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THE HISTORY OF NORTH CAROLINA COURTS

The purpose of this outline is to provide sufficient factual material to allow judges, lawyers, and court personnel to effectively address civic, social and school groups, and organizations on the history of our courts and the reasons behind the design, creation, and purpose of our District Court on its 50th Anniversary.

PART ONE — How Our Courts Came to Be: The Theory, Formation and Evolution of The Rule of Law and North Carolina's Unified Courts

OVERVIEW

Prior to the late 1700s, the legal system in the American colonies consisted of a handful of local, part-time courts formed under the blessing and design of the British Crown. There were no courts of final appeal on our continent. All final dispositions upon appeal rested across the Atlantic Ocean in the British Isles. A number of attempts to unify the colonial judicial system and create a court of final appeal were thwarted by Crown and Parliament.

In the early 1720s to 1730s, many colonies passed Judiciary Acts establishing Supreme Courts (Circuit Courts) and Courts of Common Pleas. Later, State Constitutions allowed for regular sessions and special topic courts like Orphan's Courts. Early "progressive trends" established judicial districts in the 1770s – 1780s, eradicated separate courts of law and equity in the mid to late 1800s and movements toward the creation of a system of unified State Courts in the 1950s – 1960s.

INTRODUCTION

We have cause to celebrate several milestones in the formation of North Carolina's Unified Courts. The 50th anniversary of our current configuration of State Court is upon us. Our District Courts and Magistrates officially began their work December, 1966. Our Court of Appeals will complete its 50th year of serving our citizens in 2017. The State's Supreme Court will mark 200 years of decision-making in 2019. There is much to celebrate, much to share, and much work yet to be done.

OUR HISTORY

The first courts in North Carolina followed the Concession of 1665. King Charles II of Great Britain gave the lands of the Carolinas to eight noblemen in 1663. They were:

> Edward Hyde, Earl of Clarendon, John Berkeley, Bacon Berkeley of Stratton, William Craven, Earl of Craven, Sir George Carteret1, Sir William Berkeley, Sir John Colleton, Anthony Cooper, Earl of Shaftesbury

These noblemen were authorized to create Provincial Courts. All appeals, however, were to be heard by the courts in England until after the Revolutionary War.

- 1680: the Governor of Albermarle established a general court in North Carolina.
- As towns and cities developed in the early 1700s, they were empowered by the General Assembly to pass ordinances for better government not inconsistent with the laws of our state. When rural-minded justices of the peace failed to energetically meet the expectations of the city dwellers, the door was opened for the establishment of mayors' courts. The Bell Commission noted 154 mayors' courts in operation in North Carolina in the late 1950's.
- 1712: North Carolina had its own Provincial Governor.
- 1729: The province of Carolina was divided into the colonies of North and South Carolina. The descendants of seven of the eight Lords Proprietors decided to sell their shares of the Carolinas back to the Crown. Only the heirs of George Carteret kept their interests.
- North Carolina was one of the original 13 colonies to be established by England in North America.
- 1775 – 1783: The 13 American Colonies reject British authority, fight, and win their independence in the Revolutionary War. Some estimate nearly 100,000 Americans who remained loyal to the King exiled/fled to Canada, Florida, or England.
- April 12, 1776: The North Carolina Provincial Congress issued the Halifax Resolves, empowering delegates to vote for independence. It was the first official act in the American Colonies empowering delegate to vote for independence from Great Britain. July 1776 marked the Continental Congress' Declaration of Independence. North Carolina declared statehood and became part of the "United States of America" November 21, 1789 (12th state to ratify the United States Constitution).
- An American form of government emerged. Three co-equal branches of government (Executive, Legislative, and Judicial) sharing governance under the watchful eyes of the citizens. By design, a series of checks and balances exist among these three branches to assure peaceful progress, prosperity, and freedoms within an ever-changing nation and world.
- 1777: Six judicial districts (with two more added in 1782 and 1787) were created November 15, 1777 — with court held twice a year in Wilmington, New Bern, Edenton, Hillsboro, Halifax, and Salisbury. Three Superior Court Judges were appointed: Samuel Ashe of New Hanover County, Samuel Spencer of Anson County, and James Iredell of Chowan County. One of the earliest written opinions on appeal (described below) in North Carolina found that our State Courts had the authority to declare legislative acts unconstitutional — preceding the landmark United States Supreme Court case of Marbury v. Madison by some 15 years!
- Justices of the Peace received their appointment from the Governor (rather than the English government) upon recommendation of the Legislature. North Carolina's Constitution of 1776 created a "Supreme Court" (really Superior Court Circuit Judges) who held office for an unlimited term if they possessed "good behavior."
- November 26, 1787: Bayard v. Singleton is decided in Superior Court. The lawsuit involved Elizabeth Cornell Bayard suing to reclaim lands of her father, Samuel Cornell, which had been confiscated at the end of the American Revolution (due to his loyalty to the British Crown) pursuant to the Confiscation Act of 1785. The case, decided in Craven County held the courts could not enforce a law that violated the North Carolina Constitution — setting precedent for the exercise of judicial review of legislative action. This decision came 16 years before the landmark United States Supreme Court decision in Marbury v. Madison which solidified the exercise of judicial review in America pursuant to Article 3 of the Constitution, defining the boundary of separation of powers in our government.
- 1790: North Carolina ceded a portion of its western lands to Articles of Confederation government. In 1784, we had voted to give these lands (29 million acres) to Congress to lessen the debt of Congress after the Revolutionary War. Settlers in this area learned of this intent. 1784 – 1790 saw this area of northeast Tennessee governed simultaneously by North Carolina and settlers who organized a "new state" named Franklin — in honor of Benjamin Franklin.
- 1799: The Supreme/Superior Court Judges were required to meet twice a year in Raleigh to resolve conflicting rulings and issue written opinions at the "Court of Conference". In 1805, the "Court of Conference" became the North Carolina Supreme Court. Jurisdiction to hear appeals came in 1810. By 1818, the legislature formalized trial and appeal responsibilities by providing jurisdiction to the Supreme Court for primarily appeals and leaving the Superior Circuit Courts for trials and matters of original jurisdiction. Our Superior Court Judges could not take the same route twice in a row through 1856 as they were required to travel a different "circuit", by law.
- North Carolina's first Chief Justice was John L. Taylor. Born in England, he attended William and Mary College and located to Fayetteville. He was admitted to the Bar in 1788 at the age of 19. He became a judge of the Superior Courts in 1798. In 1811, he was appointed by vote of the North Carolina Superior Court Judges as their "Chief Justice." He formally assumed that title upon the Supreme Court's formation in 1818. The legislature appointed Taylor, Leonard Henderson, and John Hall as justices. The three were allowed to select their "Chief". The Court first met January 1, 1819.

- 1818: North Carolina Supreme Court established by our Legislature.

- New Constitutional provisions in 1868 established a number of sweeping changes. It abolished colonial distinctions between courts of law and equity, moved the judicial selection process from appointments to elections, and set term limits at eight years. In "The History of Superior Court Judges in North Carolina," the Honorable E. Lynn Johnson, citing other sources, noted:

- "In 1818, the legislature…created a Supreme Court, consisting of three Judges. The creation of this new appellate court did not go without criticism including objections to the extravagant salaries of $2,500 per year, life-tenure appointments, long journeys that lawyers had to undertake from the western counties, and Superior Court Judges who resented being reversed on appeal."

- The 1890s ushered in the age of administrative agencies. Administrative Courts were called upon to handle decisions outside the realm of our traditional courts. Our first state administrative agency was the Railroad Commission established by the General Assembly in 1891. After that, the Corporation Commission in 1899, Industrial Commission in 1929, and the Utilities Commission in 1933. Over 100 other agencies or officials possessed quasi-judicial responsibilities subject to statutory review by the Superior Courts (i.e. State Banking Commission, State Board of Alcohol Control, State Board of Elections, State Parole Board, State Board of Education, Department of Agriculture, 25 plus occupational licensing boards).

- From mostly 1905 to 1917, the General Assembly established over 100 separate courts by "special act." There were 70 such "special act" courts still in existence in the late 1950s. The President of the North Carolina Bar summed up the dilemma posed by "special act" courts in a speech delivered in 1915:

  "It has, in every instance, taken care of the local condition arising from the total inadequacy on the part of the Superior Courts to cope with local business and dispatch of criminal dockets…(but) in many instances for the express purpose of increasing the fees of the officers, a tendency to disregard the rights of the state, or defendants, or both…and make the courts return a big yield in money…making them fast turn into paths of disrepute…creating judicial and court chaos…they have given us a system of courts that are the most expensive, less effective and more demoralizing to the profession of law than any system ever attempted in this state."

- In response, the 1917 General Assembly outlawed the future creation of local, private or "special act" courts inferior to the Superior Courts and slowly began to shape a system of somewhat uniform lower courts over the next half century (courts of "general law").

- The juvenile court was established by our General Assembly in 1919. It possessed the current philosophies of design for delinquent and abuse/neglect/dependency cases. Summons's, informal proceedings, detention rooms, adjudications and training school/boarding home/foster care placements replaced warrants, arraignment/indictment/formal trial, jails, sentences and prisons. All appeals went to Superior Court. When the Bell Commission began its work, there were 106 juvenile and domestic relations courts existing in North Carolina — 92 county juvenile courts, two joint city-county juvenile courts, six city juvenile courts, three county domestic relations courts, and three city-county domestic relations courts. These courts varied in selecting judges — some judges selected by the city's governing body, others by county government, some joint city and county government, most by appointment by the Clerk of Superior Court. Some domestic courts had a solicitor, others did not. As well, reporting techniques and the use of probation personnel varied.

- Numerous courts were created, formulated, reformulated, or rescinded since then. In 1955, the Committee on Improving and Expediting the Administration of Justice in North Carolina (known as the Bell Commission) was appointed by the State Bar Association at the request of Governor Luther H. Hodges. The Bell Commission was tasked with examining best practices and making recommendations to improve our courts. Our General Assembly, Executive Branch, county governments, and municipalities have had a rich history of working collectively with the judiciary to address the legal and social needs of our citizens. The work continues to this day.

- When the Bell Commission began its work in the mid to late 1950s, there were nearly 1,500 of these courts. They were established by different people in different places for different purposes at different times frequently exercising conflicting and incongruous jurisdictional requirements. Their formation and history spanning colonial times, the Revolutionary War, U.S. expansion westward, the Civil War, the agricultural and industrial revolutions, and two World Wars.

- In 1955, the time was right. All eyes were fixed upon the future. The need was identified. Our citizens deserved more from their judicial system. J. Spencer Bell (Chairman) along with Joel Adams, John Archer, J. Murray Atkins, D.G. Bell, Henry Brandis, Jr., David Clark, Fred Fletcher, Ashley Futrell, A. Pilston Godwin, P.K. Gravely, T.N. Grice, Shearon Harris, Francis Heazel, Howard Hubbard, R.O. Huffman, Thomas Leath, Wallace Murchison, William Murdock, G. Harold Myrick, James Poyner, Woodrow Price, Robert Proctor, John Redmon, William Snider, John Spicer, William Womble, and the five Ex-Officio members from the North Carolina Bar Association were poised to study our past in order to chart the future of our courts. This change was born of necessity.

- By 1957, there were 256 of these "general law" courts (commonly referred to as Municipal Recorder's Court, County Recorder's Court, General County Court, or County Civil Court) in North Carolina with jurisdiction greater than justices of the peace court and less than that of Superior Court. The Bell Commission noted many of these courts, for decades, varied in: civil and criminal jurisdictional requirements, methods of selecting solicitors and clerks, term lengths, oaths of office, compensation (at times set by court officials against litigants), provisions for removal of judges, solicitors, clerks, filling of vacancies, allowing court officials to preside and also practice law, the number of jurors necessary to decide a case, the amount of "jury taxes" assessed, who may issue criminal and civil process, rules of criminal and civil procedure, costs of court, rights to trial de novo on appeal versus an appellate determination.

- In 1957, there were 940 justices of the peace in North Carolina. Some were full-time with fixed work locations and hours. Others worked part-time conducting business anywhere and anytime. Records establish hearings in or on a backyard, front porch, grocery store loading dock on top of crates, car, plowed field, repair garage, icehouse, print shop, and funeral parlor.

- The Committee of Improving and Expediting the Administration of Justice (a.k.a. the Bell Commission) invested its time and energies from 1955 to 1958. Dr. Roscoe Pound, Dean Emeritus of Harvard Law School, addressed the North Carolina Bar on June 12, 1958. He noted 150 years of social and economic progress, shifts from agriculture to urban/industrial centers of manufacture and finance, economic issues of state rather than local magnitude, overlapping jurisdictions, and inefficient/uncoordinated use of precious judicial resources demanded a restructuring of our courts.

He went on to highlight the four characteristics central to a new design. First, unification allowed courts to focus the machinery of justice upon its tasks with an emphasis on better organization of the administrative work of the courts. Second, the design had to be flexible to enable courts to speedily and efficiently meet the continually varying demands made upon it. Yet, there must be a consistency in the quality of procedures and substantive rulings. Third, judicial power must be conserved to assure that the expensive machinery of the courts is applied to the true purposes of the law and not wasted on matters of inconsequence. Fourth, there should emerge clear and full responsibility in someone that may always stand out as the official to be held responsible if the organization does not function the most efficiently that the law and the nature of its tasks permit.

These four principles formed the foundation of the Bell Commission's purpose, inquiry, and recommendations. The Bell Commission advocated for one unified court — the General Court of Justice, serving all of North Carolina and consisting of appellate, superior, and district court layers. Central authority was to rest with our Supreme Court and a need was recognized to create an additional court of appeal at the appellate level to share the growing workload. Jurisdiction of the district courts was established. Magistrates replaced justices of the peace and were subject to supervision of higher court authorities unlike justices of the peace.

Recommendations were made, to include allowing written waivers of jury trials in criminal cases except for the most serious of crimes, juries numbering less than 12 and less than unanimous verdicts in civil cases, appointment of district court judges by the Chief Justice as recommended by the Senior Resident Superior Court Judge.

- The Committee of Improving and Expediting the Administration of Justice Bill was introduced in the 1959 General Assembly. Resistance was met in affording the Supreme Court such an abundance of authority. The Legislative Branch wished to designate sessions of Superior Court, amend Supreme Court rules on any occasion and for any reason, and require that district court judges be elected rather than appointed.

- A new, improved, revised bill was introduced in 1961. Again, the General Assembly sought to modify provisions to maintain a measure of power and authority over the Judicial Branch. For example, the General Assembly sought to retain rule making and district court judicial district designations. Recommendations aimed at establishing an Administrative Office of the Courts were delayed until the late 1960s. However, a Courts Commission was charged with preparing legislation outlining the new state court system by January 1, 1971. (See Bell Committee Summary by Tom Thornburg, I.O.G., Sept. 1994). The efforts of the Bell Commission, the Court's Commission (created by Legislative enactment in 1963), the Bar Association and General Assembly had now come together to create a unified General Court of Justice that included our District Court.

- Our court system had four functional layers by 1965: a Supreme Court hearing only appeals, Superior Courts for trials (of interest, robes were not worn until January 1, 1958), Statutory Courts of limited jurisdiction, and, at the lowest level, justices of the peace courts. In 1965, 30 Superior Court judicial districts existed and the Court of Appeals was created by constitutional amendment. Subsequent to the creation of our District Courts, a "unified court system" had been established in all 100 counties by 1970. Our North Carolina Court of Appeals began its work in 1967. A single, statewide court system of varying levels and jurisdictions unified in purpose, direction, supervision, and funding had become a reality.

OUR CURRENT COURT STRUCTURE:
POST 1966

The 1955 initiatives that led to the formation of the Committee on Improving and Expedition the Administration of Justice in North Carolina (known as The Bell Commission)

was truly a joint effort of all three branches of government and the North Carolina Bar Association. The collaborative study and recommendations that led to the creation of our present court system is a direct consequence of this collective effort.

APPELLATE DIVISION

This level examines issues of law and procedure that may have occurred in a trial, hearing or proceeding. There are no juries, no opportunities to present evidence/facts. Our appellate courts handle thousands of appeals, petitions, and motions.

- THE NORTH CAROLINA SUPREME COURT
  Our North Carolina Supreme Court is the highest Court in our State. It was established in 1818. It is comprised of our Chief Justice (currently Chief Justice Mark Martin) and six Associate Justices (Robert H. Edmonds, Jr., Paul Newby, Robin Hudson, Barbara Jackson, Cheri Beasley, and Sam J. Ervin, IV).

  Most of the North Carolina Supreme Court decisions involve certain cases from our Court of Appeals and certain other cases appealed directly from our trial courts.

- THE NORTH CAROLINA COURT OF APPEALS
  Our North Carolina Court of Appeals is our only intermediate appellate court. It was created in 1967 to relieve the growing number of cases handled by the Supreme Court. It is comprised of a Chief Judge (currently Chief Judge Linda McGee) designated by our Supreme Court Chief Justice and 14 judges (Wanda Bryant, Ann Marie Calabria, Mark Davis, Richard Dietz, Chris Dillon, Rick Elmore, Martha Geer, Robert Hunter, Lucy Inman, Douglas McCullough, Linda Stevens, Donna Stroud, John Tyson, and Valerie Zachary).

  These judges sit and consider cases in panels (teams) of three. Generally, they hear most types of appeals from the trial division.

TRIAL DIVISION

This level of court conducts a portion of the trials and hearings allowed by law.

- THE NORTH CAROLINA SUPERIOR COURTS
  The Superior Courts are courts of general trial jurisdiction (the authority to hear and decide a particular type of case). Superior Court must be held in all 100 counties at least twice a year.

  In many urban areas, multiple sessions of court are held weekly throughout the year. Our Superior Courts handle hundreds of thousands of trials, hearings, appeals, and motions each year.

  Superior Court Judges rotate within certain defined geographical areas of our State — still "riding a circuit" which was a feature of the court's original design dating back to the 1700s. It was designed to avoid favoritism if judges held court in the same location. For years, no judge could ride the same circuit twice in a row.

  Superior Courts handle all felony criminal trials (most crimes punishable by more than two years in prison), civil cases involving more than $25,000, and misdemeanors/infractions appealed from District Court. Superior Courts exclusively handle wills, probate, administration of estates (with Clerks of Court serving as the initial judge of probate), and nearly all felonies.

  Superior Court was the original court of law existing since the 1700s.

- THE NORTH CAROLINA DISTRICT COURTS
  Our District Courts began their work in 1966. The new courts opened for business in three phases. Twenty-three counties saw these courts begin their work in December, 1966, 60 more counties in 1968, and 17 counties in December, 1970.

  Our District Courts handle civil cases of any jurisdictional amount (subject to a right of removal to Superior Court), divorce, custody, child and spousal support, mental commitments, civil, domestic violence cases, juvenile matters, small claims magistrate court appeals, preliminary hearings on felonies, and most misdemeanors/traffic violations/certain low grade felony guilty pleas. Our District Courts handle millions of trials, hearings, motions, and appeals each year.

  In District Court, judges always decide guilt or innocence in criminal cases and driving infractions (not a crime, punishable only by costs plus fine, never jail or prison). Appeals in District Court criminal cases/infractions go to our Superior Courts for a "trial de novo" (anew).

  District Court juvenile delinquent courts handle violations of law when the accused is less than 16 years of age. Serious offenders may be sent to a detention facility — designed for juveniles so they remain separated from convicted adults. As well, serious juvenile offenders age 13 – 15 at the time of offense may be transferred to Superior Court to face charges as an "adult".

  Juvenile Abuse/Neglect/Dependency Court (also called Department of Social Services Court) assesses whether a juvenile (less than 18 years old) or a juvenile's family requires certain services. This may involve the temporary or permanent removal from caretakers to establish a safe, healthy stable living environment. Typically, all parties (Department of Social Services, parents or caregivers, and child) are represented by lawyers.

  Beginning in the 1990s a number of courts were designed to address critical, complex issues. One goal was to reduce recidivism in areas where offenders/citizens had a high rate of reoffending.

Another goal was to provide enhanced training of judicial staff to increase capabilities and efficiencies.

Family Courts requiring District Court judges with specialized training to handle child custody and support/alimony/equitable distribution/domestic violence/juvenile issues. Principles of case management and monitoring were added to increase efficiencies and reduce case age from filing to disposition.

Drug and Alcohol Treatment Courts designed to address substance abuse offenders' dependency issues in hopes of enhancing recovery and diminishing recidivism. These courts typically require participants to appear in court frequently, intensive monitoring of treatment efforts, use regularly administered drug and alcohol tests, curfews, job training, psychological assessment and treatment enhancing recovery, and minimizing recidivism.

Mental Health Courts are designed to specifically address the mental health needs of citizens by evaluating and establishing a treatment plan and monitoring compliance specifically tailored to the treatment needs of the offender.

Veterans Courts are designed to address the drug/alcohol/mental health/justice system issues for our veterans.

The North Carolina Business Court was created in 1995 to hear complex business cases. A Senior Resident Superior Court Judge, Chief District Court Judge, or presiding Superior Court Judge may request our Chief Justice of the North Carolina Supreme Court to designate a case as complex and assign it to a specialized business court judge for resolution.

CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM

This Commission was established in September, 1998, to promote and improve professionalism among North Carolina's lawyers. It is a catalyst in programs and practices among law students, lawyers, and judges in seeking to improve the administration and quality of justice by recognizing and reinforcing the honored and honorable principles associated with the practice of law.

CATALYSTS FOR COURT INITIATIVES

Beginning with the Bell Commission in the 1950s, our courts have seen the creation of a "super committee" to examine court performance, initiate best practices, and work collectively among all branches of government and citizenry to improve our courts. These committees supplant the annual efforts of the Judiciary, Bar, Legislature, Governor and Executive Branch officials, Law Enforcement, Advocate Organizations, Non-Profits, and citizen activists to effect positive change and enhance the possibility of "justice for all."

THE MEDLIN COMMISSION

Former North Carolina Supreme Court Chief Justice James G. Exum appointed the Medlin Commission (named after its chairman, Mr. John Medlin) to examine "the Future of Justice and the Courts". Its purpose was to identify inefficiencies, inequalities and improvements in our justice system. He cited Superior Courts had undergone little study since 1868. The Commission was composed equally of lawyers and non-lawyers, with their recommendations being presented to the Legislative Research Committee (a study group for the State of House and Senate).

Improvements were made in case management, minimizing certain insufficiencies. As an example, enhanced legislation came about regarding dispute resolutions without the need of a trial by judge or jury.

- Mediation: An alternative to trials to resolve certain types of cases (typically high volume areas of filings). Trained mediators serve as impartial third parties in managing negotiations and settlements to the satisfaction of the parties and avoid the time and cost of a trial. Mediation is now utilized in nearly every type of lawsuit in our trial courts. A citizen is not required to have a lawyer to participate.

- Arbitration: Trained arbitrators are authorized to enter a decision after reviewing the evidence and contentions of the parties. Cases appropriate for court-ordered arbitration allow for appeal to the appropriate trial division.

The Medlin Commission supported the creation of specialized family courts. At that time, polls indicated that 80 percent of North Carolinians favored that idea.

COMMISSION ON THE ADMINISTRATION OF LAW AND JUSTICE

On May 27, 2015, North Carolina Supreme Court Chief Justice Mark Martin announced the creation of The Commission on the Administration of Law and Justice (NCCALJ). It is comprised of an all-inclusive cross-section of stakeholders charged with evaluating our judicial system to strengthen our courts.

PAST MEETS PRESENT

The 1950s Bell Commission had four goals: unification of courts to increase efficiencies; flexibility to quickly effect changes to meet demands; focus courts on true purposes of the law and avoid matters of inconsequence; and place full responsibility and accountability in someone – namely our Chief Justice.

Chief Justice Mark Martin's NCCALJ is comprised of over 85 committee, ex-officio, and reporting members focusing on improving five areas of our judicial system: Civil Justice, Criminal Investigation and Adjudication, Legal Professionalism, Public Trust and Confidence, and Technology.

The NCCALJ is anticipated to complete its series of reports and recommendations in the early part of 2017. According to Chief Justice Martin, the creation and work of this Commission will provide a blueprint to work with our Legislature in allowing our Judiciary to meet the needs of our citizens and instill confidence in our courts.

To that end, we all share in these responsibilities.