

People's Alliance PAC 2021 Questionnaire for North Carolina Superior Court Judicial Candidates

Please return this completed form along with a resume or biographical statement describing your education, work history, community service, and prior political experience as soon as possible, but by **April 15, 2021 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.

Please e-mail your responses to Tom Miller at tom-miller1@nc.rr.com.

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

Candidate's name: Lindsey W. Spain

Judicial office sought: Superior Court Judge

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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. Please limit your answer to each question to 400 words. Please do not feel obligated to use the full word allowance if it is not necessary.

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 January 2, 2020 memorandum of the Judicial Standards Commission on Permitted Political Conduct. You may find it at:

<https://www.nccourts.gov/assets/inline-files/2020-Political-Conduct-Memo.pdf?lqEnTi0CGRseARDEGD.mXt60PMdBDGef>

About you:

1. How do you characterize yourself politically? What values, policies, or platforms have influenced your decision to vote for one candidate over another?

While I am a registered Democrat, I would describe my political philosophy as progressive in that I want social change through the government to better society. The most important value to me when selecting to vote for one candidate over another is a candidate's track record and commitment to equity for traditionally underrepresented or marginalized groups such as women, people of color, and the LGBTQIA+ community. A judge must always remain fair and impartial in

making decisions without allowing politics to influence decisions, but certain qualities and views can certainly impact the accessibility and level of comfort that citizens have inside the courtroom. My progressive views will allow all to feel welcome and heard inside of the courtroom and allow the courtroom to be a more inclusive environment.

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

No. I have not been convicted of a criminal offense, other than a minor traffic offense.

3. 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. I have not personally been a party in a civil legal proceeding.

About your practice of law:

4. Please describe your practice as a lawyer. Describe the areas of your practice and your specialties. Describe the diversity of your client base as a part of your answer.

I began my legal career as an associate attorney at Thomas, Ferguson, & Mullins, LLP (now Thomas, Ferguson, & Beskind, LLP) here in Durham. While there, I practiced primarily as a criminal defense attorney in a variety of courts from traffic court to federal court representing clients on cases ranging from simple assaults to homicide. Even though I was in a private firm, I have always been passionate that everyone deserves competent, quality legal representation, so in addition to private clients, I also personally represented indigent clients on the juvenile appointment list and on misdemeanor and low-level felony contracts through Indigent Defense Services, and assisted with indigent capital cases, including work with the Racial Justice Act litigation. My client base was quite diverse in both age and race. In addition to criminal defense, I also worked on complex civil litigation during my time in private practice by preparing interrogatories and answers, sifting through voluminous discovery and redacting where appropriate, and researching, drafting, and arguing motions in Superior Court.

Following my work at Thomas, Ferguson, & Mullins, I went to North Carolina Central University School of Law where I was a professor in the Academic Success Unit before returning to more active legal practice and joining the Durham County District Attorney's Office in January 2019 under the newly elected District Attorney Satana Deberry. My first role in the office was as an Assistant District Attorney on the Special Victims Team prosecuting child sexual assault and abuse cases and domestic violence homicides. In September 2020, I was promoted to Juvenile Team Lead for the office. In that role, I oversee juvenile district court and the ADA who primarily handles that courtroom. Additionally, I prosecute cases that are legally required to be transferred to Superior Court from juvenile court, as well as youthful offenders up to age 25 who are primarily charged with homicides and violent crimes.

Throughout my years of practice, I have gained significant experience in Superior Court. Since joining the DA's office, I have practiced almost exclusively in Superior Court. I have experience with lengthy homicide and rape jury trials, and I am also very experienced in more administrative matters like felony probation violations.

5. Have you ever been publicly or privately disciplined by the North Carolina State Bar or any other professional or occupational licensing authority in North Carolina or any other state? "Disciplined" should be read to include reprimands, censures, and warnings in addition to license suspension, surrender, revocation, and disbarment. Is the State Bar or any governmental authority considering a complaint against you at the present time? Have you ever been found in contempt of court? For each "yes" answer, please tell us what happened and describe the outcome of the matter.

No. I have never been publicly or privately disciplined by the North Carolina State Bar or any other professional or occupational licensing authority in North Carolina or any other state. To my knowledge, neither the State Bar nor any other governmental authority is considering a complaint against me at the present time. I have never been found in contempt of court.

6. Please describe the nature and extent of any pro bono work you have done. Is there a pro bono matter to which you have contributed that best illustrates your values?

Pro bono work has been important to me since I was a first-year law student at UNC School of Law. I worked on my first pro bono assignment during fall break that year, and it became an integral part of my life. During my third year of law school, I chose to spend my Spring Break in western North Carolina drafting wills, powers of attorney, and health care powers of attorney for individuals who could not otherwise afford to have an attorney prepare estate documents. As a practicing attorney, I have incorporated pro bono work into my practice as much as possible. In private practice, I assisted clients in obtaining certificates of relief (prior to the law change making more people eligible for expunctions), and I worked pro bono on a Motion for Appropriate Relief investigation on a murder case. When representing indigent clients through contracts with Indigent Defense Services, I would assist eligible clients with preparing and filing expunction paperwork, a service not included in representation under the contract system. Helping provide those expunctions best illustrates my values that everyone, regardless of income or ability to pay, deserves the same opportunities under the law afforded to those with the ability to pay. An expunction could provide an individual with a job offer, a school acceptance, or housing that may have otherwise been denied had the proof of a criminal charge remained on their criminal record.

Concerning law and policy:

7. 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 if anything should the legislature and our courts do to address the issues of mass incarceration and racial bias in the administration of justice?

In my opinion, to effect the most change, these issues should be dealt with well before individuals find themselves in the criminal justice system. The legislature should focus on providing more access to social resources. For instance, affordable and accessible housing, health care, extracurricular activities, and community programming are just a few items that could ameliorate some of the socioeconomic disparities of families and individuals and keep people out of the criminal justice system due to poverty. Further, the legislature should require law enforcement to engage in mandatory racial equity training to help combat systemic racism within police departments. As far as how the legislature and our courts should address the issues of mass incarceration and racial bias in the administration of justice, it is important that racial equity training be provided for all court actors along with access to more diversion programs for people charged with crimes. The legislature should also consider revising the law and possible punishments for people charged and convicted of nonviolent offenses so that nonviolent offenders are less likely to have to serve any active time.

8. Should the North Carolina General Assembly abolish the death penalty?

Yes, I am opposed to the death penalty, and the North Carolina General Assembly should absolutely abolish it.

9. What, if anything, should be done to improve access to justice for people with limited financial means or who mistrust the system? How should courts handle requests to waive court costs, fines, failure to appear fees, probation supervision fees and attorney's fees in criminal court?

The criminal justice system is overwhelmed with defendants (and victims) living in poverty. Despite this, criminal court exacerbates the criminalization of poverty with expenses for bail, and the imposition of fines, costs, and fees assessed upon conviction. There are even daily jail fees assessed against individuals who spend any amount of time in pretrial custody. A defendant should never have to choose between paying money to the court to remain in compliance with probation and paying for rent, utilities, or food. A court should always be mindful of the burden of these expenses and freely entertain requests to waive court costs, fines, failure to appear fees, probation supervision fees, and attorney's fees in criminal court. (Restitution that is owed to victims should be distinguished here as that is a cost related to making someone whole who was wronged, but a defendant's ability to pay must always be considered). Refusing to waive court costs and other fees on the front end, in effect, sets an individual up for failure and ensures another appearance in court for failure to comply with monetary obligations. The criminal justice system should not continue to criminalize poverty.

In regard to improving access to justice for people with limited financial means or who mistrust the system, it is imperative for the State to continue to fund Legal Aid offices and Public Defender offices along with qualified and competent court-appointed attorneys. Further, individuals who come into contact with the judicial system, regardless of the capacity, should always be treated fairly and with the utmost respect, especially by judicial officials, to continue to build trust among the community.

10. What is your position on bail? What, if any, changes need to be made to the current bond schedule?

The primary issue with respect to bond is whether the accused is a flight risk or a danger to the community. During the course of my career, I have seen individuals charged with nonviolent misdemeanors and low-level felonies who, being unable to make a rather minimal cash bond (even as low as \$1,000 secured), end up serving as much or more time in pretrial custody than they would have received if convicted of all charges against them. Cases such as these certainly call into question our judicial system's current bail procedure, specifically as it relates to nonviolent crimes. Prosecutors are the first line of defense against setting an unfair bond, but ultimately, a judge is responsible for approving the bond order, even if agreed upon by both the defense and prosecution. Judges should be considering a defendant's ability to pay the bond being set when making bond decisions and weighing that against other factors such as a defendant's level of dangerousness to the community and whether a defendant poses a flight risk. Durham County's Office of Pretrial Services offers an alternative to cash bail by allowing qualifying defendants to be released on an unsecured bond and monitored through pretrial supervision and should always be used for these defendants who are not a danger or flight risk.

Currently, our judicial district has an advisory bond schedule that requires higher financial outlays (bond) for pretrial freedom based upon the severity of the charge. While I respect and understand the purpose of such an order, I believe it unfairly impacts those without the funds to make bond. If appointed for this position, I will impose secured bonds only in cases where I believe a defendant to be a danger to the community or a flight risk.

11. What can be done to improve language access for parties, victims, and witnesses during court proceedings?

We need more interpreters to be available for translation services during court proceedings. Often, there is only one Spanish-speaking interpreter serving the entire Durham County Courthouse who is expected to be available to all courtrooms on a given day. (If an individual speaks a language other than Spanish, then arrangements must be made for another interpreter to be present.) Typically, if both parties need translation services, one interpreter must translate for both during the proceeding. If a party needs to speak privately to his or her client or victim and needs the aid of an interpreter, then they are often having to compete for the interpreter's time with the other party and other courtrooms. Additionally, parties need access to more interpreters *before* court proceedings to ensure that individuals are fully aware of what to expect in the court process. Access to more interpreters would be a necessary first step to allow for parties who speak different languages to have a more complete understanding of the court proceedings. In my experience, people who come into contact with the justice system at least feel satisfied that some amount of justice was done if they were heard and respected, but if an individual is not even certain that they have been accurately heard because of a language barrier, then a disservice has been done to that person and his or her experience in court.

12. Do courts have the authority to shorten prison sentences and release prisoners in the interests of justice and in response to emergencies like the current pandemic?

I believe the most procedurally sound way to accomplish this goal is through a filed Motion for Appropriate Relief. The North Carolina General Statutes provide a mechanism for dealing with potential sentencing injustices through the filing of a Motion for Appropriate Relief under §15A-1420. Durham County has elected a progressive prosecutor who has been amenable to reviewing past cases of injustice to address the problem of over incarceration on a case-by-case basis. With a prosecutor's consent to a motion for appropriate relief, a judge is free to amend prior judgments. See N.C. Gen. Stat. §15A-1420(e). While there is no legal mechanism for a judge to review sentences not motioned before the court by a party, any judge reviewing such a motion has a duty to promptly review and grant the requested relief when there is a sound basis to do so.

13. What does racial equity mean to you and how will racial equity inform your work as a superior court judge? Have you had any special training in issues related to racial disparities and equities?

With respect to the court system, racial equity means a person's race should not, in any way, be a statistical predictor of any particular outcome.¹ Currently, people of color, especially Black people, are more likely to be engaged with the criminal justice system, more likely to be victims of violent crime, more likely to be in prison, and more likely to receive longer sentences. Racial equity means to me recognizing and acknowledging that systemic racism is a pervasive problem in our society that has infected our justice system. After acknowledgment of the problem, we must commit, in spirit and with tangible actions and resources, to dismantling racism in all forms. Racial equity means that a person's socioeconomic status and outcomes are no longer determined by their race. To achieve this goal, it is imperative that resources are put in place to help those most disadvantaged by structural racism begin to thrive. Over the past year, I have had the opportunity to participate in two racial equity trainings through my work in the DA's Office and in the Durham County Bar Association. In fact, as President of the 16th Judicial District Bar and the Durham County Bar Association, I was instrumental in planning and implementing the first racial equity training to be offered to the entire Bar. As part of those trainings, I learned that everyone has implicit biases whether we realize it or not. To combat these implicit biases, we must constantly engage in inward reflection to consciously work on changing our own internalized stereotypes and biases. As a superior court judge, I would focus on seeing people as

¹ I acknowledge that this is paraphrased from the report of the N.C. Task Force for Racial Equity in Criminal Justice. I use it because it is striking in its simplicity and impact on me personally.

individuals and continuously analyzing my own actions to ensure that I remain fair and impartial and committed to ensuring that my application of the law and decisions maintain racial equity.

14. What are your thoughts on Durham's current diversion programs? If you believe these programs should be changed in any way please describe how and why.

Every effort should be made by the criminal justice system to divert offenders from having a criminal record. Durham would benefit from more diversion programs, particularly diversion programs that are low or no cost to be more accessible for all participants regardless of ability to pay. Additionally, in general, Durham and the judicial system would benefit from diversion programs being committed to doing everything possible to ensure an individual referred to their program is successful in completing the program. While it is ultimately up to the individual participant to take ownership over successful completion of the program, it is important to recognize that many of these individuals find themselves in the situation they are in because of a lack of community support and entrenched systemic inequalities. Finally, I believe there should be more diversion programs with the necessary resources and expertise to provide meaningful direction for people with learning disabilities or mental health concerns. In my experience, some diversion and treatment programs have turned away individuals because they lacked the ability to work with and treat individuals with learning disabilities or mental health concerns.

15. How should we treat youthful offenders transferred to Superior Court?

Despite the recent Juvenile Justice Reinvestment Act legislation (commonly referred to as "Raise the Age") which raised the age of juvenile court jurisdiction to 17, there are still several cases that are mandatory transfers to Superior Court. If juveniles are 16 or 17 and charged with an A-G felony (all felonies except for H and I felonies), then their cases must be transferred to Superior Court. There is a mechanism for waiving these cases back to juvenile court if both the prosecutor and the defense attorney move to do so, and as Juvenile Team Lead, I carefully review each of these cases to send cases back to juvenile court as warranted.

Research has shown that the human brain does not fully develop until age 25. To expect 16- and 17-year-olds to behave in a mature and thoughtful way as expected from adults is unrealistic and unfair. Every effort should be made to balance the perceived level of danger posed by a juvenile defendant against the desire to give the juvenile defendant a chance to learn from his or her mistakes. Deferrals and pleas to lower offenses should readily be offered by prosecutors and accepted by judges in cases involving defendants transferred from juvenile court. Beyond that, judges should exercise significant discretion in determining whether to revoke a juvenile's probation for alleged probation violations by keeping in mind the fact that juveniles do not process and respond to information in the same way that adults do.

16. When both the defense and prosecution agree upon a bond request or agree on a lawful plea, what should the court do? What weight should the agreement be given?

Having practiced as both a prosecutor and a criminal defense attorney, it has been my experience that the attorneys working on a case are in the position to be most familiar with the facts of a case, the strengths and weaknesses of a case, and the unique situations of individuals involved in the case. To that end, if a bond request or lawful plea has been agreed upon by both the prosecution and defense, in most situations, the judge should honor that agreement. However, a judge has a responsibility to make sure the agreed-upon result is fair and being equally applied, regardless of socioeconomic or racial status.

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