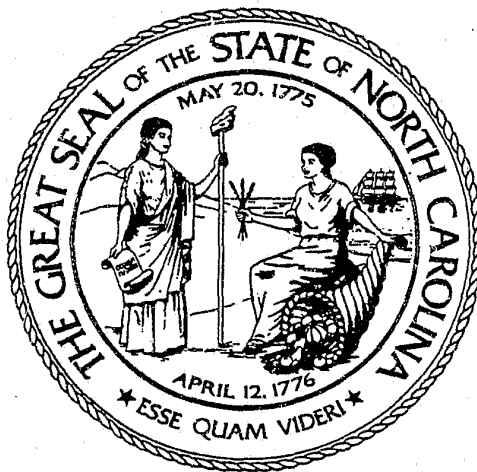


149793

# NORTH CAROLINA COURTS COMMISSION



## REPORT TO THE 1993 GENERAL ASSEMBLY OF NORTH CAROLINA

1994 SESSION

149793

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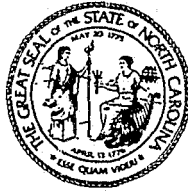
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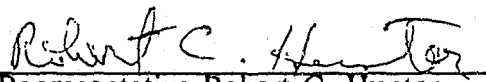


May 13, 1994

TO THE MEMBERS OF THE 1993 GENERAL ASSEMBLY:

The North Carolina Courts Commission submits to you for your consideration its report. This report was prepared according to G.S. 7A-508.

Respectfully submitted,

  
Representative Robert C. Hunter

Chair  
North Carolina Courts Commission

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## INTRODUCTION

The North Carolina Courts Commission, established by Article 40A of Chapter 7A of the General Statutes, is a permanent commission authorized to study the structure, organization, jurisdiction, procedures, and personnel of the Judicial Department and of the General Court of Justice. (See Appendix A.) The 1993-94 chair of the Commission is Representative Robert C. Hunter. The full membership of the Commission is listed in Appendix B of this report. A committee notebook containing the Commission minutes and all information presented to the Commission is filed in the Legislative Library.

## COMMISSION PROCEEDINGS

January 28, 1994

The Commission held its first meeting. Representative Hunter made introductory remarks, commenting in particular on the problem of violent crime in our society.

T. Wayne Harris, Supervisor, North Carolina Victims Compensation Commission, described the Victims Compensation Program and the financial problems the program currently has.

Robin L. Lubitz, Executive Director, N.C. Sentencing and Policy Advisory Commission, described some of the proposals concerning restitution that his organization is studying. It will report to the 1994 Session of the 1993 General Assembly.

Daniel T. Blue, Jr., Speaker of the House of Representatives, spoke about issues that he believed were important for the General Assembly to address during the upcoming Special Session on crime.

Robert T. Hargett, Associate Attorney General, told the Commission about the recent decision by an administrative law judge in the McCrimmon case, holding that a man was entitled to receive compensation from the Victims Compensation Fund, even though he was engaged in criminal activity at the time he was injured.

Governor James B. Hunt addressed the Commission. He discussed the proposals for fighting crime that he was going to make to the General Assembly for its Special Session.

After some discussion, the members of the Commission voted to recommend legislation to the Special Session. That legislation is set forth and explained in North Carolina Courts Commission: Recommended Legislation to the 1994 Special Session of the General Assembly. This report is on file in the Legislative Library.

April 22, 1994

Chief Justice James G. Exum, Jr. addressed the Commission. He told the Commission about the establishment of the Futures Commission on Justice and the Courts in North Carolina. The charge to the Futures Commission is to look ahead into the twenty-first century to develop a vision as to what the state's judiciary should be and to recommend the necessary steps to achieve that vision.

Chief Justice Exum made the following proposals for the Courts Commission to consider:

1. Eliminate de novo appeals to the superior court in misdemeanor cases in which the defendant has entered a guilty plea in the district court.
2. Establish higher qualifications for magistrates and raise their salaries.
3. Consider whether the jurisdictional amount in civil cases handled in district court should be increased from \$10,000.

4. Increase small claims limitations for magistrate's court from \$3,000.
5. Expand alternative dispute resolution programs.
6. Appropriate planning money for a new judicial center.
7. Consider whether to reduce the judicial divisions in which superior court judges rotate.
8. Make substantial adjustments in judicial salaries.

Chief Justice Exum also addressed the Attorney General's proposals to transfer H, I, and J felonies to the district court and to transfer the hearing of infractions to magistrates. He said that the proposal would need careful study and would require additional and better-trained magistrates. He said that the real caseload crush is in district court, not superior court.

Edwin M. Speas, Senior Deputy Attorney General, briefed the Commission on the decision by Judge Fox (U.S. District Court) on selection of superior court judges. The trial in that case is scheduled for August 22, 1994.

Attorney General Michael F. Easley addressed the Commission. He discussed the need for enactment of his proposals to transfer H, I, and J felonies to the district court and to transfer the hearing of infractions to magistrates (Senate Bills 118 and 119 in the 1994 Special Session). He also proposed the use of mediators to hear and decide infractions and the use of direct disposition with the district attorney by changing the infractions statement of charges.

The Commission members asked several questions. They expressed concern about the proposals in Senate Bills 118 and 119. Several members believed that the district courts would gain too heavy a caseload, explaining that H, I, and J felonies would take up far more time than the infractions that the district court already does.

Stan Sprague, Staff Attorney, Central Carolina Legal Services, talked about House Bill 124 from the 1994 Special Session. It would require the clerk of court to appoint a private process server if the sheriff could not serve civil papers in a child support case. The Commission had some concerns about how this procedure would work.

The Commission decided that the subject matter of the Attorney General's proposed bills, Senate 118 and 119, as it was referred to the Commission for study through Chapter 24 of the 1993 Session Laws (Special Session), Sections 51 and 52, needs further study. Therefore, the Commission decided not to make any recommendations to the 1994 Session of the 1993 General Assembly concerning these bills or the issues that they address.

May 13, 1994

James C. Drennan, Director of the Administrative Office of the Courts, addressed the Commission. He spoke of the need for better definition of roles within the court system, such as local vs. state funding, how district attorneys relate to law enforcement, and the role of judges in settling cases. He also talked about the pressures on the court system, particularly the pressures from family and juvenile cases in the district courts

and felony cases in the superior courts, as well as the heavy demand for more data from court information services.

The Commission voted to recommend to the 1994 Session of the 1993 General Assembly proposed legislation doing the following: (1) raising magistrates' qualifications and salaries, (2) appropriating planning money for a new state judicial center, and (3) allowing private process servers in civil cases where sheriffs are unable to serve process. The Commission also voted to recommend to the General Assembly that judicial salaries be increased.

Judge James A. Wynn, Jr., of the North Carolina Court of Appeals, told the Commission that Judge Hugh A. Wells of the Court of Appeals would soon be retiring due to the mandatory retirement age for judges. He asked that the Commission acknowledge the retirement of Judge Wells.



## RECOMMENDATIONS

**RECOMMENDATION 1:** The Commission recommends that the 1994 Session of the 1993 General Assembly enact "A BILL TO BE ENTITLED AN ACT TO RAISE THE EDUCATIONAL QUALIFICATIONS FOR THE OFFICE OF MAGISTRATE AND TO MODIFY THE MAGISTRATE'S PAY PLAN ACCORDINGLY" (Appendix C).

The Commission finds that there is a need to raise qualifications for magistrates' positions. Along with this, salaries should be raised to attract well-qualified magistrates.

House Bill 1074, which was introduced during the 1993 Session, would raise the minimum educational qualifications for the office of magistrate and would increase magistrates' pay accordingly. A committee substitute to that bill was reported favorably from the House Courts and Justice Committee. The bill is currently in House Appropriations. The adjournment resolution for the 1993 General Assembly (Regular Session) allows bills that have not crossed over to the other house before adjournment to be considered during the 1994 Extra Session if they directly and primarily affect the budget. Although House Bill 1074 directly affects the budget, there is a question as to whether it primarily affects the budget. Therefore, the Commission recommends that this new bill be passed by the General Assembly. This bill is identical to the committee substitute of House Bill 1074, except that it: (1) changes the effective date from July 1, 1993, to July 1, 1994; and (2) increases the salary scale by 2% to reflect the across-the-board increase that took effect on July 1, 1993.

**RECOMMENDATION 2:** The Commission recommends that the 1994 Session of the 1993 General Assembly enact "AN ACT TO APPROPRIATE FUNDS FOR THE PLANNING OF A NEW STATE JUDICIAL CENTER" (Appendix D).

The Commission finds that the state needs a new judicial facility to house the Supreme Court, the Court of Appeals, and the Administrative Office of the Courts. There is inadequate space in the present buildings for the two appellate courts, their employees, and their libraries, and the Administrative Office of the Courts is scattered among several buildings in different areas of Raleigh.

Senate Bill 1221, which was introduced during the 1993 Session and is in the Senate Committee on Capital Expenditures, would appropriate \$250,000 for planning money for a new state judicial center. The Commission was provided with information indicating that the planning costs would be around \$2 million rather than \$250,000. The Commission recognizes the need to plan for a new judicial facility. Therefore, it recommends passage of this bill, appropriating \$2 million to provide for adequate planning money for a new judicial center.

**RECOMMENDATION 3:** The Commission recommends that the 1994 Session of the 1993 General Assembly enact "AN ACT TO ALLOW SERVICE OF PROCESS BY A PRIVATE PROCESS SERVER WHEN A PROPER OFFICER RETURNS SERVICE OF PROCESS UNEXECUTED" (Appendix E).

The Commission finds that it would help to expedite civil cases to allow people to use private process servers to serve process where the sheriff neglects to, or is unable to, serve process.

During the 1994 Special Session, House Bill 124 was introduced. It would have provided for private process servers in child support actions. That bill does not appear to be eligible for consideration during the 1994 Extra Session. The Commission recommends this new legislation, which would allow the use of private process servers in all civil cases. It also adds a sentence that: (1) requires the plaintiff, plaintiff's agent, or plaintiff's attorney to submit to the clerk of court the name of a person to serve process, (2) provides that the person is compensated, if at all, by the plaintiff, plaintiff's agent, or plaintiff's attorney, and (3) provides that the person shall not be a party to the action and shall be at least 21 years old.

**RECOMMENDATION 4:** The Commission recommends that the 1994 Session of the 1993 General Assembly increase the salaries of the Chief Justice of the Supreme Court, Associate Justices of the Supreme Court, Chief Judge of the Court of Appeals, Judges of the Court of Appeals, Senior Resident Judges of the Superior Court, Judges of the Superior Court, Chief Resident Judges of the District Court, and Judges of the District Court to levels proposed by the Legislature and Judicial Salary Commission in its report to the 1990 Session of the 1989 General Assembly (Appendix F).

The Commission finds that judicial salaries in North Carolina lag behind those in other states in the United States and in the Southeast. The Commission finds that these salaries need to be increased to attract highly-qualified attorneys to the judiciary. Therefore, the Commission recommends that the General Assembly appropriate money to increase judicial salaries.

## APPENDIX A

### **G.S. CHAPTER 7A, ARTICLE 40A: NORTH CAROLINA COURTS COMMISSION**

#### **§ 7A-506. Creation; members; terms; qualifications; vacancies.**

(a) The North Carolina Courts Commission is created. Effective July 1, 1993, it shall consist of 24 members, six to be appointed by the Governor, six to be appointed by the Speaker of the House of Representatives, six to be appointed by the President Pro Tempore of the Senate, and six to be appointed by the Chief Justice of the Supreme Court.

(b) Of the appointees of the Chief Justice of the Supreme Court, one shall be a Justice of the Supreme Court, one shall be a Judge of the Court of Appeals, two shall be judges of superior court, and two shall be district court judges.

(c) Of the six appointees of the Governor, one shall be a district attorney, one shall be a practicing attorney, one shall be a clerk of superior court, at least three shall be members of the General Assembly, and at least one shall not be an attorney.

(d) Of the six appointees of the Speaker of the House, at least three shall be practicing attorneys, at least three shall be members of the General Assembly, and at least one shall not be an attorney.

(e) Of the six appointees of the President Pro Tempore of the Senate, at least three shall be practicing attorneys, at least three shall be members of the General Assembly, and at least one shall be a magistrate.

(f) Of the initial appointments of each appointing authority, three shall be appointed for four-year terms to begin July 1, 1993, and three shall be appointed for two-year terms to begin July 1, 1993. Successors shall be appointed for four-year terms.

(g) A vacancy in membership shall be filled for the remainder of the unexpired term by the appointing authority who made the original appointment. A member whose term expires may be reappointed. (1979, c. 1077, s. 1; 1981, c. 847; 1981 (Reg. Sess., 1982), c. 1253, s. 4; 1983, c. 181, ss. 1, 2, c. 774, s. 2; 1991, c. 739, s. 7; 1993, c. 438, s. 1.)

#### **§7A-507. Ex officio members.**

The following additional members shall serve ex officio: the Administrative Officer of the Courts; a representative of the N. C. State Bar appointed by the Council thereof; and a representative of the N. C. Bar Association appointed by the Board of Governors thereof. Ex officio members have no vote. (1979, c. 1077, s. 1.)

#### **§7A-508. Duties.**

It shall be the duty of the Commission 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 for such changes therein as will facilitate the administration of justice. (1979, c. 1077, s. 1.)

#### **§ 7A-509. Chair; meetings; compensation of members.**

The Governor, after consultation with the Chief Justice of the Supreme Court, shall appoint a chair from the legislative members of the Commission. The term of the chair is two years, and the chair may be reappointed. The Commission shall meet at such times and places as the chair shall designate. The facilities of the State Legislative Building shall be available to the Commission, subject to approval of the Legislative

Services Commission. The members of the Commission shall receive the same per diem and reimbursement for travel expenses as members of State boards and commissions generally. (1979, c. 1077, s. 1; 1993, c. 438, s. 2.)

**§7A-510. Supporting services.**

The Commission is authorized to contract for such professional and clerical services as are necessary in the proper performance of its duties. (1979, c. 1077, s. 1.)

## APPENDIX B

### **NORTH CAROLINA COURTS COMMISSION MEMBERSHIP 1993 - 1994**

#### **Governor's Appointments**

Rep. Philip A. "Phil" Baddour, Jr.  
208 S. William Street  
Goldsboro, NC 27530  
(919)735-7275

Hon. Robert H. "Bob" Christy, Jr.  
60 Court Plaza  
Asheville, NC 28801  
(704)255-4746

Hon. Carl Fox  
P.O. Box 1118  
Chapel Hill, NC 27514  
(919)732-9334

Sen. Elaine F. Marshall  
P.O. Box 1660  
Lillington, NC 27546  
(910)893-4000

Rep. Paul R. "Jaybird" McCrary  
310 Westover Drive  
Lexington, NC 27292  
(704)249-9285

W. Douglas "Doug" Parsons  
P.O. Box 1400  
Clinton, NC 28328  
(919)592-7066

#### **Chief Justice's Appointments**

Hon. Willis P. Whichard  
Associate Justice  
Supreme Court  
P.O. Box 1841  
Raleigh, NC 27602  
(919)733-3714

#### **President Pro Tempore's Appointments**

Sen. John G. Blackmon  
P.O. Box 33664  
Charlotte, NC 28233  
(704)332-6164

Mr. Bob Burchette  
Johnston, Taylor, Allison & Hord  
Attorney at Law  
101 North McDowell Street, Ste. 100  
Charlotte, NC 28204

Sen. George B. Daniel  
P.O. Box 1210  
Graham, NC 27253  
(910)226-0683

Mr. Phillip Ginn  
P.O. Box 427  
Boone, NC 28607

Sen. Wilbur P. Gulley  
4803 Montvale Drive  
Durham, NC 27707  
(919)683-1584

Mr. J. Carl Hayes  
P.O. Box 9  
Manteo, NC 27954

#### **Speaker's Appointments**

Rep. Robert C. Hunter, Chairman  
P.O. Drawer 1330  
Marion, NC 28752  
(704)652-2844

Rep. David T. Flaherty, Jr.  
P.O. Drawer 1586  
Lenoir, NC 28645  
(704)754-0961

Hon. James A. Wynn, Jr., Judge  
Court of Appeals  
P.O. Box 888  
Raleigh, NC 27602  
(919)733-6185

Hon. Robert P. Johnston  
Resident Superior Court Judge  
Mecklenburg County Courthouse  
700 E. Fourth Street  
Charlotte, NC 28202  
(704)347-7800

Hon. Richard B. Allsbrook  
Senior Resident Superior Court Judge  
Halifax County Courthouse  
Halifax, NC 27839  
(919)583-8121

Hon. William A. Christian  
Chief District Court Judge  
P.O. Box 2007  
Sanford, NC 27330  
(919)774-7570

Hon. Patricia A. Timmons-Goodson  
District Court Judge  
Cumberland County Courthouse  
P.O. Box 363  
Fayetteville, NC 28302  
(919)678-2901

Mr. George T. Griffin  
Cumberland County Clerk of Court  
P.O. Box 363  
Fayetteville, NC 28302

Rep. Robert J. Hensley, Jr.  
124 St. Mary's Street  
Raleigh, NC 27605  
(919)832-9651

Rep. Annie B. Kennedy  
3727 Spaulding Drive  
Winston-Salem, NC 27105  
(910)723-0007

Rep. H. Mickey Michaux, Jr.  
P.O. Box 2152  
Durham, NC 27702  
(919)596-8181

#### Ex Officio

##### Administrative Office of the Courts

Mr. James C. Drennan, Director  
Justice Building  
2 West Morgan Street  
Raleigh, NC 27601-1400  
(919)733-7107

##### N.C. State Bar Representative

Ms. Ann Reed  
P.O. Box 629  
Raleigh, NC 27602  
(919)733-3377

##### N.C. Bar Association Representative

Mr. Wade Barber, Jr.  
206 Hillsborough Street  
P.O. Box 602  
Pittsboro, NC 27312  
(919)542-2400

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Mr. Thomas H. Thornburg (919)966-4377  
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UNC-Chapel Hill  
Knapp Building, CB# 3330  
Chapel Hill, NC 27599-3330

**Clerk:**

Ms. Ferebee Stainback  
1201 Legislative Building  
O: (919)733-5987  
H: (919)847-5820

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

D

D94-RGZ-001

THIS IS A DRAFT 11-MAY-94 09:10:24

Short Title: Magistrates' Qual./Pay Plan.

(Public)

Sponsors:

Referred to:

- 1 A BILL TO BE ENTITLED  
2 AN ACT TO RAISE THE EDUCATIONAL QUALIFICATIONS FOR THE  
3 OFFICE OF MAGISTRATE AND TO MODIFY THE MAGISTRATE'S PAY  
4 PLAN ACCORDINGLY.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. G.S. 7A-171.2 reads as rewritten:  
7 "§ 7A-171.2. Qualifications for nomination or renomination.  
8 (a) In order to be eligible for nomination or for renomination as a magistrate an  
9 individual ~~must~~ shall be a resident of the county for which he is appointed.  
10 (b) ~~To be eligible for nomination as a magistrate, an individual must have~~  
11 ~~successfully completed a high school education, or have qualified for a certificate of~~  
12 ~~high school equivalency, or have successfully completed the course of basic training~~  
13 ~~prescribed by G.S. 7A-177. To be eligible for nomination as a magistrate, an~~  
14 individual shall have a four-year degree from an accredited senior institution of  
15 higher education or shall have a two-year associate degree and four years of work  
16 experience in a related field, including teaching, social services, law enforcement,  
17 arbitration or mediation, the court system, or counseling. The Administrative Officer  
18 of the Courts may determine whether the work experience is sufficiently related to  
19 the duties of the office of magistrate for the purposes of this subsection. In  
20 determining whether an individual's work experience is in a related field, the  
21 Administrative Officer of the Courts shall consider the requisite knowledge, skills,  
22 and abilities for the office of magistrate.  
23 The eligibility requirements prescribed by this subsection do not apply to  
24 individuals holding the office of magistrate on June 30, 1994, and do not apply to



1 individuals who have been nominated by June 30, 1994, but who have not been  
 2 appointed or taken the oath of office by that date.

3 (c) In order to be eligible for renomination as a magistrate an individual ~~must~~  
 4 shall have successfully completed the course of basic training for magistrates  
 5 prescribed by G.S. 7A-177.

6 (d) Notwithstanding any other provision of this subsection, an individual who  
 7 holds the office of magistrate on July 1, 1977, shall not be required to have  
 8 successfully completed the course of basic training for magistrates prescribed by G.S.  
 9 7A-177 in order to be eligible for renomination as a magistrate."

10 Sec. 2. G.S. 7A-171.1 reads as rewritten:

11 "§ 7A-171.1. Duty hours, salary, and travel expenses within county.

12 (a) The Administrative Officer of the Courts, after consultation with the chief  
 13 district judge and pursuant to the following provisions, shall set an annual salary for  
 14 each magistrate.

15 (1) ~~A full-time magistrate, so designated by the Administrative Officer~~  
 16 ~~of the Courts, magistrate~~ shall be paid the annual salary indicated  
 17 ~~in the table below according to the number of years he has served~~  
 18 ~~as a magistrate. The salary steps shall take effect on the anniversary~~  
 19 ~~of the date the magistrate was originally appointed; set out in this~~  
 20 ~~subdivision. A full-time magistrate is a magistrate who is assigned~~  
 21 ~~to work an average of not less than 40 hours a week during the~~  
 22 ~~term of office. The Administrative Officer of the Courts shall~~  
 23 ~~designate whether a magistrate is full-time. Initial appointment~~  
 24 ~~shall be at the entry rate. A magistrate's salary shall increase to~~  
 25 ~~the next step every two years on the anniversary of the date the~~  
 26 ~~magistrate was originally appointed.~~

27 Table of Salaries of Full-Time Magistrates

28 ~~Number of Prior Years of Service~~

Annual Salary

1992-93

29 ~~Less than 1~~

\$17,399

30 ~~1 or more but less than 3~~

18,293

31 ~~3 or more but less than 5~~

20,092

32 ~~5 or more but less than 7~~

22,075

33 ~~7 or more but less than 9~~

24,290

34 ~~9 or more but less than 11~~

26,702

35 ~~11 or more~~

29,333

Annual Salary

1993-94

36 Entry Rate

\$22,075

37 Step 1

24,290

38 Step 2

26,702

39 Step 3

29,333

40 Step 4

32,214

41 Step 5

35,382

## Step 6

38,866.

~~A 'Full time magistrate' is a magistrate who is assigned to work an average of not less than 40 hours a week during his term of office. Notwithstanding any other provision of this subdivision, a full time magistrate, who was serving as a magistrate on December 31, 1978, and who was receiving an annual salary in excess of that which would ordinarily be allowed under the provisions of this subdivision, shall not have the salary, which he was receiving reduced during any subsequent term as a full time magistrate. That magistrate's salary shall be fixed at the salary level from the table above which is nearest and higher than the latest annual salary he was receiving on December 31, 1978, and, thereafter, shall advance in accordance with the schedule in the table above.~~

- (2) ~~A part-time magistrate, so designated by the Administrative Officer of the Courts, is included, in accordance with G.S. 7A-170, under the provisions of G.S. 135-1(10) and 135-40.2(a) and~~ magistrate is a magistrate who is assigned to work an average of less than 40 hours of work a week during the term, except that no magistrate shall be assigned an average of less than 10 hours of work a week during the term. A part-time magistrate is included, in accordance with G.S. 7A-170, under the provisions of G.S. 135-1(10) and G.S. 135-40.2(a). The Administrative Officer of the Courts designates whether a magistrate is a part-time magistrate. A part-time magistrate shall receive an annual salary based on the following formula: The average number of hours a week that a part-time magistrate is assigned work during his the term shall be multiplied by the annual salary payable to a full-time magistrate who has the same number of years of service prior to the beginning of that term as does the part-time magistrate and the product of that multiplication shall be divided by the number 40. The quotient shall be the annual salary payable to that part-time magistrate.

~~A 'part-time magistrate' is a magistrate who is assigned to work an average of less than 40 hours of work a week during his term. No magistrate may be assigned an average of less than 10 hours of work a week during his term.~~

~~Notwithstanding any other provision of this subdivision, upon reappointment as a magistrate and being assigned to work the same or greater number of hours as he worked as a magistrate for a term of office ending on December 31, 1978, a person who received an annual salary in excess of that to which he would be entitled under the formula contained in this subdivision shall receive an annual salary equal to that received during the prior term. That magistrate's salary shall increase in accordance with the salary formula contained in this subdivision.~~

- (3) ~~Notwithstanding any other provision of this section, a magistrate with a two year Associate in Applied Science degree in criminal justice or paralegal training from a North Carolina community college or the equivalent degree from a private educational institution in North Carolina, shall receive the annual salary provided in the table above for a magistrate with three years of service in addition to those which the magistrate has served; a magistrate with a four year degree from an accredited senior institution of higher education shall receive the annual salary provided in the table above for a magistrate with five years of service in addition to those which the magistrate has served; a magistrate who holds a law degree from an accredited law school shall receive the annual salary provided in the table above for a magistrate with seven years of service in addition to those which the magistrate has served; and a magistrate who is licensed to practice law in North Carolina shall receive the annual salary provided in the table above for a magistrate with nine years of service in addition to those which the magistrate has served.~~

~~Magistrates with a two or four year degree or a law degree described herein who became magistrates before July 1, 1979 are entitled to an increase of three, five and seven years, respectively, in their seniority, for pay purposes only. Full time magistrates licensed to practice law in North Carolina who became magistrates before July 1, 1979 are entitled to the pay of a magistrate with 9 or more years of service, and part time magistrates holding a law degree or a license to practice law as described above who became magistrates before July 1, 1979 are entitled to a proportionate adjustment in their pay. Pay increases authorized by this paragraph of this subdivision are not retroactive. Notwithstanding any other provision of this subsection, an individual who, when initially appointed as a full-time magistrate, is licensed to practice law in North Carolina, shall receive the annual salary provided in the Table in subdivision (1) of this subsection for Step 4. This magistrate's salary shall increase to the next step every two years on the anniversary of the date the magistrate was originally appointed. An individual who, when initially appointed as a part-time magistrate, is licensed to practice law in North Carolina, shall be paid an annual salary based on that for Step 4 and determined according to the formula in subdivision (2) of this subsection. This magistrate's salary shall increase to the next step every two years on the anniversary of the date the magistrate was originally appointed. The salary of a full-time magistrate who acquires a license to practice law in North Carolina while holding the office of magistrate and who at the time of acquiring the license is~~

receiving a salary at a level lower than Step 4 shall be adjusted to Step 4 and, thereafter, shall advance in accordance with the Table's schedule. The salary of a part-time magistrate who acquires a license to practice law in North Carolina while holding the office of magistrate and who at the time of acquiring the license is receiving an annual salary as determined by subdivision (2) of this subsection based on a salary level lower than Step 4 shall be adjusted to a salary based on Step 4 in the Table and, thereafter, shall advance in accordance with the provision in subdivision (2) of this subsection.

- (4) ~~Notwithstanding any other provision of this section, a magistrate with 10 years' experience within the last 12 years as a sheriff or deputy sheriff, administrative officer for a district attorney, city or county police officer, campus police officer, wildlife officer, or highway patrolman in the State of North Carolina, or with 20 years' experience as a sheriff or deputy sheriff, city or county police officer, campus police officer, wildlife officer, or highway patrolman in the State of North Carolina, or with 10 years' experience within the last 12 years as clerk of superior court or an assistant or deputy clerk of court in the State of North Carolina shall receive the annual salary provided in the table in subdivision (1) for a magistrate with five years of service in addition to those the magistrate has served. A magistrate who qualifies for the increased salary under both subdivisions (3) and (4) of this subsection shall receive either the salary determined under subdivision (3) or that determined under subdivision (4), whichever is higher, but no more.~~

(a1) Notwithstanding subsection (a), the following salary provisions apply to individuals who were serving as magistrates on June 30, 1994:

- (1) The salaries of magistrates who on June 30, 1994, were paid at a salary level of less than five years of service under the table in effect that date shall be as follows:
- |   |                  |
|---|------------------|
| <u>Less than 1 year of service</u>                | <u>\$ 17,399</u> |
| <u>1 or more but less than 3 years of service</u> | <u>18,293</u>    |
| <u>3 or more but less than 5 years of service</u> | <u>20,092.</u>   |
- Upon completion of four years of service, those magistrates shall receive the salary set as the Entry Rate in the table in subsection (a).
- (2) The salaries of magistrates who on June 30, 1994, were paid at a salary level of five or more years of service shall be based on the rates set out in subsection (a) as follows:

<u>Salary Level on June 30, 1994</u>	<u>Salary Level on July 1, 1994</u>
<u>5 or more but less than 7 years of service</u>	<u>Entry Rate</u>

1           7 or more but less than 9 years of service

Step 1

2           9 or more but less than 11 years of service

Step 2

3           11 or more years of service

Step 3.

4           Thereafter, their salaries shall be set in accordance with the  
5           provisions in subsection (a).

6           (3) The salaries of magistrates who are licensed to practice law in  
7           North Carolina shall be adjusted to the annual salary provided in  
8           the table in subsection (a) as Step 4, and, thereafter, their salaries  
9           shall be set in accordance with the provisions in subsection (a).

10          (4) The salaries of 'part-time magistrates' shall be set under the  
11          formula set out in subdivision (2) of subsection (a) but according  
12          to the rates set out in this subsection.

13          ~~(5)~~ (b) The Administrative Officer of the Courts shall provide magistrates with  
14          longevity pay at the same rates as are provided by the State to its employees subject  
15          to the State Personnel Act.

16          ~~(b)~~ (c) Notwithstanding G.S. 138-6, a magistrate may not be reimbursed by the  
17          State for travel expenses incurred on official business within the county in which the  
18          magistrate resides."

19          Sec. 3. This act becomes effective July 1, 1994. Subsection (a1) of G.S.  
20          7A-171.1, as added by Section 2 of this act, expires June 30, 1998.

## ANALYSIS OF PROPOSED LEGISLATION

The proposed legislation is similar to HB 1074, introduced in 1993 and currently in the House Appropriations Committee. Only two changes from HB 1074 are made in the proposed legislation. First, the proposed legislation changes the effective date from July 1, 1993 to July 1, 1994. Second, it increases the salary scale by 2% to reflect the across-the-board increase that took effect July 1, 1993. Otherwise the two bills are identical. The following is a summary of the proposed legislation.

The bill has two major provisions; it raises the minimum educational qualification for the office of magistrate and increases the pay accordingly. The plan affects magistrates appointed after the effective date differently from those already in office when the bill takes effect.

Educational Requirements. Currently, to be eligible for appointment to the office of magistrate, a person is required to have at least a high school diploma or GED. Magistrates who have associate degrees, bachelor degrees, law degrees, licenses to practice law, law enforcement experience and experience in the clerk's office receive salary credits. Under the new bill to be eligible for nomination as a magistrate, an individual must have either (1) a 4-year college degree or (2) an associate degree and 4 years experience in a related field. The only salary credit given under the new plan is for individuals who are licensed to practice law in North Carolina. (They begin at Step 4.)

Magistrates already in office on July 1, 1994, are grandfathered in and are not required to meet the new minimum educational requirements.

Salary Modifications. The new pay scale provides for an entry level equal to the current beginning salary for magistrates with 4-year college diplomas. Thus, magistrates meeting the new educational requirements would start at the same salary under the new plan as they would under the current law. The new pay plan has 6 steps beginning at \$22,075 and ending at \$38,104. (The current salary scale runs from \$17,399 to \$29,333; magistrates who have college degrees begin in the middle of the scale at \$22,075.) Magistrates would move up the scale every two years on their anniversary date, which mirrors the current plan. However, since the top steps on the new plan are higher than the current plan, magistrates eventually would advance to a higher salary.

Magistrates already in office on July 1, 1994, merge into the new pay plan without getting any immediate pay increase under it. The advantage to current magistrates is that they can eventually move up into the higher salary scales on their two-year anniversary dates. The only current magistrates who will receive an immediate salary increase under the bill are those who are licensed to practice law in North Carolina. Those magistrates will move from a current salary of \$26,702, if they have served for less than two years, or \$29,333, if they have been a magistrate for two or more years, to a salary of \$32,214 (Step 4) on July 1, 1994.

Three examples for non-attorney magistrates might be useful. Magistrate A was appointed on January 1, 1994. He had a high school diploma and did not qualify for the law enforcement or clerk's office credit. Under the current system, his salary is \$17,399, and he would be entitled to an increase to \$18,293 on January 1, 1995. That would not change under this bill. The only increase he would be entitled to before

January 1, 1995, would be a cost of living increase granted by the General Assembly. On January 1, 1998, when Magistrate A completes four years of service, he would move into the new salary scale at the Entry Level of \$22,075. He would then receive an increase every two years thereafter on January 1 until he reached Step 6. Thus, it would take Magistrate A until January 1, 2010, or 15 years to reach the top of the scale.

Magistrate B was appointed on January 1, 1992. She had a college degree, and therefore, under the current plan she began at the level of five or more but less than seven years of service and received her two-year increase on January 1, 1994. Her salary now is \$24,290; under the new plan on the effective date of the bill her salary will remain at \$24,290, plus any cost-of-living increases granted by the General Assembly. On January 1, 1996 and every two years thereafter, she would continue to receive her incremental raises until she reaches the top of the pay scale.

Magistrate C was appointed on April 25, 1977. Under the current salary plan, he is at the top of the scale (11 or more years of service) and is paid a salary of \$29,333. Under the new plan, he will continue to receive the same salary (Step 3), plus any cost-of-living increases granted by the General Assembly. On April 25, 1995 and every two years thereafter, he would be entitled to a step increase until he reaches the top of the pay scale.

APPENDIX D

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

D

D94-RGZ-002

THIS IS A DRAFT 13-MAY-94 13:54:03

Short Title: Judicial Center Funds.

(Public)

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Sponsors:

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Referred to:

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- 1 A BILL TO BE ENTITLED  
2 AN ACT TO APPROPRIATE FUNDS FOR THE PLANNING OF A NEW STATE  
3 JUDICIAL CENTER.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. There is appropriated from the General Fund  
6 to the Judicial Department the sum of two million dollars  
7 (\$2,000,000) for the 1994-95 fiscal year for initial planning for  
8 a new judicial facility to accommodate the Supreme Court, the  
9 Court of Appeals, and the Administrative Office of the Courts.  
10 Sec. 2. This act is effective upon ratification.



## ANALYSIS OF PROPOSED LEGISLATION

The proposed legislation appropriates from the General Fund to the Judicial Department the sum of \$2,000,000 for the 1994-95 fiscal year to begin planning a new judicial facility to house the Supreme Court, the Court of Appeals, and the Administrative Office of the Courts. The proposed bill is similar to Senate Bill 1221, which is currently in the Senate Committee on Capital Expenditures. Senate Bill 1221 contains an appropriation of \$250,000 for the planning of a new judicial facility instead of the \$2,000,000 appropriation contained in this bill.

The bill would be effective upon ratification.

APPENDIX E

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

D

94D-RGZ-003

THIS IS A DRAFT 13-MAY-94 14:11:24

Short Title: Service of Process/Child Support

(Public)

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Sponsors:

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Referred to:

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1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW SERVICE OF PROCESS BY A PRIVATE PROCESS SERVER  
3 WHEN A PROPER OFFICER RETURNS SERVICE OF PROCESS UNEXECUTED.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. G.S. 1A-1, Rule 4(h), reads as rewritten:  
6 "(h) Summons -- When proper officer not available. -- If at  
7 anytime there is not in a county a proper officer, capable of  
8 executing process, to whom summons or other process can be  
9 delivered for service, or if a proper officer refuses or neglects  
10 to execute such process, or if a proper officer returns such  
11 process unexecuted, or if such officer is a party to or otherwise  
12 interested in the action or proceeding, the clerk of the issuing  
13 court, upon the facts being verified before him by written  
14 affidavit of the plaintiff or his agent or attorney, shall  
15 appoint some suitable person who, after he accepts such process  
16 for service, shall execute such process in the same manner, with  
17 like effect, and subject to the same liabilities, as if such  
18 person were a proper officer regularly serving process in that  
19 county. In an action in which a proper officer returns the  
20 process unexecuted, the plaintiff or his agent or attorney shall

1 submit to the clerk the name of some suitable person to execute  
2 service of process; that person shall be compensated, if at all,  
3 by the plaintiff or his agent or attorney, shall not be a party  
4 to the action and shall not be less than 21 years of age."

5       Sec. 2. This act becomes effective September 1, 1994,  
6 and applies to actions that are filed or have not reached final  
7 judgment on or after that date.

## ANALYSIS OF PROPOSED LEGISLATION

**BACKGROUND:** Rule 4(a) of the North Carolina Rules of Civil Procedure provides that only the sheriff of the county where service is to be made or some other person duly authorized by law to serve a summons may execute process in this State. Rule 4(h) provides that if there is no sheriff or other proper officer capable of serving process, or if a proper officer refuses or neglects to serve process or is a party to the action, the clerk of the issuing court shall appoint some suitable person to serve such process. Unless appointed by the clerk under the provisions of Rule 4(h), existing North Carolina law does not allow a private individual to serve process within the geographic boundaries of this State.

Rule 4(a) does provide that outside of this State anyone who is not a party and is not less than 21 years of age, or anyone duly authorized to serve a summons by law of the place where service is to be made may serve process. Thus, private service of process is allowed in a North Carolina action for a party outside of the State.

**SUMMARY:** The proposed legislation would amend Rule 4(h) to provide that if the sheriff or other proper officer returns process unexecuted and the plaintiff by written affidavit verifies this fact, the clerk shall appoint a suitable person to accept such process for service. The bill does clarify that, in the case of an unexecuted service of process under this subsection, the plaintiff must submit to the clerk the name of the person to serve process and the plaintiff must compensate the person, if any compensation is to be made. (For other appointments by the clerk under this subsection, it is the clerk's responsibility, and not the plaintiff's, to find a person to serve process.)

House Bill 124 would become effective September 1, 1994 and would apply to actions that are filed or have not reached final judgment on or after that date.

## RECOMMENDATIONS

1. Base pay be established for the entire Judiciary. The salary of the judges at the different levels of courts be set by using a percentage of the base pay.
2. The initial base salary be established at \$80,000 annually.
  - 2.1 The Chief Justice of the Supreme Court be 122% of base salary annually or \$97,600.
  - 2.2 The Associate Justices of the Supreme Court be 120% of base salary annually or \$96,000.
  - 2.3 The Chief Judge of Court of Appeals be 117% of base salary annually or \$93,600.
  - 2.4 The Judges of Court of Appeals be 115% of base salary annually or \$92,000.
  - 2.5 The Senior Resident Judge of the Superior Court of each Judicial District be 112% of base or \$89,600.
  - 2.6 The Judges of the Superior Court of each Judicial District be 110% of base salary annually or \$88,000.
  - 2.7 The Chief Resident Judge of the District Court of each Judicial District of 102% of base salary annually or \$81,600.
  - 2.8 The Judges of District Court of each Judicial District of 100% of base salary or \$80,000.
3. All judges shall receive longevity pay as follows:

5 years longevity creditable service	4.8%
10 years longevity creditable service	9.6%
15 years longevity creditable service	14.4%
20 years longevity creditable service	19.2%
4. The Superior Court Judges be provided a subsistence allowance of \$9,000 annually and the other Judges receive the same subsistence away from their county of residence as provided by the Administrative Office of the Courts.
5. The Judges be provided the same health insurance coverages as provided by the Administrative Office of the Courts.
6. All Appellate Court Judges earn retirement and disability benefits annually at 4% of final compensation times years of creditable service, vesting after 5 years of creditable service as a Judge.
7. All Superior Court Judges earn retirement and disability benefits annually at 3 1/2% of final compensation times years of creditable service, vesting after 5 years of creditable service as a Judge.
8. All District Court Judges earn retirement and disability benefits annually at 3% of final compensation times years of creditable service, vesting after 5 years of creditable service as a Judge.