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## Courts and Civil Procedure

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After several years of increasing workloads and budget reductions, 2004 offered some fiscal relief to the strapped state court system. The appropriations act made no reductions in the court systems budget. This in itself was of significant benefit to the courts, as nearly all other departments experienced budget reductions this session. The act also addressed the main priorities of the Administrative Office of the Courts (AOC)—interpreters, equipment, additional deputy clerks, means to address domestic violence workload increases, and fees for attorneys representing abused and neglected children served by the guardian ad litem program.

This year all judicial employees received the pay raise provided for state employees in general; in recent years judges and other elected officials did not receive the bonuses and small raises provided to other state employees. The total budget increase, not including the salary increases, was nearly \$7 million. A summary of the important budget items is included in this chapter.

In response to recommendations of the State Judicial Council, the legislature enacted some significant jurisdictional changes and proposed a constitutional amendment to extend the magistrate's term of office to four years after he or she serves an initial two-year term. This amendment came before the voters as a referendum in the November 2004 election.

This chapter also summarizes significant changes in civil procedure, especially those changes establishing new types of civil actions to provide court protection for victims of stalking and workplace harassment. It also discusses important changes to the laws that are commonly administered by clerks of court and magistrates.

Readers interested in the justice system will also want to review other chapters of this publication, including the chapters on family law, juvenile law, criminal law, and motor vehicle law. Significant substantive changes in the laws affecting domestic violence cases are discussed in both the criminal law and family law chapters.

## Budget Matters

The total court system budget for fiscal 2004–2005 is \$318.2 million. The budget bill (S.L. 2004-124 [H 1414]) adds seventy-two positions to the court system, including the following:

1. Forty deputy clerks
2. Seven judges
  - Two superior court judges (in districts 3A and 15B)
  - One special superior court judge
  - Four district court judges (in districts 5, 17B, 21, and 29)
3. Fifteen assistant district attorneys (in districts 1, 2, 7, 9, 10, 13, 16B, 18, 25, 26(3), 27B, 28, and 30)
4. Two magistrates (in Stanly and Davie counties)

The budget also appropriates \$1 million per year to partially fund the costs of providing interpreters to court participants who do not speak or understand English. The need for interpreters, however, greatly exceeds this appropriation. Previously the interpreter program has been subsidized by lapsed salaries, money allocated for positions that are vacant due to retirement, resignation, and so forth. The \$1 million will reduce the demand on that portion of the AOC budget. S.L. 2004-124 also provides funds to raise the rate paid to guardian ad litem attorneys from \$35 to \$45 per hour.

The budget also appropriates expansion funding for several important court system programs. Family court will be extended to another district. After the legislative session, the AOC designated district 28 (Buncombe County) as the new family court district, which means it will receive the additional staff training and personnel included with the designation as a family court district. Drug treatment courts in Durham, Mecklenburg, and Randolph counties were funded on a permanent basis. The custody mediation program, which has been growing slowly in recent years, received \$50,000 in expansion funds, which will allow the AOC to extend the program into at least one additional district. The budget also includes funding for critical equipment needs in three local telephone courthouse upgrades and in the statewide electronic warrant repository system. Despite the appropriations for these two programs (\$908,000 in nonrecurring moneys), most of the nearly \$7 million needed for new equipment remains unfunded.

Finally, in a related action, the budget establishes two new public defender offices. In district 1 (Currituck, Pasquotank, Dare, Gates, Camden, Chowan, and Perquimans), the office is to be established in 2004 and in district 10 (Wake), in July 2005.

## Court Jurisdiction

In 1999 the legislature authorized the creation of the State Judicial Council. Its purpose is to study the judicial system and make periodic reports on ways to improve it. One of the areas on which the council has focused since its inception has been the jurisdiction of various court officials. Many of the determinations about which judicial officials should handle particular kinds of cases have been in place since the 1960s. Several years ago the council appointed a subcommittee to review the allocation of jurisdiction to determine if the courts could operate more efficiently by changing that allocation. S.L. 2004-128 (S 577) contains some of the council's jurisdictional recommendations. The new legislation raises the civil small claims jurisdiction of magistrates to \$5,000 and authorizes clerks of court to hear and decide requests for uncontested divorces (which are now heard by the district court). The council had also recommended that the authority of magistrates and clerks to hear infraction cases be expanded, that district court judges be authorized to hear guilty pleas in several categories of felony cases, that superior court judges be authorized to dispose of misdemeanors pending in district court in limited circumstances, and that clerks of court be authorized to set child support amounts in certain cases. All of these proposals, however, were deleted from the bill before it was enacted.

The legislature also added some provisions to S.L. 2004-128 that did not arise from the council's recommendations. The act specifies that assignment to a drug treatment court is an

intermediate punishment for purposes of applying the structured sentencing laws (for more information on this topic, see Chapter 6, “Criminal Law and Procedure”). It submits to the voters a constitutional amendment proposed by the North Carolina Magistrates Association to extend the terms of magistrates. Magistrates are now appointed for two-year terms. If the voters approve the amendment, new magistrates will serve an initial two-year term, and any subsequent terms will be for four years.

## Civil Procedure

The General Assembly made several minor civil procedure changes. S.L. 2004-113 (H 918) amends G.S. 7A-311 to increase the sheriff’s fee for serving civil process from \$5 to \$15. (The fee for serving criminal process remains at \$5.) The fee had been \$5 since 1990, and the sheriffs had been seeking an increase for the past several sessions of the General Assembly. Counties must use 50 percent of the additional fees collected to ensure timely service of process.

In 2003 the General Assembly amended the judgment docketing statutes in preparation for a new electronic docketing and judgment abstracting system. This amendment provided that the clerk’s office must maintain a record of the date and time of both the entry and indexing of the judgment but not the date of the rendition of the judgment. (A judgment is *rendered* when it is announced in court, and it is *entered* when it is reduced to writing, signed, and filed with the clerk.) Although the 2003 legislation modified several judgment provisions that were based on the date of rendition, it failed to amend G.S. 1-47, which provides that the statute of limitations for filing an action on an underlying judgment from a court in North Carolina or any other state is ten years from the date of the rendition of the judgment. S.L. 2004-203 (H 281) amends G.S. 1-47 and similar G.S. 1-52(8) to make the statute of limitations run from the date of the entry of the judgment rather than the rendition since the court record no longer captures the date of rendition. In fact, even since before the 2003 amendments, the practice has been to use the date of the entry of the judgment to determine when the statute of limitations begins to run, because often the date of the rendition of the judgment could not be found in the official court records.

Rule 5(d) of the Rules of Civil Procedure provides that all papers required to be served on the parties to a case must be filed with the clerk of court. However, the General Assembly has made several exceptions to this rule for papers for which there is no reason the clerk would need copies and the volume of which would needlessly overburden the clerk’s case files. S.L. 2004-199 (S 1225) provides that subpoenas and objections to subpoenas may not be filed with the clerk unless ordered by the court. The practice has been to file with the clerk any subpoenas that have been served. Even though it appears the new law is intended to change this practice, sheriffs who serve subpoenas will likely continue to submit their returns to the clerk’s office and the clerk will file the subpoenas. A party who uses someone other than the sheriff to serve a subpoena may choose not to file the subpoena with the clerk.

## No-Contact Orders

Advocates have been lobbying for a law to protect victims of sexual assaults and stalking similar to the one that protects victims of domestic violence. At the same time advocates for victims of domestic violence had been working with businesses to help them understand and deal with domestic violence issues. Partly as a result of this advocacy, the General Assembly enacted two new laws providing for civil no-contact orders.

## Victims of Stalking or Nonconsensual Sexual Conduct

S.L. 2004-194 (H 951) adds new G.S. Chapter 50C to allow victims of stalking or non-consensual sexual conduct occurring in North Carolina to seek civil no-contact orders. The new

law does not apply if the relationship between the parties would allow a victim to seek a domestic violence protective order. Chapter 50C authorizes a district court to issue a civil no-contact order upon a finding that the plaintiff or a minor child suffered “unlawful conduct” (nonconsensual sexual conduct or stalking) committed by the defendant. The statute specifically provides that a plaintiff does not need to prove physical injury. Upon a finding that the plaintiff suffered such unlawful conduct, the court may order the defendant

- not to visit, assault, molest, or otherwise interfere with the victim;
- to cease stalking the victim, including at the victim’s workplace;
- to cease harassment of the victim;
- not to abuse or injure the victim;
- not to contact the victim by telephone, written communication, or electronic means; and
- to refrain from entering or remaining present at the victim’s residence, school, site of employment, or other specified places when the victim is present.

In addition, the court may order any other relief deemed necessary and appropriate.

A plaintiff can file an action for a civil no-contact order in any county in which the plaintiff or the defendant resides or in which the unlawful conduct occurred. No court costs may be charged for filing the complaint or for service of process or orders. If a victim states that disclosure of his or her address will place the victim or any member of his or her family or household at risk of further unlawful conduct, the victim’s address may be omitted from all documents filed with the court, and the victim must designate an alternative address to receive court notices.

As with domestic violence protection orders issued under Chapter 50B, a plaintiff seeking relief under Chapter 50C may seek a temporary order *ex parte*. Under Chapter 50C a temporary order may be granted without notice to the defendant only in certain situations. The chief district judge may designate at least one judge or magistrate to be available to issue temporary no-contact orders in emergency situations when district court is not in session. Temporary orders are effective for ten days but may be extended for another ten days for good cause. Following notice to the defendant and a hearing, the court may enter a permanent no-contact order. Although called “permanent,” the order cannot be effective for longer than one year, but it may be renewed by the court. Violations of no-contact orders are punishable by contempt.

### **Workplace Violence**

A second act—S.L. 2004-165 (S 916)—adds new Article 23 to G.S. Chapter 95 allowing an employer to file a district court civil action seeking a no-contact order on behalf of an employee who has suffered unlawful conduct at his or her workplace. *Unlawful conduct* is defined as:

- attempting to cause bodily injury or intentionally causing bodily injury;
- willfully, and on more than one occasion, following, being in the presence of, or otherwise harassing the employee without legal purpose and with intent to place the employee in reasonable fear for his or her safety; or
- willfully threatening to physically injure the employee in a manner and under circumstances that would cause a reasonable person to believe that the threat is likely to be carried out and that actually causes the employee to believe that the threat will be carried out.

While the employer must consult with the employee before seeking an order, the employee’s cooperation is not required to bring the action. The employer cannot discipline an employee who is unwilling to participate in the process.

The procedure for seeking a workplace violence no-contact order is identical to that for seeking no-contact orders in response to stalking or nonconsensual sexual conduct, except that court costs are assessed for filing the workplace action. The court may issue a ten-day temporary no-contact order and a permanent order for up to one year. If the employer proves that the employee has been the subject of unlawful conduct at the employer’s place of business, the court may order the defendant

- not to visit, assault, molest, or otherwise interfere with the employer or employee at the workplace;
- to cease stalking the employee at the workplace;

- to cease harassment of the employer or employee at the workplace;
- not to abuse or injure the employer or employee at the workplace or damage the employer's property; and
- not to contact either the employer or employee at the workplace.

The court may also order any other relief that it deems necessary and appropriate. Permanent orders are subject to renewal for good cause and violations are punishable by contempt.

S.L. 2004-165 also adds new G.S. 95-270 to prohibit employers from discharging, demoting, denying a promotion to, or disciplining an employee who takes a reasonable amount of time off work to obtain relief from the court under a domestic violence protective order or a no-contact order for stalking or nonconsensual sexual conduct.

## **Matters of Interest to Clerks of Court**

### **Clerk's Authority to Enter Judgment of Absolute Divorce**

S.L. 2004-128 amends G.S. 50-10 to allow the clerk of superior court, upon request of a plaintiff, to enter judgment in cases where plaintiff's only claim is for absolute divorce or absolute divorce and resumption of former name. The clerk is allowed to enter judgment only when the defendant has been defaulted for failure to appear, has answered admitting the allegations of the complaint, or has filed a waiver of the right to answer. The clerk cannot enter judgment if the defendant is an infant or is incompetent.

### **Private Area for Domestic Violence Complainants**

S.L. 2004-186 (H 1354) requires the clerk, when feasible, to provide a private area for complainants to fill out domestic violence forms and make inquiries to court personnel.

### **Guardianships**

North Carolina law has authorized the clerk to appoint a nonresident guardian of the person but has prohibited a nonresident from serving as a general guardian or guardian of the estate. S.L. 2004-203 amends G.S. 35A-1213(b) to remove the restriction that a general guardian or guardian of the estate must be a North Carolina resident. The clerk must require a nonresident general guardian or guardian of the estate to post a bond and may require a guardian of the person to post one. The act adds as a ground for removal or other action that the guardian is a nonresident and refuses to obey any citation, notice, or process served on him or her. Removal is the only penalty the clerk can impose against a noncomplying out-of-state guardian because the clerk cannot get physical custody of the person for contempt.

When the clerk removes a guardian for cause and determines that there is some danger to the ward or the ward's assets while the ruling is being contested, the clerk may enter any order necessary to protect the ward or the ward's estate, such as freezing the ward's bank account or prohibiting the guardian from removing the ward from a nursing home. Before entering such an order, the clerk must have held a hearing and found that one of the grounds for removing a guardian exists. S.L. 2004-203 amends G.S. 35A-1291 to add a new ground and procedure for removing a guardian. It allows the clerk to remove a guardian without a hearing if the clerk finds reasonable cause to believe an emergency exists that threatens the ward's physical well-being or constitutes a risk of substantial injury to the ward's estate. The new law provides no mechanism for the guardian to have a post-removal hearing if he or she contests the removal. The guardian may appeal the clerk's order of removal to the superior court, but such an appeal is on the record rather than for a new hearing.

## Compensation of Trustees and Other Fiduciaries

S.L. 2004-139 (S 470) repeals current G.S. 32-50 to -52, dealing with compensation of trustees and other fiduciaries, and replaces it with a new statute. G.S. 32-50 capped compensation to trustees according to the size of the estate and capped compensation to other fiduciaries at 5 percent of the receipts and expenditures.

**Trustees.** If the terms of the trust do not specify the trustee's compensation, under S.L. 2004-139 the trustee is entitled to compensation that is reasonable under the circumstances. The trustee may pay itself compensation without court approval (1) if the amount of the compensation does not exceed 4/10 of 1 percent of the principal value of the trust's assets or (2) when compensation exceeds that amount, if written notice of the compensation was given to all beneficiaries and no beneficiary filed a proceeding for review of the compensation with the clerk within twenty days of receiving the notice. The trustee also is entitled to reimbursement from the trust's assets for expenses properly incurred in the administration of the trust and is authorized to pay those expenses without prior approval by the clerk. The trustee or any beneficiary may initiate a trust proceeding before the clerk for review of the reasonableness of any compensation or expense reimbursement and for the approval or denial of a compensation or expense reimbursement payment. A beneficiary may bring the proceeding even though the twenty-day period after notice of payment has expired. In reviewing the reasonableness of the compensation, the clerk must consider all of the following:

- Degree of difficulty and novelty of the tasks required of the trustee
- The responsibilities and risks involved in the administration of the trust
- Amount and character of trust assets
- Skill, experience, expertise, and facilities of the trustee
- Quality of the trustee's performance
- Comparable charges for similar services
- Time devoted to administering the trust
- Time constraints imposed upon the trustee in administering the trust
- Nature and costs of services the trustee has delegated to others
- Where more than one trustee is serving, reasonableness of the total fees paid to all the trustees
- Any other factors the clerk deems relevant

If the clerk determines that the trustee has received excessive compensation or expense reimbursement, he or she may order the trustee to make appropriate refunds.

The clerk may allow counsel fees to be paid to an attorney serving as trustee in addition to trustee compensation where the attorney renders professional services differing from the services normally performed by a trustee and of a type that would reasonably justify the retention of legal counsel by a non-attorney trustee.

**Other fiduciaries.** Fiduciaries other than trustees must request the clerk, in writing, to set the compensation. The fiduciaries are entitled to reasonable compensation in an amount set by the clerk after the clerk takes into consideration the same factors that are listed above for trustees. Other fiduciaries also are entitled to reimbursement for expenses properly incurred in the administration of the fiduciary relationship. The clerk may authorize counsel fees for an attorney-fiduciary in addition to fiduciary compensation on the same grounds as specified above for attorney-trustees. If a power of attorney instrument does not specify how much compensation is to be paid or how compensation should be determined, subsequent to the principal's incapacity the attorney-in-fact is entitled to compensation as determined by the clerk after the clerk considers the factors set out above.

**Interpreting trust and fiduciary instruments.** S.L. 2004-139 specifies that provisions in current trusts or fiduciary instruments for compensation in an amount "provided by law" or that reference G.S. 32-50 must be construed to allow compensation under the new statute. The new law applies to payments made to a fiduciary on or after January 1, 2005, even if the compensation was earned before that date.

## **Matters of Interest to Magistrates**

### **Magistrates' Terms**

S.L. 2004-128 submits to the voters at the November 2004 election a constitutional amendment to lengthen magistrates' terms of office. Currently this term is two years. Under the proposal the first term would be for two years, but subsequent terms would be extended to four years.

### **Small Claims Court**

S.L. 2004-128 also increases the jurisdictional amount for small claims court from \$4,000 to \$5,000. In 1965, when the small claims courts were created, the maximum amount in controversy was \$300. The General Assembly has increased that amount over the years, with the \$4,000 limit having been in effect since 1999.

### **Tenancy and Water Conservation**

S.L. 2004-143 (H 1083) modifies the law governing landlords who charge tenants occupying the same contiguous premises for water or sewer service. The stated purpose of the statute is to encourage water conservation. It creates G.S. 42-42.1, which allows a written lease to include a provision that the landlord will charge the tenant for the cost of providing water or sewer service based on the user's metered consumption. The landlord must receive prior approval from the Utilities Commission to charge for water or sewer service and may also charge a reasonable administrative fee, not to exceed an amount authorized by the commission, for providing the service. S.L. 2004-143 prohibits a landlord from disconnecting or terminating water or sewer services for nonpayment of any amounts due for the service, provides that failure to pay costs for water or sewer service cannot be used as a basis for termination of a lease, and requires the landlord to apply any payments from tenants first to rent owed and then to water or sewer charges. A landlord who is providing water or sewer service and who has actual knowledge that the water being supplied to the tenants exceeds the maximum contaminant level must notify the tenants of this fact.

### **Involuntary Commitment**

A high profile incident in the state where officers did not believe they could serve a commitment custody order issued in another county led to the enactment of S.L. 2004-23 (H 1366). The new statute makes it clear that custody orders for involuntary commitment issued by magistrates or clerks of court are valid throughout the state and can be served in any county in North Carolina regardless of where they were issued. Although this was already the law, some confusion about the matter remained because it was not specifically spelled out in the statute.

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