



Update: Three-Judge Panels
Superior Court Judges Conference
Fall 2018

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Road Map

- Overview of Cases
- Legal Update
- Suggested Practices



G.S. § 1-267.1

(a1) ...any facial challenge to the validity of an act of the General Assembly shall be transferred pursuant to G.S. 1A-1, Rule 42(b)(4), to the Superior Court of Wake County and shall be heard and determined by a three-judge panel of the Superior Court of Wake County...

Civil Cases Only - Recent Case Law

State v. Singletary – 247 NC App. 368 (2014) – three judge panel not required to consider facial constitutionality of sentencing enhancement under NCGS 14-27.4A (now recodified as 14-27.28)(Statutory Sex Offense with a Child by an Adult)

State v. Stroessenreuther, 793 S.E.2d 734 (N.C. App. 2016) – three judge panel not required to consider facial constitutionality of satellite-based monitoring statutes. Even though the imposition of SBM is civil in nature, the issue arose during criminal sentencing proceeding.

G.S. § 1-267.1(b2)

Chief Justice shall appoint three resident superior court judges to panel of the Superior Court of Wake County

Chief Justice shall appoint a presiding judge of the panel

One member from 1st, 2nd or 4th Division; one from 7th or 8th; one from 3rd, 5th or 6th

Majority prevails



But, wait...Rule 42(b)(4)

...the court shall, on its own motion, 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 in the action 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.

Amended Rule 42(b)(4)

S.L. 2016-125, Section 23.(a) added:

- The original trial court shall rule on a motion filed under Rule 11 or Rule 12(b)(1) through (7)
- However...the original trial court may decline to rule on a 12(b)(6) motion
- If the original court declines to rule → motion to 3JP

Recent case law -

Byron v. SYNCO Props., 813 S.E.2d 455 (N.C. App. 2018)
– Because parties lacked standing to bring constitutional challenge, transfer to a 3JP was not necessary.
Standing – Rule 12(b)(1) subject matter jurisdiction

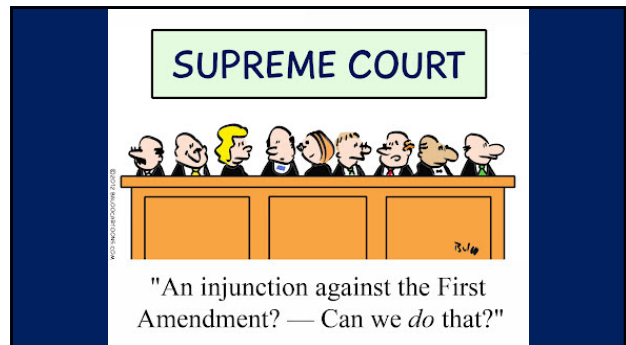
Rule 42: Stay of other Proceedings in Trial Court

- Once a matter is transferred to the 3JP, the original trial court shall stay all matters **that are contingent upon the outcome of the challenge to the act.**
- Stay remains in place until all appeals are exhausted.
- The original trial judge retains jurisdiction over all matters other than the challenge to the act's facial validity.
- Procedural motions – e.g. intervention of parties; withdrawal of counsel
- Injunctions & TROs

Amended G.S. § 7A-27



S.L. 2016-125, Section 22(b)
Removed (a1) – appeal of right directly to the N.C. Supreme Court from an order holding an act of the General Assembly facially invalid
Section 22(f) repealed direct appeal for redistricting cases



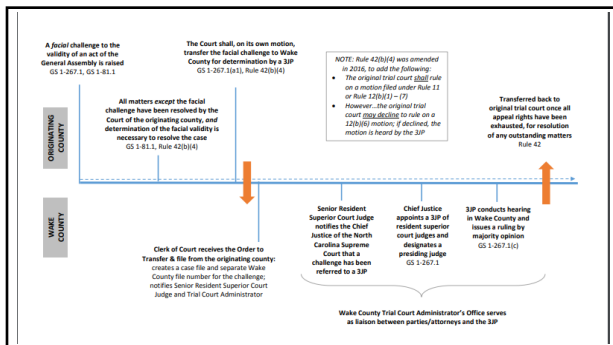
Suggested Practices - Management

- Role of the Wake TCA's office
- Scheduling
- Hearing Logistics / Media
- Orders – preparation, signing and issuing

Time Guidelines for Trial Court Cases

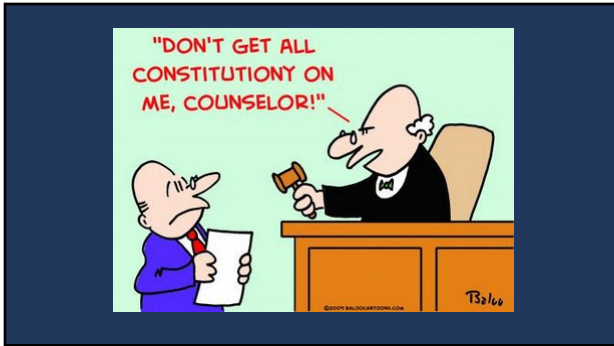
- Superior Court General Civil*
- 90% disposed within 365 days of filing
 - 98% disposed within 545 days of filing
 - 100% disposed within 730 days of filing
 - (Exceptional cases beyond 24 months)

*Based on Guidelines Adopted by the NC Supreme Court in 1996



Suggested Practices - Judicial

- Role of the Lead Judge
- Judicial Fellows
- Recusal



The slide features the seal of the North Carolina Judicial Branch General Court of Justice on the left. The seal is circular with a blue border containing the text 'JUDICIAL BRANCH NORTH CAROLINA' and 'GENERAL COURT OF JUSTICE'. Inside the seal is a figure holding scales and a sword. To the right of the seal, the text reads: 'SURVEY RESULTS' in large red letters, followed by 'NC Conference of Superior Court Judges' in smaller red letters. Below this, it says 'DATA COLLECTED OCTOBER 8 - 14, 2018' and '69 RESPONDING'.

