

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 834*

Short Title: Court Improvement Act.

(Public)

Sponsors: Senator Ballance.

Referred to: Judiciary.

April 14, 1997

A BILL TO BE ENTITLED

**AN ACT TO IMPROVE THE STATE COURT SYSTEM BY IMPLEMENTING THE
NEW COURT STRUCTURE RECOMMENDED BY THE COMMISSION FOR
THE FUTURE OF JUSTICE AND THE COURTS IN NORTH CAROLINA.**

The General Assembly of North Carolina enacts:

Section 1. This act repeals Chapter 7A of the General Statutes and enacts Chapter 7B, which implements the restructuring of the Judicial Branch of government in this State as recommended by the Commission for the Future of Justice and the Courts in North Carolina. It also enacts, as part of this restructuring, Parts 29 and 30 of Article 9 of Chapter 143B, which establish the Office of Solicitor General and the Office of State Public Defender in the Department of Administration, and Chapter 15C, which establishes the duties of those offices with respect to prosecution and indigent defense. A listing of the Articles and Parts contained in new Chapter 7B, Parts 29 and 30 of Article 9 of Chapter 143B, and Chapter 15C follows this section. This listing is provided for reference only, and it in no way limits, defines, or prescribes the scope or application of the text of the act.

**CHAPTER 7B.
JUDICIAL BRANCH OF GOVERNMENT.**

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- 1 ARTICLE 1. Judicial Power and Organization.
- 2 ARTICLE 2. Judicial Officials.
- 3 Part 1. Powers, Appointments, Terms, and Retention of Judicial Officials.
- 4 Part 2. Retirement of Judicial Officials; Recall of Judicial Officials to
- 5 Emergency Service.
- 6 ARTICLE 3. State Judicial Council.
- 7 ARTICLE 4. The Administrative Office of the Courts.
- 8 ARTICLE 5. Budget Preparation and Administration.
- 9 ARTICLE 6. Courts Commission.
- 10 ARTICLE 7. Judicial Standards Commission.
- 11 ARTICLE 8. Dispute Resolution Commission.
- 12 ARTICLE 9. Compensation of Judicial Officials.
- 13 ARTICLE 10. Supreme Court.
- 14 ARTICLE 11. Court of Appeals.
- 15 ARTICLE 12. Organization of the Trial Division.
- 16 ARTICLE 13. Jurisdiction and Rights of Appeal.
- 17 ARTICLE 14. Circuit Judicial Councils.
- 18 ARTICLE 15. Community Penalties Act.
- 19 ARTICLE 16. Costs and Fees.
- 20 ARTICLE 17. Office of Administrative Hearings.

21

22 **ARTICLE 9 OF CHAPTER 143B.**

- 23
- 24 Part 29. Office of Solicitor General.
 - 25 Part 30. Office of State Public Defender.

26

27 **CHAPTER 15C.**

28 **PROSECUTION AND INDIGENT DEFENSE.**

- 29
- 30 ARTICLE 1. Prosecution.
 - 31 ARTICLE 2. Indigent Defense.
 - 32 Part 1. Office of State Public Defender.
 - 33 Part 2. Procedures to Determine Indigency and Entitlement to Counsel.

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35 Section 2. The General Statutes are amended by adding a new Chapter to read:

36 **"CHAPTER 7B.**

37 **"JUDICIAL BRANCH OF GOVERNMENT.**

38 **"ARTICLE 1.**

39 **"JUDICIAL POWER AND ORGANIZATION.**

40 **"§ 7B-100. Judicial power vested in the General Court of Justice.**

41 The judicial power of the State is vested exclusively in the General Court of Justice,

42 except for:

1 judge for the county to which the assignment is made. The magistrate
2 has authority to:

- 3 a. Issue arrest warrants valid throughout the State;
4 b. Issue search warrants valid in the county to which the magistrate
5 is assigned;
6 c. Accept written appearances, waivers of trial or hearing and pleas
7 of guilty or admissions of responsibility, and enter judgments, in
8 infraction and misdemeanor cases, subject to any schedule of
9 penalties that may be established by the Conference of Chief
10 Circuit Judges;
11 d. Determine conditions of pretrial release in noncapital cases;
12 e. Conduct initial appearances as provided in G.S. 15A-511;
13 f. Hear, decide, and enter judgment in civil actions in which the
14 amount in controversy does not exceed three thousand dollars
15 (\$3,000) and the principal relief requested is monetary, the
16 recovery of specific personal property, summary ejection, or
17 any properly joined combination of such claims;
18 g. Take depositions and examinations before trial, when authorized
19 by the chief circuit judge;
20 h. Take affidavits for the verification of pleadings;
21 i. Issue writs of habeas corpus ad testificandum as provided in G.S.
22 17-41;
23 j. Assign a year's allowance to the surviving spouse and a child's
24 allowance as provided in Chapter 30, Article 4, of the General
25 Statutes;
26 k. Take acknowledgement of instruments as provided in G.S. 47-1;
27 l. Perform marriage ceremonies as provided in G.S. 51-1;
28 m. Take acknowledgement of a written contract or separation
29 agreement between a husband and wife; and
30 n. Assess contribution for damages or for work done on a dam,
31 canal, or ditch, as provided in G.S. 156-15.

32 (5) A magistrate who is licensed to practice law has the additional
33 authority, if so assigned by the chief circuit judge, subject to any
34 limitations imposed by the chief circuit judge, to:

- 35 a. Hear, decide, and enter judgment in all infractions cases;
36 b. Hear, decide, and enter judgment in civil actions within the
37 monetary limits established by the State Judicial Council;
38 c. Issue temporary restraining orders and preliminary injunctions in
39 civil cases within the magistrate's jurisdiction;
40 d. Grant uncontested divorces;
41 e. Determine and issue orders establishing child support and issue
42 show cause orders in child support proceedings;

- 1 f. Order blood tests in paternity cases and take acknowledgements
2 of paternity; and
3 g. Determine and issue orders for the emancipation of minors.
4 (6) A clerk of court has the authority, within the clerk's county, to hear,
5 decide, and enter judgments or orders as appropriate in all matters
6 within the clerk's jurisdiction.
7 (7) Additionally, each judge, magistrate, and clerk of court has authority to:
8 a. Administer oaths;
9 b. Issue subpoenas to compel the attendance of witnesses or the
10 production of documents for proceedings within the court's
11 jurisdiction; and
12 c. Preserve order in the court through exercise of the contempt
13 power as provided in Chapter 5A of the General Statutes.

14 **"§ 7B-201. Appointment and terms of justices of the Supreme Court and judges of**
15 **the Court of Appeals.**

16 Justices of the Supreme Court and judges of the Court of Appeals shall be appointed
17 by the Governor by the procedure in this section. The 13 members of the State Judicial
18 Council who are not judges, circuit attorneys, or circuit public defenders shall constitute
19 the Appellate Nominating Panel. The Chief Justice shall designate one of those members
20 to chair the panel for a term of four years or until that member's term on the Council
21 expires, whichever occurs first. A person may not serve more than two consecutive terms
22 as chair.

23 Within 30 days after the occurrence of a vacancy on the Supreme Court or Court of
24 Appeals, the Appellate Nominating Panel shall nominate to the Governor three
25 candidates for that position. In considering persons who might be nominated to the
26 Governor, the Appellate Nominating Panel shall develop a procedure that brings under
27 consideration a pool of possible candidates reflecting the diverse characteristics,
28 including gender, race, and geography, of those who are legally qualified to serve.

29 The Governor shall appoint one of the three candidates nominated by the panel. The
30 Governor may not make the appointment until at least five days have passed since the
31 delivery of the nominations by the panel. If the Governor fails to appoint any one of the
32 candidates within 30 days after the nominations have been delivered by the panel, the
33 appointment to that position shall be made instead by the Chief Justice, who shall choose
34 from the three candidates submitted by the panel.

35 The vote by which the Appellate Nominating Panel decides whether or not to
36 nominate a person, and all matters relating to such vote, shall be confidential.

37 The initial term of the justice or judge appointed shall expire on December 31
38 following the first general election for State or county officers occurring more than one
39 year after the appointment, and the justice or judge shall stand for retention at that
40 election as provided in G.S. 7B-206. If the vote in that election is in favor of retention,
41 the next term and each subsequent term shall be for eight years, subject to a retention
42 election at the end of each term.

43 **"§ 7B-202. Appointment and terms of circuit judges.**

1 Circuit judges shall be appointed by the Governor by the procedure in this section.

2 Each circuit shall have a circuit nominating panel. The panel shall consist of nine
3 members, all of whom must reside within the circuit, as follows:

4 (1) A chair appointed by the Chief Justice for a four-year term;

5 (2) Four nonattorneys appointed by the State Judicial Council; and

6 (3) Four attorneys chosen by the circuit bar pursuant to procedures set by
7 the State Judicial Council.

8 Members of the circuit nominating panel shall serve staggered, four-year terms, which
9 shall be established by procedures set by the State Judicial Council. The terms shall be
10 staggered so that the terms of one attorney and one nonattorney member expire each year.
11 Members may not serve more than two consecutive terms. No more than two of the four
12 nonattorney members of the panel appointed by the State Judicial Council may be from
13 the same county. No more than two of the four nonattorney members of the panel
14 appointed by the State Judicial Council may be from the same county. The person
15 appointed by the Chief Justice to chair the circuit nominating panel shall also serve a
16 four-year term, but shall be subject to removal by the Chief Justice at any time. The chair
17 may not serve more than two consecutive terms in that position. No current member of
18 the General Assembly, nor any current judicial official, may serve on a circuit
19 nominating panel.

20 Within 30 days after the occurrence of the vacancy, the circuit nominating panel for
21 that circuit shall nominate to the Governor three candidates for the position, each of
22 whom must reside within the circuit. In considering persons who might be nominated to
23 the Governor, the circuit nominating panel shall follow a procedure prescribed by the
24 State Judicial Council that brings under consideration a pool of possible candidates
25 reflecting the diverse characteristics, including gender, race, and geography, of those who
26 are legally qualified to serve.

27 The Governor shall appoint one of the three candidates nominated by the circuit
28 nominating panel. The Governor may not make the appointment until at least five days
29 have passed since the delivery of the nominations by the panel. If the Governor fails to
30 appoint any one of the candidates within 30 days after the nominations have been
31 delivered by the panel, the appointment to that position shall be made instead by the
32 Chief Justice, who shall choose from the three candidates submitted by the panel.

33 The vote by which the circuit nominating panel decides whether or not to nominate a
34 person, and all matters relating to that vote, shall be confidential. Otherwise, the
35 procedures to be followed by the panel shall be set by the State Judicial Council.

36 The initial term of the judge appointed shall expire on December 31 following the
37 first general election for State or county officers occurring more than one year after the
38 appointment, and the judge shall stand for retention at that election as provided in G.S.
39 7B-206. If the vote in that election is in favor of retention, the next and each subsequent
40 term shall be for eight years, subject to a retention election at the end of each term.

41 **"§ 7B-203. Appointment and terms of magistrates.**

1 The magistrates for each circuit shall be appointed by the chief circuit judge for that
2 circuit for terms of four years. The magistrate must reside in the county to which
3 assigned by the chief circuit judge.

4 **"§ 7B-204. Appointment and terms of clerks of court.**

5 The clerk of court for each county shall be appointed by the chief circuit judge of the
6 circuit in which that county is located, for a term of four years, by the procedure in this
7 section.

8 Before the term of the incumbent clerk is due to expire, the chief circuit judge for that
9 circuit shall establish a clerk of court advisory panel of five members, all of whom must
10 reside in the county. The panel shall include two attorneys chosen by the county bar
11 pursuant to the procedure established by the State Judicial Council, a representative of the
12 board of county commissioners chosen by that board, a nonattorney appointed by the
13 chief circuit judge, and the county director of social services or a person designated by
14 the director. The chief circuit judge shall designate one member to chair the panel.

15 Within the time prescribed by the chief circuit judge, the panel shall advise the chief
16 circuit judge whether to reappoint the incumbent clerk, if that person desires to continue
17 in office.

18 Within 30 days of receiving the recommendation from the panel, the chief circuit
19 judge shall decide whether to reappoint the incumbent clerk. If the chief circuit judge
20 decides to reappoint the incumbent clerk, that person shall take office for a term of four
21 years. If the chief circuit judge decides not to reappoint the incumbent clerk, the clerk
22 does not desire to continue in office, or the office becomes vacant for a reason other than
23 the expiration of the term, the panel described above shall constitute a panel for
24 nominating candidates for appointment to the office.

25 Within 30 days after being instructed by the chief circuit judge to nominate
26 candidates, the panel shall nominate to the chief circuit judge three candidates, each of
27 whom must reside in the county. The chief circuit judge may appoint one of the three
28 candidates nominated by the panel or may request the panel to submit up to two
29 additional candidates. The chief circuit judge must appoint as clerk a candidate
30 nominated by the panel.

31 **"§ 7B-205. Commencement and expiration of terms.**

32 The terms of all justices, judges, magistrates, and clerks, except for initial terms to fill
33 vacancies, shall commence on January 1 of odd-numbered years and expire on December
34 31 of even-numbered years.

35 **"§ 7B-206. Judicial retention elections.**

36 (a) Retention elections for justices of the Supreme Court, judges of the Court of
37 Appeals, and circuit judges shall be held in even-numbered years at the same time as
38 general elections for State and county officers.

39 (b) At a retention election, the proposition on the ballot shall be worded as
40 follows: 'Shall (Justice) (Judge) _____ be retained for a term of eight years as
41 a (Justice of the Supreme Court) (Judge of the Court of Appeals) (Circuit Judge)?'
42 Following this proposition shall be boxes or spaces marked 'YES' and 'NO' for the voter
43 to select.

1 (c) All voters in the State shall be eligible to vote in elections on the retention of
2 justices of the Supreme Court and judges of the Court of Appeals. All voters residing in
3 the judge's circuit shall be eligible to vote in elections on the retention of circuit judges.

4 (d) If a majority of the voters casting ballots in the retention election vote 'YES',
5 the justice or judge shall be retained in office for a term of eight years. If at the end of
6 that term, the justice or judge desires to continue in office, a retention election shall be
7 held in the final year of the justice or judge's term.

8 (e) If less than a majority of the voters casting ballots in the retention election vote
9 'YES', the justice or judge shall serve only the remainder of the term for that office. At
10 the end of that term, a new justice or judge shall be appointed pursuant to G.S. 7B-201 or
11 G.S. 7B-202, and the departing justice or judge shall not be eligible for that appointment.

12 **"§ 7B-207. Removal of judicial officials.**

13 (a) Judicial officials shall be subject to censure or removal from office for the
14 following reasons:

15 (1) Willful misconduct in office;

16 (2) Willful and persistent failure to perform the duties of the office;

17 (3) Habitual intemperance;

18 (4) Conviction of a crime involving moral turpitude; or

19 (5) Conduct prejudicial to the administration of justice that brings the office
20 into disrepute.

21 (b) A judicial official removed from office pursuant to subsection (a) of this
22 section shall receive no retirement compensation and shall be disqualified from holding
23 further judicial office.

24 (c) Judicial officials also shall be subject to removal from office for mental or
25 physical incapacity interfering with the performance of the duties of the office, which is,
26 or is likely to become, permanent. A judicial official removed pursuant to this subsection
27 is entitled to retirement compensation if the official has accumulated the years of
28 creditable service required for incapacity or disability retirement under any provision of
29 State law, but shall not sit as an emergency judicial official.

30 (d) Censure or removal of a justice of the Supreme Court, judge of the Court of
31 Appeals, or circuit judge shall be by the Supreme Court upon recommendation of the
32 Judicial Standards Commission as provided in Article 7 of this Chapter.

33 (e) Censure or removal of a magistrate or clerk of court shall be by the procedure
34 in this section. A written complaint may be filed with the chief judge of the circuit in
35 which the magistrate or clerk holds office. The complaint shall be in a form prescribed
36 by the State Judicial Council.

37 The chief circuit judge shall assign the complaint to another judge in the circuit to
38 determine whether it establishes probable cause to believe there is a basis for censure or
39 removal of the magistrate or clerk. If the reviewing judge determines that there is
40 probable cause, the chief circuit judge shall schedule a hearing on the matter. If the
41 complaining party is not represented by counsel, or does not desire to be responsible for
42 prosecution of the complaint, the chief circuit judge shall designate a circuit attorney to
43 be responsible for presenting to the court the evidence supporting disciplinary action.

1 The chief circuit judge may preside at the hearing or may assign another judge to do
2 so. Appeal shall be to the Court of Appeals.

3 **"PART 2. RETIREMENT OF JUDICIAL OFFICIALS; RECALL OF**
4 **JUDICIAL OFFICIALS TO EMERGENCY SERVICE.**

5 **"§ 7B-208. Age limit for service as justice or judge; retirement of judges of the**
6 **General Court of Justice.**

7 (a) No justice or judge of the General Court of Justice may continue in office
8 beyond the last day of the month in which the judge attains 72 years of age, but justices
9 and judges so retired may be recalled for periods of temporary service as provided in this
10 Part.

11 (b) Benefits payable upon the death or retirement of justices and judges of the
12 Appellate Division and circuit judges are as provided in the Consolidated Judicial
13 Retirement Act, Article 4 of Chapter 135 of the General Statutes.

14 **"§ 7B-209. Assignment of retired justices and judges to service on temporary basis.**

15 (a) The Chief Justice may assign a retired justice of the Supreme Court, a retired
16 judge of the Court of Appeals, or a retired circuit judge to temporary service on the court
17 from which the justice or judge retired, if the retired justice or judge consents to the
18 assignment and if:

- 19 (1) The justice or judge has retired from active service;
- 20 (2) The justice or judge had served as a justice or judge for at least five
21 years at the time of retirement;
- 22 (3) The justice or judge is not currently engaged in the practice of law;
- 23 (4) The most recent active, full-time service of the justice or judge
24 terminated in the 10 years immediately preceding the date of the first
25 order assigning the judge to temporary service; and
- 26 (5) The most recent assignment of the justice or judge to temporary service
27 terminated in the five years immediately preceding the date of the
28 current order of assignment.

29 A justice or judge may serve as a mediator, referee, or arbitrator and still be eligible
30 for temporary service.

31 (b) The Chief Justice, before assigning a justice or judge to temporary service,
32 shall ensure that the justice or judge is eligible to serve and is capable of efficiently and
33 promptly discharging the duties of the office to which the justice or judge is subject to
34 assignment. If the assignment is to service in the Appellate Division, the Chief Justice
35 shall ensure that the requirements of G.S. 7B-211 are met.

36 (c) The Code of Judicial Conduct applies to any justice or judge during any period
37 of temporary service.

38 (d) In addition to the compensation or retirement allowance the justice or judge
39 would otherwise be entitled to receive by law, each emergency justice or judge recalled
40 for temporary active service shall be paid by the State his actual expenses plus two
41 hundred dollars (\$200.00) for each day of active service rendered. No justice or judge
42 assigned to temporary service shall receive from the State total annual compensation for

1 judicial services in excess of that received by an active justice or judge of the bench to
2 which the justice or judge has been recalled.

3 (e) All orders assigning justices or judges to temporary service shall be in writing
4 and shall be maintained in accordance with rules adopted by the State Judicial Council.

5 **"§ 7B-210. Jurisdiction of retired justices or judges assigned to temporary service.**

6 (a) An emergency justice or judge does not possess any jurisdiction or authority to
7 hear arguments or participate in the consideration and decision of any cause or perform
8 any other duty or function of a justice of the Supreme Court or Court of Appeals,
9 respectively, except while serving under an order of recall to temporary service. With
10 respect to appeals, motions, and other matters heard, considered, and decided by the court
11 during the period of temporary service, a justice of the Supreme Court or judge of the
12 Court of Appeals in whose behalf an emergency justice or judge was recalled to
13 temporary service is disqualified to participate in the consideration and decision of any
14 question presented to the court by appeal, motion, or otherwise regarding a matter in
15 which the emergency justice or judge participated during the recall.

16 (b) Circuit judges assigned to temporary service have the same jurisdiction and
17 authority in all matters in the courts which they are assigned to that regular circuit judges
18 assigned to those courts would have.

19 (c) The Supreme Court, with the advice of the State Judicial Council, may adopt
20 rules governing the filing of opinions prepared by a justice or judge temporarily assigned
21 to the Appellate Division, as well as any other rules necessary to implement the
22 provisions of this Part.

23 **"§ 7B-211. Special rules applicable to service on appellate courts by retired justices**
24 **or judges.**

25 (a) The following additional restrictions apply to justices and judges recalled to
26 temporary service in the Appellate Division:

27 (1) If a justice or judge is assigned temporarily to service while a vacancy
28 remains unfilled, the service terminates upon the filling of the vacancy;

29 (2) If a justice or judge is assigned temporarily to service because a justice
30 or judge is temporarily unable to perform the duties of the office, the
31 service terminates upon the return of the justice or judge to full-time
32 service; and

33 (3) No order assigning a justice or judge to temporary service may be for
34 more than six months, but the Chief Justice may renew an order for
35 additional six-month periods as necessary and appropriate.

36 (b) If the justice or judge who is temporarily unable to perform the functions of the
37 office is the Chief Justice, the associate justice senior in service on the Supreme Court
38 shall exercise the powers of the office of Chief Justice. If the judge who is temporarily
39 unable to perform the functions of the office is the Chief Judge of the Court of Appeals,
40 the Chief Justice shall designate another judge to serve temporarily as Chief Judge.

41 (c) If a justice or judge is assigned to temporary service because a judge or justice
42 is temporarily unable to perform the duties of the office, and the temporary inability is
43 not documented by a written statement to that effect by a competent and reputable

1 physician, the Supreme Court by majority vote shall approve the temporary assignment,
2 and a statement of reasons supporting the temporary assignment shall be entered into the
3 records of the Supreme Court.

4 **"§ 7B-212. Transition provisions for temporary service by previously retired**
5 **judges.**

6 Any judge of the district court or of the superior court who was eligible to serve as an
7 emergency judge or as a retired recalled judge under the provisions of Article 8 of
8 Chapter 7A of the General Statutes immediately prior to the enactment of this Chapter is
9 eligible to accept assignments to temporary service as a circuit judge if the judge's service
10 qualifies under the provisions of G.S. 7B-209(a)(4) or G.S. 7B-209(a)(5).

11 **"ARTICLE 3.**

12 **"STATE JUDICIAL COUNCIL.**

13 **"§ 7B-300. Composition of State Judicial Council.**

14 (a) The State Judicial Council shall consist of 18 members as follows:

- 15 (1) The Chief Justice, who chairs the Council;
- 16 (2) The Chief Judge of the Court of Appeals;
- 17 (3) A circuit attorney chosen by the circuit attorneys;
- 18 (4) A circuit public defender chosen by the circuit public defenders;
- 19 (5) A circuit judge chosen by the Conference of Circuit Judges;
- 20 (6) Two attorneys appointed by the Council of the State Bar;
- 21 (7) One attorney and one nonattorney appointed by the Chief Justice;
- 22 (8) Two nonattorneys and one attorney appointed by the Governor;
- 23 (9) Two nonattorneys and one attorney appointed by the General Assembly
24 upon the recommendation of the Speaker of the House of
25 Representatives; and
- 26 (10) Two nonattorneys and one attorney appointed by the General Assembly
27 upon the recommendation of the President Pro Tempore of the Senate.

28 (b) The Chief Justice and the Chief Judge shall be members of the State Judicial
29 Council during their terms in those judicial offices. The terms of the other members
30 selected initially for the State Judicial Council shall be as follows:

- 31 (1) One year. – One attorney appointed by the State Bar Council, the
32 nonattorney appointed by the Chief Justice, one nonattorney appointed
33 upon the recommendation of the Speaker of the House of
34 Representatives, and the attorney appointed upon the recommendation
35 of the President Pro Tempore of the Senate.
- 36 (2) Two years. – The circuit attorney, one nonattorney appointed by the
37 Governor, the attorney appointed upon the recommendation of the
38 Speaker of the House of Representatives, and one nonattorney
39 appointed upon the recommendation of the President Pro Tempore of
40 the Senate.
- 41 (3) Three years. – The circuit public defender, the attorney appointed by the
42 Governor, one nonattorney appointed by the President Pro Tempore of

1 the Senate, and one nonattorney appointed upon the recommendation of
2 the Speaker of the House of Representatives.

- 3 (4) Four years. – The circuit judge, one attorney appointed by the State Bar
4 Council, the attorney appointed by the Chief Justice, and one
5 nonattorney appointed by the Governor.

6 After these initial terms, the members of the State Judicial Council shall serve terms
7 of four years. All terms of members shall begin on January 1 and end on December 31.
8 No member may serve more than two consecutive full terms. Any vacancy on the
9 Council shall be filled by a person appointed by the official or entity who appointed the
10 person vacating the position.

11 (c) If an official or entity is authorized to appoint more than one member of the
12 State Judicial Council, the members appointed by that official or entity must reside in
13 different circuits.

14 (d) No incumbent member of the General Assembly or any incumbent judicial
15 official, other than the ones specifically identified by office in subsection (a) of this
16 section, may serve on the State Judicial Council.

17 (e) The appointing authorities shall confer with each other and attempt to arrange
18 their appointments so that the members of the State Judicial Council fairly represent each
19 area of the State, both genders, and each major racial group.

20 **"§ 7B-301. Duties of the State Judicial Council.**

21 (a) The State Judicial Council shall:

- 22 (1) Study the judicial system and report periodically to the Chief Justice on
23 its findings;
24 (2) Advise the Chief Justice on priorities for funding;
25 (3) With the Chief Justice, approve the budget prepared by the Director of
26 the Administrative Office of the Courts for submission to the General
27 Assembly;
28 (4) Advise the Chief Justice on, and consent to, the appointment of the chief
29 circuit judge of each circuit, as provided in G.S. 7B-1202;
30 (5) Set salaries of justices and judges, as provided in G.S. 7B-900;
31 (6) Recommend to the General Assembly changes in the expense
32 allowances, benefits, and other compensation for judicial officials;
33 (7) If a judgeship becomes vacant, decide whether the judgeship is still
34 needed for that circuit and, if it is not, decide whether the judgeship
35 should be transferred to another circuit or should be abolished;
36 (8) Review and advise the Chief Justice on proposals from chief circuit
37 judges to modify the rules of practice for their circuits;
38 (9) Appoint nonattorney members of circuit nominating panels, as provided
39 in G.S. 7B-202; and
40 (10) Advise or assist the Chief Justice, as requested, on any other matter
41 concerning the operation of the courts.

42 (b) The 13 members of the State Judicial Council who are not judges, circuit
43 attorneys, or circuit public defenders shall constitute the Appellate Nominating Panel to

1 nominate candidates to the Governor for appointment to vacancies on the Supreme Court
2 and Court of Appeals, as provided in G.S. 7B-201.

3 (c) The State Judicial Council, with the assistance of the Director of the
4 Administrative Office of the Courts, shall set performance standards for all courts and all
5 judicial officials and shall develop procedures for periodic evaluation of the court system
6 and individual judicial officials and employees. The Council shall inform each judicial
7 official of the standards being used to evaluate that official's performance. The
8 evaluation of each judge shall include assessments from other judges, litigants, jurors,
9 and attorneys, as well as a self-evaluation by the judge. Summaries of the evaluations of
10 justices and judges shall be made available to the public, in a manner to be determined by
11 the Council, to be considered when the justice or judge's term is expiring and a retention
12 election is being held.

13 (d) The State Judicial Council shall monitor caseloads in the appellate courts to
14 determine whether cases are being handled expeditiously, whether those courts have
15 adequate resources, and whether the courts are able to maintain a proper balance between
16 criminal and civil matters. If needed to assure such a balance, the Council may authorize
17 the establishment of separate divisions of the Court of Appeals for criminal and civil
18 cases and establish procedures for the regular rotation of individual judges between those
19 divisions.

20 (e) The State Judicial Council may increase the authority of attorney magistrates
21 to hear and decide and enter judgment in civil cases up to twenty-five thousand dollars
22 (\$25,000) in controversy. The Council may not increase the level of this authority more
23 often than once every five years and may not increase the level at any one time by more
24 than ten thousand dollars (\$10,000).

25 (f) The State Judicial Council shall establish guidelines for the assignment and
26 management of cases, including the identification of different kinds of cases for different
27 kinds of resolution. The guidelines shall provide that, except for good cause, each civil
28 case subject to assignment to a trial judge should be directed first to an appropriate form
29 of alternative dispute resolution. The guidelines may also provide for posttrial alternative
30 dispute resolution before or as part of an appeal. The guidelines should not require
31 absolute uniformity from circuit to circuit and should allow case management personnel
32 within each circuit the flexibility to direct cases to the most appropriate means of
33 resolution in that circuit.

34 (g) The State Judicial Council shall monitor the use of alternative dispute
35 resolution throughout the court system and, with the assistance of the Director of the
36 Administrative Office of the Courts and the Dispute Resolution Commission, evaluate the
37 effectiveness of those programs. The Council may approve the inclusion of additional
38 forms of alternative dispute resolution in court-ordered programs.

39 (h) The State Judicial Council may approve and implement changes in the
40 boundaries of the circuits, as requested by the Chief Justice. In exercising this authority,
41 the Council shall not set circuit boundaries that cross county lines nor increase the
42 number of circuits above 18.

1 (i) The State Judicial Council shall perform other functions as needed to monitor
2 the administration of justice and assess the effectiveness of the Judicial Branch in serving
3 the public and to advise the Chief Justice and the General Assembly on changes needed
4 to assist the General Court of Justice in better fulfilling its mission.

5 **"§ 7B-302. Compensation of the State Judicial Council.**

6 Members of the State Judicial Council who are not judicial officials or salaried public
7 officials shall be reimbursed for their travel, meal and lodging expenses while on Council
8 business at the same rate as provided in G.S. 120-3.1(a)(3) for members of the General
9 Assembly, and shall also be compensated at the rate of two hundred dollars (\$200.00) per
10 day for each day on official Council business.

11 **"ARTICLE 4.**

12 **"THE ADMINISTRATIVE OFFICE OF THE COURTS.**

13 **"§ 7B-400. Administrative Office of the Courts.**

14 The administrative functions of the General Court of Justice shall be performed by the
15 Administrative Office of the Courts. It shall be supervised by a Director, assisted by an
16 Assistant Director.

17 **"§ 7B-401. Appointment and compensation of Director.**

18 The Director shall be appointed by and serve at the pleasure of the Chief Justice of the
19 Supreme Court. The compensation of the Director shall be set by the Chief Justice
20 subject to the approval of the State Judicial Council.

21 **"§ 7B-402. Appointment and compensation of Assistant Director.**

22 (a) The Assistant Director shall also be appointed by and serve at the pleasure of
23 the Chief Justice. The compensation of the Assistant Director shall be set by the Chief
24 Justice subject to the approval of the State Judicial Council.

25 (b) The Assistant Director is the administrative assistant to the Chief Justice, and
26 shall perform those duties assigned by the Chief Justice or the Director of the
27 Administrative Office of the Courts.

28 **"§ 7B-403. Appointment of other persons employed by the Administrative Office of**
29 **the Courts; personnel policies.**

30 The Director may appoint other assistants and employees as are necessary to perform
31 the duties of the office, and may promulgate personnel policies and regulations to provide
32 for the administration of the personnel system for the Judicial Branch.

33 **"§ 7B-404. Duties of Director.**

34 The Director is the Administrative Officer of the Courts, with the following duties:

- 35 (1) To collect and compile statistical data and other information on the
36 judicial and financial operation of the courts and on the operation of
37 other offices directly related to and serving the courts;
38 (2) To determine the state of the dockets and evaluate the practices and
39 procedures of the courts, and to make recommendations concerning the
40 number of judges, clerks, magistrates, and other supporting personnel
41 required for the efficient administration of justice;
42 (3) To prepare and submit budget estimates of State appropriations
43 necessary for the maintenance and operation of the Judicial Branch, and

1 to authorize expenditures from funds appropriated for those purposes, as
2 provided in Article 17 of this Chapter;

3 (4) To prescribe uniform administrative and business methods, systems, and
4 forms to be used in the offices of the clerks of court;

5 (5) To adopt rules for record keeping in the offices of the clerks as provided
6 by G.S. 7B-405;

7 (6) To investigate, make recommendations concerning, and assist in the
8 securing of adequate physical accommodations for the General Court of
9 Justice, and, after consultation with the North Carolina Association of
10 County Commissioners, to establish standards for local court facilities;

11 (7) To oversee the procurement, distribution, exchange, transfer, and
12 assignment of equipment, books, forms, and supplies to be acquired
13 with State funds for the General Court of Justice, either by purchase at
14 the State level or by delegation of purchasing authority to the chief
15 circuit judge or circuit administrator;

16 (8) To make recommendations for the improvement of operations of the
17 Judicial Branch to the Chief Justice, the State Judicial Council, or the
18 General Assembly, as appropriate;

19 (9) To prepare and submit an annual report on the work of the Judicial
20 Branch to the Chief Justice and the State Judicial Council, and to
21 transmit a copy to each member of the General Assembly;

22 (10) To serve as staff to the State Judicial Council;

23 (11) To develop and implement a strategic plan for the use of technology by
24 the Judicial Branch;

25 (12) To establish, monitor, and enforce standards and specifications for
26 equipment, including computer hardware and software, used by the
27 Judicial Branch that allow local flexibility where possible while
28 retaining the level of uniformity needed to maintain compatibility in
29 information systems technology utilized in local jurisdictions;

30 (13) To establish policies for determining who is entitled to access to the
31 information systems established by the Judicial Branch, and if necessary
32 to establish fees to offset the costs of providing that access in locations
33 other than court facilities; and

34 (14) To perform those additional duties and exercise the additional powers as
35 may be prescribed by statute or assigned by the Chief Justice or the
36 State Judicial Council.

37 **"§ 7B-405. Record-keeping procedures.**

38 (a) Each clerk of court shall maintain the records, files, dockets, and indexes
39 prescribed by rules of the Director of the Administrative Office of the Courts. Except as
40 prohibited by law, these records shall be open to the inspection of the public during
41 regular office hours, and shall include civil actions, special proceedings, estates, criminal
42 actions, juvenile actions, minutes of the court, judgments, liens, lis pendens, and all other

1 records required by law to be maintained. The rules prescribed by the Director shall be
2 designed to accomplish the following purposes:

- 3 (1) To provide an accurate record of every determinative legal action,
4 proceeding, or event which may affect the person or property of any
5 individual, firm, corporation, or association;
- 6 (2) To provide a record during the pendency of a case that allows for the
7 efficient handling of the matter by the court from its initiation to
8 conclusion and also affords information on the progress of the case;
- 9 (3) To provide security against the loss or destruction of original documents
10 during their useful life and a permanent record for historical uses;
- 11 (4) To provide a system of indexing that will afford adequate access to all
12 records maintained by the clerk;
- 13 (5) To provide, to the extent possible, for the maintenance of records
14 affecting the same action or proceeding in one rather than several units;
15 and
- 16 (6) To provide a reservoir of information useful to those interested in
17 measuring the effectiveness of the laws and the efficiency of the courts
18 in administering them.

19 (b) The rules shall provide for indexing according to the minimum criteria set out
20 below:

- 21 (1) Civil actions. – The names of all parties;
- 22 (2) Special proceedings. – The names of all parties;
- 23 (3) Administration of estates. – The name of the estate and in the case of
24 testacy the name of each devisee;
- 25 (4) Criminal actions. – The names of all defendants;
- 26 (5) Juvenile actions. – The names of all juveniles;
- 27 (6) Judgments, liens, lis pendens, etc. – The names of all parties against
28 whom a lien has been created by the docketing of a judgment, notice of
29 lien, transcript, certificate, or similar document and the names of all
30 parties in those cases in which a notice of lis pendens has been filed
31 with the clerk and abstracted on the judgment docket.

32 (c) The rules shall require that all documents received for docketing shall be
33 immediately indexed on either a permanent or temporary index. The rules may prescribe
34 any technological process the Director deems appropriate for the economical and
35 efficient indexing, storage, and retrieval of information.

36 **"§ 7B-406. Information to be furnished to Director.**

37 All judges, magistrates, clerks of court, and other officers or employees of the courts
38 and of offices directly related to and serving the courts shall on request furnish to the
39 Director information and statistical data relative to the work of the courts and of those
40 offices and relative to the receipt and expenditure of public moneys for the operation of
41 the courts. If necessary to the effective administration of the courts and on request of the
42 Director, the circuit attorneys and circuit public defenders shall furnish information and
43 statistical data relative to the work of their respective offices.

1 **"§ 7B-407. Publication of Appellate Division reports.**

2 (a) The Director of the Administrative Office of the Courts shall contract for the
3 printing of the reports of the Supreme Court and the Court of Appeals after consultation
4 with the Department of Administration and a comparison of prices for similar work in
5 other states to the extent practicable. The Director shall provide for the sale of the reports
6 to the general public at a price of not less than cost plus ten percent (10%), to be fixed by
7 the Director. Proceeds of the sales shall be remitted to the General Fund.

8 (b) In addition to or as an alternative to the provisions of subsection (a) of this
9 section, the Supreme Court may designate a commercial law publisher's reports of the
10 opinions of the Supreme Court and Court of Appeals as the official reports of the
11 Appellate Division, or the Director, with the approval of the Supreme Court, may
12 contract with a commercial law publisher or publishers to act as printer and vendor of the
13 reports upon terms set by the Supreme Court after consultation with the Department of
14 Administration.

15 (c) The provisions of subsections (a) and (b) of this section also apply to the
16 republication of reports of the Supreme Court and Court of Appeals that are not on hand
17 for sale.

18 (d) The Director shall furnish copies of the reports of the Supreme Court and
19 Court of Appeals, and the advance sheets of those reports, to officers, agents, and
20 libraries designated by the Supreme Court. In determining the officers, agencies, and
21 libraries to which the reports should be provided without charge, the Supreme Court shall
22 consider the previous statutory requirements for the distribution of the reports and shall
23 attempt to provide the reports in a manner so as to allow those previous recipients to
24 maintain complete sets.

25 **"ARTICLE 5.**

26 **"BUDGET PREPARATION AND ADMINISTRATION.**

27 **"§ 7B-500. Financial management of the Judicial Branch.**

28 (a) The General Assembly shall provide adequate funds to operate the Judicial
29 Branch. No personnel may be hired by local governments to work in the Judicial Branch,
30 nor may any funds from local government be provided to the Judicial Branch to be used
31 to hire personnel.

32 (b) The Director of the Administrative Office of the Courts is the director of the
33 budget for the Judicial Branch. In that capacity, and subject to the provisions of this
34 Article, it is the responsibility of the Director to prepare a unified budget for the Judicial
35 Branch for submission to the General Assembly. It is also the Director's responsibility to
36 authorize expenditures for lawful activities of the Judicial Branch from the funds
37 appropriated by the General Assembly and from funds received from other sources.

38 **"§ 7B-501. Budget preparation procedure.**

39 (a) On a schedule to be promulgated by the Director, the chief circuit judge of
40 each circuit shall develop a budget request for the circuit. The chief circuit judge shall
41 consult with the circuit judicial council in the preparation of the request. The request
42 shall be in a format to be prescribed by the Director, and shall include a statement about

1 the objectives to be obtained if the budget request is funded, along with performance
2 measures that can be used to determine if the objectives are met.

3 (b) On a schedule to be promulgated by the Director, the Chief Justice of the
4 Supreme Court and the Chief Judge of the Court of Appeals shall develop a budget
5 request for the Appellate Division of the Judicial Branch. The request shall be in a
6 format to be prescribed by the Director, and shall include a statement about the objectives
7 to be obtained if the budget request is funded, along with performance measures that can
8 be used to determine if the objectives are met.

9 (c) The Director shall include in the unified budget request for the Judicial Branch
10 sufficient funds to operate the office of the Director and any other Judicial Branch
11 administrative units not attached to the trial or appellate courts. The funds requested
12 shall include a statement about the objectives to be obtained if the budget request is
13 funded, along with performance measures that can be used to determine if the objectives
14 are met.

15 (d) Upon receipt of the various budget requests, the Director shall review each
16 request and prepare a single unified budget for the Judicial Branch. The unified budget
17 shall identify the funds necessary to provide adequate personnel and other personal
18 services, equipment, contractual services, communications support, supplies and printing,
19 training, and travel. The Director shall submit that budget request to the State Judicial
20 Council for review and approval.

21 (e) The unified budget request shall be submitted by the Director on behalf of the
22 Judicial Branch to the Governor, and the Governor shall incorporate the budget requests,
23 without change, in the proposed State budget submitted by the Governor to the General
24 Assembly. The request shall be submitted in a format that includes requests for funds for
25 personal services and for nonpersonnel operations funds, with any supporting data that
26 the Director deems appropriate or that is requested by the General Assembly.

27 **"§ 7B-502. Budget administration.**

28 (a) Funds appropriated to the Judicial Branch shall be provided in a format
29 prescribed by the General Assembly. Funds shall be designated as personnel or
30 nonpersonnel funds, and may be designated by purpose or program within those
31 categories. Personnel funds are any funds that are used to procure personal services by
32 an individual or group of individuals, regardless of whether the individuals receive a
33 salary, an hourly wage, or a lump sum for the services provided.

34 (b) Funds appropriated to the Judicial Branch shall be spent for the purpose for
35 which the funds were requested, unless the Director, with the approval of the State
36 Judicial Council, determines that the funds should be transferred to meet another purpose.
37 No funds appropriated on a nonrecurring basis shall be spent in a manner that will require
38 subsequent recurring funds to maintain. The Director shall report any transfers under this
39 subsection to the Director of the Office of State Budget and Management and the General
40 Assembly. Funds received from sources other than appropriations from the General
41 Assembly shall be spent as prescribed by the funding source, but those funds may be
42 allocated by the Director if the source of funds allows the reallocation.

1 (c) Funds received by the office of the Director may be allocated by the Director,
2 with the advice of the State Judicial Council, to the various circuits and other
3 administrative units in the Judicial Branch. Funds so allocated shall be for specified
4 personnel and other personal services, equipment, contractual services, communications
5 support, supplies and printing, training, travel, and other operational costs.

6 (d) The chief circuit judge may direct that funds be transferred among purposes at
7 the circuit level if authorized to do so by rules promulgated by the Director and approved
8 by the State Judicial Council. Personnel funds may not be transferred to nonpersonnel
9 purposes, and nonpersonnel funds may not be transferred to personnel purposes. The
10 chief circuit judge may delegate the authority to make budget transfers to the circuit
11 administrator.

12 (e) The Director shall promulgate rules as appropriate to ensure that funds
13 distributed to the circuits or other administrative units within the Judicial Branch are
14 properly accounted for.

15 "ARTICLE 6.

16 "COURTS COMMISSION.

17 "§ 7B-600. Creation; members; terms; qualifications; vacancies.

18 (a) The North Carolina Courts Commission is created. Effective July 1, 1993, it
19 shall consist of 24 members, six to be appointed by the Governor, six to be appointed by
20 the Speaker of the House of Representatives, six to be appointed by the President Pro
21 Tempore of the Senate, and six to be appointed by the Chief Justice of the Supreme
22 Court.

23 (b) Of the appointees of the Chief Justice of the Supreme Court, one shall be a
24 Justice of the Supreme Court, one shall be a Judge of the Court of Appeals, and four shall
25 be circuit judges.

26 (c) Of the six appointees of the Governor, one shall be a circuit attorney, one shall
27 be a practicing attorney, one shall be a clerk of court, at least three shall be members of
28 the General Assembly, and at least one shall not be an attorney.

29 (d) Of the six appointees of the Speaker of the House of Representatives, at least
30 three shall be practicing attorneys, at least three shall be members of the General
31 Assembly, and at least one shall not be an attorney.

32 (e) Of the six appointees of the President Pro Tempore of the Senate, at least three
33 shall be practicing attorneys, at least three shall be members of the General Assembly,
34 and at least one shall be a magistrate.

35 (f) Of the initial appointments of each appointing authority, three shall be
36 appointed for four-year terms to begin July 1, 1993, and three shall be appointed for two-
37 year terms to begin July 1, 1993. Successors shall be appointed for four-year terms.

38 (g) A vacancy in membership shall be filled for the remainder of the unexpired
39 term by the appointing authority who made the original appointment. A member whose
40 term expires may be reappointed.

41 "§ 7B-601. Ex officio members.

42 The following additional members shall serve ex officio: the Director of the
43 Administrative Office of the Courts; a representative of the North Carolina State Bar

1 appointed by the State Bar Council; and a representative of the North Carolina Bar
2 Association appointed by the Board of Governors of the Bar Association. Ex officio
3 members have no vote.

4 **"§ 7B-602. Duties.**

5 The Courts Commission shall make continuing studies of the structure, organization,
6 jurisdiction, procedures, and personnel of the Judicial Branch and make
7 recommendations to the State Judicial Council and the General Assembly for such
8 changes as will facilitate the administration of justice.

9 **"§ 7B-603. Chair; meetings; compensation of members.**

10 The Governor, after consultation with the Chief Justice, shall appoint a chair from the
11 legislative members of the Commission. The term of the chair is two years, and the chair
12 may be reappointed. The Commission shall meet at such times and places as the chair
13 designates. The facilities of the State Legislative Building shall be available to the
14 Commission, subject to approval of the Legislative Services Commission. The members
15 of the Commission shall receive the same per diem and reimbursement for travel
16 expenses as members of State boards and commissions generally.

17 **"§ 7B-604. Supporting services.**

18 The Commission is authorized to contract for those professional and clerical services
19 necessary to the proper performance of its duties.

20 **"ARTICLE 7.**

21 **"JUDICIAL STANDARDS COMMISSION.**

22 **"§ 7B-700. Judicial Standards Commission.**

23 (a) The Judicial Standards Commission shall consist of: one Court of Appeals
24 Judge and two circuit judges from different circuits, each appointed by the Chief Justice;
25 two members of the State Bar who have actively practiced in the courts of the State for at
26 least 10 years, elected by the State Bar Council; and two citizens who are not judges,
27 active or retired, nor members of the State Bar, appointed by the Governor. The Court of
28 Appeals Judge shall chair the Commission.

29 (b) Terms of Commission members shall be for six years, except that, to achieve
30 staggered terms, one of the judges, one of the practicing members of the State Bar, and
31 one of the citizens shall be appointed initially for a term of only three years. No member
32 who has served a full six-year term is eligible for reappointment. A member's term ends
33 if the member ceases to have the qualifications required for his appointment. Vacancies
34 are filled in the same manner as the original appointment for the remainder of the term.
35 Members who are not judges are entitled to per diem, and all members are entitled to
36 reimbursement for travel and subsistence expenses at the rate applicable to members of
37 State boards and commissions generally for each day engaged in official business.

38 (c) If a member of the Commission who is a judge becomes disabled, or becomes
39 a respondent before the Commission, the Chief Justice shall appoint an alternate member
40 to serve during the period of disability or disqualification. The alternate member shall be
41 from the same division of the General Court of Justice as the disabled or disqualified
42 judge. If a member of the Commission appointed by the Governor becomes disabled, the
43 Governor shall appoint an alternate member to serve during the period of disability. If a

1 member of the Commission elected by the State Bar Council becomes disabled, the State
2 Bar Council shall elect an alternate member to serve during the period of disability. In a
3 particular case, if a member disqualifies himself or herself, or is successfully challenged
4 for cause, that member's seat for that case shall be filled by an alternate member selected
5 as provided in this subsection.

6 (d) A member may serve after expiration of that member's term only to participate
7 until the conclusion of a formal proceeding begun before expiration of the term. Such
8 participation shall not prevent the successor from taking office, but the successor may not
9 participate in the proceeding for which the predecessor's term was extended. This
10 subsection shall apply also to any judicial member whose membership on the
11 Commission is automatically terminated by retirement or resignation from judicial office
12 or expiration of the term of judicial office.

13 **"§ 7B-701. Grounds for censure or removal.**

14 Upon recommendation of the Commission, the Supreme Court may censure or
15 remove any judge for willful misconduct in office, willful and persistent failure to
16 perform his duties, habitual intemperance, conviction of a crime involving moral
17 turpitude, or conduct prejudicial to the administration of justice that brings the judicial
18 office into disrepute. Upon recommendation of the Commission, the Supreme Court may
19 remove any judge for mental or physical incapacity interfering with the performance of
20 the judge's duties, which is, or is likely to become, permanent. A judge removed for
21 mental or physical incapacity is entitled to retirement compensation if the judge has
22 accumulated the years of creditable service required for incapacity or disability
23 retirement under any provision of State law, but the judge shall not sit as an emergency
24 justice or judge. A judge removed for other than mental or physical incapacity receives
25 no retirement compensation and is disqualified from holding further judicial office.

26 **"§ 7B-702. Procedures; employment of executive secretary, special counsel, or
27 investigator.**

28 (a) Any citizen of the State may file a written complaint with the Commission
29 concerning the qualifications or conduct of any justice or judge of the General Court of
30 Justice, and thereupon the Commission shall investigate as it deems necessary. The
31 Commission may also make an investigation on its own motion. The Commission may
32 issue process to compel the attendance of witnesses and the production of evidence, to
33 administer oaths, to punish for contempt, and to prescribe its own rules of procedure. No
34 justice or judge shall be recommended for censure or removal unless the justice or judge
35 has been given a hearing affording due process of law. Unless otherwise waived by the
36 justice or judge involved, all papers filed with and proceedings before the Commission,
37 including any preliminary investigation which the Commission may make, are
38 confidential, except as otherwise provided in this section.

39 After the preliminary investigation is completed, and if the Commission concludes
40 that formal proceedings should be instituted, the notice and complaint filed by the
41 Commission, along with the answer and all other pleadings, are not confidential. Formal
42 hearings ordered by the Commission are not confidential, and recommendations of the
43 Commission to the Supreme Court, along with the record filed in support of those

1 recommendations, are not confidential. Testimony and other evidence presented to the
2 Commission is privileged in any action for defamation. At least five members of the
3 Commission shall concur in any recommendation to censure or remove any justice or
4 judge.

5 A respondent who is recommended for censure or removal is entitled to a copy of the
6 proposed record to be filed with the Supreme Court, and if the respondent has objections
7 to it, to have the record settled by the Commission. The respondent is also entitled to
8 present a brief and to argue the case, in person and through counsel, to the Supreme
9 Court. A majority of the members of the Supreme Court voting shall concur in any order
10 of censure or removal. The Supreme Court may approve the recommendation, remand
11 for further proceedings, or reject the recommendation. A justice of the Supreme Court or
12 a member of the Commission who is a judge is disqualified from acting in any case in
13 which the justice or judge is a respondent.

14 (b) The Commission may employ an executive secretary to assist it in carrying out
15 its duties. For specific cases, the Commission may also employ special counsel or call
16 upon the Attorney General to furnish counsel. For specific cases, the Commission may
17 also employ an investigator or call upon the Director of the State Bureau of Investigation
18 to furnish an investigator. While performing duties for the Commission, an executive
19 secretary, special counsel, or investigator has authority throughout the State to serve
20 subpoenas or other process issued by the Commission in the same manner and with the
21 same effect as an officer authorized to serve process of the General Court of Justice.

22 **"§ 7B-703. Censure or removal of justice of Supreme Court.**

23 (a) The recommendation of the Judicial Standards Commission for censure or
24 removal of any justice of the Supreme Court for any grounds provided by G.S. 7B-701
25 shall be made to, and the record filed with, the Court of Appeals, which shall have and
26 shall proceed under the same authority for censure or removal of any justice as is granted
27 to the Supreme Court under G.S. 7B-701 and G.S. 7B-702(a) for censure or removal of
28 any judge.

29 (b) The proceeding shall be heard by a panel of the Court of Appeals consisting of
30 the Chief Judge, who shall be the presiding judge of the panel, and six other judges, the
31 senior in service, excluding the judge who is chairman of the Commission. For good
32 cause, a judge may be excused by a majority of the panel. If the Chief Judge is excused,
33 the presiding judge shall be designated by a majority of the panel. The vacancy created
34 by an excused judge shall be filled by the judge of the court who is next senior in service.

35 **"ARTICLE 8.**

36 **"DISPUTE RESOLUTION COMMISSION.**

37 **"§ 7B-800. Purpose of Dispute Resolution Commission.**

38 The General Assembly finds:

- 39 (1) That arbitration and mediation procedures have been effectively used by
40 trial courts;
41 (2) That other alternative dispute resolution (ADR) procedures may also be
42 effective;

- 1 (3) That ADR programs and procedures redound to the public good,
2 enhancing the courts' potential for expeditiously and economically
3 resolving issues in litigation;
- 4 (4) That information concerning the use and effectiveness of all ADR
5 programs and procedures across the State should be compiled for the
6 benefit of the General Assembly, the courts, and the public;
- 7 (5) That an agency should be established to monitor all ADR programs and
8 procedures, and the legislation governing them, through which the
9 Supreme Court can exercise delegated and constitutional authority
10 vested in the General Court of Justice.

11 **"§ 7B-801. Creation and membership.**

12 The Dispute Resolution Commission is established as an independent commission
13 within the Judicial Branch. The commission shall consist of nine members, as follows:

- 14 (1) Two judges and two certified providers of ADR, appointed by the Chief
15 Justice of the Supreme Court;
- 16 (2) Two practicing attorneys who are not certified as ADR providers,
17 appointed by the President of the North Carolina State Bar; and
- 18 (3) Three citizens knowledgeable about ADR, one to be appointed by the
19 Governor, one by the General Assembly upon the recommendation of
20 the Speaker of the House of Representatives in accordance with G.S.
21 120-121, and one by the General Assembly upon the recommendation
22 of the President Pro Tempore of the Senate in accordance with G.S.
23 120-121.

24 Members shall serve four-year terms and may serve no more than two consecutive
25 terms. The Chief Justice shall designate the chair from the members who are judges.
26 The chair shall serve a two-year term as chair and is eligible for reappointment.

27 The Chief Justice may appoint no more than two additional members who have
28 expertise or experience in ADR for terms of four years, upon certification to the General
29 Assembly that unforeseen, additional, or unique issues or duties require the services of
30 those persons as members and that the cost of the appointments is within the
31 Commission's budget.

32 **"§ 7B-802. Authority.**

33 The Commission may, subject to approval by the Supreme Court:

- 34 (1) Monitor and regulate ADR procedures and programs authorized by
35 statute or by rule of court;
- 36 (2) Propose for adoption by the Supreme Court:
- 37 a. Criteria for the qualification and certification for arbitrators,
38 mediators, and other neutrals, for the qualification of training
39 programs, and for the eligibility of personnel to participate in
40 those programs; and
- 41 b. Standards, rules, and policies as may be appropriate to achieve
42 the purposes of the programs, and sanctions for their violation,

1 appropriate, the Council may establish new salaries for justices and judges by the process
2 set forth in this subsection.

3 No later than the thirtieth day of the legislative session, the Council shall notify the
4 President Pro Tempore of the Senate and the Speaker of the House of Representatives in
5 writing of the salaries to be paid justices and judges beginning on the following January
6 1. The General Assembly may disapprove the new salaries by adoption of a joint
7 resolution.

8 If the General Assembly fails to adopt such a resolution before enactment of the State
9 budget for the upcoming fiscal year, the salaries established by the State Judicial Council
10 become law the same as if they had been enacted by the General Assembly.

11 If the General Assembly disapproves the new salaries, the Council may establish a
12 new salary level and notify the President Pro Tempore of the Senate and the Speaker of
13 the House of Representatives in writing. If notice of the new salaries is given to the
14 legislative leaders at least 30 days before enactment of the budget for the upcoming fiscal
15 year, the salaries shall become law unless disapproved by adoption of a joint resolution
16 before enactment of the budget.

17 If the General Assembly has disapproved a salary increase in the first year of the
18 biennium, the State Judicial Council may establish new salaries through this process in
19 the second year of the biennium. However, if a salary increase established by the
20 Council becomes law during the first year of the biennium, no additional increase may be
21 established during the second biennium.

22 The salaries established through this process shall not be subject to veto by the
23 Governor.

24 (d) In establishing salaries for justices and judges, the State Judicial Council shall
25 provide that, except for differences based on years of service as a judge, salaries shall be
26 uniform within the following categories:

- 27 (1) Chief Justice;
- 28 (2) Justice of the Supreme Court;
- 29 (3) Chief Judge of the Court of Appeals;
- 30 (4) Judge of the Court of Appeals;
- 31 (5) Chief circuit judge; and
- 32 (6) Circuit judge.

33 (e) The State Judicial Council shall recommend to the General Assembly, as part
34 of the regular budget process, any changes in retirement or other benefits, or subsistence
35 or travel allowances, that it believes are appropriate for judicial officials.

36 (f) No judicial official who is a member of the State Judicial Council shall
37 participate in the Council's review of compensation of justices and judges, or in any other
38 part of the proceedings described in this section for setting salaries or recommending
39 changes in other forms of compensation.

40 **"§ 7B-901. Compensation of magistrates and clerks of court.**

41 (a) The Chief Justice and State Judicial Council shall recommend to the General
42 Assembly the salaries and other compensation to be paid to magistrates and clerks of
43 court, and that compensation shall be set by the General Assembly.

1 (b) Salaries and other compensation for nonattorney magistrates shall be uniform
2 throughout the State except for differences based on years of service as a judicial official.
3 Salaries and other compensation for attorney magistrates shall be uniform throughout the
4 State except for differences based on years of service as a judicial official. If a chief
5 circuit judge designates a magistrate as the supervising magistrate for a county, additional
6 compensation may be paid to that magistrate pursuant to a uniform statewide schedule.

7 (c) In setting salaries and other compensation for clerks of court, the General
8 Assembly may establish categories based on the county's population or caseload or a
9 combination of those factors, and may set different levels of compensation according to
10 those categories. Salaries and compensation within each category shall be uniform
11 throughout the State except for differences based on years of service as a clerk.

12 "ARTICLE 10.

13 "SUPREME COURT.

14 "§ 7B-1000. Organization, compensation.

15 (a) The Supreme Court shall consist of a Chief Justice and six associate justices
16 appointed by the Governor as provided in G.S. 7B-201. Before entering upon the duties
17 of the office, each justice shall take an oath of office. Four justices shall constitute a
18 quorum for the transaction of the business of the Court.

19 (b) Sessions of the Court shall be held in Raleigh and shall be scheduled by rule of
20 the Court so as to discharge expeditiously the Court's business.

21 (c) The compensation of justices shall be determined as provided in G.S. 7B-900.

22 "§ 7B-1001. Authority to adopt rules, prescribe standards of conduct.

23 The Supreme Court may:

24 (1) Establish and alter rules of civil and criminal procedure and rules of
25 evidence for the Trial Division, subject to veto, but not amendment, by
26 the General Assembly;

27 (2) Prescribe standards of judicial conduct for the guidance of all justices
28 and judges of the General Court of Justice; and

29 (3) Censure or remove a justice or judge, upon recommendation of the
30 Judicial Standards Commission, as provided in G.S. 7B-207.

31 "§ 7B-1002. Clerk of the Supreme Court.

32 (a) The clerk of the Supreme Court shall be appointed by the Court to serve at its
33 pleasure, and shall perform those duties assigned by the Court.

34 (b) Before entering upon the duties of the office, the clerk shall take an oath of
35 office.

36 (c) The compensation of the clerk shall be set by the Director of the
37 Administrative Office of the Courts, subject to the approval of the State Judicial Council.
38 The clerk shall be bonded for faithful performance of the duties of the office, in the same
39 manner as a clerk of court, and in an amount determined by the Director of the
40 Administrative Office of the Courts.

41 (d) The clerk may appoint and compensate assistants as authorized by the Director
42 of the Administrative Office of the Courts.

43 (e) The clerk shall adopt a seal of office, to be approved by the Supreme Court.

1 (f) A fee bill for services rendered by the clerk shall be fixed by rule of the
2 Supreme Court, and all such fees shall be remitted to the General Fund, except that
3 charges to litigants for the reproduction of appellate records and briefs shall be fixed and
4 administered as provided by rule of the Supreme Court.

5 (g) Operations of the clerk shall be subject to oversight of the State Auditor
6 pursuant to Article 5A of Chapter 147 of the General Statutes.

7 **"§ 7B-1003. Supreme Court library and librarian.**

8 (a) The Supreme Court shall appoint a librarian of the Supreme Court library, to
9 serve at the pleasure of the Court. The annual salary of the librarian shall be fixed by the
10 Director of the Administrative Office of the Courts, subject to the approval of the State
11 Judicial Council. The librarian may appoint assistants in numbers and at salaries to be
12 fixed by the Director, subject to the approval of the State Judicial Council.

13 (b) The primary function of the Supreme Court library is to serve the Appellate
14 Division of the General Court of Justice, but it may render service to the Trial Division of
15 the General Court of Justice, to State agencies, and to the general public, under such
16 regulations as the librarian, subject to the approval of the library committee, may
17 promulgate.

18 (c) The library shall be maintained in the City of Raleigh, except that if the Court
19 of Appeals sits regularly in locations other than the City of Raleigh, branch libraries may
20 be established at such locations for the use of the Court of Appeals.

21 (d) The librarian shall promulgate rules and regulations for the use of the library,
22 subject to the approval of a library committee, to be composed of two justices of the
23 Supreme Court appointed by the Chief Justice, and one judge of the Court of Appeals
24 appointed by the Chief Judge.

25 (e) The librarian may adopt a seal of office.

26 (f) The librarian may operate a copying service by means of which the librarian
27 may furnish certified or uncertified copies of all or portions of any document, paper,
28 book, or other writing in the library that legally may be copied. When a certificate is
29 made under the librarian's hand and attested by the librarian's official seal, it shall be
30 received as prima facie evidence of the correctness of the matter therein contained, and as
31 such shall receive full faith and credit. The fees for copies shall be approved by the
32 library committee, and the fees so collected shall be administered in the same manner as
33 the charges to litigants for the reproduction of appellate records and briefs.

34 **"§ 7B-1004. Appellate Division reporters.**

35 The Supreme Court shall appoint one or more reporters for the Appellate Division to
36 serve at its pleasure. The reporters shall prepare for publication the opinions of the
37 Supreme Court and the Court of Appeals, which shall be printed and distributed by the
38 Director of the Administrative Office of the Courts as provided in G.S. 7B-407. The
39 salary of the reporters shall be fixed by the Administrative Office of the Courts, subject to
40 the approval of the Supreme Court.

41 **"ARTICLE 11.**

42 **"COURT OF APPEALS.**

43 **"§ 7B-1100. Organization, compensation.**

1 (a) The Court of Appeals shall consist of 12 judges appointed by the Governor as
2 provided in G.S. 7B-201. Before entering upon the duties of the office, each judge shall
3 take an oath of office.

4 (b) The Chief Justice shall designate one judge to serve as the Chief Judge of the
5 Court of Appeals, at the pleasure of the Chief Justice. If the Chief Judge is unable,
6 because of absence or temporary incapacity, to perform the duties of the office, the Chief
7 Justice may appoint an acting Chief Judge to temporarily discharge the duties of the
8 office.

9 (c) The Court of Appeals shall sit in panels of three judges each. The Chief Judge
10 shall attempt to assign members to panels so that each member sits nearly an equal
11 number of times with each other member. The Chief Judge shall preside over any panel
12 of which the Chief Judge is a member and shall designate the presiding judge of the other
13 panels.

14 (d) Three judges shall constitute a quorum for transaction of the business of the
15 Court, except as provided in G.S. 7B-1305.

16 (e) The compensation of judges of the Court of Appeals shall be determined as
17 provided in G.S. 7B-900.

18 **"§ 7B-1101. Seats and sessions of Court.**

19 (a) The Chief Judge shall schedule sessions of the Court of Appeals as required to
20 discharge expeditiously the Court's business.

21 (b) The Court shall sit in Raleigh and at those other locations the Chief Justice
22 may designate.

23 **"§ 7B-1102. Clerk of the Court of Appeals.**

24 (a) The clerk of the Court of Appeals shall be appointed by the Court to serve at its
25 pleasure and shall perform those duties assigned by the Court.

26 (b) Before entering upon the duties of office, the clerk shall take the oath of office
27 prescribed for the clerk of the Supreme Court.

28 (c) The compensation of the clerk shall be set by the Director of the
29 Administrative Office of the Courts, subject to the approval of the State Judicial Council.
30 The clerk shall be bonded for faithful performance of the duties of the office, in the same
31 manner as a clerk of court, and in an amount determined by the Director of the
32 Administrative Office of the Courts.

33 (d) The clerk may appoint and compensate assistants as authorized by the Director
34 of the Administrative Office of the Courts.

35 (e) The clerk shall adopt a seal of office, to be approved by the Court of Appeals.

36 (f) Subject to approval of the Supreme Court, the Court of Appeals shall
37 promulgate a fee bill for services rendered by the clerk, and such fees shall be remitted to
38 the General Fund, except that charges to litigants for the reproduction of appellate records
39 and briefs shall be fixed and administered as provided by rule of the Supreme Court.

40 (g) Operations of the clerk shall be subject to oversight of the State Auditor
41 pursuant to Article 5A of Chapter 147 of the General Statutes.

42 **"ARTICLE 12.**

43 **"ORGANIZATION OF THE TRIAL DIVISION.**

1 **"§ 7B-1200. Circuits and allocation of judges.**

2 (a) The Trial Division shall be divided into circuits by the Chief Justice, with the
3 advice and approval of the State Judicial Council, as provided in Section 9 of Article IV
4 of the North Carolina Constitution.

5 (b) A total of 297 judges are authorized for the Trial Division, to be allocated
6 among the circuits by the Chief Justice, with the advice and consent of the State Judicial
7 Council.

8 (c) The Chief Justice may assign a trial judge to a different circuit on a temporary
9 basis when needed because of an emergency, a backlog of cases, a conflict disqualifying
10 the resident judges, or other good reason.

11 **"§ 7B-1201. Organization of the Trial Division in the circuit.**

12 (a) Within each circuit, the Trial Division shall be organized as follows:

13 (1) A chief circuit judge;

14 (2) Circuit judges;

15 (3) A supervising judge for family cases, if the chief circuit judge decides
16 that such a position is warranted by the family law caseload in the
17 circuit and the State Judicial Council approves creation of the office;

18 (4) One or more case managers for family cases, supervised by the circuit
19 judges assigned to family cases;

20 (5) Magistrates assigned to duties and supervised by the chief circuit judge;

21 (6) A supervising magistrate for each county for which the chief circuit
22 judge decides that such a position is warranted;

23 (7) A circuit administrator supervised by the chief circuit judge;

24 (8) A coordinator of alternative dispute resolution, supervised by the circuit
25 administrator;

26 (9) Employees of the circuit administrator's office, supervised by the circuit
27 administrator;

28 (10) A clerk of court for each county, supervised by the circuit administrator
29 with respect to the clerk's administrative duties; and

30 (11) Employees of the clerk's office in each county, supervised by the clerk.

31 (b) Cases to be heard by circuit judges shall be divided into the following
32 categories:

33 (1) Major criminal. – All felonies and related misdemeanors that arise from
34 the same incident or course of conduct;

35 (2) Minor criminal. – All misdemeanors, except those that may be heard
36 and decided by a magistrate, and all infractions;

37 (3) Civil. – All civil matters except those listed in the family category and
38 those that may be heard and decided by a magistrate or clerk of court;
39 and

40 (4) Family. – All matters involving intrafamily rights, relationships, and
41 obligations, and all juvenile justice matters, including:

42 a. Child abuse, neglect, and dependency;

43 b. Delinquent and undisciplined juvenile matters;

- 1 c. Emancipation of minors and termination of parental rights;
2 d. Divorce;
3 e. Annulment;
4 f. Equitable distribution;
5 g. Alimony and postseparation support;
6 h. Child custody;
7 i. Child support;
8 j. Paternity;
9 k. Adoption;
10 l. Domestic violence civil restraining orders;
11 m. Abortion consent waivers;
12 n. Adult protective services; and
13 o. Guardianship, involuntary commitment, and voluntary
14 admissions to mental health facilities.

15 (c) Cases to be heard in the Trial Division also shall include these categories:

- 16 (1) Magistrates. – All matters within the jurisdiction of magistrates as
17 provided in G.S. 7B-200; and
18 (2) Clerks of court. – All matters within the judicial authority of clerks of
19 court as provided in G.S. 7B-200.

20 (d) After consulting with circuit judges, the circuit attorney, the circuit public
21 defender, and the private bar, as appropriate, the circuit administrator shall recommend to
22 the chief circuit judge a schedule for court to be held in the different counties in the
23 circuit. The chief circuit judge shall set the schedule for court and shall assign circuit
24 judges to court in a manner that provides for court to be open in the circuit at all times
25 and for each judge to move from county to county throughout the circuit. The chief
26 circuit judge, with the assistance of the circuit administrator, shall develop a procedure
27 for assigning cases to judges in a manner that results in each judge receiving a balance of
28 criminal and civil cases. In making such assignments, however, the chief circuit judge
29 shall take into account the experience and ability of the individual judges in the circuit to
30 assure that the most complicated and difficult cases are heard by judges best suited for
31 those matters.

32 (e) The chief circuit judge shall assign circuit judges to hear family matters
33 exclusively for periods of three years. Unless special circumstances require otherwise,
34 only judges who have completed the training required by the State Judicial Council shall
35 be assigned this duty by the chief circuit judge. If a judge assigned to family matters
36 desires to continue in that position for longer than three years, the chief circuit judge may
37 continue the assignment. The chief circuit judge or the supervising family law judge, if
38 there is one in the circuit, may further divide the family case category and assign judges
39 to hear matters within those particular categories for specified periods of time. While
40 assigned to family matters, a circuit judge retains full authority and jurisdiction over all
41 other matters within the jurisdiction of the Trial Division and may be temporarily
42 assigned by the chief circuit judge to those other matters as the need arises.

43 "§ 7B-1202. Chief circuit judge.

1 (a) The Chief Justice, with the advice and consent of the State Judicial Council,
2 shall appoint one trial judge in each circuit to serve as the chief circuit judge for that
3 circuit. The chief circuit judge shall serve in that office at the pleasure of the Chief
4 Justice.

5 (b) The chief circuit judge shall:

6 (1) Appoint and supervise a circuit administrator who shall serve at the
7 pleasure of the chief circuit judge;

8 (2) Appoint and supervise magistrates;

9 (3) Designate the attorney magistrates within the circuit, if any, to be
10 authorized to exercise the additional authority described in G.S. 7B-
11 200(5) and, with the advice of the circuit judicial council, decide what
12 restrictions to place on the exercise of that authority;

13 (4) Designate one magistrate in a county as the supervising magistrate for
14 that county, if needed;

15 (5) Appoint clerks of court for the counties within the circuit, as provided in
16 G.S. 7B-201;

17 (6) Chair the circuit judicial council;

18 (7) With the assistance of the circuit administrator, develop a schedule of
19 courts and assign judges to those courts;

20 (8) If authorized by the State Judicial Council, designate a circuit judge to
21 serve as the supervising judge for the Family Court within that circuit;

22 (9) Approve the employment of personnel by the circuit administrator;

23 (10) Review and approve for presentation to the Director of the
24 Administrative Office of the Courts the budget prepared for the circuit
25 by the circuit administrator;

26 (11) Review and approve modifications in the allocation of funds
27 appropriated to the circuit, as proposed by the circuit administrator;

28 (12) Review proposed modifications in the rules of practice for the circuit, as
29 proposed by the circuit judicial council or the circuit bar, and seek
30 approval of those modifications from the State Judicial Council; and

31 (13) With the assistance of the circuit administrator and the public
32 information office of the Administrative Office of the Courts, develop
33 and implement public information and outreach programs for the circuit
34 that inform the news media and public about the operation of the courts,
35 that involve volunteer groups in assisting the courts, and that assist the
36 public schools in educating their students about the judicial system.

37 (c) All the chief circuit judges of the circuits shall constitute the Conference of
38 Chief Circuit Judges, which shall meet at least once a year to consider matters of mutual
39 interest. The Director of the Administrative Office of the Courts shall arrange those
40 meetings and shall provide staff assistance to the conference.

41 **"§ 7B-1203. Circuit administrator.**

1 (a) The circuit administrator is generally responsible for the administration of the
2 court system within the circuit, including overall supervision of court employees and
3 oversight of all financial matters.

4 (b) The circuit administrator shall:

5 (1) After consultation with the chief circuit judge and clerks of court,
6 prepare and submit to the circuit judicial council the proposed budget
7 for the circuit and, upon the approval of the circuit judicial council,
8 submit that budget to the Director of the Administrative Office of the
9 Courts;

10 (2) Supervise clerks of court with respect to the administrative duties of that
11 office;

12 (3) Review the financial operations of each clerk's office at least once a
13 year;

14 (4) Employ and supervise the employees of the circuit other than those
15 employed by the clerks' offices;

16 (5) As provided in G.S. 7B-1201, assist the chief circuit judge in
17 developing a procedure for the assignment of cases to judges;

18 (6) Assign cases to magistrates and clerks of court;

19 (7) In consultation with the clerks of court, circuit judges, county officials,
20 circuit attorneys, and public defenders, periodically assess the facility
21 needs of the circuit and recommend modification or construction of
22 facilities to the Director of the Administrative Office of the Courts; and

23 (8) Periodically assess the needs of the judges, magistrates, clerks and court
24 personnel within the circuit for continuing education or training, and
25 arrange for that education or training, either through programs offered
26 statewide by the Administrative Office of the Courts or other agencies
27 or through programs provided locally with the approval of the Director
28 of the Administrative Office of the Courts.

29 (c) The circuit administrator shall arrange meetings of the circuit judicial council
30 and, working with the council, shall be responsible for coordinating the court's functions
31 with those of other related agencies so as to best serve the needs of the public and avoid
32 undue delay or inconvenience to jurors, witnesses, and litigants.

33 **"§ 7B-1204. Clerk of court.**

34 (a) There shall be a clerk of court for each county.

35 (b) The clerk of court, pursuant to procedures established by the Director of the
36 Administrative Office of the Courts, shall be responsible for all clerical and financial
37 functions of the Trial Division within the clerk's county.

38 (c) The clerk of court shall be responsible for employing, training, supervising,
39 and dismissing employees within the clerk's office. All employees of the clerk's office
40 shall be subject to the salary schedule and personnel rules established by the Director of
41 the Administrative Office of the Courts, which shall include a uniform statewide schedule
42 of salary, benefits, paid leave, and other conditions of employment.

1 (d) The clerk of court may establish a management organization within the office
2 that allows the clerk to delegate specified responsibilities to assistants and that permits
3 the employees to whom those responsibilities are delegated to be compensated
4 accordingly pursuant to the salary schedule established by the Director of the
5 Administrative Office of the Courts.

6 (e) The Director of the Administrative Office of the Courts shall require, or
7 purchase, individual or blanket bonds for any or all clerks of court and their employees,
8 the bond or bonds to be conditioned on faithful performance of their duties and made
9 payable to the State. The premiums for these bonds shall be paid by the State.

10 (f) The Director of the Administrative Office of the Courts, subject to approval of
11 the State Auditor, shall establish procedures for the receipt, deposit, protection,
12 investment, and disbursement of all funds coming into the hands of the clerk of court.
13 The clerk shall invest funds as provided in G.S. 7B-1205. The fees to be remitted to
14 counties and cities shall be paid to them monthly.

15 (g) The clerk of court also possesses certain judicial powers as specified in G.S.
16 7B-200. The clerk may delegate this judicial authority to specified assistants.

17 **"§ 7B-1205. Investment of funds in clerk's hands; deposit of money held by clerks.**

18 (a) The clerk of court may invest moneys secured by virtue or color of the clerk's
19 office or as receiver in any of the following securities:

- 20 (1) Obligations of the United States or obligations fully guaranteed both as
21 to principal and interest by the United States;
- 22 (2) Obligations of the State of North Carolina;
- 23 (3) Obligations of North Carolina cities or counties approved by the Local
24 Government Commission; and
- 25 (4) Shares of any building and loan association organized under the laws of
26 this State, or of any federal savings and loan association having its
27 principal office in this State, and certificates of deposit for time deposits
28 or savings accounts in any bank or trust company authorized to do
29 business in North Carolina, to the extent in each instance that those
30 shares or deposits are insured by the State or federal government or any
31 agency of the State or federal government or by any mutual deposit
32 guaranty association authorized by the Administrator of the Savings
33 Institutions Division of North Carolina to do business in North Carolina
34 pursuant to Article 7A of Chapter 54 of the General Statutes. If the clerk
35 desires to deposit in a bank, savings and loan, or trust company funds
36 entrusted to the clerk by virtue or color of the clerk's office, beyond the
37 extent that such deposits are insured by the State or federal government
38 or an agency of the State or federal government or by any mutual
39 deposit guaranty association authorized by the Administrator of the
40 Savings Institutions Division of North Carolina to do business in North
41 Carolina pursuant to Article 7A of Chapter 54 of the General Statutes,
42 the clerk shall require that depository to furnish a corporate surety bond
43 or obligations of the United States or obligations fully guaranteed both

1 as to principal and interest by the United States or obligations of the
2 State of North Carolina, or of counties and municipalities of North
3 Carolina whose obligations have been approved by the Local
4 Government Commission.

5 (b) When money in a single account in excess of two thousand dollars (\$2,000) is
6 received by the clerk by virtue or color of the clerk's office and it can reasonably be
7 expected that the money will remain on deposit with the clerk in excess of six months
8 from date of receipt, the money exceeding two thousand dollars (\$2,000) shall be
9 invested by the clerk within 60 days of receipt in investments authorized by this section.
10 The first two thousand dollars (\$2,000) of these accounts and money in a single account
11 totaling less than two thousand dollars (\$2,000), received by the clerk by virtue or color
12 of the clerk's office, shall be invested, or administered, or invested and administered, by
13 the clerk in accordance with regulations promulgated by the Director of the
14 Administrative Office of the Courts. This subsection shall not apply to cash bonds or to
15 money received by the clerk to be disbursed to governmental units.

16 (c) The clerk of court shall deposit any funds received by that office, except funds
17 invested pursuant to subsections (a) and (b) of this section in an interest-bearing checking
18 account or accounts in a bank, savings and loan, or trust company licensed to do business
19 in North Carolina, at the maximum feasible interest rate available taking into
20 consideration prevailing interest rates and the checking account services provided to the
21 clerk's office by the bank, savings and loan, or trust company. The funds deposited in
22 such checking accounts shall be guaranteed to the same extent and in the same manner as
23 funds invested pursuant to subsections (a) and (b) of this section.

24 (d) The State Auditor may inspect the records of the clerk to insure compliance
25 with this section, and the State Auditor shall report noncompliance with the provisions of
26 this section to the Director of the Administrative Office of the Courts.

27 (e) It shall be unlawful for the clerk of court of any county receiving any money
28 by virtue or color of the clerk's office to apply or invest any of it except as authorized
29 under this section. Any clerk violating the provisions of this section shall be guilty of a
30 Class 1 misdemeanor.

31 **"§ 7B-1206. Procedures applicable to civil cases generally.**

32 (a) Pursuant to guidelines of the State Judicial Council, each circuit shall have a
33 case management system that includes standards and goals for the processing of all cases
34 so as to best serve the public and that assigns responsibility to specific officials and
35 employees for meeting those standards.

36 (b) The Director of the Administrative Office of the Courts shall provide or
37 arrange for training in case management techniques for all judicial officials and court
38 personnel with that responsibility, and the circuit administrator shall be responsible for
39 assessing the needs for that training within the circuit.

40 (c) The case management system for each circuit shall include full and appropriate
41 use of alternative dispute resolution. The system shall be designed to encourage the
42 resolution of disputes without filing a civil action, through the use of community-based
43 mediation centers or other means that may be available. Subject to the guidelines

1 established by the State Judicial Council, each civil case should be assigned initially to a
2 form of alternative dispute resolution except where good cause is shown for an
3 exemption.

4 **"§ 7B-1207. Procedures applicable to family cases.**

5 (a) The management of family law cases in each circuit should be governed by a
6 case manager/case management team approach. Under this approach, each judge
7 assigned to hear family cases is assisted by a team headed by a case manager. The case
8 manager is assigned to work specifically with one or more judges. The remainder of the
9 team includes the appropriate personnel for providing a full range of services necessary
10 to conclude each case expeditiously and in a manner that best serves the interests of the
11 entire family. Members of a team may include social workers, psychologists, domestic
12 violence specialists, alternative dispute resolution specialists, juvenile court counselors,
13 and other appropriate personnel.

14 (b) All matters involving the same family should be assigned to the same judge
15 and the same case management team.

16 (c) The circuit administrator shall arrange for the availability of mediation and
17 other forms of alternative dispute resolution to individuals before and in lieu of filing an
18 action that would be assigned to a family law judge.

19 (d) The case management system for matters in the family law category shall
20 include full use of alternative dispute resolution when appropriate. Generally, a form of
21 alternative dispute resolution should be available for all types of cases in the family law
22 category and should be mandatory except in cases involving domestic violence or other
23 cases where the parties are exempted by a family law judge for good cause shown. The
24 case manager shall monitor compliance with alternative dispute requirements and shall
25 report on progress or, if alternative dispute resolution appears unlikely to resolve the
26 matter, refer the case back to the family law judge for pretrial procedures.

27 (e) For cases which are not resolved through alternative dispute resolution, the
28 judge to whom the case is assigned shall conduct a scheduling conference after the case
29 manager has reported that alternative dispute resolution is unsuccessful. The conference
30 shall be held within the time limits established by the State Judicial Council. At that
31 conference, the judge shall set a schedule for completion of discovery, any necessary
32 pretrial conferences and the trial. The case manager shall monitor compliance with the
33 scheduling order, but only the judge may extend the deadlines or otherwise alter the
34 schedule.

35 (f) A program providing mediation as a means of resolving disputes over child
36 custody or visitation rights should be established as part of the court in the circuit. Where
37 practicable, such a program should be provided in each county in the circuit. A family
38 law judge may appoint an attorney to represent the child in child custody and visitation
39 proceedings and tax the attorney's fee as costs in the case.

40 **"§ 7B-1208. Alternative dispute resolution.**

41 (a) The General Assembly finds that various forms of court-ordered alternative
42 dispute resolution, including court-ordered nonbinding arbitration and mediated
43 settlement conferences, may be a more economical, efficient, and satisfactory procedure

1 for resolving certain civil actions than traditional civil litigation. Accordingly, the
2 General Assembly encourages the development of these alternatives within the Judicial
3 Branch and supports the Supreme Court in the use of its rule-making authority to expand
4 these programs.

5 (b) The parties to a civil action in which nonbinding arbitration, a mediated
6 settlement conference, or other form of alternative dispute resolution is ordered, their
7 attorneys and other persons or entities with authority, by law or by contract, to settle the
8 parties' claims shall attend the alternative dispute resolution unless excused by rules of
9 the Supreme Court or by order of the circuit judge. Nothing in this section shall require
10 any party or other participant to make a settlement offer or demand which it considers
11 contrary to its best interests.

12 (c) Any person required to attend nonbinding arbitration, a mediated settlement
13 conference, or other form of alternative dispute resolution, who, without good cause, fails
14 to attend in compliance with this section, shall be subject to any appropriate monetary
15 sanction imposed by a circuit judge, including the payment of attorneys' fees, arbitrator or
16 mediator fees, and expenses incurred in attending the conference.

17 (d) Arbitrators, mediators, and other neutrals acting pursuant to this section shall
18 have judicial immunity in the same manner and to the same extent as a judge of the
19 General Court of Justice, except that these neutrals may be disciplined in accordance with
20 enforcement procedures adopted by the Supreme Court.

21 (e) Costs of nonbinding arbitration, mediated settlement conferences, or other
22 court-ordered forms of alternative dispute resolution shall be borne by the parties, except
23 as otherwise provided by law. Unless otherwise ordered by the court or agreed to by the
24 parties, the arbitrator or mediator fees shall be paid in equal shares by the parties. For
25 purposes of this section, multiple parties shall be considered one party when they are
26 represented by the same counsel. The rules adopted by the Supreme Court implementing
27 this section shall set out a method whereby parties found by the court to be unable to pay
28 the costs of the alternative dispute resolution are afforded an opportunity to participate
29 without cost. The rules adopted by the Supreme Court shall set the fees to be paid an
30 arbitrator or mediator appointed by a judge upon the failure of the parties to designate a
31 person for that purpose.

32 **"§ 7B-1209. Publication or broadcast of reports of open court proceedings or**
33 **reports of public records.**

34 No court shall:

35 (1) Restrict the publication or broadcast of any report concerning any
36 matter occurring in open court in any hearing, trial, or other civil or
37 criminal proceeding; or

38 (2) Restrict the publication or broadcast of the contents of any public
39 record.

40 Any order issued by any court in violation of the provisions of this section is invalid, and
41 any order of contempt issued for the violation of that order is invalid.

42 **"ARTICLE 13.**

43 **"JURISDICTION AND RIGHTS OF APPEAL.**

"§ 7B-1300. Original jurisdiction of the Trial Division.

(a) Original general jurisdiction of all justiciable civil and criminal matters cognizable in the General Court of Justice is vested in the Trial Division.

(b) Within the Trial Division, exclusive original jurisdiction is vested in the clerk of court for:

(1) The probate of wills and the administration of decedents' estates;

(2) Special proceedings, except proceedings under the Protection of the Abused, Neglected or Exploited Disabled Adult Act, Article 6 of Chapter 108A of the General Statutes, and proceedings for involuntary commitment to treatment facilities, Article 5A of Chapter 122 of the General Statutes; and

(3) All proceedings involving the appointment of guardians and the administration by legal guardians and trustees of express trusts of the estates of their wards and beneficiaries.

"§ 7B-1301. Appellate jurisdiction.

The Supreme Court and the Court of Appeals have jurisdiction to review upon appeal decisions of courts of the Trial Division and of administrative agencies, upon matters of law or legal inference, in accordance with the system of appeals provided in this Article. Circuit judges have jurisdiction to review upon appeal decisions of magistrates, clerks of court, and administrative agencies, as provided in this Article.

"§ 7B-1302. Rights of appeal.

(a) For all matters heard and decided originally by a clerk of court, appeals are as provided in Article 27 of Chapter 1 of the General Statutes.

(b) Appeals from decisions of magistrates shall be as provided in this subsection. The losing party in a civil matter has an appeal of right to a circuit judge of the circuit for a trial de novo. A person who has denied responsibility and against whom judgment has been entered for an infraction has an appeal of right to a circuit judge of the circuit for a trial de novo. For any other contested matter decided by a magistrate, the losing party has an appeal of right to a circuit judge of the circuit.

(c) There is an appeal of right to a circuit judge from the final decision of any administrative agency, except as provided below.

(d) There is an appeal of right to the Court of Appeals from:

(1) Any final judgment of a court of the Trial Division, other than a judgment in a criminal case based upon a plea of guilty or no contest;

(2) Any interlocutory order or judgment of a court of the Trial Division in a civil matter, which:

a. Affects a substantial right;

b. In effect determines the action and prevents a judgment from which appeal might be taken;

c. Discontinues the action; or

d. Grants or refuses a new trial;

(3) Any other order or judgment of a court of the Trial Division for which another statute provides a right of appeal;

- 1 (4) Final orders and decisions of the:
2 a. Utilities Commission, except those governed by subsection (e) of
3 this section;
4 b. Department of Human Resources pursuant to G.S. 131E-188(b);
5 c. Commissioner of Banks pursuant to Articles 17 and 18 of
6 Chapter 53 of the General Statutes;
7 d. Administrator of Savings and Loans pursuant to Article 3A of
8 Chapter 54B of the General Statutes;
9 e. Industrial Commission;
10 f. State Bar pursuant to G.S. 84-28;
11 g. Property Tax Commission pursuant to G.S. 105-290 and G.S.
12 105-342;
13 h. Board of State Contract appeals pursuant to G.S. 143-135.9;
14 i. Commissioner of Insurance pursuant to G.S. 59-9.4; and
15 j. Governor's Waste Management Board pursuant to G.S. 130A-
16 293 and G.S. 104E-6.2.
17 (e) There is an appeal of right to the Supreme Court from:
18 (1) Any decision of the Court of Appeals rendered in a case:
19 a. Which directly involves a substantial question arising under the
20 Constitution of the United States or and the Constitution of North
21 Carolina; or
22 b. In which there is a dissent; and
23 (2) Any final order or decision of the Utilities Commission in a general rate
24 case.

25 **"§ 7B-1303. Final decisions of the Court of Appeals.**

26 The following decisions of the Court of Appeals are final and not subject to review by
27 the Supreme Court by appeal, motion, certification, writ, or otherwise:

- 28 (1) Decisions upon review of motions for appropriate relief listed in G.S.
29 15A-1415(b); and
30 (2) Decisions upon review of valuation of exempt property under Chapter
31 1C of the General Statutes.

32 **"§ 7B-1304. Discretionary review by the Supreme Court.**

33 (a) In any cause in which appeal is taken to the Court of Appeals, except a cause
34 appealed from the North Carolina Industrial Commission, the North Carolina State Bar
35 pursuant to G.S. 84-28, the Property Tax Commission pursuant to G.S. 105-345, the
36 Board of State Contract Appeals pursuant to G.S. 143-135.9, or the Commissioner of
37 Insurance pursuant to G.S. 58-2-80, or a motion for appropriate relief or valuation of
38 exempt property pursuant to G.S. 7B-1303, the Supreme Court may, in its discretion, on
39 motion of any party to the cause or on its own motion, certify the cause for review by the
40 Supreme Court, either before or after it has been determined by the Court of Appeals. A
41 cause appealed to the Court of Appeals from any of the administrative bodies listed in the
42 preceding sentence may be certified in similar fashion, but only after determination of the
43 cause in the Court of Appeals. The effect of this certification is to transfer the cause from

1 the Court of Appeals to the Supreme Court for review by the Supreme Court. If the cause
2 is certified for transfer to the Supreme Court before its determination in the Court of
3 Appeals, review is not had in the Court of Appeals but the cause is forthwith transferred
4 for review in the first instance by the Supreme Court. If the cause is certified for transfer
5 to the Supreme Court after its determination by the Court of Appeals, the Supreme Court
6 reviews the decision of the Court of Appeals.

7 Except in motions within the purview of G.S. 7B-1303, the State may move for
8 certification for review of any criminal cause, but only after determination of the cause
9 by the Court of Appeals.

10 (b) In causes subject to certification under subsection (a) of this section,
11 certification may be made by the Supreme Court before determination of the cause by the
12 Court of Appeals when in the opinion of the Supreme Court:

- 13 (1) The subject matter of the appeal has significant public interest;
- 14 (2) The cause involves legal principles of major significance to the
15 jurisprudence of the State;
- 16 (3) Delay in final adjudication is likely to result from failure to certify and
17 thereby cause substantial harm; or
- 18 (4) The workload of the courts of the Appellate Division is such that the
19 expeditious administration of justice requires certification.

20 (c) In causes subject to certification under subsection (a) of this section,
21 certification may be made by the Supreme Court after determination of the cause by the
22 Court of Appeals when in the opinion of the Supreme Court:

- 23 (1) The subject matter of the appeal has significant public interest;
- 24 (2) The cause involves legal principles of major significance to the
25 jurisprudence of the State; or
- 26 (3) The decision of the Court of Appeals appears likely to be in conflict
27 with a decision of the Supreme Court.

28 Interlocutory determinations by the Court of Appeals, including orders remanding the
29 cause for a new trial or for other proceedings, shall be certified for review by the
30 Supreme Court only upon a determination by the Supreme Court that failure to certify
31 would cause a delay in final adjudication which would probably result in substantial
32 harm.

33 (d) The procedure for certification by the Supreme Court on its own motion, or
34 upon petition of a party, shall be prescribed by rule of the Supreme Court.

35 **"§ 7B-1305. Power of Supreme Court and Court of Appeals to issue remedial writs.**

36 (a) The Supreme Court and the Court of Appeals have jurisdiction, exercisable by
37 any one of the justices or judges of the respective courts, to issue the writ of habeas
38 corpus upon the application of any person described in G.S. 17-3, according to the
39 practice and procedure provided therefor in Chapter 17 of the General Statutes, and to
40 rule of the Supreme Court.

41 (b) The Supreme Court has jurisdiction, exercisable by one justice or by such
42 number of justices as the court may by rule provide, to issue the prerogative writs,
43 including mandamus, prohibition, certiorari, and supersedeas, in aid of its own

1 jurisdiction or in exercise of its general power to supervise and control the proceedings of
2 any of the other courts of the General Court of Justice. The practice and procedure shall
3 be as provided by statute or rule of the Supreme Court, or, in the absence of statute or
4 rule, according to the practice and procedure of the common law.

5 (c) The Court of Appeals has jurisdiction, exercisable by one judge or by such
6 number of judges as the Supreme Court may by rule provide, to issue the prerogative
7 writs, including mandamus, prohibition, certiorari, and supersedeas, in aid of its own
8 jurisdiction, or to supervise and control the proceedings of any of the circuit courts, the
9 Utilities Commission, or the Industrial Commission. The practice and procedure shall be
10 as provided by statute or rule of the Supreme Court, or, in the absence of statute or rule,
11 according to the practice and procedure of the common law.

12 "ARTICLE 14.

13 "CIRCUIT JUDICIAL COUNCILS.

14 "§ 7B-1400. Composition of circuit judicial councils.

15 (a) Each circuit shall have a circuit council consisting of the following members,
16 each of whom shall reside in the circuit:

17 (1) The chief circuit judge, who shall chair the council;

18 (2) The circuit public defender;

19 (3) The circuit attorney;

20 (4) A clerk of court, chosen by the clerks in the circuit;

21 (5) A representative of the Department of Correction, chosen by the
22 Secretary of Correction;

23 (6) A director of social services, chosen by the directors in the circuit;

24 (7) A representative of law enforcement, chosen by the chief circuit judge;

25 (8) A person engaged in providing alternative dispute resolution, chosen by
26 the chief circuit judge;

27 (9) Three attorneys chosen by the circuit bar, one of whom is engaged in
28 the practice of family law, one of whom is engaged in civil practice
29 generally, and one of whom is engaged in criminal defense. If the
30 circuit consists of three or more counties, no two of these members may
31 reside in the same county; and

32 (10) The following members appointed by the boards of county
33 commissioners for the counties in the circuit:

34 a. If the circuit consists of six or fewer counties, there shall be six
35 such members. If the circuit consists of two, three, or six
36 counties, each board of commissioners shall appoint an equal
37 number of members. If the circuit consists of four or five
38 counties, the counties shall rotate the appointment of the extra
39 member or members according to a schedule established by the
40 chief circuit judge; or

41 b. If the circuit consists of more than six counties, there shall be one
42 member appointed by each board of commissioners.

1 (b) Members of a circuit judicial council shall serve staggered terms of four years
2 pursuant to a schedule established by the chief circuit judge. All terms shall begin on
3 July 1 of odd-numbered years and expire on June 30 of odd-numbered years.

4 (c) Any vacancy on a circuit judicial council shall be filled by the same official or
5 entity who selected the person vacating that position.

6 (d) The persons responsible for selecting members of a circuit judicial council
7 shall confer with each other and attempt to arrange their selections to provide fair
8 representation on the council for each county in the circuit, including members of both
9 genders and each major racial group in the circuit.

10 **"§ 7B-1401. Duties of circuit judicial councils.**

11 (a) Each circuit judicial council shall periodically evaluate the operation of the
12 courts within the circuit to determine whether they are serving the public properly and
13 whether they are meeting the standards and goals established by the State Judicial
14 Council.

15 (b) Each circuit judicial council shall work with the circuit administrator to
16 coordinate the court's functions with those of other related agencies so as to best serve the
17 needs of the public and avoid undue delay or inconvenience to jurors, witnesses, and
18 litigants.

19 (c) Each circuit judicial council shall:

20 (1) Advise the circuit administrator and chief circuit judge on the budgetary
21 needs of the circuit;

22 (2) Advise the circuit administrator on the needs for facilities in the circuit;
23 and

24 (3) Advise the chief circuit judge on modifications in the rules of practice
25 for the circuit.

26 **"ARTICLE 15.**

27 **"COMMUNITY PENALTIES ACT.**

28 **"§ 7B-1500. Purpose.**

29 This Article shall be known and may be cited as the 'Community Penalties Act of
30 1983.' The purpose of this Article is to reduce prison overcrowding by providing the
31 judicial system with community sentences to be used in lieu of and at less cost than
32 imprisonment. In furtherance of this purpose, this Article provides for the following:

33 (1) Establishment of local sentencing alternatives for felons who require
34 less than institutional custody but more than regular probation
35 supervision;

36 (2) Increased opportunities for certain felons to make restitution to victims
37 of crime through financial reimbursement or community service;

38 (3) Local involvement in the development of community penalties to assure
39 that they are specifically designed to meet local needs; and

40 (4) Reduced expenditures of State funds through an emphasis on alternative
41 penalties for offenders so that new prisons need not be built or new
42 space added.

43 **"§ 7B-1501. Definitions.**

1 As used in this Article:

2 (1) 'Community penalties program' means an agency or State-run office
3 within the circuit which shall (i) prepare community penalty plans; (ii)
4 arrange or contract with public and private agencies for necessary
5 services for offenders; and (iii) monitor the progress of offenders placed
6 on community penalty plans.

7 (2) 'Community penalty plan' means a plan presented in writing to the
8 sentencing judge which provides a detailed description of the targeted
9 offender's proposed community penalty.

10 (2a) 'Director' means the Director of the Administrative Office of the Courts.

11 (3) 'Targeted offenders' means persons convicted of misdemeanors or
12 felonies who are eligible to receive an intermediate punishment based
13 on their class of offense and prior record level and who are facing an
14 imminent and substantial threat of imprisonment.

15 **"§ 7B-1502. Allocation of funds.**

16 (a) The Director may award grants in accordance with the policies established by
17 this Article and in accordance with any laws made for that purpose, including
18 appropriations acts and provisions in appropriations acts, and adopt regulations for the
19 implementation, operation, and monitoring of community penalties programs.
20 Community penalties programs that are grantees shall use such funds to develop,
21 implement, and monitor community penalty plans. Grants shall be awarded by the
22 Director to agencies whose comprehensive program plans promise best to meet the goals
23 set forth herein.

24 (b) The Director may establish local community penalties programs and appoint
25 staff as the Director deems necessary. These personnel may serve as full-time or part-
26 time State employees or may be hired on a contractual basis when determined appropriate
27 by the Director. Contracts entered under the authority of this subsection shall be exempt
28 from the competitive bidding procedures under Chapter 143 of the General Statutes. The
29 Administrative Office of the Courts shall adopt rules necessary and appropriate for the
30 administration of the program. Funds appropriated by the General Assembly for the
31 establishment and maintenance of community penalties programs under this Article shall
32 be administered by the Administrative Office of the Courts.

33 **"§ 7B-1503. Responsibilities of a community penalties program.**

34 A community penalties program shall be responsible for:

35 (1) Targeting offenders who are eligible to receive an intermediate
36 punishment based on their class of offense and prior record level and
37 who face an imminent and substantial threat of imprisonment;

38 (2) Preparing detailed community penalty plans for presentation to the
39 sentencing judge by the offender's attorney or at the request of the
40 sentencing judge;

41 (3) Contracting or arranging with public or private agencies for services
42 described in the community penalty plan; and

43 (4) Monitoring the progress of offenders under community penalty plans.

"§ 7B-1504. Requirements for a comprehensive community penalties program plan.

Agencies applying for grants shall prepare a comprehensive community penalties program plan for the development, implementation, operation, and improvement of a community penalties program for the circuit, as prescribed by the Director. Such plan shall include:

- (1) Objectives of the community penalties program;
- (2) Goals for reduction of offenders committed to prison for each county within the circuit, and a system of monitoring the number of commitments to prison;
- (3) Procedures for identifying targeted offenders, and a plan for referral of targeted offenders to the community penalties program;
- (4) Procedures for preparing and presenting community penalty plans to the court;
- (5) Procedures for obtaining services from existing public or private agencies, and a detailed budget for staff, contracted services, and all other costs;
- (6) Procedures for monitoring the progress of offenders on community penalty plans and for cooperating with the probation personnel who have supervisory responsibility for the offender;
- (7) Procedures for returning offenders who do not comply with their community penalty plan to court for action by the court; and
- (8) Procedures for evaluating the program's effect on numbers of prison commitments.

"§ 7B-1505. Community penalties board.

Each community penalties program shall establish a community penalties board to provide direction and assistance to the community penalties program in the implementation and evaluation of the plan. Community penalties boards may be organized as nonprofit corporations under Chapter 55A of the General Statutes. The community penalties board shall consist of not less than 12 members, and shall include, insofar as possible, judges, circuit attorneys, attorneys, social workers, law enforcement officers, probation officers, and other interested persons. The community penalties board shall meet on a regular basis, and its duties include the following:

- (1) Development of an annual budget for the program;
- (2) Hiring, firing, and evaluation of program personnel;
- (3) Selection of board members;
- (4) Arranging for a private and independent annual audit; and
- (5) Development of procedures for contracting for services.

"§ 7B-1506. Limitation on use of funds.

Funds provided for use under the provisions of this Article shall not be used for the operating costs, construction, or any other costs associated with local jail confinement.

"§ 7B-1507. Evaluation.

The Director shall evaluate each community penalties program on an annual basis to determine the degree to which the prison commitments have been reduced or have been

1 kept from increasing as a result of the community penalties program. The Director shall
2 not renew or continue a program that has failed to affect commitments and that shows no
3 promise of doing so in the future, after allowing for changes in the number of
4 convictions.

5 **"ARTICLE 16.**

6 **"COSTS AND FEES.**

7 **"§ 7B-1600. Purposes of costs and fees in the General Court of Justice.**

8 Fees are assessed in proceedings in the General Court of Justice to help defray the
9 costs of operating the courts, but it is not the policy of this State for the Judicial Branch to
10 be fully supported by the revenues it collects. Rather, it is intended to set fees at a level
11 that assures that litigants appreciate the gravity of their undertaking but that does not
12 make financial resources a significant factor in deciding whether to litigate. The portion
13 of fees charged for the support of facilities are not intended to fully satisfy the counties'
14 obligation to provide adequate facilities for the courts.

15 **"§ 7B-1601. Costs in criminal actions.**

16 (a) In every criminal case in the circuit court, wherein the defendant is convicted,
17 or enters a plea of guilty or no contest, or when costs are assessed against the prosecuting
18 witness, the following costs shall be assessed and collected, except that when the
19 judgment imposes an active prison sentence, costs shall be assessed and collected only
20 when the judgment specifically so provides, and that no costs may be assessed when a
21 case is dismissed.

22 (1) For each arrest or personal service of criminal process, including
23 citations and subpoenas, the sum of five dollars (\$5.00), to be remitted
24 to the county wherein the arrest was made or process was served, except
25 that in those cases in which the arrest was made or process served by a
26 law enforcement officer employed by a municipality, the fee shall be
27 paid to the municipality employing the officer.

28 (2) For the use of the courtroom and related judicial facilities, the sum of
29 six dollars (\$6.00) in misdemeanor and infraction cases, and the sum of
30 twenty-four dollars (\$24.00) in felony cases, to be remitted to the county
31 in which the judgment is rendered. In all cases where the judgment is
32 rendered in facilities provided by a municipality, the facilities fee shall
33 be paid to the municipality. Funds derived from the facilities fees shall
34 be used exclusively by the county or municipality for providing,
35 maintaining, and constructing adequate courtroom and related judicial
36 facilities, including: adequate space and furniture for judges, circuit
37 attorneys, public defenders, magistrates, juries, and other court related
38 personnel; office space, furniture and vaults for the clerk; jail and
39 juvenile detention facilities; free parking for jurors; and a law library
40 (including books) if one has heretofore been established or if the
41 governing body hereafter decides to establish one. In the event the funds
42 derived from the facilities fees exceed what is needed for these
43 purposes, the county or municipality may, with the approval of the

1 Administrative Officer of the Courts as to the amount, use any or all of
2 the excess to retire outstanding indebtedness incurred in the construction
3 of the facilities, or to reimburse the county or municipality for funds
4 expended in constructing or renovating the facilities, or to supplement
5 the operations of the General Court of Justice in the county.

6 (3) For the retirement and insurance benefits of both State and local
7 government law enforcement officers, the sum of seven dollars and
8 twenty-five cents (\$7.25), to be remitted to the State Treasurer. Fifty
9 cents (50¢) of this sum shall be administered as is provided in Article
10 12C of Chapter 143 of the General Statutes. Five dollars and seventy-
11 five cents (\$5.75) of this sum shall be administered as is provided in
12 Article 12E of Chapter 143 of the General Statutes, with one dollar and
13 twenty-five cents (\$1.25) being administered in accordance with the
14 provisions of G.S. 143-166.50(e). One dollar (\$1.00) of this sum shall
15 be administered as is provided in Article 12F of Chapter 143 of the
16 General Statutes.

17 (3a) For the supplemental pension benefits of sheriffs, the sum of seventy-
18 five cents (75¢) to be remitted to the Department of Justice and
19 administered under the provisions of Article 12G of Chapter 143 of the
20 General Statutes.

21 (4) For support of the General Court of Justice, the sum of forty-six dollars
22 (\$46.00) in misdemeanor and infraction cases, and the sum of fifty-three
23 dollars (\$53.00) in felony cases, to be remitted to the State Treasurer.

24 (5) For using pretrial release services, the circuit court judge shall, upon
25 conviction, impose a fee of fifteen dollars (\$15.00) to be remitted to the
26 county providing the pretrial release services. This cost shall be assessed
27 and collected only if the defendant had been accepted and released to
28 the supervision of the agency providing the pretrial release services.

29 (6) For support of the General Court of Justice, for the issuance by the clerk
30 of a report to the Division of Motor Vehicles pursuant to G.S. 20-24.2,
31 the sum of fifty dollars (\$50.00), to be remitted to the State Treasurer.
32 Upon a showing to the court that the defendant failed to appear because
33 of an error or omission of a judicial official, a prosecutor, or a law
34 enforcement officer, the court shall waive this fee.

35 (a1) The costs assessed pursuant to subsection (a) of this section may also be
36 collected by clerks of court for charges in which a party elects to pay the court's costs to
37 satisfy the requirements of G.S. 20-7.2. Costs collected pursuant to this subsection shall
38 be allocated in the same manner as other costs collected pursuant to this section. If a
39 party elects to pay the costs of court to satisfy the requirements of G.S. 20-7.2 and is
40 subsequently adjudged guilty of the same charge by the court, he shall not be required to
41 pay the costs of court again for that charge, but he is subject to any other orders of the
42 court, including an order to pay a fine.

1 (b) Witness fees, expenses for blood tests and comparisons incurred by G.S. 8-
2 50.1(a), jail fees and cost of necessary trial transcripts shall be assessed as provided by
3 law in addition to other costs set out in this section. Nothing in this section shall limit the
4 power or discretion of the judge in imposing fines or forfeitures or ordering restitution.

5 (c) In any criminal case in which the liability for costs, fines, restitution, or any
6 other lawful charge has been finally determined, the clerk of court shall, unless otherwise
7 ordered by the presiding judge, disburse such funds when paid in accordance with the
8 following priorities:

9 (1) Costs due the county;

10 (2) Costs due the city;

11 (3) Fines to the county school fund;

12 (4) Sums in restitution prorated among the persons entitled thereto;

13 (5) Costs due the State;

14 (6) Attorneys' fees.

15 Sums in restitution received by the clerk of court shall be disbursed when:

16 (1) Complete restitution has been received; or

17 (2) When, in the opinion of the clerk, additional payments in restriction will
18 not be collected; or

19 (3) Upon the request of the person or persons entitled thereto; and

20 (4) In any event, at least once each calendar year.

21 **"§ 7B-1602. Costs in civil actions.**

22 (a) In every civil action in the circuit court the following costs shall be assessed:

23 (1) For the use of the courtroom and related judicial facilities, the sum of
24 six dollars (\$6.00) in cases heard before a magistrate, and the sum of ten
25 dollars (\$10.00) in circuit court, to be remitted to the county in which
26 the judgment is rendered, except that in all cases in which the judgment
27 is rendered in facilities provided by a municipality, the facilities fee
28 shall be paid to the municipality. Funds derived from the facilities fees
29 shall be used in the same manner, for the same purposes, and subject to
30 the same restrictions, as facilities fees assessed in criminal actions.

31 (2) For support of the General Court of Justice, the sum of fifty-five dollars
32 (\$55.00) in the circuit court, except that if the case is assigned to a
33 magistrate the sum shall be twenty-eight dollars (\$28.00). Sums
34 collected under this subsection shall be remitted to the State Treasurer.

35 (b) On appeal, costs are cumulative, and when cases heard before a magistrate are
36 appealed to the circuit court, the General Court of Justice fee and the facilities fee
37 applicable in the circuit court shall be added to the fees assessed before the magistrate.
38 When an order of the clerk of court is appealed to the circuit court, no additional General
39 Court of Justice fee or facilities fee shall be assessed.

40 (c) When a defendant files an answer in an action filed as a small claim which
41 requires the entire case to be withdrawn from a magistrate and transferred to the circuit
42 court, the difference between the General Court of Justice fee and facilities fee applicable
43 to the circuit court and the General Court of Justice fee and facilities fee applicable to

1 cases heard by a magistrate shall be assessed. The defendant is responsible for paying the
2 fee.

3 (d) The clerk of court, at the time of the filing of the papers initiating the action or
4 the appeal, shall collect as advance court costs, the facilities fee and General Court of
5 Justice fee, except in suits by an indigent. The clerk shall also collect the fee for
6 discovery procedures under Rule 27(a) and (b) at the time of the filing of the verified
7 petition.

8 (e) The following expenses, when incurred, are also assessable or recoverable, as
9 the case may be:

10 (1) Witness fees, as provided by law.

11 (2) Jail fees, as provided by law.

12 (3) Counsel fees, as provided by law.

13 (4) Expense of service of process by certified mail and by publication.

14 (5) Costs on appeal to the circuit court, or to the Appellate Division, as the
15 case may be, of the original transcript of testimony, if any, insofar as
16 essential to the appeal.

17 (6) Fees for personal service and civil process and other sheriff's fees, as
18 provided by law. Fees for personal service by a private process server
19 may be recoverable in an amount equal to the actual cost of such service
20 or fifty dollars (\$50.00), whichever is less, unless the court finds that
21 due to difficulty of service a greater amount is appropriate.

22 (7) Fees of guardians ad litem, referees, receivers, commissioners,
23 surveyors, arbitrators, appraisers, and other similar court appointees, as
24 provided by law. The fee of such appointees shall include reasonable
25 reimbursement for stenographic assistance, when necessary.

26 (8) Fees of interpreters, when authorized and approved by the court.

27 (9) Premiums for surety bonds for prosecution, as authorized by G.S. 1-109.

28 (f) Nothing in this section shall affect the liability of the respective parties for
29 costs as provided by law.

30 **"§ 7B-1603. Discovery, fee on filing verified petition.**

31 When discovery procedures under Rule 27 of the Rules of Civil Procedure are
32 utilized, the sum of twenty dollars (\$20.00) shall be assessed and collected by the clerk at
33 the time of the filing of the verified petition. If a civil action is subsequently initiated, the
34 twenty dollars (\$20.00) shall be credited against costs in the civil action.

35 **"§ 7B-1604. Costs in special proceedings.**

36 (a) In every special proceeding in the circuit court, the following costs shall be
37 assessed:

38 (1) For the use of the courtroom and related judicial facilities, the sum of
39 four dollars (\$4.00) to be remitted to the county. Funds derived from the
40 facilities fees shall be used in the same manner, for the same purposes,
41 and subject to the same restrictions, as facilities fees assessed in
42 criminal actions.

1 (2) For support of the General Court of Justice, the sum of twenty-six
2 dollars (\$26.00). In addition, in proceedings involving land, except
3 boundary disputes, if the fair market value of the land involved is over
4 one hundred dollars (\$100.00), there shall be an additional sum of thirty
5 cents (30¢) per one hundred dollars (\$100.00) of value, or major
6 fraction thereof, not to exceed a maximum additional sum of two
7 hundred dollars (\$200.00). Fair market value is determined by the sale
8 price if there is a sale, the appraiser's valuation if there is no sale, or the
9 appraised value from the property tax records if there is neither a sale
10 nor an appraiser's valuation. Sums collected under this subsection shall
11 be remitted to the State Treasurer.

12 (b) The facilities fee and twenty-six dollars (\$26.00) of the General Court of
13 Justice fee are payable at the time the proceeding is initiated.

14 (c) The following additional expenses, when incurred, are assessable or
15 recoverable, as the case may be:

16 (1) Witness fees, as provided by law.

17 (2) Counsel fees, as provided by law.

18 (3) Costs on appeal, of the original transcript of testimony, if any, insofar as
19 essential to the appeal.

20 (4) Fees for personal service of civil process, and other sheriff's fees, and
21 for service by publication, as provided by law.

22 (5) Fees of guardians ad litem, referees, receivers, commissioners,
23 surveyors, arbitrators, appraisers, and other similar court appointees, as
24 provided by law. The fees of such appointees shall include reasonable
25 reimbursement for stenographic assistance, when necessary.

26 (d) Costs assessed before the clerk shall be added to costs assessable on appeal to
27 the judge or upon transfer to the civil issue docket.

28 (e) Nothing in this section shall affect the liability of the respective parties for
29 costs, as provided by law.

30 (f) This section does not apply to a foreclosure under power of sale in a deed of
31 trust or mortgage.

32 **"§ 7B-1605. Costs in administration of estates.**

33 (a) In the administration of the estates of decedents, minors, incompetents, of
34 missing persons, and of trusts under wills and under powers of attorney, and in
35 collections of personal property by affidavit, the following costs shall be assessed:

36 (1) For the use of the courtroom and related judicial facilities, the sum of
37 four dollars (\$4.00), to be remitted to the county. Funds derived from
38 the facilities fees shall be used in the same manner, for the same
39 purposes, and subject to the same restrictions, as facilities fees assessed
40 in criminal actions.

41 (2) For support of the General Court of Justice, the sum of twenty-six
42 dollars (\$26.00), plus an additional forty cents (40¢) per one hundred
43 dollars (\$100.00), or major fraction thereof, of the gross estate, not to

1 exceed three thousand dollars (\$3,000). Gross estate shall include the
2 fair market value of all personalty when received, and all proceeds from
3 the sale of realty coming into the hands of the fiduciary, but shall not
4 include the value of realty. In collections of personal property by
5 affidavit, the fee based on the gross estate shall be computed from the
6 information in the final affidavit of collection made pursuant to G.S.
7 28A-25-3 and shall be paid when that affidavit is filed. In all other
8 cases, this fee shall be computed from the information reported in the
9 inventory and shall be paid when the inventory is filed with the clerk. If
10 additional gross estate, including income, comes into the hands of the
11 fiduciary after the filing of the inventory, the fee for such additional
12 value shall be assessed and paid upon the filing of any account or report
13 disclosing such additional value. For each filing, the minimum fee shall
14 be ten dollars (\$10.00). Sums collected under this subsection shall be
15 remitted to the State Treasurer.

16 (2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents
17 (40¢) per one hundred dollars (\$100.00), or major fraction thereof of the
18 gross estate, not to exceed three thousand dollars (\$3,000), shall not be
19 assessed on personalty received by a trust under a will when the estate
20 of the decedent was administered under Chapters 28 or 28A of the
21 General Statutes. Instead, a fee of fifteen dollars (\$15.00) shall be
22 assessed on the filing of each annual and final account.

23 (2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs
24 shall be assessed when the estate is administered or settled pursuant to
25 G.S. 28A-25-6.

26 (3) For probate of a will without qualification of a personal representative,
27 the clerk shall assess a facilities fee as provided in subdivision (1) of
28 this subsection and shall assess for support of the General Court of
29 Justice, the sum of seventeen dollars (\$17.00).

30 (b) In collections of personal property by affidavit, the facilities fee and twenty-six
31 dollars (\$26.00) of the General Court of Justice fee shall be paid at the time of filing the
32 qualifying affidavit pursuant to G.S. 28A-25-1. In all other cases, these fees shall be paid
33 at the time of filing of the first inventory. If the sole asset of the estate is a cause of
34 action, the thirty dollars (\$30.00) shall be paid at the time of the qualification of the
35 fiduciary.

36 (b1) The clerk shall assess the following miscellaneous fees:

37 (1) Filing and indexing a will with no probate

38 – first page \$ 1.00

39 – each additional page or fraction thereof .25

40 (2) Issuing letters to fiduciaries, per letter over five letters issued 1.00

41 (3) Inventory of safe deposits of a decedent, per box, per day 15.00

42 (4) Taking a deposition 5.00

43 (5) Docketing and indexing a will probated in another

1 county in the State

2 – first page 1.00

3 – each additional page or fraction thereof .25.

4 (c) The following additional expenses, when incurred, are also assessable or
5 recoverable, as the case may be:

6 (1) Witness fees, as provided by law.

7 (2) Counsel fees, as provided by law.

8 (3) Costs on appeal, of the original transcript of testimony, if any, insofar as
9 essential to the appeal.

10 (4) Fees for personal service of civil process, and other sheriff's fees, as
11 provided by law.

12 (5) Fees of guardians ad litem, referees, receivers, commissioners,
13 surveyors, arbitrators, appraisers, and other similar court appointees, as
14 provided by law.

15 (d) Costs assessed before the clerk shall be added to costs assessable on appeal to
16 the judge or upon transfer to the civil issue docket.

17 (e) Nothing in this section shall affect the liability of the respective parties for
18 costs, as provided by law.

19 ""§ 7B-1606. Miscellaneous fees and commissions.

20 (a) The following miscellaneous fees and commissions shall be collected by the
21 clerk of court and remitted to the State for the support of the General Court of Justice:

22 (1) Foreclosure under power of sale in deed of trust or mortgage \$25.00

23 Plus if the property is sold pursuant to the power of sale, an additional
24 sum of thirty cents (30¢) per one hundred dollars (\$100.00), or major
25 fraction thereof, of the final sale price shall be collected. In no case shall
26 the additional sum exceed two hundred dollars (\$200.00).

27 (2) Proceeding supplemental to execution 20.00

28 (3) Confession of judgment 15.00

29 (4) Taking a deposition 5.00

30 (5) Execution 15.00

31 (6) Notice of resumption of former name 5.00

32 (7) Taking an acknowledgment or administering an oath, or both, with or
33 without seal, each certificate (except that oaths of office shall be
34 administered to public officials without charge) 1.00

35 (8) Bond, taking justification or approving 5.00

36 (9) Certificate, under seal 2.00

37 (10) Exemplification of records 5.00

38 (11) Recording or docketing (including indexing) any document

39 – first page 4.00

40 – each additional page or fraction thereof .25

41 (12) Preparation of copies

42 – first page 1.00

43 – each additional page or fraction thereof .25

- 1 (13) Preparation and docketing of transcript of judgment 5.00
2 (14) Substitution of trustee in deed of trust 5.00
3 (15) Execution of passport application – the amount allowed by federal law
4 (16) Criminal record search except if search is requested by an agency of the
5 State tor any of its political subdivisions or by an agency of the United
6 States or by a petitioner in a proceeding under Article 2 of Chapter 20 of
7 the General Statutes 5.00
8 (18) Filing the affirmations, acknowledgments, agreements and resulting
9 orders entered into under the provisions of G.S. 110-132 and G.S. 110-
10 133 4.00.

11 (b) The fees and commissions set forth in this section are not chargeable when the
12 service is performed as a part of the regular disposition of any action or special
13 proceeding or the administration of an estate. When a transaction involves more than one
14 of the services set forth in this section, only the greater service fee shall be charged. The
15 Director of the Administrative Office of the Courts shall issue guidelines to be followed
16 in administering this subsection.

17 **"§ 7B-1607. Fees on deposits and investments.**

18 On all funds received by the clerk by virtue or color of his office and deposited
19 pursuant to G.S. 7B-1205 or invested pursuant to G.S. 7B-1205 one or both of the fees
20 provided for in this section shall be assessed and collected as follows:

- 21 (1) On all funds deposited by the clerk in an interest-bearing checking
22 account pursuant to G.S. 7B-1205, a fee of four percent (4%) of each
23 principal amount so deposited shall be assessed and collected, subject to
24 the following conditions:
25 a. The fee shall be collected from interest earnings only and shall
26 not exceed the amount of the interest earnings on any principal
27 amount so deposited, or seven hundred fifty dollars (\$750.00),
28 whichever is less;
29 b. All fees collected pursuant to this subdivision shall be paid to the
30 county as court facilities fees and used as prescribed in G.S. 7B-
31 1601(a)(2);
32 c. All interest earnings in excess of the prescribed fee shall be
33 remitted to the beneficial owner or owners of any principal
34 amount when that amount is withdrawn and distributed by the
35 clerk; and
36 d. If any principal amount is withdrawn from the checking account
37 and invested pursuant to G.S. 7B-1205, any interest in excess of
38 the prescribed clerk's fee which is invested with the principal
39 amount shall be included in the fund upon which the fee provided
40 for in subdivision (2) is computed.
41 (2) On all funds to be invested by the clerk pursuant to G.S. 7B-1205, a fee
42 equal to five percent (5%) of each fund shall be assessed and collected,
43 subject to the following conditions:

- 1 a. The fee shall be charged and deducted from each fund before the
2 fund is invested, and only the balance shall be invested;
3 b. Over the life of an account, the fees charged on the initial funds
4 and all funds subsequently placed with the clerk for that account
5 shall not exceed the investment earnings on the account or one
6 thousand dollars (\$1,000), whichever is less;
7 c. All fees collected pursuant to this subdivision shall be remitted to
8 the State Treasurer for the support of the General Court of
9 Justice; and
10 d. Any fees charged in excess of the cumulative investment
11 earnings on an account shall be refunded and all investment
12 earnings in excess of the prescribed fee shall be remitted to the
13 beneficial owner or owners when all funds in that account are
14 finally withdrawn and distributed by the clerk.

15 **"§ 7B-1608. Magistrate's special fees.**

16 The following special fees shall be collected by the magistrate and remitted to the
17 clerk of court for the use of the State in support of the General Court of Justice:

- 18 (1) Performing marriage ceremony \$10.00
19 (2) Hearing petition for year's allowance to surviving spouse or child,
20 issuing notices to commissioners, allotting the same, and making return
21 4.00
22 (3) Taking a deposition 5.00
23 (4) Proof of execution or acknowledgment of any instrument 1.00
24 (5) Performing any other statutory function not incident to a civil or
25 criminal action 1.00.

26 **"§ 7B-1609. Fees of commissioners and assessors appointed by magistrate.**

27 Any person appointed by a magistrate as a commissioner or assessor, and who shall
28 serve, shall be paid the sum of two dollars (\$2.00) to be taxed as a part of the bill of costs
29 of the proceeding.

30 **"§ 7B-1610. Uniform civil process fees.**

31 (a) In a civil action or special proceeding, the following fees and commissions
32 shall be assessed, collected, and remitted to the county:

- 33 (1) For every civil action filed, for each item of civil process, including
34 summons, subpoenas, notices, motions, orders, writs and pleadings
35 served, the sum of five dollars (\$5.00). When two or more items of civil
36 process are served simultaneously on one party, only one five dollar
37 (\$5.00) fee shall be charged. When an item of civil process is served on
38 two or more persons or organizations, a separate service charge shall be
39 made for each person or organization. If the process is served, or
40 attempted to be served, by a city policeman, the fee shall be remitted to
41 the city rather than the county. If the process is served, or attempted to
42 be served by the sheriff, the fee shall be remitted to the county. This
43 subsection shall not apply to service of summons to jurors.

- 1 (2) For the seizure of personal property and its care after seizure, all
2 necessary expenses, in addition to any fees for service of process.
- 3 (3) For all sales by the sheriff of property, either real or personal, or for
4 funds collected by the sheriff under any judgment, five percent (5%) on
5 the first five hundred dollars (\$500.00), and two and one-half percent (2
6 1/2%) on all sums over five hundred dollars (\$500.00), plus necessary
7 expenses of sale. Whenever an execution is issued to the sheriff, and
8 subsequently while the execution is in force and outstanding, and after
9 the sheriff has served or attempted to serve such execution, the
10 judgment, or any part thereof, is paid directly or indirectly to the
11 judgment creditor, the fee herein is payable to the sheriff on the amount
12 so paid. The judgment creditor shall be responsible for collecting and
13 paying all execution fees on amounts paid directly to the judgment
14 creditor.
- 15 (4) For execution of a judgment of ejectment, all necessary expenses, in
16 addition to any fees for service of process.
- 17 (5) For necessary transportation of individuals to or from State institutions
18 or another state, the same mileage and subsistence allowances as are
19 provided for State employees.

20 (b) All fees shall be collected in advance (except in suits in forma pauperis) except
21 those contingent on expenses or sales prices. When the fee is not collected in advance or
22 at the time of assessment, a lien shall exist in favor of the county on all property of the
23 party owing the fee. If the fee remains unpaid, it shall be entered as a judgment against
24 the debtor and shall be docketed in the judgment docket in the office of the clerk of
25 circuit court.

26 (c) The process fees and commissions set forth in this section are complete and
27 exclusive and in lieu of any and all other process fees and commissions in civil actions
28 and special proceedings.

29 **"§ 7B-1611. Uniform fees for jurors; meals.**

30 A juror in the General Court of Justice including a petit juror, or a coroner's juror, but
31 excluding a grand juror, shall receive twelve dollars (\$12.00) per day, except that if any
32 person serves as a juror for more than five days in any 24-month period, the juror shall
33 receive thirty dollars (\$30.00) per day for each day of service in excess of five days. A
34 grand juror shall receive twelve dollars (\$12.00) per day. A juror required to remain
35 overnight at the site of the trial shall be furnished adequate accommodations and
36 subsistence. If required by the presiding judge to remain in a body during the trial of a
37 case, meals shall be furnished the jurors during the period of sequestration. Jurors from
38 out of the county summoned to sit on a special venire shall receive mileage at the same
39 rate as State employees.

40 **"§ 7B-1612. Uniform jail fees.**

41 Only persons who are lawfully confined in jail awaiting trial, or who are ordered to
42 pay jail fees pursuant to a probationary sentence, shall be liable to the county or
43 municipality maintaining the jail in the sum of five dollars (\$5.00) for each 24 hours'

1 confinement, or fraction thereof, except that a person so confined shall not be liable for
2 this fee if the case or proceeding against him is dismissed, or if acquitted, or if judgment
3 is arrested, or if probable cause is not found, or if the grand jury fails to return a true bill.

4 **"§ 7B-1613. Uniform fees for witnesses; experts; limit on number.**

5 (a) A witness under subpoena, bound over, or recognized, other than a salaried
6 State, county, or municipal law enforcement officer, or an out-of-state witness in a
7 criminal case, whether to testify before the court, Judicial Standards Commission, jury of
8 view, magistrate, clerk, referee, commissioner, appraiser, or arbitrator shall be entitled to
9 receive five dollars (\$5.00) per day, or fraction thereof, during his attendance, which,
10 except as to witnesses before the Judicial Standards Commission, must be certified to the
11 clerk of court.

12 (b) A witness entitled to the fee set forth in subsection (a) of this section, and a law
13 enforcement officer who qualifies as a witness, shall be entitled to receive reimbursement
14 for travel expenses as follows:

15 (1) A witness whose residence is outside the county of appearance but
16 within 75 miles of the place of appearance shall be entitled to receive
17 mileage reimbursement at the rate currently authorized for State
18 employees, for each mile necessarily traveled from his place of
19 residence to the place of appearance and return, each day.

20 (2) A witness whose residence is outside the county of appearance and
21 more than 75 miles from the place of appearance shall be entitled to
22 receive mileage reimbursement at the rate currently authorized for State
23 employees for one round-trip from his place of residence to the place of
24 appearance. A witness required to appear more than one day shall be
25 entitled to receive reimbursement for actual expenses incurred for
26 lodging and meals not to exceed the maximum currently authorized for
27 State employees in lieu of daily mileage.

28 (c) A witness who resides in a state other than North Carolina and who appears for
29 the purpose of testifying in a criminal action and proves his attendance may be
30 compensated at the rate of ten cents (10¢) a mile for one round-trip from his place of
31 residence to the place of appearance, and five dollars (\$5.00) for each day that he is
32 required to travel and attend as a witness, upon order of the court based upon a finding
33 that the person was a necessary witness. If such a witness is required to appear more than
34 one day, he is also entitled to reimbursement for actual expenses incurred for lodging and
35 meals, not to exceed the maximum currently authorized for State employees.

36 (d) An expert witness, other than a salaried State, county, or municipal law
37 enforcement officer, shall receive such compensation and allowances as the court, or the
38 Judicial Standards Commission, in its discretion, may authorize. A law enforcement
39 officer who appears as an expert witness shall receive reimbursement for travel expenses
40 only, as provided in subsection (b) of this section.

41 (e) If more than two witnesses are subpoenaed, bound over, or recognized to prove
42 a single material fact, the expense of the additional witnesses shall be borne by the party
43 issuing or requesting the subpoena.

1 (f) In a criminal case when a person who does not speak or understand the English
2 language is an indigent defendant, a witness for an indigent defendant, or a witness for
3 the State and the court appoints a language interpreter to assist that defendant or witness
4 in the case, the reasonable fee for the interpreter's services, as set by the court, are
5 payable from funds appropriated to the Administrative Office of the Courts.

6 **"§ 7B-1614. Liability of State for witness fees in criminal cases when defendant not**
7 **liable.**

8 In a criminal action, if no prosecuting witness is designated by the court as liable for
9 the costs, and the defendant is acquitted, or convicted and unable to pay, or a nolle
10 prosequi is entered, or judgment is arrested, or probable cause is not found, or the grand
11 jury fails to return a true bill, the State shall be liable for the witness fees allowed
12 pursuant to G.S. 7B-1613 and any expenses for blood tests and comparisons incurred
13 pursuant to G.S. 8-50.1(a).

14 **"§ 7B-1615. Payment of witness fees in criminal actions.**

15 A witness in a criminal action who is entitled to a witness fee and who proves his
16 attendance prior to assessment of the bill of costs shall be paid by the clerk from State
17 funds, and the amount disbursed shall be assessed in the bill of costs. When the State is
18 liable for the fee, a witness who proves his attendance not later than the last day of court
19 in the week in which the trial was completed shall be paid by the clerk from State funds.
20 If more than two witnesses shall be subpoenaed, bound over, or recognized to prove a
21 single material fact, disbursements to such additional witnesses shall be charged against
22 the party issuing or requesting the subpoena.

23 **"§ 7B-1616. Counties and municipalities not required to advance certain fees.**

24 Counties and municipalities are not required to advance costs for the facilities fee, the
25 General Court of Justice fee, the miscellaneous fees enumerated in G.S. 7B-1606, or the
26 civil process fees enumerated in G.S. 7B-1610.

27 **"§ 7B-1617. Disposition of fees in counties with unincorporated seats of court.**

28 Notwithstanding any other provision of this Article, if a municipality in which circuit
29 court is conducted is not incorporated, the arrest, facilities, and jail fees which would
30 ordinarily accrue thereto, shall instead accrue to the county in which the unincorporated
31 municipality is located.

32 **"§ 7B-1618. Costs are exclusive.**

33 The costs set forth in this Article are complete and exclusive and in lieu of any other
34 costs and fees."

35 Section 3. Article 60 of Chapter 7A of the General Statutes, "Office of
36 Administrative Hearings", G.S. 7A-750 through G.S. 7A-759, is recodified as Article 17
37 of Chapter 7B of the General Statutes, G.S. 7B-1700 through 7B-1709. The Revisor of
38 Statutes shall change the reference in G.S. 7A-756, recodified as G.S. 7B-1706, from
39 "Superior Court Division" to "Trial Division", and the reference in G.S. 7A-759,
40 recodified as G.S. 7B-1609, from "G.S. 7A-756" to "G.S. 7B-1706".

41 Section 4. Article 9 of Chapter 143B of the General Statutes is amended by
42 adding two new Parts to read:

43 **"PART 29. OFFICE OF SOLICITOR GENERAL.**

1 **"§ 143B-426.50. Creation and duties of Office of Solicitor General.**

2 (a) The Office of Solicitor General, headed by the Solicitor General, is created in
3 the Department of Administration, and includes the Prosecutorial Standards Commission
4 and the circuit attorneys provided for in Article 1 of Chapter 15C of the General Statutes.

5 (b) The Office of the Solicitor General shall represent the State in criminal
6 appeals, provide oversight and coordination of and assistance to circuit attorneys' offices,
7 and perform the other duties set forth in Article 1 of Chapter 15C of the General Statutes.

8 (c) The Solicitor General shall exercise the duties of the office independently of
9 the Secretary of Administration, but in matters related to the internal administration of the
10 office, the Solicitor General is subject to general administrative oversight by the
11 Secretary. The term 'internal administration', as used in this section, means planning,
12 organizing, and administering the personnel system for and the budget of the office. The
13 Secretary of Administration shall not exercise oversight with respect to the preparation of
14 a proposed budget for the Office of Solicitor General or the representation of the Office
15 of Solicitor General in matters before the General Assembly.

16 **"PART 30. OFFICE OF STATE PUBLIC DEFENDER.**

17 **"§ 143B-426.60. Creation and duties of Office of State Public Defender.**

18 (a) The Office of the State Public Defender, headed by the State Public Defender,
19 is created in the Department of Administration, and includes the State Public Defender
20 Board and the circuit public defenders provided for in Article 2 of Chapter 15C of the
21 General Statutes.

22 (b) The Office of the State Public Defender shall provide legal representation to (i)
23 indigent persons charged with crimes who are entitled by law to that representation and
24 (ii) any other indigent persons entitled to legal representation under Article 2 of Chapter
25 15C of the General Statutes and for whom no other provision is made to appoint counsel.

26 (c) The State Public Defender shall exercise the duties of the office
27 independently of the Secretary of Administration, but in matters related to the internal
28 administration of the office, the State Public Defender is subject to general administrative
29 oversight by the Secretary. The term 'internal administration', as used in this section,
30 means planning, organizing, and administering the personnel system for and
31 administering the budget of the office. The Secretary of Administration shall not exercise
32 oversight with respect to the preparation of a proposed budget for the Office of State
33 Public Defender or the representation of the Office of the State Public Defender in
34 matters before the General Assembly."

35 Section 5. The General Statutes are amended by adding a new Chapter to read:

36 **"CHAPTER 15C.**

37 **"PROSECUTION AND INDIGENT DEFENSE.**

38 **"ARTICLE 1.**

39 **"PROSECUTION.**

40 **"§ 15C-100. Solicitor General.**

41 The Solicitor General heads the Office of Solicitor General, established in Part 29 of
42 Article 9 of Chapter 143B of the General Statutes. The Solicitor General is appointed by
43 the Governor. The initial term of office shall expire on July 1, 2006, and successors shall

1 be appointed to serve six-year terms. The Solicitor General shall be an attorney licensed
2 and eligible to practice in the courts of this State at the time of the appointment and at all
3 times during service as Solicitor General. The Solicitor General may appoint assistant
4 solicitors general and other supporting staff to assist in the performance of the duties of
5 the office, as authorized by the General Assembly.

6 **"§ 15C-101. Duties of the Solicitor General.**

7 The Solicitor General shall:

- 8 (1) Represent the State in appeals of criminal matters heard in the appellate
9 courts of this State and in the federal courts;
- 10 (2) Prepare and propose to the Governor a budget for the operation of the
11 Office of Solicitor General;
- 12 (3) Administer the budget for the Office of Solicitor General and provide
13 administrative oversight of circuit attorney's offices in matters related to
14 personnel and budget administration, information services, and other
15 administrative matters;
- 16 (4) Assist circuit attorneys in the performance of their duties;
- 17 (5) If ordered by a court to do so, provide for the prosecution of cases in
18 which a circuit attorney is charged with a criminal offense or infraction;
- 19 (6) With the consent of the circuit attorneys involved, assign assistant
20 solicitors general or prosecutors to temporary duty outside their circuit
21 when necessary to manage overcrowded dockets or cases in which a
22 circuit attorney's office has a conflict of interest; and
- 23 (7) Perform other duties as the General Assembly may assign to the office.

24 **"§ 15C-102. Circuit attorneys.**

25 The counties of the State are divided into prosecutorial circuits coterminus with the
26 circuits established pursuant to G.S. 7B-1200. There shall be a circuit attorney for each
27 circuit. The circuit attorney shall be elected by the voters of the circuit in nonpartisan
28 elections for four-year terms. The circuit attorney shall be a resident of the circuit for
29 which elected. A vacancy in the office is filled as provided in Section 12 of Article III of
30 the North Carolina Constitution.

31 **"§ 15C-103. Acting circuit attorney or Solicitor General.**

32 When a circuit attorney or Solicitor General for any reason becomes unable to
33 perform the duties of the office, including a suspension pursuant to the provisions of G.S.
34 15C-106, the Governor shall appoint an acting circuit attorney or Solicitor General to
35 serve during the period of disability. An acting circuit attorney has all the power,
36 authority, and duties of the circuit attorney. An acting Solicitor General has all the
37 power, authority, and duties of the Solicitor General. The acting circuit attorney or
38 Solicitor General shall take the oath of office prescribed for the circuit attorney or
39 Solicitor General, and shall receive the same compensation as the circuit attorney or the
40 Solicitor General.

41 **"§ 15C-104. Assistant circuit attorneys and other staff.**

42 (a) Each circuit attorney is entitled to the number of full-time assistant circuit
43 attorneys authorized by the General Assembly, to be appointed by the circuit attorney to

1 serve at the pleasure of the circuit attorney. A vacancy in the office of assistant circuit
2 attorney shall be filled in the same manner as the initial appointment. An assistant circuit
3 attorney shall take the same oath of office as the circuit attorney and shall perform those
4 duties assigned by the circuit attorney. Assistant circuit attorneys shall devote full time
5 to the duties of the office and shall not engage in the private practice of law during the
6 term of employment as an assistant circuit attorney.

7 (b) Each circuit attorney is entitled to employ an administrative assistant and those
8 additional administrative, clerical, and investigative assistants authorized by the General
9 Assembly and the Solicitor General.

10 **"§ 15C-105. Duties of circuit attorney.**

11 (a) The circuit attorney shall:

12 (1) Prosecute in the name of the State all criminal action and infractions
13 requiring prosecution in the circuit courts of the prosecutorial circuit;

14 (2) Advise the officers of justice in the circuit;

15 (3) Represent the State in juvenile cases in which the juvenile is alleged to
16 be delinquent or undisciplined; and

17 (4) Perform those duties related to appeals as the Solicitor General may
18 require.

19 (b) Each circuit attorney shall devote full time to the duties of the office and shall
20 not engage in the private practice of law.

21 (c) In matters related to the exercise of prosecutorial discretion at the circuit court
22 level, the circuit attorney shall not be subject to the direction of the Solicitor General.

23 **"§ 15C-106. Grounds for removal of circuit attorneys and Solicitor General.**

24 The following are grounds for suspension or removal from office of a circuit attorney
25 or the Solicitor General:

26 (1) Mental or physical incapacity interfering with the performance of duties
27 which is, or is likely to become, permanent;

28 (2) Willful misconduct in office;

29 (3) Willful and persistent failure to perform the duties of the office;

30 (4) Habitual intemperance;

31 (5) Conviction of a crime involving moral turpitude;

32 (6) Conduct prejudicial to the administration of justice which brings the
33 office into disrepute; and

34 (7) Knowingly authorizing or permitting an assistant circuit attorney or
35 assistant solicitor general to commit any act constituting grounds for
36 removal, as defined in subdivisions (1) through (6) of this section.

37 **"§ 15C-107. Prosecutorial Standards Commission.**

38 (a) The Prosecutorial Standards Commission shall consist of six members
39 appointed as follows:

40 (1) Two circuit attorneys chosen by the circuit attorneys;

41 (2) Two attorneys appointed by the President of the North Carolina State
42 Bar;

1 (3) One nonattorney appointed by the General Assembly upon the
2 recommendation of the Speaker of the House of Representatives; and

3 (4) One nonattorney appointed by the General Assembly upon the
4 recommendation of the President Pro Tempore of the Senate.

5 (b) The terms of office for members of the Commission shall be for six years
6 except that, to achieve staggered terms, the circuit attorneys shall designate one of the
7 two circuit attorneys to serve an initial term of two years and the other to serve a term of
8 four years, and the President of the North Carolina State Bar shall designate one of the
9 two attorneys to serve an initial term of two years and the other to serve an initial term of
10 four years. The Commission shall appoint a chair from its membership. Vacancies are
11 filled in the same manner as the original appointment for the remainder of the term.
12 Members who are not circuit attorneys are entitled to per diem, and all members are
13 entitled to reimbursement for travel and subsistence expenses at the rate applicable to
14 members of State boards and commissions generally for each day engaged in official
15 business.

16 (c) If a member of the Commission who is a circuit attorney becomes disabled, or
17 becomes a respondent before the Commission, the circuit attorneys shall choose an
18 alternate member to serve during the period of disability or disqualification. If any other
19 member of the Commission becomes disabled, the appointing authority shall appoint an
20 alternate member to serve during the period of disability. In a particular case, if a
21 member disqualifies himself or is successfully challenged for cause, the member's seat
22 for that case shall be filled by an alternate member selected as provided in this
23 subsection.

24 (d) A member may serve after expiration of the member's term only to participate
25 until the conclusion of a formal proceeding begun before expiration of the term. That
26 participation shall not prevent the successor from taking office, but the successor may not
27 participate in the proceeding for which the predecessor's term was extended.

28 (e) The executive secretary, special counsel, and investigator employed by the
29 Judicial Standards Commission pursuant to G.S. 7B-702(b) shall assist the Prosecutorial
30 Standards Commission in carrying out its duties. While performing duties for the
31 Commission, the executive secretary, special counsel, or investigator has authority
32 throughout the State to serve subpoenas or other process issued by the Commission in the
33 same manner and with the same effect as an officer authorized to serve process of the
34 General Court of Justice.

35 **"§ 15C-108. Procedures; employment of executive secretary, special counsel, or**
36 **investigator.**

37 (a) Any citizen of the State may file a written complaint with the Commission
38 concerning the qualifications or conduct of a circuit attorney or the Solicitor General, and
39 the Commission shall investigate the complaint as it considers necessary. The
40 Commission may also make an investigation on its own motion. The Commission may
41 issue process to compel the attendance of witnesses and the production of evidence, to
42 administer oaths, to punish for contempt, and to prescribe its own rules of procedure. No
43 circuit attorney or Solicitor General shall be reprimanded or made the subject of a

1 proceeding for suspension or removal unless the circuit attorney or Solicitor General has
2 been given a hearing affording due process of law. Unless otherwise waived by the
3 circuit attorney or Solicitor General involved, all papers filed with and proceedings
4 before the Commission, including any preliminary investigation which the Commission
5 may make, are confidential, except as otherwise provided in this section.

6 (b) If the Commission, after investigating allegations of misconduct concludes that
7 disciplinary action is needed, it may reprimand the circuit attorney or the Solicitor
8 General who is the subject of the investigation. The circuit attorney or the Solicitor
9 General who is reprimanded may appeal to the circuit court in the circuit in which the
10 circuit attorney serves for a review of the decision to reprimand, but no appeal as of right
11 of the circuit court's decision is allowed to the Appellate Division.

12 (c) If the Commission concludes that suspension or removal is the appropriate
13 response to misconduct by a circuit attorney, the Commission may commence such a
14 proceeding by filing with the clerk of court of the county where the circuit attorney
15 resides a complaint adopted by the Commission charging the circuit attorney with one or
16 more grounds for removal. If the Commission concludes that suspension or removal is
17 the appropriate response to misconduct by the Solicitor General, the Commission may
18 commence such a proceeding by filing with the Clerk of Court for Wake County a
19 complaint adopted by the Commission charging the Solicitor General with one or more
20 grounds for removal.

21 (d) The clerk shall immediately bring the matter to the attention of the chief circuit
22 judge for the circuit in which the county is located who shall within 30 days either review
23 and act on the charges or refer them for review and action within 30 days to another
24 circuit court judge residing in or regularly holding the courts of that circuit.

25 (e) If the judge, upon review, finds that the charges, if true, constitute grounds for
26 suspension and finds probable cause for believing that the charges are true, the judge may
27 enter an order suspending the circuit attorney or the Solicitor General from performing
28 the duties of the office until a final determination of the charges on the merits. If the
29 circuit attorney is suspended, the appropriate appointing authority shall appoint an acting
30 circuit attorney. During the suspension, the salary of the circuit attorney or the Solicitor
31 General continues. If the judge finds that the charges, if true, do not constitute grounds
32 for suspension or finds that no probable cause exists for believing that the charges are
33 true, the judge shall dismiss the proceeding.

34 (f) If the judge reviewing the charges finds probable cause for the matter to
35 proceed to a hearing, the judge may appoint the Attorney General or a special counsel to
36 present the evidence supporting removal. If a special counsel is appointed, the counsel
37 shall be compensated by the Administrative Office of the Courts in an amount to be
38 determined by the judge conducting the hearing.

39 (g) The circuit attorney or Solicitor General who is the subject of the removal
40 proceeding is entitled to be represented by the Attorney General's office or by counsel
41 paid by the Administrative Office of the Courts if the circuit attorney or the Solicitor
42 General is otherwise entitled to the services of State-paid representation under Article
43 31A of Chapter 143 of the General Statutes.

1 (b) The terms of office for members of the Board shall be for four years, except
2 that, to achieve staggered terms, each appointing authority in subsection (a) of this
3 section shall designate one member to serve an initial term of two years and one member
4 to serve an initial term of four years.

5 (c) The State Public Defender Board shall:

6 (1) Appoint the State Public Defender;

7 (2) Establish rules and procedures to define indigency for purposes of
8 administering this Article in a manner consistent with any statutes
9 adopted by the General Assembly dealing with that subject;

10 (3) Investigate allegations of misconduct by the State Public Defender and
11 circuit public defenders, and in appropriate cases, reprimand the State
12 Public Defender or a circuit public defender;

13 (4) Initiate proceedings to suspend or remove the State Public Defender or a
14 circuit public defender;

15 (5) Review and approve allocations of funds among and between circuits,
16 upon the recommendation of the State Public Defender; and

17 (6) Adopt rules to govern the operation of the Office of State Public
18 Defender and the circuit public defenders' offices, in a manner not
19 otherwise governed by acts of the General Assembly or rules of the
20 Supreme Court.

21 **"§ 15C-202. Duties of State Public Defender.**

22 The State Public Defender shall:

23 (1) Represent those entitled to representation in appeals of the appellate
24 courts of this State and in the federal courts;

25 (2) Prepare and propose to the Governor a budget for the operation of the
26 Office of State Public Defender;

27 (3) Appoint a circuit public defender for each judicial circuit established
28 pursuant to G.S. 7B-1200;

29 (4) Administer the budget for the operation of the State public defender
30 system and provide administrative oversight of circuit public defenders
31 offices, including administrative oversight of the extent to which
32 individual circuits use salaried employees, contractually paid attorneys
33 or other means to provide services;

34 (5) Assign personnel temporarily to duty outside their circuit when
35 necessary to balance the workload among circuits or because of a
36 conflict of interest;

37 (6) Adopt personnel rules, and as appropriate, salary schedules or pay plans
38 applicable to circuit public defenders' offices; and

39 (7) Perform other duties the General Assembly or the State Public Defender
40 Board may assign to the office.

41 **"§ 15C-203. Circuit public defenders.**

42 (a) The counties of the State are divided into public defender circuits coterminus
43 with the circuits established pursuant to G.S. 7B-1200.

1 (b) The State Public Defender shall appoint a circuit public defender for each
2 circuit for a term of four years. The circuit public defender shall be responsible for
3 managing the indigent defense program in the circuit and may with the approval of the
4 State Public Defender establish salaried attorney and support positions or contract with
5 attorneys to provide indigent defense services for the circuit. The professional
6 relationship of counsel provided to the indigent person under this Article is the same as if
7 counsel had been privately retained by the indigent person.

8 (c) An indigent person indicted for murder may not be tried where the State is
9 seeking the death penalty without an assistant counsel being appointed in a timely
10 manner. If the indigent person is represented by the circuit public defender's office, the
11 requirement of an assistant counsel may be satisfied by the assignment to the case of an
12 additional attorney from the public defender's staff.

13 **"§ 15-204. Removal of State Public Defender or circuit public defender.**

14 (a) The State Public Defender or a circuit public defender may be suspended or
15 removed from office for:

- 16 (1) Mental or physical incapacity interfering with the performance of duties
17 which is, or is likely to become, permanent;
- 18 (2) Willful misconduct in office;
- 19 (3) Willful and persistent failure to perform the duties of the office;
- 20 (4) Habitual intemperance;
- 21 (5) Conviction of a crime involving moral turpitude;
- 22 (6) Conduct prejudicial to the administration of justice which brings the
23 office into disrepute; or
- 24 (7) Knowingly authorizing or permitting an assistant circuit public defender
25 to commit any act constituting grounds for removal under subdivisions
26 (1) through (6) of this subsection.

27 (b) The State Public Defender Board shall investigate allegations of misconduct by
28 circuit public defenders or the State Public Defender. The Board shall adopt rules
29 establishing procedures for filing of those allegations and for screening of those
30 allegations before formal investigations are begun. If the Board, after investigating
31 allegations of misconduct concludes that disciplinary action is needed, it may reprimand
32 the circuit public defender or the State Public Defender who is the subject of the
33 investigation. The circuit public defender or State Public Defender who is reprimanded
34 may appeal to the circuit court in the circuit in which he or she serves for a review of the
35 decision to reprimand, but no appeal as of right of the circuit court's decision is allowed
36 to the Appellate Division.

37 (c) If the State Public Defender Board concludes that suspension or removal is the
38 appropriate response to misconduct by a circuit public defender, the Board may
39 commence such a proceeding by filing with the clerk of court of the county where the
40 circuit public defender resides a complaint adopted by the Board charging the circuit
41 public defender with one or more grounds for removal. If the State Public Defender
42 Board concludes that suspension or removal is the appropriate response to misconduct by
43 the State Public Defender, the Board may commence such a proceeding by filing with the

1 Clerk of Court for Wake County a complaint adopted by the Board charging the State
2 Public Defender with one or more grounds for removal.

3 (d) The clerk shall immediately bring the matter to the attention of the chief circuit
4 judge for the circuit in which the county is located who shall within 30 days either review
5 and act on the charges or refer them for review and action within 30 days to another
6 circuit court judge residing in or regularly holding court in the courts of that circuit.

7 (e) If the judge upon review finds that the charges, if true, constitute grounds for
8 suspension and finds probable cause for believing that the charges are true, the judge may
9 enter an order suspending the circuit public defender or the State Public Defender from
10 performing the duties of the office until a final determination of the charges on the merits.
11 If the public defender is suspended, the appropriate appointing authority shall appoint an
12 acting public defender. During the suspension, the salary of the public defender
13 continues. If the judge finds that the charges if true do not constitute grounds for
14 suspension or finds that no probable cause exists for believing that the charges are true,
15 the judge shall dismiss the proceeding.

16 (f) If the judge reviewing the charges finds probable cause for the matter to
17 proceed to a hearing, the judge may appoint the Attorney General or a special counsel to
18 present the evidence supporting removal. If a special counsel is appointed, the counsel
19 shall be compensated by the Administrative Office of the Courts in an amount to be
20 determined by the judge conducting the hearing.

21 (g) The public defender who is the subject of the removal proceeding is entitled to
22 be represented by the Attorney General's office or by counsel paid by the Administrative
23 Office of the Courts if the public defender is otherwise entitled to the services of State-
24 paid representation under Article 31A of Chapter 143 of the General Statutes.

25 (h) If a hearing, with or without suspension, is ordered, the public defender shall
26 receive immediate written notice of the proceedings and a true copy of the charges, and
27 the matter shall be set for hearing not less than 10 days nor more than 30 days thereafter.
28 The matter shall be set for hearing before the judge who originally examined the charges
29 or before another judge resident in or regularly holding the courts of that circuit. The
30 hearing shall be open to the public. All testimony shall be recorded. At the hearing, the
31 circuit judge shall hear evidence and make findings of fact and conclusions of law, and if
32 the circuit judge finds that grounds for removal exist, the judge shall enter an order
33 permanently removing the public defender from office and terminating the public
34 defender's salary. If the judge finds that no grounds exist, the judge shall terminate the
35 suspension, if any.

36 (i) The public defender may appeal from an order of removal to the Court of
37 Appeals on the basis of error of law by the circuit judge. Pending decision of the case on
38 appeal, the public defender shall not perform any of the duties of the office. If, upon final
39 determination, the public defender is ordered reinstated either by the Appellate Division
40 or by the circuit court upon remand, the public defender's salary shall be restored from
41 the date of the original order of removal.

42 "Part 2. Procedures to Determine Indigency and Entitlement to Counsel.

43 "§ 15C-210. General procedures.

1 The court shall determine if a person is indigent and entitled to counsel and shall
2 indicate its findings in a written order. The court shall insure that the public defender is
3 notified of those persons found to be entitled to representation by that office, and the
4 public defender is responsible for providing that representation. To assist the public
5 defender in determining how to compensate those who provide the counsel, the court
6 shall provide information about the services rendered by attorneys and others
7 representing indigents upon request.

8 **"§ 15C-211. Determination of indigency.**

9 (a) An indigent person is a person who is financially unable to secure legal
10 representation and to provide all other necessary expenses of representation in an action
11 or proceeding enumerated in this Article. An interpreter is a necessary expense, as
12 defined in Chapter 8A of the General Statutes, for a deaf person who is entitled to
13 counsel under this subsection.

14 (b) The question of indigency may be determined or redetermined by the court at
15 any stage of the action or proceeding at which an indigent person is entitled to
16 representation.

17 (c) If, at any stage in the action or proceeding, a person previously determined to
18 be indigent becomes financially able to secure legal representation and provide other
19 necessary expenses of representation, the person shall inform the counsel appointed by
20 the court to represent the person of that fact. In such a case, that information is not
21 included in the attorney-client privilege, and counsel shall promptly inform the court of
22 that information.

23 **"§ 15C-212. False statements perjury.**

24 (a) A person making a false material statement under oath or affirmation on the
25 issue of the person's indigency is guilty of a Class I felony.

26 (b) A judicial official making the determination of indigency shall notify the
27 person of the provisions of subsection (a) of this section.

28 **"§ 15C-213. Entitlement to counsel.**

29 (a) An indigent person is entitled to services of counsel in the following actions
30 and proceedings:

31 (1) Any case in which imprisonment, or a fine of five hundred dollars
32 (\$500.00) or more, is likely to be adjudged.

33 (2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of
34 the General Statutes.

35 (3) A motion for appropriate relief under Chapter 15A of the General
36 Statutes if the defendant has been convicted of a felony, has been fined
37 five hundred dollars (\$500.00) or more, or has been sentenced to a term
38 of imprisonment.

39 (4) A hearing for revocation of probation.

40 (5) A hearing in which extradition to another state is sought.

41 (6) A proceeding for an inpatient involuntary commitment to a facility
42 under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a

1 proceeding for commitment under Part 8 of Article 5 of Chapter 122C
2 of the General Statutes.

3 (7) A proceeding for an outpatient involuntary commitment to a facility
4 under Part 7 of Article 5 of Chapter 122C of the General Statutes, if the
5 court finds that representation of counsel is necessary pursuant to G.S.
6 122C-267(d).

7 (8) In any case of execution against the person under Article 28 of Chapter
8 1 of the General Statutes, and in any civil arrest and bail proceeding
9 under Article 34 of Chapter 1 of the General Statutes.

10 (9) In the case of a juvenile, a hearing as a result of which commitment to
11 an institution or reassignment of the case for trial on a felony charge is
12 possible.

13 (10) A hearing for revocation of parole at which the right to counsel is
14 provided in accordance with the provisions of Article 4 of Chapter 148
15 of the General Statutes.

16 (11) A proceeding for sterilization under Article 7 of Chapter 35,
17 Sterilization of Persons Mentally Ill and Mentally Retarded, of the
18 General Statutes.

19 (12) A proceeding for the provision of protective services according to
20 Article 4 of Chapter 108 of the General Statutes.

21 (13) In the case of a juvenile alleged to be neglected under Chapter 7C of the
22 General Statutes.

23 (14) A proceeding to find a person incompetent under Subchapter I of
24 Chapter 35A of the General Statutes.

25 (15) A proceeding to terminate parental rights where a guardian ad litem is
26 appointed under Chapter 7C of the General Statutes.

27 (16) An action brought under Chapter 7B of the General Statutes to terminate
28 an indigent person's parental rights.

29 (17) A proceeding involving consent for an abortion on an unemancipated
30 minor pursuant to Part 2 of Article 1A of Chapter 90 of the General
31 Statutes. G.S. 15C-216 shall not apply to this proceeding.

32 (b) In each of the actions and proceedings enumerated in subsection (a) of this
33 section, entitlement to the services of counsel begins as soon as feasible after the indigent
34 is taken into custody or service is made upon him of the charge, petition, notice, or other
35 initiating process. Entitlement continues through any critical stage of the action or
36 proceeding, including, if applicable:

37 (1) An in-custody interrogation;

38 (2) A pretrial identification procedure which occurs after formal charges
39 have been preferred and at which the presence of the indigent is
40 required;

41 (3) A hearing for the reduction of bail, or to fix bail if bail has been earlier
42 denied;

43 (4) A probable cause hearing;

1 (5) Trial and sentencing; and

2 (6) Review of any judgment or decree pursuant to G.S. 7B-1302(d) and (e)
3 and Subchapter XIV of Chapter 15A of the General Statutes.

4 (c) In any capital case, an indigent defendant who is under a sentence of death
5 may apply to the circuit court in which the defendant was indicted for an order directing
6 the public defender to appoint counsel to represent the defendant in preparing, filing, and
7 litigating a motion for appropriate relief. The application for the appointment of
8 postconviction counsel may be made prior to completion of review on direct appeal and
9 shall be made no later than 10 days from the latest of the following:

10 (1) A mandate issued by the Supreme Court of North Carolina on direct
11 appeal pursuant to N.C.R. App. P. 32(b) and the expiration of the time
12 for filing a petition for writ of certiorari to the United States Supreme
13 Court without a petition being filed;

14 (2) The United States Supreme Court's denial of a timely petition for writ of
15 certiorari of the decision on direct appeal by the Supreme Court of
16 North Carolina; or

17 (3) The United States Supreme Court's granting of the defendant's or the
18 State's timely petition for writ of certiorari of the decision on direct
19 appeal by the Supreme Court of North Carolina, but subsequently
20 leaving the defendant's death sentence undisturbed.

21 Upon application, supported by the defendant's affidavit, the circuit court shall enter an
22 order directing that two counsels be appointed if the court finds that the defendant is
23 indigent and desires counsel. The defendant does not have a right to be present at the
24 time of entry of the order directing that counsel be appointed. If the defendant was
25 previously adjudicated an indigent for purposes of trial or direct appeal, the defendant
26 shall be presumed indigent for purposes of this subsection.

27 (d) No counsel appointed pursuant to subsection (c) of this section shall have
28 previously represented the defendant at trial or on direct appeal in the case for which the
29 appointment is made unless the defendant expressly requests continued representation
30 and understandingly waives future allegations of ineffective assistance of counsel.

31 **"§ 15C-214. Civil judgment for services rendered; partial indigency.**

32 (a) If, in the opinion of the court, an indigent person is financially able to pay a
33 portion, but not all, of the value of the legal services rendered by the public defender and
34 other necessary expenses of representation, the court shall order the partially indigent
35 person to pay that portion to the clerk of court for transmission to the General Fund.

36 (b) In all cases the public defender shall inform the court of the public defender's
37 opinion of the money value of services rendered by the public defender, including in the
38 sum the necessary expenses of representing the indigent person. The court shall then
39 make a finding as to the value of the services rendered by the public defender and shall
40 direct that judgment in that amount be entered in the office of the clerk of court. Any
41 judgment so entered shall constitute a lien as prescribed by the general law of the State
42 applicable to judgments. Any reimbursement to the State as provided in subsection (a) of
43 this section or any funds collected by reason of that judgment shall be deposited in the

1 General Fund and credited against the judgment. In fixing the money value of services
2 rendered by the public defender, the court shall consider the factors normally involved in
3 fixing the fees of private attorneys, such as the nature of the case, the time, effort, and
4 responsibility involved, and the fee usually charged in similar cases. Even if the trial,
5 appeal, hearing, or other proceeding is never held, preparation therefor is nevertheless
6 compensable.

7 (c) No order for partial payment under subsection (a) of this section and no
8 judgment under subsection (b) of this section shall be entered unless the indigent person
9 is convicted. If the indigent person is convicted, the order or judgment shall become
10 effective and the judgment shall be docketed and indexed pursuant to G.S. 1-233, et seq.,
11 in the amount then owing, upon the later of (i) the date upon which the conviction
12 becomes final if the indigent person is not ordered, as a condition of probation, to pay the
13 State for the costs of the representation in the case or (ii) the date upon which the indigent
14 person's probation is terminated or revoked if the indigent person is so ordered.

15 (d) In all cases in which the entry of a judgment is authorized, the public defender
16 who rendered the services or incurred the expenses for which the judgment is to be
17 entered shall obtain the social security number, if any, of each person against whom
18 judgment is to be entered. Each judgment docketed against a person under this section
19 shall include the social security number, if any, of the judgment debtor.

20 **"§ 15C-215. Waiver of counsel; pleas of guilty.**

21 (a) An indigent person who has been informed of the right to be represented by
22 counsel at any in-court proceeding, may, in writing, waive the right to in-court
23 representation by counsel, if the court finds of record that at the time of waiver the
24 indigent person acted with full awareness of the person's rights and of the consequences
25 of the waiver. In making such a finding, the court shall consider, among other things,
26 such matters as the person's age, education, familiarity with the English language, mental
27 condition, and the complexity of the crime with which the person was charged.

28 (b) If an indigent person waives counsel as provided in subsection (a) of this
29 section and pleads guilty to any offense, the court shall inform the person of the nature of
30 the offense and the possible consequences of the plea and, as a condition of accepting the
31 plea of guilty, the court shall examine the person and shall ascertain that the plea was
32 freely, understandingly, and voluntarily made, without undue influence, compulsion or
33 duress, or promise of leniency.

34 (c) An indigent person who has been informed of the right to be represented by
35 counsel at any out-of-court proceeding, may, either orally or in writing, waive the right to
36 out-of-court representation by counsel.

37 **"§ 15C-216. Responsibility of parents and fiduciaries in juvenile matters.**

38 (a) At the same time as a person who is less than 18 years old or who is at least 18
39 years old but remains dependent on and domiciled with a parent or guardian is
40 determined to be indigent, and has an attorney or guardian ad litem appointed pursuant to
41 G.S. 7B-213, the court shall determine the identity and address of the parent, guardian, or
42 any trustee in possession of funds or property for the benefit of the person. The court
43 shall issue a summons to the parent, guardian, or trustee to be present at the dispositional

1 hearing or the sentencing hearing or other appropriate hearing and to be a party to these
2 hearings for the purpose of being determined responsible for reimbursing the State for the
3 person's attorney or guardian ad litem fees, or to show cause why he should not be held
4 responsible.

5 Both the issuance of the summons and the service of process shall be made pursuant
6 to G.S. 1A-1, Rule 4.

7 (b) At the dispositional sentencing or other hearing of the person who is less than
8 18 years old or who is at least 18 years old but remains dependent on and domiciled with
9 a parent or guardian, the court shall determine whether the parent, guardian, or trustee
10 should be held responsible for reimbursing the State for the person's attorney or guardian
11 ad litem fees. This determination shall include a consideration of (i) the financial
12 situation of the parent, guardian, or trustee; (ii) the relationship of responsibility the
13 parent, guardian, or trustee bears to the person; and (iii) any showings by the parent,
14 guardian, or trustee that the person is emancipated or not dependent. The test of the
15 party's financial ability to pay is the test applied to appointment of an attorney in cases of
16 indigency. Any provision of any deed, trust, or other writing, which, if enforced, would
17 defeat the intent or purpose of this section is contrary to the public policy of this State
18 and is void insofar as it may apply to prohibit reimbursement to the State.

19 If the court determines that the parent, guardian, or trustee is responsible for
20 reimbursing the State for the attorney or guardian ad litem fees, the court shall so order.
21 If the party does not comply with the order within 90 days, the court shall file a judgment
22 against him for the amount due the State.

23 (c) This section does not apply to the Department of Human Resources or any
24 county Department of Social Services."

25 Section 6. Subchapter XI, Articles 41 through 59 of Chapter 7A of the General
26 Statutes, the North Carolina Juvenile Code, and Articles 24, 24A, 24B, 39, and 39A of
27 Chapter 7A of the General Statutes, are recodified as Chapter 7C of the General Statutes,
28 Articles 1 through 23. The Revisor of Statutes shall correct all internal references to
29 other sections of the North Carolina Juvenile Code to the corresponding recodified
30 sections.

31 Section 7. Chapter 7A of the General Statutes is repealed.

32 Section 8. (a) This act becomes effective upon certification by the State Board of
33 Elections to the Secretary of State that the constitutional amendments included in Parts I
34 and II of the House or Senate version of "A BILL TO BE ENTITLED AN ACT
35 PROPOSING AMENDMENTS TO THE CONSTITUTION OF NORTH CAROLINA
36 TO IMPROVE THE COURT SYSTEM BY IMPLEMENTING THE NEW COURT
37 STRUCTURE RECOMMENDED BY THE COMMISSION FOR THE FUTURE OF
38 JUSTICE AND THE COURTS IN NORTH CAROLINA" have been ratified.

39 (b) As soon as practicable after this act takes effect, the State Judicial Council
40 described in Article 3 of Chapter 7B as established in Section 1 of this act shall be
41 established by appointment of the members described in G.S. 7B-300 of that Article. For
42 the initial appointments, however, the "circuit attorney" shall be a district attorney chosen
43 by the Conference of District Attorneys, the "circuit public defender" shall be a public

1 defender chosen by the public defenders, and the "circuit judge" shall be a superior court
2 judge chosen by the Judicial Conference. The members of this initial State Judicial
3 Council shall hold office until January 1, 2002, at which time new members shall be
4 appointed pursuant to G.S. 7B-300.

5 (c) Upon its establishment, the initial State Judicial Council shall proceed to plan
6 for implementation of the new circuit court in phases beginning January 1, 2000, with full
7 statewide implementation to be completed by January 1, 2002. By January 1, 1999, the
8 State Judicial Council shall decide the number and configuration of circuits and the
9 schedule for implementation. The State Judicial Council also may exercise other
10 authority granted to it by Chapter 7B as necessary to prepare for and establish the circuit
11 court system and to govern the circuit court once established.

12 (d) The Chief Justice, with the advice and consent of the State Judicial Council,
13 may appoint the chief circuit judge for each circuit to take office six months before the
14 establishment of that circuit, and the chief judge may appoint the circuit administrator to
15 take office at the same time.

16 (e) Upon establishment of a circuit, the provisions of this act become effective
17 in the counties included in that circuit. Until that time, the provisions of Chapter 7A of
18 the General Statutes and other statutes repealed or amended by this act shall remain in
19 effect in those counties.