

## I. INTRODUCTION

This is the fourth judicial evaluation sponsored by Court

Court Watch of North Carolina, Inc. Court Watch worked with professors from the University of North Carolina-Greensboro in all these surveys.

There are several reasons why Court Watch continues conducting judicial evaluations. First, judge evaluations are the sole source of anonymous attorney feedback available to trial judges in these districts. There is no substitute for confidential input offered by large numbers of trial attorneys on the conduct of the judges whom they have appeared before. A second reason for conducting judicial evaluations is to give voters information that they may find useful in electing judges who seek to return to office. Voters continually complain that they know little (or nothing) about judicial candidates who appear on the ballots. Since the judicial evaluations are given widespread media publicity, they can help the highest-rated judges retain their seats. A third reason for judicial evaluations is to offer a model to the General Assembly, the N.C. Supreme Court, and the N.C. Bar Association.

Court Watch hopes that one of these institutions will finance and supervise its own statewide judicial evaluations on a routine basis.

This Division III and IV Judicial Evaluation offers some new features that these institutions may desire to use.

## II. FUNDING

In December 2004, Court Watch received a \$25,000 grant from the Z. Smith Reynolds Foundation, Inc. towards the \$34,800 requested for this judge evaluation project. Then Court Watch began contacting other foundations and bar associations to raise the \$9,800 needed to fully fund the project. Court Watch raised \$8,150 in additional funds, which included \$4,650 from the Wake County Bar, \$2,500 from the District 14 (Durham County) Bar, and \$500 each from the District 15A Bar and N.C. Defense Attorneys. Court Watch commenced work on this project in January 2006, after it had received a total of \$33,150 for the project.

### **III. GEOGRAPHICAL AREA COVERED**

The judicial evaluation covers trial court judges who served in the Third and Fourth Divisions (i.e. in the central-eastern part of the state). These Divisions include twelve districts and 21 counties (some districts cover several counties). See map at **Exhibit 1**. These two divisions contain several counties with major cities, - Durham County (Durham), Cumberland County (Fayetteville), and Wake County (Raleigh).

### **IV. METHODOLOGY USED IN THE EVALUATION**

To provide information on judicial behavior, Court Watch sought input from attorneys, courtroom clerks, and bailiffs within Divisions Three and Four.

### **A. DEVELOPING THE QUESTIONNAIRES**

Court Watch used three kinds of questionnaires. The first questionnaire (**Exhibit 2**) was a "Behavior-Observed" type questionnaire, which requested the attorney respondent to affirm or deny whether the judge exhibited precisely described behavior. This questionnaire was based on the questionnaire that UNC-G Professors Lee Bernick and David Pratto had developed and tested in Court Watch's 1994 and 1996 Judicial Evaluations. That earlier questionnaire was slightly altered for use in this evaluation. Court Watch used this type of questionnaire almost exclusively in this judge evaluation because it offers judges more detailed feedback, and tends to elicit a more objective response to the key "judge retention" question.

A second questionnaire (**Exhibit 3**) was a brand new questionnaire which Court Watch developed for this project, for use as a new model for future surveys. A three-person "grant policy committee" carefully developed this questionnaire, which was an "Attitudinal Scaling" type questionnaire. Attitudinal Scaling questionnaires request the respondent to assign a number or adjective (e.g. "excellent", "poor") to an aspect of the judge's behavior according to a scale. A third questionnaire (**Exhibit 4**) was developed for this project solely for use by courtroom clerks, and by sheriff deputies who had served as courtroom bailiffs. This questionnaire contained many of the questions in the first questionnaire, but a number of questions were omitted which required a legal background to answer (e.g. whether the judge properly applied the law).

## **B. PRELIMINARY SCREENING OF ATTORNEYS**

## (1) GENERAL

Court Watch purchased attorney membership mailing lists from the North Carolina State Bar, which it used to contact attorneys for the judge evaluation. Attorneys in Wake County initially were sent their questionnaires by e-mail, while all other attorneys received all their questionnaires by regular mail. Except for Durham County attorneys, all attorneys received the first questionnaire. In Durham County, half of the attorneys received the first questionnaire, and half received the second questionnaire.

## (2) PRELIMINARY SCREENING IN ALL COUNTIES EXCEPT WAKE

Court Watch sent letters (**Exhibit 5**) to all (non-Wake County) attorneys in Divisions III & IV who appeared on the N.C. State Bar's attorney membership list. The letter asked each attorney to fill out and send back a postage-paid return card. The return card (**Exhibit 6**) asked the attorney whether (since January 1, 2004) he/she had appeared (1) before any district court judges, and/or (2) before any superior court judges. The purpose of this card was to screen out attorneys who had not appeared recently before any of these local judges.

## (3) PRELIMINARY SCREENING IN WAKE COUNTY

### Sending the Letters and Return Postcards

In March 2006, Court Watch sent a mailing packet to Wake County attorneys who appeared on the N.C. State Bar's membership list (except those identified on the list as being judges or

magistrates). The mailing packet was sent by regular mail and it included a cover letter (**Exhibit 7**) which requested each attorney to fill out and return a postage prepaid return card (**Exhibit 8**).

The return card asked the attorney two questions: whether the attorney since January 1, 2004, had (or had not) appeared before any District Judge, and whether the attorney had (or had not) appeared before any Superior Court Judge. In addition, attorneys who responded affirmatively to either of these questions were asked to share with us their e-mail addresses. This e-mail information would help Court Watch send its initial questionnaires via e-mail.

The Wake County Bar Association encouraged their members to participate in this evaluation. On April 10, 2006, it sent an e-mail letter (**Exhibit 9**) to its members encouraging them to respond to the Court Watch inquiry.

### Processing the Return Postcards

Court Watch personnel did two things with the filled out Wake County attorney return postcards. First, if an attorney indicated that he or she had not appeared before any District or Superior Court Judge in the county since January 1, 2004, that attorney was crossed off all Court Watch lists. That attorney was not sent any questionnaires. This screening resulted in 521 attorneys being disqualified because they didn't meet the recent courtroom criteria, or because they indicated that they were judges or magistrates.

Second, 657 Wake County attorneys provided their e-mail addresses, and that became the

foundation for Court Watch's Wake County attorney e-mail address list. To increase the number of addresses on its e-mail address list, Court Watch added 926 addresses from the 2004 North Carolina Bar Association Membership Directory and 368 more using the MartinDale-Hubbell law directory website. Court Watch's Wake County e-mail address list grew to 1,951 attorneys. This list was sent to Stat Pac so it could conduct Court Watch's e-mail evaluation.

## **C. DELIVERING THE QUESTIONNAIRES**

### **(1) SENDING QUESTIONNAIRES BY REGULAR MAIL (NON-WAKE)**

#### Sending the Questionnaires

In January 2007, Court Watch began its first mailing to attorneys in non-Wake Counties.

Bulk mailing was used whenever possible. Court Watch sent mailing packets to all the attorneys listed on the N.C. State Bar attorney membership list, after having removed some attorneys who were deemed not suitable for evaluating judges.

The mailing packet included a cover letter (**Exhibit 10**), a set of questionnaires for judges in that district, and a special return mailing envelope (**Exhibit 11**). The cover letter explained that the attorney must return the completed questionnaires in the special return envelope. Court Watch required that its special return envelope be used as a safeguard to prevent submissions by unauthorized persons. A special identification code was handwritten on each return envelope to

further insure the security of the evaluation. A separate questionnaire was enclosed for each local District Court Judge. A separate questionnaire also was enclosed for each Superior Court Judge, except in Districts 11 and 12 (where a sample of Superior Court Judge questionnaires was sent due to the large number of judges to be evaluated).

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### Sending Supplemental Postcards

Court Watch used a new technique in order to boost attorney response rates with the minimum expenditure of time and money. Court Watch sent out two postcards. A pink-colored "notice" postcard (**Exhibit 12**) was mailed about one week before each judge evaluation packet was sent out. This postcard began with the line: "Please be on the lookout for some very important papers!" The postcard was designed to alert each attorney that the judge survey mailing packet would be coming soon, and thereby reduce the chance that the packet would be mistakenly discarded. A yellow-colored "reminder" postcard (**Exhibit 13**) was mailed one or two weeks after the questionnaires had been sent. This postcard reminded the attorney to complete and return the questionnaires that he or she had received.

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### (2) SENDING QUESTIONNAIRES BY E-MAIL IN WAKE COUNTY

Court Watch hired Stat Pac, a private Wisconsin company, to host the Wake County e-mail judicial survey. On June 20, 2007, Stat Pac sent the judicial evaluation package via e-mail to all

the 1,951 Wake County attorneys on Court Watch's e-mail address list. Stat Pac sent the attorneys an e-mail cover letter (**Exhibit 14**) with instructions. The cover letter warned attorneys that they must complete the evaluation in one session (allowing attorneys to leave the Website and return later would have been prohibitively expensive). Attorneys who elected to participate were directed to another screen (**Exhibit 15**). This screen enabled them to choose 7 out of the 15 Wake County District Court Judges listed, and to select 3 out of the 9 Superior Court Judges listed. The list of 15 District Court Judges to choose from included all of Wake's District Court Judges, whereas the list of 9 Superior Court Judges to choose from was more limited. Once the attorney selected which Judges he/she wanted to evaluate, he/she was directed to additional screens for each judge that he/she had selected. This screen (sample at **Exhibit 16**) showed a blank questionnaire that could be filled in for each selected judge. When the attorney completed evaluating the first judge, the attorney could reach additional screens showing additional judges that he/she had selected.

(3) SENDING QUESTIONNAIRES BY REGULAR MAIL IN WAKE COUNTY After

Stat Pac's e-mail judge evaluation was completed, Court Watch created a list of Wake County attorneys who would be sent questionnaires by regular mail. This list was created by taking the 3,819 Wake County attorneys in the N.C. State Bar's membership list, and deleting the 176 attorneys who had participated in Stat Pac's e-mail evaluation. Then Court Watch deleted 511 more attorneys who were judges, magistrates, or had indicated on their postcard responses that

they hadn't observed any judges recently. The 3,132 remaining attorneys on this list were sent a packet containing a cover letter (**Exhibit 17**) and questionnaires. The processing procedures listed in Section IV, C, (1) were used. Due to the large number of district and superior court judges in Wake County, and wanting to limit the number of questionnaires sent to a manageable twelve, Court Watch mailed just a sampling of questionnaires to Wake County attorneys.

## **D. PROCESSING QUESTIONNAIRES IN NON-WAKE COUNTIES**

### **(1) RECEIPT OF THE QUESTIONNAIRES**

Most of the envelopes containing the completed questionnaires were received by Court Watch in the special Court Watch return-addressed envelopes that had been provided (**Exhibit 11**).

Each envelope was opened by a Court Watch screener.

The screener reviewed several items on all returned questionnaires. First, the screener checked that each set of questionnaires had been sent in one of the special self-addressed return envelopes that Court Watch had provided. These envelopes were marked with special identifying codes. Attorneys had been instructed to use only these return envelopes to protect the security of the evaluation (i.e. to prevent unauthorized persons from filling out questionnaires). Therefore questionnaires that arrived in other envelopes normally were not used in the judge evaluation.

Second, Court Watch looked at the response made to the second introductory question on the

questionnaire: "I have experience from personal observation to evaluate this judge fairly." Any questionnaire in which "Yes" was not marked in response to that question was discarded.

The questionnaires that met the above screening process were delivered to Professor Susan Johnson's UNC-G students for data entry. Court Watch retained the return envelopes, thereby making it impossible for anyone to match any questionnaire to a particular attorney.

## (2) TRANSFERRING QUESTIONNAIRE DATA TO A COMPUTER DATA BASE

Professor Susan Johnson trained two UNC-G students to input the data from the completed questionnaires onto a computer spread sheet. When the students completed gathering the responses from all the questionnaires that they had been given, Professor Johnson transmitted to Court Watch a final computer count of responses to each question on each judge.

## **E. PROCESSING WAKE COUNTY QUESTIONNAIRES**

### (1) PROCESSING E-MAIL RESULTS

Stat Pac not only sent an initial e-mail cover letter to Wake County attorneys, but also later sent a reminder e-mail. In August 2007, Stat Pac sent to Court Watch the results of its e-mail judge evaluation. Stat Pac also provided Court Watch with a list of the names of the 176 Wake

County attorneys who had filled out questionnaires via e-mail.

## (2) PROCESSING COMPLETED REGULAR MAIL QUESTIONNAIRES

Completed questionnaires received from these attorneys were handled using the procedures listed in Section IV, D. Court Watch combined the questionnaire results from the e-mail questionnaires with those received from the regular mail questionnaires. The combined results were included in the tables in the report.

## **F. EVALUATIONS COMPLETED BY CLERKS & BAILIFFS**

For the first time, Court Watch sent judge evaluation questionnaires to courtroom clerks and sheriff deputies who had served as courtroom bailiffs. We contacted clerks and bailiffs only in the larger counties (ie. Chatham, Durham, Orange and Wake), since we believed that in smaller counties there would be too few clerks and bailiffs to make a good sample. Also we believed that clerks and bailiffs in small counties would be reluctant to participate for fear that judges could identify them.

Court Watch asked the Clerk of Court in each of these four counties for the names of courtroom clerks who recently had served in district court. We asked the Sheriffs in these four counties for names of deputies who recently had served as courtroom bailiffs. Court Watch received names of courtroom clerks in Chatham and Wake Counties, and the names of bailiffs in

Durham County.

Court Watch sent a packet to all courtroom clerks and bailiffs on the lists that we received.

Each packet contained a cover letter (**Exhibit 18**), a third questionnaire (**Exhibit 4**) on each local district court judge, and a return envelope. Many of these courtroom clerks and bailiffs filled out and returned the questionnaires.

## V. JUDICIAL EVALUATION RESULTS

### A. THE NUMBERS

This was a much larger project than Court Watch's previous judicial evaluations. In this evaluation, Court Watch had 6,778 usable attorney names to work with - twice as many as in either of its prior major evaluations. A total of 665 attorneys filled out questionnaires (including 176 Wake County attorneys who used e-mail). These attorneys evaluated a total of 53 district court judges and 21 superior court judges. Also 30 courtroom clerks and deputy sheriff bailiffs participated (in Districts 10, 14 and 15B).

### B. RETURN AND EVALUATION RATES

Court Watch created a table (**Exhibit 19**) which shows the number of attorneys who responded to the Court Watch judicial evaluation in some manner. Some responded by evaluating judges using the questionnaires. Others responded by replying by letter or postcard, disclosing that they didn't to qualify for participating in the survey. Attorneys who responded in

any of these ways are considered "responders."

The return rate in a district was computed by dividing the total responders in the district by the total number of attorneys in the district. In this evaluation, the return rate averaged 24.5% (1,660 responders divided by 6,778 attorneys). The return rates varied from a 32.6% high in District 16A to a 20% low in District 9A. Higher return rates reflect good efforts to contact attorneys and high attorney interest in evaluating their local judges. The 24.5% average return rate was a lower return rate than in Court Watch's two previous major judge evaluations.

The evaluation rate in a district was computed by dividing the number of attorney evaluators (i.e. those who filled out at least one questionnaire) by the number of responders. The average evaluation rate in this judge survey was 40.1% (665 evaluators divided by 1,660 responders). The rates varied from a high of 75% in District 9A to a low of 30.7% in District 14. Higher evaluation rates indicate that more of the attorneys who did respond went ahead and filled out at least one questionnaire. As evidenced in this evaluation, the highest evaluation rates tend to occur in smaller districts (presumably a greater percentage of attorneys appear in court in small districts than in large districts).

## **C. DESCRIPTION OF THE EXHIBITS**

A list of exhibits appears on page X. The exhibits include the Court Watch letters and postcards used by Court Watch in collecting the evaluation information. The exhibits include the Stat Pac e-mail correspondence and screens that were used.

The exhibits also include two tables that Court Watch prepared, which were based on the responses to the final "judge retention" statement on the questionnaires. The tables compare how many attorneys answered "yes" to the final statement: "This Judge should be kept on the bench." Table B compares the percentage of "yes" responses among Superior Court judges (**Exhibit 20**). Table C (**Exhibit 21**) compares the percentage of "yes" responses among District Court Judges. Judges who received responses to this retention statement from less than 10 attorneys were not included on this list due to the low numbers involved. In both these tables, judges are listed in order of the highest percentage to lowest. Within each percentage, judges are listed in order of the largest number of attorneys who responded to that question (the number of attorney responders are shown in parenthesis to the right of each judge's name). While the percentages in these tables just reflect the opinions of the attorneys who responded to the questionnaires, they remain the best single indicator of a judge's overall performance. They are not based on popularity or whim. Rather they are backed by the courtroom behavior of the judge as observed by these attorneys, and shown by attorney responses to the earlier statements in the same questionnaire.

#### **D. DESCRIPTION OF THE APPENDIX**

The Appendix Table of Contents is found on page \_\_\_\_\_. The Appendix contains a page for each judge evaluated in this survey. For each judge evaluated, the questionnaire used by the

evaluating attorneys is included, showing the total number of attorneys who responded "yes" and "no" to each question. To the left of each "yes" response is listed the percentage of "yes" responses to the number of total responses for that question.

Each Durham County district court judge has a summary of the responses given on both the first and second questionnaires. Court Watch also has included the third questionnaires that were filled out by courtroom clerks and bailiffs.

All these questionnaires mentioned above can be found under the name of the judge that was rated (all superior court judges are alphabetically listed in one section, while district court judges are listed in the next section). An alphabetical list of all evaluated Superior Court Judges precedes the Superior Court Judge section, while a similar list of District Court Judges precedes the District Court Judge section.

## **VI. OBSERVATIONS ON THIS JUDGE EVALUATION**

### **A. GENERAL**

Court Watch is pleased with its third major judge evaluation. It took two years to conduct (rather than one year as anticipated), but it met the ambitious goals that it had set out. It was a large project involving 6,778 attorneys in 11 judicial districts. The project led to 665 attorneys evaluating 74 trial judges. The judges in these districts had never been evaluated before.

Three pilot projects were conducted during this judicial evaluation and the results are evaluated below. First, e-mail was used to conduct the Wake County evaluation. Second, a brand new "Attitudinal" questionnaire was used and tested in Durham County. Third, for the first time courtroom clerks and bailiffs participated in a judicial evaluation. They evaluated district court judges in districts 10, 14 and 15B.

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## **B. EVALUATING THE SCREENING PROCESS**

As in its previous judge evaluations, Court Watch depended on individual attorneys to self-evaluate their eligibility to participate in this judge evaluation. The only mandatory requirement was that an attorney must have personally observed the judge in order to evaluate him.

The first method of screening was through the "Attorney Response Cards" (**Exhibits 6 & 8**). Those attorneys who filled out and returned the response card, indicating that they had not appeared before a judge "since January 1, 2004," were not allowed to participate in the survey. Court Watch recommends that in future evaluations, the screening wording on the Attorney Response Card be made consistent with the screening wording on the questionnaires.

The second method of screening was through the preliminary question at the top of the questionnaires. If a judge did not mark "yes" on the top of a questionnaire (both questionnaire #1 and #2) next to the statement "I have experience from personal observation to evaluate this judge fairly", the questionnaire was not used.

There was no requirement on the questionnaire that the attorney had observed the judge within a

given number of years. Court Watch believes that "personal observation" is a legitimate requirement and that there is no other way of screening this than relying on the attorney.

However in future evaluations attorneys could be asked to disqualify themselves if they hadn't observed the judge in the recent past (e.g. five years).

## **C. EVALUATING THE ENHANCEMENT PROCESS**

In previous judicial evaluations, Court Watch used several methods to try to enhance attorney response rates, including multiple mailings and certified mail. In this judicial evaluation, Court Watch relied on several methods to enhance response rates. First, all attorneys were sent screening letters (and return response cards) to screen out attorneys who had not appeared before any local judges. This screening letter also served to enhance responses by alerting these attorneys that a judge evaluation would be conducted. Second, a week before each mailing, a postcard notice (**Exhibit 12**) was mailed to those attorneys to alert them to watch for the questionnaires in the mail. Third, a week or so after each mailing, a reminder postcard (**Exhibit 13**) was sent, reminding attorneys to fill out and return the questionnaires that had been sent. Given the low return rates in this judge evaluation, Court Watch recommends that the methods of enhancing responses be modified in future evaluations.

## **D. EVALUATION OF THE NEW "ATTITUDINAL SCALING" QUESTIONNAIRE**

One of the goals of this judge evaluation was to create and test a brand new questionnaire. This second ("Attitudinal Scaling") questionnaire (**Exhibit 3**) was sent to half of the 1,014 attorneys in Durham County who evaluated the six district court judges there. Court Watch compared the results from using this second questionnaire with the results obtained from using the first ("Behavior Observed") questionnaire (**Exhibit 2**). First, the overall return rates were compared, to see whether an attorney receiving one questionnaire was more likely to complete it than if he/she had received the other. While half the attorneys were sent each kind of questionnaire, many more attorneys (often twice as many) filled out questionnaire one than questionnaire two. Court Watch assumes that attorneys were discouraged from filling out the first questionnaire because it took more time to complete and required more thinking.

Second, the two questionnaires were compared as to attorney responses to the key final statement (i.e. "this judge should be kept on the bench.") Court Watch discovered that for all six judges evaluated, substantially more attorneys responding to the first questionnaire answered "no" than those responding to the second questionnaire. There may be several explanations for these differences. However Court Watch feels that the primary explanation is that the second questionnaire's simple format tends to lead attorneys to express their overall initial attitude towards the judge in the key "judge retention" statement. In contrast, the first questionnaire's less simplistic format tends to encourage attorneys to make more objective responses to the key "judge retention" statement.

## E. WAKE COUNTY E-MAIL EVALUATION

One of the goals of this judge evaluation was to test and evaluate conducting the use of e-mails in judge evaluations. The Wake County e-mail project met with limited success. On the positive side, Stat Pac offered a very good service at a reasonable fee. The Stat Pac computer screens and instructions were easy to follow and provided good security. Stat Pac offered the substantial advantage of allowing attorneys to select from a larger number of judges than was possible in a regular U.S. mailing evaluation.

However on the negative side, the time, cost and return rates of the e-mail evaluation were disappointing. First, it proved difficult securing e-mail addresses, since they were not listed on the N.C. State Bar membership list. While Court Watch asked every Wake County attorney who had been in court recently to give his/her e-mail address on a return postcard (**Exhibit 8**), many didn't do so. Second, while Stat Pac sent judge evaluation material to the e-mail addresses of 1,951 Wake County attorneys (657 addresses actually had been provided by attorneys themselves), only 176 attorneys filled out the questionnaires via e-mail. Since this was such a disappointing response, Court Watch had to conduct a regular judge evaluation via U.S. mail to create a better sample. The e-mail evaluation was simply added onto the regular mail evaluation, making for a more drawn out and expensive evaluation.

Court Watch has reached the following conclusions. First, an e-mail evaluation might be practical in some districts as a stand- alone evaluation (i.e. without using any expensive regular

mail backup). For example, it might work in a heavily-populated district with many attorneys, since even if only a small number of attorneys responded, it still might generate a sufficient number of responses to produce a reasonable sample. However on the downside, such stand-alone e-mail survey would leave out many attorneys who might have responded to a regular mail evaluation. Second, e-mail evaluations would be ideal in districts in which the pollsters have access to current e-mail addresses of large numbers of attorneys. While Court Watch had difficulties in securing e-mail addresses, this could change in the future as attorneys make their e-mail addresses more accessible. Third, e-mail evaluations should become easier if the same district is evaluated a second time by the same group in a few years. Not only would the group have access to the old e-mail addresses, but also the attorneys in that district should be more comfortable with the process and willing to participate.

## **F. EVALUATIONS BY CLERKS AND BAILIFFS**

For the first time, Court Watch provided an opportunity for courtroom clerks and sheriff deputies (who served as courtroom bailiffs) to participate in judge evaluations. Clerks and bailiffs were asked to fill out the third questionnaire (**Exhibit 4**), which was simply a shortened version of the first questionnaire sent to attorneys. All the questions on the third questionnaire were identical to questions on the first questionnaire which had been sent to attorneys. While there was some difficulty in getting supervisors to cooperate, those clerks and bailiffs who did

receive the questionnaires responded well. Court Watch is confident that there will be better cooperation in future surveys.

The evaluations submitted by clerks and bailiffs may not have been as important as the attorney evaluations, since they were fewer in number and they were not asked to respond to the key retention question. However the observations of courtroom clerks and bailiffs added valuable confirmation of attorney observations on those judges that both groups evaluated. Court Watch strongly recommends including courtroom clerks and bailiffs in future judge evaluations in large districts.

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**TABLE B  
OVERALL RANKING OF SUPERIOR COURT JUDGES**

The number on the left of each judge's name is the percent of attorneys who thought the judge should be kept on the bench. The number on the right of each judge's name is the number of attorneys who participated in this overall ranking. Judges who received responses to this retention statement from less than 10 attorneys do not appear on this list.

	<u>Percentage</u>			
B. CRAIG (18)	100	THOMPSON, JACK A. (38 ATTORNEYS)	100	ELLIS,
(10)	100	SMITH, WILLIAM O. (12)	100	FOX, CARL R.
HOWARD E. JR. (42)	98	SPENCER, JAMES C. JR. (55)	98	MANNING,
	98	FLOYD, ROBERT F. (40)		
	97	LOCKLEAR, GARY L. (36)		
	95	STEPHENS, DONALD W. (63)		
	94	GORE, WILLIAM C. JR. (49)		
	93	JOHNSON, LYNN E. (30)		
	88	WEEKS, GREGORY A. (26)		
	81	LANIER, FRANKLIN F. (27)		
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	79	ALLEN, J. B. JR. (67)		
	73	BARBER, WADE (37)		
<hr/>				
	62	LEWIS, OLA M. (43)		
<hr/>				

54 JONES, ABRAHAM (31)

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47 AMMONS, JAMES F. JR. (19)

45 JENKINS, KNOX V. (11)

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17 HILL, EVELYN W. (18)

TABLE C  
OVERALL RANKING OF DISTRICT COURT JUDGES

The number on the left of each judge's name is the percent of attorneys who thought the judge should be kept on the bench. The number on the right (in parenthesis) is the number of attorneys who participated in this overall ranking of that judge. Judges who received responses to this retention statement from less than 10 attorneys do not appear on this list.

PERCENTAGE

100 LOVE, JIMMY L. JR. (48 ATTORNEYS)

100 PONE, EDWARD A. (27)

100 BASKERVILLE, RANDOLPH (18)

100 CARTER, JOHN B. JR. (13)

98 RAWLS, ADDIE M. HARRIS (48)

97 BRYANT, ROBERT W. JR. (38)

96 BANKS, J. HENRY (25)

96 DAVIS, JOHN W. (23)

95 CHANEY, RICHARD G. (37)

95 KEEVER, A. ELIZABETH (37)

94 LEE, JACQUELYN L. (51)

94 DICKSON, JOHN W. (35)

93 ABERNATHY, G. WAYNE (28)

92 ROBERSON, JAMES K. (26)

92 BELL, JAMES GREGORY (13)

92 CARMICAL,

J. STANLEY (13)

91 MOREY, MARCIA H. (53)

91 FAIRCLOTH, RESSON O. II (43)

91 ALDRIDGE, THOMAS V. JR. (32)

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89 JOLLY, JERRY A. (36)

88 STIEHL, ROBERT J. III (34)

88 SASSER, DOUG

B. (32)

86 HILL, JAMES T. (35)

86 FINCH, DANIEL F.

(29)

85 RICHARDSON, HERBERT L. (13)

84 McKOWN, ANN E. (44)

84 BEASLEY, CHERI L. (31)

83 ANDERSON, CHARLES T.L. (48)

83 BROWN, CRAIG B. (48)

81 COLEMAN, ALONZO BROWN JR. (48)

81 BAREFOOT, NAPOLEON B. JR. (32)

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79 DEVINE, M. PATRICIA (43)

77 TUCKER, KIMBRELL K. (39)

75 BUCKNER, JOSEPH M. (56)

73 PHILLIPS, NANCY C. (33)

71 BUSHFAN, ELAINE M. (41)

70 CORBETT, ALBERT A. JR. (47)

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69 HARVIEL, ERNEST J. (26)

63 WILKINSON, CHARLES W. JR (27)

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59 WARREN, MARION R. (34)

59 LLOYD, H. WELDON JR. (27)

51 MURPHY, GEORGE R. (41)

50 CLARK, DOUGALD JR. (12)

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48 ALLEN, BRADLEY R. SR. (25)

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35 DONALDSON, C. EDWARD (17)

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29 HAIR, JOHN S. JR. (17)

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10 ETHRIDGE, JAMES B. (10)

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The first Court Watch evaluation was released in October 1992 and it evaluated Guilford County trial judges (District 18). The second evaluation was released in April 1994 and it covered Division IV (Districts 24-30). The third evaluation was released in October 1996 and it covered Division III (Districts 17-23). Now Court Watch is evaluating judges in districts which have not been covered in prior surveys. Please note that the numbering system for divisions (but not districts) changed since Court Watch's third evaluation.

For example, Wake County attorneys were given the opportunity to answer questionnaires via e-mail. In Durham County, half the attorneys were given a brand new questionnaire which Court Watch developed for this evaluation.

The districts in the Third and Fourth Divisions are: 9, 9A, 10, 11A, 11B, 12, 13, 14, 15A, 15B, 16A, and 16B.

The three-person "grant policy committee" (Professor James Cauthen, Professor Susan Johnson, and attorney Stan Sprague) made some minor changes to the 1996 questionnaire. The questionnaire was shortened by removing four questions which were deemed repetitive or unclear. Also the wording of a few questions was slightly altered to improve clarity.

UNC-G professors Lee Bernick and David Pratto carefully developed and tested the first questionnaire in the 1994 and 1996 judge evaluations. Court Watch believes that this "Behavior Observed" questionnaire, with its "yes" "no" questions, gives more details about a judge's observed conduct. Also it tends to lead to a more objective answer to the key last question - "should the judge be retained?" However Court Watch recognized that there are some advantages to an "Attitudinal Scaling" Questionnaire. For example, they are simpler and quicker to complete, and some judges don't want attorneys to report on the details of their conduct. For a discussion of the techniques used in developing the 1994 and 1996 surveys, see "A Behavior Based Evaluation Instrument for Judges," E. Lee Bernick and David J. Pratto (1995) **The Justice Systems Journal**. 18: 173-184.

Court Watch collected nine different "Attitudinal Scaling" questionnaires from various states and cities (including Alaska, Connecticut, Illinois, Missouri, Utah, and West Virginia). Then, using the best features from these nine questionnaires, the grant policy committee developed two sample questionnaires. These two questionnaires were sent to a number of prominent attorneys. These attorneys were asked to select one of the two questionnaires, and suggest changes in wording. After reviewing comments received from ten attorneys (including two former NC appellate judges), the committee finalized its second questionnaire. **Exhibit 3**.

In District 11, there were 8 district court and 7 superior court judges to be evaluated. It was decided to send questionnaires of only 4 of the 7 superior court judges on a random basis (to keep the number of questionnaires to a more manageable 12). In District 12, there were 9 district court judges and 9 superior court judges to be evaluated. It was decided to send questionnaires of only 4 of the 9 superior court judges on a random basis (to keep the number down to 13).

In past judge surveys, when Court Watch didn't receive a response from an attorney, follow up questionnaires were sent out. Certified mailings sometimes were used. This system was costly, time-consuming, and difficult to administer.

There were several reasons for limiting the number of judges that an attorney could select. First, Court Watch wanted to help the attorneys by limiting them to a manageable number of judges, since the evaluation had to be completed in one sitting. Second, Court Watch discovered from the responses received from its non-Wake mailings that most attorneys had appeared before less than half of the total judges in their county (especially Superior Court Judges). Third, Court Watch believed that enough Wake County attorneys still would respond to create a good sample.

Court Watch included in the 9-judge list only Superior Court Judges who had held at least one 6-month session during the period between July 2004 and June 2006. Furthermore, several Superior Court Judges who met this criteria were not included because they were being evaluated by attorneys from other counties. (e.g. J.B. Allen, Jr., Wade Barber, Evelyn W. Hill, Howard E. Manning, Jr., and James C. Spencer, Jr.).

In Wake County there were 11 district court judges and 6 superior court judges to be evaluated. It was decided to

send questionnaires (on a random basis) of only 8 of the 11 district court judges, and only 4 of the 6 superior court judges. This way each attorney received only 8 district court judge questionnaires and 4 superior court judge questionnaires.

The special codes were put on the envelopes as an additional safeguard, so that Court Watch could positively confirm that no attorney had submitted more than one set of questionnaires.

However questionnaires were not discarded if the Court Watch return envelope was not used to return the questionnaires, but still was otherwise returned (for example, some attorneys taped the Court Watch return envelope to the outside of a larger envelope, or included it with questionnaires inside another envelope).

Orange County Clerk James Stanford wouldn't give us the names of any courtroom clerks, claiming that none were interested in participating. Orange County Sheriff D.Y. Pendergrass didn't respond to a letter and phone calls. Wake County Sheriff Donnie Harrison wouldn't give us bailiff names, citing his concerns for preserving anonymity (we declined his offer to have questionnaires sent to him to distribute to his deputies, since that would violate our security standards). Court Watch was unable to contact Chatham County Sheriff Richard Webster.

In Chatham County, we sent the packets to six courtroom clerks, asking them to evaluate four district court judges. Of these, 5 filled out and returned questionnaires. In Durham County, we sent packets to 22 bailiffs, asking them to evaluate six local district court judges, and 10 responded. In Wake County, we sent packets to 29 courtroom clerks, asking them to evaluate 11 district court judges, and 16 responded.

In the 1996 judicial evaluation, only 2,938 usable attorneys names were available. In the 1994 evaluation, only 3,092 usable names were available.

There were a few judges whose results do not appear in this report because they had been evaluated by fewer than five attorneys. Also not enough courtroom clerks filled out questionnaires to justify including their responses on Judges Joseph M. Buckner and Alonzo Brown Coleman Jr.

Court Watch regrets that due to inconsistent wording, it may have wrongfully disqualified a few attorneys due to responses made on their Attorney Response Cards. Court Watch disqualified from the evaluation any attorney who didn't indicate on the Response Card that he/she had appeared before a judge "since January 1, 2004." However Court Watch had no such recent observation requirement in its questionnaire. This inconsistent wording should be changed in future evaluations.

Court Watch feels that the first "notice" postcard enhanced the response rate. However the second "reminder" postcard may not have been worth the time and cost. For example, reminder postcards were mailed to 3,132 Wake County attorneys two weeks after the questionnaires were mailed, but less than 20 responses were received after the postcard mailing. Given the relatively low return rates in this judge evaluation, Court Watch recommends sending out more screening letters and postcards before sending the questionnaires. However the low return rates also may partly have been due to the high percentage of Wake County attorneys who are government employees (who normally do not appear in court).

Attorneys filled out 32 "second questionnaires" for four of the evaluated judges, whereas attorneys filled out only 12, 14, 22 and 16 "first questionnaires" for these same four judges. For the other two evaluated judges, attorneys filled out 25 "second questionnaires," whereas attorneys filled out 11 and 13 "first questionnaires" for these two judges.

The first questionnaire asked attorneys to give a "good", "poor", etc. description to 18 general qualities. In contrast, the second questionnaire asked attorneys to consider whether the judge did (or did not) exhibit 27 specific forms of behavior.

The differences in responses were especially remarkable for Judges Elaine Bushfan, Craig Brown and Richard Chaney. For Judge Bushfan, 44% of attorneys responding to questionnaire #1 felt that she should remain on the bench, while 78% responding to questionnaire #2 felt she should remain. For Judge Brown, 69% responding to questionnaire #1 felt he should remain, while 91% responding to questionnaire #2 felt he should stay. For Judge Chaney, 83% responding to questionnaire #1 felt that the Judge should remain, while 100% responding to questionnaire #2 felt he should stay. However for Judge Marcia Morey, there was little difference - 90% responding to questionnaire #1 felt she should remain, while 91% responding to questionnaire #2 felt she should stay.

The simple format allows an attorney who likes the evaluated judge to quickly check the boxes on the left of the questionnaire (i.e. "excellent," "good") without having done much thinking about the judge's conduct. Such an attorney will tend to follow up by marking "yes" to the last "judge retention" statement, since that is consistent with his/her previous favorable responses. In short, the format encourages attorneys to base their decisions in the "judge retention" statement on their overall attitudes towards the judge - rather than on the judge's courtroom conduct.

The first questionnaire demands that the attorney state whether or not he/she observed the judge engaging in specific conduct. By forcing the attorneys to make these choices, the attorney unconsciously compares the judge's conduct with standards of good and bad judge behavior. This questionnaire tends to lead the attorney to make a more reasoned objective decision in responding to the final statement.

In theory, e-mailing questionnaires had several advantages over regular mail. First, the overall cost of the evaluation should drop since there would be no need to print paper questionnaires and no need to pay for postage. Second, some attorneys should be more likely to fill out e-mail questionnaires. Those attorneys familiar with e-mail may quickly respond by e-mail. However; if instead they were to receive a thick judicial evaluation packet in the mail, they might set it aside and never get around to tackling that more time-consuming chore.

26 Stat Pac website allowed an attorney to self-select 7 of the 15 District Court Judges, and self-select 3 of the 9 Superior Court Judges (**Exhibit 15**). Thus in the e-mail evaluation, a total of 24 judges could potentially be evaluated. In contrast, in its regular mail evaluations, Court Watch sent only 12 questionnaires to any attorney (the maximum it felt could be stuffed in its return envelope). Thus there was a better chance that attorneys responding by e-mail would rate more judges than if they responded by U.S. mail. In fact, in the e-mail evaluation, 176 responding attorneys sent in a total of 563 questionnaires (3.2 questionnaires per attorney); whereas in the regular mail evaluation, \_\_\_ responding attorneys sent in a total \_\_\_ questionnaires (X questionnaires per attorney).

This judicial evaluation exposed the problems in getting attorneys to respond by e-mail. Of the 298 Wake County

attorneys who participated, 176 used e-mail, while 122 others used regular mail. Many of the e-mail participants probably would have responded using regular mail if only that method had been offered to them.

The North Carolina State Bar includes the names of all attorneys in the State on its membership list, since membership is mandatory. The North Carolina Bar Association is a large voluntary membership organization which does not include all the state's attorneys. While its membership list contains many e-mail addresses, it wouldn't share those addresses with Court Watch for this judge evaluation, citing confidentiality concerns.

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