

INNOCENCE INQUIRY COMMISSION UPDATE

By

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Article 92 of Chapter 15A of the North Carolina General Statutes – Innocence Inquiry Commission - became effective August 3, 2006, and applies to claims of complete factual innocence filed on or before December 31, 2010 “*on behalf of a living person convicted of a felony in the General Court of Justice...asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and for which there is some credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through post conviction relief.*” N.C.G.S. §15A-1460(1).

North Carolina is the first state to create this type of commission. Some other states have comparable legislation under consideration, but have yet to enact it. North Carolina’s statute is considered a prototype for such legislation.

The Innocence Inquiry Commission, consisting of eight voting members, *inter alia*, does not represent convicted defendants but conducts “*inquiries into claims of factual innocence, with priority given to those cases in which the convicted person is currently incarcerated solely for the crime for which he or she claims factual innocence.*” N.C.G.S. 15A-1466(2). “*At the completion of a formal inquiry, **all relevant evidence shall be presented to the full Commission.***” N.C.G.S. 15A-1468(a)

If five (5) or more of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, “*the case shall be referred to the senior resident superior court judge in the district of original jurisdiction....*” N.C.G.S. 15A-1468(c). If the convicted person entered and was convicted on a plea of guilty, all eight voting members of the Commission must agree before the case may be referred to the senior resident superior court judge.

A three judge panel is the final phase of Commission Proceedings. “*If the Commission concludes there is sufficient evidence of factual innocence to merit judicial review, the Chair of the Commission shall request the Chief Justice to appoint a three-judge panel, not to include any trial judge that has had substantial previous involvement in the case,... **to hear evidence relevant to the Commission’s recommendation.** The senior judge of the panel shall preside.” N.C.G.S. 15A-1469(a). “***The three-judge panel shall conduct an evidentiary hearing.***” N.C.G.S. 15A-1469(d)*

How are judges selected to sit on a panel?

This writer has it on good authority that the Chief Justice employs a highly secretive selection process known only to her and a selected few confidantes. However, consideration is likely given to a wide range of factors in formulating panels, including geographical, ethnic and gender diversity, the location of the original jurisdiction of the offense, and the seniority, experience and temperament of potential panelists. On the other hand, it may simply be random selection (sort of like “tag, you’re it!”) and if your number is called, David Hoke will contact you and ask you to serve. Declining to serve will be frowned upon, particularly by whoever is chosen to replace you. Any judge who has had substantial previous involvement in the case – the trial judge, any judge hearing motions requiring the presentation of evidence or affecting a substantial interest in the case – is precluded from participating on the panel.

What is the likelihood that you will be called to participate on a three-judge panel?

In August 2008, Superior Court Judges Robert Hobgood (9th District), Yvonne Mims-Evans (26th District), and D. Jack Hooks, Jr. (13th District) made legal history in Greenville, NC when their panel unanimously ruled that a 2001 conviction of Henry Archie Reeves, III would remain intact. This hearing was the first of its kind in the United States. In February 2010, Judges Howard Manning (10th District), Tanya Wallace (District 20A) and Calvin Murphy (26th District) presided over the second Innocence Inquiry Commission Panel hearing. The Panel unanimously found that Gregory Taylor was factually innocent of the 1991 murder of Jacquetta Thomas in Wake County and dismissed all charges against him.

Since 2007, the Commission has received over 300 applications. According to the Office of the Commission’s Executive Director, there are currently five (5) cases in the formal inquiry stage with required waivers executed. The Commission has received additional funding which permits them to extend the number of claims it hears. Although there is no way to predict if any of the current cases will be referred to a three-judge panel, an increase in claims is likely to affect the number of claims requiring panel hearings.

How are panel hearings conducted?

The senior judge presides. *“Upon the motion of either party, the senior judge of the panel may direct the attorneys for the parties to appear before him or her for a conference on any matter in the case.”* N.C.G.S. §15A-1469(g).

As a practical matter, conducting a pre-hearing conference is an excellent way to focus the evidentiary hearing. Discovery matters can be fleshed out, issues may be refined, witness lists may be shared by the parties, time for opening and closing statements may be allotted, questions of law that have arisen pretrial may be resolved, and any other issue(s) that direction from the court might narrow or resolve may be

addressed. In the “*Taylor*” case, Judge Manning scheduled and conducted a pretrial conference before the full panel.

A significant issue between the parties in the “*Taylor*” case was, as the State’s attorney asserted, whether the Defendant’s presentation of evidence was limited to “new evidence” of factual innocence not previously presented at trial or considered at a hearing granted through post conviction relief. Addressing this issue during a conference allowed the presentation of evidence at the hearing to proceed more smoothly.

Once the presentation of evidence begins, the standard rules of evidence and procedure apply.

The senior member of the panel directs the proceedings, but consults with the other panel members, as needed, prior to ruling on motions, objections, etc. that arise during the course of the hearing.

At the conclusion of all the evidence, the panel moves into private session to discuss the evidence, reach conclusions and for each panel member individually to answer the question: Did the claimant prove by clear and convincing evidence that he/she is factually innocent of the charge of conviction? “... *Such a determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.*” N.C.G.S. §15A-1469(h).

Is the Claimant’s presentation of evidence limited to “new evidence” that has not been previously presented at trial or considered at a hearing granted through post conviction relief?

No. According to the primary sponsors of the act to establish the North Carolina Innocence Inquiry Commission – N. C Representative Rick Glazier and N. C. Senator Daniel Clodfelter – “The legislative intent of the act establishing the North Carolina Innocence Inquiry Commission was to provide for the full and complete review and consideration of evidence for innocence claims supported by some new, credible, verifiable evidence of innocence. It was not the legislative intent that the three-judge panel reaching the final determination in a case be limited in their review of the evidence, unless evidence objected to by either party is determined to be inadmissible under the established rules of evidence.” The “new evidence” standard is merely a threshold that, once crossed, allows the panel to hear all relevant evidence of the Claimant’s actual innocence.

What affect does the ruling of the three-judge panel have on other possible relief for the Defendant?

The decision of the three-judge panel is final and is not subject to further review by appeal, certification, writ, motion, or otherwise. N.C.G.S §15A-1470(a). However,

“A claim of factual innocence asserted through the Innocence Inquiry Commission shall not adversely affect the convicted person’s rights to other post-conviction relief.”
N.C.G.S. 15A-1470(b).