



**NORTH CAROLINA CENTER FOR
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HALF OF N.C. JUDGES APPOINTED, NOT ELECTED, CENTER SAYS

Nearly half of North Carolina's judges were appointed rather than elected to their current position on the bench, according to a new study by the N.C. Center for Public Policy Research. This is despite the fact that the state Constitution has given voters the responsibility for selecting judges since 1868. The Center's research is part of *North Carolina Focus*, a new anthology on North Carolina state government, politics and policy.

Of the state's 307 judgeships subject to elections, 148 (48 percent) actually were appointed to their current seats by the governor, and 155 judgeships (50 percent) were filled by election. This means that North Carolina has a substantially appointive judiciary. Article IV, Section 19 of the state Constitution requires judgeships to be filled by regular elections but allows vacancies that occur between elections to be filled by appointment.

"We think we have one system of selecting all judges, but we really have two," says Mebane Rash Whitman, policy analyst at the Center. "We elect half -- with the other half first selected through appointment by the governor and then later re-elected by the voters."

The new findings by the Center may give advocates for merit selection a boost, since the study weakens the argument that North Carolina voters really elect all judges. Whitman notes, however, that the Center takes no position on the merit selection issue.

The Center also released research Thursday on the number of judges censured or removed from office since 1975. The Judicial Standards Commission was created in 1973 to make recommendations to the N.C. Supreme Court in cases of misconduct in office. From 1975 to 1996, five North Carolina judges were removed from the bench and 19 were censured.

The issue of judicial appointments has gained prominence with the introduction of legislation in the N.C. General Assembly in April that would restructure the state's judicial system and scrap its current system of electing judges. Senate Bills 834 and 835 and House Bills 741 and 742 would replace the current electoral system with a merit system for nominating and appointing new judges. Under the proposal, the governor would appoint judges, who then would be subject to periodic retention votes.

Sen. Frank Ballance (D-Warren) sponsored the Senate bills. Rep. Chuck Neely (R-Wake), who co-sponsored the House legislation with Rep. Philip Baddour (D-Wayne), says the bills are aimed at reducing the partisan bickering, fund-raising demands, and political campaigning associated with the current electoral system.

“It’s important that you have judges who are nonpartisan and above the fray,” Neely says. “If you want to attract high-quality lawyers to the bench, frequently their main strengths are not going to be as politicians.”

Although the state legislature has debated merit selection plans many times over the past 26 years, the issue was revived in December 1996 when an influential judicial reform panel recommended that the state replace its partisan system for electing judges. Instead, the Commission for the Future of Justice and the Courts in North Carolina -- popularly called the Futures Commission -- proposed that the state adopt a form of merit selection combined with retention elections.

The Futures Commission based its recommendations, in part, on a survey that found less than half (40 percent) of the respondents knew that the state Supreme Court is an elected body. Although 60 percent said they participated in the 1994 general election, only half of those voters recalled casting a ballot for any judges. Of those who did recall voting for a judge, most (78 percent) could not name a single judge on the ballot.

“[M]ost voters do not even know that judges are elected and only a handful can recall an individual judge for whom they cast a ballot,” stated the Futures Commission, which was established in 1994 by then-Chief Justice James Exum to find ways to improve the state’s legal system.

Judicial vacancies usually occur because of retirements or deaths between elections. Governors fill most vacancies by appointment. Those appointed judges usually run for the same judgeship in the next regular election and usually win.

The merit selection bills introduced in the General Assembly in April would restructure the state’s court system and change the state Constitution. Thus, the legislation must pass the N.C. House and Senate by a three-fifths vote and then be approved by a majority of voters in a statewide referendum.

Under the proposed legislation:

- All judges would be appointed by the governor from nominees submitted by politically neutral judicial panels.
- New judges would stand for retention votes at the first general election occurring more than one year after their appointments.
- Judges retained by voters would serve eight-year terms, with additional retention elections at the end of each term.
- All judges would be subject to regular performance evaluations by neutral judicial panels, and those evaluations would be made available to the public before retention elections.

N.C. Legislators Have Considered Merit Selection Proposals in the Past

Like most southern states, North Carolina traditionally has elected its judges. But since the turn of the century, states increasingly have experimented with other ways of choosing judges. At least 20 states now use some form of merit selection.

Merit selection proposals have bounced in and out of the N.C. General Assembly for more than 25 years. In 1971, the N.C. Courts Commission endorsed merit selection, but it failed to win widespread support in the legislature or in the governor's office.

In 1986, voters were treated to a sometimes lively and sometimes bitter spectacle as former Associate Justice James Exum, a Democrat, and then-Chief Justice Rhoda Billings, a Republican, tangled in a campaign for the post of Chief Justice. Exum prevailed in the end.

The partisan nature of judicial campaigns has increased over the past decade. The number of Republican judges also has increased, with Republicans now holding 54 of the state's 307 judgeships (18 percent).

In 1994, Exum established the bipartisan Commission for the Future of Justice and the Courts in North Carolina to find ways to improve the state's legal system. The Futures Commission, funded by the U.S. Department of Justice and the private Z. Smith Reynolds Foundation of Winston-Salem, released its report in December 1996. One of the commission's key recommendations was that the state drop its system of selecting judges through partisan elections and replace it with a form of merit selection combined with periodic retention elections.

With the Futures Commission's endorsement, merit selection legislation has yet another chance of being enacted in North Carolina in 1997. However, the bills probably need support from the Republican majority in the House, the Legislative Black Caucus, and Gov. Jim Hunt to pass -- perhaps an unlikely combination.

N.C. Center Has Studied the Selection of Judges Since 1987

The N.C. Center for Public Policy Research has conducted several studies examining how judges reach office in North Carolina. In a 1987 study, the Center found that 59 percent of North Carolina's judges had first been appointed to the bench, rather than elected.

The Center updated its research twice recently, using a slightly different methodology from 1987. The newer studies look at how judges reached their current posts rather than how they were first selected as judges. In 1995, the Center found that 52 percent of the state's judges had been appointed rather than elected to their current posts. That number has dropped slightly, as the Center now finds that 48 percent of the state's judges have been appointed. The Center's data on judges were compiled by Thomas J. Andrews, chief counsel of the N.C. Administrative Office of the Courts.

The Center's study includes tables showing how judges are selected in all 50 states, how many judges reach the bench by election versus appointment in North Carolina, the numbers of judges in the state at the Appellate, Superior, and District Court levels, and salaries at all levels. The study also lists the 24 judges who have been removed from office or censured for misconduct since 1975.

The Center's research on merit selection is aimed at helping legislators, state policy-makers, the news media, and the general public sort through the complicated factors to consider in judicial election reform. Its research builds on an article just published in *North Carolina Focus*, an 817-page anthology on state government, state politics, and policy. The article was written by Jack Betts, an associate editor of *The Charlotte Observer* and former editor of *North Carolina Insight*, the Center's magazine.

Focus is designed for teachers of courses in government in high schools, community colleges, and universities across the state. The first half of the book contains articles on the executive, legislative, and judicial branches of government, and it is organized like the key sections of the State Constitution. The second half of the book examines key public policy issues facing North Carolina in education, the environment, economic development, health care, and prisons. There are also chapters on North Carolina politics and on how the media covers government.

The N.C. Center for Public Policy Research is an independent, nonpartisan, nonprofit corporation created to study public policy issues facing North Carolina and to evaluate state government's performance. The Center's publication of *North Carolina Focus* was supported by grants from The Cannon Foundation of Concord and the GE Fund of Fairfield, Connecticut. *Focus* also is made possible by the Frank U. Fletcher Memorial Gift from the A.J. Fletcher Foundation of Raleigh to support the Center's service to teachers in North Carolina.

In addition to *Focus*, the Center publishes other book-length research reports, such as this year's edition of *Article II*, a citizens' guide to the N.C. General Assembly. The Center also publishes *North Carolina Insight*, a magazine that recently has examined issues such as trends in funding for the arts, the changing relationship between state and local governments, school choice, minority health, and the North Carolina Railroad.

The study on how North Carolina selects judges is contained in the *North Carolina Focus* anthology and in an upcoming issue of *North Carolina Insight* magazine, both published by the N.C. Center for Public Policy Research. *Focus* is an anthology on state government, state politics, and policy and can be obtained from the Center for \$36.00, which includes postage, handling, and sales tax. The next edition of *Insight* will be published in late May and can be obtained for \$11.50. To order either publication, call (919) 832-2839, fax to (919) 832-2847, write to the N.C. Center for Public Policy Research at P.O. Box 430, Raleigh, NC 27602, or order through the Center's Website at <http://www.nando.net/insider/nccpr>.

How North Carolina Judges Reached the Bench: Appointment vs. Election, 1996

All Judges

Court	Total # of Judges	# Appointed	% Appointed	# Elected	% Elected
Supreme Court	7	3	43%	4	57%
Court of Appeals	12	3	25%	9	75%
Superior Court*	90	42	47%	48	53%
District Court*	198	100	51%	94	47%
TOTAL	307	148	48%	155	50%

African American/Native American Judges

Court	Appointed	Elected	Total	% Sitting on the Court
Supreme Court	1	0	1	14%
Court of Appeals	1	1	2	17%
Superior Court	4	10	14	16%
District Court	8	12	20	10%
TOTAL	14	23	37	12%
SUMMARY	37 African American/Native American Judges = 12% of the Judiciary			

Female Judges

Court	Appointed	Elected	Total	% Sitting on the Court
Supreme Court	1	0	1	14%
Court of Appeals	2	0	2	17%
Superior Court	1	4	5	6%
District Court	17	22	39	20%
TOTAL	21	26	47	15%
SUMMARY	47 Female Judges = 15% of the Judiciary			

Judges Who Are Republicans

Court	Appointed	Elected	Total	% Sitting on the Court
Supreme Court	0	2	2	29%
Court of Appeals	0	2	2	17%
Superior Court	0	6	6	7%
District Court	13	31	44	22%
TOTAL	13	41	54	18%
SUMMARY	54 Republican Judges = 18% of the Judiciary			

Source: Thomas J. Andrews, Chief Counsel, Administrative Office of the Courts, 1996. The appointment/election statistics are based on the way the judge first was seated in his or her current position.

* Percentages for District Court and Total judges do not add up to 100% because four District Court seats were vacant. The number of Superior Court judges (90) does not include five special, limited-term judgeships, which by statute are appointed by the governor.

State Systems for the Regular Selection of State Judges

State	Partisan Election	Nonpartisan Election	Gubernatorial Appointment	Legislative Election	Missouri Plan	Other Merit Selection
AL	X					
AK					X	
AZ					X	
AR	X					
CA		X	X			
CO					X	
CT						X
DE			X			
FL		X			X	
GA		X				
HI						X
ID		X				
IL	X					
IN	X				X	
IA					X	
KS					X	
KY		X				
LA		X				
ME			X			
MD					X	
MA						X
MI		X				
MN		X				
MS	X					
MO	X				X	
MT		X				
NE					X	
NV		X				
NH			X			
NJ			X			
NM					X	
NY	X		X			

State	Partisan Election	Nonpartisan Election	Gubernatorial Appointment	Legislative Election	Missouri Plan	Other Merit Selection
NC	X					
ND		X				
OH		X				
OK		X			X	
OR		X				
PA	X					
RI			X	X		
SC				X		
SD		X			X	
TN	X				X	
TX	X					
UT					X	
VT						X
VA				X		
WA		X				
WV	X					
WI		X				
WY					X	
TOTALS	12	17	7	3	16	4

Notes: Shaded lines indicate states that use some sort of merit selection.

The Missouri Plan is the term used for merit selection that involves (1) a nominating commission to screen judicial candidates, (2) gubernatorial appointments of judges from a list of those nominees, sometimes with legislative confirmation, and (3) retention elections in which voters determine whether a judge serves another term.

Many states have different judicial selection plans for different groups of judges, so states may appear in more than one category on this chart. States are classified according to the system they use for the regular selection of judges, rather than for the filling of vacancies or for the staffing of minor trial courts.

Source: *The Book of the States 1996-97*, The Council of State Governments, Lexington, Ky., Table 4.4: "Selection and Retention of Judges," pp. 133-135.

Arguments For and Against Merit Selection

For Merit Selection:

Would take politics out of the judicial selection process.

Judges would be selected more on merit and legal ability.

Merit selection would attract qualified candidates who do not now seek election to judicial office.

Merit selection would prohibit judicial candidates from having to seek campaign funds from lawyers who later must appear before those judges.

Merit selection would produce a more independent judiciary without ties to party, politicians, or lawyers who appear before judges.

A judicial nominating committee would be able to make better choices than voters because it would have access to better information on the candidates' actual performance in the legal profession.

Merit selection would eliminate bitter political campaigns.

Merit selection would shorten North Carolina's long ballot and relieve voters of the burden of having to vote for judges they do not know.

Merit selection has worked well in 20 other states and would produce better judges in North Carolina, where 24 judges have been removed or censured for misconduct in office since 1975.

Against Merit Selection:

Would shift politics from electoral decisions by large numbers of voters to political decisions by a select few within the bar's nominating committee in the appointment process.

Judges still would be selected on the basis of political alliances with those in power.

Merit selection would not produce more qualified judges than the electoral process does.

Judicial candidates would still have to drum up pledges of support from judicial nominating committee members.

Few problems stem from judicial ties to political parties, and merit selection would not eradicate party alliances or beliefs.

As North Carolina increasingly becomes a two-party state, more contested judicial elections would mean that more information is available to voters.

Political campaigns still could exist because voter groups could oppose a judge who is up for a retention vote under a merit selection system.

Merit selection would remove choice of judges from the electorate, where it belongs, and place that choice in the hands of a select few.

Judges in North Carolina already are good ones, and merit selection in other states has not produced better judges.

Removal and Censure Actions Against N.C. Judges by the State Supreme Court Since 1975

Judges Removed from the Bench

1. District Court **Judge Linwood Peoples** of Henderson resigned his seat in 1977 after he was accused by the Judicial Standards Commission of accepting money from defendants to settle traffic cases out of court. The Commission recommended to the Supreme Court that Peoples be removed from office. In 1978, Peoples ran for Superior Court and won a seat, but the Supreme Court refused to seat him, ruling that his misconduct in office made him ineligible to retain his seat.
2. District Court **Judge William Martin** of Hickory was removed from the bench by the Supreme Court in 1981 after the Judicial Standards Commission accused him of trying "to obtain sexual favors from female defendants who had matters pending before the courts." The Commission earlier had recommended in 1978 that Martin be removed from office, but the Supreme Court reduced that recommendation to a public censure of Judge Martin.
3. Superior Court **Judge Charles Kivett** of Greensboro was accused by N.C. Department of Justice prosecutors in 1982 of sexual misconduct in office and of giving light sentences to certain defendants at the request of a friend. The Judicial Standards Commission recommended that Kivett be removed, and the Supreme Court removed him from office in 1983.
4. District Court **Judge Wilton Hunt** of Whiteville was accused by the Judicial Standards Commission of accepting bribes in an undercover operation conducted by law enforcement authorities. The Supreme Court removed Hunt from the bench in 1983.
5. Superior Court **Judge Terry Sherrill** of Charlotte was removed from the bench by the Supreme Court in 1991 for conduct that constituted willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. In 1990, Sherrill had been placed in the Deferred Prosecution Program for offenses arising out of his arrest on March 10, 1990 for misdemeanor possession of marijuana and drug paraphernalia and felony possession of cocaine.

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Judges Censured

1. District Court **Judge E.E. Crutchfield** of Albemarle, 1975, for *ex parte*¹ disposition of several court cases.
2. District Court **Judge Joseph P. Edens** of Hickory, 1976, for *ex parte* disposition of a case.
3. District Court **Judge George Stuhl** of Fayetteville, 1977, for *ex parte* disposition of cases, making overtures to an arresting officer about his testimony, and improperly urging an assistant district attorney to take a dismissal in a case.
4. District Court **Judge Milton Nowell** of Goldsboro, 1977, for *ex parte* disposition of a case.
5. District Court **Judge Herbert Hardy** of Goldsboro, 1978, for *ex parte* disposition of cases and for writing another judge urging him to enter a certain sentence in a pending court case.
6. Superior Court **Judge Paul Wright** of Goldsboro, 1985, for making a campaign contribution to a candidate in another race, contrary to a judicial canon proscribing such political activity.
7. Superior Court **Judge Kenneth Griffin** of Charlotte, 1987, for making an inappropriate courtroom comment and for making a derogatory gesture in court.
8. District Court **Judge Lacy Hair** of Fayetteville, 1989, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute.
9. District Court **Judge George Greene** of Raleigh, 1991, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. While presiding over a prosecution for assault on a female, the judge told the victim she would ruin her children's lives if she did not reconcile with the defendant. He referred to a battered women's assistance group as a one-sided, man-hating bunch of females and pack of she-dogs. He also polled the courtroom spectators to see how many of them had minor spats during their marriages. While presiding over speeding trials, the judge routinely admitted that he drove 52 m.p.h. in 45 m.p.h. zones and 65 m.p.h. in 55 m.p.h. zones. He counseled defendants to restrict their speeding violations to those limits to avoid apprehension and conviction.
10. District Court **Judge Stafford Bullock** of Raleigh, 1991, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The judge ordered the detention of an attorney who declined to give a reason for his motion to withdraw as counsel in a criminal case, and the judge informed the attorney in open court that in the future, he would not accept recommendations from him, would not grant him continuances, would not appoint him to represent indigent defendants, and would require his clients to plead guilty or not guilty as charged.
11. District Court **Judge Allen Harrell** of Wilson, 1992, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The judge involved himself in a criminal child abuse case in the district in which he was sitting.
12. District Court **Judge James E. Martin** of Greenville, 1993, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The judge convicted defendants for reckless driving when they were charged with impaired driving, an action he knew was improper and *ultra vires*.²

13. District Court **Judge Marilyn Bissell** of Charlotte, 1993, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The judge barred an attorney, who had initiated a preliminary investigation of the judge with the Judicial Standards Commission, from a session of juvenile court over which she was presiding. The proper course of action was for the judge to recuse³ herself.
14. District Court **Judge John S. Hair Jr.** of Fayetteville, 1993, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The judge made comments which could reasonably be interpreted as threats of professional reprisal against members of the district attorney's office and attorneys practicing in district court for what the judge perceived to be disloyalty and a betrayal of him in his divorce case.
15. Superior Court **Judge Preston Cornelius** of Mooresville, 1993, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The judge gave legal advice to an individual with regard to her discharge from employment with Iredell County Department of Social Services and he undertook in his official capacity to intervene on her behalf.
16. District Court **Judge Jerry Leonard** of Raleigh, 1995, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The judge was censured for (1) his behavior while publicly intoxicated in Key West, Fla., which resulted in his arrest and a negotiated plea of *nolo contendere* to the criminal offense of trespass after warning; (2) his behavior while publicly intoxicated in Raleigh, N.C., which resulted in his conviction of the criminal offense of indecent exposure; and (3) his refusal to abstain from the consumption of alcohol.
17. District Court **Judge James E. Martin** of Greenville, 1995, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The judge initiated a series of *ex parte* communications with law enforcement and court personnel concerning the son of a friend who had been arrested for felonious breaking and entering. The judge also initiated *ex parte* communications with a law officer concerning an automobile accident that resulted in charges being filed against the driver of a car in which the daughter of a friend was a passenger. He told the officer his opinion was that the matter was civil, not criminal, and that if the case came before him in court, he would so declare it, and he suggested to the officer that he reconsider his assessment of fault. Previously censured in 1993.
18. Superior Court **Judge George Greene** of Raleigh, 1995, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute for comments made during the trial of two separate cases over which he presided. Previously censured in 1991.
19. District Court **Judge James Ammons Jr.** of Fayetteville, 1996, for conduct prejudicial to the administration of justice that brings the judicial office into disrepute based on his actions in a worthless check case in which the prosecuting witness was a personal friend of his. Also for issuing an *ex parte* arrest order in a separate custody dispute.

—Mebane Rash Whitman

FOOTNOTES

¹ *Ex parte* means on behalf of one party in a lawsuit.

² *Ultra vires* means beyond or exceeding the legal authority.

³ Recuse means a judge disqualifies himself or herself from hearing a lawsuit because of self-interest, bias, or prejudice.