

SUPREME COURT OF NORTH CAROLINA

NORTH CAROLINA STATE CONFERENCE OF)
THE NATIONAL ASSOCIATION FOR THE)
ADVANCEMENT OF COLORED PEOPLE)

v.)

Wake County

TIM MOORE, in his official capacity, PHILIP)
BERGER, in his official capacity)

ORDER

The Court, on its own motion, authorizes the parties to file simultaneous supplemental briefs and reply briefs addressing the question of the procedure that the Court should implement in considering a recusal motion, including some or all the following issues and any additional procedure-related issues that any party deems appropriate:

1. What historical and current recusal practices are utilized by state and federal courts of last resort in the United States? To the extent that another state’s court of last resort has rules allowing the involuntary recusal of a justice who does not believe that his or her self-recusal would be appropriate, upon what authority were those rules predicated and what process was used to adopt them? Does the recusal process differ between state and federal courts of last resort and, if so, why?

2. Does this Court have the authority to require the involuntary recusal of a justice who does not believe that self-recusal is appropriate? If so, upon what legal principles does that authority rest? What role, if any, do N.C.G.S. § 7A-10 and N.C.G.S. § 7A-10.1 play in determining whether this Court has such authority? What role do the provisions of the Code of Judicial Conduct play in the making of any such recusal

decision? And what enforcement mechanisms exist to ensure compliance with any such involuntary recusal decision?

3. What has been the method for making recusal decisions by this Court? What should be the procedures employed in making recusal decisions for members of this Court?

4. Are there any differences in the principles to be utilized in determining whether a justice of a court of last resort should be recused and those governing the recusal of a judicial official serving as a member of a trial court or lower appellate court?

5. What, if any, effect should the filing of a motion that a particular justice be recused have upon the process followed in making the recusal decision? Should any distinction be made in the handling of recusal motions predicated upon constitutional and non-constitutional grounds? Should the justice who is the subject of the recusal motion participate in the determination of that motion by the full court and, if so, on what authority?

6. What effect should any "duty to sit" have in the process of deciding whether a justice of a court of last resort should be recused? Does the fact that a justice of a state court of last resort is elected, rather than appointed, have any bearing upon the recusal analysis? Does an elected justice have an individual constitutional right to participate in deciding every case that comes before the Court and, if so, what is the source and extent of any such right? Does the involuntary recusal of a justice have any impact upon the constitutional or statutory rights of any party to the underlying case?

7. Should written rules be adopted to govern the recusal of a member of this Court who elects to refrain from recusing himself or herself? If so, what entity should adopt any such rules? And what should be the content of those rules?

8. Should any such rules incorporate a process for the making of findings of fact? If so, what person or entity should make those findings and what procedures should be employed in order to facilitate the making of any such findings? What should be the standard of proof utilized in making those findings of fact? And what burden of proof, if any, is applicable to the fact-finding process and who bears it?

Each party's initial brief should be filed no later than 30 days from the date of the entry of this order. Any response brief that a party wishes to submit should be

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filed no later than 20 days after the deadline for the filing of initial briefs. After both initial and response briefs have been filed, the Court will decide the extent, if any, to which additional procedural steps need to be taken prior to the resolution of the recusal motions that are currently pending before this Court.

By order of the Court in conference, this the 28th day of September 2021.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 29th day of September 2021.



AMY FUNDERBURK
Clerk, Supreme Court of North Carolina

A handwritten signature in blue ink, appearing to read "MCH", written over a horizontal line.

M.C. Hackney
Assistant Clerk, Supreme Court of
North Carolina

Copy to:

North Carolina Court of Appeals

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