

**PA PAC Questionnaire for
North Carolina Appellate Division Candidates – 2020**

Please return the completed questionnaire along with your resume or biographical statement describing education, work history, community service, and prior political experience as soon as possible, but by January 8 at the latest.

You may e-mail your responses to Tom Miller at tom-miller1@nc.rr.com or you may send a printed copy of your responses to PA PAC c/o Tom Miller 1110 Virginia Avenue, Durham, NC 27705-3262

Please note that following the January 8 deadline, the People's Alliance PAC may publish your responses to this questionnaire and your resume.

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. Do not use colors or shading.

Please try to confine your responses to no more than 300 words unless another word limit is indicated. Do not feel obliged to exhaust the limit for each question.

If you use words or ideas from another person, please attribute your source.

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

Candidate's name: Patricia (Tricia) Shields

Court and seat you are running for: NC Court of Appeals, Seat 04

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About you:

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

I was raised to value honesty, integrity, and compassion, both in my church and at home. I grew up in Durham, and my family attended St. Luke's Episcopal Church. I raised by parents who devoted their lives to the service of others. My mother was a social worker. My father was the director of Operation Breakthrough in the mid-1960s. Social and racial equity and justice were subjects of regular dinner table conversations in my childhood. These values have always influenced my conduct, personally and professionally, and will continue to guide me in all of my future endeavors.

While a person's values may influence their perspective, a Court of Appeals judge has the duty to apply the law as written, consistent with the constitutions of North Carolina and the United States. I would decide any case that came before me based on the facts of the case and the applicable law, and not based on my personal opinions or beliefs.

2. Would you support requiring race equity training for all North Carolina judges? If not, why not? Can you provide an example of your own advocacy for race-equity and diversity?

Yes, I would support requiring race equity training.

I was honored to be a recipient of the Diversity & Inclusion Award from NC-SC Lawyers Weekly this year. I was given this award for my emphasis on diversity over the course of my career. In addition to my full-time private practice, I am a member of the adjunct faculty at Campbell Law School, where I have taught Trial Advocacy for six years. I am well aware that young Black lawyers have fewer opportunities when entering the profession, particularly in private practice law firms. In my work at Campbell, I have had the opportunity to teach, mentor, and become friends with a number of Black law students. I have worked to assist them in finding suitable employment, either with my law firm or with others. I have actively engaged with the Black lawyers that we have hired, and helped them to develop the necessary skills to practice law and navigate life at a law firm.

Additionally, I served as the President of the North Carolina Association of Defense Attorneys from 2011-2012. The NCADA is an organization for civil defense trial attorneys in North Carolina. In the early years after its creation in 1977, the NCADA was comprised largely of white male attorneys. I served as the third female president of the association. During my presidency, my focus was on increasing and supporting the diversity of our membership, and created its Diversity Committee. As a result of the work of that committee, in October, 2019, the NCADA received the Rudolph A. Janata Award from DRI, a national organization, in recognition of its diversity programming.

About your practice of law:

2. 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.

I began my career as a law clerk to Chief Judge Hedrick at the NC Court of Appeals, from 1985-1987. Since then, I have been an attorney in private practice. Over the years, my practice has focused on litigation, appellate work, and administrative law.

After my clerkship, I joined the law firm of Bailey & Dixon. In the early years, I had an active civil defense practice, primarily defending personal injury cases. This practice had the benefit of getting me into court often. I also did work for Lawyers Mutual Liability Insurance Company, both defending lawyers handling “claim repair” work, where I helped lawyers correct mistakes that they had made, so that their client’s cases could proceed on the merits. Over time, lawyers began hiring me directly to assist them on their cases. In that kind of work, I have represented both plaintiffs and defendants in a variety of cases.

Additionally, I worked for occupational licensing boards, essentially prosecuting licensees that had violated the Board’s rules. My primary clients were the boards for engineers and surveyors, dentists, and general contractors. I also have represented licensees in front of other licensing boards, such as the Real Estate Commission and the State Bar.

In 2005, I joined the law firm of Troutman Sanders. In addition to my board work and my work assisting attorneys, I had a broader commercial litigation practice while at that firm. During that time, one of my more interesting cases was representing members of the Durham Police Department in the “Duke Lacrosse” litigation.

In 2013, I joined the firm of Hedrick Gardner Kincheloe & Garofalo, where I have continued to represent attorneys, licensing boards, and other clients on a variety of cases. In addition, I have taught Trial Advocacy at Campbell Law School for the past six years.

3. If you have been a member of an appellate division court, please choose a recent decision you wrote 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.
4. If you have not been a member of an appellate division court, please describe your practice, if any, 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.

I have always had a busy appellate practice in state and federal court. Because of my training by Judge Hedrick, I was sought out early to handle appellate work, and had my first argument before the Court of Appeals a few months into private practice. I have appeared before our Court of Appeals and Supreme Court many times, and have assisted other attorneys in their appeals.

Vaughan v. Mashburn, 817 S.E.2d 370 (N.C. 2018) represents my efforts on an issue that I worked on for several years. This case involved the technical requirements for filing a medical malpractice action. Rule 9(j) of our Rules of Civil Procedure was enacted in 1998, and required that a medical malpractice complaint “specifically assert” that a qualified expert had reviewed the “medical care” before it could be filed. In 2011, the statute was amended to require allegations that the medical records, as well as the medical care, had been reviewed before filing.

Problems arose when lawyers failed to specifically use the exact statutory language, even though the proper review had occurred. Superior Court judges were denying motions to correct his technical error.

I handled several of these appeals. It was my position that our rules favor substance over form, and allow the correction of this kind of scrivener’s error. In *Boyd v. Rekuc*, 246 N.C. App. 227 (2016), the Court of Appeals agreed that a defective complaint could be dismissed, and a corrected complaint refiled. In *Vaughn*, however, the Court of Appeals held that a technically defective complaint could not be amended, based on a prior decision of that Court, even though it acknowledged the outcome was “harsh and pointless.” I convinced the Supreme Court in *Vaughn* that our Rules allowed amendment, so that the case could be considered on the merits.

5. Please describe the nature and extent of any pro bono legal work or other volunteer work you have done which best illustrates your values as a lawyer and as a person.

For a number of years, I provided pro bono work through referrals from the Legal Aid office in Raleigh. While I handled a variety of matters, the most consistent work that I handled involved appeals of the denial of social security benefits. One of my social security clients began referring family members to me, and I handled a number of legal issues for them over the years. The one that was the most significant to me personally involved my representation of one of those family members, in her disputes with public housing agencies. I was able to resolve the matter to her satisfaction, and she wrote me a poem to thank me.

I have worked on a number of other pro bono matters over the years, including assisting local counsel in defending a citizens group in Asheville that had been sued for libel for its protests concerning a concrete plant being built in a residential neighborhood and analyzing insurance issues for a nonprofit in Wilmington. Recently, I participated in a drivers’ license restoration clinic through a program coordinated by the NC Pro Bono Resource Center, the NC Justice Center and the Durham Expunction and Restoration Project.

I have served on the pro bono committee for each of my law firms, encouraging the lawyers to provide pro bono service and helping to arrange for pro bono opportunities.

6. 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.

My reputation for having high ethical standards and for professionalism are very important to me. I have never been disciplined by the North Carolina State Bar.

Concerning law and policy:

7. Should the North Carolina General Assembly repeal the death penalty?

North Carolina Court of Appeals judges have the responsibility to apply the law to the cases that come before them, and do not legislate policy. Cases imposing the death penalty are appealed directly to the Supreme Court and are not considered by the Court of Appeals. I have a personal opinion on this issue, but it would not impact my service as a judge on the Court of Appeals.

8. 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 should be done to address the problems of mass incarceration and racial bias in our legal system?

As stated above, North Carolina Court of Appeals judges have the responsibility to apply the law to the cases that come before them. While legislative changes may help address these issues, judges on the Court of Appeals do not enact legislation. Further, adequately addressing racial bias in our legal system, and our society in general, in my opinion, will require broad cultural change beyond just legislation.

Based upon the Code of Judicial Conduct, I believe that it would be inappropriate to provide a response that could be construed to suggest how I would rule in any particular case. I can respond that I would take great care and give thoughtful consideration to any argument that a case was tainted by racial bias, as I would with any other issue.

9. 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?

As a civil trial lawyer, I do not have personal experience with the use of peremptory strikes in a racially discriminatory fashion. However, I am aware of recent studies that indicate that peremptory strikes in some criminal cases are used in a manner that result in racially imbalanced juries in North Carolina. I am also aware and agree with the premise of the *Batson v. Kentucky* decision from the Supreme Court that “racial discrimination in jury selection offends the Equal Protection Clause,” 476 U.S. 79, 85. I understand the practical difficulties of making a *Batson* challenge and preserving that issue for appeal, as illustrated by the opinions of our appellate courts.

Under decisions of our Supreme Court, deference is given to the trial judge's rulings on peremptory challenges. *See, State v. Rogers*, 355 N.C. 420 (2002). Thus, for this reason and many others, it is critical that we have insightful Superior Court judges who are sensitive to these issues.

As I am seeking election to the Court of Appeals, I do not believe it would be appropriate for me to suggest any ways that this issue could be specifically addressed by our appellate courts, because it could be construed as a commitment to rule in a particular way.

10. Should the North Carolina General Assembly should enact legislation designed to protect gay, bisexual, lesbian, and transgender people from discrimination in housing, employment, public accommodation, and access to government benefits and services?

I am not running for the legislature, so I will not have the opportunity to enact such legislation myself. I do believe that gay, bisexual, lesbian, and transgender people are entitled to equal protection under the law.

11. Is the decision of the United States Supreme Court in *Roe v. Wade* well founded in law?

The *Roe* decision is grounded in the conclusion that the Constitution provides a right of personal privacy, that can only be limited by the government where there is a compelling state interest. This conclusion is imbedded in legal principles and case law that predates *Roe*, and these concepts have been followed since the *Roe* decision. This decision is still precedent, and binding on lower courts on this issue.

12. What changes, if any, should be made to North Carolina sentencing laws?

Any such changes would be made by the Legislature, and as I have mentioned above, this is not the position that I am seeking. I am aware of some criticisms of the current laws, including the lack of parole hearings and the rigidity of the habitual felon sentencing. However, this is not an issue that I have adequately studied to have any specific recommendations.

13. What is your position on appointment versus election of judges? Should judicial elections be partisan?

In my opinion, the people of North Carolina would be better served by a selection process for judges that is not political. Judges are required by the Code of Judicial Conduct to preserve the independence of the judiciary, to conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and to be faithful to the law and unswayed by partisan interests, public clamor or fear of criticism. Elections, particularly when they are partisan, can lead people to believe that their decisions will be based on their political views.

I believe that Judges should be selected based upon their ability and experience, and not their political leanings or connections. An appointment process that involves members of the Bar and the public vetting and recommending potential judges would be a preferable system.

14. What changes, if any, should be made to the composition of the court to which you seek election? What changes, if any, should be made to its jurisdiction?

I believe that diversity of all kinds in our Courts is important. This includes racial and gender diversity, as well as diversity of background and experience. While our Supreme Court is now the most diverse in the country, this is not true of our Court of Appeals, particularly with regard to racial diversity. With Justice Davis' elevation to the Supreme Court, our Court of Appeals lost a member with important civil litigation experience. I will bring that kind of experience to the Court.

Appeals from the Business Court now go directly to the Supreme Court. In my opinion, the Supreme Court's work should focus on handling matters that are important to North Carolina's jurisprudence in general. While this is sometimes true of Business Court decisions, it is not always the case. The Court of Appeals should handle most of these cases in the first instance. Parties in any case have the option of petitioning to have the Supreme Court review a case before a determination of the Court of Appeals, so an avenue already exists for cases to go directly to the Supreme Court where appropriate. Further, parties in these cases can seek review from the Supreme Court after the Court of Appeals makes a decision.

15. What changes, if any, should be made to the Rules of Appellate Procedure? How would you change access to the appellate courts?

The Rules should specifically allow the amicus filings in support of a Petition for Discretionary Review, and set out the requirements for those filings. It has never been clear whether the Supreme Court will allow an amicus to weigh in at this stage of the proceedings. One of the considerations on whether the Court will grant discretionary review is whether the issues in the case are of significant public interest. Thus, input from groups or individuals who are not parties to the case should be highly relevant. While the Court has recently allowed motions to file as an amicus at this stage, the process for making this filing is not addressed by the rules.

The Rules should also be amended to specify that a party may file a motion to reconsider a decision of the Court of Appeals prior to the issuance of the mandate. The current process under Rule 31 contemplates filing a motion after the mandate issues, and requires the certification of two attorneys uninvolved in the appeal that the decision is erroneous. On occasion, the Court issues a decision that misses controlling authority or makes a factual mistake. There should be a provision for a prompt filing of a simple, direct motion seeking to correct such an error, because it would serve the interests of justice and efficiency.

Increased funding for legal services organizations would greatly assist in increasing access to the courts in civil cases. I have financially supported Legal Aid of North Carolina and will continue to do so. While it is possible for people to appear *pro se* in our appellate courts, it is very difficult for them to adequately advocate for themselves without the assistance of an attorney.

Your politics:

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

I believe in the right of a voter to a secret ballot, including when that voter is a candidate. While I have shared this information with some people privately, I would prefer not to share it publically.

Thank you for completing this questionnaire.

Please do not forget to provide us with your resume or biographical statement.