

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**HOUSE BILL 1848
RATIFIED BILL**

AN ACT TO AUTHORIZE THE COLLECTION OF OFFENDER FINES AND FEES ASSESSED BY THE GENERAL COURT OF JUSTICE BY CREDIT CARD, CHARGE CARD, OR DEBIT CARD; TO AUTHORIZE THE USE OF ELECTRONIC FILING IN THE TRIAL COURTS; TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE THE JUDICIAL DEPARTMENT WITH CRIMINAL BACKGROUND CHECKS FROM THE STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORIES; TO ESTABLISH A PERMANENCY MEDIATION PROGRAM; TO AMEND THE LAW PROVIDING FOR FOREIGN LANGUAGE INTERPRETERS IN THE COURTS; TO AUTHORIZE THE ESTABLISHMENT OF CERTAIN POSITIONS WITHIN THE JUDICIAL DEPARTMENT; TO REVISE AND UPDATE THE PROCEDURES AND RESPONSIBILITIES OF THE JUDICIAL STANDARDS COMMISSION AND TO AUTHORIZE SIX ADDITIONAL MEMBERS OF THE COMMISSION; AND TO MAKE TECHNICAL CORRECTIONS AND ADJUSTMENTS TO PROVISIONS AFFECTING THE COURTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 28 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-321. Collection of offender fines and fees assessed by the court.

The Judicial Department may, in lieu of payment by cash or check, accept payment by credit card, charge card, or debit card for the fines, fees, and costs owed to the courts by offenders."

SECTION 1.(b) G.S. 7A-343 reads as rewritten:

"§ 7A-343. Duties of Director.

The Director is the Administrative Officer of the Courts, and his duties include the following:

(9b) Enter into contracts with one or more private vendors to provide for the payment of fines, fees, and costs due to the court by credit, charge, or debit cards; such contracts may provide for the assessment of a convenience or transaction fee by the vendor to cover the costs of providing this service;

SECTION 2.(a) G.S. 1A-1, Rule 5(e), reads as rewritten:

- "(e) (1) Filing with the court defined. – The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.
- (2) Filing by ~~telefacsimile transmission~~ electronic means. – If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, costs, procedures and specifications for the filing of pleadings or other court papers by ~~telefacsimile transmission~~,

electronic means, filing may be made by the transmission electronic means when, in the manner, and to the extent provided therein."

SECTION 2.(b) G.S. 7A-343(9a) reads as rewritten:

"(9a) Establish and operate systems and services that provide for electronic filing in the court system and further provide electronic transaction processing and access to court information systems pursuant to G.S. 7A-343.2; and".

SECTION 2.(c) Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-49.5. Statewide electronic filing in courts.

(a) The General Assembly finds that the electronic filing of pleadings and other documents required to be filed with the courts may be a more economical, efficient, and satisfactory procedure to handle the volumes of paperwork routinely filed with, handled by, and disseminated by the courts of this State, and therefore authorizes the use of electronic filing in the courts of this State.

(b) The Supreme Court may adopt rules governing this process and associated costs and may supervise its implementation and operation through the Administrative Office of the Courts. The rules adopted under this section shall address the waiver of electronic fees for indigents.

(c) The Administrative Office of the Courts may contract with a vendor to provide electronic filing in the courts, provided that the costs for the hardware and software are not paid using State funds.

(d) Any funds received by the Administrative Office of the Courts from the vendor selected pursuant to subsection (c) of this section, other than applicable statutory court costs, as a result of electronic filing, shall be deposited in the Court Information Technology Fund in accordance with G.S. 7A-343.2."

SECTION 2.(d) G.S. 7A-343.2 reads as rewritten:

"§ 7A-343.2. Court Information Technology Fund.

The Court Information Technology Fund is established within the Judicial Department as a nonreverting, interest-bearing special revenue account. Accordingly, revenue in the Fund at the end of a fiscal year does not revert and interest and other investment income earned by the Fund shall be credited to it. All moneys collected by the Director pursuant to G.S. 7A-109(d) and G.S. 7A-49.5 shall be remitted to the State Treasurer and held in this Fund. Moneys in the Fund shall be used to supplement funds otherwise available to the Judicial Department for court information technology and office automation needs. The Director shall report by August 1 and February 1 of each year to the Joint Legislative Commission on Governmental Operations, the Chairs of the Senate and House Appropriations Committees, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety on all moneys collected and deposited in the Fund and on the proposed expenditure of those funds collected during the preceding six months."

SECTION 3.(a) Part 2 of Article 4 of Chapter 114 is amended by adding a new section to read:

"§ 114-19.16. Criminal record checks for the Judicial Department.

(a) The Department of Justice may provide to the Judicial Department from the State and National Repositories of Criminal Histories the criminal history of any current or prospective employee, volunteer, or contractor of the Judicial Department. The Judicial Department shall provide to the Department of Justice, along with the request, the fingerprints of the current or prospective employee, volunteer, or contractor, a form signed by the current or prospective employee, volunteer, or contractor consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The fingerprints of the current or prospective employee, volunteer, or contractor shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation

shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Judicial Department shall keep all information obtained pursuant to this section confidential.

(b) The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 3.(b) Article 29 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-349. Criminal history record check; denial of employment, contract, or volunteer opportunity.

The Judicial Department may deny employment, a contract, or a volunteer opportunity to any person who refuses to consent to a criminal history check authorized under G.S. 114-19.16 and may dismiss a current employee, terminate a contractor, or terminate a volunteer relationship if that employee, contractor, or volunteer refuses to consent to a criminal history record check authorized under G.S. 114-19.16."

SECTION 4.(a) Article 2 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"§ 7B-202. Permanency mediation.

(a) The Administrative Office of the Courts shall establish a Permanency Mediation Program to provide statewide and uniform services to resolve issues in cases under this Subchapter in which a juvenile is alleged or has been adjudicated to be abused, neglected, or dependent, or in which a petition or motion to terminate a parent's rights has been filed. Participants in the mediation shall include the parties and their attorneys, including the guardian ad litem and attorney advocate for the child; provided, the court may allow mediation to proceed without the participation of a parent whose identity is unknown, a party who was served and has not made an appearance, or a parent, guardian, or custodian who has not been served despite a diligent attempt to serve the person. Upon a finding of good cause, the court may allow mediation to proceed without the participation of a parent who is unable to participate due to incarceration, illness, or some other cause. Others may participate by agreement of the parties, their attorneys, and the mediator, or by order of the court.

(b) The Administrative Office of the Courts shall establish in phases a statewide Permanency Mediation Program consisting of local district programs to be established in all judicial districts of the State. The Director of the Administrative Office of the Courts is authorized to approve contractual agreements for such services as executed by order of the Chief District Court Judge of a district court district, such contracts to be exempt from competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall promulgate policies and regulations necessary and appropriate for the administration of the program. Any funds appropriated by the General Assembly for the establishment and maintenance of permanency mediation programs under this Article shall be administered by the Administrative Office of the Courts.

(c) Mediation proceedings shall be held in private and shall be confidential. Except as provided otherwise in this section, all verbal or written communications from participants in the mediation to the mediator or between or among the participants in the presence of the mediator are absolutely privileged and inadmissible in court.

(d) Neither the mediator nor any party or other person involved in mediation sessions under this section shall be competent to testify to communications made during or in furtherance of such mediation sessions; provided, there is no confidentiality or privilege as to communications made in furtherance of a crime or fraud. Nothing in this subsection shall be construed as permitting an individual to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of Article 3 of Chapter 7B of the General Statutes or G.S. 108A-102.

(e) Any agreement reached by the parties as a result of the mediation, whether referred to as a "placement agreement," "case plan," or some similar name, shall be

reduced to writing, signed by each party, and submitted to the court as soon as practicable. Unless the court finds good reason not to, the court shall incorporate the agreement in a court order, and the agreement shall become enforceable as a court order. If some or all of the issues referred to mediation are not resolved by mediation, the mediator shall report that fact to the court."

SECTION 4.(b) The Administrative Office of the Courts may use funds available during the 2006-2007 fiscal year to implement the provisions of this section.

SECTION 5.(a) G.S. 7A-314(f) reads as rewritten:

"(f) ~~In a criminal case when a person who~~any case in which the Judicial Department is bearing the costs of representation for a party and that party or a witness for that party does not speak or understand the English language is an indigent defendant, a witness for an indigent defendant, or a witness for the Statelanguage, and the court appoints a foreign language interpreter to assist that ~~defendant or witness in the case,~~party or witness, the reasonable fee for the interpreter's ~~services, as set by the court, are~~services is payable from funds appropriated to the Administrative Office of the Courts. The appointment and payment shall be made in accordance with G.S. 7A-343(9b)."

SECTION 5.(b) G.S. 7A-343 is amended by adding a new subdivision to read:

"(9b) Prescribe policies and procedures for the appointment and payment of foreign language interpreters in those cases specified in G.S. 7A-314(f). These policies and procedures shall be applied uniformly throughout the General Court of Justice. After consultation with the Joint Legislative Commission on Governmental Operations, the Director may also convert contractual foreign language interpreter positions to permanent State positions when the Director determines that it is more cost-effective to do so."

SECTION 6. G.S. 7A-39 reads as rewritten:

"§ 7A-39. ~~Adverse weather cancellation~~**Cancellation of court sessions and closing court offices; extension of statutes of limitations in catastrophic conditions.**

(a) Cancellation of Court Sessions, Closing Court Offices. – In response to adverse weather or other ~~comparable~~emergency situations, any session of any court of the General Court of Justice may be cancelled, postponed, or altered by judicial officials, and court offices may be closed by judicial branch hiring authorities, pursuant to uniform statewide guidelines prescribed by the Director of the Administrative Office of the Courts.

(b) Authority of Chief ~~Justice to Extend Statutes of Limitations.~~Justice. – When the Chief Justice of the North Carolina Supreme Court determines and declares that catastrophic conditions exist or have existed in one or more counties of the State, the Chief Justice may by order entered pursuant to this subsection extend, to a date certain no fewer than 10 days after the effective date of the order, the time or period of limitation within which pleadings, motions, notices, and other documents and papers may be timely filed and other acts may be timely done in civil actions, criminal actions, estates, and special proceedings in each county named in the order.

(1) Catastrophic conditions defined. – As used in this subsection, "catastrophic conditions" means any set of circumstances that make it impossible or extremely hazardous for judicial officials, employees, parties, witnesses, or other persons with business before the courts to reach a courthouse, or that create a significant risk of physical harm to persons in a courthouse, or that would otherwise convince a reasonable person to avoid travelling to or being in the ~~courthouse, including conditions that may result from hurricane, tornado, flood, snowstorm, ice storm, other severe natural disaster, fire, or riot.~~courthouse.

(2) Entry of order. – The Chief Justice may enter an order under this subsection at any time after catastrophic conditions have ceased to exist. The order shall be in writing and shall become effective for each affected county upon ~~being filed in the office of the clerk of superior court of that county.~~ the date set forth in the order, and if no date is set forth in the order, then upon the date the order is signed by the Chief Justice.

(c) In Chambers Jurisdiction Not Affected. – Nothing in this section prohibits a judge or other judicial officer from exercising, during adverse weather or other emergency situations, any in chambers or ex parte jurisdiction conferred by law upon that judge or judicial officer, as provided by law. The effectiveness of any such exercise shall not be affected by a determination by the Chief Justice that catastrophic conditions existed at the time it was exercised."

SECTION 7.(a) If Senate Bill 1741, 2005 Regular Session, becomes law, then G.S. 7A-133(c), as amended by Section 14.5 of that act, reads as rewritten:

"(c) Each county shall have the numbers of magistrates and additional seats of district court, as set forth in the following table:

County	Magistrates Min	Additional Seats of Court
Camden	1 <u>3</u>	
Chowan	2 <u>3</u>	
Currituck	1 <u>4</u>	
Dare	3 <u>6</u>	
Gates	2	
Pasquotank	3 <u>5</u>	
Perquimans	2 <u>3</u>	
Martin	4	
Beaufort	4 <u>5.05</u>	
Tyrrell	1 <u>3</u>	
Hyde	2 <u>3.5</u>	
Washington	3 <u>4</u>	
Pitt	10 <u>10.5</u>	Farmville Ayden Havelock
Craven	7 <u>10</u>	
Pamlico	2 <u>3</u>	
Carteret	6 <u>9</u>	
Sampson	6 <u>7</u>	
Duplin	8	
Jones	2	
Onslow	8 <u>11</u>	
New Hanover	6 <u>11</u>	
Pender	4 <u>4.8</u>	
Halifax	9 <u>12</u>	Roanoke Rapids, Scotland Neck
Northampton	5 <u>5.25</u>	
Bertie	4 <u>5</u>	
Hertford	5 <u>6</u>	
Nash	7 <u>9</u>	Rocky Mount
Edgecombe	4 <u>7</u>	Rocky Mount
Wilson	4 <u>7</u>	
Wayne	5 <u>9</u>	Mount Olive
Greene	3 <u>4</u>	
Lenoir	4 <u>7</u>	La Grange

Granville	$3 \overline{7}$	
Vance	$3 \overline{6}$	
Warren	$3 \overline{3.5}$	
Franklin	$3 \overline{7}$	
Person	$3 \overline{4}$	
Caswell	$2 \overline{4}$	
Wake	$12 \overline{18.5}$	Apex, Wendell, Fuquay- Varina, Wake Forest
Harnett	$7 \overline{10}$	Dunn
Johnston	$10 \overline{11}$	Benson, Clayton, Selma
Lee	$4 \overline{5.5}$	
Cumberland	$10 \overline{19}$	
Bladen	$4 \overline{5}$	
Brunswick	$4 \overline{9}$	
Columbus	$6 \overline{9.5}$	Tabor City
Durham	$8 \overline{13}$	
Alamance	$8 \overline{12}$	Burlington
Orange	$4 \overline{9}$	Chapel Hill
Chatham	$3 \overline{6}$	Siler City
Scotland	$3 \overline{5}$	
Hoke	$4 \overline{5}$	
Robeson	$9 \overline{15}$	Fairmont, Maxton, Pembroke, Red Springs, Rowland, St. Pauls
Rockingham	$4 \overline{9}$	Reidsville, Eden, Madison
Stokes	$2 \overline{5}$	
Surry	$5 \overline{9}$	Mt. Airy
Guilford	$20 \overline{24.4}$	High Point
Cabarrus	$5 \overline{9}$	Kannapolis
Montgomery	$3 \overline{5}$	
Randolph	$5 \overline{10}$	Liberty
Rowan	$5 \overline{9}$	
Stanly	$5 \overline{6}$	
Union	$4 \overline{7}$	
Anson	$4 \overline{5}$	
Richmond	$5 \overline{6}$	Hamlet
Moore	$5 \overline{6.5}$	Southern Pines
Forsyth	$3 \overline{15}$	Kernersville
Alexander	$2 \overline{4}$	
Davidson	$7 \overline{10}$	Thomasville
Davie	$2 \overline{4}$	
Iredell	$4 \overline{9}$	Mooresville
Alleghany	$1 \overline{2}$	
Ashe	$3 \overline{4}$	

Wilkes	4-6	
Yadkin	3-4	
Avery	3-4	
Madison	4	
Mitchell	3-4	
Watauga	4-5	
Yancey	2-3	
Burke	4-6.75	
Caldwell	4-7	
Catawba	6-10	Hickory
Mecklenburg	15-26.50	
Gaston	12-17	
Cleveland	5-8	
Lincoln	4-6	
Buncombe	6-15	
Henderson	4-6.5	
McDowell	3-4.5	
Polk	3-4	
Rutherford	6-7	
Transylvania	2-4	
Cherokee	3-4	
Clay	1-2	
Graham	2	
Haywood	5-6.75	Canton
Jackson	3-5	
Macon	3-3.5	
Swain	2-3.75	

SECTION 7.(b) G.S. 7A-132 reads as rewritten:

"§ 7A-132. Judges, district attorneys, full-time assistant district attorneys and magistrates for district court districts.

Each district court district shall have one or more judges and one district attorney. Each county within each district shall have at least one magistrate.

For each district the General Assembly shall prescribe the numbers of district judges, and the numbers of full-time assistant district attorneys. For each county within each district the General Assembly shall prescribe a minimum ~~and a maximum~~ number of magistrates."

SECTION 7.(c) G.S. 7A-171(a) reads as rewritten:

"§ 7A-171. Numbers; appointment and terms; vacancies.

(a) The General Assembly shall establish a minimum ~~and a maximum~~ quota of magistrates for each county. In no county shall the minimum quota be less than one. The number of magistrates in a county, ~~within~~ above the minimum quota set by the General Assembly, is determined by the Administrative Office of the Courts after consultation with the chief district court judge for the district in which the county is located."

SECTION 8. Section 4 of S.L. 2006-32 reads as rewritten:

"SECTION 4. ~~The Joint Legislative Corrections, Crime Control and Juvenile Justice Oversight Committee and the Legislative Research Commission and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services (LOC)~~ shall study drug treatment courts in North Carolina. The study shall include the following issues in relation to drug treatment courts:

- (1) Funding mechanisms;
- (2) Target populations;
- (3) Interagency collaboration at the State and local levels; and

- (4) Any other matter that the Commissions deem appropriate or necessary to provide proper information to the General Assembly on the subject of the study.

The ~~Commissions~~ Commission may report ~~their~~ its findings and recommendations to the 2007 Regular Session of the 2007 General Assembly."

SECTION 9. If Senate Bill 1741, 2005 Regular Session, becomes law, then Section 14.17 of that act is amended by adding a new subsection to read:

"**SECTION 14.17.(b)** This section applies to persons summoned to serve as jurors on or after August 7, 2006."

SECTION 10. The Administrative Office of Courts, in conjunction with the North Carolina Equal Access to Justice Commission, North Carolina Bar Association, North Carolina Legal Services Planning Council, Legal Aid of North Carolina, Inc., North Carolina Justice Center, and Pisgah Legal Services, Inc., shall study the most effective way to address the increasing numbers of persons who either cannot afford representation or choose to represent themselves in family law matters and in some civil litigation, and report the results of the study to the Joint Appropriations Subcommittee on Justice and Public Safety no later than December 31, 2007.

SECTION 11. Article 30 of Chapter 7A of the General Statutes reads as rewritten:

"Article 30.

"Judicial Standards Commission.

"§ 7A-374.1. Purpose.

The purpose of this Article is to provide for the investigation and resolution of inquiries concerning the qualification or conduct of any judge or justice of the General Court of Justice. The procedure for discipline of any judge or justice of the General Court of Justice shall be in accordance with this Article. Nothing in this Article shall affect the impeachment of judges under the North Carolina Constitution, Article IV, Sections 4 and 17.

"§ 7A-374.2. Definitions.

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this Article:

- (1) "Censure" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge has willfully engaged in misconduct prejudicial to the administration of justice that brings the judicial office into disrepute, but which does not warrant the suspension of the judge from the judge's judicial duties or the removal of the judge from judicial office. A censure may require that the judge follow a corrective course of action. Unless otherwise ordered by the Supreme Court, the judge shall personally appear in the Supreme Court to receive a censure.
- (2) "Commission" means the North Carolina Judicial Standards Commission.
- (3) "Incapacity" means any physical, mental, or emotional condition that seriously interferes with the ability of a judge to perform the duties of judicial office.
- (4) "Investigation" means the gathering of information with respect to alleged misconduct or disability.
- (5) "Judge" means any justice or judge of the General Court of Justice of North Carolina, including any retired justice or judge who is recalled for service as an emergency judge of any division of the General Court of Justice.
- (6) "Letter of caution" means a written action of the Commission that cautions a judge not to engage in certain conduct that violates the Code of Judicial Conduct as adopted by the Supreme Court.

- (7) "Public reprimand" means a written action of the Commission issued upon a finding by the Commission that a judge has violated the Code of Judicial Conduct and has engaged in conduct prejudicial to the administration of justice, but that misconduct is minor and does not warrant a recommendation by the Commission that the judge be disciplined by the Supreme Court. A public reprimand may require that the judge follow a corrective course of action.
- (8) "Remove" or "removal" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of all duties of the judge's office and disqualified from holding further judicial office.
- (9) "Suspend" or "suspension" means a finding by the Supreme Court, based upon a written recommendation by the Commission, that a judge should be relieved of the duties of the judge's office for a period of time, and upon conditions, including those regarding treatment and compensation, as may be specified by the Supreme Court.

"§ 7A-375. Judicial Standards Commission.

(a) ~~The Judicial Standards Commission shall consist of: of the following residents of North Carolina: one Court of Appeals judge, one two superior court judge, judges, and one two district court judge, judges, each appointed by the Chief Justice of the Supreme Court; two four members of the State Bar who have actively practiced in the courts of the State for at least 10 years, elected by the State Bar Council; and two four citizens who are not judges, active or retired, nor members of the State Bar, appointed by the Governor. two appointed by the Governor, and two appointed by the General Assembly in accordance with G.S. 120-121, one upon recommendation of the President Pro Tempore of the Senate and one upon recommendation of the Speaker of the House of Representatives.~~ The Court of Appeals judge shall act as chair of the Commission.

(b) ~~The Court of Appeals judge shall serve at the pleasure of the Chief Justice. Terms of other Commission members shall be for six years, except that, to achieve overlapping of terms, one of the judges, one of the practicing members of the State Bar, and one of the citizens shall be appointed initially for a term of only three years. years. No member who has served a full six-year term is eligible for reappointment. If a member ceases to have the qualifications required for his the member's appointment, he that person ceases to be a member. Vacancies of members, other than those appointed by the General Assembly, are filled in the same manner as the original appointment, for the remainder of the term. Vacancies of members appointed by the General Assembly are filled as provided under G.S. 120-122. Members who are not judges are entitled to per diem and all members are entitled to reimbursement for travel and subsistence expenses at the rate applicable to members of State boards and commissions generally, for each day engaged in official business.~~

(c) If a member of the Commission who is a judge becomes disabled, or becomes a respondent before the Commission, the Chief Justice shall appoint an alternate member to serve during the period of disability or disqualification. The alternate member shall be from the same division of the General Court of Justice as the judge whose place ~~he the alternate member~~ takes. If a member of the Commission who is not a judge becomes disabled, the Governor, if he appointed the disabled member, shall appoint, or the State Bar Council, if it elected the disabled member, shall elect, an alternate member to serve during the period of disability. If a member of the Commission who is not a judge and who was appointed by the General Assembly becomes disabled, an alternate member shall be appointed to serve during the period of disability in the same manner as if there were a vacancy to be filled under G.S. 120-122. In a particular case, if a member disqualifies himself, becomes disqualified, or is successfully challenged for cause, his the member's seat for that case shall be filled by an alternate member selected as provided in this subsection.

(d) A member may serve after expiration of ~~his~~the member's term only to participate until the conclusion of a ~~formal~~disciplinary proceeding begun before expiration of ~~his~~the member's term. Such participation shall not prevent ~~his~~the successor from taking office, but the successor may not participate in the proceeding for which ~~his~~the predecessor's term was extended. This subsection shall apply also to any judicial member whose membership on the Commission is automatically terminated by retirement or resignation from judicial office, or expiration of the term of judicial office.

(e) Members of the Commission and its employees are immune from civil suit for all conduct undertaken in the course of their official duties.

(f) The chair of the Commission may employ, if funds are appropriated for that purpose, an executive director, Commission counsel, investigator, and any support staff as may be necessary to assist the Commission in carrying out its duties. With the approval of the Chief Justice, for specific cases, the chair also may employ special counsel or call upon the Attorney General to furnish counsel. In addition, with the approval of the Chief Justice, for specific cases, the chair or executive director also may call upon the Director of the State Bureau of Investigation to furnish an investigator who shall serve under the supervision of the executive director. While performing duties for the Commission, the executive director, counsel, and investigator have authority throughout the State to serve subpoenas or other process issued by the Commission in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.

(g) The Commission may adopt, and may amend from time to time, its own rules of procedure for the performance of the duties and responsibilities prescribed by this Article, subject to the approval of the Supreme Court.

"§ 7A-376. ~~Grounds for censure or removal.~~Grounds for discipline by Commission; censure, suspension, or removal by the Supreme Court.

(a) The Commission, upon a determination that any judge has engaged in conduct that violates the North Carolina Code of Judicial Conduct as adopted by the Supreme Court but that is not of such a nature as would warrant a recommendation of censure, suspension, or removal, may issue to the judge a private letter of caution or may issue to the judge a public reprimand.

(b) Upon recommendation of the Commission, the Supreme Court may ~~censure or remove~~censure, suspend, or remove any judge for willful misconduct in office, willful and persistent failure to perform ~~his~~the judge's duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. ~~Upon recommendation of the Commission, the Supreme Court may remove any judge for mental or physical incapacity interfering with the performance of his duties, which is, or is likely to become, permanent.~~A judge who is suspended for any of the foregoing reasons shall receive no compensation during the period of that suspension. A judge who is removed for any of the foregoing reasons shall receive no retirement compensation and is disqualified from holding further judicial office.

(c) Upon recommendation of the Commission, the Supreme Court may suspend, for a period of time the Supreme Court deems necessary, any judge for temporary physical or mental incapacity interfering with the performance of the judge's duties, and may remove any judge for physical or mental incapacity interfering with the performance of the judge's duties which is, or is likely to become, permanent. A judge who is suspended for temporary incapacity shall continue to receive compensation during the period of the suspension. A judge removed for mental or physical incapacity is entitled to retirement compensation if ~~he~~the judge has accumulated the years of creditable service required for incapacity or disability retirement under any provision of State law, but he shall not sit as an emergency justice or judge. ~~A judge removed for other than mental or physical incapacity receives no retirement compensation, and is disqualified from holding further judicial office.~~

~~"§ 7A-377. Procedures; employment of executive secretary, special counsel or investigator. Procedures.~~

(a) Any citizen of the State may file a written complaint with the Commission concerning the qualifications or conduct of any justice or judge of the General Court of Justice, and thereupon the Commission shall make such investigation as it deems necessary. The Commission may also make an investigation on its own motion. The Commission is ~~authorized to~~ may issue process to compel the attendance of witnesses and the production of evidence, to administer oaths, and to punish for contempt, and to prescribe its own rules of procedure. ~~contempt.~~ No justice or judge shall be recommended for ~~censure~~ censure, suspension, or removal unless he has been given a hearing affording due process of law.

(a1) Unless otherwise waived by the justice or judge involved, all papers filed with and proceedings before the Commission, including any ~~preliminary~~ investigation ~~which~~ that the Commission may make, are confidential, and no person shall disclose information obtained from Commission proceedings or papers filed with or by the Commission, except as provided herein. Those papers are not subject to disclosure under Chapter 132 of the General Statutes.

(a2) Information submitted to the Commission or its staff, and testimony given in any proceeding before the Commission, shall be absolutely privileged, and no civil action predicated upon that information or testimony may be instituted against any complainant, witness, or his or her counsel.

(a3) If, after an investigation is completed, the Commission concludes that a letter of caution is appropriate, it shall issue to the judge a letter of caution in lieu of any further proceeding in the matter. The issuance of a letter of caution is confidential in accordance with subsection (a1) of this section.

(a4) If, after an investigation is completed, the Commission concludes that a public reprimand is appropriate, the judge shall be served with a copy of the proposed reprimand and shall be allowed 20 days within which to accept the reprimand or to reject it and demand, in writing, that disciplinary proceedings be instituted in accordance with subsection (a5) of this section. A public reprimand, when issued by the Commission and accepted by the respondent judge, is not confidential.

(a5) ~~After the preliminary~~ If, after an investigation is completed, and if the Commission concludes that formal disciplinary proceedings should be instituted, the notice and complaint statement of charges filed by the Commission, along with the answer and all other pleadings, are not confidential. Formal Disciplinary hearings ordered by the Commission are not confidential, and recommendations of the Commission to the Supreme Court, along with the record filed in support of such recommendations are not confidential. Testimony and other evidence presented to the Commission is privileged in any action for defamation. At least five members of the Commission must concur in any recommendation to ~~censure~~ censure, suspend, or remove any ~~justice or judge.~~ A respondent who is recommended for ~~censure or removal~~ censure, suspension, or removal is entitled to a copy of the proposed record to be filed with the Supreme Court, and if ~~he~~ the respondent has objections to it, to have the record settled by the ~~Commission.~~ Commission's chair. He The respondent is also entitled to present a brief and to argue ~~his~~ the respondent's case, in person and through counsel, to the Supreme Court. A majority of the members of the Supreme Court voting must concur in any order of ~~censure~~ censure, suspension, or removal. The Supreme Court may approve the recommendation, remand for further proceedings, or reject the recommendation. A justice of the Supreme Court or a member of the Commission who is a judge is disqualified from acting in any case in which he is a respondent.

(b) ~~The chair of the Commission is authorized to employ an executive secretary to assist the Commission in carrying out its duties. For specific cases, the Commission may also employ special counsel or call upon the Attorney General to furnish counsel. For specific cases, the Commission may also employ an investigator or call upon the Director of the State Bureau of Investigation to furnish an investigator. While~~

~~performing duties for the Commission such executive secretary, special counsel or investigator shall have authority throughout the State to serve subpoenas or other process issued by the Commission in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.~~

(c) The Commission may issue advisory opinions to judges, in accordance with rules and procedures adopted by the Commission.

(d) The Commission has the same power as a trial court of the General Court of Justice to punish for contempt, or for refusal to obey lawful orders or process issued by the Commission.

"§ 7A-378. ~~Censure~~ Censure, suspension, or removal of justice of Supreme Court.

(a) The recommendation of the Judicial Standards Commission for ~~censure~~ censure, suspension, or removal of any justice of the Supreme Court for any grounds provided by G.S. 7A-376 shall be made to, and the record filed with, the Court of Appeals, which shall have and shall proceed under the same authority for ~~censure~~ censure, suspension, or removal of any justice as is granted to the Supreme Court under G.S. 7A-376 and G.S. 7A-377(a) for ~~censure~~ censure, suspension, or removal of any judge.

(b) The proceeding shall be heard by a panel of the Court of Appeals consisting of the Chief Judge, who shall be the presiding judge of the panel, and six other judges, the senior in service, excluding the judge who is chairman of the ~~commission~~ Commission. For good cause, a judge may be excused by a majority of the panel. If the Chief Judge is excused, the presiding judge shall be designated by a majority of the panel. The vacancy created by an excused judge shall be filled by the judge of the court who is next senior in service."

SECTION 12. In order to provide for an orderly transition in membership to the Judicial Standards Commission to the six-year terms specified in G.S. 7A-375(b), as amended by Section 11 of this act, and notwithstanding G.S. 7A-375(b), as amended by Section 11 of this act, the following provisions apply:

- (1) The initial terms of the new district court judge and of one new member of the North Carolina Bar appointed to the Commission effective January 1, 2007, shall be three-year terms.
- (2) The initial terms of all other new members appointed to the Commission effective January 1, 2007, shall be six-year terms.
- (3) The term of the citizen appointed by the Governor to the Commission effective January 1, 2007, shall be a three-year term.
- (4) The term for the citizen appointed by the Governor to the Commission effective January 1, 2010, shall be a three-year term.

SECTION 13. Section 2 of this act is effective when it becomes law and applies to all matters filed with the courts on or after the date that the Supreme Court adopts rules for electronic filing as authorized by that section. Section 3 of this act becomes effective October 1, 2006. Sections 4, 7, and 9 of this act become effective July 1, 2006. Sections 11 and 12 become effective January 1, 2007. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 2006.

Beverly E. Perdue
President of the Senate

James B. Black
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____m. this _____ day of _____, 2006