

# **NORTH CAROLINA LAMP COMMITTEE**

## **ANNUAL CLE CONFERENCE**

### **NORTH CAROLINA STATE COURTS: PRACTICE AND PROCEDURE<sup>1</sup>**

I. Introduction.

II. The Supreme Court

A. The Appellate Division of the General Court of Justice is composed of the Supreme Court and the Court of Appeals. The Supreme Court is the state's highest court. This court has a chief justice and six associate justices, who sit as a body in Raleigh and hear oral arguments in cases appealed from lower courts. The Supreme Court has no jury, and it makes no determinations of fact; rather, it considers errors in legal procedures or in judicial interpretation of the law and hears arguments on the written record from the trial below. Its decisions are printed and distributed in bound volumes known as "North Carolina Reports."

B. The Supreme Court's case load has consisted primarily of cases involving questions of constitutional law, legal questions of major significance and appeals from convictions imposing death sentences in first-degree murder cases.

C. Except in very limited circumstances, a party dissatisfied with the results in the trial division has a right to be heard by either the Supreme Court or the Court of Appeals, and in some cases by both. In 1995-96, the Supreme Court disposed of 231 cases on appeal.

D. First-degree murder convictions for which the defendant is given the death penalty go directly to the Supreme Court from superior court. The Utilities Commission's general rate-making cases go directly from the commission to the Supreme Court. All other cases go to the Court of Appeals.

E. Cases involving a constitutional question and cases in which there is a dissent in the Court of Appeals go to the Supreme Court from the Court of Appeals by right (that is, the appealing party has a right to have the case heard by the appellate courts). Other cases go to either the Supreme Court or the Court of Appeals or both by certification (that is, the Supreme Court decides whether to review the case that has been decided by the Court of Appeals and in some cases, the Supreme Court decides to take a case directly, bypassing the Court of Appeals.)

F. The Supreme Court is located in the Justice Building in Raleigh. It has a clerk, who is

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<sup>1</sup>This outline was taken in substantial part from the webpage for The North Carolina Court system, which can be found at [www.nccourts.org/courts/default.asp](http://www.nccourts.org/courts/default.asp).

its administrative officer. Each justice has two research assistants, who must be law school graduates. The Supreme Court clerk also serves as the marshal to the court.

### III. The Court of Appeals

A. The Appellate Division of the General Court of Justice is composed of the Supreme Court and the Court of Appeals. The Court of Appeals is an intermediate appellate court. It is composed of twelve judges, who sit in panels of three. Most of the court's sessions are held in Raleigh, but individual panels have on occasion sat in other localities throughout the state. Like the Supreme Court, the Court of Appeals decides only questions of law.

B. This court was created to relieve the Supreme Court of a portion of its case load. It hears and decides cases in which the questions of law are less significant. Except in very limited circumstances, a party dissatisfied with the results in the trial division has a right to be heard by one or the other of these courts and in some cases by both.

C. In 1995-96, the Court of Appeals disposed of 1,425 cases on appeal. First-degree murder convictions for which the defendant is given the death penalty go directly to the Supreme Court from superior court. The Utilities Commission's general ratemaking cases go directly from the commission to the Supreme Court. All other cases go to the Court of Appeals.

D. Cases involving a constitutional question and cases in which there is a dissent in the Court of Appeals go to the Supreme Court from the Court of Appeals by right (that is, the appealing party has a right to have the case heard by the appellate courts). Other cases go to either the Supreme Court or the Court of Appeals or both by certification (that is, the Supreme Court decides whether to review the case that has been decided by the Court of Appeals and in some cases, the Supreme Court decides to take a case directly, bypassing the Court of Appeals.)

E. The Court of Appeals is located in downtown Raleigh, next to the Justice Building, in the Court of Appeals Building. The Court of Appeals has a clerk, who is its administrative officer. Each judge has two research assistants, who must be law school graduates. The Court of Appeals clerk also serves as the marshal to its court.

### IV. The Superior Court Division

A. The Superior Court Division consists of the superior court, which is the court with general trial jurisdiction. This court sits at least twice a year in each county of the state. In the busiest counties, several sessions may be held concurrently each week.

B. The state is divided into sixty-two superior court districts for electoral purposes and forty-six districts for administrative purposes. Where the superior court district is composed of less than one county, several superior court electoral districts become one district for administrative purposes. For example, Wake County has four superior court districts-10A,

10B, 10C and 10D-for electoral purposes, but all are joined together for administrative purposes with only one senior resident superior court judge for the four electoral districts. The state also is divided into four divisions for rotation purposes.

C. Judges – There are ninety regular (elected) superior court judges, of which forty-six are senior resident superior court judges. The senior resident superior court judge is the most senior judge in each of the administrative districts and is responsible for carrying out various administrative duties and appointing magistrates and some other court officials. The number of judges in a judicial district is specified by the General Assembly and is based on the volume of judicial business.

D. The constitution requires superior court judges to rotate, or "ride the circuit," from one district to another in their division. Judges are assigned to a judicial district for a six-month period and then rotated to another district for the same time period. In the past many judges spent months or years holding court 100 miles or more away from their own homes, commuting on weekends or, in some instances, establishing a second home in the district to which they are temporarily assigned.

E. Rotation of judges costs the state more than would a non-rotation system because of substantial travel expenses. It also allows a lawyer, by delaying a case, to "shop" for the judge before whom the lawyer wishes to present a case; and it may mean that several judges hear parts of the case at different times rather than one judge seeing the entire case through.

F. On the other hand, the rotation system helps avoid any favoritism that might result from always having a judge hold court where he or she lives, has close friends among the lawyers and might be more personally familiar with and interested in the particular cases tried. It also contributes to uniformity of procedure. The frequent changes of judges tend to discourage the development of local rules that are unique to that area.

G. In recent years, the chief justice has tried to balance the requirement for rotation with the need to better manage cases moving through the system by assigning all resident superior court judges to their home districts more frequently, senior judges even more frequently, and by designating certain cases as "extraordinary cases," which means that one judge is assigned to hear all matters in that case.

H. In addition to regular superior court judges, the Governor appoints eight special superior court judges to four-year terms. These judges are not elected and may reside in any county. Special superior court judges may be assigned to hold sessions of court in any county of the state where they may be needed without regard to their district of residence or rotation requirements. Theoretically, a special judge over the years could sit in every county of the state. In practice, they are usually assigned to those counties closest to their residence.

I. Jurisdiction – The civil jurisdiction of the superior court is concurrent with that

of the district court. Cases involving more than \$10,000 in money and a few special categories of cases (injunctions, constitutional issues, eminent domain actions and corporate receiverships) are usually tried in superior court. A jury of twelve persons is available in civil cases. As to criminal jurisdiction, the superior court has exclusive jurisdiction over all felonies (major crimes) and jurisdiction over misdemeanors (crimes for which the punishment cannot exceed two years' imprisonment) and infractions (minor non-criminal motor vehicle violations) appealed from a conviction in district court. Trials are by a jury of twelve. In criminal cases appealed from the district court, the defendant gets a trial de novo (a whole new trial). Approximately 34 percent of the criminal cases in superior court are misdemeanors on appeal from district court.

## V. The District Court Division

A. The state is divided into thirty-nine district court districts. Like the superior court, the district court sits in the county seat of each county. It may also sit in certain other cities and towns specifically authorized by the General Assembly. Most counties have only one seat of court, but a few counties have several. The present number of additional seats is forty.

B. Judges – District judges, like superior and appellate court judges, serve full time and are forbidden from practicing law privately. Each district has from one to fourteen judges, depending on population and geography, and the total number of district court judges in the state is 204. The chief justice appoints one judge in each district as chief district court judge. The responsibilities of the chief district court judge include assigning all of the judges of the district to sessions of court; prescribing the times and places at which magistrates will discharge their duties; assigning civil (small claims) cases to magistrates for trial; and in conjunction with the other chief district court judges, promulgating schedules of minor traffic, wildlife, boating, marine fisheries, state park recreation, alcoholic beverage and littering offenses for which magistrates and clerks of court may accept written appearances, waivers of trial and pleas of guilty.

## VI. Magistrates

A. Magistrates for each county are appointed for two-year terms by the senior superior court judge on nomination of the clerk of superior court. The maximum and minimum numbers of magistrates allowed each county are fixed by law; currently there are about 690 magistrates in the state.

B. Magistrates are officers of the district court, and they are subject to the supervision of the chief district court judge in judicial matters and the clerk of court in clerical matters. Some are assigned to be on duty forty hours per week and others for less time as determined by the chief district court judge in consultation with the Administrative Office of the Courts. Their salaries are paid by the state and are based on their length of service and number of hours worked per week.

C. If the minimum quota (never less than one) of magistrates in a county proves to be inadequate, additional magistrates within a maximum quota per county may be authorized by the Administrative Office of the Courts on recommendation of the chief district court judge if funds are available.

D. Jurisdiction – The jurisdiction of the district court is somewhat complicated and can be explained clearly only by reference to both trial court divisions, including the magistrate. In addition, for convenience, the subject should be treated in four categories: civil, criminal, juvenile, and magisterial.

E. Civil --Except for the clerk of superior court' s exclusive original jurisdiction over the probate of wills and the administration of decedents' estates, civil jurisdiction is concurrent between the superior and district trial divisions of the General Court of Justice. But the District Court Division s the proper division for cases involving amounts in controversy of \$10,000 or less, and the Superior Court Division is proper for cases involving amounts in controversy over \$10,000.

F. Normally this \$10,000 dividing line is followed, but if the parties consent for reasons of speed or convenience, cases may be filed and tried in the "improper" division. No case is ever "thrown out," therefore, for lack of jurisdiction, although a case may be transferred to the proper division. Exceptions to the general "proper division rule" arise in certain specific subject-matter categories. For example, civil domestic relations matters (divorce, custody and support of children) are properly the business of the district court, while the superior court is the proper forum for constitutional issues, special proceedings, eminent domain actions, corporate receiverships and review of certain administrative agency rulings.

G. Civil cases involving amounts not over \$4,000 may, under certain conditions, be assigned to a magistrate for trial as a "small claims" action. A jury may be requested for trial of a civil case before a district court judge but not before a magistrate. Generally, parties are represented by attorneys in district court while they appear on their own in trials before a magistrate. However, North Carolina law does not prohibit attorneys from representing clients in small claims court and allows parties to represent themselves (called appearing pro se) in any court in the state.

H. Criminal -- The criminal jurisdiction of the district court is less complicated. Because felony cases must be tried in the superior court, the district court has authority in those cases only to conduct preliminary hearings to determine whether there is probable cause to bind the defendant over to the grand jury for indictment to stand trial in superior court.

I. In misdemeanor cases, the district court has exclusive original jurisdiction that, with respect to very minor offenses, it shares with the magistrate. Trial of a criminal case in district court is always without a jury.

J. Juvenile – The district court also has jurisdiction over juvenile matters. These

cases concern children under the age of sixteen who are "delinquent" or "undisciplined" and children under the age of eighteen who are "dependent," "neglected" or "abused." Proceedings involving children who may be found to belong in one of these statutory categories are initiated by petition (as distinguished from the arrest warrant used in adult cases), and the hearing conducted by the judge may be less formal than in adult cases. However, juveniles do have attorneys appointed to represent them at the hearing.

K. Magisterial – Magisterial jurisdiction is both civil and criminal. The magistrate' s authority in criminal matters is limited to (a) accepting guilty pleas to minor misdemeanors and pleas of responsibility to infractions; (b) accepting waivers of trial and guilty pleas to certain traffic, littering, wildlife, boating, marine fisheries, state park recreation and alcoholic beverage violations; and (c) accepting waivers of trial and guilty pleas in worthless-check cases in which the check is for \$2,000 or less.

L. If specifically authorized by the chief district judge, the magistrate may also hear cases and enter judgment on a plea of not guilty to a worthless-check case in which the check is for \$2,000 or less. However, very few magistrates have been authorized to try worthless-check cases on a not-guilty plea.

M. The magistrate also issues arrest and search warrants and sets bail. For the minor littering, traffic, wildlife, boating, marine fisheries, state park recreation and alcoholic beverage offenses, the fine for each offense is fixed in advance by a uniform statewide schedule promulgated by the chief district judges so that the magistrate has neither trial nor sentencing discretion in these cases and so that the fine that a person charged with the offense will pay is uniform throughout the state.

N. In about 39 percent of all traffic misdemeanors and infractions (approximately 519,000 cases), trial is waived, and the matter never goes to court. And in non-motor vehicle cases, trial is waived in about 8 percent (50,000) of the cases. The magistrate or clerk assesses the fine according to the uniform schedule. In another 1 percent of the non-motor vehicle offenses (7,000 cases), the defendant pleads guilty before a magistrate.

O. In civil cases, the magistrate is authorized to try small claims involving up to \$4,000 money value, including summary ejectment (landlord' s action to oust a tenant) cases, assigned by the chief district judge. In fiscal year 1996-97, magistrates disposed of 271,977 civil cases. The parties are not usually represented by attorneys, and simplified trial procedures are followed. Trial is always without a jury. The magistrate' s judgment has the same effect as that of a district judge and is placed in the records of the clerk of superior court. An appeal from magistrate' s court to district court gives the appealing party an entirely new trial.

P. Besides hearing small-claims cases, the magistrate is authorized to perform various quasi-judicial or administrative functions formerly discharged by justices of the peace. Of these, performance of the marriage ceremony is the most common. The magistrate is the only civil official in the state who can perform a marriage. Other authorized functions of the

magistrate include assigning a year's allowance to a surviving spouse, administering oaths, verifying pleadings and taking acknowledgments (notarizing) of instruments.

VII. NC Court Forms –<http://www.nccourts.org/Forms/FormSearch.asp>

VIII. NC Rules – <http://www.aoc.state.nc.us/www/public/html/rules.htm>

N.C. Rules of Appellate Procedure

N.C. Rules of Appellate Procedure

Orders Adopting Amendments to the Rules of Appellate Procedure

Appellate Procedure Style Manual

General Rules of Practice for Superior and District Courts

North Carolina State Bar Rules

NC Bar - Appellate Law Practice

IX Best Practices in District Court

I. Conclusion