




THREE JUDGE PANELS

JUNE 2025

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BACKGROUND


- Relevant statutes: N.C.G.S. § 1-267.1; N.C.G.S. § 1A-1, Rule 42
- Since 2014, per our records, about 46 cases have been heard by a three-judge panel
- In the 2023 budget, there were several major changes to the statutes above relating to the process for three-judge panels
 - Elimination of geographic requirement (used to be that one judge must be appointed from the first and second division, one from the third or fourth division, and one from the fifth division)
 - Specials and emergency judges are eligible to serve on three-judge panels (previously, only resident superior court judges could serve on three-judge panels)
 - Changes to the makeup of panel for redistricting actions – Senior Resident Judge of Wake County no longer must be served and is not automatically appointed to the three-judge panel



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N.C.G.S. § 1-267.1

- (a) Any action challenging the validity of any act of the General Assembly that **apportions or redistricts State legislative or congressional districts shall be filed in the Superior Court of Wake County**. Any action that is a facial challenge to the validity of an act of the General Assembly shall be, unless filed in the Superior Court of Wake County, **transferred** pursuant to G.S. 1A-1, Rule 42(b)(4), to the Superior Court of Wake County.
 - Redistricting – must be filed in Wake County
 - Facial challenges to an act of the General Assembly – filed in Wake or transferred to Wake



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N.C.G.S. § 1-267.1

- (b2) For each challenge referenced in subsection (a) of this section, the Chief Justice of the Supreme Court shall appoint three superior court judges to a three-judge panel of the Superior Court of Wake County to hear the challenge. The Chief Justice shall appoint a presiding judge of each three-judge panel.
 - The Chief may substitute a member on a three-judge panel.
 - Note: Former members of the General Assembly cannot be on a three-judge panel hearing a redistricting matter
- (c) Only applies to civil proceedings



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N.C.G.S. § 1A-1, RULE 42. CONSOLIDATION; SEPARATE TRIALS

- Facial challenges must be heard by a three-judge panel in Wake County if a facial challenge is raised in (1) plaintiff's complaint or amended complaint, or (2) defendant's answer, responsive pleading, or within 30 days of filing the answer or responsive pleading
- If the above circumstances exist, then the court shall, on its own motion or on the motion of a party, transfer that portion of the action challenging the validity of the act of the General Assembly to the Superior Court of Wake County for resolution by a three-judge panel
 - IF
 - "after all other matters have been resolved, a determination as to the facial validity of an act of the General Assembly must be made in order to completely resolve any matters in the case."



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RULE 42 (CONTINUED)

- The court in which the action originated shall maintain jurisdiction over all matters other than the challenge to the act's facial validity.
- "For a motion filed under Rule 11 or Rule 12(b)(1) through (7), the original court shall rule on the motion, however, it may decline to rule on a motion that is based solely upon Rule 12(b)(6). If the original court declines to rule on a Rule 12(b)(6) motion, the motion shall be decided by the three-judge panel."
 - This means you must resolve all pending Rule 11 and Rule 12(b) motions, other than a rule 12(b)(6) motion, before you transfer the case to Wake County to be resolved by a three-judge panel.
 - If there are matters "contingent upon the outcome of the challenge to the act's facial validity," the original court shall stay those matters until all appeal rights are exhausted
 - Once the three-judge panel has ruled and all appeal rights have been exhausted, the matter shall be transferred or remanded to the three-judge panel or the trial court in which the action originated for resolution of any outstanding matters, as appropriate."



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THINGS TO NOTE

- (1) All 12(b) motions, other than 12(b)(6), must be decided by you before transfer.
- (2) Parties cannot consent to transfer – you must determine that a facial challenge has been raised.
- (3) N.C.G.S. § 1A-1, Rule 19(d): Necessary Joinder of House of Representatives and Senate. — The Speaker of the House of Representatives and the President Pro Tempore of the Senate, as agents of the State through the General Assembly, must be joined as defendants in any civil action challenging the validity of a North Carolina statute or provision of the North Carolina Constitution under State or federal law.
 - This must occur before the case is transferred to a three-judge panel



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WHAT TO EXPECT:

- If you are assigned to a three-judge panel, you will hear from and receive an order of assignment from the Assistant Director's Office
- Kellie Myers (Wake County) is your primary contact from that point forward
- Also, generally one to two judicial fellows will be assigned to a 3JP
 - Can assist with scheduling, research, etc.



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THANK YOU

QUESTIONS?

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