

Terms of Office for Appointed Appellate Judges

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[Editor's note: Today we welcome Jim Drennan to the blog. Jim has been here at the School of Government for almost 40 years, though he took a couple of years away to serve as the director of the AOC. He was the first director of the Judicial College and knows a thing or two about judges and court administration.]

When [Justice Patricia Timmons-Goodson](#), elected to the North Carolina Supreme Court in 2006, decided to retire in December, it started a conversation among a couple of my colleagues about how long the person appointed to replace her would serve. So here's a quiz. The appointee, [Justice Cheri Beasley](#), will serve:

- (a) for the remainder of Timmons-Goodson's term
- (b) for an eight-year term
- (c) until Jan. 1, 2015

Should Justice Beasley run in the next election scheduled for the seat, that election will be for:

- (a) an eight-year term
- (b) an eight-year term, but only because Justice Timmons-Goodson's term would expire in 2014—otherwise it would be for the remainder of her term

If Justice Timmons-Goodson had been a superior court judge, would the answer have been any different?

Although our court system values uniformity as an organizing principle, that is not the case with methods of selection of the various levels of court. Every court level is different. The whole selection system has many nooks and crannies; it would require many posts to cover them all. This post is only about appellate court vacancies. For a summary of the provisions on filling vacancies in all judicial offices, see this [paper](#) (updated January 2015) by my colleague Michael Crowell on the School of Government's Judicial Authority and Administration [website](#).

Until 1995, the rule for filling vacancies was uniform for appellate judges and superior court judges. The constitution sets the terms for both offices at eight years. If either office became vacant, the appointee served until the next general election held more than sixty days after the vacancy occurred, at which point the winner of the election would serve the remainder of the term. If the vacancy occurred in the last two years of the term, the election would be for a full eight-year term, as it would have been if the incumbent judge had sought re-election. Terms of office attached to the office, not the office-holder.

Here's an example: Judge A is elected to the Court of Appeals in November 1980 for an eight-year term. Judge A retires in January 1983. Judge B is appointed to "fill" the vacancy. Judge B would serve until the 1984 general election, at which time either Judge B or someone else is elected to "fill the vacancy". The winner of the 1984 election would serve until Judge A's original term expired on Jan. 1, 1989. The 1988 election would select the judge to serve

for the next eight-year term. Only if the vacancy had occurred after September 1986 — within 60 days of the 1986 election — would Judge B have served the remainder of the term without having to stand for election before the next election for a full eight-term term in 1988.

This rule often resulted in appointees having to run for short terms. In extreme cases, they had to run twice in less than three years. That would be the result in the example above if the vacancy occurred in March 1986. There would have been an election in November 1986 for the last two years of the unexpired term, followed by another election in 1988 for a full eight-year term.

The pre-1995 rule was codified in GS 163-9, and it specified that mid-term elections were to “fill the unexpired term of the office,” unless the election would have been for a new eight-year term anyway. The constitutionality of that statute was affirmed in [Brannon v. State Board of Elections](#), 331 NC 335 (1992). The facts were these: Judge (later Justice) Robert Orr was appointed in 1986 to fill a vacancy created on the Court of Appeals when Justice John Webb was elected to the Supreme Court. Judge Orr stood for election in 1988 for the remainder of the unexpired term which was due to end in 1992. Governor Jim Martin, though, interpreted the constitutional provision on eight-year terms to mean that every time a judge was elected to the Court of Appeals, even if it was the result of a vacancy, it was for a full eight-year term, notwithstanding the provisions of GS 163-9. The Governor issued an eight-year commission to Judge Orr and several other appellate judges in similar positions. The State Board of Elections followed that interpretation and scheduled no election in 1992 for Judge Orr’s seat. Judge Anthony Brannon, a superior court judge, sued, contending that in 1988 Judge Orr’s election was for the unexpired portion of Justice Webb’s term. The Supreme Court found that the version of GS 163-9 in effect at the time was consistent with the constitutional requirement for eight-year terms and required the Board of Election to hold another election at the end of the original term in 1992. Judge Orr won that election.

That was not the end of the story, however. Proponents of the interpretation taken by Governor Martin pursued a legislative change to GS 163-9. In [1995](#), the legislature adopted that interpretation. The current version of that statute provides that any appellate judge gets an eight-year term upon being elected, regardless of when the term of the previous judge would have expired. The term of office attaches to the person, not the office.

So the answer to the first question is (c) [*although in this case, (a) would also be the correct answer, but only because Justice Timmons-Goodson retired so close to the end of her eight-year term*], and (a) to the second.

For superior court vacancies the answer is “it depends.” The 1995 amendment to GS 163-9 created two kinds of superior court terms in order to comply with voting rights statutes and litigation from the 1980s. That’s a longer story, perhaps for another blog post.