



**North Carolina Commission on the Administration of Law and Justice
Public Trust and Confidence Committee**

Meeting Minutes / November 15, 2016

MEETING DATE	November 15, 2016
TIME	10:30 a.m. – 1:00 p.m.
LOCATION	NCJC, 901 Corporate Center Drive, Raleigh NC, 27607

Attendees

Chair: Brad Wilson

Members: Judge Wanda Bryant, Douglas Carter, John Hood, A. Dale Jenkins, Senator Floyd B. McKissick Jr., Dean Suzanne Reynolds, Dean Michael R. Smith (Ex-Officio), and Representative Sarah Stevens (Ex-Officio).

NCCALJ Staff: Will Robinson and Emily Portner.

Reporters: Andrew Atkins and Mildred Spearman.

Approval of Minutes

The committee members unanimously approved the minutes from the September and October meetings.

Committee Action

Certification of Unresolved Questions of State Law

After the October presentation about certification of unresolved questions of state law, the Committee asked for additional information about certification, which they received during the interim. The committee consequently approved a recommendation that “North Carolina should adopt a process by which federal courts may certify questions of North Carolina state law to the Supreme Court of North Carolina.” The committee deleted the language related to “any other designated court,” believing that the Supreme Court to be the proper court to hear certified questions.

Judicial Selection

John “Buddy” Wester, with the North Carolina Bar Association Committee on Judicial Independence, made a presentation about judicial selection at the February 16, 2016 PTCC meeting. After reviewing the PTCC’s draft recommendations, he requested the opportunity to speak before the committee about judicial selection. With the recent elections highlighting the need to put the focus back on judicial independence, Wester asked the committee to shine the

brightest light on judicial independence, recommend the elimination of appellate court elections and restore judicial independence as essential to democracy. Wester reiterated that he was not making a specific recommendation, but wanted to open the dialogue to greater focus on judicial independence.

One member commented that the people wanted to vote for judges and there is no way to take politics out of the process. Wester indicated that as Einstein said, you can't take matter out of the universe. Likewise you can't take politics completely out of the process, but you can improve the process. While not recommending a specific model, Wester believes that something close to the federal model would be the best system, including a commission with a cross-section of elected officials, law school deans (no surrogates), minority and majority legislative leaders, etc. The commission would nominate three candidates to the Governor, who then would appoint from among the three. Wester acknowledged that no state model is ideal, but challenged the group to lead the charge, noting that North Carolina ranked second in judicial spending in 2014. He also noted that his proposal would not have significant costs, and that North Carolina can't afford to keep kicking the can down the road.

Drafting of Recommendations

The Committee discussed revisions to the remaining recommendations. Specifically, there was targeted discussion about what to recommend related to judicial selection. The committee discussed the meaning of judicial independence, and whether consensus existed about what it means. Jon Heyl with the North Carolina Bar Association Board of Governors, a member of the audience, offered that it means fairness and impartiality, and the freedom to act as a legitimate check on the other branches of government. One member suggested that while the committee did not agree on a specific method of selection, the recommendation should take into account the effect that campaigns and fundraising have on judicial independence.

A member suggested that the committee address the possible expansion of the number of justices on the North Carolina Supreme Court, indicating that empirical data should be the sole basis for expansion of the number of judges or justices. When political considerations are the basis for expansion, it causes a crisis of public trust and confidence in the judicial process. The Chair asked for specific language and a motion. The motion passed to include the following language in the report:

“The PTCC also urges the General Assembly to tie the number of judges and justices on a given court to the workload of the relevant court. The PTCC believes that any other consideration for numbers of judges and justices threatens public trust and confidence.”

A second member moved to ask the full NCCALJ to issue a statement to that effect. The motion passed as follows:

“The PTCC recommends that the Commission issue a statement opposing the expansion of our Supreme Court unless the NCAOC requests additional justices to meet workload demands.”

The committee also made minor changes to other language in the report, and authorized the reporters to make appropriate changes to the report consistent with the discussion and will of the committee.

Administrative Matters

The final full Commission is scheduled for December 2, 2016. The reporters will revise the report and send it to the Committee for feedback. Will Robinson provided information about the format of the final meeting and the work of the Commission as a whole.

Final NCCALJ Full Commission Meeting

Date: Friday, December 2, 2016

Time: 11:00 a.m. to 2:00 p.m.

Location: North Carolina Judicial Center, 901 Corporate Center Drive, Raleigh NC, 27607