



NORTH CAROLINA CENTER FOR
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MOST NORTH CAROLINA JUDGES ARE APPOINTED, NOT ELECTED, CENTER STUDY SHOWS

Most of North Carolina's trial and appellate court judges are appointed to the bench -- not elected as many may believe -- and they tend to stay in office until they retire, reports the N.C. Center for Public Policy Research in the latest issue of its quarterly journal, North Carolina Insight.

Of the state's 234 judgeships subject to elections, 138 were actually filled originally by appointment of the governor -- nearly 60 percent -- while only 96 judgeships were filled by election. This means North Carolina has a predominantly appointive judiciary even though the state Constitution (Article IV, section 19) requires judgeships to be filled by regular elections, except when vacancies occur between elections.

Judicial vacancies usually occur because of retirement or death and come between elections, so governors normally fill those vacancies by appointment. Those appointed judges usually run for election to the same judgeship in the next regular election and usually win election. This tradition of appointments leading to election of a judge raises the question whether North Carolina should adopt a formal system for the nomination and appointment of new judges -- known as merit selection.

"The fact is that most judgeships are not filled by election," notes Insight Associate Editor Jack Betts. "In practice, most state judgeship vacancies are filled by appointment of the governor, which does not require the confirmation of the legislature or the consent of the electorate. So the question naturally arises whether this is the best method of choosing those who must interpret the law."

The N.C. Center for Public Policy Research is not advocating a new selection plan for judges, but points out that legislation pending in the N.C. General Assembly would create a study commission to examine the issue and make a recommendation to the 1989 legislature. "Passage of Senate Bill 31 would give opponents and proponents of merit selection an opportunity to debate fully the advantages and disadvantages of the current system and of alternatives," says Betts.

Like most southern states, North Carolina traditionally has elected its judges. But increasingly since the turn of the century, states have experimented with other ways of choosing judges. Seventeen states now use a formal merit selection plan, and 22 others use some component of merit selection. Merit selection plans usually entail:

-- a nominating commission to screen potential candidates for a judicial vacancy;

-- appointment by the governor of a judge who has been recommended by the nominating commission, sometimes subject to legislative confirmation; and

-- a retention vote, usually after the judge has served one full term, that allows the electorate to say whether a judge should be retained in office. A national study by the American Judicature Society found that nearly 99 percent of the judges subject to retention elections won re-election.

Insight's merit selection package of articles is designed to aid the legislature, state policymakers, the news media, and the general public sort through the complicated factors involved in judicial election reform. The three-part package includes a pro-con debate. The "pro" merit selection article is written by former state Rep. H. Parks Helms of Charlotte, while the "con" arguments are written by N.C. State University political science professors Joel Rosch and Eva R. Rubin. An introduction by Betts lays out the background for the merit selection debate.

Helms and other proponents of merit selection argue that the current system of choosing judges discourages qualified lawyers from running for judgeships. They say the costs of politicking for judgeships are excessive and require candidates to seek money from other lawyers who may have cases before that judge. Proponents also say voters often don't know who the most qualified candidates are because election ballots are too long. As many as 26 Superior Court judges and nine appellate judges can appear on the statewide ballot -- 35 judges in all -- plus whatever District Court judges are running within a voter's individual county. Proponents of merit selection also say present restrictions don't allow judicial candidates to mount effective campaigns. For example, Canon 7 of the Code of Judicial Conduct says "A candidate, including an incumbent judge for a judicial office should not...announce his views on disputed legal or political issues...." Helms concludes, "In practice, a system that purports to give the voters complete control over the selection of judges gives them almost no control. And it gives the governor almost complete control over judicial selection."

Rosch, Rubin and other opponents of merit selection, on the other hand, argue that the problems inherent in the current electoral system won't necessarily be solved by switching to a formal system of merit selection. They argue that merit selection hasn't worked all that well in other states and that merit selection takes power from its proper place -- with the voters -- and places it in the hands of a select few. They say that North Carolina has had relatively good judges with its current system. Changing to merit selection, they contend, merely removes judicial politics from its current place out in the open and puts it behind closed doors. Rosch and Rubin conclude, "Based on the experience from both California and Missouri [states with merit selection], merit selection will not eliminate partisan conflict.... Instead, it may prompt one-issue groups to target candidates they don't like and attempt to turn them out in a single-shot campaign."

The number of appointed and elected judges in North Carolina is as follows:

N.C. Court*	Number of Judges	Number First Appointed	Number First Elected	% of Whole
Supreme Court	7	4	3	43%
Court of Appeals	12	7	5	42%
Superior Court	64	46	18	28%
District Court	151	81	70	46%
	234	138	96	41%

* Chart includes only active judges -- not emergency or retired judges or Special Superior Court judges who must be appointed by the Governor.