

FILLING VACANCIES IN JUDICIAL DEPARTMENT OFFICES

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Magistrate

Method of selection — Nominated by the clerk of court, appointed by the senior resident superior court judge. Const, Art IV, § 10; GS 7A-171.

Term of office — Initial term is for two years, subsequent terms for four years. Const, Art IV, § 10; GS 7A-171. Terms begin on Jan. 1 of odd-numbered year following appointment. GS 7A-171(a).

Vacancies —

Const, Art IV, § 10 — Vacancy is to be filled in same manner as an initial appointment unless the General Assembly provides otherwise.

GS 7A-171(d) — The clerk of court is to submit two names (or more if requested) to the senior resident superior court judge within 30 days of the vacancy, and the senior resident is to appoint the replacement within 15 days of receiving the nominations. The replacement is to serve until Dec. 31 of the next even-numbered year. [The statute does not say what happens if the clerk fails to nominate candidates within 30 days.]

Chief magistrate

Method of selection — The chief district judge may, but is not required to, designate a full-time magistrate to serve as chief magistrate for the county and assume certain responsibilities for setting magistrates' schedules. GS 7A-146(12).

Term of office — The chief magistrate serves at the pleasure of the chief district judge. GS 7A-146(12).

Vacancies — Because the chief magistrate serves at the pleasure of the chief district judge, any vacancy in the office is filled by designation of a new chief magistrate by the chief district judge.

Clerk of court

Method of selection — Elected in partisan election held in the county. Const, Art IV, § 9(3); GS 7A-100(a), 163-106(c). [The Constitution specifies election but does not say whether it is

partisan or nonpartisan, nor does GS 7A-100, but GS 163-106(c) provides for party primaries for all county offices which includes the clerk.]

Term of office — Four years, beginning the first Monday in December following election in even-numbered year. Const, Art IV, § 9(3); GS 163-1.

Vacancies —

Const, Art IV, § 9(3) — The senior resident superior court judge of the county appoints a replacement to serve until an election can be held.

GS 7A-100(a) — The senior resident appoints a replacement to serve until an election can be held, and may appoint an acting clerk to serve for up to 30 days until the replacement is appointed.

GS 163-115(a) — If the vacancy occurs before the general election in the middle of the clerk's term, there is an election for the replacement and that person serves the last two years of the term. [However, neither the Constitution nor statutes specify how far in advance of the election the vacancy must occur for there to be a mid-term election to fill the vacancy. For all other judicial department offices the constitution or statutes specify that an election is held only if the vacancy occurs more than 60 days before election day.]

District attorney

Method of selection — Elected in partisan election held in the prosecutorial district. Const, Art IV, § 18(1); GS 163-106(c). [Although the Constitution specifies election it does not say whether it is partisan or nonpartisan, but GS 163-106(c) provides for party primaries for district attorneys.]

Term of office — Four years, beginning on Jan. 1 of odd-numbered year following election. Const, Art IV, § 18(1); GS 163-1.

Vacancies —

Const, Art IV, § 19 — If the vacancy occurs more than 60 days before an upcoming general election in the middle of the DA's term, the governor appoints a replacement to serve until someone can be elected at that upcoming election to fill the vacancy. [GS 163-10 then provides that the person elected at that time serves the remaining two years of the term.] If the vacancy occurs on the 60th day before the upcoming mid-term election, or any time later, the governor appoints a replacement to serve the remainder of the term.

GS 163-10 — If the vacancy occurs more than 60 days before an upcoming general election in the middle of the DA's term, the governor appoints a replacement to serve

until someone can be elected at that upcoming election to fill the vacancy. The person elected at that time serves the remaining two years of the term. If the vacancy occurs on the 60th day before the upcoming mid-term election, or any time later, the governor appoints a replacement to serve the remainder of the term.

Public defender

Method of selection — In districts that have a public defender's office, the public defender is appointed by the senior resident superior court judge from two to three nominees chosen by written ballot by the bar of the district. GS 7A-498.7(b).

Term of office — The public defender serves a term of four years. GS 7A-498.7(h). [The statute does not specify when the term begins.]

Vacancies — The process for filling a vacancy is the same as for appointment of the public defender, i.e., the senior resident appoints a replacement from nominees from the district bar. GS 7A-498.7(b). [The statute does not say whether the person appointed to fill the vacancy is to serve a four-year term or just the remainder of the unexpired term. The practice varies. Sometimes the replacement just serves the remainder of the term and sometimes the replacement starts a new four-year term.]

Appellate defender

Method of selection — The appellate defender is appointed by the Commission on Indigent Defense Services. GS 7A-498.8(a).

Term of office — The appellate defender serves a term of four years. GS 7A-498.8(a). [Although the current statute does not say when the term begins, the 1981 original appellate defender act created the office effective October 1, 1981, and provided for subsequent terms to begin July 1, 1985, and every four years thereafter. SL 1981-964, § 11(b).]

Vacancies — A vacancy is filled by appointment of a replacement by the Commission on Indigent Defense Services, to serve the remainder of the unexpired term. GS 7A-498.8(a).

District court judge

Method of selection — Elected in nonpartisan elections held in the district court district. Const, Art IV, § 10; GS 7A-10, 163-321, -322.

Term of office — Four years, beginning on Jan. 1 of odd-numbered year following election. Const, Art IV, § 10; GS 7A-140, 163-1.

Vacancies —

Const, Art IV, § 10 — Vacancies are to be filled for the unexpired term in the manner provided by law.

GS 7A-142 — The governor appoints a replacement for the remainder of the unexpired term. The governor is to consider but is not bound by nominations submitted by the judicial district bar. The district bar is to submit five names unless it certifies that there were insufficient nominations to do so.

GS 163-9(d) — There is no election to fill a vacancy in district court; vacancies are filled pursuant to GS 7A-142.

Chief district judge

Method of selection — The chief district court judge is designated by the chief justice. GS 7A-141.

Term of office — The chief district judges serves at the pleasure of the chief justice. GS 7A-141.

Vacancies — Because the chief district judge serves at the pleasure of the chief justice, when there is a vacancy the chief justice simply designates a new chief judge.

Regular superior court judge

Method of selection — Elected in nonpartisan elections held in the superior court district. Const, Art IV, §§ 9, 16; GS 7A-41.2, 163-321, -322. [A number of superior court judges are elected from sub-districts within the superior court district. For example, the six judges in District 10 (Wake County) are elected from six sub-districts designated as districts 10A through 10F, and the four judges in District 14 (Durham) are elected from two sub-districts designated as 14A and 14B. Those sub-districts are used for election purposes only.]

Term of office — Eight years, beginning on Jan. 1 of odd-numbered year following election. Const, Art IV, § 16; GS 163-1.

Vacancies —

Const, Art IV, § 19 — If the vacancy occurs any time more than 60 days before the general election in the sixth year of the judge's term, the governor appoints a replacement to serve until someone can be elected at the next general election to fill the vacancy. If the vacancy occurs any time later than that – i.e., any time after the 60th day before the general election two years before the end of the judge's term – the governor appoints a replacement to serve the remainder of the term.

GS 163-9 — If the vacating judge’s term expires after the next election, the person appointed by the governor serves until the expiration of the term. If the vacating judge’s term does not expire until sometime later and an election must be held for the vacant judgeship, the person appointed serves until a replacement is elected at the next election. The person elected in the election to fill the vacancy is elected to a full eight-year term. [Although a portion of the statute says that a person elected to fill a vacancy in a district with a county subject to preclearance under Section 5 of the federal Voting Rights Act serves only the remainder of the unexpired term of the vacating judge, that provision is now void because of the United States Supreme Court decision in *Shelby County, Alabama v. Holder*, 133 S.Ct. 2612 (2013), invalidating the coverage provisions of Section 5. Consequently, all elections to fill superior court vacancies are for eight-year terms.]

GS 163-329 — The rules for the election to fill a vacancy are as follows:

- If the vacancy occurs before the regular filing period for that election year opens, the election for the vacancy is held on the same schedule and follows the same procedure as for a regular superior court election, i.e., a nonpartisan primary followed by a general election.
- If the vacancy occurs after the regular filing period has opened, but still at least 60 days before the general election, the State Board of Elections designates a special one-week filing period for the judgeship, and then:
 - If the vacancy occurs 64 days or more before the regularly scheduled second primary for that year, there is a special nonpartisan primary for the judgeship at the same time as the second primary for other offices, followed by a general election.
 - If the vacancy occurs less than 64 days before the regularly scheduled second primary for that year, there is no primary for the judgeship, all candidates run in a general election, and the winner is determined by a plurality.

GS 163-327.1 — This is a virtually incomprehensible statute which addresses certain circumstances when the vacancy is listed on the ballot “without designation as to the vacancy.” Call if you think the statute applies and need to try to figure it out.

Senior resident superior court judge

Method of selection — Generally, the senior resident superior court judge is the judge in the district with the most continuous service as a regular resident superior court judge; in case of equal seniority, it is the oldest. GS 7A-41.1(b)(2). For Wake County, however, once the current senior resident leaves office the new senior resident will be chosen by the chief justice. GS 7A-41.1(b)(3) [Wake is the only district that meets the convoluted definition in that subsection].

Term of office — Because the senior resident superior court judge for a district is determined by length of service, a senior resident remains in office until the senior resident retires, resigns, dies or otherwise leaves office. In Wake County, however, once the current senior resident

leaves office and a new senior resident is appointed by the chief justice that senior resident will serve at the pleasure of the chief justice. GS 7A-41.1(b)(3).

Vacancies — Because the office of senior resident is determined by longest continuous service, if there is a vacancy the office passes automatically to the remaining regular superior court judge in the district with longest continuous service. In a single-judge district, the person appointed or elected to fill the vacancy will automatically be the senior resident. The rules are different for Wake County. When the current senior resident resigns, dies, or otherwise vacates the office, the chief justice will designate the new senior resident, and the same procedure will be followed for any subsequent vacancy in that district. GS 7A-41.1(b)(3).

Special superior court judges

Method of selection — The constitution allows the General Assembly to provide for the selection or appointment of special superior court judges not selected for a particular district. Const, Art IV, § 9(1). The currently authorized special judgeships are listed in GS 7A-45.1. Special judges are nominated by the governor, confirmed by joint resolution of the General Assembly, and then appointed by the governor. GS 7A-45.1(a10).

Term of office — The constitution does not specify the term of office for a special superior court judge. The legislature has provided that each judge serves a five-year term that begins when the judge takes office. GS 7A-45.1.

Vacancies — Although GS 7A-45.1(b) says that a vacancy in a special superior court judgeship is filled by appointment of a replacement by the governor for the remainder of the unexpired term, subsection (a10) of the same statute provides that whenever a special judgeship becomes open because of the resignation, death, end of the term or otherwise the governor is to nominate a replacement for confirmation by the General Assembly. The latter provision appears to override subsection (b), denying the governor the opportunity to appoint a replacement for the remainder of the unexpired term. Once the replacement is confirmed by the legislature that judge serves a five-year term beginning at the time the judge takes office.

Court of Appeals judge

Method of selection — Elected in nonpartisan statewide elections. Const, Art IV, § 16; GS 7A-16, 163-321, -332.

Term of office — Eight-year terms beginning on Jan. 1 of odd-numbered year following election. Const, Art IV, § 16; GS 7A-16, 163-1.

Vacancies —

Const, Art IV, § 19 — If the vacancy occurs at any time more than 60 days before the general election in the sixth year of the judge's term, the governor appoints a replacement to serve until someone can be elected at the next general election to fill

the vacancy. If the vacancy occurs any time later than that – i.e., any time later than the 60th day before the general election two years before the end of the judge’s term – the governor appoints a replacement to serve the remainder of the term.

GS 163-9 — A vacancy is filled by appointment by the governor. The person appointed serves until Jan. 1 following the next general election held more than 60 days after the vacancy occurs. The replacement is elected at that election and serves an eight-year term beginning on Jan. 1 following the election.

Chief Judge, Court of Appeals

Method of selection — The chief judge of the Court of Appeals is designated by the chief justice. GS 7A-16.

Term of office — The chief judge serves at the pleasure of the chief justice. GS 7A-16.

Vacancies — Because the chief judge serves at the pleasure of the chief justice, when there is a vacancy in the office the chief justice simply designates a new chief judge.

Supreme Court justice

Method of selection — Elected in nonpartisan statewide elections. Const, Art IV, § 16; GS 7A-10, 163-321, -322.

Term of office — Eight years beginning on Jan. 1 of odd-numbered year following election. Const, Art IV, § 16; GS 7A-10, 163-1.

Vacancies —

Const, Art IV, § 19 — If the vacancy occurs at any time more than 60 days before the general election in the sixth year of the justice’s term, the governor appoints a replacement to serve until someone can be elected at the next general election to fill the vacancy. If the vacancy occurs any time later than that – i.e., any time later than the 60th day before the general election two years before the end of the judge’s term – the governor appoints a replacement to serve the remainder of the term.

GS 163-9 — A vacancy is filled by appointment by the governor. The person appointed serves until Jan. 1 following the next general election held more than 60 days after the vacancy occurs. The replacement is elected at that election and serves an eight-year term beginning on Jan. 1 following the election.

Chief justice

Method of selection — Chief justice is a separately elected office, elected in nonpartisan statewide elections. Const, Art IV, § 16; GS 7A-10, 163-321, -322.

Term of office — Eight years beginning on Jan. 1 of odd-numbered year following election. Const, Art IV, § 16; GS 7A-10, 163-1.

Vacancies — A vacancy in the office is treated the same as a vacancy in any other seat on the Supreme Court. Thus, as provided above, the governor appoints a replacement to serve until a new chief justice is elected. If the governor appoints another justice as the new chief justice, that person must resign the justice seat, creating a vacancy for the governor to fill.

Director and assistant director, Administrative Office of the Courts

Method of selection — Both the director (GS 7A-341) and assistant director (GS 7A-342) are appointed by the chief justice.

Term of office — Both the director (GS 7A-341) and assistant director (GS 7A-342) serve at the pleasure of the chief justice.

Vacancies — Because the director and assistant director both serve at the pleasure of the chief justice, a vacancy in either office is filled by the chief justice simply naming another person to the office.

Note about vacancies in elective offices

GS 128-7.2 provides that a person may not be appointed to fill a vacancy in an elective office unless that person is qualified to vote in an election for the office at the time of the appointment. The effect of the statute is to require that the person who is appointed meets the residency requirement for voting for the office.

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