



# WHAT TO DO WHEN YOU ARE SUED

CORRINE LUSIC, NCAOC, DEPUTY LEGAL COUNSEL


FALL MAGISTRATE'S CONFERENCE

SEPTEMBER 2023

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## TOPICS

- Structure of the Office of General Counsel
- Litigation support
- Subpoena support
- False liens against Judicial Branch employees
- Bar complaints
- Removal petitions



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# OFFICE OF GENERAL COUNSEL STRUCTURE

**General Counsel  
(Andrew Brown)**

Criminal/Family Team	Civil Team	Contracts/Technology Team	Judicial Fellows
<ul style="list-style-type: none"> <li>• Troy Page (Lead)</li> <li>• Antares Holloway</li> <li>• Erika Jones</li> <li>• Kimberly Callahan</li> </ul>	<ul style="list-style-type: none"> <li>• Corrine Lusic (Lead)</li> <li>• Nickie Brinkley</li> <li>• Matt Kraus</li> <li>• Devon Barnhardt</li> </ul>	<ul style="list-style-type: none"> <li>• Elizabeth Croom (Lead)</li> <li>• Allison Pluchos</li> </ul>	<ul style="list-style-type: none"> <li>• Lindsay Spain (Director)</li> <li>• ~8 fellows</li> </ul>

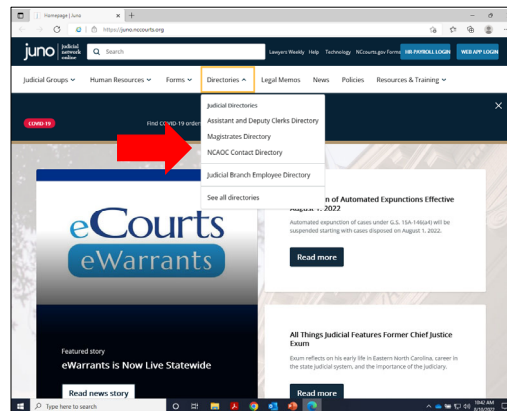
**Administrative Assistant:** Nicole Holden



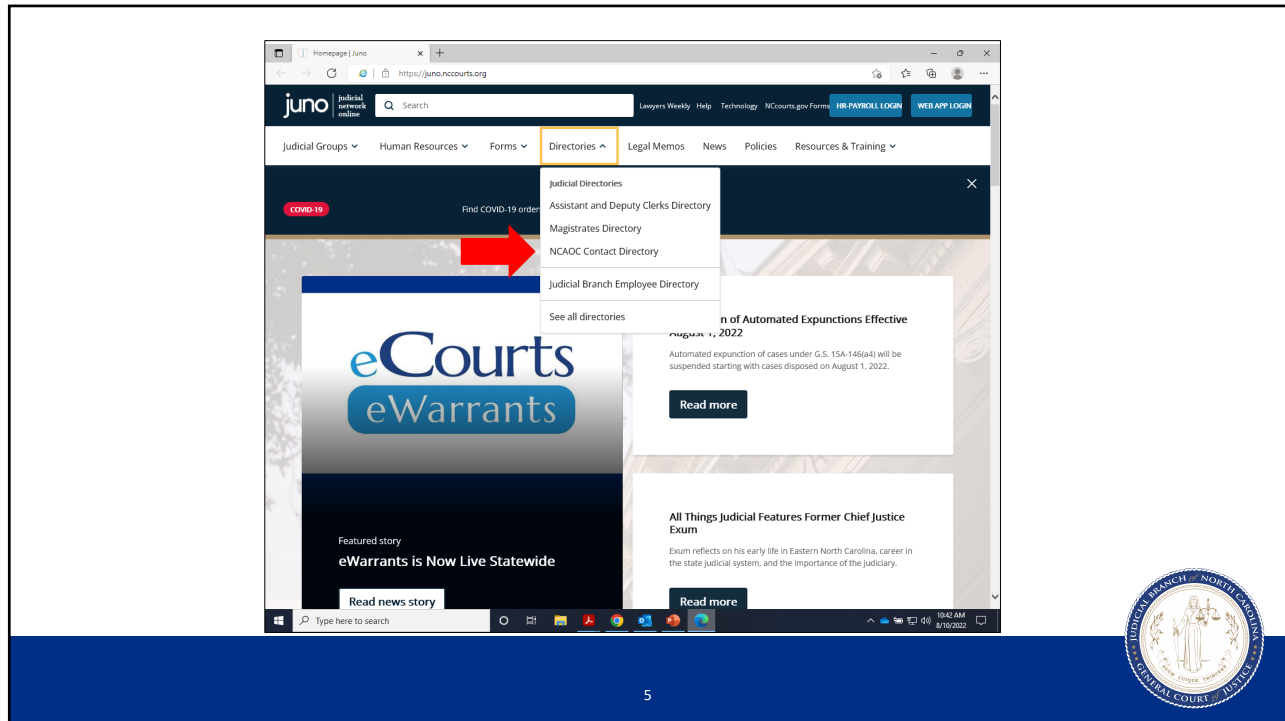
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## HOW TO FIND US (AND OUR SUBJECT AREAS)

[Homepage | Juno \(nccourts.org\)](https://www.nccourts.org)

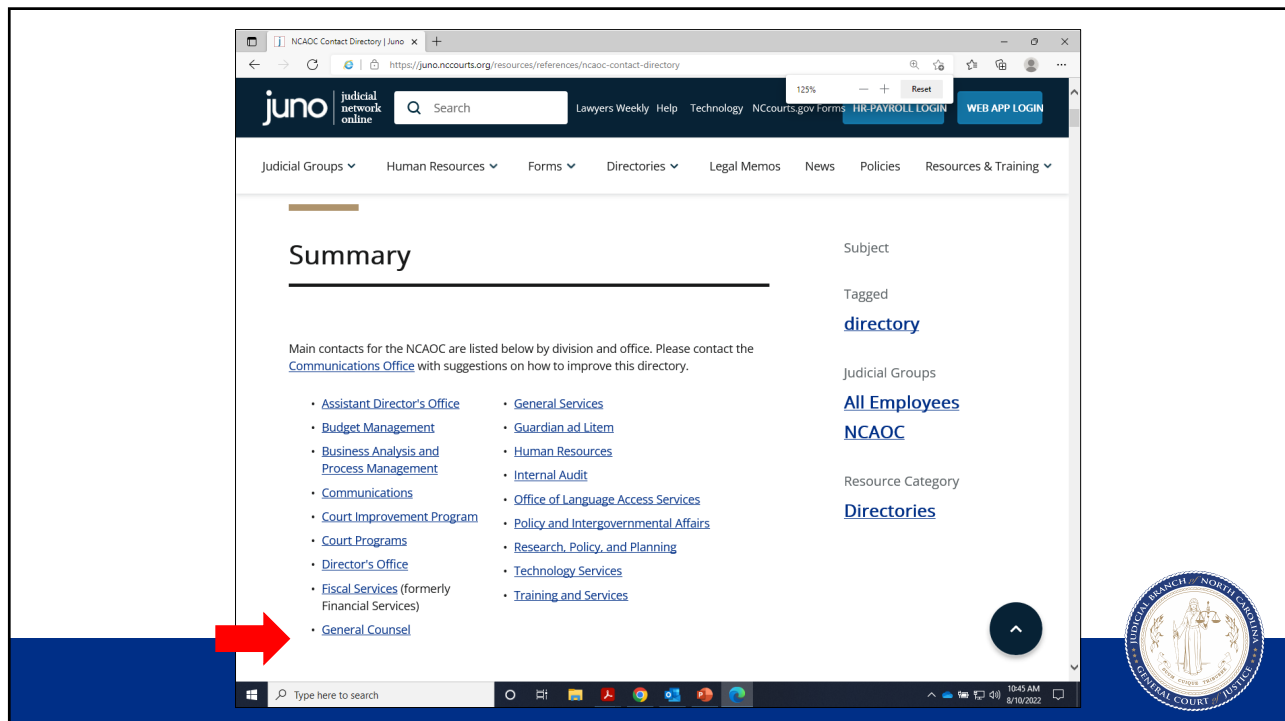


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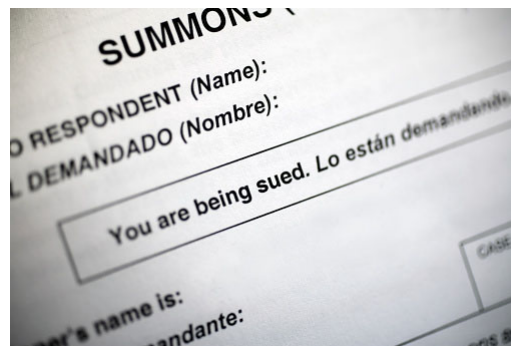
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The screenshot shows the 'juno Judicial network online' directory. The 'Litigation Involving Court Officials' entry is circled in red. The entry lists Corrine Lusic (919-890-1315) and Andrew Brown (919-890-1308). Other categories include Juvenile - Abuse / Neglect / Dependency, Legitimation Proceedings, Liens, Magistrates - Temporary Assignment, Mediation, Motor Vehicle (offenses and seizures), Name Changes, Personnel, Privacy and Personal Identifying Information (PII), and Public Records.

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## LITIGATION SUPPORT

- The OGC reviews all lawsuits filed in federal or state court and agencies against Judicial Branch officials and employees and works closely with the Attorney General’s office to facilitate representation in court, monitor litigation, and develop litigation strategies.
- The OGC consults with Judicial Branch officials and employees on litigation risks as requested or necessary



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## LITIGATION SUPPORT

Most common types of claims in lawsuits against magistrates:

- Frivolous (uphappy customer claims; malicious prosecution claims; nonsensical sovereign citizen claims)
- Chief magistrate may be brought into an employment action
- Negligence in ministerial duties
- Previously: suits against bonds



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## LITIGATION—LAWSUITS

- Pursuant to statute, the AG's Office **must** represent the state in all lawsuits filed against the state.
  - This includes claims made against Judicial Branch officials and employees in the "official capacity"
- Under the Defense of State Employees Act, the AG's Office **may** represent state employees in suits filed against them in their "individual capacity" for actions taken in employment



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## LITIGATION—LAWSUITS

- Defense of State Employees Act (G.S. Chapter 143-300.2 et seq)
  - The AG’s Office can refuse representation (G.S. 143-300.4)
    - Act/omission wasn’t related to employment
    - Actual fraud, corruption, or actual malice
    - Defense of the action would create a conflict of interest
    - Defense of the action would not be in the best interest of the State
  - AG has only refused to represent a Judicial Branch official or employee on one occasion in last decade
    - Criminal activity (DA Bradsher)
  - NCAOC may be able to provide representation if AG refuses.



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## LITIGATION—LAWSUITS

- The OGC maintains a close relationship with our AG attorneys.
  - Standing weekly meeting for monitoring
  - Strategy input (especially as it relates to impacts to the Branch as a whole)
  - Review and edit all MAJOR briefs
  - Ensure appropriate level of communication between AG attorneys and Judicial Branch defendants
  - Assist in gathering discovery
  - Participate in mediations
  - Final call (with Director) on monetary settlement decisions



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## LITIGATION—SUBPOENAS

- Most common subpoenas issued to magistrates:
  - Subpoena for testimony on *Knoll* motions
  - Subpoena for criminal files or communications related to case
  - Subpoena for testimony about judicial decision



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## LITIGATION—SUBPOENAS

- OGC also assists on responding to subpoenas
  - Review all subpoenas and discuss whether and how to respond
  - Draft objection letters for subpoenas for documents
  - Coordinate with the AG's office to object to and quash subpoenas for testimony (which require an appearance in a case)



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## LITIGATION—SUBPOENAS

- Please don't respond to a civil subpoena on your own.
- If you're an attorney—why do you need the OGC to help you respond to a subpoena?
  - Why create more work for yourselves?
  - The OGC has standing practices for responses
    - E.g., objection letters versus motions to quash
  - Allows OGC to track trends in the success of our arguments and provide relevant advice on responding



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## LITIGATION SUPPORT

- How do I know that a lawsuit or subpoena has been filed/served against a Judicial Branch official or employee?
- Send any litigation documents to me ASAP!

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## PAPER TERRORISM—FALSE LIENS

- Paper terrorism is a tactic used by a citizen (e.g., Sovereign citizens) to harass, annoy, or extort money from a government official. It includes filing a false lien against the property of the public official for fictitious work.
  - Feel free to run any sovereign paperwork by our office if you have concerns
- North Carolina and many other states make it a crime to file false liens. (G.S. 14-118.6; Class I felony)

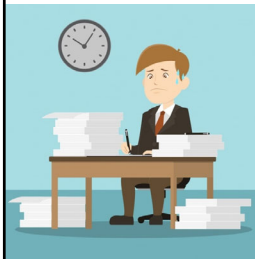


Image by Freepik

- North Carolina has a law that allow Clerks of Court and Registers of Deeds to reject false lien filings. (G.S. 14-118.6)



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## PAPER TERRORISM—FALSE LIENS

- But false liens do get filed in the offices of the Clerks of Court, Register of Deeds, and the Secretary of State.
- What do you do?
- The OGC provide advice and counsel on:
  - the impact, or lack of impact, of the lien;
  - filing paperwork to remove the lien;
  - whether litigation is needed to remove the lien and AG resources available for litigation; and
  - coordinating law enforcement to enforce criminal sanctions.



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## BAR COMPLAINTS—DISCIPLINE ROADMAP

1. Complaint is investigated by the State Bar's Grievance Committee
2. If the complaint alleges a violation, then attorney has opportunity to write a response and Office of Counsel will investigate
3. Grievance Committee will review Office of Counsel's Report and decide whether to dismiss, issue lesser discipline, or refer to Disciplinary Hearing Commission (DHC) for more serious discipline
  - Can also appeal lesser discipline for full hearing in DHC
4. DHC process is a full hearing
5. DHC decisions can be appealed to the NCCOA

<https://www.ncbar.gov/lawyer-discipline/roadmap-of-the-disciplinary-process/>



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## BAR COMPLAINTS—OGC'S ROLE

- The OGC can provide advice and counsel on drafting a response to the Grievance Committee and in obtaining evidence for a response (transcripts/case files)
- Hearings before the DHC are a form of litigation BUT the AG's office has informed us that they will not represent employees on bar complaints
  - NCAOC has some limited authority to pay for private representation when the AG's office declines
  - Relatively new authority--we haven't had to evaluate it for bar complaints yet
  - Decisions will be made on a case-by-case basis



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## REMOVAL PETITION PROCESS

- Magistrates may be removed from office pursuant to procedure in G.S. 7A-173.
  - Sworn written charges are filed with the Clerk's office
  - CDCJ evaluates and will suspend magistrate, with pay, if he/she "finds that the charges, if true, constitute grounds for removal."



Image by master1305 on Freepik

- Grounds for removal: "willful misconduct in office, willful and persistent failure to perform the judge's duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute." G.S. 7A-376(b).



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## REMOVAL PETITIONS PROCESS

- Magistrates removal procedure continued...
  - Matter assigned to the "senior regular resident superior court judge of, or any regular superior court," who will either dismiss the matter or hold an hearing and hear testimony and any evidence presented.
  - "If the judge finds that grounds for removal exist, the judge shall enter an order permanently removing the magistrate from office, and terminating the magistrate's salary."
  - Magistrate may appeal errors of law to the Court of Appeals.



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## REMOVAL PETITIONS

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  - Decisions will be made on a case-by-case basis



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