



## The North Carolina Innocence Inquiry Commission\*

### *Commissioners*

Judge Quentin T. Sumner  
Chairman

Charles Becton  
Mel Laura Chilton  
Jacqueline Greenlee  
Heath Jenkins  
Susan Johnson  
William Kenerly  
Wade Smith

Administrative Office of the Courts  
North Carolina Innocence Inquiry Commission  
P.O. Box 2448  
Raleigh, NC 27602  
Phone: (919) 890-1580  
Fax: (919) 890-1937

### *Staff*

Kendra Montgomery-Blinn  
Executive Director  
Michael Epperly  
Sharon Stellato  
Grace Castellanos  
Juanita Betts  
Jamie T. Lau  
Lindsey Guice Smith

May 12, 2010

### *VIA FIRST CLASS MAIL*

Ret. Chief Justice I. Beverly Lake  
3703 Shadybrook Drive  
Raleigh, NC 27609

Ms. Christine Mumma  
The North Carolina Center on Actual Innocence  
PO Box 52446 Shannon Plaza Station  
Durham, North Carolina 27717-2446

Dear Ret. Chief Justice Lake and Ms. Mumma:

Thank you both for attending the April 30 administrative meeting of the North Carolina Innocence Inquiry Commission. The Commissioners appreciated hearing from you and the presentation of your legislative proposals. I would like to again extend my offer to explain our case screening process in detail and to welcome Chief Justice Lake out to our offices any time. As a reminder, the Commission is eager to have the copies of all nine signed letters you discussed at the meeting.

The Commissioners discussed and voted on your legislative proposals and were unanimous in their decisions on each one. As you will see from the discussion below, the Commission supports legislative proposals six, seven, and ten and the Commission would consider supporting a modified proposal five.

### **Proposal Number One - Applications require referrals**

The Commission opposes this proposal. The Commission believes that all convicted persons who have an innocence claim should have access to the resources of the Commission. Requiring referrals would cause unnecessary delay and perhaps even prevent access to those who

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\* A state agency created by the North Carolina General Assembly in 2006 pursuant to N.C.G.S. § 15A-1460-75.

need the Commission the most. The Commission is comfortable with the way cases are currently received by the Commission and screened by the Commission staff.

**Proposal Number Two – Director and Chair must find new evidence merits review before presentation**

The Commission opposes this proposal. The Commission felt this proposal was unnecessary since the statute already defines a claim of factual innocence as having “credible verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.” NCGS 15A-1460(1). The statute also states: “at completion of a formal inquiry, all relevant evidence shall be presented to the full Commission.” NCGS 15A-1468(a).

The Commission believes this type of evaluation is already being done and that this statutory change could cast the Director and Chair in an advocatory light.

**Proposal Number Three – Close all Commission hearings to the public**

Although some hearings should be closed, the Commission opposes this proposal. The Commission feels that the current statute that leaves the status of hearings to the Chair on a case-by-case basis is appropriate.

**Proposal Number Four – Release of all investigative files not otherwise under necessary protective order**

The Commission opposes this proposal. The Commission felt this provision was unnecessary since any party who wanted access to files was welcome to file a motion and ask a Judge to open the particular files. Requiring the staff to sort through each case file and seek protections for documents piece by piece would take away from the staff’s time to focus on other cases. This proposal seems to be in direct contradiction to the Public Records Act.

**Proposal Number Five – Require AG to appoint a Special Prosecutor**

The Commission opposes this proposal as a mandate. The Commission would reconsider this proposal if it is made as a recommendation. The Commission also will consider making a recommendation in their findings of fact that an independent prosecutor be assigned. The Commission also is concerned that limiting special prosecutors to the Attorney General’s office could become a financial burden on that office.

✓ **Proposal Number Six – Prosecution may join Defense in a motion to dismiss**

The Commission supports this proposal.

✓ **Proposal Number Seven – At three-judge panel, all relevant evidence may be presented**

The Commission supports this proposal.

**Proposal Number Eight – Two of three Judges find clear and convincing evidence**

The Commission opposes this proposal at this point in time.

**Proposal Number Nine – Time frames for the appointment of the three-judges and special prosecutor**

The Commission opposes this proposal. The Commission does not think a need for this provision has been established and they defer to the wisdom of the Chief Justice in her appointments.

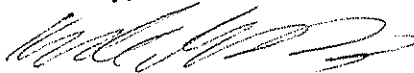
**Proposal Number Ten – Removal of the sunset of legislation**

The Commission supports this proposal.

The Commission requests that you not advance the proposed legislation that they have opposed. Whether or not you consider their wishes, the Commission requests that you keep me notified of all legislative proposals and their status at the General Assembly.

On behalf of the Commission, I would like to express thanks to both of you for your extraordinary efforts to create this unique Commission. The Commission appreciates your support and understands how strongly you feel about what you worked so hard to create. Like you, they are proud of your efforts and accomplishments. The Commission believes the way they now operate maximizes their success and acceptability.

Sincerely,



Kendra Montgomery-Blinn  
Executive Director

cc: Chief Justice Sarah Parker  
Chief Judge John Martin  
Representative Rick Glazier  
Senator Dan Clodfelter  
Commission Members