

**NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE**

BILL NUMBER: Senate Bill 1012

SHORT TITLE: Publication of Appellate Decisions

SPONSOR(S): Senators Rucho and Odom

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 1997-98</u>	<u>FY 1998-99</u>	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
<u>Judicial Expenditures</u>					
Recurring	\$84,864	\$102,287	\$102,287	\$102,287	\$102,287
Nonrecurring	\$6,700				
<u>Estimated Revenues</u>	\$30,720	\$30,720	\$30,720	\$30,720	\$30,720
<u>Net Expenditures</u>	\$60,844	\$71,567	\$71,567	\$71,567	\$71,567
 POSITIONS: Assistant Appellate Reporter					
 PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Department					
 EFFECTIVE DATE: When bill becomes law and applies to decisions issued on or after that date.					

BILL SUMMARY: *TO PROVIDE PARTIES WITH THE RIGHT TO THE PUBLICATION OF ANY OPINION ISSUED BY THE COURT OF APPEALS.* Adds new GS 7A-6.1, permitting any party to an action to pay Judicial Department costs (not to exceed \$500) for printing, publishing, and storing a court opinion when the Court of Appeals decides a case without publication of an opinion under Rule 30(e).

ASSUMPTIONS AND METHODOLOGY: Judicial Department

The Judicial Department anticipates this bill would have some fiscal impact on the court system. Currently, Court of Appeals opinions are not published when the Court determines “that the appeal involves no new legal principles and that an opinion, if published, would have no value as precedent.” The proposed bill would allow any party to require publication of any opinion upon paying up to \$500 of the costs of publication. The fiscal impact would be twofold: (1) There would be a need for one additional staff person in the Appellate Reporter Office (who administers publication of appellate opinions); and, (2) A need for additional operating funds to publish the additional opinions.

Number of Opinions

Presently, most Court of Appeals opinions are *not* published. The Clerk of the Court of Appeals reported that of the 1,399 opinions filed in 1996, approximately 959, or nearly 70%, were not published.

It is very difficult to determine how often parties would demand that opinions be published, although there appear to be several factors which seem to militate against publication. First, unpublished opinions are public records. The Court sends copies to the parties, any person may request a copy, and the media can report on cases decided by unpublished opinion. Published reports already list the cases decided by unpublished opinion, identifying the parties and briefly stating the results of the appeals. In addition, many parties, especially losing parties, may not see a large incentive to have an opinion published. A dissatisfied party may seek review by the Supreme Court or may by motion ask the Court of Appeals to reconsider its determination that an opinion will not be published. (Motions that request publication of an opinion are most often granted, but such motions are infrequent, some twelve per year.) Finally, a dissatisfied party might prefer that the decision not be published, since forcing publication would give precedential force to an opinion with which the party disagrees.

On the other hand, there are factors which may contribute to parties wanting to have opinions published. For instance, there may be some losing parties who believe that publication is necessary to hold the Court's decision up to greater public scrutiny. In addition, there may be many prevailing parties and/or their attorneys who would want an opinion to be published because they prevailed.

For purposes of this fiscal note, it is estimated that parties would request publication for 10% of the opinions that are not published now which would total approximately 96 additional opinions each year (959 opinions not published last year). These 96 additional opinions would result in an 22% increase of the number of published opinions.

Estimated Fiscal Impact

Personnel

The Appellate Reporter Office prepares appellate opinions for publication (both for the Court of Appeals and the Supreme Court). Currently, there are two full-time and one part-time Assistant Appellate Reporters, who prepare the headnotes and other legal references for all appellate opinions. (Headnotes are succinct summaries of the legal issues decided by the Court, printed for convenient reference before each opinion; the reports also include an analytical index of legal issues.) Additional staff consist of two Editorial Assistants who handle all of the non-legal indexing (including case and attorney lists), and all other administrative tasks for publication.

Based on consultations with the Clerk of the Court of Appeals, the Department estimates the potential 22% increase in the number of published opinions would necessitate one Assistant Appellate Reporter position. The costs for this position are \$54,144 recurring (position effective 10/1/97) and \$6,700 nonrecurring for FY 1997-98 and \$71,567 recurring for future years.

Costs of Publication

Appellate opinions are published in both “advance sheets” and later, in permanent bound volumes. (Advance sheets are pamphlet-like publications which are produced so that the legal profession and public have prompt access to appellate opinions which under present law the Court has determined to have value as legal precedent.) Once enough opinions have been issued, a bound volume is produced, and advance sheets are generally discarded. The Judicial Branch contracts for the printing of the appellate reports and advance sheets. Based on the most recent three editions of the advance sheets and bound volumes, the costs for printing and distribution of Court of Appeals opinions is \$64.00 *per page*. The average length of an unpublished opinion is about five printed pages. Thus, printing the 96 additional opinions would cost approximately \$30,720 each year.

Potential Revenues

Based on five pages per opinion, the average cost to a party would be \$320 (five pages times \$64 per page), which is less than the maximum of \$500 that a party could be charged under this bill. However, in instances where an opinion exceeds 8 pages in length, the party would not pay the full costs of publication (\$500 divided by \$64 per page is 7.8 pages). It is probable that some opinions would exceed eight pages. For purposes of this fiscal note, it is estimated that revenues will equal \$320 per request (\$64 X 5 pages), thus totaling about \$30,720 in fees collected each year (\$320 X 96 opinions).

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION

733-4910

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