonged illnesses that will require the judge to be away from his duties for an inordinate amount of time. In that and in other circumstances, it frequently would be better for the judge and for the court if a retired judge were recalled to serve temporarily in his place. In neither of these situations do the statutes currently authorize relief for a judge, or more importantly, for the Court he serves. Accordingly, the Commission recommends that legislation be enacted to deal with this issue.

Specifically, the Commission recommends that if a vacancy exists on the Supreme Court, the Chief Justice be allowed to recall a retired justice to

serve until the vacancy is filled. If a vacancy exists on the Court of Appeals, the Chief Justice would be authorized to recall a retired Court of Appeals judge or a retired justice to serve on that court until the vacancy is filled. The Commission believes a Chief Justice would exercise this power sparingly, and if he does exercise it, the Governor can always appoint a successor and the recalled judge or justice would be relieved of his duties by the appointed successor. In addition, the Commission recommends that the Chief Justice be authorized, with the concurrence of a majority of the Supreme Court, to recall a retired justice to serve on either appellate court or to recall a retired Court of Appeals judge to serve on that court when "necessary to expedite the work of the court." This standard is intentionally not very precise. The Commission discussed several possible circumstances in which such a recall order might be issued, but concluded that any attempt to codify those instances might have the same restrictive effect as the current statutes. The Commission believes the power would be exercised sparingly by the Court. The requirement of approval by a majority of the Court should serve as an adequate safeguard against abuse, and the proposed legislation makes it clear that the recalled judge may not participate as a voting member unless the sitting justice is at the same time not participating.

The need for both of these recommendations was highlighted recently. In November and December of 1984 and January of 1985, a member of the Court of Appeals was ill and unable to work. His work could have been done by a retired Court of Appeals judge under the current law, but there was no retired judge for the Chief Judge to recall. As a result, his work simply had to be shared by his eleven colleagues. The burden on the court was exaggerated when two members of that court retired during the same period and another was

appointed to the Supreme Court. Working in three new judges and waiting for a fourth judge to get well places a significant and unreasonable burden on the remaining eight judges. The problem is not that there are no retired judges; instead, the problem is that all the retirees whose health would permit them to return are otherwise occupied and retired Supreme Court Justices who might be interested are not eligible to help unless the Commission's first recommendation is adopted.

The Commission believes that passage of both recommendations will make it much more likely that retired appellate judges will remain available for temporary service. For retired justices, the prospect of service on both courts, coupled with the possibility of productive work assignments even though no judge is temporarily incapcitated make the option of remaining eligible for recall much more attractive. For retired court of appeals judges, the provisions of the second recommendation makes it much more likely that they will be used by the court.

Thus, while each provision is separable and is worthy of support on its own merits, the combined effect is greater than the sum of its parts. Recent history reaffirms the need for temporary help in the appellate courts. The Commission believes that retired judges will respond to that need if there is a reasonable possibility of their being used. With the current statutes it is unreasonable to expect healthy, retired judges to sit and wait for a former colleague to become ill. That situation will change if the Commission's recommendations are adopted.

D. Appellate Defender. In 1980, the office of the Appellate Defender was established with federal funds. In 1981 it became a state funded program,

and it was given a life of four years. Its statutory authorization will expire on June 30, 1985 unless its legislative authorization is renewed. The Commission was asked by the Appellate Defender to review the office's work to determine if the Commission could recommend that the statutory authorization be continued. After considering the issue, the Commission concluded that the office is providing quality representation for indigents at the appellate level, and it recommends that the office be continued.

In reaching the decision, the Commission is aware that the costs per case for the appellate defender is higher than the cost per case for an appointed counsel doing appellate work For several reasons, the Commission believes that figure does not tell the whole story. The caseload of the appellate defender is not typical of the appellate caseload, since the office gets a disproportionate share of the most serious cases. Those cases invariably raise issues that require greater attention. In addition, the appellate defender serves a valuable function in preparing and maintaining a set of briefs on difficult issues that occur frequently. That "bank" of briefs is available to other public defenders, as well as appointed counsel, and the Commission believes this service is worth any additional cost. Finally, the Commission recognizes that providing a quality staff will have a cost. In deciding that the office justifies any added expense, the Commission considered the advice it received from the Chief Justice and the appellate judges who serve on the Commission. Their recommendations were uniformly favorable, as were the recommendations from private lawyers who have dealt with them.

In making the recommendation for continuation, the Commission notes that the Administrative Office of the Courts has requested funds for the office,

and the Advisory Budget Commission has included the necessary funds in its proposed budget. The Commission joins them in recommending a permanent statutory and funding authority for the Appellate Defender Office. It has done a good job.

II. MATTERS AFFECTING THE TRIAL DIVISIONS

A. Decriminalization of Minor Traffic Offenses. In its review of the criminal courts, the suggestion heard most often by the Commission was that it improve the way minor traffic cases are handled. In response to those suggestions and to a 1979 resolution directing it to do so, the Commission has considered several options for dealing with the issue in the last five years. Its recommendation is to classify minor traffic offenses as non-criminal infractions and retain them in the court system with simplified hearing and appeal procedures.

To understand how the recommendation would affect the courts, it is useful to review some current statistics. Now, all motor vehicle offenses are crimes. In 1983-84, there were 768,403 motor vehicle offenses charged. This figure includes serious and minor traffic offenses. Of those charged a significant number (437,665) waived their right to appear in court and paid a prescribed fine and costs by mail or before a clerk or magistrate. Of the remaining cases, some were dismissed before trial. The remaining cases were disposed of by the court, and included in that group are serious traffic offenses such as driving while impaired, reckless driving, racing, etc. The remaining group of cases are the minor offenses that are occupying the courts' time. That figure cannot be precisely determined from available data, but an educated guess is that it is at least 100,000 cases. (One additional fact of

interest here is that the 1979-80 number of offenses charged was 777,264, or almost exactly the same number of cases as in 1981-82.)

The Commission found some significant implications in those numbers. First, while the number of total cases is quite large, the number disposed of summarily is also quite large. The Commission saw no reason to do anything to change that method of handling cases. Second, the number of cases requiring court time is a relatively small number for the existing district court system to handle. With over 140 district court judges and existing clerks of court and district attorneys' offices available statewide, the Commission concluded that creating a new agency to hear traffic cases would be very expensive and would duplicate services and facilities present in the court system. This judgment is reinforced by the recent leveling off in the caseload. With these findings in mind, the Commission concluded that the court system provides the most cost-effective way to dispose of these cases and still provide an opportunity for a fair hearing.

That basic decision, however, does not offer any improvement in a troublesome aspect of the present system. A traffic charge is still a crime, and that categorization has several negative features. It gives every person convicted of a minor motor vehicle offense a criminal record. By inappropriately classifying such minor offenses as crimes, it tends to dilute the effect of that classification. It allows minor traffic offenders the full range of procedural protections available for serious crimes, when the issues presented are much simpler and the stakes much lower; the result is sometimes a very expensive jury trial for a very minor offense or frequently a plea reduction or dismissal by the prosecutor to avoid that expensive trial.

The Commission believes its recommendation addresses this problem. It recommends that all minor moving violations and parking violations be classified as infractions, which are defined as non-criminal violations of law not punishable by imprisonment. The sole punishment is a monetary penalty, which is distributed to the school boards in the same manner as a criminal fine. Categorizing these offenses as infractions means that persons who violate minor traffic laws are not "criminals." The Commission believes this is a step worth taking, worthy of merit in itself. The Commission expects that the new designation will encourage more citizens to avoid a trial or hearing, and the time saved will be needed to handle the increased workload created by laws such as the Safe Roads Act and child support enforcement revisions.

It is important to note, however, that the recommendation does more than change the name of the offense. First, while the procedure followed in district court hearings basically follows the procedure based to dispose of misdemeanors, in superior court there is an important difference. A motorist may still appeal to superior court for a trial de novo, but he must request a jury trial if he wants one. The effect is to allow waivers of jury trial in superior court, and that is not allowed for any criminal action under the Constitution. Second, to encourage the motorist charged to appear or to pay the monetary penalties imposed by the court, the Commission recommends that a person's driver's license be revoked if he fails to appear or fails to pay the penalty. Revocation is a drastic sanction but the motorist determines by his own actions whether he is to lose his license. To help insure that improper revocation orders will not be issued, the procedures recommended by the Commission require that the revocation not be effective for 30 days after the

defendant is notified. The Commission believes this grace period will allow anyone erroneously named in a revocation order an opportunity to correct the error, and will encourage those not erroneously named to satisfy the charge or pay the appropriate penalty. If the revocation becomes effective, it remains effective until the person pays the penalty or appears to answer the charge. This revocation procedure basically treats residents the same for in-state violations as they are treated when they are ticketed outside the state.

Using the revocation to enforce the sanction or to encourage prompt court appearances has another advantage--it will reduce the clerks' and sheriffs' workload, since the court will simply have to notify the Division of Motor Vehicles of the violation. Now the courts usually enter an order for arrest, the sheriff has to try to find the defendant, and if he does, the defendant must be arrested and appear before a magistrate to secure his release pending trial. That procedure is very costly, and the Commission believes that notice from the Division of a pending license revocation will be more effective in securing attendance in court and collecting penalties.

One of the most important aspects of the proposal is the determination of which offenses are infractions. Traffic offenses which now require a mandatory court appearance, with a couple of exceptions, remain as misdemeanors. The offenses for which appearances can now be waived are all classified as infractions. In addition, the Commission recommends that parking violations formerly prosecuted in the criminal courts be classified as infractions. The Commission does not recommend that any non-traffic cases be classified as infractions, but if the procedure does not create unexpected problems the Commission believes other kinds of offenses may be appropriately classified as infractions in the future.

In summary, establishing these offenses as infractions will mean that citizens who commit minor traffic offenses will no longer have a criminal record for that offense. The license revocation for ignoring the court will create considerable savings for the clerks, sheriffs, and the court, and should help convince motorists that law violations are serious and need to be answered in court.

B. Parole for Life Sentences. One other matter that has a significant impact on the use of criminal courts has come to the Commission's attention. Under the criminal procedure statutes, the parole eligibility time for a person serving a life sentence for second degree murder is 20 years, reduced by good time (which is now one day's credit for each day served). For life sentences served for first degree murder or first degree rape or sexual offense, the parole eligibility time is 20 years. The Commission found that homicide cases for which guilty pleas to second degree murder would normally be offered by the defendant and accepted by the state are being tried as first degree murder cases. That is costly for two reasons. First, any trial is more expensive than a guilty plea to the same charge, and second, first degree murder trials are by far the most expensive of all criminal trials. The sole reason that most of those cases result in trials is the parole differential between a life sentence for second degree murder and one for first degree murder. The Commission sees no reasons for the differential. Accordingly, it recommends that all life sentences be treated the same, and it recommends that the twenty year period, without reduction for good time, be the rule in all such cases.

The Commission makes this recommendation for another reason. It strikes a small blow in the name of simplification and consistency in the sentencing

statutes. The Commission has perceived an increasing frustration with criminal sentencing laws that do not mean what they would normally be thought to mean. There is no more telling example than to have one life sentence authorizing parole at 10 years and another authorizing parole at 20 years. The Commission believes that making the two consistent is a step in the right direction, and it leaves to others the more difficult problem of dealing with this problem comprehensively.

C. Costs of Court. In 1982, the Courts Commission undertook a thorough review of court costs in North Carolina and recommended a complete revision of the schedule of costs of court. That recommendation was enacted by the 1983 General Assembly and took effect July 1, 1983. After a year of operation several clerks and staff at the Administrative Office of the Courts brought to the Commission's attention some ambiguities in the law that need clarification. The Commission reviewed their suggestions and has a recommendation that resolves the ambiguities. For the most part the changes are technical and do not change the fees currently being charged. The recommendation does add a new fee for docketing and indexing a will probated in another county in North Carolina and reduces the fee for recording or docketing a document to make it more accurately reflect the cost of the service and to conform it to the fee for copying documents. The bill would also eliminate the minimum fee on the commission collected on funds administered or invested by the clerk; in some cases the amount deposited with the clerk is quite small and the current $15 minimum fee would take a large percentage of the principal amount deposited with the clerk. Finally, the recommendations clarify when the fees set in 1983 apply. The 1983 law applied

to actions initiated on or after August 1, 1983; that effective date has caused interpretational problems. Under one interpretation, the fee schedule is set when the case file is opened and that schedule remains in effect for the life of the estate. That interpretation causes problems for clerks in assessing fees due long after the action was begun. For example, if an estate is opened on July 30, 1983 and has an annual accounting filed each year for fifteen years, the old fees are still being charged in 1998. The miscellaneous fees charged under G.S. 7A-308 pose a related problem. These fees may not be based on an action at all or may be related to a case begun long before August 1, 1983. The clerks have found it confusing having to apply two sets of fees (the old and new) depending on when the case was initiated. The Commission's recommended bill would make it clear that the new fee schedule applies when the service is performed or the fee is assessed no matter when the case was begun.

D. Magistrates Salary Credit for Court Experience. The Commission received several complaints from officials who have responsibility for nominating and appointing magistrates. The substance of the complaint was that well-qualified people are being lost because the salary plan does not allow any credit for job-related experience. The current salary statute provides that persons with a two-year Associate in Applied Science degree in criminal justice or paralegal training begin at the salary level of a magistrate with 3 years experience and persons with a four-year college degree in any field begin at the level of a magistrate with 5 years experience. However, a person who has many years experience as a law enforcement officer or court official in North Carolina, for whom the knowledge gained in that

former job would directly transfer to the new job of magistrate, cannot be given any salary credit for his experience. Good people are unwilling to apply for magistrates' positions because of the inability to begin them at a competitive salary. The Commission believes that ten years experience as a law enforcement officer in North Carolina or as an employee of the clerk of superior court's office in North Carolina should be treated as the equivalent of a four-year college degree. Certainly, the experience such a person would bring to the job is equivalent to a four-year degree in a subject unrelated to the law. Therefore, the Commission recommends that persons with 10 years law enforcement or court experience within the past twelve years be hired at the level of a magistrate with five years of service.

E. Discovery Abuse. Several court officials (including the Chief Justice) and attorneys appearing before the Commission at its public hearings urged the Commission to look into the problem of abuse of discovery in civil actions. The speakers mentioned that in many instances lawyers were using discovery to intimidate the opposing side. Some mentioned that discovery should not be restricted but rather the sanctions for abuse be strengthened. The Commission looked at the North Carolina cases on the discovery process and sanctions. It also reviewed a survey of attorney's perceptions of the extent of discovery abuse taken by the North Carolina Bar Association. Forty-one per cent of those lawyers responding to the Bar Association survey responded that discovery abuse is a significant problem in North Carolina state court cases. (Fifty-four per cent responded that it was not a significant problem.) The grounds of abuse most often cited were evasive responses to discovery, abusive use of form interrogatories, and failure of the trial bench to enforce

discovery rules. The conclusion of the Bar Association committee reviewing the survey was that no statutory changes were needed; any abuse of discovery could be handled by using available statutory sanctions. The Commission also reviewed legislation from other states to see how they dealt with discovery abuse. After reviewing all those materials the Commission decided not to recommend any statutory changes at this time. The Commission is aware that the trial judges had been made aware of the conclusion of the Bar Association survey, and it believes that they might try to correct the abuses through sanctions available to them. The Commission also recommended to the Chief Justice that he consider implementing a rule of court similar to one used in federal courts that requires that before a judge will consider any motion or objection relating to discovery the attorneys must certify that they have personally consulted with opposing attorneys in the case and made diligent, but unsuccessful, attempts to resolve any differences. The Commission hopes that requiring the attorneys to sit down and try to resolve discovery disputes might solve some of the abuse problems.

F. Filing Requests for Admissions with the Clerk. In 1983 the Commission discovered that one of the serious problems of clerks of superior court was the amount of file space used by depositions and other discovery papers that are not used in court. The Commission recommended that discovery papers be filed with the clerk only if a court orders that they be filed or if they are needed in the proceeding. That legislation was enacted by the 1983 General Assembly. The Commission intentionally omitted from the nonfiling requirement requests for admissions and answers to them because it believed that it was important for attorneys to know the time the request was made to

avoid making an admissions by not responding within a specific time. The Commission received numerous comments from attorneys that treating admissions differently caused confusion. The federal courts do not require admission requests to be filed and apparently they have not experienced difficulty in determining when a matter is admitted by failure to respond to a request. After further reflection, the Commission now recommends that Rule 5 be amended to treat requests for admissions the same as other discovery papers.

G. Hearing Civil Motions Outside the County. In House of Style Furniture Corp. v. Scronce, 33 N.C. App. 365 (1977) the Court of Appeals held that a judge, without consent of the parties, may not hear civil motions outside the county but within the judicial district where the suit is pending. This inability to hear motions outside the county creates a problem in superior court, particularly in small counties that have very few sessions of court a year. It allows a party to delay the trial by filing motions that must await a term of court in the county; the effect is to delay the trial of the case to an even later session. The Commission determined that civil cases could be disposed of more efficiently without affecting the fairness of the procedure if civil motions could be heard anywhere within the judicial distirct. Its recommendation would allow motions to be heard out of county during a week when no session of superior court is being held in the county where the action is pending. To keep the proposal from being used by attorneys to obtain a particular judge, the Commission recommends that the motion be heard by a judge regularly assigned to hold court in the district, a resident judge, or a special judge residing in the district. It also

recommends that consent of the presiding judge be required and due notice be given to all parties.

III. MATTERS RELATED TO JURY SERVICE

The Commission has two recommendations for improving the statutes regulating jury service in North Carolina.

A. Employee Discipline of Jurors. In its hearings, the Commission heard from court officials who had to deal with problems jurors face from hostile employers when they are called to jury service. For many judges it is common to be asked to excuse from jury service a juror who contends he will be fired if he reports for jury duty as summoned. While the judge is not legally obligated to release the juror, most do so for obvious reasons. The result is that this responsibility of citizenship is not spread as widely as it should be.

The Commission discussed several options to deal with this problem. It concluded that the most effective and least-disruptive method to deal with it is to recommend legislation to make firing or discipline of employees serving as jurors a ground for contempt. This measure would deter the threatening employer, and at the same time will allow the judge to deal effectively with a prospective juror who fabricates such a problem to avoid jury service. In cases in which a discharge actually results, the Commission also recommends that the employee have a statutory civil remedy for damages. This provision is based on a similar provision in the Uniform Jury Service and Selection Act, and similar provisions are already in use in twenty-five states.

B. Initial Randomization of Jury Lists. For several years, master jury lists have been prepared in many counties with the assistance of computers and automatic data processing equipment. This trend has resulted in more efficient and cost effective preparation of master lists, and the Commission believes the practice will increase in popularity in years to come. In spite of this trend, the provisions of G.S. Chapter 9 are written, with one exception, as if a weekly list is prepared manually for each session of court from the master list. One of the most important statutes requires that the list be determined randomly, but it does not specify how that requirement is to be met. In counties in which the master list is prepared manually, the practice is to select names at random from that list for each session of court that requires jurors. In counties using computers, the procedure of randomly selecting a new list for each session of court can be costly and time-consuming. With computers the entire master list can be randomized when it is prepared, and the resulting list can be used, in sequence, for each succeeding session of court. This process is called initial randomization and the Commission believes that statutory recognition of the process will encourage its use, even though some counties have already done so pursuant to an Attorney General's opinion.

The Commission recognizes that the master list, once randomized, might be sought by attorneys interested in who will serve as jurors in a future court session. To avoid that possibility, it recommends that the randomized list be kept confidential to insure that a person's scheduled jury service date cannot be predicted by litigants or attorneys.

The Commission accordingly recommends that G.S. 9-2.1 be amended to authorize initial randomization, subject to a requirement that the randomized list be confidential.

IV. JUDICIAL SELECTION

The Courts Commission, in its final recommendation, returns to a recommendation first made in 1971 by the original Courts Commission. The recommendation is that North Carolina modify its method of judicial selection to establish a merit selection and retention system. The Commission believes the fourteen years since the original recommendation have reinforced the validity of these words quoted in the Commission's 1971 report:

> "The quality of the judiciary largely determines the quality of justice.... No procedural or administrative reforms will help the courts, and no reorganization will avail unless judges have the highest qualifications, are fully trained and competent, and have high standards of performance." Presidents Commission on Law Enforcement and Administration of Justice; (1968) Chapter 5, The Courts, p. 146.

A. The present system. Before describing the advantages of a merit selection and retention system, it is helpful to review the current method used to select judges in North Carolina. The North Carolina Constitution requires that judges be elected in partisan elections at regular intervals. Nevertheless this report uses the word "selection" intentionally. Nearly all of North Carolina's judges are initially appointed by the Governor, and the overwhelming majority of those judges never face opposition at the polls. The point is that a system that purports to give voters complete control over the selection of judges gives them almost no control and gives the Governor almost complete control over selection.

In such a system, the decision of who to appoint is affected by political considerations. When any Governor is elected, he is elected to represent a point of view that some will call political. In his appointments it is not

reasonable to expect him to ignore political considerations, and no system can be devised that will eliminate political considerations. The problem with the North Carolina system is that it does not encourage other non-political considerations. The Commission believes a true merit selection system will minimize the effects of partisan politics on judicial selection, while encouraging the appointment of the most highly qualified candidates.

It is generally conceded that some of the most highly qualified lawyers refuse to make themselves available for judicial office. One of the reasons, of course, is money. For the outstanding practitioner who would be a credit to the bench, judicial salaries are not, and perhaps never will be, as attractive as the money to be earned in private practice. But a more frequently heard reason leaders of the bar in private practice will not consider a judicial career is the possibility of having to engage in partisan political campaigns. Campaigning can be expensive, and it requires political know-how in a degree not always present in the best qualified judicial candidates. And defeat in a campaign, after four, eight, or perhaps more years on the bench, can result in the need to rebuild a private practice in middle age, at severe financial sacrifice. Even if the judge is fortunate and does not have opposition, he would be foolish not to maintain amicable relationships to the party leaders in his area. The result is a system where judges must always remain sensitive to partisan political concerns.

If the judge is forced into a contested election, there are few, if any, public issues on which the judge can--or should--campaign. Judges are not like legislators--they do not formulate public policies. As administrators of the law, judges can find it embarrassing and unethical to take sides on political issues which may eventually come to litigation in their courts.

Campaigning of this sort is inappropriate, to say the least, and demeans both the office and the individual. It also forces a judge who runs against a campaigner who ignores or bends these rules to choose between matching the unethical technique or risking the loss of the election. Fortunately, this kind of unethical campaigning has not been as common in North Carolina as in many states. Nevertheless, judicial candidates in North Carolina must closely identify themselves with, and financially support, a political party. The vice in that process is that it does not attract as judicial candidates people who are unwilling to become involved in party politics to be appointed and to remain involved to stay elected.

This election process would still be worthwhile if the participation by the judge succeeded in informing the voters of the judge's qualifications for office. Studies made of the level of voter information about judicial nominees are uniformly discouraging, however. And in our own state, how many voters in last November's election were well informed as to the qualifications of the judges on the state ballot? If they were not informed, as the Commission believes, on what basis did they vote? The common perception is that the basis then becomes party affiliation. That fact tends to please the members of the dominant party in an electoral unit, since judgeships are controlled by the party. But as this state or electoral units within the state have political parties of roughly equal strength, two things happen. First, candidates or incumbents may lose or win based mostly on the party's candidate for President or Senate or on the unemployment or inflation rate. Second, the <u>possibility</u> of that kind of result has an undetermined but almost certainly negative effect on the quality of applicants for judicial office. It is in this context that the equally important concept of retention elections should be considered.

B. The Principles of Merit Selection and Retention. The Commission believes that the administration of justice will be better served by a plan that attracts the best lawyers as candidates and helps assure that, if appointed, their retention will tend to be determined by their performance in office. All nonpartisan merit selection and retention plans have three basic elements:

(1) Submission of a list of judicial nominees by a nonpartisan commission composed of professional and lay persons;

(2) Selection of a judge by an appointing authority (usually the Governor) from the list submitted by the nominating commission;

(3) Approval or rejection by the voters of the Governor's selections in nonpartisan elections in which the judge runs unopposed on the sole question of his record in office.

This plan is now in use, in whole or in part, in at least 35 states. It was first adopted in 1940 in Kansas City and St. Louis, Missouri, for trial judges, and throughout the state for appellate judges. The results of its use across the country are revealing. According to research conducted by the American Judicature Society, most jurisdictions employing the plan have relatively few judges failing in retention elections. In 1980 the number failing at retention elections was under two per cent. That the statistic is low supports the Commission's view that nominating commissions do a good job in finding nominees. It also is not consistent with the view that retention elections will expose good judges to defeat by single issue voting blocs; experience has not shown that fear to be based on fact. The Commission finds comfort, however, that there is a small number who do not get retained because it indicates merit selection and retention is not a lifetime appointment. The

prospect of having to face an electorate, with the beneficial effect that has on a person's humility and conduct, is preserved by merit selection and retention.

The heart of the nonpartisan merit plan lies in the first basic element--the judicial nominating commission. It should be broadly representative of the two major groups who use the courts: the attorneys who practice there, and the public whose lives, liberties, and property are at stake there. It should also represent all major geographic regions of the state. Terms of members must be several years in length to build up expertise. Above all, however, the Commission must be composed of persons of the highest integrity, who will sincerely and objectively try to carry out their sole duty--to find the most highly qualified persons for the judiciary. They must be prepared to seek out members of the bar whose personal and professional characteristics offer the most potential for becoming an outstanding judge.

This "seeking out" process can best be described by one who has had lengthy personal experience with the system. U.S. District Judge Elmo Hunter, formerly a merit plan selectee at both the trial and appellate courts in Missouri and at one time chairman of a judicial nominating commission to select trial judges for Kansas City, describes the selection process as follows:

> Just a few months ago two of our trial judges retired because of a combination of age and illness. This created two judicial vacancies. Our judicial nominating commission issued a public statement carried by our press and other news media that the nominating commission would soon meet to consider two panels of three names each to be sent to the Governor for him to select one from each panel to fill the vacancy, and that the nominating commission was open to suggestions and recommendations of names of those members of our bar best qualified to be circuit judges.

It received the names of many outstanding and highly qualified lawyers who were willing to be considered by the commission because of the nonpolitical merit type of selection involved. The commission on its own surveyed all eligible lawyers in the circuit to see if it had before it the names of all those who ought to be considered. From all sources the commission ended up with fifty-seven names.

After several weeks of careful study by the commission, the list of eligibles was cut to twelve, then to nine, and finally to those six who the members of the commission sincerely believed to be the six best qualified of all. Those six names, three on each of the two panels, were sent to the Governor who, after his own independent consideration of them, made his selection of one from each panel. His selections were widely acclaimed by the press and the public as excellent choices from two very outstanding panels. The commission was glad to see the Governor get this accolade, but its members knew that no matter which one of the three on each panel he selected, the people of Missouri would have been assured an outstanding judge.

Students of the nonpartisan merit selection and retention plan give a variety of reasons for its success. Judges become politically independent, and time formerly spent campaigning can be spent attending to the urgent business of the courts. Public confidence in the individual judge--and in the administration of justice generally--improves. The attention of voters can be focused on a judge's record, rather than his political affiliation, so that it is easier, should the need arise, to vote an unfit judge out of office. Opportunity of minority groups for representation on the bench is increased. Even the Governor benefits--he is relieved of the occasional embarrassment of choosing between political favorites, some of whom may be less than well qualified. At the same time, he can take credit for outstanding appointments he makes from the list furnished by the nominating commission. But the two most important reasons, amply supported by actual experience, are these:

- The plan guarantees qualified judges by screening out the obviously unfit and mediocre.

- The plan increases the available pool of qualified candidates from which nominees can be selected.

C. A Recommended Nonpartisan Merit Plan for North Carolina. States that have adopted the nonpartisan merit plan for the selection of judges have usually inserted in their constitutions a statement of the basic elements of the plan, and left detailed implementation of it to the legislative branch. The Commission believes that this is the soundest approach for North Carolina, and accordingly recommends a revision of Article IV, Section 16 of the Constitution that (1) authorizes a judicial nominating commission to recommend to the Governor a list of qualified nominees for vacant judgeships; (2) directs the Governor to select a judge from this list; and (3) provides that the appointee must stand for re-election on a nonpartisan "yes" or "no" ballot at the next general election which occurs more than one year after his initial appointment. If the voters vote "yes", the judge then serves a regular term; if the voters vote "no", the judge's office is declared vacant, and the judicial nominating commission submits a new list of names to the Governor, as before. Terms of judges--eight years for appellate and superior court judges, and not more than eight years, at the option of the General Assembly, for district court judges--are also specified.

The amendment spells out some details of the nominating commission; it must have a majority of non-lawyers; at least 1/3 must be Governor's appointments, at least 1/3 must be the Chief Justice's appointees; at least one member must reside in each judicial district. These provisions are inserted into the Constitution to insure wide representation and to insure that the commission will never become a "Bar association, lawyer-dominated" group.

The proposed amendment further provides that voting on retention or rejection of appellate division judges would be by the voters of the state, and that similar voting for district court judges would be by the voters of the judge's district. It leaves to the General Assembly the issue of the proper electorate for superior court judges.

Finally, the proposed amendment provides that incumbent elected judges continue in office for the remainder of the terms for which they were elected, and thereafter are subject to approval or rejection by the voters on a nonpartisan "yes" or "no" ballot, as described above. Since the plan is not designed to become effective until January 1, 1987, after its approval by the voters in the general election of November, 1986, many incumbent judges would be subject to one last election under the existing partisan election laws.

Statutory implementation of these constitutional provisions consists for the most part of creating a judicial nominating commission and outlining its functions. Since the integrity and objectivity of the nominating commission is the most important key to the end product--high quality judges--the composition of the commission is of critical importance. To assure continuity, terms of members--fixed at four years, except for legislatively appointed members--would be overlapped, and to prevent possible domination of the commission by one member or group of members, no member could serve more than one full term without a lapse of two intervening years. Members, other than the chairman, would be forbidden to hold public office, or office in any political party. No member of the commission except the chairman would be eligible for appointment to a judgeship during his term of office and for a period of two years thereafter. Finally, members of the commission would serve without remuneration other than the per diem and expenses accorded members of state boards and commissions generally.

The composition of the commission is complicated in appearance but not in operation. To understand it, one must remember two principles--each district has the same number of representatives on the commission, and the panel sitting to nominate candidates will vary depending on the level and location at which the vacancy occurs. For appellate judges, an at-large panel of 10 members would nominate. For superior court judges, the panel is composed of the at-large members residing in the division in which the vacancy occurs, plus the divisional members from the division. The result is that this panel will include one member from each district in the division. For district court judgeships, the divisional and at-large members residing in the division in which the vacancy occurs would sit, but they would be joined for this nomination by the four district members who reside in the district. A chairman or chairman pro tem (who must be a justice of the Supreme Court) presides over each panel.

In summary, for appellate judges and special superior court judges, the at-large panel of 11 members nominates. For superior court judges, the panel has 9 or 10 members (one for each district). For District Court Judges, the panel has 13 or 14 members, five of whom reside in the district in which the vacancy occurs.

It is essential that the commission be broadly based. To achieve that, it has appointees from all branches of state government. The Governor appoints four at-large members, eight divisional members, and two members for each district. All his appointees must be non-lawyers. The Chief Justice appoints a number equal to the Governor, but all his appointees must be lawyers. The Speaker and President pro tem each appoint five members, three of whom are not lawyers. This broad base of appointments should help to prevent the nomination of judges of a single point of view or orientation.

Whenever a vacancy occurs, the appropriate panel of the nominating commission would be called upon to act each time a judicial vacancy occurred. The panel could meet anywhere in the state. It would be authorized to publicize judicial vacancies, and empowered to solicit declarations of availability for judicial service from highly qualified attorneys who might otherwise be unavailable. It could hold public hearings, at which interested persons could speak for or against the nomination of particular individuals. In the interest of discouraging publicity seekers and encouraging qualified persons who might not otherwise declare their availability, it would be required to hold the names of potential nominees in confidence until it transmitted its final list to the Governor, when the names of the nominees would be made public.

The commission would be required to nominate five names for each vacancy on the Supreme Court or the Court of Appeals. For special superior court judges, three names would be submitted. For other trial bench vacancies, some of which arise in districts with a very limited number of attorneys, two or three names would be required. Names of nominees would be submitted to the Governor within 60 days of the occurrence of the vacancy, and the Governor would have to make his selection from the names submitted within an additional 30 days. If he failed to make a selection within the time allowed, the Lieutenant Governor would then make the appointment from the nominees submitted.

Terms of office for appellate and superior court judges would remain as currently specified, but under the constitutional option for district court judges, it is recommended that terms of district court judges be fixed at six years. Extending the term from four to six years will make the office

somewhat more attractive to a larger number of potential district court judges.

A judge selected under this plan who desired to serve successive terms would be required to file, within specified time limits, a declaration of his intention to run. The ballot at the next general election would then bear the question: "Shall Judge _____ of _____ Court be retained in office?". An affirmative vote would return the judge to office for a regular six or eight year term; a negative vote would vacate the office, and trigger the nominating process already described.

To guarantee that the nonpartisan merit plan is actually operated in a nonpartisan fashion, the Courts Commission recommends that no judge, no person who has declared his availability for nomination for a judgeship, and no nominee for a judgeship, directly or indirectly make any contribution to or hold any office in a political party or organization, or take part in any partisan political campaign between opposing candidates. This prohibition is a vital feature of the proposal without which the laudable objective of the proposed legislation might not be attainable.

D. Special Superior Court Judges. So far this report has discussed the selection of appellate judges, district court judges, and resident superior court judges. There is another kind of superior court judge, however, provided for by Article IV, Section 9(1) of the Constitution: "The General Assembly may provide...for the selection or appointment of special...Superior Court Judges not selected for a particular judicial district." Under this authority for many years the General Assembly has authorized the Governor to appoint a number of special superior court judges. Currently, the number is

eight, all appointed for four-year terms. These judges may serve anywhere in the State, and do, being assigned week by week wherever the need for an additional session of superior court is greatest.

The need for the flexibility these special superior court judges provide continues, but the reasons which compel re-evaluation of the method of selecting all other kinds of judges apply with equal force to special superior court judges. Logic dictates that, if the nonpartisan merit plan for choosing our other judges over the years will bring about an improvement in the quality of the judiciary generally, it will do no less for special superior court judges. The Courts Commission therefore recommends that the nonpartisan merit selection and retention plan for the selection of our judges be extended to special superior court judges also. A constitutional amendment to do this is not necessary. It can be effected at the same time as the parent bill for selection of our other judges is scheduled to go into effect--January 1, 1987. After that date, special superior court judges, limited to two per judicial division, for a total of eight, would be selected by the Governor from a list of three nominees for each vacancy put forward by the same judicial vacancies. Since special judges serve throughout the state, the same at-large panel that nominates appellate judges would make the nominations. Terms would be eight years, and successive terms would be subject to a "yes" or "no" retention election the same as for other judges. Incumbent special superior court judges would serve out their current terms, but could serve a succeeding term only if selected by the Governor from a list of candidates submitted by the nominating commission. Under this proposal, all special superior court judges would be products of the nonpartisan merit plan by July 1, 1987.

E. Conclusion. The Commission recommends two bills to accomplish its purpose of providing a stable, highly qualified judiciary that is as free as possible from the impact of partisan politics. In reaching this decision, the Commission is aware that the bills it recommends contain many details that are necessary to have a system that works. The Commission recognizes, however, that reasonable men can differ about these kind of details. In fact some legislative members of the Commission are opposed to the legislation that is being recommended and have expressed reservations about the need for fundamental changes in the method of judicial selection. Nevertheless, a majority of the Commission believes this approach is sound, and hopes these bills will be adopted as recommended. More importantly, it also believes that adoption of the concepts of merit selection is absolutely essential if a stable, independent judiciary is to be preserved. The Commission stands ready to work with the members of the General Assembly to come up with a system that will embody these concepts and provide the citizens of North Carolina with the best possible judiciary.

APPENDIX A

A BILL TO BE ENTITLED

AN ACT TO CREATE THE STATE JUDICIAL CENTER COMMISSION AND TO APPROPRIATE FUNDS FOR ITS OPERATION.

Whereas, the state-level components of the Judicial Department--The Supreme Court, the Court of Appeals, and the Administrative Office of the Courts--have experienced a significant increase in workload over the last decade, and the space allotted to them has become inadequate to meet their current needs; and

Whereas, each division of the appellate court is housed in a different building, and the Administrative Office of the Courts is itself housed in four different buildings; and

Whereas, if these agencies were placed in a single building, they would be able to operate more efficiently at less cost by sharing facilities common to all and by eliminating rental payments to private parties; and

Whereas, the Judicial Department is one of the three branches of the government of North Carolina, and as stated by the State Constitution, should be "forever separate" from the other branches of government; and

Whereas, the state level components of the Judicial Department all share buildings with agencies of the executive branch; and

Whereas, the placement of these agencies in a single building would provide a symbol to this state's citizens of the separate and independent nature of the judicial branch of government; and

Whereas, the provision of adequate and appropriately dignified surroundings for the state-level components of the judicial branch will require careful study and planning by concerned persons who understand the court system, the legislative process, and the process necessary to acquire or construct buildings in the state government complex in Raleigh.

The General Assembly of North Carolina enacts:

Section 1. There is created the State Judicial Center Commission, which shall consist of nine members. The Governor, Chief Justice, Speaker of the House, and President of the Senate shall each appoint two members. The Director of the Administrative Office of the Courts shall serve ex officio. All appointed members shall be appointed by July 1, 1985, or as soon thereafter as is practicable, and shall serve until the commission's duties are completed. Any vacancy in the appointed membership shall be filled by the officer making the initial appointment to the seat vacated. The Chief Justice shall designate one of the members as chairman, and he may designate a vice-chairman.

Sec. 2. The State Judicial Center Commission shall have the following powers and duties:

(a) To study the current and future needs for office and court facilities of the Supreme Court, the Court of Appeals, and the Administrative

Office of the Courts, and the desirability and practicability of providing a single facility for the exclusive use of the state-level components of the judicial branch of government.

(b) To report its findings and recommendations to the Governor and the General Assembly no later than March 1, 1987. If the Commission recommends that a new building be constructed, the recommendation shall include a general recommendation as to size, appearance, design, and location of the proposed building.

(c) To contract for such professional and clercial support as is necessary to perform its duties.

Sec. 3. The members of the State Judicial Center Commission shall receive for their services the per diem and reimbursement for travel expenses authorized by law for members of state boards and commissions.

Sec. 4. The State Judicial Center Commission shall meet at such times and places as the chairman shall designate. Subject to the approval of the Legislative Services Commission, the facilities of the State Legislative Building shall be available to the Commission. The Legislative Services Office shall make the services of its Fiscal Research Division available to the Commission.

Sec. 5. There is appropriated $75,000 for fiscal 1985-86 from the General Fund to the Department of Administration to fund the activities of the State Judicial Center Commission. The Commission is authorized, subject to the availability of funds, to observe other states' judicial facilities as it deems necessary in the course of its study to determine the proper kind of judicial facility for this state.

Sec. 6. The State Judicial Center Commission may call upon any department, agency, institution, or officer of the State, or any political

subdivision thereof for such assistance as it deems appropriate, and these departments, agencies, institutions, and officers shall cooperate with the Commission and its committees to the fullest possible extent. Upon request by the Commission, the Department of Administration shall provide an office for the Commission.

Sec. 7. This act shall be effective on ratification, and shall expire on June 30, 1987.

APPENDIX B

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE APPELLATE JUDGES TO HAVE MORE THAN ONE LAW CLERK.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-7(a) is amended by deleting the words "one research assistant" and inserting in their place "not more than two research assistants".

Sec. 2. This act is effective on ratification.

APPENDIX C

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A CONSTITUTIONAL AMENDMENT APPROVED BY THE VOTERS BY PROVIDING FOR TEMPORARY SERVICE BY RETIRED STATE SUPREME COURT JUSTICES ON EITHER THE SUPREME COURT OR THE COURT OF APPEALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-39.1(b) is amended by putting a period after the word "service" and deleting the remainder of the subsection.

Sec. 2. G.S. 7A-39.3(a) is rewritten to read as follows:

"(a) Justices of the Supreme Court and judges of the Court of Appeals who have not reached the mandatory retirement age specified in G.S. 7A-4.20, but who have retired under the provisions of G.S. 7A-39.2, or under the Uniform Judicial Retirement Act after having completed 12 years of creditable service, may apply as provided in G.S. 7A-39.6 to become emergency justices or judges and upon being commissioned as an emergency justice or emergency judge shall be subject to temporary recall to active service as provided in G.S. 7A-39.5."

Sec. 3. G.S. 7A-39.5(b) is amended by adding a new sentence between the first and second sentences of that subsection to read as follows:

"If the Chief Judge does not recall an emergency judge to serve in the place of the temporarily incapacitated judge, the Chief Justice may recall an emergency justice who, in his opinion, is competent to perform the duties of a judge of the court of appeals, to serve temporarily in the place of the judge in whose behalf he is recalled."

Sec. 4. G.S. 7A-39.9(a) is rewritten to read as follows:

"(a) Decisions of the Chief Justice and the Chief Judge regarding recall of emergency justices and emergency judges, when not in conflict with the provisions of this Article, are final."

Sec. 5. G.S. 7A-39.9(c) is amended on line 5 by inserting after the word "judge" the words "or justice".

Sec. 6. G.S. 7A-39.13(2) is rewitten to read as follows:

"(2) The Chief Justice is authorized to recall retired justices to serve on the Supreme Court or on the Court of Appeals, and the Chief Judge is authorized to recall retired judges of the Court of Appeals to serve on that Court."

Sec. 7. This act is effective upon ratification.

APPENDIX D

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CHIEF JUSTICE TO RECALL RETIRED JUSTICES AND JUDGES TO ASSIST THE APPELLATE DIVISION IN EXPEDITING ITS WORK.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding a new section, G.S. 7A-39.14, to read as follows:

"§ 7A-39.14. Recall by Chief Justice of retired of emergency justices or judges for temporary vacancy or to otherwise expedite court business.--(a) In addition to the authority granted to the Chief Justice under G.S. 7A-39.5 to recall emergency justices and under G.S. 7A-39.13 to recall retired justices, the Chief Justice may recall retired or emergency justices or retired or emergency judges of the Court of Appeals in the following circumstances:

(1) If a vacancy exists on the Supreme Court, he may recall an emergency or retired justice to serve on that court until the vacancy is filled in accordance with law.

(2) If a vacancy exists on the Court of Appeals, he may recall an emergency or retired justice or judge of the Court of Appeals to serve on that court until the vacancy is filled in accordance with law.

(3) With the concurrence of a majority of the Supreme Court, he may recall an emergency or retired justice to serve on or assist the Supreme Court when necessary to expedite the work of that court.

(4) With the concurrence of a majority of the Supreme Court, he may recall an emergency or retired justice or judge of the Court of Appeals to serve on or assist the Court of Appeals when necessary to expedite the work of that court.

(b) No judge or justice may be recalled unless he consents to the recall. Orders of recall issued pursuant to this section must be in writing and entered on the minutes of the Court. In addition, if the judge or justice is recalled pursuant to subdivision (a)(3) or (a)(4), the order must contain a finding by the Chief Justice setting out, in detail, the reason for the recall, and the order must specify whether the recalled justice or judge is to serve on or to assist the court to which he is recalled.

(c) A judge or justice recalled pursuant to subdivisions (a)(1) or (a)(2) of this section:

(1) has the same authority and jurisdiction granted to emergency justices and judges under G.S. 7A-39.7;

(2) is subject to rules adopted pursuant to G.S. 7A-39.8 regarding filing of opinions and other matters; and

(3) is compensated as are other retired or emergency justices or judges recalled for service pursuant to G.S. 7A-39.5 or G.S. 7A-39.13.

(d) A judge or justice recalled pursuant to subsection (a)(3) or (a)(4) of this section:

(1) has the same authority and jurisdiction granted to emergency justices and judges under G.S. 7A-39.7, if he is recalled to serve in place of a sitting judge or justice;

(2) is subject to rules adopted pursuant to G.S. 7A-39.8 regarding filing of opinions and other matters, if he is recalled to serve in place of a sitting judge or justice;

(3) may not vote on or participate in the hearing and decision of a matter before the court to which he is recalled, if he is recalled to assist that court; and

(4) is compensated as are other retired or emergency justices or judges recalled for service pursuant to G.S. 7A-39.5 or G.S. 7A-39.13.

(e) A retired or emergency justice or judge may serve on the Supreme Court or Court of Appeals pursuant to subdivisions (a)(3) or (a)(4) only if he is recalled to serve temporarily in place of a sitting justice or judge. This section does not authorize more than seven justices to serve on the Supreme Court at any given time, nor does it authorize more than 12 justices or judges to serve on the Court of Appeals at any given time."

Sec. 2. This act is effective upon ratification.

APPENDIX E

A BILL TO BE ENTITLED

AN ACT TO CLASSIFY MINOR TRAFFIC OFFENSES AS INFRACTIONS AND TO PROVIDE A PROCEDURE FOR THE DISPOSITION OF SUCH INFRACTIONS BY THE COURTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new section, G.S. 14-3.1, to read as follows:

"§ 14-3.1. Infraction defined; sanctions.--(a) An infraction is a noncriminal violation of law not punishable by imprisonment. Unless otherwise provided by law, the sanction for a person found responsible for an infraction is a penalty of not more than one hundred dollars ($100.00). The proceeds of penalties for infractions are payable to the county in which the infraction occurred for the use of the public schools.

(b) The procedure for disposition of infractions is as provided in Article 66 of Chapter 15A of the General Statutes."

Sec. 2. G.S. 14-4 is amended by designating the present section as subsection (a) and amending the redesignated subsection (a) by inserting at the beginning of that subsection the phrase "Except as provided in subsection (b),"; that section is further amended by adding a new subsection (b) to read as follows:

"(b) If any person shall violate an ordinance of a county, city, or town regulating the operation or parking of vehicles, he shall be responsible for an infraction and shall be required to pay a penalty of not more than fifty dollars ($50.00)."

Sec. 3. Chapter 15A of the General Statutes is amended by adding a new Article 66 to read as follows:

"Article 66.

"Procedure for Hearing and Disposition of Infractions.

"§ 15A-1111. General procedure for disposition of infractions.--The procedure for the disposition of an infraction, as defined in G.S. 14-3.1, is as provided in this Article. If a question of procedure is not governed by this Article, the procedures applicable to the conduct of pretrial and trial proceedings for misdemeanors in district court are applicable unless the procedure is clearly inapplicable to the hearing of an infraction.

"§ 15A-1112. Venue.--Venue for the conduct of infraction hearings lies in any county where any act or omission constituting part of the alleged infraction occurred.

"§ 15A-1113. Prehearing procedure.--(a) Process. A law enforcement officer may issue a citation for an infraction in accordance with the provisions of G.S. 15A-302. A judicial official may issue a summons for an infraction in accordance with the provisions of G.S. 15A-303.

(b) Detention of person charged. A law enforcement officer who has probable cause to believe a person has committed an infraction may detain the person for a reasonable period in order to issue and serve him a citation.

(c) Appearance bond may be required. A person charged with an infraction may not be required to post an appearance bond if:

(1) he is licensed to drive by a state that subscribes to the nonresident violator compact as defined in Article 1B of Chapter 20 of the General Statutes and the infraction charged is subject to the provisions of that compact, or;

(2) he is a resident of North Carolina.

Any other person charged with an infraction may be required to post a bond to secure his appearance and a charging officer may require such a person charged to accompany him to a judicial official's office to allow the official to determine if a bond is necessary to secure the person's court appearance, and if so, what kind of bond is to be used. If the judicial official finds that the person is unable to post a secured bond, he must allow the person to be released on execution of an unsecured bond. The provisions of Article 26 of this Chapter relating to issuance and forfeiture of bail bonds are applicable to bonds required pursuant to this subsection.

(d) Territorial jurisdiction. A law enforcement officer's territorial jurisdiction to charge a person with an infraction is the same as his jurisdiction to arrest specified in G.S. 15A-402.

(e) Use of same process for two offenses. A person may be charged with a criminal offense and an infraction in the same pleading.

"§ 15A-1114. Hearing procedure for infractions.--(a) Jurisdiction. Jurisdiction for the adjudication and disposition of infractions is as specified in G.S. 7A-253 and G.S. 7A-271(d).

(b) No trial by jury. In adjudicatory hearings for infractions, no party has a right to a trial by jury in district court.

(c) Infractions heard in civil or criminal session. A district court judge may conduct proceedings relating to traffic infractions in a civil or criminal session of court, unless the infraction is joined with a criminal offense arising out of the same transaction or occurrence. In such a case, the criminal offense and the infraction must be heard at a session in which criminal matters may be heard.

(d) Pleas. A person charged with an infraction may admit or deny responsibility for the infraction. The plea must be made by the person

charged in open court, unless he submits a written waiver of appearance which is approved by the presiding judge, or, if authorized by G.S. 7A-146, he waives his right to a hearing and admits responsibility for the infraction in writing and pays the specified penalty and costs.

(e) Duty of district attorney. The district attorney is responsible for ensuring that infractions are calendared and prosecuted efficiently.

(f) Burden of proof. The State must prove beyond a reasonable doubt that the person charged is responsible for the infraction unless the person admits responsibility.

(g) Recording not necessary. The State does not have to record the proceedings at infraction hearings. With the approval of the court, a party may, at his expense, record any proceeding.

"§ 15A-1115. Review of disposition by superior court. (a) Appeal of district court decision. A person who denies responsibility and is found responsible for an infraction in the district court, within 10 days of the hearing, may appeal the decision to the criminal division of the superior court for a hearing de novo. Either party, upon demand in the manner required by G.S. 1A-1, Rule 38, is entitled to have the issue of responsibility decided by a jury. The State must prove beyond a reasonable doubtthat the person charged is responsible for the infraction unless the person admits responsibility. Unless otherwise provided by law, the procedures applicable to misdemeanors disposed of in the superior court apply to those infraction hearings. In the superior court, a prosecutor must represent the State. Appeal from the judgment in the superior court is as provided for other criminal actions in superior court, and the attorney general must represent the State in an appeal of such actions."

(b) Review of infractions originally disposed of in superior court. If the superior court disposes of an infraction pursuant to its jurisdiction in G.S. 7A-271(d), appeal from that judgment is as provided for criminal actions in the superior court.

"§ 15A-1116. Enforcement of sanctions.--(a) Use of contempt or fine collection procedures; notification of DMV. If the person does not comply with a sanction ordered by the court, the court may proceed in accordance with Chapter 5A of the General Statutes. If the person fails to pay a penalty, the court may proceed in accordance with Article 84 of this Chapter. If the infraction is a motor vehicle infraction and the person does not pay the applicable penalty and costs within 30 days of the date specified in the court's judgment, the court must notify the Division of Motor Vehicles of the failure to comply.

(b) No order for arrest. If a person served with a citation for an infraction fails to appear to answer the charge, the court may issue a summons to secure the person's appearance, but an order for arrest may not be used in such cases.

"§ 15A-1117. Court to report failures to appear.--The court must report to the Division of Motor Vehicles the name of any person charged with a motor vehicle infraction who fails to appear for a scheduled hearing, unless within 10 days after the scheduled hearing, the person either appears in court to answer the charge or admits responsibility pursuant to the procedure authorized in G.S. 7A-146.

"§ 15A-1118. Costs.--Costs assessed for an infraction are as specified in G.S. 7A-304."

Sec. 4. G.S. 15A-302 is amended by rewriting subsection (a) to read:

"(a) Definition. A citation is a directive, issued by a law enforcement officer or other person authorized by statute, that a person appear in court and answer a misdemeanor or infraction charge or charges." That section is further amended by adding in subsection (b) after the word "misdemeanor" the words "or infraction". That section is further amended in subsection (e) by inserting the words "or infraction". That section is further amended in subsection (f) by inserting at the beginning of that subsection the words and punctuation "If the offense is a misdemeanor, a" and by deleting the word "A".

Sec. 5. G.S. 15A-303 is amended by adding the words "or infraction" after the word "crime" in the first sentence of subsection (a). That section is further amended in subsection (b) by adding in the caption and in each of the two sentences after the word "crime" the words "or infraction". That section is further amended by adding, at the beginning of subsection (e)(1), the words and punctuation "If the offense charged is a criminal offense, a" and by deleting the word "A". That section is further amended by adding, at the beginning of subsection (e)(2), the words and punctuation "If the offense charged is a criminal offense, an" and by deleting the word "An".

Sec. 6. G.S. 15A-1361 is rewritten to read as follows:

"§ 15A-1361. Authorized fines and penalties.--A person who has been convicted of a criminal offense may be ordered to pay a fine as provided by law. A person who has been found responsible for an infraction may be ordered to pay a penalty as provided by law. Unless the context clearly requires otherwise, references in this Article to fines also include penalties."

Sec. 7. G.S. 7A-61 is amended by inserting in the first sentence between the words "actions" and "requiring" the words "and infractions".

Sec. 8. G.S. 7A-146(8) is rewritten to read as follows:

"(8) Promulgating the schedule of traffic, hunting, fishing, and boating offenses adopted pursuant to G.S. 7A-148(a) for which magistrates and clerks of court may accept written appearances, waivers of hearing or trial, and pleas of guilty or admissions of responsibility and establishing a schedule of fines or penalties therefor;".

Sec. 9. G.S. 7A-148(a) is amended by deleting the words "waivers of trial and pleas of guilty and establish a schedule of offenses therefor," and inserting in their place the words "waivers of trial or hearing and pleas of guilty or admissions of responsibility, and establish a schedule of penalties or fines therefor,".

Sec. 10. G.S. 7A-180(4) is rewritten to read as follows:

"(4) Has the power to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility to certain traffic, hunting, fishing, and boating offenses in accordance with a schedule of offenses promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fine or penalty and costs;".

Sec. 11. G.S. 7A-191 is amended by rewriting the first sentence to read as follows: "All trials on the merits and all hearings on infractions conducted pursuant to Article 66 of Chapter 15A shall be conducted in open court and so far as convenient in a regular courtroom."

Sec. 12. G.S. 7A-196 is amended to add a new subsection (c) to read as follows:

"(c) In adjudicatory hearings for infractions, there shall be no right to trial by jury in the district court."

Sec. 13. G.S. 7A-198(e) is amended by deleting the period at the end of the subsection and inserting in its place the following: "or in

hearings to adjudicate and dispose of infractions in the district court."

Sec. 14. Article 20 of Chapter 7A of the General Statutes is amended by adding a new section, G.S. 7A-253, to read as follows:

"§ 7A-253. Infractions.--Except as provided in G.S. 7A-271(d), original, exclusive jurisdiction for the adjudication and disposition of infractions lies in the district court division."

Sec. 15. G.S. 7A-271 is amended by adding a new subsection (d) to read as follows:

"(d) The criminal jurisdiction of the superior court includes the jurisdiction to dispose of infractions only in the following circumstances:

(1) If the infraction is a lesser included violation of a criminal action properly before the court, the court must submit the infraction for the jury's consideration in factually appropriate cases.

(2) If the infraction is a lesser included violation of a criminal action properly before the court, or if it is a related charge, the court may accept admissions of responsibility for the infraction. A proper pleading for the criminal action is sufficient to support a finding of responsibility for the lesser included infraction."

Sec. 16. G.S. 7A-273 is amended by inserting after the word "actions" in the first line the words "or infractions"; that section is further amended by rewriting subdivision (2) to read as follows:

"(2) In misdemeanor or infraction cases involving traffic, hunting, fishing, and boating offenses, to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the

Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;". That section is further amended by adding between the word "in" and the word "criminal" in the caption the words "infractions or".

Sec. 17. G.S. 7A-304 is amended by adding a new subsection (e) to read as follows:

"(e) The costs assessed pursuant to this section for criminal actions disposed of in the district court are also applicable to infractions disposed of in the district court. If an infraction is disposed of in the superior court pursuant to G.S. 7A-271(d), costs applicable to the original charge are applicable to the infraction."

Sec. 18. G.S. 20-24(c) is amended by rewriting the first sentence to read as follows: "For the purpose of this Article, the term conviction shall mean a final conviction of a criminal offense or a determination that a person is responsible for an infraction."

Sec. 19. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section, G.S. 20-24.1, to read as follows:

"§ 20-24.1. Revocation for failure to appear or comply with sanctions in infractions.--(a) The Division must revoke the driver's license of a person upon receipt of notice from a court that the person was charged with a motor vehicle infraction and he:

(1) failed to appear, after being notified to do so, for a hearing to determine if he was responsible for the infraction; or

(2) failed to pay a penalty as ordered by the court after a determination that the person was responsible for the infraction.

Revocation orders entered under the authority of this section are

effective on the thirtieth day after the order is mailed or personally delivered to the person.

(b) A license revoked under this section remains revoked until the Division receives notice from the court that the person whose license has been revoked:

(1) has appeared to answer the charge; or

(2) is not the person charged with the infraction; or

(3) has paid the penalty ordered by the court; or

(4) did not willfully fail to pay the penalty.

Upon receipt of such notice, the Division must restore the person's license if he is otherwise eligible to be licensed and he has paid the restoration fee required by G.S. 20-7. In addition, if the person whose license is revoked is not a resident of this State, the Division may notify the driver licensing agency in the person's state of residence that the person's license to drive in this State has been revoked.

(c) If the Division receives the notice described in subsection (b) before the effective date of the revocation order, the revocation must be rescinded and the person does not have to pay a restoration fee."

Sec. 20. G.S. 20-176 is rewritten to read as follows:

"§ 20-176. Penalty for misdemeanor or infraction.--(a) Violation of a provision of Part 9, 10, 10A, or 11 of this Article is an infraction unless the violation is specifically declared by law to be a misdemeanor or felony. Violation of the remaining Parts of this Article is a misdemeanor unless the violation is specifically declared by law to be an infraction or a felony.

(b) Unless a specific penalty is otherwise provided by law, a person found responsible for an infraction contained in this Article may be ordered to pay a penalty of not more than one hundred dollars ($100.00).

(c) Unless a specific penalty is otherwise provided by law, a person convicted of a misdemeanor contained in this Article may be imprisoned for not more than 60 days or fined not more than one hundred dollars ($100.00), or both such fine and imprisonment. A punishment is specific for purposes of this subsection if it contains a quantitative limit on the term of imprisonment or the amount of fine a judge can impose.

(d) For purposes of determining whether a violation of an offense contained in this Chapter constitutes negligence per se, criminal offenses and infractions shall be treated identically."

Sec. 21. G.S. 20-79(a) is amended by adding between the figure ($1,000) and the period in the subsection the words "and may be imprisoned for not more than 60 days, or both such fine and imprisonment".

Sec. 22. G.S. 20-108 is amended by inserting between the words "or" and "imprisonment" the words "up to six months".

Sec. 23. G.S. 20-183.8 is amended by rewriting subsection (c) of that section to read as follows:

"(c) Except for the unauthorized reproduction of an inspection sticker, violation of any provision of this Article is an infraction which carries a penalty of not more than fifty dollars ($50.00). The unauthorized reproduction of an inspection sticker is a forgery under G.S. 14-119." That section is further amended by deleting the last sentence of subsection (d).

Sec. 24. G.S. 20-37.6 is amended by deleting from subsection (f)(1) the words "The penalty for a violation of G.S. 20-37.6(e)(1), and (2) and (3) shall be ten dollars ($10.00)" and inserting in their place the words "A violation of G.S. 20-37.6(e)(1), (2) or (3) is an infraction which carries a penalty of ten dollars ($10.00)"; that section is further amended by deleting from subsection (f)(2) the words "The penalty for violation of G.S. 20-

37.6(e)(4) shall be fifty dollars ($50.00)" and by inserting in their place the words "A violation of G.S. 20-37.6(e)(4) is an infraction which carries a penalty of fifty dollars ($50.00)".

Sec. 25. G.S. 20-146(e) is amended by deleting the last sentence of that subsection.

Sec. 26. G.S. 20-135(d) is repealed.

Sec. 27. G.S. 20-137 is amended by deleting the second paragraph of that section.

Sec. 28. G.S. 20-137.1(b) is amended by deleting the word "fine" and inserting in its place the word "penalty".

Sec. 29. G.S. 20-140(d) is rewritten to read as follows:

"(d) Reckless driving as defined in subsections (a) and (b) is a misdemeanor, punishable by imprisonment not to exceed six months or a fine not to exceed five hundred dollars ($500.00), or both a fine and imprisonment."

Sec. 30. G.S. 20-141 is amended by adding a new subsection (j1) to read as follows:

"(j1) It is a misdemeanor punishable as provided in G.S. 20-176 for a person to drive a vehicle on a highway at a speed of more than 75 miles per hour, regardless of the speed limit established by law for the highway where the offense occurred."

Sec. 31. G.S. 20-141(j) is amended by inserting after the word "laws" the words "is guilty of a misdemeanor and".

Sec. 32. G.S. 20-157(a) is amended by adding a new sentence at the end of the subsection to read as follows: "Violation of this subsection is a misdemeanor punishable as provided by G.S. 20-176."

Sec. 33. G.S. 20-162.1 is amended in the second paragraph by deleting the word "convicted" and inserting in its place the words "found

responsible for an infraction".

Sec. 34. G.S. 20-166.1 is amended by adding a new subsection (k) to read as follows:

"(k) A violation of any provision of this section is a misdemeanor punishable as provided in G.S. 20-176."

Sec. 35. G.S. 153A-123(b) is rewritten to read as follows:

"(b) Unless the Board of Commissioners has provided otherwise, violation of a county ordinance is a misdemeanor or infraction as provided by G.S. 14-4. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4."

Sec. 36. G.S. 160A-175(b) is rewritten to read as follows:

"(b) Unless the Council shall otherwise provide, violation of a city ordinance is a misdemeanor or infraction as provided by G.S. 14-4. An ordinance may provide by express statement that the maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation is some amount of money or number of days less than the maximum imposed by G.S. 14-4."

Sec. 37. G.S. 116-44.4(g) is rewritten to read as follows:

"(g) Violation of an ordinance adopted under any portion of this Part is an infraction as defined in G.S. 14-3.1 and is punishable by a penalty of not more than fifty dollars ($50.00). An ordinance may provide that certain prohibited acts shall not be infractions and in such cases the provisions of subsection (h) may be used to enforce the ordinance."

Sec. 38. G.S. 115C-46(a) is amended by deleting the second and third sentence of that subsection and inserting in lieu thereof: "A violation of a rule or regulation concerning parking on public schools grounds is an infraction punishable by a penalty of not more than ($10.00) unless the

regulation provides that the violation is not punishyable as an infraction."

Sec. 39. G.S. 115D-21(b) is amended by deleting the fifth sentence of that subsection and inserting in its place the following: "Violation of any such rules, regulations, or ordinances, is an infraction punishable by a penalty of not more than one hundred dollars ($100)."

Sec. 40. G.S. 143-116.7(c) is rewritten to read:

"(c) A violation of these regulations or ordinances is an infraction punishable by a penalty not to exceed fifth dollars ($50)."

Sec. 41. This act shall become effective January 1, 1986, and shall apply to offenses committed on or after that date. Offenses committed before the effective date of this act shall be governed by the law in effect at the time of the offense.

APPENDIX F

A BILL TO BE ENTITLED

AN ACT TO MAKE THE PAROLE CONSEQUENCES OF ALL LIFE SENTENCES THE SAME.

Section 1. G.S. 15A-1355(c) is amended by deleting the second sentence of that subsection and by adding a new sentence at the end of the subsection to read: "This subsection does not apply to:

1. Class A or B felonies;
2. Class C felonies in which a life sentence is imposed; and
3. Sentences of special probation imposed under G.S. 15A-1344(e) or 15A-1351(a).

Sec. 2. This act shall become effective July 1, 1985 and shall apply to offenses committed on and after that date.

APPENDIX G

A BILL TO BE ENTITLED

AN ACT TO MODIFY COURT COSTS.

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 thereof . . . . . .25."

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 thereof . . . . . .25."

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. 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. 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 estate case was opened, and no maximum fee shall apply.

c. 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. 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. 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 July 1, 1985.

APPENDIX H

A BILL TO BE ENTITLED

AN ACT TO GIVE SALARY CREDIT TO BEGINNING MAGISTRATES WITH LAW ENFORCEMENT OR JUDICIAL DEPARTMENT EXPERIENCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-171.1 is amended by adding a new subsection (4) as follows:

"(4) Notwithstanding any other provision of this section, a beginning full-time magistrate with ten years' experience within the last twelve years as a sheriff or deputy sheriff, city or county police officer or highway patrolman in the State of North Carolina or with ten years' experience within the last twelve years as clerk of superior court or an assistant or deputy clerk of court in the State of North Carolina may be initially employed at the annual salary provided in the table above for a magistrate with "5 or more but less than 7" years of service. Seniority increments for a magistrate with law enforcement or judicial system experience described herein accrue thereafter at two-year intervals, as provided in the table. A beginning magistrate who meets the criteria for increased beginning salary under both subdivisions (3) and (4) may not combine those entry levels but may begin at the higher of the two levels.

Sec. 2. This act shall become effective July 1, 1985 and applies to persons initially appointed on or after that date.

APPENDIX I

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT REQUESTS FOR ADMISSIONS BE FILED LIKE OTHER DISCOVERY PAPERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 5(d) is amended in the second sentence by adding between the words and punctuation "documents," and "and" the following words and punctuation: "requests for admissions,".

Sec. 2. This act is effective October 1, 1985 and applies to all requests for admissions made on or after the date and all responses to those requests.

APPENDIX J

A BILL TO BE ENTITLED

AN ACT TO ALLOW CIVIL MOTIONS TO BE HEARD OUTSIDE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding a new section G.S. 7A-49.4 to read:

"§ 7A-49.4. Civil Motions Heard Outside of County. During a week in which no session of superior court is scheduled in a county in which a civil action is pending, motions on pending civil actions may be heard with the consent of the presiding judge and upon due notice in any county within the judicial district before a judge regularly assigned to hold court in that judicial district, a resident superior court judge of the district, or a special superior court judge residing in the district. No motion scheduled pursuant to this section may take precedence over a regularly scheduled criminal matter."

Sec. 2. This act is effective October 1, 1985, and applies to any motions pending on filed on or after that date.

APPENDIX K

A BILL TO BE ENTITLED

AN ACT TO PROTECT JURORS FROM FIRINGS BECAUSE OF JURY SERVICE.

The General Assembly of North Carolin enacts:

Section 1. Chapter 9 of the General Statutes of North Carolina is amended by adding a new Article to read:

Article 5.

Protection of Juror's Employment

G.S. 9-32. Employer Discipline Prohibited.

(a) An employer shall not deprive an employee of his employment, or threaten or otherwise coerce him with respect thereto, because he receives a summons, responds thereto, serves as a juror, or attends court for prospective jury service.

(b) The provisions of this section are equally applicable to grand jury and petit jury service.

G.S. 9-33. Improper Discipline as Criminal Contempt.

Any employer who violates G.S. 9-32 is guilty of criminal contempt and may be punished as provided in G. S. 5A-12.

G.S. 9-34. Civil Remedy for Improper Discipline.

(a) If an employer discharges an employee in violation of G.S. 9-32 the employee within 60 days may bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee.

(b) Damages recoverable under this section shall not exceed the wages of the employee for six weeks.

(c) If the employee prevails in an action brought under this section, the court shall award him a reasonable attorney's fee.

Sec. 2. G. S. 5A-11(a) is amended by adding a new subdivision (9a) to read:

"(9a) Violation of the provisions of Article 5 of Chapter 9 of the General Statutes."

Sec. 3. G.S. 5A-12(b) is amended by deleting "G.S. 5A-11(5) or G.S. 5A-11(9)" and inserting in their place "G.S. 5A-11(a)(5), -11(a)(9), or -11(a)(9a)."

Sec. 4 This act shall become effective on October 1, 1985 and shall apply to violations of Section 1 of this act occurring on or after that date.

APPENDIX L

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR INITIAL RANDOMIZATION OF THE BIENNIAL JURY LIST IN COUNTIES USING ELECTRONIC DATA PROCESSING EQUIPMENT FOR JURY SELECTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 9-2.1 is amended by designating the current section as subsection (a) and adding a new subsection (b) to read as follows:

"(b) To facilitate random selection of jurors, all the names on the biennial jury list may be sorted into random order before the first venire is drawn. Thereafter, names may be selected sequentially from the randomized list without further randomization, except as required by G.S. 15A-1214. Public access to the jury list as required by G.S. 9-4 shall be limited to an alphabetical listing of the names. Access to the randomized list shall be prohibited."

Sec. 2. This act is effective on ratification.

APPENDIX M

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO PROVIDE FOR NONPARTISAN SELECTION OF JUSTICES AND JUDGES OF THE GENERAL COURT OF JUSTICE.

The General Assembly of North Carolina enacts:

Section 1. Article IV, Section 16, of the Constitution of North Carolina is rewritten to read as follows:

"Sec. 16. Appointment and tenure of justices and judges of the General Court of Justice.

(1) General principles. Justices and Judges of the General Court of Justice should be selected for and continue to hold office solely upon the basis of personal and professional fitness to administer right and justice wisely, according to law, and without favor, denial, or delay, to all persons who come into the courts. While their continuation in office should be periodically subject to approval by the people, both their initial selection and continuation in office should be free, so far as may be, from the influences and necessities of partisan political activity.

(2) Appointment, retention, and terms of justices and judges. On and after January 1, 1987, when a vacancy occurs in the office of Chief Justice, the Governor shall fill the vacancy by appointing to the office an incumbent Associate Justice of the Supreme Court. On and after January 1, 1987, when a vacancy occurs in the office of Associate Justice or Judge of the General Court of Justice, the Governor shall fill the vacancy by appointment from a list of nominees submitted by the judicial nominating commission. If the Governor fails to appoint from the list within a time to be specified by the

General Assembly, the Lieutenant Governor shall make the appointment from the same list of nominees.

The term of office by appointment as Chief Justice, Associate Justice, or Judge extends to January 1 after the next election for members of the General Assembly that is held more than one year after the appointment is made. At that election, a person holding by appointment the office of Chief Justice, Associate Justice, or Judge who desires to continue in office shall be subject to approval, by such percentage of the votes cast on the issue of his retention as the General Assembly shall determine, but not less than fifty percent (50%), for retention in office. A Chief Justice, Associate Justice, or Judge then approved for retention serves a regular term.

The regular term of office of the Chief Justice, Associate Justices and Judges of the Appellate Division and of Judges of the Superior Court Division shall be eight years. The regular term of office of District Judges shall be fixed by the General Assembly, but shall not exceed eight years.

At the last election for members of the General Assembly held before the expiration of a regular term of office, a Chief Justice, Associate Justice, or Judge who desires to continue in office shall be subject to approval, by such percentage of the votes cast on the issue of his retention as the General Assembly shall determine, but not less than fifty percent (50%), to continue in office for the next succeeding regular term.

If the voters fail to approve the retention in office of a Chief Justice, Associate Justice, or Judge serving an appointed or regular term, his office shall become vacant at the end of the term, and it shall be filled by appointment as prescribed in this Section.

Voting on retention of the Chief Justice, Associate Justices, or Judges of the Appellate Division and of any special Superior Court Judges authorized

by the General Assembly shall be by the qualified voters of the whole State; voting on retention of regular Superior Court Judges shall be by the qualified voters of their respective judicial divisions; and voting on retention of district judges shall be by the qualified voters of their respective judicial districts.

(3) Judicial nominating commission. A judicial nominating commission shall be created by the General Assembly. Subject to the provisions of this Section, the composition, modes of procedure, and method of selecting members of the judicial nominating commission shall be determined by the General Assembly. At least one third of the members of the commission shall be appointed by the Governor, and at least one third by the Chief Justice of the Supreme Court. The commission shall include at least one member from each judicial district of the State. The General Assembly may provide for exercise of commission powers, including the power of nomination, by panels of less than the full membership of the commission. At least one third of the members of any panel so empowered shall be appointees of the Governor and at least one third shall be appointees of the Chief Justice of the Supreme Court. No nomination for appointment as justice or judge may be made by the commission or any panel thereof except upon the concurrence of at least a majority of those members empowered to make the nomination. At least a majority of the members authorized to make nominations of persons to be regular Superior Court Judges and District Judges shall be residents of the judicial division in which the vacancy exists. At least one third of the members authorized to make nominations of persons to be District Judges shall be residents of the judicial district in which the vacancy exists. The members authorized to make nominations of persons to be Associate Justices of the Supreme Court and Judges of the Court of Appeals shall include at least one member resident in each of the

judicial divisions of the State. No person, other than a Justice of the Supreme Court, holding an office established under Articles II, III, and IV of this Constitution is eligible to be a member of the judicial nominating commission during the term of the office held. Initial appointments to the judicial nominating commission shall be made on or before January 31, 1987, for terms of office commencing January 1, 1987.

(4) Transition provisions. The term of office of a person who has been elected before January 1, 1987, to the office of Chief Justice, Associate Justice or Judge of the General Court of Justice for a term which extends beyond January 1, 1987, and who is in office on January 1, 1987, shall not be affected by the provisions of this Section. If the person so elected continues to serve for the remainder of the term, that person may stand for retention in the office for a succeeding regular term as provided in this Section. If the person continues to serve for the remainder of the term but does not stand for retention, a vacancy is created in the office upon expiration of the term, and this vacancy shall be filled by appointment as provided in this Section.

The term of office of a person who has been appointed before January 1, 1987, to the office of Chief Justice, Associate Justice, Judge of the Court of Appeals, regular Superior Court Judge, or District Judge for a term which extends beyond January 1, 1987, and who is in office on January 1, 1987, shall end on the first day of January 1, 1989. If the person continues to serve until the end of that term, a vacancy is created in the office upon expiration of the term, and this vacancy shall be filled by appointment as provided in this Section.

Upon the death, resignation, removal, or retirement of any incumbent justice or judge on or after January 1, 1987, and before the expiration of his

term of office the resulting vacancy shall be filled by appointment as provided in this Section.

Vacancies in judicial office occurring before January 1, 1987, and not filled by that date, shall be filled by appointment as provided in this Section.

From the date any incumbent described in this subsection is continued in office by retention vote for a term next succeeding the term in progress on January 1, 1987, or is succeeded in office by another person, the office is held subject to the provisions of this Section."

Sec. 2. Article IV, Section 9(1), of the Constitution of North Carolina is amended by deleting the word "election" in the first sentence, and inserting in lieu thereof the word "selection"; and by deleting the word "elected" in the second sentence, and inserting in lieu thereof the word "selected".

Sec. 3. Article IV, Section 10, of the Constitution of North Carolina is amended by deleting the word "elected" in the third and fourth sentences, and substituting in its place in each instance the word "selected"; and by deleting the second and seventh sentences.

Sec. 4. The amendment set out in Sections 1, 2, and 3 of this act shall be submitted to the qualified voters of the State at the general election to be held in November 1986. That election shall be conducted under the laws then governing elections in this State. At that election, each qualified voter desiring to vote shall be provided a ballot on which shall be printed the following:

"[_] FOR constitutional amendment to substitute for present method of selecting justices and judges in partisan elections a method by which they will be appointed by the Governor from among persons nominated by a nonpartisan citizen's commission on the basis of

merit and qualification for judicial office. All justices and judges so appointed will then serve for limited terms after which the question of their retention in office is regularly submitted for approval or disapproval by vote of the people at general elections."

"[_] AGAINST constitutional amendment to substitute for present method of selecting justices and judges in partisan elections a method by which they will be appointed by the Governor from among persons nominated by a nonpartisan citizen's commission on the basis of merit and qualification for judicial office. All justices and judges so appointed will then serve for limited terms after which the question of their retention in office is regularly submitted for approval or disapproval by vote of the people at general elections."

Those qualified voters favoring the amendment set out in Sections 1, 2, and 3 of this act shall vote by marking an X or a check mark in the square beside the statement beginning "FOR", and those qualified voters opposed to that amendment shall vote by marking an X or a check mark in the square beside the statement beginning "AGAINST".

Notwithstanding the provisions of this section, voting machines may be used in accordance with rules and regulations prescribed by the State Board of Elections.

Sec. 5. If a majority of the votes cast thereof are in favor of the amendment set out in Sections 1, 2, and 3 of this act, then the State Board of Elections shall certify the amendment to the Secretary of State, who shall enroll the amendment so certified among the permanent records of his office, and the amendment shall become effective on January 1, 1987.

Sec. 6. This act is effective upon ratification.

APPENDIX N

A BILL TO BE ENTITLED

AN ACT TO CREATE A JUDICIAL NOMINATING COMMISSION AND TO IMPLEMENT THE NONPARTISAN PLAN FOR THE SELECTION OF JUDGES AS REQUIRED BY ARTICLE IV, SECTION 16, OF THE NORTH CAROLINA CONSTITUTION.

The General Assembly of North Carolina enacts:

Section 1. A new Article is added to Chapter 7A of the General Statutes to read as follows:

"ARTICLE 1A.

"Selection and Tenure of Judges.

§ 7A-4.1. Appointment of justices and judges.--On and after January 1, 1987, when a vacancy occurs in the office of Chief Justice, the Governor shall fill the vacancy by appointing to the office an incumbent associate justice of the Supreme Court. On and after January 1, 1987, when a vacancy occurs in the office of associate justice or judge of the General Court of Justice, the Governor shall fill the vacancy by appointment from a list of nominees submitted by the judicial nominating commission as provided in this Article.

"§ 7A-4.2. Judicial nominating commission.--(a) Composition of commission.--The judicial nominating commission shall consist of members at large, divisional members, and district members.

(b) At-large members.--The members at large are:

(1) one citizen not licensed to practice law in the State from each of the judicial divisions of the State, to be appointed by the Governor;

(2) two citizens not licensed to practice law in the State, each a resident of a different judicial division of the State, one to

be appointed by the President Pro Tempore of the Senate and one by the Speaker of the House of Representatives;

(3) one citizen, licensed to practice law in the State, from each of the judicial divisions of the State, to be appointed by the Chief Justice of the Supreme Court; and

(4) two members of the Supreme Court, one of whom shall serve as chairman of the commission, and another who shall serve in the absence of the chairman as chairman pro tempore of the commission, each to be appointed by that court.

(c) Divisional members.--The divisional members are:

(1) two citizens not licensed to practice law in the State from each of the judicial divisions of the State, to be appointed by the Governor;

(2) two citizens licensed to practice law in the State from each of the judicial divisions of the State, to be appointed by the Chief Justice of the Supreme Court;

(3) four citizens not licensed to practice law in the State, two to be appointed by the President Pro Tempore of the Senate, and two by the Speaker of the House of Representatives; and

(4) four citizens licensed to practice law in the State, two to be appointed by the President Pro Tempore of the Senate and two by the Speaker of the House of Representatives.

(d) District members.--The district members are:

(1) two citizens not licensed to practice law in the State from each of the judicial districts of the State, to be appointed by the Governor; and

(2) two citizens licensed to practice law in the State from each of the judicial districts of the State, to be appointed by the Chief Justice of the Supreme Court.

The removal of a district member's residence from the district of appointment creates a vacancy to be filled from that district as provided in subsection (f).

(e) Residence of Commission members; sequence of appointments.--Exclusive of the chairman and chairman pro tempore, each at-large and divisional member of the commission shall be a resident of a different judicial district of the State. The removal of such a member's residence from the district of appointment creates a vacancy to be filled from that district as provided in subsection (f). To ensure the required distribution of at-large and divisional members among the judicial districts, initial appointments of such members other than the chairman and chairman pro tempore shall be made by the appointing authorities in the following sequence: the Chief Justice, the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

(f) Length of terms; filling of vacancy; prohibition on appointment of commission member to judgeship.--The chairman and chairman pro tempore shall serve at the pleasure of the Supreme Court. The members appointed by the Governor and the Chief Justice shall serve initial terms as follows: members from the first judicial division, one year; members from the second judicial division, two years; members from the third judicial division, three years; members from the fourth judicial division, four years. Thereafter all members appointed by the Governor and the Chief Justice shall serve four-year terms. The members appointed by legislative authorities shall serve two-year terms. If a vacancy occurs before the expiration of a term, the vacancy shall be

filled for the remainder of that term by the appointing authority that made the initial appointment. Upon the simultaneous expiration of the terms of at-large and divisional members other than the chairman and chairman pro tempore residing within a particular judicial division, the appointing authorities identified in subsection (e), proceeding in the order specified in that subsection but without regard to the particular districts within which prior appointments may have been made by any appointing authorities, shall appoint successor members of the same categories and in the same numbers previously appointed within the division. Upon the expiration of the term of a district member, a successor member of the same category shall be appointed by the authority that made the initial appointment. A member appointed by the Governor or Chief Justice who has served a full four-year term may not be reappointed for at least two years after the expiration of his term. A member appointed by a legislative authority may be reappointed for not more than one additional term. No member of the commission is eligible for appointment as an associate justice or judge of the General Court of Justice for a vacancy that is created during the member's service on the commission and for a period of six months thereafter.

(g) Travel expenses and per diem for commission members.--While engaged on official business, a member of the commission is entitled to such per diem and reimbursement for travel and subsistence as may be authorized for members of State boards and commissions generally.

"§ 7A-4.3. Commission function, powers, and procedure.--(a) Function of commission.--The function of the judicial nominating commission is to identify and nominate for appointment those persons most highly qualified personally and professionally to be justices and judges of the General Court of Justice without regard to any partisan political considerations.

term of office the resulting vacancy shall be filled by appointment as provided in this Section.

Vacancies in judicial office occurring before January 1, 1987, and not filled by that date, shall be filled by appointment as provided in this Section.

From the date any incumbent described in this subsection is continued in office by retention vote for a term next succeeding the term in progress on January 1, 1987, or is succeeded in office by another person, the office is held subject to the provisions of this Section."

Sec. 2. Article IV, Section 9(1), of the Constitution of North Carolina is amended by deleting the word "election" in the first sentence, and inserting in lieu thereof the word "selection"; and by deleting the word "elected" in the second sentence, and inserting in lieu thereof the word "selected".

Sec. 3. Article IV, Section 10, of the Constitution of North Carolina is amended by deleting the word "elected" in the third and fourth sentences, and substituting in its place in each instance the word "selected"; and by deleting the second and seventh sentences.

Sec. 4. The amendment set out in Sections 1, 2, and 3 of this act shall be submitted to the qualified voters of the State at the general election to be held in November 1986. That election shall be conducted under the laws then governing elections in this State. At that election, each qualified voter desiring to vote shall be provided a ballot on which shall be printed the following:

"[_] FOR constitutional amendment to substitute for present method of selecting justices and judges in partisan elections a method by which they will be appointed by the Governor from among persons nominated by a nonpartisan citizen's commission on the basis of

(d) Meetings of commission panels.--Panels of the commission shall meet on call of the chairman, chairman pro tempore, or a majority of the members of the panel. All calls shall be upon reasonable notice to all members entitled to participate. Meetings of panels of the commission shall be presided over by the chairman or, in his absence, the chairman pro tempore. The chairman or chairman pro tempore presiding shall vote only when necessary to break tie votes of the members of the panel present. A simple majority of the members constituting the executive panel or any of the nominating panels constitutes a quorum for exercise of the panel's powers, but no nomination may be made except upon the concurrence of a majority of all of the members of a nominating panel.

(e) Secretary to panel.--The chairman of each panel may appoint a secretary from among its members to serve at his pleasure.

(f) Open meetings law and public record law inapplicable.--Notwithstanding the provisions of Chapter 132 and Article 33C of Chapter 143 of the General Statutes, the meetings, deliberations, investigations, records and documents of the judicial nominating commission shall be confidential and shall be closed to the public, except that public hearings so designated by the commission shall be open to the public.

"§ 7A-4.4. Nomination of justices and judges.--(a) Number of nominees.--For any vacancy in the office of associate justice or judge of the appellate division occurring on or after January 1, 1987, the commission shall nominate five persons; for any vacancy in the office of special superior court judge occurring on or after January 1, 1987, the commission shall nominate three persons; and for any vacancy in the office of regular superior court judge or district court judge occurring on or after January 1, 1987, the commission shall nominate two or three persons. Before submitting any nominations the

commission shall ascertain that the nominee is willing to be nominated and to serve if appointed.

(b) Timing of nominations and appointments.--Nominations may be submitted to the Governor not more than 60 days in advance of a vacancy occurring by reason of the expiration of a term if a timely declaration of intention to stand for retention has not been submitted, or by reason of mandatory retirement of a judge. All nominations shall in any event be submitted not later than 60 days after a vacancy occurs, except that when two or more vacancies exist simultaneously in the Appellate Division of the General Court of Justice or in the superior court or district court benches of a particular judicial district, the commission may delay submission of nominations to fill the second or subsequent vacancies until 15 days after an appointment has been made from the preceding list of nominees submitted. No appointment of a justice or judge is void solely for the reason that his nomination was not submitted within the time limits specified in this section. Nominations by the commission shall be certified to the Governor over the signature of the chairman or chairman pro tempore.

(c) Notification of imminent vacancy.--To assist the commission, the Director of the Administrative Office of the Courts shall notify the commission of the imminence of a vacancy in a judicial office occurring by expiration of a term or mandatory retirement reasonably in advance of its occurrence, and shall notify the commission of other vacancies as soon as practicable.

"§ 7A-4.5. Appointment by Governor.--Upon receipt of nominations from the judicial nominating commission, the Governor shall cause the identity of the nominees to be made public. Not less than 10 days nor more than 30 days after receipt of nominations or the occurrence of a vacancy, whichever event

last occurs, the Governor shall appoint one of the nominees to fill the vacancy. If the Governor fails to make an appointment within the period provided, the Lieutenant Governor shall make the appointment from the nominees submitted to the Governor.

"§ 7A-4.6. Terms of office.--The initial term of office for a justice or judge appointed under this Article shall be until January 1 following the next election for members of the General Assembly that occurs more than one year after the appointment.

The regular term of office of a justice or judge of the appellate division or a judge of the superior court division is eight years. The regular term of office of a judge of the district court division who takes office on or after January 1, 1987, is six years. All terms of office begin on January 1.

The regular term of office of a district judge who is in office on January 1, 1987, is extended from the first Monday in December of the last year of his term in office through the last day of the same month.

"§ 7A-4.7. Retention or rejection by popular vote.--On and after January 1, 1987, a Chief Justice, associate justice or judge who desires to be retained in office beyond his current term must file a declaration of intention to stand for retention with the State Board of Elections not less than 120 and not more than 180 days before the expiration of his term of office. Failure to file such a declaration within the time specified creates a vacancy in the office at the end of the term. The ballot, bearing no party designation, shall contain the question 'Shall Justice (or Judge) _____ of the (name of court) be retained in office?' If more than fifty percent (50%) of those voting on the question vote 'Yes,' the justice or judge is elected to a succeeding regular term. If fifty percent (50%) or fewer of

those voting on the question vote 'Yes,' a vacancy is created in the office at the end of the term.

For retention in office of justices and judges of the appellate division and of special superior court judges, the qualified voters of the State are eligible to vote. For retention in office of regular superior court judges, the qualified voters of the judicial division in which the judge resides are eligible to vote. For retention in office of district judges, the qualified voters of the district in which the judge resides are eligible to vote.

"§ 7A-4.8. Transition provisions.--(a) Elected incumbents.--The term of office of a person elected before January 1, 1987, to the office of Chief Justice, Associate Justice or Judge of the General Court of Justice for a term that extends beyond January 1, 1987, and who is in office on January 1, 1987, shall not be affected by this Article. If the person so elected continues to serve for the remainder of the term, that person may stand for retention in office for a succeeding regular term as provided in this Article. If the person continues to serve for the remainder of the term but does not stand for retention, a vacancy is created in the office upon expiration of the term, and this vacancy shall be filled by appointment as provided in this Article.

(b) Incumbent special superior court judges.--The term of office of a person appointed before January 1, 1987, to the office of special superior court judge for a term that extends beyond January 1, 1987, and who is in office on January 1, 1987, shall not be affected by this Article. If the person continues to serve for the remainder of the term, a vacancy is created in the office upon expiration of the term, and this vacancy shall be filled by appointment as provided in this Article.

(c) Appointed incumbents other than special superior court judges.--The term of office of a person appointed before January 1, 1987, to the office of

Chief Justice, associate justice, judge of the Court of Appeals, regular superior court judge, or district judge for a term that extends beyond January 1, 1987, and who is in office on January 1, 1987, shall end on the first day of January, 1989. If the person continues to serve until the end of that term, a vacancy is created in the office upon expiration of the term, and this vacancy shall be filled by appointment as provided in this Article.

(d) Vacancies before expiration of incumbents' terms.--Upon the death, resignation, removal, or retirement of any incumbent justice or judge on or after January 1, 1987, and before the expiration of his term of office, the resulting vacancy shall be filled by appointment as provided in this Article.

(e) Vacancies existing on January 1, 1987.--Vacancies in a judicial office occurring before January 1, 1987, and not filled by that date shall be filled by appointment as provided in this Article.

(f) When transition to nonpartisan system complete.--From the date any incumbent described in this section is continued in office by retention vote for a term next succeeding the one in progress on January 1, 1987, or is succeeded in office by another person, the office is held subject to the provisions of this Article.

"§ 7A-4.9. Application to special superior court judges.--This Article shall apply to special superior court judges, except that the term of office of a special superior court judge who is retained in office in an election conducted pursuant to this Article is eight years, and each special superior court judge shall reside in the judicial division for which he is selected. Each judicial division is entitled to not more than two special superior court judges. If, on the effective date of this section, there are more than two special superior court judges residing in any judicial division, each may remain in office until the expiration of the term for which he was appointed,

but no special judge may be appointed for that division until the number is reduced to less than two.

"§ 7A-4.10. Partisan political activity prohibited.--From the date a person is nominated for appointment to a judicial office until the particular appointment is made, it shall be unlawful for the person, directly or indirectly, to make any contribution to or hold any office in a political party or organization or to take part, other than by voting, in any political campaign between opposing candidates for elective office. Political activity by an incumbent judge or justice of the General Court of Justice is limited to that authorized by the Code of Judicial Conduct promulgated by the Supreme Court."

Sec. 2. G.S. 7A-10(a) is amended by rewriting the first sentence to read as follows:

"The Supreme Court shall consist of a Chief Justice and six associate justices."

Sec. 3. G.S. 7A-16 is amended by deleting the second, third, fourth, and fifth paragraphs and by rewriting the first paragraph to read as follows:

"The Court of Appeals shall consist of 12 judges. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of the office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice. The Court of Appeals is authorized to promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary for the discharge of the judicial business lawfully assigned to it."

Sec. 4. G.S. 7A-45(a) is rewritten to read as follows: "Pursuant to Article IV, Section 9 of the Constitution, eight special superior court judges are authorized. A special judge takes the same oath of office and is subject to the same requirements and disabilities as is or may be prescribed by law for regular judges of the superior court, save the requirement of residence in a particular district."

Sec. 5. G.S. 7A-140 is amended by rewriting paragraph one to read as follows:

"The General Assembly shall prescribe the number of district court judges for each district, but each district must have at least one judge. Each judge shall be a resident of the district for which selected."

Sec. 6. G.S. 7A-147(c) is amended by placing a period after the word "training" in line 6 of the first paragraph thereof, and deleting the remainder of the sentence.

Sec. 7. G.S. 7A-45(b), G.S. 7A-142, G.S. 7A-147(a) and (b), and all other laws and parts of laws in conflict with this act are repealed.

Sec. 8. Partial invalidity. If any provision of this act or the application of it is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 9. This act shall become effective January 1, 1987, if Article IV, Section 16 of the Constitution of North Carolina is amended by the amendment proposed in H.B. _____ (S.B. _____) ratified _____,. If the amendment proposed by H.B. _____ (S.B. _____) is not approved by the voters, this act shall be of no effect.