

THE SIGNIFICANCE OF A TRIAL JUDGE'S COMMISSION

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Every now and then a question arises about a trial judge's commission and whether the judge is properly authorized to hear a case. This paper is intended to explain what a judge's commission is, when it is needed, and where it comes from.

Questions about commissions are most likely to arise in superior court, largely as a byproduct of the system of rotating judges. Although superior court judges have statewide jurisdiction, they have to be assigned to particular districts for particular terms and sessions of court. (For superior court, "term" is used to refer to the six-month period of assignment to a particular district and "session" to the one-week assignments within that term.) To understand the import of a commission it is useful to first review the system of rotation.

Rotation of superior court judges

Article IV, § 11 of the North Carolina Constitution honors the tradition of judges riding circuit and requires that it be maintained through rotation: "The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed." The same section gives the chief justice the duty of assigning judges: "The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Court Judges from one district to another for temporary or specialized duty."

Pursuant to GS 7A-345, the assistant director of the Administrative Office of the Courts (AOC) — currently David Hoke — assists the chief justice in assigning judges. Another statute, GS 7A-47.3, declares that judges are to be assigned to effectuate the constitutional provision on rotation.

Rotation, as the constitution says, is based on judicial divisions. The state currently is divided into eight divisions and each superior court judge travels among the districts within the judge's division. Assignments are made for six-month terms. If the judge is assigned to a district comprised of a single county, like the 10th (Wake County), the judge will spend the entire six-month term in that one county. If the assignment is to a multi-county district, the judge will hold weekly sessions of court in different counties of the district according to the schedule in the Master Calendar. A judge assigned to the 9th District, for example, might be in Granville County one week, Vance the next, Warren the week after.

The Master Calendar

The principal method of assigning superior court judges is the Master Calendar. As stated above, assignments are made for terms of six months, called the spring and fall calendars. The

Fall 2012 Master Calendar covers July through December 2012 and the Spring 2013 Master Calendar will assign judges for January through June 2013. The calendars are posted on the AOC website.

For regularly scheduled sessions of superior court the Master Calendar itself serves as the assignment, meaning no individual commissions are issued.

Assignments outside the Master Calendar and the issuance of commissions

The Master Calendar never meets all the needs for assignment of judges. Judges get sick, they have to recuse themselves from cases, some trials run for weeks on end, or additional sessions of court have to be scheduled because of an unexpected volume of cases. Consequently, Mr. Hoke spends a fair amount of time swapping judges from their original assignments, cancelling sessions or scheduling new ones, and sometimes has to bring retired judges back for temporary service. In each instance this means issuing a commission confirming the new assignment.

When an assignment changes from the Master Calendar, or a new session is scheduled, Mr. Hoke prepares and sends a commission to the judge, the clerk's office, and to various designated officials such as the judge's judicial assistant and, for criminal sessions, the district attorney. The commission is issued in the name of the chief justice through the use of a signature stamp, but an original is signed in person by the chief justice and kept in the AOC files.

The significance of the commission

The Master Calendar or commission is proof of the judge's assignment to hold court at that time and place. Without the authority of an assignment, the judge's acts may be invalid.

The validity of the judge's authority was disputed in the defendant's appeal of his murder conviction in *State v. Eley*, 326 N.C. 759 (1990). Judge Beaty of Winston-Salem had been assigned to a special session of court in Hertford County starting in June 1988. (Special assignments are common in murder cases because of the length of the trials, making it difficult to fit them in regular court schedules, and because of the need for a seasoned judge to preside.) After the defendant's conviction it was discovered that there was no commission on file for Judge Beaty to be in Hertford.

The *Eley* opinion quotes extensively from the affidavit of Dallas Cameron, who then occupied the position now held by Mr. Hoke, describing the assignment and commission process. The court concluded that Mr. Cameron had issued a commission but it simply had never been received. Thus, despite the missing commission, Judge Beaty still was authorized to hold court. The opinion included this:

"Judge Beaty's jurisdiction, power, and authority as a superior court judge flowed from the Constitution of North Carolina and his appointment and commission by the Governor as a superior court judge. N.C. Const. art. IV, § 9. His assignment by the Chief Justice of this Court pursuant to article IV, § 11 of the Constitution of

North Carolina, to preside at the 6 June 1988 special session of Superior Court of Hertford County was merely the mode by which he was directed to preside at that session of court. The issuance of a commission by the Chief Justice . . . does not endow the judge with jurisdiction, power, or authority to act as a superior court judge. The commission so issued merely manifests that such judge has been duly assigned pursuant to our Constitution to preside over such session of court." *Eley*, at 764.

The court also held that the chief justice could, as he did, issue a commission to Judge Beaty *nunc pro tunc* in October 1989 assigning him to the June 1988 session.

Despite the quoted language, *Eley* should not be read to say that a commission does not matter. The holding in the case was that the chief justice had assigned Judge Beaty to the session and that a commission actually had issued, it just could not be found. If Judge Beaty had never been assigned to the Hertford session his acts could have been void, regardless of his statewide jurisdiction.

The validity of acts when the judge was not assigned, did not have a commission

The importance of a proper assignment, and a commission, was demonstrated in *Vance Construction Company, Inc., v. Duane White Land Corporation*, 127 N.C. App. 493 (1997). While assigned to a session of Warren County Superior Court, Judge Brown of Edgecombe County decided a case about construction of a boat storage facility. When questions later arose about a credit against the judgment the parties returned to Judge Brown, now back in Edgecombe County. Unfortunately, the judge was no longer assigned to Warren County, did not have a commission to hold court in Warren County, and did not have in-chambers jurisdiction as a resident judge of Warren County, so his order was void.

Commission issues for district court judges

Although it is even rarer than in superior court, commission issues can arise in district court as well. District court judges generally have jurisdiction only within their district, and their assignments to sessions of court, typically for a day at a time, are made by the chief district judge. As the constitutional provision quoted above says, though, the chief justice may transfer a district judge from one district to another for temporary duty. In those situations a commission must be issued, just as for a superior court judge.

In *Lockert v. Lockert*, 116 N.C. App. 73 (1994), Judge Neely of Asheboro was assigned to hear an equitable distribution case in Rowan County because the local judges had disqualified themselves. An initial hearing was held in September 1990, but the trial itself did not begin until November and concluded in December. The losing side challenged the judgment, claiming that Judge Neely's commission was defective. The argument was that the commission only assigned the judge for a one-day session on September 11th and thus everything occurring after that was void. The actual wording of the commission was that Judge Neely was assigned for the period of "one day or until the business is disposed of," prompting the Court of Appeals to hold

that the judge clearly had jurisdiction beyond the one day as necessary to complete the case. The “until the business is disposed of” phrase is common in judges’ commissions.

Summary

Questions about judge’s commissions are rare because most assignments of superior court judges are made pursuant to the Master Calendar and because district judges are seldom asked to hold court outside their home district. When a superior court judge is assigned outside the Master Calendar, or a district judge is temporarily sent out of district, the chief justice issues a commission through the assistant director of the AOC. Without a proper assignment and commission, the judge would be without jurisdiction and the judge’s actions could be void. The AOC is careful about issuing commissions when needed, indeed probably issues individual commissions more often than is required by law. When a question does arise about a judge’s commission the essential issue is whether the chief justice has properly assigned the judge to the session of court. The commission would be the best evidence of the assignment, but the assignment can be proven by other means when the commission has gone missing.