

# Administration of Justice Memorandum

## 1993 LEGISLATION OF INTEREST TO SMALL CLAIMS MAGISTRATES

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This memorandum summarizes acts of the 1993 session of the North Carolina General Assembly that may be of interest to magistrates trying small claims cases.

### PROCEDURE

**Small claims amount increased.** Chapter 107 (S 846) increases the maximum amount in controversy in cases assigned as small claims from \$2,000 to \$3,000. It takes effect October 1, 1993. Chapter 107, originally, was made effective for *causes of action arising* on or after that date, which would have required clerks and magistrates to determine when the underlying breach of contract or tort occurred in order to determine whether the case was appropriately assigned to a magistrate. That rule would have meant that for at least two years some cases of \$3,000 would be allowed in small claims court, but for many others, only \$2,000 cases would be allowed. Chapter 553 (H 544) amended Ch. 107 to make the increase to \$3,000 effective for *claims filed* on or after October 1. Consequently, any lawsuit for \$3,000 or less filed with the clerk on or after October 1 may be assigned to a magistrate.

**Suits and appeals as an indigent.** Chapter 435 (H 908) makes it easier for certain low income persons to file lawsuits in small claims court and to appeal from small claims to district court without having to pay the costs. The first change the law makes is to delete references to filing as a "pauper" or "in forma pauperis." The new terminology is to file as an "indigent." In order to file a lawsuit or appeal as an indigent, the person suing or appealing must file an affidavit that he or she is unable to pay the required costs. No accompanying statements by witnesses that the party has a good cause of action or defense are necessary. If the person filing the affidavit receives food stamps, receives Aid to Families With Dependent Children (AFDC), receives Supplemental Security Income (SSI), is represented by legal services, or is represented by private counsel working under the auspices of legal services, the clerk must authorize the person to sue or

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appeal as an indigent. If the person filing the affidavit is not receiving one of the five specific benefits, the clerk or a judge (or a magistrate in the case of appeal to district court from small claims) may determine whether or not the party is indigent. Thus, the General Assembly has determined that persons who meet the income requirements for food stamps, AFDC, SSI, or legal services representation are as a matter of law entitled to sue without paying court costs. For all other persons, the court must make a determination on a case-by-case basis, as it has done in the past, whether the person is unable to pay the costs. The only situation in which a magistrate may be called upon to make a determination of indigence is when a party who files a motion to appeal from a magistrate to district court as an indigent is not receiving one of the five specific benefits. In that situation, the magistrate may make an inquiry into the financial situation of the appealing party to determine whether the party is unable to pay the costs of appeal.

Chapter 435 also provides that a magistrate may dismiss a lawsuit brought by a plaintiff filing as an indigent and may charge the court costs to the plaintiff if the allegations in the affidavit are determined to be untrue or if the magistrate is satisfied that the action is frivolous or malicious. Also, the magistrate may tax the court costs against the indigent plaintiff when the indigent wins the civil lawsuit and the magistrate does not require the defendant to pay the costs.

Chapter 435 takes effect October 1, 1993 and applies to suits or appeals filed on or after that date.

## CONTRACTS

**Consumer credit contracts.** Chapter 370 (S 125) deals with the situation where a debtor purchases personal property on credit and signs a security agreement with the seller listing the property purchased as security for the extension of credit. Before fully paying for the item, the buyer buys a second or subsequent item from the seller and the seller either consolidates the two contracts or takes a security agreement in both items purchased. G.S. 25A-27 specifies how the seller must apply payments made by the buyer to the various items listed as security that were purchased from the seller at different times. The statute has required the seller to allocate payments to the various purchases on the basis of the original cash prices of each purchase. Chapter 370 amends the law to provide that payments must be applied first to finance charges and then to principal. The application of payments to principal are applied to the various purchases on the basis that the first sums paid in are applied to the oldest purchase until payment is received in full. Other payments are applied accordingly to all other purchases in the order in which the obligation was assumed. When an item is paid for, the security interest in that item is extinguished. When the debtor has been making payments for some time, the creditor may not be entitled to recover the earlier purchased items upon default. Magistrates should require creditors to prove that the security interest in each item sought to be recovered has not been extinguished. Chapter 370 takes effect October 1, 1993. Any payments made on a consumer credit contract on or after that date must be applied according to the new law.

**Layaway contracts.** Chapter 340 (S 709) amends G.S. 25-2-106 to make it clear that layaway contracts are contracts for the sale of goods covered by Article 2, Sales, of the Uniform Commercial Code (UCC). It also provides an additional method of restitution available at the option of the seller when the seller withholds delivery of goods because the buyer defaults on a

layaway contract. Under this option, the buyer would be entitled to recover the aggregate amount of payments made on the contract over \$50. Chapter 340 takes effect October 1, 1993.

**Worthless Checks.** Chapter 374 clarifies the damages in a civil action on a check returned for insufficient funds or because the maker had no account at the bank. It amends G.S. 6-21.3 to provide that the plaintiff is entitled to damages of the amount of the check, any service charge imposed on the payee (person to whom the check is written) by the bank, and any processing fee charged by the payee to the maker of the check pursuant to G.S. 25-3-512. G.S. 25-3-512 requires the payee to comply with certain procedures in order to recover a processing fee from the maker of the check. The payee is entitled to charge a processing fee to the check writer if, at the time the check was presented, a sign that was no smaller than 8 by 11 inches and that stated the amount of the fee (up to \$20) that would be charged for returned checks was conspicuously posted in the immediate vicinity of the cash register in plain view of anyone paying for the goods by check. If the maker pays for the debt by mail, the payee is entitled to collect a processing fee if written notice has been sent to the maker by first class mail before the debt is paid. Magistrates should require a plaintiff to prove compliance with G.S. 25-3-512.

G.S. 6-21.3(a) also provides that a plaintiff is entitled to additional damages if payment is not made within 30 days after a written demand is mailed to the defendant by certified mail at the last known address. The demand must describe the check, the circumstances of its dishonor, must contain a demand for payment and a notice of intent to file suit for the amount owing on the check, the service charges, and processing fees and additional damages up to \$500 if payment is not received within 30 days. Chapter 374 clarifies that the additional damages are three times the amount owing on the check, not to exceed \$500 or to be less than \$100. A magistrate may waive all or part of the additional damages upon a finding that the defendant's failure to satisfy the dishonored check was due to economic hardship.

The major change by Chapter 374 was an amendment to G.S. 7A-273 authorizing magistrates as part of restitution against defendants pleading guilty to worthless check criminal charges to collect, in addition to the face amount of the check, any service charges imposed on the payee (the person to whom the check is written) by a bank for processing the dishonored check and any processing fee imposed by the payee under G.S. 25-3-512. The memo by Bob Farb on 1993 criminal legislation that was sent to you discusses this portion of Chapter 374 in detail.

Chapter 374 takes effect December 1, 1993 and applies to checks written on or after that date.

**UCC regulates leases.** Chapter 463 (S 899) enacts a new Article 2A of Chapter 25 of the General Statutes, UCC, regulating leases. Article 2A generally sets out similar provisions for leases of goods as Article 2 does for sales of goods. The act includes an unconscionability provision; requires leases with total payments of \$1,000 or more to be in writing; sets a four-year statute of limitations for actions based on a lease of goods; and sets out lessor's and lessee's remedies for breach of a lease. Chapter 463 rewrites G.S. 25-1-201(37), defining security interest, to indicate when a contract is a lease of goods and when it is a security interest. This new definition will assist in determining whether the contract is truly a lease or is a security agreement since the terminology used by the parties is not the final determiner of the question.

## TORT ACTIONS

**Parent's liability for acts of child.** G.S. 1-538.1 provides that parents are strictly liable for damages caused by a malicious or willful act of their minor child. Strict liability means that no fault on the part of the parent is required. Chapter 540 (S 431) raises the maximum amount of the parent's strict liability from \$1,000 to \$2,000. A plaintiff is entitled to recover actual damages suffered in an amount not to exceed \$2,000 from the parent or parents of a minor who maliciously or willfully injures the plaintiff or destroys the plaintiff's property. Parents whose custody and control have been removed by court order or by contract before the act complained of are not liable under this statute. If the minor's act is negligent rather than intentional, this statute does not apply. Chapter 540 takes effect October 1, 1993, and applies to *causes of action* arising on or after that date. Hence, the intentional act of the child must occur on or after October 1 for the parent to be liable for up to \$2,000 damages. For acts occurring before October 1, the parents' maximum liability would be \$1,000.

In order to recover in an action brought under G.S. 1-538.1, the plaintiff must prove (1) that the minor maliciously or willfully (in other words, intentionally) injured the plaintiff or destroyed the plaintiff's property; (2) that the minor had not attained the age of 18 years at the time the act was done; (3) that the defendants are the parents of the minor; and (4) the amount of damages the plaintiff suffered. If the plaintiff proves actual damages in excess of \$2,000 (for example, \$2,500), the magistrate's judgment would be limited to \$2,000. To exempt themselves from liability, the parents must prove that at the time of the act, their custody and control of the minor had been removed by court order or contract.

G.S. 1-538.1 does not preclude or limit recovery of damages from parents under common law remedies. If the parent's intentional or negligent act causes the injury, the parent would be liable for the full amount of the actual damages, without the \$2,000 limitation. One common law theory on which parents might be sued is breach of the duty to supervise their child. In a failure to supervise suit, the plaintiff must prove that (1) that the minor engaged in behavior that caused injury or damage to the plaintiff; (2) that the parents knew, or in the exercise of ordinary care, should have known that the child had previously engaged in or had the propensity to engage in such behavior, and the behavior was reasonably likely to endanger another person; (3) that the parents had an opportunity or the ability to control or supervise that behavior of the child; (4) that, in the exercise of ordinary care under the same or similar circumstances, a reasonable parent would have exercised sufficient control or supervision over the child so as to stop that behavior; (5) that the parents failed to exercise sufficient control or supervision over that behavior of the child and that such failure was a proximate cause of the injury suffered by the plaintiff; and (6) the amount of damages the plaintiff suffered. In this case, if the damages proved were \$2,500, the magistrate could award the full amount.

## MATTERS OF GENERAL INTEREST

**Undisciplined juveniles.** An issue that magistrates as well as judges and juvenile court counselors often raise is what to do with undisciplined children between the ages of 16 and 18. Under the present law, undisciplined juveniles includes persons under 16 years of age. The court has no authority over children 16 and 17 years of age who are beyond the control of their parents. Chapter 47 (H 283) establishes a pilot program in Bertie, Catawba, and McDowell Counties

expanding juvenile court jurisdiction to include undisciplined juveniles between the ages of 16 and 18. The purpose of the pilot is to determine whether juvenile court jurisdiction would be expanded on a statewide basis. Chapter 47 takes effect October 1, 1993 and automatically terminates April 1, 1995.

**Child abuse and neglect changes.** Chapter 516 (H 364) amends G.S. 7A-517 to redefine the definitions of "abused juvenile," "caretaker," and "dependent juvenile." An abused juvenile includes one whose parent, guardian, custodian or caretaker inflicts or allows to be inflicted upon the juvenile serious physical injury (instead of injury that causes a substantial risk of death, disfigurement, impairment of physical health, or loss or impairment of a function of bodily organ) or who uses or allows to be used upon a juvenile cruel or grossly inappropriate procedures or devices to modify behavior. Before the new definition, serious physical injury that did not cause one of the specified types of harm was treated as neglect.

Caretaker is defined as a person responsible for a juvenile's health and welfare in a residential setting, including a stepparent, foster parent, adult member of the juvenile's household, adult relative entrusted with juvenile's care, or any person such as house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential care or educational facility.

Dependent juvenile is one who needs assistance or placement because he or she has no parent, guardian, or custodian responsible for his or her care or whose parent, guardian or custodian, due to physical or mental incapacity and the absence of an appropriate alternative child care arrangement, is unable to provide care or supervision of the juvenile.

Chapter 516 amends GS 7A-543 to expand the duty to report child abuse or neglect to extend that reporting duty to cases in which there is cause to suspect that a juvenile is dependent or that a juvenile has died as the result of maltreatment. The act does not define "maltreatment," a term that is not used elsewhere in the Juvenile Code. Information that must be included in a report is expanded to include the names and ages of other juveniles in the home.

Chapter 516 takes effect October 1, 1993 and applies to allegations of abuse, neglect or dependence initiating on or after that date.

**Budgetary matters.** For the first time in three years, the General Assembly had surplus revenues and was able to expand rather than reduce basic departmental budgets. The Judicial Department fared extremely well, receiving about \$15.8 million in expansion funds, of which \$12.5 million is for recurring expenditures. One of the reasons why the department received such a large increase was that the Administrative Office of the Courts (hereafter referred to as AOC) demonstrated to the General Assembly the need for more personnel. The AOC presented statistics indicating that between fiscal year 1983-84 and 1991-92, the caseload per clerk rose 29.0%; the caseload per prosecutor increased 43.4%; the caseload per district court judge jumped 39.9%; and per superior court judge it rose 49.6%. As the case loads were increasing, court officials were also disposing of more cases. Prosecutors disposed of 49.1% more cases in 1991-92 than in 1983-84. District court judges cleared 46.4% more cases, and superior court judges, 34.1%. But in spite of the fact that court officials were handling more work, the mean age of cases in the system lengthened and citizens were forced to wait longer to have their disputes resolved. In fiscal 1983-84 the mean age of pending felony cases was 156.5 days; by 1991-92 that had risen to 191.9 days. For civil district court cases (including domestic relations cases), in 1983-84, the mean age was

288.3. For fiscal 1991-92, the mean age for domestic cases was 363.1 and for other civil cases, 327.3. Recognizing the need for new personnel, the General Assembly, in Chapter 321 (S 27), appropriated to the Judicial Department \$247,922,854 for fiscal year 1993-94 and \$250,716,110 for fiscal year 1994-95.

Two hundred and eighty new positions were funded as follows: six magistrates; ten new superior court judges (in fiscal 1993-94, resident judges for Districts 3B, 9A, 10A, 15A, 17B, 20B, 25B and two special judges appointed by the Governor; in fiscal 1994-95, one new resident judge in District 27B to be initially elected); six support positions to aid trial court administrators and senior resident superior court judges who do not have secretaries; eight superior court reporters; thirteen district court judges (six appointed by Governor in fiscal 1993-94 in Districts 1, 8, 10, 12, 18, 30 and seven initially elected in fiscal 1994-95 in Districts 3A, 6B, 19A, 19C, 20, 22, 26); six district court secretaries; eleven assistant district attorneys, effective January 1, 1994 (Districts 1, 10, 11, 15A, 18, 19B, 20, 22, 25, 26, 28); three investigators for prosecutorial districts 1, 3B, 8; nine district attorney secretaries; four assistant public defenders; five public defender secretaries; two assistant appellate defenders; 100 deputy clerks; a chief court counselor and 35 juvenile court counselors; four juvenile court counselor secretaries; eighteen guardian ad litem program administrators; nine guardian ad litem program secretaries; an assistant librarian for the supreme court library, an appellate clerk of the court of appeals; and nineteen administrative support positions in the AOC.

The budget also includes \$3.3 million in non-recurring equipment funds, which for the first time in several years will allow the AOC to replace worn equipment.

**Court costs.** Chapter 313 (S 1139) creates a new cost of \$50 to a defendant charged with a motor vehicle offense for the clerk's issuance of a report notifying the Division of Motor Vehicles that the defendant failed to appear at trial or failed to pay a fine, penalty or costs as ordered by the court. A defendant will not be able to have the driver's license restored until he or she both clears the charge and pays the reporting fee. Chapter 313 allows the court to waive the fee if the defendant shows that he failed to appear because of an error or omission of a judicial official, prosecutor, or law enforcement officer.

Although this \$50 reporting fee may raise as much as \$5 million for the state's General Fund, it is perhaps more significant that the General Assembly did not increase court costs to pay for the full \$15 million in expansion funds. In recent years, the General Assembly has required an increase in court costs to match the increase in appropriations. This year, the General Assembly treated the court system like other governmental entities by funding much of its increase through general revenues.

**Judicial and prosecutorial districts.** Chapter 321 creates a new judicial and prosecutorial district 9A, effective November 1, 1993 or when precleared under Section 5 of the federal Voting Rights Act. The new judicial district is composed of Caswell County (from District 17A) and Person County (from District 9). The Governor will appoint the superior court judge and district attorney for the district. One district court judge from District 17A who resides in Caswell County and one from District 9 who resides in Person County are transferred to the new judicial district.

In 1987 and 1989, Cabarrus and Rowan counties were split into separate superior court and district court judicial districts (19A and 19C), but the two counties remained in one

prosecutorial district. Effective January 1, 1995, the prosecutorial district will be split to match the judicial districts. The new district attorney's position will be filled in the 1994 general election.

**Courts Commission.** The North Carolina Courts Commission of 1963-75 researched, drafted, and shepherded through the General Assembly all the major legislation implementing the new Judicial Article that was added to the Constitution in 1962. The Commission ended in 1975, but was reactivated in 1979 and charged with making studies of the structure, organization, jurisdiction, procedures and personnel of the Judicial Department and of the General Court of Justice and with making recommendations for changes that will facilitate the administration of justice. During that period the Commission created new districts, added court personnel, created a category of offenses called infractions, and recommended use of emergency judges. In fiscal 1987-88, the General Assembly did not fund the Commission and it became inactive again. Chapter 438 (H 1157) reactivates the Commission again, effective July 1, 1993. The Commission includes 24 members, six each appointed by the Governor, Speaker of the House, President Pro Tempore of the Senate and Chief Justice. Nine of the members must be legislators, nine are court officials (including one magistrate), and four must be practicing attorneys. The Governor, after consultation with the Chief Justice, will appoint one of the legislative members as chairman.