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## Courts and Civil Procedure

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The 2002 General Assembly neither considered nor enacted many changes affecting the court system. The most significant legislation, S.L. 2002-158 (S 1054), changed the method of election for appellate court judges and provided public financing for their election campaigns. Another significant bill, S 712, would have submitted to the voters a constitutional amendment changing the district court judges' terms to eight years. The bill passed the Senate and was sent to the floor by a House committee, but it was never voted on by the full House. Therefore, district judges remain the only judges serving four-year terms; all other judges serve eight-year terms. Yet another bill, S 887, would have authorized clerks of court and magistrates to hear infraction and Class 3 misdemeanor cases (unless the person pleads guilty, those cases must now be heard by district court judges). The bill, which was supported by the State Judicial Council, passed the Senate and a House committee, but it was not approved by the full House.

Other significant legislative actions involved the court system's budget. The courts' budget, like the budgets of all state agencies, was reduced in some significant ways. Court costs and fees were raised in almost all categories.

### **Appellate Courts' Elections**

#### **Public Financing**

In 2002, North Carolina became the first state to pass a public financing measure for judicial election campaigns. The measure, S.L. 2002-158 (S 1054), provides public financing for contested primaries and general elections for the North Carolina Supreme Court and Court of Appeals, beginning with the 2004 elections. These changes are discussed in more detail in Chapter 7, "Elections."

Under the new law, candidates may elect not to participate in public financing. The law requires those who do elect to participate to raise a specified amount in campaign funds from at least 350 contributors. The amount is keyed to the filing fee, which is currently 1 percent of the

base salary for the office being sought. A participating candidate must raise at least thirty times the filing fee. At current salary levels, that amount is slightly more than \$30,000. The candidate may not raise more than twice that amount, and the maximum contribution that may be received from any individual toward the qualifying amount is \$500.

The amounts allocated to candidates vary based on the office sought. Court of appeals candidates receive 125 times the filing fee for contested general elections (around \$137,000 at current salary levels), and supreme court candidates receive 175 times the filing fee (around \$200,000 at current salary levels). The candidates do not receive any funds for primaries unless a candidate who elects not to participate in public financing spends more than the maximum amount that participating candidates are allowed to raise. In that case, “rescue funds” are provided to the participating candidates. Rescue funds are also provided to candidates in general elections if they are competing against nonparticipating candidates who spend more than the maximum public contributions paid to participating candidates.

The public funds come from two principal sources—lawyers who contribute an additional \$50 when they pay their business license tax, and funds designated by individual taxpayers on their tax returns. Each taxpayer may designate \$3 to go to the fund; the designation does not affect the taxpayer’s tax bill.

S.L. 2002-158 also prohibits individual contributions of more than \$1000 for nonparticipating candidates, except by candidates’ close family members, who may contribute \$2000 each.

### **Nonpartisan Elections**

Superior court elections were switched from partisan to nonpartisan in the 1998 election. District court elections became nonpartisan in the 2002 elections. S.L. 2002-158 makes the appellate races nonpartisan, beginning in the 2004 elections. In the Judicial Department, only the clerk of court and the district attorney now run in partisan elections.

S.L. 2002-158 directs the State Board of Elections to publish a Judicial Voter Guide for appellate court races. The guide must explain the functions of the appellate courts, describe the relevant elections laws, and contain specified information about each candidate. The Judicial Voter Guide is to be distributed to as many voters as possible, either through mailing to all residences or by some other method that is similarly effective at reaching voters.

Before they can be enforced, all the changes in elections law must be reviewed for compliance with the Voting Rights Act of 1965, either by the United States Department of Justice or by a federal court in the District of Columbia.

### **Court Budget Matters**

The budget approved for the Judicial Department by the 2001 legislature was \$305.5 million. The final budget approved in the 2002 appropriations act, S. L. 2002-126 (S 1115), was \$294.6 million. As is reported in more detail in Chapter 2, “The State Budget,” this was a very difficult year for those writing the state’s budget, and reductions were widespread.

The final cuts in the courts’ budget were not as severe as those included in the version of the budget that passed the Senate. Among the Senate items not included in the final budget was a proposal to eliminate the retirement system that has been in place for judges, clerks, and district attorneys; under the Senate proposal, all future benefits would have accrued under the Teachers’ and State Employees’ Retirement System.

The most significant reductions in the courts’ budget include:

- The exclusion of collection cases (action on accounts) from the court-ordered arbitration program in G.S. 7A-37.1, and a reduction in staff to reflect that workload decrease.
- A requirement that the Administrative Office of the Courts eliminate five magistrate positions, effective January 1, 2003. No county with fewer than five magistrates may lose a magistrate.

- An 80 percent reduction in the budgeted funds for payment of retired judges, and a prohibition on the use of retired judges in the appellate courts. This reduction may not necessarily result in an 80 percent reduction in the use of retired judges, since other funds may be used to pay those judges as well, but a significant reduction is very likely given the other pressures on the judicial budget. According to statements made by the Director of the Administrative Office of the Courts, this reduction reflects both a need to cut costs and a feeling that the court system has not been using the current full-time judges as effectively as it should have.
- Elimination of one continuing education conference for judges, clerks of court, and district attorneys. In addition, wherever possible, conferences are to be conducted by instructors who are state employees and are to be held in state-owned facilities.
- Suspension of “automatic rotation” of superior court judges until July 2003. Two specific constitutional provisions in Article IV, section 11, of the North Carolina Constitution suggest, however, that the power of the legislature to restrict rotation of superior court judges is limited. The first provides that the Chief Justice of the Supreme Court “shall make assignments of Judges of the Superior Court.” The second provides that “[t]he principle of rotating Superior Court Judges among the various districts is a salutary one and shall be observed.”
- Transfer of the Sentencing Services Program to the Office of Indigent Defense Services for administrative oversight. The program was also cut by 33 percent to reflect a narrower focus. The Office of Indigent Defense Services is to report to the legislature by January 1, 2003, recommendations for making the program’s focus consistent with the resources available under its reduced budget.
- Authorization of the establishment of a public defender’s office in Defender District 21 (Forsyth County). Responsibility for establishing the office lies with the Office of Indigent Defense Services.

In one of the rare increases in funding, the Office of Indigent Defense Services received an additional \$4.9 million to pay attorney fees owed by that office for fiscal year 2001–2002. The fees were not paid in that year due to insufficient funds.

Court costs were increased in many areas. The most significant increases are

- a \$10 increase in the General Court of Justice fee;
- the doubling of the fee paid by persons serving community service sentences (from \$100 to \$200);
- the partial elimination of the exemption from court costs for those charged with seat belt or motorcycle helmet violations (they must pay \$50 in costs);
- an expunction fee of \$65;
- an increase in the monthly fee for probation supervision, from \$20 to \$30;
- an appointment fee of \$50 for all persons who have lawyers appointed for them because they are indigent; and
- a minimum criminal district court fee (the most common fee) of \$100.

The fees will generate more than \$15 million in new revenue.

Finally, no court officials received cost-of-living raises. This was the second consecutive year in which judges received no raises. Magistrates, deputy clerks, and assistant clerks will receive any step increases to which they are entitled under their statutory pay plans.

## **Bioterrorism**

In light of the terrorist attacks on the World Trade Center and the Pentagon, the legislature enacted a wide-ranging bioterrorism bill, S.L. 2002-179 (H 1508). This bill (discussed in more detail in Chapter 10, “Health”) has some provisions that impact the courts directly.

S.L. 2002-179 gives the State Health Director and local health directors significant power to quarantine people and animals affected by chemical, biological, or nuclear agents and to restrict

access by others to any contaminated areas. It allows those officials to require persons to submit to tests, to require the evacuation of affected areas, and to implement other necessary measures to protect the public's health. This power exists so long as the relevant officials determine that a public health threat exists, that all other reasonable means to correct the problem have been exercised, and that no less-restrictive means are available. For this purpose, a public health threat exists when there is a situation that is likely to cause an immediate risk of loss of human life, serious injury or illness, or serious adverse health effects. This power to restrict movement or access may be exercised without court approval for ten days. After ten days, the health officials must file an action in superior court to gain approval for additional thirty-day periods of restricted access or movement. Any person affected by such an order may institute an action in superior court to review the health officials' determination.

## **Civil Procedure**

Only one minor change was made to the Rules of Civil Procedure. S.L. 2002-171 (H 1402) establishes the Address Confidentiality Program for relocated victims of domestic violence, sexual abuse, and stalking. Under the program, the Attorney General assigns the program participant a substitute address to prevent the victim's assailants or potential assailants from finding the victim through public records. The Attorney General forwards first class, certified, or registered mail received at the substitute address to the actual address of the participant. The new law accounts for the additional time necessary for forwarding such mail by amending G.S. 1A-1, Rule 6, to provide that when a person participating in the Address Confidentiality Program has a legal right to act within a prescribed period of ten days or less after the service of a notice or other paper upon the program participant and the notice or paper is served by mail, the participant has an additional five days to act.

## **Matters of Interest to Clerks of Court**

### **Execution and Judicial Sales**

In 2001, the General Assembly enacted legislation conforming judicial and execution sales of real property to foreclosures by creating a procedure for rolling upset bids rather than resales after upset bids are filed. That legislation merely incorporated the language from the foreclosure statute into the judicial and execution sales statutes. One provision stated that if no upset bid is filed within ten days after the report of sale or within ten days after the filing of the last upset bid, "the rights of the parties are fixed." Although that provision was necessary in foreclosure sales because the statute does not provide for the clerk to confirm a foreclosure sale, it created a conflict in judicial and execution sales, which do require confirmation by the clerk. The long-standing body of law holds that the rights of the parties are fixed upon the clerk's confirming the sale. Thus, for judicial and execution sales, the law fixed the rights of the parties at two separate times. S.L. 2002-28 (H 1513) removes the language fixing the rights ten days after the sale or last upset bid so that the clerk's order of confirmation fixes the rights of the parties.

### **Decedent's Estates**

G.S. 28A-22-9 allows a personal representative who holds property that is due to known but unlocated devisees to deliver the property to the clerk of court immediately before filing the final accounting in the decedent's estate. S.L. 2002-62 (H 1538) shortens the time that the clerk must hold the devisee's share before escheating it. Rather than holding the property for five years as previously required, the clerk must now hold the property for only one year after the filing of the final account.

Under G.S. 28A-13-1(c), a personal representative must file a proceeding before the clerk to take custody and control over real property, and under G.S. 28A-15-1(c), the personal representative must file a special proceeding to petition to sell, lease, or mortgage real property. In 2001 the General Assembly attempted to add provisions to both statutes making it clear that if a special proceeding under one of the statutes was filed, the personal representative could also petition for the other action in that same proceeding. However, the enacted legislation stated that a person who filed a petition for custody and control could seek custody and control in the same proceeding and one who filed a petition to sell real property could seek to sell property in the same proceeding. Sections 8 and 9 of S.L. 2002-159 (S 1217) correct that error; the law now makes it clear that a personal representative who has filed a special proceeding for custody and control may petition in that same proceeding to sell, lease, or mortgage the property, and vice versa.

A bill that would have allowed personal representatives to take possession of and sell real property without an order from the clerk did not pass. However, S.L. 2002-180 (S 98) directs the General Statutes Commission to study the issue. It also directs the commission to study whether North Carolina should provide a method for the distribution of property that comes into an estate after the estate is closed without having to reopen the estate.

### **Assessment Liens and Foreclosures in Planned Communities**

S.L. 2002-112 (S 1154) clarifies a provision regarding the application of the Planned Communities Act to communities created before January 1, 1999. It amends G.S. 47F-1-102 to make certain provisions of the law, including the provisions regarding assessments for common expenses and liens for assessments, apply to all planned communities, no matter when created, without the requirement that the planned community amend its declaration. Prior law had included that provision, but it was not as clearly written as the amendment. Planned communities created before or after January 1, 1999, can use the provisions of G.S. 47F-3-116 allowing the filing of a claim of lien in the clerk's office for any unpaid assessment that is overdue for thirty days or longer. The procedure for foreclosing the lien is the same as that for foreclosures under power of sale in Chapter 45 of the General Statutes. However, a lien pursuant to G.S. 47F-3-116 applies only to events and circumstances occurring on or after January 1, 1999, and may not be used to collect assessments due before that date.

### **Adoptions**

Section 12 of S.L. 2002-159 incorporates into the adoption law (G.S. 48-2-601) the general law on appeals from clerks that is found in G.S. 1-301.2. That law requires a clerk to transfer an adoption proceeding to district court if an issue of fact, an equitable defense, or a request for equitable relief is raised before the clerk.

### **Domestic Violence**

The 2002 General Assembly enacted two bills dealing with domestic violence. Both bills were recommended by the Domestic Violence Commission.

### **Approval of Abuser Treatment Programs**

G.S. 50B-3 allows the judge, in issuing a civil domestic violence protective order, to require a party to attend and complete an abuser treatment program approved by the Department of Administration. G.S. 15A-1343 sets out a similar provision as a condition for probation of a defendant who is responsible for acts of domestic violence. S.L. 2002-105 (H 1534) transfers the power for approving abuser treatment programs from the Department of Administration to the Domestic Violence Commission and specifically authorizes the commission to adopt rules, subject

to the Administrative Procedure Act, for the approval of abuser treatment programs. The rules must establish a consistent level of performance from program providers and ensure that approved programs enhance the safety of victims and hold those who perpetrate acts of domestic violence responsible for their acts.

### **Address Confidentiality Program**

Victims of domestic violence, sexual assault, or stalking often relocate to hide from their assailants only to be found at the new location through public documents, such as school registration or court records. Effective January 1, 2003, S.L. 2002-171 (H 1402) enacts new Chapter 15C of the General Statutes to establish the Address Confidentiality Program for victims of domestic violence, sexual offense, and stalking. The program enables victims who relocate to register with the Attorney General's Office and be given a substitute address that can be used in any public documents, thereby keeping the victim's actual physical location confidential. The statute sets out the requirements for application to the program and provides that upon the filing of a properly completed application, the Attorney General's Office shall issue the applicant an Address Confidentiality Program authorization card, which is valid for four years and can be renewed. The program participant can then show the authorization card to personnel at a state agency (defined to include state and local agencies), who must accept the address designation by the Attorney General as the participant's address when creating a new public record. For example, the substitute address can be used on a court pleading or on an application for services from a county department of social services. The statute requires the participant to notify the Attorney General of a name change or a change of address or telephone number. It also provides a civil penalty of \$500 for falsely attesting in an application to the program that disclosure of the applicant's address would endanger the applicant's safety. The Attorney General must terminate participation in the program if the participant fails to notify the Attorney General of an address or name change, the participant submits false information in the program application, or mail forwarded by the Attorney General is returned as undeliverable.

**Address use by certain agencies.** Several agencies are required to use the program participant's actual address rather than the substitute address on the authorization card for certain purposes. Boards of elections must use the participant's actual address for all election-related purposes, and local school units must use the actual address for any purposes related to admission or assignment. The tax office may not use the substitute address for purposes of listing, levying, and collecting property taxes on motor vehicles and real property, and registers of deeds may not use the substitute address on recorded documents or land registrations. However, the records of those agencies (with the exception of non-motor vehicle tax records in the tax collectors' and assessors' offices and land records in the office of the register of deeds) are not public records, nor are the records in the Attorney General's office of the participant's actual address and telephone number available to the public. The new law makes it a Class 1 misdemeanor for any person to knowingly and intentionally obtain or disclose information in violation of the statute.

**Extension of time to act for participants.** Whenever state law provides a program participant a legal right to act within a prescribed period of ten days or less after service of a notice or other paper upon the program participant and the participant is served with the notice or other paper by mail, the participant is granted an additional five days to act. S.L. 2002-171 also makes this change to Rule 6 of the Rules of Civil Procedure regarding service by mail.

### **Performing Marriages**

S.L. 2002-115 (H 1581) continues the practice of the last five years in which the General Assembly has passed general legislation to meet the requests of specific judges who wish to perform marriage ceremonies for family members or friends, without giving overall authority to judges to perform marriages. The first such bill, enacted in 1998, authorized "district court judges,

who were formerly assistant district attorneys in the Thirteenth Judicial District” to perform marriages during a one-year period. In 2000, superior court judges could perform weddings during a two and one-half month period. In 2001, two bills were enacted: one bill authorized emergency superior court judges to perform marriages during a four-day period and district court judges to perform marriages during a different four-day period, and the second bill authorized regular resident superior court judges to perform marriages during a ten-day period. This year, the General Assembly authorized superior court judges to perform marriages during a specified week and district court judges to perform marriages during a different, four-day period.

In 2001, when the General Assembly rewrote provisions of the marriage law, the legislation inadvertently removed language requiring the minister or magistrate performing the marriage to declare the persons husband and wife. Section 7 of S.L. 2002-159 (S 1217), the technical corrections bill, reinstates the former language and ratifies marriages performed between October 1, 2001 (the effective date of the 2001 law), and October 11, 2002 (the effective date of S.L. 2002-115), if the minister or magistrate failed to declare the couple husband and wife.

### **Magistrates’ Jurisdiction**

S.L. 2002-159 (S 1217), the technical corrections bill, amends G.S. 7A-273(2) to allow the Conference of Chief District Court Judges to add the littering crime found in G.S. 14-399(c1) to the waiver list so that persons charged with that offense can waive appearance and trial and plead guilty before a magistrate or clerk of court. Formerly, only littering offenses under G.S. 14-399(c) could be added to the list. G.S. 14-399(c) prohibits a person from intentionally or recklessly littering on any public property or private property in an amount not exceeding fifteen pounds and not for commercial purposes. G.S. 14-399(c1) prohibits littering in the same amount but eliminates the requirement that the littering be done intentionally or recklessly. Violations of G.S. 14-399(c1) are classified as infractions, while violations of G.S. 14-399(c) are classified as misdemeanors. The Conference of Chief District Court Judges did not add G.S. 14-399(c1) to the waiver list for 2003 but may revisit the issue for 2004. Thus, the only littering offense that is subject to waiver of trial before a magistrate or clerk continues to be G.S. 14-399(c).

Senate Bill 887, which would have expanded the authority of magistrates and clerks to hear and decide infractions and Class 3 misdemeanors, did not pass. However, the bill had the approval of the Judicial Council and is likely to be reintroduced in the 2003 session.

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