

People's Alliance PAC 2018 Questionnaire for North Carolina Appellate Division Judicial Candidates

Please return this completed questionnaire along with a resume or biographical statement describing your education, work history, community service, and prior political experience as soon as possible, but by July 20, 2018 at the latest. Please note that following this deadline, the Durham People's Alliance PAC may publish your responses to this questionnaire and your resume.

You may e-mail your responses to Tom Miller at tom-miller@nc.rr.com or mail them to Tom at 1110 Virginia Avenue, Durham, NC 27705

Thank you for completing this questionnaire and your willingness to serve the people of North Carolina.

Candidate's name: **John S. Arrowood**

Judicial office sought: **North Carolina Court of Appeals**

Address: **210 N. Church Street Unit 1714 Charlotte, N.C. 28202**

E-mail address: judgearrowoodcampaign@gmail.com

Phone: **704-906-5695**

When answering this questionnaire, please repeat the questions in your response document with each question numbered and organized as it appears here. Type your responses in italics, bold, or a different font to distinguish your responses from the questions. Please do not use colors. Please respond to questions using your own words and cite outside sources when applicable. You may explain your answer to every question, but please be concise.

About you:

1. Are you conservative or liberal? Please choose one and then explain your answer.

I am not sure that either of the labels fit me entirely. I will say I have never been called a conservative, and folks on the other side of the political spectrum call me liberal. On social and social justice issues I suspect that most people would call me a liberal; on fiscal issues I would probably be viewed as a moderate.

2. Please describe how your religious and philosophical beliefs may affect your conduct and decision-making if you are elected.

I am an Episcopalian and active in St. Peter's Episcopal Church in Charlotte. My ethics and beliefs govern my day to day life. With respect to how I will conduct my duties as a Court of Appeals Judge, my judicial philosophy is quite simple. I have no agenda to

pursue or platform to advance other than to dispense equal justice under the law without favoritism to any party, I pledge to perform my responsibilities independently, with integrity and to the best of my abilities.

3. Have you ever been convicted of a criminal offense (other than a minor traffic or drug offense)? If the answer is yes, please describe the circumstances and the outcome.

No

4. Have you personally ever been a party in a civil legal proceeding? If the answer is yes, please explain the circumstances and the outcome of the case.

No

About your practice of law:

5. Please describe your practice as a lawyer. Describe the areas of your practice and your specialties. If, over time, your practice has evolved or changed, describe the changes. Describe your various client bases as a part of your answer.

For approximately 26 years before and after I served on the bench the first time, I have practiced with the same medium-sized law firm, James, McElroy and Diehl, P.A. My practice was mainly in the civil litigation area with approximate five percent in white collar criminal pardon and expunction practice. My civil practice was in complex commercial litigation with some work in employment and administrative law. I represented both individuals and businesses in commercial disputes, before administrative agencies and in employment cases. My practice was such that it has never compelled or qualified me to be a member of either the Advocates for Justice or the Association of Defense Counsel. Over time I did considerable work for the automotive and motorsports industry where one of my major clients has been the Hendrick family and their various companies. I have represented a variety of individuals in licensing and discipline disputes with state boards and commissions. I have represented plaintiffs with respect to issues related to the State Personnel Act and with employment disputes (both those related to claims covered by the EEOC's jurisdiction and issues as they relate to employment contracts). I also represent business clients of the firm in various employment contract disputes and before the EEOC. In my pro bono work I have served as an attorney for the "Lawyer on the Line" program with Legal Services, taking at least one situation per month.

6. If you have been a member of an appellate division court, please choose a recent decision you have written for the court which you feel best illustrates your learning, values, skills, outlook, and temperament as a jurist. If the decision is published, you may simply cite it. If the decision you have selected is unpublished, please provide us with a copy. Please explain why you selected the decision and tell us how it demonstrates your particular fitness to hold the judicial office you are seeking.

From my earlier term on the Court, I would call your attention to four cases to review; two cases where I wrote the majority opinion both dealing with personal injury and toxic

substances fact situations. In one case, *Cameron v. Merisel Properties, Inc.*, 187 N.C. App. 40, 652 S.E. 2d 660 (2007), the Plaintiff prevailed on a large jury verdict. In the other *Curl v. American Multimedia, Inc.*, 187 N. C. App. 489, 654 S.E. 2d 76 (2007) the Defendant prevailed because the law did not recognize a current injury.

I also invite your attention to two cases where I wrote a dissent and that position was adopted by the North Carolina Supreme Court; *Saft American, Inc. v. Plainview Batteries, Inc.*, 189 N.C. App 579, 659 S.E. 2d 39 (2007) rev'd 363 N.C. 5, 673 S.E.2d 864(2009) a personal jurisdictions case where I wrote in favor of finding jurisdiction and *State v. Moore*, 194 N.C. App. 754, 671 S.E. 2d 545 (2009) rev'd 363 NC 793, 688 S.E. 2nd 477 (2010) where I wrote a dissent to overturn a conviction. In each case the Supreme Court agreed and in *Saft* merely adopted my reasoning per curiam.

From my current term I would call your attention to a couple of dissents I have written in *State v. Brawley* 17-287 adopted by the Supreme Court and *State v. Cromartie* 17-350. In one case I would have ruled for the State in the other for the Defendant.

I think that by reading these opinions you can get a flavor of how I think and analyze cases in an attempt to carry out my judicial philosophy. I also think they show that I decide the cases by applying the facts presented to the law as it exists; which is what an intermediate appellate court is bound to do.

7. If you have not been a member of an appellate division court, please describe your practice in that division. Please provide us with the citation of an appellate decision in a case in which you advocated as lead attorney for one of the parties. The decision you choose should best illustrate the learning, values, skills, outlook, and temperament you would bring to the court as the holder of the judicial office you seek. If the decision you have chosen is unpublished, please provide us with a copy. You may also provide us with the brief you wrote in that case. Explain why you selected this decision.

N/A

8. Please describe the nature and extent of any *pro bono* legal work or other volunteer work you have done. Is there a *pro bono* or volunteer effort your contribution to which best illustrates your values as a lawyer and as a person?

As set forth above, I volunteered with Legal Services through their "Lawyer on the Line" program where I take one client per month. I also contribute to the Access to Justice Campaign and in one of the large class actions I was defending for an automotive client was successful in getting 1/3 of the cy pre pot directed to assist Legal Services of North Carolina and to Legal Aid of the Southern Piedmont. I also did pro bono work for the Mint Museum and St. Peter's.

9. Have you ever been the subject of a complaint to the North Carolina State Bar or the North Carolina Judicial Standards Commission? If the answer is yes, please explain the circumstances and the outcome.

No

Concerning law and policy:

10. What is your position on the death penalty?

As there are current cases pending in North Carolina related to this subject I believe that pursuant to the provisions of Canon 2 and Canon 3 of the North Carolina Code of Judicial Conduct, and most particularly Canon 3(A)(6), it would be inappropriate for me to comment on this subject.

11. What, if anything, should be done to improve access to the courts for people with limited financial means?

I have witnessed, as a Superior Court Judge, that more poor and disadvantaged citizens appeared before me in situations related to the criminal justice system. Whether that is because of selective enforcement or some other reason I cannot say. I believe that it is imperative that all people without regard to their background or means be afforded competent and capable defense counsel and the ability to present a full and fair defense. In the civil area it is critical that the various legal services organizations continue to be funded at the federal level and that the cuts recently made in state funding be restored.

12. North Carolina incarcerates an extraordinary number of people, including persons convicted of non-violent crimes. Those who are incarcerated are disproportionately people of color. What can you do in your role as an appellate judge to address the issues of mass incarceration and racial bias in the administration of justice?

As a Court of Appeals Judge, we review the record on appeal to determine if the trial court erred in various rulings that it made. Issues with respect to whether non-violent persons are incarcerated and the length of incarceration allowed are governed by the sentencing statutes. If the trial court acts within the confines of the statute the appellate judge has no ability to overturn those decisions. The issues with respect to sentencing and the length thereof are legislative questions.

With respect to racial bias if raised and a record made below the Courts can address the issues particularly with respect to the peremptory strikes are used in jury selection those are addressed under the framework of United State Supreme Court case of Batson v. Kentucky 476 U.S. 476 U.S. 79 (1986)

13. Do you think that racial discrimination in the use of peremptory strikes in jury selection is a problem, and, if so, what can be done to address it?

I believe in North Carolina that in some jurisdictions trial courts have found in doing review of death case under the NC Racial Justice Act have found issues with respect removal of minority jurors as it relates to death penalty cases. The legislature has since repealed that statute. The mechanism to address this issue now is through the making of challenges under Batson referenced above. Under the North Carolina Supreme Court precedent that has interpreted the Batson analysis and that are binding on the N.C. Court of Appeals defendants have found it a very high bar to cross to obtain a new trial under this line of cases.

14. Would you support legislation designed to protect gay, lesbian, and transgender people from discrimination in housing, employment, public accommodation, and access to government processes, benefits, and services?

Yes

15. Should magistrates, judges, or other government officials be excused from performing their lawful duties because of their religious beliefs?

Because this issue and other issues related to how religious beliefs may be used in various refusals to render services to the LGBTQ communities are currently being litigated I believe under Canons 2 & 3 of the North Carolina Code of Judicial Conduct it would be inappropriate for me to comment on this question.

16. Should state agencies with licensing, environmental protection, consumer protection, or similar functions make the final decisions in enforcement or other contested cases or should the final decisions in such matters be made by administrative law judges? What should North Carolina's law and policy be with regard to the deference courts afford regulatory agencies? What should our state's law and policy be with regard to who is an "aggrieved person" in cases of environmental law violations?

Because cases related to these questions may come before the N.C. Court of Appeals especially the question of how to apply agency decisions, I believe that pursuant to the provisions of Canon 2 and Canon 3 of the North Carolina Code of Judicial Conduct, and most particularly Canon 3(A)(6)e, it would be inappropriate for me to comment on this subject.

17. Did you support "Raise the Age"? Are you satisfied with the current law?

Yes

18. Should judges be appointed or elected in North Carolina? If you believe judges should be appointed, who should appoint them? If you believe judges should be elected, what system should be employed to elect them? Should judicial elections be partisan?

I think that the ideal system for the selection of Judges when a vacancy to occur would be for there to be a bipartisan panel made up of attorneys together with representation of the public that looks like North Carolina conduct a process and recommend to the Governor several people to fill the vacancy, that the Governor make an appointment and that the person appointed must stand for retention in a non-partisan manner after having served a number of years in office. I also believe that this system should have a public financing component so that the judge is not required to raise large sums of money, many times from folks who appear before them.

I do not support the system currently being proposed by the proposed constitutional amendment the Legislature is placing on the ballot this year.

19. What is the most important decision of the Supreme Court of North Carolina in the last five years and why?

I do not think that I can single out a single decision as most important, I do believe that the issues related to separation of powers and the appropriate roles for the legislative and executive branches of government are the most consequential set of cases our Supreme Court has faced recently. I think this is true because while there have been issues with respect to voting rights at the Supreme Court the most consequential decisions are being made in the federal system.

20. Did you support or oppose the bill passed by the North Carolina General Assembly in 2017 that will reduce the number of Court of Appeals judges? How many judges should sit on that court?

Oppose.

15

21. What changes, if any, would you make in the relative jurisdiction of the North Carolina Court of Appeals and the Supreme Court of North Carolina?

I am concerned about the Legislatures movement of the 3.1 termination of parental rights cases and issues related thereto to the Supreme Court as an initial appeal. I think there needs to be some consideration made as to whether all cases initially heard by the Business Courts should be initially heard in the Supreme Court.

Your politics:

22. How are you registered to vote? Have you ever changed your voter registration? If you have changed your registration, please explain why.

Since I was 18 years old I have been registered as a Democrat in whatever domicile I have been resident.

23. Who did you vote for in the 2012 and 2016 presidential and gubernatorial elections? Who did you vote for in the 2014 U.S. Senate race?

**2012 Obama/Biden and Lt. Governor Dalton
2016 Clinton/Kaine and Governor Cooper
2014 Senator Hagan**

24. How will you vote if the November ballot contains constitutional amendment referenda in favor of voter identification, "Marsy's Law," and the filling of judicial vacancies?

I intend to vote against the Voter ID and Judicial Vacancy amendments.

While I am in favor of the provisions of Marsy's law related to victims' rights, I am still unsure about how that would fit in the constitution as opposed to in the statutes themselves.

Judges and judicial candidates in North Carolina are allowed substantial freedom of political speech. PA PAC believes that every question in this questionnaire may be answered fully within the scope of the applicable rules. For more information on the scope of permitted political speech for judicial candidates, we refer you to the December 17, 2015 memorandum of the Judicial Standards Commission on Permitted Political Conduct. You may find it at:

https://www.sog.unc.edu/sites/www.sog.unc.edu/files/course_materials/04%20Political%20Conduct%20Guidance%20for%20Judges%202016.pdf

Again, Thank you. **Please do not forget to provide us with your resume or biographical statement.**

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JSArrowood@aol.com

Personal:

Born: November 4, 1956
Burnsville, North Carolina

Religious Affiliation: Episcopalian

Employment:

Judge, North Carolina Court of Appeals (2007-2008, 2017-present)

Special Superior Court Judge
Charlotte, North Carolina (2007)
(Conducted hearings and trials involving a wide range of civil and criminal matters)

James, McElroy & Diehl, P.A.
Charlotte, North Carolina (1989-2007, 2009 to 2017)
(Practice involved complex commercial litigation in State and Federal Courts)
Martindale-Hubbell AV Preeminent Rated

North Carolina Court of Appeals
Staff Attorney, Senior Staff Attorney/Staff Director
Raleigh, North Carolina (1983-1985, 1986-1989)

Research Assistant to the Honorable S. Gerald Arnold
Judge (later Chief Judge), North Carolina Court of Appeals
Raleigh, North Carolina (1985-1986)

Wilson, Palmer & Cannon, P.A.
Lenoir, North Carolina (1982-1983)
(General practice of law)

Education:

University of North Carolina at Chapel Hill

Juris Doctor (1982)

Phi Delta Phi (Exchequer 1981-1982)

Catawba College

B.A. Magna Cum Laude (1979)

Awarded the Whitener Award, Most Outstanding Senior (1979)

Alpha Chi National Honor Society

Phi Delta Phi (Honor Society)

Bar Admissions:

North Carolina State Bar

United States Supreme Court

United States Court of Appeals for the Fourth Circuit

Western, Middle and Eastern Districts of the United States District Court for the District of North Carolina

Bar Associations and Activities:

American Bar Association

North Carolina Bar Association

Public Service Advisory Committee (2008-2009)

Appellate Practice Section Council (2017-2020)

Outstanding Young Lawyer Award, North Carolina Bar Association, Young Lawyer Division (1988-1989)

Young Lawyers Division of the North Carolina Bar Association

Co-Chairman, Appellate Survey Committee (1987-1988)

Chairman, Scholarship Committee (1988-1989)

Division Director (1989-1990)

Chairman, Special Projects Homeless Committee (1990-1992)

State Boards and Commission Service:

North Carolina Railroad Board of Directors (2001-2007)

North Carolina Arts Council (2003-2007)

North Carolina Banking Commission (1995-2001)

North Carolina Rules Review Commission (1999-2001)

Attorney General Advisory Commission on Statutes (1995)

North Carolina Election Law Review Commission (1994-1995)

Religious and Civic Involvement:

St. Peter's Episcopal Church
Vestry (2009-2012)
Delegate to Diocesan Convention (2006-2008, 2012-2014)
Outreach Commission (1999-2001)
Outreach Grant's Committee (2013-2015; Chair 2014-15)
Chancellor (2015 - 2017)
St. Peter's Choir School Board of Directors (2016-Present)
Mint Museum of Art
Board of Trustees (1998-2004, 2006-2007)
Executive Committee (2000-2004)
Advisory Board (2004-2006, 2007-2015)
Leadership Charlotte Class XVIII
Charlotte Center for Urban Ministries, Inc., Board of Directors (1995-1997)
The Brothers Foundation, Inc., Board of Directors (1995-1996)

Political Activities:

North Carolina Democratic Party
Executive Council (1995-2002) (2014-2016)
Chair Platform and Resolutions Committee (2002-2004)
Member of the Executive Committee (2005-2007) (2010-2017)
Delegate to Democratic National Convention (1996, 2000 (Delegation Whip),
2004, 2016 (Clinton Delegation Whip)
Gore 2000 NC Authorized Representative for Delegate Selection (2000)
Hillary Clinton NC Authorized Representative for Delegate Selection (2016)
Equality North Carolina PAC Board Chair (2005-2007)
Gay and Lesbian Victory Institute Board of Directors (2011-2017)
Vice-Chair (2014-2016)
One Victory Board of Directors (2015- present)