AGENDA
BASIC SCHOOL FOR MAGISTRATES: SUMMER 2018
UNC SCHOOL OF GOVERNMENT

(Unless otherwise specified, the instructor for all sessions is Dona Lewandowski)

Monday, July 23

9:00	**Orientation**
9:20	**Introduction to the Law & Judicial Process**
10:30	**Break**
10:40	**Intro to Law & Judicial Process, cont'd**
12:00	**Lunch at SOG**
12:45	**Small Claims Procedure**
2:20	**Break**
2:30	**Small Claims Procedure, *cont'd***
4:15	**Break**
4:25	**Small Claims Procedure, *cont'd***
5:30	**Adjourn**

Tuesday, July 24

9:00	**Revisiting Yesterday**
9:15	**Torts** (30m)
9:45	**Break**
10:00	**Understanding Domestic Violence** (150m) Chief District Court Judge J. Corpening, New Hanover & Pender Counties
12:30	**Lunch**
1:15	**Ethics** (45m)
2:00	**Involuntary Commitment** (50m) Mark Botts, School of Government
2:50	**Break**
3:00	**Involuntary Commitment, *cont'd*** (90m)
4:30	**Break**
4:40	**Involuntary Commitment, *cont'd*** (50m)
5:30	**Adjourn**

Wednesday, July 25

9:00	**Revisiting Yesterday**
9:15	**Contracts** (75m)
10:30	**Break**
10:45	**Contracts** (75m)
12:00	**Lunch at SOG**
12:45	**Actions to Recover Personal Property** (95m)
2:20	**Break**
2:30	**Issuing Ex Parte DVPOs** (105m)
4:15	**Break**
4:25	**Landlord-Tenant Law** (65m)
5:30	**Adjourn**

Thursday, July 26

8:15	**Review for Test (attendance optional)**
9:00	**Landlord-Tenant Law, cont'd** (75m)
10:15	**Break**
10:30	**Landlord-Tenant Law, cont'd** (90m)
12:00	**Lunch at SOG**
1:00	**Landlord-Tenant Law, cont'd** (60m)
2:00	**Break**
2:15	**Landlord-Tenant Law, cont'd** (90m)
3:45	**Break**
4:00	**NCAOC Language Access Services for Magistrates** (90m) Brooke Crozier, Courts Program Specialist II, Administrative Office of the Courts
5:30	**Adjourn**

Friday, July 27

9:00	**AOC: Handling Money** (60m) Tony McKinney, Financial Management Analyst, Administrative Office of the Courts

Any breakfast or lunch provided as part of this program is paid for by the Administrative Office of the Courts. When claiming reimbursement for expenses for this program, the portion of the daily travel allowance allocated for these breakfasts or lunches may not be claimed.

10:00 **Landlord-Tenant Law, cont'd** (30m)
10:30 **Break**
10:40 **Landlord-Tenant Law, cont'd** (65m)
11:45 **The Struggle Toward Fairness: Avoiding Bias** (60m)
12:45 **Lunch & Marriage Session—In Room 2401** (60m)

1:30 **Evaluations & Test in Room 2601 & 2401**

Totals for both weeks: 3540m = 59 CLE Hours
Week I----105m = 1.75 Ethics Hours and 1780m = 30 General Hours
Week II---1740m = 29 General Hours

SOG will cover the cost of 12 CLE credit hours (including the 1.75 Ethics Hours)

Sponsored by
North Carolina Association of District Court Judges
North Carolina Administrative Office of the Courts
UNC School of Government

Magistrate's Oath of Office

I do solemnly swear that I will administer justice without favoritism to anyone or to the State; that I will not knowingly take, directly or indirectly, any fee, gift, gratuity or reward whatsoever, for any matter or thing done by me or to be done by me by virtue of my office, except the salary and allowances by law provided; and that I will faithfully and impartially discharge all the duties of magistrate of the District Court Division of the General Court of Justice to the best of my ability and understanding, and consistent with the Constitution and laws of the State; so help me, God.

TAB 01:

General Information

UNC SCHOOL OF GOVERNMENT

Mission
The mission of the School of Government is to improve the lives of North Carolinians by engaging in practical scholarship that helps public officials and citizens understand and improve state and local government.

Values
Consistent values for more than 75 years have built a legacy of trust with North Carolina's public officials:

- Nonpartisan
- Policy-neutral
- Responsive

How We Serve North Carolina
As the largest university-based local government training, advisory, and research organization in the United States, the School of Government offers up to 200 courses, seminars, and specialized conferences for more than 12,000 public officials each year.

Faculty members respond to more than 100,000 phone calls and e-mail messages each year on routine and urgent matters and also engage in long-term advising projects for local governing boards, legislative committees, and statewide commissions.

In addition, faculty members annually publish approximately 50 books, periodicals, and other reference works related to state and local government. Each day that the General Assembly is in session, the School produces the *Daily Bulletin*, which reports on the day's activities for members of the legislature and others who need to follow the course of legislation.

History
Established in 1931 as the Institute of Government, the School provides educational, advisory, and research services for state and local governments. The School of Government is also home to specialized centers focused on information technology, environmental finance, and civic education for youth.

School of Government faculty members have made notable contributions to North Carolina government:

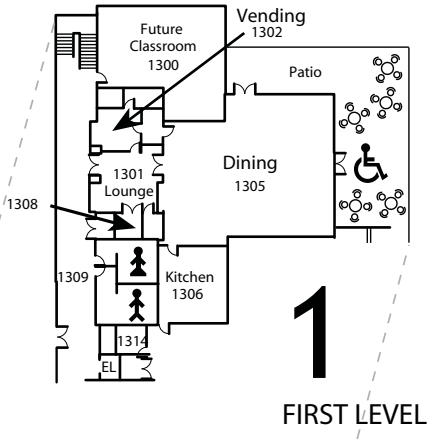
- Study to reorganize state government
- Study of the state's court system
- North Carolina Constitutional Commission
- Local Government Study Commission
- Open Meetings Study Commission
- NC Sentencing and Policy Advisory Commission
- Governor's Crime Commission on Juvenile Crime and Justice

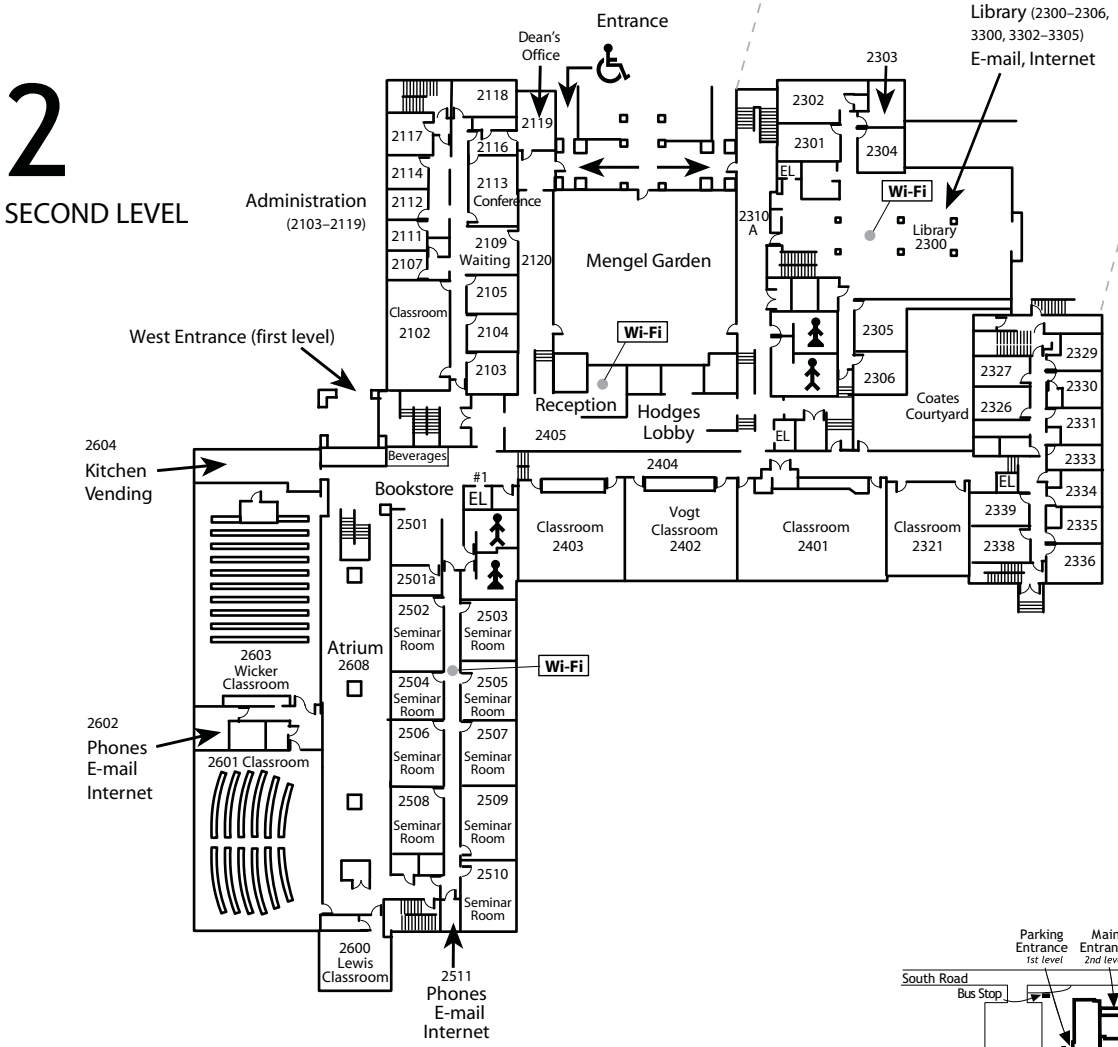
Support for the School of Government
Operating support for the School of Government's programs and activities comes from many sources, including state appropriations, local government membership dues, private contributions, publication sales, course fees, and service contracts. Visit www.sog.unc.edu or call 919.966.5381 for more information on the School's courses, publications, programs, and services.

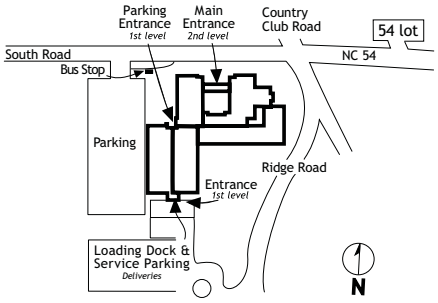
Knapp-Sanders Building

School of Government
UNC-Chapel Hill

May 2008
Guest Map







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Mark Botts joined the School of Government in 1992. Prior to that, he served judicial clerkships with the US Court of Appeals for the Sixth Circuit and the US District Court for the Western District of Michigan. Botts' publications include *A Legal Manual for Area Mental Health, Developmental Disabilities, and Substance Abuse Boards in North Carolina*. Mark holds a B.A. from Albion College and a J.D. from the University of Michigan, School of Law.

Areas of Interest: Mental health law, including involuntary commitment procedures; legal responsibilities of area boards; client rights (especially confidentiality)

Shea Riggsbee Denning
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Shea Denning joined the School of Government in 2003. Prior to that, she was an assistant federal public defender for the Eastern District of North Carolina and practiced law with the firm of King and Spalding in Atlanta, Georgia. Denning began her career as a law clerk to the Honorable Malcolm J. Howard, US District Judge for the Eastern District of North Carolina. She is a member of the North Carolina State Bar. Denning earned an AB with distinction in journalism and mass communication and a JD with high honors, order of the coif, from the University of North Carolina at Chapel Hill. Shea specializes in motor vehicle law and the criminal laws and procedures associated with this subject area, including the law of search and seizure and the rules of evidence. She teaches and consults with judges, prosecutors, public defenders, magistrates and others. In 2011, she was awarded the Albert and Gladys Coates Term Professorship for Faculty Excellence.

Areas of interest: Motor vehicle law; district court judge education

Phil Dixon Jr.
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Phil Dixon joined the School of Government in 2017. Previously he worked for eight years as an attorney in Pitt and surrounding eastern North Carolina counties, focusing primarily on criminal defense and related matters. Dixon served as assigned counsel to indigent clients throughout his career, and represented adult and juvenile clients charged with all types of crimes at the trial level. He earned a BA from the University of North Carolina at Chapel Hill and a JD with highest honors from North Carolina Central University. He works with the indigent education group at the School to provide training and consultation to public defenders and defense lawyers, as well as to research and write about criminal law issues.

Areas of interest: Criminal Law and Procedure, Evidence, Indigent Defense Education and Public Defender Training

Dona Lewandowski
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Dona Lewandowski joined the faculty of the Institute of Government in 1985 and spent the next five year writing, teaching, and consulting with district court judges in the area of family law. In 1990, following the birth of her son, she left the Institute to devote full time to her family. She rejoined the School of Government in 2006. Lewandowski holds a B.S. and an M.A. from Middle Tennessee State University and a J.D. with honors, Order of the Coif, from the University of North Carolina at Chapel Hill. After law school, she worked as a research assistant to Chief Judge R.A. Hedrick of the NC Court of Appeals.

Areas of Interest: Magistrates' issues (non-criminal law), including small claims law and procedure, ethics, marriage, and magistrate personnel matters, including appointment and removal.

Jamie Markham
(919) 843-3914 **markham@sog.unc.edu**

Jamie Markham joined the School of Government faculty in 2007. His area of interest is criminal law and procedure, with a focus on the law of sentencing, corrections, and the conditions of confinement. Markham earned a bachelor's degree with honors from Harvard College and a law degree with high honors, Order of the Coif, from Duke University, where he was editor-in-chief of the *Duke Law Journal*. He is a member of the North Carolina Bar. Prior to law school, Markham served five years in the United States Air Force as an intelligence officer and foreign area officer. He was also a travel writer for Let's Go Inc., contributing to the Russia and Ukraine chapters of *Let's Go: Eastern Europe*.

Areas of Interest: Criminal law and procedure, especially community corrections and sentencing law

John Rubin
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John Rubin joined the School of Government in 1991. Prior to that, he practiced law in Washington, D.C., and Los Angeles. At the School he specializes in criminal law and indigent defense education. He has written several articles and books on criminal law, including the *North Carolina Defender Manual*, and he designs and teaches in numerous training programs each year for indigent defenders. He is a frequent consultant to the Office of Indigent Services, which is responsible for overseeing and enhancing legal representation for indigent defendants and others entitled to counsel under North Carolina law. He is the 2008 recipient of the Albert and Gladys Coates Term Professorship for Faculty Achievement. Rubin earned a B.A. from the University of California at Berkeley and a J.D. from the University of North Carolina at Chapel Hill.

Areas of Interest: Criminal law and procedure; public defender training; evidence; indigent defense; domestic violence; subpoenas.

Jessica Smith
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Jessica Smith joined the Institute of Government in 2000. Prior to that, she practiced law at Covington & Burling in Washington, D.C. She also clerked for U.S. District Judge W. Earl Britt in the U.S. District Court for the Eastern District of North Carolina and for Senior U.S. Circuit Judge J. Dickson Phillips Jr. in the U.S. Court of Appeals for the Fourth Circuit. At the School of Government, Smith teaches and consults with judges and other public employees involved in the criminal justice system. In 2006, she received the Albert and Gladys Hall Coates Term Professorship for Teaching Excellence. In 2013, she was named by the Chancellor as a W. R. Kenan, Jr. Distinguished Professor, one of the University's highest academic honors. Smith earned a BA, cum laude, from the University of Pennsylvania and a JD, magna cum laude, Order of the Coif, from the University of Pennsylvania Law School, where she was managing editor of the *Law Review*.

Areas of Interest: Criminal law and procedure; evidence

Christopher Tyner

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Christopher Tyner joined the School of Government in 2012. He is a member of the North Carolina State Bar and provides research support to faculty members in the areas of criminal and local government law. Tyner earned a BA and a JD from the University of North Carolina at Chapel Hill.

Jeff Welty
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Jeff Welty specializes in criminal law and procedure, including search and seizure issues and prosecutor assistance. Prior to joining the School of Government, he practiced law in Durham and was a Lecturing Fellow at Duke Law School. He earned his JD, with highest honors, at Duke, where he served as executive editor of the *Duke Law Journal*.

Areas of Interest: Criminal law and procedure; evidence; prosecutor training; police attorneys

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November 2016

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Dean's Office	919.966.4107
Development	919.843.2556
Knapp Library	919.962.2760
Marketing and Communications	919.966.4178
Receptionist	919.966.5381
Registration	919.966.4414

Visit **sog.unc.edu** or call 919.966.5381 to learn more about the School of Government's courses, publications, webinars, blogs, and other information resources.

20161225

School of Government

Central Switchboard Number (919) 966-5381

**many of the SOG faculty are listed on AOC email list and can be reached there. However, direct email addresses are listed on this sheet.*

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Dona Lewandowski	lewandowski@sog.unc.edu
Small Claims and Miscellaneous Magistrates' Issues	(919) 966-7288
Jamie Markham	Markham@sog.unc.edu
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Raleigh, NC 27602
Phone: (919) 890-1000

Location: NC Judicial Center
901 Corporate Center Drive
Raleigh, NC. 27607-5045

Personnel Matters (919) 890-1000

Fran Kelly, Travel (919) 890-1025

Jim Gray, Learning Technology Consultant (919) 890-1110
keeps records of CLE hours and approves non-School of Government hours

Help Desk (919) 890-2407
NCAWARE
StateWide Warrant Search
Office 2013
Other Mainframe NCAOC Applications (ACIS, VCAP, etc.)
Technical Computer Assistance

NCAOC COURT SERVICES DIVISION County/District Field Assignments				
County	**District**	**Support**	**Support**	**Support**
ALAMANCE	15A	Joe Privette	Faith Taylor	
ALEXANDER	22A	Dori Wynter-Mitchell El	Christi Stark	
ALLEGHANEY	23	Brent Sheppard	Dori Wynter-Mitchell El	
ANSON	16C	Bruce Saburn	Takeeta Tyson	
ASHE	23	Brent Sheppard	Dori Wynter-Mitchell El	
AVERY	24	Brent Sheppard	Christi Stark	
BEAUFORT	2	Cashie Phillips	Scott Havenook	
BERTIE	6	Cashie Phillips	Meredith McSwain	
BLADEN	13	Kim Whitfield	Takeeta Tyson	
BRUNSWICK	13	Kim Whitfield	Takeeta Tyson	
BUNCOMBE	28	DeShield Greene	Brent Sheppard	
BURKE	25	Brent Sheppard	Christi Stark	
CABARRUS	19A	Bruce Saburn	Paul Reinhartsen	
CALDWELL	25	Brent Sheppard	Christi Stark	
CAMDEN	1	Cashie Phillips	Scott Havenook	
CARTERET	3B	Sherry Rackley	Scott Havenook	
CASWELL	9A	Joe Privette	Meredith McSwain	
CATAWBA	25	Brent Sheppard	Christi Stark	
CHATHAM	15B	Krystal Tart	Faith Taylor	
CHEROKEE	30	DeShield Greene	Paul Reinhartsen	
CHOWAN	1	Cashie Phillips	Scott Havenook	
CLAY	30	DeShield Greene	Paul Reinhartsen	
CLEVELAND	27B	Dori Wynter-Mitchell El	Bruce Saburn	
COLUMBUS	13	Kim Whitfield	Takeeta Tyson	
CRAVEN	3B	Sherry Rackley	Scott Havenook	
CUMBERLAND	12	Kim Whitfield	Ashley Confroy	
CURRITUCK	1	Cashie Phillips	Scott Havenook	
DARE	1	Cashie Phillips	Scott Havenook	
DAVIDSON	22B	Dori Wynter-Mitchell El	Christi Stark	
DAVIE	22B	Dori Wynter-Mitchell El	Christi Stark	
DUPLIN	4	Kim Whitfield	Sherry Rackley	
DURHAM	14	Joe Privette	Meredith McSwain	
EDGECOMBE	7	Krystal Tart	Ashley Confroy	
FORSYTH	21	Christi Stark	Rebecca Saleeby	
FRANKLIN	9	Ashley Confroy	Joe Privette	
GASTON	27A	Bruce Saburn	Paul Reinhartsen	

GATES	1	Cashie Phillips	Scott Havenook	
GRAHAM	30	DeShield Greene	Paul Reinhartsen	
GRANVILLE	9	Ashley Confroy	Joe Privette	
GREENE	8	Faith Taylor	Scott Havenook	
GUILFORD	18	Rebecca Saleeby	Christi Stark	Meredith McSwain
HALIFAX	6A	Cashie Phillips	Meredith McSwain	
HARNETT	11A	Krystal Tart	Sherry Rackley	
HAYWOOD	30	DeShield Greene	Paul Reinhartsen	
HENDERSON	29B	DeShield Greene	Paul Reinhartsen	
HERTFORD	6B	Cashie Phillips	Meredith McSwain	
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HYDE	2	Cashie Phillips	Scott Havenook	
IREDELL	22A	Dori Wynter-Mitchell El	Christi Stark	
JACKSON	30	DeShield Greene	Paul Reinhartsen	
JOHNSTON	11B	Krystal Tart	Sherry Rackley	
JONES	4	Kim Whitfield	Sherry Rackley	
LEE	11A	Krystal Tart	Sherry Rackley	
LENOIR	8	Faith Taylor	Scott Havenook	
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MOORE	19D	Krystal Tart	Meredith McSwain	
NASH	7	Krystal Tart	Ashley Confroy	
NEW HANOVER	5	Kim Whitfield	Takeeta Tyson	
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WAKE	10	Ashley Confroy	Joe Privette	Takeeta Tyson
WARREN	9	Ashley Confroy	Joe Privette	
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Website Resources

School of Government Website
www.sog.unc.edu

School of Government's Magistrate Website
www.ncmagistrates.unc.edu

School of Government's Criminal Law Website
https://www.sog.unc.edu/resources/microsites/criminal-law-north-carolina

School of Government's District Court Judges Website
http://www.sog.unc.edu/programs/dcjudges

NC Judicial College Website
http://www.sog.unc.edu/programs/judicialcollege

NC Magistrate's Association Website
www.aoc.state.nc.us/magistrate

Administrative Office of the Courts' (AOC) Website
www.nccourts.org

General Assembly's Website
(can download any bill or statute)
www.ncleg.net

School of Government Blogs

School of Government's Criminal Law Blog
https://www.sog.unc.edu/resources/microsites/criminal-law-north-carolina/criminal-law-blog

School of Government's *On The Civil Side* Blog
http://civil.sog.unc.edu/

On the Civil Side

A UNC School of Government Blog

We are creating this blog – "On The Civil Side" – in direct response to the popularity of The Criminal Law Blog, administered by our colleague Jeff Welty. Our contributors believe civil cases can be just as interesting and exciting as criminal proceedings and we are going to use this forum to prove it. We will write about issues of interest to court personnel and lawyers working in a variety of civil court proceedings, including general civil district and superior court, domestic relations matters, juvenile cases, small claims court, and hearings before clerks. We hope readers will contribute to the discussion by using the comment feature or by emailing the author directly.

There are three ways to follow this blog. First, you can regularly check this site. You can expect two posts a week—one on Wednesday and one on Friday. Second, you can use an RSS feed, which automatically sends new posts to an RSS reader. Third, you can subscribe by email, which will result in new posts magically arriving in your inbox.

We look forward to sharing our thoughts, hearing yours, and revealing the intrigue that lies on the civil side.

To Subscribe to the *On the Civil Side* Blog

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REIMBURSEMENT FOR TRAVEL AND SUBSISTENCE

DUE TO THE CONSTANTLY CHANGING BUDGET POLICIES, expect substantial delays in processing your reimbursement as well as the potential for changes in coverage. If you have any questions you should contact Fran Kelly at the AOC at the number below.

Fran Kelly
Accounting Specialist II
901 Corporate Center Dr
PO Box 2448
Raleigh, NC 27602
919.890.1025

The Administrative Office of the Courts will reimburse magistrates attending the Basic School as follows:

Breakfast	$ 8.40
Lunch	$ 11.00
Dinner	$ 18.90
Lodging (actual cost, up to)	$ 71.20 + tax
Total Daily Rate	$ 109.50
Travel mileage	Check with your supervisor or AOC to determine the current rate

To obtain reimbursement for qualifying expenses, you will need to submit **AOC-A-25**, which is available from your clerk of superior court, or which may be downloaded from www.nccourts.org (click on "Forms" and then type in "AOC-A-25"). You will find a copy following this memo.

After completing the form, send it to your Chief District Court Judge, who is your supervisor, for his or her signature before mailing the completed form to Raleigh. (The mailing address is shown in the instruction box at the top of the form.) Make a copy of the form to keep with your records.

MEALS:
You do not need to attach receipts for meals to your reimbursement form.
On Mondays you may claim breakfast if you had to leave home before 6 a.m. and on Fridays you may claims dinner if you arrive home after 8:00 p.m.
NOTE: If meals are provided by the School of Government you cannot claim them.

If you are commuting daily, you are not entitled to recover any meal expenses except you may claim $8.30 for breakfast if you left before 6:00 a.m. and may claim $18.70 for dinner if you return to your duty station after 8:00 p.m.

ROOM:
The actual cost of your daily room rate is reimbursed up to a maximum of $67.30, plus actual tax. **The original itemized hotel receipt** (not a photocopy) must be attached to the reimbursement form. The itemized hotel receipt must show each day's total and tax separately. Your receipt must show a "0" balance owed.

NOTE: You can request an itemized receipt when you checkout of the hotel.

TRAVEL:

NOTE: Because of the constantly changing mileage policies you should check with your supervisor or AOC to determine the current rate.

Magistrates who are located 35 miles or less from the school are expected to commute daily and will be reimbursed at the current rate of mileage.

Basic School: Small Claims Review

I. Procedure
   A. Small Claims Action
      i. Summary Ejectment, $ Owed, or Return of Personal Property
      ii. $10,000 or less
      iii. At least one defendant must reside in county

   B. Service of Process
      i. Personal service by sheriff
      ii. Certified mail, return receipt requested
      iii. Voluntary appearance
      iv. (SE cases only: Service by posting)

   C. Counterclaim
      i. Must be filed with clerk prior to time case is set for trial
      ii. Written
      iii. For $10000 or less

   D. Continuance*
      i. Both parties agree: allowed
      ii. Motion by one party: allow only for good cause shown

   E. Failure to appear
      i. By defendant: Take plaintiff's testimony just as usual
      ii. By plaintiff: dismiss with prejudice

   F. Amendment of complaint
      i. Freely allowed
      ii. Usually only issue is whether defendant has sufficient notice

   G. Voluntary dismissal (without prejudice)
      i. Plaintiff has the right to take a voluntary dismissal at any time before conclusion of plaintiff's evidence

   H. Entering judgment
      i. May reserve judgment for up to 10 days*
      ii. Party may give notice of appeal in open court, or by seeing clerk

   I. Clerical errors: judge may correct without notice to parties

   J. Rule 60(b) motions to set aside judgment for excusable neglect
      i. Must be authorized by CDCJ to hear these motions
      ii. Requires notice to other party and hearing
      iii. If motion by defendant, must also show meritorious defense

*Special rule for summary ejectment.

II. Torts:
   A. In negligence cases In North Carolina, contributory negligence is a complete defense.
   B. Conversion is an intentional tort, in which the plaintiff proves:
      i. Plaintiff is the owner or lawful possessor of property;
      ii. Defendant wrongfully took or wrongfully retained that property;
      iii. Conversion, sometimes referred to as "forced sale," entitles the plaintiff to recover the fair market value of the property at the time and place of conversion as well as interest on that amount.

III. Contracts
   A. Bargained-for exchange

   B. Contracts by minors
      i. Voidable at the option of the minor
      ii. Exception: contracts for necessaries

   C. Statutes of limitation
      i. Contracts for the sale of goods: 4 years
      ii. Other contracts: 3 years
      iii. Contracts under seal: 10 years
      iv. NOTE: Partial payment on account starts statute running over again. A creditor who accepts partial payment of a debt does not waive the right to bring an action for the remainder of a debt.

   D. Contracts that must be in writing
      i. Contracts for the sale of goods for $500 or more
      ii. Retail installments sales contracts
      iii. Security agreements

   E. Terms of a contract
      i. Parole evidence rule: Evidence of contract terms in the form of conversation between the parties is not allowed to change or contradict a written contract, unless
         a. That evidence is offered to clarify a term that is vague or unclear, or
         b. The evidence is of a modification of the written contract that occurred after the written contract was completed.
         a. Implied terms: In contracts for the sale of goods, there is an implied term (called an implied warranty of merchantability) that the goods will be fit for the ordinary purpose for which they are used, assuming the seller is someone who sells these goods in the ordinary course of business.

   F. Parties to a contract
      1. Husband and wife do not have authority to bind each other to contracts, unless one is acting as an agent for the other. Marriage =agency.
      2. An agent <u>does</u> have authority to enter a contract on behalf of the principal.
      3. Under the theory of joint and several liability, a creditor having a contract with two debtors has the option of suing either or both for the entire amount due.

IV. Actions to recover personal property

A. By a non-secured party: Requires evidence identical to conversion claim, plus evidence that defendant is in possession of property, but remedy is return of personal property, along with cost of repairing damage to property and for loss of use.

B. By a secured party:
   i. SP must prove

      a. Security agreement
         i) Written
         ii) Signed
         iii) Dated
         iv) Contains a description of the property.

      b. Default by defendant

      c. Defendant is in possession of property.

      NOTE: Amount of underlying debt is not relevant.

   ii. Retail Installment Sales Act
      a. Applies to consumer credit purchases in which seller finances purchase
      b. Seller allowed to take security interest only in property sold, or in property previously sold by same seller and not yet paid off.
      c. Attempt to take security interest in other property is void.
      d. FIFO rule applies to allocation of payments when several goods bought from same seller.

V. Summary Ejectment
   A. Procedure
      i. Property manager may sign complaint, but owner must be listed as plaintiff
      ii. Service by posting? No money judgment
      iii. Judgment on the pleadings available if all requirements satisfied

   B. Grounds
      i. Breach of lease condition (forfeiture clause?)
      ii. Failure to pay rent (demand/10-day wait/tender)
      iii. Holding over
         a. Lease ends when it says it ends
         b. Month to month: 7 days
         c. Week to week: 2 days
         d. Year to year: 30 days
         e. Special rule for mobile home lots: 60 days
      iv. Criminal activity

   C. Consumer Protection Laws
      i. Late fees (maximum amount, agreed-to in lease, at least 5 days late)
      ii. No self-help eviction
      iii. Security deposit

iv. Residential Rental Agreements Act
LL has duty to keep premises in safe and habitable condition and make all repairs

TAB лн:

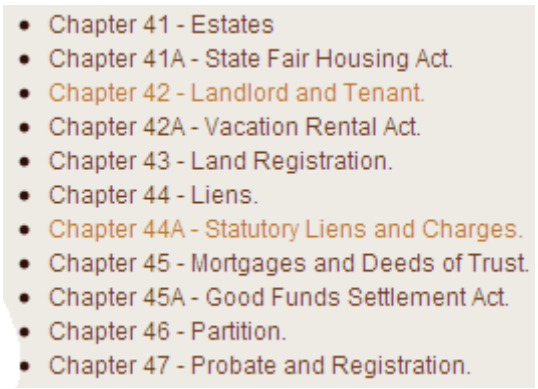
Intro to Law & Judicial Process

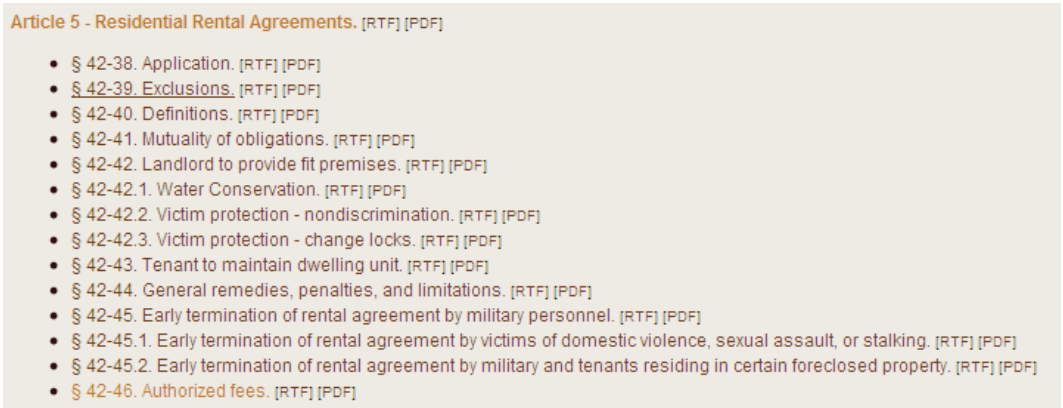
Introduction to Law & Judicial Process

Where does law come from?

Statutes

- Are laws passed by a legislative body
- Congress enacts federal statutes
- Local governing bodies pass ordinances.
- The NC General Assembly enacts state statutes
    - NC statutes are organized into *chapters* which are in turn organized into *articles, sections,* and *subsections.*





    - A citation to a NC statute may begin with *NCGS, NC Gen Stat,* or simply GS, followed by a number—indicating the *chapter*—a hyphen, and another number—indicating the *section.*

      EXAMPLES:
      The statutes of limitation for most civil actions may be found in GS Ch. 1, Art. 5.

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The qualifications for appointment as a magistrate are set out in NC Gen Stat. 7A-171.2.

- Statutes are available online at https://www.ncleg.net/gascripts/statutes/statutes.asp (or just Google "NC statutes" and click the first link).

- Statutes must be read carefully, giving every word its precise meaning. When a statute's meaning is not clear, there are legal rules about *statutory construction*, i.e., interpreting the meaning of the statute.

Appellate Court Opinions (aka *Case Law*)

- Written opinions provided by panels of appellate court judges reviewing trials in individual cases.
- Appellate courts do not hear evidence or conduct trials. Instead they review the record of a trial to determine whether the trial judge made an error.
- Reading an appellate opinion requires a different approach than reading a statute.

  The part of the opinion essential to the result reached by the Court is a *holding*. The Court's *holding* in an appellate case is binding on lower courts in future cases.
  Language in the opinion not essential to the result is *dicta*. *Dicta* in an opinion, however intriguing and suggestive, is not binding on lower courts and may be ignored in future opinions of the deciding court.

- NC has two appellate courts, the Court of Appeals and the Supreme Court, with the former being the intermediate court and the latter being – well-- Supreme.

- Case names are in the form of *Plaintiff v. Defendant, XX NC App* (or *NC) YYY (year of decision)*.
  Examples: Friday v. United Dominion Realty, Inc., 155 N.C. App. 671 (2003).
  State v. Knoll, 422 N.C. 535 (1988).

- If you are interested in reading court opinions as they're handed down, you can go to *www.nccourts.org* and click on "opinions" in the column on the right. If you're VERY eager, you can sign up there to be notified of new cases as soon as they're filed. If you're looking for a case and have only the name or what it's about, sometimes GOOGLE is your best bet.

Example:

Facts: LL-T case involving dispute over late fees assessed but unpaid in residential lease providing for monthly rent of $600. Late fees were calculated by computer and filled in automatically in written lease agreement. Computer rounded up to whole dollars, providing that late fee in amount of $31 would be assessed. LL never charged this amount, instead assessing $30.

Statute:

§ 42-46. Authorized fees.

(a) In all residential rental agreements in which a definite time for the payment of the rent is fixed, the parties may agree to a late fee not inconsistent with the provisions of this subsection, to be chargeable only if any rental payment is five days or more late. If the rent:

(1) Is due in monthly installments, a landlord may charge a late fee not to exceed fifteen dollars ($15.00) or five percent (5%) of the monthly rent, whichever is greater.

(4) Any provision of a residential rental agreement contrary to the provisions of this section is against the public policy of this State and therefore void and unenforceable.

Case

IN THE COURT OF APPEALS 671

FRIDAY v. UNITED DOMINION REALTY TR., INC.

[155 N.C. App. 671 (2003)]

REBECCA M. FRIDAY, PLAINTIFF v. UNITED DOMINION REALTY TRUST, INC., T/A AND D/B/A NORTHWINDS APARTMENTS, DEFENDANT

No. COA02-283

(Filed 21 January 2003)

"We hold that although Northwinds only charged and Ms. Friday only paid a $30 late fee each time her rent was late, the $31 late fee provision of the Northwinds lease agreement is contrary to the provisions of G.S. § 42-46(a) and therefore void and unenforceable as against North Carolina public policy."

What is the rule of law?

- *There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny.* —U.S. Supreme Court Justice Felix Frankfurter (1947).
- *From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial*

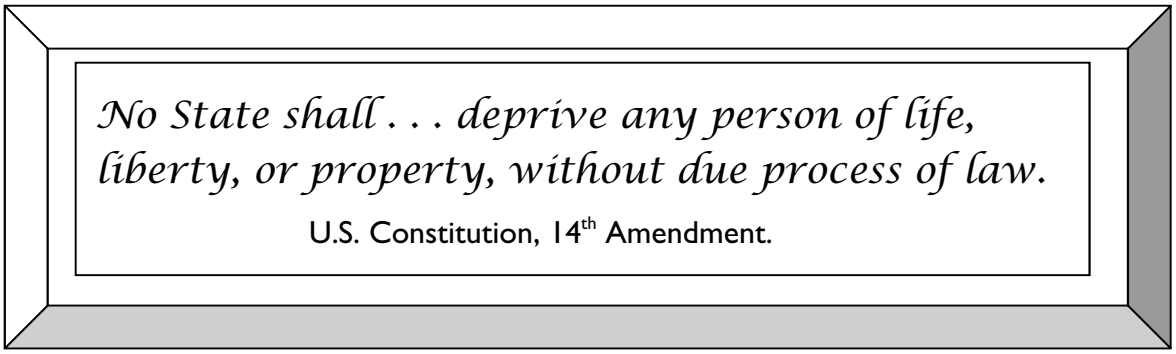
tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him. —U.S. Supreme Court Justice Hugo Black (1963)

- *[N]either laws nor the procedures used to create or implement them should be secret; and . . . the laws must not be arbitrary.* —U.S. Court of Appeals Judge Diane Wood (2003)
- *When we [Americans] talk about the rule of law, we assume that we're talking about a law that promotes freedom, that promotes justice, that promotes equality.* —U.S. Supreme Court Justice Anthony Kennedy (2007)

Some people have said it boils down to four components:

1. _____
2. _____
3. _____
4. _____

Due Process: The Heart of Your Job



Put this in your own words:

_____

_____

_____

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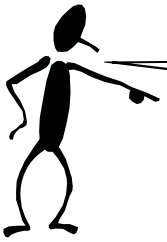
How Judicial Officials Make Decisions

Before we allow a defendant to use the force of law to take away property belonging to another, we require every plaintiff to establish specific facts. We call these facts

Essential Elements

Only after a plaintiff has introduced sufficient evidence to prove each individual element do we require a defendant to either rebut the evidence against her, or introduce additional evidence establishing an affirmative defense.

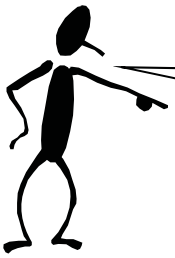


You injured me by

_____,

so I'm suing you for

_____.



Here are the essential elements of my case:

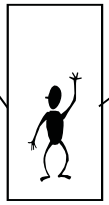
1. _____
2. _____
3. _____
4. _____

I am not responsible for your injury, because one of your essential elements is not true:

_____

_____

_____



Even if everything you say is true, I'm STILL not responsible for your injury, because

_____

_____

_____

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How to Read a Legal Opinion

A Guide for New Law Students

Orin S. Kerr

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How to Read a Legal Opinion

A Guide for New Law Students

Orin S. Kerr

This essay is designed to help new law students prepare for the first few weeks of class. It explains what judicial opinions are, how they are structured, and what law students should look for when reading them.

I. What's in a Legal Opinion?

When two people disagree and that disagreement leads to a lawsuit, the lawsuit will sometimes end with a ruling by a judge in favor of one side. The judge will explain the ruling in a written document referred to as an "opinion." The opinion explains what the case is about, discusses the relevant legal principles, and then applies the law to the facts to reach a ruling in favor of one side and against the other.

Modern judicial opinions reflect hundreds of years of history and practice. They usually follow a simple and predictable formula. This

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section takes you through the basic formula. It starts with the introductory materials at the top of an opinion and then moves on to the body of the opinion.

The Caption

The first part of the case is the title of the case, known as the "caption." Examples include *Brown v. Board of Education* and *Miranda v. Arizona*. The caption usually tells you the last names of the person who brought the lawsuit and the person who is being sued. These two sides are often referred to as the "parties" or as the "litigants" in the case. For example, if Ms. Smith sues Mr. Jones, the case caption may be *Smith v. Jones* (or, depending on the court, *Jones v. Smith*).

In criminal law, cases are brought by government prosecutors on behalf of the government itself. This means that the government is the named party. For example, if the federal government charges John Doe with a crime, the case caption will be *United States v. Doe*. If a state brings the charges instead, the caption will be *State v. Doe*, *People v. Doe*, or *Commonwealth v. Doe*, depending on the practices of that state.[1]

The Case Citation

Below the case name you will find some letters and numbers. These letters and numbers are the legal citation for the case. A citation tells you the name of the court that decided the case, the law book in which the opinion was published, and the year in which the court decided the case. For example, "U.S. Supreme Court, 485 U.S. 759 (1988)" refers to a U.S. Supreme Court case decided in 1988 that appears in Volume 485 of the *United States Reports* starting at page 759.

The Author of the Opinion

The next information is the name of the judge who wrote the opinion. Most opinions assigned in law school were issued by courts

[1] English criminal cases normally will be *Rex v. Doe* or *Regina v. Doe*. Rex and Regina aren't the victims: the words are Latin for "King" and "Queen." During the reign of a King, English courts use "Rex"; during the reign of a Queen, they switch to "Regina."

with multiple judges. The name tells you which judge wrote that particular opinion. In older cases, the opinion often simply states a last name followed by the initial "J." No, judges don't all have the first initial "J." The letter stands for "Judge" or "Justice," depending on the court. On occasion, the opinion will use the Latin phrase "per curiam" instead of a judge's name. Per curiam means "by the court." It signals that the opinion reflects a common view among all the judges rather than the writings of a specific judge.

The Facts of the Case

Now let's move on to the opinion itself. The first part of the body of the opinion presents the facts of the case. In other words, what happened? The facts might be that Andy pulled out a gun and shot Bob. Or maybe Fred agreed to give Sally $100 and then changed his mind. Surprisingly, there are no particular rules for what facts a judge must include in the fact section of an opinion. Sometimes the fact sections are long, and sometimes they are short. Sometimes they are clear and accurate, and other times they are vague or incomplete.

Most discussions of the facts also cover the "procedural history" of the case. The procedural history explains how the legal dispute worked its way through the legal system to the court that is issuing the opinion. It will include various motions, hearings, and trials that occurred after the case was initially filed. Your civil procedure class is all about that kind of stuff; you should pay very close attention to the procedural history of cases when you read assignments for your civil procedure class. The procedural history of cases usually will be less important when you read a case for your other classes.

The Law of the Case

After the opinion presents the facts, it will then discuss the law. Many opinions present the law in two stages. The first stage discusses the general principles of law that are relevant to cases such as the one the court is deciding. This section might explore the history of a particular field of law or may include a discussion of past cases (known as "precedents") that are related to the case the court is de-

ciding. This part of the opinion gives the reader background to help understand the context and significance of the court's decision. The second stage of the legal section applies the general legal principles to the particular facts of the dispute. As you might guess, this part is in many ways the heart of the opinion: It gets to the bottom line of why the court is ruling for one side and against the other.

Concurring and/or Dissenting Opinions

Most of the opinions you read as a law student are "majority" opinions. When a group of judges get together to decide a case, they vote on which side should win and also try to agree on a legal rationale to explain why that side has won. A majority opinion is an opinion joined by the majority of judges on that court. Although most decisions are unanimous, some cases are not. Some judges may disagree and will write a separate opinion offering a different approach. Those opinions are called "concurring opinions" or "dissenting opinions," and they appear after the majority opinion. A "concurring opinion" (sometimes just called a "concurrence") explains a vote in favor of the winning side but based on a different legal rationale. A "dissenting opinion" (sometimes just called a "dissent") explains a vote in favor of the losing side.

II. Common Legal Terms Found in Opinions

Now that you know what's in a legal opinion, it's time to learn some of the common words you'll find inside them. But first a history lesson, for reasons that should be clear in a minute.

In 1066, William the Conqueror came across the English Channel from what is now France and conquered the land that is today called England. The conquering Normans spoke French and the defeated Saxons spoke Old English. The Normans took over the court system, and their language became the language of the law. For several centuries after the French-speaking Normans took over England, lawyers and judges in English courts spoke in French. When English courts eventually returned to using English, they continued to use many French words.

Why should you care about this ancient history? The American colonists considered themselves Englishmen, so they used the English legal system and adopted its language. This means that American legal opinions today are littered with weird French terms. Examples include plaintiff, defendant, tort, contract, crime, judge, attorney, counsel, court, verdict, party, appeal, evidence, and jury. These words are the everyday language of the American legal system. And they're all from the French, brought to you by William the Conqueror in 1066.

This means that when you read a legal opinion, you'll come across a lot of foreign-sounding words to describe the court system. You need to learn all of these words eventually; you should read cases with a legal dictionary nearby and should look up every word you don't know. But this section will give you a head start by introducing you to some of the most common words, many of which (but not all) are French in origin.

Types of Disputes and the Names of Participants

There are two basic kinds of legal disputes: civil and criminal. In a civil case, one person files a lawsuit against another asking the court to order the other side to pay him money or to do or stop doing something. An award of money is called "damages" and an order to do something or to refrain from doing something is called an "injunction." The person bringing the lawsuit is known as the "plaintiff" and the person sued is called the "defendant."

In criminal cases, there is no plaintiff and no lawsuit. The role of a plaintiff is occupied by a government prosecutor. Instead of filing a lawsuit (or equivalently, "suing" someone), the prosecutor files criminal "charges." Instead of asking for damages or an injunction, the prosecutor asks the court to punish the individual through either jail time or a fine. The government prosecutor is often referred to as "the state," "the prosecution," or simply "the government." The person charged is called the defendant, just like the person sued in a civil case.

In legal disputes, each party ordinarily is represented by a lawyer. Legal opinions use several different words for lawyers, includ-

ing "attorney" and "counsel." There are some historical differences among these terms, but for the last century or so they have all meant the same thing. When a lawyer addresses a judge in court, she will always address the judge as "your honor," just like lawyers do in the movies. In legal opinions, however, judges will usually refer to themselves as "the Court."

Terms in Appellate Litigation

Most opinions that you read in law school are appellate opinions, which means that they decide the outcome of appeals. An "appeal" is a legal proceeding that considers whether another court's legal decision was right or wrong. After a court has ruled for one side, the losing side may seek review of that decision by filing an appeal before a higher court. The original court is usually known as the trial court, because that's where the trial occurs if there is one. The higher court is known as the appellate or appeals court, as it is the court that hears the appeal.

A single judge presides over trial court proceedings, but appellate cases are decided by panels of several judges. For example, in the federal court system, run by the United States government, a single trial judge known as a District Court judge oversees the trial stage. Cases can be appealed to the next higher court, the Court of Appeals, where cases are decided by panels of three judges known as Circuit Court judges. A side that loses before the Circuit Court can seek review of that decision at the United States Supreme Court. Supreme Court cases are decided by all nine judges. Supreme Court judges are called Justices instead of judges; there is one "Chief Justice" and the other eight are just plain "Justices" (technically they are "Associate Justices," but everyone just calls them "Justices").

During the proceedings before the higher court, the party that lost at the original court and is therefore filing the appeal is usually known as the "appellant." The party that won in the lower court and must defend the lower court's decision is known as the "appellee" (accent on the last syllable). Some older opinions may refer to the appellant as the "plaintiff in error" and the appellee as the "defendant

in error." Finally, some courts label an appeal as a "petition," and require the losing party to petition the higher court for relief. In these cases, the party that lost before the lower court and is filing the petition for review is called the "petitioner." The party that won before the lower court and is responding to the petition in the higher court is called the "respondent."

Confused yet? You probably are, but don't worry. You'll read so many cases in the next few weeks that you'll get used to all of this very soon.

III. What You Need to Learn from Reading a Case

Okay, so you've just read a case for class. You think you understand it, but you're not sure if you learned what your professor wanted you to learn. Here is what professors want students to know after reading a case assigned for class:

Know the Facts

Law professors love the facts. When they call on students in class, they typically begin by asking students to state the facts of a particular case. Facts are important because law is often highly fact-sensitive, which is a fancy way of saying that the proper legal outcome depends on the exact details of what happened. If you don't know the facts, you can't really understand the case and can't understand the law.

Most law students don't appreciate the importance of the facts when they read a case. Students think, "I'm in law school, not fact school; I want to know what the law is, not just what happened in this one case." But trust me: the facts are really important.[2]

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[2] If you don't believe me, you should take a look at a few law school exams. It turns out that the most common form of law school exam question presents a long description of a very particular set of facts. It then asks the student to "spot" and analyze the legal issues presented by those facts. These exam questions are known as "issue-spotters," as they test the student's ability to understand the facts and spot the legal issues they raise. As you might imagine, doing well on an issue-

Know the Specific Legal Arguments Made by the Parties

Lawsuits are disputes, and judges only issue opinions when two parties to a dispute disagree on a particular legal question. This means that legal opinions focus on resolving the parties' very specific disagreement. The lawyers, not the judges, take the lead role in framing the issues raised by a case.

In an appeal, for example, the lawyer for the appellant will articulate specific ways in which the lower court was wrong. The appellate court will then look at those arguments and either agree or disagree. (Now you can understand why people pay big bucks for top lawyers; the best lawyers are highly skilled at identifying and articulating their arguments to the court.) Because the lawyers take the lead role in framing the issues, you need to understand exactly what arguments the two sides were making.

Know the Disposition

The "disposition" of a case is the action the court took. It is often announced at the very end of the opinion. For example, an appeals court might "affirm" a lower court decision, upholding it, or it might "reverse" the decision, ruling for the other side. Alternatively, an appeals court might "vacate" the lower court decision, wiping the lower-court decision off the books, and then "remand" the case, sending it back to the lower court for further proceedings. For now, you should keep in mind that when a higher court "affirms" it means that the lower court had it right (in result, if not in reasoning). Words like "reverse," "remand," and "vacate" means that the higher court though the lower court had it wrong.

Understand the Reasoning of the Majority Opinion

To understand the reasoning of an opinion, you should first identify the source of the law the judge applied. Some opinions interpret the Constitution, the founding charter of the government. Other cases

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spotter requires developing a careful and nuanced understanding of the importance of the facts. The best way to prepare for that is to read the fact sections of your cases very carefully.

interpret "statutes," which is a fancy name for written laws passed by legislative bodies such as Congress. Still other cases interpret "the common law," which is a term that usually refers to the body of prior case decisions that derive ultimately from pre-1776 English law that the Colonists brought over from England.[3]

In your first year, the opinions that you read in your Torts, Contracts, and Property classes will mostly interpret the common law. Opinions in Criminal Law mostly interpret either the common law or statutes. Finally, opinions in your Civil Procedure casebook will mostly interpret statutory law or the Constitution. The source of law is very important because American law follows a clear hierarchy. Constitutional rules trump statutory (statute-based) rules, and statutory rules trump common law rules.

After you have identified the source of law, you should next identify the method of reasoning that the court used to justify its decision. When a case is governed by a statute, for example, the court usually will simply follow what the statute says. The court's role is narrow in such settings because the legislature has settled the law. Similarly, when past courts have already answered similar questions before, a court may conclude that it is required to reach a particular result because it is bound by the past precedents. This is an application of the judicial practice of "stare decisis," an abbreviation of a Latin phrase meaning "That which has been already decided should remain settled."

In other settings, courts may justify their decisions on public policy grounds. That is, they may pick the rule that they think is the best rule, and they may explain in the opinion why they think that rule is best. This is particularly likely in common law cases where judges are not bound by a statute or constitutional rule. Other courts will rely on morality, fairness, or notions of justice to justify

[3] The phrase "common law" started being used about a thousand years ago to refer to laws that were common to all English citizens. Thus, the word "common" in the phrase "common law" means common in the sense of "shared by all," not common in the sense of "not very special." The "common law" was announced in judicial opinions. As a result, you will sometimes hear the phrase "common law" used to refer to areas of judge-made law as opposed to legislatively-made law.

their decisions. Many courts will mix and match, relying on several or even all of these justifications.

Understand the Significance of the Majority Opinion

Some opinions resolve the parties' legal dispute by announcing and applying a clear rule of law that is new to that particular case. That rule is known as the "holding" of the case. Holdings are often contrasted with "dicta" found in an opinion. Dicta refers to legal statements in the opinion not needed to resolve the dispute of the parties; the word is a pluralized abbreviation of the Latin phrase "obiter dictum," which means "a remark by the way."

When a court announces a clear holding, you should take a minute to think about how the court's rule would apply in other situations. During class, professors like to pose "hypotheticals," new sets of facts that are different from those found in the cases you have read. They do this for two reasons. First, it's hard to understand the significance of a legal rule unless you think about how it might apply to lots of different situations. A rule might look good in one setting, but another set of facts might reveal a major problem or ambiguity. Second, judges often reason by "analogy," which means a new case may be governed by an older case when the facts of the new case are similar to those of the older one. This raises the question, which are the legally relevant facts for this particular rule? The best way to evaluate this is to consider new sets of facts. You'll spend a lot of time doing this in class, and you can get a head start on your class discussions by asking the hypotheticals on your own before class begins.

Finally, you should accept that some opinions are vague. Sometimes a court won't explain its reasoning very well, and that forces us to try to figure out what the opinion means. You'll look for the holding of the case but become frustrated because you can't find one. It's not your fault; some opinions are written in a narrow way so that there is no clear holding, and others are just poorly reasoned or written. Rather than trying to fill in the ambiguity with false certainty, try embracing the ambiguity instead. One of the skills of top-flight lawyers is that they know what they don't know: they know

when the law is unclear. Indeed, this skill of identifying when a problem is easy and when it is hard (in the sense of being unsettled or unresolved by the courts) is one of the keys to doing very well in law school. The best law students are the ones who recognize and identify these unsettled issues without pretending that they are easy.

Understand Any Concurring and/or Dissenting Opinions

You probably won't believe me at first, but concurrences and dissents are very important. You need to read them carefully. To understand why, you need to appreciate that law is man-made, and Anglo-American law has often been judge-made. Learning to "think like a lawyer" often means learning to think like a judge, which means learning how to evaluate which rules and explanations are strong and which are weak. Courts occasionally say things that are silly, wrongheaded, or confused, and you need to think independently about what judges say.

Concurring and dissenting opinions often do this work for you. Casebook authors edit out any unimportant concurrences and dissents to keep the opinions short. When concurrences and dissents appear in a casebook, it signals that they offer some valuable insights and raise important arguments. Disagreement between the majority opinion and concurring or dissenting opinions often frames the key issue raised by the case; to understand the case, you need to understand the arguments offered in concurring and dissenting opinions.

IV. WHY DO LAW PROFESSORS USE THE CASE METHOD?

I'll conclude by stepping back and explaining why law professors bother with the case method. Every law student quickly realizes that law school classes are very different from college classes. Your college professors probably stood at the podium and droned on while you sat back in your chair, safe in your cocoon. You're now starting law school, and it's very different. You're reading about actual cases, real-life disputes, and you're trying to learn about the law by picking up bits and pieces of it from what the opinions tell

you. Even weirder, your professors are asking you questions about those opinions, getting everyone to join in a discussion about them. Why the difference?, you may be wondering. Why do law schools use the case method at all?

I think there are two major reasons, one historical and the other practical.

The Historical Reason

The legal system that we have inherited from England is largely judge-focused. The judges have made the law what it is through their written opinions. To understand that law, we need to study the actual decisions that the judges have written. Further, we need to learn to look at law the way that judges look at law. In our system of government, judges can only announce the law when deciding real disputes: they can't just have a press conference and announce a set of legal rules. (This is sometimes referred to as the "case or controversy" requirement; a court has no power to decide an issue unless it is presented by an actual case or controversy before the court.) To look at the law the way that judges do, we need to study actual cases and controversies, just like the judges. In short, we study real cases and disputes because real cases and disputes historically have been the primary source of law.

The Practical Reason

A second reason professors use the case method is that it teaches an essential skill for practicing lawyers. Lawyers represent clients, and clients will want to know how laws apply to them. To advise a client, a lawyer needs to understand exactly how an abstract rule of law will apply to the very specific situations a client might encounter. This is more difficult than you might think, in part because a legal rule that sounds definite and clear in the abstract may prove murky in application. (For example, imagine you go to a public park and see a sign that says "No vehicles in the park." That plainly forbids an automobile, but what about bicycles, wheelchairs, toy automobiles? What about airplanes? Ambulances? Are these "vehicles" for the purpose of the rule or not?) As a result, good lawyers

need a vivid imagination; they need to imagine how rules might apply, where they might be unclear, and where they might lead to unexpected outcomes. The case method and the frequent use of hypotheticals will help train your brain to think this way. Learning the law in light of concrete situations will help you deal with particular facts you'll encounter as a practicing lawyer.

Good luck!

TAB 00:

Welcome to the Job!

Welcome to the Job!

The office of magistrate has a history dating back to 12th Century England, when King Richard assigned knights the duty of keeping "the King's peace." While the office of Justice of the Peace was a prestigious and honorable one for centuries, it was abolished in North Carolina in 1962 due to corruption, widespread lack of professionalism, and general disrepute. The old justice of the peace was replaced by the newly-created office of magistrate, sharing many of the same responsibilities but lacking the factors that eventually led to the downfall of the justice of the peace.

A Constitutional Office

For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The initial term of appointment for a magistrate shall be for two years and subsequent terms shall be for four years. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. . . . Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office, unless otherwise provided by the General Assembly.

NC Constitution, Art. IV, Sec. 10.

Qualifications

(a) In order to be eligible for ***nomination or for renomination*** *as a magistrate an individual shall be a* ***resident of the county*** *for which he is appointed.*

(b) To be eligible for nomination as a magistrate, an individual shall have at ***least eight years' experience as the clerk of superior court*** *in a county of this State or shall have a* ***four-year degree*** *from an accredited senior institution of higher education or shall have a* ***two-year associate degree and four years of work experience in a related field,*** *including teaching, social services, law enforcement, arbitration or mediation, the court system, or counseling. The Administrative Officer of the Courts may determine whether the work experience is sufficiently related to the duties of the office of magistrate for the purposes of this subsection. In determining whether an individual's work experience is in*

a related field, the Administrative Officer of the Courts shall consider the requisite knowledge, skills, and abilities for the office of magistrate.
G.S. 7A-171.2.

Appointment

The procedure established in the NC Constitution for appointment as a magistrate has been criticized as involving "too many cooks." That procedure is set out in G.S. 7A-171(b) as follows:

Not earlier than the Tuesday after the first Monday nor later than the third Monday in December of each even-numbered year, the clerk of the superior court shall submit to the senior regular resident superior court judge of the district or set of districts as defined in G.S. 7A-41.1(a) in which the clerk's county is located the names of two (or more, if requested by the judge) nominees for each magisterial office for the county for which the term of office of the magistrate holding that position shall expire on December 31 of that year. Not later than the fourth Monday in December, the senior regular resident superior court judge shall, from the nominations submitted by the clerk of the superior court, appoint magistrates to fill the positions for each county of the judge's district or set of districts.

G.S. 7A-171: Term of Office

(a1)The initial term of appointment for a magistrate is two years and subsequent terms shall be for a period of four years. The term of office begins on the first day of January of the odd-numbered year after appointment. The service of an individual as a magistrate filling a vacancy as provided in subsection (d) of this section does not constitute an initial term. For purposes of this section, any term of office for a magistrate who has served a two-year term is for four years even if the two-year term of appointment was before the effective date of this section, the term is after a break in service, or the term is for appointment in a different county from the county where the two-year term of office was served.

. . .

(c) If an additional magisterial office for a county is approved to commence on January 1 of an odd-numbered year, the new position shall be filled as provided in subsection (b) of this section. If the additional position takes effect at any other time, it is to be filled as provided in subsection (d) of this section.

(d) [Upon] a vacancy in the office of magistrate . . . the senior regular resident superior court judge shall appoint from the nominations received a magistrate who shall take office immediately and shall serve until December 31 of the even-numbered year, and thereafter the position shall be filled as provided in subsection (b) of this section.

Supervision

The chief district judge . . . has administrative supervision and authority over the operation of the district courts and magistrates in his district. These powers and duties include, but are not limited to, the following:

(4) Assigning matters to magistrates, and consistent with the salaries set by the Administrative Officer of the Courts, prescribing times and places at which magistrates shall be available for the performance of their duties; however, the chief district judge may in writing delegate his authority to prescribe times and places at which magistrates in a particular county shall be available for the performance of their duties to another district court judge or the clerk of the superior court, or the judge may appoint a chief magistrate to fulfill some or all of the duties. . . , and the person to whom such authority is delegated shall make monthly reports to the chief district judge of the times and places actually served by each magistrate.

G.S. 7A-146.

Note: Counties vary widely in procedures related to vacation leave for magistrates.

Training & Education

Magistrates are required to satisfactorily complete Basic School in order to be eligible for reappointment. G.S. 7A-171.2.

In addition, magistrates are required to attend at least 12 hours of training approved by the AOC for **continuing education credit** each biennium. (A biennium begins on January 1st each odd-numbered year and ends on December 31st of each even-numbered year.)

Most opportunities for continuing education credit for magistrates are offered by the AOC and the SOG. The AOC provides extensive training opportunities related to

technology for magistrates; additional information and class schedules are available through the AOC intranet. In addition, the following regularly scheduled events are designed specifically to address magistrates' educational needs:

Spring and Fall Conferences
Jointly sponsored by the AOC, SOG, and the NC Magistrates' Association. Each conference provides a minimum of 12 hours of continuing education credit.

Judicial College Seminars
Consisting of 2-3 days of intensive small-group instruction, these seminars are offered on a recurring basis:

- Involuntary Commitment
- Introduction to Holding Small Claims Court
- Special Topics in Small Claims Law
- Advanced Criminal Procedure
- DWI
- Domestic Violence

Course announcements and registration information are sent out to magistrates by email well in advance of each course.

One-Day Regional Small Claims Seminars
Conducted each fall in 3 locations throughout the state. These seminars focus exclusively on small claims law and provide 6 hours of continuing education credit.

Criminal Law & More
Conducted each fall in 3 locations throughout the state. These seminars focus on criminal law and other topics of particular interest to magistrates, and provide 6 hours of continuing education credit.

Other Training Opportunities
There are numerous other training opportunities for magistrates offered by a wide variety of providers. Note that training offered by providers other than AOC and SOG must be approved in advance for continuing education credit; students should carefully consult AOC policy, available on AOC intranet, concerning requirements for credit approval, and/or contact James Gray at AOC (James.F.Gray@nccourts.org; 919-890-1110).

Duties of the Office

The duties a magistrate may be authorized to perform include the following:

- Accept guilty pleas, admission of responsibility and enter judgment for infractions
- Handle misdemeanor and infractions for cases involving alcohol, boating offenses, state park/recreational areas, littering offenses, and wildlife offenses (e.g., hunting, fishing, etc.)
- Accept written appearances, waivers of trial or hearing and guilty pleas and, in appropriate cases, enter judgment and collect fines, penalties and costs
- Issue arrest warrants
- Issue search warrants
- Grant bail or set release conditions (non-capital offenses)
- Hear and enter judgments on worthless checks (<$2000.00)
- Conduct initial appearances
- Conduct small claims court in cases involving up to $10,000
- Administer oaths
- Provide punishment for direct criminal contempt
- Take depositions and examination before trial
- Issue subpoenas and capiases
- Take affidavits for verification of pleadings
- Assign years allowances to surviving spouses and children
- Perform marriage ceremonies
- Take acknowledgment of written contract or separation agreement
- Accept applications for involuntary commitments
- Conduct hearing for driver license revocations
- Validate vehicle towing by law enforcement
- Validate impounding of vehicles in certain DWI/DWLR charges
- Issue temporary domestic violence protection orders in certain emergency conditions
- Appoint an umpire pursuant to GS 20-279.21 to determine the amount of property damage to a motor vehicle

Removal from Office

The grounds for removing a magistrate from office are "the same as for a judge . . . . " *G.S. 7A-173(a).*

The grounds for removing a judge from office are:
(1) willful misconduct in office,
(2) willful and persistent failure to perform the judge's duties,

(3) habitual intemperance,
(4) conviction of a crime involving moral turpitude,
(5) conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

G.S. 7A-376(b).

While the grounds for removing a magistrate from office are identical to those for removing a judge, the procedures are quite different. In the case of judges, complaints are considered by The Judicial Standards Commission, which in turn makes recommendations to the North Carolina Supreme Court, based on a written ethical code enacted by that Court termed the Code of Judicial Conduct. By contrast, neither the Commission nor the Supreme Court is involved in considering complaints against magistrates, although the Code of Judicial Conduct itself has indirect application as a primary source of determining whether particular conduct is "prejudicial to the administration of justice."

The procedure for removing a magistrate from office is set out in G.S. 7A-173. The first step occurs when a sworn written complaint is filed with the clerk of superior court. The next step requires the chief district court judge to examine the charges in order to determine whether the allegations, "if true, constitute grounds for removal." The final step in the statutory process is a public hearing conducted by a superior court judge; upon finding that grounds for removal exist, the judge is required to remove the magistrate from office.

TAB лп:

Small Claims Procedure

SMALL CLAIMS PROCEDURE

Mandatory Rule #1: You must have subject-matter jurisdiction.

IS IT A SMALL CLAIMS ACTION?

What is the principal relief sought? Summary Ejectment
Money Owed
Return of Personal Property

Not Coercive Judgment
Not Action to Recover Real Property

In case of a claim for $$ or personal property, what is amount in controversy? Maximum $10,000

Does at least one Δ reside in your county?

Amount in Controversy Rules

~ Amount in controversy is determined as of time case is filed.

~ Claim-splitting is not allowed.

~ In actions for return of personal property, amount in controversy is FMV.

~ In summary ejectment actions in which π seeks only possession, amount in controversy requirement does not apply.

Q: What should the magistrate do if a case does not meet one of these requirements?

A: The magistrate should not hear the case.

- ≈ If the case isn't the type that may be heard in small claims: dismiss.
- ≈ If the amount in controversy too high: may be cured in some cases by amending complaint. Otherwise, dismiss or return to clerk.
- ≈ Δ isn't a resident: dismiss or return to clerk

Q: Where does a corporation "reside"?

A: Corporations that have authority to do business in NC reside in either the county in which the principal office is located or the county in which the corporation maintains a place of business. If neither of these applies to a particular corporation, it resides in any county in which it is regularly conducting business. G.S. 1-79.

Q: What if π has sued more than one Δ, but only one Δ resides in the county?

A: The law requires only that at least one Δ reside in the county.

Mandatory Rule #2: You must have jurisdiction over the Δ: either service of process or voluntary appearance.

HAS Δ BEEN SERVED?

Check the file for one of the following: Completed return of service on back of summons
π's affidavit & postal receipt
Δ's written acceptance of service
Δ has filed motion, answer, or counterclaim
OR
Δ is present in court

Q: What should the magistrate do if the summons and complaint have not been served?
A: Continue the case to allow additional time for service. Use AOC Form G-108.

Q: What if π has sued more than one Δ, but only one has been served?
A: π must choose between
- ≈ requesting continuance to pursue service on other Δs, or
- ≈ taking a voluntary dismissal against unserved Δs and going ahead against Δ that has been served.

Service on a Corporate Δ:

- ≈ Delivering to registered agent, or
- ≈ Serving officer, director, or managing agent by
  - Delivering copy
  - Leaving copy in office with person apparently in charge
  - Mailing or using delivery service (certified, signed receipt)

Hint: Be careful not to confuse service of process with the rule about at least one Δ residing in the county**.** They are two separate requirements.

HAVE ANY OTHER DOCUMENTS BEEN FILED WITH THE CLERK?

Check the file for: an answer (which may also contain a counterclaim)
a motion for continuance
a motion to dismiss for
- ≈ failure to state a claim [Rule 12(b)(6)]
- ≈ lack of personal jurisdiction
- ≈ improper venue

Q: What difference does it make if Δ files an answer?

A: It makes very little difference. Quite often, answers are filed in cases in which Δ is represented by an attorney unused to small claims practice who are unaware that answers are not required in small claims court. Filing an answer in a case does constitute a voluntary appearance, though, and so it may be important in an action in which Δ has not been served and is not present in court.

Q: How should I handle a pre-trial motion for a continuance?

A: The law favors, but does not require, granting a continuance if both parties join in the request.

If a request for a continuance is made by only one party, the law requires that party to demonstrate good cause.

If the magistrate grants a continuance, s/he must be certain that the other party receives

notice of the new trial date and time.

In summary ejectment actions, a continuance is permitted only for good cause and for a maximum of 5 business days unless both parties agree to a longer period.

	LOCAL PRACTICE ALERT: Be sure to find out what your county's policy is about the procedure for pre-trial requests for a continuance.	

Q: What should I do if Δ files a Rule 12(b)(6) motion to dismiss the case for failure to state a claim for relief?

A: This motion is not allowed in small claims court. GS 7A-216. Because it is a common motion in general civil actions, this error is usually made by an attorney unused to small claims practice and unfamiliar with the rules of small claims procedure set out in GS Ch. 7A, Art. 19. A magistrate should either instruct the attorney to withdraw the motion or deny it as improperly made.

Q: What if the motion is actually valid in the sense that the complaint is virtually blank or so poorly-stated that it in fact does fail to adequately notify Δ of the underlying basis for the lawsuit sufficient to permit Δ to identify potential defenses?

A: GS 7A-216 authorizes the magistrate to direct the π to amend the complaint to provide adequate details, and to grant whatever continuances may be necessary to allow Δ to respond to the new information.

Q: What should I do if Δ files a motion to dismiss pursuant to GS 1A-1, Rule 12(b)(2) and/or (3), challenging venue or personal jurisdiction?

A: GS 7A-221 provides that assignment to the magistrate is automatically suspended if a Δ files one of these motions. The clerk must schedule the motion for hearing before a district court judge.

NOTE: These objections are waived unless filed in writing prior to trial. A Δ who objects to personal jurisdiction or venue for the first time at trial will not be heard, unless the defect is so severe as to deprive the court of total authority to hear the case. E.g., the

complaint and summons clearly states that Δ is not a resident of the county, thus depriving the small claims court of subject matter jurisdiction.

BEFORE YOU HEAR THE EVIDENCE

Complete the *Pre-Trial Checklist*

Determine whether both parties, or their *authorized representatives*, are present.

> Mandatory Rule #3: A party may appear only pro se (on his own behalf) or through an attorney unless an exception applies.

Who is an authorized representative? The party's attorney

An agent
- SE cases: with personal knowledge
- Corporate party: officer or employee

Special cases: estates, guardians (ad litem & otherwise)

Who is NOT an authorized representative? Anyone having only *power of attorney*

If neither party is present, or only Δ is present: Dismiss the case for *failure to prosecute*, using AOC-G-108.

Q: If Δ appears and π does not appear, is it appropriate to continue the case to allow the π another chance to appear?
A: No.

Q: In this situation, should I mark my dismissal as *with* or *without prejudice*?
A: If Δ asks you to dismiss the action, dismissal with prejudice is appropriate unless some special circumstances dictate a different result.

Q: What do these terms actually mean?

A: When a case is dismissed *without prejudice*, the π may refile the same lawsuit. Unless barred by a statute of limitations, the only consequence to the π for failing to appear is paying court costs when the π files again.

When a case is dismissed *with prejudice*, it is a final determination that Δ is not liable for the particular fault alleged in the lawsuit. If π attempts to bring a second lawsuit against the same Δ for the same reason, Δ is entitled to have the second case dismissed. And the fact that Δ is not liable for that wrong may well be binding in future lawsuits involving the same events and circumstances.

Q: If neither party appears, is the dismissal with or without prejudice?

A: GS 1A-1, Rule 41(b) states that a dismissal is with prejudice unless it falls into certain specified exceptions not relevant here, or unless the court specifically indicates to the contrary. The court has authority to so specifically indicate, but in light of the rule's "default setting" the rule seems to contemplate a general rule favoring dismissal with prejudice, with the court having authority to deviate from that when justice so requires.

	Local Practice Alert: Not all magistrates follow this practice. Some magistrates dismiss with prejudice if the Δ appears and the plaintiff does not, while others require the Δ to appear AND to request dismissal.	

Mandatory Rule #4: If defendant does not appear for trial, the SCRA prohibits the court from entering judgment in the absence of a legally-sufficient affidavit attesting to the defendant's military status.

If the π is present and Δ is not present, verify that the π has provided a legally sufficient SCRA affidavit pertaining to whether Δ is a member of the military. The affidavit must have the general form and contain the same information as AOC-G-250.

Q: What is a legally sufficient affidavit?

A: Plaintiff must have sworn to the truth of the statements before an official authorized to administer oaths and filed the completed document with the clerk. The π must select one of three alternatives:

- ✓ Δ is in the military
- ✓ Δ is not in the military
- ✓ I am unable to determine whether Δ is in the military

If either of the last two alternatives are checked, the affidavit must contain specific facts in support of the selected alternative.

Q: Who determines whether an affidavit is sufficient?

A: The federal requirement applies to the judicial official conducting the trial—not to the π — and it is the judicial official who violates the law by proceeding to trial and entering judgment in the absence of an adequate affidavit. For this reason, it is the small claims magistrate who determines whether an affidavit is sufficient.

Q: Does the law require the π to check the DoD website and supply the results to the court?

A: No. If the π has sufficient information (SS# and/or DOB) to obtain a definitive result from the DoD website, few if any additional facts are likely to be necessary for the affidavit to be accepted by the magistrate. But the website is not a mandatory source of information, and in fact is not helpful in the absence of sufficient identifying information about Δ. The π may rely on other evidence to support a conclusion that Δ is not a servicemember.

Q: What should the magistrate do if the affidavit simply states that the π is unable to determine Δ's military status?

A: This, without more, is an insufficient affidavit. The affidavit should state facts in support of the conclusion that the π is unable to make this determination.

Q: If Δ is in the military, what should the magistrate do?

A: The law requires that an attorney be appointed in this circumstance to contact Δ to make sure Δ knows both of the lawsuit and about Δ's rights to request a stay of proceedings under the SCRA.

	Local Practice Alert: The procedure for appointing an attorney when required by the SCRA is established by each county or judicial district. Because the SCRA applies to all civil cases, clerks and trial judges also encounter this requirement and should be able to answer any questions.	

Mandatory Rule #5: Unless Δ is present and waives a continuance, the magistrate must continue an action in which service of process was not accomplished a minimum time before trial.

Determine whether the statutory requirements for minimum notice to Δ have been satisfied:

- ≈ For summary ejectment cases: GS 42-29 requires sheriff's office to serve T "at least two days prior to the day of trial."
- ≈ All other small claims cases: GS 7A-214 requires a magistrate to continue the case if trial date is less than five days after Δ is served.

Q: What should the magistrate do if Δ is present but the minimum notice requirements have not been met?

A: The magistrate should inform Δ that the law entitles the Δ to additional time to prepare for trial if the Δ wishes. If the Δ waives the right to a continuance, the magistrate should proceed as usual with the case. If the Δ prefers a continuance, the magistrate should continue the case for a time long enough to provide the Δ with the minimum notice period.

AT THE BEGINNING OF TRIAL

Identify the parties present and resolve any issues raised by the Pretrial Checklist.

Deal with any *last-minute developments*. These are perhaps most likely to come up at the beginning of trial, but they sometimes arise as the parties present their evidence.

> Mandatory Rule #6: Every action must be brought in the name of the real party in interest. If the named plaintiff is not the rpii, the court must allow the plaintiff an opportunity to correct the error, continuing the case if necessary.

Real party in interest (rpii) requirement: The law requires that the person bringing a lawsuit be the person who is entitled to the relief sought. If at any point during the trial it becomes clear that someone other than the π is actually the injured party, the magistrate must offer the π an opportunity to add or substitute the "real party in interest," continuing the case if necessary.

The most common instance of a rpii violation occurs when a property management company files a summary ejectment action in its own name, rather than in the name of the property owner.

Plaintiff requests a voluntary dismissal. (Sometimes this happens before trial as well.)

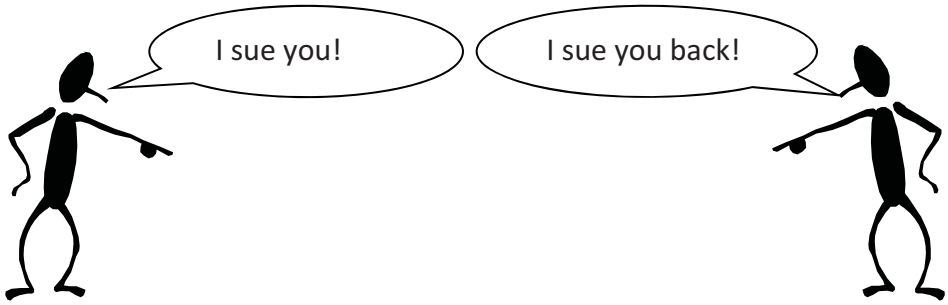
Rule: π can dismiss the case at any point before s/he has finished presented evidence. Use AOC-G-108 to record the dismissal.

Δ has filed (or says she wants to file) a counterclaim.

Q: What's a counterclaim?

A: A counterclaim is simply a document (very similar to a complaint) in which Δ asserts a claim against the π. Generally, a counterclaim is filed as part of an answer, and the document should ideally be titled "Δ's Answer & Counterclaim." Sometimes it may not be completely clear whether a Δ intended to file a counterclaim or merely an answer. A counterclaim is different from an answer because it goes further. Instead of simply defending against π 's claim, a Δ is essentially saying, "Not only do I not owe π money. Plaintiff owes ME money!" A

Δ is required to pay court costs for filing a counterclaim, just as a π is for filing a complaint. Counterclaims will be discussed again in the *Trial* section of this document.



Q: What should I do if Δ files the counterclaim at the last minute and then brings a copy to trial, surprising the π?
A: Assuming counterclaim meets above conditions, tell Δ to give π a copy. If π needs time to prepare a defense, grant a continuance.

Rules for Counterclaims

Must not exceed $10,000.

Must be in writing.

Must be filed with clerk before the time the trial is scheduled to begin.

Q: What if Δ asks to file counterclaim after the time case is set for trial**?**
A: Tell Δ that s/he may file it as a separate action, but has missed the deadline for having the claim heard in this action.

Q: What if counterclaim is for more than $10,000?
A: Δ has two choices:

- ≈ reduce the amount so that the counterclaim can be heard today, or
- ≈ take a voluntary dismissal and refile in district or superior court.

NOTE: Be sure to inform Δ that claim-splitting is not allowed, and that Δ should accurately state all the damages s/he wishes to recover for the alleged wrongful act of the π . Example: Δ can't reduce a $18,000 counterclaim to $10,000 and then bring another action for the $8,000 excess.

Q: What's the procedure if Δ chooses to reduce the amount of damages?
A: This requires Δ to amend her counterclaim. The magistrate need only write something like the following in the *Other* section of the judgment, under *Findings*: "Δ filed a counterclaim in this action in the amount of $18,000" but amended her complaint in open court to reduce the amount claimed to $10,000."

Q: What's the procedure if Δ chooses to take a voluntary dismissal of her counterclaim?
A: Be sure to state that in your judgment.

Q: What happens to Δ's counterclaim if π voluntarily dismisses his case?
A: Verify that π has received notice of the counterclaim, and then hear the counterclaim just as though it had been filed as a small claims action in the first place.

One of the parties requests a continuance.

If both parties are present and agree to a continuance, the law favors—but does not compel—allowing it.

If one party's request for a continuance is opposed by the other party, the party seeking a continuance must show good cause.

> "[T]he trial court must pass on … the question whether the moving party has acted with diligence and good faith. . . . The chief consideration to be weighed in passing on [the request] is whether the grant or denial of a continuance will be in furtherance of substantial justice."
> Shankle v. Shankle, 289 N.C. 473 (1976).

There is reason to believe the Δ has filed for bankruptcy.

> Mandatory Rule #7: If Δ files a petition for bankruptcy, the small claims judge must stop the trial, discontinuing the action (using G-108) until the automatic bankruptcy stay is lifted.

When a person files a bankruptcy petition, it triggers an *automatic stay* under federal law which prohibits creditors from attempting to collect debts from the person, including pursuing legal actions against the debtor. The stay goes into immediate effect when the petition is filed, and

any action taken by a state court thereafter is void, assuming the stay is applicable. (Criminal cases, for example, are not actions by a creditor and are not subject to the stay.)

Q: Is the small claims judge subject to the stay even if the Δ takes no action to inform the court that a bankruptcy petition has been filed?

A: Yes. The stay goes into effect automatically, and judgments entered in violation of the stay—whether knowingly or not—are void.

Q: What should a magistrate do upon learning that a bankruptcy petition has been filed?

A: Fill out the bottom portion of AOC-G-108, discontinuing the action until the stay has been lifted. Do not dismiss the action.

Q: Does the stay apply to actions for summary ejectment?

A: Yes, unless judgment was entered prior to Δ's filing the bankruptcy petition. A landlord is not without a remedy in this situation, however; the landlord may ask the bankruptcy court to lift the stay in regard to the tenant's obligation to pay rent.

HEARING THE EVIDENCE

Place both parties and any witnesses under oath at the outset.

Explain to both parties that you will make a decision only after hearing from them both. Because the π has the burden of proving the case by the greater weight of the evidence, π must testify first.

If only the π is present, administer the oath to π and any witnesses and hear testimony just as you would if Δ were present. This situation is handled exactly as though Δ were present, but presented no effective defense. Exception: In summary ejectment actions π may request a judgment on the pleadings and thereby avoid the requirement that π prove entitlement to relief.

Mandatory Rule #8: Whether or not Δ is present at trial, π must prove the essential elements of the case by the greater weight of the evidence (subject to one exception).

The degree of formality with which a small claims trial is conducted lies within the discretion of the magistrate. It is appropriate for magistrates to question witnesses and to provide the parties with information about small claims procedure, so long as the magistrate is careful to avoid asking leading questions, advising a party about the best course of action, or acting in a manner showing favoritism to either party.

Trying a Case with a Counterclaim

Recommended: Conduct the trial in two parts, trying the primary claim first and then separately hearing evidence on the counterclaim. After you've heard and decided both cases, calculate the total amount of the judgment, setting off as necessary. Enter one judgment, making clear how you ruled on both cases and what damages were awarded in each case.

Amending the Complaint

The law says that a judge *should freely allow* a π to amend a complaint. Assuming the statute of limitations has not run, there is little reason to deny such a motion. Generally, the only issue of concern is whether fairness requires a continuance so that Δ -- particularly an absent Δ -- can be given notice and make any necessary adjustments to defend against the amended claim.

Amendment to correct name? Allowed, provided that the correct person was served. Not allowed to substitute a different Δ.

Amendment to substitute remedy? Common in actions to recover property where creditor discovers property is no longer in Δ's possession. Creditor should be allowed to amend complaint to request money owed, but take care that Δ has notice of amendment.

Amendment to amount requested? Allowed, but be sure Δ has notice of increased amount.

Amendment to change theory of recovery (aka, checked the wrong box)? Unnecessary, but allowed. Again, issue is notice to Δ.

Q: What is the procedure for amending a complaint?

A: In small claims court a motion to amend is often made during trial. In this circumstance, it is not necessary for the π to physically write the amendment on the complaint. It is preferable for the magistrate to write the amendment on the judgment form.

Entering Judgment and Other Post-Trial Issues

Mandatory Rule #9: The judgment must contain the magistrate's decision about all claims in relation to all parties.

Usually, small claims judgments are announced in open court. If the magistrate prefers, the magistrate may reserve judgment for up to 10 days. Note the exception for summary ejectment cases. GS 7A-221(b) prohibits a magistrate from reserving judgment unless the parties agree or the case is complex. If the magistrate reserves judgment because the case is complex, judgment must be rendered within five business days.

Q: What's the procedure for reserving judgment?

A: The magistrate should inform the parties that they will receive a copy of the written judgment within the next two weeks, and explain the procedure for appeal. The magistrate must complete the section at the bottom of the judgment form labeled *Certification*, have the judgment stamped in by the clerk, and mail a copy to both parties.

Q: Can a magistrate correct a clerical error in a judgment?

A: A magistrate can correct a clerical error at any time, on the magistrate's own motion. Note that a *clerical error* is an error that does not affect the legal rights of the parties. For that reason, notice to the parties is usually not necessary. An example would be misspelling the name of one of the parties. See Small Claims Law p. 41 for details of procedure.

Steps in Entering Judgment

Make a clear division between the close of evidence and your readiness to announce your decision.

Announce your decision, clearly identifying by name the party you're ruling in favor of.

Provide a brief explanation of the legal reason for your decision.

Allow the parties to ask questions about next steps, and inform the losing party of the right to appeal.

Mandatory Rule #10: The judgment in a small claims action is a final judgment and may be changed only by appeal or by an order entered pursuant to Rule 60(b) setting the judgment aside.

Appeal

The remedy for a magistrate's legal error is appeal to district court for trial *de novo*.

Q: What is trial *de novo*?

A: When a small claims judgment is appealed, the district court judge conducts a whole new trial. The parties are not bound by their decisions at the small claims level: they may make new arguments, present new evidence, and even change the remedy they're seeking in the lawsuit.

Q: What is the procedure for appeal?

A*:* A party may give notice of appeal in two ways, either by notifying the small claims judge in open court, or by filing a written notice of appeal with the clerk within 10 days. An appealing party must pay costs of appeal within 20 days, or else appeal is dismissed. Note: costs must be paid within 10 days in summary ejectment actions. A party who cannot afford to pay the costs of appeal may be excused by qualifying as indigent.

Q: What is the effect of the small claims judgment while an appeal is pending in district court?

A: A judgment for money is automatically stayed when a party gives notice of appeal. An judgment awarding possession of real or personal property is not automatically stayed and so may be enforced just as if there were no appeal. In summary ejectment actions a tenant appealing a judgment in favor of a landlord can delay enforcement of the judgment through a procedure in the clerk's office requiring the tenant to pay the undisputed rent in arrears and sign an undertaking to pay rent as it comes due.

Q: What happens after the small claims judgment?

A: A π who wins in small claims court is not permitted to enforce a judgment immediately; first, the 10-day period during which the Δ may give notice of appeal must end. Only then may the π initiate enforcement procedures by going to the clerk. There is an additional cost to

enforce a judgment, which will be added to the costs owed by the losing party. The next steps vary, depending on whether the judgment is for money or recovery of rental or personal property. Some magistrates provide the parties a copy of the handout in the Reference Section titled "What Happens After Small Claims Court."

Motions to Set Aside Judgment under Rule 60(b)

Rule 60(b) sets out six reasons for setting aside a judgment. The first ground is that the judgment should be set aside because of excusable neglect, mistake, or surprise. In small claims, the "excusable neglect" at issue almost always involves a party's failure to appear. When a judgment is set aside under Rule 60(b), the case will be re-tried, usually based on the original complaint with no need to repeat service of process.

Q: What is the procedure for deciding whether to set aside a judgment?

A: Typically, the losing party files a motion to set aside the judgment, specifying the reason. Motions must be filed within a reasonable time, usually within one year. The other party is given notice of the motion, and the court conducts a hearing on whether the motion should be granted.

Q: Who conducts the hearing?

A: A district court judge generally hears Rule 60(b) motions, but some magistrates are authorized by their chief district court judge to hear motions provided that the motion is based on Rule 60(b)(1) (mistake, excusable neglect, inadvertence, or surprise.)

Q: How does a magistrate determine whether the judgment should be set aside?

A: The test is whether the party who made the error gave the case "such attention as a man of ordinary prudence usually gives to important business affairs." If the moving party is Δ, she must also allege that she has a meritorious defense to π's claim. Finally, our appellate courts have repeatedly stated that a motion under Rule 60(b) is not to be used as a substitute for appeal. If the error in question was a legal error made by the magistrate, the judgment will not be set aside (unless the error was so serious that it renders the judgment void).

Q: If a magistrate decides to set aside the judgment, how is this decision implemented?

A: The magistrate enters a written order setting aside the judgment, making appropriate findings about the grounds for doing so and, if the motion was filed by the Δ, the existence of a meritorious defense. The magistrate should then re-calendar the case for trial.

POINTS TO REMEMBER IN MAKING DECISIONS ABOUT EVIDENCE

Distinguish between the decision to admit evidence and the decision about the weight you give to evidence. In general, evidence is admissible and entitled to consideration if it is *relevant* to an issue in the case and *reliable (*that is, likely to be true).

Why?

- Small claims court is not subject to review on appeal in the same way other trial courts are, so whether evidence does or does not become part of the record is not relevant in the same way.
- Small claims cases never involve juries, and so the legal principles governing consideration of evidence that apply to trials before the judge without a jury are more relevant than are the rules used in jury trials.

Unless evidence is objected to, or unless you, the judge, feel that the evidence is such that it might improperly bias your decision, it should be freely admitted – and given appropriate weight.

When evidence is objected to, it is appropriate to rule on the objection by admitting the evidence but pointing out that its weight is to be determined.

When an attorney repeatedly objects—or when you anticipate that this may happen – it is proper to instruct the attorney to hold objections until the close of the evidence, at which point the attorney may be allowed to present arguments about its weight and admissibility.

What you might say:

> *"As you know, we are about to conduct a trial before the judge without a jury, and one of the parties is not represented by an attorney, which is often the case in this court. My policy in such situations is to be lenient in allowing evidence to be offered, so that parties may testify without interruption. At the close of the evidence, I will hear any argument the parties would like to offer about evidence that you believe I should not consider. After hearing your argument, I will carefully consider all the relevant admissible evidence and determine what weight I will give it before arriving at my decision."*

Factors to consider in assessing credibility:

Motive to lie	Corroborating evidence	Person in best position to observe
Demeanor	Ability to provide details	Which version seems more likely?

A Note on Dealing With Attorneys

~ Remember that attorneys have a different role, and thus a different agenda, than you in your role as a judge.

~Don't expect that an attorney will necessarily approve of or agree with your decisions, or the way you run your courtroom. Be respectful and polite, but be prepared to be assertive if necessary in maintaining control of the courtroom.

~ Like everyone else, attorneys vary in skill and ability. Don't assume that an attorney is more knowledgeable than you about the law, and don't accept general proclamations about what "the law says" at face value.

~ Let attorneys know that you will not rule in their favor unless they explain their argument clearly, in a way that everyone in the courtroom can understand. Communicate that you won't be intimidated into ruling favorably by a complicated jargon-laden legal argument made quickly and without regard for your ability to understand. This is an appropriate requirement, and one that an advocate should anticipate and respect.

~Never hesitate to require an attorney to establish the truth of his or her contentions by supplying a copy of a case or statute, granting a brief continuance if necessary for the attorney to obtain a copy or for you to read it carefully. Insist that copies of cases and statutes be complete, and specifically ask whether the law provided is current as of the date of trial if you have any reason to be doubtful.

~Be aware of procedural errors frequently made by attorneys unused to small claims practice.

~Particularly when confronted with an attorney who is disruptive or insists on interrupting the testimony of the unrepresented party, be prepared to cite GS Ch. 8C, Rule 611, which provides:

> *The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.*

~Similarly, when confronted with an attorney who objects to your questioning of parties or contends that your participation is inappropriate because you are "helping," be prepared to cite Rule 614, which says

> *. . . The court may, on its own motion or at the suggestion of a party call witnesses, and all parties are entitled to cross-examine witnesses thus called. . . . The court may interrogate witnesses, whether called by itself or a party.*

Four Rules of Evidence You Should Know

Business records exception to hearsay rule

Writing or records of acts, events, conditions, opinions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge are admissible if kept in the regular course of business and if it was the regular course of business to make that record, unless the source information or circumstances of preparation indicate a lack of trustworthiness.

G.S. 8-45: Verified statement of account

In an action on an account for goods sold, rents, services rendered, or labor performed, or any oral contract for money loaded, a verified itemized statement of the account is admissible into evidence and is deemed correct unless disputed by the defendant.

Verified: Accompanied by an affidavit from a person who (1) would be competent to testify at trial; (2) has personal knowledge of the particular account, or of the books and records of the business in general; and (3) swears that the account is correct and presently is owed by defendant to plaintiff.

Itemized: Describes each item with price and item number, if there is one.

Best Evidence Rule (paraphrased)

When an action by a party is based on a right created by a written contract, and the content of that contract is in dispute, the party must either produce the contract or adequately explain why he is unable to do so.

Parole Evidence Rule

When contract is in writing, parties may not introduce evidence of prior or contemporaneous oral agreement that varies the terms of the written contract

Note that the rule has no application in two circumstances:

(1) When the evidence is offered to assist the court in determining the meaning of an ambiguous term in the contract; and

(2) when the evidence offered relates to an oral agreement taking place after the written contract and thus in support of an allegation that the written contract was subsequently modified by a later oral agreement.

Words of Wisdom About Small Claims Procedure

Always begin with *"Who is suing whom, for what?"*

Who are the parties, and what are the claims?

If the answers to these questions are not crystal clear from the complaint & summons, get those answers first.

Focusing on this question at the very beginning helps you remember the most important rule:

Decide the case in front of you.

Notice is a very big deal. And so is *jurisdiction.*

There is a difference between an *order*—which does something with a pending lawsuit—and *a judgment*, which makes a determination based on the evidence about the merits of a case.

Your judgment should *dispose of all the parties and all the claims.*

These three things should *be identical*:

Your written judgment

Your spoken judgment

Your actual decision

Finality of judgments is a very big deal.

Everyone makes errors, and professional decision-makers make lots of them. The remedy for legal errors made by a judicial official is *appeal.* Not changing your judgment. *See previous principle.*

WHAT HAPPENS AFTER SMALL CLAIMS COURT

Location of Clerk's Office: _____

Notice to Both Parties

If you are either the plaintiff (the person suing) or defendant (the person being sued) and are unhappy with the decision of the magistrate, you may appeal the case to district court. You may appeal either by telling the magistrate at the trial that you want to appeal or by filing a written request with the clerk of court within 10 days after the magistrate ruled in your case. If you want to file a written request, ask the clerk to give you a copy of form AOC-CVM-303, which is the notice of appeal form. If you give written notice of appeal to the clerk, you must also send a copy of the form to the opposing parties in your case.

Whether you appeal in open court or file a written appeal, you MUST PAY $150 court costs to the clerk. These costs must be paid within 20 days of the magistrate's ruling, unless you are a tenant appealing from judgment in a summary ejectment action, in which case the costs must be paid within 10 days of the magistrate's ruling. If you cannot pay the appeal costs, you may be able to qualify to file your appeal as an indigent. If you are a tenant appealing an eviction and you want to continue to live at the premises until the case is heard on appeal, you will be required to pay past due rent to the clerk and to sign an undertaking that you will pay rent into the court as it becomes due to keep the judgment from being carried out. If you meet the requirements for appeal as an indigent, you may be excused from the requirement that you pay past due rent in order to remain on the premises while the appeal is pending.

If one party appeals, there will be a completely new trial before a district court judge. (In some cases, the matter may be assigned first to an arbitrator. If that occurs contact the clerk to have the procedure explained to you.) The clerk will notify both parties of the trial date (usually by mailing the trial calendar), and both must appear at that time. If you are the defendant and don't appear at trial, the plaintiff will probably win the case. Both parties should bring all your evidence and witnesses to the trial. The trial before the district court judge will be more formal than the one before the magistrate; therefore, you may wish to consider hiring an attorney to represent you.

Notice to Plaintiff (Party Suing)

If you won your case, your judgment against the defendant is good for 10 years. Before the end of the 10 years, you may bring another lawsuit to extend the judgment an additional 10 years. If you have won a money judgment, it becomes a lien against any land owned by the defendant, which means the defendant cannot sell that land without paying your judgment. Just because you have a judgment does not mean that you will be able to collect it. The defendant must have enough property to enable the sheriff to sell the property to satisfy the judgment. You may try as many times in the 10-year period as you wish to collect the judgment.

If you have won a judgment that the defendant owes you money, the court cannot try to help you collect that money unless you have given the defendant an opportunity to claim his or her exemptions. "Exemptions" is a legal term referring to a judgment debtor's right to shelter certain property from being seized and sold to satisfy a judgment. After the judgment is rendered, you must get two forms (Notice of Rights and Motion to Claim Exempt Property) from the clerk. You must serve these on the defendant. The back of the Notice of Rights tells you how to serve the forms. If you have not heard anything from the defendant within 20 days after you have served the Notice of Rights and Motion, you may go to the clerk ask to have an execution issued. The back of the Notice of Rights form tells you what you have to bring to the clerk. If the defendant responds to your notice and claims exemptions, you may either (1) agree with the exemptions claimed and ask the clerk to issue an execution for non-exempt property or (2) object to the

claimed exemptions and have the district court judge determine the exempt property. After the district judge determines the defendant's exemptions, you may ask the clerk to issue an execution for all nonexempt property. You will have to pay $55 to have an execution issued--$25 for the court and $30 for the sheriff. Those costs will be added to the judgment to be repaid by the defendant. An execution is an order to the sheriff to seize and sell property of the defendant to satisfy the judgment. If you know of any property that belongs to the defendant, you should attach to the execution a description of the property and where it may be found to help the sheriff. The sheriff will sell any property that can be found and turn the proceeds over to the clerk of court, who will then turn the money over to you.

If the defendant pays all or part of the money owed to you directly, you MUST go to the clerk's office and indicate how much you have been paid.

If you have a judgment ordering the defendant to turn personal property over to you and if the defendant has not turned it over within 10 days after the magistrate enters the judgment, you may ask the clerk to issue a writ of possession to the sheriff. The cost to you for having the writ issued is $25, plus $30 for the sheriff. The sheriff will then try to recover the property from the defendant and turn it over to you. You may be asked to advance the costs of having the sheriff pick up the property.

If you are a landlord and have a judgment for eviction and the tenant fails to leave the premises within 10 days after the judgment was rendered, you may pay $25 and have the clerk issue a writ of possession to the sheriff. The sheriff will then remove the defendant from the premises. You will have to pay the sheriff $30. You may be asked to advance the costs of removing the tenant's property and one month's storage costs or you may request the sheriff, in writing, to lock the premises and you will then be responsible for handling the tenant's property in the manner required by the law.

If the defendant won a judgment against you on a counterclaim, read the section below for defendants.

Notice to Defendant (Party Being Sued)

If a judgment is entered against you stating that you owe the plaintiff money and you want to pay the amount owed, it would be safer to pay the money to the clerk of court rather than to the plaintiff. If you do pay the plaintiff directly, make sure he or she notifies the clerk so the judgment won't continue to be listed against you. If you cannot or do not pay the judgment, the plaintiff will serve a notice of rights on you, telling you that you must claim your exemptions or they will be waived. It is very important that you respond to that notice. Exemptions are property the law allows you to keep from being taken from you to pay off judgments against you. If you fail to claim your exemptions, the sheriff will be able to seize and sell any property you own. If you fail to claim your exemptions when notified, you may ask the clerk to set aside your waiver if you have the grounds. Also, even if you have waived your statutory exemptions, you may go to the clerk any time up until the proceeds of the sale of your property have been distributed to the plaintiff and request your constitutional exemptions. The judgment is good against you for 10 years and may be extended for another 10 years. It becomes a lien against any land you own now or buy later until it is satisfied.

If you have a judgment against you to turn personal property over to the plaintiff, you may not prevent the property from being turned over to the plaintiff unless the plaintiff is a finance company and the judgment against you is to recover household goods that you listed as collateral in a security agreement with the finance company and the finance company did not lend you the money to buy those goods. In that case, the finance company must give you notice of your right to claim exemptions as described in the paragraph above and you may keep the household goods from being repossessed by claiming them as exempt.

If you are a tenant and have an eviction judgment against you, you will have to leave the premises. If you do not leave voluntarily, the sheriff may forcibly evict you and remove and store your belongings for you or may leave them with the landlord who may dispose of them in the manner allowed by the law. You will be held responsible for the costs of moving you out.

If you won a counterclaim against the plaintiff in which you were awarded money, read the section for plaintiffs to see what to do.

Statutes of Limitation

Most intentional torts:	3 years
Negligence actions:	3 years
Contract for services:	3 years
Contract for sale of goods:	4 years
Contracts under seal:	10 years

Contracts Required to be Written

Contract for the sale of land.

Lease for more than 3 years.

Promise to pay the debt of another.

Retail consumer credit installment contract.

Contract for the sale of goods for $500 or more.

Security agreement.

Attorneys' Fees

Examples of authorizing statutes below. See Small Claims Law, pp. 91-94 for important restrictions.

G.S. 6-21.2: Plaintiff is suing to collect a debt and written agreement between parties contains provision for attorneys' fees. Notes, conditional sales contracts.
G.S. 6-21.3: Action on a check.
G.S. 25A-21: Actions involving consumer credit sales contracts.
G.S. 25-9-615(a)(1): Actions arising out of repossession of collateral.

Small Claims: What Lawyers Need to Know

Small claims procedure is governed in large part by GS Ch. 7A, Art. 19.

The Rules of Civil Procedure apply only when Article 19 does not contain a more specific rule applicable to small claims court. Here are a few of the most significant differences in small claims procedure:

Service by publication is allowed only in (certain) cases involving motor vehicle liens. G.S. 7A-217, -211.1.

Motions to dismiss based on *Rule 12(b)(6)* are not permitted. See GS 7A-216 (referring to such motions by the old common-law term "demurrer").

The defendant is not required to file an answer, and failure to do so constitutes a general denial. G.S. 7A-218. There are *no default judgments* in small claims, and (with the exception of summary ejectment actions meeting the requirements set out in GS 42-30 for obtaining a judgment on the pleadings) the plaintiff must prove the case by the greater weight of the evidence even if the defendant files no answer and fails to appear at trial.

The compulsory *counterclaim* rule does not apply in small claims court. GS 7A-219.

The result in a case in which the plaintiff fails to produce sufficient evidence to establish a right to relief is a judgment *of dismissal*.

Time periods for service of process, calendaring a case for hearing, and giving notice of appeal *are abbreviated* in small claims court. The procedure overall is less formal, and the rules of evidence are only generally observed. See GS 7A-222.

Appeal of a small claims judgment is to district court for trial de novo.

The Difference between an Order and a Judgment

When a magistrate has heard evidence in a case and makes a decision based on that evidence, the formal document reflecting that decision is a *judgment* of the court. It is recorded on the appropriate AOC-CVM judgment form, signed by the magistrate, and filed with the clerk. *Entry of judgment* is one of the law's Momentous Moments—like the effect of a deed, a divorce decree, or an honorable discharge, the rights of an individual are significantly different the moment after judgment is entered than the moment before. Because of this, a fundamental legal preference is expressed in the phrase "finality of judgments." A judgment can be modified or set aside, but not without observation of formal legal requirements and never without good reason.

One of many confusing facts in the world of small claims law is that when a plaintiff fails to prove the case by the greater weight of the evidence, the law (and the AOC forms) uses the term *dismissal* to describe the outcome. In the larger legal world, to say a case is *dismissed* means that it has been finally disposed of without the parties having produced evidence and the court deciding it on the merits. In Small Claims Land, that's also true, but the word is used more broadly to encompass a decision on the merits against the plaintiff.

While the terminology overlaps, it's important to distinguish the two very different outcomes, one of which is a judgment on the merits and the other is . . .not. Instead, the other (confusingly termed a *dismissal*) brings a case to an end without a judgment being entered. The AOC form for recording a dismissal—and actually other significant events occurring during the lifetime of a case—is G-108, the generic *Order* form. G-108 is used to record a dismissal in any of the following events:

1) The plaintiff has decided not to proceed with the case at this time, and has not yet finished presenting evidence (a *voluntary dismissal*).
2) The plaintiff has completed presenting evidence, but asks to dismiss and the court allows it (also a *voluntary dismissal*).
3) The plaintiff failed to appear for trial (an *involuntary dismissal*).
4) Neither party appeared for trial (an *involuntary dismissal*).

The AOC Order form has checkboxes allowing a magistrate to indicate that a dismissal is with or without prejudice. A *dismissal with prejudice* bars the plaintiff from later filing an identical action. A *dismissal without prejudice*, on the other hand, preserves the plaintiff's right to sue the defendant at a later point for the same alleged wrong.

Generally, a voluntary dismissal is without prejudice. A magistrate should check the box indicating with prejudice only if the plaintiff so indicates. An example of an appropriate fact situation would be if the plaintiff informs the court that the plaintiff wishes to take a voluntary dismissal because the defendant has paid all that is owed.

Generally, an involuntary dismissal is *with prejudice.* If the plaintiff fails to appear and the defendant appears and requests a dismissal, the law provides that the dismissal is with prejudice. When neither party appears, the same result generally applies, although a magistrate may dismiss without prejudice if justice requires.

In some cases it may be best for the magistrate to check neither box and instead explain the dismissal. A common example arises when a plaintiff files a case in small claims which

is not eligible for hearing in that court. A dismissal with prejudice is subject to being understood as a ruling that the plaintiff may not refile the action in any court. A dismissal without prejudice is sometimes misunderstood by a plaintiff unfamiliar with the law to mean the case can be refiled in small claims court. In such a case the magistrate should simply check “involuntary dismissal” and write on the order form that the magistrate is without jurisdiction to hear the case in small claims court.

Small Claims Forms

(These and other forms can be found at the www.nccourts.org webpage)

AOC-CV-105	Affidavit of Service of Process By….
AOC-CVM-100	Magistrate Summons
AOC-CVM-200	Complaint for Money Owed
AOC-CVM-201	Complaint for Summary Ejectment
AOC-CVM-202	Complaint to Recover Possession of Personal Property
AOC-CVM-203	Complaint to Enforce Possessory Lien on Motor Vehicle
AOC-CVM-400	Judgment in Action to Recover Money or Personal Property
AOC-CVM-401	Judgment in Action for Summary Ejectment
AOC-CVM-402	Judgment in Action on Possessory Lien on Motor Vehicle
AOC-CV-415	Motion To Claim Exempt Property
AOC-G-108	Order
AOC-G-250	Service Members Civil Relief Act Affidavit
AOC-CV-401	Writ of Possession Real Property

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
☐ District ☐ Superior Court Division

Name Of Plaintiff(s)	**AFFIDAVIT OF SERVICE OF PROCESS BY** ☐ **REGISTERED MAIL** ☐ **CERTIFIED MAIL** ☐ **DESIGNATED DELIVERY SERVICE** G.S. 1-75.10(a)(5), (a)(6); 1A-1, Rule 4(j2)
VERSUS	
Name Of Defendant	

I, the undersigned, did mail by ☐ registered mail (return receipt requested), ☐ certified mail (return receipt requested), ☐ designated delivery service (delivery receipt requested),

a copy of the summons and complaint ☐ and other document(s) *(list)* _____

_____

in the above captioned action to *(name of person to be served)* _____,

addressed as follows: _____

_____

_____

_____

Further, that copies of the summons and complaint ☐ and the above listed other document(s) *(check, if applicable)* were in fact received by the defendant on *(date of receipt)* _____, as evidenced by the attached original receipt.

(Attach original receipt or electronic proof of signature confirmation to this affidavit.)

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		*Signature Of Plaintiff/Attorney*
Date	*Signature Of Person Authorized To Administer Oaths*	*Name (type or print)*
Title Of Person Authorized To Administer Oaths		
☐ *Notary*	*Date My Commission Expires*	
SEAL	*County Where Notarized*	

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
District Court Division - Small Claims

Plaintiff(s)	**MAGISTRATE SUMMONS** ☐ **ALIAS AND PLURIES SUMMONS (ASSESS FEE)**
VERSUS	G.S. 1A-1, Rule 4; 7A-217, -232
Defendant(s)	*Date Original Summons Issued*
	Date(s) Subsequent Summons(es) Issued

TO	**TO**
Name And Address Of Defendant 1	*Name And Address Of Defendant 2*
Telephone No. Of Defendant 1	*Telephone No. Of Defendant 2*

A Small Claim Action Has Been Commenced Against You!

You are notified to appear before the magistrate at the specified date, time, and location of trial listed below. You will have the opportunity at the trial to defend yourself against the claim stated in the attached complaint.

You may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court at any time before the time set for trial. Whether or not you file an answer, the plaintiff must prove the claim before the magistrate.

If you fail to appear and defend against the proof offered, the magistrate may enter a judgment against you.

Date Of Trial	*Time Of Trial* ☐ AM ☐ PM	*Location Of Court*
Name And Address Of Plaintiff Or Plaintiff's Attorney		*Date Issued*
		Signature
		☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

(Over)

AOC-CVM-100, Rev. 8/17

RETURN OF SERVICE

I certify that this summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

Date Served	*Time Served* ☐ AM ☐ PM	*Name Of Defendant*

☐ By delivering to the defendant named above a copy of the summons and complaint.

☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copy Left (if corporation, give title of person copy left with)

☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason:

DEFENDANT 2

Date Served	*Time Served* ☐ AM ☐ PM	*Name Of Defendant*

☐ By delivering to the defendant named above a copy of the summons and complaint.

☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

☐ As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copy Left (if corporation, give title of person copy left with)

☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason:

FOR USE IN SUMMARY EJECTMENT CASES ONLY:

☐ Service was made by mailing by first class mail a copy of the summons and complaint to the defendant(s) and by posting a copy of the summons and complaint at the following premises:

Date Served	*Name(s) Of The Defendant(s) Served By Posting*

Address Of Premises Where Posted

Service Fee	*Signature Of Deputy Sheriff Making Return*
$	
Date Received	*Name Of Deputy Sheriff Making Return (type or print)*
Date Of Return	*County Of Deputy Sheriff Making Return*

File No.

COMPLAINT FOR MONEY OWED

G.S. 7A-216, 7A-232

Name And Address Of Plaintiff

County | Telephone No.

VERSUS

Name And Address Of Defendant 1 ☐ Individual ☐ Corporation

County | Telephone No.

Name And Address Of Defendant 2 ☐ Individual ☐ Corporation

County | Telephone No.

Name And Address Of Plaintiff's Attorney

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division-Small Claims

1. The defendant is a resident of the county named above.
2. The defendant owes me the amount listed for the following reason:

Principal Amount Owed	$
Interest Owed *(if any)*	$
Total Amount Owed	$

(check one below)

☐ On An Account *(attach a copy of the account)*	Date From Which Interest Due		Interest Rate
☐ For Goods Sold And Delivered Between	Beginning Date	Ending Date	Interest Rate
☐ For Money Lent	Date From Which Interest Due		Interest Rate
☐ On a Promissory Note *(attach copy)*	Date Of Note	Date From Which Interest Due	Interest Rate

☐ For a Worthless Check *(attach a copy of the check)*

☐ For conversion *(describe property)*

Other: *(specify)*

I demand to recover the total amount listed above, plus interest and reimbursement for court costs.

Date	Name Of Plaintiff Or Attorney (Type Or Print)	Signature Of Plaintiff Or Attorney

(Over)

AOC-CVM-200, Rev. 9/13

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

1. The PLAINTIFF must file a small claim action in the county where at least one of the defendants resides.

2. The PLAINTIFF cannot sue in small claims court for more than $10,000.00. This amount may be lower, depending on local judicial order. If the amount is lower, it may be any amount between $5,000.00 and $10,000.00, as determined by the chief district court judge of the judicial district.

3. The PLAINTIFF must show the complete name and address of the defendant to ensure service on the defendant. If there are two defendants and they reside at different addresses, the plaintiff must include both addresses. The plaintiff must determine if the defendant is a corporation and sue in the complete corporate name. If the business is not a corporation, the plaintiff must determine the owner's name and sue the owner.

4. The PLAINTIFF may serve the defendant(s) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, addressed to the party to be served or by paying the costs to have the sheriff serve the summons and complaint. If certified or registered mail is used, the plaintiff must prepare and file a sworn statement with the Clerk of Superior Court proving service by certified mail and must attach to that statement the postal receipt showing that the letter was accepted.

5. The PLAINTIFF must pay advance court costs at the time of filing this Complaint. In the event that judgment is entered in favor of the plaintiff, court costs may be charged against the defendant.

6. The DEFENDANT may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court. This answer should be accompanied by a copy for the plaintiff and be filed no later than the time set for trial. The filing of the answer DOES NOT relieve the defendant of the need to appear before the magistrate to assert the defendant's defense.

7. Whether or not an answer is filed, the PLAINTIFF must appear before the magistrate.

8. The PLAINTIFF or the DEFENDANT may appeal the magistrate's decision in this case. To appeal, notice must be given in open court when the judgment is rendered, or notice may be given in writing to the Clerk of Superior Court within ten (10) days after the judgment is rendered. If notice is given in writing, the appealing party must also serve written notice of appeal on all other parties. The appealing party must PAY to the Clerk of Superior Court the costs of court for appeal within twenty (20) days after the judgment is rendered.

9. This form is supplied in order to expedite the handling of small claims. It is designed to cover the most common claims.

10. **The Clerk or magistrate cannot advise you about your case or assist you in completing this form. If you have any questions, you should consult an attorney.**

AOC-CVM-200, Rev. 9/13

File No.

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division - Small Claims

COMPLAINT
IN SUMMARY EJECTMENT

G.S. 7A-216, 7A-232; Ch. 42, Arts. 3 and 7

1. The defendant is a resident of the county named above.
2. The defendant entered into possession of premises described below as a lessee of plaintiff.

Description Of Premises (include location and address)	☐ Conventional ☐ Public Housing ☐ Section 8

Rate Of Rent (Tenant's Share)	Date Rent Due	Date Lease Ended	Type Of Lease
$ per ☐ Month ☐ Week			☐ Oral ☐ Written

3. ☐ The defendant failed to pay the rent due on the above date and the plaintiff made demand for the rent and waited the 10-day grace period before filing the complaint.
   ☐ The lease period ended on the above date and the defendant is holding over after the end of the lease period.
   ☐ The defendant breached the condition of the lease described below for which re-entry is specified.
   ☐ Criminal activity or other activity has occurred in violation of G.S. 42-63 as specified below.

Name And Address Of Plaintiff

County	Telephone No.

Description Of Breach/Criminal Activity (give names, dates, places and illegal activity)

VERSUS

Name And Address Of Defendant 1 ☐ Individual ☐ Corporation

4. The plaintiff has demanded possession of the premises from the defendant, who has refused to surrender it, and the plaintiff is entitled to immediate possession.
5. The defendant owes the plaintiff the following:

County	Telephone No.

Description Of Any Property Damage

Name And Address Of Defendant 2 ☐ Individual ☐ Corporation

Amount Of Damage (if known)	Amount Of Rent Past Due	Total Amount Due
$	$	$

County	Telephone No.

6. I demand to be put in possession of the premises and to recover the total amount listed above and daily rental until entry of judgment plus interest and reimbursement for court costs.

Name And Address Of Plaintiff's Attorney Or Agent

Date	Name Of Plaintiff/Attorney/Agent (type or print)	Signature Of Plaintiff/Attorney/Agent

CERTIFICATION WHEN COMPLAINT SIGNED BY AGENT OF PLAINTIFF

I certify that I am an agent of the plaintiff and have actual knowledge of the facts alleged in this Complaint.

Attorney Bar No.

Date	Name Of Agent (type or print)	Signature Of Agent

(Over)

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

THE CLERK OR MAGISTRATE CANNOT ADVISE YOU ABOUT YOUR CASE OR ASSIST YOU IN COMPLETING THIS FORM. IF YOU HAVE ANY QUESTIONS, YOU SHOULD CONSULT AN ATTORNEY.

1. The PLAINTIFF must file a small claim action in the county where at least one of the defendants resides.
2. The PLAINTIFF cannot sue in small claims court for more than $10,000.00 excluding interest and costs unless further restricted by court order.
3. The PLAINTIFF must show the complete name and address of the defendant to ensure service on the defendant. If there are two defendants and they reside at different addresses, the plaintiff must include both addresses. The plaintiff must determine if the defendant is a corporation and sue in the complete corporate name. If the business is not a corporation, the plaintiff must determine the owner's name and sue the owner.
4. The PLAINTIFF may serve the defendant(s) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, addressed to the party to be served or by paying the costs to have the sheriff serve the summons and complaint. If certified or registered mail is used, the plaintiff must prepare and file a sworn statement with the Clerk of Superior Court proving service by certified mail and must attach to that statement the postal receipt showing that the letter was accepted.
5. In filling out number 2 of the complaint in subsidized housing (e.g., Section 8, voucher, housing authority), the landlord should include in the "Rate Of Rent" box only that portion of the rent that the tenant pays directly to the landlord.
6. In filling out number 3 in the complaint, if the landlord is seeking to remove the tenant for failure to pay rent when there is no written lease, the first block should be checked. (Defendant failed to pay the rent due on the above date and the plaintiff made demand for the rent and waited the ten (10) day grace period before filing the complaint.) If the landlord is seeking to remove the tenant for failure to pay rent when there is a written lease with an automatic forfeiture clause, the third block should be checked. (The defendant breached the condition of the lease described below for which re-entry is specified.) And "failure to pay rent" should be placed in the space for description of the breach. If the landlord is seeking to evict tenant for violating some other condition in the lease, the third block should also be checked. If the landlord is claiming that the term of the lease has ended and the tenant refuses to leave, the second block should be checked. If the landlord is claiming that criminal activity occurred, the fourth block should be checked and the conduct must be described in space provided.
7. The PLAINTIFF must pay advance court costs at the time of filing this Complaint. In the event that judgment is rendered in favor of the plaintiff, court costs may be charged against the defendant.
8. The PLAINTIFF must appear before the magistrate to prove his/her claim.
9. The DEFENDANT may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court. This answer should be accompanied by a copy for the plaintiff and be filed no later than the time set for trial. The filing of the answer DOES NOT relieve the defendant of the need to appear before the magistrate to assert the defendant's defense.
10. Requests for continuances of cases before the magistrate may be granted for good cause shown and for no more than five (5) days per continuance unless the parties agree otherwise.
11. The magistrate will render judgment on the date of hearing unless the parties agree otherwise, or the case is complex as defined in G.S. 7A-222, in which case the decision is required within five (5) days.
12. The PLAINTIFF or the DEFENDANT may appeal the magistrate's decision in this case. To appeal, notice must be given in open court when the judgment is entered, or notice may be given in writing to the Clerk of Superior Court within ten (10) days after the judgment is entered. If notice is given in writing, the appealing party must also serve written notice of appeal on all other parties. The appealing party must PAY to the Clerk of Superior Court the costs of court for appeal within ten (10) days after the judgment is entered. If the appealing party applies to appeal as an indigent, and that request is denied, that party has an additional five (5) days to pay the court costs for the appeal.
13. If the defendant appeals and wishes to remain on the premises the defendant must also post a stay of execution bond within ten (10) days after the judgment is entered. In the event of an appeal by the tenant to district court, the landlord may file a motion to dismiss that appeal under G.S. 7A-228(d). The court may decide the motion without a hearing if the tenant fails to file a response within ten (10) days of receipt of the motion.
14. Upon request of the tenant within seven (7) days of the landlord being placed in lawful possession, the landlord shall release any personal property of the tenant. If, after being placed in lawful possession by execution of a writ, the landlord has offered to release the tenant's property and the tenant fails to retrieve such property during the landlord's regular business hours within seven (7) days after execution of the writ, the landlord may throw away, dispose of, or sell the property in accordance with the provisions of G.S. 42-25.9(g). If sold, the landlord must disburse any surplus proceeds to the tenant upon request within seven (7) days of the sale. If the total value of the property is less than $500.00, it is deemed abandoned five (5) days after execution unless the tenant requests, prior to expiration of the five-day period, release of the property to the tenant, in which case the landlord shall release possession of the property to the tenant during regular business hours or at a time agreed upon.
15. This form is supplied in order to expedite the handling of small claims. It is designed to cover the most common claims.

AOC-CVM-201, Side Two, Rev. 8/17

File No.

COMPLAINT TO RECOVER POSSESSION OF PERSONAL PROPERTY

☐ PLAINTIFF A SECURED PARTY
☐ PLAINTIFF NOT A SECURED PARTY

G.S. 7A-232; 25-9-609

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division - Small Claims

Name And Address Of Plaintiff

County | *Telephone No.*

VERSUS

Name And Address Of Defendant 1 ☐ *Individual* ☐ *Corporation*

County | *Telephone No.*

Name And Address Of Defendant 2 ☐ *Individual* ☐ *Corporation*

County | *Telephone No.*

Name And Address Of Plaintiff's Attorney

Attorney Bar No.

WHEN PLAINTIFF IS A SECURED PARTY

The defendant is a resident of the county named above. I have a security interest in the personal property described in the attached security agreement. The total current value of this property is as shown below. The defendant has defaulted in the payment of the debt which the property secures or has otherwise breached the terms of the security agreement giving me the right to claim immediate possession of the property described below. I demand recovery of this property and reimbursement for court costs.

Description Of Personal Property In Which You Have A Secured Interest (attach copy of security agreement)

Total Value Of Property To Be Recovered

$

Date | *Signature Of Plaintiff Or Attorney*

WHEN PLAINTIFF IS NOT A SECURED PARTY

The defendant is a resident of the county named above. The defendant has in his/her possession the personal property described below which belongs to me. I am entitled to immediate possession of the property, but the defendant has refused on demand to deliver it to me. The defendant has unlawfully kept possession of this property since the date listed below and has therefore deprived me of its use. The damage due me for the loss of use and physical damage to the property is set out below. I demand recovery of this property and damages in the total amount set out below, plus interest and reimbursement for court costs.

Description Of Personal Property You Own Which Is In Possession Of Defendant

Total Value Of Property To Be Recovered

$

Date Defendant Wrongfully Took Or Kept Property

Damage Due For Loss Of Use	$
Physical Damage To Property	$
Total Amount Of Damages	$

Date | *Name Of Plaintiff Or Attorney (type or print)* | *Signature Of Plaintiff Or Attorney*

Original - File Copy - Each Defendant Copy - Attorney/Plaintiff

(Over)

AOC-CVM-202, Rev. 8/17

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

THE CLERK OR MAGISTRATE CANNOT ADVISE YOU ABOUT YOUR CASE OR ASSIST YOU IN COMPLETING THIS FORM. IF YOU HAVE ANY QUESTIONS, YOU SHOULD CONSULT AN ATTORNEY.

1. The PLAINTIFF must file a small claim action in the county where at least one of the defendants resides.

2. The PLAINTIFF cannot sue in small claims court to recover property worth more than $10,000.00. This amount may be lower, depending on local judicial order. If the amount is lower, it may be any amount between $5,000.00 and $10,000.00, as determined by the chief district court judge of the judicial district.

3. The PLAINTIFF must show the complete name and address of the defendant to ensure service on the defendant. If there are two defendants and they reside at different addresses, the plaintiff must include both addresses. The plaintiff must determine if the defendant is a corporation and sue in the complete corporate name. If the business is not a corporation, the plaintiff must determine the owner's name and sue the owner.

4. The PLAINTIFF may serve the defendant(s) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, addressed to the party to be served or by paying the costs to have the sheriff serve the summons and complaint. If certified or registered mail is used, the plaintiff must prepare and file a sworn statement with the Clerk of Superior Court proving service by certified mail and must attach to that statement the postal receipt showing that the letter was accepted.

5. The PLAINTIFF must pay advance court costs at the time of filing this Complaint. In the event that judgment is rendered in favor of the plaintiff, court costs may be charged against the defendant.

6. The DEFENDANT may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court. This answer should be accompanied by a copy for the plaintiff and be filed no later than the time set for trial. The filing of the answer DOES NOT relieve the defendant of the need to appear before the magistrate to assert the defendant's defense.

7. Whether or not an answer is filed, the PLAINTIFF must appear before the magistrate.

8. The PLAINTIFF or the DEFENDANT may appeal the magistrate's decision in this case. To appeal, notice must be given in open court when the judgment is entered, or notice may be given in writing to the Clerk of Superior Court within ten (10) days after the judgment is entered. If notice is given in writing, the appealing party must also serve written notice of appeal on all other parties. The appealing party must PAY to the Clerk of Superior Court the costs of court for appeal within twenty (20) days after the judgment is entered. A defendant who appeals also must post a bond to stay execution of the judgment within ten (10) days after the judgment is entered.

9. This form is supplied in order to expedite the handling of small claims. It is designed to cover the most common claims.

AOC-CVM-202, Side Two, Rev. 8/17

File No.

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division - Small Claims

COMPLAINT TO ENFORCE POSSESSORY LIEN ON MOTOR VEHICLE

G.S. 7A-211.1; 20-77(d); 44A-2(d), 44A-4(b), (e)

Name And Address Of Plaintiff

County | *Telephone No.*

VERSUS

Name And Address Of Defendant 1

County | *Telephone No.*

Name And Address Of Defendant 2

County | *Telephone No.*

Name And Address Of Plaintiff's Attorney

Attorney Bar No.

1. The lien claimed arose in the county named above.

2a. ☐ I repair, service, tow or store motor vehicles in the ordinary course of business.

b. ☐ I am an operator of a place of business for garaging or parking motor vehicles for the public and the motor vehicle listed below has remained unclaimed for at least 10 days.

c. ☐ I am a landowner on whose property the motor vehicle listed below has been abandoned for at least 30 days. The property was not left by a tenant. [G.S. 42-25.9(g); 44A-2(e2)]

3. I came into possession of the motor vehicle described on the date shown below, am in possession of the vehicle, and claim a possessory lien on this vehicle for the amounts indicated below plus storage at the rate indicated from this date until the lien is satisfied.

Make/Year Of Vehicle

ID Number	Repairs	$
Date Of Possession	Towing	$
Date Storage Began	Storage Cost to Date	$
Date Notice Of Unclaimed Vehicle Given	Vehicle Rental	$
(Plus Storage At $ _____ Per Day Until Sold)	**Total Lien Claimed To Date**	$

4. The defendants are the registered owner of the vehicle and the known secured party(ies).

5. I gave notice of an unclaimed vehicle to the Division of Motor Vehicles on the date listed above.

6. I have given notice to the North Carolina Division of Motor Vehicles that a lien is asserted, and sale is proposed for the above described motor vehicle.

I demand that this Court declare the lien valid and enforceable by sale and order that the North Carolina Division of Motor Vehicles transfer title to the person who purchases at the sale upon proof that proper notice of sale has been given.

Date	*Name Of Plaintiff Or Attorney (type or print)*	*Signature Of Plaintiff Or Attorney*

(Over)

AOC-CVM-203, Rev. 8/17

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

THIS FORM IS SUPPLIED IN ORDER TO EXPEDITE THE HANDLING OF SMALL CLAIMS. IT IS DESIGNED TO COVER THE MOST COMMON CLAIMS. QUESTIONS ABOUT THE ADEQUACY OF THIS FORM OR WHETHER IT IS THE APPROPRIATE FORM TO BE USED SHOULD BE ADDRESSED TO AN ATTORNEY.

1. Before filing this Complaint, you must have filed certain forms with the Division of Motor Vehicles. Contact your local Division of Motor Vehicles office.

2. The PLAINTIFF must file a small claim action in the county where the claim arose (i.e., where the motor vehicle was repaired, towed or stored).

3. The PLAINTIFF cannot sue in small claims court for more than $10,000.00. This amount may be lower, depending on local judicial order. If the amount is lower, it may be any amount between $5,000.00 and $10,000.00, as determined by the chief district court judge of the judicial district.

4. The registered owner of the vehicle and any secured parties listed with the Division of Motor Vehicles must be made defendants in the case. The PLAINTIFF must show the complete name and address of the defendant to ensure service on the defendant. If there are two defendants and they reside at different addresses, the plaintiff must include both addresses. The plaintiff must determine if the defendant is a corporation and sue in the complete corporate name. If the business is not a corporation, the plaintiff must determine the owner's name and sue him/her.

5. The PLAINTIFF may serve the defendant(s) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, addressed to the party to be served or by paying the costs to have the sheriff serve the summons and complaint. If certified or registered mail is used, the plaintiff must file a sworn statement with the Clerk of Superior Court proving service by certified mail and must attach to that statement the postal receipt showing that the letter was accepted. If the name or address of the vehicle owner cannot be determined, service by publication is authorized. In that case plaintiff may want to consult an attorney.

6. The PLAINTIFF must pay advance court costs at the time of filing this Complaint. In the event that judgment is rendered in favor of the plaintiff, court costs may be charged against the defendant.

7. The DEFENDANT may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court. This answer should be accompanied by a copy for the plaintiff and be filed no later than the time set for trial. The filing of the answer DOES NOT relieve the defendant of the need to appear before the magistrate to assert the defendant's defense.

8. Whether or not an answer is filed, the PLAINTIFF must appear before the magistrate.

9. The PLAINTIFF or the DEFENDANT may appeal the magistrate's decision in this case. To appeal, notice must be given in open court when the judgment is rendered, or notice may be given in writing to the Clerk of Superior Court within ten (10) days after the judgment is rendered. If notice is given in writing, the appealing party must also serve written notice of appeal on all other parties. The appealing party must PAY to the Clerk of Superior Court the costs of court for appeal within twenty (20) days after the judgment is rendered.

AOC-CVM-203, Side Two, Rev. 8/17

File No.

Film No.

Judgment Docket Book And Page No.

JUDGMENT IN ACTION TO RECOVER MONEY OR PERSONAL PROPERTY

G.S. 7A-210(2), 7A-224

Name And Address Of Plaintiff

County | Telephone No.

VERSUS

Name And Address Of Defendant 1

County | Telephone No.

Name And Address Of Defendant 2

County | Telephone No.

Name And Address Of Plaintiff's Attorney

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division-Small Claims

This action was tried before the undersigned on the cause stated in the complaint. The record shows that the defendant was given proper notice of the nature of the action and the date, time and location of trial.

FINDINGS

The Court finds that:

☐ the plaintiff has proved the case by the greater weight of the evidence.

☐ the plaintiff has failed to prove the case by the greater weight of the evidence.

the defendant(s) ☐ was ☐ was not present at trial.

☐ the case involves a breach of contract and the date of breach is: _____.

☐ the contract provides for pre-judgment interest on damages for breach at the rate of _____% and/or post-judgment interest at the rate of _____%.

☐ the contract does not provide a specific pre-judgment interest rate.

☐ the contract does not provide a specific post-judgment interest rate.

☐ Other:

ORDER

It is ORDERED that:

☐ the plaintiff recover possession of the personal property described in the complaint.

☐ the plaintiff recover possession of the personal property listed below:

☐ the plaintiff recover nothing of the defendant(s) and that this action be dismissed with prejudice.

☐ *(for breach of contract cases)* the plaintiff recover of the defendant(s) the following principal sum plus interest on the principal from the date of breach to the date of judgment (1) at the rate provided in the contract, as found above; or (2) at the legal rate. In addition, the principal shall bear interest from the date of judgment until the judgment is satisfied (1) at the rate provided in the contract, as found above; or (2) at the legal rate.

☐ *(for tort cases)* the plaintiff recover of the defendant(s) the following principal sum, plus interest at the legal rate from the date the action was instituted until judgment is satisfied.

☐ Other: *(specify)*

☐ Costs of this action are taxed to the ☐ plaintiff. ☐ defendant.

Principal Sum Of Judgment	$	*Name Of Judgment Debtor(s) From Whom Amount Recovered*
Pre-judgment Interest Not Included In Principal	$	☐ Judgment Announced And Signed In Open Court
Attorney's Fees Or Other Damages *(when appropriate)*	$	*Date* / *Signature Of Magistrate*
TOTAL AMOUNT	$	*Name Of Party Announcing Appeal In Open Court*

CERTIFICATION

NOTE: *To be used when magistrate does not announce and sign this Judgment in open court at the conclusion of the trial.*
I certify that this Judgment has been served on each party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Date | *Signature Of Magistrate*

AOC-CVM-400, Rev. 2/12

File No.	Abstract No.
Scan No.	
Judgment Docket Book And Page No.	

JUDGMENT IN ACTION FOR SUMMARY EJECTMENT

G.S. 7A-210(2), 7A-224; 42-30

Name And Address Of Plaintiff	
County	Telephone No.

VERSUS

Name And Address Of Defendant 1	
County	Telephone No.
Name And Address Of Defendant 2	
County	Telephone No.
Name And Address Of Plaintiff's Attorney	

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division - Small Claims

This action was tried before the undersigned on the cause stated in the complaint. The record shows that the defendant was given proper notice of the nature of the action and the date, time and location of trial.

FINDINGS

The Court finds that:

1. ☐ a. the plaintiff has proved the case by the greater weight of the evidence.
   ☐ b. the plaintiff has failed to prove the case by the greater weight of the evidence.
   ☐ c. the plaintiff requested and was entitled to a judgment for possession based on the pleading.
2. the defendant(s) ☐ was ☐ was not present. ☐ The defendant was served by postings.
3. ☐ a. there is no dispute as to the amount of rent in arrears, and the amount is $ _____.
   ☐ b. there is an actual dispute as to the amount of rent in arrears. The defendant(s) claims the amount of rent in arrears is _____, and this amount is the undisputed amount of rent in arrears.
4. other:

ORDER

It is ORDERED that:

☐ 1. the defendant(s) be removed from and the plaintiff be put in possession of the premises described in the complaint.
☐ 2. this action be dismissed with prejudice.
☐ 3. this action be dismissed with prejudice because the defendant tendered the rent due and the court costs of this action.
☐ 4. the plaintiff recover rent of the defendant(s) in the amount and at the rate listed below, plus other damages in the amount indicated. The plaintiff is also entitled to interest on the total principal sum from this date until the judgment is paid.
☐ 5. other: *(specify)*

☐ 6. costs of this action are taxed to the ☐ plaintiff. ☐ defendant.

Rate Of Rent (Tenant's Share)	Amt. Of Rent In Arrears (Owed To Date)	
$ per ☐ Mo. ☐ Wk.	$	☐ Judgment Announced And Signed In Open Court
Amount Of Other Damages $	Date	Signature Of Magistrate
TOTAL AMOUNT $	Name Of Party Announcing Appeal In Open Court	

CERTIFICATION

(**NOTE:** *To be used when magistrate does not announce and sign this Judgment in open court at the conclusion of the trial.)*
I certify that this Judgment has been served on each party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Date	Signature Of Magistrate

AOC-CVM-401, Rev. 8/17

File No.

Film No.

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division-Small Claims

JUDGMENT IN ACTION ON POSSESSORY LIEN ON MOTOR VEHICLE

G.S. 44A-4

This action was tried before the undersigned on the cause stated in the complaint. The record shows that the defendant was given proper notice of the nature of the action and the date, time and location of trial.

FINDINGS

The Court finds that:

☐ 1. the plaintiff has failed to prove the case by the greater weight of the evidence.

☐ 2. the plaintiff ☐ repairs, services, tows or stores motor vehicles in the ordinary course of business ☐ is the operator of a place of business for garaging or parking vehicles ☐ is a landowner on whose property the vehicle listed was abandoned and the plaintiff came into possession of the motor vehicle on the date shown below, is still in possession, and has a valid enforceable lien against the motor vehicle for the amount indicated, plus storage at the rate below from the date of this Judgment until the lien is satisfied.

3. the defendant(s) ☐ was ☐ was not present at trial.

4. The lienor has given proper notice to the North Carolina Division of Motor Vehicles that a lien is asserted and sale is proposed for the vehicle.

Name And Address Of Plaintiff

County | Telephone No.

VERSUS

Name And Address Of First Defendant

County | Telephone No.

Name And Address Of Second Defendant

County | Telephone No.

Name And Address Of Plaintiff's Attorney

Make/Year Of Vehicle

ID Number

Date Of Possession

(Plus Storage @ $ Per Day Until Sold)

Repairs	$
Towing	$
Storage Cost to Date	$
Vehicle Rental	$
Total Lien Claimed To Date	$ 0.00

ORDER

It is ORDERED that:

☐ the plaintiff recover nothing of the defendant and that this action be dismissed with prejudice.

☐ the lien is valid and enforceable by sale and the Division of Motor Vehicles shall transfer title to the person who purchases at the sale upon proof that proper notice of sale has been given.

☐ Judgment Announced And Signed In Open Court

Name Of Party Announcing Appeal In Open Court | Date | Signature Of Magistrate

CERTIFICATION

(**NOTE:** *To be used when magistrate does not announce and sign this Judgment in open court at the conclusion of the trial.*)
I certify that this Judgment has been served on each party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Date | Signature Of Magistrate

STATE OF NORTH CAROLINA

_____ County

File No.
Judgment Abstract No.
Date Judgment Filed

In The General Court Of Justice
☐ District ☐ Superior Court Division

Name Of Judgment Creditor (Plaintiff)
VERSUS
Name Of Judgment Debtor (Defendant)

MOTION TO CLAIM EXEMPT PROPERTY (STATUTORY EXEMPTIONS)

(Use If Judgment Filed On Or After Jan. 1, 2006)

G.S. 1C-1603(c)

NOTE TO JUDGMENT DEBTOR: *The Clerk of Superior Court cannot fill out this form for you. If you need assistance, you should talk with an attorney.*
JUDGMENT DEBTOR NOTICE OF RIGHTS: *(a) You have the right to retain an interest in certain property free from collection efforts by the judgment creditor. (b) To preserve that right, you are required to respond to the notice by filing a motion or petition to claim exempt property, including a schedule of assets that are claimed as exempt, no later than 20 days after you receive the notice, and you must also mail or take a copy to the judgment creditor at the address provided in the notice. (c) You have the option to request a hearing to claim exemptions rather than filing a schedule of assets. (d) You may have exemptions under State and federal law that are in addition to those listed on the form for the debtor's statement that is included with the notice, such as Social Security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days. (e) There is a procedure for challenging an attachment or levy on your property. (f) You may wish to consider hiring an attorney. (g) Failure to respond within the required time results in the loss of statutory rights.*

I, the undersigned, move to set aside the property claimed below as exempt.

1. I am a citizen and resident of _____.
2. ☐ a. I am married to _____.
   ☐ b. I am not married.
3. My current address is _____.
4. The following persons are dependent on me for support:

Name(s) Of Person(s) Dependent On Me	Age	Relationship

5. I wish to claim as exempt *(keep from being taken)* my interest in the following real or personal property, or in a cooperative that owns property, that I use as a residence. I also wish to claim my interest in the following burial plots for myself or my dependents. I understand that my total interest claimed in the residence and burial plots may not exceed $35,000.00, except that if I am unmarried and am 65 years of age or older, I am entitled to claim a total exemption in the residence and burial plots not to exceed $60,000.00, so long as the property was previously owned by me as a tenant by the entireties or as a joint tenant with rights of survivorship, and the former co-owner of the property is deceased.

Street Address Of Residence		
County Where Property Located	Township	No. By Which Tax Assessor Identifies Property

Legal Description (Attach a copy of your deed or other instrument of conveyance or describe property in as much detail as possible. Attach additional sheets if necessary.)

☐ I am unmarried and 65 years of age or older and this property was previously owned by me as a tenant by entireties or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased.

Name(s) Of Owner(s) Of Record Of Residence	Estimated Value Of Residence (What You Think You Could Sell It For)
	$

(Over)

AOC-CV-415, Rev. 8/17

Amount Of Lien(s) And Name(s) And Address(es) Of Lienholder(s): *(How Much Money Is Owed On The Property And To Whom)*	**Current Amount Owed**
	$
	$
Location Of Burial Plots Claimed	*Value Of Burial Plots Claimed* $

6. I wish to claim the following personal property, consisting of household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments, as exempt from the claims of my creditors *(in other words, keep them from being taken from me).* These items of personal property are held primarily for my personal, family, or household use.

   I understand that I am entitled to personal property worth the sum of $5,000.00. I understand I am also entitled to an additional $1,000.00 for each person dependent upon me for support, but not to exceed $4,000.00 for dependents. I further understand that I am entitled to this amount after deducting from the value of the property the amount of any valid lien or security interest. Property purchased within ninety (90) days of this proceeding may not be exempt. *(Some examples of household goods would be TVs, appliances, furniture, clothing, radios, record players.)*

Item Of Property	**Fair Market Value** *(What You Could Sell It For)*	**Amount Of Lien Or Security Interest** *(Amount Owed On Property)*	**Name(s) Of Lienholder(s)** *(To Whom Money Is Owed)*	**Value Of Debtor's (Defendant's) Interest** *(Fair Market Value Less Amount Owed)*
	$	$		$
	$	$		$
	$	$		$

7. I wish to claim my interest in the following motor vehicle as exempt from the claims of my creditors. I understand that I am entitled to my interest in one motor vehicle worth the sum of $3,500.00 after deduction of any valid liens or security interests. I understand that a motor vehicle purchased within ninety (90) days of this proceeding may not be exempt.

Make And Model	*Year*	*Name Of Title Owner Of Record*
Fair Market Value (What You Could Sell It For) $		*Name(s) Of Lienholder(s) Of Record (Person(s) To Whom Money Is Owed)*
Amount Of Liens (Amount Owed) $		*Value Of Debtor's (Defendant's) Interest (Fair Market Value Less Amount Owed)* $

8. *(This item is to claim any other property you own that you wish to exempt.)* I wish to claim the following property as exempt because I claimed residential real or personal property as exempt that is worth less than $35,000.00, or I made no claim for a residential exemption under section (5) above. I understand that I am entitled to an exemption of up to $5,000.00 on any property only if I made no claim under section (5) or a claim that was less than $35,000.00 under Section (5). I understand that I am entitled to claim any unused amount that I was permitted to take under section (5) up to a maximum of $5,000.00 in any property. *(Examples: If you claim $34,000 under section (5), $1,000 allowed here; if you claim $30,000 under section (5), $5,000 allowed here; if you claim $35,000 under section (5), no claim allowed here.)* I further understand that the amount of my claim under this section is after the deduction from the value of this property of the amount of any valid lien or security interests and that tangible personal property purchased within ninety (90) days of this proceeding may not be exempt.

Item Of Personal Property Claimed	**Fair Market Value**	**Amount Of Lien(s)**	**Name(s) Of Lienholder(s)**	**Value Of Debtor's (Defendant's) Interest**
	$	$		$
	$	$		$
	$	$		$
	$	$		$

(Over)

VERSUS	File No.	
Name Of Judgment Creditor (Plaintiff)	Judgment Abstract No.	Date Judgment Filed

Real Property Claimed (I understand that if I wish to claim more than one parcel, I must attach additional pages setting forth the following information for each parcel claimed as exempt.)

Street Address		Estimated Value Of Property (What You Could Sell It For) $
County Where Property Located	Township	No. By Which Tax Assessor Identifies Property

Description (Attach a copy of your deed or other instrument of conveyance or describe the property in as much detail as possible.)

Name And Address Of Lienholder	Current Amount Owed $
Name And Address Of Lienholder	Current Amount Owed $

(Attach additional sheets for more lienholders.)

9. I wish to claim the following items of health care aid *(wheelchairs, hearing aids, etc.)* necessary for ☐ myself ☐ my dependents.

Item	Purpose

10. I wish to claim the following implements, professional books, or tools (not to exceed $2,000.00), of my trade or the trade of my dependent. I understand such property purchased within ninety (90) days of this proceeding may not be exempt.

Item	Estimated Value *(What You Could Sell It For)*	What Business Or Trade Used In
	$	
	$	
	$	

11. I wish to claim the following life insurance policies whose sole beneficiaries are my spouse and/or my children as exempt.

Name Of Insurer	Policy Number	Beneficiary(ies)

12. I wish to claim as exempt the following compensation that I received or to which I am entitled for the personal injury of myself or a person upon whom I was dependent for support, including compensation from a private disability policy or an annuity, or compensation that I received for the death of a person upon whom I was dependent for support. I understand that this compensation is not exempt from claims for funeral, legal, medical, dental, hospital or health care charges related to the accident or injury that resulted in the payment of the compensation to me. *(Add additional sheets if more than one amount of compensation.)*

Amount Of Compensation $	Method Of Payment: Lump Sum or Installments (If Installments, state amount, frequency, and duration of payments.)
Location/Source Of Compensation	

13. I wish to claim my individual retirement accounts, including Roth accounts, and individual retirement annuities (IRAs) that are listed below.

Name Of Custodian Of IRA Account	Type Of Account	Account Number
Name Of Custodian Of IRA Account	Type Of Account	Account Number
Name Of Custodian Of IRA Account	Type Of Account	Account Number
Name Of Custodian Of IRA Account	Type Of Account	Account Number

(Over)

14. I wish to claim the following funds I hold in a college savings plan that is qualified under section 529 of the Internal Revenue Code, not to exceed $25,000.00. I understand that the plan must be for my child and must actually be used for the child's college expenses. I understand that I may not exempt any funds I placed in this account within the preceding 12 months, except to the extent that any contributions were made in the ordinary course of my financial affairs and were consistent with my past pattern of contributions.

College Saving Plan	Account Number	Value	Name(s) Of Child(ren) Beneficiaries
		$	
		$	

15. I wish to claim the following retirement benefits to which I am entitled under the retirement plans of other states and governmental units of other states. I understand that these benefits are exempt only to the extent these benefits are exempt under the law of the state or governmental unit under which the benefit plan was established.

State/Governmental Unit	Name Of Retirement Plan	Identifying Number

16. I wish to claim as exempt any alimony, support, separate maintenance, or child support payments or funds that I have received or that I am entitled to receive. I understand that these payments are exempt only to the extent that they are reasonably necessary for my support or for the support of a person dependent on me for support.

Type Of Support	Person Paying Support	Amount Of Support	Location Of Funds
		$	
		$	
		$	

17. The following is a complete listing of my property which I do **NOT** claim as exempt.

Item	Location	Estimated Value
		$
		$
		$

18. I certify that the above statements are true.

Date	*Signature Of Judgment Debtor/Attorney For Debtor (Defendant)*

CERTIFICATE OF SERVICE

19. A copy of this Motion was served on the judgment creditor (plaintiff) by: ☐ delivering a copy to the judgment creditor (plaintiff) personally ☐ delivering a copy to _____, the judgment creditor's attorney. ☐ depositing a copy of this Motion in a post-paid, properly-addressed envelope in a post office, addressed to the judgment creditor (plaintiff) at the address shown on the notice of rights served on me. ☐ depositing a copy of this motion in a post-paid, properly-addressed envelope in a post office, addressed to the judgment creditor's (plaintiff's) attorney at the following address: _____.

Date	*Address And Phone Number Of Attorney For Debtor (Defendant)*
Signature Of Judgment Debtor/Attorney For Debtor (Defendant)	

STATE OF NORTH CAROLINA

_____ County

File No.

Film No.

In The General Court Of Justice

☐ District ☐ Superior Court Division ☐ Small Claims

Name Of Plaintiff/Petitioner	**ORDER**
VERSUS	
Name Of Defendant/Respondent	

☐ DISMISSAL ☐ With Prejudice ☐ Without Prejudice

This action is dismissed for the following reason:

☐ The plaintiff elected not to prosecute this action and has moved for dismissal.

☐ Neither the plaintiff, nor the defendant appeared on the scheduled trial date.

☐ The plaintiff failed to appear on the scheduled trial date; the defendant did appear on that date and has moved to dismiss this action.

☐ Other:

☐ DISCONTINUANCE [G.S. 1A-1, Rule 4(e)]

The defendant has never been served in this action, and more than ninety (90) days have elapsed since the last summons was issued.

☐ CONTINUANCE

The trial of this action is continued to the following date and time on motion of the

☐ Plaintiff

☐ Defendant

☐ Judge or Magistrate

☐ Other: *(specify)*

Date Of New Trial	*Time Of New Trial* ☐ AM ☐ PM	*Location Of New Trial*

☐ BANKRUPTCY

It is ordered that this action be removed from the active calendar and placed on inactive status because a petition for bankruptcy has been filed staying this proceeding. This action may be reinstated if the claim is not resolved in the U.S. Bankruptcy or District Courts.

Date	*Signature*	☐ *Judge* ☐ *Magistrate* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

AOC-G-108, Rev. 11/02

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice

Name And Address Of Plaintiff

VERSUS

Name And Address Of Defendant

SERVICEMEMBERS CIVIL RELIEF ACT AFFIDAVIT

50 U.S.C. 3901 to 4043

NOTE: *This form is not for use in Chapter 45 Foreclosure actions.*

AFFIDAVIT

I, the undersigned Affiant, under penalty of perjury declare the following to be true:

1. As of the current date: *(check one of the following)*
   - ☐ a. the defendant named above is in military service.*
   - ☐ b. the defendant named above is **not** in military service.*
   - ☐ c. I am unable to determine whether the defendant named above is in military service.*
2. *(check one or more of the following)*
   - ☐ a. I ☐ have ☐ have not used the Servicemembers Civil Relief Act Website (https://scra.dmdc.osd.mil/) to determine the defendant's military status. ☐ The results from my use of that website are attached.
     (**NOTE:** *The Servicemembers Civil Relief Act Website is a website maintained by the Department of Defense (DoD). If DoD security certificates are not installed on your computer, you may experience security alerts from your internet browser when you attempt to access the website. DoD security certificates were automatically added to the computers of all Judicial Branch users, such that these users should not expect security alerts to appear with this website after July of 2015. As of June 22, 2016, the Servicemembers Civil Relief Act Website includes the following advice: "Most web browsers don't come with the DoD certificates already installed. The best and most secure solution is for the user to install all of the DoD's public certificates in their web browser."*)
   - ☐ b. The following facts support my statement as to the defendant's military service: *(State how you know the defendant is not in the military. Be specific.)*

_____

_____

_____

_____

_____

_____

***NOTE:** *The term "military service" includes the following: active duty service as a member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; service as a member of the National Guard under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency; active service as a commissioned officer of the Public Health Service or of the National Oceanic and Atmospheric Administration; any period of service during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. 50 U.S.C. 3911(2).*

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME	*Date*
Date	*Signature Of Affiant*
Signature Of Person Authorized To Administer Oaths	*Name Of Affiant (type or print)*
☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court* ☐ *Magistrate*	
SEAL ☐ *Notary* — *Date My Commission Expires*	

NOTE TO COURT: ***Do not proceed to enter judgment in a non-criminal case in which the defendant has not made an appearance until a Servicemembers Civil Relief Act affidavit (whether on this form or not) has been filed, and if it appears that the defendant is in military service, do not proceed to enter judgment until such time that you have appointed an attorney to represent him or her.***

(Over)

AOC-G-250, Rev. 6/16

Information About Servicemembers Civil Relief Act Affidavits

1. Plaintiff to file affidavit

In any civil action or proceeding, including any child custody proceeding, in which the defendant does not make an appearance, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or

(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

50 U.S.C. 3931(b)(1).

2. Appointment of attorney to represent defendant in military service

If in a civil action or proceeding in which the defendant does not make an appearance it appears that the defendant is in military service, the court may not enter a judgment until after the court appoints an attorney to represent the defendant. If an attorney appointed to represent a service member cannot locate the service member, actions by the attorney in the case shall not waive any defense of the service member or otherwise bind the service member. 50 U.S.C. 3931(b)(2). State funds are not available to pay attorneys appointed pursuant to the Servicemembers Civil Relief Act. To comply with the federal Violence Against Women Act and in consideration of G.S. 50B-2(a), 50C-2(b), and 50D-2(b), plaintiffs in Chapter 50B, Chapter 50C, and Chapter 50D proceedings should not be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. Plaintiffs in other types of actions and proceedings may be required to pay the costs of attorneys appointed pursuant to the Servicemembers Civil Relief Act. The allowance or disallowance of the ordering of costs will require a case-specific analysis.

3. Defendant's military status not ascertained by affidavit

If based upon the affidavits filed in such an action, the court is unable to determine whether the defendant is in military service, the court, before entering judgment, may require the plaintiff to file a bond in an amount approved by the court. If the defendant is later found to be in military service, the bond shall be available to indemnify the defendant against any loss or damage the defendant may suffer by reason of any judgment for the plaintiff against the defendant, should the judgment be set aside in whole or in part. The bond shall remain in effect until expiration of the time for appeal and setting aside of a judgment under applicable Federal or State law or regulation or under any applicable ordinance of a political subdivision of a State. The court may issue such orders or enter such judgments as the court determines necessary to protect the rights of the defendant under this Act. 50 U.S.C. 3931(b)(3).

4. Satisfaction of requirement for affidavit

The requirement for an affidavit above may be satisfied by a statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury. 50 U.S.C. 3931(b)(4). The presiding judicial official will determine whether the submitted affidavit is sufficient.

5. Penalty for making or using false affidavit

A person who makes or uses an affidavit permitted under 50 U.S.C. 3931(b) (or a statement, declaration, verification, or certificate as authorized under 50 U.S.C. 3931(b)(4)) knowing it to be false, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both. 50 U.S.C. 3931(c).

AOC-G-250, Side Two, Rev. 6/16

STATE OF NORTH CAROLINA

_____ County

File No.

Scan No.(s) (official use only)

In The General Court Of Justice
☐ Small Claims ☐ District ☐ Superior Court Division

Name And Address Of Plaintiff

VERSUS

Name And Address Of Defendant 1

Name And Address Of Defendant 2

WRIT OF POSSESSION REAL PROPERTY

G.S. 1-313(4), 42-36.2

To The Sheriff Of _____ County:

A judgment in favor of the plaintiff was rendered in this case for the possession of the real property described below and you are commanded to remove the defendant(s) from, and put the plaintiff in possession of, those premises.

Description Of Property (include location)

Date Of Judgment

Date Writ Issued

Signature

☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*

(Over)

AOC-CV-401, Rev. 8/17

RETURN

☐ 1. This Writ Of Possession was served as follows:

- ☐ a. By removing the defendant(s) from the premises and putting the plaintiff in possession after giving notice of removal to the defendant(s) as required by law.
- ☐ b. By removing the defendant(s) from the premises and putting the plaintiff in possession after giving notice of removal to the defendant(s) as required by law. The defendant's(s') property was taken to the warehouse listed below for storage.
- ☐ c. By giving notice of removal to the defendant(s) as required by law and by leaving the defendant's(s') property on the premises and locking the premises in accordance with the written request of the plaintiff which is attached.
- ☐ d. By locking the premises after the undersigned sheriff received a signed statement from the landlord or the landlord's authorized agent, stating that the tenant's property can remain on the premises. *(attach signed statement)*

☐ 2. The undersigned sheriff received a signed statement from the landlord or the landlord's authorized agent, stating that the landlord does not want to eject the tenant because the tenant has paid all court costs charged to him/her and has satisfied his/her indebtedness to the landlord. As a result, this Writ Of Possession is being returned unexecuted. *(attach signed statement)*

☐ 3. I have failed to remove the defendant(s) from the premises for the following reason:

- ☐ a. The plaintiff verbally requested that the Writ be returned because the defendant(s) satisfied the obligation to the plaintiff.
- ☐ b. The plaintiff failed to advance the expenses of removal and one month's storage after being asked to do so.
- ☐ c. Other: *(specify)*

Name And Address Of Warehouse

Fee Paid $			*Signature Of Deputy Sheriff Making Return*
Fee Paid By (type or print)			*Name Of Deputy Sheriff Making Return (type or print)*
Date Received	*Date Executed*	*Date Returned*	*County Of Deputy Sheriff Making Return*

TAB 05:

Domestic Violence

LEGAL ISSUES IN DOMESTIC VIOLENCE

SOME BASIC INFORMATION ABOUT DOMESTIC VIOLENCE PROTECTIVE ORDERS[1]

G.S. Ch. 50B creates a special kind of civil action in which the relief sought is protection from injury by the defendant, in the form of a coercive order by a judge prohibiting the defendant from taking certain actions. If the defendant knowingly violates the order, he may be found in contempt of court for violation of a court order. As an alternative to being found in contempt, the defendant may be found guilty of the crime of violating a DVPO.

A special kind of DVPO is available to a plaintiff who fears that she may be injured during the interval between filing the complaint and the time the hearing is held. What statistical fact suggests that this concern of plaintiffs is often well-founded?

_____

A person seeking a DVPO has the option of asking for an **ex parte DVPO** as well. An ex parte DVPO is a protective order already in place before the defendant learns that the victim has filed for a DVPO. An ex parte DVPO is issued following a hearing conducted in the absence of the defendant. What concern does this raise in your mind?

_____

Magistrates never issue DVPOs, but in some counties magistrates are authorized to determine whether an ex parte DVPO should issue. Authorized magistrates may conduct hearings on requests for ex parte DVPOs only if (1) district court is not in session, and (2) no district court judge will be available to conduct the hearing for at least four hours.

Has your chief district court judge authorized magistrates to issue ex parte DVPO's?

___ Never
___ Only during conferences or other relatively rare occasions
___ Theoretically, but we are strongly urged to use criminal charges when possible
___ Yes

[1] This outline refers to the victim of domestic violence as "the plaintiff" or "she", and the perpetrator of domestic violence as "the defendant" or "he", but any of these terms may be inaccurate in a specific case. The terms are used consistently in order to avoid confusion, and were chosen because they are accurate in the majority of cases. In fact, though, a significant minority of victims of domestic violence are male. And because a person may seek a DVPO either by filing a civil action or by filing a motion in an already-existent civil action, that person may be a plaintiff or a defendant.

An ex parte DVPO issued by a magistrate is valid until midnight of the next day district court is in session. A district court judge will conduct another ex parte hearing when court is back in session.

The "permanent" hearing on plaintiff's request for a DVPO is referred to as the "10 day hearing," After defendant is served with the complaint, a full hearing is conducted on whether plaintiff is entitled to a DVPO and, if so, what provisions the order should contain. The order entered by the district court judge after hearing the evidence is valid for one year, and may be extended at the end of that time for up to two years.

A DVPO is available only to parties involved in a **type of personal relationship** specified in the statute. These relationships are:

--current or former spouses

--persons of the opposite sex who live together or have lived together

--parents and children,[2] and grandparents and grandchildren. NOTE: no DVPO may issue under this section against a child under the age of 16.

--persons having a child in common

--current or former household members

--persons of the opposite sex who are or have been in a dating relationship.[3]

[2] Including those acting *in loco parentis* to a minor child.
[3] A dating relationship is defined as a relationship in which the parties are romantically involved over time and on a continuous basis over the course of the relationship.

A DVPO is available only against a person who **has done one of the following things** to the plaintiff, or to a child who lives with the plaintiff:

--He tried to cause physical injury;

--He intentionally caused physical injury;

--He behaved in a way that caused the plaintiff, a member of her family, or a member of her household, to be afraid of imminent serious bodily injury;

-- He behaved in a way that caused the plaintiff, a member of her family, or a member of her household, to be afraid that defendant will continue to terrorize that person to such a degree that the person experiences significant mental suffering. This behavior must be intentional on the part of the defendant, and it must have no legitimate purpose.[4] The statute refers to this behavior as **harassment.**

--He committed any act defined as rape or sexual offense in GS 14-27.2 to 14-27.7.

_____

_____

_____

If a magistrate finds that an act of domestic violence did in fact occur (i.e., the defendant committed one of the acts listed above against a person in a personal relationship protected by the statute), the magistrate MUST grant an ex parte DVPO, ordering that the defendant refrain from acts of domestic violence. And the magistrate must do one other thing as well: the magistrate must question the plaintiff about defendant's ownership or access to firearms. (Does the defendant have access? Does the defendant own or have access to ammunition? A permit to purchase firearms? A permit to carry a concealed firearm?)

_____

_____

_____

The magistrate must ask about the information above in every case, but in some cases the magistrate is required to go further and specifically order the defendant to turn over to the sheriff all guns, ammunition, and permits within his custody or control. This order is mandatory if any of the following factors are present:

[4] The statute specifically states that this behavior may include, among other things, written communication, telephone calls (including voice mail), email, faxes, and pager messages.

1) The defendant has at some time in the past used or threatened to use a deadly weapon.

2) The defendant has a pattern of prior conduct involving the use or threatened use of violence with a firearm against people.

3) The defendant has made threats to seriously injure or kill the plaintiff or minor child.

4) The defendant has threatened suicide.

5) The defendant has inflicted serious injuries on the plaintiff or minor child.

_____

_____

_____

_____

_____

_____

The magistrate has authority to grant a wide range of additional relief to the plaintiff, depending on the particular circumstances of the case. These remedies include

1) granting the plaintiff possession of the parties' shared residence, and ordering the defendant to leave the home;
2) determining which party has the right to possession of personal property during the time the order is effective, including possession of family pets; and
3) ordering the defendant to stay away from the plaintiff, as well as specific places such as the plaintiff's workplace and homes of family members.

_____

_____

_____

The magistrate is often asked to make a determination of temporary custody of minor children residing with one or both parties. The magistrate is explicitly prohibited by GS 50B-2(c)(1) from doing this, unless the magistrate finds that . . .

> . . . the child is exposed to a substantial risk of physical or emotional injury or sexual abuse.

If a magistrate makes this finding, s/he may then go on to order that the defendant stay away from the minor child, return the child to the plaintiff, or not remove the child from the plaintiff. In support of this order, the magistrate must make a formal finding that the order is necessary for the child's safety.

ANSWERING QUESTIONS ABOUT DVPO'S

Every magistrate should know the answers to the following questions, and those answers sometimes vary from one county to the next—and one magistrate to the next, depending on your personality, the shift you're working, and other circumstances. Magistrates should be guided by two fundamental principles in responding to these questions:

Providing information to citizens about the court system's response to domestic violence is an important part of your job;

and

You have a responsibility to be certain that the information you provide is accurate.

1. How do I get a DVPO?
2. Why should I consider a DVPO?
3. How much does it cost?
4. What do I have to prove to get one?
5. What if my spouse violates the order?
6. How long will it last?
7. Can I get one for my kids and family too?
8. Do I need a lawyer to get one?
9. Is there anyone that can help me fill out the forms?
10. When will my spouse find out about it?

List other questions you've heard or can think of:

11. _____

12. _____

13. _____

In many counties, the clerk's office or local agency offering assistance to domestic violence has prepared brochures or other handouts providing victims with answers to these questions. In every case, the magistrate should be certain that the citizen is informed that **there are no court costs** associated with seeking a DVPO , and that an attorney is not necessary to access these services.

Chapter 50B.

Domestic Violence.

§ 50B-1. Domestic violence; definition.

(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:

(1) Attempting to cause bodily injury, or intentionally causing bodily injury; or

(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3A, that rises to such a level as to inflict substantial emotional distress; or

(3) Committing any act defined in G.S. 14-27.21 through G.S. 14-27.33.

(b) For purposes of this section, the term "personal relationship" means a relationship wherein the parties involved:

(1) Are current or former spouses;

(2) Are persons of opposite sex who live together or have lived together;

(3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;

(4) Have a child in common;

(5) Are current or former household members;

(6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

(c) As used in this Chapter, the term "protective order" includes any order entered pursuant to this Chapter upon hearing by the court or consent of the parties. (1979, c. 561, s. 1; 1985, c. 113, s. 1; 1987, c. 828; 1987 (Reg. Sess., 1988), c. 893, ss. 1, 3; 1995 (Reg. Sess., 1996), c. 591, s. 1; 1997-471, s. 1; 2001-518, s. 3; 2003-107, s. 1; 2009-58, s. 5; 2015-181, s. 36.)

§ 50B-2. Institution of civil action; motion for emergency relief; temporary orders; temporary custody.

(a) Any person residing in this State may seek relief under this Chapter by filing a civil action or by filing a motion in any existing action filed under Chapter 50 of the General Statutes alleging acts of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person. Any aggrieved party entitled to relief under this Chapter may file a civil action and proceed pro se, without the assistance of legal counsel. The district court division of the General Court of Justice shall have original jurisdiction over actions instituted under this Chapter. Any action for a domestic violence protective order requires that a summons be issued and served. The summons issued pursuant to this Chapter shall require the defendant to answer within 10 days of the date of service. Attachments to the summons shall include the complaint, notice of hearing, any temporary or ex parte order that has been issued, and other papers through the appropriate law enforcement agency where the defendant is to be served. In compliance with the federal Violence Against Women Act, no court costs or attorneys' fees shall be assessed for the filing, issuance,

registration, or service of a protective order or petition for a protective order or witness subpoena, except as provided in G.S. 1A-1, Rule 11.

(b) Emergency Relief. - A party may move the court for emergency relief if he or she believes there is a danger of serious and immediate injury to himself or herself or a minor child. A hearing on a motion for emergency relief, where no ex parte order is entered, shall be held after five days' notice of the hearing to the other party or after five days from the date of service of process on the other party, whichever occurs first, provided, however, that no hearing shall be required if the service of process is not completed on the other party. If the party is proceeding pro se and does not request an ex parte hearing, the clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served.

(c) Ex Parte Orders. -

(1) Prior to the hearing, if it clearly appears to the court from specific facts shown, that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the court may enter orders as it deems necessary to protect the aggrieved party or minor children from those acts.

(2) A temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the court finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse.

(3) If the court finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the court shall consider and may order the other party to (i) stay away from a minor child, or (ii) return a minor child to, or not remove a minor child from, the physical care of a parent or person in loco parentis, if the court finds that the order is in the best interest of the minor child and is necessary for the safety of the minor child.

(4) If the court determines that it is in the best interest of the minor child for the other party to have contact with the minor child or children, the court shall issue an order designed to protect the safety and well-being of the minor child and the aggrieved party. The order shall specify the terms of contact between the other party and the minor child and may include a specific schedule of time and location of exchange of the minor child, supervision by a third party or supervised visitation center, and any other conditions that will ensure both the well-being of the minor child and the aggrieved party.

(5) Upon the issuance of an ex parte order under this subsection, a hearing shall be held within 10 days from the date of issuance of the order or within seven days from the date of service of process on the other party, whichever occurs later. A continuance shall be limited to one extension of no more than 10 days unless all parties consent or good cause is shown. The hearing shall have priority on the court calendar.

(6) If an aggrieved party acting pro se requests ex parte relief, the clerk of superior court shall schedule an ex parte hearing with the district court division of the General Court of Justice within 72 hours of the filing for said relief, or by the end of the next day on which the district court is in session in the county in which the action was filed, whichever shall first occur. If the district court is not in session in said county, the aggrieved party may contact the clerk of superior court in any other county within the same judicial district who shall schedule an ex parte hearing with the district court division of the General Court of Justice by the end of the next day on which said court division is in session in that county.

(7) Upon the issuance of an ex parte order under this subsection, if the party is proceeding pro se, the Clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, order and other papers through the appropriate law enforcement agency where the defendant is to be served.

(c1) Ex Parte Orders by Authorized Magistrate. - The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex parte the district court is not in session and a district court judge is not and will not be available to hear the motion for a period of four or more hours, the motion may be heard by the magistrate. If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate may enter orders as it deems necessary to protect the aggrieved party or minor children from those acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse. If the magistrate finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the magistrate shall consider and may order the other party to stay away from a minor child, or to return a minor child to, or not remove a minor child from, the physical care of a parent or person in loco parentis, if the magistrate finds that the order is in the best interest of the minor child and is necessary for the safety of the minor child. If the magistrate determines that it is in the best interest of the minor child for the other party to have contact with the minor child or children, the magistrate shall issue an order designed to protect the safety and well-being of the minor child and the aggrieved party. The order shall specify the terms of contact between the other party and the minor child and may include a specific schedule of time and location of exchange of the minor child, supervision by a third party or supervised visitation center, and any other conditions that will ensure both the well-being of the minor child and the aggrieved party. An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge by the end of the next day on which the district court is in session in the county in which the action was filed. Ex parte orders entered by the district court judge pursuant to this subsection shall be entered and scheduled in accordance with subsection (c) of this section.

(c2) The authority granted to authorized magistrates to award temporary child custody pursuant to subsection (c1) of this section and pursuant to G.S. 50B-3(a)(4) is granted subject to custody rules to be established by the supervising chief district judge of each judicial district.

(d) Pro Se Forms. - The clerk of superior court of each county shall provide to pro se complainants all forms that are necessary or appropriate to enable them to proceed pro se pursuant to this section. The clerk shall, whenever feasible, provide a private area for complainants to fill out forms and make inquiries. The clerk shall provide a supply of pro se forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section.

(e) All documents filed, issued, registered, or served in an action under this Chapter relating to an ex parte, emergency, or permanent domestic violence protective order may be filed electronically. Hearings held to consider ex parte relief pursuant to subsection (c) of this section may be held via video conference. Hearings held to consider emergency or permanent relief pursuant to subsections (a) or (b) of this section shall not be held via video conference. (1979, c. 561, s. 1; 1985, c. 113, ss. 2, 3; 1987 (Reg. Sess., 1988), c. 893, s. 2; 1989, c. 461, s. 1; 1994, Ex. Sess., c. 4, s. 1; 1997-471, s. 2; 2001-518, s. 4; 2002-126, s. 29A.6(a); 2004-186, ss. 17.2, 19.1; 2009-342, s. 2; 2012-20, s. 1; 2013-390, s. 1; 2015-62, s. 3(b).)

§ 50B-3. Relief.

(a) If the court, including magistrates as authorized under G.S. 50B-2(c1), finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence. A protective order may include any of the following types of relief:

(1) Direct a party to refrain from such acts.

(2) Grant to a party possession of the residence or household of the parties and exclude the other party from the residence or household.

(3) Require a party to provide a spouse and his or her children suitable alternate housing.

(4) Award temporary custody of minor children and establish temporary visitation rights pursuant to G.S. 50B-2 if the order is granted ex parte, and pursuant to subsection (a1) of this section if the order is granted after notice or service of process.

(5) Order the eviction of a party from the residence or household and assistance to the victim in returning to it.

(6) Order either party to make payments for the support of a minor child as required by law.

(7) Order either party to make payments for the support of a spouse as required by law.

(8) Provide for possession of personal property of the parties, including the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

(9) Order a party to refrain from doing any or all of the following:

a. Threatening, abusing, or following the other party.

b. Harassing the other party, including by telephone, visiting the home or workplace, or other means.

b1. Cruelly treating or abusing an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

c. Otherwise interfering with the other party.

(10) Award attorney's fees to either party.

(11) Prohibit a party from purchasing a firearm for a time fixed in the order.

(12) Order any party the court finds is responsible for acts of domestic violence to attend and complete an abuser treatment program if the program is approved by the Domestic Violence Commission.

(13) Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child.

(a1) Upon the request of either party at a hearing after notice or service of process, the court shall consider and may award temporary custody of minor children and establish temporary visitation rights as follows:

(1) In awarding custody or visitation rights, the court shall base its decision on the best interest of the minor child with particular consideration given to the safety of the minor child.

(2) For purposes of determining custody and visitation issues, the court shall consider:

a. Whether the minor child was exposed to a substantial risk of physical or emotional injury or sexual abuse.

b. Whether the minor child was present during acts of domestic violence.

c. Whether a weapon was used or threatened to be used during any act of domestic violence.

d. Whether a party caused or attempted to cause serious bodily injury to the aggrieved party or the minor child.

e. Whether a party placed the aggrieved party or the minor child in reasonable fear of imminent serious bodily injury.
f. Whether a party caused an aggrieved party to engage involuntarily in sexual relations by force, threat, or duress.
g. Whether there is a pattern of abuse against an aggrieved party or the minor child.
h. Whether a party has abused or endangered the minor child during visitation.
i. Whether a party has used visitation as an opportunity to abuse or harass the aggrieved party.
j. Whether a party has improperly concealed or detained the minor child.
k. Whether a party has otherwise acted in a manner that is not in the best interest of the minor child.

(3) If the court awards custody, the court shall also consider whether visitation is in the best interest of the minor child. If ordering visitation, the court shall provide for the safety and well-being of the minor child and the safety of the aggrieved party. The court may consider any of the following:

a. Ordering an exchange of the minor child to occur in a protected setting or in the presence of an appropriate third party.
b. Ordering visitation supervised by an appropriate third party, or at a supervised visitation center or other approved agency.
c. Ordering the noncustodial parent to attend and complete, to the satisfaction of the court, an abuser treatment program as a condition of visitation.
d. Ordering either or both parents to abstain from possession or consumption of alcohol or controlled substances during the visitation or for 24 hours preceding an exchange of the minor child.
e. Ordering the noncustodial parent to pay the costs of supervised visitation.
f. Prohibiting overnight visitation.
g. Requiring a bond from the noncustodial parent for the return and safety of the minor child.
h. Ordering an investigation or appointment of a guardian ad litem or attorney for the minor child.
i. Imposing any other condition that is deemed necessary to provide for the safety and well-being of the minor child and the safety of the aggrieved party.

If the court grants visitation, the order shall specify dates and times for the visitation to take place or other specific parameters or conditions that are appropriate. A person, supervised visitation center, or other agency may be approved to supervise visitation after appearing in court or filing an affidavit accepting that responsibility and acknowledging accountability to the court.

(4) A temporary custody order entered pursuant to this Chapter shall be without prejudice and shall be for a fixed period of time not to exceed one year. Nothing in this section shall be construed to affect the right of the parties to a de novo hearing under Chapter 50 of the General Statutes. Any subsequent custody order entered under Chapter 50 of the General Statutes supersedes a temporary order issued pursuant to this Chapter.

(b) Protective orders entered pursuant to this Chapter shall be for a fixed period of time not to exceed one year. The court may renew a protective order for a fixed period of time not to exceed two years, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current order; provided, however, that a temporary award of custody

entered as part of a protective order may not be renewed to extend a temporary award of custody beyond the maximum one-year period. The court may renew a protective order for good cause. The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the current order is not required for an order to be renewed. Protective orders entered, including consent orders, shall not be mutual in nature except where both parties file a claim and the court makes detailed findings of fact indicating that both parties acted as aggressors, that neither party acted primarily in self-defense, and that the right of each party to due process is preserved.

(b1) A consent protective order may be entered pursuant to this Chapter without findings of fact and conclusions of law if the parties agree in writing that no findings of fact and conclusions of law will be included in the consent protective order. The consent protective order shall be valid and enforceable and shall have the same force and effect as a protective order entered with findings of fact and conclusions of law.

(c) A copy of any order entered and filed under this Article shall be issued to each party. Law enforcement agencies shall accept receipt of copies of the order issued by the clerk of court by electronic or facsimile transmission for service on defendants. In addition, a copy of the order shall be issued promptly to and retained by the police department of the city of the victim's residence. If the victim does not reside in a city or resides in a city with no police department, copies shall be issued promptly to and retained by the sheriff, and the county police department, if any, of the county in which the victim resides. If the defendant is ordered to stay away from the child's school, a copy of the order shall be delivered promptly by the sheriff to the principal or, in the principal's absence, the assistant principal or the principal's designee of each school named in the order.

(c1) When a protective order issued under this Chapter is filed with the Clerk of Superior Court, the clerk shall provide to the applicant an informational sheet developed by the Administrative Office of the Courts that includes:

(1) Domestic violence agencies and services.
(2) Sexual assault agencies and services.
(3) Victims' compensation services.
(4) Legal aid services.
(5) Address confidentiality services.
(6) An explanation of the plaintiff's right to apply for a permit under G.S. 14-415.15.

(d) The sheriff of the county where a domestic violence order is entered shall provide for prompt entry of the order into the National Crime Information Center registry and shall provide for access of such orders to magistrates on a 24-hour-a-day basis. Modifications, terminations, renewals, and dismissals of the order shall also be promptly entered. (1979, c. 561, s. 1; 1985, c. 463; 1994, Ex. Sess., c. 4, s. 2; 1995, c. 527, s. 1; 1995 (Reg. Sess., 1996), c. 591, s. 2; c. 742, s. 42.1.; 1999-23, s. 1; 2000-125, s. 9; 2002-105, s. 2; 2002-126, s. 29A.6(b); 2003-107, s. 2; 2004-186, ss. 17.3-17.5; 2005-343, s. 2; 2005-423, s. 1; 2007-116, s. 3; 2009-425, s. 1; 2013-237, s. 1; 2015-176, s. 1.)

§ 50B-3.1. Surrender and disposal of firearms; violations; exemptions.

(a) Required Surrender of Firearms. - Upon issuance of an emergency or ex parte order pursuant to this Chapter, the court shall order the defendant to surrender to the sheriff all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant if the court finds any of the following factors:

(1) The use or threatened use of a deadly weapon by the defendant or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons.
(2) Threats to seriously injure or kill the aggrieved party or minor child by the defendant.

(3) Threats to commit suicide by the defendant.

(4) Serious injuries inflicted upon the aggrieved party or minor child by the defendant.

(b) Ex Parte or Emergency Hearing. - The court shall inquire of the plaintiff, at the ex parte or emergency hearing, the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(c) Ten-Day Hearing. - The court, at the 10-day hearing, shall inquire of the defendant the presence of, ownership of, or otherwise access to firearms by the defendant, as well as ammunition, permits to purchase firearms, and permits to carry concealed firearms, and include, whenever possible, identifying information regarding the description, number, and location of firearms, ammunition, and permits in the order.

(d) Surrender. - Upon service of the order, the defendant shall immediately surrender to the sheriff possession of all firearms, machine guns, ammunition, permits to purchase firearms, and permits to carry concealed firearms that are in the care, custody, possession, ownership, or control of the defendant. In the event that weapons cannot be surrendered at the time the order is served, the defendant shall surrender the firearms, ammunitions, and permits to the sheriff within 24 hours of service at a time and place specified by the sheriff. The sheriff shall store the firearms or contract with a licensed firearms dealer to provide storage.

(1) If the court orders the defendant to surrender firearms, ammunition, and permits, the court shall inform the plaintiff and the defendant of the terms of the protective order and include these terms on the face of the order, including that the defendant is prohibited from possessing, purchasing, or receiving or attempting to possess, purchase, or receive a firearm for so long as the protective order or any successive protective order is in effect. The terms of the order shall include instructions as to how the defendant may request retrieval of any firearms, ammunition, and permits surrendered to the sheriff when the protective order is no longer in effect. The terms shall also include notice of the penalty for violation of G.S. 14-269.8.

(2) The sheriff may charge the defendant a reasonable fee for the storage of any firearms and ammunition taken pursuant to a protective order. The fees are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer. The fees shall be used by the sheriff to pay the costs of administering this section and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only. The sheriff shall not release firearms, ammunition, or permits without a court order granting the release. The defendant must remit all fees owed prior to the authorized return of any firearms, ammunition, or permits. The sheriff shall not incur any civil or criminal liability for alleged damage or deterioration due to storage or transportation of any firearms or ammunition held pursuant to this section.

(e) Retrieval. - If the court does not enter a protective order when the ex parte or emergency order expires, the defendant may retrieve any weapons surrendered to the sheriff unless the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order.

(f) Motion for Return. - The defendant may request the return of any firearms, ammunition, or permits surrendered by filing a motion with the court at the expiration of the current order or final disposition of any pending criminal charges committed against the person that is the subject of the current protective order and not later than 90 days after the expiration of the current order or final disposition of any pending criminal charges committed against the person that is the subject of the

current protective order. Upon receipt of the motion, the court shall schedule a hearing and provide written notice to the plaintiff who shall have the right to appear and be heard and to the sheriff who has control of the firearms, ammunition, or permits. The court shall determine whether the defendant is subject to any State or federal law or court order that precludes the defendant from owning or possessing a firearm. The inquiry shall include:

(1) Whether the protective order has been renewed.
(2) Whether the defendant is subject to any other protective orders.
(3) Whether the defendant is disqualified from owning or possessing a firearm pursuant to 18 U.S.C. § 922 or any State law.
(4) Whether the defendant has any pending criminal charges, in either State or federal court, committed against the person that is the subject of the current protective order.

The court shall deny the return of firearms, ammunition, or permits if the court finds that the defendant is precluded from owning or possessing a firearm pursuant to State or federal law or if the defendant has any pending criminal charges, in either State or federal court, committed against the person that is the subject of the current protective order until the final disposition of those charges.

(g) Motion for Return by Third-Party Owner. - A third-party owner of firearms, ammunition, or permits who is otherwise eligible to possess such items may file a motion requesting the return to said third party of any such items in the possession of the sheriff seized as a result of the entry of a domestic violence protective order. The motion must be filed not later than 30 days after the seizure of the items by the sheriff. Upon receipt of the third party's motion, the court shall schedule a hearing and provide written notice to all parties and the sheriff. The court shall order return of the items to the third party unless the court determines that the third party is disqualified from owning or possessing said items pursuant to State or federal law. If the court denies the return of said items to the third party, the items shall be disposed of by the sheriff as provided in subsection (h) of this section.

(h) Disposal of Firearms. - If the defendant does not file a motion requesting the return of any firearms, ammunition, or permits surrendered within the time period prescribed by this section, if the court determines that the defendant is precluded from regaining possession of any firearms, ammunition, or permits surrendered, or if the defendant or third-party owner fails to remit all fees owed for the storage of the firearms or ammunition within 30 days of the entry of the order granting the return of the firearms, ammunition, or permits, the sheriff who has control of the firearms, ammunition, or permits shall give notice to the defendant, and the sheriff shall apply to the court for an order of disposition of the firearms, ammunition, or permits. The judge, after a hearing, may order the disposition of the firearms, ammunition, or permits in one or more of the ways authorized by law, including subdivision (4), (4b), (5), or (6) of G.S. 14-269.1. If a sale by the sheriff does occur, any proceeds from the sale after deducting any costs associated with the sale, and in accordance with all applicable State and federal law, shall be provided to the defendant, if requested by the defendant by motion made before the hearing or at the hearing and if ordered by the judge.

(i) It is unlawful for any person subject to a protective order prohibiting the possession or purchase of firearms to:

(1) Fail to surrender all firearms, ammunition, permits to purchase firearms, and permits to carry concealed firearms to the sheriff as ordered by the court;
(2) Fail to disclose all information pertaining to the possession of firearms, ammunition, and permits to purchase and permits to carry concealed firearms as requested by the court; or
(3) Provide false information to the court pertaining to any of these items.

(j) Violations. - In accordance with G.S. 14-269.8, it is unlawful for any person to possess, purchase, or receive or attempt to possess, purchase, or receive a firearm, as defined in G.S. 14-409.39(2), machine gun, ammunition, or permits to purchase or carry concealed firearms if ordered by

the court for so long as that protective order or any successive protective order entered against that person pursuant to this Chapter is in effect. Any defendant violating the provisions of this section shall be guilty of a Class H felony.

(k) Official Use Exemption. - This section shall not prohibit law enforcement officers and members of any branch of the Armed Forces of the United States, not otherwise prohibited under federal law, from possessing or using firearms for official use only.

(l) Nothing in this section is intended to limit the discretion of the court in granting additional relief as provided in other sections of this Chapter. (2003-410, s. 1; 2004-203, s. 34(a); 2005-287, s. 4; 2005-423, ss. 2, 3; 2011-183, s. 40; 2011-268, ss. 23, 24.)

§ 50B-4. Enforcement of orders.

(a) A party may file a motion for contempt for violation of any order entered pursuant to this Chapter. This party may file and proceed with that motion pro se, using forms provided by the clerk of superior court or a magistrate authorized under G.S. 50B-2(c1). Upon the filing pro se of a motion for contempt under this subsection, the clerk, or the authorized magistrate, if the facts show clearly that there is danger of acts of domestic violence against the aggrieved party or a minor child and the motion is made at a time when the clerk is not available, shall schedule and issue notice of a show cause hearing with the district court division of the General Court of Justice at the earliest possible date pursuant to G.S. 5A-23. The Clerk, or the magistrate in the case of notice issued by the magistrate pursuant to this subsection, shall effect service of the motion, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served.

(b) Repealed by Session Laws 1999-23, s. 2, effective February 1, 2000.

(c) A valid protective order entered pursuant to this Chapter shall be enforced by all North Carolina law enforcement agencies without further order of the court.

(d) A valid protective order entered by the courts of another state or the courts of an Indian tribe shall be accorded full faith and credit by the courts of North Carolina whether or not the order has been registered and shall be enforced by the courts and the law enforcement agencies of North Carolina as if it were an order issued by a North Carolina court. In determining the validity of an out-of-state order for purposes of enforcement, a law enforcement officer may rely upon a copy of the protective order issued by another state or the courts of an Indian tribe that is provided to the officer and on the statement of a person protected by the order that the order remains in effect. Even though registration is not required, a copy of a protective order may be registered in North Carolina by filing with the clerk of superior court in any county a copy of the order and an affidavit by a person protected by the order that to the best of that person's knowledge the order is presently in effect as written. Notice of the registration shall not be given to the defendant. Upon registration of the order, the clerk shall promptly forward a copy to the sheriff of that county. Unless the issuing state has already entered the order, the sheriff shall provide for prompt entry of the order into the National Crime Information Center registry pursuant to G.S. 50B-3(d).

(e) Upon application or motion by a party to the court, the court shall determine whether an out-of-state order remains in full force and effect.

(f) The term "valid protective order," as used in subsections (c) and (d) of this section, shall include an emergency or ex parte order entered under this Chapter. (1979, c. 561, s. 1; 1985, c. 113, s. 4; 1987, c. 739, s. 6; 1989, c. 461, s. 2; 1994, Ex. Sess., c. 4, s. 3; 1995 (Reg. Sess., 1996), c. 591, s. 3; 1999-23, s. 2; 2002-126, s. 29A.6(c); 2003-107, s. 3; 2009-342, s. 4.)

§ 50B-4.1. Violation of valid protective order.

(a) Except as otherwise provided by law, a person who knowingly violates a valid protective order entered pursuant to this Chapter or who knowingly violates a valid protective order entered by the courts of another state or the courts of an Indian tribe shall be guilty of a Class A1 misdemeanor.

(b) A law enforcement officer shall arrest and take a person into custody, with or without a warrant or other process, if the officer has probable cause to believe that the person knowingly has violated a valid protective order excluding the person from the residence or household occupied by a victim of domestic violence or directing the person to refrain from doing any or all of the acts specified in G.S. 50B-3(a)(9).

(c) When a law enforcement officer makes an arrest under this section without a warrant, and the party arrested contests that the out-of-state order or the order issued by an Indian court remains in full force and effect, the party arrested shall be promptly provided with a copy of the information applicable to the party which appears on the National Crime Information Center registry by the sheriff of the county in which the arrest occurs.

(d) Unless covered under some other provision of law providing greater punishment, a person who commits a felony at a time when the person knows the behavior is prohibited by a valid protective order as provided in subsection (a) of this section shall be guilty of a felony one class higher than the principal felony described in the charging document. This subsection shall not apply to convictions of a Class A or B1 felony or to convictions of the offenses set forth in subsection (f) or subsection (g) of this section.

(e) An indictment or information that charges a person with committing felonious conduct as described in subsection (d) of this section shall also allege that the person knowingly violated a valid protective order as described in subsection (a) of this section in the course of the conduct constituting the underlying felony. In order for a person to be punished as described in subsection (d) of this section, a finding shall be made that the person knowingly violated the protective order in the course of conduct constituting the underlying felony.

(f) Unless covered under some other provision of law providing greater punishment, any person who knowingly violates a valid protective order as provided in subsection (a) of this section, after having been previously convicted of two offenses under this Chapter, shall be guilty of a Class H felony.

(g) Unless covered under some other provision of law providing greater punishment, any person who, while in possession of a deadly weapon on or about his or her person or within close proximity to his or her person, knowingly violates a valid protective order as provided in subsection (a) of this section by failing to stay away from a place, or a person, as so directed under the terms of the order, shall be guilty of a Class H felony.

(g1) Unless covered under some other provision of law providing greater punishment, any person who is subject to a valid protective order, as provided in subsection (a) of this section, who enters property operated as a safe house or haven for victims of domestic violence, where a person protected under the order is residing, shall be guilty of a Class H felony. A person violates this subsection regardless of whether the person protected under the order is present on the property.

(h) For the purposes of this section, the term "valid protective order" shall include an emergency or ex parte order entered under this Chapter. (1997-471, s. 3; 1997-456, s. 27; 1999-23, s. 4; 2001-518, s. 5; 2007-190, s. 1; 2008-93, s. 1; 2009-342, s. 5; 2009-389, s. 2; 2010-5, s. 1; 2015-91, s. 3.)

§ 50B-4.2. False statement regarding protective order a misdemeanor.

A person who knowingly makes a false statement to a law enforcement agency or officer that a protective order entered pursuant to this Chapter or by the courts of another state or Indian tribe remains in effect shall be guilty of a Class 2 misdemeanor. (1999-23, s. 5.)

§ 50B-5. Emergency assistance.

(a) A person who alleges that he or she or a minor child has been the victim of domestic violence may request the assistance of a local law enforcement agency. The local law enforcement

agency shall respond to the request for assistance as soon as practicable. The local law enforcement officer responding to the request for assistance may take whatever steps are reasonably necessary to protect the complainant from harm and may advise the complainant of sources of shelter, medical care, counseling and other services. Upon request by the complainant and where feasible, the law enforcement officer may transport the complainant to appropriate facilities such as hospitals, magistrates' offices, or public or private facilities for shelter and accompany the complainant to his or her residence, within the jurisdiction in which the request for assistance was made, so that the complainant may remove food, clothing, medication and such other personal property as is reasonably necessary to enable the complainant and any minor children who are presently in the care of the complainant to remain elsewhere pending further proceedings.

(b) In providing the assistance authorized by subsection (a), no officer may be held criminally or civilly liable on account of reasonable measures taken under authority of subsection (a). (1979, c. 561, s. 1; 1985, c. 113, s. 5; 1999-23, s. 6.)

§ 50B-5.5. Employment discrimination unlawful.

(a) No employer shall discharge, demote, deny a promotion, or discipline an employee because the employee took reasonable time off from work to obtain or attempt to obtain relief under this Chapter. An employee who is absent from the workplace shall follow the employer's usual time-off policy or procedure, including advance notice to the employer, when required by the employer's usual procedures, unless an emergency prevents the employee from doing so. An employer may require documentation of any emergency that prevented the employee from complying in advance with the employer's usual time-off policy or procedure, or any other information available to the employee which supports the employee's reason for being absent from the workplace.

(b) The Commissioner of Labor shall enforce the provisions of this section according to Article 21 of Chapter 95 of the General Statutes, including the rules and regulations issued pursuant to the Article. (2004-186, s. 18.1.)

§ 50B-6. Construction of Chapter.

This Chapter shall not be construed as granting a status to any person for any purpose other than those expressly stated herein. This Chapter shall not be construed as relieving any person or institution of the duty to report to the department of social services, as required by G.S. 7B-301, if the person or institution has cause to suspect that a juvenile is abused or neglected. (1979, c. 561, s. 1; 1985, c. 113, s. 6; 1998-202, s. 13(r).)

§ 50B-7. Remedies not exclusive.

The remedies provided by this Chapter are not exclusive but are additional to remedies provided under Chapter 50 and elsewhere in the General Statutes. (1979, c. 561, s. 1.)

§ 50B-8. Effect upon prosecution for violation of § 14-184 or other offense against public morals.

The granting of a protective order, prosecution for violation of this Chapter, or the granting of any other relief or the institution of any other enforcement proceedings under this Chapter shall not be construed to afford a defense to any person or persons charged with fornication and adultery under G.S. 14-184 or charged with any other offense against the public morals; and prosecution, conviction, or prosecution and conviction for violation of any provision of this Chapter shall not be a bar to prosecution for violation of G.S. 14-184 or of any other statute defining an offense or offenses against the public morals. (1979, c. 561, s. 1; 2003-107, s. 4.)

§ 50B-9. Domestic Violence Center Fund.

The Domestic Violence Center Fund is established within the State Treasury. The fund shall be administered by the Department of Administration, North Carolina Council for Women, and shall be used to make grants to centers for victims of domestic violence and to The North Carolina Coalition Against Domestic Violence, Inc. This fund shall be administered in accordance with the provisions of the Executive Budget Act. The Department of Administration shall make quarterly grants to each eligible domestic violence center and to The North Carolina Coalition Against Domestic Violence, Inc. Each grant recipient shall receive the same amount. To be eligible to receive funds under this section, a domestic violence center must meet the following requirements:

(1) It shall have been in operation on the preceding July 1 and shall continue to be in operation.

(2) It shall offer all of the following services: a hotline, transportation services, community education programs, daytime services, and call forwarding during the night and it shall fulfill other criteria established by the Department of Administration.

(3) It shall be a nonprofit corporation or a local governmental entity. (1991, c. 693, s. 3; 1991 (Reg. Sess., 1992), c. 988, s. 1.)

Case No.

Court: General Court of Justice, District Court Division

County: **NORTH CAROLINA**

EX PARTE DOMESTIC VIOLENCE ORDER OF PROTECTION

G.S. 50B-2, -3, -3.1

PETITIONER/PLAINTIFF

First *Middle* *Last*

PETITIONER/PLAINTIFF IDENTIFIERS

Date Of Birth Of Petitioner

And/or on behalf of minor family member(s): *(List Name And DOB)*

Other Protected Persons/DOB:

VERSUS

RESPONDENT/DEFENDANT

First *Middle* *Last*

Relationship to Petitioner: ☐ spouse ☐ former spouse
☐ unmarried, of opposite sex, currently or formerly living together
☐ unmarried, have a child in common
☐ of opposite sex, currently or formerly in dating relationship
☐ current or former household member
☐ parent ☐ grandparent ☐ child ☐ grandchild

Respondent's/Defendant's Address

RESPONDENT/DEFENDANT IDENTIFIERS

Sex	Race	DOB	HT	WT

Eyes	Hair	Social Security Number

Drivers License No.	State	Expiration Date

Distinguishing Features

CAUTION:
☐ Weapon Involved

THE COURT HEREBY FINDS THAT:

This matter was heard by the undersigned ☐ district court judge. ☐ magistrate. The court has jurisdiction over the subject matter.

Additional findings of this order are set forth on Page 2.

THE COURT HEREBY ORDERS THAT:

☐ The above named Respondent/Defendant shall not commit any further acts of domestic violence or make any threats of domestic violence (G.S. 50B-1).

☐ The above named Respondent/Defendant shall have no contact with the Petitioner/Plaintiff. No contact includes any defendant-initiated contact, except through an attorney, direct or indirect, by means such as telephone, personal contact, email, pager, gift-giving or telefacsimile machine. **[05]**

Additional terms of this order are as set forth on Pages 3 and 4.

The terms of this order shall be effective until _____ _____, _____

WARNINGS TO THE RESPONDENT/DEFENDANT:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, and any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

This order will be enforced anywhere in North Carolina.

Only the Court can change this order. The plaintiff cannot give you permission to violate this order.

See additional warnings on Page 4.

(Over)

ADDITIONAL FINDINGS

1. As indicated by the check block under Respondent/Defendant's name on Page 1, the parties are or have been in a personal relationship.

☐ 2. That on *(date of most recent conduct)* _____ , the defendant

☐ a. ☐ attempted to cause ☐ intentionally caused bodily injury to ☐ the plaintiff ☐ the child(ren) living with or in the custody of the plaintiff

☐ b. placed in fear of imminent serious bodily injury ☐ the plaintiff ☐ a member of the plaintiff's family ☐ a member of the plaintiff's household

☐ c. placed in fear of continued harassment that rises to such a level as to inflict substantial emotional distress ☐ the plaintiff ☐ a member of plaintiff's family ☐ a member of plaintiff's household

☐ d. committed an act defined in G.S. 14- ☐ 27.21 (1st deg. rape) ☐ 27.22 (2nd deg. rape) ☐ 27.26 (1st deg. sexual off.) ☐ 27.27 (2nd deg. sexual off.) ☐ 27.33 (sexual battery) ☐ 27.31 (sexual activity by substitute parent) against ☐ the plaintiff ☐ a child(ren) living with or in the custody of the plaintiff by *(describe defendant's conduct)*

☐ 3. The defendant is in possession of, owns or has access to firearms, ammunition, and gun permits described below. *(Describe all firearms, ammunition, gun permits and give identifying number(s) if known, and indicate where defendant keeps firearms)*

☐ 4. The defendant

☐ a. ☐ used ☐ threatened to use a deadly weapon against the ☐ plaintiff ☐ minor child(ren) residing with or in the custody of the plaintiff

☐ b. has a pattern of prior conduct involving the ☐ use ☐ threatened use of violence with a firearm against persons

☐ c. made threats to seriously injure or kill the ☐ plaintiff ☐ minor child(ren) residing with or in the custody of the plaintiff

☐ d. made threats to commit suicide

☐ e. inflicted serious injuries upon the ☐ plaintiff ☐ minor child(ren) residing with or in the custody of the plaintiff in that *(state facts):*

☐ 5. The parties are the parents of the following child(ren) under the age of eighteen (18). The child(ren) are presently in the physical custody of the ☐ plaintiff. ☐ defendant. The plaintiff has submitted an "Affidavit As To Status Of Minor Child."

NOTE TO JUDGE: *A copy of AOC-CV-609 for each child must be attached to the order.*

Name	Sex	Date Of Birth	Name	Sex	Date Of Birth

☐ 6. The minor child(ren) is exposed to a substantial risk of physical or emotional injury or sexual abuse in that:

☐ 7. It is in the best interest of and necessary for the safety of the minor child(ren) ☐ that defendant stay away from the minor child(ren) ☐ that the defendant return the minor child(ren) to plaintiff ☐ and that the defendant not remove the minor child(ren) from plaintiff in that:

☐ 8. *(Check block only if plaintiff is entitled to physical care of child(ren).)* It is in the best interest of the minor child(ren) that defendant have contact with the minor child(ren) in that:

☐ 9. The ☐ defendant ☐ plaintiff is presently in possession of the parties' residence at _____

_____

(Over)

☐ 10. The ☐ defendant ☐ plaintiff is presently in possession of the parties' vehicle. *(describe vehicle)*

☐ 11. Other: *(specify)*

☐ 12. *(for magistrate only)* This matter was heard at a time when the district court was not in session and a district court judge was not available and would not be available for a period of four or more hours.

CONCLUSIONS

Based on these facts, the Court makes the following conclusions of law:

☐ 1. The defendant has committed acts of domestic violence against the plaintiff.

☐ 2. The defendant has committed acts of domestic violence against the minor child(ren) residing with or in the custody of the plaintiff.

☐ 3. It clearly appears that there is a danger of acts of domestic violence against the ☐ plaintiff. ☐ minor child(ren). [G.S. 50B-2(c)]

☐ 4. The minor child(ren) is exposed to a substantial risk of ☐ physical injury. ☐ emotional injury. ☐ sexual abuse. [G.S. 50B-2(c)]

☐ 5. The Court has jurisdiction under the Uniform Child Custody Jurisdiction And Enforcement Act.

☐ 6. It is in the best interest of and necessary for the safety of the minor child(ren) that the defendant ☐ stay away from the minor child(ren). ☐ (and) return the minor child(ren) to the physical care of the plaintiff. ☐ (and) not remove the minor child(ren) from the physical care of the plaintiff.

☐ 7. The defendant's conduct requires that he/she surrender all firearms, ammunition and gun permits. [G.S. 50B-3.1]

☐ 8. The plaintiff has failed to prove grounds for ex parte relief.

ORDER

It is ORDERED that:

☐ 1. the defendant shall not assault, threaten, abuse, follow, harass (by telephone, visiting the home or workplace or other means), or interfere with the plaintiff. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. **[01]**

☐ 2. the defendant shall not assault, threaten, abuse, follow, harass (by telephone, visiting the home or workplace or other means), or interfere with the minor child(ren) residing with or in the custody of the plaintiff. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. **[01]**

☐ 3. the defendant shall not threaten a member of the plaintiff's family or household. **[02]**

☐ 3a. the defendant shall not cruelly treat or abuse an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

☐ 4. the plaintiff is granted possession of, and the defendant is excluded from, the parties' residence described above and all personal property located in the residence except for the defendant's personal clothing, toiletries and tools of trade. **[03]**

☐ 5. any law enforcement agency with jurisdiction shall evict the defendant from the residence and shall assist the plaintiff in returning to the residence. **[08]**

☐ 6. the ☐ plaintiff **[08]** ☐ defendant **[08]** is entitled to get personal clothing, toiletries, and tools of trade from the parties' residence. A law enforcement officer shall assist the ☐ plaintiff ☐ defendant in returning to the residence to get these items.

☐ 6a. the plaintiff is granted the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

☐ 7. the defendant shall stay away from the plaintiff's residence or any place where the plaintiff receives temporary shelter. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. **[04]**

☐ 8. the defendant shall stay away from the following places:

- ☐ a. the place where the plaintiff works. **[04].**
- ☐ b. any school(s) the child(ren) attend. **[04]**
- ☐ c. the place where the child(ren) receives day care. **[04]**
- ☐ d. the plaintiff's school. **[04]**
- ☐ e. Other: *(name other places)* **[04]** _____

The sheriff must deliver a copy of this order to the principal or the principal's designee at the following school(s): *(name schools)*

☐ 9. the plaintiff is granted possession and use of the vehicle described in Block No. 10 of the Findings on Page 3. **[08]**

☐ 10. The plaintiff is awarded temporary custody of the minor child(ren) *(Check any of a, b, or c that apply.)*

- ☐ a. and the defendant is ordered to stay away from the minor child(ren).
- ☐ b. and the defendant is ordered to immediately return the minor child(ren) to the care of the plaintiff.
- ☐ c. and the defendant is ordered not to remove the minor child(ren) from the care of the plaintiff.

☐ 11. *(If No. 10 is checked and you are allowing visitation to defendant)* The defendant is allowed the following contact with the minor child(ren):

☐ 12. the defendant is prohibited from ☐ possessing or receiving **[07]** ☐ purchasing a firearm for the effective period of this Order **[07]** ☐ and the defendant's concealed handgun permit is suspended for the effective period of this Order. **[08]**
☐ The defendant is a law enforcement officer/member of the armed services and ☐ may ☐ may not possess or use a firearm for official use.

☐ 13. the defendant surrender to the Sheriff serving this order the firearms, ammunition, and gun permits described in Number 3 of the Findings on Page 2 of this Order and any other firearms and ammunition in the defendant's care, custody, possession, ownership or control. **NOTE TO DEFENDANT:** ***You must surrender these items to the serving officer at the time this Order is served on you. If the weapons cannot be surrendered at that time, you must surrender them to the sheriff within 24 hours at the time and place specified by the sheriff. Failure to surrender the weapons and permits as ordered or possessing, purchasing, or receiving a firearm, ammunition or permits to purchase or carry concealed firearms after being ordered not to possess firearms, ammunition or permits is a crime. See "Notice To Parties: To The Defendant" on Page 4 of this Order for information regarding the penalty for these crimes and instructions on how to request return of surrendered weapons.***

☐ 14. the request for Ex Parte Order is denied.

☐ 15. Other: *(specify)* **[08]**

Date	*Signature*	☐ *District Court Judge* ☐ *Designated Magistrate*

NOTE TO PLAINTIFF: *If the judge signs this Order and gives it to you, take it to the Clerk's office immediately. If the magistrate signs this Order and gives it to you, follow the magistrate's directions.*

NOTE TO CLERK: *Give or mail a copy of this Order to the plaintiff and to the appropriate local law enforcement agency. Send copies to sheriff with Notice Of Hearing, Complaint and Summons for service on defendant. Send extra copies to the sheriff if required to deliver copy(ies) to the child(ren)'s school.*

NOTICE TO PARTIES

TO THE DEFENDANT:

1. **If this Order prohibits you from possessing, receiving or purchasing a firearm and you violate or attempt to violate that provision, you may be charged with a Class H felony pursuant to North Carolina G.S. 14-269.8 and may be imprisoned for up to 39 months.**
2. **If you have been ordered to surrender firearms, ammunition, and gun permits and you fail to surrender them as required by this Order, or if you failed to disclose to the Court all information requested about possession of these items or provide false information about any of these items you may be charged with a Class H felony and may be imprisoned for up to 39 months.** If you surrendered your firearms, ammunition, and permits, you may file a motion for the return of weapons with the clerk of court in the county in which this Order was entered when the protective order is no longer in effect, except if at the time this Order expires criminal charges, in either state or federal court, are pending against you alleged to have been committed against the person who is protected by this order, you may not file for return of the firearms until final disposition of the criminal charges. The form, "Motion For Return Of Weapons Surrendered Under Domestic Violence Protective Order" AOC-CV-319, is available from the clerk of court's office. The motion must be filed **not later than 90 days after the expiration of the Order that requires you to surrender the firearms or if you have pending criminal charges alleged to have been committed against the person who is protected by the domestic violence protection order, the motion must be filed not later than 90 days after final disposition of the criminal charges.** At the time you file the motion, the clerk will schedule a hearing before the district court for a judge to determine whether to return the weapons to you. The sheriff cannot return your weapons unless the Court orders the sheriff to do so. You must pay the sheriff's storage fee before the sheriff returns your weapons. If you fail to file a motion for return of the weapons within 90 days after the expiration of this Order, or the final disposition of criminal charges pending at the time this Order expired, or if you fail to pay the storage fees **within 30 days after the Court enters an order to return your weapons**, the sheriff may seek an order from the Court to dispose of your weapons.

TO THE PLAINTIFF:

1. You should keep a copy of this order on you at all times and should make copies to give to your friends and family. If you move to another county or state, you may wish to give a copy to the law enforcement agency where you move, but you are not required to do so.
2. The court or judge is the only one that can make changes to this order. If you wish to change any of the terms of this order, you must come back into court to have the judge modify the order.
3. If the defendant violates any provision of this order, you may call a law enforcement officer or go to a magistrate to charge the defendant with the crime of violating a protective order. You also may go to the Clerk of Court's office in the county where the protective order was issued and ask to fill out form AOC-CV-307, Motion For Order To Show Cause Domestic Violence Protective Order, to have an order issued for the defendant to appear before a district court judge to be held in contempt for violating the order.

Name Of Defendant	File No.

CERTIFICATION

I certify this order is a true copy.

Date	Signature Of Clerk	☐ Deputy CSC ☐ Assistant CSC ☐ Clerk of Superior Court

RETURN OF SERVICE

NOTE: *To be used when Magistrate issues ex parte protective order and order will be served on defendant separate from the complaint and civil summons. If complaint and summons are served with order, return on summons covers order.*

I certify that this Ex Parte Domestic Violence Order of Protection was received and served as follows:

Date Served	Time Served ☐ AM ☐ PM	Name Of Defendant

☐ By delivering to the defendant named above a copy of the order.

☐ By leaving a copy of the order at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

Name And Address Of Person With Whom Copies Left

☐ Other manner of service on the defendant *(specify)*

☐ Defendant WAS NOT served for the following reason.

Date Received	Signature Of Deputy Sheriff Making Return
Date Of Return	Name Of Deputy Sheriff Making Return (type or print)
	County Of Sheriff

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
District Court Division

Name Of Plaintiff (Person Filing Complaint)

VERSUS

Name And Address Of Defendant (Person Accused Of Abuse)

COMPLAINT AND MOTION FOR DOMESTIC VIOLENCE PROTECTIVE ORDER

G.S. 50B-1, -2, -3, -4

(Check only boxes that apply and fill in blanks. Additional sheets may be attached.)

1. I live in _____ County, North Carolina.
2. The defendant and I
   - ☐ are spouses. ☐ are former spouses.
   - ☐ are persons of the opposite sex who are not married but live together or have lived together.
   - ☐ have a child in common.
   - ☐ are parent and child or grandparent and grandchild.
   - ☐ are current or former household members.
   - ☐ are persons of the opposite sex who are in or have been in a dating relationship.
3. There ☐ is ☐ is not another court proceeding between the defendant and me pending in this or any other state. *(List county, state, date, and what kind of proceeding, if applicable.)*

☐ 4. The defendant has attempted to cause or has intentionally caused me bodily injury; or has placed me or a member of my family or household in fear of imminent serious bodily injury or in fear of continued harassment that rises to such a level as to inflict substantial emotional distress; or has committed a sexual offense against me in that: *(Give specific dates and describe in detail what happened.)*

☐ 5. The defendant has attempted to cause or has intentionally caused bodily injury to the child(ren) living with me or in my custody; has placed my child(ren) in fear of imminent serious bodily injury or in fear of continued harassment that rises to such a level as to inflict substantial emotional distress; or has committed a sexual offense against the child(ren) in that: (*Give specific dates and describe in detail what happened.)*

☐ 6. I believe there is danger of serious and immediate injury to me or my child(ren).

☐ 7. *(Check this block if you ask for temporary child custody.)* The defendant and I are the parents of the following child(ren) under the age of eighteen.

A COPY OF "AFFIDAVIT AS TO STATUS OF MINOR CHILD" (AOC-CV-609) MUST BE ATTACHED FOR EACH CHILD.

Name	Sex	Date Of Birth	Name	Sex	Date Of Birth

(Over)

☐ 8. *(Fill in the block if you are asking for temporary child custody)* The minor child(ren) listed in No 7. above is exposed to a substantial risk of physical or emotional injury or sexual abuse in that: (*Describe in detail what happened that created a risk of physical or emotional injury or sexual abuse.)*

☐ 9. The defendant has firearms and ammunition as described below, ☐ has a permit to purchase a firearm, ☐ and has a permit to carry a concealed weapon. *(Describe all firearms, ammunition, gun permits and give identifying number(s) if known, and indicate where defendant keeps firearms and gun permits.)*

☐ 10. The defendant has used or threatened to use a deadly weapon against me or minor child(ren) in my custody or has a pattern of prior conduct involving the use or threatened use of violence with a firearm against any persons in that *(Give specific dates and describe in detail what happened.)*

☐ 11. The defendant has made threats to commit suicide in that *(Give specific dates and describe in detail what happened.)*

Because Of The Acts Of Domestic Violence By The Defendant, I Am Requesting That The Court Give Me The Following Relief:

(Check only boxes that apply.)

1. I want emergency relief.

☐ 2. Since there is a danger of acts of domestic violence against me or my child(ren), I want an Ex Parte Order before notice of a hearing is given to the defendant.

☐ 3. I want the Court to order the defendant not to assault, threaten, abuse, follow, harass or interfere with me and my child(ren).

☐ 3a. I want the defendant ordered not to cruelly treat or abuse an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.

☐ 4. I want possession of our residence at the address listed below, and I want the defendant to move from and not return to the residence.

Address Of Residence

☐ 5. I want the Court to order the eviction of the defendant from the residence listed above and I want assistance in returning to the residence.

☐ 6. I want possession of the personal property such as clothing and household goods in the residence listed above except for the defendant's personal clothing, toiletries and tools of trade.

☐ 6a. I want the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household granted to me.

VERSUS	File No.
Name Of Defendant	

☐ 7. I want the defendant to be ordered not to come on or about:

- ☐ (a) my residence.
- ☐ (b) any place where I am receiving temporary shelter.
- ☐ (c) the place where I work.
- ☐ (d) any school(s) the child(ren) attend.
- ☐ (e) the place where the child(ren) receives day care.
- ☐ (f) the place where I go to school.
- ☐ (g) Other: (name other places)

The child(ren) currently attend: *(name school)*

☐ 8. I want the defendant to be ordered to have no contact with me.

☐ 9. I want possession and use of the following vehicle:

Describe Vehicle

☐ 10. I want temporary custody of our minor child(ren) listed in this Complaint. I understand that I must file a separate child custody action for permanent custody.

☐ 11. I want the defendant to be ordered to make payments for the support of our minor child(ren), as required by law, but I understand it is only temporary and that I must file a separate child support action for regular, permanent child support.

☐ 12. I want the Court to prohibit the defendant from possessing or purchasing a firearm.

☐ 13. I want the Court to order the defendant to surrender to the sheriff his/her firearms, ammunition, and gun permits to purchase a firearm and carry a concealed weapon.

☐ 14. I want the defendant to be ordered to attend an abuser treatment program.

☐ 15. I want the defendant to be ordered to provide me and the child(ren) suitable alternative housing.

☐ 16. I want the defendant to be ordered to make payments for my support as required by law, but I understand it is only temporary and that I must file a separate action for regular permanent spousal support.

☐ 17. Other: *(specify)*

Date	*Signature Of Plaintiff (Person Filing Complaint)*

VERIFICATION

I, the undersigned, being first duly sworn, say that I am the plaintiff in this action; that I have read the Complaint and Motion; that the matters and things alleged in the Complaint and Motion are true except as to those things alleged upon information and belief and as to those I believe them to be true and accurate.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		*Date*
Date	*Signature*	*Signature Of Plaintiff (Person Filing Complaint)*
☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk of Superior Court* ☐ *Designated Magistrate*		*Name Of Plaintiff (Type Or Print)*
☐ *Notary*	*Date My Commission Expires*	
SEAL	*County Where Notarized*	

INSTRUCTIONS FOR DOMESTIC VIOLENCE FORMS

FORMS YOU NEED TO FILL OUT:

I. Complaint And Motion For Domestic Violence Protective Order (AOC-CV-303)

1. You will need three (3) copies of this form.
2. Fill in:
   (a) Name of county;
   (b) Plaintiff's name - you are the plaintiff;
   (c) Defendant's name and address - a defendant is a spouse, former spouse, person of the opposite sex with whom you live or have lived as if married, your child or grandchild who is at least 16 years old, the mother or father of your child, a current or former household member, or a person of the opposite sex that you are dating or have dated;
   (d) Check the blocks and fill in the blanks that apply to you. If you are afraid of additional acts of domestic violence and you want the judge/magistrate to act immediately, check block #2 at the bottom of page 2, asking for an Ex Parte Order. A request for an Ex Parte Order will be heard soon and without giving notice to the defendant. If a magistrate hears your request for ex parte relief, the magistrate's order is only good for a short period of time and a second temporary Ex Parte Order must be issued by the judge. If the judge issues the temporary Ex Parte Order, another hearing will be held after the defendant is given notice. If no Ex Parte Order is entered, a hearing will still be held after the defendant is given notice;
   (e) Date and sign the complaint on the back *(above the verification section).* The verification must be signed before a clerk or notary;
   (f) In some counties you may be able to take it to the magistrate's office on weekends and evenings.
3. If you or the defendant is under the age of eighteen (18) and not married, you must ask the clerk for the form to appoint a guardian ad litem (AOC-CV-318).

II. Notice Of Hearing On Domestic Violence Protective Order (AOC-CV-305)

1. You will need three (3) copies of this form.
2. Fill in:
   (a) Name of county;
   (b) Plaintiff's name;
   (c) Defendant's name and address.
3. **DO NOT** fill out the remainder of this form.

III. Ex Parte Domestic Violence Order Of Protection (AOC-CV-304)

1. You will need only one (1) copy of this form.
2. Fill in:
   (a) Name of county;
   (b) Plaintiff's name;
   (c) Defendant's name and address.
3. **DO NOT** fill out the remainder of this form.

IV. Civil Summons Domestic Violence (AOC-CV-317)

1. You will need three (3) copies of this form.
2. Fill in:
   (a) Name of county;
   (b) Plaintiff's name and address. You may give an address where you want your mail to go, not necessarily where you are staying;
   (c) Defendant's name and address *(under the block designated "Defendant");*
   (d) Defendant's name and address again in the block designated "Name and Address of Defendant."
3. **DO NOT** fill out the remainder of this form.

(Over)

AOC-CV-303 Instructions, Rev. 10/14

V. Identifying information About Defendant Domestic Violence Action (AOC-CV-312)

1. You will need only one (1) copy of this form.
2. Fill in all the information that you know. Be as complete and accurate as you can.
3. Leave blank any portion for which you do not have the information.
4. You may either:
   (a) turn in the completed form to the clerk or magistrate with the other papers, or
   (b) keep the form, get the needed information, and turn in the completed form to the judge or magistrate at the hearing.

VI. Affidavit As To Status Of Minor Child (AOC-CV-609)

1. You **do not** need this form unless you are asking for temporary custody of the children.
2. You will need one (1) copy of this form for each minor child.
3. You must attach the completed form to the Complaint and give it to the clerk or magistrate with the other papers:
   (a) turn in the completed form to the clerk or magistrate with the other papers, or
   (b) keep the form, get the needed information, and turn in the completed form to the judge or magistrate at the hearing.

TAKE ALL FORMS TO THE CLERK/MAGISTRATE FOR FURTHER DIRECTIONS.

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

Name Of Plaintiff	**CIVIL SUMMONS** **DOMESTIC VIOLENCE** ☐ **ALIAS AND PLURIES SUMMONS**
Address	
City, State, Zip	
VERSUS	G.S. 50B-2(a)
Name Of Defendant	Date Original Summons Issued
	Date(s) Subsequent Summons(es) Issued

To The Defendant Named Below:

Name And Address Of Defendant

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within ten (10) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address; and

2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)	Date Issued	Time ☐ AM ☐ PM
	Signature	
	☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court	

☐ **ENDORSEMENT**
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement	Time ☐ AM ☐ PM
Signature	
☐ Deputy CSC ☐ Assistant CSC ☐ Clerk Of Superior Court	

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint ☐ and a copy of the ex parte order were received and served as follows:

DEFENDANT

Date Served	*Time Served*	*Name Of Defendant*
	☐ AM ☐ PM	

☐ By delivering to the defendant named above a copy of the summons and complaint.

☐ By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

Name And Address Of Person With Whom Copies Left

☐ Other manner of service *(specify)*

☐ Defendant WAS NOT served for the following reason:

Service Fee Paid	*Signature Of Deputy Sheriff Making Return*
$	
Date Received	*Name Of Sheriff (Type Or Print)*
Date Of Return	*County Of Sheriff*

Understanding Domestic Violence

Chapter 50B.
Domestic Violence.

§ 50B-1. Domestic violence; definition.

(a) Domestic violence means the commission of one or more of the following acts upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship, but does not include acts of self-defense:

(1) Attempting to cause bodily injury, or intentionally causing bodily injury; or

(2) Placing the aggrieved party or a member of the aggrieved party's family or household in fear of imminent serious bodily injury or continued harassment, as defined in G.S. 14-277.3A, that rises to such a level as to inflict substantial emotional distress; or

(3) Committing any act defined in G.S. 14-27.2 through G.S. 14-27.7.

(b) For purposes of this section, the term "personal relationship" means a relationship wherein the parties involved:

(1) Are current or former spouses;

(2) Are persons of opposite sex who live together or have lived together;

(3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;

(4) Have a child in common;

(5) Are current or former household members;

(6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.

(c) As used in this Chapter, the term "protective order" includes any order entered pursuant to this Chapter upon hearing by the court or consent of the parties. (1979, c. 561, s. 1; 1985, c. 113, s. 1; 1987, c. 828; 1987 (Reg. Sess., 1988), c. 893, ss. 1, 3; 1995 (Reg. Sess., 1996), c. 591, s. 1; 1997-471, s. 1; 2001-518, s. 3; 2003-107, s. 1; 2009-58, s. 5.)

DOMESTIC ABUSE INTERVENTION PROJECT

202 East Superior Street
Duluth, Minnesota 55802
218-722-2781
www.duluth-model.org

Power and Control Wheel Enactments

Power and Control

Abusers believe they have a right to control their partners by:

- Telling them what to do and expecting obedience
- Using force to maintain power and control over partners
- Feeling their partners have no right to challenge their desire for power and control
- Feeling justified making the victim comply
- Blaming the abuse on the partner and not accepting responsibility for wrongful acts.

The characteristics shown in the wheel are examples of how this power and control are demonstrated and enacted against the victim.

Isolation

- Limiting outside involvement
- Making another avoid people/friends/family by deliberately embarrassing or humiliating them in front of others
- Expecting another to report every move and activity
- Restricting use of the car
- Moving residences

Emotional Abuse

- Putting another down/name-calling
- Ignoring or discounting activities and accomplishments
- Withholding approval or affection
- Making another feel as if they are crazy in public or through private humiliation
- Unreasonable jealousy and suspicion
- Playing mind games

Economic Abuse

- Preventing another from getting or keeping a job
- Withholding funds
- Spending family income without consent and/or making the partner struggle to pay bills
- Not letting someone know of or have access to family/personal income
- Forcing someone to ask for basic necessities

Intimidation

- Driving recklessly to make another feel threatened or endangered
- Destroying property or cherished possessions
- Making another afraid by using looks/actions/gestures
- Throwing objects as an expression of anger to make another feel threatened
- Displaying weapons

Using Children or Pets

- Threatening to take the children away
- Making the partner feel guilty about the children
- Abusing children or pets to punish the partner
- Using the children to relay messages

Power and Control Wheel Enactments

Using Privilege

- Treating another like a servant
- Making all the big decisions
- Being the one to define male and female roles
- Acting like the master or queen of the castle

Sexual Abuse

- Sex on demand or sexual withholding
- Physical assaults during sexual intercourse
- Spousal rapes or non-consensual sex
- Sexually degrading language
- Denying reproductive freedom

Threats

- Threats of violence against significant third parties
- Threats to commit physical or sexual harm
- Threats to commit property destruction
- Threats to commit suicide or murder

Physical Abuse

- Biting/scratching
- Slapping/punching
- Kicking/stomping
- Throwing objects at another
- Locking another in a closet or utilizing other confinement
- Sleep interference and/or deliberately exhausting the partner with unreasonable demands and lack of rest
- Deprivation of heat or food
- Shoving another down steps or into objects
- Assaults with weapons such as knives/guns/other objects

Case Study

I have been married to my husband for ten years. I became pregnant with my first child shortly after we were married. We now have three children, ages nine, seven and six. Even from the beginning, my husband has made all of the decisions for our family. He told me that my job was to be a good wife—to take care of the children and to cook and clean for him.

The first time he hit me was when I was pregnant with my first child. We had come home from my mother's house and he was angry about something. I think I had forgotten to buy a kind of food item that he wanted, and then he slapped me. I thought it was just an isolated event. I never thought he would do it again.

Since then, he has hit, kicked, choked, slapped and burned me. He does not hurt me physically that often, though, maybe only once a month. Mainly, when I do something he doesn't like, such as visiting my mother or talking on the phone to a friend, he calls me a prostitute and other bad names, and tells me that he will take the children and go to his mother's home if I am not a good wife. He refuses to let me take a job, even though all of our children are in school, and I would be qualified for many different kinds of jobs. He does not let me have any money, except for a little for grocery shopping.

He is very jealous and possessive. A few months ago, he became very angry because I was late getting home from the store. He accused me of seeing another man and punched a hole in the door between the kitchen and the living room. My sons were there and saw this, and he yelled at them to go to their rooms. I recently overheard him talking to my seven-year-old son. He was asking if my son ever saw me talking to "other men." He told my son that I was crazy and that my son should watch me and tell him if I did anything strange.

Another time, we went to a party given by a friend of his from work. I met the wife of one of the people my husband works with. We spent a long time talking. After some time, my husband came up to me, grabbed my arm so tightly it hurt and left bruises, and whispered in my ear, "We're leaving." Just by the look he gave me, I knew he was angry that I spent so much time talking with the woman, and that he would likely beat me when we got home. When we got home, he smashed a framed picture I have of myself with a group of my friends at the university, before I was married, by throwing it at the wall near where I was standing. He told me that I "knew" what would happen if I continued to disobey him.

A few months ago, my husband came home late with friends and made me get up to cook them food. He started joking with his friends about how much I weighed, and that I was like all other women who let themselves go once they got married. He called me many bad names. After his friends left, he woke me up again and forced me to have sex with him, even though I didn't want to and was feeling sick.

Recently, I tried to talk to my husband about the abuse. He got very angry. He said he doesn't hurt me any more than is to be expected of a husband and that in fact he thinks that he is too nice to me. He said that if he did happen to be a bit harsh with me sometimes, it was my fault anyway for not being a good wife and letting myself become so unattractive.

I love my husband, but I do not think I can continue to live with him. He has threatened to kill me, the children, and himself if I leave him, and I don't have anywhere to go. I don't have a job or any money, and would not be able to find another place to stay even if I did leave.

This scenario is fictional. Some aspects of the scenario are based on descriptions of domestic violence contained in reports by Minnesota Advocates For Human Rights, available at http://www.mnadvocates.org; the Domestic Violence Centre, available at http://www.dvc.org.nz; and the Family Violence Prevention Fund, available at http://www.fvpf.org.

Do's and Don'ts of Handling Domestic Violence Victims

DO	DON'T
• Explain the services available in a simple and direct manner.	• Assume that battered women know about their options and the services available.
• Prioritize the victim's needs.	• Overload the victim with services and decisions.
• Express concern for their safety and that of their children. Empower the victim with information that increases their choices.	• Ever ask the victim why they stay. This is a shaming remark, which insinuates the victim is at fault. Leaving does not always solve the problem.
• Be aware of your own attitude, experiences and reactions to abuse. It is appropriate to disagree with the victim's behavior and/or attitude while remaining objective, empathetic and understanding.	• Impose your own values and make quick judgments. Your reaction to the victim's responses will be communicated strongly.
• Help the victim understand the danger and repetitiveness of the violence.	• Expect the victim to exaggerate or invent the violence.
• Encourage the victim to take small steps, which will promote independence and build self-confidence.	• Try to rescue the victim.
• Take into consideration cultural values and beliefs.	• Lump all victims into one category.
• Challenge any efforts on the victim's part to justify the abuse through religion.	• Reject the woman's religion or ignore references to religious beliefs.
• Convey fears for the victim's safety and respect their reasons for staying. Separation from the abuser can be the most dangerous time for the victim.	• Convey disappointment if the victim chooses to stay. This can elicit feelings of failure and worthlessness.
• Define your role as a court official; be realistic about what you can and cannot do with regards to the relationship.	• Get caught up in the role of marriage counselor, mediator and/or referee.
• Recognize that the victim's reactions and responses may change frequently and be unpredictable. Reactions will range from resistance to cooperation.	• Become cynical with the victim's failure to take the action or respond the way you believe they should. Your frustration can result in victim blaming and impact your ability to intervene effectively.
• Express your concerns if the situation is lethal and take appropriate action.	• Ignore or minimize the potential dangerousness of the situation.
• Be patient and honest with the victim.	• Expect instant decision-making by the victim or contribute to unrealistic expectations.
• Emphasize the abuser's responsibility for his/her own choices.	• Let the victim blame themselves or other factors for the abuse.
• Expect the "honeymoon" period to emerge following an abusive episode.	• Delay in responding to a reported incident of violence. Timing is a key factor in gathering evidentiary information.
• Challenge the victim's explanation of the incident and openly ask if their partner is hurting them. The approach must be sensitive and not threatening in nature.	• Accept unexplained injuries accompanied by implausible reasons.
• Be honest with the victim, especially about confidentiality issues.	• Make a promise you can't keep.

Danger Assessment*

1. Has the physical violence increased in severity or frequency over the past year?
2. Does he own a gun?
3. Have you left him after living together during the past year?

3a. (If you have *never* lived with him, check here___)

4. Is he unemployed?
5. Has he ever used a weapon against you or threatened you with a lethal weapon?

5a. (If yes, was the weapon a gun?____)

6. Does he threaten to kill you?
7. Has he avoided being arrested for domestic violence?
8. Do you have a child that is not his?
9. Has he ever forced you to have sex when you did not wish to do so?
10. Does he ever try to choke you?

11. Does he use illegal drugs? By drugs, I mean "uppers" or amphetamines, speed, angel dust, cocaine, "crack", street drugs or mixtures?
12. Is he an alcoholic or problem drinker?
13. Does he control most or all of your daily activities? (For instance: does he tell you who you can be friends with, when you can see your family, how much money you can use, or when you can take the car? (If he tries, but you do not let him, check here: ____)
14. Is he violently and constantly jealous of you? (For instance, does he say "If I can't have you, no one can.")
15. Have you ever been beaten by him while you were pregnant? (If you have never been pregnant by him, check here: ____)

16. Has he ever threatened or tried to commit suicide?
17. Does he threaten to harm your children?
18. Do you believe he is capable of killing you?
19. Does he follow or spy on you, leave threatening notes or messages on an answering machine, destroy your property, or call you when you don't want him to?
20. Have you ever threatened or tried to commit suicide?

One study has shown that women who score 8 or higher on the Danger Assessment are at very grave risk of being killed by their intimate partners; women who score 4 or higher are at great risk. . . .By simply asking the questions in the assessment, magistrates may raise a victim's awareness of the dangerousness of the situation.

*"Danger Assessment," Jacquelyn C. Campbell, PhD, RN, FAAN. This lethality checklist is taken from The Magistrate Protocol for Domestic Violence Cases.

Why Victims of Domestic Violence Stay and Go

Situational Factors:

- Economic dependence
- Fear of greater physical danger to themselves and their children if they attempt to leave
- Fear of emotional damage to children
- Fear of losing custody of children
- Lack of alternative housing
- Lack of job skills
- Social isolation resulting in lack of support from family or friends and lack of information regarding alternatives
- Fear of involvement in court processes
- Cultural and religious constraints
- Fear of retaliation

Emotional Factors:

- Fear of loneliness
- Insecurity over potential independence and lack of emotional support
- Guilt about failure of marriage
- Fear that partner is unable to survive along
- Belief that partner will change
- Ambivalence and fear over making formidable life changes

Signs to Look for in a Battering Personality

1. **Possessiveness.** At the beginning of a relationship, an abuser may say that jealousy (actually possessiveness) is a sign of love. Possessiveness has nothing to do with love. It is a sign of lack of trust. The abuser may question his partner about who she talks to, accuse her of flirting, or keep her from spending time with family, friends, or children. As the possessiveness progresses, he may call her frequently during the day or drop by unexpectedly. He may refuse to let her work for fear she'll meet someone else, or even engage in behaviors such as checking her car mileage or asking friends to watch her.
2. **Controlling Behavior.** At first the batterer will say this behavior is due to his concern for her safety, her need to use her time well, or her need to make good decisions. He will be angry if the woman is "late" coming back from the store or an appointment; he will question her closely about where she went and who she talked with. As this behavior progresses, he may not let the woman make personal decisions about the house, her clothing, or even going to church. He may keep all the money or even make her ask permission to leave the house or room.
3. **Quick Involvement.** Many battered women dated or knew their abuser for less than six months before they were married, engaged, or living together. He comes in like a whirlwind, claiming, "you're the only person I could ever talk to", or "I've never been loved like this by anyone." He will pressure the woman to commit to the relationship in such a way that later the woman may feel very guilty or that she's "letting him down" if she wants to slow down involvement or break off the relationship.
4. **Unrealistic Expectations.** Abusive people will expect their partner to meet all their needs. He expects a perfect wife, mother, lover, and friend. He will say things such as "if you love me, I'm all you need, and you're all I need." His partner is expected to take care of everything for him emotionally and in the home.
5. **Isolation.** The abusive person tries to cut his partner off from all resources. If she has male friends, she's a "whore." If she has women friends, she's a lesbian. If she's close to family, she's "tied to the apron strings." He accuses people who are the woman's supports of causing trouble. He may want to live in the country, without a telephone, or refuse to let her drive the car, or he may try to keep her from working or going to school.
6. **Blames others for problems.** If he is chronically unemployed, someone is always doing him wrong or out to get him. He may make mistakes and then blame the woman for upsetting him and keeping him from concentrating on the task at hand. He may tell the woman she is at fault for virtually anything that goes wrong in his life.
7. **Blames others for feelings.** The abuser may tell his partner "you make me mad," "you're hurting me by not doing what I want you to do," or "I can't help being angry." He is the one who makes the decision about what he thinks or feels, but he will use these feelings to manipulate his partner. Harder to catch are claims, "you make me happy," or "you control how I feel."
8. **Hypersensitivity.** An abuser is easily insulted, claiming his feelings are hurt, when in actuality he is angry or taking the slightest setback as a personal attack. He will rant and rave about the injustice of things that have happened, things that are just a part of living (for example being asked to work late, getting a traffic ticket, being asked to help with chores, or being told some behavior is annoying).
9. **Cruelty to animals or children.** Abusers may punish animals brutally or be insensitive to their pain or suffering. An abuser may expect children to be capable of things beyond their abilities (e.g. punishes a 2 year old for wetting a diaper). He may tease children until they cry. Some studies indicate that about 60% of men who physically abuse their partners also abuse their children.
10. **Sexual abuser.** An abuser may physically assault private parts of a woman's body. He may show little concern about whether the woman wants to have sex and use violence to coerce her into having sex with him. He may begin having sex with his partner while she is sleeping. He may

force her to do sexual acts that she finds uncomfortable, unpleasant, or degrading. He may demand sex after beating her.

11. **Verbal abuse.** In addition to saying things that are intentionally meant to be cruel and hurtful, verbal abuse is also apparent in the abuser's degrading of his partner, cursing her, and belittling her accomplishments. The abuser tells her she is stupid and unable to function without him. This may involve waking her up to verbally abuse her or not letting her go to sleep.
12. **Rigid sex roles.** The abuser expects his partner to serve him. He may even say the woman must stay at home and obey in all things – even acts that are criminal in nature. The abuser sees women as inferior to men, responsible for menial tasks, and unable to be a whole person without a relationship.
13. **Dr. Jekyll/Mr. Hyde personality.** Many women are confused by the abuser's sudden changes in mood. She may think he has some sort of mental problem because one minute he's agreeable, the next he's exploding. Explosiveness and moodiness are typical of men who beat their partners. These behaviors are related to other characteristics, such as hypersensitivity.
14. **Past battering.** The abuser may say he has hit women in the past, but blame them for the abuse (e.g., they made me do it"). The women may hear from relatives or ex-partners that he is abusive. A batterer will abuse any woman he is with if the relationship lasts long enough for the violence to begin; situational circumstances do not make one's personality abusive.
15. **Threats of violence.** This includes any threat of physical force meant to control the partner. "I'll slap your mouth off," "I'll kill you," "I'll break your neck." Most people do not threaten their partners. Abusers will try to excuse their threats by saying that everybody talks that way.
16. **Breaking or striking objects.** Breaking loved possessions is used as a punishment, but mostly to terrorize the woman into submission. The abuser may beat on the table with his fist, or throw objects around or near his partner. There is great danger when someone thinks he has the right to punish or frighten his partner.
17. **Any force during an argument.** This may involve the abuser's holding the woman down, physically restraining her from leaving the room, or any pushing or shoving. He may hold his partner against the wall, telling her, "You're going to listen to me."

Domestic Violence and Children
Children Exposed to Batterers

Traits of Batterers

- Controlling
- Entitled/Self-Centered
- Believe they are the victims
- Manipulative
- Good public image
- Skillfully dishonest (e.g. say they "don't remember")
- Disrespectful, Superior

Implications of Entitlement Thinking

- Leads abusers to think they are the victim
- Will stop partner from attending to children so she can attend to him
- Wants children to meet his needs
- Increases a child's vulnerability when conditioned to meet adult's needs

Implications of Good Public Image

- Keeps people from believing partner and children
- Abuser looks like sensitive team player
- Confuses the children
    - believe no one else thinks anything is wrong with battering
    - Leads children to blaming the mom, because she is only one saying something is wrong

Implications of Manipulation

- Calm demeanor in court
- File multiple harassing or retaliatory motions
- Make false allegations against partner, (e.g. -flight risk, substance abuser, neglects children)
- Use court process to avoid child support or get it reduced
- Use parallel actions in different jurisdictions to gain advantage

Batterers

- Good early in a relationship
- Externalize responsibility
- Punish, retaliate
- Batter serially
- Danger increases post separation

Batterer's Risk to Abuse Children

Physical Abuse

- 50% of batterers abuse their children
- 7 times more likely to abuse their children than a non-battering parent

Sexual Abuse

- Six times more likely to sexually abuse their children than a non-battering parent
- Correlated with presence of violence towards partner but not severity

Post Separation Risk

- Abuse mothers during exchanges
- Use child as weapon for information on mother
- Physical, sexual, or mental abuse of child
- Child exposed to abuser's violence of new partner
- Learn attitudes and behaviors that lead to violence
- Batterer is not focused on needs of child

Information from Lundy Bancroft, author of The Batterer as Parent

TAB 06:

Torts

A tort is a civil wrong.

Intentional

_____

_____

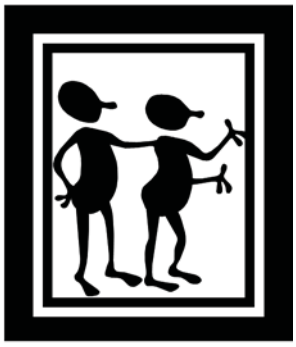
_____

Negligent

_____

_____

_____



The Reasonable Man and the Reasonable Woman

Did You Know?

There are a few legal concepts, though, that are good to know about, if only because there is so much misinformation floating around.

Tree Law

General rule: A person who owns property is required to use reasonable care to avoid injury to adjoining property by unsound trees on the owner's property. A property owner is not liable for damage caused by "an act of God," however, meaning injury that was not foreseeable.

Similarly, a property owner must use reasonable care to avoid injury caused by trees on his or her property falling on to public roads. The owner is not liable, however, if the owner had no notice of the danger. An owner may be said to have "notice" if the evidence shows the owner should have known of the condition--including the situation in which an agent of the owner was informed of the condition-- even if the evidence falls short of establishing actual knowledge on the part of the owner.

Rights of adjoining landowners: NC has not decided a case raising this issue, but cases from other jurisdictions are uniform in holding that a landowner has the right to trim branches or roots extending over his or her land, and that a landowner has no right to enter his neighbor's property for the purpose of cutting down his neighbor's tree. Beyond that, courts have established varying rules for resolving these disputes.

Negligent Children:

Children under the age of seven are incapable of being negligent as a matter of law.

Children between 7 and 14 are presumed incapable of negligence, but that presumption may be rebutted by a showing that the child acted in a way that is careless even when compared to other children of the same age.

When children cause injury to person or property, whether negligently or intentionally, the child's parent(s) may be found responsible because of the parent's own negligence as a parent (negligent supervision).

NC law makes parents responsible for injury to person or property deliberately caused by their children, up to a maximum of $2,000. (See pp. 116-117 for details.)

Vicarious Liability:
In some circumstances, the law holds a person responsible for torts committed by someone else. The most common examples are:

A employer may be held responsible for the negligent acts of an employee.

The legal owner of a car may be held responsible for the negligence of the driver, if the owner is a passenger in the car.

The legal owner of a car may be held responsible for the negligence of a driver who is a member of the driver's household, even if the owner is NOT a passenger in the car.

Is a husband responsible for the negligence of his wife? _____

_____

_____

_____

_____

_____

Bailment

John took his favorite suit to the dry cleaners, but when he went to pick it up, the suit was a better fit for his five-year-old than it was for him. He brings an action in small claims court, alleging that the dry cleaner's negligence resulted in his property becoming worthless.

The dry cleaner defends as follows:

1. "John hasn't introduced any evidence that I was negligent. In fact he hasn't introduced any evidence at all that I ever touched the suit." What do you think?

_____

_____

2. "On the pick-up ticket—and on a big sign in the store—we say that we're not responsible for damage to property left for cleaning." What do you think?

_____

_____

3. "John dropped off a cheap suit with a tag plainly stating, "Hand wash only. Dry cleaning may cause shrinkage." What do you think?

_____

_____

This last defense is the most common, and North Carolina is one of few states that continues to recognize it as a complete defense in cases involving negligence. What's the name of this defense?

_____

The general rule is that it's up to the defendant to raise this defense.

TAB:

Involuntary Commitment

Criteria for Involuntary Commitment in North Carolina

Mental Illness (Adults)
an illness that so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control.

Mental Illness (Minors)
a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age-adequate self-control or judgment in the conduct of his activities and social relationships that he is in need of treatment.

Substance abuse
the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. Substance abuse may include a pattern of tolerance and withdrawal.

Dangerous to self
Within the relevant past, the individual has:

1. acted in such a way as to show that
    a. he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and
    b. there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given. Behavior that is grossly irrational, actions that the individual is unable to control, behavior that is grossly inappropriate to the situation, or other evidence of severely impaired insight and judgment creates an inference that the individual is unable to care for himself; or
2. attempted suicide or threatened suicide and there is a reasonable probability of suicide unless adequate treatment is given; or
3. mutilated himself or attempted to mutilate himself and there is a reasonable probability of serious self-mutilation unless adequate treatment is given.

Previous episodes of dangerousness to self, when applicable, may be considered when determining the reasonable probability of serious physical debilitation, suicide, or serious self-mutilation.

Dangerous to others
Within the relevant past the individual has:

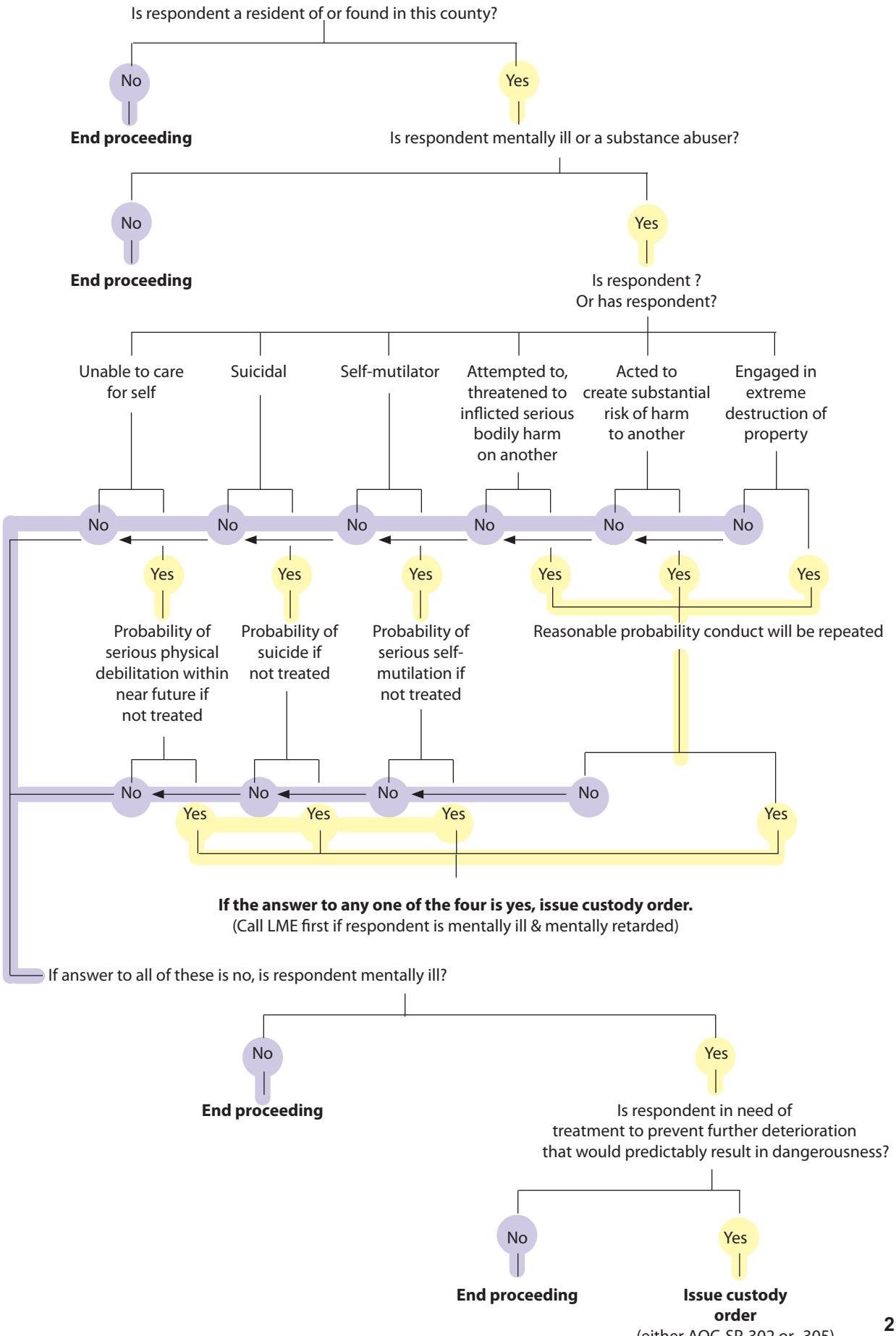
1. inflicted, attempted to inflict, or threatened to inflict serious bodily harm on another and there is a reasonable probability that this conduct will be repeated, or
2. acted in a way that created a substantial risk of serious bodily harm to another and there is a reasonable probability that this conduct will be repeated, or
3. engaged in extreme destruction of property and there is a reasonable probability that this conduct will be repeated.

Previous episodes of dangerousness to others, when applicable, may be considered when determining the reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is evidence of dangerousness to others.

Source: NC General Statutes 122C-3

Mark Botts, Associate Professor (2009)

Magistrate's Involuntary Commitment Decision Tree



Joan Brannon
Institute of Government

COMMON QUESTIONS TO ASK TO OBTAIN INFORMATION FOR THE PETITION FOR INVOLUNTARY COMMITMENT

1. Has the person harmed or threatened to harm himself or others within the past 24 hours? Week? Month? 3 months?
   (a) What did he/she do to you?
   (b) What did he/she do to others?

2. Is the person hallucinating (seeing or hearing things that other people don't see or hear)?
   (a) What is he/she seeing or hearing?

3. Can the person identify the day, where he is, his name, and his age?

4. Does the person have unreasonable thoughts that people are talking about him or are going to kill or hurt him?

5. Is the person making elaborate, exaggerated claims about himself? Such as:
   (a) Being on a special mission;
   (b) Being another important and powerful person;
   (c) Being a part of a powerful organization.

6. Does the person have trouble sleeping at night? How long since the person had a normal night's rest?

7. Has the person consumed more than 1 pint of alcohol per day for the past 3-10 days?

8. Is the person taking any medication?
   (a) What is it?
   (b) Has the person taken any illegal drugs within the past 24 hours? Week? Month? 3 months?
      (1) What kind of drug?
      (2) How much?

9. Has there been any change in the person's appetite? More? Less? Not eating?

10. Is the person working and doing his/her normal activities?

11. Is the person not able to take care of himself of his mental condition? (Eat, sleep, dress, bathe, use the toilet, stay out of traffic?)

I. BEHAVIORS

A. hostile vs. passive -- acting out in destructive ways vs. withdrawn, quiet, apathetic
B. erratic, excitable -- sensitive to slight irritation, unpredictable, agitated
C. combative, violent -- destructive, physically and/or verbally abusive
D. incontinence --poor control of urine and feces
E. inappropriate social judgment -- behaviors usually considered in poor taste and usually rejected or found offensive by other people

II. MOVEMENTS

A. overactivity, restlessness, agitation -- parts of body in constant motion, repetitive, activity beyond reasonable level
B. involuntary movements -- parts of body jerk, shake or activated without apparent reason
C. underactivity -- immobile, stuporous, sluggish
D. general muscle tension -- parts of body held taut (e.g., clenched teeth), possibly small tremors, rigid posture or walking stance

III. SPEECH

A. overtalkative vs. mute -- constant talking vs. unresponsive, "pressure of speech"
B. unusual speech -- strange words, "word salad," disconnected speech
C. assaultive/suicidal content -- words that suggest harmful intent

IV. EMOTIONS

A. flat or inappropriate emotions -- little change in expression or expression that doesn't fit occasion (e.g., happy but angry, crying when happy)
B. mood swings -- dramatic changes from dejection to elation
C. general overapprehension --anxiety in most areas of life
D. depression, apathy, hopelessness -- withdrawal and minimal interest in activities of daily life
E. euphoric -- grandiose and unrealistic feelings, often of feeling indestructible

V. THOUGHTS

A. disturbed awareness -- unaware of self or others or time or place
B. disturbed memory --impairment of short term and/or long term memory
C. disturbed reasoning/judgment -- impaired logic or decisions not tied to common thinking
D. confused thoughts -- inconsistent and/or combination of unrelated thoughts

E. poor concentration and/or attention

F. low intellectual functioning

G. slow mental speed

VI. ABNORMAL MENTAL TRENDS

A. false perceptions (hallucinations) -- experiences in visual, hearing, smelling, tasting or skin sensations without real basis

B. false beliefs (delusions) -- usually persecutory or grandiose thoughts without real basis

C. paranoid ideas -- involves suspiciousness or belief that one is persecuted or unfairly treated

D. body delusion -- delusion involving body functions (e.g., "my brain is rotting," a 60 year-old insisting she is pregnant)

E. feelings of unreality or depersonalization -- sense of own reality is temporarily lost, so body parts distorted or sensing self from a distance

F. repetitious behaviors/thoughts/speech

G. extreme fears -- especially when seriously impairing activities of daily life

VII. PREVIOUS EVIDENCE

A. psychiatric assessments or treatment

B. prior petitions or associated legal difficulties

VIII. COURSE OR DISTURBANCE

A. chronic

B. gradual onset

C. C. acute episode

Involuntary Commitment—Case Studies
(July 2015)

1. You are a magistrate who receives a petition from an emergency room physician. The physician has checked box number 1 on the petition, which states that the respondent, Martin, is "mentally ill and dangerous to self of others or mentally ill and in need of treatment in order to prevent further disability and deterioration that would predictably result in dangerousness." The facts upon which the physician's opinion is based, according to the petition, are: "Patient behaving in a bizarre manner. Confused. Poor judgment. Unclear if suicidal."

   What do you do? Describe what you do and explain why.

2. Molly lives with her husband and daughter. Her husband reports that Molly has forgotten to turn off the stove two times in the last week, resulting in the burning of some pots and pans and a Formica countertop. Molly is extremely forgetful, frequently talks to the wall, and appears to be out of touch with her real surroundings. She has been diagnosed with bipolar disorder (manic-depressive disorder).

   Is Molly dangerous to herself or others? Why or why not?

3. John goes downtown, hangs out on the main street sidewalk, blocks people from walking by, preaches loud words, and refuses to leave after being directed by the city police. John's brother says that John is religiously preoccupied, has ideas of persecution, and delusions of grandeur. John cannot understand why City Hall will not give him a license. John's brother is afraid that if John persists in trying to convert someone on the street who is resisting John's idea, then this person might become physically aggressive toward John. John's brother does not get any indication that John is aggressively motivated in the sense of being physically violent. John's brother has prepared a petition/affidavit for commitment for the magistrate. John's brother has written down in the petition the facts stated above and added that he believes John is in a mentally ill state of mind, is dangerous to himself or others, and needs medical treatment.

   Is John dangerous to himself or others? Why or why not?

4. Same facts as in number 3, except the petitioner adds that John "assaulted two people yesterday." Is John dangerous to himself or others? Why or why not?

5. Jane has been unemployed for almost one year, having left her job because she felt she was being harassed by married men at work. She has not attempted to seek other employment and has been living in her car for the past two weeks, despite the cold weather (December). Jane believes that people are harassing her. Jane's daughter, Mary, was able to get her mother assessed by a physician who diagnosed Jane as suffering from psychotic depression, and possibly paranoid schizophrenia. The doctor also noted to Mary that Jane was not eating well. Since this initial evaluation two weeks ago, Jane has refused treatment and begun living in her car. Mary reports that her mother seems to have imaginary friends visiting her car, has a flat affect, and believes that others are "harming her." Mary believes that her mother is incapable of providing for herself in her present state and is not getting sufficient nourishment. Mary says that Jane does not appear to have eaten much in the last two weeks and is losing weight. Jane apparently runs the car engine periodically to keep warm. Mary fears that Jane might die of carbon monoxide poisoning if Jane continues to live in her car the rest of the winter.

   Is Jane dangerous to herself? Why or why not?

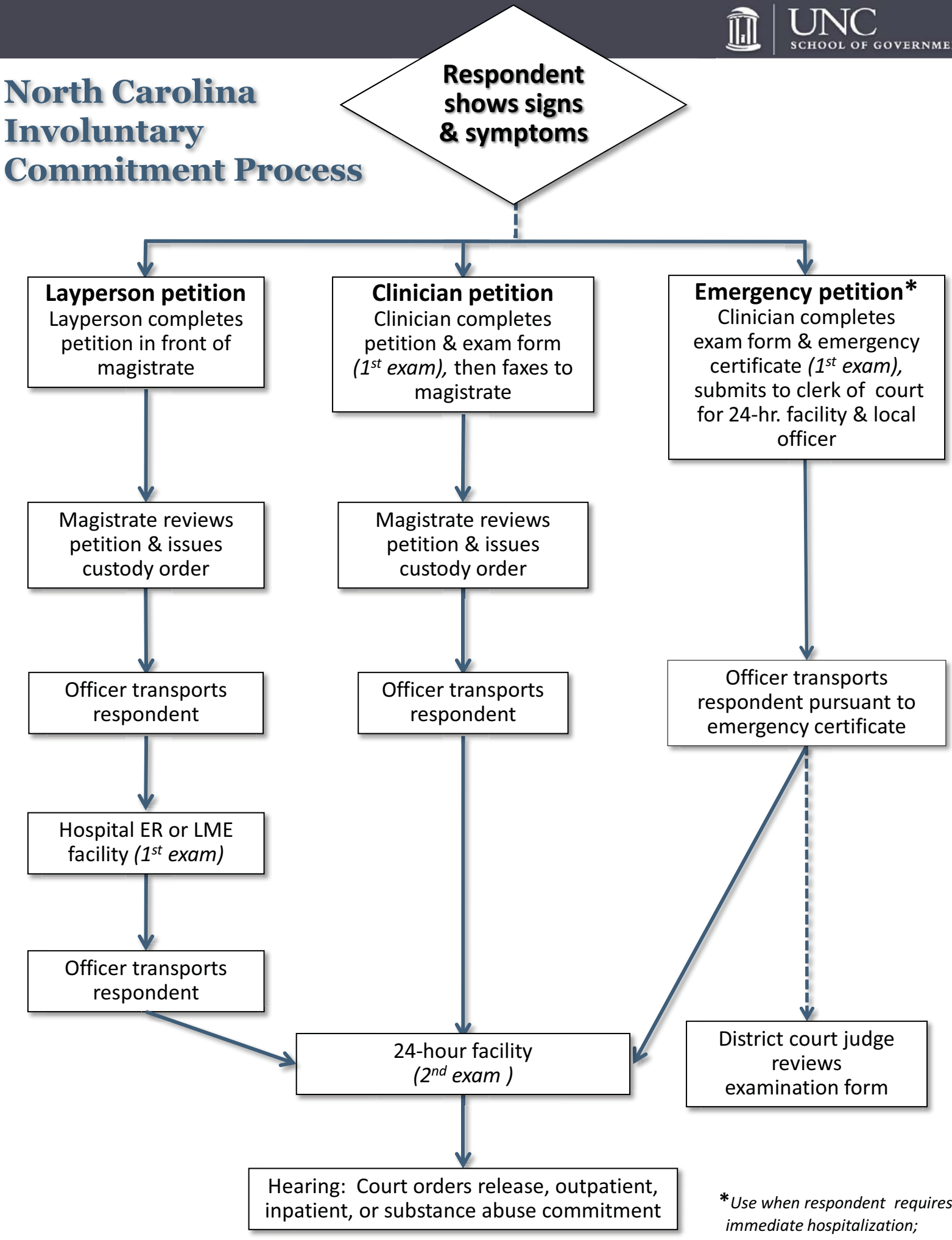
6. Mary has a hammer in the house, breaks everything she can find, and told her husband that if he went to sleep she would bash his brains out. She has threatened to kill her daughter, granddaughter and sister. The daughter says, "Upon coming home, I found the TV busted, the telephone had been cut away from the wall, and glass was all over the living room. When I asked what happened, mother became excited and said that she had broken the TV, cut the phone, and broke some of the glass. On the phone the night before, mother had threatened to kill father and aunt."

   Is Mary dangerous to herself? Why or why not?

7. David was found sitting on the edge of a busy airport runway. He had been observed in the woods with a rope around his neck and cutting his arm with a knife. He kept an iron pipe and hatchet under his bed and threatened his mother three days age by forcing her to sit in one chair and not move for two hours while he was screaming, shouting, and cursing. He threatened to "bust" his mother's head if she called anybody. He complained of demons and of feeling that his bones were being pulled out.

   Is David dangerous? Why or why not?

North Carolina Involuntary Commitment Process



**Use when respondent requires immediate hospitalization; procedure by-passes magistrate.*

Mark Botts, Associate Professor (2009)

Involuntary Commitment

"Reasonable Grounds to Believe"

"The affidavit shall include facts on which the affiant's opinion is based." G.S. 122C-261(a).

"The affidavit must set out facts upon which the affiant's opinion is based." In re Hernandez, 46 N.C. App. 265 (1980).

"If the clerk or magistrate finds reasonable grounds to believe that the facts alleged in the affidavit are true and that the respondent [probably meets the commitment criteria], then clerk or magistrate shall issue an order . . . " G.S. 122C-261(b).

Reasonable grounds to believe: The *knowledge of facts* that would lead a reasonable person of ordinary intelligence and prudence to believe.

Reasonable grounds to believe that the respondent probably meets the commitment criteria: The *knowledge of facts* that would lead a reasonable person of ordinary intelligence and prudence to believe the respondent probably meets the commitment criteria.

For the magistrate or clerk to have reasonable grounds to believe, he or she must first have knowledge of facts that lead to that belief. To have knowledge of facts that would give reasonable grounds to believe, the affiant must assert facts (signs and symptoms) in the affidavit. Mere conclusions or opinions do not suffice to give the magistrate or clerk reasonable grounds to believe, for the magistrate cannot simply adopt the belief of others. Rather, the magistrate must come to his or her own belief based on facts asserted in the affidavit.

What Happens After a Magistrate Issues a Custody and Transportation Order

Source: Administration of Justice Bulletin, September 2007

Upon request, the magistrate or clerk of court has issued an order for custody and transportation of a person alleged to be in need of examination and treatment. This order is not an order of commitment but only authorizes the person to be evaluated and treated until a court hearing. The individual making the request has filed a petition with the court for this purpose and is, therefore, called the "petitioner." The individual to be taken into custody for examination will have an opportunity to respond to the petition and is, therefore, called the "respondent." If you are taken into custody, the word "respondent," below, refers to you.

1. A law enforcement officer or other person designated in the custody order must take the respondent into custody within 24 hours. If the respondent cannot be found within 24 hours, a new custody order will be required to take the respondent into custody. Custody is not for the purpose of arrest, but for the respondent's own safety and the safety of others, and to determine if the respondent needs treatment.

2. Without unnecessary delay after assuming custody, the law enforcement officer or other individual designated to provide transportation must take the respondent to a physician or eligible psychologist for examination.

3. The respondent must be examined as soon as possible, and in any event within 24 hours, after being presented for examination. The examining physician or psychologist will recommend either outpatient commitment, inpatient commitment, substance abuse commitment, or termination of these proceedings.

    - *Inpatient commitment*: If the examiner finds the respondent meets the criteria for inpatient commitment, the examiner will recommend inpatient commitment. The law enforcement officer or other designated person must take the respondent to a 24-hour facility.
    - *Outpatient commitment*: If the examiner finds the respondent meets the criteria for outpatient commitment, the examiner will recommend outpatient commitment and identify the proposed outpatient treatment physician or center in the examination report. The person designated in the order to provide transportation must return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county. The respondent must be released from custody.
    - *Substance abuse commitment*: If the examiner finds the respondent meets the criteria for substance abuse commitment, the examiner must recommend commitment and whether the respondent should be released or held at a 24-hour facility pending a district court hearing. Depending upon the physician's recommendation, the law enforcement officer or other designated individual will either release the respondent or take him or her to a 24-hour facility.
    - *Termination*: If the examiner finds the respondent meets neither of the criteria for commitment, the respondent must be released from custody and the proceedings terminated. If the custody order was based on the finding that the respondent was probably mentally ill, then the person designated in the order to provide transportation must return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county.

4. If the law enforcement officer transports the respondent to a 24 hour facility, another evaluation must be performed within 24 hours of arrival. This evaluator has the same options as indicated in step 3 above. If the respondent is not released, the respondent will be given a hearing before a district court judge within 10 days of the date the respondent was taken into custody.

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF		AFFIDAVIT AND PETITION FOR INVOLUNTARY COMMITMENT	
Name And Address Of Respondent		G.S. 122C-261, 122C-281	
Social Security No. Of Respondent (if available)	*Date Of Birth*	*Drivers License No. Of Respondent*	*State*

I, the undersigned affiant, being first duly sworn, and having sufficient knowledge to believe that the respondent is a proper subject for involuntary commitment, allege that the respondent is a resident of, or can be found in the above named county, and is:

(check all that apply)

☐ 1. mentally ill and dangerous to self or others or mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.

☐ in addition to being mentally ill, respondent is also "mentally retarded" pursuant to G.S. 122C-261.

☐ 2. a substance abuser and dangerous to self or others.

The facts upon which this opinion is based are as follows: (*State facts, not conclusions, to support ALL blocks checked.*)

Name And Address Of Nearest Relative Or Guardian		*Name And Address Of Person Other Than Petitioner Who May Testify*	
Home Telephone No.	*Business Telephone No.*	*Home Telephone No.*	*Business Telephone No.*

Petitioner requests the court to issue an order to a law enforcement officer to take the respondent into custody for examination by a person authorized by law to conduct the examination for the purpose of determining if the respondent should be involuntarily committed.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		*Signature Of Petitioner*	
Date	*Signature*	*Name And Address Of Petitioner (type or print)*	
☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court* ☐ *Magistrate*			
☐ *Notary (use only with physician or psychologist petitioner)*	*Date Notary Commission Expires*	*Relationship To Respondent*	
SEAL	*County Where Notarized*	*Home Telephone No.*	*Business Telephone No.*

Original-File Copy-Hospital Copy-Special Counsel Copy-Attorney General
(Over)

AOC-SP-300, Rev. 5/17

PETITIONER'S WAIVER OF NOTICE OF HEARING

I voluntarily waive my right to notice of all hearings and rehearings in which the Court may commit the respondent or extend the respondent's commitment period, or discharge the respondent from the treatment facility.

Signature Of Witness	*Date*
	Signature Of Petitioner

NOTE: *"Upon the request of the legally responsible person or the minor admitted or committed, and after that minor has both been released and reached adulthood, the court records of that minor made in proceedings pursuant to Article 5 of [Chapter 122C] may be expunged from the files of the court." G.S. 122C-54(e).*

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
District Court Division

IN THE MATTER OF

Name And Address Of Respondent

AFFIDAVIT AND PETITION FOR INVOLUNTARY COMMITMENT

G.S. 122C-261, 122C-281

Social Security No. Of Respondent (if available)	*Date Of Birth*	*Drivers License No. Of Respondent*	*State*

I, the undersigned affiant, being first duly sworn, and having sufficient knowledge to believe that the respondent is a proper subject for involuntary commitment, allege that the respondent is a resident of, or can be found in the above named county, and is:

(check all that apply)

☐ 1. mentally ill and dangerous to self or others or mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.

☐ in addition to being mentally ill, respondent is also "mentally retarded" pursuant to G.S. 122C-261.

☐ 2. a substance abuser and dangerous to self or others.

The facts upon which this opinion is based are as follows: (*State facts, not conclusions, to support ALL blocks checked.*)

Name And Address Of Nearest Relative Or Guardian		*Name And Address Of Person Other Than Petitioner Who May Testify*	
Home Telephone No.	*Business Telephone No.*	*Home Telephone No.*	*Business Telephone No.*

Petitioner requests the court to issue an order to a law enforcement officer to take the respondent into custody for examination by a person authorized by law to conduct the examination for the purpose of determining if the respondent should be involuntarily committed.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME		*Signature Of Petitioner*	
Date	*Signature*	*Name And Address Of Petitioner (type or print)*	
☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court* ☐ *Magistrate*			
☐ *Notary (use only with physician or psychologist petitioner)*	*Date Notary Commission Expires*	*Relationship To Respondent*	
SEAL	*County Where Notarized*	*Home Telephone No.*	*Business Telephone No.*

Original-File Copy-Hospital Copy-Special Counsel Copy-Attorney General
(Over)

AOC-SP-300, Rev. 5/17

PETITIONER'S WAIVER OF NOTICE OF HEARING

I voluntarily waive my right to notice of all hearings and rehearings in which the Court may commit the respondent or extend the respondent's commitment period, or discharge the respondent from the treatment facility.

Signature Of Witness	*Date*
	Signature Of Petitioner

NOTE: *"Upon the request of the legally responsible person or the minor admitted or committed, and after that minor has both been released and reached adulthood, the court records of that minor made in proceedings pursuant to Article 5 of [Chapter 122C] may be expunged from the files of the court." G.S. 122C-54(e).*

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF:

Name And Address Of Respondent

FINDINGS AND CUSTODY ORDER INVOLUNTARY COMMITMENT

(PETITIONER APPEARS BEFORE MAGISTRATE OR CLERK)

G.S. 122C-252, -261, -263, -281, -283

Social Security No. Of Respondent	*Date Of Birth*	*Drivers License No. Of Respondent*	*State*

I. FINDINGS

The Court finds from the petition in the above matter that there are reasonable grounds to believe that the facts alleged in the petition are true and that the respondent is probably:

(Check all that apply)

☐ 1. mentally ill and dangerous to self or others or mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.

☐ In addition to being mentally ill, the respondent probably is also mentally retarded. (If this finding is made, see G.S. 122C-261(b) and (d) for special instructions.)

☐ 2. a substance abuser and dangerous to self or others.

II. CUSTODY ORDER

TO ANY LAW ENFORCEMENT OFFICER:

The Court ORDERS you to take the above named respondent into custody **WITHIN 24 HOURS AFTER THIS ORDER IS SIGNED** and take the respondent for examination by a person authorized by law to conduct the examination. (A COPY OF THE EXAMINER'S FINDINGS SHALL BE TRANSMITTED TO THE CLERK OF SUPERIOR COURT IMMEDIATELY.)

- IF the examiner finds that the respondent IS NOT a proper subject for involuntary commitment, then you shall take the respondent home or to a consenting person's home in the originating county and release him/her.
- IF the examiner finds that the respondent IS mentally ill and a proper subject for outpatient commitment, then you shall take the respondent home or to a consenting person's home in the originating county and release him/her.
- IF the examiner finds that the respondent IS mentally ill and a proper subject for inpatient commitment, then you shall transport the respondent to a 24-hour facility designated by the State for the custody and treatment of involuntary clients and present the respondent for custody, examination and treatment pending a district court hearing.
- IF the examiner finds that the respondent IS a substance abuser and subject to involuntary commitment, the examiner must recommend whether the respondent be taken to a 24-hour facility or released, and then you shall either release him/her or transport the respondent to a 24-hour facility designated by the State for the custody and treatment of involuntary clients and present the respondent for custody, examination and treatment pending a district court hearing.

Date	*Time* ☐ AM ☐ PM	*Signature*	☐ *Deputy CSC* ☐ *CSC* ☐ *Assistant CSC* ☐ *Magistrate*

This Order is valid throughout the State. If the respondent is taken into custody, this Order is valid for seven (7) days from the date and time of issuance.

III RETURN OF SERVICE
A. CUSTODY CERTIFICATION

☐ Respondent WAS NOT taken into custody for the following reason:

☐ I certify that this Order was received and respondent served and taken into custody as follows:

Date Respondent Taken Into Custody	*Time* ☐ AM ☐ PM
Name Of Law Enforcement Officer (Type Or Print)	*Signature Of Law Enforcement Officer*
Name Of Law Enforcement Agency	*Badge No. Of Officer*

NOTE TO LAW ENFORCEMENT OFFICER: *If respondent is not taken into custody within 24 hours after this Order is signed, check the appropriate box above and return to the Clerk of Superior Court immediately. If respondent is served and taken into custody, complete return of service on the reverse. When taking respondent into custody you must inform him or her that he or she is not under arrest and has not committed a crime, but is being transported to receive treatment and for his or her own safety and that of others.*

Original-File Copy-24-Hour Facility Copy-Special Counsel Copy-Attorney General

(Over)

AOC-SP-302A, New 11/12

B. PATIENT DELIVERY TO FIRST EXAMINATION SITE

The respondent was presented to an authorized examiner as shown below:

Date Presented	*Time* ☐ AM ☐ PM	*Name Of Examiner (Type Or Print)*
Name Of Examining Facility		*County Of Examining Facility*
Name Of Law Enforcement Officer (Type Or Print)		*Signature Of Law Enforcement Officer*
Name Of Law Enforcement Agency		*Badge No. Of Officer*

C. FOR USE WHEN TRANSPORTING AFTER FIRST EXAMINATION: PATIENT RELEASED OR DELIVERED TO 24-HOUR FACILITY

☐ 1. The examiner found that the respondent does not meet the commitment criteria, or meets the criteria for outpatient commitment, or meets the criteria for substance abuse commitment and should be released pending a hearing. I returned respondent to his/her regular residence or the home of a consenting person and released respondent from custody.

☐ 2. The examiner found that the respondent is mentally ill and meets the criteria for inpatient commitment, or meets the criteria for substance abuse commitment and should be held pending a district court hearing. I transported and placed the respondent in the custody of the 24-hour facilty named below for observation and treatment.

Name Of 24-Hour Facility	*County Of 24-Hour Facility*

☐ 3. Respondent was temporarily detained under appropriate supervision at the site of first examination because the first examiner recommended inpatient commitment and a 24-hour facility was not immediately available or medically appropriate. Upon further examination, an examiner determined that the respondent no longer meets inpatient commitment criteria or meets the criteria for outpatient commitment. I returned the respondent to his/her regular residence or the home of a consenting person and released respondent from custody.

Date Delivered	*Time Delivered* ☐ AM ☐ PM	*Name Of Examiner (Type Or Print)*
Name Of Examining Facility		*County Of Examining Facility*
Name Of Law Enforcement Officer (Type Or Print)		*Signature Of Law Enforcement Officer*
Name Of Law Enforcement Agency		*Badge No. Of Officer*

NOTE TO LAW ENFORCEMENT OFFICER: *Upon completing this section, immediately return this form and a copy of the examiner's written report (Form No. DMH 5-72-01) to the Clerk of Superior Court of the county where the petition was filed and the custody order issued (See top of reverse side).*

STATE OF NORTH CAROLINA

File No.

County

In The General Court Of Justice
District Court Division

IN THE MATTER OF:

Name And Address Of Respondent

FINDINGS AND CUSTODY ORDER INVOLUNTARY COMMITMENT

(PETITIONER IS CLINICIAN WHO HAS EXAMINED RESPONDENT)

G.S. 122C-252, -261, -263, -281, -283

Social Security No. Of Respondent	*Date Of Birth*	*Drivers License No. Of Respondent*	*State*

I. FINDINGS

The Court finds from the petition in the above matter that there are reasonable grounds to believe that the facts alleged in the petition are true and that the respondent is probably:

(Check all that apply)

☐ 1. mentally ill and dangerous to self or others.

☐ In addition to being mentally ill, the respondent probably is also mentally retarded. (If this finding is made, see G.S. 122C-261(b) and (d) for special instructions.)

☐ 2. a substance abuser and dangerous to self or others.

II. CUSTODY ORDER

TO ANY LAW ENFORCEMENT OFFICER:

The Court ORDERS you to take the above named respondent into custody **WITHIN 24 HOURS AFTER THIS ORDER IS SIGNED** and transport the respondent directly to a 24-hour facility designated by the State for the custody and treatment of involuntary clients and present the respondent for custody, examination and treatment pending a district court hearing.

Date	*Time* ☐ AM ☐ PM	*Signature*	☐ *Deputy CSC* ☐ *CSC* ☐ *Assistant CSC* ☐ *Magistrate*

This Order is valid throughout the State. If the respondent is taken into custody, this Order is valid for seven (7) days from the date and time of issuance.

III. RETURN OF SERVICE
A. CUSTODY CERTIFICATION

☐ Respondent WAS NOT taken into custody for the following reason:

☐ I certify that this Order was received and the respondent served and taken into custody as follows:

Date Respondent Taken Into Custody	*Time* ☐ AM ☐ PM
Name Of Law Enforcement Officer (Type Or Print)	*Signature Of Law Enforcement Officer*
Name Of Law Enforcement Agency	*Badge No. Of Officer*

NOTE TO LAW ENFORCEMENT OFFICER: *If respondent is not taken into custody within 24 hours after this Order is signed, check the appropriate box above and return to the Clerk of Superior Court immediately. If respondent is served and taken into custody, complete return of service on the reverse. When taking respondent into custody you must inform him or her that he or she is not under arrest and has not committed a crime, but is being transported to receive treatment and for his or her own safety and that of others.*

Original-File Copy-24-Hour Facility Copy-Special Counsel Copy-Attorney General

(Over)

AOC-SP-302B, New 11/12

B. FOR USE WHEN 24-HOUR FACILITY NOT IMMEDIATELY AVAILABLE OR MEDICALLY APPROPRIATE

A 24-hour facility is not immediately available or medically appropriate. The respondent is being temporarily detained under appropriate supervision at the facility named below.

Date	*Time* ☐ AM ☐ PM	*Name Of Examiner (Type Or Print)*
Name Of Examining Facility		*County Of Examining Facility*
Name Of Law Enforcement Officer (Type Or Print)		*Signature Of Law Enforcement Officer*
Name Of Law Enforcement Agency		*Badge No. Of Officer*

C. FOR USE WHEN RESPONDENT RELEASED BEFORE TRANSPORT TO 24-HOUR FACILITY

Respondent was temporarily detained under appropriate supervision at the site of first examination because the first examiner (petitioning clinician) recommended inpatient commitment and a 24-hour facility was not immediately available or medically appropriate. Upon further examination, an examiner determined that the respondent no longer meets the inpatient commitment criteria or meets the criteria for outpatient commitment. I returned the respondent to his/her regular residence or the home of a consenting person and released respondent from custody.

Date Delivered	*Time Delivered* ☐ AM ☐ PM	*Name Of Examiner (Type Or Print)*
Name Of Examining Facility		*County Of Examining Facility*
Name Of Law Enforcement Officer (Type Or Print)		*Signature Of Law Enforcement Officer*
Name Of Law Enforcement Agency		*Badge No. Of Officer*

NOTE TO LAW ENFORCEMENT OFFICER: *Upon completing this section, immediately return this form and the examiner's written report (Form No. DMH 5-72-01) to the Clerk of Superior Court of the county where the petition was filed and the custody order issued (See top of reverse side).*

D. PATIENT DELIVERY TO 24-HOUR FACILITY

I transported the respondent and placed him/her in the custody of the 24-hour facility named below.

Date Delivered	*Time Delivered* ☐ AM ☐ PM
Name Of 24-Hour Facility	*County Of 24-Hour Facility*
Name Of Law Enforcement Officer (Type Or Print)	*Signature Of Law Enforcement Officer*
Name Of Law Enforcement Agency	*Badge No. Of Officer*

NOTE TO LAW ENFORCEMENT OFFICER: *Upon completing this section, immediately return this form to the Clerk of Superior Court of the county where the petition was filed and the custody order issued (See top of reverse side).*

STATE OF NORTH CAROLINA Department of Health and Human Services
Division of Mental Health, Developmental Disabilities, and Substance Abuse Services

County_____ File #_____

Client Record #_____

EXAMINATION AND RECOMMENDATION TO DETERMINE NECESSITY FOR INVOLUNTARY COMMITMENT

Film # _____

Name of Respondent:	Age	DOB	Sex	Race	M.S.

Address (Street, Box Number, City, State, Zip (use facility address after 1 year in facility):	County:
	Phone:
Legally Responsible Person ☐Next of Kin (Name and Address)	Relationship:
	Phone:
Petitioner (Name and address)	Relationship:
	Phone

The above-named respondent was examined on _____, 20___ at _____ o'clock ____.M. at _____ _____. OR, I examined the respondent via telemedicine technology on _____ 20__ at _____o'clock ___M. Included in the examination was an assessment of the respondent's: ❑ (1) current and previous mental illness or mental retardation including, if available, previous treatment history; (2) dangerousness to self or others as defined in G.S. 122C-3 (11*); (3) ability to survive safely without inpatient commitment, including the availability of supervision from family, friends, or others; and (4) capacity to make an informed decision concerning treatment. ❑ (1) current and previous substance abuse including, if available, previous treatment history; and (2) dangerousness to himself or others as defined in G.S. 122C-3 (11*). The following findings and recommendations are made based on this examination. For telemedicine evaluations only: ❑ I certify to a reasonable degree of medical certainty that the results of the examination via telemedicine were the same as if I had been personally present with the respondent OR ❑The respondent needs to be taken to a facility for a face to face evaluation. (*Statutory Definitions are on reverse side)

SECTION I - CRITERIA FOR COMMITMENT

Inpatient. It is my opinion that the respondent is:
(1st Exam – Physician or Psychologist)
(2nd Exam – Physician only)

- ❑ mentally ill; ❑ dangerous to self; ❑ dangerous to others
- ❑ in addition to being mentally ill is also mentally retarded
- ❑ none of the above

Outpatient. It is my opinion that:
(Physician or Psychologist)

- ❑ the respondent is mentally ill
- ❑ the respondent is capable of surviving safely in the community with available supervision
- ❑ based upon the respondent's treatment history, the respondent is in need of treatment in order to prevent further disability or deterioration which would predictably result in dangerousness as defined by G.S. 122C-3 (11*)
- ❑ the respondent's current mental status or the nature of his illness limits or negates his/her ability to make an informed decision to seek treatment voluntarily or comply with recommended treatment
- ❑ none of above

Substance Abuse. It is my opinion that the respondent is:
(1st Exam – Physician or Psychologist; 2nd Exam – If 1st exam done by Physician, 2nd exam may be done by Qual. Prof.)

- ❑ a substance abuser
- ❑ dangerous to himself or others
- ❑ none of the above

SECTION II – DESCRIPTION OF FINDINGS

Clear description of findings (findings for each criterion checked above in Section I must be described):

over

Notable Physical Conditions: Current Medications (medical and psychiatric)

Impression/Diagnosis:

SECTION III - RECOMMENDATION FOR DISPOSITION

❑ Inpatient Commitment for _____ days (respondent must be mentally ill **and** dangerous to self or others)
❑ Outpatient Commitment (respondent must meet **ALL** of the first four criteria outlined in Section I, **Outpatient)**
Proposed Outpatient Treatment Center or Physician: (Name)_____
(Address and Phone Number)_____
_____
LME notified of appointment: (Name of LME and date)_____
❑ Substance Abuse Commitment (respondent must meet both criteria outlined in Section I, **Substance Abuse)**
❑ Release respondent pending hearing - Referred to:_____
❑ Hold respondent at 24-hour facility pending hearing – Facility: _____
❑ Respondent does not meet the criteria for commitment but custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and that he was found not guilty by reason of insanity or incapable of proceeding: therefore, the respondent will not be released until so ordered following the court hearing.
❑ Respondent or Legally Responsible Person Consented to Voluntary Treatment
❑ Release Respondent and Terminate Proceedings (insufficient findings to indicate that respondent meets commitment criteria)
❑ Respondent was held 7 days from issuance of custody order but continues to meet commitment criteria. A new petition will be filed.

❑ Other (*Specify*) _____

_____M.D. Physician Signature _____ Signature/Title – Eligible Psychologist/Qualified Professional _____ Print Name of Examiner _____ Address or Facility _____ City and State _____ Telephone Number	This is to certify that this is a true and exact copy of the Examination and Recommendation for Involuntary Commitment _____ Original Signature – Record Custodian _____ Title _____ Address or Facility _____ Date **NOTE:** Only copies to be introduced as evidence need to be certified

CC: Clerk of Superior Court where petition was initiated (initial hearing only)
Clerk of Superior Court where 24-hour facility is located or where outpatient treatment is supervised
Respondent or Respondent's Attorney and State's Attorneys, when applicable
Proposed Outpatient Treatment Center or Physician (Outpatient Commitment); Area Program / Physician (Substance Abuse Commitment)
NOTE: If it cannot be reasonably anticipated that the clerk will receive the copies within 48 hours of the time that it was signed, the physician or eligible psychologist/qualified professional shall communicate his findings to the clerk by telephone.

***STATUTORY DEFINITIONS**

"Dangerous to self". Within the relevant past: (a) the individual has acted in such a way as to show: (1) that he would be unable without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and (2) that there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a **prima facie** inference that the individual is unable to care for himself; or (b) the individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given; or (c) the individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given. NOTE: Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

"Dangerous to others". Within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct.

"Mental illness:. (a) when applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance or control; and (b) when applied to a minor, a mental condition, other than mental retardation alone, that so lessens or impairs the youth's capacity to exercise age adequate self-control and judgment in
the conduct of his activities and social relationships so that he is in need of treatment.

"Substance abuser". An individual who engages in the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. Substance abuse may include a pattern of tolerance and withdrawal.

STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
Superior Court Division

IN THE MATTER OF:

Name And Address Of Respondent

FINDINGS AND ORDER INVOLUNTARY COMMITMENT PHYSICIAN-PETITIONER RECOMMENDS OUTPATIENT COMMITMENT

G.S. 122C-261

NOTICE: *This form is to be used instead of the Findings And Custody Order (AOC-SP-302) only when the petitioner is a physician or psychologist who recommends outpatient commitment or release pending hearing for a substance abuser.*

FINDINGS

The petitioner in this case is a physician/eligible psychologist who has recommended outpatient commitment/substance abuse commitment with the respondent being released pending hearing.

The Court finds from the petition in the above matter that there are reasonable grounds to believe that the facts alleged in the petition are true and that the respondent is probably:

☐ mentally ill and in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness.

☐ a substance abuser and dangerous to himself/herself or others.

ORDER

It is ORDERED that a hearing before the district court judge be held to determine whether the respondent will be involuntarily committed.

Date	*Signature*
	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court* ☐ *Magistrate*

NOTE TO CLERK: *Schedule an initial hearing for the respondent pursuant to G.S. 122C-264 or G.S. 122C-284 and give notice of the hearing as required by those statutes.*

AOC-SP-305, Rev. 1/98

SUPPLEMENT TO SUPPORT IMMEDIATE HOSPITALIZATION
(To be used in addition to "Examination and Recommendation for Involuntary Commitment, Form 572-01)

CERTIFICATE

The Respondent, _____
requires immediate hospitalization to prevent harm to self or others because:

I certify that based upon my examination of the Respondent, which is attached hereto, the Respondent is (check all that apply):

- ☐ Mentally ill and dangerous to self
- ☐ Mentally ill and dangerous to others
- ☐ In addition to being mentally ill, is also mentally retarded

_____
Signature of Physician or Eligible Psychologist

Address: _____
City State Zip: _____
Telephone: _____
Date/Time: _____

Name of 24-hour facility: _____
Address of 24-hour facility: _____

CC: 24-hour facility
Clerk of Court in county of 24-hour facility

Note: If it cannot be reasonably anticipated that the clerk will receive the copy within 24 hours (excluding Saturday, Sunday and holidays) of the time that it was signed, the physician or eligible psychologist shall also communicate the findings to the clerk by telephone.

NORTH CAROLINA
_____ County
Sworn to and subscribed before me this
_____ day of _____, 20__

(seal)

_____
Notary Public

My commission expires:_____

Pursuant to G.S. 122C-262 (d), this certificate *shall serve as the Custody Order* and the law enforcement officer or other person *shall* provide transportation to a 24-hr. facility in accordance with G.S. 122C-251.

TO LAW ENFORCEMENT: See back side for Return of Service

	RETURN OF SERVICE	

☐ **Respondent WAS NOT taken into custody for the following reason:**

☐ **I certify that this Order was received and served as follows:**

Date Respondent Taken into Custody	*Time* ☐ AM ☐ PM		
Name of 24-Hour Facility	*Date Delivered*	*Time Delivered* AM ☐ PM ☐	*Date of Return*
Name of Transporting Agency	*Signature of Law Enforcement Official*		

ADMINISTRATION OF JUSTICE BULLETIN

2007/05 September 2007

THE MAGISTRATE'S ROLE IN INVOLUNTARY COMMITMENT

■ Joan G. Brannon

What is Involuntary Civil Commitment?

Involuntary civil commitment is the process that the state, through its courts, uses to order a person who meets certain statutory criteria to obtain mental health treatment. The person ordered to receive treatment is called "the respondent." Civil commitment is involuntary because the respondent is ordered to submit to mental health treatment without his or her consent.

When a respondent is involuntarily committed, the state has substituted its judgment about what is best for the respondent for the respondent's own judgment. This substituted judgment is a significant intrusion on the respondent's right to liberty, as is the involuntary commitment itself. Despite its intrusiveness, the commitment process before 1973 contained very few safeguards to assure that the respondent was not arbitrarily deprived of freedom. Procedural due process was lacking insofar as a person could be committed for twenty days, without notice or a hearing, if a physician certified that the person was mentally ill or inebriate and dangerous to self or others.[1] Substantive due process was lacking in that a respondent could be committed for up to 180 days if, after an informal hearing, the clerk of court found that he or she was mentally ill or inebriate. The respondent did not need to be dangerous to self or others to be committed.[2] In 1973 the process was changed so that no respondent could be taken into custody without a hearing in which a magistrate found that the respondent was either mentally ill or "inebriate" (later changed to

■ The author is a faculty member of the School of Government. She wishes to thank the following people who graciously reviewed this Bulletin: her colleague, Mark Botts, Lisa Corbett and Angel Gray of the Attorney General's Office, and the High Point, North Carolina magistrates.

1. N.C. G.S. § 122-59 (1971).
2. N.C. G.S. § 122-63 (1971).

"substance abuser") and dangerous to self or others.[3] In 1975 the United States Supreme Court held that a finding of mental illness alone could not justify involuntary commitment. The state must show some dangerousness. "A state cannot constitutionally confine without more a nondangerous individual who is capable of surviving safely in freedom by himself or with the help of a willing and responsible family members or friends."[4]

Parts six, seven and eight of Article 5, Chapter 122C of the North Carolina General Statutes establish the procedures for involuntary commitment. A brief overview of these procedures is set out below.

Description of Commitment Process

The statutory procedure for an involuntary commitment involves some or all of the following stages:

The Petition for Commitment: A person who has knowledge of someone he or she believes needs mental health or substance abuse treatment petitions the magistrate to begin the involuntary commitment process. [5] (Petitions may also be presented to the clerk of superior court. Although this bulletin will refer to magistrates only, the same law and procedure applies if the petition is presented to a clerk.) This petition is an affidavit setting out facts intended to show that the respondent meets the statutory criteria for issuing an order (called a custody order) to take the respondent into custody for examination by a physician or eligible psychologist.

Review of the Petition: The magistrate reviews the petition to determine whether reasonable grounds exist to find that the respondent meets the criteria for a custody order.[6] If the magistrate does not find reasonable grounds to believe that the respondent meets the criteria, the magistrate must decline to issue the order.

Custody Order: If the magistrate does find reasonable grounds to conclude that the respondent meets the criteria for a custody order, the magistrate must issue an order to a law enforcement officer to take the respondent into custody and transport him or her to a local physician or psychologist for an examination.[7]

Examinations: A local physician or eligible psychologist[8] examines the respondent and if the examiner finds that the respondent does not meet the criteria for commitment, the respondent is released and the process of involuntary commitment ends.[9] If, however, the examiner finds that the respondent meets the commitment criteria, the examiner must recommend outpatient,[10] inpatient,[11] or substance abuse commitment.[12] If outpatient commitment is recommended, the respondent will then be transported to his or her residence (or the residence of a consenting individual) and released pending a district court hearing.[13] If the examiner recommends inpatient commitment, the respondent must be transported directly to a designated 24-hour facility for a second examination.[14] This examiner has the same options as the first examiner: if he or she finds that the respondent meets none of the commitment criteria, the respondent will be released; if the

3. N.C. G.S. §§ 122-58.1, -58.3 (1973). See In re Hayes, 18 N.C. App. 560, 197 S.E.2d 582 (1973) in which the court held the former statutory procedure unconstitutional.

4. O'Connor v. Donaldson, 422 U.S. 563, 576, 95 S.Ct. 2486, 2494, 45 L.Ed.2d 396, 407 (1975).

5. G.S. 122C-261(a), -281(a).

6. G.S. 122C-261(b), -281(b).

7. Id.

8. Eligible psychologist means a licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the North Carolina Psychology Board. G.S. 122C-3(13d).

9. G.S. 122C-263(d)(3), -283(d)(2).

10. Outpatient commitment means treatment in an outpatient setting and may include medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision or living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility. G.S. 122C-3(27).

11. Inpatient commitment involves holding the respondent in the custody of a facility the state has designated "24-hour" facilities. A "24-hour facility" is one whose primary purpose is to provide services for the care and treatment of persons who are mentally ill or substance abusers and provides a structured living environment and services for a period of 24 consecutive hours or more. G.S. 122C-3(14)g. Such facilities include state operated psychiatric hospitals, public and private psychiatric and substance abuse hospitals, and general hospitals with inpatient psychiatric or substance abuse services.

12. G.S. 122C-283(d). Substance abuse commitment may result in either outpatient or inpatient treatment.

13. G.S. 122C-263(d)(1), 122C-283(d)(1).

14. G.S. 122C-263(d)(2), 122C-283(d)(1). See supra note 11 for a definition of 24-hour facility.

respondent meets the criteria for outpatient commitment, the respondent will be released pending a district court hearing; if the respondent meets the inpatient commitment criteria, he or she will be held at the hospital pending a hearing before the district court.[15]

District Court Hearing: A respondent who is recommended for either outpatient or inpatient commitment is entitled to a hearing in district court. This hearing must occur within 10 days of the date the respondent is taken into custody by order of the magistrate.[16] At the hearing, if the court is persuaded by clear, cogent and convincing evidence that the respondent meets the commitment criteria, it will order involuntary commitment.[17]

The magistrate's role in the involuntary commitment process is a small but important one. Magistrates decide whether to issue orders to take respondents into custody for examination. Magistrates do not actually commit anyone; district court judges determine whether to commit. The role of the magistrate as an independent and neutral judicial official determining whether to initiate the process for involuntary commitment is a safeguard to provide due process to a person before depriving that person of liberty as required by the United States Constitution.[18]

The rest of this bulletin will focus on the magistrate's role in the process that potentially leads to involuntary commitment.

Criteria For Issuing A Custody Order

When a person (called the petitioner) appears before a magistrate to initiate the process of involuntary commitment, the magistrate must determine whether there are reasonable grounds to believe that the respondent meets the statutory criteria for issuing a custody order. Reasonable grounds exist when, taking into consideration all the relevant information, a reasonable person would conclude that there is a fair likelihood that the respondent meets the criteria for a custody order. The "reasonable grounds" standard is synonymous with the probable cause standard that magistrates use in issuing warrants.[19]

There are three situations in which a magistrate can issue a custody order:

1. The respondent is mentally ill and dangerous to self or others.
2. The respondent is mentally ill and needs court-ordered treatment to prevent further disability or deterioration that would predictably lead to dangerousness.
3. The respondent is a substance abuser and dangerous to self or others.[20]

The first standard, mentally ill and dangerous, is the most complicated of the standards.

Mentally Ill and Dangerous to Self or Others

Under this standard the magistrate must draw two conclusions from the facts presented before issuing a custody order: first, that the respondent is probably mentally ill; and next, that the respondent is probably dangerous to self or dangerous to others.[21]

Mentally Ill

An adult respondent is mentally ill when his or her capacity to use self-control, judgment, and discretion in the conduct of his or her affairs and social relations has been so reduced by an illness that it becomes necessary or advisable for the respondent to be under treatment, care, supervision, guidance, or control.[22] A minor respondent is mentally ill when he or she has a mental condition, other than mental retardation alone, that so impairs his or her capacity to exercise age adequate self-control or judgment in the conduct of activities and social relationships that he or she needs treatment.[23] In both cases, the important features of mental illness are: (1) an illness (2) that impairs judgment and self-control and (3) makes treatment advisable. This is a legal standard, not a medical standard, and therefore does not require that the respondent have been diagnosed with a recognized mental illness by a physician or psychologist. Rather,

15. G.S. 122C-266(a), 122C-285(a).

16. G.S. 122C-267(a), 268(a), -286(a).

17. G.S. 122C-267(h) (outpatient commitment), -268(j) (inpatient commitment); 122C-286(h) (substance abuse commitment).

18. See In re Reed, 39 N.C. App. 227, 249 S.E.2d 864 (1978).

19. Id. at 229, 249 S.E.2d at 866.

20. A summary of the standards for involuntary commitment is found at Appendix I at the end of this bulletin.

21. G.S. 122C-261(b).

22. G.S. 122C-3(21)(i).

23. G.S. 122C-3(21)(ii).

the magistrate must listen for facts that show that the respondent needs treatment because of a mental condition that is impairing his or her ability to make judgments or exercise self-control.

In determining whether there are reasonable grounds to find that the respondent is mentally ill, a magistrate should look for conduct that is on the extreme ends of behaviors. Of course every person can, at times, engage in behavior that might be called extreme: a person can be so hostile that he slams the door in someone's face or so agitated that she drives off from the store with the grocery bags on top of her car. But in a respondent who is mentally ill, this behavior should go one step further: hostility may be taken to the point of attacking someone or anxiety may be manifested by a complete inability to carry on with the other functions of daily life. Also the extreme behavior is continuing rather than a one-time occurrence. The magistrate must examine the information provided about the respondent's behavior, movements, speech, motions and thoughts. For example, is the respondent seeing things that are not really there? Is the respondent in constant motion or is he totally quiet and apathetic? Appendix II at the end of this bulletin gives examples of the kinds of extreme behaviors that might indicate mental illness.

If a magistrate determines that the respondent is probably mentally ill, the next step is to determine whether the respondent is probably dangerous to self or others.

Dangerous to Self

A petitioner can show that the respondent is dangerous to self in three different ways: Respondent is unable to care for himself or herself, is suicidal, or has engaged in self-mutilation.

Respondent is unable to care for self

The first way of proving dangerousness is by showing that, within the relevant past, the respondent has been unable to care for himself or herself and as a result is likely to suffer serious physical debilitation in the near future if treatment is not given.[24] Magistrates should note that although the appellate cases cited in this bulletin are instructive, they are based on evidence presented at the district court hearing where the standard of proof—clear, cogent, and convincing evidence—is significantly higher than the reasonable grounds determination that the magistrate must make. The requirement that the behavior have occurred within the "relevant past" does not mean that the behavior must have occurred within the "recent past." There is no specific time within which the past behavior must have occurred to be relevant. (The concept of "relevant past" is discussed more thoroughly below at page 7.)

The test for finding that the respondent is unable to care for self has two prongs and both must be satisfied before issuing a custody order. First, the magistrate must determine that the respondent has acted in such a way as to show that he or she probably would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of daily responsibilities and social relations, or to satisfy the need for nourishment, personal or medical care, shelter, or self-protection and safety. Put more simply, the first prong requires the magistrate to find that the respondent probably would be unable to care for himself or herself in regard to daily affairs without treatment. For example, a respondent, who required anti-psychotic medication but refused to take it, would not eat properly, and refused recommended outpatient treatment was found dangerous to himself. Failure to care for medical, dietary, and grooming needs meets the test of dangerousness to self, the court said.[25] On the other hand, unusual eating habits alone may not show dangerousness to self. The North Carolina Court of Appeals was hesitant to find that a respondent who fasted for a time, then ate a whole chicken or loaf of bread, and also ate about five pounds of sugar every two days was dangerous to himself.[26]

If the respondent seems unable to care for his or her daily needs, the magistrate must go on to make a second, more specific, finding that this inability to care for self creates a probability that the respondent will suffer serious physical debilitation within the near future. In the example above, where the respondent's dietary habits were irregular, the court noted that it could not find a likelihood of serious debilitation because the state had presented no evidence of the effect of the irregular diet on the respondent, or any evidence on how long he had been eating that way.[27] The result might have been different if the respondent was diabetic. On the other

24. G.S. 122C-3(11)a.1.

25. In re Lowery, 110 N.C. App. 67, 428 S.E.2d 861 (1993).

26. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980). The decision was an appeal from the district court's commitment so the standard of proof that was not met was clear, cogent and convincing rather than the magistrate's standard of reasonable grounds.

27. Id. at 29, 270 S.E.2d at 540.

hand, where a petitioner presented evidence that the respondent had been living in her car for two weeks during the winter, had been unemployed for the last year, having left her job because she felt she was being harassed, and had no plans for earning income, and that her only means of subsistence was food brought by the petitioner, the court found that the respondent was at risk of serious physical debilitation.[28] In determining the reasonable probability of future dangerous conduct, the magistrate may consider previous episodes of dangerousness to self.[29]

If the petitioner presents evidence that the respondent's behavior is grossly irrational, that the respondent is unable to control his or her actions, that the respondent's behavior is grossly inappropriate to the situation, or that the respondent's insight and judgment are severely impaired, the magistrate may presume that the respondent probably meets this second prong.[30]

To summarize, a magistrate may find a respondent dangerous to self if the respondent seems unable to take care of his or her daily needs and is likely to suffer serious physical debilitation in the near future if he or she does not receive treatment. However, the respondent cannot be found dangerous to self merely because he or she behaves in a way that may provoke others to harm him or her. For example, a respondent who was not physically violent herself, but who aggressively preached on the street corner, trying to convert all passersby, was not dangerous to herself merely because someone who reacted negatively to her conversion attempt might react in a way that is physically harmful to her.[31]

Respondent is suicidal

A respondent also can be dangerous to self if he or she has attempted or threatened suicide and there is a reasonable probability of suicide unless the respondent receives adequate treatment.[32] The magistrate may choose to treat an attempt at suicide, alone, as sufficient evidence that there is a reasonable probability of suicide. The magistrate also may treat a threat of suicide as grounds for issuing a custody order and leave the determination of whether there is a future likelihood of suicide to the examiners. Whether a statement constitutes a threat of suicide will depend on the respondent's history and the context in which the statement was made: for example, a statement like "I could kill myself" probably is not a threat of suicide when it comes from a person who has just done something enormously embarrassing, but it may be when it comes from someone who has suffered a dramatic loss of some kind.

Respondent has engaged in self-mutilation

The third way to show a respondent is dangerous to self is to prove that he or she has mutilated or attempted to mutilate himself or herself and that serious mutilation is likely to occur again unless the respondent is committed.[33] No North Carolina appellate cases have discussed this ground for commitment. Self-harm or self-injurious behavior is fairly prevalent today, [34] particularly among adolescents and may include burning, biting, cutting, head banging, picking at skin, pulling out hair, bruising. But some self-harm, while needing treatment, does not rise to the level of self-mutilation necessary for involuntary commitment, and the magistrate must be careful to distinguish between the two. The involuntary commitment statute requires that the magistrate find that serious self-mutilation is likely to occur unless the respondent is committed. Therefore, the frequency and the severity or seriousness of the injury is critical. The magistrate should also look at other factors such as the reason for the self-harm, whether the respondent has access to weapons to do serious harm, and the progression of seriousness of the injuries. One case from another state in which the facts showed dangerousness to self based on self-mutilative behavior indicated that the patient had a history of cutting himself, injuring

28. In re Medlin, 59 N.C. App. 33, 295 S.E.2d 604 (1982). The finding that the respondent was mentally ill was not disputed.

29. G.S 122C-3(11)a.

30. G.S. 122C-3(11)a.1.II.

31. In re Hogan, 32 N.C. App. 429, 232 S.E.2d 492 (1977).

32. G.S. 122C-3(11)a.2.

33. G.S. 122C-3(11)a.3.

34. About one percent of the United States population uses physical self-injury as a way of dealing with overwhelming feelings or situations, but the problem is more prevalent among teenagers where an estimated ten percent have experimented with self-mutilation. Teenagers and Self Mutilation: The Facts, http://www.psychiatric-disorders.com/warning-signs/self-mutilation.php. A recent study published in the August 2007 issue of the journal, Psychological Medicine, indicated 46% of U.S. high school students surveyed had practiced some form of self-mutilation in the past year. David Andreatta, Self-injury Might Be More Common Than Thought, RALEIGH NEWS & OBSERVER, July 2, 2007 at A3.

himself very seriously to the point that he required blood transfusions.[35]

Dangerous to Others

A magistrate must also issue a custody order for a mentally ill respondent if he or she is dangerous to others. A respondent is dangerous to others if, within the relevant past, he or she has: (1) inflicted or attempted to inflict serious bodily harm on another, or has acted in a way that creates a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property, and (2) there is a reasonable probability that such conduct will be repeated.[36]

Respondent has inflicted or attempted to inflict serious bodily harm on another

Most cases coming before a magistrate probably will be fairly clear cut as to whether the respondent inflicted or attempted to inflict serious bodily harm on another person. But what if the respondent has only threatened to inflict serious bodily harm on another? Is the threat a sufficient basis for finding that the respondent is dangerous to others? Courts addressing the issue have concluded that overt dangerous actions are not necessary to conclude that a respondent is dangerous to others. For example, a respondent who threatened his aged and nervous mother and family with increasing frequency over several weeks, saying he was going to "get you all," in conjunction with evidence that he believed his family had sexually seduced him and that he appeared ready to fight any time one of them said something to him, led the court to conclude that the respondent was dangerous to others.[37] In another case, a respondent was found dangerous to others based on evidence that he kept an iron pipe and hatchet under his bed and, through threats, had kept his mother in one chair, unmoving, while he screamed, shouted, cursed, and threatened to "bust" her head if she called anybody.[38] A respondent who had threatened many people in the neighborhood and had threatened to cut her brother's throat was found dangerous to others.[39]

In order to find a respondent dangerous to others on the basis of threats alone, however, the petitioner must present specific evidence about the kind of harm the respondent threatened, when the threats were made, and in what context. For example, the mere allegation that the "respondent ha[d] made statements to her husband of a threatening nature," without more, is insufficient.[40]

One issue that sometimes troubles magistrates is commitment of persons who are residing in nursing homes. For example, a resident of the nursing home who suffers from dementia or bipolar disorder becomes violent and attacks another resident of the nursing home and the nursing home staff seeks to have the resident involuntarily committed. The fact that the respondent is in a nursing home or the fact that the respondent suffers from dementia should not result in any different decision by the magistrate. If the magistrate finds reasonable grounds to believe the respondent is mentally ill (i.e., has an illness—and dementia and Alzheimer's disease are mental illnesses--that impairs judgment and self-control and makes treatment advisable) and is dangerous to self or others, the magistrate should issue a custody order.

Respondent's behavior creates a substantial risk of serious harm

There are no reported North Carolina cases that have addressed a respondent whose actions, though not intended to inflict serious bodily harm on another, have nonetheless created a substantial risk of serious harm. Some situations, of course, will be clear cut: if the respondent, while playing with matches, sets fire to an occupied twenty-unit apartment building in the middle of the night, the respondent's behavior creates a substantial risk of serious harm. Other cases will require a judgment call: if the respondent has a habit of digging man-sized holes in a field near his house, whether or not such conduct creates a substantial risk of serious harm depends on the depth of the holes, the amount of pedestrian traffic in the field, and the visibility of the holes to pedestrians who do walk in the field. If the field sees significant pedestrian traffic, and the respondent artfully covers the holes

35. In re Best Interest of M.G. 2002 WL 31854887 (Tex. App.-Tyler 2002)

36. G.S. 122C-3(11)(b).

37. In re Monroe, 49 N.C. App. 23, 270 S.E.2d 537 (1980).

38. In re Collins, 49 N.C. App. 243, 271 S.E.2d 72 (1980).

39. In re Jackson, 60 N.C. App. 581, 299 S.E.2d 677 (1983). This respondent had also cut her brother's hand within the last week, but the court did not discuss the seriousness of this cut or its role in the determination that she was dangerous to others.

40. In re Holt, 54 N.C. App. 352, 354, 283 S.E.2d 413, 415 (1981).

with grass, the holes may create a substantial risk, but if the holes are only two inches deep, they may not create a risk of serious physical harm.

Respondent has engaged in extreme destruction of property

The one reported case in North Carolina dealing with dangerousness to others based on engaging in extreme destruction of property emphasized the "extreme" requirement. In that case the respondent had used a hammer to break everything she could find in her house, including the television, the telephone, and all available glass.[41]

Reasonable probability of dangerous behavior being repeated

Unlike the second prong of the dangerousness to self test, the second prong of the dangerousness to others test—a reasonable probability that the dangerous behavior will be repeated—has not been emphasized in court cases. The statute provides that the magistrate may consider previous episodes of dangerous behavior in determining future probability of dangerous conduct.[42] Therefore, as long as the magistrate finds past acts of dangerousness this prong is satisfied.

Within the relevant past

The tests for dangerousness to self and others share the requirement that the respondent's allegedly dangerous behavior has occurred within the relevant past. This requirement is no different than the requirement of relevance in evidence law, generally. That is, any information that tends to make the existence of a material fact more or less likely is relevant.[43] In the context of involuntary commitment, the respondent's behavior occurred within the relevant past if the behavior makes it more or less likely that the respondent is dangerous to self or others at the time commitment is considered. "[The] acts are relevant because they occurred close enough in time to the district court [or magistrate's] hearing to have probative value on the ultimate question before the court of whether there was a 'reasonable probability that such [violent] conduct [would] be repeated.'"[44] So, for example, if the petitioner presents information that the mentally ill respondent, now thirty years old, went through a period when she was ten where she would only eat dirt, the behavior probably did not occur within the relevant past.

The concept of within the relevant past does not depend solely on the passage of time, however, but on the totality of the circumstances as the petitioner presents them. For example, the petitioner presents evidence that the mentally ill respondent tried to kill his brother three years ago after refusing to take medication prescribed for his mental illness. This information may seem remote in time. However, if the petitioner supplements this evidence with the information that the mentally ill respondent has once again stopped taking his prescription medication and is exhibiting symptoms similar to those that preceded the three-year-old incident, that three-year-old evidence may have occurred within the relevant past. Although most information the magistrate hears will probably not be this remote, the important thing to remember is that there is no bright-line in time beyond which information is no longer relevant. In fact, one of the problems the General Assembly wanted to cure in changing the language of the standard from "within the recent past" to "within the relevant past" was the practice of some judicial officials of setting a specific limit on the time frame for the conduct.[45]

Summary

The magistrate must issue a custody order when he or she finds reasonable grounds to believe that the respondent is probably mentally ill and dangerous to self or others.

Mental illness has three elements:
(1) an illness
(2) that impairs judgment and self-control
(3) to a degree that makes treatment or supervision advisable.

A respondent is dangerousness to self if he or she:
(1) is unable to care for self and there is a reasonable probability of serious physical debilitation in the near future or
(2) has attempted or threatened suicide and there is a reasonable probability of suicide or

41. In re Williamson, 36 N.C. App. 362, 244 S.E.2d 189 (1978). There was also evidence that the respondent threatened to physically injure family members.

42. G.S. 122C-3(11)b.

43. G.S. 8C-1, Rule 401.

44. Davis v. N.C. Dep't of Human Res., 121 N.C. App. 105, 115, 465 S.E.2d, 2, 8 (1995)

45. See Joan Brannon "Mental Health," NORTH CAROLINA LEGISLATION 1989 at 127 (Institute of Government 1990).

(3) has mutilated, or attempted to mutilate, himself or herself and there is a reasonable probability of serious self-mutilation.

A respondent is dangerous to others if

(1) he or she has:
  (a) inflicted or attempted to inflict serious bodily harm on another or
  (b) acted in a way that creates a substantial risk of serious bodily harm to another or
  (c) engaged in extreme destruction of property and
(2) there is a reasonable probability that such conduct will be repeated.

Mentally Ill and in Need of Treatment

Even if a mentally ill respondent is not dangerous to self or others, a magistrate still must issue a custody order if the respondent, based on his or her psychiatric history, is in need of treatment to prevent further disability or deterioration that would predictably lead to dangerousness.[46] Mental illness in this context means the same thing as mental illness in the inpatient commitment context: (1) an illness (2) that impairs judgment and self-control (3) to the extent that treatment or supervision is advisable. Although this standard (unlike the mentally ill and dangerous to self or others standard) does not specifically require the petitioner to show that within the relevant past the respondent has engaged in, attempted, or threatened to engage in conduct that is dangerous to self or others, such evidence seems necessary to show a psychiatric history indicating that deterioration leading to dangerousness is likely. That is, psychiatric history that would make dangerous deterioration predictable is bound to be a history of past instances in which the respondent did become dangerous. For example, if the petitioner presents evidence that the respondent has stopped taking her antipsychotic medication and states that the lack of medication will make the respondent dangerous, this statement alone probably is not sufficient grounds to issue a custody order: it should be supported by information that when the respondent has gone off her medication in the past she has done, attempted, or threatened to do, something dangerous.

Involuntary Commitment of Mentally Retarded Respondents

Special rules apply in issuing custody orders for mentally ill persons who are also mentally retarded. A mentally retarded respondent may be involuntarily committed only if he or she meets one of the standards set out above; that is, the respondent must be mentally ill and dangerous to self or others or must be mentally ill and in need of treatment to prevent deterioration that would predictably lead to dangerousness.[47] It is often difficult, if not impossible, to determine whether the dangerous behavior is caused by the mental retardation or mental illness, If the magistrate finds reasonable grounds to believe the respondent is mentally ill as well as mentally retarded and if the magistrate finds dangerousness to self or others, the magistrate should issue the commitment order and leave it to the professionals to determine whether involuntary commitment is appropriate for the respondent.

Moreover, a mentally retarded person cannot be admitted to a state psychiatric hospital unless the respondent is so extremely dangerous as to pose a serious threat to the community and to other patients in a non-state hospital or is so gravely disabled by both multiple disorders and medical fragility or deafness that alternative care is inappropriate. In both of those situations the determination of whether the respondent meets the criteria for commitment to a state psychiatric hospital is made by the Local Management Entity for the area where the respondent resides or is found.[48] If a respondent is mentally retarded, the petitioner must produce facts indicating this on the petition, and the magistrate must specifically note it on the custody order.

"Mental retardation" is defined as "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22."[49] Making such a diagnosis is beyond the knowledge of lay petitioners and magistrates alike and should be left to the professional examiner. However, the petition must

46. G.S. 122C-261(b).

47. G.S. 122C-261(b). In Thomas S. v. Flaherty, 699 F. Supp. 1178 (W.D.N.C. 1988) a federal district court held that North Carolina was inappropriately confining and treating mentally ill retarded persons in the state psychiatric hospitals and ordered the state to provide a full range of habilitative treatment for mentally retarded persons confined in state psychiatric hospitals. The requirement limiting admission to state hospitals was enacted in 1995 in response to that case. See Joan Brannon, 1996 Legislation Amending the Involuntary Commitment and Domestic Violence Laws, ADMINISTRATION OF JUSTICE MEMORANDUM No. 96/04 at 1.

48. G.S. 122C-261(f).

49. G.S. 122C-3(22) (1996).

include facts indicating mental retardation. Four questions can help a magistrate determine whether the respondent is probably mentally retarded:

(1) Has a doctor or psychologist ever said that the respondent has mental retardation?
(2) Has the respondent ever been in special education classes for students with mental retardation?
(3) Has the respondent ever received special services for respondents with mental retardation such as sheltered workshops or group home placement?
(4) Did the problems relating to intelligence and functioning begin before age 22?

In order to find the respondent mentally retarded, the answer to the fourth question must be "yes" and at least one of the other three questions must also be answered in the affirmative.[50]

The special provisions regarding mentally retarded persons do not apply to substance abuse commitments.

Substance Abuse Commitment

Magistrates may also be asked to issue custody orders for respondents who are substance abusers. The standard for issuing a custody order in these circumstances is: (1) the respondent is a substance abuser who is (2) dangerous to self or others.[51] Substance abuse means the pathological use or abuse of alcohol or other drugs in a way, or to a degree, that produces an impairment in personal, social, or occupational functioning; it may include a pattern of tolerance and withdrawal.[52] The use does not need to have occurred over any certain length of time or in any certain amount. To be pathological the use need only be habitual or compulsive and have a negative impact on the respondent's functioning. Such functional impairment might mean, for example, that the respondent misses important meetings at work because of alcohol or drugs, verbally abuses friends and family members when drunk, or suffers delusions when she has gone too long without drugs or alcohol.

A magistrate who finds that the respondent is probably a substance abuser and is dangerous to self or others must issue a custody order. The standard for assessing danger to self or others is the same as described under the standard for inpatient commitment of persons with mental illness.

50. Brannon, supra note 47 at 2-3.

51. G.S. 122C-281.

52. G.S. 122C-3(36). Unlike the definition of mental illness, this definition is a medical one.

Procedure for Initiating Involuntary Commitment

To begin the process of involuntary commitment a person must petition for an order (the custody order) to have the respondent picked up for examination by a physician. Petitioning for a custody order differs in several significant ways from the usual small claims court procedure. First of all, the procedure is not a trial; it is merely a mechanism to have the respondent taken into custody for examination. Petitioning for a custody order is an ex parte hearing: that is, the hearing takes place without notice to, or the presence of, the opposing party—in this case, the respondent. The respondent normally is not present, but even if respondent is present, the usual procedure for presentation of evidence is not followed. The respondent is not part of the process and does not present evidence in his or her favor or get to cross examine the petitioner or petitioner's witnesses. Also, two fundamental rules of evidence are not followed in petitioning for involuntary commitment. First, the petitioner is deemed a competent witness even in cases where he or she has no personal, firsthand, knowledge of the respondent's state. This departure from the rules of evidence leads to the second, which is that a petitioner can prove his or her case, and the respondent may be taken into custody and transported for examination, entirely on the basis of hearsay evidence.[53] In this last respect, hearing a petition for a custody order is like the probable cause determination in issuing criminal process.

Who may initiate a petition?

Anyone with information about the respondent may petition for a custody order.[54] The respondent's family members or friends, neighbors, social workers, teachers, physicians or law enforcement officers can all be petitioners. The petitioner's knowledge of the respondent's condition does not have to be firsthand; hearsay information about the respondent is acceptable. For example, a law enforcement officer may petition for a custody order on the basis of information told to him or her by the respondent's neighbor, or a respondent's sister may petition based on information from the respondent's mother. In this respect, the petition resembles an application for a warrant: hearsay evidence can be considered, but at the trial of the matter before a

53. In re Zollicoffer, 165 N.C. App. 462, 598 S.E.2d 696 (2004).

54. G.S. 122C-261(a), -281(a).

district court, the witness must have personal knowledge of the facts about which he or she is testifying.

Who is subject to a custody order?

Any person may be subject to a custody order (assuming the petitioner presents sufficient evidence), no matter his or her age. Involuntary commitment of minor children may occur less frequently than of adults because parents (or guardians) are given the power to consent to treatment for their minor children and can have them admitted to treatment without showing dangerousness. Involuntary commitment thus generally occurs only when a child's parents do not consent to treatment, the parents cannot be found, or because of the child's dangerousness, the parents believe it is best to involuntarily commit the child. However, if the petitioner presents sufficient facts to commit a minor, the magistrate cannot refuse to issue a custody order for a minor simply because the parent could seek a voluntary admission.

Where is the petition initiated?

Petitions may be made to a magistrate in the county where the respondent lives or in the county where the respondent is found.[55] For example, if a resident of Cabarrus County is found wandering the streets of downtown Charlotte without proper clothing, speaking to imaginary friends, either a magistrate in Cabarrus County or a magistrate in Mecklenburg County is authorized to issue a custody order for the respondent and the petitioner can go to either place. Most often the petition is brought in the county where the respondent is found. A respondent who is found in North Carolina need not be a resident of the state to be involuntarily committed. A Mecklenburg County magistrate could also issue a custody order for a resident of South Carolina who is found in Mecklenburg County.[56]

How is a petition made?

Personal Appearance

Most petitioners must appear personally before the magistrate to execute the petition.[57] The magistrate may have the petitioner fill out the petition or may complete it for the petitioner after the petitioner has conveyed the relevant facts about the respondent's condition. Either way, the petitioner must swear to the facts contained in the petition. An unsworn petition cannot serve as the basis for issuance of a custody order.[58]

Physician or Psychologist Petitioner

One group of petitioners does not have to personally appear before the magistrate: when the petitioner is a physician or eligible psychologist[59] who has examined the respondent, he or she may execute an affidavit before any official authorized to administer oaths (usually a notary public) and submit the affidavit to the magistrate by delivering the original to the magistrate or sending a copy by telefacsimile transmission.[60] The physician or psychologist examiner need not appear before the magistrate to testify, but the magistrate must have the notarized affidavit or a faxed copy of it in front of him or her and make a determination from the facts contained in the affidavit that the respondent meets the custody order criteria. Because the physician's or psychologist's evaluation must comply with the requirements of an initial examination, the physician or psychologist petitioner frequently will attach a form called "Examination and Recommendation to Determine the Necessity for Involuntary

55. G.S. 122C-261(a), -281(a).

56. If a resident of another state is involuntarily committed in North Carolina, the State psychiatric hospital may return the respondent to his or her home state. G.S. 122C-345.

57. G.S. 122C-261(a), -281(a).

58. In re Ingram, 74 N.C. App 579, 328 S.E.2d 588 (1985).

59. There is a pilot program operating in several western Local Management Entities (LMEs) allowing the initial evaluation to be performed by a licensed clinical social worker, a masters level psychiatric nurse or a masters level certified addictions specialist in addition to a physician or eligible psychologist. In those LMEs when these clinicians perform the initial evaluation, they are treated like physicians and eligible psychologists and do not have to personally appear before the magistrate when they are the petitioner.

60. G.S. 122C-261(d). A similar provision for transmission by telefacsimile is not included in the substance abuse statute. However, since the procedure could be followed without a statutory provision, it can be followed in substance abuse commitments also.

Commitment"[61] to the affidavit and the facts may be stated in the attachment.

If the affidavit is submitted by telefacsimile transmission, the physician or psychologist must mail the original no later than five days after transmission to the clerk or magistrate to be filed in the case file. Sometimes rather than mailing the original, the physician or psychologist will give it to the law enforcement officer who comes to the physician or psychologist to take the respondent into custody under the order.

Petition Must Show Facts

The "Affidavit and Petition for Involuntary Commitment" (AOC-SP-300) is a sworn affidavit setting forth facts that show that the respondent meets at least one of the standards for issuance of a custody order. The magistrate must issue a custody order if the petition shows that the respondent is probably: (1) mentally ill and dangerous to self or others; (2) mentally ill and in need of treatment to prevent deterioration that would predictably lead to dangerousness; or (3) a substance abuser who is dangerous to self or others.

The petition must set forth facts in support of petitioner's allegations and not just conclusions. Facts are assertions or statements about something having objective reality—an actual event in time or space. Conclusions are judgments. Statements in a petition such as "the respondent lacks self-control and is unable to provide for himself" or "the respondent is a mentally ill … person who is dangerous to [her]self or others [and] [r]espondent has strange behavior and irrational in her thinking"[62] are conclusions. An example of a statement of facts is: "For the past two weeks the respondent has been hallucinating, claiming that an escaped convict is after him and that his wife is secretly keeping the convict in the basement of their home. On three occasions between April 23 and 25 he threatened to shoot his wife if she does not get rid of the convict. On April 26, the respondent purchased a gun, shot his wife in the arm, and told her that she had three days to get the convict out of the house."

The facts stated in the petition must support all the criteria necessary for a custody order. The statement of facts above, for example, establishes that the respondent is probably mentally ill (hallucinating, claiming that an escaped convict is conspiring with his wife), that he inflicted serious physical harm on someone (shot his wife), and that there is a likelihood such conduct will be repeated (past behavior and still hallucinating indicates conduct likely to reoccur); this statement of facts supports a finding that the respondent is mentally ill and dangerous to others. But recall the example of the mentally ill respondent who fasted for days at a time and then ate a whole loaf of bread or a chicken, and ate five pounds of sugar every two days. While this statement of facts may have supported a finding that the respondent was unable to care for himself, it did not show that he was in danger of serious physical debilitation, as required to find the respondent mentally ill and dangerous to himself. The following petition also was found to be insufficient to allege mental illness and dangerous to self: "Respondent has strange behavior and irrational in her thinking. Leaves home and no one knows of her whereabouts, and at times spends the night away from home. Accuses her husband of improprieties."[63] An example of a sufficient petition based on respondent's danger to self is: "Respondent stopped taking her psychiatric medicine (Haldol) three weeks ago. She has begun having trouble sleeping at night and hasn't slept more than one hour in the past 48 hours. She hasn't bathed for a week and has been talking constantly for the last week even though normally she is a quiet person. Last night when it was 25 degrees outside, I found her walking around in the back yard in a short-sleeved shirt saying she was looking for her mother, who died fifteen years ago."

A petition adequate to obtain a custody order for a substance abuser might be the following: "The respondent has been smoking crack cocaine three times daily for the last two weeks; he lost his job two days ago when he showed up at work high and now that he has no income of his own to buy drugs today he beat his mother and father to steal their money."

When a respondent is mentally retarded as well as mentally ill, the petition might allege (in addition to facts necessary to support the other required elements for commitment) something to the effect that the respondent was identified as mentally retarded when she was in second grade and has been receiving special education services for the mentally retarded since that time. It is not clear whether it is necessary to allege facts regarding the mental retardation since that is not a criteria for commitment, but rather a special provision that affects the choice of hospitals for the respondent. However, since the statute requires the magistrate to find that "the respondent is also probably mentally ill"[64] the safest practice is to include facts supporting that finding.

61. The form number is DMH 5-72-01 (Sept. 2001).

62. In re Ingram, 74 N.C. App. 579, 581, 328 S.E.2d 588, 589 (1985).

63. Id.

64. G.S. 122C-261(b).

Magistrate's Role in Ascertaining Facts

Asking Questions

A petitioner who appears before a magistrate seeking a custody order is often in a state of crisis. Due to this emotional state and the fact that the petitioner is probably not acquainted with the custody order criteria, the magistrate may have to actively participate in getting information from the petitioner and in writing the petition. The magistrate should always feel free to ask specific questions necessary to determine whether to issue a custody order.

Common questions to ask might include:

1. Has the respondent harmed or threatened to harm self or others within the past 24 hours? Within the last week? Month? Three months?
    a. What did the respondent do to himself or herself?
    b. What did the respondent do to you?
    c. What did the respondent do to others?
2. Is the respondent hallucinating (seeing or hearing things that other people don't)? What kind of things is he or she hearing or seeing?
3. Can the respondent identify the day, where he or she is, his or her name or age?
4. Does the respondent have unreasonable thoughts that people are talking about him or her or are going to kill or hurt him or her? Tell me what he or she said, or how you learned this information?.
5. Is the respondent making exaggerated or elaborate claims, such as:
    a. being on a special mission;
    b. being another important and powerful person;
    c. being part of a powerful organization?
6. Does the respondent have trouble sleeping at night? How long since the respondent had a normal night's sleep?
7. Has the respondent consumed more than one pint of alcohol per day for the past three to ten days?
8. Is the respondent taking any medication?
    a. what is it?
    b. has the respondent taken any illegal drugs within the past 24 hours? Month? Three months? What kind of drug? How much?
9. Has there been any change in the respondent's appetite? Has it grown or decreased? Is the respondent eating at all?
10. Is the respondent doing his or her normal activities? If not, what is the respondent doing differently?
11. Is the respondent unable to care for self because of his or her mental condition? Is he or she eating, sleeping, dressing, bathing, using the toilet, staying out of traffic?

Writing Down All the Relevant Facts

The magistrate must make sure that the petition itself contains all the facts about a respondent's present condition as well as information about previous episodes of dangerousness that are relevant to determining that there is a reasonable probability of future dangerous conduct or that would show the current deterioration would predictably result in dangerousness if treatment is not provided.[65] The facts must support all the bases for commitment that are checked on the order. For example, if the respondent is mentally ill and dangerous to self, the facts must support each of these prongs. If there is not enough space for this information on the petition itself, the magistrate should attach an extra sheet.

Full detail is important for two reasons: First, the district court judge is likely to dismiss the case if the petition is lacking in detail to support a custody order.[66] "[A custody] order is essentially a judgment by which a person is deprived of his liberty …, and as a result, he is entitled to the safeguard of a determination by a neutral officer of the court that reasonable grounds exist for his original detention…."[67] Even if the petitioner is a physician or psychologist, the petition must state sufficient facts to support the issuance of a custody order. Giving too much deference to physicians or psychologists, who are required to give facts like other petitioners, may result in the case being dismissed and is an abdication of the magistrate's role as an independent judicial official determining reasonable grounds to proceed.

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65. G.S. 122C-261(a), -281(a).

66. In re Ingram, 74 N.C. App. 579, 328 S.E.2d 588 (1985).

67. In re Reed, 39 N.C. App. 227, 229, 249 S.E.2d 864, 866 (1978).

Second, because the physician or psychologist who examines the respondent may not speak to anyone besides the respondent, the petition must convey to the examiner the respondent's current state and past history.

Denying The Custody Order

If, after hearing the petitioner, the magistrate does not find reasonable grounds to believe that the respondent meets one of the custody order standards, the magistrate must not issue a custody order. In this circumstance, the magistrate does not have to fill out a petition (in those cases where the petitioner has not filled out his or her own petition) and is not required to make written findings of fact. The magistrate should give the petitioner the information necessary to contact the local mental health center and pursue whatever treatment options the respondent will voluntarily accept.

Issuing The Custody Order

A magistrate who does find reasonable grounds to believe that the respondent meets one of the custody order standards must issue a custody order. Where the statutory criteria for issuing a custody order are met, the magistrate should issue a custody order even if the respondent, either in person or via the petitioner, agrees to submit to treatment voluntarily. The reason for this result is this: it is possible that the respondent, because of mental illness or substance abuse, may not have the capacity to consent to treatment. Whether the capacity to consent does exist is a determination that should be left to the professional examiner and, if the respondent has capacity to consent, the examiner may convert the involuntary commitment to a voluntary admission. In a case from Florida the respondent agreed to hospitalization but later claimed that he was deprived of his liberty without due process because he didn't have the mental capacity to understand his consent. He successfully claimed that the hospitalization should have occurred under the involuntary commitment process where he would have been afforded the due process safeguards inherent in that procedure.[68] The bottom line is that if a respondent meets the custody order criteria, the magistrate should issue the order.

68. Zinermon v. Burch, 494 U.S. 113, 110 S.Ct. 975, 108 L.Ed. 2d 100 (1990).

The kind of order the magistrate issues will depend on who the petitioner is.

When the Petitioner is Not a Physician or Psychologist

When the petitioner is not a physician or eligible psychologist, the magistrate will use the form entitled "Findings and Custody Order Involuntary Commitment" (AOC-SP-302).

Findings

In issuing the order itself the magistrate must first make "findings" of fact. The order contains three possible findings: (1) the respondent is mentally ill and dangerous to self or others or in need of treatment to prevent deterioration that would predictably lead to dangerousness; (2) the respondent, in addition to being mentally ill, is also mentally retarded; or (3) the respondent is a substance abuser and dangerous to self or others. The magistrate should check all that apply, and it is possible that all three could apply. The magistrate, however, may only check the mental retardation box [box (2)] if the respondent is also mentally ill and that box was also checked. If the respondent is a substance abuser and also mentally retarded, there is no similar requirement to make findings concerning mental retardation.

Order

Under the order the magistrate should check the block that directs "any law enforcement officer" to take the respondent into custody and take the respondent for examination by a person authorized by law to conduct the examination (block 1). The officer must take the respondent to an area facility[69] for examination; if a proper person to perform the examination is not available in the area facility or no facility is available, the officer takes the respondent to any physician or psychologist locally available,[70] which typically is the emergency department of the nearest general hospital. If the initial examiner recommends inpatient commitment, the order directs a law enforcement officer to transport the respondent to a designated 24-hour facility for a second examination.

69. An "area facility" is a facility operated by or under contract with an area mental health authority. G.S. 122C-3(14).

70. G.S. 122C-263(a), -283(a).

When the Petitioner is a Physician or Psychologist

When the petitioner is a physician or psychologist[71] who has already examined the respondent and has made a specific recommendation as to the respondent's disposition and the magistrate finds reasonable grounds supporting the recommendation, then the order the magistrate issues depends on the examiner's recommendation for disposition, which is found in Section III of "Examination and Recommendation to Determine Necessity for Involuntary Commitment" (DMH 5-72-01). If the examination form is not attached and the physician has not specified the type of commitment—mentally ill and dangerous; mentally ill and in need of treatment; or substance abuser and dangerous—the magistrate must determine which type of commitment the facts support.

When the physician or psychologist recommends inpatient commitment

If the physician or psychologist petitioner recommends inpatient commitment and the magistrate finds reasonable grounds to affirm that recommendation, the magistrate must issue the regular custody order (AOC-SP-302), make the appropriate finding, and check the box in the order directing the law enforcement officer to transport the respondent directly to a designated 24-hour facility for examination and custody pending a district court hearing (box 2).[72] There is no need to take the respondent to a local examiner because the physician or psychologist petitioner has already performed that examination.

When the physician or psychologist recommends outpatient commitment

If the physician or psychologist petitioner recommends outpatient commitment and the magistrate finds reasonable grounds to affirm the recommendation, the magistrate does not issue a custody order because the respondent will not be taken into custody. Rather, the magistrate issues the order entitled "Findings and Order Involuntary Commitment Physician-Petitioner Recommends Outpatient Commitment" (AOC-SP-305), which requires hearing a district court judge to hold a hearing to determine whether the respondent will be involuntarily committed to outpatient treatment.[73] The clerk will issue a notice of hearing to the respondent.[74]

Outpatient commitment means treatment in an outpatient setting and may include medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision or living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility.[75]

When the physician or psychologist recommends substance abuse commitment

If the physician or psychologist petitioner recommends substance abuse commitment and the magistrate finds reasonable grounds to affirm that recommendation, the type of order issued by the magistrate depends upon the recommendation of the physician or eligible psychologist as stated in the "Examination and Recommendation" form.[76] If the physician recommends that the respondent be held at a 24-hour facility, the magistrate issues a custody order to transport the respondent directly to the designated 24-hour facility for examination and custody pending a district court hearing AOC-SP-302, block 2). If the physician recommends that the respondent be released pending a hearing, the magistrate issues an order that a hearing before a district court judge be held to determine whether the respondent will be involuntarily committed (AOC-SP-305).

Designate the 24-Hour Facility To Which Respondent Taken

In the final part of the first page of the custody order, the magistrate must fill in the name of the designated 24-hour facility[77] to which the respondent may be

71. See supra note 59.

72. G.S. 122C-261(d).

73. Id.

74. The form is "Notice of Hearing/Rehearing for Involuntary Commitment," AOC-SP-301.

75. G.S. 122C-3(27).

76. G.S. 122C-281(d). The number of the form is DMH 5-72-01.

77. Under G.S. 122C-252 hospitals must be designated by the Secretary of Health and Human Resources to receive and treat involuntarily committed respondents. Any facility

taken if the first examiner finds that the respondent is an appropriate candidate for inpatient commitment or if the petitioner is a physician or psychologist who recommends inpatient commitment. Note that the magistrate does not put the place for the officer to take the respondent to the first evaluation (in other words the mental health center or local hospital emergency room) in this block. The form and statute require that the magistrate put the designated 24-hour facility to which the respondent will be taken for the second evaluation and at which he or she will be held for a district court hearing.

The Department of Health and Human Services maintains a list of designated 24-hour facilities on its website at http: //www/ ncdhhs.gov/mhddsas/ ivc/ ivcdesignatedfacilities_6-14-07.pdf.

In order to ensure that the respondent will be admitted to any designated 24-hour facility (state psychiatric hospital or local public or private hospital that has been designated by the State to take involuntary commitments) to which he or she might be taken, the magistrate should name the 24-hour facility to which most respondents are sent and then put "any designated 24-hour facility," (e.g. "Broughton Hospital or any designated 24-hr. facility"). Some magistrates merely put "any designated 24-hour facility" without naming any specific facility.

Private Hospital Placements

A respondent who has the resources to pay for the cost of inpatient hospital care without the use of any public funds may select a private facility for treatment and care. In those cases where the respondent is able to choose a private placement, the petitioner must have already have made arrangements with the chosen facility and if it is clear that the private facility has agreed to accept the respondent, the magistrate should fill in the name of that facility on the order.[78] If the family has not made prior arrangements for admission to a private facility, the magistrate should send the respondent to the usual 24-hour facility and the Local Management Entity or facility staff can transfer a respondent who qualifies for admission to a private hospital.

Requirement to Contact Area Authority Before Issuing Custody Order

In two different circumstances, the magistrate must contact the local mental health center before issuing a custody order. First, in cases where the magistrate has found that the respondent is probably mentally retarded, in addition to being mentally ill, he or she must contact the area authority (local mental health center) before issuing any order.[79] When the petitioner is not a physician or an eligible psychologist, the area authority will tell the magistrate where to take the respondent for the initial and second examinations. The magistrate should indicate to the officer where to take the respondent for the first evaluation and should write the location of the second evaluation in the block on the form "name of 24-hr. facility for mentally ill." When the petitioner is a physician or eligible psychologist, the area authority will designate the 24-hour facility to which the respondent should be taken and the magistrate should write this location down on the order in the block for the 24-hour facility for mentally ill. In the event that a mentally retarded person gets beyond the magistrate without the petitioner asserting and the magistrate finding that the person is mentally retarded and the mental retardation is discovered at the first evaluation, the examiner at the first evaluation can fill in a non-state facility in the box designated "or following facility designated by area authority."

Second, some counties have local policies that require the magistrate to contact the local mental health center before issuing a custody order. If the chief district court judge has approved the policy, it should be followed by the magistrates.

Who Serves the Custody Order

When the magistrate issues a custody order, generally a law enforcement officer serves the order. City police officers are responsible for transportation to a location within the county if the respondent resides, or was taken into custody, within city limits. If the respondent resides, or was taken into custody, in the county but outside city limits, the county deputy sheriffs are responsible for transportation, including

designated could take the respondent, but private hospitals may not take indigent respondents.

78. G.S. 122C-263(d)(2) implies that direct commitment to a private hospital is appropriate when it provides that if the first examiner recommends inpatient commitment, "the law enforcement officer … shall take the respondent to a [designated] 24-hour facility…. If there is no area 24-hour facility and if the respondent is indigent and unable to pay for care at a private 24-hour facility, the law enforcement officer … shall take the respondent to a State facility for the mentally ill…."

79. G.S. 122C-261(b).

transportation to locations outside the county.[80] This statute is confusing if a respondent resides in the city but is found in the county outside the city limits or vice versa since in those situations both the police and sheriff are designated to transport for evaluations within the county. The local law enforcement agencies must determine which agency transports in those circumstances.

There are two situations where persons other than law enforcement officers may provide transportation under a custody order. The city or county may designate volunteers or other personnel to provide transportation rather than using law enforcement officers.[81] The persons designated by the city or county follow the same procedure as law enforcement officers.

Magistrates may authorize family members or immediate friends of the respondent to carry out the custody order if the following criteria are met: first, a family member or immediate friend must make a request to transport the respondent; and second, the magistrate must find that the respondent does not pose substantial danger to the public.[82] The critical word is "substantial" since all respondents must be dangerous. For example the second criterion might be met in a case where the respondent is an older person who has been found dangerous to self because he is unable to care for himself but becomes extremely agitated when dealing with law enforcement officers. If the magistrate authorizes transportation by a family member or friend, in addition to completing the custody order, the magistrate must also complete the form entitled "Request and Authorization to Deliver Respondent" (AOC-SP-902M). The magistrate should inform the family member or friend providing the transportation where to take the respondent for the initial evaluation and where to take the respondent for the second evaluation if necessary (which is the 24-hour facility designated by the magistrate on the custody order). The magistrate also should inform the person that he or she must return to the clerk of court the form entitled "Request and Authorization to Deliver Respondent" with the acknowledgement of delivery filled in and the "Custody Order" with the "preliminary examination" section filled in.

Validity of Order

The magistrate's custody order directs any law enforcement officer to take the respondent into custody and transport him or her as directed in the order within 24 hours after the order is issued and without unnecessary delay after assuming custody.[83] If the respondent is not taken into custody within 24 hours of issuance of the order, the order is no longer valid and the officer may not take the respondent into custody after that time. What is not clear is the procedure that must be followed if the respondent is not taken into custody within 24 hours and the petitioner still wishes to commit the respondent. One possibility is for the magistrate to issue a second custody order based on the first petition. The other course of action would be to require the petitioner to present evidence of the respondent's continued dangerousness in a new petition and issue a new order based on that petition. The procedure the magistrate follows may depend on the nature of the facts presented in the first petition. Some facts would support the issuance of a custody order even though one or more days might have passed since anyone has seen the respondent and since the issuance of the custody order. Other facts may present a weaker case with the passage of a day or more. If at the time the request for a new custody order is made, the magistrate determines that the facts alleged in the first petition lead the magistrate to find reasonable grounds to believe that the respondent now meets the criteria for commitment, the magistrate can issue a second order based on the first petition.[84]

Where is the order valid? For example, what if a respondent moves back and forth between counties? As long as the custody order was issued by an appropriate magistrate—one sitting in a county where the respondent either resided or was found—it can be served on the respondent anywhere in North Carolina.[85] The only difficulty with service is a practical one of getting the order to the appropriate law enforcement agency in the county where the respondent is to be taken into custody. Generally, an officer from the magistrate's county delivers the order to the appropriate agency. Although there are no cases or statute governing the situation, it probably is sufficient for the officer holding the original custody order to fax a copy of the order and petition to a law enforcement agency in the county where the respondent is now believed to be found for service.

80. G.S. 122C-251(a).
81. G.S. 122C-251(g).
82. G.S. 122C-251 (f).
83. G.S. 122C-261(e), -281(e).
84. There are no reported cases in North Carolina dealing with this issue.
85. G.S. 122C-261(e), -281(e).

Inform Petitioner of Next Steps

If the magistrate issues a custody order for a mentally ill respondent, the magistrate must provide the petitioner (and respondent, if present) with information regarding the next steps in the process.[86] Although the statute containing this requirement does not enumerate specific pieces of information that should be relayed, the magistrate should inform the petitioner that:

(1) the custody order is a document that initiates the process leading to commitment; it is not the commitment order itself;

(2) the respondent will be taken into custody by a law enforcement officer and taken to a local facility to be examined by a physician or psychologist who will make one of three recommendations:

(a) release the respondent because he or she does not meet the commitment criteria;

(b) release the respondent but schedule a district court hearing within 10 days because the respondent meets the criteria for outpatient commitment;

(c) take the respondent to a 24-hour facility because he or she meets the criteria for inpatient commitment.

(3) if the second examiner recommends inpatient commitment, the respondent will be held at the 24-hour facility for observation and treatment pending a district court hearing to be held within 10 days. The facility staff must release the respondent when he or she no longer meets the criteria for involuntary commitment.

A model notice of next steps is found at Appendix III at the end of this bulletin.[87]

Inquiry Into Respondent's Indigence

Upon issuing a custody order for inpatient commitment, the magistrate is required by law to inquire as to whether the respondent is indigent (and thus entitled to have appointed counsel at the district court hearing).[88] However, many magistrates no longer make this inquiry because indigent respondents who are sent to a state psychiatric hospital are entitled to receive representation from the special counsel and in that situation determining whether a respondent is indigent is the responsibility of the special counsel.[89] At hearings for mentally ill persons in counties other than where state hospitals are located, counsel is appointed for indigent respondents in accordance with the rules adopted by the Office of Indigent Defense Services.[90] However, even if a mentally ill respondent is not indigent, but refuses to retain counsel, the Office of Indigent Defense Services must appoint counsel for him or her anyway.[91] Therefore, for most mentally ill respondents counsel is going to be appointed so a magistrate's determination of indigence is unnecessary.

For substance abuse respondents, the statute provides that the clerk of court, upon direction of the district court judge, assigns counsel[92] who represents the respondent at the trial level, and upon appeal the Office of Indigent Defense Services appoints counsel.[93]

Respondents who are recommended only for outpatient treatment (that is, those who are not at a state psychiatric hospital) do not have the right to counsel at their district court hearing. However, a judge may appoint counsel for an indigent respondent who is recommended only for outpatient commitment if the judge determines that the issues involved in the outpatient commitment are of significant complexity or that the respondent is unable to speak for himself or herself.[94]

Magistrates who do conduct an indigence inquiry should use the form "Affidavit of Indigency," AOC-CR-226.

Emergency Commitments

In addition to the regular procedure for initiating an involuntary commitment, there are two emergency procedures for circumstances where the respondent requires immediate hospitalization to prevent harm to self or others.

86. G.S. 122C-261(b).

87. The notice is a slightly modified version of one drafted by Mark Botts, a School of Government faculty member who specializes in mental health law.

88. G.S. 122C-261(c), -281(c).

89. G.S. 122C-270(a).

90. G.S. 122C-270(d). Currently the judge or clerk handles the appointments.

91. G.S. 122C-268(d).

92. G.S. 122C-284(a), -286(d).

93. G.S. 122C-289.

94. G.S. 122C-267(d).

Emergency Commitments for Mentally Ill

Magistrates are not involved in emergency commitments of mentally ill respondents. The criteria for the special emergency procedure is that the person not only meet the criteria for a regular commitment but also that person is in need of immediate hospitalization to prevent harm to themselves or others. The emergency commitment procedure allows anyone, including law enforcement officers, to take the respondent directly to a local physician or psychologist or directly to a State facility for examination.[95] If the examiner finds that the respondent is, in fact, (1) mentally ill, (2) dangerous to self or others, and (3) in need of immediate hospitalization, the examiner will send sworn certification of this finding to the clerk of superior court on the form entitled "Supplement to Support Immediate Hospitalization" (DMH 5-72-01-A). This supplement must accompany the examiner's usual examination form ("Examination and Recommendation To Determine Necessity for Involuntary Commitment," DMH 5-72-01).[96] The certification takes the place of the magistrate's custody order and requires a law enforcement officer to transport the respondent to a 24-hour facility for a second examination. If a person comes to the magistrate with an evaluation by a physician and the additional supplement certifying the need for immediate hospitalization, the magistrate should not issue a custody order but should indicate to the law enforcement officer that the certificate takes the place of a custody order.

Emergency Commitment of Substance Abusers

The special procedure for emergency commitment of substance abusers does involve magistrates. Only law enforcement officers may petition for emergency commitment of substance abusers. If a substance abuser is violent and requires restraint, and if delay in taking him or her to a physician or eligible psychologist for examination would probably endanger life or property, the law enforcement officer may take the substance abuser into custody and take him or her immediately before a magistrate to seek a custody order.[97] If magistrate finds by clear, cogent, and convincing evidence (note that this evidentiary standard is higher than that required in the non-emergency case) that (1) the facts in the affidavit are true, (2) that the respondent is in fact violent and in need of restraint, and (3) that delay in taking the respondent to a physician or eligible psychologist would endanger life or property, the magistrate must issue an emergency commitment order to take the respondent directly to a 24-hour facility, bypassing the first examination. The form is entitled "Petition for Special Emergency Substance Abuse Involuntary Commitment Petition and Custody Order" (AOC-SP-909M).

Transportation Orders

In addition to issuing custody orders that require officers to transport the respondent for examination in response to a petition for involuntary commitment, magistrates may order law enforcement officers to provide transportation in two other situations. First, if a substance abuser who is under an order for outpatient treatment fails to comply with that order, the area mental health authority or supervising physician may, after reasonable efforts to solicit the respondent's compliance, ask the magistrate to order that the respondent be taken into custody and transported to the area authority or physician for examination.[98] Also if a substance abuser who has been discharged from inpatient commitment and breaches the conditions of his or her release, the area mental health authority or physician may request that the respondent be taken into custody and transported to the area authority or physician for examination.[99] Upon request, the magistrate must issue an order a law enforcement officer to transport the respondent to a designated physician for examination. The form is "Request for Transportation Order and Order (Committed Substance Abuser Fails to Comply With Treatment or Is Discharged From 24-Hour Facility)" (AOC-SP-223).

The second situation in which the magistrate may be asked to issue a custody order is where transportation is needed to transfer certain respondents from one 24-hour facility to another.[100] In this situation, a respondent being held for a district court hearing or already committed by a district court

95. G.S. 122C-262.

96. Both forms are needed because the examiner must give facts supporting the mental illness and dangerousness as well as the need for immediate hospitalization, and the certificate for emergency commitment does not require facts supporting the mental illness and dangerousness. G.S. 122C-262(b), -264(b1).

97. G.S. 122C-282.

98. G.S. 122C-290(b).

99. Id.

100. G.S. 122C-206(c1).

judge needs to be transferred from the 24-hour facility in which he or she is being held to another 24-hour facility. Frequently this occurs when the respondent was sent to a local hospital but that hospital is unable to handle the respondent and wants the respondent sent to a state psychiatric hospital. The magistrate may also be asked to transfer a minor or incompetent adult who was voluntarily admitted from one facility to another. If a responsible professional at the original facility notifies the magistrate to issue an order, the magistrate must order a law enforcement agency to transfer the respondent. The form is "Notice of Need For Transportation Order and Order (From One 24-Hour Facility to Another)" AOC-SP-222.

Conclusion

After a magistrate has issued an order to take a respondent into custody and transport him or her for examination, the magistrate's involvement in the process of involuntary civil commitment ends. From this point the respondent is examined by two professionals and, if these examinations reveal that the respondent meets the criteria for commitment, the respondent will receive a hearing in the district court, at which time the judge may commit the respondent.

Appendix I

Summary of Involuntary Commitment Standards

Mentally ill and dangerous to self or others	*Mentally ill and in need of treatment to prevent deterioration that would predictably lead to dangerousness*	*Substance abuser and dangerous to self or others*
Respondent is **mentally ill** if he or she has 1) an illness 2) that impairs judgment and self-control *and* 3) makes treatment advisable Respondent is **dangerous to self** if he or she 1) is unable to care for self and in danger of suffering serious physical debilitation in the near future *or* 2) has attempted or threatened suicide and is likely to commit suicide unless treatment is given *or* 3) has mutilated or attempted to mutilate self and is likely to seriously mutilate self unless treatment is given Respondent is **dangerous to others** if 1) he or she has a) inflicted, attempted to inflict, or (in some cases) threatened to inflict, serious bodily harm on another *or* b) acted in a way that creates a substantial risk of serious harm *or* c) engaged in serious destruction of property *and* 2) there is a reasonable probability that such conduct will be repeated	Respondent is **mentally ill** if he or she has 1) an illness 2) that impairs judgment and self-control *and* 3) makes treatment advisable Respondent needs treatment to prevent deterioration if his or her psychological history indicates that his or her present state would predictably lead to dangerousness	Respondent is a **substance abuser** if he or she engages in 1) pathological use or abuse of alcohol or drugs 2) in a way or to a degree that produces an impairment in personal, social, or occupational functioning Respondent is **dangerous to self** if he or she 1) is unable to care for self and in danger of suffering serious physical debilitation in the near future *or* 2) has attempted or threatened suicide and is likely to commit suicide unless treatment is given *or* 3) has mutilated or attempted to mutilate self and is likely to seriously mutilate self unless treatment is given Respondent is **dangerous to others** if 1) he or she has a) inflicted, attempted to inflict, or (in some cases) threatened to inflict, serious bodily harm on another *or* b) acted in a way that creates a substantial risk of serious harm *or* c) engaged in serious destruction of property *and* 2) there is a reasonable probability that such conduct will be repeated

Appendix II

Information Useful in Considering Whether Respondent is Mentally Ill

Behaviors

hostile vs. passive -- acting out in destructive ways vs. withdrawn, quiet, apathetic

erratic, excitable -- sensitive to slight irritation, unpredictable, agitated

combative, violent -- destructive, physically and/or verbally abusive

incontinence --poor control of urine and feces

inappropriate social judgment -- behaviors usually considered in poor taste and usually rejected or found offensive by other people

Movements

overactivity, restlessness, agitation -- parts of body in constant motion, repetitive, activity beyond reasonable level

involuntary movements -- parts of body jerk, shake or activated without apparent reason

underactivity -- immobile, stuporous, sluggish

general muscle tension -- parts of body held taut (e.g., clenched teeth), possibly small tremors, rigid posture or walking stance

Speech

overtalkative vs. mute -- constant talking vs. unresponsive, "pressure of speech"

unusual speech -- strange words, "word salad," disconnected speech

assaultive/suicidal content -- words that suggest harmful intent

Emotions

flat or inappropriate emotions -- little change in expression or expression that doesn't fit occasion (e.g., happy but angry, crying when happy)

mood swings -- dramatic changes from dejection to elation

general over apprehension --anxiety in most areas of life

depression, apathy, hopelessness -- withdrawal and minimal interest in activities of daily life

euphoric -- grandiose and unrealistic feelings, often of feeling indestructible

Thoughts

disturbed awareness -- unaware of self or others or time or place

disturbed memory --impairment of short term and/or long term memory

disturbed reasoning/judgment -- impaired logic or decisions not tied to common thinking

confused thoughts -- inconsistent and/or combination of unrelated thoughts

poor concentration and/or attention

low intellectual functioning

slow mental speed

Abnormal Mental Trends

false perceptions (hallucinations) -- experiences in visual, hearing, smelling, tasting or skin sensations without real basis

false beliefs (delusions) -- usually persecutory or grandiose thoughts without real basis

paranoid ideas -- involves suspiciousness or belief that one is persecuted or unfairly treated

body delusion -- delusion involving body functions (e.g., "my brain is rotting," a 60 year-old insisting she is pregnant)

feelings of unreality or depersonalization -- sense of own reality is temporarily lost, so body parts distorted or sensing self from a distance

repetitious behaviors/thoughts/speech

extreme fears -- especially when seriously impairing activities of daily life

Previous Evidence

psychiatric assessments or treatment

prior petitions or associated legal difficulties

Course of Disturbance

chronic

gradual onset

acute episode

Appendix III

Steps Following the Issuance of a Custody Order for Involuntary Commitment

Upon request, the magistrate or clerk of court has issued an order for custody and transportation of a person alleged to be in need of examination and treatment. This order is not an order of commitment but only authorizes the person to be evaluated and treated until a court hearing is held.

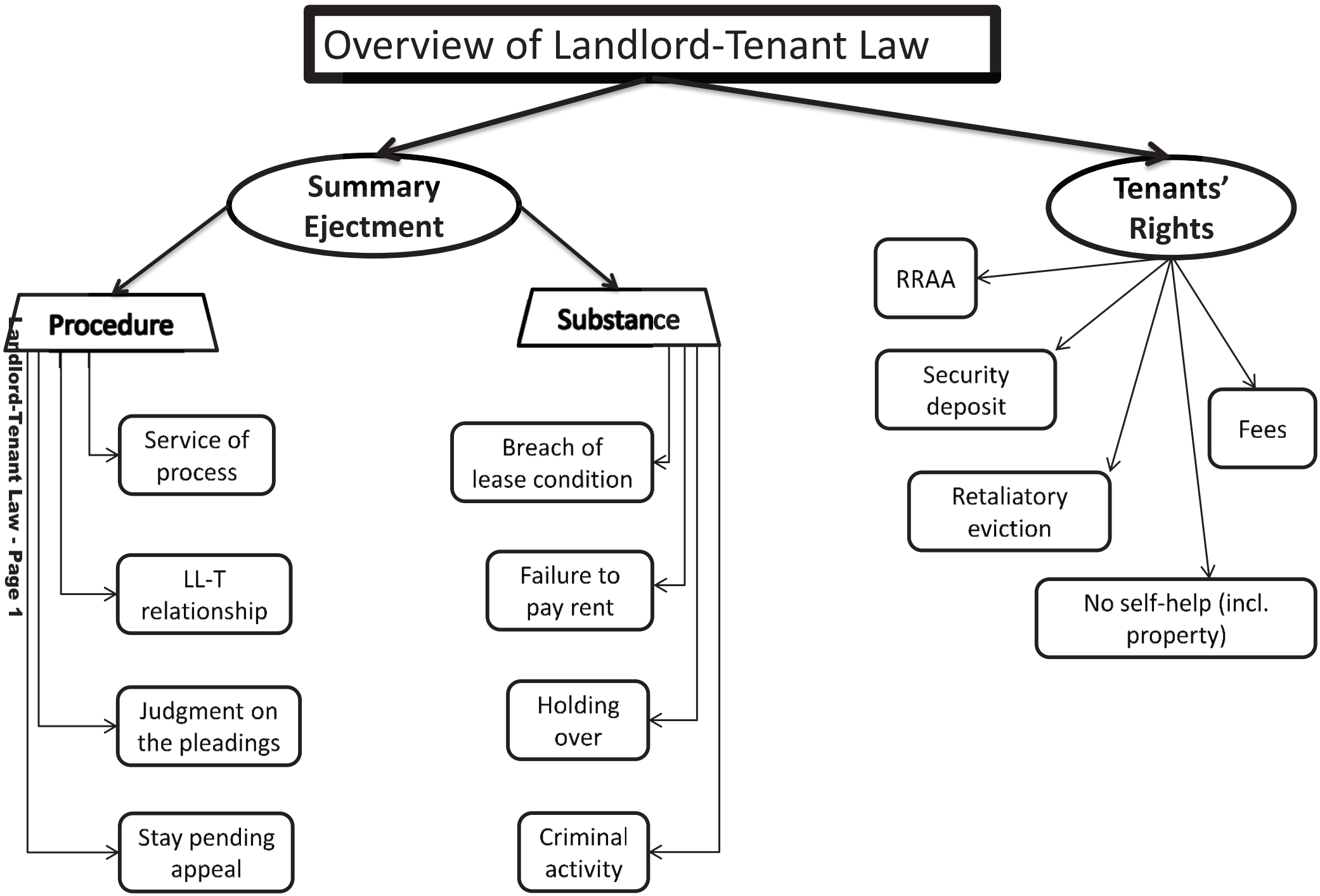
The individual making the request has filed a petition with the court for this purpose and is, therefore, called the "petitioner." The individual to be taken into custody for examination will have an opportunity to respond to the petition and is, therefore, called the "respondent." If you are taken into custody, the word "respondent," below, refers to you. G.S. 122C-261(b) requires that the petitioner and the respondent, if present, be informed of the next steps that will occur for the respondent.

1. A law enforcement officer or other person designated in the custody order must take the respondent into custody within 24 hours. If the respondent cannot be found within 24 hours, a new custody order will be required to take the respondent into custody. Custody is not for the purpose of arrest, but for the respondent's own safety and the safety of others, and to determine if the respondent is in need of treatment.
2. Without unnecessary delay after assuming custody, the law enforcement officer or other individual designated to provide transportation must take the respondent to a physician or eligible psychologist for examination.
3. The respondent must be examined as soon as possible, and in any event within 24 hours, after being presented for examination.
4. Upon examination, the physician or psychologist will recommend either outpatient commitment, inpatient commitment, substance abuse commitment, or termination of these proceedings.
    - Inpatient commitment: If the examiner finds the respondent meets the criteria for inpatient commitment, the examiner shall recommend inpatient commitment. The law enforcement officer or other designated person shall take the respondent to a 24-hour facility.
    - Outpatient commitment: If the examiner finds the respondent meets the criteria for outpatient commitment, the examiner will recommend outpatient commitment and identify the proposed outpatient treatment physician or center in the examination report. The person designated in the order to provide transportation must return the respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county. The respondent shall be released from custody.
    - Substance abuse commitment: If the examiner finds the respondent meets the criteria for substance abuse commitment, the examiner shall recommend commitment and whether the respondent should be released or held at a 24-hour facility pending a district court hearing. Based on the physician's recommendation, the law enforcement officer or other designated individual shall take respondent to a 24-hour facility or release the respondent.
    - Termination: If the examiner finds the respondent meets neither of the criteria for commitment, the respondent must be released from custody and the proceedings terminated. If the custody order was based on the finding that respondent was probably mentally ill, then the person designated in the order to provide transportation must return respondent to the respondent's regular residence or, with the respondent's consent, to the home of a consenting individual located in the originating county.
5. If inpatient treatment is recommended, the law enforcement officer transports the respondent to a designated 24 hour facility where another evaluation must be performed within 24 hours. This evaluator has the same options as indicated in step 4 above. If the evaluator determines that the respondent needs inpatient treatment, the respondent is admitted to the facility for care and treatment.
6. The inpatient treatment provider must release the respondent when in the provider’s professional opinion the respondent no longer meets commitment criteria. If the respondent is not released, the respondent will be given a hearing before a district court judge within 10 days of date respondent taken into custody. The hearing is usually held in the county where the 24-hour facility is located unless the respondent request a hearing in the county where the petition was initiated.

TAB:

Landlord-Tenant Law

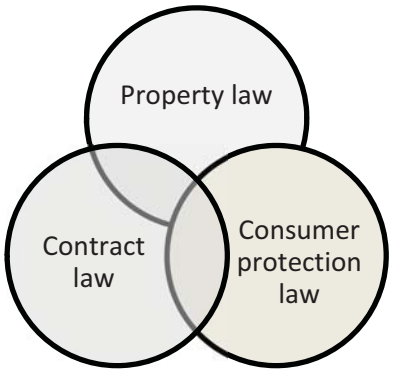
Overview of Landlord-Tenant Law



What is summary ejectment?

If Larry "owns" real property (i.e., land, not personal property), what is it that he owns, exactly?

Landlord-tenant law is challenging sometimes because it's not intuitive. Present-day law is a mixture drawn from three sources, each with its own historical development, primary goals, and interests to be protected.



The unique remedy of summary ejectment is available

only *in cases involving "a simple landlord-tenant relationship"*

AND

only *for four specific breaches*

- Breach of a lease condition for which re-entry is specified.
- Failure to pay rent
- Holding over
- Criminal activity

The most important aspect of making correct decisions in summary ejectment actions is identifying the grounds and then applying the rules associated with that ground.

Breach of a lease condition for which reentry is specified

No matter what the complaint says, it works best to begin in every case by determining whether the lease contains a forfeiture clause (i.e., **a lease condition for which re-entry is specified).**

The analysis for this ground works like this:

- ☑ Ask the plaintiff whether the lease is oral or written.
- ☑ If written, require that a copy of the lease be placed into evidence.
- ☑ Read the lease for language providing in essence that a consequence of breach may be termination of the lease. Key words are *right of reentry* and *default*, but neither may be used.
- ☑ Identify the trigger for forfeiture.
- ☑ Determine whether the plaintiff has demonstrated that tenant's behavior triggered forfeiture.
- ☑ Determine whether plaintiff strictly complied with any procedural requirements for declaring forfeiture set out in the lease. (For example, notice requirement.)

Failure to pay rent

What if there is no forfeiture clause?

If the landlord has no contractual right to end the lease because of tenant's breach, the general rule is that a landlord's only remedy is money damages caused by the tenant's behavior. If the particular breach is failure to pay rent, however, NC law throws the landlord a life preserver (confusingly) identified as Failure to Pay Rent. The General Assembly passed a law specifically targeting a situation in which a tenant is occupying property, not paying rent, and refusing to leave by creating a statutory procedure allowing the landlord to eject the tenant if all efforts to obtain payment fail. This ground is only available if there is no forfeiture clause in the lease. To qualify for this statutory exception to the general rule, the landlord must make a **demand** that the tenant pay rent and must give the tenant at least **ten days** from the date of demand before filing an action for summary ejectment. The landlord has the burden of showing compliance with this requirement as part of a prima facie case. If the tenant is able to come up with all money owed and court costs at any time prior to entry of judgment ("**tender"**), the tenant is entitled to have the action for SE dismissed.

Holding over

AKA "The lease has ended, but the tenant's still there!"

There are three ways a lease can end:

(1) The parties agree at the beginning on the end-date ("This lease for one year begins on Sept. 1, 2011, and ends on August 31, 2012.")
(2) The parties agree at the beginning on a procedure for ending the lease ("The landlord will provide the tenant 45 days advance written notice prior to the termination date.")
(3) The parties did not agree about when or how the lease would end, resulting in termination based on statute:
    a. lease for 7 days: 2 days notice
    b. lease for one month: 7 days notice
    c. lease for one year: 30 days notice
    d. lease for mobile home space: 60 days notice

NOTE: This notice operates to terminate lease as of end of rental period. For example, in a month-to-month lease, with rent payable on the first day of the month, the landlord may give notice as early as Sept. 1, or as late as Sept. 23, in order to terminate the lease as of Sept. 30.

Criminal activity

If the lease itself states that criminal activity is a trigger for a forfeiture clause, the ground for summary ejectment is actually "breach of a lease condition . . . ." (see pp. 182-184 for discussion).

G.S. 42-59 to -73 sets out the statutory procedure for eviction based on criminal activity when the lease does not make that available. The statute is long and complex, and a magistrate should not hear a summary ejectment action based on the statute before studying pp. 178-184 of Small Claims Law.

Breach of a lease condition

Plaintiff/LL must prove:
____ landlord-tenant relationship
____ lease contains a forfeiture clause
____ T breached lease condition for which forfeiture is specified
____ LL followed procedure set out in lease for declaring a forfeiture and terminating the lease.

Common defenses:
____ failure to follow lease procedure[1]
____ T has not breached (often due to RRAA)
____ waiver[2]

Failure to pay rent

Plaintiff/LL must prove:
____ landlord-tenant relationship;
____ terms of the lease related to obligation to pay rent
____ LL demanded that tenant pay rent on certain date[3]
____ LL waited at least 10 days after demand to file this action
____ T has not yet paid the full amount due.

Common defenses:
____ T does not owe rent (often due to RRAA)
____ lease contains forfeiture clause[4]
____ failure to make proper demand
____ filing too soon after demand
____ tender[5]

Holding over

Plaintiff/LL must prove:
____ landlord-tenant relationship
____ terms of lease related to duration and procedure for termination, if any
____ LL has followed lease procedure or, if none, given statutory notice, to terminate[6]
____ T has not vacated.

Most common defenses:
____ waiver
____ improper notice

Criminal activity[7]

Plaintiff/LL must prove *one* of the following things:

___ Criminal activity occurred within the rental unit
___ The rental unit was used to further criminal activity
___ T, household member, or guest engaged in criminal activity on premises or in immediate vicinity
___ T gave permission for a barred person to return to property
___ When person barred from unit re-entered unit, T failed to notify LL or LEO

Most common defenses:

___ T did not know or have reason to know of first three grounds listed above
___ T took all reasonable steps to prevent criminal activity
___ Eviction would create serious injustice

---

[1] Appellate courts have emphasized that LLs must "strictly comply" with procedural requirements in lease

[2] Unless lease contains provision that LL's acceptance of partial rent does not waive LL's right to SE.

[3] This demand for rent must be "clear and unequivocal." *Snipes v. Snipes*, 55 NC App 408, aff'd 306 NC 373 (1982)

[4] When parties have agreed on grounds and procedure for forfeiture in lease, their contractual provision overrides *GS 42-3*. *Charlotte Office Tower Associates v. Carolina SNS Corp.,* 89 NC App. 697 (1988).

[5] Tender must be in cash, for total rent past-due & costs of court.

[6] *GS 42-14* establishes notice requirements for termination in the absence of a provision in the lease:

Year-to-year lease	30 days
Month-to-month	7 days
Week-to-week	2 days
MH space	60 days

[7] GS Ch. 42, Art. 7; *see* Brannon, NC Small Claims Law pp. 176-186

Forfeiture Clauses[1]

If the Lessee shall fail to pay any installment of rent when due and payable or to perform any of the other conditions as herein provided, such failure shall at the option of the Lessor, terminate this lease and upon one days notice to the Lessee the Lessor may without further notice or demand reenter upon and take possession of said premises without prejudice to other remedies, the Lessee hereby expressly waiving all the legal formalities.

Stanley v. Harvey, 90 N.C. App. 535, 538, 369 S.E.2d 382, 384 (1988)

Is this a forfeiture clause? Yes No

What triggers it? _____

What procedure is required to exercise it?_____

What does it give the LL a right to do?_____

_____

Should the Defendant remain in default of the lease for 30 days following notice from the Plaintiffs of default, the Plaintiffs may thereupon enter upon the premises and expell (sic) the lessee (Defendant) therefrom, without prejudice to any other remedy which the lessor, his executors, administrators or assigns may have on account of such default.

Menache v. Atl. Coast Mgmt. Corp., 43 N.C. App. 733 (1979)

Is this a forfeiture clause? Yes No

What triggers it? _____

What procedure is required to exercise it? _____

What does it give the LL a right to do? _____

[1] Edited for improved readability

In a default other than failure to pay rent, the lessor will take no action to effect a termination of the lease without first giving the tenant a reasonable time to cure the default. Upon the payment of the rent and performing the other terms of the lease, the lessee shall have the quiet enjoyment of the property.

Couch v. ADC Realty Corp., 48 N.C. App. 108, 113, 268 S.E.2d 237, 241 (1980)

Is this a forfeiture clause? Yes No

What triggers it?_____

What procedure is required to exercise it?_____

What does it give the LL a right to do?_____

In case Landlord should bring suit for the possession of the premises, for the recovery of any sum due hereunder, or because of the breach of any covenant herein, or for any other relief against Tenant, declaratory or otherwise, or should Tenant bring any action for any relief against Landlord, declaratory or otherwise, arising out of this lease, and Landlord should prevail in any such suit, Tenant shall pay Landlord a reasonable attorney's fee which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment

Morris v. Austraw, 269 N.C. 218, 222, 152 S.E.2d 155, 158 (1967)

Is this a forfeiture clause? Yes No

What triggers it? _____

What procedure is required to exercise it? _____

What does it give the LL a right to do? _____

In the event of any default hereunder or if the Landlord shall at any time deem the tenancy of the Tenant undesirable by reason of objectionable or improper conduct on the part of the Tenant, his family, servant, guests, invitees, or causing annoyance to other Tenants in said building, or should the Tenant occupy the subject premises in violation of any rule, regulation or ordinance issued or promulgated by the Landlord or any rental authority, then and in any of said events the Landlord shall have the right to terminate this lease by giving the Tenant personally or by leaving at the leased premises a thirty day written notice of termination and this Lease shall terminate upon the expiration of thirty days from the delivery of such notice if the default is not remedied within a reasonable time not in excess of 30 days and the Landlord, at the expiration of said thirty day notice or any shorter period conferred under or by operation of law shall thereupon be entitled to immediate possession of said premises and may avail himself of any remedy provided by law for the restitution of possession and the recovery of delinquent rent. If this lease is terminated, Landlord shall refund prepaid and unearned rent, and any amount of the security deposit recoverable by the Tenant.

However, in the event the default is nonpayment of rent, Landlord shall not be required to deliver thirty day notice as provided above but may serve Tenant with a ten day written notice of termination whereupon the Tenant must pay the unpaid rent in full or surrender the premises by the expiration of the ten day notice period. Failure by Tenant to pay all past due rent by the expiration of the ten day notice period shall imply a forfeiture of the term and the Landlord may forthwith enter and dispossess tenant without have declared such forfeiture or having reserved the right of reentry in the lease.

Is this a forfeiture clause? Yes No

What triggers it? _____

What procedure is required to exercise it? _____

What does it give the LL a right to do? _____

Landlord may give 5 days written notice to tenant to correct any of the following defaults:

- Failure to pay rent or added rent on time
- Improper assignment of the lease, subletting all or part of the premises, or allowing another to use the premises
- Improper conduct by tenant or other occupant of the premises
- Failure to fully perform any other term in the lease.

If tenant fails to correct one of these defaults within 5 days landlord may cancel the lease by giving tenant a written 3 day notice stating the date the term will end. On that date the term and the tenant's rights in this lease automatically end and tenant must leave the premises and give landlord the keys.

Is this a forfeiture clause? Yes No

What triggers it? _____

What procedure is required to exercise it? _____

What does it give the LL a right to do? _____

In the event that you fail to comply with any one or more of the terms and conditions contained herein or referenced hereto, or should you fail to perform any other promise, duty or obligation herein agreed to or imposed by law, any such failure shall constitute your immediate and instant default of this agreement without notice or warning of any kind to you. Upon any default by you, we shall be entitled to collect from you any and all expenses, damages, and costs (including reasonable attorney's fees and court costs) arising out of or in any way relating to said default. In the event of a default by you, we may, with or without notice to you, do any one or more of the following acts: (1) terminate your right to possession of the home without terminating this agreement, and/or (2) terminate this agreement.
Excerpted from AANC lease 2008.

Events Constituting Breach: It shall constitute a breach of this agreement if Tenant fails to

(i) Pay the full amount of rent herein reserved as and when it shall become due hereunder; or

(ii) Perform any other promise, duty, or obligation herein agreed to by him or imposed upon him by law and such failure shall continue for a period of five (5) days from the date the Landlord provides Tenant with written notice of such failure.

In either of such events and as often as either of them may occur, the Landlord, in addition to all other rights and remedies provided by law, may, at its option and with or without notice to Tenant, either terminate this lease or terminate the Tenant's right to possession of the Premises without terminating this lease.
NCREC Standard Form 410-T (2006)

Be Aware of These Procedural Rules for Summary Ejectment Cases

In the absence of a "simple landlord-tenant relationship," both small claims magistrate and district court judge lack subject matter jurisdiction to hear action labeled as "summary ejectment."

Agent with personal knowledge may sign complaint and represent LL. GS 7A-223(a).

Property owner is rpii and must be listed as plaintiff in complaint.

Action must be calendared within 7 business days of complaint being filed.

Sheriff must serve summons and complaint within 5 days of complaint being filed.

Service of process must occur at least 2 days prior to trial date.

Service by first class mailed + posting on rental premises is sufficient for award of possession only.

If landlord is seeking both money damages and possession, service is by posting, and defendant is not present, 2017 amendment allows plaintiff to ask that the claims be "severed," with claim for possession heard immediately and money damages claim heard at later time after defendant has been personally served.

Service by private process server not allowed even after unsuccessful attempt by sheriff for possession claim, but private process server allowed to serve severed claim for money damages..

Plaintiff is entitled to judgment on the pleadings if:

- ≈ Defendant was served, but has not filed answer nor appeared for trial
- ≈ Complaint lists breach of lease condition for which re-entry is specified as grounds
- ≈ Plaintiff requests JOTP in open court

Continuances are available only for good cause and for no more than five days or next session of court, whichever is greater, unless parties consent to longer period

Magistrate prohibited from reserving judgment unless parties agree or court finds the case is "more complex." In case of complex case, magistrate required to enter judgment within 5 business days.

If judgment is for landlord in small claims court and tenant appeals, tenant is subject to being evicted while appeal is pending unless tenant satisfies statutory requirements for obtaining stay.

Costs of appeal for trial de novo must be paid within 10 (not 20) days of entry of judgment.

Appeal subject to dismissal in district court under some conditions, requiring magistrate to make a finding when tenant presents a defense in small claims court.

Sheriff must execute a writ of possession within 5 days of issuance.

LL-T Notetaking Outline

Remember **CONTRACT ANALYSIS** applies to these cases, and so do **The Ten Mandatory Rules of Procedure.**

IS THERE A (RENTAL) CONTRACT? May be written or oral (usually), but must be agreement between person entitled to possession of land and Person #2 that Person #2 has right to possess property in exchange for paying rent or providing some other service. This is a conditional agreement: "T has possession on condition that T do _____." T is purchasing the right to possession of the property for a limited time, while LL retains ownership of property.

_____

_____

_____

_____

This question also goes to **MR#1: do you have jurisdiction?** In SE action for possession only, amount in controversy N/A, defendant must reside in your county, and there must be LL-T relationship between plaintiff & defendant.

_____

_____

_____

_____

If no landlord-tenant relationship exists between the parties, the magistrate should dismiss the action and note on the dismissal form that the small claims court is without jurisdiction due to the lack of a landlord-tenant relationship.

WHO ARE THE PARTIES?

As to the named plaintiff, remember **MR#6: the real party in interest** is the owner of the property, and the lawsuit must be brought in that person's name. An exception to the general rule applies in SE actions, however, allowing an agent of the owner with personal knowledge to sign the complaint and present the case**. (MR #3).**

The defendant in a SE action is the person(s) who contracted with the LL to rent the property. Other occupants have no contractual relationship with the owner; they are there with the tenant's agreement and lose their right to occupancy automatically when the tenant is ejected.

_____

_____

_____

_____

Preliminary procedural considerations

MR#2: Service of process or appearance is required. In SE cases only, sheriff may serve process by mailing to defendant's last known address and posting on door of premises. See Return of Service re posting on back of summons. When service is accomplished by mail/posting and defendant does not appear in court, no money judgment is permissible.

_____

_____

_____

_____

MR#4: If defendant is not present, SCRA affidavit required.

MR #5: Defendant must have been served at least 2 days prior to trial. Statute excludes legal holidays, suggesting that requirement is 2 calendar days: service on Friday PM sufficient for case to be heard Monday AM.

Special Rule for Continuances: In 2013 GS 7A-223(b) was amended to provide that (1) an action for SE should be continued only for good cause shown, and (2) a continuance in SE cases only should not exceed 5 days or until the next session of small claims court unless the parties agree to a longer delay.

Disputed title to real property will not be resolved in small claims court. If a defendant files an answer raising this issue, assignment to small claims court is withdrawn and the case is put on the district court docket.

_____

_____

_____

_____

MR #8: Plaintiff must produce evidence in support of claim even if defendant is not present.

Subject to one exception, discussed below, a LL must introduce evidence of each essential element of the claim even if defendant is not present. Just as in other civil cases, the plaintiff has the burden of establishing a prima facie right to relief before the defendant is required to produce any evidence in defense.

Exception: Judgment on the Pleadings. (see requirements on p. 30, Small Claims Law)

WHAT ARE THE TERMS OF THE CONTRACT?

DID DEFENDANT BREACH?

WHAT ARE THE DAMAGES?

~~~~~~
~~~~~~

Magistrate must either render judgment in open court or reserve judgment.*

In 2013 GS 7A-22 was amended to restrict reservation of judgment in SE actions unless (1) the parties agree, or (2) the case is "more complex," in which case judgment must be entered within 5 business days. The statute provides examples of issues that might render an action more complex (e.g., subsidized housing cases, counterclaims, criminal activity), but circumstances are not limited to the examples listed.

Two other recent legislative amendments relate to appeals from SE cases, but both require modification of usual procedure by the magistrate at the small claims level. First, a litigant who wishes to appeal from a small claims judgment is required to pay costs of appeal within a certain period. Failure to make timely payment results in automatic dismissal of the appeal. In SE actions only, costs must be paid within 10 days of entry of judgment. In all other small claims cases, the appellant has 20 days to pay costs. (Note that parties who qualify as indigent make be excused from this requirement.) GS 7A-228.

The second legislative change to GS 7A-228 establishes a procedure for dismissal of a tenant's appeal under certain circumstances related to the degree of a tenant's participation in the action. The sole involvement of the magistrate in this procedure is to make a notation on the judgment if the defendant raised a defense in the small claims action. If a tenant raised a defense in writing, that will be part of the record, but an oral defense will not—thus the importance of the magistrate's notation. It is important to note that the magistrate need not have found the defense persuasive—indeed, there would be no appeal by the tenant if that were the case. An unpersuasive defense has legal significance in this context, and must be noted.

What Magistrates Need to Know About the RRAA

The Residential Rental Agreements Act (and Other Tenants' Rights Statutes)

The Residential Rental Agreements Act is set out in G.S. Chapter 42, Sections 38 to 44. This law, which was passed in 1977, changed NC law to require landlords to maintain residential rental premises at a certain minimal level of habitability. This obligation is imposed as a matter of social policy by the State of North Carolina. For that reason, a tenant has no authority to give a landlord permission to violate the law. In exchange for providing greater protections to tenants, including prohibiting self-help eviction and requiring landlords to provide fit and habitable housing, a number of preferential procedures are provided to landlords allowing fast and inexpensive evictions when tenants breach a lease.

Who and What is Covered by the Law?

The RRAA applies only to residential rental agreements.

The law applies to any dwelling unit, including mobile homes and mobile home spaces, as well as surrounding grounds and facilities provided for use by residential tenants.

The statute defines "landlord" to include not only property owners, but also rental agencies or other persons who have or appear to have authority to comply with the legal requirements imposed by the RRAA.

The RRAA does not apply to vacation rentals covered by GS Ch. 42A, temporary lodging in hotels or motels, and to permissive occupancy of premises furnished without charge.

What Does the Law Provide?

The law imposes 8 distinct obligations on a landlord:

1. It must comply with building and housing codes.
2. It must keep premises in a fit and habitable condition.
3. It must keep common areas in safe condition
4. It must maintain and promptly repair electrical, plumbing, heating, and other supplied facilities and appliances.
5. It must install a smoke detector and keep it in good repair.
6. It must install a carbon monoxide detector and keep it in good repair.

7. It must notify the tenant if water the landlord charges to provide exceeds a certain contaminant level.
8. It must repair within a reasonable time any "imminently dangerous condition" listed in the statute:
    a. Unsafe wiring.
    b. Unsafe flooring or steps.
    c. Unsafe ceilings or roofs.
    d. Unsafe chimneys or flues.
    e. Lack of potable water.
    f. Lack of operable locks on all doors leading to the outside.
    g. Broken windows or lack of operable locks on all windows on the ground level.
    h. Lack of operable heating facilities capable of heating living areas to 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from November 1 through March 31.
    i. Lack of an operable toilet.
    j. Lack of an operable bathtub or shower.
    k. Rat infestation as a result of defects in the structure that make the premises not impervious to rodents.
    l. Excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation or mold.

Notice Requirements

General rule: The tenant must give whatever notice is necessary to reasonably permit the landlord to fulfill his obligations.

With regard to #4, the rule related to electrical, plumbing, and other "facilities and appliances," the tenant is required to give written notice that repair or maintenance is necessary (except in case of emergency).

A property owner is presumed to have knowledge of conditions in existence at the beginning of the rental, and no further notice by the tenant is required.

A Tenant Can't Excuse a Landlord from the Law's Requirements

The obligations imposed on landlords by the RRAA are not based on the rental agreement between the parties, but are imposed by law. Consequently, the rules apply

- even if the contract says nothing about them
- even if the lease specifically states that the tenant waives those rights
- even if the housing had obvious violations which the tenant was aware of when the tenant entered into the lease
- even if the rent is substantially lowered to reflect the FRV of the defective property

Q: What is the effect of a lease provision that specifies that an appliance (e.g., dishwasher) is being provided as an accommodation to the tenant, but only if the tenant agrees to pay any cost of repair if the appliance breaks?
A: The provision is not enforceable; the landlord is required to repair the dishwasher. Note that the landlord is not required to provide a dishwasher, but is required to maintain and repair those appliances it provides.

Q: What are the landlord's rights and obligations if the tenant's own behaviors cause an imminently dangerous condition (#8) on the property?
A: The landlord is required to repair or remedy any imminently dangerous condition, even one that results from the tenant's fault, but the tenant is responsible for paying the actual and reasonable costs of repairs.

A Tenant Has Obligations Too

GS 42-43 lists the requirements applicable to tenants related to keeping property clean and undamaged and to cooperating with the landlord to ensure that the rental unit has at all times an operable smoke and/or carbon monoxide alarm. A landlord who becomes aware of a tenant's violations of these requirements is required to give written notice to the tenant except in case of emergency.

Remedies: What Happens When a Landlord Fails to Meet His Responsibilities Under the Act?

At the outset, you are confronted with two apparently contradictory provisions of the Act that have worried commentators. On the one hand, the obligations of the landlord and the tenant under the Act are "mutually dependent"—that is, each of them is obligated only if the other keeps his part of the bargain. Based just on this provision, one might reasonably conclude that a tenant's obligation to pay rent "depends" on the landlord's provision of fit and habitable premises. But another section of the Act specifically says that a tenant may not "unilaterally withhold rent prior to a judicial determination of the tenant's right to do so." What does this mean?

No one is absolutely certain, because there have actually been only a few appellate cases interpreting the RRAA. It seems clear, though, that a tenant who withholds rent because the landlord violates the RRAA risks being evicted for failure to pay rent. A much safer course would be to pay rent and then bring an action in rent abatement; a tenant who prevails in this action will recover damages for the landlord's past violation of the Act and may well also secure a "judicial determination of [his] right" to withhold future rent until the landlord complies with the law.

If a tenant does not adopt this safer course, but instead withholds rent, one leading commentator suggests the following approach:

First, determine the actual amount of rent owed, after factoring in the amount of offset to which the tenant is entitled due to the landlord's breach of the RRAA. If that amount is zero, dismiss the action. If the amount is greater than zero, the next step depends on the specific basis for the action:

If the action is based on breach of a lease condition for which forfeiture is specified, the landlord is entitled to possession upon making the usual showing.
If the action is based on failure to pay rent, however, the tenant may successfully defend by tendering the amount which the magistrate has determined is actually owed.

Repair & Deduct?

Can a tenant hire someone to fix the roof, pay for it out of his own pocket, and then take that amount out of the rent? We don't know, and the commentators are divided in their predictions. Until North Carolina courts clarify the law, it seems likely that many courts will cautiously allow tenants to do this, with the facts of the individual case being important (a tenant who gives notice, waits a long time, and then spends a small amount of money being much more likely to prevail than a tenant who fails to give notice and makes major repairs, such as replacing a roof).

Procedure

The Act states that a tenant may enforce his rights under the RRAA by civil action, *including "recoupment, counterclaim, defense, setoff, and any other proceeding, including an action for possession."* Thus, a magistrate may be confronted with applying the Act in any of the following circumstances:

1. The landlord brings an action for possession and/or money damages, and the tenant defends by contending that the landlord violated the Act.

2. The landlord brings an action for possession and/or money damages, and the tenant brings a counterclaim for rent abatement based on the landlord's violation of the Act.

3. The landlord brings an action for money damages, and the tenant responds by arguing that the landlord's damages should be reduced ("set-off") because of his violation of the Act.

4. The tenant files an action for rent abatement.

Damages

The tenant is entitled to the difference between the FRV (fair rental value) of the property as warranted and the FRV of the property as it actually is, plus any incidental damages (for example, the tenant had to

buy a space heater when the furnace stopped working). NOTE: A tenant may only recover up to the amount of rent he actually paid.

How are damages proven? No expert testimony is required. Witnesses may offer their opinion about the FRV of property, and the magistrate may also rely on the magistrate's own experience in determining reasonable damages.

Exercise: Let's Look at Some Lease Provisions

Lease #1:

Resident accepts Property in its present "AS-IS" condition . . .

_____

All appliances of any kind including window air conditioners are specifically excluded from this Agreement. Such appliances remain as a convenience to Resident and Management assumes no responsibility for their operation. No part of the monthly rent is attributable to them.

_____

Discount for prompt payment and maintenance: Time is of the essence of this Agreement. If the rent, and any previous balance due, is received and accepted on or before (the due date described above) and Resident complies with the maintenance requirements contained herein, a _____ Dollar discount will be credited to the rental payment.
Resident shall at his own expense and at all times maintain the premises in a clean and sanitary manner, including all equipment and appliances therein. . . Resident expressly stipulates and agrees that Management is granting a rental discount in exchange for Resident's agreeing to perform and bear the expense of, or have performed, minor maintenance and repairs on the dwelling, therefore Management shall NOT be responsible for maintenance and repairs of the premises during the term of this Agreement. If Resident repair responsibilities conflict with any state laws to the contrary, Resident expressly agrees to fully waive and relinquish any protections so provided.

_____

Lease #2

In the event repairs are needed beyond the competence of the Tenant, Tenant is urged to contact the Landlord. Tenant is offered the loan of the shed as an incentive to make his own decisions on repairs to the property and to allow Landlord to rent the property without the need to employ professional management. Therefore, as much as possible, Tenant should refrain from contacting the landlord or his agent except for emergencies, or for expensive repairs.

_____

Tenant warrants that any work or repairs performed by him will be undertaken only if he is competent and qualified to perform it. Tenant will be totally responsible for all activities to assure that work is done in a safe manner which will meet all the applicable codes and statutes. Tenant further warrants that he will be accountable for any mishaps or accidents resulting from such work, and will hold the Landlord free from harm, litigation, or claims of any other person. Tenant is responsible for all plumbing repairs including faucets, leaks, stopped up pipes, frozen pipes, water damage, and bathroom caulking.

_____

Appliances or furniture in the unit at date of lease are loaned not leased to Tenant. Maintenance of appliances or furniture is the responsibility of Tenant who will keep them in good repair.

_____

Rent Abatement Problem

Larry Landlord rents an apartment to Tommy Tenant. There is no written lease. Tommy pays $600 rent on the first of each month. Larry files for summary ejectment based on failure to pay rent on March 15, based on Tommy's failure to pay rent for February and for March. You hear the case on March 25.

Imagine that Larry establishes a prima facie case, but Tommy's testimony is that the apartment has had no heat since he moved in, on Jan. 1st. He testifies that he notified Larry immediately of the problem, and Larry promised to fix it, but beyond providing a space heater, has taken no other steps to repair the heating system. Tommy tells you that he believes the apartment with a single space heater, rather than a central heating system, is worth only $300 a month. He is prepared to tender the full amount due in order to maintain possession of the property.

Assuming you find Tommy's estimate credible, what amount must he tender? _____

	January	February	March
FRV	$300	$300	$300
Amt pd by T	$600	0	0
Balance	+$300	0	-($300)

Assume that Tommy is not asking to remain in possession of the property, but that he is instead merely disputing the amount owed. What is your money judgment? _____

Fees in Summary Ejectment Actions

For Leases Entered Into On or After Oct. 1, 2009

Late Fees

In residential leases, parties may agree to late fee for payments five or more days late. When rent is paid monthly, the maximum fee is $15 or 5%, whichever is greater. In case of weekly rent, maximum is $4 or 5%, whichever is greater.

Complaint Filing Fee

In residential leases, parties may agree to this fee, not to exceed $15 or 5%, whichever is greater, only if:

---tenant was in default
---LL filed complaint for SE
---tenant cured the default
---LL dismissed the claim.
Fee may be charged as part of amount required to cure default.

Court-Appearance Fee

In residential leases, parties may agree to this fee, not to exceed 10% of monthly rent if
---tenant was in default
---LL won a SE action
--neither party appealed.[1]

Second Trial Fee

In residential leases, parties may agree to this fee, not to exceed 12% of monthly rent, in event of new trial following appeal from small claims judgment. If Court-Appearance Fee was awarded as part of small claims judgment, that award is vacated. Available if
---tenant was in default
---LL prevailed.

Additional Rules

LL can charge only one of the last three fees, and that fee may not be deducted from subsequent rent payment or asserted as ground for default in subsequent SE action. Prohibits LL from attempting to charge a larger fee and provides lease provision in violation of law is void.

[1] In 2016 GS 42-46(f) was amended to allow magistrates to award a court appearance fee upon entry of judgment in favor of the landlord, with the provision that this award is to be vacated if the tenant successfully appeals the judgment.

DGL/SOG/April 2017

KEY POINTS ABOUT LANDLORD-TENANT LAW & DAMAGES

Damages that might be awarded to LL in summary ejectment action

Unpaid rent, up to date of judgment

Damages for occupancy after lease is terminated.

Damages for remainder of term[1]

Premature termination by T:

If T raises mitigation issue: measure is amount LL would have received had T not breached, reduced by amount recovered by mitigation.

If T does not raise mitigation issue: amount LL would have received, reduced to present value.

NOTE: possible issue about whether termination was in fact premature: DV victims; members of military & families; surrender of leasehold by T; constructive eviction by LL.

LL terminates possession, but not lease: damages same as above.

Late fees & administrative fees under GS 42-46 (residential leases)[2]

Must be in lease

LL forfeits completely if exceeds statutory maximum

May not be deducted from rent payment so as to make rent late again

Subsidized housing: based on T's share of rent

Late fees: must provide 5-day grace period

"Rent concession" may be challenged as disguised late fee

Administrative fees provision is new law: note correction on p. 170 SCL.

Other fees contained in lease: often subject to rules re liquidated damages.

---

[1] Summary ejectment (typically) terminates the lease, and the right to payments pursuant to the lease, but the LL nevertheless has a claim for breach of contract damages when lease period extended into future.

[2] GS 42-46 is not applicable to commercial leases, which are subject to the usual rules about liquidated damages provisions.

DGL/SOG/2017

Physical damage to rental property

Must exceed normal wear & tear

Measure is difference between FMV of property before and after damage.

Attorney fees under GS 6-21.2

Must be agreed to in lease

15% of rent due, unless lease specifies lower amount

Notice requirement applies, giving T notice of claim for fees and 5 days from mailing to pay outstanding balance.

Damages That Might Be Awarded to Tenant in Action against Landlord in Residential Context

Unlawful self-help eviction (whether actual or constructive)

GS 42-25.6 – 25.9 gives T right to sue to recover possession of property and actual damages.

Courts have held this to be an UTP, with consequent availability of treble damages and attorney fees.

Unlawful interference with T's property

Same rules as above apply.

T also has option of suing for conversion.

Retaliatory/wrongful eviction: generally used as affirmative defense, but T may recover damages through UTP claim.

Violation of Security Deposit Act (GS 42-50 - -56)

Violation of trust account provisions: LL forfeits entire deposit

T may sue for accounting, return, & damages from other violation.

Willful violation: Actual damages plus attorney's fees.

Possible violation of UTP law.

Rent abatement

Measure of damages is difference between FRV of property as warranted and FRV of property as is.

T may not recover more than has paid.

LL who accepts rent while aware that premises violate RRAA commits an UTP.

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Landlord-Tenant Law: NC Small Claims Law by Brannon (2009)

The chapter on Landlord-Tenant Law in Joan Brannon's book on small claims law continues to be an outstanding reference. While a few portions of the text have been rendered inaccurate by subsequent legislation or case law, the majority of these relate to procedural modifications applicable to small claims court. Readers should be aware of the following changes:

- The unconscionability issue discussed on p. 160 was directly addressed by the NC Supreme Court in Eastern Carolina Regional Housing Authority v. Lofton, 789 SE2d 449 (2016), in an opinion holding that a landlord is not required to produce evidence negating the possibility that eviction in the particular circumstances would be unconscionable.

- References throughout the text to damages not exceeding $5000 should read "10,000" due to legislation in 2013 increasing the jurisdictional amount for small claims cases.

- The section on page 170 referring to "Other Contractual Fees" has been substantially amended by legislation enacted in 2009 amending GS 42-46 establishing a hierarchy of permissible administrative fees.

- In 2012 the General Assembly added GS 42-26(c) permitting a landlord to accept partial payment of rent in certain circumstances without waiving the right to pursue eviction. This legislation is an important addition to the discussion of waiver beginning on p. 171 of the book.

- The section labeled *Security Deposits* on p. 189 of the book should be supplemented with legislation making minor amendments to GS 42-51. In addition, Neil v. Kuester Real Estate Services, Inc., 237 NC App 132 (2014) is an important case limiting the "full refund" remedy for violation of the Act to willful violations of GS 42-50, the provision related to the deposit of funds to a trust account.

- The section on pp. 190-192 governing a landlord's right to dispose of tenant's property should be revised to correct references to dollar amounts and time periods in accordance with statutory amendments set out in GS 42-25.9 and 42-36.2.

TAB:

Recovering Personal Property

Actions to Recover Personal Property

Forms: Complaint Form CVM-202 (Complaint to Recover Possession of Personal Property) & Judgment Form CVM-400 (Judgment in Action to Recover Money or Personal Property).

"He took my dog!"

- I'm the owner or legal possessor.
- He wrongfully (1) took, or (2) retained my dog.

"He welshed on his debt, and we want our collateral."

- He agreed that we could repo the property if he missed a payment.
- He missed a payment.

These are two entirely different lawsuits. Only the remedy is the same.

Job Aid

Essential Elements of Action to Recover Personal Property as a Non-Secured Party

___ Plaintiff is owner (or person entitled to possession).

___ Property was wrongfully taken or retained.

___ Defendant has possession of property. [If not, plaintiff may amend complaint to seek money damages for conversion.]

___ Damages necessary to return plaintiff to original position: return of property, compensation for injury to property, and costs associated with loss of use.

Essential Elements of Action to Recover Personal Property as a Secured Party

___ The existence of a valid security agreement.

___ That the security agreement created a security interest in the specific property at issue.

___ The debtor defaulted.

Introductory Activity

Assume that in each of the fact situations below the plaintiff seeks the remedy of recovering personal property. The plaintiff probably could also file an action for money damages, and might also be able to establish probable cause for a criminal charge, but neither of those are before you for this activity.

If the plaintiff should file as a non-secured party, write NSP in the blank. If the plaintiff should file as a secured party, write SP in the blank.

_____ Plaintiff is suing her former roommate to recover possession of her iPad.

_____ Plaintiff is suing his ex-spouse to recover possession of the quilt he inherited from his grandmother.

_____ Plaintiff is suing a debtor who borrowed money from plaintiff and put up a boat as collateral.

_____ Plaintiff is suing the person who bought her car after the buyer failed to make the final payment.

_____ A tenant is suing his landlord to recover the furniture he left behind when he was evicted.

_____ A furniture store is suing a customer to recover furniture sold on the installment plan after the customer defaults.

"He Took My Dog" Cases: Actions by a Non-Secured Party

Action for Conversion (aka Forced Sale*): π wants money damages*

Essential elements:

- Plaintiff is owner (or person entitled to possession)
- Defendant wrongfully took or retained
  NOTE: Wrongful retention requires demand for return, even if due date specified.
- FMV
  Plaintiff's opinion testimony sufficient

Action to Recover Possession of Property

Essential elements:

- Plaintiff is owner (or person entitled to possession)
- Property was wrongfully taken or retained
- Defendant has possession of property
  If not, plaintiff may amend complaint to seek money damages for conversion.
- Damages necessary to return plaintiff to original position: return of property, compensation for injury to property, and costs associated with loss of use.

"We Want Our Collateral" Cases: Actions by a Secured Party

SP is either a lender (L) or a seller of property on credit (S).

Essential Elements

- Valid security agreement
- Applicable to property sought to be recovered
- Debtor defaulted in manner triggering right to repossess

Essential Element #1: Valid Security Agreement

- Authenticated by debtor
- Description of property sufficient to allow identification
- Writing sufficient to indicate intention to create security interest

- If the agreement involves the extension of *consumer credit*, the document must be dated.

Q: What's a consumer credit transaction?
A: A transaction involving

- A seller who in ordinary course of business regularly extends credit,
- buyer is natural person,
- goods or services are purchased for personal, family, household, or agricultural purposes,
- debt is payable in installments or finance charge imposed,
- amount does not exceed $75,0000.

Essential Element #2: SA applies to particular property sought to be recovered.

Retail Installment Sales Act

A seller in a consumer credit sale is allowed to take a security interest only in:

- The property sold
- Previous purchases not yet paid off
- Personal property to which goods are installed ($300+)
- MV to which repairs are made ($100 +)
- Property sold for use in agricultural business

SI taken in property other than that above is void.

FIFO rule applies to allocation of payments to collateral purchased from same seller over time. S has burden of proof on proper allocation.

RISA (GS Ch. 25A)

RISA applies only to sellers.

A federal regulation governs lenders and provides SI in household goods other than *purchase money security interest* is unfair trade practice. *Purchase money security interest* is interest taken in property purchased with money obtained from loan.

Rights of Secured Party on Buyer's Default

May repossess without court order <u>if no breach of peace</u>.

Q: What is the effect of breach of peace?

A: It renders repossession wrongful. Consequences of wrongful repossession are that SP may be liable for conversion, civil trespass, or even criminal charges.

Q: What factors should I consider in determining whether repossession caused breach of peace?

- A: Location
- Debtor's express or constructive consent
- Reactions of third parties
- Type of premises entered
- Use of deception by creditor

NOTE: A secured party always has the option of sue for $ or repossession; not required to repossess.

What Happens after Repossession

Sell or Keep?

Generally, SP has option of sale or keeping goods in full satisfaction of debt.

Debtor must agree to decision not to sell, either by

- signing agreement or
- by failing to object to notice of intent to keep within 20 days

Consumer goods/60% of debt paid: SP must sell property within 90 days.

Statutory requirements for sale of repossessed property:

- Debtor is entitled to notice of sale,
  Notice must be given in commercially reasonable manner (timing, content, and manner sent)

  Consumer goods: GS 25-9-614 spells out required contents of notice.

- Debtor has right to redeem property at any point prior to sale.
  Amount owed, expenses, and attorney fees (if SA provides) required for redemption.

  Effect of acceleration clause: D must pay full amount of debt to redeem property.

- Sale must be conducted in commercially reasonable manner "in every aspect."
  Whether sale meets CRM standard depends on facts; guiding star is reasonable efforts to obtain best price.

  Whether sale is CR may include consideration of time, place, price obtained for goods, amount of publicity, other broad range of factors.

  May require S to make reasonable efforts to prepare property for sale.

S may elect public sale (auction, with notice to general public) or private sale (all others). S is allowed to purchase property only at public sale unless fair price is capable of objective determination.

Post-sale

- Proceeds allocated in order to
  expenses,
  debt to S,
  debt to other SPs,
  surplus to D.
- Consumer goods: S must provide written accounting to D.

Action for deficiency

If proceeds of sale are insufficient for expenses & debt to seller, seller may bring action for $ owed ("action for deficiency").

Essential elements:

~S gave D proper written notice of disposition of property
~Sale was conducted in CRM
~Amount of remaining debt

Defense

Failure to conduct CR sale →Rebuttable presumption that value of property was at least equivalent to amount of debt.

D's Remedies for Creditor's Violation of Rules

- 60% Rule: action for conversion
- Any actual damages debtor is able to prove
- Consumer goods: liquidated damages of not less than total finance charge plus 10% principal
- Treble damages if B proves unfair or deceptive practice
- $500 penalty for
  ~Creditor who refuses to provide statement of amount owed or list of collateral securing debt in response to written request, or
  ~Creditor who fails to account for proceeds of sale and who has a pattern of noncompliance.

Rights of Third Parties

SP may be able to repossess property from 3rd parties if SP has a *perfected* security interest.

Perfection may occur in four ways:

- By filing financing statement with Secretary of State.
- A purchase money security interest is automatically perfected.
- In the case of motor vehicles, by filing a lien with DMV.
- Creditor retains possession of property (e.g., pawnbroker)

Priority rules for perfected security interests:

- Purchase money security interest prevails over all others.
- First to perfect wins otherwise.
- Perfected interest wins over unperfected interest.

Special rule for consumer goods

A "good faith purchaser" of consumer goods who purchases from a buyer takes free of a security interest in the goods if

- The GFP did not know there was a security interest in the goods;
- The GFP paid for the goods;
- The goods were for the GFP's personal use; the goods before a financing statement was filed.
- The GFP bought the goods before a financing statement was filed.

Activity

Secured Transactions: Learning the Lingo

Friendly Furniture sells bedroom furniture, and Connie Consumer would like to purchase some. Connie doesn't have the money to pay the entire purchase price, though. So FF offers to sell her the furniture on an installment plan—in other words, to "finance" her purchase. Of course, there's a possibility that Connie will take the furniture but not finish paying for it. If that happened, FF could certainly sue Connie for breach of contract. But there's a good chance that Connie might turn out to be "judgment-proof," and even if she isn't, it would involve a lot of effort and expense on FF's part to collect. An alternative, which helps FF feel more secure, and thus more interested in selling to low-income customers, is for FF and Connie to enter into another contract saying that if Connie misses a payment, FF can repossess the furniture. FF doesn't even have to come to court, unless its effort to retrieve the furniture might cause a breach of the peace.

As you know, a business deal is often referred to as a transaction, and this special type of two-contracts-in-one is called a _____ _____. To create a secured transaction, the debtor must sign a written, dated _____ _____that describes the property involved specifically enough so that it may be identified. The parties to this agreement are Connie, the *debtor,* and FF, the _____ _____. The property that secures the transaction is called _____ .

Rather than saying that FF and Connie entered into a security agreement in which FF obtained the right to repossess the collateral if Connie doesn't pay, it's easier to simply say that FF took a _____ _____ in the property. The legal term for Connie's failure to pay, which triggers FF's right to repossess, is _____.

The rules about what FF does after repossessing the property are complex. If FF sells the property, it is required to conduct the sale in a _____ _____ manner. Any amount still owing after the sale is called a _____, and FF's lawsuit seeking that amount is an *action on the deficiency*.

Word Bank

commercially reasonable

SECURITY AGREEMENT

COLLATERAL

Security interest

DEFICIENCY

Secured party

default

SECURED TRANSACTION

Problems

1. David rented a tuxedo for his wedding from Pretty Fashion Rental Company. He didn't get around to returning it until after his honeymoon, although the rental period was 24 hours. When the tux was two days late, Pretty Fashion was forced to rent a tux from its arch-competitor in order to fill an order for another wedding. That cost PF $100. When David finally brought it back, the tux was torn and had grass and wine stains on it. Cleaning and repair would cost $150, which David refused to pay, causing PF to refuse the tux.

   What action(s), requiring what complaint form(s), could PF use in small claims court on these facts?
   What would PF sue for?

2. Fantastic Furniture Co. brings an action to recover possession of a dining room table and chairs sold to The Skull and his wife, Morticia. At trial the manager testifies that he entered into an agreement with the couple when they bought the furniture that it would be collateral for the debt. He then introduces his account record, which shows 2 payments and then a default.

   Do you need more information before you rule? If so, what do you need to know?

3. Paul has filed an action for conversion against Danny's Motors, Inc. based on the repossession of his truck. The evidence is undisputed that Danny's had a valid security interest in the truck and that Paul was in default. Nevertheless, Paul asserts that the repossession was wrongful because it involved a breach of the peace. In support of this claim, Paul introduces testimony by his neighbor, to the effect that he witnessed the repossession from his bedroom window around 1:00 AM, believed the truck to have been stolen, and called 911. He testifies that after the police came, other neighbors came out of their houses into the street, resulting in considerable confusion and chaos.

   How do you rule on Paul's claim for conversion?

4. Womble Furniture Co. sues to recover a dining room table, six chairs, one couch, a cocktail table and an upholstered wing chair. At the trial, Womble introduces a written security agreement in which defendant agreed that the items listed would be collateral for the extension of credit for their purchase on that day from Womble. Womble proves default by the defendant-debtor. Defendant admits default, but argues that he's paid off all but $150 and the items Womble seeks to recover are worth more than that. He wants you to limit your judgment to recover the dining room table and chairs only, based on evidence that their value alone exceeds $150.

   How do you rule, and why?

5. Easy Credit Appliance Co. filed a civil action on July 1, 2016 to recover a refrigerator purchased on June 1, 2010; a clothes dryer purchased on June 1, 2011; a DVD player purchased on June 1, 2012; a television purchased on June 1, 2013, and a washing machine purchased on June 1, 2014. As each item was purchased, the buyer signed a security agreement listing the item just purchased and all the items previously purchased as security for the debt. The buyer defaulted on his payments on March 5, 2016. Easy Credit asked for a judgment to repossess all of the items listed as collateral. The defendant argued that he had been paying $75 on the contract since 2010 and he believed Easy Credit was not entitled to recover all of the items listed since he must have paid off some of the first items purchased. What would you do and what statute would you rely on?

TAB:

Ethics

Magistrates, like other judicial officials, may be removed from office if they are found to have engaged in willful misconduct or in conduct "prejudicial to the administration of justice that brings the judicial office into disrepute." The primary source for determining what specific behavior constitutes such conduct is the North Carolina Code of Judicial Conduct. The Code consists of a Preamble and seven Canons (general statements of overall principles), set out below. The complete Code contains a substantial number of more specific provisions for each Canon; that document appears at the end of this section of the notebook.

North Carolina Code of Judicial Conduct

Preamble

An independent and honorable judiciary is indispensable to justice in our society, and to this end and in furtherance thereof, this Code of Judicial Conduct is hereby established. *A violation of this Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice that brings the judicial office into disrepute,* or willful misconduct in office, or otherwise as grounds for disciplinary proceedings. . . .

Canon 1

A judge should uphold the integrity and independence of the judiciary.

Canon 2

A judge should avoid impropriety in all his activities.

Canon 3

A judge should perform the duties of his office impartially and diligently.

Canon 4

A judge may participate in cultural or historical activities or engage in activities concerning the legal, economic, educational, or governmental system, or the administration of justice.

Canon 5

A judge should regulate his extra-judicial activities to ensure that they do not prevent him from carrying out his judicial duties.

Canon 6

A judge should regularly file reports of compensation received for quasi-judicial and extra-judicial activities.

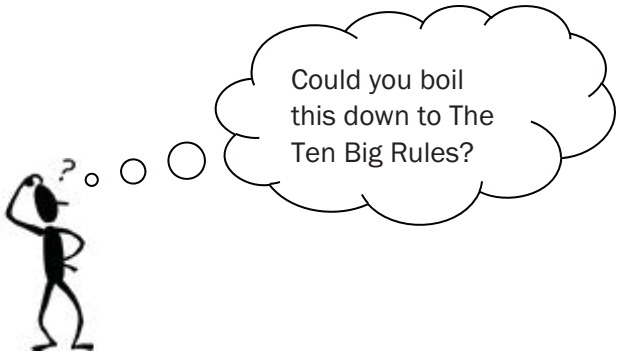
Canon 7

A judge may engage in political activity consistent with his status as a public official.

_____

_____

_____



THE TEN BIG RULES[1]

1. When it comes to behaving honorably, a magistrate is a magistrate 24 hours day.

2. A magistrate's judicial duties must be given priority over all other activities.

3. An ethical magistrate is patient, dignified, and courteous to all those with whom s/he comes into contact with in the course of performing his or her responsibilities.

_____

_____

_____

_____

4. A magistrate must avoid ex parte communication with parties interested in a proceeding except when such communication is authorized by law.

5. A magistrate should avoid participating as a judicial official in a proceeding in which his or her impartiality might reasonably be questioned.

6. A magistrate should not allow his or her family, social, or personal relationships to influence his or her judicial conduct or judgment.

7. A magistrate may engage in civic and charitable activities and other public service, including teaching, writing, and public speaking, so long as (a) the magistrate does not raise funds for the organization; and (b) his or her activities do not raise doubt about the magistrate's ability to be impartial in performing the duties of the judicial office.

8. Neither a magistrate nor any member of the magistrate's family should accept a gift or other benefit given in connection with the magistrate's office.

9. A magistrate should never engage in direct fund-raising.

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[1] Dona's paraphrase, offered for the purpose of structuring in-class discussion. The Ten Big Rules are certainly not to be relied upon instead of, or as a definitive restatement of, the Code of Judicial Conduct, which may be found in its entirety at the end of this Tab.

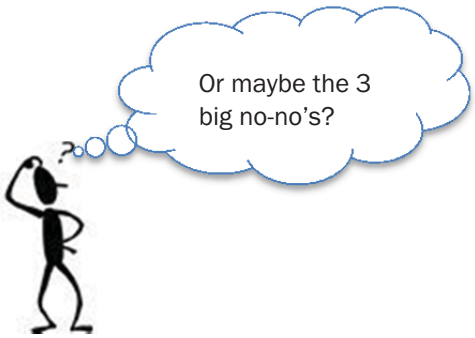
10. A magistrate should not endorse, or contribute to the campaign of, any particular candidate for office.

_____

_____

_____

_____



It might be said that a magistrate is most likely to run afoul of the Code of Judicial Conduct in three areas: (1) bias, (2) incompetence and/or lack of professionalism, and (3) abuse of power. Reading the Code from this perspective generates the following list of particularly important considerations for an inexperienced magistrate in approaching the duties of this new office:

<u>To avoid the appearance of **bia**s:</u>

a. Be extremely careful about ex parte communications.

b. Avoid mixing work with family, social, or other relationships

c. Do not participate in any matter involving (in any way) a person within the third degree of relationship to you or your spouse.

d. Don't hesitate to disqualify yourself in any matter in which your impartiality might reasonably be questioned.

e. Keep your interactions with law enforcement officers professional, being mindful of your differential roles.

f. Eschew membership in organizations that practice unlawful discrimination

g. Be unswayed by partisan interests, public clamor, or fear of criticism.

h. Be very careful about public comment on matters likely to come before you.

To avoid the appearance of **incompetence/lack of professionalism**:

a. Be faithful to the law and maintain professional competence in it.

b. Maintain order and decorum in proceedings before you.

c. Address parties by their appropriate title and last name and require them to address you in the same way.

To avoid the appearance of **abuse of power**:

a. Do not lend the prestige of your office to advance the private interest of others.

b. Treat everyone who appears before you with patience, dignity, and courtesy.

c. Do not engage in fundraising activity.

d. Do not endorse anyone for public office (although you may attend political gatherings, be active in a political party, and make contributions to the party).

e. Do not accept a gift from a party, and avoid accepting gifts from parties who appear frequently before you or who are otherwise in a position likely to benefit or suffer from your decisions as a judicial official.

Discussion Questions for Ethics

A magistrate is married to a police officer. Can the magistrate handle cases in which the officer appears before him or her?

You arrive early to small claims court, as does a merchant bringing several collection suits. One of the defendants comes into the courtroom and sees the two of you chatting. Does your behavior raise ethical concerns?

Your church asks you to serve as the head of its finance committee. Your duties would include raising money for next year's budget. Can you serve?

The incumbent sheriff is running for re-election and asks you to endorse him. Can you?

A local bail bonding company gives each magistrate a gift certificate to the local mall at Christmas? Can you accept it?

Additional Notes: _____

_____

_____

_____

_____

North Carolina Code of Judicial Conduct

Adopted April 2003

The North Carolina Code of Judicial Conduct is hereby amended to read as follows:

Preamble

An independent and honorable judiciary is indispensable to justice in our society, and to this end and in furtherance thereof, this Code of Judicial Conduct is hereby established. A violation of this Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or willful misconduct in office, or otherwise as grounds for disciplinary proceedings pursuant to Article 30 of Chapter 7A of the General Statutes of North Carolina. No other code or proposed code of judicial conduct shall be relied upon in the interpretation and application of this Code of Judicial Conduct.

Canon 1

A judge should uphold the integrity and independence of the judiciary.

A judge should participate in establishing, maintaining, and enforcing, and should himself observe, appropriate standards of conduct to ensure that the integrity and independence of the judiciary shall be preserved.

Canon 2

A judge should avoid impropriety in all his activities.

A. A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge should not allow his family, social or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interest of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. A judge may, based on personal knowledge, serve as a personal reference or provide a letter of recommendation. He should not testify voluntarily as a character witness.

C. A judge should not hold membership in any organization that practices unlawful discrimination on the basis of race, gender, religion or national origin.

Canon 3

A judge should perform the duties of his office impartially and diligently.

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply.

A. Adjudicative responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials and others subject to his direction and control.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither knowingly initiate nor knowingly consider *ex parte* or other communications concerning a pending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about the merits of a pending proceeding in any state or federal court dealing with a case or controversy arising in North Carolina or addressing North Carolina law and should encourage similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit a judge from making public statements in the course of official duties; from explaining for public information the proceedings of the Court; from addressing or discussing previously issued judicial decisions when serving as faculty or otherwise participating in educational courses or programs; or from addressing educational, religious, charitable, fraternal, political, or civic organizations.

(7) A judge should exercise discretion with regard to permitting broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during civil or criminal sessions of court or recesses between sessions, pursuant to the provisions of Rule 15 of the General Rules of Practice for the Superior and District Courts.

B. Administrative responsibilities.

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

C. Disqualification.

(1) On motion of any party, a judge should disqualify himself in a proceeding in which his impartiality may reasonably be questioned, including but not limited to instances where:

(a) He has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings;

(b) He served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(c) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(d) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(a) The degree of relationship is calculated according to the civil law system;

(b) "Fiduciary" includes such relationships as executor, administrator, trustee and guardian;

(c) "Financial interest" means ownership of a substantial legal or equitable interest (*i.e.,* an interest that would be significantly affected in value by the outcome of the subject legal proceeding), or a relationship as director or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, cultural, historical, religious, charitable, fraternal or civic organization is not a "financial interest" in securities held by the organization.

D. Remittal of disqualification.

Nothing in this Canon shall preclude a judge from disqualifying himself from participating in any proceeding upon his own initiative. Also, a judge potentially disqualified by the terms of Canon 3C may, instead of withdrawing from the proceeding, disclose on the record the basis of his potential disqualification. If, based on such disclosure, the parties and lawyers, on behalf of their clients and independently of the judge's participation, all agree in writing that the judge's basis for potential disqualification is immaterial or insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all lawyers, shall be incorporated in the record of the proceeding. For purposes of this section, *pro se* parties shall be considered lawyers.

Canon 4

A judge may participate in cultural or historical activities or engage in activities concerning the legal, economic, educational, or governmental system, or the administration of justice.

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast substantial doubt on his capacity to decide impartially any issue that may come before him:

A. He may speak, write, lecture, teach, participate in cultural or historical activities, or otherwise engage in activities concerning the economic, educational, legal, or governmental system, or the administration of justice.

B. He may appear at a public hearing before an executive or legislative body or official with respect to activities permitted under Canon 4A or other provision of this Code, and he may otherwise consult with an executive or legislative body or official.

C. He may serve as a member, officer or director of an organization or governmental agency concerning the activities described in Canon 4A, and may participate in its management and investment decisions. He may not actively assist such an organization in raising funds but may be

listed as a contributor on a fund-raising invitation. He may make recommendations to public and private fund-granting agencies regarding activities or projects undertaken by such an organization.

Canon 5

A judge should regulate his extra-judicial activities to ensure that they do not prevent him from carrying out his judicial duties.

A. Avocational activities. A judge may write, lecture, teach, and speak on legal or non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not substantially interfere with the performance of his judicial duties.

B. Civic and charitable activities. A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal or civic organization subject to the following limitations.

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him.

(2) A judge may be listed as an officer, director or trustee of any cultural, educational, historical, religious, charitable, fraternal or civic organization. He may not actively assist such an organization in raising funds but may be listed as a contributor on a fund-raising invitation.

(3) A judge may serve on the board of directors or board of trustees of such an organization even though the board has the responsibility for approving investment decisions.

C. Financial activities.

(1) A judge should refrain from financial and business dealings that reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirements of subsection (1), a judge may hold and manage his own personal investments or those of his spouse, children, or parents, including real estate investments, and may engage in other remunerative activity not otherwise inconsistent with the provisions of this Code but should not serve as an officer, director or manager of any business.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified.

(4) Neither a judge nor a member of his family residing in his household should accept a gift from anyone except as follows:

(a) A judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official or academic use; or an invitation to the judge and his spouse to attend a bar-related function, a cultural or historical activity, or an event related to the economic, educational, legal, or governmental system, or the administration of justice;

(b) A judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, favor or loan from a friend or relative; a wedding, engagement or other special occasion gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) Other than as permitted under subsection C.(4)(b) of this Canon, a judge or a member of his family residing in his household may accept any other gift only if the donor is not a party presently before him and, if its value exceeds $500, the judge reports it in the same manner as he reports compensation in Canon 6C.

(5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(6) A judge is not required by this Code to disclose his income, debts or investments, except as provided in this Canon and Canons 3 and 6.

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

D. Fiduciary activities. A judge should not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent or any other relative of the judge by blood or marriage. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust or ward becomes involved in adversarial proceedings in the court on which he serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

E. Arbitration. A judge should not act as an arbitrator or mediator. However, an emergency justice or judge of the Appellate Division designated as such pursuant to Article 6 of Chapter 7A of the General Statutes of North Carolina, and an Emergency Judge of the District Court or Superior Court commissioned as such pursuant to Article 8 of Chapter 7A of the General Statutes of North Carolina may serve as an arbitrator or mediator when such service does not conflict with or interfere with the justice's or judge's judicial service in emergency status. A judge of the Appellate Division may participate in any dispute resolution program conducted at the Court of Appeals and authorized by the Supreme Court.

F. Practice of law. A judge should not practice law.

G. Extra-judicial appointments. A judge should not accept appointment to a committee, commission, or other body concerned with issues of fact or policy on matters other than those relating to cultural or historical matters, the economic, educational, legal or governmental system, or the administration of justice. A judge may represent his country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

Canon 6

A judge should regularly file reports of compensation received for quasi-judicial and extra-judicial activities.

A judge may receive compensation, honoraria and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, subject to the following restrictions:

A. Compensation and honoraria. Compensation and honoraria should not exceed a reasonable amount.

B. Expense reimbursement. Expense reimbursement should be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

C. Public reports. A judge shall report the name and nature of any source or activity from which he received more than $2,000 in income during the calendar year for which the report is filed. Any required report shall be made annually and filed as a public document as follows: The members of the Supreme Court shall file such reports with the Clerk of the Supreme Court; the members of the Court of Appeals shall file such reports with the Clerk of the Court of Appeals; and each Superior Court Judge, regular, special, and emergency, and each District Court Judge, shall file such report with the Clerk of the Superior Court of the county in which he resides. For each calendar year, such report shall be filed, absent good cause shown, not later than May 15th of the following year.

Canon 7

A judge may engage in political activity consistent with his status as a public official.

The provisions of Canon 7 are designed to strike a balance between two important but competing considerations: (1) the need for an impartial and independent judiciary and (2) in light of the continued requirement that judicial candidates run in public elections as mandated by the Constitution and laws of North Carolina, the right of judicial candidates to engage in constitutionally protected political activity. To promote clarity and to avoid potentially unfair
application of the provisions of this Code, subsection B of Canon 7 establishes a safe harbor of permissible political conduct.

A. Terminology. For the purposes of this Canon only, the following definitions apply.

(1) A "candidate" is a person actively and publicly seeking election to judicial office. A person becomes a candidate for judicial office as soon as he makes a public declaration of candidacy, declares or files as a candidate with the appropriate election authority, authorizes solicitation or acceptance of contributions or public support, or sends a letter of intent to the chair of the Judicial Standards Commission. The term "candidate" has the same meaning when applied to a judge seeking election to a non-judicial office.

(2) To "solicit" means to directly, knowingly and intentionally make a request, appeal or announcement, public or private, oral or written, whether in person or through the press, radio, television, telephone, Internet, billboard, or distribution and circulation of printed materials, that expressly requests other persons to contribute, give, loan or pledge any money, goods, labor, services or real property interest to a specific individual's efforts to be elected to public office.

(3) To "endorse" means to knowingly and expressly request, appeal or announce publicly, orally or in writing, whether in person or through the press, radio, television, telephone, Internet, billboard or distribution and circulation of printed materials, that other persons should support a specific individual in his efforts to be elected to public office.

B. Permissible political conduct. A judge or a candidate may:

(1) attend, preside over, and speak at any political party gathering, meeting or other convocation, including a fund-raising function for himself, another individual or group of individuals seeking election to office and the judge or candidate may be listed or noted within any publicity relating to such an event, so long as he does not expressly endorse a candidate (other than himself) for a specific office or expressly solicit funds from the audience during the event;

(2) if he is a candidate, endorse any individual seeking election to any office or conduct a joint campaign with and endorse other individuals seeking election to judicial office, including the solicitation of funds for a joint judicial campaign;

(3) identify himself as a member of a political party and make financial contributions to a political party or organization; provided, however, that he may not personally make financial contributions or loans to any individual seeking election to office (other than himself) except as part of a joint judicial campaign as permitted in subsection B(2);

(4) personally solicit campaign funds and request public support from anyone for his own campaign or, alternatively, and in addition thereto, authorize or establish committees of responsible persons to secure and manage the solicitation and expenditure of campaign funds;

(5) become a candidate either in a primary or in a general election for a judicial office provided that he should resign his judicial office prior to becoming a candidate either in a party primary or in a general election for a non-judicial office;

(6) engage in any other constitutionally protected political activity.

C. Prohibited political conduct. A judge or a candidate should not:

(1) solicit funds on behalf of a political party, organization, or an individual (other than himself) seeking election to office, by specifically asking for such contributions in person, by telephone, by electronic media, or by signing a letter, except as permitted under subsection B of this Canon or otherwise within this Code;

(2) endorse a candidate for public office except as permitted under subsection B of this Canon or otherwise within this Code;

(3) intentionally and knowingly misrepresent his identity or qualifications.

D. Political conduct of family members. The spouse or other family member of a judge or a candidate is permitted to engage in political activity.

Limitation of Proceedings

Disciplinary proceedings to redress alleged violations of Canon 7 of this Code must be commenced within three months of the act or omission allegedly giving rise to the violation. Disciplinary proceedings to redress alleged violations of all other provisions of this Code must be commenced within three years of the act or omission allegedly giving rise to the violation; provided, however, that disciplinary proceedings may be instituted at any time against a judge convicted of a felony during his tenure in judicial office.

Scope and Effective Date of Compliance

The provisions of Canon 7 of this Code shall apply to judges and candidates for judicial office. The other provisions of this Code shall become effective as to a judge upon the administration of the judge's oath to the office of judge; provided, however, that it shall be permissible for a newly installed judge to facilitate or assist in the transfer of his prior duties as legal counsel but he may not be compensated therefor.

Practical Tips for New Judges Making the Transition to the Bench

By Judge Douglas S. Lavine

Hon. Douglas S. Lavine was appointed to the trial bench by Connecticut Governor Lowell P. Weicker Jr. in 1993 and to the Connecticut Appellate Court in 2006 by Governor M. Jodi Rell. The views expressed in this article are strictly his own. He can be reached at Douglas.Lavine@connapp.jud.ct.gov.

Congratulations! You have been appointed to the bench. I can assure you that you will find your new job to be enormously gratifying and challenging. You will have a rare opportunity to use your legal and personal skills, honed by the practice of law, to serve the community. I can honestly say that I have enjoyed going to work on all but a few days of the nearly sixteen years I have been on the bench. Almost all of my judge friends feel the same way.

With your new position comes a significant passage. You are beginning something exciting, but you are also ending an important phase of your life. You will be moving out of your previous comfort zone, one in which you may have had a high degree of control over your daily life and significant confidence in your abilities. In your new milieu, it is likely that almost everyone you deal with—other judges, lawyers, court staff—will initially understand the way the system operates better than you. It will take time to adapt to your new surroundings in what one writer has called the "neutral zone"—a time of reorientation to new circumstances and surroundings.[1] Be patient with yourself. In a relatively short period of time, you will emerge, like the proverbial butterfly from the cocoon, relaxed and confident, ready to fly.

Everyone will call you "Your Honor," doors will be held open, and lawyers will laugh at your jokes—even when they are not funny. *Especially* when they are not funny. You will carry an elevated status in your community, particularly in the legal world you inhabit. People will view you differently, and you will view yourself differently. You will be held to higher, more exacting standards. Everyone will stand when you enter the courtroom. I have a colleague who recalled the first time she headed out onto the bench. Everyone stood. She reflexively turned around, asking herself, "Whom are they standing for?" From now on, they will be standing for *you.* This is heady stuff and can result in a severe attack of early onset robitis, a dreaded disease sometimes afflicting new judges which I will discuss later.

It takes some time to adjust. Presumably, mentors, colleagues, and others you trust will offer advice. Like everyone who came before you, you will need to find your own way. No matter the advice you receive from other judges, every decision you make will be your own. It will become part of your judicial DNA. I wish you the best in ruling on the myriad issues you will confront over the years, issues often critical in the lives of the people who come before you and in the communities in which you live.

I do not claim to have any sage advice when it comes to the art of judging. But in more than fifteen years on the bench—thirteen as a trial judge, and almost three on the Connecticut Appellate Court—I have learned a few things about how to deal with recurring issues, some on the bench and many off, that you are sure to encounter. I claim to speak for no one but myself and underscore that the points raised here are based on my own experiences and observations, and sometimes, mistakes. As a judicial colleague, I hope these nuts-and-bolts suggestions will help you successfully cope with some of the mundane issues that you will face in your new role.

Dealing with Friends

Some people will take your new status in stride. But others, including people you have known your whole life, may act differently. Some acquaintances might be a bit standoffish or appear to be slightly intimidated. Others will tease you about having all the answers. Dealing with lawyer friends and colleagues—people you used to practice with or against—will present special challenges, especially when faced with issues of recusal or disqualification. It is important to be familiar with professional requirements relating to these issues. I recommend speaking to experienced judges with a good sense of local practices and mores before making recusal or disqualification decisions. Of course, judges have a duty *not* to remove themselves from a case merely because a motion has been made. But experience teaches that even if litigants lose their cases, they can accept their disappointment if they think they have had a fair hearing. Appearances matter. Obviously every case is different, but be very careful about remaining in a case if your fairness or objectivity can be reasonably questioned. You must be the guardian of your own reputation for fairness and impartiality.

The Line Between Public and Private Behavior

In a nutshell, it is best, under most circumstances, to act as if this line no longer exists. What I mean is this: whatever you say and do, anywhere and to anyone, can be grist for the mill if it reflects upon your fitness to dispense justice. I suggest the following approach: except, perhaps, when dealing with immediate family and friends, imagine that what you say or do will appear in your local newspaper. Much as you may try, you really cannot be a judge just during the hours you are at court, or in your chambers. You are a judge *all the time.* Let me give a few hypotheticals. (1) Every year, prior to your appointment, you have hosted a big party at which alcohol is served. In the past, if someone was stopped on the way home for a DUI, it might have been a cause for concern. Now, it could mushroom into a major career blemish. (2) In the past, you sat and smiled uncomfortably when someone told an inappropriate joke. Now, doing or saying nothing might be understood by oth-

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ers to be an endorsement of the offensive attitudes expressed by the teller of the joke. (3) In the past, when someone was tailgating at high speeds you might have been tempted to slow down, or yell at them, or gesticulate. Now, taking any of these actions could lead to an allegation that you exhibited "road rage" and lack appropriate judicial temperament. (4) In the past, you might talk freely in an elevator no matter who was in it. Now, any words you utter could have an impact on a case or a juror or could be repeated in another courtroom.

The simple truth is this: the line between private and public behavior has become blurred beyond recognition now that you are a judge. As a judge, you are a public figure. Your private conduct, therefore, is of interest to the public—and the press. Therefore, you must conduct yourself with the utmost care in private matters as well as public.

Requests for Legal Advice

Here is the usual scenario. You are at a party when the friend of a friend approaches you, introduces himself, and states he knows you are a judge. He makes small talk. He says that he knows you are not allowed to give legal advice. Actually, he tells you, he is not seeking legal advice, but he has just one question, and maybe you can assist. It seems that his brother-in-law has been kicked out of the house by his spouse and he wants to go in to get his clothes and other personal belongings. Any problem? Or "a friend's son" got caught in the school bathroom smoking marijuana and was manhandled by the school's personnel. Can't they sue the school? Or his elderly mother got this speeding ticket and . . . . You get the idea. As a lawyer, you have undoubtedly dealt with such questions throughout the years. But as a judge, it becomes more important still that you absolutely, positively say or do nothing that could be construed—or misconstrued—as giving legal advice. First of all, judges are prohibited from giving such advice. Secondly, it is not uncommon for laypeople to misunderstand or misinterpret legal concepts—or to hear what they want to hear. So even if you decide to be polite and give some seemingly innocuous counsel with a disclaimer, the disclaimer is likely to be ignored. The last thing you want to learn is that Joe Smith's friend went into criminal court and told the judge that he went into the house to retrieve his belongings because "Judge Jones told me I could." My advice? Tell the simple truth. Explain that you would like to be of assistance but that you are strictly prohibited, for professional reasons, from giving legal advice. And never, ever succumb to the temptation to do so.

Mentioning that You Are a Judge

Years ago, I worked as an assistant U.S. attorney. Often, I would be sitting next to someone on an airplane and the conversation would be relaxed and friendly until I mentioned that I was a prosecutor. Then everything stopped. I always assumed that people thought that I would initiate a tax investigation if they said the wrong thing. In your new role, people will react differently to you when they learn you are a judge. Some people will want to treat you more favorably because of your position. My advice is to resist, except in social situations where the subject arises naturally, the temptation to tell people that you are a judge unless you are asked. What that means is this. (1) If you are on a waiting list at a local restaurant, do not mention that you are a judge in the hope of getting seated before your time, and don't permit your spouse, significant other, or partner to do so either. (2) If you are pulled over for speeding, do not disclose that you are a judge in the hope of gaining favored treatment. And do not put your judicial credentials next to your driver's license so the officer will inevitably discover that you are a judge. (3) If your spouse has a dispute with the local mechanic because he charged more than he said he would, do not make that angry phone call claiming that, as a judge, you know what he is doing is unlawful, a violation of consumer protection laws, that you decided a case just like this, etc. (4) If your child is arrested for possession of marijuana, do not try to use your status to obtain preferential treatment for him or her. And so on. The bottom line is that the inappropriate use of your position to obtain special treatment is an abuse of power.

Charities

Some people will try to use your presence at an event or your name on a letterhead to raise funds. No matter how worthy the charity or cause, this should be resisted. Check relevant ethical rules, guidelines, and decisions to determine to what extent you can be involved in charitable events, including those with which you have had a long-time involvement.

Political Activities

Different considerations may apply, of course, in states in which judges are elected. But for appointed judges in places like Connecticut, the rule is simple. Political activity is strictly verboten. Avoid rallies, fund-raisers, making contributions, bumper stickers, and signs or posters on your lawn. If your spouse is involved in politics, steer clear of situations in which it appears that you yourself are engaging in political conduct.

Email

It is probable that at home you have received unsolicited email that is offensive to you. Be careful not to allow any such unsolicited material to be forwarded to your work computer. When writing email messages at work, avoid language that would embarrass you if printed in the local newspaper. Tell friends and colleagues *not* to send you jokes, articles, and pictures at work. When online at work, avoid sites or searches that could call up offensive material. Use your home computer to communicate with friends to avoid contamination of your work computer.

Work Interactions

All of your contacts with everyone in the work setting should be polite, professional, and courteous. You are a role model and should set the appropriate tone. This includes lawyers, secretaries, marshals, probation officers, the cleaning crew, family relations officers, stenographers, court reporters, members of the public, foreign visitors, school children on a class trip—virtually everyone. Court systems are huge echo chambers. Everything you say and do is grist for the mill. Rumors and anecdotes fly from court to court. If you are rude or inconsiderate, that will be known to everyone quickly. Jokes or comments that might have been appropriate in your past life, when talking to longtime associates or employees, are better left unsaid in your new role.

Discussing Cases or Opinions in Public

The scenario is a familiar one. You are out to lunch with judge friends and the discussion turns to a trial you are presiding over. You offer a few tart opinions on the performance of a lawyer or the merits of the case. Oops! You didn't notice, but in the next booth is the very lawyer you have been discussing, or the plaintiff, or a juror. The prospect of a mistrial in your first trial now dangles before you. Be very, very discreet when discussing legal matters, particularly a case, with a colleague. Talking about cases or decisions in a public setting—a restaurant, a hallway, an elevator—frequently invites disaster. Similarly, do not leave files, drafts of opinions, or anything else relating to a case lying around—in a car, at a restaurant, or anywhere.

Ruling Before You Are Ready

Your job is now to analyze arguments and make decisions. In a variety of settings, the problems requiring a decision will come at you very quickly. Nonetheless, my advice is to never rule unless you are comfortable with what you are doing. It is often said that lawyers prefer a timely decision, any decision, even if it is at odds with their positions, to being forced to wait. And there will be times when numerous factors—a heavy docket, a crowded court, the presence of people who have come from a long distance to attend a proceeding—will militate toward just ruling and moving on. I am *not* counseling timidity or indecision. But if that little internal voice that sometime speaks to you tells you that you are not ready to rule, listen to it. Take a recess. Hear more argument and think it over. Seek out advice from a senior colleague. Order additional briefs. Or just sleep on it. Very few decisions are so urgent that they cannot wait a few more hours or days.

Expressions of Personal Opinions on the Bench

During my first judicial assignment, a crusty veteran gave me two bits of advice. First, he said, always stop in the bathroom before going out onto the bench. Second, KYBMS—Keep Your Big Mouth Shut. I leave to you whether you choose to follow his first bit of advice. But over the years I have come to appreciate his blunt advice about keeping personal comments and observations to an absolute minimum. Pleasantries are okay. Occasional conversation can be alright. But always remember that we are *not* being paid to express our personal or political views on the matters of the day or share our thoughts on the pennant race, the state of the economy, or anything else. Nor are we a sort of master of ceremonies in a robe, presiding over an entertainment event. Except for court personnel, lawyers and the like, the people in the courtroom almost always do not want to be there. They are a captive audience. It is, frankly, somewhat egocentric to think otherwise and an abuse of your authority to force people to listen to opinions they would just as soon not hear.

Humor on the Bench or in Written Opinions

Off the bench, a lively and irreverent sense of humor can be charming. I used to think I was funny until my now-twenty-two-year-old daughter somewhere back in the eighth grade or so stopped laughing at my jokes and just sighed. But on the bench, or in written opinions, joke-telling runs the risk of detracting from the solemnity of the proceedings, being boorish, and veering off into abusiveness. A joke—particularly at someone's expense—may earn you snickers from some observers, but what seems funny to you will be deeply offensive to someone else. Criminal defendants, litigants in a divorce, plaintiffs in a malpractice case, and others forced into court, see nothing at all humorous about their situation. Never forget that for most people, a court case represents a traumatic event and frequently involves matters of the utmost importance in their lives. Even when you are acting with the best of intentions or trying to lessen the tension in the courtroom, attempts at humor are almost always likely to be misunderstood. My advice? Avoid the laugh lines; think it, but don't say it. The same applies to written opinions. Jokes, or opinions in verse, may seem clever when written, but they are not likely to seem funny to the people on the receiving end whose cases you are deciding.

Treating Everyone with Courtesy and Respect

You should strive to treat everyone—underline *everyone*—with patience, courtesy, and respect. This includes the corporation president and the convicted felon, the elderly alcoholic and the star athlete, the pro se litigant and the top flight lawyer. You speak for the community, so at times, you will be required to make harsh decisions—particularly when sentencing defendants convicted of serious crimes. But even as you voice the community's concerns, there is never a reason to treat any-

one with disrespect or deprive a person of inherent human dignity or make him or her the butt of jokes or derogatory remarks. Your job is to set the appropriate tone of dignity and fairness in the courtroom and to apply the rules fairly to everyone.

Dealing with the Media

How do you deal with the media? With extreme care. This is particularly the case if you receive a call asking you to comment on a pending matter. In most, if not all, jurisdictions, judges are prohibited from commenting on a pending case. In many jurisdictions, the judicial branch will have designated a person to handle calls and manage press relations. If you are uncomfortable returning reporters' calls, you can delegate that job to someone else. However, as a former reporter who covered legal matters, I can attest to the fact that often reporters are working under tight deadlines. Therefore, even if you cannot or do not wish to comment, the courteous thing to do is to return the call personally or to direct someone else to do it so that the reporter is informed that you cannot, or will not, comment.

Robitis

We turn now to the dreaded disease, robitis. Robitis is defined as a condition that befalls a judge when he or she dons a robe which causes the judge to assume a self-important, arrogant attitude. In your years in practice, you have undoubtedly practiced before judges with this dreaded affliction. Robitis can be fatal to a judge's career. Friends and colleagues will probably be reticent to tell you if you have come down with it. Figure out a way to have someone—perhaps a mentor or more experienced colleague who you respect—close the door and tell you if you are showing symptoms of the disease. Comments from lawyers and jurors, if you have access to them, can be helpful. If you see a recurring theme emerging in these comments, resist the human urge to resent them and ignore them. Also try to step outside of yourself—mentally—on occasion, look dispassionately down at your own behavior, and ask yourself if you like what you see. Your work is important; take it seriously. Try not to take yourself too seriously. A touch of humility goes a long way. So does a willingness to acknowledge that you have made a mistake or misunderstood an argument or would like to be educated on a point of law.

Ethical Concerns

You must be the guardian of your own integrity and reputation. Friends and family may ask you to do things not understanding that a different set of rules applies to you. My wife still makes fun of me when we are walking our dogs because I refuse to walk over a small patch of waterfront property near our home that has a "No Trespassing" sign posted. Explain to your family in emphatic terms that you are now living under a set of rules that is different from other people's and that you need to be scrupulous in ways that others may find excessive. Periodically review the Code of Judicial Conduct. When in doubt about the propriety of conduct, check with a senior colleague or a designated person in your judicial branch. Keep your ethical antennae up. Never do anything if you have qualms about its propriety.

A Final Comment

Again, congratulations to you. I guarantee that you will love being a judge. It is an honor and a privilege to be appointed or elected a judge. It is also a great responsibility. I wish you the best. I hope these suggestions are helpful to you as begin this exciting passage.

Endnote

1. WILLIAM BRIDGES, TRANSITIONS: MAKING SENSE OF LIFE'S CHANGES (1980).

JUDICIAL ETHICS AND SOCIAL NETWORKING SITES

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August 2012 (Updated)

One of the significant developments in communication in recent years is the astounding growth of social networking websites. Huge numbers of people have joined Facebook or LinkedIn or Twitter or other on-line social networks as a means to notify others of news in their lives, to learn what their friends and relatives and acquaintances are doing, and to generally stay in touch with other people with whom they have something in common. Businesses, organizations and government agencies use social networks to communicate information about their products and services and get limited feedback. For individuals, and for some kinds of organizations, the appeal of such sites is the opportunity for ongoing back-and-forth communication among large groups of people. Typically a social network allows someone to post a profile and photographs, videos, music, etc., and invite others to become "friends" or "fans." Some information may be shared with the whole world; other parts may be restricted to a select, small group.

As with the general population, the number of judges using social media sites continues to increase. A 2012 report says that 46.1 percent of judges surveyed use a social media profile site. Among those judges, Facebook is most popular, being the choice of 86.3 percent of the users.

For some time now state bar regulatory agencies have been addressing the effect of electronic communication on traditional ethical rules for lawyers — the extent to which law firm websites constitute advertising, whether e-mail inquiries establish an attorney/client relationship, and so on. Likewise, judges hearing cases have faced new legal issues involving electronic discovery and searches of computers. Judges are becoming familiar, too, with problems of jurors communicating with the outside world and conducting their own research via their smart phones and other devices.

Until recently, though, there has been relatively little reference material for judges concerning their own social networking and the Code of Judicial Conduct. The purpose of this paper is to share some information addressing questions of judges' personal use of social networks. I welcome any additional material anyone knows about.

Judges' use of social networks

A good overview of social networking issues for judges appears in an April 30, 2010, on-line article from Slate entitled "Tweet Justice." The article reports that some judges search Facebook and other sites to check on what lawyers and parties are up to, and it tells of one judge who requires all juveniles appearing before her to friend her on Facebook or MySpace so she can monitor their activities. As the article says, the new social media can generate ethical issues for judges. One question is the appearance created by a judge and lawyer "friending" each other on a social network. Another potential pitfall is the increased opportunity for ex parte communication. The article cites a North Carolina judicial discipline case arising from a Facebook friendship.

North Carolina disciplinary case

The North Carolina disciplinary case mentioned in the Slate article is an April 2009 reprimand issued by the Judicial Standards Commission. The judge and lawyer had decided at the beginning of a child custody/support proceeding to friend each other on Facebook and then exchanged comments about the case on the social network. That contact led to the reprimand for ex parte communication. The judge was also reprimanded for his independent research on the parties, without informing either side, through his visits to the wife's business website, a photography business where she posted both photographs and poems.

Articles about judges and social networks

For another example of how a judge's use of Facebook can lead to trouble, there is the resignation of Georgia judge Ernest Wood as reported in both the ABA Journal.

Another example, also reported in a local newspaper, involves a lawyer who served as a substitute judge in North Las Vegas. He was removed from the office once the district attorney discovered that the judge's MySpace page said one of his personal interests was "Breaking my foot off in a prosecutor's ass."

There are also two articles on social networking in American Judicature Society publications, but they are not on-line. One is "Judges and Social Networks" in the Judicial Conduct Reporter, Vol. 32, No. 1, p. 1. The other is "The Too Friendly Judge? Social Networks and the Bench," by Cynthia Gray in *Judicature* magazine, Vol. 93, p. 236 (May-June 2010).

Ethics opinions

The question of whether judges may join social networks and whether they may be social networking friends with lawyers, law enforcement officers and others now has been addressed

by eight state ethics committees. All the opinions say that judges may join social networks, but they disagree on the propriety of friending lawyers. Florida, Oklahoma and Massachusetts say no; New York, Kentucky, South Carolina, Ohio and California say yes, though usually with qualifications. All the opinions warn judges about the potential pitfalls of social networks for embarrassment and damage to the dignity and integrity of the office. The short reviews of the ethics opinions below explain the issues that may arise under the Code of Judicial Conduct.

Florida

The Florida Supreme Court's Judicial Ethics Advisory Committee's opinion 2009-20, issued on November 17, 2009, received a great deal of publicity because it was one of the earliest opinions and because it concluded that judges may not add lawyers as friends on a social network. The opinions from several other jurisdictions have taken a different view, as discussed below.

The Florida committee opined that a judge could join a social network and post comments and other materials so long as the material did not otherwise violate the Code of Judicial Conduct, but that the judge could not add as friends lawyers who appear before the judge, nor allow lawyers to add the judge as a friend. The committee further said that a judge's election campaign committee could post material on a social network and could allow lawyers and others to list themselves as "fans," provided the judge or campaign committee did not control who could list themselves in that manner.

The committee's concern was that the judge's acceptance of a lawyer as a friend on the judge's page on the social network would violate the canon which prohibits a judge from conveying the impression, or allowing others to convey the impression, that a person is in a special position to influence the judge. The comparable provision in North Carolina's Code of Judicial Conduct is in Canon 2B. The Florida's committee noted that being listed as a friend as the term is used on social network would not necessarily mean that the lawyer actually was in a special position, but the listing would convey that impression.

The original Florida opinion generated additional inquiries resulting in three follow-up opinions. The first is Opinion Number 2010-04 which advises that judicial assistants may add as Facebook friends lawyers who may appear before the judge for whom the assistant works, so long as the assistant's Facebook activity is conducted independently of the judge and does not mention the judge or court.

The next Florida opinion, Number 2010-05, advised that candidates for judicial office are not subject to the original opinion and that they, thus, may add as Facebook friends lawyers who are likely to appear before them if elected. The opinion is based on the wording of the Florida Code of Judicial Conduct which specifies the portions that apply to candidates.

Finally, the Florida Judicial Ethics Advisory Committee revisited and reiterated its support for its original opinion on March 26, 2010, with Opinion Number 2010-06. The new opinion was prompted by several inquiries, two of which proposed disclaimers on judges' Facebook pages and one of which asked about an organization's Facebook page. The committee advised, first, that a judge who is a member of a voluntary bar association which uses a Facebook page may use that page to communicate with other members, including lawyers, about the organization and about non-legal matters, and does not have to "de-friend" lawyer members who might appear before the judge. The opinion emphasized that the organization, not the judge, controlled the Facebook page and decided which friend requests would be accepted and rejected.

One judge asked whether the concerns expressed in the original opinion could be addressed by including a disclaimer on the judge's Facebook page stating that (a) the judge would accept as a friend anyone the judge recognized or who shared a number of common friends; (b) the term "friend" does not mean a close relationship; and (c) no one listed as a friend is in a position to influence the judge. Another judge inquired about a similar approach, proposing to state on the judge's Facebook page that the judge would accept as a friend all lawyers who requested to be added.

The Florida committee rejected both proposals and stuck to its original opinion. The committee majority said that the disclaimer failed to cure the impression that a lawyer listed as a Facebook friend had special influence. The majority observed that lawyers who chose not to use Facebook would not be listed as friends and that there was no assurance that someone viewing the page would see or read the disclaimer. A minority of the committee wrote a dissent, calling for withdrawal of the original opinion, arguing that judges are not prohibited from having lawyers as friends in the historic sense of the word and that adding a lawyer as a Facebook-defined friend creates no stronger impression of special influence than does ordinary socializing. The minority would advise that a judge may accept lawyers as Facebook friends and that any motion to require the judge to recuse because of that relationship would need to include additional specific allegations supporting the impression of special influence.

South Carolina

In October 2009 the South Carolina Advisory Committee on Standards of Judicial Conduct issued Opinion 17-2009. With little discussion the committee said that a magistrate may join Facebook and be friends with law enforcement officers and court employees so long as the site is not used for discussion of judicial business.

New York

More extended discussions, tending toward the same result as South Carolina but with more helpful analysis and discussion, have come from New York, Kentucky, Ohio and California. The gist of Opinion 08-176 of the New York Advisory Committee on Judicial Ethics, issued on January 29, 2009, is that there is nothing fundamentally different about a judge socializing through a social network and socializing in person, and nothing fundamentally different about communicating electronically rather than face to face. The key question for the committee was not whether a judge could join a social network but how the judge behaves on the network. The judge, said the committee, needs to be aware of the public nature of comments posted on such a site; the potential of creating the appearance that a lawyer who friends the judge will have special influence; and the likelihood that people might use the judge's social network page to seek legal advice. The committee observed that in some ways allowing a person to become a friend on a social network is no different than adding the person's contact information to a Rolodex, but still cautioned that when combined with other circumstances the friending can lead to the appearance of a close social relationship requiring disclosure or recusal.

Kentucky

One of the most extensive opinions is Formal Judicial Ethics Opinion JE-119 issued on January 10, 2010, by the Ethics Committee of the Kentucky Judiciary. The Kentucky committee does not believe that being designated a friend on a social network by itself conveys an impression of a special relationship. The committee repeats the cautions of the New York opinion, though, and notes that "social networking sites are fraught with peril for judges . . . ." Personal information, photographs and comments that might be appropriate for someone else may not satisfy the higher standards for judges. The committee also warns of the problem of ex parte communications and cites the North Carolina reprimand.

California

Opinion 66 from the Judicial Ethics Committee of the California Judges Association, issued on November 23, 2010, is well written and useful. The California committee concludes, with qualifications, that a judge may join a social network, even one which includes lawyers who may appear before the judge, but the judge must disclose the social network connection and must defriend the lawyer when the lawyer has a case before the judge.

As to whether a judge may friend a lawyer, the committee answers that it depends on the nature of the social network and whether the lawyer has a case before the judge. If the social network is one limited to the judge's relatives and a few close colleagues and it is used for exchanging personal information, for example, the likelihood will be greater that the lawyer appears to have special influence. There is much less risk, by comparison, when the social

network involves individuals and organizations interested in a particular subject or project, say a sports team or a charitable project, and the exchanges are limited to that topic. Regardless of the nature of the social network, however, the California opinion says the judge should always disclose that the judge has a social network tie to a lawyer and must recuse from any case in which a friend from the first kind of network, the more personal one, is participating. Even for the second kind of social network, the less personal one, the judge should de-friend the lawyer when the lawyer appears in a case before the judge.

One issue the California opinion addresses but others do not is the judge's obligation when others post comments on the judge's personal social network page. The committee says that the ethical obligation to avoid the appearance of bias requires the judge to monitor the judge's page frequently for such comments and to delete the comments, hide them from public view or otherwise repudiate anything others say that is offensive or demeaning. Leaving comments on the page can create the impression that the judge has adopted the comments.

The California opinion also admonishes judges to not create links to political organizations or others that would amount to impermissible political activity. And the judge must be careful not to lend the prestige of the office to another by posting any material that would be construed as advancing that other person's interest.

Finally, the opinion admonishes judges to be familiar with a social network's privacy settings and how to modify them. And the judge should be aware that other participants in the social network may not guard privacy as diligently and may thereby expose the judge's comments, photographs, etc., to others without the judge's permission.

Ohio

The Ohio opinion is Opinion 2010-7, issued December 3, 2010, by the Ohio Supreme Court's Board of Commissioners on Grievances and Discipline. It is the last opinion in the list of 2010 opinions.

The Ohio opinion observes that there is no prohibition on a judge being a friend of a lawyer who appears before the judge, thus friending on-line cannot be an ethics violation by itself. The opinion notes the special risks associated with social networks for judges and advises that: (a) the judge must be careful to maintain the dignity of the office in every comment, photograph, etc., posted on the site; (b) a judge should not interact on social networks with individuals or organizations whose advocacy or interest in matters before the court would raise questions about the judge's independence; (c) the judge should not make any comments on a site about any matter pending before the judge; (d) the judge should not use the social network for ex parte communications; and (e) the judge should not undertake independent investigation of a case by visiting a party's or witness' page. Finally, the Ohio opinion advises judges to consider

whether interaction with a lawyer on a social network creates any bias or prejudice concerning the lawyer or a party.

Oklahoma

The Oklahoma Judicial Ethics Advisory Board issued its Judicial Ethics Opinion 2011-3 on July 6, 2011. Oklahoma supports the Florida point of view, that while a judge may participate in social networking sites the judge should not be social network friends with lawyers, law enforcement officers, social workers or others who may appear in the judge's court. In the panel's view such a relationship can convey the impression that the person is in a special position to influence the judge. It is immaterial whether the person actually is in such a position, it is the possible impression that matters, and in the opinion of the Oklahoma committee, "We believe that public trust in the impartiality and fairness of the judicial system is so important that [it] is imperative to err on the side of caution where the situation is 'fraught with peril.'"

Massachusetts

The last opinion issued is CJE Opinion No. 2011-6 from the Committee on Judicial Ethics of the Massachusetts Supreme Judicial Court. Massachusetts relies on the Florida analysis in concluding that a judge may join a social network site but may not friend any lawyer who appears before the judge. "Stated another way, in terms of a bright-line test, judges may only 'friend' attorneys as to whom they would recuse themselves when those attorneys appeared before them." Friending creates the impression, Massachusetts concludes, that the lawyer is a special position to influence the judge.

The Massachusetts opinion repeats briefly the warnings from other opinions about the posting of embarrassing photographs, the avoidance of ex parte communications, and the like, and also adds a new caution. It tells judges not to identify themselves as judges on the social network site, nor allow others to do so. Such identification would run afoul of the code provisions against using the prestige of the office to advance private interests, in addition to the problem of creating an impression that others are in a special position to influence the judge.

Summary

Although the number of opinions about judges and social networks is still small, there does seem to be a consensus building on several issues. There appears to be general agreement among the ethics committee that:

(1) Judges may join on-line social networks.
(2) Social networks create opportunities and temptations for ex parte communication that judges must be careful to avoid.

(3) Judges are still judges when posting materials on their social networking pages and need to realize that the kinds of comments and photographs posted by others may not be appropriate for them.
(4) Judges need to avoid on-line ties to organizations that discriminate, just as they are prohibited from joining such organizations.
(5) Judges also need to avoid on-line ties to organizations that may be advocates before the court.
(6) Judges need to avoid posting comments on social network sites or taking other actions on such sites that lend the prestige of the judge's office to the advancement of a private interest.

The ethics committees divide most sharply on the issue of a judge accepting a lawyer as a friend on a social network. The majority of the states opining on the issue to date conclude that friending does not by itself establish such a relationship as to imply that the lawyer has special influence and does not by itself require the judge to recuse from cases with that lawyer, although they recognize that a social network friendship may create such problems when combined with other circumstances. In the view of those states, being a friend of a judge on a social network is no different than being a friend in person and does not by itself lead to automatic recusal. On the other hand, the ethics committees of three states have concluded that a social network friendship is sufficiently likely to create the impression of special influence that it should be barred. Although such an impression of favoritism may be mistaken, the approach of those ethics committee is to err on the side of caution when it comes to appearances of fairness.

Judges also should be aware of the security issues that come with social networking. A judge's page on Facebook or MySpace or other social network can provide lots of information to someone who is dissatisfied with the judge's decisions and wants to do harm.

8/10/12

TAB:

Avoiding Bias

More Resources on Bias and Other Cognitive Distortions

For a thought-provoking introduction to implicit bias, see https://implicit.harvard.edu/implicit/education.html, where you can learn about the Implicit Associations Test (the IAT), and try a test yourself. Since Project Implicit was established in 1998 as a joint project sponsored by scientists at Harvard University, University of Virginia, and University of Washington, more than two million people have taken the test. Most people who take the test are surprised by the results, and often question the accuracy of the test, because the information about the associations they make doesn't match up with their beliefs. If you find that you're dubious, check out the FAQ page at https://implicit.harvard.edu/implicit/faqs.html your concerns may well be addressed.

The California Administrative Office of the Courts website contains a superlative three-video series on judicial bias, which can be accessed by going to http://www2.courtinfo.ca.gov/cjer/2098.htm and scrolling down to the three videos listed as *CTD-Neuroscience and Psychology of Decision Making*. While you're there, take a look at the next video listed: *Overcoming Implicit Bias*.

The National Center for State Courts has taken a leadership role in understanding and training on the topic of implicit bias and offers a wealth of resources. An online version of the Primer on Implicit Bias contained in your materials may be found at http://tinyurl.com/oyz57ex and offers the advantage of numerous hyperlinks. Another particular favorite of mine on this website is a document titled *Strategies to Reduce the Influence of Implicit Bias*, which may be found at http://tinyurl.com/obebbgv.

For a comprehensive and current examination of the various ways in which issues of race arise in the context of criminal proceedings, see Raising Issues of Race in North Carolina Criminal Cases, a 2014 publication by SOG faculty members Alyson Grine and Emily Coward and available at no cost on our website at http://defendermanuals.sog.unc.edu/defender-manual/16

Jerry Kang is a leading scholar writing and researching about implicit bias in connection with the intersection of social science and law, and his law review article, "*Implicit Bias in the Courtroom,"* in 59 UCLA L. Rev. 1124 (2012) is well worth a read.

For an opportunity to experience a situation in which about 50% of people find that a high level of confidence in one's perceptions is not necessarily justified, try the experiment at https://www.youtube.com/watch?v=IGQmdoK_ZfY

The New York Times article about decision fatigue is a must-read, and may be found at http://www.nytimes.com/2011/08/21/magazine/do-you-suffer-from-decision-fatigue.html?_r=0

And don't forget Nobel prizewinner Daniel Kahneman's authoritative reference on decision-making in a broad context from the neuro-psychological point of view Thinking, Fast and Slow (2011).

Race & Ethnic Fairness in the Courts

Implicit Bias

A Primer for Courts

Jerry Kang

Prepared for the National Campaign to Ensure the Racial and Ethnic Fairness of America's State Courts

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ABOUT THE PRIMER

This Primer was produced as part of the National Campaign to Ensure the Racial and Ethnic Fairness of America's State Courts. The Campaign seeks to mobilize the significant expertise, experience, and commitment of state court judges and court officers to ensure both the perception and reality of racial and ethnic fairness across the nation's state courts. The Campaign is funded by the Open Society Institute, the State Justice Institute, and the National Center for State Courts. Points of view or opinions expressed in the Primer are those of the author and do not represent the official position of the funding agencies. To learn more about the Campaign, visit www.ncsconline.org/ref.

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Implicit Bias: A Primer

Schemas and Implicit Cognitions (or "mental shortcuts")

Stop for a moment and consider what bombards your senses every day. Think about everything you see, both still and moving, with all their color, detail, and depth. Think about what you hear in the background, perhaps a song on the radio, as you decode lyrics and musical notes. Think about touch, smell, and even taste. And while all that's happening, you might be walking or driving down the street, avoiding pedestrians and cars, chewing gum, digesting your breakfast, flipping through email on your smartphone. How does your brain do all this simultaneously?

It does so by processing through schemas, which are templates of knowledge that help us organize specific examples into broader categories. When we see, for example, something with a flat seat, a back, and some legs, we recognize it as a "chair." Regardless of whether it is plush or wooden, with wheels or bolted down, we know what to do with an object that fits into the category "chair." Without spending a lot of mental energy, we simply sit. Of course, if for some reason we have to study the chair carefully--because we like the style or think it might collapse--we can and will do so. But typically, we just sit down.

We have schemas not only for objects, but also processes, such as how to order food at a restaurant. Without much explanation, we know what it means when a smiling person hands us laminated paper with detailed descriptions of food and prices. Even when we land in a foreign airport, we know how to follow the crazy mess of arrows and baggage icons toward ground transportation.

These schemas are helpful because they allow us to operate without expending valuable mental resources. In fact, unless something goes wrong, these thoughts take place automatically without our awareness or conscious direction. In this way, most cognitions are implicit.

Implicit Social Cognitions (or "thoughts about people you didn't know you had")

What is interesting is that schemas apply not only to objects (e.g., "chairs") or behaviors (e.g., "ordering food") but also to human beings (e.g., "the elderly"). We naturally assign people into various social categories divided by salient and chronically accessible traits, such as age, gender, race, and role. And just as we might have implicit cognitions that help us walk and drive, we have implicit social cognitions that guide our thinking about social categories. Where do these schemas come from? They come from our experiences with other people, some of them direct (i.e., real-world encounters) but most of them vicarious (i.e., relayed to us through stories, books, movies, media, and culture).

If we unpack these schemas further, we see that some of the underlying cognitions include stereotypes, which are simply traits that we associate with a category. For instance, if we think that a particular category of human beings is frail--such as the elderly--we will not raise our guard. If we think that another category is foreign--such as Asians--we will be surprised by their fluent English. These cognitions also include attitudes, which are overall, evaluative feelings that are positive or negative. For instance, if we identify someone as having graduated from our beloved alma mater, we will feel more at ease. The term "implicit bias"

includes both implicit stereotypes and implicit attitudes.

Though our shorthand schemas of people may be helpful in some situations, they also can lead to discriminatory behaviors if we are not careful. Given the critical importance of exercising fairness and equality in the court system, lawyers, judges, jurors, and staff should be particularly concerned about identifying such possibilities. Do we, for instance, associate aggressiveness with Black men, such that we see them as more likely to have started the fight than to have responded in self-defense? Or have we already internalized the lessons of Martin Luther King, Jr. and navigate life in a perfectly "colorblind" (or gender-blind, ethnicity-blind, class-blind, etc.) way?

Asking about Bias (or "it's murky in here")

One way to find out about implicit bias is simply to ask people. However, in a post-civil rights environment, it has become much less useful to ask explicit questions on sensitive topics. We run into a "willing and able" problem.

First, people may not be willing to tell pollsters and researchers what they really feel. They may be chilled by an air of political correctness.

Second, and more important, people may not know what is inside their heads. Indeed, a wealth of cognitive psychology has demonstrated that we are lousy at introspection. For example, slight environmental changes alter our judgments and behavior without our realizing. If the room smells of Lysol, people eat more neatly. People holding a warm cup of coffee (versus a cold cup) ascribe warmer (versus cooler) personality traits to a stranger described in a vignette. The experiments go on and on. And recall that by definition, implicit biases are those that we carry without awareness or conscious direction. So how do we know whether we are being biased or fair-and-square?

Implicit measurement devices (or "don't tell me how much you weigh, just get on the scale")

In response, social and cognitive psychologists with neuroscientists have tried to develop instruments that measure stereotypes and attitudes, without having to rely on potentially untrustworthy self-reports. Some instruments have been linguistic, asking folks to write out sentences to describe a certain scene from a newspaper article. It turns out that if someone engages in stereotypical behavior, we just describe what happened. If it is counter-typical, we feel a need to explain what happened. (Von Hippel 1997; Sekaquaptewa 2003).

Others are physiological, measuring how much we sweat, how our blood pressure changes, or even which regions of our brain light up on an fMRI (functional magnetic resonance imaging) scan. (Phelps 2000).

Still other techniques borrow from marketers. For instance, conjoint analysis asks people to give an overall evaluation to slightly different product bundles (e.g., how do you compare a 17" screen laptop with 2GB memory and 3 USB ports, versus a 15" laptop with 3 GB of memory and 2 USB ports). By offering multiple rounds of choices, one can get a measure of how important each feature is to a person even if she had no clue to the question "How much would you pay for an extra USB port?" Recently, social cognitionists have adapted this methodology by creating "bundles" that include demographic attributes. For instance, how

would you rank a job with the title Assistant Manager that paid $160,000 in Miami working for Ms. Smith, as compared to another job with the title Vice President that paid $150,000 in Chicago for Mr. Jones? (Caruso 2009).

Scientists have been endlessly creative, but so far, the most widely accepted instruments have used reaction times--some variant of which has been used for over a century to study psychological phenomena. These instruments draw on the basic insight that any two concepts that are closely associated in our minds should be easier to sort together. If you hear the word "moon," and I then ask you to think of a laundry detergent, then "Tide" might come more quickly to mind. If the word "RED" is painted in the color red, we will be faster in stating its color than the case when the word "GREEN" is painted in red.

Although there are various reaction time measures, the most thoroughly tested one is the Implicit Association Test (IAT). It is a sort of video game you play, typically on a computer, where you are asked to sort categories of pictures and words. For example, in the Black-White race attitude test, you sort pictures of European American faces and African American faces, Good words and Bad words in front of a computer. It turns out that most of us respond more quickly when the European American face and Good words are assigned to the same key (and African American face and Bad words are assigned to the other key), as compared to when the European American face and Bad words are assigned to the same key (and African American face and Good words are assigned to the other key). This average time differential is the measure of implicit bias. [If the description is hard to follow, try an IAT yourself at Project Implicit.]

Pervasive implicit bias (or "it ain't no accident")

It may seem silly to measure bias by playing a sorting game (i.e. the IAT). But, a decade of research using the IAT reveals pervasive reaction time differences in every country tested, in the direction consistent with the general social hierarchies: German over Turk (in Germany), Japanese over Korean (for Japanese), White over Black, men over women (on the stereotype of "career" versus "family"), light-skinned over dark skin, youth over elderly, straight over gay, etc. These time differentials, which are taken to be a measure of implicit bias, are systematic and pervasive. They are statistically significant and not due to random chance variations in measurements.

These pervasive results do not mean that everyone has the exact same bias scores. Instead, there is wide variability among individuals. Further, the social category you belong to can influence what sorts of biases you are likely to have. For example, although most Whites (and Asians, Latinos, and American Indians) show an implicit attitude in favor of Whites over Blacks, African Americans show no such preference on average. (This means, of course, that about half of African Americans do prefer Whites, but the other half prefer Blacks.)

Interestingly, implicit biases are dissociated from explicit biases. In other words, they are related to but differ sometimes substantially from explicit biases--those stereotypes and attitudes that we expressly self-report on surveys. The best understanding is that implicit and explicit biases are related but different mental constructs. Neither kind should be viewed as the solely "accurate" or "authentic" measure of bias. Both measures tell us something important.

Real-world consequences (or "why should we care?")

All these scientific measures are intellectually interesting, but lawyers care most about real-world consequences. Do these measures of implicit bias predict an individual's behaviors or decisions? Do milliseconds really matter>? (Chugh 2004). If, for example, well-intentioned people committed to being "fair and square" are not influenced by these implicit biases, then who cares about silly video game results?

There is increasing evidence that implicit biases, as measured by the IAT, do predict behavior in the real world--in ways that can have real effects on real lives. Prof. John Jost (NYU, psychology) and colleagues have provided a recent literature review (in press) of ten studies that managers should not ignore. Among the findings from various laboratories are:

- implicit bias predicts the rate of callback interviews (Rooth 2007, based on implicit stereotype in Sweden that Arabs are lazy);
- implicit bias predicts awkward body language (McConnell & Leibold 2001), which could influence whether folks feel that they are being treated fairly or courteously;
- implicit bias predicts how we read the friendliness of facial expressions (Hugenberg & Bodenhausen 2003);
- implicit bias predicts more negative evaluations of ambiguous actions by an African American (Rudman & Lee 2002), which could influence decisionmaking in hard cases;
- implicit bias predicts more negative evaluations of agentic (i.e. confident, aggressive, ambitious) women in certain hiring conditions (Rudman & Glick 2001);
- implicit bias predicts the amount of shooter bias--how much easier it is to shoot African Americans compared to Whites in a videogame simulation (Glaser & Knowles 2008);
- implicit bias predicts voting behavior in Italy (Arcari 2008);
- implicit bias predicts binge-drinking (Ostafin & Palfai 2006), suicide ideation (Nock & Banaji 2007), and sexual attraction to children (Gray 2005).

With any new scientific field, there remain questions and criticisms--sometimes strident. (Arkes & Tetlock 2004; Mitchell & Tetlock 2006). And on-the-merits skepticism should be encouraged as the hallmark of good, rigorous science. But most scientists studying implicit bias find the accumulating evidence persuasive. For instance, a recent meta-analysis of 122 research reports, involving a total of14,900 subjects, revealed that in the sensitive domains of stereotyping and prejudice, implicit bias IAT scores better predict behavior than explicit self-reports. (Greenwald et al. 2009).

And again, even though much of the recent research focus is on the IAT, other instruments and experimental methods have corroborated the existence of implicit biases with real world consequences. For example, a few studies have demonstrated that criminal defendants with more Afro-centric facial features receive in certain contexts more severe criminal punishment (Banks et al. 2006; Blair 2004).

Malleability (or "is there any good news?")

The findings of real-world consequence are disturbing for all of us who sincerely believe that we do not let biases prevalent in our culture infect our individual decisionmaking. Even a little bit. Fortunately, there is evidence

that implicit biases are malleable and can be changed.

- An individual's motivation to be fair does matter. But we must first believe that there's a potential problem before we try to fix it.
- The environment seems to matter. Social contact across social groups seems to have a positive effect not only on explicit attitudes but also implicit ones.
- Third, environmental exposure to countertypical exemplars who function as "debiasing agents" seems to decrease our bias.
    - In one study, a mental imagery exercise of imagining a professional business woman (versus a Caribbean vacation) decreased implicit stereotypes of women. (Blair et al. 2001).
    - Exposure to "positive" exemplars, such as Tiger Woods and Martin Luther King in a history questionnaire, decreased implicit bias against Blacks. (Dasgupta & Greenwald 2001).
    - Contact with female professors and deans decreased implicit bias against women for college-aged women. (Dasgupta & Asgari 2004).
- Fourth, various procedural changes can disrupt the link between implicit bias and discriminatory behavior.
    - In a simple example, orchestras started using a blind screen in auditioning new musicians; afterwards women had much greater success. (Goldin & Rouse 2000).
    - In another example, by committing beforehand to merit criteria (is book smarts or street smarts more important?), there was less gender discrimination in hiring a police chief. (Uhlmann & Cohen 2005).
    - In order to check against bias in any particular situation, we must often recognize that race, gender, sexual orientation, and other social categories may be influencing decisionmaking. This recognition is the opposite of various forms of "blindness" (e.g., color-blindness).

In outlining these findings of malleability, we do not mean to be Pollyanish. For example, mere social contact is not a panacea since psychologists have emphasized that certain conditions are important to decreasing prejudice (e.g., interaction on equal terms; repeated, non-trivial cooperation). Also, fleeting exposure to countertypical exemplars may be drowned out by repeated exposure to more typical stereotypes from the media (Kang 2005).

Even if we are skeptical, the bottom line is that there's no justification for throwing our hands up in resignation. Certainly the science doesn't require us to. Although the task is challenging, we can make real improvements in our goal toward justice and fairness.

The big picture (or "what it means to be a faithful steward of the judicial system")

It's important to keep an eye on the big picture. The focus on implicit bias does not address the existence and impact of explicit bias--the stereotypes and attitudes that folks recognize and embrace. Also, the past has an inertia that has not dissipated. Even if all explicit and implicit biases were wiped away through some magical wand, life today would still bear the burdens of an unjust yesterday. That said, as careful stewards of the justice system, we

should still strive to take all forms of bias seriously, including implicit bias.

After all, Americans view the court system as the single institution that is most unbiased, impartial, fair, and just. Yet, a typical trial courtroom setting mixes together many people, often strangers, from different social backgrounds, in intense, stressful, emotional, and sometimes hostile contexts. In such environments, a complex jumble of implicit and explicit biases will inevitably be at play. It is the primary responsibility of the judge and other court staff to manage this complex and bias-rich social situation to the end that fairness and justice be done--and be seen to be done.

Glossary

Note: Many of these definitions draw from Jerry Kang & Kristin Lane, A Future History of Law and Implicit Social Cognition (unpublished manuscript 2009)

Attitude

An attitude is "an association between a given object and a given evaluative category." R.H. Fazio, et al., Attitude accessibility, attitude-behavior consistency, and the strength of the object-evaluation association, 18 J. EXPERIMENTAL SOCIAL PSYCHOLOGY 339, 341 (1982). Evaluative categories are either positive or negative, and as such, attitudes reflect what we like and dislike, favor and disfavor, approach and avoid. See also stereotype.

Behavioral realism

A school of thought within legal scholarship that calls for more accurate and realistic models of human decision-making and behavior to be incorporated into law and policy. It involves a three step process:

First, identify advances in the mind and behavioral sciences that provide a more accurate model of human cognition and behavior.

Second, compare that new model with the latent theories of human behavior and decision-making embedded within the law. These latent theories typically reflect "common sense" based on naïve psychological theories.

Third, when the new model and the latent theories are discrepant, ask lawmakers and legal institutions to account for this disparity. An accounting requires either altering the law to comport with more accurate models of thinking and behavior or providing a transparent explanation of "the prudential, economic, political, or religious reasons for retaining a less accurate and outdated view." Kristin Lane, Jerry Kang, & Mahzarin Banaji, Implicit Social Cognition and the Law, 3 ANNU. REV. LAW SOC. SCI. 19.1-19.25 (2007)

Dissociation

Dissociation is the gap between explicit and implicit biases. Typically, implicit biases are larger, as measured in standardized units, than explicit biases. Often, our explicit biases may be close to zero even though our implicit biases are larger.

There seems to be some moderate-strength relation between explicit and implicit biases. See Wilhelm Hofmann, A Meta-Analysis on the Correlation Between the Implicit Association Test and Explicit Self-Report Measures, 31 PERSONALITY & SOC. PSYCH. BULL. 1369 (2005) (reporting mean population correlation r=0.24 after analyzing 126 correlations). Most scientists reject the idea that implicit biases are the only "true" or "authentic" measure; both explicit and implicit biases contribute to a full understanding of bias.

Explicit

Explicit means that we are aware that we have a particular thought or feeling. The term sometimes also connotes that we have an accurate understanding of the source of that thought or feeling. Finally, the term often connotes conscious endorsement of the thought or feeling. For example, if one has an explicitly positive attitude toward chocolate, then one has a positive attitude, knows that one has a positive attitude, and consciously endorses and celebrates that preference. See also implicit.

Implicit

Implicit means that we are either unaware of or mistaken about the source of the thought or feeling. R. Zajonc, Feeling and thinking: Preferences need no inferences, 35 AMERICAN PSYCHOLOGIST 151 (1980). If we are unaware of a thought or feeling, then we cannot report it when asked. See also explicit.

Implicit Association Test

The IAT requires participants to classify rapidly individual stimuli into one of four distinct categories using only two responses (for example, in a the traditional computerized IAT, participants might respond using only the "E" key on the left side of the keyboard, or "I" on the right side). For instance, in an age attitude IAT, there are two social categories, YOUNG and OLD, and two attitudinal categories, GOOD and BAD. YOUNG and OLD might be represented by black-and-white photographs of the faces of young and old people. GOOD and BAD could be represented by words that are easily identified as being linked to positive or negative affect, such as "joy" or "agony". A person with a negative implicit attitude toward OLD would be expected to go more quickly when OLD and BAD share one key, and YOUNG and GOOD the other, than when the pairings of good and bad are switched.

The IAT was invented by Anthony Greenwald and colleagues in the mid 1990s. Project Implicit, which allows individuals to take these tests online, is maintained by Anthony Greenwald (Washington), Mahzarin Banaji (Harvard), and Brian Nosek (Virginia).

Implicit Attitudes

"Implicit attitudes are introspectively unidentified (or inaccurately identified) traces of past experience that mediate favorable or unfavorable feeling, thought, or action toward social objects." Anthony Greenwald & Mahzarin Banaji, Implicit social cognition: attitudes, self-esteem, and stereotypes, 102 Psychol. Rev. 4, 8 (1995). Generally, we are unaware of our implicit attitudes and may not endorse them upon self-reflection. See also attitude; implicit.

Implicit Biases

A bias is a departure from some point that has been marked as "neutral." Biases in implicit stereotypes and implicit attitudes are called "implicit biases."

Implicit Stereotypes

"Implicit stereotypes are the introspectively unidentified (or inaccurately identified) traces of past experience that mediate attributions of qualities to members of a social category" Anthony Greenwald & Mahzarin Banaji, Implicit social cognition: attitudes, self-esteem, and stereotypes, 102 Psychol. Rev. 4, 8 (1995). Generally, we are unaware of our implicit stereotypes and may not endorse them upon self-reflection. See also stereotype; implicit.

Implicit Social Cognitions

Social cognitions are stereotypes and attitudes about social categories (e.g., Whites, youths, women). Implicit social cognitions are implicit stereotypes and implicit attitudes about social categories.

Stereotype

A stereotype is an association between a given object and a specific attribute. An example is "Norwegians are tall." Stereotypes may support an overall attitude. For instance, if one likes tall people and Norwegians are tall, it is likely that this attribute will contribute toward a positive orientation toward Norwegians. See also attitude.

Validities

To decide whether some new instrument and findings are valid, scientists often look for various validities, such as statistical conclusion validity, internal validity, construct validity, and predictive validity.

- Statistical conclusion validity asks whether the correlation is found between independent and dependent variables have been correctly computed.
- Internal validity examines whether in addition to correlation, there has been a demonstration of causation. In particular, could there be potential confounds that produced the correlation?
- Construct validity examines whether the concrete observables (the scores registered by some instrument) actually represent the abstract mental construct that we are interested in. As applied to the IAT, one could ask whether the test actually measures the strength of mental associations held by an individual between the social category and an attitude or stereotype
- Predictive validity examines whether some test predicts behavior, for example, in the form of evaluation, judgment, physical movement or response. If predictive validity is demonstrated in realistic settings, there is greater reason to take the measures seriously.

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TAB:

Language Access Services

Office of Language Access Services (OLAS)

Spoken Foreign Language Court Interpreters

Service Offerings

The North Carolina Administrative Office of the Courts (NCAOC) Office of Language Access Services (OLAS) serves the North Carolina State Court System by helping to facilitate equal access to justice for limited-English proficient (LEP) individuals in our court system by:

- Developing standards for the provision and efficient use of language access services
- Providing daily support and guidance for questions, concerns, and issues involving interpreting and translating services
- Ensuring that proficient and ethical foreign language court interpreters are provided to the courts
- Administering court interpreter training and certification testing for court interpreters provided by the National Center for State Courts

NCAOC offers a number of language access services to meet the needs of LEP individuals including certified staff court interpreters in 9 counties (Alamance, Buncombe, Chatham, Durham, Forsyth, Guilford, Mecklenburg, Orange, and Wake), contract court interpreters, telephone interpreting, remote interpreting, translation, and transcription - translation services. Learn more at http://www.NCcourts.gov.

Terms

- LOTS – Language(s) other than Spanish
- Limited English Proficient (LEP) individual – a person who speaks a language other than English as his or her primary language and has a limited ability to read, speak, write, or understand English
- Interpretation – the accurate and complete unrehearsed transmission of an oral message from one language to an oral message in another language
- Translation – the accurate and complete transmission of written text from one language into written text in another language

Proper Role of Court Interpreter

- The interpreter's job is to render everything said in court from the source language into the target language
  - Accurately without any distortion of meaning
  - Without omissions and additions
  - Without changes to style or register
  - With as little delay or interference as possible

- The interpreter's job is NOT
  - To explain anything to anybody
  - To fill out forms
  - To serve as a "go between"

- Interpreters have an ethical obligation to ask for repetition if speech is unclear
- In order to conserve impartiality and confidentiality, the interpreter should not be asked to be alone with any of the parties
- Interpreters may sight translate a form for an LEP individual, but may not advise the individual on how to complete the form or answer the individual's questions.

Do not use untrained bilingual individuals to interpret during court proceedings

- Using an untrained bilingual speaker to interpret during court proceedings creates potential conflicts of interest and may have a negative impact on the case
- Bilingual speakers who are not trained court interpreters are not aware of the role, the demand, the modes of interpreting, the ethics or rules of professionalism required of the court interpreter and therefore cannot interpret accurately and completely, which can significantly impact equal access to justice for the LEP individual

Tips for working with court interpreters

- Speak to the LEP individual directly just as you would an English speaker – e.g., "What time did you call the police?"
- Use plain English, avoid jargon, and do not use acronyms
- Speak slowly and clearly with regular pauses between complete thoughts
- Ask one question at a time
- Do not ask interpreter to explain or summarize what is said
- Provide the interpreter with information about the case; the more information an interpreter has about a case, the better he or she can prepare and perform
- Do not ask the interpreter if the LEP individual understands what you are saying; the interpreter's role is to serve as a language conduit, not to assess understanding
- In order to ensure the accuracy of the interpreting services provided throughout the proceeding, provide a team of two interpreters for any proceeding lasting two hours or more
- Interpreters must be given a break every 20 – 30 minutes to maintain accuracy

Early identification of cases in which an interpreter is needed

- Early identification of the need for interpreting services in an individual case allows for efficient assignment, reduces the number of continuances for lack of an interpreter, and maximizes the possibility that litigants will understand what to do next in their case

- Use interpreter resources efficiently – share interpreters between criminal and civil courtroom calendars and schedule an interpreter only for the time the interpreter is needed; do not request interpreters "just in case" because their services are often needed in another county
- Failure to provide sufficient time to secure a qualified interpreter may result in a delay or postponement of the court proceeding if a qualified interpreter is not available

How to Request a Court Interpreter

The request process for both Spanish and LOTS interpreters is consistent statewide. A **Request for Spoken Foreign Language Court Interpreter** must be submitted to the Language Access Coordinator (LAC) for the county where the case is set to be heard at least 10 days in advance of the court appearance to ensure adequate coverage. More advance notice may be required for LOTS interpreters who are located out of state. The request form can be accessed at https://www.nccourts.gov/request-for-spoken-foreign-language-court-interpreter.

Failure to cancel scheduled services with notice of more than 24 hours will result in cancellation fees. Alert the interpreter and LAC immediately if it is determined services will not be needed.

Contact

OLAS Main: 919-890-1407
OLAS Email: OLAS@nccourts.org
Website: www.NCcourts.gov

Language Access Services

Frequently Asked Questions for Judicial Officials *[July 2018]*

Who is entitled to a court interpreter?
The Judicial Branch is committed to removing barriers that hinder equal access to justice by individuals with limited English proficiency (LEP). The court should require an interpreter for any court proceeding involving a party in interest who speaks a language other than English as the primary language and has a limited ability to read, speak, or understand English.

Who pays for the court interpreter?
The Judicial Branch will provide a court interpreter at state expense and at no cost to the party in the following types of court proceedings:

- All court proceedings heard before the magistrate
- All court proceedings heard before the clerk of superior court
- All court proceedings heard before the district court judge
- All court proceedings heard before the superior court judge

Who is considered a party in interest?
Parties in interest in a court proceeding can be any of the following: a party; a victim; a witness; the parent, legal guardian or custodian of a minor party; the legal guardian or custodian of an adult party.

How do I determine whether a person has limited English proficiency and needs a court interpreter?
To help determine whether to require a court interpreter, the court should conduct a voir dire that asks open-ended questions that cannot be answered with a simple yes or no. Visit www.NCcourts.gov to access the *Language Access Bench Card* for suggested voir dire questions, the interpreter's oath, jury instructions, and general tips for working with court interpreters.

What types of interpreting services are available?
The Judicial Branch offers a number of language access services to meet the needs of LEP individuals, including staff court interpreters, contract court interpreters, telephone interpreting, remote interpreting, translation, and transcription-translation services. Certified staff court interpreters provide Spanish interpreting services in 9 counties: Alamance, Buncombe, Chatham, Durham, Forsyth, Guilford, Mecklenburg, Orange and Wake.

The court proceeding is scheduled for today, but no court interpreter has been scheduled. Is it possible to find an interpreter on such short notice?
The request process set forth in the Standards requires a completed *Request for Spoken Foreign Language Court Interpreter* be submitted by counsel, if applicable, or court personnel to the local Language Access Coordinator at least 10 days in advance of the court date or as soon as the matter is placed on the calendar, whichever occurs first. Court

interpreters are often scheduled well in advance of the court date, so last minute coverage is unlikely outside of staff court interpreter districts. Attorneys should be instructed to submit a request for a future court date. Court personnel should assist with submitting the request on behalf of self-represented litigants.

If parties bring friends or family with them to interpret, may we use those friends or family as court interpreters?
No. Only court interpreters approved by OLAS may provide interpreting services during a court proceeding. Friends and family may help parties communicate with court staff outside the courtroom, but they *may not serve as court interpreters.*

May court personnel who speak other languages serve as court interpreters in court proceedings?
No. Court personnel who speak other languages may help parties communicate with court staff *outside* the courtroom, but they *may not serve as court interpreters* in court proceedings. Additionally, law enforcement officers, corrections officers, and attorneys may *not serve as court interpreters* in court proceedings.

May I use telephone interpreting to conduct a trial?
The telephone interpreting services may be used for brief matters before the judicial official, such as continuances, and for first appearances. However, a telephone interpreter should not be used for trials or any other types of evidentiary hearings in district court. Telephone interpreting services are not available in superior court.

What if one of the parties needs an interpreter outside of the court proceeding?
The Judicial Branch will provide an interpreter for out-of-court communications on behalf of the district attorney, Guardian ad Litem Program, and, pursuant to a memorandum of understanding between NCAOC and the Office of Indigent Defense Services (IDS), on behalf of public defenders, assigned counsel, and guardians ad litem representing indigent parties for IDS.

The Judicial Branch does not provide interpreting services to facilitate communications between private counsel and clients, witnesses or other parties *outside of the court proceeding*. Language access services required for all out-of-court communications involving private counsel, including all interviews, investigations, and other aspects of general case preparation, are outside the scope of services provided or funded by the Judicial Branch.

Will the court interpreter maintain the confidentiality of what is said between attorney and client?
Yes. The court interpreter is ethically bound to maintain the confidentiality of any information disclosed between attorney and client.

Where should I direct questions about language access services?
If you have questions about language access services, contact OLAS at 919-890-1407 or OLAS@nccourts.org.

Language Access Bench Card

POLICY NOTE: The North Carolina Judicial Branch is committed to removing barriers that hinder equal access to justice by individuals with limited English proficiency (LEP). This bench card addresses the language access services provided by the N.C. Judicial Branch in accordance with the Standards for Language Access Services in North Carolina state courts.

When should the court require an interpreter?

The court should require a qualified interpreter for any court proceeding that involves a party in interest who speaks a language other than English as the primary language and has a limited ability to read, speak, or understand English.

Who is a party in interest?

Parties in interest may be any of the following:

- A party
- A victim
- A witness
- The parent, legal guardian,or custodian of a minor party
- The legal guardian or custodian of an adult party

Who pays for the interpreter?

The Judicial Branch provides interpreters at state expense in all civil and criminal court proceedings before a magistrate, clerk of superior court, district court judge, superior court judge, the Court of Appeals, or the Supreme Court of North Carolina.

The costs for interpreting services shall not be charged to the parties.

The Judicial Branch will provide an interpreter at state expense for child custody mediation, permanency mediation, and child planning conferences.

The Judicial Branch will not provide an interpreter at state expense for probation and parole functions, and for private mediations and arbitrations.

Language access services provided by the North Carolina Administrative Office of the Courts Office of Language Access Services (OLAS)

- In-person interpreting for court proceedings — Judicial Branch staff court interpreters in nine counties: Alamance, Buncombe, Chatham, Durham, Forsyth, Guilford, Mecklenburg, Orange, and Wake; and contract court interpreters
- Telephone interpreting service — use for brief routine matters in district court; use by magistrates and DAs; use in public access areas in clerks' and family court offices
- Translation of court forms and vital court documents
- Transcription-translation of audio / visual evidence for district attorneys and public defenders or assigned counsel (court interpreters are prohibited by their ethics from interpreting audio / visual recordings; upon request to OLAS, all audio / visual recordings must be transcribed and translated *prior to the court proceeding*)

1 Evaluating the need for a court interpreter

To help determine whether to require a court interpreter, the court should ask open-ended questions that cannot be answered with a simple yes or no. For example:

- "Please tell me about your country of origin."
- "What kind of work do you do?"
- "What is the purpose of your court hearing today?"

2 Assignment of a court interpreter

If the court determines that the party has limited English proficiency (LEP), the court should require a court interpreter. Any doubts should be resolved in favor of the LEP individual, and an interpreter should be required.

- The court should only allow a Judicial Branch authorized court interpreter to provide interpreting services in court
- The court should never allow family or friends to interpret in court
- Judicial officials or court personnel should not serve as interpreters

3 Obtaining a court interpreter

A Request for Spoken Foreign Language Court Interpreter should be submitted electronically to the local Language Access Coordinator (LAC) at least 10 business days prior to the scheduled proceeding, or as soon as the proceeding is placed on the court calendar, whichever occurs first.

Counsel is responsible for submitting the request form for their LEP clients or witnesses. Court personnel should assist self-represented litigants with submitting the request form.

Language Access Bench Card

POLICY NOTE: The North Carolina Judicial Branch is committed to removing barriers that hinder equal access to justice by individuals with limited English proficiency (LEP). This bench card addresses the language access services provided by the N.C. Judicial Branch in accordance with the Standards for Language Access Services in North Carolina state courts.

Clarifying the Interpreter's Role to the Jury*

This court seeks a fair trial for all regardless of the language they speak and regardless of how well they may or may not speak English. Bias against or for persons who have little or no proficiency in English is not allowed. Therefore, do not allow the fact that the party requires an interpreter to in any way influence you.

**There is no pattern jury instruction on this matter. This form is recommended for your consideration.*

Clarifying the Interpreter's Role to the Witness

I want you to understand the role of the interpreter. The interpreter is here only to interpret the proceedings. The interpreter will say only what is said in your language and will not add, omit, or summarize anything. The interpreter will say in English everything that you say in your language, so do not say anything you do not want everyone to hear. If you do not understand a question asked of you, request clarification from the person who asked it. Do not ask the interpreter.

You are giving testimony to this court; therefore please speak directly to the attorney or to me (the court). Do not ask the interpreter for advice. Speak in a loud clear voice. If you do not understand the interpreter, please tell me. If you need the interpreter to repeat, please make your request to me, not to the interpreter. Please wait until the entire statement has been interpreted before you answer. Do you have any questions?

Use of Interpreter Outside of Court Proceeding

Judicial Branch funds are provided for interpreting services for out-of-court communications on behalf of the district attorney, Guardian ad Litem Program, and, pursuant to a memorandum of understanding between the Judicial Branch and the Office of Indigent Defense Services (IDS), on behalf of public defenders, assigned counsel, and guardians ad litem representing indigent parties for IDS.

- Staff court interpreters are prohibited from providing services out of court.
- Authorized Spanish interpreters are listed on the Registry of Spoken Foreign Language Court Interpreters.
- Authorized LOTS interpreters will be assigned upon the submission of a Request for Spoken Foreign Language Court Interpreter electronically.

Language access services required for all out-of-court communications involving private counsel, including all interviews, investigations, and other aspects of general case preparation, are outside the scope of services provided or funded by the Judicial Branch.

To ensure equal access to justice, private counsel are encouraged to privately retain the services of a Judicial Branch registered and qualified court interpreter by contacting directly a contract interpreter from the Registry of Spoken Foreign Language Court Interpreters.

The Interpreter's Oath**

Do you solemnly swear or affirm that you will interpret accurately, completely, and impartially, using your best skill and judgment in accordance with the standards prescribed by law and the Code of Professional Responsibility for Court Interpreters, follow all official guidelines established by the North Carolina Administrative Office of the Courts for legal interpreting and translating, and discharge all of the solemn duties and obligations of legal interpretation and translation?

***There is no statutory or judicially approved oath. This form is recommended for your consideration.*

Quick Guide

- Evaluate the need for an interpreter.
- Require an authorized court interpreter approved by OLAS.
- Allow the interpreter to meet with the LEP individual briefly prior to the proceeding to confirm the ability to communicate, and to view the court file prior to the proceeding to become familiar with case terminology, names, and dates.
- Allow the interpreter to review any documents that will need to be sight translated during the proceeding.
- Make sure that the interpreter is located in a position that allows the interpreter to see and hear everything that happens in the courtroom.
- Administer the interpreter's oath.
- Have the interpreter state his / her name and qualifications on the record.
- Explain the role of the interpreter to the parties, witnesses, and the jury on the record.
- Advise witnesses to speak clearly and at a moderate pace.
- Emphasize that the record produced by the court reporter or court recorder is the official record of the proceeding.
- Provide breaks every 30 minutes for the interpreter or require a team of two interpreters for proceedings expected to last longer than two hours.
- Observe the interpreter's conduct, communication, and interaction with participants; if problems arise, use a sidebar conference with attorneys and the interpreter or a recess to address and correct the problems.
- Keep in mind that the interpreter may be needed in other courtrooms.

Guide to Interpreter Language Needed and Interpreter Used Indicators

This document is designed to assist with the use of the interpreter language needed and interpreter used indicators in the following systems: eCITATION, NCAWARE, ACIS, CCIS-CC, CCIS-DA, VCAP, and JWise. These indicators should be used to indicate spoken foreign language interpreting services and sign language interpreting services for the deaf and hard of hearing. The interpreter language needed and interpreter used indicators should be used for managing cases that need or use an interpreter, and should not be used solely for scheduling interpreters.

Use of Interpreter Indicators
If a case is coded as interpreter language needed, an interpreter should not automatically be scheduled for every setting of that case. Judicial officials, attorneys, and court personnel always should check the case file to determine who needs the interpreter and if an interpreter actually will be needed for the proceeding. For example, the victim in a criminal case who needed an interpreter during a trial may not be present during the defendant's subsequent probation violation hearing, so the court would not schedule an interpreter for the subsequent proceeding. Courts should use interpreter resources efficiently by sharing interpreters between criminal and civil courtroom calendars, scheduling an interpreter only for the time the interpreter is needed and not requesting interpreters "just in case," as their services are often needed in another courtroom or county.

What is a court proceeding?
A court proceeding is any hearing, trial, or other appearance before any North Carolina state court in an action, appeal, or other proceeding, including any matter conducted by a judicial official.

Who is a judicial official?
A judicial official is a clerk, judge, magistrate, or justice of the General Court of Justice.

Interpreter Language Needed Data

- Interpreter language needed indicates that an interpreter is needed for a limited English proficient (LEP) individual in a case. Once it is turned on, it should never be turned off unless it was entered in the system incorrectly.
- Once the language is selected for the case, it should never be changed unless it was set incorrectly
- Use the *I Speak* cards to assist you in identifying the language needed
- Indicate the language needed and corresponding 3-digit code (see pg. 2) in the system
- The language information will appear on calendars generated from the automated systems
- If you are not able to update the interpreter language needed indicator, or if the system is down, please use the Interpreter Indicator Request Form to request that the clerk update the interpreter information in the appropriate system

- Note to DA: please use the Interpreter Indicator Request Form to request that the clerk update the interpreter information in ACIS / CCIS-CC or JWise
- Note to CaseWise users: please use the Interpreter Indicator Request Form to request that the clerk update the interpreter information in VCAP

- This information may be used to identify the need for an interpreter at any point during the life of the case

Interpreter Used Data

- Interpreter used indicates that an interpreter was used in any court proceeding for an LEP individual in a case at some time. Once it is turned on, it should never be turned off unless it was entered in the system incorrectly.
- Indicate that an interpreter was used in the case by selecting Yes / Y
- A blank field or No / N indicates that an interpreter was never used in the case
- This applies to live, distance and telephone interpreting
- If you are not able to update the interpreter used indicator, or if the system is down, please use the Interpreter Indicator Request Form to request that the clerk update the interpreter information in the appropriate system
  - Note to DA: please use the Interpreter Indicator Request Form to request that the clerk update the interpreter information in ACIS / CCIS-CC or JWise
  - Note to CaseWise users: please use the Interpreter Indicator Request Form to request that the clerk update the interpreter information in VCAP

Language Access Codes

Spanish	spa
Vietnamese	vie
Russian	rus
French	fra
Mandarin (Chinese)	cmn
Arabic	arb
Portuguese	por
Korean	kor
Hmong	hnj
Burmese	mya
Amharic	amh
Bosnian	bos
Bu Nong (Montagnard)	cmo
Cantonese (Chinese)	yue
Chatino	cly
Chuukese	chk
Czech	ces

Farsi (Persian)	pes
Gujarati	guj
Haitian Creole	hat
Hakka (Chinese)	hak
Hausa	hau
Hindi	hin
Hindko	hnd
Igbo (Ibo)	ibo
Indonesian	ind
Japanese	jpn
Jarai (Montagnard)	jra
Karen (Karen Languages)	kar
Khmer (Cambodian)	khm
Krahn	kqo
Kru (Kru Languages)	klu
Lao	lao
Marshallese	mah

Mnong (Montagnard)	mng
Nepali	nep
Pashto (Pushto)	pbt
Polish	pol
Punjabi (Panjabi, Punjabi)	pan
Rhade (Montagnard)	rad
Serbian	srp
Swahili	swh
Tagalog	tgl
Thai	tha
Tigrinya	tir
Urdu	urd
American Sign Language	ase
Undetermined	und
Other	999

Reference Charts
The following charts are intended to assist with determining when use the indicators.

Event	Indicator	May I change the indicator after the initial entry?
An interpreter will be needed for a limited English proficient (LEP) individual in a case	YES – Indicate the language needed	NO – unless it was entered in the system incorrectly
An interpreter was used in any court proceeding for an LEP individual in a case at some time	YES – Interpreter used	NO – unless it was entered in the system incorrectly

If an interpreter is needed / was used:	Do I set the indicator?	Is the cost of the interpreter currently covered at state expense?*
First appearances	Yes	Yes
All criminal / traffic proceedings	Yes	Yes
Criminal non-Support / show cause proceedings	Yes	Yes
Juvenile delinquency proceedings	Yes	Yes
Abuse / neglect / dependency proceedings (includes child planning conferences)	Yes	Yes
Chapter 50B proceedings	Yes	Yes
Chapter 50C proceedings	Yes	Yes
Child Custody proceedings	Yes	Yes
Civil commitment proceedings before a judicial official	Yes	Yes
Incompetency proceedings	Yes	Yes
Estate / adoption hearing before the clerk	Yes	Yes
Initial appearance before a magistrate	Yes	Yes
Any district or superior court pretrial hearing / conference presided over by a judicial official	Yes	Yes
VWLA conversation with victim outside of court proceeding	No	Yes
GAL home visit	No	Yes
Clerk answers a question about a court date outside of court proceeding	No	Yes
Probation home / office visit	No	No

**This column applies only to spoken foreign language court interpreters and not to services for the deaf and hard of hearing.*

FAQ
For additional information, please see *Frequently Asked Questions: Interpreter Needed and Interpreter Used Indicators*.

Contact
For procedural questions on the use of the interpreter indicators, please contact the Office of Language Access Services at 919 890-1407 or OLAS@nccourts.org.

Frequently Asked Questions:
Interpreter Needed and Used Indicators

When do I use the interpreter language needed indicator?
If an interpreter will be needed for any court proceedings for any limited-English proficient individual, select the appropriate language from the interpreter needed section.

For example, if the state's witness to a criminal case speaks Korean, indicate that a Korean interpreter will be needed by selecting Korean from the languages available under the interpreter language needed section.

When do I use the interpreter used indicator?
If an interpreter was used at any point during a court proceeding for any limited-English proficient individual, select Yes / Y from the interpreter used section.

For example, if a magistrate used the telephone interpreting service to conduct an initial appearance, the magistrate would indicate that an interpreter was used during that proceeding. But, if a clerk used the telephone interpreting service to answer a general question about a court date, the clerk would not indicate that an interpreter was used because it was not during a court proceeding.

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Who is a party in interest?
A party in interest is a party to a case; a victim; a witness; the parent, legal guardian, or custodian of a minor party, or the legal guardian or custodian of an adult party.

Who is a judicial official?
A judicial official is a clerk, judge, magistrate, or justice of the General Court of Justice.

How do I use the indicators?
The interpreter language needed and interpreter used indicators should be used for managing cases that need or use an interpreter, and should not be used solely for scheduling interpreters. Judicial officials, attorneys, and court personnel always should check the case file to determine who needs the interpreter and if an interpreter actually will be needed for the proceeding.

For example, the victim in a criminal case who needed an interpreter during a trial may not be present during the defendant's subsequent probation violation hearing, so the court would not schedule an interpreter for the subsequent proceeding. Courts should use interpreter resources efficiently by sharing

interpreters between criminal and civil courtroom calendars, scheduling an interpreter only for the time the interpreter is needed and not requesting interpreters "just in case," as their services are often needed in another courtroom or county.

May I change the indicators?
No. Once the case has been indicated as interpreter needed or interpreter used, do not change the indicators *unless it was entered into the system incorrectly.*

For example, if a law enforcement officer incorrectly indicates in eCITATION that a Spanish interpreter is needed, but the court determines that the defendant speaks Portuguese, not Spanish, the language needed indicator may be changed to Portuguese.

If there are multiple LEP parties in interest to a case, for whom do I indicate that an interpreter is needed / was used?
Because our current technology only allows for indicators at the case level (not by each event or party), indicate that an interpreter is needed based on the first request or indication that you received that an interpreter will be needed for the court proceeding for any party in interest. Indicate that an interpreter was used at the first court proceeding in which an interpreter was used for any party in interest.

Who should set the interpreter indicators?
Any person with update capability to the data systems that currently have the interpreter indicators (eCITATION, NCAWARE, ACIS, CCIS-CC, CCIS-DA, VCAP, JWise) should set the interpreter language needed indicator at the time of the first request or indication received that an interpreter will be needed for the court proceeding for any party in interest.

Any person with update capability to the data systems that currently have the interpreter indicators (eCITATION, NCAWARE, ACIS, CCIS-CC, CCIS-DA, VCAP, JWise) should set the interpreter used indicator at the first court proceeding in which an interpreter was used for any party in interest.

Do the indicators also apply to services for the deaf and hard of hearing?
Yes. If interpreting services will be needed for someone who is deaf or hard of hearing, indicate that by selecting American Sign Language (ASE) or by selecting Other and indicate the language accommodation that will be needed. If interpreting services or accommodations were provided to someone who is deaf or hard of hearing during a court proceeding, indicate that an interpreter was used.

Obtaining a Spoken Foreign Language Court Interpreter for Court Proceedings – Courts

The Judicial Branch will provide an interpreter at state expense in all civil and criminal court proceedings before a magistrate, clerk of superior court, district court judge, superior court judge, the Court of Appeals, or the Supreme Court. The Judicial Branch will provide an interpreter at state expense for child custody mediation, permanency mediation, and child planning conferences. **The Judicial Branch will provide an interpreter at state expense to facilitate communication involving the district attorney, indigent defendants or respondents and appointed counsel, or the Guardian ad Litem Program. The Judicial Branch will not provide an interpreter at state expense for out-of-court communications between privately retained counsel and their civil clients, privately retained counsel and their non-indigent criminal defendants, for probation and parole functions, and for private mediations and arbitrations.**	
All Spoken Foreign Language Court Interpreters	Submit a *Request for Spoken Foreign Language Court Interpreter** at least 10 business days prior to the scheduled proceeding, or as soon as the proceeding is placed on the court calendar. Requests should be submitted electronically from the website at http://www.NCcourts.gov. The LAC for each county can be contacted by sending an email to an address using the following naming convention: County.Interpreter@nccourts.org. For example, Wake.Interpreter@nccourts.org and NewHanover.Interpreter@nccourts.org.
IMPORTANT	➢ **Failure to provide sufficient time to secure a qualified interpreter likely will result in a delay or postponement of the court proceeding if a qualified interpreter is not available.** ➢ **Once services are requested, if it is determined before the court date that the case will not go forward as scheduled, please notify the local Language Access Coordinator so services can be cancelled in a timely manner (no less than 24 hours) to avoid unnecessary cancellation charges.**

Obtaining a Spoken Foreign Language Court Interpreter for Court Proceedings – Attorneys

The Judicial Branch will provide an interpreter at state expense in all civil and criminal court proceedings before a magistrate, clerk of superior court, district court judge, superior court judge, the Court of Appeals, or the Supreme Court.

The Judicial Branch will provide an interpreter at state expense for child custody mediation, permanency mediation, and child planning conferences.

The Judicial Branch will not provide an interpreter at state expense for out-of-court communications between privately retained counsel and their civil clients, privately retained counsel and their non-indigent criminal defendants, for probation and parole functions, and for private mediations and arbitrations.

Spanish Court Interpreter	If you represent a limited English proficient (LEP) party in interest in a court proceeding currently covered at State expense, submit a *Request for Spoken Foreign Language Court Interpreter* * at least 10 business days prior to the scheduled proceeding, or as soon as the proceeding is placed on the court calendar, whichever occurs first.
Language Other Than Spanish (LOTS) Court Interpreter	Requests should be submitted electronically from the website at www.NCcourts.gov. Submitting your request using the **Submit** button at the bottom of the request form will ensure your request is sent to the appropriate LAC and OLAS personnel. The LAC for each county can be contacted by sending an email to an address using the following naming convention: County.Interpreter@nccourts.org. For example, Wake.Interpreter@nccourts.org and NewHanover.Interpreter@nccourts.org.
IMPORTANT	➢ **Failure to provide sufficient time to secure a qualified interpreter likely will result in a delay or postponement of the court proceeding if a qualified interpreter is not available.** ➢ **Once services are requested, if it is determined before the court date that the case will not go forward as scheduled, you must notify the local LAC and the interpreter so services can be cancelled in a timely manner (no less than 24 hours) to avoid unnecessary cancellation charges.**

Obtaining a Spoken Foreign Language Court Interpreter for Out of Court Communication Needs – Attorneys

LANGUAGE	Spanish Court Interpreter	Language Other Than Spanish (LOTS) Court Interpreter
District Attorney or Assistant District Attorney	If a DA/ADA needs to communicate with a Spanish speaking LEP victim or witness outside of the actual court proceeding, the DA/ADA should access the *Registry of Spoken Foreign Language Court Interpreters* for direct contact information for authorized Spanish court interpreters.	If a DA/ADA needs to communicate with an LEP victim or witness who speaks a language other than Spanish (LOTS) outside of the actual court proceeding, the DA/ADA should submit a *Request for Spoken Foreign Language Court Interpreter** electronically from the website at www.NCcourts.gov.
Public Defender, Assistant Public Defender, Assigned Counsel, or GAL for an adult LEP party	If a PD/APD, assigned counsel, or a GAL for an adult LEP party represented by IDS needs to communicate with a Spanish speaking client or witness outside of the actual court proceeding, the PD/APD, assigned counsel, or GAL should access the *Registry of Spoken Foreign Language Court Interpreters* for direct contact information for authorized Spanish court interpreters.	If a PD/APD, assigned counsel, or a GAL for an adult LEP party represented by IDS needs to communicate with an LEP client or witness who speaks a language other than Spanish (LOTS) outside of the actual court proceeding, the PD/APD, assigned counsel, or GAL should submit a *Request for Spoken Foreign Language Court Interpreter* * electronically from the website at www.NCcourts.gov.
GAL PROGRAM **GAL Attorney or GAL Volunteer**	If a GAL needs to communicate with a Spanish speaking LEP client or family member outside of the actual court proceeding, the GAL should access the *Registry of Spoken Foreign Language Court Interpreters* for direct contact information for authorized Spanish court interpreters.	If a GAL needs to communicate with an LEP client or family member who speaks a language other than Spanish (LOTS) outside of the actual court proceeding, the GAL should submit a *Request for Spoken Foreign Language Court Interpreter* * electronically from the website at www.nccourts.org/LanguageAccess.
Civil Attorneys	The Judicial Branch does not bear the cost of interpreting services necessary to communicate with civil LEP clients or witnesses outside of that which occurs during an actual covered court proceeding. For Spanish language needs, attorneys are encouraged to hire a certified court interpreter from the *Registry of Spoken Foreign Language Court Interpreters*. For LOTS needs, attorneys are invited to contact OLAS for a list of interpreters for the language needed.	

Guide to Using the Telephone Interpreting Service

- Dial **844-340-2763**
- Your call will be answered by a Call Center Agent
- Provide the **language** required, and the **six digit access code** assigned to your office
- You will then be joined by the requested language interpreter

IMPORTANT NOTE: To the extent possible, preschedule telephonic appointments. Call the above number to preschedule. Unforeseen nationwide surges may create longer queue times than desired.

TIPS FOR WORKING WITH TELEPHONE INTERPRETERS

1. Brief interpreter prior to conversation
2. The interpreter is there to only interpret what is being said
3. Ask interpreter not to change or alter any part of the conversation
4. Speak clearly and in a normal tone
5. Allow more time for interpreted communication
6. Be aware of cultural factors
7. Refrain from using metaphors, acronyms, slang, or idioms
8. Remember to pause between sentences
9. Speak directly to the non-English speaker, not the interpreter
10. Permit only one person to speak at a time
11. Treat interpreter as a professional

For **sight translation:** Please send the source document to **Services@telelanguage.com.** The Telelanguage interpreter managers will forward the file to the assigned interpreter. Pre-scheduling the needed languages and providing required documents will accelerate the process. Please provide any special instructions to the Call Center Agent when requesting or pre-scheduling the required language.

NEED SUPPORT?

Tim Bernal
Project Manager
Toll-Free 888.983.5352 | Direct: 503.535.2178
E-mail: tbernal@telelanguage.com

TELELANGUAGE℠ {Language List}

DIAL: 844-340-2763 Provide the Required Language and Your Access Code

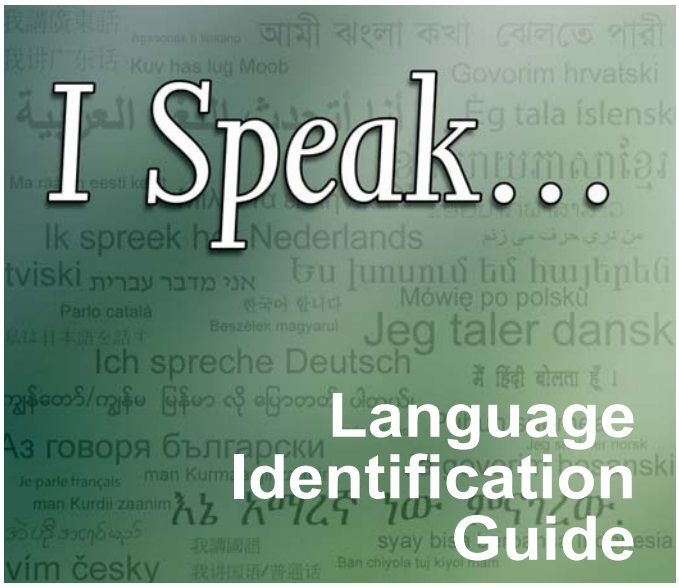
Acholi
Afrikaans
Akan
Albanian
American Sign Language
Amharic
Arabic
Armenian
Ashanti
Assyrian
Azerbaijani
Bambara
Basque
Bassa
Behdink
Belarusian
Bengali
Bosnian
Bulgarian
Burmese
Cantonese
Cape Verde
Catalan
Cebuano
Chaldean
Cham
Chamorro
Chau-jo
Cherokee
Chinese
Chouja
Chauukese
Creole
Croatian
Czech
Danish
Dari (Persian)
Dimli
Dinka
Duala
Dutch
Edo
Efik
Estonian
Ethiopian
Ewe
Farsi (Persian)

Fijian
Filipino
Finnish
Flemish
French
French Canadian
French Creole
Frisian (West)
Fujianese
Fukinese
Fula
Fulani
Fuzhou
Ga
Gaelic
Ganda
Garre
Georgian
German
Gilaki
Grebo
Greek
Greenlandic
Gujarati
Haitian Creole
Haka Burmese
Hakka
Harari
Hausa
Hebrew
Hindi
Hmong
Ho
Hunanese
Hungarian
Iban
Ibang
Icelandic
Lgbo
Ilocano
Indonesian
Jaaxanke
Jakartanese
Japanese
Javanese
Kakwa
Kanjobal

Kankanay
Kannada
Karen
Kashmir
Kayah
Kazakh
Khmer (Cambodian)
Kikamba
Kikuyu
Kinyarwanda
Kirghiz
Kirundi
Korean
Kosrae
Kpelle
Krahn
Kurdish
Lakota
Laotian
Latin
Latvian
Lebanese
Liberian
Lingala
Lithuanian
Luganda
Luo (Dhuluo)
Maay
Macedonian
Malagasy
Malay
Malayalam
Malaysian
Maltese
Mam
Mandarin
Mandingo
Mandinko
Mankon
Marathi
Marshallese
Maylay
Meru
Mien
Mina
Mixteco
Mixteco Alto

Mixteco Bajo
Moldovan
Mongolian
Moroccan Arabic
Myanmar
Nahuati
Navajo
Nepali
Newari
Nigerian
Norwegian
Nuer
Ojibay
Oromifa
Oromo
Pahari
Palauan
Pampangan
Papiamento
Pashto
Polish
Ponapean
Portuguese
Portuguese Brazilian
Portuguese Creole
Potwari
Pilaar
Punjabi
Quechua
Quiche Rhade
Romanian
Rundi
Russian
Samoan
Sara
Serbian
Serbo Croatian
Shanghalinese
Shona
Sichuan
Sicilian Sindhi
Sinhala
Sinhalese
Slovak
Slovenian
Somali Soninke
Sotho

Spanish (European)
Spanish (Latin America)
Spanish (Mexican)
Sudanese
Swahali
Swedish
Syrian
Tagalog
Tahitian
Taiwanese
Tajiki
Tamal
Tamang
Tamil
Tarasco
Tatar
Telugu
Teochew
Thai
Thai Dam
Tibetan
Tigrigna
Tigrinya
Toishanese
Tokelau
Tongan
Trukese (Chuukese)
Tshiluba
Tsonga
Tswana
Turkish
Turkmen
Twi
Ukranian
Urdu
Uzbek
Vangali
Vietnamese
Visayan (Cebuano)
Welsh
Wolof
Wu
Yi
Yiddish
Yoruba
Zapoteco
Zulu



This guide assists literate individuals who are not proficient in English to identify a preferred language.

Homeland Security

Language Identification Guide for DHS Personnel and Others

As employees of the Department of Homeland Security you may encounter a broad range of persons in the course of your work, including individuals who have limited English proficiency (LEP). DHS is both committed and legally obligated to take reasonable steps to provide meaningful access for these individuals. The DHS Office for Civil Rights and Civil Liberties (CRCL) offers this “I Speak” guide and similar posters as practical ways to identify which language an individual speaks so that you can obtain the necessary assistance. Consult your office or component for resources, such as translation or over-the-phone interpretation.

Executive Order 13166 requires DHS to take reasonable steps to provide meaningful access for persons with limited English proficiency and - as also required by Title VI of the Civil Rights Act of 1964 - to ensure that recipients of federal financial assistance do the same.

Contact the DHS Office for Civil Rights and Civil Liberties' CRCL Institute at CRCLTraining@dhs.gov for digital copies of this guide or an "I Speak" poster.

Download copies of the DHS LEP plan and guidance to recipients of financial assistance at www.dhs.gov/crcl.

I speak …

A

Amharic

እኔ አማረኛ ነው ምናገረው.

Arabic

أنا أتحدث اللغة العربية

Armenian

Ես խոսում եմ հայերեն

B

Bengali

আমী ঝংলা কথা ঝেলতে পারী

Bosnian

Ja govorim bosanski

Bulgarian

Аз говоря български

Burmese

ကျွန်တော်/ကျွန်မ မြန်မာ လို ပြောတတ် ပါတယ်၊

C

Cambodian

Cantonese

我講廣東話 (Traditional)

我讲广东话 (Simplified)

Catalan

Parlo català

Croatian

Govorim hrvatski

Czech

Mluvím česky

D

Danish
Jeg taler dansk

Dari
من دری حرف می زنم

Dutch
Ik spreek het Nederlands

E

Estonian
Ma räägin eesti keelt

F

Finnish
Puhun suomea

French
Je parle français

G

German
Ich spreche Deutsch

Greek
Μιλώ τα ελληνικά

Gujarati
હુ ગુજરાતી બોલુ છુ

H

Haitian Creole
M pale kreyòl ayisyen

Hebrew
אני מדבר עברית

Hindi
मैं हिंदी बोलता हूँ ।

Hmong
Kuv has lug Moob

Hungarian
Beszélek magyarul

I

Icelandic
Èg tala íslensku

Ilocano
Agsaonak ti Ilokano

Indonesian
syay bisa berbahsa Indonesia

Italian
Parlo italiano

J

Japanese
私は日本語を話す

K

Kackchiquel

Quin chagüic´ká chábal´ ruin´ rí tzújon cakchiquel

Korean

한국어 합니다

Kurdish

man Kurdii zaanim

Kurmanci

man Kurmaanjii zaanim

L

Laotian

ຂອ້ຍປາກພາສາລາວ

Latvian

Es runâju latviski

Lithuanian

Að kal bu lietuviš kai

M

Mandarin

我講國語 (Traditional)

我讲国语/普通话 (Simplified)

Mam

Bán chiyola tuj kíyol mam

Mon

N

Norwegian

Jeg snakker norsk

P

Persian

من فارسی صحبت می کنم.

Polish

Mówię po polsku

Portuguese

Eu falo português do Brasil
(for Brazil)

Eu falo português de Portugal
(for Portugal)

Punjabi

ਮੈਂ ਪੰਜਾਬੀ ਬੋਲਦਾ/ਬੋਲਦੀ ਹਾਂ।

Q

Qanjobal

Ayin tí chí walq´ anjob´ al

Quiche

In kinch´aw k´uin ch´e quiche

R

Romanian

Vorbesc româneşte

Russian

Я говорю по-русски

S

Serbian

Ја говорим српски

Sign Language (American)

Slovak
Hovorím po slovensky

Slovenian
Govorim slovensko

Somali
Waxaan ku hadlaa af-Soomaali

Spanish
Yo hablo español

Swahili
Ninaongea Kiswahili

Swedish
Jag talar svenska

T

Tagalog
Marunong akong mag-Tagalog

Tamil
நான் தமிழ் பேசுவேன்

Thai
พูดภาษาไทย

Turkish
Türkçe konuşurum

U

Ukrainian
Я розмовляю українською мовою

Urdu
میں اردو بولتا ہوں

V

Vietnamese
Tôi nói tiêng Việt

W

Welsh
Dwi'n siarad

X

Xhosa
Ndithetha isiXhosa

Y

Yiddish
איך רעד יידיש

Yoruba
Mo nso Yooba

Z

Zulu
Ngiyasikhuluma isiZulu

Selected Indigenous Languages of Mexico

Agrupación Lingüística	Variante Lingüística	Frase en español	Frase en lengua
chichimeo jonaz	chichimeco jonaz	yo hablo chichimeca	ikáuj úza' ér~í
mazateco	mazateco del norte	yo hablo mazateco Hablo la lengua de Santa María Chilchotla	Cha'ña enná Cha 'ña énn nda xo
maya	maya	Yo hablo maya	teen k-in t'aan maya
mixe	mixe bajo	Yo hablo mixe	Madyakpiëch ayuuk
	mixe alto, de Tlahuitoltpec	Yo hablo mixe	Xaamkëjxpët ayuujk ëts nkajpyxypy
mixteco	mixteco del oeste de la costa	yo hablo mixteco	Yuu kain se'en savi ñu ñundua

Agrupación Lingüística	Variante Lingüística	Frase en español	Frase en lengua
náhuatl	náhuatl de la huasteca veracruzana (se entiende junto con Ve racruz y San Luis Potosí)	yo hablo náhuatl	Na nitlajtowa náhuatl
tojolabal	tojolabal	yo hablo tojolabal	Ja ‘ke´ni wala kúmaniyon tojol-abál
triqui	triqui de la baja	yo hablo triqui	‘unj a’mii xna’ ánj nu’a
tseltal	tseltal (variante unificada)	Yo hablo tseltal	Te jo’one ja k’op te bats’il k’op tseltal
tsotsil	tseltal (variante unificada)	Yo hablo tsotsil	Vu’une jna’xi k’ opoj ta bats’i k’op
zapoteco	zapoteco de la planicie costera	yo hablo zapoteco	Naa rinė’ diidxazá
chinanteco	chinanteco del sureste medio	yo hablo chinanteco	Jnea lo’n jujmií kiee ’dsa mo’kuöo

Limited English Proficiency Resources

www.lep.gov

"I Speak" is provided by the Department of Homeland Security Office for Civil Rights and Civil Liberties (CRCL). Special thanks to the Department of Justice Bureau of Justice Assistance and the Ohio Office of Criminal Justice Services, for inspiration and permission to use their "I Speak" guide as the initial source.

Office for Civil Rights and Civil Liberties

www.dhs.gov/crcl

Toll Free: 1-866-644-8360
Toll Free TTY: 1-866-644-8361
Email: crcl@dhs.gov

TAB:

Handling Money

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
☐ District ☐ Superior Court Division

Name And Mailing Address Of Defendant

Telephone No. Of Defendant

Total Bond Required
$

Amount Of This Bond
$

APPEARANCE BOND FOR PRETRIAL RELEASE

#

G.S. 15A-531, 15A-534, 15A-544.2

Offenses And Additional File Numbers

☐ See Attachment

☐ **Unsecured Appearance Bond** - I, the undersigned defendant, acknowledge that my personal representatives and I are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side.

☐ **Cash Appearance Bond By Defendant *(See note on reverse side.)*** - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, and hereby deposit the cash identified below as security with the understanding that the deposit will be returned upon the Court's determination that the conditions of release have been performed, subject to the conditions of this Bond stated on the reverse side, and that it will be available to satisfy my obligations.

☐ **Defendant's Property Appearance Bond** - I, the undersigned defendant, acknowledge that I am bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side, and as security for said Bond have executed a mortgage or deed of trust to real or personal property, payable to the State of North Carolina and with power of sale conditioned upon the breach of any condition of this Bond.

☐ **Surety Appearance Bond** - We, the undersigned, jointly and severally acknowledge that we and our personal representatives are bound to pay the State of North Carolina the sum shown above, subject to the conditions of this Bond stated on the reverse side. Any undersigned professional bondsman, bail agent, or runner attests that the AFFIDAVIT on the reverse side is complete and true. If a cash deposit is indicated below, surety(ies) has deposited the cash to secure the obligation as surety(ies) on this bond with the understanding that the deposit will be returned to the surety(ies) upon termination of that obligation as provided by law, and that it will NOT be available to satisfy defendant's obligations. **(For cash bond, see note on reverse side.)**

Date Of Execution Of Bond

Signature Of Defendant

ACCOMMODATION BONDSMAN

☐ See attached AOC-CR-201A for additional accommodation bondsmen executing this bond.

Name And Address Of Accommodation Bondsman

Telephone No.

Name And Address Of Accommodation Bondsman

Telephone No.

PROFESSIONAL BONDSMAN

Name Of Bondsman

License No. Of Bondsman

Telephone No.

Name Of Runner, If Applicable

License No. Of Runner

Telephone No.

INSURANCE COMPANY

Name Of Insurance Company

Power Of Appointment No. Of Bail Agent

Name Of Bail Agent

License No. Of Bail Agent

Telephone No.

SIGNATURE

Signature Of Surety

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Signature

☐ *Magistrate* ☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*
☐ *Custodian Of Detention Facility [G.S. 15A-537(c)]*

Signature Of Surety

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

Date

Signature

☐ *Magistrate* ☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *Clerk Of Superior Court*
☐ *Custodian Of Detention Facility [G.S. 15A-537(c)]*

COMPLETE IF CASH DEPOSITED

Signature Of Official Accepting Cash

Name Of Official Accepting Cash (type or print)

Receipt No.

NOTE: If cash deposited, see note on reverse side.

CONDITIONS

The conditions of this Bond are that the above named defendant shall appear in the above entitled action(s) whenever required. It is agreed and understood that this Bond is effective and binding upon the defendant and each surety throughout all stages of the proceedings in the trial divisions of the General Court of Justice until the entry of judgment in the district court from which no appeal is taken or until the entry of judgment in the superior court, unless terminated earlier by operation of law or order of the court. If the defendant appears as ordered until termination of the Bond, then the bond is to be void, but if the defendant fails to appear as required, the Court will forfeit the bond pursuant to Part 2 of Article 26 of Chapter 15A of the General Statutes.

Each accommodation bondsman, by signing on the reverse or on the attached AOC-CR-201A, states: "I have reached the age of 18 years and am a bona fide resident of North Carolina. Aside from love and affection and release of the above named defendant, I have received no consideration for acting as surety. I own sufficient property over and above all liabilities, homestead and other exemptions allowed me by law to enable me to pay this Bond should it be ordered forfeited. I understand that if I sign this Bond without sufficient property, I am guilty of a crime."

AFFIDAVIT

NOTE: *"Professional bondsmen, surety bondsmen [bail agents], and runners shall file with the clerk of court having jurisdiction over the principal an affidavit on a form furnished by the Administrative Office of the Courts." G.S. 58-71-140(d). Check all options that apply.*

☐ 1. I have not, nor has anyone for my use, been promised or received any collateral, security or premium for executing this Bond.

☐ 2. I have been promised a premium in the amount shown below, which is due on the date shown below.

☐ 3. I have received a premium in the amount shown below.

☐ 4. I have been given collateral security by the person named below, of the nature and in the amount shown below.

Amount Of Premium Promised	*Date Due*	*Amount Of Premium Received*
$		**$**

Name Of Person From Whom Collateral Received	*Nature Of Collateral*	*Value*

AFFIX STAMP OR POWER OF ATTORNEY HERE

RETURN OF CUSTODIAN OF DETENTION FACILITY

The defendant named on the reverse was released from my custody on the date shown below upon the execution of this Appearance Bond.

Date Defendant Released	*Name Of Custodian (type or print)*	*Signature Of Custodian*	☐ *Sheriff* ☐ *Deputy Sheriff* ☐ *Other* _____

NOTES ON CASH BONDS:

(1) ***To Official Taking The Bond.*** *Use this form for all cash bonds. Complete this form as follows:*

When Cash Deposited By Defendant Or By Another Person Who Intends For The Cash To Be Used To Satisfy The Defendant's Obligations. *Enter defendant's name, address and telephone number at the top of Side One. Check "Cash Appearance Bond By Defendant." Have defendant sign. Do no more. No other person's name should appear on this form. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to DEFENDANT, not to any other person.*

When Cash Deposited By Another Person Who Does NOT Intend For The Cash To Be Used To Satisfy The Defendant's Obligations. *Enter defendant's name, address and telephone number at the top of Side One. Check "Surety Appearance Bond." Have defendant sign. Enter name, address and telephone number of person depositing cash under "Accommodation Bondsman." Have that person sign under "Signature Of Surety." Complete notarization for that person. Enter your name, sign and enter receipt number under "Complete If Cash Deposited." Make receipt out to person depositing the cash.*

(2) ***To Bookkeeper.*** *If case disposed without forfeiture, disburse cash as follows: (1) If "Cash Appearance Bond By Defendant" checked on Side One, disburse to defendant or apply to defendant's obligations if court so orders. (2) If "Surety Appearance Bond" is checked on Side One, disburse only to the person(s) named under "Accommodation Bondsman."*

(3) ***Bond By Insurance Company Or Professional Bondsman As Surety Is Same As Cash Except In Child Support.*** *G.S. 15A-531(4) provides that an appearance bond executed by an insurance company or a professional bondsman (or a bail agent or runner on behalf of one of those sureties) is considered the same as a cash deposit, except in child support contempt proceedings for which only cash may satisfy a cash bond requirement.*

STATE OF NORTH CAROLINA		MAGISTRATE OFF-SITE DAILY CASH REPORT
Name Of Magistrate	*Name Of County*	*Date Collected*

CODE/ACCOUNT NO.	ACCOUNT DESCRIPTION	QUANTITY	TOTAL COLLECTED
21330	Special Fees: Marriage		
26210	Cash Bond		
292XX	Cash Bond – Other County CNTY _____		
26410	Purge Payment		
298XX	Purge Payment – Other County CNTY _____		
CRMC	Criminal Costs CNTY _____ CITY _____		
CTWM	Crim./Traffic Viol. CNTY _____ CITY _____		
IFMC	Infraction Costs CNTY _____ CITY _____		
IFTC	Infraction/Traffic Viol. CNTY _____ CITY _____		
MMVM	Moped/Motorcycle Violation		
SBM	Seatbelt		
22700	Fines		
CVMC	Small Claims Filing Fees CNTY _____ CITY _____		
21140	Hearing Petition for Year's Allowance		
21400	Miscellaneous Special Fees		
22500	Other Service Fees - County		
22600	Jail Fees		
2350X	Other Service Fees - City Other Details _____		
20100	Partial Pay		
26110	Restitution		
21211	FTA Fee		
21213	FTC Fee		
24202	Expanded Community Service		
	Other		

RECEIPT NUMBERS USED	TOTAL COLLECTED	$
Beginning: _____	Total Cash	$
	Total Bank Checks	$
Ending: _____	Total Money Orders	$
	TOTAL REMITTED	$

AOC-FS-3731, New 9/16

TAB:

Contracts

Contracts

Small Claims Law, Ch. 3 (pp. 53-97)

NOTE: Table 1 in Appendix 2 on page 96 has been substantially revised. Remove the page that immediately follows this one from the notebook and insert it in Small Claims Law.

Forms: Usually Complaint Form CVM-200 (Complaint for Money Owed) & Judgment Form CVM-400 (Judgment in Action to Recover Money or Personal Property). Summary ejectment actions are also contract cases, but specialized forms are used in those cases.

Introductory Activity

General Rule: The courts will enforce agreements between parties.

Brainstorm exceptions, limitations, conditions to the general rule:

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

MAXIMUM ALLOWABLE INTEREST RATES ON LOANS IN NORTH CAROLINA

Type of Lender	Amount Lent	Security	Interest Rate	Other Allowable Charges
Bank, credit union, savings and loans, and individual (G.S. 24-1.1, -10.1)	$25,000 or less	Any property (but not home loan secured by first deed of trust)	Greater of 16% or noncompetitive rate for U.S. Treasury bills with six-month maturity plus 6%. Rate will be set monthly by Comm'r of Banks.	Late payment charge up to 4% of outstanding balance. Prepayment fee of 2% if prepaid within 3 years of 1st payment for contract loan. Fee of ¼% of 1% of balance for modification of loan.
Bank, credit union, savings and loans, and individual (G.S. 24-11)	Extension of credit on open-end credit or revolving credit charges.	Any property if charge 1¼% or less. No property if over 1¼%	1½% per month (18% per year) on unpaid balance	Annual charge of no more than $24. Late pyt fee of $5 for unpaid balance less than $100 and $10 for balance of $100 or more
Finance company--(G.S. 53-176, -177, -180, -189, G.S. 25A-30)*	$15,000 or less	Any personal property	Prejudgment: Loan of $10,000 or less--30% per year on unpaid principal to $4,000, 24% on unpaid principal between $4,000 & $8,000, and 18% per year on the remainder. Loan of more than $10,000, 18% per year. Postjudgment: 8%	Processing fee not to exceed $25 for loans up to $2,500 and 1% for loans over $2,500, but max. of $40. $15 late fee. Deferral charge of 1 ½ % of amount deferred. Fee for purchase of insurance policy in lieu of recording.

PENALTIES:

Banks, credit union, individuals: Knowingly charging greater rate of interest than allowable forfeits entire interest on loan and borrower may recover twice the amount of interest actually paid. (G.S. 24-2)

Finance companies: Misdemeanor with punishment of $500 to $2,500 fine and/or imprisonment for 4 months to 2 years. Also contract is void unless violation is the result of accidental or bona fide error of computation. Lender has no right to collect or retain any principal or interest with respect to the loan. Borrower would have an action against the lender to recover any principal or interest paid. (G.S. 153-166)

Note additional requirements for loans to certain military service members. (G.S. 53-180.1)

File No.

COMPLAINT FOR MONEY OWED

G.S. 7A-216, 7A-232

Name And Address Of Plaintiff

County | Telephone No.

VERSUS

Name And Address Of Defendant 1 ☐ Individual ☐ Corporation

County | Telephone No.

Name And Address Of Defendant 2 ☐ Individual ☐ Corporation

County | Telephone No.

Name And Address Of Plaintiff's Attorney

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division-Small Claims

1. The defendant is a resident of the county named above.
2. The defendant owes me the amount listed for the following reason:

Principal Amount Owed	$
Interest Owed *(if any)*	$
Total Amount Owed	$

(check one below)

☐ On An Account *(attach a copy of the account)*	Date From Which Interest Due		Interest Rate
☐ For Goods Sold And Delivered Between	Beginning Date	Ending Date	Interest Rate
☐ For Money Lent	Date From Which Interest Due		Interest Rate
☐ On a Promissory Note *(attach copy)*	Date Of Note	Date From Which Interest Due	Interest Rate

☐ For a Worthless Check *(attach a copy of the check)*

☐ For conversion *(describe property)*

Other: *(specify)*

I demand to recover the total amount listed above, plus interest and reimbursement for court costs.

Date	Name Of Plaintiff Or Attorney (Type Or Print)	Signature Of Plaintiff Or Attorney

Contracts Page 5

(Over)

AOC-CVM-200, Rev. 9/13

INSTRUCTIONS TO PLAINTIFF OR DEFENDANT

1. The PLAINTIFF must file a small claim action in the county where at least one of the defendants resides.

2. The PLAINTIFF cannot sue in small claims court for more than $10,000.00. This amount may be lower, depending on local judicial order. If the amount is lower, it may be any amount between $5,000.00 and $10,000.00, as determined by the chief district court judge of the judicial district.

3. The PLAINTIFF must show the complete name and address of the defendant to ensure service on the defendant. If there are two defendants and they reside at different addresses, the plaintiff must include both addresses. The plaintiff must determine if the defendant is a corporation and sue in the complete corporate name. If the business is not a corporation, the plaintiff must determine the owner's name and sue the owner.

4. The PLAINTIFF may serve the defendant(s) by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, addressed to the party to be served or by paying the costs to have the sheriff serve the summons and complaint. If certified or registered mail is used, the plaintiff must prepare and file a sworn statement with the Clerk of Superior Court proving service by certified mail and must attach to that statement the postal receipt showing that the letter was accepted.

5. The PLAINTIFF must pay advance court costs at the time of filing this Complaint. In the event that judgment is entered in favor of the plaintiff, court costs may be charged against the defendant.

6. The DEFENDANT may file a written answer, making defense to the claim, in the office of the Clerk of Superior Court. This answer should be accompanied by a copy for the plaintiff and be filed no later than the time set for trial. The filing of the answer DOES NOT relieve the defendant of the need to appear before the magistrate to assert the defendant's defense.

7. Whether or not an answer is filed, the PLAINTIFF must appear before the magistrate.

8. The PLAINTIFF or the DEFENDANT may appeal the magistrate's decision in this case. To appeal, notice must be given in open court when the judgment is rendered, or notice may be given in writing to the Clerk of Superior Court within ten (10) days after the judgment is rendered. If notice is given in writing, the appealing party must also serve written notice of appeal on all other parties. The appealing party must PAY to the Clerk of Superior Court the costs of court for appeal within twenty (20) days after the judgment is rendered.

9. This form is supplied in order to expedite the handling of small claims. It is designed to cover the most common claims.

10. **The Clerk or magistrate cannot advise you about your case or assist you in completing this form. If you have any questions, you should consult an attorney.**

AOC-CVM-200, Rev. 9/13

File No.

Film No.

Judgment Docket Book And Page No.

JUDGMENT IN ACTION TO RECOVER MONEY OR PERSONAL PROPERTY

G.S. 7A-210(2), 7A-224

Name And Address Of Plaintiff

County | Telephone No.

VERSUS

Name And Address Of Defendant 1

County | Telephone No.

Name And Address Of Defendant 2

County | Telephone No.

Name And Address Of Plaintiff's Attorney

STATE OF NORTH CAROLINA

_____ County

In The General Court Of Justice
District Court Division-Small Claims

This action was tried before the undersigned on the cause stated in the complaint. The record shows that the defendant was given proper notice of the nature of the action and the date, time and location of trial.

FINDINGS

The Court finds that:

☐ the plaintiff has proved the case by the greater weight of the evidence.

☐ the plaintiff has failed to prove the case by the greater weight of the evidence.

the defendant(s) ☐ was ☐ was not present at trial.

☐ the case involves a breach of contract and the date of breach is: _____.

☐ the contract provides for pre-judgment interest on damages for breach at the rate of _____% and/or post-judgment interest at the rate of _____%.

☐ the contract does not provide a specific pre-judgment interest rate.

☐ the contract does not provide a specific post-judgment interest rate.

☐ Other:

ORDER

It is ORDERED that:

☐ the plaintiff recover possession of the personal property described in the complaint.

☐ the plaintiff recover possession of the personal property listed below:

☐ the plaintiff recover nothing of the defendant(s) and that this action be dismissed with prejudice.

☐ *(for breach of contract cases)* the plaintiff recover of the defendant(s) the following principal sum plus interest on the principal from the date of breach to the date of judgment (1) at the rate provided in the contract, as found above; or (2) at the legal rate. In addition, the principal shall bear interest from the date of judgment until the judgment is satisfied (1) at the rate provided in the contract, as found above; or (2) at the legal rate.

☐ *(for tort cases)* the plaintiff recover of the defendant(s) the following principal sum, plus interest at the legal rate from the date the action was instituted until judgment is satisfied.

☐ Other: *(specify)*

☐ Costs of this action are taxed to the ☐ plaintiff. ☐ defendant.

Principal Sum Of Judgment	$	*Name Of Judgment Debtor(s) From Whom Amount Recovered*
Pre-judgment Interest Not Included In Principal	$	☐ Judgment Announced And Signed In Open Court
Attorney's Fees Or Other Damages *(when appropriate)*	$	*Date* / *Signature Of Magistrate*
TOTAL AMOUNT	$	*Name Of Party Announcing Appeal In Open Court*

CERTIFICATION

NOTE: *To be used when magistrate does not announce and sign this Judgment in open court at the conclusion of the trial.*
I certify that this Judgment has been served on each party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Date | *Signature Of Magistrate*

AOC-CVM-400, Rev. 2/12

Job Aid

How to Analyze a Contracts Case

Is there a contract?

Who are the parties to the contract?

What are its terms?

Did defendant breach the contract?

What damages is plaintiff entitled to recover?

Another Way to Think About It

The plaintiff has the burden of proving by the greater weight of the evidence each of the following essential elements:

___ That there was a contract

___ That plaintiff and defendant were parties to the contract.

___ That the terms of the contract were A, B, C, etc.

___ The defendant breached term A as follows: ...

___ The breach by defendant resulted in my being damaged in this particular way. . .

___ The monetary amount of my damages is X, and here's how I calculated X. . .

Activity

1. Medical doctor sues former patient to recover payment for services rendered. MD proves that Patient came to her office to be treated for the flu. MD examined her and gave her a shot. She then billed $50 for the treatment. Patient has never paid her. MD seeks damages of $50. Patient argues that she never entered into a contract with Dr. Sanders regarding the price she would charge. What's the legal issue?

_____

2. Customer sues Salesperson for breach of implied warranty. Customer proves that he purchased a pair of running shoes at Sears after informing Salesperson that he runs approximately 50 miles each week. The shoes fell apart after two weeks. Customer argues that he relied on the advice of Salesperson about which shoes to buy and seeks to recover $125, the cost of the shoes. What's the legal issue?

_____

3. Landlord sues Tenant for $900 past-due rent. Tenant agrees that he did not pay last month's rent, but contends that he owes only $750 because LL agreed to reduce the rent in exchange for T's services in repairing and maintaining other rental properties owned by LL. T offers evidence that he provided such services. What's the legal issue?

_____

4. LL sues T for summary ejectment. Written lease provides that LL has the right to evict T if T fails to "keep yard neatly maintained." T offers evidence of her yard maintenance activities (along with pictures). LL contends that these activities were insufficient. What's the legal issue?

_____

5. Homeowner sues contractor to recover $1500 paid for construction of gazebo. The undisputed facts are that contractor agreed to construct a six-sided gazebo, but in fact constructed a gazebo with only five sides. What's the legal issue?

_____

CHECKLIST FOR CONTRACT CASES IN SMALL CLAIMS COURT

DOES THIS CASE INVOLVE AN AGREEMENT BETWEEN π AND Δ?

WHO ARE THE PARTIES TO THE CONTRACT?

If parties are not identical to people who entered into contract, why not?

- Agency
- Guarantors
- Joint and Several Liability
- Husbands, Wives, and Kids

WHAT ARE THE TERMS OF THE AGREEMENT?

If the agreement is in writing, ask for a copy. Read it carefully. Are the terms clear?

If the agreement is not in writing, listen to the testimony about the terms.

- ☐ Do the parties agree about the terms of their agreement?
- ☐ If they don't agree, what specifically do they disagree about? What does π contend? What does Δ contend? In the case of a disagreement, the magistrate must determine the terms, remembering that the party seeking to enforce the contract has the B/P on its terms.
- ☐ Are there terms they left out? Assuming the intent to contract is clear, the magistrate "fills in the blanks" based on evidence about what is usual and reasonable, to implement the probable intention of the parties.

What rules of evidence should the magistrate be mindful of in determining the terms?

- ☐ If a contract is written, the *best evidence* of what the parties agreed to is the written contract.
- ☐ If a contract is written, evidence about what the parties said before signing the contract is not relevant unless meaning is unclear (parol *evidence rule).*
- ☐ In an action on an account, a *verified itemized statement of the account* is sufficient to prove that Δ owes that amount of money in the absence of evidence to the contrary.

Are there additional or different terms written into the agreement by the law?

- ☐ *In contracts for the sale of goods*, is π's claim for breach of warranty?
- ☐ *In actions based on a lease,* does the landlord have additional responsibilities under the RRAA?
- ☐ *In actions involving consumer credit sales,* does the Retail Installment Sales Act affect any of the contract terms?

Before moving to the next question, stop and decide what the terms of the agreement are.

Is the agreement one that the law will enforce?

- ☐ Does it involve a bargained-for exchange?
- ☐ Is this particular defendant (rather than someone else) bound by the contract?
  - --Does the contract involve a corporation?
  - --Does the contract involve an agency relationship?
- ☐ Is there any question about Δ's ability to consent?
  - --Was Δ a minor at the time of the contract?
  - -- Is there doubt about Δ's competence to contract?
- ☐ Is there a legal rule that renders this agreement unenforceable?
  - --Is this one of the kinds of contracts the law requires to be written?
  - --Did π wait too long to file the lawsuit?
  - --Are the terms of the agreement so one-sided and unfair as to be *unconscionable*?

DID Δ BREACH THE CONTRACT?

WHAT DAMAGES IS π ENTITLED TO?

Common damage items:

- ☐ Direct damages (difference between value of promised performance and what it will cost now)
- ☐ Incidental damages (costs of preparing to perform, those incurred in response to breach, those involved in minimizing injury)
- ☐ Consequential damages (foreseeable damages resulting from breach)
- ☐ Interest from date of breach

Special cases:

- ☐ Cancelling the contract: damages for putting everything back the way it was
- ☐ Liquidated damages clauses
- ☐ Failure to return property: FMV of property
- ☐ Breach of warranty: difference between FMV of goods as warranted and FMV of goods received
- ☐ Checks NSF: Amount of check + bank charge + processing fee + amount of check x 3 ($100-$500)
- ☐ Attorney fees

Be on the lookout for:

- ☐ Duty to mitigate damages
- ☐ Joint & several liability

Issue Presented	Location in Text
Whether the parties actually reached agreement	pp. 52 - 56
The asserted agreement is based on the behavior of the parties	*Implied contracts* *p. 56*
The terms of the contract don't involve mutual benefit or exchange.	*Consideration* p. 57
The agreement leaves out some important terms.	p. 59
One party claims the written contract is not the complete agreement and wants to testify to additional terms.	*Parole evidence rule* *pp. 61, 73-74*
The case is about a warranty in a contract involving a sale of goods.	pp. 61 - 66
The case is about an implied warranty in a contract for the sale of goods.	pp. 63-64, 65-66
The contract involves an illegal transaction.	*Illegality* p. 67
The contract was based on mistake.	*Mistake* p. 67 - 68
One party did not actually give free consent to the contract terms	pp. 68 - 69
One party to the contract was a minor or mentally competent.	pp. 69 - 72
Whether a contract is required to be written.	*Statute of Frauds* p. 73
Whether a contract is no longer enforceable because of a statute of limitations.	pp. 74 - 76
Whether a contract is so unfair and one-sided as to be unenforceable.	*Unconscionability* pp. 76 - 77
One person has contracted on behalf of another	*Agency* pp. 78 – 81, 95

The contract involves purchase of goods by a consumer on the installment plan	*RISA* pp. 81 - 84
Determining damages to award for breach of contract	*pp. 84 - 86*
Rule of evidence for proving amount owed on an account	*Verified itemized statement of account* pp. 86 - 87
Damages for breach of warranty	*pp. 87*
Damages for bad check	*pp. 87 - 88*
Whether injured party is required to minimize damages from breach	*Duty to mitigate damages pp. 89*
Two debtors sign contract	*Joint & several liability pp. 89*
Complete cancellation of contract	*Recission p. 90*
How to determine interest in contracts case	*pp. 90 – 91, (revised) 96 - 97*
Attorney's fees	*p. 91-94*

Activity

Using the Textbook in a Contracts Case

Find the page in Small Claims Law that addresses the legal question raised by the facts:

_____ A landlord asks that you award attorney fees as part of money damages in an action to recover possession of residential property.

_____ Bill never paid Samantha for the old clunker he bought from her 4 ½ years ago. Samantha finally sued him for the money, but Bill says she waited too long.

_____ Pamela promises her 16-year-old daughter Kamesha that if Kamesha doesn't drink or use illegal drugs before she's 18, Pamela will buy her a car. Kamesha, who just celebrated her 18th birthday, is suing her mom for the cost of the car she never got.

_____ Ivanna financed her purchase of a dining room table and chairs from Sebastian's Sensational Furniture. SSF sells the set for $200 to cash customers and $250 to customers buying on credit. Ivanna paid $50 down, and financed the remaining amount at 15% interest plus $4 for a credit report and $10 for a loan fee. SSF brought this action for money owed after Ivanna defaulted on her monthly payments.

_____ Leonardo and Rachel both signed the lease agreement as tenants on a two-year rental agreement for a very nice apartment. After 6 months, Rachel moved out. Leonardo stayed six more months before leaving with no notice and owing $4800 rent. The landlord doesn't know where Leonardo went, and has sued Rachel (who just won the lottery) for the $4800.

TAB:

Marriage

Pop Quiz on Marriage

1. A magistrate can legally perform a marriage anywhere in the state of North Carolina.

   True False

2. A couple who want a civil marriage ceremony—as opposed to a religious ceremony—have no alternative but to be married by a magistrate.

   True False

3. An eight-year-old child may serve as a legal witness in a marriage ceremony.

   True False

4. A magistrate should verify that both parties are of legal age or otherwise meet the legal requirements of eligibility before performing a marriage ceremony.

   True False

5. A magistrate may not accept any money other than the $20 fee for performing a marriage unless the magistrate has left the office and traveled to the ceremony. In that case, the magistrate may accept reimbursement of expenses.

   True False

6. At the completion of the ceremony the magistrate should provide one copy of the marriage license to the couple and return the other to the Register of Deeds office in the county in which the ceremony was performed.

   True False

7. A marriage license is good for one year.

   True False

OUTLINE ON PERFORMING MARRIAGES

I. Capacity to Marry

A. Must be single.

B. Must be 18 or older or between 16 and 18 with consent of parent or guardian. A 14 or 15 year old female who is pregnant or has a child or a 14 or 15 year old who is father of child or baby not yet born can petition the district court for a judge to authorize that person to marry.

C. Persons of nearer kin than first cousins cannot marry.

D. Common law marriages are not recognized.

II. Marriage Licenses

A. Do not perform ceremony without a valid license.

B. License may be issued by Register of Deeds of any county in North Carolina.

C. Marriage ceremony must be conducted within 60 days after license issued.

D. Must be at least two witnesses to ceremony.

E. Every magistrate who marries a couple without a valid license or fails to return the license to the Register of Deeds within 10 (ten) days shall forfeit and pay $200 to any person who sues and shall be guilty of a midemeanor.

NOTE: There is no specific procedure for "returning" marriage certificates to an out-of-county register of deeds. However, if magistrate mails them by first class mail, that should be sufficient. As an extra precaution, the magistrate might want to make a copy for his or her records with a notation of the date mailed.

III. Marriage Ceremony

A. Couple must orally consent to take each other as spouses, freely, seriously and plainly.

B. Must be in the presence of each other and authorized ordained minister or a magistrate.

C. Officer must declare such persons to be married.

D. There must be two witnesses to the ceremony; witnesses may be under the age of 18 but must be able to sign their name and to relate and understand what they are observing.

IV. Fees and certificates

A. A $20.00 fee is collected by the magistrate for performing marriage ceremony. No other fee may be taken. Can go to the couple's party, reception.

B. Fee is to be remitted to the Clerk of Superior Court for use of State in support of General Court of Justice.

C. The magistrate must fill out and sign both copies of the certificate and return both copies to register of deeds within 10 days. Failure to do so subjects magistrate to $200 penalty.