



# THE NORTH CAROLINA JUDICIAL SYSTEM

2008 EDITION





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The cover photo is of the North Carolina Justice Building  
in downtown Raleigh.



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the* COURTS

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# INTRODUCTION

Under the North Carolina Constitution, the Judicial Department is established as a co-equal branch of state government with the Legislative and Executive branches. North Carolina's court system, called the General Court of Justice, is a unified statewide and state-operated system.

Before 1966, North Carolina operated under a hybrid court system with a supreme court (the appellate court) and a superior court (general jurisdiction trial court), funded by the State and uniform statewide. However, lower courts were operated and funded by cities and counties, and jurisdiction of those courts varied. In one county a municipal court might handle certain types of cases, while in another county a different court would handle the same matters. At one time North Carolina had 256 various lower courts. Clerks of superior court and justices of the peace worked on a fee basis; for example, a justice of the peace received a fee upon finding a defendant guilty, but no fee if the defendant was found not guilty. That procedure alone caused much consternation about the judicial system because the court official could be biased if presented with a financial interest in the outcome of a proceeding before him.

The North Carolina Bar Association appointed a committee to study the court system in 1955. The committee, named the Committee on Improving and Expediting the Administration of Justice in North Carolina, was known as the "Bell Commission," because its chairman was J. Spencer Bell, an attorney from Charlotte.

*Under the North Carolina Constitution, the Judicial Department is established as a co-equal branch of state government with the legislative and executive branches. North Carolina's court system, called the General Court of Justice, is a unified statewide and state-operated system.*

## INTRODUCTION

After a thorough study, the Bell Commission in 1958 recommended a complete restructuring of the judicial system.<sup>1</sup> In 1962, the voters of North Carolina approved a constitutional amendment creating North Carolina's present court system under Article IV of the present constitution. Legislation was passed in 1965 to reorganize the court system according to the new Article IV, and the system began operation in 1966. Jurisdiction of the courts of North Carolina is now uniform throughout the state. At the trial level, original jurisdiction over misdemeanors, minor civil cases, juvenile matters and domestic relations was taken from the superior court and given to the district court, and the many city and county courts were replaced by a uniform district court system. The justices of the peace and mayors' courts were replaced by magistrates, who operate within the district court division. On the appellate level, an intermediate appellate court – the Court of Appeals – was created in 1967 to relieve the heavy caseload of the Supreme Court.

Among the significant changes brought about by this uniform judicial system was the centralization of administration and budgeting. All court personnel are paid by the State, rather than being paid based on the number or outcome of cases before them. The Administrative Office of the Courts, under a director appointed by the Chief Justice of the Supreme Court, is responsible for developing a single budget for the entire judicial system.

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*This guide contains some legal terms or phrases that are not common in regular English use. A glossary of frequently-used legal terms can be found on the North Carolina Judicial Department's website: [www.nccourts.org/Citizens/Publications/LegalTerms.asp](http://www.nccourts.org/Citizens/Publications/LegalTerms.asp).*

# COURT DIVISIONS

The General Court of Justice consists of three divisions: the appellate division, the superior court division and the district court division.

## **The Appellate Division**

[www.nccourts.org/Courts/Appellate](http://www.nccourts.org/Courts/Appellate)

The appellate division comprises the Supreme Court and the Court of Appeals. Except in very limited circumstances, a party dissatisfied with the results in the trial divisions has a right to have that result reviewed by one of these courts, and in some cases by both.

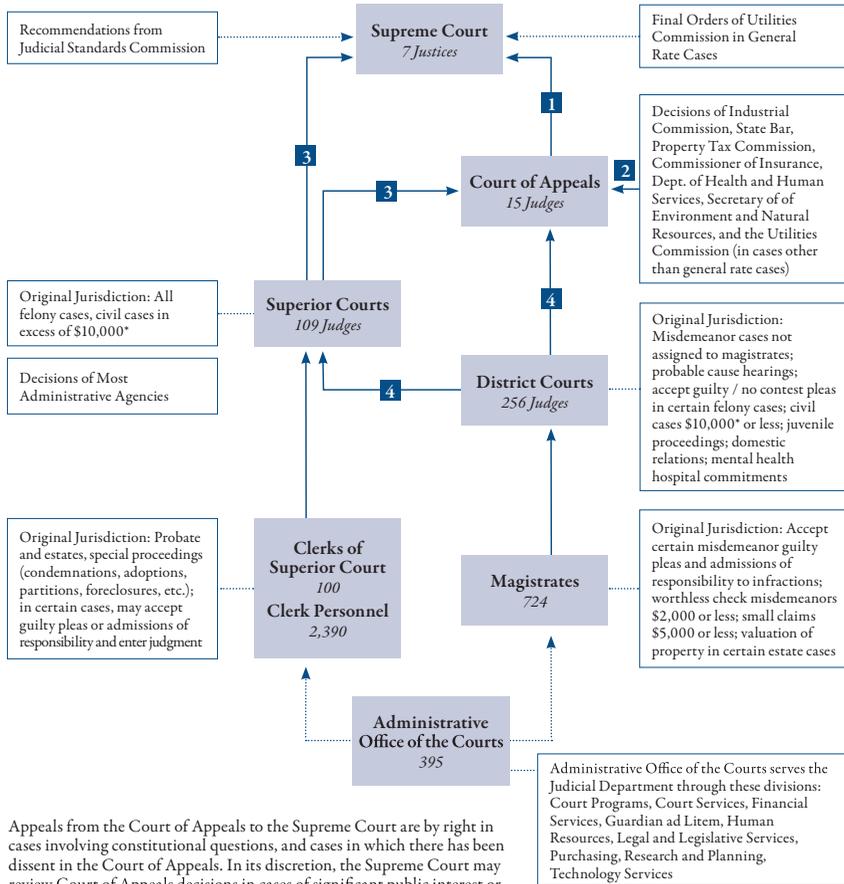
The Supreme Court is the state's highest court. This court has a Chief Justice and six associate justices, who sit as a body and decide cases appealed from lower courts, including from the Court of Appeals. The Supreme Court has no jury, and it makes no determinations of fact; rather, it considers only questions of law, which means resolving a party's claim that there were errors in legal procedures or in judicial interpretation of the law in the trial court or the Court of Appeals. Its decisions are printed and distributed in the bound North Carolina Reports and are accessible on the Judicial Department's website: [www.nccourts.org](http://www.nccourts.org).<sup>2</sup>

The Court of Appeals is an intermediate appellate court that was created to relieve the Supreme Court of a portion of its heavy caseload. It has fifteen judges, who sit in panels of three to hear cases. One of the judges is the Chief Judge of the Court of Appeals, appointed by the Chief Justice of the Supreme Court. Most of the court's sessions are held in Raleigh, but individual panels sometimes meet in other locations throughout the state. Like the Supreme Court, the Court of Appeals

# COURT DIVISIONS

## Court Organizational Structure and Routes of Appeal

As of June 30, 2008



- 1 Appeals from the Court of Appeals to the Supreme Court are by right in cases involving constitutional questions, and cases in which there has been dissent in the Court of Appeals. In its discretion, the Supreme Court may review Court of Appeals decisions in cases of significant public interest or cases involving legal principles of major significance.
- 2 Appeals from these agencies go directly to the Court of Appeals.
- 3 As a matter of right, appeals go directly to the Supreme Court in first degree capital murder cases in which the defendant has been sentenced to death, and in Utilities Commission general rate cases. In all other cases appeal as of right is to the Court of Appeals. In its discretion, the Supreme Court may hear appeals directly from the trial courts in cases of significant public interest, in cases involving legal principles of major significance, where delay would cause substantial harm, or when the Court of Appeals docket is unusually full.
- 4 Criminal cases proceed to the superior court for trial de novo. Civil and juvenile cases proceed to the Court of Appeals.

\*The district and superior courts have concurrent original jurisdiction in civil actions (G.S. 7A-240). However, the district court division is the proper division for the trial of civil actions in which the amount in controversy is \$10,000 or less; and the superior court division is the proper division for the trial of civil actions in which the amount in controversy exceeds \$10,000 (G.S. 7A-243).

decides only questions of law. Its decisions are printed in the bound North Carolina Court of Appeals Reports and on the internet at the same site as opinions of the Supreme Court.

The Supreme Court and the Court of Appeals are located in downtown Raleigh. Each court has a clerk, who is the court's administrative officer. Each justice or judge has research assistants who must be law school graduates.

### **The Superior Court Division**

[www.nccourts.org/Courts/Trial/Superior](http://www.nccourts.org/Courts/Trial/Superior)

Unlike the appellate division that decides only questions of law when a party appeals a case, the Superior and District Court divisions are the trial court divisions that hold trials to determine the facts of cases. The superior court division consists of the superior court, which is the court with general trial jurisdiction. This court “sits” (holds court) at least twice a year in each county of the state. In the busiest counties, several sessions may be held concurrently each week.

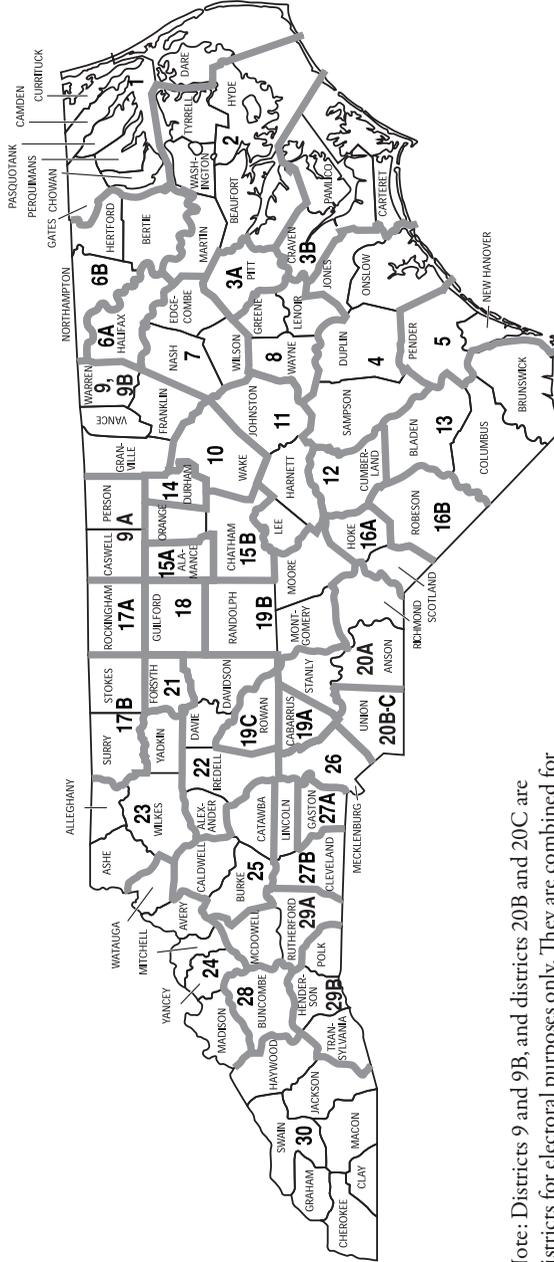
The State is divided into superior court districts for both electoral and administrative purposes. Where the superior court district is composed of less than a full county for electoral purposes, several electoral districts become one district for administrative purposes. For example, Wake County has four superior court electoral districts – 10A, 10B, 10C and 10D – each of which has a separate election for the judge(s) from that district, but all are joined together for administrative purposes as the 10th District. Each administrative superior court district has a senior resident superior court judge who manages the administrative duties of the court. The superior court sits only in the county seat of each county, except for Guilford County where the court sits in Greensboro (the county seat)

*Unlike the appellate division that decides only questions of law when a party appeals a case, the Superior and District Court divisions are the trial court divisions that hold trials to determine the facts of cases.*



# NORTH CAROLINA DISTRICT COURT DISTRICTS

EFFECTIVE JUNE 30, 2008



Note: Districts 9 and 9B, and districts 20B and 20C are districts for electoral purposes only. They are combined for administrative purposes.

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## COURT DIVISIONS

and High Point.<sup>3</sup> The superior court districts are further grouped into eight divisions, and the State’s constitution requires superior court judges to rotate, or “ride the circuit,” from one district to another in their divisions. Judges are assigned to a judicial district for a six-month period and then rotated to another district for the same time period. The map on page 6 shows the superior court districts and divisions.

### **The District Court Division**

[www.nccourts.org/Courts/Trial/District](http://www.nccourts.org/Courts/Trial/District)

#### *District Court*

Like the superior court division, the state is divided into district court districts for electoral purposes and administrative purposes. The map on page 7 shows the district court judicial districts. Also like the superior court, the district court sits in the county seat of each county. It may sit in certain other cities and towns if authorized by the General Assembly. Most counties have only one seat of court, but a few counties have several. Unlike the superior court, the district court districts are not grouped into larger judicial divisions. Each administrative district court district has a chief district court judge who manages the administrative duties of the court.

#### *Magistrates’ Courts*

Magistrates hold court in both civil and criminal matters as officers of the district court under the supervisory authority of the chief district court judge (see “Justices and Judges” under the Court Personnel section in this guide). Magistrates do not preside over a separate trial division of the General Court of Justice, so technically there is no such court as “magistrate’s court.” In the civil context, magistrates generally are assigned by the chief district court judge to preside over “small claims” court (see “Jurisdiction,” in the following section). For criminal matters, magistrates conduct certain preliminary proceedings and are authorized to dispose of some cases by pleas of guilty or by trial.

# JURISDICTION

“Jurisdiction” means the authority of a court to hear and decide a case.<sup>4</sup> A court’s jurisdiction depends on both geography and the subject matter of the case. The geographic jurisdiction of the General Court of Justice generally is limited to cases arising from events that happen within North Carolina or cases concerning a person’s or company’s property or business interests in North Carolina.

A specific court’s jurisdiction over subject matter varies, depending on factors such as whether the case is civil or criminal, how much money or what kind of crime is involved, and whether the proceeding is a trial or an appeal from another court’s judgment. A more thorough discussion of the subject matter jurisdiction of North Carolina’s courts is provided in the following text.

## Trial Jurisdiction – Civil

The civil jurisdiction of the trial court divisions – the superior court and district court – is concurrent. This means that for most civil cases, the case can be filed in either court, but there is a “proper” division where a case should be filed and heard. If a case is filed and heard in the improper division, the case often will be transferred to the proper division, but if a case proceeds all the way to judgment in the improper division, the judgment is not void or “thrown out” solely because it was heard in the wrong court.

*Cases within the proper jurisdiction of the superior courts are cases involving \$10,000 or more and cases in a few special categories. Cases within the proper jurisdiction of the district courts are those involving less than \$10,000 and domestic cases.*

## JURISDICTION

Cases within the proper jurisdiction of the superior courts are cases involving \$10,000 or more and cases in a few special categories such as injunctions to compel or prevent enforcement of a particular law by the government, constitutional issues, eminent domain actions, corporate receiverships and review of the rulings of certain administrative agencies. Cases within the proper jurisdiction of the district courts are those involving less than \$10,000 and domestic cases (issues of family law like divorce and child custody).

The exceptions to the general rule of proper jurisdiction are cases in the “exclusive” jurisdiction of one court or the other, meaning that only that court can hear and render a judgment in them. Cases in the exclusive jurisdiction of the superior court include probate (of wills) and the administration of estates of deceased persons (with the clerks of superior court as the initial judges of probate). The district court has exclusive jurisdiction over cases of juvenile law, as described later in this section.

### *Small Claims*

Some cases in the district court’s proper jurisdiction go to “small claims” court, normally heard by a magistrate. Small claims include claims for less than \$5,000, recovery of personal property, summary ejectment (ejecting a tenant from a landlord’s property), and cases to enforce liens filed by mechanics for service and storage of motor vehicles. The chief district court judge may assign any case to trial before a magistrate if it meets the small claims criteria, and in most counties the judge enters a general order that all such cases are to be heard in small claims court.

*Small claims include claims for less than \$5,000, recovery of personal property, summary ejectment, and cases to enforce liens filed by mechanics for service and storage of motor vehicles.*

### **Trial Jurisdiction – Criminal**

The criminal jurisdiction of the trial courts depends on the type of offense charged, but ultimately all crimes are

within the jurisdiction of the superior court.

With a few exceptions, the superior court has exclusive jurisdiction over all felonies. All felony trials in which the defendant pleads not guilty must be tried before a jury; the state constitution does not allow a judge to decide whether a defendant is guilty or not guilty of a felony (called a “bench trial,” in which the judge decides the verdict instead of a jury). The district court has jurisdiction over a felony to conduct a preliminary hearing to determine whether or not there is probable cause to believe that the defendant committed the offense. If so, the district court orders that the defendant stand trial in superior court and the case is transferred there. With the consent of the district attorney and the defendant, the district court also may take guilty pleas to certain less serious felonies, but the district court in those cases operates as if the plea was entered in superior court and must follow the superior court’s procedures.

For misdemeanor cases, the district court has exclusive “original” jurisdiction, which means that all misdemeanor crimes are tried initially in district court (unless the misdemeanor was committed as part of the same act as a felony, in which case both are tried together in superior court). A criminal trial in district court is always a “bench trial.” However, because the Sixth Amendment to the United States Constitution guarantees a person charged with a crime the right to be tried by a jury, a defendant convicted of a misdemeanor in district court has the right to appeal his conviction to the superior court for a new trial (also called a trial “de novo,” which is Latin for “anew”)<sup>5</sup>, in which the trial must be before a jury. If a defendant pleads guilty to a low-level felony in district court and appeals the judgment, there is no new trial in superior court. Because the plea is treated as if it had been done in superior court, any appeal from the

*Magistrates generally are the first judicial officials involved in criminal cases, because they usually issue the criminal process (e.g., a warrant for arrest) that begins most criminal cases. Magistrates also generally set the initial conditions for pretrial release (bail) for persons who have been arrested. They also may accept waivers of trial and pleas of guilt or responsibility for minor misdemeanors and infractions.*

*With a few exceptions, the superior court has exclusive jurisdiction over all felonies.*

*The district court has exclusive “original” jurisdiction over misdemeanors and infractions.*

## JURISDICTION

judgment goes to the appellate division.

In addition to misdemeanors, the district court has original jurisdiction over infractions. An infraction is not a criminal offense and may be punished only by a fine. A person charged with an infraction initially appears before the district court, but if the person is found responsible for committing the infraction he may appeal to the superior court for a new hearing. Unlike felonies and misdemeanors, a person found responsible for an infraction cannot be sent to jail or prison for the infraction, so the state constitution's requirement that a jury decide criminal cases does not apply. A person who appeals a district court finding of responsibility for an infraction, therefore, can have a bench trial in superior court.

As officers of the district court, magistrates generally are the first judicial officials involved in criminal cases, because they usually issue the criminal process (*e.g.*, a warrant for arrest) that begins most criminal cases. The magistrate also generally sets the initial conditions for pretrial release (bail) for persons who have been arrested. In disposing of criminal cases, magistrates have jurisdiction to accept waivers of trial and guilty pleas to certain minor misdemeanors and pleas of responsibility to infractions. If specifically authorized by the chief district court judge, a magistrate also may try cases and enter judgment for defendants who plead not guilty to charges of writing worthless checks.

The minor misdemeanors and infractions for which magistrates may accept waivers of trial and pleas of guilt or responsibility generally are traffic, wildlife, boating, marine fisheries, state park recreation and alcoholic beverage offenses. The fine for each offense for which the magistrate can accept a plea of guilty is set by uniform statewide schedules (called the "waiver lists"), which are developed by the chief district court judges at their annual conference.

*The district court has exclusive, original jurisdiction over all juvenile cases.*

### **Trial Jurisdiction – Juvenile**

The district court has exclusive, original jurisdiction over all juvenile cases. These cases concern children under the age of sixteen who are accused of being "delinquent" and children under the age of eighteen who are "undisciplined," "abused," "neglected" or "dependent." All records of juvenile proceedings are confidential and not open to the public.

A juvenile case alleging that the child is delinquent or undisciplined is not a criminal proceeding, and a juvenile found delinquent does not acquire a criminal record as a result. A finding of delinquency may result in detention of the juvenile, but only in state facilities reserved for juveniles; a delinquent juvenile is not housed in an adult prison. However, a juvenile charged with committing a felony after his or her thirteenth birthday may be transferred to superior court for trial as an adult, and any sentence entered after a conviction in superior court is the same as an adult would receive, except that a person may not be sentenced to death for a crime committed before the age of 18.

A juvenile who is alleged to be abused, neglected or dependent is not accused of an offense. Instead, the court must determine whether the juvenile or his family needs the assistance of the state or if removal of the juvenile from the custody of his parent or custodian is necessary for the juvenile's own protection and safety. The court must appoint a person called a guardian *ad litem* (not necessarily a lawyer) to represent the best interests of the juvenile in a proceeding alleging abuse or neglect of the juvenile, and the court may appoint a guardian *ad litem* for dependency cases. See the section titled "Guardian ad Litem" later in this guide, for more information.

### **Trial Jurisdiction – Innovative Courts**

Within the normal jurisdiction of the district and superior courts, North Carolina has developed several innovative courts with jurisdiction over certain types of cases. These innovative courts deal with cases for which the traditional, adversarial justice system is not always appropriate, or for which the complexity of the cases requires the special attention of a single judge.

*North Carolina has several innovative courts with jurisdiction over certain types of cases, such as those for which the traditional, adversarial justice system is not always appropriate, or for which the complexity of the cases requires the special attention of a single judge. These innovative courts are the family, drug treatment and business courts.*

## JURISDICTION

### *Family Court*

[www.nccourts.org/Citizens/CPrograms/Family](http://www.nccourts.org/Citizens/CPrograms/Family)

Family courts are district court sessions set up to deal with a particular family's multiple legal issues, such as divorce, child custody and abuse. Traditionally the court has dealt with each family issue as a separate, individual case before whichever judge was assigned to hold court on the date of a particular hearing. Family court assigns each family to one judge who will be able to gain an understanding of the needs of the family and see the family's entire situation. The court also encourages families to resolve conflicts through mediation and will see that services are provided at an earlier stage of the proceedings. Intensive case management services are provided to make sure that cases move through the system as quickly as possible and to coordinate available court and community resources needed by a particular family.

### *Drug Treatment Court*

[www.nccourts.org/Citizens/CPrograms/DTC](http://www.nccourts.org/Citizens/CPrograms/DTC)

Drug treatment court was created to deal with the serious effect of substance abuse on repetitive criminal behavior. Rather than only punishing a defendant for criminal acts, this court provides intensive treatment and case tracking services in order to reduce defendants' substance abuse dependence and recidivism.

To be eligible for the treatment court, a defendant must be diagnosed as chemically dependent, sentenced to an intermediate punishment (a very restrictive type of probation) for his or her offense, or sentenced to a community punishment (*i.e.*, regular probation) and at risk of revocation of his or her probation. Most participants are multiple offenders for whom other programs have been unsuccessful. In drug treatment courts, the judge, prosecutor, defense attorney, probation officer, community policing officer, treatment provider and case manager work together in an ongoing, non-adversarial fashion to make sure that defendants in the program are given appropriate treatment, but also to hold defendants accountable for their behavior. Defendants must participate in intensive treatment, followed by therapy for at least one year. Each participant must undergo drug tests, be employed or attend school, and attend frequent court hearings.

There are also juvenile drug treatment courts for nonviolent juvenile offenders whose drug or alcohol abuse is affecting their lives, family drug treatment courts that work with drug-abusing parents in danger of losing custody of their children due to charges of abuse or neglect and a drug court in one district specifically for alcohol-dependent defendants charged with offenses of driving while impaired (DWI).

### *Business Court*

[www.ncbusinesscourt.net](http://www.ncbusinesscourt.net)

The business court is a superior court of special jurisdiction. As a result of a 1995 recommendation by the North Carolina Commission on Business Laws and the Economy, the North Carolina Supreme Court created the business court, in which a designated special superior court judge hears “complex business cases.” The business court is patterned after a similar system in Delaware. The Chief Justice may designate a case for assignment to the business court, which can result from the recommendation of a senior resident superior court judge, chief district court judge or presiding superior court judge.

Reasons that a case might be designated a complex business case include factors like a large number of parties with diverse interests or the involvement of complex legal issues. The designation of a case as a complex business case means that it is assigned to a special superior court judge designated to preside over such cases. That judge generally presides over the entire case from the pretrial matters through the trial. This is different from the normal superior court procedure, in which different stages of a case could be heard by multiple judges before the case ends, depending on which judge is assigned under the rotation system to hold court in the weeks when the case is scheduled for hearings or for trial. Specialization in business court cases allows the business court judge to develop expertise in both the substantive business law and the case management issues that arise in complex business cases. That increased level of expertise leads to greater efficiency and predictability. Currently, the business court sits in Charlotte, Greensboro and Raleigh.

### **Appellate Jurisdiction – Court of Appeals**

[www.nccourts.org/Courts/Appellate/Appeal](http://www.nccourts.org/Courts/Appellate/Appeal)

A party dissatisfied with the result of a case in the trial division generally has a right to have that result reviewed by the appellate division. With a few exceptions, most appeals from decisions of the trial division go first to the Court of Appeals. One exception to this rule is an appeal of a conviction for a misdemeanor or infraction in District Court, for which the appeal is first to superior court for a trial de novo; if the defendant is again convicted in superior court, then his appeal goes to the appellate division. The Court of Appeals also hears appeals from administrative agencies of the state, such as a decision by the State Bar to punish an attorney for misconduct or decisions of the Industrial Commission to award or deny worker’s compensation to an injured or disabled worker.

### **Appellate Jurisdiction – Supreme Court**

[www.nccourts.org/Courts/Appellate/Supreme](http://www.nccourts.org/Courts/Appellate/Supreme)

The Supreme Court is the State’s highest court, and hears appeals of the decisions from the other divisions of the General Court of Justice as well as appeals of the decisions of some other state agencies.

Most of the Supreme Court’s cases come from the Court of Appeals. Because the judges of the Court of Appeals sit in panels of three judges for each case, one judge might disagree with the others about the outcome of the case; this is called a “dissent” by the judge who disagrees. If there is a dissent in the opinion of the Court of Appeals, or if the case involves an important question about the constitutions of North Carolina or the United States, then the party who disagrees with the Court of Appeals has a right to have the Supreme Court review the case. Even if there was a unanimous decision in the Court of Appeals, a party can petition the Supreme Court to hear an appeal of that decision, but the court does not have to accept the case.

Some cases go directly to the Supreme Court without passing through the Court of Appeals. A defendant sentenced to death for a conviction of first-degree murder may

appeal his conviction or sentence directly to the Supreme Court. The court also hears direct appeals from decisions about utilities rates (prices) from the state Utilities Commission. Finally, in certain cases, the Supreme Court can order that a case bypass the Court of Appeals and be heard directly by the Supreme Court. These cases generally involve legal questions that are important to the public or for which the delay of first hearing the case in the Court of Appeals would result in substantial harm to a party or their interests.

### Alternative Dispute Resolution

In recent years, North Carolina has experimented with resolving disputes by methods other than litigation. The North Carolina Bar Association has worked closely with the Administrative Office of the Courts in supporting these efforts to experiment with alternative methods of dispute resolution.

#### *Mediation*

One basic alternative to court litigation is mediation, a process where an impartial third party, called a mediator, referees negotiations between the parties and suggests possible solutions. The parties themselves actually reach an agreement as to how to resolve their dispute. Mediation is voluntary, and the parties are not required to reach an agreement.

North Carolina has an extensive private mediation program that operates independently of the court system. Dispute settlement centers around the state rely on trained volunteers to serve as mediators. Although many of the centers' cases are generated privately, they also receive referrals from the district court on minor criminal matters in which mediation between the offender and victim might resolve the matter. Some centers

*In recent years, North Carolina has experimented with resolving disputes by methods other than litigation, such as mediation and arbitration.*

## JURISDICTION

mediate worthless check cases, and others conduct mediation programs in public schools. North Carolina also operates court mediation programs. In 1991 the General Assembly authorized a pilot program for mediated settlement conferences in superior court cases; today the program is available in all counties. The program requires superior court litigants and their attorneys to participate in a settlement conference with a mediator that is paid for by the parties before their case can be tried in court. In 1995, the General Assembly created the Dispute Resolution Commission (see page 42) to administer mediator certification and regulate mediator conduct.

Mediation also is used in family law cases in the district court. Mediation of child custody and visitation disputes, first begun experimentally in Mecklenburg County, has been implemented in all counties. Mediation is viewed as more desirable than traditional litigation in custody disputes because, unlike contract or tort cases where the parties have no contact after litigation, parents need to cooperate for years in making decisions about their children. The “win-lose” approach of the adversarial system often complicates that future relationship and does not promote the best interests of the child. Mediators for the child custody cases are not attorneys, but must be trained as mediators and have certain other qualifications related to family dynamics and child development. Similar to the custody mediation program, the Family Financial Settlement Program provides mediated settlement opportunities for equitable distribution, alimony and child support cases. In 2003, the General Assembly enacted a collaborative law settlement procedure for all family law issues except absolute divorce. The procedure allows a husband and wife and their attorneys to agree in writing to “collaborate” (*i.e.*, cooperate) in an attempt to resolve domestic actions like alimony or child custody and support without using the courts.

### *Arbitration*

Another method of alternative dispute resolution used in North Carolina is court-ordered arbitration. Arbitration is submission of a dispute to a third party who renders a decision after hearing arguments and reviewing evidence. Arbitration is generally less formal and less time consuming than litigation. Unlike mediation, the arbitrator actually

decides the outcome of the case rather than just helping the parties to negotiate. The first court-ordered alternative dispute resolution program enacted in North Carolina was mandatory, nonbinding arbitration of civil claims for monetary damages of \$15,000 or less. The program now covers many superior court judicial districts and applies to almost all civil cases for monetary damages of \$15,000 or less. A party who is not satisfied with the arbitrator's decision has a right to have the case heard by the district or superior court.

# COURT PERSONNEL

## Justices and Judges

Justices and judges are nominated and elected in non-partisan elections, which means that the judges are not associated on the ballot with a political party (*e.g.*, Democrat or Republican). The justices and judges of the appellate division are elected by the voters of the entire state, while superior court judges and district court judges are nominated and elected by the voters of their districts. A superior court judge or a district court judge must reside in the district for which he or she is elected as a judge, but a justice or judge of the appellate division can live anywhere in the state. District court judges serve terms of four years. Justices and judges of the appellate division and regular superior court judges all serve terms of eight years. There also are “special” superior court judges appointed by the governor for five-year terms, who are not required to live in a particular district but who otherwise have all of the authority of a resident superior court judge.

When a vacancy occurs in a judgeship (usually through death or retirement) or a new judgeship is created by the General Assembly, the governor fills the vacancy by appointing a judge to fill the position until the next general election or for the remainder of the former judge’s term in office. Many judges initially obtain office this way rather than through election. Thus, while the constitution provides for election of judges, many first attain office by appointment.

According to the state constitution, justices of the Supreme Court and the judges of the trial divisions and the Court of Appeals must be attorneys. However, all of them are prohibited from practicing law privately while they are judges. North Carolina judges also must be under the age of seventy-two, the mandatory retirement age for judges.

In addition to presiding over the sessions of their courts, some justices and judges have additional duties. The Chief Justice of the Supreme Court has numerous administrative duties as the head of the Judicial Department, including appointing the director and the assistant director of the Administrative Office of the Courts, designating the Chief Judge from among the judges of the Court of Appeals and a chief district court judge for each district court district, creating the schedule of superior court sessions and assigning superior court judges to those sessions (assisted by the assistant director of the Administrative Office of the Courts), transferring district court judges to other districts for temporary or specialized duty, appointing the chief administrative law judge of the Office of Administrative Hearings, and either serving on or appointing representatives of the Judicial Department to numerous groups such as the State Judicial Council and the Commission on Indigent Defense Services.

The trial division districts also have judges with additional duties. In each administrative superior court district, the most senior judge (in years of service) is the “senior resident superior court judge,” who is responsible for various administrative duties, including appointing magistrates and some other court officials, and managing the scheduling of civil cases for trial. Therefore for Wake County, as described under “The Superior Court Division” earlier in this guide, four electoral districts are joined in a single district for administrative purposes, and the senior resident superior court judge is the longest serving judge of all the judges elected from those four districts.

Similar to the senior resident superior court judge for superior court districts, a district court district has a chief district court judge. The chief district court judge is appointed by the Chief Justice of the Supreme Court, rather than being determined by years of service. Among other duties, the chief district court judge creates the schedule of district court sessions for the district, assigns district court judges to preside over those sessions and supervises the magistrates for each county in the district.

All judges and justices are governed by the Code of Judicial Conduct, as adopted by the Supreme Court.<sup>6</sup> The Code governs all aspects of judicial conduct, including placing limitations on the campaign practices of candidates for judicial office during elections. The Code requires a judge to perform the duties of the office impartially and diligently and sets out standards for meeting these duties, including when a judge should disqualify himself or herself in a proceeding in which the judge’s impartiality might be questioned.

Also, the Code requires a judge to file a public report of extra-judicial activities for which the judge receives compensation. A judge who violates the Code may be subject to disciplinary action by the Judicial Standards Commission or by the Supreme Court upon the Commission's recommendation. The Commission is discussed further under the "Related Agencies" section, page 39. Under the state constitution, judges also may be removed through impeachment by the General Assembly or other prescribed processes.

### **Magistrates**

Often called a "judge" of small claims court, a magistrate is not a judge but rather an officer of the district court division. Unlike judges and justices, magistrates are not elected. A magistrate is nominated for office by the clerk of superior court, appointed to that office by the senior resident superior court judge of the district and supervised by the chief district court judge. A magistrate must reside in the county where appointed to serve. A magistrate serves an initial term of two years, but if nominated and appointed to serve again, the magistrate's second or any additional terms are for four years. Unlike justices and judges, magistrates do not have a mandatory retirement age.

To be nominated as a magistrate, a candidate must have a four-year college degree, eight years of work experience as a clerk of superior court, or a two-year associate degree and four years of work experience in a job related to the court system, law enforcement, or other public service work. Many magistrates are attorneys, but they are not required to be, and those who are attorneys are prohibited from practicing law privately while in office as a magistrate.

Magistrates perform numerous duties as officers of the district court in both civil and criminal proceedings. For a description of a magistrate's authority in the regular civil and criminal contexts, see "Jurisdiction," earlier in this guide. In addition to presiding over civil and criminal proceedings, magistrates have a few duties assigned specifically to their office. 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. Magistrates also perform duties such as administering oaths and assigning a year's allowance of living expenses to the spouse of a deceased person from the deceased person's estate, and magistrates who meet certain qualifications also may conduct child support hearings.

Magistrates are not under the jurisdiction of the Judicial Standards Commission like judges are, but they must obey the Code of Judicial Conduct, and the grounds for removing magistrates are the same as for removing judges. A magistrate may be removed from office by a regular superior court judge holding court in the district where the magistrate's county is located, if the judge finds after a hearing that there are grounds for removal.

### **Clerks of Superior Court**

The clerk of superior court is responsible for all clerical and record-keeping functions of the superior court and district court, and keeps those records according to rules established by the director of the Administrative Office of the Courts. The clerk's office also collects and invests money due to the State or on behalf of parties involved in cases before the courts, and the clerk's books and accounts are subject to audit by the Office of the State Auditor. The clerk and the clerk's employees are "bonded," which means that the State insures that it will be compensated for any liability if the clerk does not faithfully perform the duties of his or her office.

The clerk also has numerous judicial duties. The clerk is the judge of probate, which means that the clerk handles the probate of wills (proceedings to determine if a paper writing is a valid will) and the administration of estates of the deceased, minors and people who are incompetent. The clerk hears other special proceedings such as adoptions, determinations of guardianship for incompetent adults, and partitions of land, and handles the administration of trusts. In criminal matters the clerk can issue arrest and search warrants, conduct initial appearance hearings for criminal defendants, and exercise the same powers as a magistrate when taking waivers of trial and pleas of guilty to minor littering, traffic, wildlife, boating, marine fisheries, alcoholic beverage, state park recreation and worthless check offenses.

Each clerk has a number of assistants and deputies. The number of assistants and deputies that each clerk may employ varies from county to county, depending on the volume of business. Assistant and deputy clerks are paid on a salary schedule fixed by the Administrative Office of the Courts and based on their education and years of service in the clerk's office. The maximum and minimum salaries on that scale are set by the General Assembly.

## COURT PERSONNEL

The clerk of superior court is elected in a partisan election to a four-year term by the voters of the clerk's county. Clerks are paid by the state, and their salaries depend on the population of their counties. If the office of the clerk has a vacancy, the senior resident superior court judge for the clerk's county appoints a new clerk to serve until the next election. In the event of a clerk's misconduct or mental or physical incapacity, the senior resident superior court judge is authorized to hold a hearing to remove the clerk from office.

### District Attorneys

In all criminal and some juvenile matters, the district attorney represents the state. The primary duty of the district attorney, with his or her assistants, is to prosecute all criminal cases and infractions filed in the superior and district courts in his or her district. Other duties include preparing the criminal trial docket (the calendar of when cases will be tried), advising law enforcement officers in the district and assisting the Office of the Attorney General with appeals of criminal cases from the district attorney's district.

The state is divided into prosecutorial districts for the election of district attorneys, just like it is divided into superior court and district court districts for the election of judges. A district attorney is elected to a four-year term in a partisan election by the voters of the district and must reside in the district. Like justices and judges, district attorneys and their assistant district attorneys must be lawyers.

Each district attorney has assistant district attorneys who are paid by the state. The exact number of assistants in each office is set in statute by the General Assembly based on the number of criminal cases in the district and on the recommendations of the Administrative Office of the Courts. District attorneys and their assistants are required to devote full time to their prosecutorial duties and may not engage in the private practice of law. Each district attorney also has an administrative assistant to aid in office administration and calendaring of cases, at least one victim-witness/legal assistant, and other clerical support staff. Many also have a staff investigator.

The district attorney may be removed from office for mental or physical incapacity or for misconduct after a hearing before a superior court judge. Assistant district attorneys serve “at the pleasure” of the district attorney, which means that they may be terminated whenever the district attorney sees fit to do so.

## Public Defenders

In all criminal cases and some juvenile proceedings, the State is represented by the district attorney as the State’s lawyer. On the other side, the United States Constitution and the North Carolina Constitution both provide that a defendant in a criminal case is entitled to be represented by a lawyer, and North Carolina further provides a juvenile accused of being delinquent or in violation of an undisciplined contempt order with the right to a lawyer. In addition, North Carolina law provides that certain civil respondents are entitled to counsel. If the defendant, juvenile or respondent is “indigent,” meaning that he or she cannot afford to hire a lawyer, then the court will appoint a lawyer to represent them. In many judicial districts, the appointed lawyer is a private attorney paid by the State to represent the defendant, juvenile or respondent, but in sixteen districts, there is a public defender’s office created by the State to represent indigent persons.

Like a district attorney, a public defender must be an attorney, must be devoted full-time to the duties of his or her office and must serve a term of four years. Unlike the district attorney, the public defender is not elected by the voters; the public defender is appointed by the senior resident superior court judge from a list of candidates nominated by the other attorneys in the district. The public defender can be removed from office for the same reasons (*e.g.*, misconduct or incapacity) and after the same process (a hearing before the senior resident superior court judge) as for the district attorney.

Also like the district attorney, the public defender has a staff of assistant public defenders, investigators and administrative staff. All of the staff serve at the pleasure of the public defender. Unlike assistant district attorneys, whose numbers in each district are set out in the General Statutes, the number of assistant public defenders

## COURT PERSONNEL

in an office is determined by the Office of Indigent Defense Services (IDS), which oversees indigent defense throughout the state. The public defender determines the salary of assistant public defenders and other staff, subject to the approval of IDS. See the “Court Administration section,” page 36, for more information about Indigent Defense Services.

### **Judicial Support Staff**

Personnel are provided to support the judges who preside over district and superior court. Judicial assistants perform administrative and secretarial functions, including preparing documents and tracking the status of cases. Trial court coordinators perform a variety of administrative and case management functions.

In 1979, the General Assembly established state-funded trial court administrator positions in certain districts set out in the General Statutes and as determined by the Administrative Office of the Courts. The trial court administrator for a district is hired by the senior resident superior court judge, but in some districts they work for both the superior court and district court divisions.

The general duties of trial court administrators include assisting in managing civil dockets, improving jury utilization and other duties as assigned by the senior resident superior court judge (*e.g.*, receiving requests from elderly citizens to be excused from jury duty). They may also serve as the court’s liaison with other governmental and private organizations, the press, and the public.

### **Guardian ad Litem**

[www.ncgal.org](http://www.ncgal.org)

An Office of Guardian ad Litem Services was established in the Administrative Office of the Courts in 1983 to provide statewide guardian *ad litem* services to juveniles who are alleged to be abused, neglected or dependent. A “guardian *ad litem*” is a person who

is appointed to serve as an advocate for a child in a particular case or proceeding; “*ad litem*” is a Latin phrase that means “for the suit,” so the guardian represents the child’s best interests only in a particular “suit” (case).

Each of the state’s judicial districts has one Guardian ad Litem district administrator and at least one other staff person who are paid employees, a program attorney and volunteer guardians *ad litem*. The responsibility of the Guardian ad Litem Program is to ensure that there are sufficient volunteer guardians *ad litem* who are adequately trained and supervised to carry out their duties. The statutory duties of guardian *ad litem* volunteers are to make investigations to determine the facts of a case, the needs of the juvenile and the available resources within the family and community to meet those needs, to help settle disputed issues when appropriate, to explore options with the judge at the court hearing, and to protect and promote the best interests of the juvenile. The program’s attorney ensures protection of the juvenile’s legal rights.

## Court Reporters

Court reporters record many of the proceedings of the trial division, such as trials and hearings of pre-trial motions. The senior resident superior court judge appoints court reporters for each judicial district, and the Administrative Office of the Courts hires court reporters to provide reporting services as needed when there are not enough local reporters to cover the courts.

Reporters are required to record the courtroom proceedings verbatim, which means exactly as they are spoken by the court officials, witnesses and others speaking before the court. Some parts of a trial, like the selection of jurors, are not recorded unless a party asks for recording. When a case is appealed, court reporters prepare transcripts of the case for the appealing parties. The reporter’s original notes are state property and are preserved by the clerk of superior court.

In district court, only certain proceedings are recorded. Trials for misdemeanors and infractions are not recorded, but pleas of guilty to low-level felonies must be recorded the same as they would be in superior court. Juvenile hearings are recorded electronically,

and the recordings are later erased if there is no appeal for which a transcript must be prepared. For civil cases in district court, recording by court reporter or electronic recording is available if any party to the case requests it, but any court reporter in those cases generally must be paid for by the parties.

### **Juries**

#### *Jury Service*

Every two years (or every year, if requested by the senior resident superior court judge), a master jury list is prepared in each county by a jury commission, which is composed of three citizens who are qualified voters in the county and appointed by the senior resident superior court judge, the clerk of superior court and the county commissioners. The list is prepared by randomly selecting names from the rolls of registered voters and licensed drivers in the county. The actual number of jurors selected for the list is based on the number of people drawn for jury duty in the previous two years (or previous year, if the county compiles its jury list annually). For each court session that requires a jury, prospective jurors are selected randomly from this list.

All county residents are eligible for jury service if they are citizens of the state, are eighteen years of age or older, are physically and mentally competent, and can hear and understand the English language. A person is not allowed to serve on a jury if they have been convicted of a felony and have not had their citizenship restored, or if they have been adjudged *non compos mentis* (in other words, mentally incompetent). No person can be excluded from jury service on account of his or her sex, race, color, religion or national origin, and an employer may not discharge or demote an employee because of the employee's service as a juror.

Only a judge can exempt from jury service a person who has been called. North Carolina does not provide an automatic exemption from jury service because of a person's profession or age, but a person who is called for jury service and is seventy-two years of age or older may request an exemption by writing to the court rather than having to make the request in person before the judge. A trial juror's service is normally one week. However, some counties use a system in which jurors are summoned for one day or one trial rather than one week.

### *Trial Juries*

The Sixth Amendment to the United States Constitution and Article I, Section 24, of the North Carolina Constitution provide a person charged with a crime the right to a trial by a jury. All criminal trials in the superior court are by a jury; the North Carolina Constitution does not allow a judge to decide a criminal defendant's guilt or innocence at trial in superior court. Criminal charges before a district court judge or a magistrate are "bench trials" conducted without a jury, but a defendant convicted in district court has an automatic right to appeal the conviction to superior court for a new trial – which must be before a jury.

Civil cases before the district and superior courts may be tried before a jury if any party to the case requests it. If no party requests a jury, the judge will hear the evidence and decide the facts of the case. In certain cases, however, including family court cases concerning child custody and support, a jury is never used. A jury also never decides civil matters before a magistrate.

There is never a jury in the appellate division, because the Court of Appeals and Supreme Court decide only "issues of law," which means that they decide whether or not the court(s) below made any legal errors in the case. The judges and justices of those courts do not decide the facts of a case (or "issues of fact"); that is the jury's function.

### *The Grand Jury*

The trial jury in a criminal trial is also called a petit (or "small") jury. A second type of criminal jury is the grand jury. The grand jury consists of eighteen persons, half drawn from the jurors called for a county's first criminal term of superior court after January 1 and half from those called for the first criminal term of superior court after July 1. A grand jury member normally serves for twelve months. The grand jury usually meets for one or two days at the beginning of each criminal session or once a month in counties with multiple criminal sessions. A few large urban counties have two grand juries to avoid imposing too much on those who serve as grand jurors. An official accusation by the grand jury, called an "indictment," is necessary to try a person for a felony in the

superior court, unless the accused waives their right to indictment. The accused may waive indictment in all cases except those for which the punishment would be death or when he or she is not represented by an attorney.

### **Education and Training of Court Personnel**

Because court personnel need to keep up with ever-changing law and procedure, education and training programs for them are essential to a good judicial system. The Supreme Court requires judges to attend at least thirty hours of continuing legal education in each two-year period. As practicing attorneys, district attorneys and public defenders must attend at least twelve hours of training each year. Newly appointed magistrates are required to complete a basic training course and must attend at least twelve hours of continuing education during each two-year term of office. Other court personnel, such as clerks of court and judicial support staff, also are required to have ongoing training, as do employees of agencies outside the Judicial Department who are closely involved with the courts (*e.g.*, law enforcement officers who use the courts' computer programs to produce warrants for arrest). Two agencies play a role in providing this vital service.

#### *The Administrative Office of the Courts*

[www.nccourts.org/Courts/CRS/AOCAdmin](http://www.nccourts.org/Courts/CRS/AOCAdmin)

The Administrative Office of the Courts works closely with the University of North Carolina's School of Government in planning and preparing programs, and it supplies legal memoranda, books and materials to court personnel. In addition, the Administrative Office of the Courts has education staff responsible for maximizing the effectiveness of all Judicial Department training, and maintains classrooms around the state for training Judicial Department employees and others in the computer applications used in the courts. The "classrooms" also include a mock courtroom for training of court personnel in courtroom procedures and a mobile classroom of laptop computers for training in more remote locations that lack adequate training facilities.

*School of Government*  
[www.sog.unc.edu](http://www.sog.unc.edu)

The School of Government at The University of North Carolina at Chapel Hill engages in research, teaching and consultation with court personnel. It has faculty members who conduct seminars or short courses each year for judges, clerks, district attorneys, public defenders and magistrates. It also publishes various articles, memoranda and books to aid court personnel in their work. Information about those publications is available on the School of Government's website.

# COURT ADMINISTRATION

## **Administrative Office of the Courts**

[www.nccourts.org](http://www.nccourts.org)

The 1962 amendment of the North Carolina Constitution that created North Carolina's current Judicial Department also required that the General Assembly create an administrative agency to manage this third branch of North Carolina government. The Administrative Office of the Courts is that agency, created by the General Assembly in 1965. The Chief Justice of the Supreme Court appoints the director of the Administrative Office of the Courts who supervises the agency. The Chief Justice also appoints an assistant director, who serves as administrative assistant to the Chief Justice. Both the director and the assistant director serve at the pleasure of the Chief Justice.

The duties of the director of the Administrative Office of the courts, carried out by its employees hired by the director, are many. The Administrative Office of the Courts develops the uniform rules, forms and methods for keeping the records of the courts, particularly those records maintained by the clerks of superior court. The director prepares the budget for the Judicial Department for submission to the General Assembly and authorizes the expenditure of the funds appropriated by the General Assembly for the courts' use. Those expenditures include securing physical facilities to house the Administrative Office of the Courts and purchasing and distributing the supplies, equipment, books and computers used to run the courts and maintain the records described above.

As part of the director's duty to prescribe the methods of keeping the courts' records, and using funds appropriated by the General Assembly and certain fees paid to the courts, the Administrative Office of the Courts provides information technology resources to the court system. This includes development and maintenance of new information systems;

purchasing, maintenance and support of all computer hardware and software; maintenance and development of the Administrative Office of the Courts' statewide network for voice and data communications; and operation of Administrative Office of the Courts' data center. The Administrative Office of the Courts has developed and maintains the North Carolina Court System website, [www.nccourts.org](http://www.nccourts.org), which serves the public and hosts individual county courts' websites.

Except for those salaries set by the General Assembly, the Administrative Office of the Courts develops pay plans for court employees and evaluates job classifications. The Administrative Office of the Courts also collects and publishes statistics and reports on the work of the Judicial Department, develops training programs for court officials and provides educational materials.

The Administrative Office of the Courts also manages the assignment of superior court judges and emergency judges. As described in the "superior court division" section earlier in this guide, North Carolina has a system of rotation for superior court judges. The assistant director of the Administrative Office of the Courts develops each six-month rotation schedule of where judges will be assigned to hold court within their superior court divisions. The assistant director publishes the rotation schedule on an annual basis.

### Financial Support of the Courts

Since the unified court system was established, all operating expenses of the Judicial Department have been paid by the State. These include salaries

*Since the unified court system was established, all operating expenses of the Judicial Department have been paid by the State. These include salaries and travel expenses of all court officials, juror and witness fees, and equipment and office supplies for the judicial system. Counties and cities, however, are responsible for providing courtrooms and related judicial physical facilities.*

and travel expenses of all court officials, juror and witness fees, and equipment and office supplies for the judicial system. Counties and cities, however, are responsible for providing courtrooms and related judicial physical facilities, including furniture. Almost all of the state financing of the judicial system comes from funds appropriated by the General Assembly, with a small portion coming from federal grants. Except for certain fees related to the electronic filing of cases or electronic access to court records, the courts do not keep the money collected as costs, fees, and fines; instead, it is paid into the General Fund of the State or to the counties and cities around the state.

In civil actions, two primary cost items are paid by the parties: a General Court of Justice fee that goes to the State and a facilities fee that goes to the county or city that supplies the courts' physical facilities, to be used for the support of those facilities. Additional fees can be assessed for particular types of cases, such as a special fee for filing a divorce case.

Criminal actions include other fees in addition to the General Court of Justice fee and the facilities fee. The court collects a law enforcement officers' fee for each personal service of criminal process (*e.g.*, serving a warrant for arrest). This fee goes to the county or city whose officer performed the service. The court also collects a fee that is sent to the State Treasurer for law enforcement officers' retirement and insurance funds.

In addition to basic cost items, parties might be charged other expenses like the costs of a witness' attendance at trial or for the services of a guardian *ad litem* or a mediator. In both civil and criminal cases, a portion of the General Court of Justice fee is given to the North Carolina State Bar to provide civil legal services for people who cannot afford lawyers and to provide legal help to victims of domestic violence. The courts also collect certain miscellaneous fees that are paid to the State, such as fees for copying court records or issuing a writ of execution by which the sheriff collects the money owed to a party as the result of a court's judgment.

Fines and forfeitures are different from costs and fees. A fine is a money penalty imposed on a defendant as punishment for conviction of a crime. A forfeiture occurs when a judge orders that a party forfeit money or property to the State as the result of an unlawful act, like a bail bond forfeited when a criminal defendant does not appear for court or when property or money is forfeited to the State because it was used in the commission of a crime. The North Carolina

Constitution requires that the clear proceeds of any fines and forfeitures be paid to the county for the use of the public schools, so fines or forfeitures are not used to support the court system.

### **Public Records and the Courts**

Under North Carolina's Public Records Act, the records and information compiled by the agencies of state government and local governments are the property of the people, and those records usually are available for the public to review (and copy, if the requester pays the costs of producing the copies) during the an agency's regular business hours or on the Internet, if available. The Judicial Department agencies (such as the Administrative Office of the Courts and the Judicial Council) and local officials (like the clerk of superior court) also are subject to the public records law.

There are some exceptions to the Public Records Act, which means that some records of the courts are confidential and not available to the public. Examples of the courts' confidential records include warrants for arrest that have been issued by a judicial official but not yet returned to the courts by the law enforcement officer assigned to serve it, adoption records and almost all records of juvenile cases.

### **Representation of Indigents**

As described in the "Public Defender" section earlier in this guide, a defendant accused of a crime who is indigent (financially unable to employ a lawyer) may be appointed an attorney who will be paid by the State. A juvenile alleged to be delinquent also is entitled to have an attorney appointed, as are indigent parties to certain other court proceedings, such as revocation of probation or involuntary commitment to a state mental hospital.

*Office of Indigent Defense Services*

[www.aoc.state.nc.us/www/ids](http://www.aoc.state.nc.us/www/ids)

To manage the appointment of attorneys to represent indigent persons, the General Assembly created the Office of Indigent Defense Services (IDS) in 2000. IDS is part of the Judicial Department and receives administrative support from the Administrative Office of the Courts, but exercises its authority independent of the Administrative Office of the Courts' supervision. The General Assembly also created the Commission on Indigent Defense Services to develop standards for indigent representation and to develop and improve programs by which the Office of Indigent Defense Services provides legal representation to indigent persons. The Commission appoints the director of the Office of Indigent Defense Services. The office's goals are to ensure that every attorney representing indigent persons at state expense has the qualifications, training, support and resources needed to be effective advocates; to create a system that will eliminate the recognized problems and conflicts caused by judges appointing and compensating defense attorneys; and to manage the State's indigent defense fund in an efficient and equitable manner.

For most cases, the clerk or trial judge assigns a local attorney (or the public defender's office, if there is one in the district) to represent an indigent defendant. For capital cases, IDS is responsible for appointing two attorneys to represent the defendant. Fees and expenses of appointed attorneys are paid by the State from IDS' budget. The public defender's office represents most of the indigent defendants in the district, but private attorneys are still called upon to represent indigents when the public defender's office is handling the maximum number of cases it can handle at one time or when representation of a defendant would cause a conflict of interest for the public defender's office.

*Appellate Defender*

A state-funded Office of the Appellate Defender began operations in 1981. The Durham-based office was transferred to the Office of Indigent Defense Services in 2000, and the Commission on Indigent Defense Services appoints the appellate defender to a four-year term. The appellate defender's office represents indigent persons who appeal

their convictions to the Court of Appeals or the Supreme Court. The office also manages the roster of private attorneys who are eligible for appointment in appellate cases.

### *Capital Defender*

A state-funded Office of the Capital Defender began operations in 1999. The office represents indigent defendants who are charged with potentially capital offenses, which means that they may result in the death penalty for the defendant. The office also manages the list of private attorneys who are eligible for appointment in potentially capital cases.

### *Juvenile Defender*

Based on a recommendation from the Commission on Indigent Defense Services, the General Assembly authorized the creation of a new statewide juvenile defender position in 2004. The mission of the juvenile defender's office is to provide services and support to defense attorneys, to evaluate the current system of representation and make recommendations as needed, to elevate the stature of juvenile delinquency representation, and to work with other juvenile justice actors to promote positive change in the juvenile justice system.

### *Sentencing Services*

The Sentencing Services Program provides sentencing information to judges in selected criminal cases and recommends whether or not an offender is suited for a particular community corrections program. Judges are presented with a written plan giving a detailed assessment and description of the offender's background. The program was transferred from the direct supervision of the Administrative Office of the Courts to IDS in 2002. Sentencing Services programs operate in many judicial districts.

# RELATED AGENCIES IN THE JUDICIAL DEPARTMENT

## **Judicial Council**

The State Judicial Council was created by the General Assembly in 1999 to promote overall improvement in the Judicial Department. The duties of the Council are to:

- study the judicial system and report periodically to the Chief Justice
- advise the Chief Justice on priorities for funding
- review and give advice on the Judicial Department budget
- study and recommend to the General Assembly salaries and compensation for justices, judges and other judicial officials
- recommend the creation of judgeships where needed
- recommend performance standards for evaluating the courts and judicial officials
- recommend guidelines for the assignment and management of cases
- monitor the use of alternative dispute resolution
- recommend changes in the boundaries of judicial districts and divisions
- monitor the effectiveness of the Judicial Department in serving the public

The Council comprises eighteen members who represent every court function, private attorneys and the public, and is organized into committees on substantive topics related to its overall mission. The Administrative Office of the Courts provides staff assistance to the Council.

## Judicial Standards Commission

The Judicial Standards Commission was established to consider complaints against judges and justices and, where appropriate, to make recommendations for disciplining them. The Commission is authorized to investigate the qualifications or conduct of any judge based upon a complaint from a citizen or on its own initiative. Grounds for disciplining a judge include willful misconduct in office, willful and persistent failure to perform judicial duties, habitual intemperance, or conviction of a crime involving moral turpitude or conduct prejudicial to the administration of justice and that brings the judicial office into disrepute.

If the Commission finds after an investigation that a judge has violated the Code of Judicial Conduct,<sup>6</sup> but the violation was not serious enough to deserve public punishment, the Commission can issue the judge a “letter of caution” about the violation. If the Commission decides that some public punishment is needed, it can issue the judge a public reprimand. If the judge rejects the reprimand, the Commission will hold a full hearing to determine whether or not to discipline the judge. In more serious cases and after the judge has been given a hearing, the Commission may recommend to the Supreme Court that the judge be censured (a more formal kind of reprimand) or suspended or removed from office. When referring a case to the Supreme Court, the Commission only makes a recommendation; the Commission cannot actually censure, suspend or remove a judge on its own. The Supreme Court must vote on the actual punishment to be imposed, if any. All papers filed with the Commission and the records of its investigations are confidential, as are letters of caution. Public reprimands and any cases that require a hearing before the Commission, including any recommendations to the Supreme Court for censure or removal of the judge, are public records.

## Conference of Clerks of Superior Court

The General Assembly established the Conference of Clerks of Superior Court of North Carolina in 2005, making each of the 100 elected clerks of superior court a member. The functions of the conference are to cooperate with public and private agencies to promote the administration of justice, develop advisory guidelines to as-

## RELATED AGENCIES IN THE JUDICIAL DEPARTMENT

sist the clerks with the administration of their offices and duties, and to work with the Administrative Office of the Courts and the University of North Carolina School of Government to develop educational programs for the clerks and their staffs. The conference began its operations in 2007.

### **Conference of District Attorneys**

[www.ncdistrictattorney.org](http://www.ncdistrictattorney.org)

The North Carolina Conference of District Attorneys was created in 1983. All of the elected district attorneys of the State are members of the conference. The conference serves as a resource for the State’s prosecutors, assisting with training efforts for district attorneys and their staffs, conducting research on topics of concern to prosecutors, promoting the rights of victims and managing grants from the federal government and the Governor’s Crime Commission to improve the State’s law enforcement and criminal justice processes.

### **Office of Indigent Defense Services**

[www.aoc.state.nc.us/www/ids](http://www.aoc.state.nc.us/www/ids)

The Office of Indigent Defense Services (IDS) manages the delivery of legal services to indigent persons appearing before the state’s courts. For more information about IDS, see the section titled “Representation of Indigents” earlier in this guide.

### **Sentencing and Policy Advisory Commission**

[www.nccourts.org/Courts/CRS/Councils/spac](http://www.nccourts.org/Courts/CRS/Councils/spac)

In 1990 the General Assembly created the North Carolina Sentencing and Policy Advisory Commission (Sentencing Commission) within the Judicial Department to evaluate sentencing laws and policies and their relationship to the purposes of the criminal

justice and corrections systems. The Commission has 30 members drawn from all three branches of government, from all areas of the criminal justice system and from the public. In its early years, the Sentencing Commission devised a new sentencing system for the State, that was enacted as the Structured Sentencing Act in 1993 and became effective in October 1994. In 1998, the Commission's mandate was expanded to include monitoring and recommending policies for the juvenile justice system.

The Sentencing Commission continues to monitor the effect of sentencing on the prison population, determine the long-range needs of the criminal and juvenile justice systems and corrections systems, identify critical problems in the those systems, and recommend strategies to solve those problems. The Commission is required to make recommendations to the General Assembly about pending criminal legislation and makes regular reports to the General Assembly and other agencies. The Commission's reports include annual statistical summaries of criminal sentences imposed, reports on the recidivism rates of criminal defendants and juvenile delinquents, and special reports as requested by the General Assembly or other agencies on topics like sentencing of misdemeanors and how to handle special populations like youthful offenders.

### **Innocence Inquiry Commission**

[www.innocencecommission-nc.gov](http://www.innocencecommission-nc.gov)

A defendant convicted of a crime can appeal the conviction to a higher court, but if there were no legal errors in the defendant's trial, the jury's verdict of guilt is not overturned. However, evidence discovered later or improvements in scientific methods of examining evidence (*e.g.*, DNA evidence) have demonstrated that some defendants convicted and sent to prison did not commit the crimes for which they were convicted. To examine cases in which that might have happened, the General Assembly created the North Carolina Innocence Inquiry Commission in 2006. The commission reviews, investigates and hears claims of innocence by convicted defendants when new evidence becomes available that was not available at the original trial or a post-conviction hearing. If the commission determines that sufficient evidence

of actual innocence exists, the case is referred to a panel of three judges who will review the case and determine whether or not to reverse the conviction and dismiss the original charges against the defendant.

### **Dispute Resolution Commission**

[www.nccourts.org/Courts/CRS/Councils/DRC](http://www.nccourts.org/Courts/CRS/Councils/DRC)

Established in 1995, the Dispute Resolution Commission's primary purpose is the licensing (called "certification") and regulation of private mediators in the State's courts. The Commission also recommends rules for mediation in North Carolina courts, provides support and advice to the courts' mediation programs, certifies mediation trainers, assists other agencies interested in or providing dispute resolution services, publishes a newsletter about alternative dispute resolution and maintains its website as a resource on dispute resolution. The Commission members include judges, mediators, attorneys and private citizens.

### **Chief Justice's Commission on Professionalism**

[www.nccourts.org/Courts/CRS/Councils/Professionalism](http://www.nccourts.org/Courts/CRS/Councils/Professionalism)

The Chief Justice's Commission on Professionalism was established in 1998 to enhance professionalism among North Carolina's lawyers, judges and law students. The Commission's chair is the Chief Justice of the Supreme Court, and its members include judges from all divisions of the Judicial Department, deans of the state's law schools, practicing attorneys and three public members. To carry out its purpose, the Commission evaluates the current state of professionalism and ethical behavior among lawyers, promotes inclusion of the study of professionalism in Continuing Legal Education programs, and coordinates efforts to promote professional conduct with law schools, the State Bar and the courts. The Commission also tries to assist citizens who have complaints about an attorney's professional conduct, particularly when the conduct may be unprofessional but does not amount to a violation of the State Bar's Rules of Professional Conduct. See the section on the "North Carolina State Bar" under "Related Agencies – Outside the Judicial Department" for more information about attorney conduct and discipline.

# RELATED AGENCIES OUTSIDE THE JUDICIAL DEPARTMENT

## Legislative Branch

*North Carolina General Assembly*

[www.ncleg.net](http://www.ncleg.net)

The General Assembly is the Legislative Branch of North Carolina's government. Its actions have a tremendous impact on the Judicial Department because the legislature, by its enactment of laws and funding of programs, determines to a large extent how the court system will operate. The General Assembly receives reports and recommendations from numerous governmental and private organizations that study the court system and recommend changes – like the North Carolina Bar Association, the Governor's Crime Commission and the Judicial Council. The General Assembly decides whether to enact the recommendations into law. Other legislation does not directly address the operations of the courts, but often affects the duties of court personnel because of their particular functions. For example, many statutes designate the clerk of superior court as the keeper of various records of the public's business (*e.g.*, election results from local boards of elections), even when the record does not actually involve a court case.

Much of the business of the General Assembly is done by the committees of its two houses: the House of Representatives and the Senate. Most laws dealing with courts pass through the judiciary committees. Each house's appropriation committee – the committee that decides how the State's budget is allocated – has a subcommittee on Justice and Public Safety that is responsible for making all budgetary recommendations for the Judicial Department, including proposals for increasing the numbers of court officials and funding new programs within the court system. The counterparts to the appropriations committees are the Finance committees, which review legislation concerning how the State receives funds. Because the courts serve as the point of

## RELATED AGENCIES OUTSIDE THE JUDICIAL DEPARTMENT

collection and disbursement of many of the State's non-tax sources of revenue (*e.g.*, fines and forfeitures paid out to the county for operation of the public schools), much of the legislation affecting the courts passes through the finance committees.

### *Courts Commission*

The Courts Commission is a body of court officials, members of the General Assembly, practicing attorneys and private citizens. The members are appointed by the Governor, the leaders of both houses of the General Assembly and the Chief Justice of the Supreme Court. First established in the 1960s, the commission researched, drafted and promoted the amendments to the State's constitution and much of the legislation that led to the current structure of the Judicial Department.

The statutes that created the original Courts Commission were repealed in 1975, but the commission was re-created four years later. It has met as needed since its re-enactment, and continues to study and make recommendations for the structure, organization, jurisdiction, procedures and personnel of the state's court system.

### **Executive Branch**

[www.ncgov.com](http://www.ncgov.com)

The Executive Branch is led by the Governor as the chief executive officer of the State and comprises numerous agencies like the Department of Revenue, the Department of Health and Human Services, and the Department of Transportation. Although almost all government agencies interact with the court system in some way, a few agencies of the Executive Branch are closely related to the justice system and are described briefly in the following text.

*Department of Justice*

[www.ncdoj.com](http://www.ncdoj.com)

The North Carolina Department of Justice operates under the direction of the Attorney General, who is elected for a term of four years in a statewide election. The Attorney General's office provides legal advice to all state government departments, agencies and commissions in legal matters, and represents the State and its agencies in court.

For criminal matters, the Attorney General's office consults with and advises the district attorneys whenever they request assistance, and its Special Prosecutions Section prosecutes criminal cases at the trial level when a district attorney asks it to do so. The office also oversees the development of training and licensing rules for law enforcement agencies and for professions related to law enforcement or security, such as private security services and companies that install security alarm systems.

The Department of Justice includes the State Bureau of Investigation (SBI), which identifies and apprehends criminals, investigates, analyzes and prepares evidence to be used in the criminal courts, and provides assistance to local law enforcement officers and district attorneys. The Criminal Information and Identification Section of the SBI operates DCI, a computerized communication and records system for sharing information among law enforcement agencies and other authorized users. DCI is North Carolina's interface with the National Criminal Information Center (NCIC), the criminal records system of the Federal Bureau of Investigation (FBI).

*Department of Juvenile Justice and Delinquency Prevention*

[www.ncdjdp.org](http://www.ncdjdp.org)

The Department of Juvenile Justice and Delinquency Prevention (DJJDP) was created as part of the reform of North Carolina's juvenile justice system. In 1998, the General Assembly created the Office of Juvenile Justice as part of the Governor's office, and in 2000 changed the Office of Juvenile Justice to a full state agency on its own – DJJDP – led by a Secretary who is appointed by the Governor. DJJDP manages the State's juvenile justice system in cooperation with the courts and criminal justice agencies.

## RELATED AGENCIES OUTSIDE THE JUDICIAL DEPARTMENT

The Department's primary responsibilities include appointing and supervising the court counselors who manage individual juvenile cases in the district courts, overseeing the agencies and programs around the State that provide services to juveniles found to be delinquent or undisciplined (or at risk of being found delinquent or undisciplined), operating the State's youth development centers for delinquent youth (formerly called "training schools"), and researching, planning, and reporting on the needs and effectiveness of the State's juvenile justice system.

### *Department of Correction*

[www.doc.state.nc.us](http://www.doc.state.nc.us)

The Department of Correction (DOC), under the authority of the Secretary of Correction as the head of the department, provides custody, supervision, and treatment for the control and rehabilitation of criminal offenders. DOC operates the State's prisons and supervises offenders who have been placed on probation, released from prison on post-release supervision or parole, or convicted of certain sex offenses and who must wear global positioning system (GPS) devices to track their movements. The Department also provides treatment services to offenders who have alcohol or drug problems, and operates Correction Enterprises, which provides low-cost manufacturing and labor services to state and local government agencies and applies the income from those services to support the Department's operations.

### *Governor's Crime Commission*

[www.gcc.state.nc.us](http://www.gcc.state.nc.us)

The Governor's Crime Commission was established pursuant to the federal Omnibus Crime Control and Safe Streets Act of 1968<sup>7</sup> as a mechanism for allocating federal funds within the State's criminal justice system. The Crime Commission is composed of state and local officials involved in the criminal justice system and private citizens.

Besides awarding federal and state grant money and advising the governor on matters pertaining to the criminal justice system, the Commission studies criminal justice issues, makes long-range planning and policy recommendations for improving the criminal justice system and develops a legislative agenda for improving the system. It also provides data analysis, research and technical assistance to state agencies, and serves as the primary clearinghouse for information on crime and the criminal justice system.

### **North Carolina State Bar**

[www.ncbar.gov](http://www.ncbar.gov)

The North Carolina State Bar is the State’s licensing and regulatory agency for attorneys and paralegals. Except for out-of-state attorneys allowed to appear on a case-by-case basis, a person must be licensed by the State Bar in order to practice law in North Carolina. The Bar is governed by the State Bar Council, which comprises attorney representatives from each judicial district, plus three non-attorneys appointed by the Governor.

In addition to licensing attorneys, the State Bar also disciplines attorneys who violate the Bar’s Rules of Professional Conduct, which define the standards of professional and ethical conduct that attorneys must follow in the practice of law. The State Bar has a committee that investigates complaints of unethical practice by an attorney and, if a violation is found, can discipline the attorney. Disciplinary actions can result in penalties as minor as a warning or as severe as “disbarment,” which means revocation of the attorney’s license to practice law. Any citizen who wishes to make a complaint about the professional conduct of an attorney should contact the State Bar ([www.ncbar.gov](http://www.ncbar.gov)) or the Chief Justice’s Commission on Professionalism (discussed earlier in this guide).

The State Bar is not the same agency as the North Carolina Bar Association, which is a private association of attorneys that promotes the interests of the legal profession. To practice law in North Carolina, an attorney must be a member of and licensed by the State Bar but does not have to be a member of the Bar Association.

# PRIVATE ORGANIZATIONS

Private associations of court officials and of attorneys also contribute to the working of the court system. A few such associations are described in the following text.

## **Private Associations of Court Personnel**

Several groups of court officials (*e.g.*, judicial support personnel, district court judges, assistant and deputy clerks of court) have formed private organizations to evaluate and improve the processes by which each group performs its functions in the Judicial Department. The clerks of superior court and the district attorneys also belong to private associations in addition to their statutory conferences described earlier in this guide.

Each group holds at least one annual meeting. These meetings are primarily educational, at which speakers discuss changes in the law affecting the group and the court officials discuss matters of mutual concern. Generally, the officers of the associations plan the programs with the assistance of the University of North Carolina School of Government and the Administrative Office of the Courts. Another function of these organizations is to permit each group of court officials to take positions concerning legislation or policy that reflect the opinion of the group as a whole.

## **Private Associations of Attorneys**

Many attorneys belong to private associations devoted to practicing in certain areas of the law (*e.g.*, criminal defense, civil plaintiffs). Other private organizations

of attorneys are based on common characteristics of the attorneys, themselves (*e.g.*, women attorneys) and the particular interests or challenges for that particular group in the practice of law. Each of these private organizations of attorneys has its own goals and activities, but some common functions carried out by such groups include sponsoring legal education programs for their members, establishing relationships with and helping to mentor law students at the law schools around the State, representing their members' interests by lobbying the General Assembly, and providing information to the other agencies concerned with operation of the courts and the law, such as the Judicial Council or the North Carolina State Bar. Some of the private associations of attorneys are:

- North Carolina Bar Association  
[www.ncbar.org](http://www.ncbar.org)
- North Carolina Academy of Trial Lawyers (criminal defense and civil plaintiffs' attorneys)  
[www.ncatl.org](http://www.ncatl.org)
- North Carolina Association of Defense Attorneys (civil defense attorneys)  
[www.ncada.org](http://www.ncada.org)
- North Carolina Association of Black Lawyers  
Golden Belt Center, 807 E. Main Street #1-C, Durham, NC 27701
- North Carolina Association of Women Attorneys  
[www.ncawa.org](http://www.ncawa.org)

# JUDICIAL DEPARTMENT DATA

Fiscal Year 2006 – 2007 | July 1, 2006 – June 30, 2007

## SUPREME COURT

*7 justices*

Appeals filed	246
Appeals disposed	214

## COURT OF APPEALS

*15 judges*

Appeals filed	1,623
Appeals disposed	1,755

## SUPERIOR COURT

*109 judges*

*(includes 14*

*special judges)*

Total cases filed	363,091
Total cases disposed	342,305

### Cases

	Filed	Disposed
Civil	27,091	27,762
Felonies	111,059	105,603
Misdemeanors	41,820	40,804
Estates	62,028	60,306
Special proceedings	121,093	107,830

## DISTRICT COURT

256 judges

Total cases filed	2,986,871
Total cases disposed	2,907,265*

*\*Does not include the dispositions of civil license revocations*

Cases	Filed	Disposed
Domestic relations	132,600	130,185
General civil	72,205	69,095
CVM appeal / transfer	3,621	3,566
Civil magistrate	264,194	262,955
Criminal non-motor vehicle	636,751	637,891
Criminal motor vehicle	1,018,120	1,000,106
Infractions	808,384	803,467
Civil license revocations	50,996	

### Other District Court Data

Domestic violence protective orders	31,576 entered
Driving while impaired and implied consent charges	72,421 filed 74,016 disposed

JUDICIAL DEPARTMENT DATA

<b>JUDICIAL DEPARTMENT PERSONNEL</b>		<b>5,868.575*</b>	
Clerks of superior court	100.00	Court support staff	1,074.825
Clerk personnel	2,389.75	AOC Staff	394.75
Magistrates	724	Guardian ad Litem	143.75
District attorneys	42	Personnel	
Assistant district attorneys	571	Other**	28.5
Trial court administrators	13		

\* The total personnel figures include grant-funded FTEs, but not Indigent Defense Services and public defender FTEs. Data are authorized FTEs as of June 30, 2007.

\*\* Judicial Standards Commission, District Attorney's Conference, Dispute Resolution Commission, Conference of Clerks of Superior Court, Innocence Inquiry Commission, Chief Justice's Commission on Professionalism, and Sentencing and Policy Advisory Commission.

**JUDICIAL DEPARTMENT BUDGET\***

Total authorized appropriations	\$400,159,117
Percentage of total state budget	2.12%
 Total expenditures (includes receipts such as grants)	 \$410,661,508

\* Does not include indigent defense or State Bar / Civil Justice Act funds

**\$467+ MILLION DISTRIBUTED TO CITIZENS AND GOVERNMENTS**

Distributed to citizens <i>(judgments, restitution, condemnation awards, child support, alimony, etc.)</i>	\$161,372,962	26.99%
Remitted to state treasurer <i>(various court fees, appellate division report sales, law enforcement officer and sheriff benefits, and pretrial civil revocation fees)</i>	\$210,308,069	35.18%
Distributed to counties <i>(facilities, officer, jail and pretrial civil revocation fees, plus fines and forfeitures for public schools)</i>	\$92,986,316	15.55%
Distributed to municipalities <i>(facilities, officer and jail fees)</i>	\$3,075,443	0.51%

**ESTIMATED DAY-IN-COURT COSTS**

<i>(based on 2008-09 position costs)*</i>	
Cost of one-day criminal jury trial in superior court	\$2,283
Cost of one-day criminal trial in district court	\$1,406

\*Does not include costs for indigent representation

**MISCELLANEOUS**

Abused or neglected children served by the Guardian ad Litem program	17,701
Funded family courts districts	11
Districts with custody mediation programs	36
Counties with court arbitration programs	72

## ENDNOTES

<sup>1</sup> North Carolina Bar Association, Report of the Committee on Improving and Expediting the Administration of Justice in North Carolina (1958).

<sup>2</sup> [www.aoc.state.nc.us/www/public/html/opinions.htm](http://www.aoc.state.nc.us/www/public/html/opinions.htm).

<sup>3</sup> In addition to meeting in the county seat of each county, the superior court must meet regularly in any city in the state that was not a county seat but had a population over 35,000 in the 1960 U.S. census. N.C.G.S. 7A-42(a). High Point was the only city in North Carolina that fit that description in 1960.

<sup>4</sup> See Black's Law Dictionary 853 (6th ed. 1990) for a more thorough definition of "jurisdiction."

<sup>5</sup> Black's Law Dictionary 435 (6th ed. 1990).

<sup>6</sup> A copy of the current Code of Judicial Conduct may be found online at: [www.nccourts.org/Courts/CRS/Councils/JudicialStandards/Documents/Amendments-NCJudicialCode.pdf](http://www.nccourts.org/Courts/CRS/Councils/JudicialStandards/Documents/Amendments-NCJudicialCode.pdf).

<sup>7</sup> Omnibus Crime Control and Safe Streets Act of 1968, P.L. 90-351 (1968).

# NOTES

# NOTES





NORTH CAROLINA JUDICIAL DEPARTMENT  
ADMINISTRATIVE OFFICE OF THE COURTS

[WWW.NCCOURTS.ORG](http://WWW.NCCOURTS.ORG)